

**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 ISO/RTO COUNCIL

I. REPLY COMMENTS

The ISO/RTO Council (“IRC”) appreciates the opportunity to provide these Reply Comments in this docket proposing that the Federal Energy Regulatory Commission (“Commission”) implement a penalty structure in lieu of today’s “Reasonable Efforts” standard governing the processing of interconnection requests.¹

A. The Comments Underscore the Unintended Consequences of the NOPR Proposal.

The IRC reiterates its concern with the replacement of the current Reasonable Efforts standard for the conduct of interconnection studies with imposition of automatic penalties on transmission providers and transmission owners for study delays proposed in the Notice of Proposed Rulemaking (“NOPR”) issued by the Commission.² The replacement of the Reasonable Efforts standard as proposed would result in inevitable trade-offs where speed could be valued over thoroughness, resulting in less certainty for

¹ The IRC comprises the following independent system operators (“ISOs”) and regional transmission organizations (“RTOs”): Alberta Electric System Operator (“AESO”); California Independent System Operator Corporation (“CAISO”); Electric Reliability Council of Texas, Inc. (“ERCOT”); the Independent Electricity System Operator of Ontario, Inc. (“IESO”); ISO New England Inc. (“ISO-NE”); Midcontinent Independent System Operator, Inc. (“MISO”); New York Independent System Operator, Inc. (“NYISO”); PJM Interconnection, L.L.C. (“PJM”); and Southwest Power Pool, Inc. (“SPP”). AESO and IESO are not subject to the Commission’s jurisdiction and ERCOT is not subject to the Commission’s jurisdiction on this subject and as a result these three entities are not joining this filing.

² *Improvements to Generator Interconnection Procedures and Agreements*, Notice of Proposed Rulemaking, 179 FERC ¶ 61,194 (2022) (“NOPR”).

both transmission providers and interconnection customers in contradiction of the stated goals of the NOPR.³ Additionally, the proposed deadlines for studies are arbitrary in that they do not account for the size and complexities of different queues and different interconnection proposals and circumstances, and, ultimately, would not address the causes of interconnection study delays, which are rooted in circumstances of tremendous oversubscription of interconnection requests, the quality of the data associated with those requests, and limited transmission provider personnel and resources.⁴

While the Commission did receive some support for its proposal, the IRC notes that many commenters oppose the NOPR's proposal to eliminate the Reasonable Efforts standard and replace it with automatic penalties for delays in completing interconnection studies.⁵ While the amount of these comments is telling (i.e., the IRC counts 39 comments

³ *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the ISO/RTO Council, Docket No. RM22-14-000, at 8-9 (Oct. 13, 2022) (“IRC Initial Comments”).

⁴ IRC Initial Comments at 3.

⁵ *See, e.g., Improvements to Generator Interconnection Procedures and Agreements*, Comments of the Bonneville Power Administration, Docket No. RM22-14-000, at 14-17 (Oct. 13, 2022) (arguing that imposition of penalties and elimination of the Reasonable Efforts standard would do little to address the primary issues of study delays and queue backlogs “[g]iven the nationwide shortage of qualified engineers” causing “resource constraints” in queue processing); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of PacifiCorp, Docket No. RM22-14-000, at 32-35 (Oct. 13, 2022) (arguing that the Commission relies on a record that actually supports the retention of the Reasonable Efforts standard); *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the R Street Institute, Docket No. RM22-14-000, at 14-15 (Oct. 13, 2022) (“R Street Institute Comments”) (arguing that penalties will not resolve the core issues delaying the interconnection queue and that “[l]evying penalties on RTOs is irrational”); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the State Agencies, Docket No. RM22-14-000, at 3 (Oct. 13, 2022) (“State Agencies’ Comments”) (describing how the record developed in response to the [Advanced Notice of Rulemaking] demonstrates that “the reasons for the backlog vary from region to region and are often outside the control of transmission providers” which does not support the one-size-fits all penalties); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of Tri-State Generation and Transmission Association, Inc. on Commission Notice of Proposed Rulemaking, Docket No. RM22-14-000, at 17-18 (Oct. 13, 2022) (“Tri-State Comments”) (arguing that penalties for delayed studies is contrary the Commission’s recognition of “the lack of qualified engineers to study projects”); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of WIRES, Docket No. RM22-14-000, at 9-11

in clear opposition to the proposed study-delay penalties, and many others that do not support the proposal in full), the likely unintended consequences of the Commission’s NOPR proposal identified by numerous comments is important to reiterate.

For example, the Edison Electric Institute notes that utilities would need to sacrifice current practices that “provide for flexibility and collaboration” during the conduct of studies that allow parties to “modify study parameters for optimum results.”⁶ This collaboration would be replaced with a need to avoid penalties and meet deadlines, likely resulting in less ability to provide such flexibility. This could have the further consequence of increased litigation, which could actually drive up costs, and further delays.⁷ Eversource Energy Service Company’s comments echoed this sentiment, stating that the proposed fixed deadlines and penalties would direct “transmission providers to prioritize meeting those deadlines over flexibility and collaboration with customers.”⁸

The concerns with the proposal were not limited to transmission owners as notable objections were also raised by the Organization of MISO States, Inc., which expressed concern that penalties could lead to faster study completion at the cost of lower quality studies, the New England States Committee on Electricity, which expressed concern about the potential impact of litigation and for disputes to divert resources from the completion

(Oct. 13, 2022) (“[E]stablishing a penalties scheme through which the cost of the penalties are passed through and borne by entities not responsible for the underlying violation would not satisfy the Commission’s obligation.”).

⁶ *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the Edison Electric Institute, Docket No. RM22-14-000, at 16 (Oct. 13, 2022) (“EEI Comments”).

⁷ EEI Comments at 16.

⁸ *Improvements to Generator Interconnection Procedures and Agreements*, Comments of Eversource Energy Service Company, Docket No. RM22-14-000, at 25 (Oct. 13, 2022) (“Eversource Energy Comments”).

of studies and increase costs to customers, and the Organization of PJM States, Inc.⁹ The State Agencies point to the Commission’s statements in the NOPR recognizing that factors such as the large number of interconnection requests and changes in market conditions and the resource mix contribute to delays in the interconnection process.¹⁰ Other comments, although supportive generally of the imposition of penalties, also recognize that such penalties may lead to compromises in study depth,¹¹ likely will ultimately cost ratepayers

⁹ *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the Organization of MISO States, Inc., Docket No. RM22-14-000, at 14-15 (Oct. 13, 2022) (“Organization of MISO States Initial Comments”) (also stating the Commission should avoid creating incentives for shortcuts or lack of thoroughness in conducting studies); *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the New England States Committee on Electricity, Docket No. RM22-14-000, at 16-17 (Oct. 13, 2022) (also indicating that there should be some form of exemption when the delay in study completion is outside the RTO’s and the transmission owner’s control); *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the Organization of PJM States, Inc., Docket No. RM22-14-000, at 8-9 (Oct. 13, 2022) (“Organization of PJM States Initial Comments”); *see also* *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of the New York State Public Service Commission and New York State Energy Research and Development Authority, Docket No. RM22-14-000, at 6 (Oct. 13, 2022) (expressing concern about the impact of penalties on not-for-profit RTOs and their customers); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the Public Utilities Commission of Ohio’s Office of the Federal Energy Advocate, Docket No. RM22-14-000, at 12-13 (Oct. 13, 2022) (“Ohio FEA Comments”) (arguing against penalties for transmission providers because the penalty will inevitably go to ratepayers); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the North Dakota Public Service Commission, Docket No. RM22-14-000, at 5-6 (Oct. 13, 2022) (stating that penalties will not address the fundamental reasons for queue delays and avoid to penalties, transmission providers may be incentivized to either rush through the study processes thereby increasing the likelihood of reliability issues; also noting penalties imposed on RTOs may be paid by ratepayers rather than shareholders).

¹⁰ State Agencies’ Comments at 12-13 (*citing* NOPR at P 20). The State Agencies point out that fining an RTO “will not immediately create a host of qualified engineers that can evaluate the backlog in interconnection requests” or otherwise address these causes of the delays and that RTOs may be compelled to recover penalty costs from ratepayers. *Id.* at 12-14.

¹¹ *See, e.g.*, Organization of MISO States Initial Comments at 14-15 (expressing concern that penalties could lead to faster study completion at the price of lower study quality); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of Enel North America, Inc. on Notice of Proposed Rulemaking, Docket No. RM22-14-000, at 48-51 (Oct. 13, 2022) (supporting penalties, but concerned about potential impacts to study accuracy).

in the long-run,¹² and may themselves be another cause of delays in the interconnection process.¹³

The record therefore makes clear that the Commission should not move forward with this aspect of the NOPR as currently structured. However, if the Commission chooses to proceed with this proposal, it should consider the State Agencies' suggestion to postpone the elimination of the Reasonable Efforts standard until other elements of the NOPR reform are in place.¹⁴

The IRC emphasizes again, as it did in its Initial Comments, that imposing automatic monetary penalties on transmission providers does not actually address the underlying causes of study delays. As the R Street Institute's Comments highlight, the proposed elimination of the Reasonable Efforts standard and study delay penalties "will not remedy the core issues" and the Commission would benefit most from a "root cause analysis" of these delays to "inform more reasonable performance expectations" and "illuminat[e] and inform effective fixes"¹⁵ As explained in a number of RTO/ISO member comments,¹⁶ the root causes of interconnection study delays are occurring to varying

¹² See, e.g., Organization of PJM States Initial Comments at 8-9 (expressing concern that, without further clarification, the proposed penalties may ultimately be paid by retail ratepayers); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the Illinois Commerce Commission, Docket No. RM22-14-000, at 9-10 (Oct. 13, 2022) (arguing the Commission should impose such penalties so long as consumers do not pay). The Public Utilities Commission of Ohio's Office of the Federal Energy Advocate takes this concern a step farther, generally opposing penalties for study delays because they will ultimately affect ratepayers, but agreeing that targeted penalties should be considered. Ohio FEA Comments at 12-13.

¹³ Organization of MISO States Initial Comments at 5-6.

¹⁴ State Agencies' Comments at 14.

¹⁵ R Street Institute Comments at 14.

¹⁶ See, e.g., *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of PJM Interconnection, L.L.C., Docket No. RM22-14-000, at 56 (Oct. 13, 2022); *Improvements to Generator Interconnection Procedures and Agreements*, Initial Comments of ISO New England Inc., Docket No. RM22-14-000, at 35-36 (Oct. 13, 2022) ("ISO-NE Comments"); *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the New

degrees due to (1) unmanageable volumes of interconnection requests; (2) interconnection customer data issues; (3) restudies caused by higher queued project withdrawal; and (4) a lack of available capability on the transmission system in many areas, leading to the identification of complex system upgrades; and (5) a limited number of expert personnel and resources available to perform the studies.¹⁷ Imposing penalties for delayed studies fails to account for the realities that transmission providers and transmission owners face: exponentially increasing interconnection requests and tightening resources and staff to process these requests.¹⁸

In addition, it is not clear how the complexities of collecting and paying the proposed penalties will be able to operate in a just and reasonable manner. Numerous comments raised this issue without a clear and fair resolution.¹⁹ Various IRC members

York Independent System Operator, Inc., Docket No. RM22-14-000, at 26-27 (Oct. 13, 2022) (“NYISO Comments”).

¹⁷ The NOPR highlighted this fact and commenters touched on it as well. *See* NOPR at P 20 (“[T]ransmission providers report 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.”); State Agencies’ Comments at 13 (“Fining an RTO/ISO will not immediately create a host of qualified engineers that can evaluate the backlog in interconnection requests.”); EEI Comments at 14; Tri-State Comments at 17 (“Eliminating the ‘Reasonable Efforts’ and penalizing Transmission Provider for delayed studies is contradictory to FERC recognizing the lack of qualified engineers to study projects.”); *see also* Eversource Energy Comments at 26 (“Instituting a strict penalty regime places significant additional stress on an already difficult process and may deter qualified personnel from working in interconnections and encourage existing personnel to depart to other electrical engineering fields . . .”).

¹⁸ For these reasons, the Commission should also dismiss the proposal from the Affected Interconnection Customers for an incentive program to complement the proposed penalty regime (*see Improvements to Generator Interconnection Procedures and Agreements*, Joint Comments of the Affected Interconnection Customers to the Commission’s Notice of Proposed Rulemaking on Generator Interconnection Agreements and Procedures, Docket No. RM22-14-000, at 25-30 (Oct. 13, 2022)), as it would also be ineffective in addressing the root causes of study delays.

¹⁹ *See, e.g.*, R Street Institute Comments at 15; State Agencies’ Comments at 12-13; *Improvements to Generator Interconnection Procedures and Agreements*, Comments of the Midcontinent Independent System Operator, Inc., Docket No. RM22-14-000, at 13-14, 71-72 (Oct. 13, 2022) (“MISO Comments”); *see also* Eversource Energy Comments at 29-30 (highlighting that, while the Commission treats non-profit RTOs with the same rules as for-profit entities, the Commission levied approximately \$1.4 billion of disgorgement and civil penalties since the grant of enhanced

highlighted how unreasonable it is to impose such penalties without a fact-based finding of fault, particularly when the accused entity may have no control over such a delay. MISO, for example, states that, “RTOs have no organic ability to pay fines. MISO is non-profit and revenue neutral. Any money that MISO pays in fines must be collected from another party under a rate schedule or other provision of the Tariff.”²⁰ ISO-NE notes that any penalty regime would need to recognize these roles of each party in the interconnection process “and penalty apportionment would need to be based on fault among these parties, which, in turn, would require a fact finder and a detailed adjudicatory process.”²¹ NYISO points to the contrast between the North American Electric Reliability Corporation reliability penalty construct that allows for an evaluation of all the circumstances associated with a violation and the “kind of strict liability system that the NOPR would impose for interconnection studies.”²² The lack of a clear, transparent mechanism for fault to be determined and penalties to be assessed and collected is a serious flaw in the proposed rule, meriting its withdrawal and reconsideration.

II. CONCLUSION

For the above reasons, the IRC urges the Commission to reconsider the replacement of the Reasonable Efforts Standard with a strict liability penalty regime. Various RTOs and other commenters have proposed alternatives that are designed to address the Commission’s desired result without the unintended consequences that would be likely to

penal authority under the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (codified as amended in scattered sections of 42 U.S.C. and 16 U.S.C.), and only 0.5% of that was against RTOs).

²⁰ MISO Comments at 13.

²¹ ISO-NE Comments at 36.

²² NYISO Comments at 35.

result from the NOPR proposal. The IRC recognizes that these alternative proposals, and potentially others, need further exploration and discussion, and as such urges the Commission to refrain from adopting its penalty proposal at this time and instead, similar to the proposal of the National Association of Regulatory Utility Commissioners, allow for continued discussion of this item through Technical Conferences or Staff-led Workshops.²³ This will provide the Commission with the opportunity to examine the impact of the other NOPR reforms on reducing interconnection delays and result in a more complete record on which a decision can be made about whether the imposition of a penalty regime is necessary or whether the other reforms have worked to significantly reduce the interconnection queue delays that gave rise to this docket in the first instance.

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²³ *Improvements to Generator Interconnection Procedures and Agreements*, Motion to Intervene and Comments of the National Association of Regulatory Utility Commissioners, Docket No. RM22-14-000, at 22 (Oct. 13, 2022).

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