

NISKANEN

C E N T E R

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Antitrust Division
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Niskanen Center Comments on Anticompetitive Laws and Regulations in Energy, Healthcare, and Housing (Docket No. ATR-2025-0001)

The Niskanen Center respectfully submits these comments in response to the United States Department of Justice (DOJ) request for comments¹ pertaining to the Trump Administration's ongoing initiative to identify and thwart anticompetitive regulations nationwide. The Niskanen Center is a nonpartisan think tank and public policy organization dedicated to promoting robust markets and evidence-based policy. Our mission centers on advancing both an effective public sector and a competitive private sector and our subject matter experts specialize in a range of policy areas, including energy, healthcare, and housing. Across these areas, we have identified specific anticompetitive laws and regulations that warrant the DOJ's attention under this docket. We support the DOJ in its mission to ensure our nation's markets operate fairly and openly to all good-faith entrants and offer the following recommendations for DOJ's consideration.

I. Anticompetitive Laws and Regulations Affecting Energy Reliability and Affordability

A. Introduction

We appreciate the opportunity to comment on regulations and laws that "...undermine reliability and affordability by protecting incumbent electricity providers from competition or disruptive innovation."² The high-voltage long-distance transmission system is a key element to the affordability and reliability of electric power.

There are siting, permitting, financing, planning, regulatory, and legal challenges to the national/regional/interstate transmission buildout. Of particular note, vertically integrated companies owning both generation and transmission assets are incentivized to pursue transmission projects that favor their competitive advantage, and to oppose projects by

¹ See [Justice Department Launches Anticompetitive Regulations Task Force](#), U.S. Department of Justice, Docket No. ATR2025-0001 (March 27, 2025) ("DOJ Anticompetitive Regulations Press Release").

² See *id.*

non-incumbent developers proposing projects which facilitate competition from more distant generation resources. These vertically integrated companies have especially made use of the planning, regulation and legal systems to benefit their assets. In our comments, we focus on these same three areas, because this is where we believe the DOJ can have the most impact: regulatory, planning and legal barriers. Specifically, we both discuss and make recommendations on: regulatory barriers to a specific type of transmission (High Voltage Direct Current) particularly well suited to promoting affordability and reliability; interregional transmission planning; governance of bodies engaged in transmission planning; utility understanding of antitrust law as it pertains to joint ventures and information sharing; and Right of First Refusal laws and regulations as they pertain to the design and build of transmission.

As background, we first explain why transmission contributes significantly to the affordability and reliability of electric power, then outline supporting evidence. We then describe specific issues impeding the high-voltage transmission buildout and suggest specific policy options for the DOJ to help facilitate impact.

B. Background

1. Transmission enhances competition in electric power markets, increasing affordability and reliability.

Transmission tends to (a) increase competition in electric power markets and (b) facilitate efficient transfer of power. Specifically, transmission facilitates power flows over broader areas, which increases supply and causes prices to fall overall. Electricity supply and demand across the country varies over geography and time—transmission efficiently serves to respond to imbalances. These connections are analogous to the risk-reducing effects of having a broad-based mutual fund as opposed to a single-sector mutual fund. Transmission lines can exploit: time zone and meteorological differences (e.g. power moving from west to east in early morning and from east to west in the evening; power moving from north to south when central U.S. temperatures are moderate and southern temperatures are high); comparative regional fuel cost advantages (e.g. lower gas prices, stronger wind or stronger solar irradiance);³ and weather variation (e.g. areas with normal weather can move power to areas experiencing extreme weather).⁴ The “arbitrage” facilitated by transmission generates not only operational cost savings, but also capital cost savings in terms of reducing the need for localized standby generation.⁵

³ For example, “Path 65” is a joint project of five Southern California utilities to bring hydro power from the Pacific Northwest to Southern California. [Pacific Intertie: The California Connection on the Electron Superhighway](#), Northwest Power Planning Council, May 2001.

⁴ For example, in 2021’s Storm Uri, well connected areas had far fewer blackouts than less well-connected areas. *See* [The One-Year Anniversary of Winter Storm Uri](#), Michael Goggin and Jesse Schneider, Grid Strategies, February 13, 2022.

⁵ In 2013, Entergy Corp, which had previously operated generation, transmission, and distribution as an integrated company, placed its transmission system under the operational control of the Midcontinent Independent System Operator (MISO) when it became a MISO member. *See* [News Release: Move to MISO Delivering Benefits](#), Entergy Corp., May 17, 2017. In 2017, an Entergy press release stating that between 2014 and 2016, its customers had saved approximately \$286 million, attributing most of the savings to “(1) the more efficient dispatch of power plants on the transmission grid, resulting in a lower delivered cost of energy; and (2) reducing the number of power plants that the company must maintain in reserve and have ready to run if needed.” *See id.*

Whether regions are different, and have strong economic arbitrage opportunities, or regions are similar, and economic arbitrage opportunities are limited, the connecting of regions through transmission is beneficial for providing *reliability*. A reliable power system is able to consistently meet demand in various circumstances.⁶ Transmission increases reliability through (a) supply diversification—even if one area has plant outages, transmission can access areas without damage; (b) demand diversification—if one area has high demand due to extreme weather, it may be able to import from an area with milder weather; and (c) multiple pathways/redundancy—if one major line is down, power can be rerouted through other lines.

While these heuristic arguments outline the affordability and reliability benefits of transmission, there is also good evidence for these effects. Multiple studies, including a joint study by the U.S. Department of Energy (DOE) and the National Renewable Energy Lab (NREL) authored by Bloom et al. (2020) and studies conducted by Hurlbut et al. (2024) and DOE (2024) found that reductions in wholesale generation costs outweigh construction costs for modeled transmission buildout scenarios;⁷ Ham et al. (2025) found that integrating regional markets through transmission significantly reduces wholesale generation costs;⁸ empirical analysis by Grid Strategies (2022) and (2023) estimated that more transmission would have entailed large cost savings had it been available during Winter Storms Uri (2021) and Elliott (2022);⁹ and a 2024 North American Electric Reliability Corporation (NERC) study found that significant additions to interregional transmission would be prudent investments from the perspective of system reliability.¹⁰ Indeed, FERC has demonstrated its conviction about the need for more transmission by promulgating three major transmission planning Orders in recent years.¹¹

⁶ Affordability and reliability are not unrelated - having more transmission (and generation), broadly speaking, make the system more affordable *and* reliable. [More Electricity Transmission Lines Would Lower Costs, Increase Reliability](#), Pacific Northwest National Laboratory, October 3, 2024. While adding generation and transmission typically reduces average wholesale electricity prices, these investments eventually reach a point where the capital costs outweigh the benefits.

⁷ [The Value of Increased HVDC Capacity Between Eastern and Western U.S. Grids: The Interconnections Seam Study](#), Aaron Bloom et al., National Renewable Energy Laboratory, October 2020; [Interregional Renewable Energy Zones](#), David J. Hurlbut et al., National Renewable Energy Laboratory, March 2024; [The National Transmission Planning Study – Chapter 2](#), U.S. Department of Energy Grid Deployment Office, October 2024.

⁸ [Power Flows, Part 2: Transmission Lowers US Generation Costs, But Generator Incentives Are Not Aligned](#), Dasom Ham et al., Rocky Mountain Institute, April 2025.

⁹ Michael Goggin and Jesse Schneider, *supra* note 4; [The Value of Transmission During Winter Storm Elliot](#), Michael Goggin and Zachary Zimmerman, Grid Strategies, February 2023.

¹⁰ [Interregional Transfer Capability Study – \(Part 2\) and \(Part 3\)](#), North American Electric Reliability Corporation, November 2024.

¹¹ See, e.g., [Order No. 890: Preventing Undue Discrimination and Preference in Transmission Service](#), FERC Docket No. RM05-17-000, FERC Stats. & Regs. 31,241 (February 16, 2007) (“FERC Order No. 890”); [Order No. 1000: Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities](#), FERC Docket No. RM10-23-000, FERC Stats. & Regs. 31,323 (July 21, 2011) (“FERC Order No. 1000”); [Order No. 1920: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation](#), FERC Docket No. RM21-17-000, 187 FERC 61,068 (May 13, 2024) (“FERC Order 1920”).

2. High-voltage direct current technology is particularly well-suited to expanding markets.

High-voltage direct current (HVDC) transmission, which in the U.S. currently is almost always developed by private “merchant” companies,¹² is better suited to promote competition and provide reliability than the high-voltage alternating current (HVAC) transmission which is currently used in most of the U.S. grid. The two defining differences between these types of transmission are the current types carried in the lines (i.e. direct current vs. alternating current) and that HVDC transmission requires an expensive converter station to integrate with the existing HVAC system. Direct current is very stable, causing low line loss (*i.e.*, increased efficiency). For long distance lines, the increased efficiency of HVDC lines offsets the fixed cost of the converter stations, making HVDC best suited for expanding market size and providing reliability.¹³ On the other hand, HVAC is more easily transformed to lower voltages for use in the distribution network, making it the ideal choice for direct-to-consumer power delivery.¹⁴ The U.S. grid would benefit from more of *both* kinds of transmission, with HVDC playing the main role of linking different Regional Transmission Organizations (RTOs)/Independent System Operators (ISOs)/balancing authorities without disturbing complex intraregional power flows.

C. Issues and Recommendations for Anticompetitive Laws and Regulations

1. HVDC faces regulatory barriers.

HVDC faces at least two significant regulatory barriers. The first regulatory barrier is related to specialized grid services—ancillary and capacity services—HVDC (but not HVAC) is capable of providing. Ancillary services help maintain grid balance, for example by keeping voltage within safe limits and maintaining the capability of restarting the grid in the event of a partial or total blackout. Capacity services ensure sufficient capacity to meet future demand by incentivizing generators to stay available to the grid. HVDC is technically capable of providing ancillary and capacity services, but is not eligible for payments for these services due to RTO/ISO regulations.¹⁵ The second regulatory barrier is related to HVDC interconnection. Since HVDC often connects two (or more) transmission planning regions, it is hampered by the lack of standard interconnection processes/agreements, which can force HVDC projects to comply with different standards on each end of the line.¹⁶

- a) *DOJ should ask FERC to qualify high-voltage direct current technology for ancillary and capacity payments.*

Ancillary and capacity revenues can constitute a significant percentage of total ISO wholesale generation revenues. We encourage the DOJ to consider sharing, privately with the Federal

¹² See [Merchant Developers Fill ‘Void’ in US Interregional Grid Build-Out](#), Zack Hale, S&P Global, October 6, 2023; [Ready-to-Go Transmission Projects 2023](#), Zachary Zimmerman et al., ACEG, September 2023.

¹³ [Connecting the Country with HVDC](#), U.S. Department of Energy, September 27, 2023.

¹⁴ [The War of the Currents: AC vs. DC](#), U.S. Department of Energy, November 18, 2014.

¹⁵ [The Operational and Market Benefits of HVDC to System Operators](#), The Brattle Group, September 2023. In non-RTO/ISO regions, there is no such thing as formal ancillary and capacity service markets.

¹⁶ [Invenergy Transmission LLC Request for Technical Conference](#), FERC Docket No. AD22-13-000, Accession No. 20221110-5252 (November 10, 2022) (“Invenergy Request for HVDC Technical Conference”).

Energy Regulatory Commission (FERC) and/or publicly, the view that HVDC technology should qualify for ancillary and capacity payments. Additionally, if FERC holds a relevant rulemaking or technical conference, such as an interregional transmission rulemaking or a merchant HVDC technical conference, we encourage the DOJ to file comments.

b) *DOJ should ask FERC to improve merchant grid interconnection processes and agreements.*

In the U.S., there is no standard national process for connecting merchant transmission to the high voltage grid.¹⁷ For example, the California ISO, uses the same interconnection process for both merchant and utility transmission, whereas for interconnection purposes some grid operators (such as PJM) handle merchant transmission as they do generators.¹⁸ In addition, while there is a *pro forma* agreement for generation to interconnect with investor-owned utility (IOU) transmission assets,¹⁹ there is no equivalent standard agreement for generation to interconnect with merchant transmission.²⁰ We encourage the DOJ to consider sharing, privately with FERC and/or publicly, the view that the interconnection process and interconnection agreements for merchant HVDC should be standardized. Additionally, if FERC holds a relevant rulemaking or technical conference, such as an interregional transmission rulemaking or a merchant HVDC technical conference, we encourage the DOJ to file comments.

2. The lack of interregional transmission planning negatively impacts transmission buildout and therefore stifles competition.

In the U.S., there is no institution supporting *interregional* transmission planning. This means that no entity is proactively identifying where in the physical system connections could be routed between regions to support affordability and reliability, thus creating an information and procedural barrier to development. This is important not only for the physical planning of the transmission system, but because approved regional transmission lines are eligible for “cost allocation,” a system in which states agree how to share in paying, through ratepayers, for multi-state lines.

a) *DOJ should ask FERC to prioritize interregional transmission planning and cost allocation.*

Currently, FERC requires joint regional *coordination* for interregional projects, where “. . . an interregional project must first be selected in each of the neighboring regions’ regional planning processes before being selected in the interregional process” but does not require interregional *planning*.²¹ Interregional transmission planning can happen, as has been evidenced recently in the Joint Targeted Interconnection Queue planning between the Midcontinent Independent

¹⁷ *Id.* at 20-24.

¹⁸ *Id.* at 20, nn. 63-64.

¹⁹ [Final Rules Establishing and Revising Standard Interconnection Agreements and Procedures for Large Generators](#), Federal Energy Regulatory Commission, last accessed May 1, 2025.

²⁰ [Invenergy Request for HVDC Technical Conference](#), *supra* note 16 at 22-24.

²¹ [Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection](#), 86 Fed. Reg. 40,266, 40, 277 (July 27, 2021).

System Operator (MISO) and the Southwest Power Pool (SPP) RTOs.²² However, without a regulatory driver, there is little reason to believe that significant interregional planning will occur. Niskanen encourages the DOJ to consider sharing, privately with FERC and/or publicly, the view that FERC should, as many parties have requested, hold an interregional transmission planning rulemaking, and further, in the event that FERC does hold such a rulemaking, that the DOJ file comments noting that the lack of interregional transmission planning and cost allocation serves as a barrier to an interregional transmission buildout that stifles competition.

3. Current RTO/ISO governance does not facilitate efficient transmission buildout.

Regional planning institutions also have the effect of discouraging deployment of HVDC lines, and more generally, lines built by non-incumbents. Many incumbent utilities are vertically-integrated companies whose own generation benefits when there is little long-distance transmission bringing in competition. They are not only disinclined to support non-incumbent projects, they are incentivized to propose alternative solutions that maintain their competitive advantage. To our knowledge, CleanPath New York is the only HVDC project²³ that has ever been incorporated in regional transmission planning processes; for technical reasons, the line *had* to be HVDC.²⁴

a) *DOJ should ask FERC to implement governance changes consistent with competition principles.*

In 2022, the DOJ and the Federal Trade Commission (FTC) noted, “. . . the Agencies recognize that there is an important role for integrated regional and national planning by entities with grid-wide perspectives.”²⁵ However, *how* this integrated planning is conducted and *who* conducts it have a dramatic effect on the affordability and reliability of the system. FERC’s Order 1920 did institute some useful regional planning requirements such as 20-year planning horizons required to address seven factors, and a policy to institute default cost allocation when agreement is not possible.²⁶ However, Order 1920 did not address, as many commenters requested, the implications of planning decisions being heavily influenced by incumbent transmission owners.²⁷

²² [MISO-SPP Joint Targeted Interconnection Queue Studies](#), Midcontinent Independent System Operator and Southwest Power Pool, last accessed May 23, 2025.

²³ [Clean Path New York Project Factsheet](#), last accessed May 1, 2025.

²⁴ The line had to be HVDC because the project was a longer-distance, submarine project. The project has since been cancelled. See [NYSERDA, Clean Path NY developers terminate contracts underpinning 175-mile transmission line](#), Robert Walton, Utility Dive, December 2, 2024.

²⁵ [Joint Comment of the U.S. Department of Justice and Federal Trade Commission](#), FERC Docket No. RM21-17-000, Accession No. 20220817-5300, p. 12 (August 17, 2022) (“Joint DOJ and FTC Comment”).

²⁶ [Explainer on the Transmission Planning and Cost Allocation Final Rule](#), FERC, last updated May 7, 2025.

²⁷ See generally FERC Order 1920, *supra* note 11.

Many industry participants, including the DOJ/FTC,²⁸ large industrial users,²⁹ organizations of various political leanings,³⁰ market monitors³¹ and consumer advocates³² have asked FERC to make significant changes to the current governance system. Some of the more notable requests are: require inclusion of 100 kilovolts (kV) and above transmission lines in regional planning; independent transmission planners; independent transmission monitors and/or making RTO exit difficult. We note that in the DOJ/FTC joint comments, the Agencies declined to recommend any specific governance solution, and instead stated: “The Agencies support FERC’s implementation of solutions consistent with competition principles[.]”³³

Niskanen encourages the DOJ to continue its advocacy for significant changes in transmission planning governance. As the DOJ has declined to make specific governance recommendations in the past, we are not requesting that the DOJ make specific governance recommendations going forward. However, Niskanen does encourage the DOJ to consider, privately and/or in a future FERC rulemaking, providing FERC more specific information about competition principles relevant to RTO governance.

For example, the recently rescinded DOJ/FTC Antitrust Guidelines for Collaborations Among Competitors (Guidelines) suggest it is better that an entity making decisions related to industry output, prices and/or quality is an “independent third party” than competitors making the decisions.³⁴ Although the DOJ/FTC have rescinded the Guidelines due to changing case law, analytical methods, and technologies,³⁵ an “independent third party” is still preferred over competitors making industry decisions involving output, prices, and/or quality (although this may well not be enough to guarantee consumers aren’t harmed). It would be helpful for the DOJ to illuminate what “independent third party” might mean in the context of utility governance. For example, knowledgeable industry observers have expressed concern that RTO transmission

²⁸ *Id.* at 20-21.

²⁹ See e.g., [Reply Comments of the Industrial Customer Organizations](#), FERC Docket No. RM21-17-000, Accession No. 20220919-5155 (September 19, 2022); [Comments of the Electricity Transmission Competition Coalition](#), FERC Docket No. RM21-17-000, Accession No. 20220817-5258 (August 17, 2022); [Reply Comments of the Clean Energy Buyers Association](#), FERC Docket No. RM21-17-000, Accession No. 20211130-5102 (November 30, 2021).

³⁰ See e.g., [Niskanen Center et al., Pro Competition Letter](#), FERC Docket No. RM21-17-000, Accession No. 20240205-5137, p. 4, February 5, 2024 (“Pro Competition Coalition Letter”).

³¹ See e.g., [Comments of the Southwest Power Pool Market Monitoring Unit](#), FERC Docket No. RM21-17-000, Accession No. 20211012-5565 (October 12, 2021); [Comments of the Independent Market Monitor for PJM](#), FERC Docket No. RM21-17-000, Accession No. 20211101-5267 (November 1, 2021).

³² See e.g., [Initial Comments of the National Association of State Utility Consumer Advocates](#), FERC Docket No. RM21-17-000, Accession No. 20220817-5285 (June 12, 2022).

³³ [Joint DOJ and FTC Comment](#), *supra* note 25 at 19-20.

³⁴ [Antitrust Guidelines for Collaborations Among Competitors](#), U.S. Department of Justice and Federal Trade Commission, p. 21 (April 2000). While the Guidelines endorsed independent third parties as preferable to competitor decision-making, recent DOJ enforcement actions demonstrate that such arrangements can still facilitate anticompetitive coordination when the third party enables or systematizes information sharing that would otherwise be difficult to achieve. See e.g., [Justice Department Sues RealPage for Algorithmic Pricing Scheme that Harms Millions of American Renters](#), U.S. Department of Justice (August 23, 2024); [Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors](#), U.S. Department of Justice (September 28, 2023).

³⁵ [Justice Department and Federal Trade Commission Withdraw Guidelines for Collaboration Among Competitors](#), U.S. Department of Justice and Federal Trade Commission (December 2024) (“... the Collaboration Guidelines rely in part on outdated and withdrawn policy statements, and risk creating safe harbors that have no basis in federal antitrust statutes”).

planning decision makers are not truly independent – they must reckon with the threat that IOUs could leave the RTO if the RTO makes planning decisions that are not viewed as favorable to a participating IOU.³⁶

An example of an “independent third party” running transmission planning is the Public Utility Commission of Texas’ 2007-2013 competitive bidding effort that resulted in a set of transmission lines spanning two RTO’s—the Electric Reliability Council of Texas (ERCOT) and SPP—connecting west Texas wind to east Texas population centers. The Public Utility Commission of Texas, with technical assistance from ERCOT, collected extensive input from stakeholders, ran the competitive solicitation and decided on the winning bidders,³⁷ a combination of incumbents and independents.³⁸ An incipient effort announced in April 2025 by nine northeastern states to identify, solicit proposals for, and choose developers for “no-regrets interregional transmission projects”³⁹ appears to also fit the notion of “independent third parties” engaging in transmission planning.⁴⁰

4. Incumbent utilities may not be fully informed as to antitrust law on joint ventures and information sharing.

There may be confusion in the industry about what type of competitor behavior is acceptable under the antitrust laws. “WIRES” is a non-profit trade association representing many transmission industry players, including major IOUs.⁴¹ WIRES sponsored,⁴² and later endorsed,⁴³ a 2024 paper by Grid Strategies titled “Fostering Collaboration Would Help Build Needed Transmission,”⁴⁴ which was submitted⁴⁵ to the FERC transmission planning rulemaking resulting in Order 1920. In Chapter 8, in a section entitled “Explicit Rules Against Collaboration,” the authors state: “Antitrust policies can strictly bar certain communications and collaboration...The sharing of ‘competitively sensitive information’ is particularly noteworthy because the needs and

³⁶ [Problems in Electricity Market Governance: An Assessment](#), Travis Kavulla, The R Street Institute, pp. 5-6, August 30, 2019; [Replacing the Utility Transmission Syndicate’s Control](#), Ari Peskoe, Energy Law Journal, p. 64, n. 412, November 14, 2023; [Planning for the Future: FERC’s Opportunity to Spur More Cost-Effective Transmission Infrastructure](#), Rob Gramlich and Jay Caspary, Americans for a Clean Energy Grid, p. 77, January 2021.

³⁷ [How Grid Projects Get Stuck: Four Cases in Long-Distance Transmission Development in the United States](#), Stephen Ansolabehere et al., Salata Institute for Climate and Sustainability, Harvard University, pp. 60-77, June 24, 2024; [Planning for the Future: FERC’s Opportunity to Spur More Cost-Effective Transmission Infrastructure](#), Rob Gramlich and Jay Caspary, Americans for a Clean Energy Grid, p. 77, January 2021; [Fostering Collaboration Would Help Build Needed Transmission](#), Rob Gramlich et al., Grid Strategies, pp. 29-30, February 2024 (“Collaboration Paper”).

³⁸ [The Competitive Renewable Energy Zones Process](#), Warren Lasher, Electric Reliability Council of Texas, p. 6, August 11, 2014.

³⁹ [Northeast states to seek transmission proposals between PJM, ISO-NE, New York](#), Ethan Howland, Utility Dive, April 30, 2025.

⁴⁰ [Release of a Strategic Action Plan on State-Led Interregional Transmission Priorities](#), States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, Vermont, p. 9, April 28, 2025.

⁴¹ [Our Members](#), WIRES, last accessed May 1, 2025.

⁴² See [Collaboration Paper](#), *supra* note 37.

⁴³ [Media Statement on Grid Strategies Report “Fostering Collaboration Would Help Build Needed Transmission.”](#) WIRES, February 24, 2024.

⁴⁴ See [Collaboration Paper](#), *supra* note 37.

⁴⁵ [Supplemental Comments of WIRES](#), FERC Docket No. RM21-17-000, Accession No. 20240223-5066 (February 23, 2024).

impacts of transmission investment options are some of the items that have been shared throughout the many examples of successful transmission development we reviewed.”⁴⁶

- a) *DOJ should examine transmission planning practices for consistency with the DOJ’s general policy on joint ventures and information sharing.*

Niskanen encourages the DOJ to publicly communicate its views on whether the various types of joint activities involved in transmission planning, such as the ones described in the WIRES report, are actually barred—or alternatively—considered acceptable under the antitrust laws.⁴⁷ For example, it would be helpful if the DOJ opined on the circumstances under which a joint venture of adjacent utilities bidding on a transmission line would be considered pro-competitive.

5. State and federal right of first refusal laws and regulations impede competition to design and build high-voltage transmission lines and competition in wholesale power markets.

Over a decade ago, when FERC finalized Order 1000, it removed the federal “right of first refusal” (ROFR) for regionally-planned, cost-allocated transmission projects in an effort to expand competition.⁴⁸ Since then, a number of states have enacted their own ROFR laws, essentially excluding non-incumbents from proposing regionally-planned, cost-allocated transmission projects.⁴⁹

On August 17, 2022 the DOJ and FTC submitted a joint comment to FERC in Docket No. RM21-17-000, “Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection.” The comment advocated that FERC not reinstate any type of ROFR, and instead “adopt reforms that will improve regional transmission planning and cost allocation processes without harming competition, as well as reforms that will strengthen and expand the implementation of existing competitive processes for transmission design and construction.”⁵⁰

We strongly support the DOJ/FTC’s position, and in fact, in February 2024, Niskanen (along with five other organizations, jointly referred to herein as “the Coalition”) submitted comments containing some of the same themes in the DOJ/FTC joint comments.⁵¹ The Coalition Letter noted that ROFRs do not just entail a loss of competition to design and build high-voltage transmission lines, but the excluded non-incumbents have a disproportionate level of expertise with respect to the higher voltage, more complex projects that are often subject to regional cost allocation.⁵² Using data from a 2023 paper that inventoried high-voltage transmission

⁴⁶ [Collaboration Paper](#), *supra* note 37 at 42.

⁴⁷ We do not deny the possibility there are some transmission planning activities that would violate federal antitrust law if they took place in another industry, but which are covered under the state action exception to federal antitrust laws established by *Parker v. Brown*, 317 U.S. 341 (1943).

⁴⁸ See generally FERC Order No. 1000, *supra* note 11.

⁴⁹ See [ROFR Laws Fragment America’s Transmission Grid](#), Rachel Levine et al., Niskanen Center, May 15, 2025.

⁵⁰ [Joint DOJ and FTC Comment](#), *supra* note 25 at 22.

⁵¹ See [Pro Competition Coalition Letter](#), *supra* note 30.

⁵² *Id.* at 3.

infrastructure projects in the U.S.,⁵³ the Coalition Letter observed that merchant companies were developing all 10 of the HVDC projects,⁵⁴ three of the four buried projects, and 11 of the 16 multi-state/international projects.⁵⁵

ROFRs not only affect competition to design and build transmission lines, they also affect competition in the wholesale generation market. There is no incentive for non-incumbents to propose projects for regional planning when state or federal ROFRs are applicable, since incumbent utilities would have the right to develop the non-incumbent's proposed project.⁵⁶ This leads to fewer transmission lines, and thus less competition in the wholesale generation market.

During the RM21-17-000 comment period, and even after the Docket closed, a number of entities have offered (a) studies examining the relationship between transmission development competition and outcomes, and/or (b) comments on studies, in favor of and against ROFRs. If the DOJ would find it helpful, the Niskanen Center has monitored these issues and has compiled a list of what we consider the most prominent studies and rejoinders, attached as **Appendix A**.

a) DOJ should ask FERC to preempt state right of first refusal laws and avoid reinstating a federal right of first refusal.

Niskanen encourages the DOJ to consider recommending, privately with FERC and/or publicly, that (1) state ROFR laws should be preempted by FERC; and (2) FERC should not reinstate the federal ROFR for transmission projects.⁵⁷ In Order 1920-A, FERC stated that “. . . it will continue to consider potential federal right of first refusal reforms along with other transmission reforms in the future.”⁵⁸ In the event that FERC does indeed consider federal ROFR reforms, Niskanen encourages the DOJ to file comments in any relevant rulemaking.

II. Anticompetitive Laws and Regulations Affecting Healthcare Cost and Quality

A. Introduction

We appreciate the opportunity to comment on anticompetitive laws and regulations that discourage doctors and hospitals from providing low-cost, high-quality healthcare in the U.S. Regulatory capture permeates America's healthcare system. As a result, lower-cost doctors, care centers, and medicine are squeezed with no corresponding increase in quality for patients. Expanded insurance coverage and a growing, aging population has increased demand but the

⁵³ Zachary Zimmerman, et al., *supra* note 12.

⁵⁴ Nine of these projects were won solely by a merchant company, one project was a joint venture between a merchant company and an incumbent utility. [Pro Competition Coalition Letter](#), *supra* note 30 at 3.

⁵⁵ *Id.*

⁵⁶ Lynne Kiesling, an energy economist, has noted, “A ROFR essentially requires a market entrant to get the incumbent's permission before entering; who would expect them to say yes?” [Regional Transmission Organizations as Market Platforms III](#), Lynne Kiesling, American Enterprise Institute, January 31, 2025.

⁵⁷ In Order 1920, FERC did give incumbent transmission owners a narrower ROFR to develop “right-siz[ed]” replacement facilities. See [Fact Sheet: Building for the Future Through Electric Regional Transmission Planning and Cost Allocation](#), Federal Energy Regulatory Commission, May 13, 2024.

⁵⁸ [Order No. 1920-A: Order on Rehearing and Clarification](#), FERC Docket No. RM21-17-001, 189 FERC 61,126, P 801 (November 21, 2024).

supply of healthcare has failed to keep pace.⁵⁹ The result is a less competitive provider market and rising prices. Patients and workers bear the burden, albeit largely shrouded from view via incremental increases in insurance premiums and higher government spending to cover federal programs. Reversing course will require addressing the regulatory and legislative framework that allowed these dynamics to persist.

In this section, we highlight seven healthcare competition problems—both legislative and regulatory—that can be remedied by state and federal policymakers and that warrant the DOJ’s consideration.

B. Issues and Recommendations for Anticompetitive Laws and Regulations

1. Licensing practices and self-regulation are reducing the supply of physicians and lower-cost services.

Self-regulation in the healthcare industry has long threatened adequate competition in the provider market. Licensing boards, specialty boards, and committees made up primarily of industry actors determine who can practice medicine, where they can practice it, and help dictate how much their services should cost. While some influence from practitioners is necessary due to the complexities of medical care, and offers benefits such as ensuring high practice standards, the incentives are not aligned appropriately to ensure an adequate supply of doctors, particularly those that offer lower-cost services.

Under the current regulatory framework, the rate of doctor supply has not kept up with demand for care, resulting in shortages in key specialties like psychiatry and primary care, along with compounding regional disparities in access.⁶⁰ State licensing requirements prevent qualified physicians from practicing medicine in most states and a lack of license portability makes it difficult to address regional disparities in care access. At the national level, industry influence in payment policy has resulted in a specialty bias that inflates costs without delivering commensurate value for patients. These state and federal laws and regulations, discussed in more detail below, are unquestionably anticompetitive in nature, as they serve as artificial and unjustified barriers to market entry despite ample demand and capacity for additional service providers, thereby insulating incumbent practitioners against competition and allowing artificial price increases.⁶¹

⁵⁹ [Healthcare abundance: An agenda to strengthen healthcare supply](#), Lawson Mansell, Niskanen Center, October 2024.

⁶⁰ [The Complexities of Physician Supply and Demand: Projections From 2021 to 2036](#), The Association of American Medical Colleges, March 2024; [Understanding the U.S. Behavioral Health Workforce Shortage](#), Nathaniel Counts, The Commonwealth Fund, May 18, 2023.

⁶¹ See, e.g., *N. Carolina State Bd. of Dental Examiners v. Fed. Trade Comm’n*, 574 U.S. 494 (2015).

a) Remove barriers to practice for internationally trained physicians

In all but 10 states, internationally trained doctors must repeat their residency training in the U.S. or Canada to receive licensure to practice medicine.⁶² Even for doctors who have already completed residency training or the equivalent abroad, state licensing boards in the vast majority of states require that doctors go through the same residency process as those with no postgraduate training. This requirement is also maintained by most specialty boards, who do not allow internationally trained physicians to sit for specialty exams without a North American residency.⁶³ This barrier serves to artificially restrict the supply of physicians without providing clear benefits in the way of care quality. Restrictive licensing rules like this leave qualified, trained doctors on the sideline, unable to address critical healthcare gaps in their communities.

In recent years, state legislatures have begun to mandate that state licensing boards create alternative licensure pathways that allow internationally trained doctors to practice under supervision through provisional licenses that are later converted to full licenses.⁶⁴ The design and implementation of these pathways vary and many states still retain strict eligibility requirements that deny highly trained doctors of any licensure pathway.⁶⁵ For the largest impact, state policymakers must focus on creating permanent, streamlined pathways to licensure that recognize international training and experience and remove duplicative residency mandates.

Recommendations:

- 1) State policymakers to establish permanent alternative licensure pathways for internationally trained physicians, allowing them to practice under supervision before transitioning into full practice authority.
- 2) Medical boards and specialty certification bodies to develop clear, evidence-based criteria to recognize international postgraduate training and clinical experience, enabling qualified international medical graduates to obtain board certification and hospital privileges without unnecessarily repeating their training.

b) Improve licensing portability across state lines

Over 14 million U.S. healthcare workers are subject to occupational licensing.⁶⁶ Healthcare workers' authorization to work in their licensed occupation typically ends at their states' borders and moving to a new state for work requires paying fees, filling out paperwork, and possibly exams or an interview with the state board to prove their competence. While ensuring

⁶² [Unlocking potential: How states can remove barriers for internationally trained physicians](#), Lawson Mansell and Cecilia Esterline, Niskanen Center, March 20, 2025 ("Unlocking Potential Paper").

⁶³ [Cutting the American Physician Shortage With International Doctors](#), Jonathan Wolfson, Cicero Institute, January 2025.

⁶⁴ See [Unlocking Potential Paper](#), *supra* note 62.

⁶⁵ For example, Arkansas' [recent legislation](#) signed into law requires that applicants maintain an active license in their home country and have been practicing medicine for four years before applying. The narrow eligibility criteria will likely prevent doctors who have been out of practice due to restrictive licensing rules from accessing the provisional license.

⁶⁶ [U.S. Health Care Licensing: Pervasive, Expensive, and Restrictive](#), Robert Orr, Niskanen Center, May 12, 2020.

competency for healthcare workers is necessary, these requirements often result in inefficiencies that prevent qualified workers from practicing, may decrease interstate mobility, and ultimately result in worse access for patients.⁶⁷ In 2015, the Obama Administration acknowledged these challenges and created a playbook for state policymakers to begin addressing unduly burdensome licensing requirements.⁶⁸

Some states have begun waiving the relicensure process for those moving across state lines by adopting universal licensing recognition (ULR). This policy waives relicensure requirements for any individual practicing their occupation without issues, allowing them to immediately begin work upon arriving to their new home state. In 2020, the Trump Administration recommended that state lawmakers “recognize the occupational licenses of other states” due to the overly cumbersome process for maintaining licensure across state lines.⁶⁹ Research has found that, in states that recently adopted ULR, the employment ratio for licensed workers increased relative to those who are unlicensed, indicating that the policy improves labor market efficiency and, hence, competition for services.⁷⁰ The same research also found that ULR programs can decrease overall healthcare costs due to a healthier, more robust labor market.⁷¹ Other research shows that the policy has positive effects on patient access – states with ULR programs saw an in-flow of doctors resulting in “significantly rais[ing] the proportion of respondents accessing healthcare, particularly among older respondents, and reduc[ing] the proportion of respondents not getting healthcare services due to costs.”⁷²

Recommendation:

- 1) Only twenty-six states have adopted a ULR program, some of which exclude healthcare occupations.⁷³ The U.S. federal government should use all available resources to encourage the adoption of ULR for healthcare occupations to ensure there are no gaps in patient access to a doctor and better competition dynamics to bring down overall healthcare costs for patients.

c) Fix how physician services are valued by Medicare

Organized medicine’s influence over Medicare’s rate-setting procedures encourages overuse of highly expensive specialists.⁷⁴ These unjustified market distortions are then compounded because Medicare’s rate setting procedures serve as a template for Medicaid and private insurers. The value of a physician’s service, i.e. the price paid for a given service, is determined by a

⁶⁷ [Occupational Licensing Reduces Interstate Mobility](#), Charles Hughes, Manhattan Institute, December 12, 2017.

⁶⁸ [Occupational Licensing: A Framework for Policymakers](#), The Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor, July 2015.

⁶⁹ [The President’s Principles on Workforce Freedom and Mobility](#), The White House, January 2020.

⁷⁰ [Now You Can Take It with You: Effects of Occupational Credential Recognition on Labor Market Outcomes](#), Edward Timmons and Kihwan Bae, March 2023.

⁷¹ *See id.*

⁷² [Does Universal Licensing Recognition Improve Patient Access? Evidence from Healthcare Utilization](#), Yun taek Oh and Morris M. Kleiner, November 2024.

⁷³ [Policy Brief: 2024 Update to the Survey of Universal Licensing Reforms in the United States](#), Dr. Kihwan Bae and Dr. Darwyn Deyo, July 2024.

⁷⁴ [Regarding “Committee Representation and Medicare Reimbursements: An Examination of the Resource-Based Relative Value Scale](#), Miriam Laugesen, Health Services Research, November 2018.

combination of Medicare/Medicaid rates set by policymakers and commercial market rates set by the negotiation between the insurer and provider. But the rates that Medicare sets are heavily influenced by the American Medical Association's Specialty Society Relative Value Scale Update Committee (RUC). This 32 member committee is composed of doctors representing 22 different specialties who annually review procedural codes and offer recommendations to Medicare on the relative value of each code (determined by the time and intensity of performing the service). In 2024, Medicare accepted 97 percent of the recommendations from the RUC.⁷⁵ Historically, around 87 percent of the RUC's recommendations are accepted.⁷⁶

Centers for Medicare and Medicaid Services (CMS) reliance on the RUC to determine the value of different types of physician services has drawn significant pushback, from the current Secretary of Health and Human Services (HHS) Robert F. Kennedy, Jr., the Government Accountability Office (GAO), and health policy experts.⁷⁷ There are several ways this process fails to adequately value physician services and encourages more expensive procedures. Physicians' direct involvement in determining specialty payment relative to all other payments creates evident conflicts of interest.⁷⁸ In 2008, CMS noted that "there continues to be concern that the presence of many overvalued procedures within the physician fee schedule [PFS] disadvantages primary care services and creates distortion in the PFS."⁷⁹ At the minimum, the RUC should ensure fair and equal input from each type of specialty to avoid any bias. But among the 32 members of the RUC, only 4 represent primary care.⁸⁰

In 2015, the GAO found that the RUC's conflicts of interest may lead to inflated valuations by specialty societies relative to primary care.⁸¹ For example, a skin lesion removal code is listed by the RUC as taking 29 minutes to perform, while experts from the Urban Institute report that the service instead takes mere seconds.⁸² The GAO found in its 2015 investigation that the RUC's

⁷⁵ [CY 2024 Medicare Physician Payment Schedule and Quality Payment Program \(OPP\) Final Rule Summary](#), The American Medical Association, 2023.

⁷⁶ [In setting doctors' Medicare fees, CMS almost always accepts the relative value update panel's advice on work values](#), Miriam Laugesen, Roy Wada, and Eric Chen, Health Affairs, May 2012

⁷⁷ See e.g., [Rethinking the RUC](#), Maura Calysn and Madeline Twomey, Center for American Progress, July 13, 2018; [Experts urge Medicare to overhaul secretive panel that helps determine doctors' pay](#), Bob Herman, Stat News, September 12, 2022; [RFK Jr. is exploring a plan to upend Medicare's physician payments system](#), Rachel Cohrs Zhang, Stat News, November 20, 2024; [Medicare Physician Payment Rates: Better Data and Greater Transparency Could Improve Accuracy](#), GAO-15-434, The Government Accountability Office, May 2015 ("GAO Medicare Physician Payment Rates Report").

⁷⁸ In most other contexts, this type of practitioner price fixing would constitute a *per se* violation of § 1 of the Sherman Antitrust Act. In fact, the DOJ has a long history of investigating and prosecuting price fixing in the medical industry. See e.g., *United States v. Ariz. Hosp. and Healthcare Ass'n*, No. CV07-1030-PHX (D. Ariz. Sept. 12, 2007); [Justice Department Reaches Settlement With the Arizona Hospital and Healthcare Association and Its Subsidiary](#), U.S. Department of Justice, May 22, 2007. Although we are aware that the Medicare rate setting procedures are not actionable antitrust violations, we include it in these comments because the DOJ's request for comments was not limited to actionable antitrust matters, but rather requested comments more generally on anticompetitive regulations that have cost implications. This unquestionably qualifies.

⁷⁹ [Medicare Program: Revisions to Payment Policies](#), 73 Fed. Reg. 38502, 38582 (July 7, 2008).

⁸⁰ [Committee Representation and Medicare Reimbursements—An Examination of the Resource-Based Relative Value Scale](#), Y Nina Gao, Health Services Research, 2018; see also [Composition of the RVS Update Committee \(RUC\)](#), American Medical Association, May 20, 2025.

⁸¹ See [GAO Medicare Physician Payment Rates Report](#), *supra* note 77.

⁸² [Experts urge Medicare to overhaul secretive panel that helps determine doctors' pay](#), Bob Herman, Stat News, September 12, 2022.

low survey response rates also may lead to inaccurate payment recommendations. These types of inflated valuations result in chronic undervaluing of primary care services which are less procedure-based and more cognitive in nature.⁸³ The imbalance between procedural and non-procedural services has resulted in a significant income gap between primary care doctors and other specialists, with primary care physicians making roughly half the income of specialists.⁸⁴

Consequently, a higher proportion of new practitioners pursue more lucrative specialties other than primary care, causing a reduction in the availability of primary care services, further squeezing out the kind of care patients need to manage their chronic conditions. By dismantling the RUC's monopoly over payment policy, Medicare can rebalance incentives toward high-value care.

Recommendation:

- 1) The U.S. federal government should replace the RUC with an independent committee made up of practitioners, experts, and patients (or patient representatives). Physician members should be appropriately balanced to include proportionate representation of primary care physicians. Rather than rely on survey data, members should determine the value of physician services based on empirical data on the time and intensity of services, incorporating the value of the service to the patient (i.e. population health outcomes). For example, the committee should adjust work relative value units for physicians in specialties with acute shortages like primary care to reflect their population health value.

2. Market consolidation is increasing prices without improving quality.

Out of view of patients, providers have increased their pricing power, and perverse incentives in federal payments have contributed to a scarce, consolidated, and uncompetitive provider market. Providers have engaged in problematic horizontal integration, consolidating ownership by buying up hospitals and physician offices, as well as vertical integration such as mergers with insurance companies.⁸⁵ Although some hospital consolidation provides benefits through better coordination, which can reduce overall operating costs, research consistently shows that hospital mergers result in higher prices with no corresponding benefits in the way of quality in violation of the DOJ's and FTC's joint Horizontal Merger Guidelines.⁸⁶

A recent study of 1,164 hospital mergers from 2000 to 2020 found that prices increased by 5.2 percent where mergers significantly boosted market power.⁸⁷ As providers consolidate, they gain bargaining leverage over insurance companies in price negotiations, allowing them to receive higher rates for services. Higher negotiated insurance compensation rates mean higher premiums for patients and higher costs for employers. The result is a scarce provider market dominated by

⁸³ [Association of Evaluation and Management Payment Policy Changes With Medicare Payment to Physicians by Specialty](#), Hannah T. Neprash et al., JAMA, February 28, 2023.

⁸⁴ [Trends in Compensation for Primary Care and Specialist Physicians After Implementation of the Affordable Care Act](#), Walter R Hsiang et al., JAMA, July 28, 2020.

⁸⁵ [What We Know About Provider Consolidation](#), Karyn Schwartz et al., KFF, September 2, 2020.

⁸⁶ [The Perils of Hospital Consolidation](#), Yevgeniy Feyman and John Hartley, National Affairs, 2016.

⁸⁷ [Is There Too Little Antitrust Enforcement in the US Hospital Sector?](#), Zarek Brot et al., December 2024.

high-cost sites of care like large hospital systems, while more affordable sites for care are squeezed out. Mergers between medical service providers and insurance companies raise a host of anticompetitive concerns, including foreclosure of competitors, raising rivals' costs, market power and pricing concerns, reduced incentives for competition, barriers to entry and expansion, and harm to consumer choice and access.⁸⁸

a) Make Medicare payments site-neutral

How much the government pays for care and what services it covers create incentives for various providers who seek to maximize their revenue. The Medicare program includes a glaringly perverse incentive: site-based billing.⁸⁹ Medicare has different reimbursement rates for different *types* of facilities. In some cases, Medicare pays *hospitals* nearly double what they would pay a *freestanding physician's office* for the same service.⁹⁰ Even for routine services like X-rays, which are commonly done at both hospitals and physicians offices, rates are up to four times higher for Medicare in a hospital outpatient department (HOPD).⁹¹ There is no sound economic basis for these discrepancies in Medicare reimbursement rates.

Policies like site-based payments have created an incentive for hospital systems to acquire independent physician offices where they could immediately begin receiving higher reimbursements by simply labeling an off-campus facility as a HOPD without changing the care patients receive. According to studies from the Actuarial Research Corporation, Medicare could save \$126.8 billion over 10 years if site-neutral payments were extended to all HOPDs just for routine services.⁹² Correcting perverse payment incentives like site-based billing is a necessary step to stem the tide of rising hospital consolidation and introduce more robust competition into the provider market.

Recommendations:⁹³

- 1) The U.S. federal government should make all off-campus HOPD payments site-neutral by eliminating the grandfathering provision included in the 2015 Bipartisan Budget Act.
- 2) The U.S. federal government should make common outpatient procedures site-neutral. This would require that HHS identify services that are commonly performed in a physician's office or ambulatory setting and require that Medicare bill the lower non-hospital rate for those specific services regardless of where it is performed.

⁸⁸ [2023 Merger Guidelines](#), U.S. Department of Justice and the Federal Trade Commission, December 18, 2023.

⁸⁹ [Addressing Medicare spending and hospital consolidation with site-neutral payments](#), Lawson Mansell, Niskanen Center, March 2024.

⁹⁰ [Equalizing Medicare Payments Regardless of Site-of-Care](#), Committee for a Responsible Federal Budget, February 23, 2021.

⁹¹ [Hospital-physician integration and Medicare's site-based outpatient payments](#), Brady Post et al., January 27, 2021.

⁹² [Sizing Medicare Off-Campus Hospital Outpatient Department Site Neutrality Proposals](#), Tim Bulat and Ryan Brake, Actuarial Research Corporation, January 3, 2024.

⁹³ These recommendations are in line with Senators Cassidy and Hassan's framework for site-neutral payments released in 2024. See [Lowering Health Costs for Seniors Framework](#), Senator Bill Cassidy and Senator Maggie Hassan, November 1, 2024.

b) Allow more physician-owned hospitals

The 2010 Affordable Care Act (ACA) included a provision that banned the creation of new physician-owned hospitals (POHs) and the expansion of existing ones. POHs serve as a critical counterbalance to large, vertically integrated hospital systems that dominate consolidated local markets. Yet, current law restricts market entry for these hospitals. Researchers at Johns Hopkins University found in 2023 that POHs negotiate 18 percent lower prices for outpatient procedures compared to other hospitals in the same market.⁹⁴ In 2021, scholars at the Mercatus Center found that POHs offer higher-quality care at the same or lower cost compared to non-POHs.⁹⁵

Advocates of the ban often cite concerns related to patient selection or over-utilization at POHs. But rather than restrict hospital competition through blanket bans, policymakers should address the underlying incentives and establish appropriate guardrails while ensuring patients have sufficient lower-cost options for care.⁹⁶

Recommendation:

- 1) Congress should amend the ban on POHs to allow for both the expansion of current POHs and the creation of new ones.⁹⁷

c) Repeal Certificate of Need laws

Constraints on healthcare competition operate at both the state and federal levels. 38 states maintain anticompetitive certificate of need (CON) laws which require providers to request approval to build or expand hospital facilities or acquire new equipment and in most states, the approval process allows for competing hospital systems to challenge the applications of new market entrants.⁹⁸ As a result, current providers are able to exercise what amounts to a “competitor’s veto” of new hospital construction and expansion.⁹⁹ CON laws have made it difficult for smaller facilities offering lower-cost services like ambulatory surgical centers to open due to challenges from incumbent health systems, leaving patients with fewer options.

Recent research reveals that repealing CON laws has resulted in more competition in both urban and rural areas.¹⁰⁰ Additionally, research from the Mercatus Center has found that CON laws lead to lower quality care, due to higher mortality rate for patients discharged with pneumonia and

⁹⁴ [Comparison of Commercial Negotiated Price and Cash Price Between Physician-Owned Hospitals and Other Hospitals in the Same Hospital Referral Region](#), Yang Wang et al., June 23, 2023.

⁹⁵ [Cost and Quality of Care in Physician-Owned Hospitals: A Systematic Review](#), Brian J. Miller et al., September 7, 2021.

⁹⁶ See e.g., [Reconsidering the Ban on Physician-Owned Hospitals to Combat Consolidation](#), Matthew C. Mandelberg et al., pp. 763-66, July 8, 2024. Authors of the report suggest that better oversight over billing practices and referral patterns and more accurate payment rates to reflect complexity and cost of patient care can disincentivize “cherry-picking” or induced demand. *Id.* at 720.

⁹⁷ This is similar to the recent proposed legislation from Senator James Lankford. [Physician Led and Rural Access to Quality Care Act](#), S. 1390, 119th Cong. (2025).

⁹⁸ [Brief Certificate of Need Laws](#), National Conference of State Legislatures, last updated April 29, 2025.

⁹⁹ [Certificate of Need Laws in Health Care: Past, Present, and Future](#), Matthew Mitchell, p. 1, May 10, 2024.

¹⁰⁰ [Rural Healthcare Access and Supply Constraints: a Causal Analysis](#), Vitor Melo et al., Southern Economic Journal, pp. 1-19, April 2024.

heart failure in CON states than non-CON states.¹⁰¹ In 2016, the DOJ and FTC recommended the repeal of CON laws, citing that they “prevent the efficient functioning of health care markets.”¹⁰² Similarly, the HHS under President Trump noted in a 2018 report that “CON laws have failed to produce cost savings, higher quality healthcare, or greater access to care.”¹⁰³ It is imperative that policymakers roll back these restrictions to open up more competition and improve access for patients.

Recommendation:

- 1) The U.S. federal government should employ all available resources to encourage state lawmakers in CON states to repeal CON requirements to build new care centers or expand existing facilities. New federal and state policies should focus specifically on repealing CON for lower-cost care models like ambulatory surgical centers and independent physician’s offices and facilities for higher-need populations like psychiatric care facilities and drug and alcohol abuse treatment centers.

3. Current patenting practices are inhibiting access to lower-cost medication.

American patients spend more out-of-pocket on prescription drugs than on hospital care, increasing by 25 percent over the last 5 years.¹⁰⁴ Ensuring reliable access to lower-cost generic medications is critical so patients do not forgo needed medication due to the cost. Recent polling revealed that, due to high drug costs, over 30 percent of Americans underdosed or did not purchase prescribed medication.¹⁰⁵ Currently, lower-cost generic and biosimilar drugs are often delayed by anticompetitive practices like “patent thickening” and “evergreening” from brand name drug manufacturers to delay the arrival of lower-cost medications, exacerbating the drug affordability crisis.¹⁰⁶ Regulators and lawmakers should prevent these practices and allow for better competition in drug manufacturing.

- a) *Fix the patient bottleneck to accelerate the approval of new generic drugs*

While there are numerous policies that could lower drug costs for patients, one of the key bottlenecks preventing the market entry of lower-cost biosimilar and generic drugs is in the patenting space. There are several maneuvers brand-name drug manufacturers use to delay market entry of competitors – “patent thickening” is among the most consequential.¹⁰⁷ A patent

¹⁰¹ See generally [The Effects of Certificate-of-Need Laws on the Quality of Hospital Medical Services](#), Thomas Strattmann, Journal of Risk and Financial Management, 2022.

¹⁰² [Joint Statement of the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice on Certificate-of-Need Laws and South Carolina House Bill 3250](#), U.S. Department of Justice and Federal Trade Commission, p. 1, January 11, 2016.

¹⁰³ [Reforming America’s Healthcare System Through Choice and Competition](#), U.S. Department of Health and Human Services, U.S. Department of the Treasury, U.S. Department of Labor, p. 51, November 30, 2018.

¹⁰⁴ [Understanding the Use of Medicines in the U.S. 2025](#), Iqvia, April 30, 2025.

¹⁰⁵ [Public Opinion on Prescription Drugs and Their Prices](#), Grace Sparks et al., KFF, October 4, 2024.

¹⁰⁶ [In the case of brand name drugs versus generics, patents can be bad medicine, WVU law professor says](#), WVU Today, December 19, 2022.

¹⁰⁷ [Reforms targeting “patent thickets” would speed up the arrival of lower-cost drugs](#), Lawson Mansell, Niskanen Center, July 18, 2024.

thicket occurs when brand-name drug makers build sometimes-overlapping patents and patent claims designed to block competitors from entering the market. This forces generic and biosimilar manufacturers into lengthy litigation, delaying lower-cost alternatives.¹⁰⁸ Between 2000 and 2015, continuation patent applications, which expand the scope of a patent portfolio to block prospective competitors, increased by 200 percent.¹⁰⁹

Allowing for generic and biosimilar drugs to come to market as soon as possible following the expiration of the manufacturer's Food and Drug Administration-enforced period of protection will require reforms to the patent process. Last year, the United States Patent and Trademark Office (PTO) proposed a rule that would reduce the barriers for generic manufacturers when challenging a patent portfolio.¹¹⁰ The rule, which was later pulled, would have reduced the number of claims generic drug makers would need to challenge to invalidate the other patents in a thicket.¹¹¹ Similarly, recent bipartisan legislation would have limited the number of patents a brand name drug maker can claim were violated by a competing biosimilar manufacturer during litigation.¹¹² Both of these policies would have meaningfully increased access to lower-cost drugs.

Recommendation:

- 1) The DOJ should work with the PTO and FDA to consider placing restrictions on patent thicketing, such as the PTO's proposed rule from last year to add a new requirement to the enforcement provisions in 37 CFR 1.321(c) and (d) which would have required drug makers to include language in their terminal disclaimer that ensures primary patents are no longer enforceable if a linked secondary patent is successfully challenged.¹¹³

III. Anticompetitive Regulations in the Elevator Industry and Impacts on Housing Affordability and Accessibility

A. Introduction

We appreciate the opportunity to comment on the impact of anticompetitive regulations on housing affordability in the United States. Obscure, restrictive regulations beyond the easy monitoring of most voters and popular media are vulnerable to interest group capture.¹¹⁴ Anti-competitive market structures contribute significantly to the high cost of construction,

¹⁰⁸ For example, Revlimid, an oral medication that treats blood cancers, was the subject of litigation in 2018. The brand-name manufacturers used patent thickets to ward off competition, allowing them to raise prices by 300 percent over 20 years. See [How A Drugmaker Gamed The System To Keep Generic Competition Away](#), Alison Kodjak, NPR, May 17, 2018.

¹⁰⁹ [Changes in the Number of Continuation Patents on Drugs Approved by the FDA](#), S Sean Tu et al., JAMA, August 2023.

¹¹⁰ [Terminal Disclaimer Practice to Obviate Nonstatutory Double Patenting](#), 89 Fed. Reg. 40439 (May 10, 2024).

¹¹¹ [Public comment: Terminal disclaimer practice to obviate nonstatutory double patenting](#), Lawson Mansell and Zachary Norris, Niskanen Center, July 10, 2024.

¹¹² [Affordable Prescriptions for Patients Act](#), S. 150, 118th Cong. (2023) (introduced by Senators John Cornyn and Richard Blumenthal).

¹¹³ [Terminal Disclaimer Practice To Obviate Nonstatutory Double Patenting: Withdrawal](#), 89 Fed. Reg. 96152 (December 4, 2024).

¹¹⁴ [Political Ignorance and "The Captured Economy"](#), Ilya Somin, The Washington Post, November 16, 2017.

hindering the supply of housing and exacerbating the housing affordability crisis. While many factors contribute to the housing affordability crisis, including zoning and land use regulations, we focus on the under-reported market for elevators, where anti-competitive regulatory burdens needlessly inflate costs and curtail accessibility.¹¹⁵

Comparative international statistics on elevator prevalence demonstrate the U.S. faces a significant "elevator deficit" in contrast to other high-income nations.¹¹⁶ For instance, the U.S. has approximately three elevators per thousand residents, while Spain has 23, Switzerland has 27, and Greece has over forty.¹¹⁷ This disparity persists even when accounting for differing housing stock compositions; the U.S. has 40 percent fewer elevators per capita than the Netherlands, despite having a higher share of multifamily dwellings.¹¹⁸ In many peer nations, elevators are an expected feature of nearly every new apartment building above two or three stories, but in North America, multi-story walk ups—sometimes four, five, or even six stories tall—are common, often lacking elevators due to prohibitive costs.¹¹⁹

A primary driver of this deficit is a crippling North American cost anomaly. Installing an elevator domestically costs at least three times more than a comparable installation in Western Europe or East Asia, with ongoing maintenance costs showing similar or steeper disparities.¹²⁰ New York City guidelines, for example, suggest budgeting \$7,500 annually for maintenance, while some European firms charge under \$500 annually for similar buildings.¹²¹

These inflated costs are not inevitable market outcomes nor justified by demonstrably superior safety. Instead, they arise from a complex web of U.S. elevator regulations—principally the American Society of Mechanical Engineers (ASME) A17.1 safety standard, and its interplay with model building codes like the International Building Code (IBC) and accessibility standards such as the International Code Council's (ICC) A117.1. While these are model codes promulgated by non-governmental entities, they are almost universally incorporated into state and local building codes that are binding on builders.

The overlapping intersection of those regulations diverges significantly from widely adopted international norms (*i.e.*, the Europäische Norm (EN) 81 family, which is harmonized globally via the International Organization for Standardization (ISO) 8100 series).¹²² This regulatory divergence creates substantial barriers to entry, stifling competition and limiting product availability, by relegating the American market to a small niche separate from the bigger global market for elevators.

¹¹⁵ This comment section adapts and builds upon the primary research of Niskanen's partner organization, the Center for Building in North America, with their permission and cooperation. While resting upon the intellectual foundations and work of the "Elevators" report, all claims and citations herein have been vetted by the Niskanen Center's housing policy team.

¹¹⁶ [Elevators](#), Center for Building In North America, pp. 8-9, 13-15, May 2024 ("Elevators Report").

¹¹⁷ *Id.* at 15.

¹¹⁸ *Id.* at 14; [America's Elevator Problem](#), *Conversable Economist*, July 10, 2024 ("America's Elevator Problem").

¹¹⁹ [Elevators Report](#), *supra* note 116 at 9, 16, 20-21; [Movin' On Up? The Low Ceiling of North American Elevator Standards](#), California YIMBY blog, June 24, 2024 ("Movin' On Up?").

¹²⁰ [Elevators Report](#), *supra* note 116 at 9, 34-36; [America Doesn't Have Enough Elevators](#), Connor Harris, *City Journal*, February 14, 2025.

¹²¹ [Elevators Report](#), *supra* note 116 at 37.

¹²² *Id.* at 83-84.

Higher elevator costs contribute to higher building construction costs (especially for mid-density housing with less floor area over which to amortize elevator costs), and ultimately undermines housing affordability. High elevator costs also perversely harm accessibility. The high costs make elevators economically unattractive or infeasible in many U.S. buildings where they would be standard abroad, disproportionately harming the elderly, families with small children using strollers, and Americans with disabilities. This paradox, where rules intended to enhance specific aspects of accessibility contribute to a systemic lack of elevators, represents a significant policy failure requiring examination by the Department of Justice, the Federal Trade Commission, and other federal agencies who insure, subsidize, regulate, or study multifamily housing (including the Department of Housing and Urban Development, the Internal Revenue Service, and the Federal Housing Finance Agency), and state regulators.

B. Issues

1. Divergent U.S. elevator regulations have isolated the domestic market and limited competition.

The global elevator market largely operates under standards derived from the European EN 81 family (harmonized via ISO 8100),¹²³ while the U.S. and Canada maintain the distinct ASME A17.1/CSA B44 standard.¹²⁴ This distinction ensures the North American market remains a "technological island" of just over one million installed units, compared to the EN/ISO sphere's ten million-plus.¹²⁵ Certifying products uniquely for this smaller market requires separate, costly processes, functioning as a regulatory barrier to trade. This shields North American incumbents from global competition and limits access to potentially innovative or lower-cost components, evidenced by the reduced product catalogs offered by global suppliers like Wittur in North America.¹²⁶ The restricted parts market likely also increases repair times.¹²⁷ Arguments that distinct North American standards ensure superior safety are not supported by evidence of better user safety outcomes,¹²⁸ and data suggests that to the extent any difference is measurable, U.S. elevator workers may face *higher* occupational risks than those in the European Union.¹²⁹

This isolation is exacerbated by inconsistent adoption and amendment of model codes at state and local levels, a broader issue noted in U.S. building code practices.¹³⁰ This regulatory patchwork further increases compliance costs and complexity, hindering nationwide deployment of standardized solutions.¹³¹ Furthermore, the North American standard continues to evolve in ways that may increase complexity, with the 2022 edition adding requirements for cybersecurity

¹²³ *Id.* at 88-90.

¹²⁴ *Id.* at 85.

¹²⁵ *Id.* at 41, 85.

¹²⁶ *Id.* at 90.

¹²⁷ *Id.* at 82, 85-86.

¹²⁸ *Id.* at 88.

¹²⁹ *Id.* at 41.

¹³⁰ *Id.* at 87-88.

¹³¹ *Id.* at 49.

and remote interaction operation, diverging further from simpler global norms focused on core safety.¹³²

2. Specific regulatory burdens are increasing costs.

a) *Excessive cabin size requirements*

U.S. rules effectively mandate larger elevator cabins and higher mass ratings, which interact to raise costs substantially. ICC A117.1 and the IBC have more expansive requirements for wheelchair¹³³ and stretcher¹³⁴ maneuverability, respectively, than the EN/ISO equivalents. Cabins that comply with U.S. rules typically also have a capacity between 2,500 to 3,500 lb—roughly double the rated mass of standard European accessible elevators.¹³⁵ This combined size and mass rating difference can increase installation costs by an estimated 13 percent to 44 percent¹³⁶ and necessitates larger hoistways, consuming valuable building area.¹³⁷ This forecasted cost savings *within* the US is subject to further favorable upside insofar as increased vendor entry, competition, and manufacturing scale might further increase the realizable savings beyond the direct savings of smaller and lighter elevators under current U.S. market conditions. The broad stretcher requirement appears to lack rigorous cost-benefit analysis.¹³⁸ In addition, the IBC stretcher requirement is ambiguous as written and has been interpreted to require different cabin sizes over time by various states and local jurisdictions.¹³⁹

b) *Costly technical deviations*

North American standards often require more, such as landing doors subject to a pressure test withstanding two-and-a-half times the force required by EN 81 and passing different fire tests;¹⁴⁰ and costly two-way audiovisual communication systems instead of the global audio-only standard (EN 81-28).¹⁴¹ Restrictions also hinder efficient technologies like Machine Room Less (MRL) elevators¹⁴² and modern electronic testing methods common elsewhere.¹⁴³ Each requirement, adopted without formal analysis of its social costs and benefits in the manner required of a federal Regulatory Impact Analysis, contributes to the prohibitive aggregate cost.¹⁴⁴

¹³² *Id.* at 50.

¹³³ *Id.* at 44, 49.

¹³⁴ *Id.* at 48.

¹³⁵ *Id.* at 53.

¹³⁶ *Id.* at 54.

¹³⁷ *Id.* at 50-51; [Movin' On Up?](#) *supra* note 119.

¹³⁸ [Elevators Report](#) *supra* note 116 at 103.

¹³⁹ *Id.* at 87-88.

¹⁴⁰ *Id.* at 88.

¹⁴¹ *Id.* at 88; [IAEC Position Paper: Should ASME A17.1/CSA B44 "Converge" with ISO 8100?](#), International Association of Elevator Consultants, p. 15, October 22, 2018 (“IAEC Position Paper”).

¹⁴² [Elevators Report](#) *supra* note 116 at 88; [IAEC Position Paper](#) *supra* note 141 at 14.

¹⁴³ [Elevators Report](#) *supra* note 116 at 96-98.

¹⁴⁴ *Id.* at 90-92.

c) Labor market factors and political economy

The North American installation and maintenance market is heavily influenced by the International Union of Elevator Constructors (IUEC), which faces limited competition in many areas.¹⁴⁵ The union controls labor supply and worker entry through an apprenticeship program and lobbies against licensing reforms that could expand the labor pool.¹⁴⁶ Collective bargaining agreements reportedly include provisions that reduce efficiency, such as requiring on-site reassembly of factory-built components and resisting safer, more efficient testing methods (common in the EU) that require fewer workers.¹⁴⁷ Evidence suggests cooperation between the union and signatory employers to disadvantage non-union competitors.¹⁴⁸ These factors contribute to high labor costs and installation times potentially double those in Europe.¹⁴⁹

3. High elevator costs impact housing affordability and accessibility.

High elevator costs severely impact U.S. housing by discouraging installation, particularly in essential three- to six-story "missing middle" buildings. In such buildings, elevators provide equitable and comfortable access, but the buildings are not tall enough for elevators to be an absolute physical necessity for able-bodied occupants.¹⁵⁰ This leads to fewer accessible housing units, negatively impacting elderly and Americans with disabilities.¹⁵¹ The focus on maximizing features within individual elevators creates a systemic scarcity, undermining overall accessibility goals. This contrasts sharply with international practices where lower costs facilitate elevators even in modest buildings and enable retrofits. The difficulty building accessible mid-density housing may also push development towards lower densities, hindering walkable communities and limiting overall housing supply.¹⁵²

4. Resistance to reform protects incumbents without sufficient justification.

Efforts to reform these regulations face resistance. Consultant groups like the International Association of Elevator Consultants (IAEC) argue against harmonization with ISO 8100 without a full rewrite, citing process and technical differences.¹⁵³ Industry groups like the National Elevator Industry, Inc. (NEII) defend the domestic codes as robust and blame inconsistent local adoption for problems.¹⁵⁴ Labor groups and allies often cite safety concerns to oppose reforms, as seen in Washington State, where legislation to allow smaller, more affordable elevators (SB 5156) passed the Senate but failed in the House.¹⁵⁵ Opposition from the IUEC and firefighter groups claimed global standards were unsafe, despite lack of supporting evidence.¹⁵⁶ The EU's development of the "Common Market" entailed an exhaustive review and comparison of legacy

¹⁴⁵ *Id.* at 103.

¹⁴⁶ *Id.* at 63-68.

¹⁴⁷ *Id.* at 72-78, 98.

¹⁴⁸ *Id.* at 79.

¹⁴⁹ *Id.* at 39, 68-69; [America's Elevator Problem](#) *supra* note 118.

¹⁵⁰ [Elevators Report](#) *supra* note 116 at 23, 102-103.

¹⁵¹ *Id.* at 10, 100.

¹⁵² *Id.* at 9, 42.

¹⁵³ [IAEC Position Paper](#) *supra* note 141 at 1, 4-5, 13-15.

¹⁵⁴ [Elevators Report](#) *supra* note 116 at 79, 99.

¹⁵⁵ See [SB 5156](#), 69th Leg., Reg. Sess. (Wash. 2025).

¹⁵⁶ [Elevator Reform Falls Short at Washington Legislature](#), Ryan Packer, *The Urbanist*, April 3, 2025.

national-level regulations to harmonize rules across the EU, including elevators.¹⁵⁷ While technical diligence is vital, resistance to adopting globally proven standards often functions as a non-tariff barrier protecting incumbents.¹⁵⁸ Claims that the EU—which includes such a wide variety of climates, topographies, and cultures across many member countries empowered to object to unsafe harmonized EU-wide rules—could be a lax or laissez-faire regulator strains credulity. The safety debate should focus on verified equivalent safety outcomes, not adherence to unique prescriptive rules without data-backed justification.¹⁵⁹

C. Recommendations for Anticompetitive Regulations

Divergent U.S. elevator regulations create an artificial market failure harming housing affordability, accessibility, and efficiency. Addressing these issues requires a market-oriented approach. Harmonizing with established global standards is a necessary, pro-competitive reform. Claims that the U.S. cannot adopt standard harmonized rules already adopted across global advanced economies—especially by heavyweight regulators like the EU—should be scrutinized for obvious signs of the political economy of regulatory capture. Federal leadership, objective technical analysis, and strategic use of funding incentives can overcome inertia and unlock a more competitive, innovative, and accessible U.S. elevator market, benefiting builders, consumers, and communities nationwide.

1. Embrace global standards

DOJ should encourage U.S. standard-setting NGOs and state building code regulators to adopt or recognize the ISO 8100 / EN 81 family of standards as the basis for U.S. elevator safety and design, phasing out divergent ASME A17.1/B44 requirements, or allow compliance with either system.¹⁶⁰ Private standard-setting NGOs who resist harmonized global standards in the developed world could be reviewed for anticompetitive behavior by DOJ and FTC, with an eye to “captured economy” risks.

2. Target specific regulatory reforms

DOJ should encourage private standard-setters and state regulators to allow standard international cabin sizes (e.g., EN 81 Type two) in smaller multifamily buildings; limit the broad seven-foot stretcher mandate; align door/fire testing with EN 81 norms; rescind the audiovisual communication mandate; permit and encourage electronic testing methods;¹⁶¹ and promote code adoption uniformity.¹⁶²

¹⁵⁷ [Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts \(recast\)](#), OJ L 96, pp. 251-308, March 29, 2014.

¹⁵⁸ [Elevators Report](#) *supra* note 116 at 81-82, 85, 104; [IAEC Position Paper](#) *supra* note 141 at 5.

¹⁵⁹ [Elevators Report](#) *supra* note 116 at 41, 85.

¹⁶⁰ *Id.* at 104.

¹⁶¹ *Id.* at 87-98, 102-104.

¹⁶² *Id.* at 104.

3. Utilize federal leverage

Congress could consider conditioning relevant federal funds (e.g., U.S. Department of Housing and Urban Development Community Development Block Grants, U.S. Department of Transportation grants for highway and transit projects, and Federal Energy Management Agency grants) on state/local adoption of elevator regulations consistent with, or accepting of, validated international standards, similar to strategies used for other policy goals.¹⁶³

4. Promote labor market competition

DOJ should examine any private or public regulatory or labor practices restricting labor supply and efficiency, including barriers to licensing reciprocity and make-work provisions, and ensure fair competition between union and non-union firms.¹⁶⁴

IV. Conclusion

The Niskanen Center appreciates and underscores the importance of the DOJ's initiative to address blatantly anticompetitive practices that are ongoing in multiple sectors of our economy. We encourage DOJ, and other identified relevant agencies, to move swiftly to correct the regulatory and legislative schemes that enable such practices. We thank the DOJ for the opportunity to respond to this docket, and welcome any questions or comments the DOJ may have pertaining to our recommendations.

Respectfully,

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¹⁶³ *Id.* at 106; [POLICY BRIEF: Housing Reform in the States: A Menu of Options for 2025](#), Salim Furth et al., Mercatus Center, August 2024.

¹⁶⁴ [Elevators Report](#) *supra* note 116 at 104-105.

Appendix A

ROFR Competition Studies and Rejoinders

The Brattle Group

- Order 1920:
 - **August 2019:** [Response to Concentric Energy Advisors' Report on Competitive Transmission](#)
 - **April 2019:** [Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value](#) (Prepared for LSP Transmission Holdings, LLC)

Concentric Energy Advisors

- Order 1920:
 - **September 2022:** [Affidavit of Dr. Carl R. Peterson](#) (At the request of DATA Coalition: Ameren Services Company, Eversource Energy, Exelon Corp, ITC Holdings Corp., National Grid USA, PSE&G, and Xcel Energy)
 - **August 2022:** [Competitive Transmission: Experience To-Date Shows Order No. 1000 Solicitations Fail to Show Benefits](#) (Prepared on Behalf of the DATA Coalition: Ameren Services, Eversource Energy, Exelon Corp., ITC Holdings Corp., National Grid USA, Public Service Electric and Gas Company, Xcel Energy)
 - **June 2019:** [Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations](#) (Prepared for Ameren, Eversource Energy, ITC Holdings Corp., National Grid USA, and PSE&G)
- Follow-on studies:
 - **January 2025:** [Critical Review of "The Economic Impacts of Right of First Refusal \(ROFR\) Legislation," G. Roberts, Published by The Pelican Institute](#) (Prepared at the Request of the DATA Coalition: Ameren Services, Eversource Energy, Exelon Corp., ITC Holdings Corp., National Grid USA, and Xcel Energy)
 - **April 2024:** [An Updated Examination of FERC Order No. 1000 Projects: Expanded Review Shows That Benefits of Competition Remain Elusive](#) (Prepared for the DATA Coalition: Ameren Services, Eversource Energy, Exelon Corp., ITC Holdings Corp., National Grid USA, Public Service Electric and Gas Company, and Xcel Energy)

DATA Coalition

- Order 1920:
 - **December 2023:** [Revisiting the Evidence on Cost Savings from Transmission Competition](#)
- Follow-on studies:
 - **February 2025:** [Recent Experience with Competitive Transmission Projects and Solicitations](#)

The R Street Institute

- Order 1920:
 - **May 2022:** [Transmission Reform Strategy from a Customer Perspective: Optimizing Net Benefits and Procedural Vehicles](#)
- Follow-on studies:
 - **March 2025:** [R Street Responds: DATA Whitepaper Unhelpful in Discerning Causes of Transmission Development Delays](#)
 - **February 2025:** [ATC's "Beggar Thy Neighbor" Strategy on Electric Transmission](#)
 - **March 2023:** [How ROFR Laws Increase Electric Transmission Costs in Midwestern States](#)