



VIA ELECTRONIC MAIL

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U.S. Department of Energy
1000 Independence Ave., SW
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RE: Draft 2026 National Transmission Needs Study
91 FR 42429
Comments of Americans for Prosperity

COMMENTS OF AMERICANS FOR PROSPERITY

Americans for Prosperity (“AFP”) submits the following in response to the Notice of Availability of Draft 2026 National Transmission Needs Study and Request for Comment (“Study”) published in the Federal Register on July 9, 2025.¹

It is vital that the Department develop and refine strategies, planning frameworks, and policy approaches that can support the nation’s ability to meet the accelerating power and infrastructure needs while ensuring reliability, affordability, and sustainability across the grid.

Transmission build out is costly.

“Transmission is one of the most inefficiently regulated forms of infrastructure in the United States. Regulatory flaws reward inefficient projects, underdevelop efficient projects, and underutilize existing infrastructure. This has caused escalating

¹ Notice of Availability of Draft 2026 National Transmission Needs Study and Request for Comment, Office of Electricity, Department of Energy; Notice of availability; request for comments, 91 FR 42429, Document Number: 2026-13844, Federal Register, July 9, 2026.

transmission costs to consumers, while the gap between transmission need and infrastructure capacity widens.”²

The Study correctly asserts that “(t)he nation’s energy dominance hinges on a robust transmission system capable of reliably, securely, and economically delivering electricity to load to all locations on the grid in real time[.] ...”³ and that “the operational challenges of the electric grid are evolving in complexity and magnitude:”⁴

The Study also outlines that section 216 of the Federal Power Act (FPA), as amended, directs the Department and the Federal Energy Regulatory Commission (FERC)

“to take specific actions aimed at accelerating electric transmission development. Section 216(a)(1) of the FPA requires DOE to perform a nationwide triennial ‘study of electric transmission capacity constraints and congestion,’ which DOE refers to as the National Transmission Needs Study or Needs Study. FPA section 216(a)(2) requires the Secretary of Energy, at least once every three years, to issue a report, informed by DOE’s Needs Study or other information relating to electric transmission capacity constraints and congestion, that ‘may designate as a national interest electric transmission corridor any geographic area that – (i) is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers; or (ii) is expected to experience such energy transmission capacity constraints or congestion’ (designation report).”⁵

It then explains that a National Interest Electric Transmission Corridor (NIETC) “is a geographic area where DOE has identified present or expected transmission capacity constraints or congestion that adversely affect consumers, and which has been designated by the Secretary of Energy as a NIETC. NIETC designation enables DOE and FERC to use valuable federal financing and permitting tools to spur construction or modification of transmission facilities within a NIETC. Pursuant to FPA section 216(a)(2), DOE will consider the results of its 2026 Needs Study and other information relating to electric transmission capacity constraints and

² “A Consumer-First Framework for Transmission Reform”, Devin Hartman, Director of Energy and Environment Policy, R Street Institute; Nick Loris, President, C3 Solutions; Faith Burns, Energy Policy Fellow, Americans for Prosperity; Josh T. Smith, Senior Fellow for Abundance and Environment and Natural Resources at the Pacific Legal Foundation; Taylor Barkley, Director of Federal Government Affairs, the Abundance Institute; Isiah Menning, External Affairs Director, the American Conservation Coalition; Samuel Overly, State Policy Manager, Conservative Energy Network, April 27, 2026, <https://c3solutions.org/policy-paper/a-consumer-first-framework-for-transmission-reform/>

³ “National Transmission Needs Study Draft for Consultation and Public Comment July 2026”, United States Department of Energy, Washington, DC 20585, Executive Summary, p. ii. <https://www.energy.gov/documents/national-transmission-needs-study-draft-july-2026>

⁴ *Id.*

⁵ *Id.*, p. 1, internal citation omitted.

congestion when issuing any final NIETC designation reports within the statutorily mandated three-year window.”⁶

Further, the Study indicates that its findings “are intended to inform regional and interregional planning, as well as help guide the Department in the execution of its transmission related-authorities.”⁷

Of relevant interest is footnote 7 in the Study which states:

“Transmission planning is predominantly conducted today by local utilities, which plan for transmission needs on their respective transmission systems, and by regional planning authorities formed under FERC Order 1000, which plan for regional needs and identify regional transmission projects that are more efficient or cost-effective solutions. In 2024, FERC released Order 1920, which required transmission providers to produce regional long-term transmission plans on a 20-year time horizon. See Order No. 1000, 136 FERC ¶ 61,051 and Order No. 1920-A, 189 FERC ¶ 61,127.”⁸

Chapter VI of the Study considers anticipated future transmission needs, focusing on congestion in the transmission system, “noting that transmission congestion is a critical issue affecting economic and operational efficiency within and between regional transmission organizations (RTOs) and independent system operators (ISOs) (together, RTOs/ISOs), as well as within and around Tribal lands, with load-weighted congestion costs varying by region.”⁹

AFP recognizes there is no “one size fits all” solution to address the need for additional transmission resources across the nation. However, there are guiding principles that the Department can consider as it finalizes this Study and further develops policy tools that can assist in the expansion and build out of the grid. AFP provides the following for the Department’s consideration.

FERC Order 1920 and Regional Transmission Planning

The Study references FERC Order 1920, issued May 13, 2024, and that Order’s directive for regional long-term transmission plans on a 20-year time horizon and attendant cost allocations.¹⁰ Subsequent to that Order, FERC issued two additional Orders on rehearing and clarification:

- Order 1920-A on November 21, 2024;¹¹ and

⁶ *Id.*

⁷ *Id.*, p. 2.

⁸ *Supra*, at Footnote 3 of this document, referencing Footnote 7 in the Study at p. 2, Emphasis Added.

⁹ *Supra*, at Footnote 3 of this document, referencing p. 4 of the Study.

¹⁰ *Supra*, at Footnote 3 this document referencing Footnote 7 of the Study at p. 2.

¹¹ United States of America, Federal Energy Regulatory Commission, Docket No. RM21-17-001; Order No. 1920-A, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, issued November 21, 2024.

- Order 1920-B on April 11, 2025¹²

Far from being a “done deal,” challenges to Order 1920 were filed in nine courts of appeal, with the matters consolidated¹³ in the Fourth Circuit. All three (3) Order are under review at the Fourth Circuit as of this writing.¹⁴

The existence of this judicial review does not mean that everything concerning transmission policy stops in its tracks at FERC until a final Court decision is rendered; but it does portend that the question of “who pays for what” has yet to be conclusively settled. And before anyone heads down a path that may or may not comport with how the Court may ultimately decide those matters, it is prudent to bear in mind that a great policy idea arising out of a not yet reviewed FERC Order may not be such a great policy idea post-Court decision, particularly if the matter is modified or remanded.

AFP recommends that the Department remain cognizant of this ongoing litigation as it works to finalize this Study and put in place policies that can help it and FERC accomplish the Agencies’ respective responsibilities under the Federal Power Act.

Future Needs Assessment Outlined in Chapter VI

Chapter VI of the Study addresses relevant information concerning resource plans and assessment needs across the country.

“The key findings from this chapter include:

- Load growth is the main driver of transmission need, adding pressure to peak demand. Transmission investments are therefore critical to ensure grid reliability
- Given resource changes, additional transmission will be needed to maintain reliability. Additional factors driving the need for transmission include aging infrastructure, resource retirements, and new generator interconnections.

¹² United States of America, Federal Energy Regulatory Commission, Docket No. RM21-17-003; Order No. 1920-B, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, Order on rehearing and clarification, issued April 11, 2025.

¹³ United States Judicial Panel on Multidistrict Litigation, In Re: Federal Energy Regulatory Commission, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation, 187 FERC 61,068 Issued May 13, 2024, and Denial of Rehearing by Operation of Law and Providing for Further Consideration, 188 FERC 62,025 July 15, 2024, Consolidation Order, MCP No. 190, filed August 8, 2024.

¹⁴ Appalachian Voices, et al., Petitioners, v. Federal Energy Regulatory Commission, Respondent, Case No. 24-1650 (LEAD) 24-1748, 24-1756, 24-1756, 24-1758, 24-1760, 24-1765, 24-1770, 24-1785, 24-1804, 24-1857, 24-1862, 24-1867, 24-1876, 24-1885, 24-1887, 24-1979, 24-1991, 24-2162, 24-2163, 25-1073, 25-1080, 25-1197, 25-1349 (CONSOLIDATED), United States Court of Appeals for the Fourth Circuit.

- Regional planning processes indicate that regions are investing substantially in new transmission. Some regions approved their largest transmission planning portfolios in recent years.
- Interregional transmission is increasingly recognized for its contributions in increasing reliability, grid resilience, and meeting demand growth in at-risk areas. Several planning regions have initiated joint planning processes to better identify interregional transmission and have already identified significant risk if transfer capacity is not increased between certain regions.
- The transmission needs on Tribal lands vary significantly across the regions. Some require improved energy access and reduced costs, whereas others seek opportunities for utility-scale energy development. National studies identify the need for new transmission development on and near Tribal lands, recommending that strategies be developed aligning new transmission development with Tribal needs and goals.”¹⁵

Sound Transmission Policy Should Not Ignore Sound Economic Policy

That chapter alone – Chapter VI – highlights the “complexity and magnitude”¹⁶ of the “operational challenges”¹⁷ the Department, FERC, utilities, transmission providers, and the general public face when tackling the need for additional transmission build-out.

The Energy Information Administration projects that electricity consumption will continue growing through 2050 at a rate of 0.9% to 1.6%, with a major factor being data center server energy use.¹⁸

“We assume AI servers will increasingly skew more energy intensive, the installed stock of AI servers grows exponentially through at least 2040, and computational efficiency will increase over time. In our High Electricity Demand case, we assume the exponential growth in AI servers will continue through 2050, and the rate of improvement in server computational efficiency will reflect historical trends.”¹⁹

¹⁵ *Supra*, at Footnote 3 of this document, referencing p. 64 of the Study.

¹⁶ *Supra*, at Footnote 4 of this document.

¹⁷ *Id.*

¹⁸ U.S. Energy Information Administration, Analysis & Projections, Annual Energy Outlook 2026, April 8, 2026 <https://www.eia.gov/outlooks/aeo/>

¹⁹ *Id.*, <https://www.eia.gov/outlooks/aeo/narrative/index.php#Electricity>

The Department's own information²⁰ indicates that data centers can consume 10 to 50 times the energy per floor space of a typical commercial office building; and data centers account for roughly 2% of total U.S. electricity use.²¹

All that electricity has to be sent from the point of generation to the point of utilization; and an exponential increase in electricity demand requires a corresponding increase in transmission capacity. There are likely few, if any, areas of the country where transmission issues are not of critical importance. With the expected increase of load demand from data centers and artificial intelligence (AI), and the need to quickly respond to demand, lag times anywhere in the process can hinder economic growth.

In response to the Department's Request for Information (RFI) "Accelerating Speed to Power/Winning the Artificial Intelligence Race: Federal Action to Rapidly Expand Grid Capacity and Enable Electricity Demand Growth" published in the Federal Register on September 18, 2025,²² AFP submitted a response including a number of recommendations.²³

Those recommendations included that the Department evaluate the feasibility of having generation, transmission, and distribution of electricity occur outside of the traditional grid system. AFP discussed microgrids and a concept frequently referred to as Consumer Regulated Electric (CRE) Utilities.

These off grid solutions can provide a useful solution to grid constraint and reliability issues because they can operate, quite literally, off the grid. A large load that brings its own power, either through building its own generation and transmission or through contracting with an off-grid generation and transmission provider, can be contained within its own "electric bubble" without impacting the grid.

It's a simple solution that can provide profound – and imminently needed – impactful outcomes. An obvious way to resolve the transmission issue is simply to go off grid.

But if off-grid solutions are not implemented, the Department should ensure that sound economic policy not be thrown by the wayside.

²⁰ Data Centers and Servers, U.S. Department of Energy, <https://www.energy.gov/eere/buildings/data-centers-and-servers#:~:text=Data%20centers%20are%20one%20of,a%20typical%20commercial%20office%20building>

²¹ *Id.*

²² Accelerating Speed to Power/Winning the Artificial Intelligence Race: Federal Action To Rapidly Expand Grid Capacity and Enable Electricity Demand Growth, Request for information, Grid Deployment Office, Department of Energy, 90 FR 45032, <https://www.govinfo.gov/content/pkg/FR-2025-09-18/pdf/2025-18058.pdf>

²³ Americans for Prosperity "RFI Response – Accelerating Speed to Power", sent via electronic mail to: SpeedtoPowerRFI@hq.doe.gov, dated November 20, 2025, <https://americansforprosperity.org/wp-content/uploads/2025/11/AFP-Response-to-Accelerating-Speed-to-Power-RFI-DOE-Grid-Deployment-Office-FINAL-11-20-pdf.pdf>

AFP, along with a number of organizations, is a signatory to a document entitled: “[A Consumer-First Framework for Transmission Reform](#)”.²⁴ In it, five (5) principles are identified that the signatory organizations believe can guide transmission policy toward an abundant energy future. The principles include:

- 1) prioritize expansion and upgrades of the existing transmission system;
- 2) remove barriers to greenfield transmission under the merchant transmission model;
- 3) refine mandatory transmission planning and cost allocation practices, where necessary, to follow economic principles;
- 4) streamline transmission permitting and siting; and
- 5) improve transmission governance.²⁵

The Framework document expounds on Item 3 (above) noting that “[t]he majority of greenfield transmission expansion will inevitably occur under mandatory planning and cost allocation processes run by utilities or regional transmission organizations (RTOs). The most economical manner to plan such projects is through robust cost-benefit and scenario analyses, planning horizons appropriate for long-lived infrastructure, allocating costs based on the beneficiary pays principle, and putting transmission needs or solutions out for competitive bid. Developers should have a reasonable expectation that beneficial transmission lines can be deployed. This should include ensuring that developers have a credible means of proposing lines and that regulators will evaluate them based on neutral criteria; and that if selected, costs will be borne *only* by those who benefit, and *only* to the degree they benefit.”²⁶

Why Competitive Bidding is Important in Transmission Planning Build-Out and Why a Right of First Refusal (ROFR) Can Harm Ratepayers

In the proceeding in which FERC Order 1920 was issued, Docket No. RM21-17-000, a comment submitted by the United States Department of Justice (DOJ) and the Federal Trade Commission (FTC) sets out those Agencies’ concerns with a reinstatement of a federal right of first refusal.²⁷

“With a ROFR, consumers will lose the many benefits that competition can bring, including lower rates, improved

²⁴ *Supra*, at Footnote 2 of this document,

<https://c3solutions.org/policy-paper/a-consumer-first-framework-for-transmission-reform/>

²⁵ *Id.*

²⁶ *Id.*, Emphasis Added at: “putting transmission needs or solutions out for competitive bid”; Emphasis Theirs at “costs will be borne *only* by those who benefit, and *only* to the degree they benefit.”

²⁷ Comment of the United States Department of Justice and Federal Trade Commission, Docket No. RM21-17-000. Document is undated; however, a date of 08/17/2022 is indicated in the Column titled “Filed” in online FERC records: https://elibrary.ferc.gov/eLibrary/docketsheet?docket_number=RM21-17-000&sub_docket=; comment also located at https://www.ftc.gov/system/files/ftc_gov/pdf/p072104_doj_ftc_transmission_comment_to_ferc.pdf

service, and increased innovation, leading to a more efficient, reliable, and resilient grid. The rulemaking's requirement that the ROFR can be exercised only if the incumbent transmission provider establishes joint ownership of the new transmission facilities does not alleviate the Agencies' concerns. Like an unconditional ROFR, a conditional one displaces competition and thus forgoes the important benefits that competition produces for consumers."²⁸ (Emphasis Added).

The comment went on to discuss competition in the marketplace:

"Competition is a core organizing principle of the American economy, and vigorous competition gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation. The Agencies work to promote competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers, and through competition advocacy efforts, which urge federal, state, and local governmental bodies to make decisions that benefit competition and consumers. ... In the Agencies' experience, competition in wholesale electricity markets and in the development of transmission facilities – including competition from independent, transmission-only companies and other non-incumbent transmission owners – produces important benefits for wholesale and retail electricity consumers."²⁹ (Emphasis Added).

The DOJ/FTC comment also discussed that competitive processes have significantly reduced costs of regional transmission development when they have been implemented. In referencing FERC's removal of the ROFR from federal tariffs, it cited part of Order No. 1000 where FERC had stated:

" 'federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in

²⁸ *Id.*, Comment of the United States Department of Justice and Federal Trade Commission, at Federal Trade Commission link, pp. 1-2, Emphasis Added.

²⁹ *Id.*, referencing Comment of the United States Department of Justice and Federal Trade Commission, at Federal Trade Commission link, pp. 3-4, Emphasis Added, Internal citations omitted.

transmission development, and associated potential saving [sic]’ ”³⁰
(Emphasis Added).

And finally, the Agencies noted:

“(a)dopting reforms that promote competition where possible will make transmission development less costly, more resilient, and more innovative for the American consumer than it otherwise would be.”³¹ (Emphasis Added).

AFP recommends that the Department continue to work toward solutions that provide important benefits to electricity consumers, including the important benefits that competition can bring.

PRACTICAL SOLUTIONS IN THE ENERGY SPACE

AFP appreciates the Department’s request for comments on this Study and believes that practical solutions can be identified to help move our nation forward as we continue to build a resilient electric grid that works to meet the increased demand from large loads and AI.

AFP looks forward to assisting in the identification of those solutions.

Respectfully Submitted,

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³⁰ *Id.*, referencing Comment of the United States Department of Justice and Federal Trade Commission, at Federal Trade Commission link, p. 10, Emphasis Added, Internal citation omitted, last word of the quote should read: “savings”, as FERC Order 1000 reads: “...and associated potential savings,” at page 226 of FERC Order 1000: Federal Energy Regulatory Commission Final Rule, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Docket No. RM10-23-000; [Order No. 1000](#), Issued July 21, 2011.

³¹ *Id.* referencing Comment of the United States Department of Justice and Federal Trade Commission, at Federal Trade Commission link, p. 22, Emphasis Added.