UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

Pursuant to Rule 212 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Organization of PJM States, Inc. ("OPSI"),[1] respectfully submits these Comments that are generally supportive of the Commission's Notice of Proposed Rulemaking in this docket ("NOPR").[2]

I. OVERVIEW

OPSI supports the promotion of long-term, regional transmission ("LTRT") planning for the potential efficiencies it promises, while maintaining reliability and recognizing the central role of states in this process. OPSI's support, herein, only applies to the extent the proposed reforms do not threaten the reliability of the bulk power system. OPSI appreciates that the Commission has recognized that state and local electric regulators ("retail regulators") like those that make up OPSI's membership, for the most part, have authority over the siting and permitting of transmission projects produced in a regional transmission plan. As such, the Commission is right to recognize[3] that it is critical that retail regulators have a say in the development of selection

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[1] OPSI members voting in support of these comments are: The Delaware Public Service Commission, Public Service Commission of the District of Columbia, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, Michigan Public Service Commission, North Carolina Utilities Commission, Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Tennessee Public Utility Commission, Virginia State Corporation Commission, and Public Service Commission of West Virginia.

The New Jersey Board of Public Utilities and the Illinois Commerce Commission do not support these comments.

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

[3] *Id*. at P 297 and 299.

criteria and cost allocation methods developed pursuant to any LTRT planning process since this would increase the likelihood that LTRT facilities are actually developed.

The issues raised in the NOPR are some of the most difficult issues the electric industry faces. These comments respond to the *processes* FERC has proposed and the *concepts* FERC discusses in this NOPR but do not address the *substantive decisions* that retail regulators and RTOs[4] will have to make regarding long-term regional transmission planning. The Commission should afford retail regulators and RTOs flexibility in developing the LTRT processes that are appropriate for their region and should do nothing to limit the use of cost allocation methods that may work for willing individual states or groups of states within a region, such as PJM's State Agreement Approach ("SAA").[5]

OPSI recognizes that LTRT planning may offer cost savings over the status quo when used in coordination with short-term planning practices.[6] Because of this, OPSI is supportive of the Commission's upcoming Technical Conference on Transmission Planning and Cost Management.[7] The Commission has correctly recognized that it is critical to have retail regulators

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[4] OPSI recognizes that the FERC proposes to apply the reforms in the NOPR to public utility transmission providers in RTO regions and non-RTO regions and that they apply to more entities than just RTOs. *Id.* at n.5 (FERC writes, "A public utility transmission provider means a public utility that owns, controls, or operates transmission facilities. The term public utility transmission provider should be read to include a public utility transmission owner when the transmission owner is separate from the transmission provider, as is the case in regional transmission organizations (RTO) and independent system operators (ISO). The term "public utility" means "any person who owns or operates facilities subject to the jurisdiction of the Commission." citation omitted).

For the sake of simplicity and consistency in terminology throughout these comments, OPSI will use the term RTO instead of "public utility transmission provider" as the NOPR does.

[5] PJM Operating Agreement ("OA"), Schedule 6 § 1.5.9.

[6] *Id.* at P 25 ("We are concerned that the absence of sufficiently long-term, comprehensive transmission planning processes appears to be resulting in piecemeal transmission expansion to address relatively near-term transmission needs. We are concerned that continuing with the status quo approach may cause public utility transmission providers to undertake relatively inefficient investments in transmission infrastructure, the costs of which are ultimately recovered through Commission-jurisdictional rates.").

[7] *Transmission Planning and Cost Management*, Notice of Technical Conference, Docket No. AD22-8-000 (April 21, 2022).

in a position of leadership in LTRT processes as retail regulators are the only stakeholders tasked with representing the public interest holistically, balancing the need for reliable service with the need for reasonable rates.

II. TRANSMISSION PLANNING

The Commission proposes to require transmission providers to use a 20-year transmission planning horizon to develop Long-Term Scenarios,[8] to evaluate the benefits of LTRT projects over a 20-year horizon starting from a selected project's estimated in-service date,[9] and to describe a tariff-based process to coordinate with retail regulators in developing criteria to identify and evaluate LTRT facilities.[10]

As an initial matter, OPSI requests that the Commission continue to clarify the differences between the 20-year periods described in the NOPR. For example, the Commission should further explain the implications of using a 20-year planning horizon in the development of Long-Term Scenarios and explain any differences between this time horizon and the 20-year horizon the Commission proposes for benefit evaluation. OPSI requests clarification on whether considering the benefits of projects 20 years from the in-service date turns the proposed LTRT process into a much longer-term planning process than a 20-year process.

Laudably, FERC proposes to require transmission providers to outline an open and transparent process "to coordinate with the relevant state entities in developing" the criteria that will be used to select LTRT projects.[11] However, when it comes to the development of LTRT scenarios, the Commission proposes what could be interpreted as a more limited role for retail

[8] NOPR at P 78.

[9] *Id.* at P 175

[10] *Id.* at P 241.

[11] *Id.*

regulators to be given "a meaningful opportunity to propose potential factors" that should be included in LTRT scenarios.[12] In both the development of LTRT scenarios and identification of benefit metrics, the Commission should clarify that the role of retail regulators is primary in both. If a retail regulator does not agree with the scenarios that led to the development of LTRT facilities or the benefit metrics used to quantify a selected facility's value, that LTRT project is unlikely to be approved for construction. Any final rule should prescribe process reforms that meaningfully recognize the primacy of the role for retail regulators while not mandating any particular substantive outcome.[13]

The Commission should also avoid overly prescriptive requirements, such as the exact length of the planning horizon, the frequency of planning review, or the timeframe for states to propose alternate cost allocation methods. Regional differences, the pace of change in technology, and public policy vary across the country. Retail regulators require flexible processes that they can tailor to their region's current and future needs. That said, the Commission should still require RTOs to affirmatively show that any planning horizon or timeline they propose will enable them to conduct the LTRT planning that the NOPR envisions.

III. ENHANCED TRANSPARENCY FOR LOCAL PROJECTS

OPSI appreciates the Commission's focus on enhanced transparency for local projects[14] and believes requiring assumptions, needs, and solutions meetings as part of local transmission planning processes, similar to PJM's existing M-3 process,[15] is a step in the right direction.

[12] *Id.* at P 109.

[13] *Id.* at P 245 ("We acknowledge the inherent uncertainty involved in predicting future transmission needs and emphasize that we are not proposing to require public utility transmission providers to achieve, ex post, any particular outcome but rather to adopt an evaluation process that, ex ante, aims to maximize consumer benefits over time without over-building transmission facilities.").

[14] *Id.* at § VIII.

[15] PJM OATT, Attachment M-3.

However, OPSI has serious concerns that PJM's process is not sufficiently responsive to provide retail regulators and other stakeholders with assurance that local needs are being effectively considered in regional transmission planning processes.

FERC should also be very careful that any reforms to local transmission planning processes only modify FERC-jurisdictional processes and do nothing to modify or undercut processes existing under state and local laws and regulations.

A. The Local Planning Process

Ensuring that local and regional planning processes produce the most cost-effective set of transmission projects is very important to OPSI. OPSI does not dispute the value of local transmission planning, but OPSI is concerned that the growth of transmission-related costs[16] in PJM over recent years is occurring without any effective oversight and calls for the Commission to continue to develop meaningful reforms to ensure that local and regional transmission planning processes are as co-optimized as possible. Ideally, all proposed locally-planned projects should directly feed into regional planning models so that they can be rigorously and transparently examined. This would allow retail regulators and other stakeholders to be satisfied in knowing that a more efficient regional project does not or would not exist that could displace the need for local projects.

Some retail regulators have extensive processes for reviewing local transmission projects, and others do not. In the latter case, retail regulators often lack authority over the vast majority of these local projects, meaning that the local projects being proposed simply do not undergo a review at the retail level. Thus, OPSI stresses the importance of a rigorous review at the RTO level in

[16] *See* PJM, RTEP21 at p. 290 *available at:* https://www.pjm.com/-/media/library/reports-notices/2021-rtep/2021-rtep-report.ashx. (Specifically, OPSI notes that since 2018, TOs have proposed over $21B in Supplemental Projects compared to $5B in Baseline Projects. The PJM Board does not approve Supplemental Projects.).

order to not only provide transparency into local projects, but more importantly to provide a meaningful analysis of how local projects interact with the broader regional plan.

PJM's tariff says that at the conclusion of the assumptions, needs, and solutions meetings carried out pursuant to Attachment M-3 of PJM's tariff, that transmission owners (TOs) "shall review and consider comments" within 10 days following each of these meetings and received at least 10 days prior to the submission of its Local Plan.[17] After TOs finalize their local plan, they must simply provide information about the plan to PJM.[18] There is no requirement that TOs meaningfully respond to, engage with, or incorporate any of the comments they receive into their local plans. OPSI appreciates FERC's proposal to require transmission providers to establish "an interactive process that would ensure that stakeholders have meaningful opportunities to participate and provide feedback on local transmission planning throughout the regional transmission planning process."[19]

While the M-3 process is transparent in that local planning may be *observed*, OPSI finds it difficult to see the full benefit of participation under the status quo M-3 process since TOs are under no obligation to respond to stakeholder questions and comments or even acknowledge their receipt. In local planning meetings, RTOs should do more than just provide a forum for TOs to share their projects. They should actively weigh in and describe how they are evaluating local projects to ensure the most cost-effective transmission is being built. They should do more than just evaluate whether local projects "do no harm."[20] OPSI looks forward to PJM's comments

[17] PJM OATT, Attachment M-3 at § (c) 1-5.

[18] *Id.* at. § (c) 6.

[19] NOPR at P 400.

[20] PJM Manual 14B ("It should also be noted that prior to integrating a Supplemental Project into the RTEP base case PJM performs a "do no harm study" to evaluate whether a proposed Supplemental Project will adversely impact the reliability of the Transmission System as represented in the planning models used in all other PJM reliability planning studies. If as a result of the do no harm study, system upgrades are required, such upgrades will be considered part of

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clarifying its role in the current process and its thoughts on a possible revised leadership role in this process.

If the process proposed in the NOPR leads stakeholders in other regions to question the value of their participation in local planning processes, as some do in the PJM region, the Commission should proactively consider better ways to engage stakeholders than existing RTO planning processes do. OPSI encourages the Commission to continue to develop this proposal so that stakeholders' input on local planning is taken into consideration.

The Commission should recognize that retail regulators are not expected to approve projects being presented and that RTOs should feel empowered to listen to stakeholders and respond within local planning processes with regional projects that may be the more cost-effective solution to a particular need or set of needs. The Commission should make it abundantly clear that reforms to local planning processes are limited to reforms to transmission provider processes – not state jurisdictional processes – and that these processes can provide retail regulators and other stakeholders with information to better understand whether any particular set of local projects is in fact the most cost-effective set of projects available.

OPSI appreciates the process reforms proposed in the NOPR but urges FERC to acknowledge that that they will in no way limit retail regulators' current oversight of these projects, which is a critical element of cost-control in many states.

B. Incorporating End-of-Life Needs into Regional Planning

The Commission also proposes to require each transmission provider submit "a list of each existing transmission facility operating at or above 230 kV that [they] own and that it estimates

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the Supplemental Project and are the responsibility of the Transmission Owner sponsoring the Supplemental Project.").

may need to be replaced… over the next 10 years."[21] The Commission also proposes to establish a federal right of first refusal ("ROFR") for these projects.[22]

Currently, pursuant to the PJM tariff, TOs are required to provide PJM, "a Candidate EOL Needs List comprising its non-public confidential, non-binding projection of up to 5 years of EOL Needs that it has identified under the TO's processes for identification of EOL Needs."[23] Currently, if PJM sees that a need appears on both this 5 year EOL list and in its regional plan, PJM can consider that need once a competitive window opens. However, under the proposal in the NOPR, projects addressing 10-year out EOL needs would not be eligible for competition. OPSI encourages the Commission to clarify how the proposal in the NOPR will interact with existing processes and to allow regions flexibility in crafting compliance with any final rule. OPSI also encourages the Commission to require the information on its proposed 10-year EOL list to be non-confidential to the greatest extent possible or to require justification as to why confidentiality is merited for such a long-term outlook.

IV. COST ALLOCATION

Longer term transmission planning should not become a mechanism to allow system-wide allocation of transmission projects that are needed solely to meet one state's or group of states' policy goals. A clear and unambiguous statement from the Commission that recognizes and supports the role of retail regulators in the cost allocation process will help to assure that the LTRT cost allocation rules do not inadvertently and unreasonably "force neighboring states' ratepayers to shoulder the costs of other states' public policy choices."[24]

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[21] NOPR at P 404.

[22] *Id*. at P 409.

[23] PJM OATT, Attachment M-3 at § (d) 1.iii.

[24] NOPR, Danly Dissent at P 13.

A. State Involvement in Cost Allocation for Long-Term Regional Transmission Facilities

Allocating the costs of regional electric transmission projects is possibly the most contentious issue that electric transmission providers and their stakeholders face. The Commission recognizes that if retail regulators do not support an existing cost allocation method, it makes it much more difficult for them to site and permit projects.[25] OPSI agrees and strongly supports requiring transmission providers to seek agreement from retail electric regulators as it develops *the process* for agreeing to a cost allocation method *and the method* for allocating the costs of LTRT projects pursuant to any Final Rule.

The Commission proposes:

> to require that public utility transmission providers in each transmission planning region revise their OATTs to include either
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> > (1) a Long-Term Regional Transmission Cost Allocation Method to allocate the costs of Long-Term Regional Transmission Facilities, or
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> > (2) a State Agreement Process by which one or more relevant state entities may voluntarily agree to a cost allocation method, or
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> > (3) a combination thereof.[26]

OPSI appreciates the flexibility that the Commission is proposing to provide transmission providers and retail regulators in determining the cost allocation method in any compliance filing pursuant to a final rule.

The Commission recognizes that "if states agree to a State Agreement Process instead of a [LTRT] Cost Allocation Method, certain Long-Term Regional Transmission Facilities selected in the regional transmission plan for purposes of cost allocation would lack a clear ex ante cost

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[25] *Id.* at P 299-300.

[26] *Id.* at P 302.

allocation method."[27] OPSI strongly supports the Commission continuing to provide retail regulators and transmission providers *all three* options described above so that retail regulators can decide which one makes the most sense for their region.

OPSI does not support FERC imposing generic and prescriptive methodologies common to all planning regions across the country. If retail regulators reach an agreement, the RTO should be required to file it for consideration under § 205 of the FPA. This is different than simply seeking the agreement of retail regulators as proposed in the NOPR.[28] If the RTO prefers a different cost allocation method than agreed to by retail regulators, then it may also make a filing proposing its preferred alternative, while also presenting the method agreed to by the relevant state entities. OPSI notes that deviation by a transmission planner from the state-agreed cost allocation may affect the chances for successful certification, siting approval, and final construction of a project. Should retail regulators fail to reach a consensus on all aspects of an LTRT cost allocation method, the RTO should be required to file a balanced proposal and explain how it both considered the retail regulators' preferences and reached this balance.

Further, OPSI is concerned that after the initial LTRT cost allocation method is set in the tariff, retail regulators could be limited in their ability to contribute to beneficial modifications of that methodology in future long-term regional planning cycles. The Commission should clarify that the requirement that transmission providers show how they sought the support of retail regulators in the development of the initial cost allocation method also applies to subsequent revision of applicable cost allocation method(s). Similar to the proposed three-year check-in on

[27] *Id*. at P 315.

[28] NOPR at P 303.

the LTRT scenarios,[29] the Commission should require a regular check-in with retail regulators regarding the appropriateness of the existing cost allocation method.

B. PJM's State Agreement Approach

OPSI worked with PJM to develop the SAA,[30] garnering support from most OPSI states, and the Commission has approved this method.[31] The SAA allows state governmental entities to voluntarily agree to be responsible for the costs of transmission projects that help them satisfy their public policy requirements.[32] It also ensures cost allocation rules do not inadvertently and unreasonably force neighboring states to shoulder the costs of other states' public policy choices. It is a voluntary approach, and the Commission has no authority to either preclude or require state entities' participation in funding determinations. In the NOPR, the Commission cites comments referring to the PJM SAA and the progress made in incorporating state policy goals into

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[29] *Id.* at P 97.

[30] Intra-PJM Tariffs, OA, Schedule 6, § 1.5.9.

[31] *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 142 (2013), *order on reh'g and compliance*, 147 FERC ¶ 61,128 (2014), *order on reh'g and compliance*, 150 FERC ¶ 61,038, *order on reh'g and compliance*, 151 FERC ¶ 61,250 (2015).

[32] PJM OA at 1.5.9 ("**State Agreement Approach.** (a)State governmental entities authorized by their respective states, individually or jointly, may agree voluntarily to be responsible for the allocation of all costs of a proposed transmission expansion or enhancement that addresses state Public Policy Requirements identified or accepted by the state(s) in the PJM Region. As determined by the authorized state governmental entities, such transmission enhancements or expansions may be included in the recommended plan, either as a (i) Supplemental Project or (ii) state public policy project, which is a transmission enhancement or expansion, the costs of which will be recovered pursuant to a FERC-accepted cost allocation proposed by agreement of one or more states and voluntarily agreed to by those state(s). All costs related to a state public policy project or Supplemental Project included in the Regional Transmission Expansion Plan to address state Public Policy Requirements pursuant to this Section shall be recovered from customers in a state(s) in the PJM Region that agrees to be responsible for the projects. No such costs shall be recovered from customers in a state that did not agree to be responsible for such cost allocation. A state public policy project will be included in the Regional Transmission Expansion Plan for cost allocation purposes only if there is an associated FERC-accepted allocation permitting recovery of the costs of the state public policy project consistent with this Section.

(b)Subject to any designation reserved for Transmission Owners in the Operating Agreement, Schedule 6, section 1.5.8(l), the state(s) responsible for cost allocation for a Supplemental Project or a state public policy project in accordance with the Operating Agreement, Schedule 6, section 1.5.9(a) may submit to the Office of the Interconnection the entity(ies) to construct, own, operate and maintain the state public policy project from a list of entities supplied by the Office of the Interconnection that pre-qualified to be Designated Entities pursuant to the Operating Agreement, Schedule 6, section 1.5.8(a).").

transmission planning.[33] The Commission found that the SAA was not needed for PJM to comply with Order No. 1000's requirements[34] but under the current NOPR, the State Agreement Process would have to "comply with the existing six Order No. 1000 regional cost allocation principles."[35] OPSI calls on the Commission to not preclude or limit the availability of the PJM SAA in any final rule.

C. Time Period in Long-Term Regional Transmission Planning Cost Allocation Processes for State-Negotiated Alternate Cost Allocation Method

OPSI strongly supports requiring RTOs to establish a process, detailed in their tariff, to provide retail regulators a time period to negotiate an alternate cost allocation method for projects included in the regional plan for the purposes of cost allocation.[36] The Commission proposes a 90-day time period for state negotiations and writes that this is consistent with a New York ISO process the Commission approved in 2015.[37]

However, upon review of the NYISO order the Commission cites, it appears that NYISO proposed a process that can run anywhere between 60 and 330 days depending on whether the New York Commission and the transmission developer agree on the cost allocation method that should be used.[38] Pursuant to the NYISO order FERC cites, "The New York Commission will have 150 days to review the transmission developer's proposed cost allocation method and to inform the transmission developer whether it supports the method." After this review period, if the

[33] NOPR at n. 462.

[34] *See supra* at n. 31; 142 FERC ¶ 61,214, at P 142 (2013) ("PJM's State Agreement Approach supplements, but does not conflict with or otherwise replace, PJM's process to consider transmission needs driven by public policy requirements as required by Order No. 1000.").

[35] *Id.* at P 312.

[36] *Id.* at P 319.

[37] *See NY Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,040, at PP 119-121 (2015) ("NYISO Order").

[38] *Id*. at P 119.

New York Commission and the transmission developer disagree, they have up to 60 days to attempt to come to an agreement.[39]

The Commission gave a single commission and a single developer up to 330 days to discuss cost allocation matters. Comparatively, 90 days is clearly insufficient time for retail regulators in multi-state RTOs like PJM to reach agreement. The Commission should remain flexible in determining how long states have to reach an agreement regarding a state-negotiated alternative cost allocation method.

V. CONSTRUCTION WORK IN PROGRESS INCENTIVE

The Commission proposes to not allow transmission providers to take advantage of the Construction Work in Progress ("CWIP") incentive for LTRT facilities.[40] OPSI agrees that TOs, and not ratepayers, should bear the risks of transmission facilities ultimately not being used and useful. Removing the CWIP is an appropriate way to reduce TOs' incentives to overbuild transmission that is not needed and that could lead to Commission-jurisdictional rates being unjust and unreasonable.

VI. RIGHT OF FIRST REFUSAL

OPSI notes a unique provision in the NOPR that partially reinstates FERC's ROFR if an incumbent TO allies itself with an unaffiliated company.[41] Among the OPSI member states, there are differing policies with respect to whether it is more cost-effective to build transmission via a regulated monopoly or via competition. OPSI supports the right of individual states to choose to provide TOs within their states with ROFRs, and it also supports the right of states to expose transmission development in their territory to the greatest amount of competition possible. Indeed,

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[39] *Id.*

[40] NOPR at P 33.

[41] *Id.* at § VII.

multiple OPSI states have strong policy commitments to competitive transmission development that a ROFR imposed under federal authority would undermine. OPSI therefore urges the Commission not to allow any TO or RTO to impose any federal ROFR that would undermine states' pro-competition policies or within states that do not explicitly support a ROFR.

At the very least, the Commission should not allow both parties to a joint ownership arrangement that qualifies for a conditional federal ROFR to be incumbent TOs. OPSI is concerned that the conditional ROFR as proposed by the Commission would allow incumbent TOs to effectively prevent any nonincumbent from participating in any transmission development in its territory. Specifically, it appears that an incumbent TO could satisfy the joint ownership requirements by entering into a permanent agreement with another incumbent TO to be the exclusive co-owner of any transmission project in the other's territory. If so, TOs then always exercise their ROFR rights, they could create transmission duopolies that permanently block all competition from nonincumbent developers. This feature would likely destroy the ability of the joint ownership requirement to replicate any of the benefits of full transmission competition that many states seek to achieve.

To be clear, OPSI itself takes no position on the merits of ROFRs or transmission competition. Rather, OPSI is simply concerned that any reinstatement of *federal* ROFRs will necessarily undermine the policy choices that many of its members have made and should be allowed to make without federal interference. For that reason, the majority of OPSI opposes both reinstating a federal ROFR in full and the Commission's proposed conditional federal ROFR.

VII. CONCLUSION

OPSI appreciates the Commission's recognition that LTRT planning may hold savings that status quo transmission planning processes may not. Any final rule that meaningfully and deeply engages retail regulators in the creation and maintenance of LTRT processes is much more likely to achieve savings for customers than one that does not.

Respectfully Submitted,

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Dated: August 17, 2022

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

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Dated at Newark, Delaware this August 17, 2022.