

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

Improvements to Generator)	
Interconnection Procedures and)	Docket No. RM22-14-000
Agreements)	

**REPLY COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

I. INTRODUCTION

The Edison Electric Institute (“EEI”) respectfully submits the following reply comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Notice of Proposed Rulemaking (“NOPR”) in which the Commission proposes to reform the *pro forma* Large Generator Interconnection Procedures (“LGIP”), *pro forma* Small Generator Interconnection Procedures (“SGIP”), *pro forma* Large Generator Interconnection Agreement (“LGIA”), and *pro forma* Small Generator Interconnection Agreement (“SGIA”) to address interconnection queue backlogs, improve certainty, and prevent undue discrimination for new technologies.¹ EEI submitted initial comments in this docket,² as well as initial and reply comments in the Advance Notice of Proposed Rulemaking³ issued in a related proceeding in Docket No. RM21-17-000.⁴

EEI is the association that represents all investor-owned electric companies in the United

¹ *Improvements to Generator Interconnection Procedures and Agreements*, 179 FERC ¶ 61,194 (2022) (“NOPR”). On October 28, 2022, the Commission granted EEI’s motion for extension of the reply comment period until December 14, 2022. *Notice on Request for Extension of Time*, Docket No. RM22-14-000 (Oct. 28, 2022).

² Initial Comments of the Edison Electric Institute (Oct. 13, 2022) (“EEI Comments”).

³ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 (2021) (“ANOPR”).

⁴ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Initial Comments of the Edison Electric Institute (Oct. 12, 2021) (“Initial Comments”); *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Reply Comments of the Edison Electric Institute (Nov. 30, 2021) (“Reply Comments”).

States. Our members provide electricity for more than 235 million Americans and operate in all fifty states and the District of Columbia. As a whole, the electric power industry supports more than seven million jobs in communities across the United States. EEI's member companies own and operate generation, transmission, and distribution facilities in regions in all areas of the country, both inside and outside of regional transmission organizations ("RTOs") and independent system operators ("ISOs"). EEI members are united in their commitment to get the energy they provide as clean as they can, as fast as they can, while keeping reliability and affordability front and center, as always, for the customers and communities they serve. Across the nation, EEI members are leading a clean energy transformation, making significant progress to reduce greenhouse gas emissions in our sector, while also creating good-paying jobs and an equitable clean energy future. Accordingly, EEI members are directly affected by and can provide a broad-based perspective on the issues raised in the NOPR and initial comments.

II. COMMENTS

EEI maintains all of the positions asserted in its initial comments, including related to the Commission's proposals regarding public information,⁵ affected systems,⁶ the compliance

⁵ EEI Comments at pp 12-13. *See also* Initial Comments of Bonneville Power Administration at pp 6-8 (explaining that the requirements to post public information must be consistent with transmission provider's security requirements) ("Bonneville Comments"); Initial Comments of Southwest Power Pool, Inc. at p 4 ("Although SPP does see potential value in a public information tool, SPP does not support mandating it for all transmission providers. Similar to the informational studies, the information that customers would be able to gain from a public information tool would be highly sensitive to the types of data put into the tool, the way the data is organized and assessed, and the way in which the results are presented.") ("SPP Comments"); and Initial Comments of PJM Interconnection, LLC at p 48 (explaining that public information posting requirements should not be too prescriptive) ("PJM Comments").

⁶ EEI Comments at pp 17-19. *See also* Initial Comments of the U.S. Chamber of Commerce at pp 11-12 ("The Chamber does question the merit, however, of the requirement for an affected system to repay an interconnection customer connecting to an adjacent system for the full cost of any network upgrades required by their interconnection. . . . this shifting of costs, without any commensurate benefit, is unjust and unreasonable.") ("U.S. Chamber of Commerce Comments").

period,⁷ non-synchronous generation,⁸ and the timing of information submission for interconnection customers requesting that the transmission provider file an unexecuted LGIA.⁹ EEI provides these reply comments to address other stakeholders' initial comments on the aspects of the Commission's proposal discussed below. As noted in EEI's initial comments, fifty EEI members have made future commitments to reduce carbon emissions to zero or net-zero. In this decade, many of these reductions will be realized through the interconnection of increasing amounts of renewable generation. Accordingly, EEI agrees with the Commission that there is a need to address interconnection queue backlogs and improve certainty in the interconnection process.

A. General Comments

In response to the NOPR and other commenters' initial comments, EEI offers the following general reply comments highlighting the importance of (1) focusing on proposed reforms that improve queue discipline, (2) not advancing proposed reforms that would increase the burden on recognized limited resources and contribute to delays, (3) allowing regional processes to move forward and permitting variations in compliance filings, and (4) providing the appropriate notice and comment processes for proposed reforms not included in the NOPR.

1. The Commission Should Focus on Reforms that Improve Queue Discipline.

Many commenters agree that a significant issue contributing to the need for

⁷ EEI Comments at p 22.

⁸ EEI Comments at p 23. *See also* U.S. Chamber of Commerce Comments at p 13 (explaining that the proposed requirements for non-synchronous generation "are overdue, as evidenced by previous, widespread events where the lack of these requirements has threatened the reliable operations of the transmission system"). EEI also supports initial commenters' recommendation that the Commission standardize generator interconnection technical capabilities and performance requirements, for example by reference to standards like IEEE standards. *See, e.g.*, Initial Comments of the Electric Power Research Institute at pp 5-6.

⁹ EEI Comments at pp 23-24.

interconnection reform is the number of speculative projects that enter the process only to withdraw later.¹⁰ These withdrawals often result in the need for restudies, which harms projects ready to connect by, among other things, delaying or blocking their interconnection to the transmission network. Moving to a first-ready, first-serve process with meaningful readiness requirements and financial commitments, in conjunction with sufficiently significant withdrawal penalties and financial assurances is the correct approach to instilling more discipline in the interconnection process and reducing the backlog.

Most commenters, including EEI, support the Commission’s proposal to move from a first-come, first-served process to a first-ready, first served process.¹¹ It is important that the Commission’s final rule clearly state that its policy is to prioritize ready projects, as doing so will enable an approach that meets the unique needs of the various regions. The proposed first ready process intends to do just this by prioritizing ready projects. If the priority is based on readiness,

¹⁰ See, e.g., Initial Comments of the Electric Power Supply Association at p 5 (“The existing serial queue interconnection process based on a first-come, first-served approach has been encumbered by extensive speculative activity that clogs the interconnection queue and hampers the advancement of viable projects based on the incentive to game the process.”) (“EPSA Comments”); Initial Comments of Shell Energy North America (US), L.P., Shell New Energies U.S., LLC, and Savion LLC at p 9 (“Critically, in attempting to resolve queue backlog, the Commission must send the proper signals to disincentivize the queueing of overly speculative generation projects and reward generation interconnection customers who make better choices.”) (“Shell Comments”); U.S. Chamber of Commerce Comments at p 5 (“[I]nterconnection customers routinely submit multiple diverse requests to connect what often results in the connection of a single generating unit to the transmission grid. This unnecessarily increases the size of interconnection queues and decreases the accuracy of the interconnection studies that necessarily assume that previously queued generators – and their associated network upgrades – will materialize.”); and Initial Comments of WIRES at pp 5-6 (“The existing backlogged queue is largely a result of efforts to implement legacy first-come, first-served processes, along with a significant number of renewable generation requests, and experience has shown that these structures have led to delays, uncertainty, and frequent restudies as generation is changed or drops out of the queue.”) (“WIRES Comments”).

¹¹ Many commenters support the proposal to move to a first-ready, first-served process. See, e.g., EPSA Comments at p 6 (“[M]oving to a first-ready, first-served process is an important correction which should acknowledge the commercial viability of projects so that they can move forward in the process ahead of speculative projects holding onto queue positions in order to collect additional information or stake out multiple opportunities to maneuver costs and system access.”); and WIRES Comments at p 6 (“[A] process that focuses on review of projects that are ready to move forward is likely to create a more efficient generator interconnection process that could address the backlog problems flagged by the Commission. Reducing or eliminating the need to study speculative or non-viable projects avoids wasting time and resources and should prove helpful in reducing backlogs.”).

unready projects with an earlier in time queue position should not have priority over a ready project. To this end, EEI supports recommendations that the Commission modify the proposed *pro forma* tariff language in Section 4.1 to clarify that queue position or queue priority is based on readiness and not on the date and time the request is submitted.¹²

The Commission’s proposed study deposit frameworks, site control requirements, Commercial Readiness Demonstrations, and financial commitments would impose reasonable conditions¹³ that are appropriately applied early in and throughout the process to best aid in queue discipline¹⁴ but, as discussed herein and in EEI’s initial comments, the Commission proposal may not go far enough. Some of the proposed readiness reforms already are in place in certain regions and, in several regions, the current interconnection processes have more strict readiness requirements than the Commission proposes. Initial comments demonstrate that these already accepted processes are proving beneficial.¹⁵ As EEI notes in its initial comments, to the extent pre-existing or proposed interconnection processes are not compatible with the Commercial Readiness Demonstrations proposed in the NOPR, the Commission should allow

¹² See Initial Comments of Xcel Energy Services at n.12 (explaining that while “the NOPR describes and supports a first-ready, first-served process (e.g. see P 4 of the NOPR), the Commission’s proposed tariff language in Section 4.1 “Queue Position” and subsections 4.1.1 “Assignment of Queue Position” and 4.1.2 “Higher Queued Position” still assign priority based on the date and time, and therefore continues to assign priority on a first-come basis and not a first-ready basis).

¹³ See, e.g., Initial Comments of the Electric Consumers Resources Council at p 10 (explaining that “[t]he proposed increases in fees, milestones (including site control and commercial readiness), and penalties could also improve accountability and discipline on the part of the generation project developer”) (“ELCON Comments”); Initial Comments of the Enel North America, Inc. at p 40 (noting that “[s]ite control represents a reasonable financial burden and proof of progress to show that the developer has researched and selected a project and is ready to enter the interconnection process”) (“Enel Comments”); and U.S. Chamber of Commerce Comments at p 6 (“The Chamber supports [the first-ready, first-served cluster study process; more rigorous financial commitments and readiness requirements with higher study deposits, and enhanced site control requirements, and commercial readiness requirements] as overdue, to the extent that individual transmission providers and RTO/ISOs have not already moved to adopt these or similarly effective practices.”).

¹⁴ See EEI Comments at pp 6-8.

¹⁵ For example, “[f]inancial securities, site control requirements, and development milestones are all viable, effective measures currently employed by SPP that help reduce the risk of late-stage withdrawals. . . .” SPP Comments at p 6.

the relevant transmission providers to propose readiness requirements that align with their own processes.¹⁶

In order for the readiness reforms to provide meaningful change, the Commission should limit the ability to use financial security in lieu of meeting milestones¹⁷ and, as proposed, include consequences for withdrawal. Security provided in lieu of meeting readiness requirements can be used as a loophole for speculative projects and would subvert the Commission's goal of increasing the efficiency of the interconnection process. Consequently, if the Commission allows interconnection customers to provide financial security in lieu of meeting milestones, it should only permit these payments in narrow, well-defined circumstances.¹⁸ As EEI explained in its initial comments, one such appropriate circumstance may be where an interconnection customer can demonstrate that "regulatory limitations," as defined narrowly, prohibit it from obtaining site control and where that customer also can demonstrate that it could not have obtained the requisite site control by using due diligence.¹⁹

To serve their purpose of discouraging speculative projects, withdrawal penalties must be both real and sufficiently consequential. To that end, withdrawal penalties should not be waivable in most circumstances and should be backed up with financial assurances.²⁰ The Commission also should clarify that the "intention of the rule is to exempt only withdrawals that

¹⁶ EEI Comments at n.23.

¹⁷ See EEI Comments at p 7.

¹⁸ Notably, PJM explains that its "experience has been that a project that has less than 100 percent, or no, site control may not be a viable project." PJM Comments at p 29. While EEI does not support financial securities in lieu of meeting readiness requirements, like site control, to the extent that the Commission allows interconnection customers this option, EEI agrees with APPA and LPPC that "where a payment is made in lieu of a full showing of site control, demonstration of 100 percent site control should be required as soon as possible after the generator interconnection application is submitted, and certainly prior to the facilities study stage." Initial Comments of the American Public Power Association and Large Public Power Council at p 20 ("APPA and LPPC Comments").

¹⁹ EEI Comments at pp 7-8.

²⁰ EEI Comments at p 8.

neither delay nor increase the cost of other proposed facilities; to clarify the rule, conditions (1) and (2) [in its proposed revisions to the *pro forma* LGIP] should be combined into a single condition.”²¹ Moreover, many commenters agree that “penalties should be severe enough to discourage the practice of ‘fishing’ for queue positions and withdrawing, instead of such dollar amounts being inconsequential and a mere cost of doing business.”²²

2. The Commission Should Not Move Forward with Aspects of the NOPR that Would Increase the Burden on Recognized Limited Resources and Contribute to Delays.

Unlike the proposed reforms discussed above, there are several portions of the Commission’s proposal, and initial comments in response, that would further constrain limited transmission provider resources and likely contribute to delays without sufficient benefit. These include proposals on informational interconnection studies, incorporating alternative transmission technologies into the generator interconnection process, and shared network upgrades.

a) Informational Interconnection Studies and Initial Commenters’ Recommendations Regarding Additional Information and Studies

In the NOPR, the Commission aptly recognizes that there is “a nationwide shortage of qualified engineers to keep pace with the increasing number of interconnection requests in the queue and associated interconnection studies.”²³ With that in mind, as well as the Commission’s overarching goal of enhancing the interconnection process, it is critical that any reforms that would impose further burdens on these resources deliver sufficient benefit. EEI

²¹ Initial Comments of the Environmental Defense Fund at p 5. *See also* EEI Comments at pp 8-9.

²² ELCON Comments at p 10. *See also* U.S. Chamber of Commerce Comments at p 5 (“[T]he current lack of stringent financial commitments and readiness requirements on interconnection customers perpetuates the submission of speculative interconnection requests.”).

²³ NOPR at P 20.

continues to support the objective of providing interconnection customers with more concrete information to assist in determining the costs and timing of required upgrades. However, the Commission’s proposal to require prescriptive informational interconnection studies is not the appropriate way to accomplish that goal.

As EEI²⁴ and several other commenters²⁵ note, this aspect of the Commission’s proposed reforms would provide limited benefits. For example, such informational studies will provide cost information from a single moment in time and the study will apply to a single project, while the network upgrades that an interconnection customer would be responsible for will be determined as part of a cluster. In addition, several commenters echo EEI’s concerns about the burden that this proposal—which could require “as many as several hundred studies per year,”²⁶ if not “thousands”²⁷—would impose. This level of potential burden, particularly at a time when the Commission itself recognizes resource constraints, requires a greater showing of likely benefits than has been demonstrated in order to qualify as a reasonable requirement to impose

²⁴ EEI Comments at pp 10-13.

²⁵ See, e.g., Enel Comments at p 9 (noting that Enel “does not support the NOPR’s requirement for Transmission Providers to provide an optional pre-queue informational study since the results are not binding, do not secure queue priority, and ignore the collective impact of a cluster of generators”); Initial Comments of the Organization of MISO States at p 5 (“OMS is concerned that implementing the informational interconnection study as proposed may have unintended consequences that could further delay transmission providers’ ability to process interconnection requests.”) (“OMS Comments”); Initial Comments of Ørsted North America, Inc. at p 7 (noting “we do not support the ability of ICs to request an informational interconnection study, which we believe to be of limited usefulness”) (“Ørsted Comments”); and Initial Comments of the Solar Energy Industry Association at p 3 (explaining that SEIA “does not support the proposal to require transmission providers to conduct informational studies for prospective interconnection customers. Such studies would be a drain on limited transmission provider resources, would not produce useful information for interconnection customers, and are redundant of the due diligence already required interconnection customers.”) (“SEIA Comments”).

²⁶ APPA and LPPC Comments at p 11 (explaining that “the proposal would create situations in which a transmission provider may be compelled to undertake as many as several hundred studies per year, a clearly overwhelming burden”).

²⁷ PJM Comments at p 46 (explaining that “[t]his burden, if each potential interconnection customer can submit up to five study requests, will be monumental – for example, in any given cluster, PJM might have to perform thousands of these studies, while still having to perform System Impact and other studies as required under its Tariff”).

on transmission providers. Accordingly, the Commission should not move forward with a prescriptive approach to this aspect of the NOPR. Instead, the Commission should give transmission providers the flexibility to work out the details of their own approaches to providing informational studies, if any, to prospective interconnection customers.

Some commenters go even further in their initial comments, recommending that the Commission require transmission providers to make even more detailed information available and allow parties other than the transmission provider to complete studies.²⁸ Recommendations that the Commission require transmission providers to furnish highly granular information to potential interconnection customers will be unduly burdensome on transmission providers with little benefit. Such proposals appear to be designed to allow interconnection customers, or their third-party consultants, to perform transmission line design and engineering without the involvement of the transmission providers. However, transmission line design can be extremely complex and require the consideration of a myriad of factors—clearances for maintenance, blowout clearances to the edge of the right-of-way, etc.—which cannot be condensed to a simple list of parameters. Transmission line design by its nature requires the specialized expertise of the transmission provider, and requiring the publication of additional design data will greatly increase the burden placed on transmission providers with no corresponding benefit for interconnection customers. Certain information also represents confidential system information that could be exploited for commercial benefit or a threat to the security and reliability of the transmission system. Generally publicizing such information without confidentiality protections in place for sensitive information would be an excessive disclosure

²⁸ See, e.g., Initial Comments of American Council on Renewable Energy at p 5 (“ACORE Comments”); Initial Comments of Public Interest Organizations at pp 19-20; and SEIA Comments at p 33.

of proprietary system information, especially when potential interconnection customers necessarily would not yet be a part of the queue or the interconnection process. Furthermore, providing information at this level of granularity would further complicate the interconnection process by adding another area of potential dispute to an already fraught process, and runs the significant risk of interconnection customers “backseat driving” the interconnection study process. As countless commenters have noted, the safe and reliable operation of the transmission system rests on the transmission provider, and thus it is the transmission provider who must ultimately perform and stand behind its study results.

b) Incorporating Alternative Transmission Technologies into the Generator Interconnection Process

Similarly, the Commission’s proposal to require transmission providers to evaluate alternative transmission technologies upon interconnection customer request during the generator interconnection process should not be adopted.²⁹

While these technologies can provide benefits, they “do not have an appropriate place in facilitating the interconnection of new generators to the transmission system.”³⁰ Transmission providers are best positioned to determine when and where alternative transmission technologies should be deployed on their systems and already do so.³¹ Moreover, there are ongoing Commission proceedings related to these alternative technologies that provide a more appropriate forum for this discussion.³² This includes ongoing compliance efforts related to

²⁹ See EEI Comments at pp 19-21.

³⁰ U.S. Chamber of Commerce Comments at p 12. The U.S. Chamber of Commerce further notes that “[m]any of these technologies provide varying levels of benefits, and primarily on a short-term basis. As such, the required adoption of such technologies could result in the shifting of network upgrade cost burdens to subsequent interconnection customers in instances where the earlier customer is the primary motivator of an upgrade’s need.” *Id.*

³¹ See, e.g., Bonneville Comments at p 24 (“Transmission Providers include, as appropriate, alternative technologies in interconnection studies, and we see no reason why this practice would not continue.”).

³² See EEI Comments at nn.83-85. See generally Docket Nos. RM20-10-000, AD19-19-000, AD22-5-000. See also

Order No. 881, which would be convoluted and delayed by insertion of a requirement to consider implementation of dynamic line ratings upon interconnection customer request.³³

In addition, imposing a requirement on transmission providers to analyze these technologies at an interconnection customer's request "will significantly add to the list of tasks that the transmission provider must complete within a short timeframe, thereby heightening the risk that studies will be delayed . . . [and] increase[] the probability that interconnection customers will dispute the upgrades assigned to them."³⁴ In this vein, EEI opposes recommendations that the Commission "invite the filing of Section 206 complaints based on a showing of a [transmission provider's] objection and refusal to consider a [grid enhancing technologies ("GETs")] alternative. . . . Transmission Provider decisions regarding the use and deployment of GETs in the interconnection process should be subject to review by commission approved Alternative Dispute Resolution (ADR) procedures."³⁵ If adopted, this recommendation would require a transmission provider not only to evaluate recommendations from a customer that may be uninformed about the system,³⁶ but then also defend its decision, further exhausting resources on a proposal that may not have made sense in the first place or might have presented reliability issues. Consequently, rather than aiding in meeting the

Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, 179 FERC ¶ 61,028 (2022).

³³ See generally docket No. AD22-5-000; and *Managing Transmission Line Ratings*, Order No. 881, 177 FERC ¶ 61,179 (2021). See also EEI Comments at n.83; and APPA and LPPC Comments at p 31 (noting that "the Commission should not adopt the proposed requirement to evaluate alternative transmission technologies in the generator interconnection process until the industry has further experience with AAR deployment under Order No. 881, or at least until the issues identified by commenters in the NOI proceeding are more fully addressed").

³⁴ SPP Comments at pp 25-26.

³⁵ Initial Comments of WATT at p 4.

³⁶ See Initial Comments of the California Independent System Operator at p 38 (explaining that "[t]he CAISO supports the Commission's proposal to incorporate alternative transmission technologies into the generator interconnection process; however, the CAISO opposes the proposal it must be at the request of the interconnection customer. Transmission planners are already empowered to identify and employ new technologies") ("CAISO Comments").

Commission's goals of reforming the queue process in a way that would enable viable projects to move through in a more expeditious and efficient manner, this recommendation would add layers of complexity and likely delay, without providing meaningful benefits.

While EEI agrees with commenters who suggest that if the Commission moves forward with this aspect of the NOPR that it provide an "opt out" for transmission providers,³⁷ the need for an opt out itself highlights the likely challenges that the Commission's proposal will create. Further, EEI supports the suggestion that the Commission consider convening a technical conference on this issue if it pursues this aspect of the NOPR.³⁸

c) Shared Network Upgrades

The Commission's proposal to require transmission providers to allocate the costs for network upgrades between interconnection customers in earlier and later clusters that benefit from the same network upgrades similarly presents significant burdens and implementation challenges.³⁹ Initial comments note relevant experience with similar processes that demonstrate these challenges, as well as concerns with the lack of impact such a requirement would have in practice.

More specifically, SPP explains that the Commission's proposal appears to be similar to its Z2 Crediting Process which "took years to develop, has been extremely controversial and is still mired in protests and litigation."⁴⁰ In line with EEI's concerns, SPP explains that

³⁷ ACORE Comments at p 6.

³⁸ SPP Comments at p 26.

³⁹ See EEI Comments at pp 22-23. See also U.S. Chamber of Commerce Comments at pp 7-8 (noting that the Chamber "has concerns regarding the administrative feasibility, increased costs, and burden on finite resources posed by the Interconnection NOPR's proposal to reallocate network upgrade costs from interconnection customers in an earlier cluster study to those studied in subsequent cluster studies that may benefit from network upgrade facilities that have been in service for less than five years").

⁴⁰ SPP Comments at pp 7-8.

“[u]ntangling financial obligations between multiple parties over many years has proved to be extremely difficult . . . and this proposal appears to have many of the same features.

Determining interconnection customers’ financial obligations to previous interconnection customers who funded upgrades will add complexity, time and expense.”⁴¹ All three run counter to the Commission’s ultimate goals.

Enel also notes that it does not support the proposal “due to lack of impact and potential to add more complication and administrative burden to the process.”⁴² Critically, “[f]or the generators going through the queue, there is limited impact to the decision to move forward since there is no guarantee that someone will come along later and help pay for upgrades. From a business perspective, this is not bankable and does not provide increased cost certainty.”⁴³

Accordingly, the Commission should not move forward with this aspect of the NOPR.

3. The Commission Should Allow Regional Processes to Move Forward and Permit Variations in Compliance Filings.

Recognizing and permitting regional processes and deviations in compliance filings is critical to the overall reform efforts. Allowing these variations will support key Commission principles and goals while providing the flexibility that is necessary to recognize differences in the way processes have developed to help ensure that reforms improve rather than impede progress. As noted in EEI’s and other stakeholders’ initial comments, this includes variations in

⁴¹ SPP Comments at p 9.

⁴² Enel Comments at p 30.

⁴³ Enel Comments at p 30.

the transition process,⁴⁴ in determining the contours of clusters,⁴⁵ and as otherwise may be required to recognize ongoing efforts.⁴⁶

4. Alternative Proposals and the Potential Need for Additional Notice and Comment Procedures.

Multiple commenters suggest alternatives or additions to the Commission's proposals. Some of these suggestions are straightforward, such as the recommendation that the Commission require transmission providers to offer a virtual option for scoping meetings,⁴⁷ which EEI agrees with. However, other suggestions are more complex and the details around any related timelines, filing requirements, and other attendant rights or obligations will be important.⁴⁸ If the Commission seeks to adopt any such recommended alternatives or additions, it should provide stakeholders with a draft proposal and opportunity for comment before issuing a final rule that incorporates such recommendation.

For example, in its initial comments, Enel proposes that in the Final Rule the Commission establish a new "third-party construction option" for Stand Alone Network Upgrades.⁴⁹ EEI respectfully submits that such a proposal represents a major shift in the

⁴⁴ EEI Comments at pp 9-10. *See also* Bonneville Comments at p 13 ("[W]e believe Transmission Providers should be given sufficient flexibility to develop and implement a transition process that takes into account the volume of requests in their interconnection queue. This will help to ensure that the benefits of a new cluster study process are not delayed by the need to study existing Interconnection Requests under the current process, including any new requests that may be submitted by Interconnection Customers in an effort to avoid new requirements.").

⁴⁵ *See* EEI Comments at pp 4-6. *See also* CAISO Comments at p 11 (explaining that "the Commission should avoid specifying window, review, and processing timelines altogether. The Commission should defer to the transmission providers with actual experience processing interconnection requests, and let them propose timelines they believe will be feasible"); and U.S. Chamber of Commerce Comments at p 7 (explaining that "each transmission provider knows best the particular interconnection requests that should be included within a cluster and those that shouldn't based on their system's geography, electric configuration, or other relevant factors.").

⁴⁶ EEI appreciates the Commission's recognition that regional interconnection reform efforts are already ongoing and that regional flexibility remains important. NOPR at P 6 and n.474.

⁴⁷ SEIA Comments at p 8.

⁴⁸ For example, some commenters recommended incentives in place of penalties for transmission providers who do not meet the proposed deadlines for completing studies. *See, e.g.,* Shell Comments at pp 10-12.

⁴⁹ Enel Comments at pp 52-56.

fundamental structure of the interconnection process and is well outside of the scope of a proposed rule that seeks to increase the processing speed of the interconnection queue. Enel's proposal also raises profound questions over who would own and operate such upgrades when they are finally constructed, and what that would mean when a third party owns portions of a transmission owner's transmission system. Transmission providers are also already heavily burdened by the obligations of the interconnection process – layering a pseudo-Order 1000 competitive process atop an already extremely complex process will not produce efficient outcomes. Should the Commission wish to explore the potential for competition in Network Upgrade construction, it must do so in a separate proceeding.

B. Reasonable Efforts Standard

As explained in EEI's Initial Comments, the Commission's proposal to eliminate the reasonable efforts standard and instead impose a regime of deadlines and penalties is unsupported, and will ultimately hinder efforts to reform the interconnection process.⁵⁰ As SPP notes, the Commission "has not provided evidence demonstrating a lack of compliance nor has it provided a sufficient argument for elimination of the reasonable efforts standard."⁵¹ The Indicated PJM Transmission Owners also emphasize that the Commission has not made the requisite statutory finding under Section 206 of the Federal Power Act that the reasonable efforts standard is not just and reasonable.⁵² Multiple other parties expressed similar concerns in their

⁵⁰ EEI Comments at pp 13-17.

⁵¹ See SPP Comments at p 13. SPP also asserts that "[i]nsisting that transmission providers complete studies within an arbitrary time period without regard to the volume of requests or to the complexities of the studies is to require efforts that go beyond 'reasonable.' Several of the Commission's other proposals would add significant burdens to the study process that will make it even more challenging to complete studies on time (e.g., optional resource solicitation studies that have to be done in parallel with and completed in advance of the corresponding cluster study, without delaying the cluster study; informational studies; requirement to evaluate advanced transmission technologies at the request of the interconnection customer)." *Id.*

⁵² See Initial Comments of the Indicated PJM Transmission Owners at pp 38-39 ("Indicated PJM TOs Comments").

initial comments.⁵³ The reasonable efforts standard continues to be the best approach to govern the interconnection process, as it is deliberately flexible to allow for the optimum exercise of engineering judgment while still ensuring accountability for delays that are egregious or not consistent with Good Utility Practice.⁵⁴

The Commission uses penalties to address wrongdoing and misconduct by regulated entities.⁵⁵ However, the Commission provided no evidence in the NOPR that wrongdoing or misconduct by transmission providers is causing delays to the interconnection process. In fact, the Commission stated in the NOPR that it has never found a transmission provider at fault for delays in the interconnection process.⁵⁶ The record simply does not support replacing the reasonable efforts standard with a regime of penalties and deadlines.⁵⁷ Furthermore, as the New

⁵³ See, e.g., Initial Comments of New York Independent System Operator, Inc. at pp 6-7 (“Study delays are caused by a host of factors, many of which are outside of ISOs/RTOs’ control. Studies are only becoming more complex with the expanding scope of ISO/RTOs’ interconnection responsibilities, including the unprecedented increase in generation projects.”) (“NYISO Comments”); U.S. Chamber of Commerce Comments at p 10 (“The Commission appropriately recognizes the preponderance of external forces that lead to transmission provider delays in the completion of interconnection studies. . . . What the Commission omits, however, is any evidence that unilateral transmission provider action – or inaction – is resulting in the delayed completion of interconnection studies. . . . Quite simply, there are far too many relevant variables beyond a transmission provider’s control for such an entity to be locked into rigid timeframes that are applicable to each and every interconnection request. As such, the imposition of rigid monetary fines connected to interconnection study completion is, in itself, unjust and unreasonable and should be omitted from any final rule in this proceeding.”); and WIRES Comments at pp 9-10 (“The interconnection study process involves analyzing the particular features and characteristics of each interconnecting resource along with the system impacts on the transmission network. The process is complex, and the study process is subject to modification based on withdrawals and changes to the request parameters of interconnecting generators under study. As a result, changes that are beyond the control of the transmission provider occur and can (and do) result in changes and constructive ‘delays’ to study timelines.”).

⁵⁴ EEI Comments at pp 16-17.

⁵⁵ See, e.g., *Enforcement of Statutes, Orders, Rules & Regs.*, 113 FERC ¶ 61,068, at P 26 (2005) (the Commission shall “determine the appropriate penalty to be imposed for **wrongdoing**”) (emphasis added); *id.* P 14 (the Commission “will develop a consistent approach to the amount of penalties for **misconduct**”) (emphasis added). See also *Kokesh v. SEC*, 137 S. Ct. 1635, 1642 (2017) (citing *Huntington v. Attrill*, 146 U.S. 657, 668 (1892) (stating that government-assessed penalties are “for the purpose of punishment, and to deter others from offending in like manner”)).

⁵⁶ NOPR at P 167 (stating it “has never found a transmission provider to have violated the reasonable efforts standard”).

⁵⁷ The only support the Commission cites to for its claim that delays are caused by a lack of consequences for transmission providers is a citation to testimony provided by Utah Public Service Commission Chairman Ted LeVar at a May 6, 2022, hearing. See NOPR at n.241. However, as explained in the comments of the Indicated PJM Transmission Owners, this statement fails to provide a basis for the Commission to make the necessary statutory

York Independent System Operator noted in its comments, “[i]t would also be premature for the Commission to blame the reasonable efforts standard for possible future missed study deadlines before the NOPR’s various proposed reforms have been implemented.”⁵⁸

Aside from the prohibitive lack of justification, the Commission’s proposal to eliminate the reasonable efforts standard and impose a regime of deadlines and penalties suffers from significant implementation issues. For example, it is unclear how or whether the penalty structure as proposed will accommodate different cluster sizes and study complexities or re-studies mandated by customer withdrawals. In addition, the NOPR’s proposal does not provide an exception for study delays outside of the control of the transmission provider other than Force Majeure,⁵⁹ and it is unclear what would constitute Force Majeure in the context of interconnection studies under the NOPR’s proposal.⁶⁰ The fact that numerous commenters felt compelled to offer an array of alternatives or additions to the Commission’s proposal on the reasonable efforts standard further illustrates these implementation concerns.⁶¹ Further, while some of these alternative or additional proposals may be preferable to aspects of the Commission’s proposal if the Commission moves forward with eliminating the reasonable

finding under Federal Power Act section 206 that the current regime is not just and reasonable. *See* Indicated PJM TOs at pp 38-39.

⁵⁸ NYISO Comments at p 30 (citing NOPR at P 167)).

⁵⁹ Proposed *pro forma* LGIP Section 3.9(3).

⁶⁰ The *pro forma* LGIP defines Force Majeure as including “any other cause beyond a Party’s control,” but excludes “acts of negligence or intentional wrongdoing.” *Pro forma* LGIP Section 1.

⁶¹ *See, e.g.*, Shell Comments at pp 10-12 (proposing a regime of incentives rather than penalties); Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners at p 15 (proposing a technical conference to further refine the penalty regime); APPA and LPPC Comments at pp 21-22 (asking the Commission to allow for flexibility in transmission provider deadlines based on the specific processes of the transmission provider and for other clarifications regarding deadlines); SEIA Comments at p 33 (requesting the Commission clarify that interconnection customers can use third party consultants to produce required studies in accordance with transmission provider standards and criteria); Enel Comments at p 49 (requesting an additional requirement for Transmission Providers to first post results and reports for every interconnection study as a draft, and to accept comments on the studies).

efforts standard,⁶² the details of such proposals will be important and should be fleshed out in a proposed rule before being incorporated into any final rule. For each of the foregoing reasons, the Commission should not proceed with its proposal to eliminate the reasonable efforts standard.

III. CONCLUSION

EEI appreciates the opportunity to submit comments in this proceeding and urges the Commission to enhance the efficiency of the interconnection process by implementing and modifying the reforms in the NOPR as discussed herein.

Respectfully Submitted,

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December 14, 2022

⁶² See, e.g., Shell Comments at pp 10-12 (proposing a regime of incentives rather than penalties).