

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

NextEra Energy, Inc.
Dominion Energy, Inc.

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)

Docket No. EC26-131-000

PROTEST OF PUBLIC INTEREST ORGANIZATIONS

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Pursuant to Rule 211 of the Federal Energy Regulatory Commission's (FERC or Commission) Rules of Practice and Procedure,¹ Appalachian Voices, Conservation Law Foundation, Environmental Defense Fund, North Carolina Justice Center, Public Citizen, South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy (collectively, Public Interest Organizations), protest the Application for Authorization under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Limited Waivers of Certain Filing Requirements, filed by NextEra Energy, Inc. (NextEra) and Dominion Energy, Inc. (Dominion) (together, Applicants), on July 15, 2026, in the above-captioned proceeding (Application).²

I. EXECUTIVE SUMMARY

The Commission has never evaluated a transaction of this scale before. NextEra's proposed acquisition of Dominion (Transaction) involves over 118 GW of generation capacity,³ far larger than the amount implicated in the largest applications the Commission has previously considered.⁴ The combined entity would serve over ten million captive retail customers in four

¹ 18 C.F.R. § 385.211 (2025).

² NextEra Energy, Inc. and Dominion Energy, Inc., July 15, 2026 Application for Authorization under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Limited Waivers of Certain Filing Requirements (Application).

³ See Application, Ex. J, Aff. of Edo Macan at 11 (combining the 83,393 MW of generation capacity owned or operated by NextEra subsidiaries with the 35,528 MW of generation capacity owned by Dominion) (Macan Aff.).

⁴ See, e.g., Duke Energy Corporation and Progress Energy, Inc., Application for Authorization of Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act, Ex. J-1, Prepared Testimony of William H. Hieronymus, Docket No. EC11-60-000, at 7:10 (filed Apr. 4, 2011) (involving a total of **58,301 MW** of capacity owned by applicants); Exelon Corporation and Public Service Enterprise Group

states.⁵ This does not include the untold tens of millions who indirectly receive wholesale power and transmission service from the Applicants' many subsidiaries, which collectively operate in at least 44 states.⁶ The combined revenue of the Applicants amounts to approximately ten billion dollars more than the next largest merger application considered by the Commission.⁷ And the purchase price NextEra will pay to acquire Dominion—valued at roughly \$67 billion⁸—exceeds the sale price of any prior utility purchase the Commission has considered by more than \$40 billion.⁹ If approved, the Transaction would create the largest investor-owned utility in the world, measured by market capitalization and generation capacity.¹⁰

Incorporated, Application for Authorization of Disposition of Jurisdictional Assets Under Section 203 of the Federal Power Act, Ex. J-3, Summary of Generation and Purchases, Docket No. EC05-43-000, at 1 (filed Feb. 4, 2005) (listing total of **51,186 MW** of generation capacity collectively owned or controlled by applicants); Constellation Energy Corporation, et al., Application for Authorization Under Section 203 of the Federal Power Act and Requests for Confidential Treatment and Limited Waivers of Certain Filing Requirements, Docket No. EC25-43-000, at 13 (filed Jan. 24, 2025) (showing total of **47,084 GW** in generation held by applicants); Exelon Corporation and Constellation Energy Group, Inc., Joint Application for Authorization of Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act, Docket No. EC11-83-000, at 19 (filed May 20, 2011) (describing a total of **45,835 MW** of generation collectively owned by applicants).

⁵ See Application at 4, 10-11.

⁶ See *id.* at 4; NextEra Energy Resources, *Energy Infrastructure for America*, <https://www.nexteraenergyresources.com/> (last visited Sept. 27, 2026) (identifying 44 states in operating portfolio); Jordan Blum, *NextEra's \$67 billion Dominion takeover creates the world's largest utility—just in time to win the AI data-center power surge*, FORTUNE (May 18, 2026), <https://fortune.com/2026/05/18/nextera-dominion-67-billion-acquisition-ai-data-centers-largest-utility/>.

⁷ See Exelon Corp., Annual Report (Form 10-K), 59 (Feb. 10, 2011), available at <https://www.sec.gov/Archives/edgar/data/1109357/000119312511030543/d10k.htm> (reporting Exelon Corporation consolidated operating revenues of \$18,644 million for fiscal year 2010); Constellation Energy Grp., Inc., Annual Report (Form 10-K) (Feb. 25, 2011), available at <https://www.sec.gov/Archives/edgar/data/1362705/000119312511047700/d10k.htm> (reporting Constellation Energy Group consolidated revenues of approximately \$14.3 billion for fiscal year 2010).

⁸ See Spencer Kimball, *NextEra Energy to buy Dominion in deal that unites two key players in race to power AI data centers*, CNBC (May 19, 2026), <https://www.cnbc.com/2026/05/18/nextera-nee-dominion-energy-d-data-center-ai.html?msockid=34571de7a8da60f710ff0c8da96a6196>.

⁹ See Duke Energy, *Duke Energy, Progress Energy Complete Merger* (July 2, 2012), <https://news.duke-energy.com/releases/duke-energy-progress-energy-complete-merger> (valuing transaction at \$26 billion upon announcement).

¹⁰ See NextEra Energy, *NextEra Energy and Dominion Energy to Combine, Creating the World's Largest Regulated Electric Utility Business and North America's Premier Energy Infrastructure Platform Benefiting Customers* (May 18, 2026), <https://newsroom.nexteraenergy.com/2026-05-18-NextEra-Energy-and-Dominion-Energy-to-Combine.-Creating-the-Worlds-Largest-Regulated-Electric-Utility-Business-and-North-Americas-Premier-Energy-Infrastructure-Platform-Benefiting-Customers?l=12>.

By virtue of its size, scale, and the diversity of business interests across both Applicants' corporate structures, the Transaction presents novel threats to the public interest that do not fit neatly within the Commission's traditional merger-review framework. In order to assess the Transaction's consistency with the public interest, as required by the section 203 of the Federal Power Act,¹¹ and to protect the many ratepayers it will assuredly affect, the Commission must apply a tailored review that accounts for the Transaction's unique characteristics. The Commission's ability to conduct this review depends upon the Applicants to supply the necessary information; section 203 places the burden of proving the Transaction's harmony with the public interest on the Applicants,¹² and only upon such affirmative showing may the Commission approve it.¹³ But the Applicants have not carried their burden here. By hewing strictly to the path that previous, much smaller transactions, involving far fewer affected customers, have taken, the Applicants fail to account for the unique implications the Transaction presents. Further, they have sought waiver of many of the Commission's required disclosures without sufficient justification, further obscuring the Commission's view into the Transaction's potential effects.

In reviewing the Application, the Commission must account for the context in which the Transaction would occur. As the Commission has recently recognized, "electricity demand in the United States is expected to grow at an extraordinary pace in the near term, largely due to the rapid growth of large loads."¹⁴ Much of this expected load growth is concentrated in locations affected by the Transaction, particularly Virginia and the Carolinas, where data center

¹¹ 16 U.S.C. § 824b (2024).

¹² See *Inquiry Concerning the Comm'n's Merger Pol'y Under the Fed. Power Act: Pol'y Statement*, Order No. 592, 61 FR 68595, at 68598 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) ("It is the applicants' responsibility to demonstrate that the merger is consistent with the public interest.").

¹³ See 16 U.S.C. § 824b(a)(4).

¹⁴ *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211, at P 6 (2026).

development has already surged. Into this unprecedented load growth environment, the Applicants propose to introduce a utility of unprecedented size, which creates the potential for unprecedented consequences. At a time when robust competition is most essential to serving load growth while maintaining affordability for existing ratepayers, the Commission cannot allow competitive backslide.

Yet the Transaction would enable the resulting entity to corner competitive generation and transmission markets, all while expanding its pool of captive ratepayers on whom it can push costs unimpeded. The size, buying power, and information access of the colossal combined company would create clear competitive advantages that operate to the detriment of ratepayers across the affected regions. It would have unmatched resources to build bespoke generation for data centers across the PJM Interconnection, L.L.C. (PJM) footprint, aided by recent FERC and PJM actions to encourage such arrangements. It would consolidate ownership of the only nuclear units in ISO New England (ISO-NE) at a time when clean firm power comes at a premium. It would also have the means and opportunity to dominate the growing share of competitive, data center-related regional transmission projects in PJM, while maintaining a safe pipeline of non-competitive Supplemental projects in the Dominion transmission zone (DOM Zone). And each of these competitive activities could be insured on the backs of the largest captive retail customer base in the world.

Outside the affected Regional Transmission Organizations (RTO), the Transaction would solidify and entrench the lack of meaningful competition among generation owners in the Southeast. NextEra's track record of suppressing competition in vertically integrated utility areas threatens to halt even the minor moves toward expanded competition the region has taken in recent years. Given the region's disproportionate share of projected data center growth, any

reduction in competition comes at the worst possible time for its already overburdened ratepayers.

And yet, these clear sources of harm to competition and ratepayer interests could very well slip through the cracks of the Commission's traditional merger review policies, as first articulated in the Merger Policy Statement.¹⁵ Such procedures were developed in a different era, at the dawn of open access and generation competition.¹⁶ Despite significant upheaval in the energy industry and changes in law since that time, the Commission's approach has barely changed. Its focus remains on the Appendix A Competitive Analysis Screen (Competitive Analysis Screen) and Herfindahl–Hirschman Index (HHI) values deemed acceptable three decades ago. Consequently, this screen polices only a subset of transactions with significant geographical overlap—reflecting the legal landscape and predominant merger types of the era—and overlooks transactions like the one at issue in this case. The Commission's traditional review also ignores alternative theories of competitive harm where acceptable HHI thresholds are satisfied, effectively foreclosing review of such geographically diverse transactions despite the Competitive Analysis Screen's structural indifference to them. Reliance on this sole consideration of the Merger Policy Statement's Effect on Competition prong also operates to the exclusion of the other elements, which have become largely obsolete. Both the Effect on Rates and Effect on Regulation inquiries have become box-checking exercises that do not attempt to meaningfully assess a proposed transaction's impacts so long as Applicants make the conventional commitments. Likewise, the statutorily-required assessment of the potential for cross-subsidization relies almost entirely on applicant representations rather than any searching review.

¹⁵ See *supra* note 12.

¹⁶ See Merger Policy Statement at 68596-68698.

The Application adopts this playbook. The majority of its transmittal previews the Delivered Price Test (DPT) results contained in Exhibit J.¹⁷ The Application touts up front and throughout that the Transaction would result in minimal geographic overlap,¹⁸ expecting that fact to satisfy the Commission's competition concerns. Its discussion of the Transaction's effects on rates¹⁹ and regulation²⁰ are perfunctory and formulaic, reflecting the Commission's relative lack of concern with these issues in prior merger reviews. And the Application's cross-subsidization section blithely denies the potential for such intra-corporate dealings by repeating the Commission's four-part test without further elaboration.²¹ Aside from one non-specific reference to "longer term . . . customer benefits,"²² the Application makes no attempt to explain the benefits the Transaction would create for the broader public. Rather, the Application treats consistency with the public interest as coextensive with falling into an HHI safe harbor. The result is an Application devoid of meaningful substance and incapable of supporting an informed finding that the Transaction is consistent with the public interest.

The Federal Power Act demands more. Far from eliminating competitive concerns, the Transaction's geographical reach creates unique threats of harm to competition, rates, and regulation, as well as an enhanced likelihood of improper cross-subsidization. Reflexive retreat to the Competitive Analysis Screen will overlook these harms. Instead, to ensure consistency with the public interest and protect affected customers up and down the Eastern Seaboard, the Commission must apply a more holistic review to the Transaction. Accordingly, Public Interest Organizations respectfully request that the Commission reject the Application as incomplete

¹⁷ See Application at 15-30.

¹⁸ See *id.* at 1 ("The Transaction combines two leading electric utility businesses with minimal geographic overlap.").

¹⁹ See *id.* at 30-31.

²⁰ See *id.* at 32.

²¹ See *id.* at 33-38.

²² *Id.* at 2.

because it does not contain the information necessary to determine whether the Transaction is consistent with the public interest or would result in improper cross-subsidization. Failing that, the Commission should establish a paper hearing with limited discovery, as contemplated in the Supplemental Policy Statement,²³ and find that good cause exists to extend the period for review by an additional 180 days, as authorized by section 203.²⁴ Otherwise, the Commission should reject the Application as inconsistent with the public interest due to its likely impairment of competition, unjustified increases to rates, and unmitigated opportunities for cross-subsidization, absent the imposition of certain protective conditions, described below.

The Transaction presents unique threats to the public interest that the Commission's traditional review approach may overlook. The Federal Power Act requires the Commission to adapt its process to contain these harms rather than subject millions of vulnerable ratepayers to further loss.

II. BACKGROUND

A. The Applicants' Businesses

If approved, the Transaction would effectuate NextEra's acquisition of Dominion. Among Dominion's assets, NextEra would acquire the retail utilities that serve roughly 3.6 million captive customers.²⁵ These include Virginia Electric & Power Company (VEPCO), which serves 2.8 million customers in Virginia and North Carolina, and Dominion Energy South Carolina (DESC), which serves approximately 800,000 customers in South Carolina.²⁶ For the

²³ *FPA Section 203 Supplemental Pol'y Statement*, 120 FERC ¶ 61,060, at P 77 (2007) (Supplemental Policy Statement), *order on clarification & reconsideration*, 122 FERC ¶ 61,157 (2008) (Supplemental Policy Statement Clarification).

²⁴ *See* 16 U.S.C. § 824b(a)(5).

²⁵ *See* Application at 10-11.

²⁶ *See id.* at 10-11.

most part, these customers have no ability to choose their retail service provider, meaning that the Transaction will have direct and meaningful impacts on their rapidly growing utility bills.

Despite its geographic reach, the Transaction centers on Virginia. Virginia originated the data center boom and continues to pace its growth,²⁷ a trend that only projects to accelerate.²⁸ VEPCO has asserted that “no other utility in the country has the magnitude of high load demand that Virginia is facing.”²⁹ The “scale, density of data center development, and load that [VEPCO] must support significantly outpace[s]” other markets, making it a “uniquely concentrated and capital-intensive environment.”³⁰ As VEPCO has devoted more such capital to serving growing data center demand, retail rates have sharply risen. The average monthly bill for VEPCO ratepayers in Virginia came to \$221.01 for August 2026, representing a 53.4 percent increase over the last five years.³¹ Moving south, to VEPCO’s North Carolina territory, where it operates as Dominion Energy North Carolina (DENC), conditions are no better. DENC’s customers paid an average electricity bill of \$242.20 for August 2026.³² This delta is significant, for the northeastern corner of the state that DENC serves is characterized by lower average incomes and higher poverty rates than most other parts of North Carolina.³³ There, DENC

²⁷ See Dan Gearino and Charles Paullin, *How Did This State Become the Data Center Capital of the World?*, INSIDE CLIMATE NEWS (Oct. 26, 2025), <https://insideclimatenews.org/news/26102025/virginia-data-center-capital-ai-boom/>.

²⁸ PJM Interconnection, L.L.C., Total Demand Request for Large Load Adjustment, “2026 DEMAND Requests” Tab at cells E36, I36, <https://www.pjm.com/-/media/DotCom/committees-groups/subcommittees/las/2025/20250916/20250916-post-meeting---informational-only---large-load-adjustment-requests.xlsx> (showing requested large load adjustments to PJM load forecast of Load Serving Entities in the DOM Zone of 7,219.6 MW for 2026, which more than doubles to 14,604.4 MW for 2030); PJM Interconnection, L.L.C., 2026 PJM Load Forecast Report, at 34 (Jan. 14, 2026), <https://www.pjm.com/-/media/DotCom/library/reports-notices/load-forecast/2026-load-report.pdf> (showing updated load forecast for DOM zone through 2045).

²⁹ Rebuttal Testimony of J. Scott Gaskill, Va. State Corp. Comm’n, Case No. PUR-2025-00058, at 17:3-4 (filed Sept. 10, 2025), <https://www.scc.virginia.gov/docketsearch/DOCS/88v001!.PDF>.

³⁰ Rebuttal Testimony of Stan Blackwell, Va. State Corp. Comm’n, Case No. PUR-2025-00058, at 24:6-10 (filed Sept. 11, 2025), <https://www.scc.virginia.gov/docketsearch/DOCS/88v301!.PDF>.

³¹ See Heatmap News & MIT, *Electricity Price Hub*, HEATMAP, <https://electricity.heatmap.news/> (filter for Virginia Electric & Power Co (VA)) (last visited Sept. 27, 2026) (Heatmap Electricity Price Hub).

³² See Heatmap Electricity Price Hub (filter for Virginia Electric & Power Co (NC)).

³³ See HDPulse, *North Carolina Poverty: Map – Persons below 150% of poverty*, NAT’L INST. ON MINORITY HEALTH AND HEALTH DISPARITIES, https://hdpulse.nimhd.nih.gov/data-portal/social/map?demo=00009&demo_options=poverty_3&race=00&race_options=race_9_old_DNA_APM&sex=

serves roughly 129,000 retail customers.³⁴ It also sells power at wholesale and provides transmission service to cooperative and municipal utilities in the area, which together serve approximately 100,000 customers.³⁵ In total, VEPCO owns or controls over 21 GW of generation capacity.³⁶ It is also a Transmission Owner member and Load Serving Entity in PJM.

Dominion has operated in South Carolina for far shorter, as it acquired SCANA Corporation, parent of South Carolina Electric & Gas Company (SCE&G) in 2019.³⁷ This transaction followed the abandoned construction of two nuclear units at V.C. Summer, which left \$9 billion in stranded costs to be recovered from ratepayers and forced SCANA Corporation into bankruptcy.³⁸ Those liabilities transferred to DESC's ratepayers post-acquisition and will continue to appear on their bills for more than a decade going forward.³⁹ DESC customers paid \$237.81 on average for service in August 2026.⁴⁰ As discussed in greater detail below, the V.C. Summer abandonment also prompted the consideration of potential wholesale market reforms in the state. To date, however, DESC remains a vertically integrated utility and not part of any RTO or organized wholesale market. In recent years, DESC has received some interest from large load customers, and projects a relatively modest 1.4 percent compound annual growth rate in

0&sex_options=sexboth_1&socialtopic=080&socialtopic_options=social_6&statefips=37&statefips_options=area_s
tates (map showing high concentration of population significantly below poverty line in northeast North Carolina).

³⁴ Direct Testimony of Edward H. Baine, N.C. Utils. Comm'n, Docket No. E-22, Sub 765, at 3:21-4:1 (filed Apr. 30, 2026), <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=54a9b63b-d096-4aac-b046-b4c9dd594ec3>.

³⁵ *Id.* at 4:4-7.

³⁶ See Application at 10.

³⁷ See Dominion Energy, Inc., et al., Informational Filing, Docket No. EC18-60-000 (filed Jan. 7, 2019); GroundBreak Carolinas Staff, *Dominion Energy Completes SCANA Acquisition*, GROUND BREAK CAROLINAS (Jan. 2, 2019), <https://groundbreakcarolinas.com/dominion-energy-completes-scana-acquisition/>.

³⁸ See Jessica Holdman, *Here's how much SC power customers are still paying for a failed nuclear project*, SOUTH CAROLINA DAILY GAZETTE (Apr. 5, 2024), <https://scdailygazette.com/2024/04/05/heres-how-much-sc-power-customers-are-still-paying-for-a-failed-nuclear-project/>.

³⁹ See *id.*

⁴⁰ See Heatmap Electricity Price Hub (filter for Dominion Energy South Carolina, Inc).

winter peak demand over the next 20 years.⁴¹ DESC owns and operates over 6 GW of generation capacity.⁴²

The Transaction would add these two franchised utility holdings to NextEra’s already considerable captive customer base in Florida. Florida Power & Light Company (FPL) is a vertically-integrated utility that serves over six million retail customers in the state and owns or controls nearly 36 GW of generating capacity.⁴³ FPL ratepayers paid an average bill of \$204.02 in August 2026, an increase of 35.5 percent over the last five years.⁴⁴ Unlike the Dominion-owned utility companies, however, Florida has seen comparatively little data center development to this point,⁴⁵ and state-wide policies make significant expansion unlikely.⁴⁶ In recent years, FPL has gained publicity for a raft of underhanded dealings in the state, which currently serve as the basis for an ongoing lawsuit.⁴⁷ Allegations include FPL’s consulting firm backing a ghost

⁴¹ Dominion Energy South Carolina, Inc., *2026 Integrated Resource Plan*, 36 (Mar. 31, 2026), <https://cdn-dominionenergy-prd-001.azureedge.net/-/media/content/about/our-company/irp/pdfs/integrated-resource-plan-desc.pdf?rev=6d54ce9381204687b19e43fe861cb4aa> (DESC 2026 IRP); Greenlink Analytics, Inc. and Science for Georgia, *Impacts of Projected Data Center Growth and Emerging Uncertainties on Power Demand in the Southeast*, 11-12 (Dec. 2025), <https://www.selc.org/wp-content/uploads/2025/12/2025-Greenlink-IMPACTS-OF-PROJECTED-DATA-CENTER-GROWTH-Report.pdf>.

⁴² See Application at 11.

⁴³ See *id.* at 4.

⁴⁴ See Heatmap Electricity Price Hub (filter for Florida Power & Light Co).

⁴⁵ See Fla. Pub. Serv. Comm’n, *Review of the 2025 Ten Year Site Plans of Florida’s Electric Utilities* at 19-20 (Nov. 2025) (characterizing data centers statewide as “relatively small” and noting that only FPL included projected data center load in its forecast, while Duke Energy Florida stated that no inquiry “progressed to the level of commitment that would warrant inclusion” and Tampa Electric excluded data center loads “due to no firm end-use customer commitments”); Ten-Year Power Plant Site Plan: 2026-2035, FLORIDA POWER & LIGHT CO., 50 (Apr. 2026), <https://www.floridapsc.com/pscfiles/website-files/PDF/Utilities/Electricgas/TenYearSitePlans//2026/Florida%20Power%20and%20Light%20Company.pdf> (recognizing that “[c]urrently, there are no definitive agreements in place or other binding commitments between FPL and any large power users,” while nevertheless reporting load attributable to data centers based on unsubstantiated requests) (FPL 2026 Ten-Year Power Plant Site Plan). See also Grid Strategies, LLC, *Revised Power Demand Forecasts and Infrastructure Implications* at 22 (Nov. 2025) (reporting that FPL’s 2030 summer peak forecast was 27.9 GW with only 1.6 GW of five-year growth of 5.9%, as compared to ERCOT at 62.0% growth, PJM at growth 19.3% growth, SPP at 41.8% growth, MISO at 12.0%, and Georgia Power at 45.2%, placing FPL well below the major data-center-driven regions in both absolute and percentage growth).

⁴⁶ See S.B. 484, 2026 Leg., Reg. Sess. (Fla. 2026) (enrolled) (establishing heightened cost-recovery, water-permitting, environmental, and local land-use requirements for data center facilities with an anticipated monthly peak load of 50 megawatts or more, and prohibiting electric service to qualifying large load customers that are foreign entities).

⁴⁷ See *Jastram v. NextEra Energy, Inc.*, 161 F.4th 693 (11th Cir. 2025).

candidate in a South Florida election to siphon votes away from a state senator who opposed FPL.⁴⁸ The lawsuit also alleges that the same consulting firm tried to lure a Jacksonville City Council member into a fake, well-salaried job because the councilor opposed FPL's efforts to buy Jacksonville's municipal utility, JEA.⁴⁹ FPL is also accused of arranging surveillance of a critical Jacksonville investigative reporter and funding a news publication, The Capitolist, to denounce its critics.⁵⁰

To a portfolio that includes these franchised retail utilities, the Transaction would add significant non-utility businesses. Dominion's non-utility holdings account for a relatively small portion of its activities. It owns a number of merchant generation facilities located throughout PJM, many outside the DOM zone, as well as discrete facilities in North Carolina, South Carolina, and California.⁵¹ Most notably, it owns the Millstone Power Station (Millstone), a 2,298 MW nuclear facility in Waterford, Connecticut.⁵² Together, these units amount to roughly 3.7 GW of generating capacity.⁵³ Dominion also owns shares in multiple transmission development companies that have won competitive bids to develop large-scale Baseline

⁴⁸ See *Jastram* 161 F.4th at 700-04. See also Mario Alejandro Ariza, *Florida "Ghost Candidates" Scandal Puts the Entire Utility Sector on Trial*, FLOODLIGHT (Sept. 18, 2024), <https://floodlightnews.org/florida-ghost-candidates-scandal-puts-the-entire-utility-sector-on-trial/>; Miranda Green et al., *Leaked: US Power Companies Secretly Spending Millions to Protect Profits and Fight Clean Energy*, THE GUARDIAN (July 27, 2022), <https://www.theguardian.com/environment/2022/jul/27/leaked-us-leaked-power-companies-spending-profits-stop-clean-energy> (reporting that FPL executives funneled millions through a consulting firm to covertly acquire a Tallahassee-based news site to dictate favorable press coverage, and explicitly instructed consultants to make a rival state senator's life "a living hell").

⁴⁹ See *Jastram* 161 F.4th at 700-04. See also Shelby Green, Matt Kasper & David Pomerantz, *NextEra's acquisition of Dominion would bring history of political control, rate increases to Virginia, Carolinas*, ENERGY & POL'Y INST. (May 20, 2026), <https://energyandpolicy.org/nextera-dominion-merger/>.

⁵⁰ See *Jastram* 161 F.4th at 700-04; Miranda Green et al., *Leaked: US Power Companies Secretly Spending Millions to Protect Profits and Fight Clean Energy*, THE GUARDIAN (July 27, 2022), <https://www.theguardian.com/environment/2022/jul/27/leaked-us-leaked-power-companies-spending-profits-stop-clean-energy>. See also Shelby Green, Matt Kasper & David Pomerantz, *NextEra's acquisition of Dominion would bring history of political control, rate increases to Virginia, Carolinas*, ENERGY & POL'Y INST. (May 20, 2026), <https://energyandpolicy.org/nextera-dominion-merger/>.

⁵¹ See Application, Ex. B-2, Dominion Energy Subsidiaries and Affiliates at 2-5.

⁵² See *id.* at 1.

⁵³ See Application at 10-11 (subtracting VEPCO's 21 GW and DESC's 6 GW of capacity from Dominion's 30.7 GW total capacity).

reliability transmission projects through PJM's Regional Transmission Expansion Plan (RTEP) process.⁵⁴

For its part, NextEra's competitive businesses make up a much more significant share of its activities. NextEra Energy Resources, LLC (NEER) is one of the largest competitive generation developers in the world. It accounts for nearly 46 GW of generating capacity in operation across over 40 states and Canada, with significant additional GW of capacity in development.⁵⁵ Among these existing facilities is the Seabrook Station (Seabrook) nuclear facility, a 1,247 MW generating facility in Seabrook, New Hampshire.⁵⁶ In recent years, NEER has announced plans to develop large-scale generation facilities to power co-located or proximately located data centers.⁵⁷ NextEra also owns a competitive transmission development subsidiary, NextEra Energy Transmission, LLC (NEET), which has developed transmission facilities across the country.⁵⁸ NEET is currently developing multiple Baseline reliability projects in PJM, selected in the RTEP process.⁵⁹ Finally, NextEra holds significant interests in multiple inter- and intrastate gas pipelines, including the Mountain Valley Pipeline (MVP), Sabal Trail Transmission, and the Florida Southeast Connection pipeline.⁶⁰ DESC owns natural gas local distribution operations serving approximately 500,000 customers, approximately 400 miles of gas transmission pipelines, and 20,000 miles of distribution mains.⁶¹

⁵⁴ See Application, Ex. B-2, Dominion Energy Subsidiaries and Affiliates at 5-6.

⁵⁵ See Application at 4.

⁵⁶ See Application, Ex. B-1, NextEra Energy Subsidiaries and Affiliates at 9.

⁵⁷ See Zachary Skidmore, *NextEra gets federal approval to build 10GW of natural gas power in Texas and Pennsylvania for data centers*, DCD (Mar. 23, 2026), <https://www.datacenterdynamics.com/en/news/nextera-gets-federal-approval-to-build-10gw-of-natural-gas-power-in-texas-and-pennsylvania-for-data-centers/>; *NextEra Energy plans 15 GW of capacity by 2035 for US data centers*, ENERDATA (Dec. 11, 2025), <https://www.enerdata.net/publications/daily-energy-news/nextera-energy-plans-15-gw-capacity-2035-us-data-centers.html>.

⁵⁸ See Application at 5.

⁵⁹ See *id.* at 5-6.

⁶⁰ See *id.* at 8-9.

⁶¹ Macan Aff. at 83.

B. The Transaction

The Transaction would combine these two distinct interests: three franchised utilities with over 10 million captive ratepayers and one of the largest competitive generation and transmission development platforms in the world. Together, the combined entity would account for over 118 GW of existing generation capacity located across at least 44 states.⁶² The Commission has not previously evaluated a section 203 application involving a consolidation approaching this magnitude.

Crucially, while Applicants portray the Transaction as a “merger,” it is more accurately described as an acquisition. Indeed, it represents just the latest in a string of attempts by NextEra to acquire franchised utility companies.⁶³ The Transaction entails NextEra paying—in stock valued at \$67 billion—for the privilege of bringing Dominion’s utility holdings into its corporate family. More specifically, NextEra seeks to add Dominion’s two franchised utility companies, one of which has the world’s largest current and projected data center customer base, to its own current portfolio, which includes a leading generation development platform and an existing franchised utility that has relatively few data center customers or prospects. The upside to NextEra is clear: it can harness its development capabilities to profit off of data center load growth while creating the world’s largest captive customer base to financially backstop those activities. That includes (1) expanded, risk-free, rate-based development to serve VEPCO’s

⁶² See *supra* note 6; Macan Aff. at 11.

⁶³ See, e.g., *NextEra Energy, Inc.*, 165 FERC ¶ 61,263 (2018); *Joint Report and Application of Oncor Electric Delivery Company LLC and NextEra Energy, Inc. for Regulatory Approvals Pursuant to PURA §§ 14.101, 39.262, and 39.915*, Docket No. 46238 (Pub. Utils. Comm’n of Tex. Apr. 13, 2017), https://interchange.puc.texas.gov/Documents/46238_538_936039.PDF (PUCT Order); *Application for Approval of the Proposed Change of Control and Related Matters*, Docket No. 2015-0022 (Haw. Pub. Utils. Comm’n July 14, 2016) (Hawaii PUC Order); Avery G. Wilks, *NextEra withdraws offer for Santee Cooper. Embattled utility likely to remain state owned*, POST AND COURIER (Apr. 28, 2021), https://www.postandcourier.com/business/nextera-withdraws-offer-for-santee-cooper-embattled-utility-likely-to-remain-state-owned/article_5b3deb90-a823-11eb-a582-abce557d6c1f.html.

current and growing data center load in Virginia and North Carolina, as well as (2) generation tailored to bilaterally supply data centers located outside VEPCO's franchise territory, particularly in PJM. The Transaction would also enable NextEra to pursue competitive, uncertain transmission bids in PJM and beyond, while significantly expanding its ability to develop non-competitive Supplemental transmission projects in the DOM territory that provide steady earnings to complement riskier competitive ventures. Consequently, spending on both Baseline and Supplemental projects in PJM has spiked in recent years due to data center development.⁶⁴

To this end, NextEra has pitched the Transaction as an explicit effort to take advantage of data center growth. In a shareholder presentation given following the Transaction's announcement, the Applicants highlight an expected demand growth rate over the next 20 years that is six times greater than that of the previous 20 years.⁶⁵ The Applicants expect 63 percent of the resulting entity's load growth to come from large loads.⁶⁶ Notably, the presentation highlights "Dominion Energy Large Load" as an immediate investment opportunity, whereas "FPL Large Load" only provides longer-term earnings potential.⁶⁷ Indeed, of the 132 GW "Large Load Pipeline" the combined company plans to serve, NEER and VEPCO account for 111 GW, while FPL only counts 21 GW of the total.⁶⁸ Finally, the Applicants tout the value to

⁶⁴ See Sarah Shenstone-Harris, Wooddynne Dejeanlouis & Sabine Chavin, *Understanding Rising Transmission Costs in the District of Columbia: An Overview of Transmission Planning and its Impact on Electricity Customers in DC*, SYNAPSE ENERGY ECONOMICS, INC., 5-6, 8 (Jan. 13, 2026), <https://doee.dc.gov/sites/default/files/dc/sites/doee/publication/attachments/Synapse%20Summary%20-%20Understanding%20Rising%20Transmission%20Costs%20in%20DC.pdf>.

⁶⁵ NextEra Energy and Dominion Energy, *Forming America's leading utility business and energy infrastructure company: To reliably and affordably meet America's historic power demand*, 6 (May 18, 2026), https://www.investor.nexteraenergy.com/~media/Files/N/NEE-IR/news-and-events/events-and-presentations/2026/2026-05-18%20NEED_Presentation_vF.pdf (Transaction Presentation).

⁶⁶ Transaction Presentation at 18.

⁶⁷ *Id.* at 32.

⁶⁸ *Id.* at 34.

shareholders deriving from, among other things, the “[l]argest regulated capital investment opportunity in the industry by a wide margin,” “[u]nmatched large load opportunity,” and an expectation of “doubl[ing] [the] U.S.’s largest generation fleet by 2032.”⁶⁹ In other words, NextEra currently has a massive competitive development business and a traditional utility with few data center customers; the Transaction would provide unparalleled opportunities to profit off of the country’s largest data customer base, while adding additional captive customers to soften the financial blow.

C. The Commission’s Section 203 Application Review Policies

Section 203 of the Federal Power Act directs the Commission to approve transactions only where it finds that they will be “consistent with the public interest, and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company[.]”⁷⁰ The Commission has 180 days from the filing date to grant or deny an application, though it may issue “an order tolling the time for acting on the application for not more than 180 days” if it finds, “based on good cause, that further consideration is required[.]”⁷¹

From the mid 60’s to 1996, the Commission assessed section 203 applications pursuant to a list of considerations laid out in *Commonwealth Edison Company (Commonwealth)*.⁷² These *Commonwealth* factors included:

- (1) the effect of the proposed merger on competition;
- (2) the effect of the proposed merger on the applicants’ operating costs and rate levels;

⁶⁹ *Id.* at 30.

⁷⁰ 16 U.S.C. § 824b(a)(4).

⁷¹ 16 U.S.C. § 824b(a)(5).

⁷² See Merger Policy Statement at 68597; *Commonwealth Edison Company*, Opinion No. 507, 36 F.P.C. 927, 936-42 (1966), *aff’d sub nom. Utility Users League v. FPC*, 394 F.2d 16 (7th Cir. 1968), *cert. denied*, 393 U.S. 953 (1969).

- (3) the reasonableness of the purchase price;
- (4) whether the acquiring utility has coerced the to-be-acquired utility into acceptance of the merger;
- (5) the impact of the merger on the effectiveness of state and federal regulation; and
- (6) the contemplated accounting treatment.⁷³

In light of significant changes in the industry expanding open access and generation competition, as specifically facilitated by Order No. 888, the Commission issued the Merger Policy Statement in 1996, which established a new analytical framework for evaluating applications under section 203.⁷⁴ The Merger Policy Statement created a three-part inquiry that focused on a prospective transaction's effects on competition, rates, and regulation.⁷⁵ With respect to the Effect on Competition prong, the Merger Policy Statement created the Competitive Analysis Screen, an analytic screen contained in Appendix A and based in part on the Department of Justice/Federal Trade Commission Merger Guidelines, to assess market concentration before and after the transaction takes place.⁷⁶ Soon thereafter, the Commission issued Order No. 642, which established filing requirements that implemented these requirements.⁷⁷

In 2005, Congress passed the Energy Policy Act of 2005 (EPAcT 2005),⁷⁸ which revised section 203 to, among other things, require Commission consideration of a transaction's potential to result in cross-subsidization or pledges or encumbrances of utility assets.⁷⁹ EPAcT 2005 also

⁷³ Merger Policy Statement at 68597.

⁷⁴ *See id.* at 68597.

⁷⁵ *See id.* at 68596.

⁷⁶ *See id.* at 68600, 68606-68610.

⁷⁷ *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

⁷⁸ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (EPAcT 2005).

⁷⁹ *See Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315, at P 1 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

repealed the Public Utility Holding Company Act of 1935 (PUCHA 1935), replacing it with the Public Utility Holding Company Act of 2005 (PUHCA 2005).⁸⁰ Among other reforms, PUHCA 2005 eliminated the requirement that utility holding companies maintain an “integrated public-utility system” and the Securities and Exchange Commission’s (SEC) responsibility to review inter-affiliate transactions in utility holding companies.⁸¹ In response, the Commission issued Order No. 669, which implemented the changes to section 203, including the addition of procedures to assess the potential for cross-subsidization.⁸² The Commission also issued Order No. 667 to establish requirements governing affiliate transactions.⁸³ In 2007, the Commission issued the Supplemental Policy Statement, based on its experience implementing the revised section 203 and PUHCA 2005 and after holding related technical conferences.⁸⁴ The Supplemental Policy Statement provided clarifications and guidance on: (1) information to be filed for transactions that do not raise cross-subsidization concerns; (2) the types of commitments and ring-fencing measures that could address such concerns; (3) the scope of blanket authorizations; (4) the factors establishing covered dispositions of control of jurisdictional facilities; and (5) the Competitive Analysis Screen.⁸⁵

During this period between 1996 and 2007, the Commission considered, expanded, and revised its rules and guidance applicable to section 203 applications every two to five years. Despite significant changes to the industry, the Commission has not meaningfully altered its review process since. Ten years ago, the Commission issued a Notice of Inquiry that considered

⁸⁰ See Order No. 669, 113 FERC ¶ 61,315 at P 4.

⁸¹ EPCA 2005 §§ 1261 *et seq.*

⁸² See Order No. 669, 113 FERC ¶ 61,315 at P 3.

⁸³ *Repeal of the Pub. Util. Holding Co. Act of 1935 & Enactment of the Pub. Util. Holding Co. Act of 2005*, Order No. 667, 113 FERC ¶ 61,248 (2005), *order on reh’g*, Order No. 667-A, 115 FERC ¶ 61,096, *order on reh’g*, Order No. 667-B, 116 FERC ¶ 61,073 (2006), *order denying reh’g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007).

⁸⁴ See Supplemental Policy Statement at PP 1-2.

⁸⁵ *Id.* at P 9.

significant modifications to the its approach, particularly with respect to the Competitive Analysis Screen,⁸⁶ but the Commission has not acted on the record developed in that proceeding to date. As such, the Commission has not revised its procedures to ensure that transactions involving utility assets are consistent with the public interest in nearly two decades.

III.EFFECT ON COMPETITION

The Application asserts that the Transaction will have no adverse affect on competition.⁸⁷ In making this contention, it relies entirely on the DPT results in the Competitive Analysis Screen.⁸⁸ But these results do not tell the whole story, as the Competitive Analysis Screen is structurally unsuited to an acquisition featuring such geographical diversity as the Transaction, given the immense scale and complexity involved. Looking beyond the DPT, it becomes apparent that the Transaction will impair competition in (1) PJM wholesale markets, (2) ISO-NE wholesale markets, (3) the non-RTO Southeast, (4) transmission development in PJM, and (5) Virginia's retail electricity market. The unique attributes of the Transaction dictate that the Commission consider these alternative theories of competition in order to determine whether the Transaction is consistent with the public interest.

A. The Federal Power Act Requires the Commission to Look Beyond the Competitive Analysis Screen in this Proceeding.

Applicants' Competitive Analysis Screen shows only one period in one region that exceeds acceptable HHI levels.⁸⁹ Applicants contend that this demonstrates the Transaction will not result in adverse horizontal competitive effects.⁹⁰ Yet this Competitive Analysis Screen

⁸⁶ *Modifications to Comm'n Requirements for Rev. of Transactions under Section 203 of the Fed. Power Act & Mkt.-Based Rate Applications under Section 205 of the Fed. Power Act*, 156 FERC ¶ 61,214 (2016) (2016 Notice of Inquiry).

⁸⁷ *See* Application at 15.

⁸⁸ *See id.* at 15-30.

⁸⁹ *See id.* at n.77. The DPT revealed an HHI increase of 76 points in the highly concentrated DESC market's Shoulder Off-Peak period in the high price sensitivity, using the Available Economic Capacity measure. *Id.*

⁹⁰ *See id.* at 26.

result should come as no surprise: The Applicants today operate in largely distinct geographical markets. A transaction of this type will rarely—if ever—violate a screen based on metrics that assess the difference in market concentration pre- and post-acquisition. Nevertheless, Applicants frame their entire Application around this result, repeatedly highlighting their lack of geographic overlap as the Transaction’s primary basis for approval. But the implications of this expectation are troubling. Applicants suggest—and a Commission order approving the Application would confirm—that a combination of entities operating in diverse markets will *never* harm competition and, by extension, will be categorically consistent with the public interest. A review that proceeds along this predetermined course—without considering other potential sources of competitive harm—would clearly contravene the Federal Power Act.

Section 203 directs the Commission to approve utility mergers and acquisitions only where it finds that they are “consistent with the public interest.”⁹¹ Where the Commission determines a section 203 application entirely on the results of the Competitive Analysis Screen, it has effectively defined the “public interest” as the maintenance of market concentration metrics within acceptable administrative levels. But that prism is far too narrow to provide a sufficient view into the Transaction’s potential for harm. To determine the appropriate standard of review in this proceeding, the Commission must reconsider what the “public interest” signifies within the context of section 203. As the Supreme Court has recognized, this otherwise broad concept “take[s] meaning from the purposes” of the Federal Power Act.⁹² The Court identified that purpose as “encourag[ing] the orderly development of plentiful supplies of electricity . . . at reasonable prices.”⁹³ It found in another context that “[t]he Act had two primary and related

⁹¹ 16 U.S.C. § 824b(a)(4).

⁹² *Nat’l Assoc. for the Advancement of Colored People v. FPC*, 425 U.S. 662, 669 (1976).

⁹³ *Id.* at 669-70.

purposes: to curb abusive practices of public utility companies by bringing them under effective control, and to provide effective federal regulation of the expanding business of transmitting and selling electric power in interstate commerce.”⁹⁴ Taken together, these descriptions establish the Federal Power Act’s purpose as regulating and maximizing the electric industry’s performance.

The Merger Policy Statement agreed. At its core, it sought to advance Order No. 888’s vision of open markets and robust competition. Referencing Order No. 888’s recognition that, “where it exists, competition has become the best way to protect the public interest and ensure that electricity consumers pay the lowest possible price for reliable service,” the Merger Policy Statement aimed to vindicate these interests.⁹⁵ It identified competition as the “best tool to discipline wholesale electric markets and thereby protect the public interest.”⁹⁶ At the same time, it acknowledged that “the competition needed to protect the public interest will not be efficient and deliver lower prices in poorly structured markets.”⁹⁷ Finding that “customer protection is increasingly dependent upon vibrant competition,” the Commission stressed the importance of evaluating mergers “on the basis of their effect on market structure and *performance*.”⁹⁸

The Merger Policy Statement did not, however, place the entire weight of this analysis upon the Competitive Analysis Screen. To be sure, it deemed the screen “a valuable analytical tool in all cases” and “conservative enough so that parties and the Commission can be confident that an application that clears the screen would have no adverse effect on competition.”⁹⁹ But it also cautioned against “reduc[ing] this analysis to a purely mechanized computation of the same data inputs for all merger applications.”¹⁰⁰ It recognized that the screen “is not infallible” and

⁹⁴ *Gulf States Utils. Co. v. FPC*, 411 U.S. 747, 758 (1973).

⁹⁵ Merger Policy Statement at 68598.

⁹⁶ *Id.* at 68598.

⁹⁷ *Id.* at 68598.

⁹⁸ *Id.* at 68598 (emphasis added).

⁹⁹ *Id.* at 68600.

¹⁰⁰ *Id.* at 68600.

“may not detect certain market power problems” in some cases.¹⁰¹ And it concluded in no uncertain terms that “[i]t is reasoned analysis, not blind faith in the thresholds, that must carry the day.”¹⁰² Despite these admonitions, Applicants would have the Commission devote its review entirely to the Competitive Analysis Screen, without regard for the Transaction’s more qualitative impacts on multiple markets. Doing so would impermissibly obscure the Transaction’s clear potential to harm competition.

Indeed, the Transaction presents a scenario the Merger Policy Statement could not have fathomed: an acquisition that affects nearly the entire East Coast but results in little overlap in the locus of existing generation, rendering it largely immune to the Competitive Analysis Screen. This is because the Transaction would have been illegal in 1996. PUHCA 1935, in force at the time, limited utility holding companies to occupying a “single integrated public-utility system.”¹⁰³ An “integrated public-utility system” contained “utility assets” that are “physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region.”¹⁰⁴ In other words, a transaction involving discrete utilities in Virginia/North Carolina, South Carolina, and Florida, incapable of physical interconnection or economically integrated operation, would not have been possible. The Merger Policy Statement could not then have designed the Competitive Analysis Screen with this possibility in mind, which explains the screen’s singular focus on pre- and post-merger concentration. For this reason, strict adherence to the Competitive Analysis Screen makes no sense in cases like the Transaction, where generation and utility holdings of the combining entities are geographically

¹⁰¹ *Id.* at 68600.

¹⁰² *Id.* at 68609.

¹⁰³ 15 U.S.C. § 79b(2)(29)(A).

¹⁰⁴ 15 U.S.C. § 79j(c)(2).

distinct. Otherwise, the Commission would arbitrarily deem all such transactions consistent with the public interest, in clear violation of the Federal Power Act.

Instead, the Commission must take a more expansive approach to considering the competitive harms created by the Transaction. It must define potential harm caused by the Transaction as any deviation from the performance that an effectively competitive market would produce. As the Merger Policy Statement instructed, it must recognize that “competition needed to protect the public interest will not be efficient and deliver lower prices” in markets that are already “poorly structured,”¹⁰⁵ which requires consideration of the relevant markets’ current competitive state. And it must seek to achieve outcomes that maximize net benefits, as effectively competitive markets do, rather than ensure the Transaction merely creates no harm compared to the status quo. Doing so requires the Commission to recognize that the Transaction would create an entity of unprecedented size, scale, and complexity, and insert that entity into an energy landscape struggling with a burgeoning affordability crisis. To the extent the Commission ignores the threats the Transaction poses to the public interest because they do not neatly fit an analytical box established 30 years ago, that “ostrich-like approach will not do.”¹⁰⁶

B. The Transaction Threatens Wholesale Market Competition In PJM.

Applicants have failed to demonstrate that the proposed Transaction satisfies section 203’s public interest standard with respect to its effects on wholesale market competition in PJM. The combination of NextEra and Dominion would concentrate unprecedented generation capacity and market advantages in a single corporate entity at precisely the moment when PJM’s wholesale markets face the most significant competitive challenges in their history. The resulting company would possess the scale, resources, and strategic positioning to foreclose

¹⁰⁵ Merger Policy Statement at 68598.

¹⁰⁶ *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 177 (D.C. Cir. 2022).

competition in multiple product markets. Additionally, Applicants' assurances of continued organized market participation ring hollow in light of NextEra's documented corporate history of abandoning such commitments when they prove inconvenient. The Commission should either deny the Application or impose stringent structural conditions to protect wholesale competition in the region.

1. Given the Increasing Significance of Bilateral Trading in PJM, the Delivered Price Test Does Not Sufficiently Capture the Transaction's Impact on Horizontal Market Power in PJM.

The Competitive Analysis Screen is insufficient to assess horizontal market power in PJM wholesale markets because it does not fully capture competitive effects in emerging bilateral contracting markets. This is in part because its definition of "economic capacity" for use in the DPT (generation capacity with variable costs low enough to deliver to the destination market) relies on public market pricing,¹⁰⁷ which does not include the type of out-of-market bilateral capacity contracting that is becoming more prevalent in PJM. Given the relevance of this pricing information to the Transaction's effect on competition, broader market pricing, and by extension, the public interest, this significant blind spot dictates that the Commission look beyond the DPT to assess the scale and effect of existing and planned bilateral capacity arrangements.

The Merger Policy Statement requires applicants to "identify the relevant products" as the first step of the Competitive Analysis Screen.¹⁰⁸ Encouraged by recent FERC and PJM policies, bilateral capacity arrangements between generation providers and large commercial loads are occupying a growing role in PJM. NEER has made direct contracting with data centers

¹⁰⁷ See Macan Aff. at 7.

¹⁰⁸ Merger Policy Statement at 68600.

a central component of its strategy going forward,¹⁰⁹ which renders bilateral contracting a crucial consideration for the Transaction. Bilateral capacity contracts therefore constitute a distinct product market that the Commission must consider but which the Application fails to address. To this end, the Supplemental Policy Statement Clarification emphasizes that “the Commission’s review goes beyond [DPT] screens and looks at all relevant factors regarding the effect on competition,” and this analysis “typically considers a case-specific theory of competitive harm, which includes, but is not limited to, an analysis of the merged firm’s ability and incentive to withhold output in order to drive up prices.”¹¹⁰

The Transaction is unlike any other that the Commission has previously considered: two utility conglomerates with massive retail customer bases, a litany of unregulated subsidiaries, and investments across numerous markets, occurring at a uniquely consequential moment for the PJM region. Among FERC-jurisdictional markets, PJM projects the largest load growth in the country, much of which is attributable to data center load in Northern Virginia and surrounding areas.¹¹¹ Northern Virginia already hosts the largest data center cluster in both the United States and the world—more than double the size of the next largest market (Beijing)—and data center load consumes over 25 percent of total electricity in the state.¹¹² Based on projects currently under construction or in advanced planning, this share could increase to between 39 percent and 57 percent by 2030.¹¹³ This load growth has already strained capacity markets, while creating

¹⁰⁹ See Transaction Presentation at 34 (showing portion of Large Load Pipeline to be served by NEER).

¹¹⁰ Supplemental Policy Statement Clarification at P 11. See also Constellation Energy Corporation, 192 FERC ¶ 61,074, P 135 (2025).

¹¹¹ John D. Wilson et al., *Power Demand Forecasts Revised Up for Third Year Running, Led by Data Centers*, GRID STRATEGIES, 22 (Nov. 2025), <https://gridstrategiesllc.com/wp-content/uploads/Grid-Strategies-National-Load-Growth-Report-2025.pdf>.

¹¹² EPRI, *Powering Intelligence 2026: Updated Scenarios of U.S. Data Center Electricity Use and Power Strategies*, 21 (Feb. 2026), <https://www.epri.com/research/products/000000003002034696>.

¹¹³ *Id.*

extraordinary new opportunities for generation owners to contract directly with large commercial customers outside of traditional wholesale market mechanisms.

Recent Commission and PJM actions have significantly expanded these opportunities. In its orders addressing generation co-location arrangements in PJM, the Commission has required new transmission service options that enable front-of-meter co-location configurations and sanctioned behind-the-meter configurations, both of which create new avenues for large loads to contract directly with generators while retaining grid interconnection.¹¹⁴ PJM's pending Interim Resource Adequacy Service proposal effectively mandates that new large loads bring their own new capacity to avoid priority emergency curtailment, which would drive a significant increase in direct contracts between large loads and generation developers.¹¹⁵ And while PJM's Reliability Backstop Procurement—if approved—would take place before the Transaction consummates,¹¹⁶ the potential for future Reliability Backstop Procurements creates additional long-term contracting opportunities with attractive pricing and extended terms. More fundamentally, PJM has initiated an effort to overhaul its capacity market design and incentives, with one primary focus being a larger emphasis on bilateral contracting compared to the current, centralized capacity market.¹¹⁷

NextEra has already positioned itself to aggressively exploit these expanded bilateral contracting opportunities, both within PJM and nationwide. In its presentation pitching the

¹¹⁴ See *PJM Interconnection, L.L.C.*, 195 FERC ¶ 61,211 (2026); *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217 (2025).

¹¹⁵ See PJM Interconnection, L.L.C., Proposal To Establish Interim Resource Adequacy Service and a Large Load Registry To Address System Reliability, Docket No. ER26-3515-000, Transmittal at 21-22 (filed Aug. 13, 2026).

¹¹⁶ See PJM Interconnection, L.L.C., Reliability Backstop Procurement to Address Resource Adequacy Concerns Stemming from Large Loads, Docket No. ER26-3380-000, Transmittal at 27 (filed July 31, 2026).

¹¹⁷ See PJM, *Powering Reliability Through Market Design: Addressing Rising Demand and Constrained Supply, and Stimulating Investment to Support Durable Reliability*, 4, 29-36 (May 6, 2026), <https://www.pjm.com/-/media/DotCom/library/reports-notice/special-reports/2026/20260506-powering-reliability-through-market-design.pdf>.

Transaction to investors, NextEra identified a 132 GW Large Load Pipeline to be served by the combined company; 60 GW of this total would be served by NEER alone.¹¹⁸ To this end, the company has publicly announced several massive new gas-fired generation projects designed to serve large commercial loads, including data centers, outside traditional wholesale market structures. The South Mon Project in southwestern Pennsylvania—a 4.3 GW natural gas facility announced as part of a trade agreement with Japan—is planned to interconnect with the PJM system and serve bilateral load customers directly.¹¹⁹ NextEra’s joint venture with Comstock contemplates an additional 5 GW of gas-fired generation to supply data centers in Texas,¹²⁰ while its recently secured federal loan of up to \$1.9 billion to restart Iowa’s 615 MW Duane Arnold nuclear plant is backed by a 25-year agreement to supply Google’s data-center load.¹²¹ NextEra has also entered into a memorandum of understanding with Xcel Energy to co-develop generation that will serve up to 6 GW of data center load.¹²² Meanwhile, NextEra will co-develop a sprawling data center and generation project on a former uranium enrichment site in Kentucky, supplying 2 GW of natural gas generation and up to 2.6 GW of battery energy storage,¹²³ and partner with ExxonMobil in the development of a 1.2 GW natural gas plant using

¹¹⁸ See Transaction Presentation at 34.

¹¹⁹ See U.S. Dep’t of Commerce, *Fact Sheet: New Energy Projects from U.S. – Japan Trade Deal, Deal 2: Southwest Pennsylvania Natural Gas Generation Facility (Project South Mon)* (Mar. 20, 2026), <https://www.commerce.gov/news/fact-sheets/2026/03/fact-sheet-new-energy-projects-us-japan-trade-deal>.

¹²⁰ See U.S. Dep’t of Commerce, *Fact Sheet: New Energy Projects from U.S. – Japan Trade Deal, Deal 3: Texas Natural Gas Generation Facility (Project Anderson)* (Mar. 20, 2026), <https://www.commerce.gov/news/fact-sheets/2026/03/fact-sheet-new-energy-projects-us-japan-trade-deal>.

¹²¹ U.S. Dep’t of Energy, *Energy Department Closes \$1.9 Billion Loan to Restart Duane Arnold Nuclear Plant* (Sept. 8, 2026), <https://www.energy.gov/articles/energy-department-closes-19-billion-loan-restart-duane-arnold-nuclear-plant> (announcing financial close of a loan of up to \$1.9 billion to NextEra Energy to help finance the Duane Arnold restart). See also NextEra Energy, *NextEra Energy and Google Announce New Collaboration to Accelerate Nuclear Energy Deployment in the U.S.* (Oct. 27, 2025), <https://www.investor.nexteraenergy.com/news-and-events/news-releases/2025/10-27-2025-203948689> (announcing Google’s 25-year agreement to purchase energy from the 615 MW Duane Arnold plant for its Iowa cloud and AI infrastructure).

¹²² Tom Kleckner, *Xcel, NextEra to Partner on Generation for Data Centers*, RTO INSIDER (Feb. 5, 2026), <https://www.rtoinsider.com/125115-xcel-nextera-partner-gen-data-centers/>.

¹²³ John Cropley, *NextEra, Brookfield Plan \$100B Ky. Data Center Campus*, RTO INSIDER (July 29, 2026), <https://www.rtoinsider.com/137834-nextera-brookfield-plan-100b-ky-data-center-campus/>.

fuel from ExxonMobil’s Denbury carbon dioxide pipeline and gas supply infrastructure.¹²⁴ The scale of these initiatives—exceeding 20 GW of announced capacity specifically targeted at large commercial loads and data centers—reflects NextEra’s strategic recognition that bilateral contracting with large load represents the emerging frontier of electric utility service.

Simultaneously, NextEra has announced plans to expand its upstream fuel procurement capabilities to support its bilateral contracting strategy. The company’s planned acquisition of Symmetry Energy Solutions—a natural gas supply, storage, and management company serving 5,500 commercial/industrial customers and 80,000 mass-market customers across 34 states—is designed to complement its buildout of gas transmission and gas-fired generation.¹²⁵

The Application’s competitive analysis, however, focuses narrowly on the Competitive Analysis Screen and associated DPT, which examines only sales made into the organized PJM markets and not bilateral capacity sales. This approach treats all generation units as functionally equivalent competitors,¹²⁶ ignoring the structural advantages that enable NextEra to compete for bilateral contracts that smaller market participants cannot realistically pursue. For example, a generator with 500 MW of capacity in PJM may technically compete in the wholesale market, but it lacks the ability to offer a data center customer a multi-gigawatt bilateral supply arrangement backed by development capability across multiple geographic regions. The Application’s silence on bilateral contracting markets—despite NextEra’s own public statements

¹²⁴ Zachary Skidmore, *NextEra Teams Up With ExxonMobil To Develop 1.2GW Natural Gas Plant To Power US Data Center Sector*, DATA CENTER DYNAMICS (Dec. 10, 2025), <https://www.datacenterdynamics.com/en/news/nextera-teams-up-with-exxonmobil-to-develop-12gw-natural-gas-plant-to-power-us-data-center-sector/>.

¹²⁵ NextEra Energy Resources, LLC and Energy Capital Partners, *NextEra Energy Resources to Acquire Symmetry Energy Solutions from Energy Capital Partners, Expanding Natural Gas Capabilities*, PR NEWswire (Dec. 8, 2025), <https://www.prnewswire.com/news-releases/nextera-energy-resources-to-acquire-symmetry-energy-solutions-from-energy-capital-partners-expanding-natural-gas-capabilities-302634857.html>.

¹²⁶ See Macan Aff. at 17-18.

emphasizing its strategic focus on precisely these arrangements—represents a material gap in its presentation of the Transaction’s effect on competition.

Nor does any “RTO presumption” alleviate this concern. To the extent Applicants contend that participation in an organized market sufficiently mitigates horizontal market power concerns,¹²⁷ their reliance is misplaced. PJM’s capacity market—the Reliability Pricing Model (RPM)—establishes a centralized mechanism for procuring capacity resources through competitive auctions. As Dominion’s 2025 Integrated Resource Plan (IRP) Update observes, “LDAs have increasingly used the BRA as the primary place to obtain needed capacity,” an evolution that itself reflects the competitive pressures facing smaller market participants unable to develop resources at scale.¹²⁸ More fundamentally, RTO market oversight does not extend to bilateral contracting arrangements between generators and large commercial loads. When NextEra enters into a direct supply arrangement with a large load customer, that transaction occurs outside PJM’s market framework. The generator may still enter the RPM as a price taker, but neither PJM nor the RPM clearing engine dictate the price, terms, or conditions of the bilateral capacity arrangement. The competitive advantages that enable NextEra to win such contracts—scale, equipment procurement leverage, development expertise, and geographic reach—operate entirely outside the scope of RTO market mitigation. Where competitive effects manifest outside RTO oversight, the Commission cannot rely on RTO market structures to protect consumers and market participants.

As the Transaction substantially increases NextEra’s ability to foreclose competitors from access to customers seeking direct load service arrangements, and increases the financial

¹²⁷ See *id.* at 8, n.10.

¹²⁸ *Virginia Electric and Power Company’s 2025 Update to the 2024 Integrated Resource Plan*, Va. State Corp. Comm’n, Case No. PUR-2025-00814, at 24 (filed Oct. 15, 2025), <https://www.dominionenergy.com/-/media/content/about/our-company/irp/pdfs/2025-integrated-resource-plan-update.pdf> (Dominion 2025 IRP Update).

incentive to do so, the Commission should look beyond the traditional Competitive Analysis Screen to adequately consider and mitigate the competitive concerns it creates. And as the resulting company diverts its development attention to bilateral supply arrangements in PJM, the capacity market that dictates supply to most retail customers will continue to deliver inflated capacity pricing that falls directly upon the region's existing ratepayers.

2. *The Combined Entity's Scale and Resources Threaten to Foreclose Competition in the PJM Region Because it Has the Ability and Incentive to Do So.*

Due to the scale of the Transaction's resulting entity, the historical practices of NextEra, and its planned efforts to capitalize on bilateral transactions, the resulting entity would have both the ability and incentive to exert market power and drive up prices within PJM.

The combination of NextEra and Dominion will represent the zenith of utility company scale. At no time prior has the Commission blessed a utility company as large, as complex, and—given the cost of the Transaction—as driven to derive profits as the resulting entity here. As outlined above, the novelty of this Transaction demands a tailored approach to assessing its potential for competitive harm. The Competitive Analysis Screen cannot be the Commission's only consideration, especially where it is fundamentally unsuited to evaluate a combination of this nature. To this end, the Supplemental Policy Statement states that “the Commission does look beyond the change in HHI in its analysis of the effect on competition in both horizontal and vertical mergers,” and that “even where an applicant passes the HHI screen, the Commission also considers intervenor theories of competitive harm.”¹²⁹ Even if the Commission accepts the Application's representations that the Transaction satisfies the traditionally accepted HHI levels, it presents potential for competitive harm that the Competitive Analysis Screen does not capture.

¹²⁹ Supplemental Policy Statement at P 65.

As such, the Commission should consider the “ability and incentive” of the Applicants to exert market power, dampen competition, and “drive up prices.”¹³⁰ More specifically, the Commission should probe (1) the *ability* of the resulting entity to dominate bilateral contracting in the PJM market through sheer scale, and (2) its *incentive* to do so given the higher bilateral margins as compared to centralized market prices,¹³¹ particularly for time-sensitive data center load.

As discussed in some detail above, NextEra’s acquisition of Dominion will provide it with a large, growing, and captive retail customer base in Virginia and the Carolinas, as well as financial resources and access to capital that no other utility could match. The Application reveals the magnitude of this combination. NextEra’s existing generation portfolio spans multiple RTOs and non-RTO regions, and encompasses diverse fuel types, providing operational flexibility that enhances its ability to compete across geographic markets. Dominion’s generation portfolio in the PJM region includes substantial baseload capacity—including the 1.89 GW North Anna nuclear station, the 1.47 GW Brunswick County Power Station, the 3 GW Bath County Pumped Storage Station, and the 1.67 MW Greenville combined-cycle facility—that would complement NextEra’s existing position.¹³²

¹³⁰ *Id.* at P 65.

¹³¹ See e.g., John H. Tsoukalis et al., Assessment of Potential Market Reforms for South Carolina’s Electricity Sector: Final Report to the Electricity Market Reform Measures Study Committee of the South Carolina General Assembly, BRATTLE, 186, 204-05 (Apr. 27, 2023), https://www.scstatehouse.gov/CommitteeInfo/ElectricityMarketReformMeasuresStudyCommittee/2022-04-27%20-%20SC%20Electricity%20Market%20Reform_Brattle%20Report.pdf (SC Brattle Report) (simulating bilateral day-ahead purchase prices at \$43.77/MWh versus \$32.71/MWh under a centralized RTO market, and real-time bilateral purchases at \$55.67/MWh versus \$36.60/MWh, demonstrating that the structural margin embedded in bilateral contracting produces materially higher costs than centralized market alternatives).

¹³² The resulting entity’s generation portfolio could present additional withholding concerns, which the Commission recognized in the Supplemental Policy Statement: “The ability to withhold output depends on the amount of marginal capacity controlled by the merged firm, and the incentive to do so depends on the amount of infra-marginal capacity that could benefit from higher prices. For example, in a horizontal merger combining a company with significant baseload capacity with a company owning capacity on the margin under many season/load conditions, the theory of competitive harm would be that the combination of the ‘ability’ assets with one company’s existing ‘incentive’ assets would increase the likelihood of the company exercising market power.” Supplemental Policy Statement at P 60.

NextEra’s financial scale provides a competitive advantage that smaller market participants cannot replicate. FPL’s net income for 2025 was \$5.012 billion on operating revenues of \$18.2 billion, with an earned regulatory return on equity (ROE) of approximately 11.70 percent.¹³³ The utility’s average rate base grew by approximately \$5.5 billion in 2025 alone, providing a constantly expanding asset base against which to earn regulated returns.¹³⁴ In 2025 FPL accounted for approximately 50.6 percent of Florida’s annual retail energy sales, making it the dominant utility in the state by a substantial margin.¹³⁵ This financial strength enables NextEra to pursue speculative generation development opportunities—such as procuring equipment before projects are fully permitted or contracted—that smaller developers lacking access to regulated utility cash flows cannot match.¹³⁶ Current market conditions magnify the competitive significance of this scale. Equipment lead times for generation assets—particularly large-frame gas turbines—have extended substantially in recent years, creating bottlenecks that favor established developers with existing vendor relationships and procurement contracts.¹³⁷

As a result, post-Transaction, the combined entity would possess unparalleled *ability* to offer large commercial customers tailored capacity solutions across the Eastern Interconnection, leveraging its generation diversity to meet varying load profiles and reliability requirements. This scale advantage manifests in multiple dimensions that bear directly on competition in

¹³³ NextEra Energy Inc. and Florida Power & Light Company, *Form 10-K*, Securities and Exchange Commission, 40 (Feb. 3, 2026), <https://www.investor.nexteraenergy.com/~media/Files/N/NEE-IR/NEE%202025%2010-K.pdf>.

¹³⁴ *Id.*

¹³⁵ Office of Industry Development and Market Analysis, Statistics of the Florida Electric Utility Industry, Fla. Pub. Serv. Comm’n, 41 (Oct. 2026), <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/ElectricGas/Statistics/2025.pdf> (derived from dividing FPL’s 129,472,149 MW/h by the state’s 256,059,647 MW/h total).

¹³⁶ See e.g., DESC 2026 IRP at 4, 18 (describing how DESC has signed agreements to reserve major equipment to provide natural gas transmission projects); FPL 2026 Ten-Year Power Plant Site Plan at 8-10, 425 (recognizing FPL’s extensive planned generation, and that where there is extensive volume, that FPL will leverage “economies of scale” to procure equipment).

¹³⁷ Dominion 2025 IRP Update Sec. 2.5.2 at 29. See also Diana DiGangi, *Gas turbine supply crunch set to raise prices 195% by 2027: WoodMac*, Utility Dive (Apr. 9, 2026), <https://www.utilitydive.com/news/gas-turbine-supply-crunch-set-to-raise-prices-195-by-2027-woodmac/816904/>.

bilateral contracting markets: development expertise, project financing capacity, and operational synergies that smaller developers cannot replicate.

The combined utility also has the incentive to exercise this market power. As discussed above, economic returns available through bilateral contracting may substantially exceed what generators can earn in centralized RTO markets. Data center customers requiring firm, reliable power on aggressive timelines face limited alternatives and are often willing to pay premium prices for supply certainty. The RPM clearing price provides a floor that participating generation can receive, but bilateral arrangements with large load customers offer the ability to negotiate prices that capture the scarcity value of development capability, equipment access, and execution certainty that smaller market participants cannot provide. Once it establishes this market position, NextEra can charge over-market prices to its bilateral counterparties, which will have the affect of increasing RPM bids and raise capacity prices across PJM more generally. At that point, Load Serving Entities that procure capacity from RPM will pay more for capacity and pass those costs to retail customers. Likewise, the resulting company's unparalleled ability to procure materials necessary to bilaterally service large loads will elevate equipment prices market-wide, increasing generation prices for all other load.

Because the Transaction's effect on bilateral markets threatens to exacerbate the affordability crisis PJM already faces, the Commission must look past the Competitive Analysis Screen that obscures these potential harms.

3. Applicants' Assurances that VEPCO Will Remain in PJM Are Belied By NextEra's Track Record.

Applicants assert that VEPCO will remain a member of PJM,¹³⁸ suggesting that the Transaction would not jeopardize the competitive benefits VEPCO's customers receive from its

¹³⁸ See Application at n.25.

RTO membership. Beyond Virginia and North Carolina, VEPCO's departure from PJM would devastate the RTO's competitiveness, removing substantial quantities of generating capacity and load from a market area already struggling with resource adequacy and affordability issues. Applicants' assurance that VEPCO will remain a PJM member and avert these consequences, however, provides cold comfort, and the Commission should not accept this representation at face value.

To start, PJM *membership* does not equate to participation as a Transmission Owner member, which entails ceding operational control of its transmission facilities to the RTO, or as a Load Serving Entity, which entails procuring capacity, energy, and ancillary services for its native load from PJM markets. VEPCO currently occupies both of these roles. Lesser forms of PJM membership are available, but they do not include similar rights and responsibilities, nor do they convey the same benefits. Indeed, NextEra-owned companies are currently PJM members in limited capacities without having transferred operational control of their transmission facilities to PJM. FPL and DESC are PJM members despite their remoteness from the PJM territory.¹³⁹ As such, Applicants' insistence, in a footnote, that VEPCO will remain a PJM member does not provide sufficient assurance.

More fundamentally, NextEra's corporate history demonstrates that any commitment to organized market participation is contingent and revocable when regulatory demands become inconvenient. NextEra's flagship operating utility, FPL, does not participate in any RTO or Independent System Operator (ISO)—it operates as part of the non-RTO Florida Reliability Coordinating Council (FRCC) region for transmission planning purposes and engages in bilateral wholesale transactions outside organized market structures. FPL has bucked even the slightest

¹³⁹ See PJM Interconnection, L.L.C., *Member List*, <https://www.pjm.com/about-pjm/member-services/member-list.aspx> (last updated Sept. 27, 2026).

movement towards competition in Florida and the Southeast region, failing to join the Southeast Energy Exchange Market (SEEM), despite membership by the other two Florida investor-owned utilities (IOU): Duke Energy Florida and Tampa Electric Company.¹⁴⁰

FPL has also fought efforts to establish a Florida-wide RTO, most notably through its coordinated campaign to defeat the GridFlorida proposal in the early 2000s—a campaign that ultimately succeeded in foreclosing the prospect of competitive wholesale electricity markets in Florida. The GridFlorida proposal followed FERC’s adoption of Order No. 2000, which encouraged the formation of RTOs nationwide.¹⁴¹ The proposal, jointly filed by FPL and two other Florida electric utilities, would have established a for-profit corporation operating as an RTO that would provide independent transmission service across Peninsular Florida.¹⁴² FERC provisionally approved GridFlorida in March 2001, finding that “while peninsular Florida has adequate scope, GridFlorida needs to foster further competition in the region as there are currently too few wholesale generators to encourage competition.”¹⁴³ Meanwhile, the Florida IOUs worked behind the scenes to undermine those findings.

Documented by Florida stakeholders and intervenors, the Florida IOUs engaged in a pattern of delay, obstruction, and unilateral control that undermined the collaborative stakeholder process Order No. 2000 contemplated,¹⁴⁴ offering up a governance structure that would include

¹⁴⁰ See SEEM Members, SOUTHEAST ENERGY EXCHANGE MARKET, <https://southeastenergymarket.com/>.

¹⁴¹ *Reg’l Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,073 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). See also Fla. Power & Light Co., Fla. Power Corp., and Tampa Elec. Co., Order No. 2000 Joint Compliance Filing of Fla. Power & Light Co., Docket No. RT01-67-000 (filed Oct. 16, 2000) (GridFlorida Proposal).

¹⁴² GridFlorida Proposal at 10-12.

¹⁴³ *GridFlorida LLC*, 94 FERC ¶ 61,363, at 62,335 (2001).

¹⁴⁴ See Seminole Electric Cooperative, Inc., Protest, Docket No. RT01-67-003, at 2 & n.3 (filed July 2, 2001) (highlighting that the IOUs had “suspended their RTO development activities” and “seem resigned to an indefinitely delayed RTO implementation schedule” while simultaneously filing transmission pricing proposals that “would result in windfall profits for GridFlorida in excess of \$100 million over a five-year period and in excess of \$200 million over a ten-year period.”); Florida Municipal Power Agency, Response to Applicants’ Answer to Protests, Docket No. RT01-67-001, at 14 (filed Aug. 1, 2001) (documenting how FPL dominated the stakeholder working

little to no stakeholder involvement and oversight.¹⁴⁵ The *coup de grâce*, however, was the Florida IOUs commissioning a cost-benefit study, after FERC’s approval, that they used as a basis to withdraw the RTO proposal (Study).¹⁴⁶ According to the GridFlorida utilities, the Study, prepared by ICF Consulting, purported to show that the RTO proposal “is not cost beneficial for retail customers.”¹⁴⁷ The Study, however, systematically understated the benefits and overstated the costs of RTO formation, by framing the cost-benefit analysis in terms of “transmission owner cost shifts” that would result from rate equalization across Peninsular Florida—effectively treating as a “cost” to jurisdictional consumers the elimination of the cross-subsidies that the IOUs’ captive ratepayers were providing to the incumbent utilities.¹⁴⁸ As stakeholders protested, this framing obscured the competitive benefits that would flow to all Florida consumers from the

groups “both numerically and functionally” and “chose not to accept” criticisms and alternative suggestions from other market participants, and attempted to dissuade the Commission from considering any of the intervenor’s arguments regarding congestion management); Calpine Eastern, Motion to Respond and Response, Docket No. RT01-67-000, at 12 (filed Mar. 5, 2001) (“Applicants state that the Commission is only concerned about the independence of the RTO subsequent to commencement of operations.”). *See also GridFlorida LLC*, 94 FERC ¶ 61,363, at 62,325 (“The Commission is sensitive to the need to expedite the formation of GridFlorida to allow it to commence operations as soon as possible. However, we are also sensitive to concerns raised about the independence of an interim LLC managed by Applicants and encourage that the independent Board be seated quickly. Therefore, the Commission will approve the formation of an interim LLC to be managed by Applicants prior to the date that the independent Board of Directors of GF Inc takes control of GridFlorida, subject to modification of the procedures proposed by Applicants, as discussed herein.”); *id.* at 62,337, 62,351, 62,367, 62,368 (rejecting several elements of the GridFlorida proposal as violating Order No. 2000 principles) (“GridFlorida’s proposal for a 200 percent charge (applicable to zonal and Through-and-Out rates) for use of its transmission facilities by non-participants is arbitrary”; “GridFlorida must delete the sweeping moratorium provision from the tariff”; “With respect to Seminole’s concern that Applicants will take up to five years to put in place new planning standards, we agree that this is a critical step and that a five-year phase in is too long”; “Applicants’ planning protocols do not fully explain how GridFlorida will pursue infrastructure investment that will make generation markets more competitive”; “GridFlorida has not yet developed a mechanism that integrates the transmission activities of the region”).

¹⁴⁵ *See* Response of Seminole Elec. Coop., Docket No. RT01-67-000, at 5 (filed Mar. 5, 2001) (noting how “it is truly (though sadly) ironic that the very entities—FPL and FPC—that had to be dragged to the RTO table are now the ones arguing that unless they are allowed to continue to control the process, it will not culminate timely.”)

¹⁴⁶ GridFlorida Companies, Motion to Withdraw Compliance Filing and Petition and Close Docket, Docket No. 020233-E1, Ex. A, Cost-Benefit Study of the Proposed GridFlorida RTO (Fla. Pub. Serv. Comm’n Jan. 27, 2006), <https://www.floridapsc.com/pscfiles/library/filings/2006/00837-2006/00837-2006.pdf> (ICF Study).

¹⁴⁷ GridFlorida Companies, Motion to Withdraw Compliance Filing and Petition and Close Docket, Docket No. 020233-E1, at P 19 (Fla. Pub. Serv. Comm’n Jan. 27, 2006) (“The ICF Study clearly demonstrates that the GridFlorida RTO, whether modeled as a Day 1 or Delayed Day 2 proposal, is not cost beneficial for the retail customers of the GridFlorida Companies”) (GridFlorida Motion to Withdraw). *See also* ICF Study at 12 (“The net impact of the cost shifts is that the jurisdictional transmission owners’ cost to serve retail customers increases, thus increasing their retail rates, and the non-jurisdictional transmission owners’ cost and retail rates decreases.”).

¹⁴⁸ *See e.g.*, ICF Study at 129-138, 148-149.

elimination of pancaked transmission rates, the introduction of economic dispatch, and the entry of independent generators into a transparent wholesale market.¹⁴⁹ Even under this flawed approach, the Study still found that, after year 13, benefits would overcome the costs associated with standing up and operating the RTO and inure to Florida ratepayers.¹⁵⁰ However, in January 2006, the GridFlorida Companies filed a Motion to Withdraw Compliance Filing and Close Docket with the Florida Public Service Commission (Florida PSC), submitted alongside the Study, arguing that an RTO in Florida was not beneficial.¹⁵¹ The Florida PSC agreed and ultimately yielded to FPL and the other IOUs' desire to shield their companies from competition, allowing the utilities to summarily terminate the project.¹⁵² Today, Florida remains the only high-population, high-demand state without a wholesale electric market.

The GridFlorida experience showcases NextEra's willingness to subordinate the public interest in competitive markets to the commercial interests of its regulated utility subsidiaries. FPL and the other IOUs used the GridFlorida proceeding not to facilitate the transition to competitive wholesale markets that Order No. 2000 contemplated, but rather to maintain control over the process. It commissioned a flawed study to justify withdrawal of the proposal, and ultimately preserved the vertically integrated monopoly structure that continues to insulate the Florida IOUs from competitive entry. This history should inform the Commission's evaluation

¹⁴⁹ *Id.* at 37 n.12 ("This study did not model the full detail of the proposed GridFlorida tariff filed by the GridFlorida Applicants. The exact tariff structure did not lend itself to analytic modeling. Therefore a simplified form of the tariff was modeled under Day-1 and Day-2 RTO operation."); *id.* at 149, n.76 ("[T]he quantitative RTO benefits have been estimated using a simplified form of the tariff structure because the tariff as filed did not lend itself to analytic modeling. Thus, the net benefits shown in Exhibit 7-3 should be interpreted as indicative rather than definitive.").

¹⁵⁰ *Order Granting Motion to Withdraw Compliance Filing and Closing Docket*, Docket No. 020233-E1, at 5 (Fla. Pub. Serv. Comm'n May 9, 2006) ("ICF points out there is the potential by year 13 for GridFlorida's operations benefits to equal its costs.").

¹⁵¹ *See* GridFlorida Motion to Withdraw.

¹⁵² *See* Fla. Power & Light Co., Fla. Power Corp., and Tampa Elec. Co., Notification of Termination of GridFlorida Transco Project, Docket No. RT01-67-000 (filed Jun. 12, 2006).

of NextEra's representations in this proceeding regarding its commitment to competitive market structures and continued RTO participation.

In the years since, FPL has made no effort to foster competition in Florida. It has undermined regional competition by siloing its service territory, making it more costly to transact between utilities. Case in point, FPL has failed to develop any regional transmission projects through its active participation in the FRCC Order No. 1000 regional planning process. Nor has FPL made efforts to improve the process in order to identify and select more efficient and cost-effective regional transmission projects. FERC has previously noted its concern with the Florida IOUs' minimalist approach to competitive transmission.¹⁵³ For example, in approving the Florida utilities' Order No. 1000 compliance filings, the Commission found that Florida's proposal "does not go beyond Order No. 1000" minimum compliance requirements, and observed that stakeholders had documented that "under the existing Order No. 890 transmission planning process, economic planning is not occurring in the FRCC region."¹⁵⁴ The Commission also found that the Florida proposal failed to provide a justification for the \$100,000-\$500,000 study deposit that project sponsors would be required to submit,¹⁵⁵ an amount characterized by stakeholders as excessive, designed to discourage proposals, and found to be the highest deposit amount amongst all planning regions.¹⁵⁶

¹⁵³ See e.g., *Tampa Elec. Co.*, 143 FERC ¶ 61,254, at P 54 (2013) (finding that the regional plans merely "roll-up" local plans without analysis of regional needs); *id.* PP 130, 150, 168 (finding multiple provisions favoring incumbent utilities: an automatic qualification exemption for state-obligated utilities, a licensing requirement deemed an impermissible barrier to entry, and study and data requirements so burdensome they could effectively bar nonincumbent developers from proposing projects); *id.* PP 105, 201 (requiring that the filed tariff eliminate provisions that would establish a right of first refusal and directing the Florida IOUs to eliminate OATT provisions that allowed the state to select the transmission developer and to clarify that incumbent construction preferences did not apply to CEERTS projects).

¹⁵⁴ *Id.* P 15.

¹⁵⁵ *Id.* P 171.

¹⁵⁶ *Id.* P 161-162.

Despite FERC’s directive to submit further compliance filings to remedy deficiencies, FRCC has still not selected any regional projects under Order No. 1000 more than a decade later. FPL has also submitted an Order No. 1920 compliance filing that includes heavy restrictions on developers qualified to submit projects for regional solutions as part of the Long-Term Regional Transmission Planning process,¹⁵⁷ as well as vague, discretionary and restrictive criteria on project submissions.¹⁵⁸

In light of NextEra’s history of challenging competition in Florida, the Commission cannot rely on NextEra’s assurances that it will take a different approach with regards to VEPCO’s full participation in PJM. Should the entity resulting from the Transaction elect to withdraw VEPCO’s transmission facilities from PJM—a possibility that Applicants’ representations do not foreclose—the consequences to regional competition would be severe and potentially irreversible. VEPCO currently owns or controls approximately 30 GW of generating capacity interconnected to the PJM system, representing a substantial share of the RTO’s total installed capacity.¹⁵⁹ Other Load Serving Entities in the DOM Zone serve significant native load, including the data center clusters in Northern Virginia that constitute one of the fastest-growing load centers in the nation, and procure capacity, energy, an ancillary services from PJM markets.¹⁶⁰ Withdrawal would disrupt their operations and more generally require the complex unwinding of regional transmission configurations, interchange agreements, and capacity

¹⁵⁷ See Fla. Power & Light Co., Order No. 1920 Compliance Filing, Docket No. ER26-2798, at 13 (filed June 12, 2026); FPL, OATT, Attachment K, § 1.2.11 (3.0.0); *id.* at App. 3. See also Public Interest Organizations, Amended Protest, Docket No. ER26-2798 at 8-9 (filed Aug. 5, 2026).

¹⁵⁸ FPL OATT, Att. K-3, Sec. 7 (3.0.0). See also Public Interest Organizations, Amended Protest, Docket No. ER26-2798 at 70-118 (filed Aug. 5, 2026).

¹⁵⁹ See Macan Aff. at 11.

¹⁶⁰ See, e.g., *Power Supply*, Northern Virginia Electric Membership Corporation, https://www.novec.com/about_novec/power-supply.cfm (last visited Sept. 29, 2026).

import/export rights that have developed over decades of integrated PJM operation.¹⁶¹ The seams issues created by a VEPCO withdrawal would impose transaction costs on market participants throughout the region and create opportunities for the merged entity to exercise market power at the interfaces between PJM and the withdrawn territory.¹⁶² And the subtraction of a substantial amount of generating capacity and load would rattle PJM markets, exacerbating existing affordability and resource adequacy concerns.

Given the severity of this outcome, the Commission should require, as a condition of any approval, an enforceable commitment that the Applicants will maintain VEPCO's status as a full Transmission Owner member and Load Serving Entity in PJM for a period of not less than ten years, with substantial financial penalties for early withdrawal. The Commission has imposed comparable structural commitments in prior merger proceedings where continued RTO participation was material to the public interest determination.¹⁶³ Absent such enforceable commitments, the Commission cannot conclude that the merger satisfies the public interest under section 203.

¹⁶¹ See e.g., *Duquesne Light Co.*, 122 FERC ¶ 61,039, at n.20 (2008) (documenting PJM's identification of six distinct operational issues that must be resolved before withdrawal could occur: (i) establishment of a control area or balancing authority; (ii) delineation of new borders and tie lines between Duquesne and PJM; (iii) resolution of other border issues; (iv) establishment of flowgates for PJM/MISO transmission and market-interface coordination; (v) development of a replacement OATT and OASIS node with accommodation of grandfathered agreements; and (vi) assumption of NERC and Reliability First compliance responsibilities and readiness audits); Midwest Independent Transmission System Operator, Inc. and Duquesne Light Co., Transmission Integration Filing, Docket No. ER08-1235-000, at 16-18 (Jul. 3, 2008) (describing how withdrawal would physically redraw the PJM/MISO seam—shifting the border from the western to the eastern edge of Duquesne's two-county service territory—and require conversion of existing interconnection points into a new inter-RTO interface, with imports handled at the MISO/PJM boundary rather than at specific delivery points).

¹⁶² See Rishi Garg, *Electric Transmission Seams: A Primer*, NATIONAL REGULATORY RESEARCH INSTITUTE, 1-2 (Feb. 2015), <https://pubs.naruc.org/pub/FA86CD9B-D618-6291-D377-F1EFE9650C73> (documenting how jurisdictional seams create structural barriers that prevent the economic transfer of power and increase costs to ratepayers).

¹⁶³ See *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 168 (2022) (discussing the Commission's conditioning merger approval on RTO membership).

4. *The Commission Should Evaluate the Transaction's Effect on the Critical Chesapeake Submarket.*

The Application does not evaluate the merger's effect on a submarket that the PJM Independent Market Monitor (IMM) has repeatedly recognized as a submarket of critical significance: the Chesapeake Submarket. The Application acknowledges that the IMM filed comments in Docket No. EC26-76-000 arguing that a "Chesapeake submarket" exists due to frequently binding transmission constraints in the DOM, Baltimore Gas and Electric (BGE), and Potomac Electric Power Company (PEPCO) zones, but the Application does not analyze this submarket.¹⁶⁴ Instead, it substitutes a narrower "Dominion Submarket," limited essentially to the DOM Zone, despite acknowledging that FERC has not recognized such a submarket.¹⁶⁵

The Applicants contend that the Dominion Submarket is "more conservative" because Dominion's market concentration there is "greater than anywhere else within PJM".¹⁶⁶ This reasoning is circular: if the Dominion Submarket is defined around the area where Dominion is most dominant, then adding NextEra's minuscule 3 MW of uncommitted DOM Zone capacity produces only a tiny HHI increment.¹⁶⁷ The Dominion Submarket analysis, however, is not an adequate proxy because it is geographically narrower (limited to the DOM Zone) and structurally different (it excludes the BGE and PEPCO zones where the IMM identified binding constraints).¹⁶⁸ The record establishes that the Pleasant View–Ashburn constraint produces "frequent price separation" between the DOM Zone and the rest of PJM,¹⁶⁹ and the Dominion Submarket is already highly concentrated (HHI 3,435-4,420 under the Economic Capacity (EC)

¹⁶⁴ See Application at 21, n.55.

¹⁶⁵ See *id.* at 20-21.

¹⁶⁶ *Id.* at 21, n.55.

¹⁶⁷ See *id.* at 16.

¹⁶⁸ See *id.* at 21.

¹⁶⁹ Macan Aff. at 17.

measure) with Dominion controlling approximately 58-66 percent of EC.¹⁷⁰ A broader Chesapeake submarket incorporating BGE and PEPCO would have a different supply mix and different HHI dynamics, but the record provides no analysis of this alternative.

A properly defined Chesapeake submarket—encompassing the DOM, BGE, and PEPCO zones, as the IMM suggested—would have a different market size, a different competitive supply mix, and potentially different HHI results. The Commission’s own reservation in *Gray Harbor Energy* confirms that recognition of this submarket remains squarely within its authority, and the factual circumstances of this Transaction—unlike those in *Gray Harbor Energy*—demand that it exercise that authority.¹⁷¹ The Application provides no DPT results for the Chesapeake submarket, preventing the Commission from evaluating this alternative market definition on the record as filed. This omission is material, and the Commission should therefore require that Applicants provide analysis of the Chesapeake submarket.

C. Applicants Fail to Adequately Consider the Transaction’s Potential to Create Vertical Market Power Risks.

Applicants significantly downplay the vertical market power concerns in PJM, devoting only cursory treatment to what should be a central focus of the Commission’s competitive analysis. The Application’s vertical market power analysis relies on a formulaic recitation of applicable concentration thresholds while ignoring the Transaction’s structural consequences for upstream fuel supply and downstream electricity markets. Because this approach fails to satisfy the analytical requirements under the Merger Policy Statement and Supplemental Policy

¹⁷⁰ *Id.* at 51.

¹⁷¹ See *Grays Harbor Energy LLC*, 196 FERC ¶ 61,186, at P 17, n.68 (2026) (noting that the Commission’s decision not to render a decision to evaluate the proposed Chesapeake submarket “is without prejudice to the Commission’s consideration of whether to recognize this submarket in the context of other transactions.”).

Statement, the Commission should reject Applicants' conclusion that the Transaction raises no vertical market power concerns.

1. The Commission's Vertical Market Power Framework Requires Rigorous Analysis of Both Ability and Incentive to Foreclose Rivals.

The Merger Policy Statement establishes that vertical market power concerns arise when a merger creates or enhances the ability and incentive of the resulting entity to adversely affect electricity prices or output in the downstream market by raising rivals' input costs.¹⁷² The Commission has further explained that a vertical merger can have these effects "if market power could be exercised in both the upstream and downstream geographic markets."¹⁷³ While the Commission has indicated that a high concentration (HHI above 1,800) in both upstream and downstream markets would represent a market that is "conducive to the exercise of market power," this is not a threshold analysis, and therefore does not end the inquiry.¹⁷⁴ The Commission must also examine the resulting entity's ability to foreclose or disadvantage competitors through control over essential inputs and the incentives created by a transaction's structure.¹⁷⁵

The Supplemental Policy Statement further clarifies that the Commission examines whether a transaction will create or enhance the *ability* or *incentive* to exercise vertical market power through control over inputs essential to generation, including fuel supply, fuel transportation, and generation sites.¹⁷⁶ In the context of natural gas markets, the Commission considers whether the resulting entity could withhold capacity, possess inside knowledge of

¹⁷² See Supplemental Policy Statement at P 61.

¹⁷³ Order No. 642, 65 F.R. 70984 at 71004.

¹⁷⁴ Supplemental Policy Statement at P 62.

¹⁷⁵ See, e.g., Merger Policy Statement at 68600 ("We believe that the analytic screen will produce a reliable, conservative analysis of the competitive effects of proposed mergers. However, it is not infallible. In some cases, the screen may not detect certain market power problems.")

¹⁷⁶ See Supplemental Policy Statement at P 62.

pipeline operations, or impede market entry—conduct that pipeline owners and entities with substantial pipeline interests are uniquely positioned to undertake.¹⁷⁷

2. The Application's Vertical Market Power Analysis Is Fundamentally Flawed.

The Application's vertical market power analysis suffers from three fundamental deficiencies. First, Applicants define the relevant upstream market too narrowly by focusing exclusively on interstate pipeline capacity into Transco Zone 5, while ignoring the broader context of natural gas supply and transportation relationships that the combined entity would control.¹⁷⁸ Second, Applicants dismiss vertical concerns based solely on HHI calculations without meaningfully analyzing the resulting entity's ability and incentive to foreclose competitors in downstream electricity markets. Third, the Application entirely ignores the vertical integration created by combining NextEra's upstream gas infrastructure with Dominion's gas-fired generation in PJM, despite this creating precisely the type of vertical relationship the Commission's framework was designed to scrutinize.

The Macan Affidavit acknowledges that "NextEra Energy is the only entity among the transacting parties that currently owns a share of any interstate pipeline" in Virginia, North Carolina, and South Carolina.¹⁷⁹ Specifically, NextEra holds a 36 percent ownership interest in MVP, which corresponds to 6.7 percent of total pipeline capacity into Virginia and 3.5 percent of total capacity into all three states.¹⁸⁰ The Application then dilutes the significance of NextEra's MVP ownership by measuring it against total pipeline capacity across all three states, rather than against capacity into Transco Zone 5—the very market the Macan Affidavit identifies as the

¹⁷⁷ See Supplemental Policy Statement Clarification at P 12.

¹⁷⁸ See Macan Aff. at 82-85.

¹⁷⁹ *Id.*, Ex. No. E-3, Vertical Market Power Analysis at 2.

¹⁸⁰ See Application at 28.

relevant geographic market for its own upstream concentration analysis.¹⁸¹ When measured against the relevant market, NextEra’s ownership stake carries materially greater competitive weight.

The Application also understates the depth of the Applicants’ existing ties to MVP. Dominion affiliate DESC has executed an agreement for 90,000 Dth/day on MVP,¹⁸² and Virginia Power Services Energy Corp., Inc. (VPSE) has contracted for 200,000 Dth/day on the planned MVP Boost expansion that it “intends to use . . . to meet the existing power generation needs of its affiliate, [VEPCO].”¹⁸³ On the NextEra side, the Commission’s 2017 certificate order identifies USG Properties Marcellus Holdings, LLC—“a subsidiary of NextEra Energy, Inc., and affiliate of Mountain Valley-owner US Marcellus Gas Infrastructure, LLC”—as holding 250,000 Dth/day of firm transportation capacity on MVP.¹⁸⁴ The MVP Index of Customers further confirms that NextEra Energy Marketing LLC serves as agent for WGL Midstream MVP LLC’s 200,000 Dth/day of firm transportation service contract on MVP, running through June 30, 2044.¹⁸⁵ This combination of substantial NextEra-side pipeline ownership and affiliated capacity positioning, with Dominion’s affiliated firm transportation subscriptions, is precisely the kind of upstream-downstream nexus the Commission’s vertical market power framework is designed to scrutinize.

¹⁸¹ Macan Aff., Ex No. E-3 at 6 (dismissing this ownership as immaterial because Applicants “are not the owners of the underlying interstate pipelines but rather the customers” and therefore “would not have ability to withhold capacity, have inside knowledge of pipeline operations, or impede market entry like a pipeline owner potentially could.”).

¹⁸² Macan Aff. at 86, n.104.

¹⁸³ Mountain Valley Pipeline, LLC, Abbreviated Application for Certificate of Public Convenience and Necessity (MVP Boost Project), Docket No. CP26-14-000, at 14 (filed Oct. 23, 2025).

¹⁸⁴ See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043, at P 10, n.14 (2017).

¹⁸⁵ Supplement to Joint Application, MVP_Index_of_Customers.csv (Jul. 17, 2026). See also EQT Midstream Customer Portal, https://customers.equitransmidstream.com/CustomerPortalvforcesite/index-of-customers?c_tspNumber=062498393 (last accessed Sept. 28, 2026 at 4:20pm).

The Application nevertheless dismisses this ownership as immaterial because Applicants “are not the owners of the underlying interstate pipelines but rather the customers” and therefore “would not have ability to withhold capacity, have inside knowledge of pipeline operations, or impede market entry like a pipeline owner potentially could.”¹⁸⁶ This characterization is incorrect and legally inadequate. The Macan Affidavit represents that “NextEra currently does not have any firm transportation rights on MVP,”¹⁸⁷ but Commission’s record finding that NextEra affiliate USG Properties Marcellus Holdings, LLC, holds 250,000 Dth per day of firm capacity directly contradicts this statement.¹⁸⁸ Use of the “customers not owners” framing applies, at most, to the narrow question of who *operates* the pipeline; it does not address NextEra’s 36 percent *equity ownership* in MVP, its affiliates’ substantial firm transportation positions, or the governance rights, information access, and direct financial interest in MVP’s revenues.

Under Order No. 642 and the Commission’s consistent line of precedent, transactions that “combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity’s ability or incentive to exercise vertical market power in wholesale electricity markets.”¹⁸⁹ The Transaction does not merely create the *ability* to exercise vertical market power—it enhances the *incentive* to do so. Dominion’s gas-fired generation in PJM competes directly with third-party generators for dispatch in the energy market and for capacity revenues. By raising rivals’ fuel costs or limiting their access to reliable gas supply, the resulting entity would improve the competitive position of

¹⁸⁶ Macan Aff., Ex. E-3 at 6.

¹⁸⁷ Macan Aff. at 86.

¹⁸⁸ See *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 at P 4, n.4, 10 (recognizing that USG is an affiliate of NextEra and that UGS retains 250,000 Dth per day of firm transportation capacity).

¹⁸⁹ *FirstEnergy Corp.*, 179 FERC ¶ 61,058, at P 34 (2022); see also *Clean Energy Future — Lordstown, LLC*, 188 FERC ¶ 61,137, at P 50 (2024); *NextEra Energy Transmission, LLC*, 174 FERC ¶ 61,215, at P 23 (2021).

its own generation fleet—an incentive made particularly acute by the rapid growth of data center load in Northern Virginia.

The Application’s reliance on the Commission’s open-access regime is therefore misplaced. While the Commission has recognized that open-access tariffs “reduce” the ability to exercise market power, it has never held that open-access regulation renders pipeline ownership categorically immaterial to the vertical market power analysis.¹⁹⁰ Order No. 697 establishes only a rebuttable presumption that ownership of facilities subject to open-access regulation does not raise vertical market power concerns.¹⁹¹ Here, specific circumstances warrant rebuttal: the resulting entity would simultaneously own 36 percent of MVP, NextEra-affiliated firm transportation positions of 450,000 Dth/day, and—through Dominion affiliates DESC and VPSE—firm transportation capacity of at least 290,000 Dth/day on the same pipeline.

Order No. 2004, which promulgated the Transmission and Gas Provider Standards of Conduct, partially in response to merger activity resulting in joint ownership of wholesale gas and electric businesses, expressed concern “that a Transmission Provider’s market power could be transferred to its affiliated businesses because the existing rules do not cover all affiliate relationships.”¹⁹² The Commission recognized that “an integrated entity could exercise market power in delivered natural gas service to raise costs of rival generators or inhibit entry of new

¹⁹⁰ See *KMC Thermo, LLC*, 195 FERC ¶ 61,082, at P 72 (2026).

¹⁹¹ *Mkt.-Based Rates for Wholesale Sales of Elec. Energy, Capacity & Ancillary Servs. by Pub. Utils.*, Order No. 697, 119 FERC ¶ 61,295, at P 21, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on reh’g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh’g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh’g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff’d sub nom. Mont. Consumer Couns. v. FERC*, 659 F.3d 910 (9th Cir. 2011).

¹⁹² *Standards of Conduct for Transmission Providers*, Order No. 2004, 105 FERC ¶ 61,248, at P 9 (2003), *order on reh’g*, Order No. 2004-A, 107 FERC ¶ 61,032, *order on reh’g*, Order No. 2004-B, 108 FERC ¶ 61,118, *order on reh’g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh’g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

generators into wholesale power markets”,¹⁹³ precisely the vertical market power concern at issue here. To address this risk, the Commission sought to disrupt the “interconnected”-ness between the “financial natural gas markets . . . with the natural gas physical markets and the transmission market,” including a utility’s “ability to operate its transmission system in a manner so as to give a trading affiliate an undue preference or to provide the trading affiliate with unduly preferential information.”¹⁹⁴ Yet the Application fails to analyze the interconnected nature of the resulting entity or whether the Standards of Conduct can sufficiently mitigate the anticompetitive risks inherent to the Transaction, nor does it offer any proposed conditions to address them.

VEPCO’s own 2025 IRP Update reveals that the company operates in a fully subscribed pipeline corridor where “pipeline constraints and associated restrictions to secondary flexibility rights are commonplace.”¹⁹⁵ It acknowledges that “[v]ulnerabilities in natural gas supply and transportation must be sufficiently evaluated from a planning and reliability perspective,” and that firm gas supply must be “scheduled in accordance with [FERC]-approved pipeline nomination cycles, flow rules, and then-effective pipeline constraints and restrictions.”¹⁹⁶ VEPCO recognizes that “natural gas generation will be a critical component to ensuring the ability to reliably meet generation demand” and confirms that “[t]he Company continues to work toward executing contracts to help secure fuel supply for its gas facilities.”¹⁹⁷ In this constrained environment—where the applicable pipeline corridor is fully subscribed—the combined entity’s substantial position creates the ability to preference its own generation during constraint periods

¹⁹³ Order No. 2004 at P 9.

¹⁹⁴ *Id.* P 48.

¹⁹⁵ Dominion 2025 IRP Update, App. 5B (Cost Assumptions) at 2.

¹⁹⁶ *Id.* at 1.

¹⁹⁷ *Id.*

or to leverage inside knowledge of pipeline operations and capacity availability to the disadvantage of rival generators.

Further, the Macan Affidavit's calculation of an upstream HHI of 1,645 for Transco Zone 5 does not account for the combined entity's post-Transaction position. As noted above, NextEra-affiliated entities hold a significant portion of MVP's system capacity. The Macan Affidavit fails to adequately attribute this to NextEra in its upstream market share calculations. If this affiliated capacity is aggregated with NextEra's ownership interest and Dominion's firm transportation subscriptions, the combined entity's effective upstream position is materially larger than the Macan Affidavit's HHI suggests. Moreover, even setting aside the upstream HHI, the *downstream* market is already highly concentrated: the Dominion Submarket exhibits an HHI above 3,000, with Dominion controlling a substantial market share.¹⁹⁸ Accordingly, the Commission should require Applicants to present a revised post-Transaction DPT that reflects the combined entity's total upstream position to determine whether it causes the upstream market to approach or exceed the 1,800 threshold that connotes a highly concentrated market.

More broadly, the Commission should require Applicants to supplement their vertical market power analysis and, as a condition of any approval, impose structural mitigation to address the vertical market power concerns identified above, including: (1) divestiture or capacity release of NextEra's ownership interest in MVP; (2) firewalls and affiliate transaction restrictions preventing the sharing of pipeline operational information between NextEra's gas infrastructure affiliates and Dominion's generation operations; and (3) reporting requirements documenting the resulting entity's natural gas procurement and transportation arrangements. At a minimum, the Commission should require Applicants to present a revised post-merger DPT

¹⁹⁸ See Macan Aff. at 51.

that accounts for the combined entity's aggregated upstream position to analyze the vertical competitive effects in the context of the highly concentrated downstream Dominion Submarket. Absent such conditions, the Transaction would create or enhance vertical market power in a manner inconsistent with the public interest.

D. The Transaction Threatens Wholesale Market Competition in ISO-NE.

Although the Applicants' Competitive Analysis Screen focuses primarily on traditional concentration metrics and suggests relatively modest concentration effects, those metrics do not fully consider competitive concerns arising from the Transaction in ISO-NE. In particular, the Competitive Analysis Screen does not recognize that the Transaction would combine, under common ownership, New England's only two nuclear power plants into a single company, resources that provide approximately one quarter of the region's electricity generation, receive substantial capacity credit, and play a critical role in regional grid reliability. The competitive significance of concentrating these resources is not reflected in Applicants' HHI calculations, which treat nuclear generation as part of a broader generation portfolio, rather than isolating and examining the effects of consolidating the region's entire nuclear fleet.

1. The Commission Must Account for the Transaction's Consolidation in Ownership of the Region's Only Two Nuclear Power Plants.

Following the retirement and ongoing decommissioning of the Vermont Yankee and Pilgrim nuclear power plants, the only two nuclear power plants remaining in New England are (1) NextEra's Seabrook, which has a single reactor with an installed capacity of 1,246 MW, and (2) Dominion's Millstone, which has two reactors with a combined installed capacity of 2,112 MW. Applicants' Competitive Analysis Screen does not consider the impacts of combining these two nuclear plants into a single entity or the outsized importance of these two plants to ISO-NE's wholesale energy markets. These two resources are not ordinary generating assets. They are

firm, baseload resources, and they are among New England’s most reliable generating units, as they operate nearly continuously—with capacity factors of close to 90 percent¹⁹⁹—and provide significant reliability and resource adequacy benefits to New England’s grid throughout the year, especially during the summer and winter. In fact, ISO-NE estimates that in 2025, the two nuclear plants produced 25 percent of the region’s electricity and 23 percent of its net energy for load, which includes electricity imported into the region.²⁰⁰

Seabrook and Millstone play an outsized role in supporting grid reliability during the winter, when gas-fired resources are not as reliable. The North American Electric Reliability Corporation (NERC) has noted that a standing concern for ISO-NE’s winter reliability is whether “there will be sufficient energy available to satisfy electricity demand during an extended cold spell given the existing resource mix, fuel delivery infrastructure, and expected fuel arrangements.”²⁰¹ NERC has also explained that “[a]bove-normal winter peak load combined with high generator outages could result in the need for operating mitigations (i.e., demand response and transfers)” and that “[p]rolonged extreme cold weather events that result in depletion of stored fuels can lead to resource shortfalls.”²⁰² In the winter, some gas-fueled plants may face fuel-delivery constraints, while oil-fueled plants may be limited by inventory constraints. Seabrook and Millstone are uniquely valuable because they do not depend on regular fuel deliveries, nor are they vulnerable to pipeline constraints or any other supply limitations, but rather store fuel on site and plan refueling outages far in advance. These resources can sustain operations and consistently provide significant firm capacity during

¹⁹⁹ See Form EIA-923, U.S. ENERGY INFORMATION ADMIN., <https://www.eia.gov/electricity/data/eia923/> (last visited Sept. 21, 2026).

²⁰⁰ *Resource Mix*, ISO-NE, <https://www.iso-ne.com/about/key-stats/resource-mix> (last visited Sept. 17, 2026).

²⁰¹ NERC, *2025-2026 Winter Reliability Assessment*, 22 (Nov. 2025), https://www.nerc.com/globalassets/our-work/assessments/nerc_wra_2025.pdf

²⁰² *Id.*

prolonged cold weather events when other resources may be under stress. For the 2026/2027 winter, capacity supply obligations for the two nuclear plants are 3,352 MW.²⁰³ Accordingly, during winter cold spells, the reliability contribution of Seabrook and Millstone extends beyond their nominal capacity because they provide fuel-secure generation that is largely insulated from the natural-gas supply constraints affecting much of the region’s gas-fueled plants.

Similarly, Seabrook and Millstone provide substantial summer reliability value to the ISO-NE grid. For the summer of 2026, NERC stated that New England faced elevated risks of electricity supply shortfalls during periods of more extreme summer conditions due to the “[p]otential for insufficient operating reserves” and increased reliance on non-firm imports.²⁰⁴ In 2026, ISO-NE’s Anticipated Reserve Margin of 14 percent only marginally exceeded the Reference Margin Level of 13 percent.²⁰⁵ In contrast to certain other resources, Millstone and Seabrook remain available throughout periods of peak demand, extreme heat, and evening ramping conditions. In a region that increasingly depends on non-imports and faces reliability risks under summer peak load conditions, Seabrook and Millstone can maintain continuous output through peak afternoon and evening demand periods and support resource adequacy using their 3,352 MW of capacity supply obligations.²⁰⁶ This helps maintain operating reserves, reduces the likelihood of resource shortages, and is especially important during extended summer heat waves when the grid is strained.

²⁰³ 2026 Capacity, Energy, Loads, and Transmission Report, ISO-NE (May 1, 2026), available at <https://www.iso-ne.com/system-planning/system-plans-studies/celt>.

²⁰⁴ NERC, 2026 Summer Reliability Assessment, at 2-3 (May 2026), https://www.nerc.com/globalassets/our-work/assessments/nerc_sra_2026.pdf.

²⁰⁵ *Id.* at 2.

²⁰⁶ 2026 Capacity, Energy, Loads, and Transmission Report, ISO-NE (May 1, 2026), available at <https://www.iso-ne.com/system-planning/system-plans-studies/celt>.

Given the contributions of these resources to the reliability of the ISO-NE grid and the proposed concentration of their ownership, the Commission should look beyond its typical Competitive Analysis Screen when evaluating the Transaction's competitive implications.

2. The Combined Entity Will Possess Several Levers that Allow It to Exert Market Power in ISO-NE's Wholesale Energy Markets.

The resulting entity will own not only the region's only nuclear power plants, but also a broad portfolio of generation assets across New England, including solar, wind, battery storage, and fossil fuel generation assets.²⁰⁷ According to the Applicants, in 2025, Dominion and NextEra's combined sales from these assets accounted for approximately 21.1 percent of electricity consumed in New England.²⁰⁸ Ownership of more than one-fifth of regional energy sales represents a substantial market presence even where traditional HHI concentration screens are not exceeded. This figure is particularly significant because the combined entity's portfolio will include both marginal and inframarginal resources capable of affecting wholesale market outcomes.

The portfolio of assets owned by the resulting entity could enable it to raise ISO-NE's wholesale market prices, either through physical or economic withholding. Physical withholding refers to a market seller "not offering to sell or schedule the output of or services provided by a resource capable of serving a market when it is economic to do so."²⁰⁹ In contrast, economic withholding refers to a market seller "submitting [b]ids for an [e]lectric [f]acility that are unjustifiably high so that (i) the [e]lectric [f]acility is not or will not be dispatched or scheduled, or (ii) the [b]ids will set the market clearing price."²¹⁰

²⁰⁷ See Application, Ex. B-1; Application, Ex. B-2.

²⁰⁸ Macan Aff. at 13, Table 2.

²⁰⁹ Dave Naughton, *Current Market Rules on Physical Withholding*, ISO-NE, at 1 (Nov. 30, 2026), https://www.iso-ne.com/static-assets/documents/2022/11/a06_mc_2022_12_06_08_imm_memo.pdf.

²¹⁰ *New York Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,111, at P 2 (2016).

Here, the Transaction would increase the resulting entity's incentives and ability to benefit from economic or physical withholding of certain assets. While the risk that the combined company withholds its nuclear assets may be low, there is a risk that it could withhold its other assets, particularly its fossil fuel assets that frequently operate at the margin and thus can set wholesale energy prices. For instance, if the combined entity were to economically or physically withhold its fossil fuel assets, it could result in a higher market clearing price, which could be monetized across the resulting entity's broader generation fleets due to the company earning a higher price for its remaining generation. The Seabrook and Millstone nuclear plants would be particularly significant beneficiaries of such withholding because they operate almost continuously, produce large volumes of energy, have relatively low marginal costs, and receive high capacity credit in ISO-NE's capacity markets. Thus, by withholding marginal fossil fuel assets and raising wholesale energy prices, the two nuclear plants could realize significant gains. The Commission expressed concern over the potential for merged entities to engage in this withholding strategy in the Supplemental Policy Statement.²¹¹

Further, because the combined entity would likely be a pivotal supplier in the ISO-NE capacity market, the Transaction may increase incentives for the resulting entity to exert market power and engage in withholding strategies. Order No. 697, the Commission's final rule on market-based rates, explained that a pivotal supplier analysis "examines whether the market can be met absent the seller during peak times" and "focuses on the seller's ability to exercise market power unilaterally."²¹² In other words, a "seller is pivotal if demand cannot be met without some contribution of supply by the seller or its affiliates."²¹³ Although the Commission has explained

²¹¹ See Supplemental Policy Statement at P 60.

²¹² Order No. 697, 119 FERC ¶ 61,295 at P 35.

²¹³ *Id.*

that pivotal supplier analyses are not typically part of its standard review in section 203 cases, the Commission considers them “informative,”²¹⁴ and the Commission may consider such analyses when a Competitive Analysis Screen alone does not adequately demonstrate that a transaction will not adversely affect competition.²¹⁵

The Applicants’ Competitive Analysis Screen evaluated the effects of the Transaction on ISO-NE’s capacity market, concluding that post-Transaction, the combined market share for ISO-NE’s qualified capacity would come to 14.8 percent, *i.e.*, 4,138 MW out of a total ISO-NE market capacity of 27,930 MW.²¹⁶ Using the Applicants’ reported qualified-capacity figures, removal of the resulting entity’s approximately 4,138 MW of qualified capacity would leave roughly 23,792 MW of residual supply. The Applicants have not demonstrated whether that residual supply could sufficiently meet ISO-NE’s forecasted peak demand during critical reliability periods. However, because ISO-NE’s gross peak summer load reached 26,834 MW in 2025,²¹⁷ the remaining supply would not likely be sufficient to satisfy demand during peak summer conditions.²¹⁸ This demonstrates that the combined entity would likely be a “pivotal supplier.” As a result, withholding concerns are heightened because, if New England load cannot be served without some contribution from the resulting entity’s resources, reductions in available supply could materially increase wholesale energy and capacity prices, thereby increasing its ability to benefit from such conduct. Because the traditional Competitive Analysis Screen does

²¹⁴ *Exelon Corp. Pub. Serv. Enter. Corp., Inc.*, 112 FERC ¶ 61,011, at P 177 (2005).

²¹⁵ *Atlas Power Fin., LLC Dynegy Inc. Energy Cap. Partners III, LLC GDF Suez Energy N. Am., Inc.*, 157 FERC ¶ 61,237, at P 54, n.59 (2016). The Commission has issued a notice of inquiry requesting comment on, *inter alia*, whether a pivotal supplier screen should be added to the Commission’s review of applications under section 203 of the FPA. See 2016 Notice of Inquiry at P 12.

²¹⁶ Macan Aff. at 61, Table 21.

²¹⁷ *2026 Capacity, Energy, Loads, and Transmission Report*, ISO-NE (May 1, 2026), available at <https://www.iso-ne.com/system-planning/system-plans-studies/celt>.

²¹⁸ Under this analysis, the resulting residual index of 0.89 indicates that residual supply may be insufficient to satisfy peak demand without participation from the merged company’s resources.

not capture this risk, the Commission should conduct a pivotal supplier analysis to assess whether the Transaction would create or enhance market power.

E. The Transaction will Stymie Prospects for Competition Expansion in the Southeast and Threaten the Region’s Modest Competitive Gains.

The Application affords comparatively little attention to the non-RTO Southeast. In fact, the Application denies the need for any Commission inquiry into the Transaction’s effect on competition in the Southeast “because Applicants control no overlapping, uncommitted generation in the [Southeast] Markets, and the extent of Applicants’ overlapping power sales activity in these markets is *de minimis* or non-existent.”²¹⁹ In so doing, the Application ignores the more qualitative impacts the Transaction will have on competition in the region. At precisely the moment the region’s ratepayers could most benefit from expanding competition to meet surging load growth, the Transaction threatens to stifle further progress toward this end and reverse the modest gains made in recent years.

Unlike the RTOs affected by the Transaction, the Southeast’s market structure has not meaningfully changed since the advent of open access. Early attempts to create RTOs in the region fizzled,²²⁰ leaving an energy landscape dominated by vertically integrated utilities like FPL and DESC. These utilities primarily serve their native retail load, as well as cooperative and municipal wholesale customers. They also provide open access transmission service pursuant to Order No. 888 and subsequent Commission rulemakings. While this utility model has remained largely static for decades, it has been tested in recent years by extreme load growth projections, caused primarily by data centers. Grid Strategies’ National Load Growth Report for 2025 listed

²¹⁹ Application at 17.

²²⁰ See *supra* section III.B.3; Kate Konschnik, *The Southern Grids: 2000-2006*, NICHOLAS INSTITUTE FOR ENVIRONMENTAL POLICY SOLUTIONS (2019), https://nicholasinstitute.duke.edu/sites/default/files/publications/The_Southern_Grids_2000-2006_1.pdf.

Georgia Power Company, Duke Energy Carolinas, and FPL among the ten planning areas forecasting the largest growth in peak demand by 2030.²²¹ The planning areas whose projected load growth exceeds these Southeast utilities' projections are largely comprised of much larger regional entities like PJM and MISO.²²²

In recent years, the region has explored incremental steps toward expanding competition. In early 2021, most of the utilities in the region filed a proposal with the Commission to create SEEM, a multi-lateral matching platform that enabled increased bilateral sales across the region and effectively eliminated pancaked transmission rates for SEEM exchanges.²²³ SEEM began operations in November 2022 and has expanded its utility membership since its founding.²²⁴ Around the same time, the South Carolina General Assembly enacted Act 187, which formed the South Carolina Electricity Market Reform Measures Study Committee to consider the market reforms in the state.²²⁵ This effort arose in response to the abandonment of the V.C. Summer nuclear plant expansion, discussed above, which resulted in approximately \$9 billion in stranded investment to be recovered from ratepayers.²²⁶ The resulting report outlined the possible spectrum of market investments and their benefits,²²⁷ which led to the introduction of legislation that would have created an energy imbalance market (EIM) in the state.²²⁸ This legislation has not yet passed. Finally, DESC and the South Carolina Public Service Authority (Santee Cooper),

²²¹ John D. Wilson et al., *Power Demand Forecasts Revised Up for Third Year Running, Led by Data Centers*, GRID STRATEGIES, 22 (Nov. 2025), <https://gridstrategiesllc.com/wp-content/uploads/Grid-Strategies-National-Load-Growth-Report-2025.pdf>.

²²² *See id.*

²²³ *See Duke Energy Progress, LLC*, 177 FERC ¶ 61,080, at P 2 (2021).

²²⁴ *See* Potomac Economics, *2023 Annual Audit Report on the Southeast Energy Exchange Market*, SOUTHEAST ENERGY EXCHANGE MARKET, 2 (May 28, 2024), <https://southeastenergymarket.com/wp-content/uploads/SEEM-Audit-Report-Annual-Rpt-2023FINAL.pdf>.

²²⁵ *See* SC Brattle Report at 1.

²²⁶ *See id.* at 11, n.14.

²²⁷ *See id.* at 82.

²²⁸ *See* Josiah Neeley & Chris Villarreal, *A Move Toward Electricity Competition in South Carolina*, R STREET (Jan. 31, 2024), <https://www.rstreet.org/commentary/a-move-toward-electricity-competition-in-south-carolina/>.

which currently conduct regional transmission planning pursuant to Order No. 1000 through the South Carolina Regional Transmission Planning process (SCRTP), recently announced that they will join the much larger regional transmission planning collective, the Southeastern Regional Transmission Planning process (SERTP), as part of their compliance obligations under Order No. 1920.²²⁹ Joining a more expansive regional planning process that includes peer utilities Southern Company, Duke Energy, and the Tennessee Valley Authority, among others, could expand regional connectivity and enable more inter-system transactions.

To be sure, each of these steps toward greater market integration is modest, but given the extreme load growth projections for the region and a wealth of studies showing that expanded market competition would create significant savings for the Southeast,²³⁰ it is in ratepayers' best interest that this progression continue and even accelerate. If the Transaction is consummated, additional progress toward expanded competition becomes much less likely, and the minimal gains achieved to this point would be in jeopardy. NextEra's anticompetitive track record, described in some detail above,²³¹ makes these outcomes much more likely. Other examples include NextEra's multifaceted campaign to block the New England Clean Energy Connect transmission line project (NECEC), which sought to import hydropower from Canada that would compete with Seabrook and other NextEra-owned units' output in ISO-NE markets.²³² This

²²⁹ See *Dominion SC and Santee Cooper to Join SERTP*, SOUTHEASTERN REGIONAL TRANSMISSION PLANNING, <https://www.southeasternrtp.com/>.

²³⁰ See, e.g., SC Brattle Report at 82 (showing regional savings of \$322 million if South Carolina utilities joined PJM, \$228 million if a Southeast RTO were formed, and \$99 million if a Southeast EIM were formed); Eric Gimon et al., *Summary Report: Economic and Clean Energy Benefits of Establishing a Southeast U.S. Competitive Wholesale Electricity Market*, ENERGY INNOVATION POL'Y & TECH. LLC, 1, 19 (Aug. 2020), https://energyinnovation.org/wp-content/uploads/2020/08/Economic-And-Clean-Energy-Benefits-Of-Establishing-A-Southeast-U.S.-Competitive-Wholesale-Electricity-Market_AUG_2020.pdf (finding that a Southeast RTO would create cumulative savings of \$384 billion by 2040).

²³¹ See *supra* section III.B.3.

²³² See Shelby Green, Matt Kasper & David Pomerantz, *NextEra's acquisition of Dominion would bring history of political control, rate increases to Virginia, Carolinas*, ENERGY & POL'Y INST. (May 20, 2026), <https://energyandpolicy.org/nextera-dominion-merger/nextera's-acquisition-of-Dominion-would-bring-history-of-political-control-rate-increases-to-Virginia-Carolinas> - Energy and Policy Institute ("Outside of Florida, NextEra

resulted in the Commission granting a complaint brought against NextEra and directing NextEra to upgrade a circuit breaker that would enable the NECEC's interconnection.²³³ As it relates to the Southeast, NextEra's subsidiary, FPL, remains the only major utility in the region that has not joined SEEM. While not original members, each of the other Florida utilities has joined.²³⁴ Once it takes control of DESC, NextEra will have the ability to pull DESC out of SEEM, which could hinder the market's future operations and any prospects of expanded functionality. NextEra could also retract DESC's planned membership in SERTP and instead continue to plan within SCRTP, the smallest Order No. 1000 planning region, virtually ensuring the continued investment in costly local transmission upgrades.²³⁵

Southeast ratepayers cannot afford to forgo the benefits of expanded market competition as their utilities set out to serve unprecedented load growth. The Transaction would actively harm the prospects for expanded competition in the region. Accordingly, in order to protect competition and ratepayers, the Commission should condition approval of the Transaction on FPL and DESC developing or joining an independent wholesale market construct. In the alternative, the Commission should, at the very least, require firm assurances that DESC will not leave SEEM and will join SERTP.

F. The Transaction Will Reduce Competition for Competitive Transmission Development in PJM.

The Transaction would substantially reduce competition in PJM transmission development by consolidating two of the region's most active competitive developers at a

secretly spent \$20 million in 2021 on a political campaign to block a 145-mile transmission line that would have brought carbon-free hydropower electricity from Quebec to New England, making it by far the largest funder of 'Mainers for Local Power,' the group that fought the line.'").

²³³ See *NextEra Energy Resources, LLC*, 182 FERC ¶ 61,044 (2023).

²³⁴ See *supra* note 140.

²³⁵ See *generally Bldg. for the Future Through Elec. Reg'l Transmission Plan. & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, at P 104, *order on reh'g & clarification*, Order No. 1920-A, 189 FERC ¶ 61,126 (2024), *order on reh'g & clarification*, Order No. 1920-B, 191 FERC ¶ 61,026 (2025).

moment when PJM faces unprecedented transmission needs driven by data-center load growth. The Transaction eliminates a direct competitor from an already concentrated market, clearing the field for the resulting entity to win competitive Baseline project bids while simultaneously tapping into a vast pipeline of incumbent-controlled Supplemental projects insulated from head-to-head competition. The combination would also confer durable informational and financial advantages on the resulting entity that existing Commission safeguards—including Order No. 1000’s competition reforms, the standards of conduct, and affiliate restrictions—were not designed to mitigate. Applicants’ generation-focused competitive screen fails to address these transmission-development harms. Section 203 requires the Commission to find that a proposed transaction will not adversely affect competition before approval; without additional analysis or meaningful mitigation of the harms to competitive transmission development, it cannot make that finding.

1. The Transaction eliminates a competitor from a small and strategically important pool.

Applicants’ Competitive Analysis Screen provides little insight into the competitive harm the Transaction poses to transmission development in PJM. The Transaction would consolidate two of the most active participants in PJM’s competitive transmission development process precisely when PJM requires large, competitively bid Baseline reliability RTEP projects to address extraordinary load growth throughout PJM and especially in the DOM Zone. The Transaction would eliminate a direct competitor from an already concentrated market, which is exactly the type of structural change the Commission has consistently recognized as material to competition.²³⁶

²³⁶ See *Bluegrass Generation Co., L.L.C.*, 139 FERC ¶ 61,094, at P 29 (2012).

Driven by data-center load growth concentrated in the DOM Zone, PJM's transmission needs have accelerated sharply. Dominion forecasts that DOM Zone demand will more than double by 2045—the highest projected load growth in all of PJM.²³⁷ This surge has translated directly into expanded competitive transmission-development opportunities that both Dominion and NextEra have actively pursued.

Dominion already owns approximately 6,800 miles of transmission lines, and through Dominion High Voltage Holdings, holds a 30 percent interest in Valley Link Transmission Company (Valley Link), an entity established specifically to compete for projects under PJM's RTEP process.²³⁸ Valley Link's portfolio alone comprises 417 miles of high-voltage transmission facilities with an estimated cost of \$3 billion.²³⁹ Dominion was also selected to develop multiple high-voltage projects in PJM's 2024 RTEP Open Window No. 1, which awarded nearly 100 transmission projects.²⁴⁰ Most recently, in PJM's 2025 Open Window No. 1, Dominion was selected to develop transmission facilities worth nearly \$5 billion, including a 185-mile high-voltage direct current line and a new 500 kV line.²⁴¹

NextEra is likewise a dominant competitive developer in PJM. Through NEET and its subsidiaries—including NEET MidAtlantic and Kammer Juniata Transmission—NextEra already owns 345 kV lines in PJM and has been selected to develop two landmark projects: the MidAtlantic Resiliency Link (107.5 miles of 500 kV transmission) and the Kammer-Juniata project (222 miles of 765 kV transmission across Pennsylvania and West Virginia, co-developed

²³⁷ See Dominion 2025 IRP Update at 9.

²³⁸ See Application, Ex. B-2.

²³⁹ See *id.*

²⁴⁰ See Dominion 2025 IRP Update at 26.

²⁴¹ PJM Staff, *Transmission Expansion Advisory Committee (TEAC) Recommendations to the PJM Board: PJM Staff White Paper*, PJM, 50-52 (Feb. 2026), <https://www.pjm.com/-/media/DotCom/committees-groups/committees/teac/2026/20260203/20260203-pjm-board-whitepaper-february-2026.pdf>.

with Exelon).²⁴² Beyond Dominion and NextEra, only a relatively small number of developers typically compete for PJM transmission projects—namely AEP, FirstEnergy, Exelon, PPL, and PSE&G. Removing one of these limited competitors will materially diminish competitive pressure in PJM transmission solicitations.

The Commission and reviewing courts have repeatedly recognized that transmission-development competition produces cost-saving benefits. Order No. 1000 removed federal rights of first refusal (ROFR) from Commission-approved tariffs for certain new regional transmission facilities, expressly to facilitate competitive development and its attendant ratepayer benefits.²⁴³ And Order No. 1920 maintained that standard, allowing only a limited ROFR for right-sized replacement projects.²⁴⁴ The Transaction’s consolidation of two of PJM’s most active competitive developers undermines that policy by limiting competition.

The Commission’s Competitive Analysis Screen does not capture this harm. Consistent with the Commission’s longstanding practice of looking beyond screen results where competitive concerns are evident,²⁴⁵ the Commission must independently evaluate whether the Transaction will reduce competition for transmission development.

²⁴² See Application at 4-6. See also *Kammer Juniata Transmission, LLC*, 196 FERC ¶ 61,015 (2026).

²⁴³ *Transmission Planning & Cost Allocation by Transmission Owning & Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, at P 7 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014). See also *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 64–70 (D.C. Cir. 2014); *MISO Transmission Owners v. FERC*, 819 F.3d 329, 331–34 (7th Cir. 2016) (recognizing that a right of first refusal can protect incumbents from competition and thereby risk higher transmission rates to consumers).

²⁴⁴ See Order No. 1920, 187 FERC ¶ 61,068 at PP 1702-1706.

²⁴⁵ See e.g., *Louisville Gas & Electric Co. v. FERC*, 149 F.4th 693, 708-09 (D.C. Cir. 2025) (reaffirming that the Commission’s public interest evaluation does not require a balancing of the effect on competition, effort on rates, and effect on regulation, but a consideration of those factors, in addition to “other factors”).

2. *The Transaction would create a transmission-development “juggernaut” able to pursue competitive Baseline opportunities while benefitting from a large pipeline of noncompetitive Supplemental projects.*

The combined entity would unite NextEra’s nation-leading competitive transmission platform with Dominion’s entrenched incumbent position in the DOM Zone, including its privileged local planning role and a fast-growing, rate-regulated, captive customer base. In so doing, the Transaction would create a transmission-development juggernaut capable of simultaneously competing for lucrative PJM RTEP project solicitations while harvesting a vast pipeline of reliability, delivery-point, end-of-life, and load-serving projects insulated from meaningful competitive pressure. In other words, the combined entity could bankroll more risky competitive transmission development ventures through its safe and largely unscrutinized reservoir of rate-based Supplemental projects.

Applicants cannot deflect this concern by invoking Order No. 1000’s competition requirements, which apply only to certain facilities selected in a regional transmission plan for purposes of cost allocation.²⁴⁶ They do not expose to competition the full universe of local, Supplemental, incumbent-designated projects that PJM Transmission Owners like VEPCO routinely develop outside that framework.²⁴⁷

Current high-growth market conditions that demand rapid transmission expansion amplify these concerns. Dominion has acknowledged that its system must accommodate surging demand growth, data-center interconnections, reliability-violation remediation, renewable integration, and PJM Open Window solicitations.²⁴⁸ Indeed, its IRP project list is voluminous, disclosing several hundred-million-dollar and billion-dollar transmission investments with in-

²⁴⁶ See Order No. 1000, 136 FERC ¶ 61,051 at P 313.

²⁴⁷ See *id.* P 318.

²⁴⁸ See Dominion 2025 IRP Update at 43.

service dates spanning 2025 through 2033.²⁴⁹ These plans demonstrate the uniquely privileged position the combined entity would occupy: the means to bid aggressively for regional Baseline projects while exploiting Dominion’s incumbent position, preserving a massive pipeline of lucrative Supplemental-style projects insulated from competitive pressure, and recovering costs from captive customers. Congress intended section 203 to address exactly these types of competition and cross-subsidization concerns, which demands that the Commission evaluate and as necessary, mitigate, their potential for harm before it can entertain any possible approval.

3. The Transaction creates an information asymmetry that would violate the Commission’s Standard of Conduct

The Transaction would also confer an anticompetitive informational advantage that existing Commission safeguards cannot cure. As the DOM Zone transmission owner, Dominion possesses privileged access to load forecasts, data-center interconnection requests, import constraints, and project-level transmission needs—intelligence that, when combined with NEER’s 45.6 GW generation portfolio and dominant competitive-development platform, would enable the resulting entity to anticipate where PJM transmission needs will emerge and structure winning bids accordingly.

The Commission’s Standards of Conduct for Transmission Providers²⁵⁰ and Affiliate Restrictions,²⁵¹ address information flows between transmission-function and marketing-function employees in order to protect captive ratepayers from affiliate abuse. But they do not reach the intelligence matter that is at issue here, namely the load-growth trends, RTEP pipeline visibility, local permitting and rights-of-way knowledge, cost-estimation advantages, and enterprise-wide capital allocation decisions that collectively confer competitive advantages in transmission-

²⁴⁹ See *id.* at 50.

²⁵⁰ 18 C.F.R. §§ 358.2, 358.5-.8.

²⁵¹ 18 C.F.R. § 35.39(c)-(d).

development solicitations. Nevertheless, the mechanisms of these prophylactic rules demonstrate the risk that the Transaction poses to fair and competitive transmission service.

Under the so-called “Independent Functioning Rule”, “a transmission provider’s transmission function employees must function independently of its marketing function employees”, and it is “prohibited from permitting its marketing function employees to . . . [c]onduct transmission functions; or [h]ave access to the system control center or similar facilities used for transmission operations that differs in any way from the access available to other transmission customers.”²⁵² A transmission provider is also “prohibited from permitting its transmission function employees to conduct marketing functions.”²⁵³

Order No. 2004, which established the Standards of Conduct, including the Independent Functioning Rule, did so “[a]s a result of an increase in merger activities” that effected the “convergence of the gas and electric industries.”²⁵⁴ The Commission expressed concern that “[t]hese industry changes mean[t] that interstate natural gas pipelines and their affiliates not only deal in gas, but also in power, much of which is generated using natural gas”²⁵⁵ because “Transmission Providers continue to have economic incentives to show undue preferences toward their Energy Affiliates.”²⁵⁶ Accordingly, the Commission adopted these rules “to close loopholes in existing rules and to give Transmission Providers specific guidance on how to eliminate undue discrimination and undue preferences in the provision of interstate transmission services, consistent with the directions of the NGA and FPA.”²⁵⁷ The Commission found that the “[p]referential access to information” regarding a constraint “could provide a significant benefit

²⁵² 18 C.F.R. § 358.5(b).

²⁵³ *Id.*

²⁵⁴ Order No. 2004 at P 8.

²⁵⁵ *Id.* P 8.

²⁵⁶ *Id.* P 15.

²⁵⁷ *Id.* P 15.

to an affiliate engaged in speculative trading of the commodity and cause the price of the commodity to rise to the detriment of the market, even if the trader is not using the affiliated Transmission Provider.”²⁵⁸

Here, where both Applicants boast numerous affiliates, including those engaged in gas transmission, electric generation, and energy marketing, the combination of their corporate structures could result in precisely these types of anticompetitive information risks. For this reason, the Commission must analyze the Transaction’s potential to create and entrench informational asymmetries that will prejudice competitors and harm customers.

G. The Commission Must Assess the Transaction’s Effects on Retail Competition in Virginia.

The Commission has acknowledged that the public interest standard under section 203 encompasses retail competition.²⁵⁹ The Commission has, however, limited its review of retail competition under section 203 to circumstances in which “a state lacks authority under state law and asks [FERC] to” consider retail competition.²⁶⁰ The Transaction, however, raises significant concerns for retail competition that the Commission must consider to ensure consistency with the public interest without state prompting.

Although VEPCO has a state-granted retail franchise in Virginia, the utility competes with other service providers to serve large loads in limited circumstances, which already creates a challenging environment for competition. With limited exceptions, the Virginia State Corporation Commission (Virginia SCC) has granted VEPCO a monopoly over retail service in its service territory.²⁶¹ This entitles VEPCO to sell power at cost-of-service rates to captive

²⁵⁸ *Id.* P 46. *See also* 18 CFR § 358.6 (“No Conduit Rule”).

²⁵⁹ *See* Merger Policy Statement at 68605.

²⁶⁰ Order No. 642 at 70991-70992; Merger Policy Statement at 68605.

²⁶¹ Va. Code § 56-265.3 (“No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service.”); Va. Code § 56-265.4 (“[N]o certificate shall be granted to an applicant proposing to

customers who are prohibited by statute from shopping for electricity elsewhere. However, Virginia law authorizes limited retail choice for qualifying large loads, which may purchase their electricity from competitive service providers.²⁶² As a franchised utility with all the benefits of that status that also competes with competitive service providers to serve large load demand, VEPCO enjoys certain unearned advantages that give it a leg up over its competitors, such as:

- The ability to raise capital for its competitive activities at a cost below its competitors' costs, because providers of capital are likely to view the utility's exclusive franchise as a balance-sheet strengthener and its captive-customer base as a risk-reducer;
- The ability to offer favorable non-price terms (such as shorter contract durations), because its captive customers will be available to absorb capacity costs not recovered when the contract ends;
- Immediately available supply, offered at prices based on the utility's average cost rather than its marginal cost, because (a) the utility's franchise responsibility includes an obligation to acquire resources for reasonably forecasted load before that load disappears, and (b) captive customers are symmetrically obligated to bear that reasonable anticipatory cost if the load does not appear; and
- Ready access to captive-customer-funded resources (e.g., legal services, accounting, headquarters space, employee expertise and time, and human resource staff) with that access potentially available at cost rather than at market prices.²⁶³

This dual role enables VEPCO to exploit its unearned advantage as a franchised utility to undermine competition to serve large loads.

VEPCO's GS-5 rate class for large loads increases its unearned advantages, further undermining retail competition in the state. Under GS-5, all large loads in VEPCO's service

operate in the territory of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience[.]").

²⁶² Va. Code § 56-577.

²⁶³ Direct Testimony of Scott Hempling, Va. State Corp. Comm'n, Case No. PUR-2025-00058, at 20:17-21:15 (filed July 16, 2025), <https://www.scc.virginia.gov/docketsearch/DOCS/86sj011.PDF>.

territory must pay a generation demand charge to VEPCO for 60 percent of the large load's contracted demand.²⁶⁴ This includes large loads taking service from competitive service providers.²⁶⁵ Because any such large load receives its full requirements from the competitive service provider, the large load does not contribute to the generation that VEPCO must procure to serve its native load. VEPCO nevertheless proposed this universal demand charge on the speculative possibility that it might need to serve a large load that stops taking service from a competitive service provider and seeks service from VEPCO in the future.²⁶⁶ As a result, large loads that exercise retail choice in Virginia must pay for 160 percent of the generation demand that they create: 100 percent of their contracted demand to their competitive service provider and an additional 60 percent of their contracted demand to VEPCO. This naturally deters large loads from exercising retail choice, undermining competition in the state.

The Transaction would exacerbate the deficiencies in Virginia's retail service market by eliminating NextEra as a competitor to VEPCO for serving large load demand. As discussed above, NextEra has already outlined plans to develop generation to serve large loads directly.²⁶⁷ It has identified a 60 GW Large Load Pipeline that it plans to serve through its competitive development platform, NEER.²⁶⁸ Post-Transaction, NEER would presumably not compete with its affiliate VEPCO by seeking to serve large loads as a competitive service provider in Virginia. As a result, the Transaction would eliminate one of the most likely competitors to VEPCO for retail service, further dampening retail competition in the state.

²⁶⁴ Final Order, Va. State Corp. Comm'n, Case No. PUR-2025-00058, at 25 (Nov. 25, 2025), <https://www.scc.virginia.gov/docketsearch/DOCS/89g601!.PDF>.

²⁶⁵ *Id.*

²⁶⁶ Direct Testimony of Stan Blackwell, Va. State Corp. Comm'n, Case No. PUR-2025-00058, at 19:2-5 (Mar. 31, 2025), <https://www.scc.virginia.gov/docketsearch/DOCS/84sc01!.PDF>.

²⁶⁷ *See supra* section III.B.1.

²⁶⁸ *See* Transaction Presentation at 34.

VEPCO's ability to exploit its franchise to undermine competition in this way underscores the limits of the Commission's traditional section 203 analysis. Under the Merger Policy Statement, the Commission limits its competition inquiry to the effect of the proposed transaction.²⁶⁹ As such, the Commission does not evaluate the pre-transaction market conditions or how those conditions may enable a combined entity to exercise market power.²⁷⁰ The Commission does not consider the possibility that, in markets where competition exists but is ineffective, the post-transaction entity can gain market dominance without anticompetitive conduct. Here, the proposed Transaction would eliminate competition between NextEra and VEPCO to serve large loads in Virginia and enable the combined entity to exploit existing competition-restraining conditions, such as VEPCO's dual monopoly-competitor status and GS-5's universal demand charge. In other words, the resulting entity would become market dominant without necessarily engaging in anticompetitive conduct, solely due to structural flaws in the state's competition regime. Failure to evaluate these conditions before allowing the Transaction to proceed would violate the Commission's mandate to protect the public interest and ratepayers in Virginia.

IV. EFFECT ON RATES

When reviewing a proposed transaction's effect on rates, the Commission asks whether the transaction will have any effect on the rates, terms, or conditions of service provided to wholesale and transmission customers, and whether there are sufficient measures in place to

²⁶⁹ See Merger Policy Statement at 68605.

²⁷⁰ Scott Hempling, *Inconsistent with the Public Interest: FERC's Three Decades of Deference to Electricity Consolidation*, 39 ENERGY L. J. 233, 239 (2018) ("The FERC's merger decisions require only 'no harm' to pre-merger competition—even if that pre-merger competition is ineffective competition."); *id.* at 282 ("By asking only whether the proposed merger reduces the competitiveness of the pre-merger market, the Commission fails to satisfy its own 1996 purpose: advancing 'the competitive goals' of EPCA 1992. The goal of EPCA 1992 was not 'don't harm the status quo'; the goal was 'make markets competitive,' meaning, necessarily effectively competitive.").

protect customers from adverse impacts.²⁷¹ The Applicants have not presented sufficient information for the Commission to make this finding. Nevertheless, the Transaction will have significant effects on rates that flow from the deleterious impacts on competition explained above. Applicants' proposed means of mitigating these harms are not sufficient to protect ratepayers from these effects.

A. The Applicants have Failed to Provide Adequate Information to Demonstrate that the Transaction will Not Affect Rates.

Applicants claim the Transaction will have no adverse effect on rates because they commit, for a period of five years, not to include transaction related costs “in the transmission revenue requirements or wholesale power cost-based rates, except to the extent they can demonstrate in a separate section 205 proceeding that Transaction-related savings are equal to or in excess of the Transaction-related costs included in a rate filing.”²⁷² However, a commitment to withhold costs related to the proposed Transaction from rates does not adequately substitute for identifying the Transaction's effects on rates and demonstrating that such effects are not adverse. The Commission has acknowledged that if a related rate increase is expected to appear in subsequent Commission filings, “applicants typically disclose and discuss that effect in their section 203 applications and attempt to demonstrate that an adverse effect on rates will be mitigated or offset by benefits.”²⁷³ A failure to disclose expected effects on rates in an applicant's section 203 application will bar recovery in subsequent section 205 filings, regardless of any later demonstration of offsetting benefits of the proposed transaction.²⁷⁴ The Commission distinguished the need to identify effects on rates outside of transaction-related costs in the *Hold*

²⁷¹ See Merger Policy Statement at 68603.

²⁷² Application at 31.

²⁷³ *Liberty Utils. Co.*, 181 FERC ¶ 61,212, at P 44 (2022).

²⁷⁴ See *Emera Me.*, 155 FERC ¶ 61,233 (2016), *order denying reh'g and accepting compliance filing*, 158 FERC ¶ 61,012 (2017) (denying section 205 filing to include rate changes from capital restructuring resulting from prior merger because the effect on rates was not disclosed in the initial section 203 application).

Harmless Policy Statement, emphasizing that an increase in rates that results from a transaction is not the equivalent of a transaction-related cost protected by a hold harmless commitment.²⁷⁵

Although the Commission has accepted hold harmless commitments as one of many potential ratepayer protection mechanisms,²⁷⁶ Applicants fail to provide the required specificity for a hold harmless commitment in their Application, which must include “a description of how they define, designate, accrue, and allocate transaction-related costs.”²⁷⁷ Absent the required accounting details, interested parties will be limited in their ability to distinguish recoverable costs from non-recoverable Transaction-related costs in subsequent section 205 filings and formula rate entries. The Application’s lack of criteria for identifying Transaction-related costs also inhibits the Commission’s ability to effectively scrutinize future rate filings, and undermines Applicants’ claim that the Transaction will not adversely affect jurisdictional rates because the Federal Power Act “allows the Commission to exclude costs from rates. . .”²⁷⁸ Further, the Commission has emphasized that its analysis of rate impacts under section 203 is distinct from the analysis to determine whether a rate is just and reasonable under section 205.²⁷⁹

Furthermore, although the Commission has approved transactions with similar hold harmless commitments to those Applicants make here, Applicants provide too little information to ensure that their commitment is anything more than a short-term payoff to win Commission support. As noted above, Applicants have not provided any criteria that they plan to use “to

²⁷⁵ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 47 (2016) (declining to “consider any rate increase that results from a transaction to be a transaction related cost subject to an applicant’s hold harmless commitment.”) (Hold Harmless Policy Statement).

²⁷⁶ Hold Harmless Policy Statement at P 95 (“Our intention is to make it clear that, under the Merger Policy Statement, a hold harmless commitment is just one of several ratepayer protection mechanisms that may be appropriate in a given case. . .”).

²⁷⁷ *Id.* P 69.

²⁷⁸ Application at 35.

²⁷⁹ *Elec. Energy, Inc.*, 168 FERC ¶ 61,130, at P 70 (2019).

determine which costs are transaction-related.”²⁸⁰ Without this information, there is no guarantee that the money used to fund the hold harmless commitment will arise from efficiencies that the Transaction, hypothetically, brought about. This is significant because, without such a guarantee, a hold-harmless commitment does not constitute a transaction-related benefit to the public but, rather, a temporary buyout offered by the new, resulting entity to win support for the Transaction. Moreover, as discussed further below, the Transaction is likely to result in adverse effects to rates due to the erosion of competition that the Transaction will cause. The Commission must evaluate whether the Transaction has an adverse effect on rates, full stop, not whether the Transaction has an adverse effect on rates only for the next five years. If the Applicants cannot demonstrate that the hold harmless commitment arises from Transaction-related efficiencies and that the Transaction will not result in adverse effect on rates, the Commission cannot determine whether the hold harmless commitment protects the public interest beyond the five-year term.

More broadly, transaction and transition costs do not encompass the full range of costs that could adversely affect rates as a result of the Transaction. Applicants have neither identified nor analyzed potential changes to the cost of capital for FPL, VEPCO, or DESC—including changes in ROE, cost of debt, and capital structure—that may result from the Transaction but fall outside the hold harmless commitment because they are not “transaction-related costs” as the Commission has interpreted that term. Instead, Applicants request waiver of the requirement to submit proposed accounting entry information, claiming that “[n]one of FPL, VEPCO, or DESC intends to reflect or account for any aspect of the Transaction in their books. . .” without explaining how all Transaction-related costs subject to the hold harmless commitment will be kept out of Commission-jurisdictional accounts.²⁸¹ Applicants thus recognize the potential for

²⁸⁰ Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at P 64.

²⁸¹ Application at 44.

the Transaction to affect their jurisdictional accounts, which would require a filing with the Commission to explain the basis of any Transaction-related entry, but Applicants make no commitment to ensure those effects will not be adverse to rates.²⁸²

Applicants also make no commitment to ensure that any Transaction-related costs they have already incurred have been kept out of jurisdictional accounts or have not otherwise impacted jurisdictional rates. On July 31, 2026, Dominion published its 2Q26 Earnings Release Kit, which reported an adjusted operating earnings that reflected a \$13 million expense for “Merger related costs” in the second quarter of 2026.²⁸³ Applicants have not provided an explanation for how they plan to recover the Transaction-related costs they have already incurred, a sufficient analyses of how future countervailing benefits offset any potential changes to jurisdictional entities’ costs, or a description of how they will ensure these costs are subject to the hold harmless commitment.²⁸⁴

B. The Transaction’s Effects on Rates Flow from its Effects on Competition.

Without appropriate mitigation measures, the Transaction’s effects on competition will ultimately flow through to and adversely affect rates to transmission, wholesale requirements, and retail customers. The Application does not address these impacts to rates.

For example, the proposed Transaction would result in common ownership of one of the PJM territory’s dominant transmission systems and largest generation fleets, creating financial incentives to delay competitors’ interconnection studies, favor affiliated generation projects in the queue, restrict competitors access to existing transmission capacity, and disadvantage the

²⁸² *Id.*

²⁸³ Dominion Energy, *2nd Quarter 2026 Earnings Release Kit*, 8 (July 31, 2026), https://s2.q4cdn.com/510812146/files/doc_financials/2026/q2/2026-07-31-DE-IR-2Q26-Earnings-Release-Kit-vTC.pdf.

²⁸⁴ See Hold Harmless Policy Statement at P 58 (clarifying that costs associated with activities in the early stages of a “transaction for which the hold harmless commitment was made necessitate separate tracking.”).

competitive transmission process.²⁸⁵ The resulting unprecedented concentration of transmission development capabilities will diminish competitive pressure in PJM transmission solicitations, as also discussed above.²⁸⁶ Removal of a competitor from the competitive transmission development marketplace will result in the selection of more expensive Baseline transmission projects. Less competition to build Baseline projects will allow VEPCO to continue to increase spending on local Supplemental project buildout, producing inefficient, piecemeal buildout that increases rates.²⁸⁷ Likewise, moves to limit regional transmission expansion in the Southeast will result in more expensive buildout if NextEra forgoes DESC's planned membership in SERTP for compliance with Order No. 1920, in favor of costly local transmission upgrades in SCRTP, withholding the ratepayer benefits of expanded market competition.

Applicants have not evaluated potential rate impacts from common ownership of generation and transmission that would affect market-based rate customers indirectly, for example, through changes in congestion costs, ancillary service prices, or capacity market clearing prices.²⁸⁸ Consolidating asset ownership in PJM creates market power that undermines competition and leads to price increases for wholesale rates.²⁸⁹ Likewise, the Transaction's consolidation of nuclear ownership in ISO-NE creates potential to raise wholesale energy rates in the region.²⁹⁰ By raising rivals' fuel costs or limiting their access to reliable gas supply, the resulting entity could improve the competitive position of its own generation fleet, limit competitive entry, and create the potential for additional upward pressure on PJM energy and capacity prices.²⁹¹ Alternatively, the potential that the resulting entity withdraws VEPCO from

²⁸⁵ See *supra* section III.B., III.F.

²⁸⁶ See *supra* section III.F.

²⁸⁷ See Order No. 1920, 187 FERC ¶ 61,068 at P 85.

²⁸⁸ See *supra* sections III.B.1-.2.

²⁸⁹ See *id.*

²⁹⁰ See *supra* section III.D.

²⁹¹ See *supra* section III.C.

full membership in PJM would create adverse cost impacts on customers from removing capacity to serve data center loads.²⁹² With the ability to pull DESC out of SEEM, the resulting entity could hinder the market's future operations, limit competition, and raise wholesale rates.²⁹³ To this end, further entrenching a lack of wholesale competition in the Southeast raises opportunity costs for the region.²⁹⁴

As outlined above, the Commission cannot ignore the Transaction's effects on retail customers.²⁹⁵ Although the Commission generally refrains from analyzing retail impacts, each state implicated by the Transaction may only assess the effect on retail rates within its own borders. Only the Commission can take the global view and assess the Transaction's effect on retail rates in the multiple state jurisdictions it impacts. Upward pressure on wholesale and transmission rates will inherently appear on captive retail customers' bills. And these broader impacts to retail rates are critically important, particularly in this moment. FPL and VEPCO customers are already facing disproportionately high, systemic shutoffs, making the resulting entity's captive customers uniquely vulnerable to any upward rate pressure. FPL disconnected customers at a rate nearly four times the national average for IOU disconnections (6.3 disconnections per every 100 customers in 2024),²⁹⁶ disconnecting 23.2 of every 100 customers.²⁹⁷ VEPCO disconnected customers at a rate nearly 2.5 times the national average, at a rate 15.5 disconnections per 100 customers.

²⁹² See *supra* section III.B.3.

²⁹³ See *supra* section III.E.

²⁹⁴ See *supra* section III.E.

²⁹⁵ See *supra* section IV.G.

²⁹⁶ U.S. Energy Information Admin., *2024 Residential Utility Disconnections Report* (Apr. 14, 2026), <https://www.eia.gov/analysis/requests/residential/utility/>.

²⁹⁷ Krysti Shallenberger, Shelby Green, & Jonathan Kim, *New Nationwide Data Reveals Utility Specific Disconnection Information*, ENERGY & POL'Y INST. (June 22, 2026), <https://energyandpolicy.org/new-nationwide-data-reveals-utility-specific-disconnection-information/>.

A systematic increase to retail rates in multiple states as a result of the Transaction cannot be consistent with the public interest.

C. Applicants have Made No Attempt to Demonstrate Offsetting Benefits.

Applicants have not proposed any rate mitigation measures prepared in consultation with customers, nor have they demonstrated any countervailing benefits to offset potential adverse effects on rates.²⁹⁸ In the *Hold Harmless Policy Statement*, the Commission explained that it will “preclude recovery of acquisition premiums as part of transaction-related costs, and remind[ed] applicants that a showing of ‘specific, measurable, and substantial benefits to ratepayers’ must be made in a subsequent FPA section 205 proceeding in order to recover an acquisition premium. . . .”²⁹⁹ In addition to the Application’s failure to identify the processes put in place to segregate transaction-related costs, Applicants have not included information on the acquisition premium associated with the proposed Transaction, how Applicants intend to account for the acquisition premium, or a description of countervailing benefits necessary to offset adverse effects of the financial pressure to recoup the premium.³⁰⁰ The Applicants’ July 15, 2026, Preliminary Pro Forma Financial Information filed with the SEC outlines a \$37.873 billion acquisition premium paid to consummate the transaction.³⁰¹ Applicants have made no commitment not to pursue recovery of this premium through their jurisdictional entities’ captive customers and have failed to demonstrate countervailing customer benefits derived from the

²⁹⁸ See Merger Policy Statement at 68596 (explaining that the Commission “require[s] applicants to propose appropriate rate protection for customers,” rather than require applicants and intervenors to estimate, then debate, the exact costs of a proposed merger.).

²⁹⁹ Hold Harmless Policy Statement at P 26.

³⁰⁰ See Merger Policy Statement at 68604 (noting the purchase price of the transaction will only be considered to the extent it affects rates, “[h]owever, the Commission historically has not permitted rate recovery of acquisition premiums.”).

³⁰¹ NextEra Energy, Inc., *Form 8-K Preliminary Pro Forma Financial Information*, U.S. SECURITIES AND EXCHANGE COMM’N, 1, 6 (July 15, 2026), https://otp.tools.investis.com/clients/us/nextera_energy_inc/SEC/sec-show.aspx?FilingId=19539223&Cik=0000753308&Type=PDF&hasPdf=1, (explaining that NextEra overpaid Dominion by an additional \$37.873 billion in consideration for its assets because “any excess of the consideration transferred over the fair value of the net assets acquired will be recognized as goodwill. . .”).

Transaction to justify any such rate increases. Applicants only a single vague statement that “the combined company’s scale, financial strength, and operational breadth is likely to yield customer benefits,” but do not provide specific evidence or support to identify these claimed benefits or explain whether and how they will accrue to customers.³⁰²

Prior acquisition proceedings initiated by NextEra undercut the Application’s asserted, albeit vague, benefits. NextEra made similar vague assertions of synergistic benefits when it moved to acquire Gulf Power Company (Gulf Power) in 2018.³⁰³ However, when Gulf Power and FPL merged in 2021, former Gulf Power customers in the Florida Panhandle experienced significant rate shocks and bill increases.³⁰⁴ FPL claimed it needed to “average” costs across the newly unified state footprint, effectively using the Panhandle to subsidize broader corporate infrastructure costs. The Commission conditioned approval of that transaction on a commitment from NextEra to implement ratepayer protection mechanisms to protect their transmission customers from adverse Cost Averaging Impacts through 2025.³⁰⁵ However, NextEra declined to offer a full rate freeze, and despite its ratepayer protection mechanism, hold harmless commitment, and claimed synergistic benefits, rates increased immediately for former Gulf Power customers following the transaction.³⁰⁶

³⁰² Application at 2.

³⁰³ See NextEra Energy, Inc., 700 Universe, LLC, and Gulf Power Co., Joint Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act, Docket No. EC18-117-000, at 2 (filed July 3, 2018).

³⁰⁴ Letter from Jesse Nelson, Mayor, City of Lynn Haven, Fla. to Fla. Pub. Service Comm’n. (Apr. 12, 2022), <https://www.floridapsc.com/pscfiles/library/filings/2022/02401-2022/02401-2022.pdf> (explaining that the rates for former Gulf Power customers increased 39% following the merger).

³⁰⁵ *NextEra Energy, Inc.*, 173 FERC ¶ 61,029, at P 27 (2020).

³⁰⁶ Letter from Andrew Kelly, Mayor, City of Parker, Fla. to Fla. Pub. Service Comm’n. (Apr. 15, 2022), <https://www.floridapsc.com/pscfiles/library/filings/2022/02595-2022/02595-2022.pdf> (writing that the recent FPL rate increase means “residents are paying more due to being a former Gulf Power customer, [and] the merger cost is being passed on to us.”).

The Applicants bear the burden to prove the proposed Transaction will not have an adverse impact on rates.³⁰⁷ They have not done so. Adverse rate impacts to customers cannot be consistent with the public interest without adequate protection. And the Commission cannot then approve the Application where Applicants fail to dispel the potential for adverse impacts to competition and rates, including the prices paid by customers for capacity, energy and transmission.

V. EFFECT ON REGULATION

The Application asserts that the Transaction will not have any adverse effect on regulation, as it will not diminish the regulatory authority of the Commission or any state regulator or create a regulatory gap.³⁰⁸ Although correct that the Transaction will not alter the regulatory authority of the Commission or any state regulator, the Transaction will undoubtedly complicate regulation for the implicated states by virtue of the resulting entity's size, scale, and corporate complexity, all of which will limit regulators' ability to oversee the franchised utilities in their states.

As originally conceived in the Merger Policy Statement, the Effect on Regulation prong has become a dead letter. The Commission established this inquiry in response to the *Ohio Power* decision, where the United States Court of Appeals for the District of Columbia Circuit prevented the Commission from disallowing recovery, in rates, of costs associated with non-power affiliate sales approved by the SEC.³⁰⁹ As a result, the Commission found that a merger creating a holding company structure could open a regulatory gap to the extent it gave the SEC authority to approve affiliate sales but restricted the Commission from policing recovery of

³⁰⁷ See Hold Harmless Policy Statement at P 46.

³⁰⁸ See Application at 32.

³⁰⁹ See *Ohio Power Co. v. FERC*, 954 F.2d 779, 786 (1992).

uneconomic inter-affiliate transactions in rates.³¹⁰ To address this concern, the Commission gave applicants the choice of either subjecting themselves to the Commission's intra-system transaction policies or going to a hearing on the transaction's effect on regulation.³¹¹ Congress later enacted EAct 2005 and repealed PUHCA 1935, which together granted the Commission additional authority over intra-system transactions and stripped the SEC of the powers that originally gave rise to this concern.³¹² Nevertheless, the Effect on Regulation inquiry has not changed, leading to largely perfunctory statements in all section 203 applications that disavow the creation of any regulatory gap. The Application's single page devoted to this question is a case in point.

The obsolescence of the Commission's Effect on Regulation inquiry obscures the real impacts that a transaction may have on states' ability to effectively regulate the utilities under their charge. As discussed in greater detail below, the Transaction would create a multi-state conglomerate of immense size, scale, and corporate complexity, which will strain the ability of single-state regulators to oversee.³¹³ First, state regulators necessarily have a narrow jurisdictional focus, which is limited to the utilities operating within their borders. Where a single-state utility is part of a much larger, multi-state holding company, the state regulator will have minimal or no authority over the parent or any of its out-of-state subsidiaries. Second, state regulators often lack the resources to monitor the activities of utilities in a holding company

³¹⁰ See Merger Policy Statement at 68603-68604 ("On the question of a shift of authority from this Commission to the SEC, we pointed out that pre-merger, we had authority to review for rate purposes all the costs the companies incurred, but if the merger were approved, under *Ohio Power* we would lose that authority if the SEC approved an inter-affiliate transaction. Thus, the costs could be flowed through to ratepayers, even if the goods or services were obtained at an above-market price or the costs were imprudently incurred.").

³¹¹ See *id.* at 68604.

³¹² See Order No. 669 at P 4; EAct 2005 §§ 1261 *et seq.*

³¹³ See *infra* section VI.

system.³¹⁴ A structurally expansive corporation with many affiliates creates the potential for a constant stream of affiliate transactions that no regulator alone can effectively police. Third, significant information asymmetries already exist between regulators and regulated entities;³¹⁵ a complex holding company structure only multiplies them. Here, again, a state regulator's circumscribed authority limits its visibility into the broader corporate family. The Transaction presents each of these complicating factors by creating a resulting entity of unprecedented size and complexity that will operate in a vast, multi-state footprint. These conditions necessitate the Commission's review into the Transaction's effect on state regulation

The Commission itself has complicated this inquiry as well by only considering a transaction's effect on state regulation if the state lacks authority to review the transaction and asks the Commission to assess a transaction's effect on retail regulation.³¹⁶ Similar to its reliance on state requests to consider effects on retail competition, discussed above,³¹⁷ this deference is statutorily improper on its face. Section 203 does not vary the Commission's duties depending on whether any party asks the Commission to carry out those duties. As improper as the Commission's abdication of its legal obligation was in 1996, it is even more so today. In the intervening 30 years, the Commission has approved dozens of utility mergers that have had the effect of making the electric industry far more concentrated and far more complicated.³¹⁸ Yet the Commission has neither adapted its process to these shifts nor assessed whether state commissions' regulatory preparedness or resources have grown in proportion to the additional

³¹⁴ See Scott Hempling, *Inconsistent with the Public Interest: FERC's Three Decades of Deference to Electricity Consolidation*, 39 ENERGY L. J. 233, 233-312, 304 (2018).

³¹⁵ Aneil Kovvali and Joshua C. Macey, *The Corporate Governance of Public Utilities*, 40 YALE J. ON REG. 569, 584 (2023) available at <https://www.yalejreg.com/wp-content/uploads/Aneil-Kovvali-Joshua-C.-Macey-The-Corporate-Governance-of-Public-Utilities.pdf>.

³¹⁶ See Merger Policy Statement at 68604.

³¹⁷ See *supra* section III.G.

³¹⁸ See Scott Hempling, *Inconsistent with the Public Interest: FERC's Three Decades of Deference to Electricity Consolidation*, 39 ENERGY L. J. 233, 233-312, 243-260 (2018).

concentration and complexity of the industry. Maintaining the longstanding policy assumes that regulators are capable of and willing to handle the post-consummation complexity. In reality, such corporate complexity makes regulatory decision-making more time-consuming, more resource-intensive, and less certain to succeed, all to the detriment of the public interest.

For these reasons, the Commission should consider whether the Transaction will impair the affected states' ability to regulate—regardless of whether any state tees up the issue—given the immense size and complexity of the corporate entity it would create.

VI. CROSS-SUBSIDIZATION

Section 203 *forbids* the Commission from approving a transaction unless it finds that the transaction will *not* result in “cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.”³¹⁹ Applicants bear the burden of making this demonstration.³²⁰ Historically, the Commission has relied on an applicant's representations that its proposed transaction will not create such potential for harm.³²¹ Such representations are not sufficient here.

The Transaction would combine, under the same corporate umbrella, an inherently risky, competitive development platform in NEER and NEET, with a suite of traditionally regulated utilities that have franchised service territories and captive customers in FPL, VEPCO, and DESC. The combination of two energy companies with these profiles creates structural conditions for improper cross-subsidization; the combined scale and influence of NextEra and Dominion expands opportunities to engage in improper self-dealing, which would make the

³¹⁹ 16 U.S.C. § 824b(a)(4).

³²⁰ See Supplemental Policy Statement at P 23 (“[A]ll section 203 applicants must demonstrate that a proposed transaction will not result in inappropriate cross-subsidization of non-utility associate companies or the inappropriate pledge or encumbrance of utility assets for the benefit of an associate company.”).

³²¹ Order No. 669 at P 169.

resulting entity much more difficult to police. Accordingly, the Commission must apply heightened scrutiny to the Transaction's potential for cross-subsidization and either reject the Transaction outright or impose on the combined entity stringent conditions to protect the more than 10 million captive ratepayers who would bear the burden of such improper cross-subsidization.

A. Congress Identified Prevention of Cross-Subsidization as a Priority for Commission Reviews under Section 203.

Nearly a decade after the Commission issued the Merger Policy Statement, Congress amended section 203 in EAct 2005.³²² Among other things, the revisions proscribed Commission approval of transactions that “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company,” unless the Commission determined that such actions were nevertheless consistent with the public interest.³²³ This addition evinced a clear Congressional intent that the Commission identify and prevent the risk of improper cross-subsidization. Indeed, the Commission recognized the import of this Congressional mandate in Order No. 669, stating that the revisions to section 203 “clearly show[] that Congress intended that cross-subsidization and related concerns should be a focal point of the Commission’s section 203 analysis.”³²⁴

Despite this acknowledgment, the Commission endeavored to “streamline the approval process” by allowing applicants to make certain verifications in an Exhibit M to their application, representing that the transaction would not result in:

- (1) transfers of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based regulation and an associate company;

³²² Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

³²³ 16 U.S.C. § 824b(a)(4).

³²⁴ Order No. 669 at P 164.

- (2) new issuances of securities by traditional utility associate companies with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;
- (3) new pledges or encumbrances of assets of a traditional utility associate company with wholesale or retail customers served under cost-based regulation for the benefit of an associate company;
- (4) new affiliate contracts between non-utility associate companies and traditional utility associate companies with wholesale or retail customers served under cost-based regulation, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.³²⁵

Order No. 669 and its progeny did, however, impose some minimum requirements for section 203 applications regarding the potential for cross-subsidization. First, it required that applicants “make a detailed showing that the four conditions” outlined above are met in Exhibit M.³²⁶

While the Commission did not outline in Order No. 669-A or its Rules and Regulations what, exactly, a “detailed showing” entails, it presumably includes more than an incantation of the four conditions themselves. The Commission felt that “requiring a detailed showing that all four conditions are met” does not “impose[] an unreasonable burden on section 203 applicants.”³²⁷

Second, the Commission required applicants to “disclose all existing pledges or encumbrances of utility assets as part of the application.”³²⁸ The Commission also explained that, while it would not typically require ongoing disclosure of future pledges or encumbrances of utility assets post-consummation, it would consider such condition on a case-by-case basis.³²⁹

³²⁵ Order No. 669 at P 169.

³²⁶ Order No. 669-A at P 139; 18 C.F.R. § 33.2(j)(1)(ii).

³²⁷ Order No. 669-A at P 144.

³²⁸ Order No. 669-A at P 146; 18 C.F.R. § 33.2(j)(1)(i).

³²⁹ Order No. 669-A at P 146.

B. Applicants have Not Complied with the Commission’s Minimum Requirements for Demonstrating that a Transaction will Not Result in Improper Cross-Subsidization.

Applicants treat the lack of potential for cross-subsidization as a given. The Application recites the four-part test, which Applicants summarily deem satisfied.³³⁰ Applicants also argue that the Commission and state regulators can prevent future cross-subsidization through rate regulation and approval of inter-affiliate dealings, and lists the applicable state laws and regulations.³³¹ Exhibit M likewise includes only the Applicants’ unsupported assertions that the Transaction will not result in any of the four prohibited instances of cross-subsidization, pledges, encumbrances, or contracts.³³² It adds that state-level retail regulation will eliminate the possibility of cross-subsidization.³³³

Applicants’ unsupported assertions do not satisfy the Commission’s requirements. Applicants do not acknowledge the risks for cross-subsidization inherent to the types of business ventures combined through the Transaction, nor do they propose any internal protections to prevent it. Rather, the Application relies entirely on the Applicants’ own representations and the ability and willingness of regulators to identify and police every possible instance of cross-subsidization across what would be the largest utility in the world. These representations are not sufficient to constitute the “detailed showing” required by the Commission’s regulations.³³⁴ The Application also does not appear to comply with the requirement to disclose all existing pledges or encumbrances of utility assets, as it does not disclose *any* specific pledges or encumbrances of utility assets. Yet it vaguely acknowledges the existence of “underlying securities, pledges,

³³⁰ See Application at 33-34.

³³¹ See *id.* at 34-38.

³³² See Application, Ex. M.

³³³ See *id.*

³³⁴ See 18 C.F.R. § 33.2(j)(1)(ii).

encumbrances, or affiliate contracts of the public utility subsidiaries of either Dominion or NextEra.”³³⁵ Failure to disclose these existing pledges or encumbrances of utility assets deprives the Commission of a baseline from which to judge potential future such pledges or encumbrances.

Accordingly, the Commission should reject the Application as deficient.

C. The Transaction Presents a Severe Threat of Cross-Subsidization.

Even if Applicants had complied with these basic requirements, the Transaction could not satisfy section 203’s prohibitions against improper cross-subsidization due to its unique attributes.

In the Supplemental Policy Statement, the Commission explained its concerns regarding the potential for improper cross-subsidization, noting that cross-subsidization is most likely to “arise[] in a corporate structure that has at least one franchised public utility with captive customers and one or more non-utility affiliates or market-regulated utility affiliates (*i.e.*, utilities regulated on a market rather than a cost basis).”³³⁶ These intra-corporate dynamics create opportunities for improper cross-subsidization “in routine transactions between affiliates in addition to more significant transactions such as transfers of utility assets, encumbrance of utility assets, new affiliate contracts, and issuance of securities by affiliates.”³³⁷ In its review of section 203 applications, the Commission seeks to police such activities in order to “prevent[] a transfer of benefits from a public utility’s captive customers to shareholders of the public utility’s holding company due to an intra-system transaction.”³³⁸

³³⁵ Application at 34.

³³⁶ Supplemental Policy Statement at P 14.

³³⁷ *Id.* P 14.

³³⁸ *Id.* P 13.

The Commission has identified multiple examples of problematic inter-affiliate transactions, such as “[w]here a market-regulated affiliate . . . or a non-utility affiliate provides power or goods and services to a franchised public utility with captive customers, as well as the circumstance in which the franchised public utility with captive customers provides power or non-power goods and services to the market-regulated or non-utility affiliate.”³³⁹ Customers of the franchised public utility could pay unduly inflated rates “if the franchised public utility purchases non-power goods and services from an affiliate at above-market prices or sells non-power goods and services to an affiliate at less than market value and seeks to recover the overcharges or the undercharges through rates for service to captive customers.”³⁴⁰ Similar concerns arise “with respect to intra-corporate financing transactions that may encumber franchised public utility assets in favor of a market-regulated or non-utility affiliate.”³⁴¹ Where a transaction would present applicants with the ability and opportunity to engage in this conduct, the Federal Power Act demands that the Commission reject a proposed transaction or at least condition the transaction to eliminate opportunities for cross-subsidization and ensure consistency with the public interest.³⁴²

The Transaction presents precisely these types of risks by virtue of: (1) the divergent business profiles of the affiliates that would fall within the resulting entity’s broader corporate family and (2) their immense scale. These risks necessitate a searching review of the Transaction’s potential to create opportunities for improper cross-subsidization and, depending on the outcome of that review, either outright rejection of the Transaction or the imposition of

³³⁹ *Id.* P 13.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *See* 16 U.S.C. § 824b(a)(4), (b).

firm protections against intra-corporate dealings that would transfer benefits from captive ratepayers to the resulting entity's shareholders.

1. The resulting company would present unique structural opportunities for improper cross-subsidization.

If approved, the Transaction would create—by the Applicants' own admission—the world's largest utility company and its third largest energy company.³⁴³ The combined entity would include one of the world's largest developers of competitive generation and transmission facilities and three vertically integrated utilities that serve over 10 million captive retail customers between them. In other words, the Transaction would combine a colossal market-regulated enterprise with a massive collection of franchised utilities. Doing so creates the precise corporate structure that Congress feared in amending section 203 and that the Commission found presents opportunities for improper cross-subsidization, and amplifies the risk through sheer scale, which makes policing improper cross-subsidization that much more difficult. The Commission has simply not encountered a combination of this size and complexity before and must therefore review the Transaction with heightened scrutiny commensurate with this enhanced risk.

The potential for harm stems from the disparate business profiles of NextEra's competitive ventures and the vertically integrated utilities controlled by both NextEra and Dominion. The development of competitive generation and transmission involves significant risk given the lack of guaranteed cost recovery.³⁴⁴ NextEra's competitive subsidiaries must, in most cases, reduce all-in costs as much as possible to win bids, secure contracts, and sell its

³⁴³ See *supra* note 10.

³⁴⁴ See PUCT Order at 4 (“NextEra Energy Resources, LLC, is subject to numerous risks, including, but not limited to, potential changes in renewable demand resulting from changes in climate or tax policy, commodity risks, retail electric provider risks, as well as power and nuclear generation risks.”)

facilities' output. VEPCO, DESC, and FPL, by contrast, serve millions of captive ratepayers by virtue of their state-granted utility franchises, which entitle them to guaranteed cost recovery and authorized returns. As noted above, the Commission has found that a corporate structure involving both types of businesses creates structural opportunities to transfer benefits from the franchised utility's captive ratepayers to the holding company's shareholders via expanded competitive activities.³⁴⁵ Here, this would entail NextEra's competitive business artificially shedding costs by shifting them to VEPCO, DESC, or FPL, to be recovered from their retail customers through inflated cost-of-service rates. These costs could also be recovered in a similar manner from VEPCO, DESC, or FPL's wholesale customers, to the extent they transact at cost-based rates.³⁴⁶

Such cross-subsidization could take place through inter-affiliate power sales. For instance, the franchised utility could sell power to an affiliate at a discount, forgoing the profit the utility would have made selling on the open market and thus transferring benefits from the utility's captive ratepayers to the affiliate and its shareholders.³⁴⁷ The inverse also presents problems. The franchised utility could purchase power from the affiliate above market price, giving the affiliate and its shareholders unwarranted profits paid for by the franchised utility's captive customers.³⁴⁸ For utilities with market-based rate authority, the Commission places restrictions on power sales to affiliates to avert these potential outcomes.³⁴⁹

³⁴⁵ See Supplemental Policy Statement at P 14.

³⁴⁶ Indeed, Commission staff's deficiency letter inquired as to whether any of the Dominion's subsidiaries "serve customers at cost-based rates, including wholesale electric power customers and transmission customers." *NextEra Energy, Inc.*, Docket No. EC26-131-000, at 7 (deficiency letter) (Deficiency Letter).

³⁴⁷ See *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 122 FERC ¶ 61,280, at P 4 (2008), *order on reh'g*, Order No. 707-A, 124 FERC ¶ 61,047 (2008).

³⁴⁸ Order No. 707 at P 4.

³⁴⁹ See 18 C.F.R. § 35.39.

But cross-subsidization could also occur through exchanges of non-power goods and services. The Commission has long recognized that the pricing of non-power goods, such as real estate, accounting, or legal services, presents identical concerns regarding the undue transfer of benefits from a franchised utility's captive customers to affiliates and their shareholders as inter-company power sales.³⁵⁰ For this reason, the Commission has placed restrictions on the sales of non-power goods and services between affiliates.³⁵¹ Pursuant to these rules, a franchised utility providing non-power goods and services to a non-utility affiliate must sell at the higher of cost or market price.³⁵² Likewise, a non-utility company can only provide non-power goods and services to an affiliate franchised utility at or below market price.³⁵³ By tying sales in both directions to market pricing, these rules prevent non-utility companies in a holding company structure from taking advantage of their affiliated franchised utility company's captive ratepayers. The Commission has created exceptions to these rules, however, where (1) a centralized service company sells non-power goods and services to a franchised utility,³⁵⁴ or (2) a company in a single-state holding company system trades in general administrative and management non-power goods and services with affiliates.³⁵⁵ Both types of transactions may be priced at cost, without regard for market price.³⁵⁶

The Transaction presents opportunities for cross-subsidization through these types of non-power goods and services sales. Currently, Dominion Energy Services, a centralized service company, provides non-power goods and services to VEPCO and DESC pursuant to the first of

³⁵⁰ See Order No. 707 at P 6.

³⁵¹ See 18 C.F.R. § 35.44.

³⁵² See 18 C.F.R. § 35.44(b)(1); Order No. 707 at P 70.

³⁵³ See 18 C.F.R. § 35.44(b)(2); Order No. 707 at P 71.

³⁵⁴ See 18 C.F.R. § 35.44(b)(3); Order No. 707 at P 72.

³⁵⁵ See 18 C.F.R. § 35.44(b)(4); Order No. 707-A at P 23.

³⁵⁶ See 18 C.F.R. § 35.44(b)(3)-(4).

these exceptions to market-based pricing.³⁵⁷ NextEra operates in a single-state holding company system and prices sales of general administrative and management non-power goods and services at cost amongst its affiliates pursuant to the second market-based pricing exception.³⁵⁸ Although NextEra would no longer operate in a single-state holding company system if the Commission approved the Transaction, NextEra has sought waiver of the Commission's affiliate pricing rules in order to continue selling non-power goods and services at cost amongst its affiliates post-Transaction.³⁵⁹ If the Commission approves the Transaction and grants the requested waiver, all sales of non-power goods and services within the resulting entity's broader corporate family will be priced at cost, without the discipline of market pricing to prevent cross-subsidization. Indeed, NextEra acknowledges that this new arrangement would not merely maintain the status quo but would involve sales of non-power goods and services between all new affiliates, including VEPCO and DESC.³⁶⁰ In this scenario, the franchised utilities' captive customers will only become more vulnerable to a transfer of benefits to NextEra shareholders as the potential for improper cross-subsidization increases.

To prevent this outcome and protect the captive customers of the resulting entities' franchised utilities, the Commission should either (1) reject the Transaction, (2) deny the waiver in Docket No. ER26-3187, (3) condition approval of the Transaction on application of market-based pricing controls, or (4) at the very least, require all non-power goods and services to be provided by a single centralized services company like Dominion Energy Services.

³⁵⁷ NextEra Energy, Inc., Petition for Waiver of Affiliate Pricing Rules, Docket No. ER26-3187-000, at 1-2 (filed July 15, 2026) (Waiver Petition Filing).

³⁵⁸ See Waiver Petition Filing at 2.

³⁵⁹ See *id.* at 3.

³⁶⁰ See *id.* at n.44.

The Transaction also creates the probability of risk contagion, which would harm Dominion's captive customers in particular. Dominion has divested much of its non-utility activities, such that its ownership of Millstone and some generation holdings in PJM outside the DOM Zone represent a very small portion of its business. The vast majority of its earnings come from its regulated utility businesses, VEPCO and DESC. State regulation gives these businesses a low risk profile, as discussed above. By contrast, NextEra's non-utility ventures, particularly NEER, accounts for a substantially larger share of its commercial activities.³⁶¹ These merchant development businesses entail much higher risk given their lack of guaranteed income. The combination of the stable, heavily regulated Dominion with the comparatively risky NextEra significantly increases the risk profile of VEPCO and DESC's parent relative to their risk profile today. If their state regulators use the enterprise-wide risk profile to set the ROE for their retail rates, this value will almost certainly increase, along with retail rates. The same could be said for the Commission in setting the ROE component of VEPCO and DESC's formula rates, which would raise transmission rates. In both instances, captive customers' rates would increase as a direct result of the Transaction.

Finally, but no less important, a holding company structure as large, complex, and diverse as the resulting entity post-Transaction increases the opportunity to effect transfers of benefits from the franchised utilities' captive ratepayers to shareholders through internal corporate financings. The Commission recognized in the Supplemental Policy Statement that "[i]ntra-corporate financing transactions may raise cross-subsidization concerns if the assets of a franchised public utility with captive customers are used to finance its market-regulated utility

³⁶¹ See Transaction Presentation at 36 (showing that unregulated activities comprise 30 percent of NextEra's business mix).

affiliates or non-utility affiliates or their activities.”³⁶² Such transactions could include, among other things, guarantees, pledges, or cross-defaults that link the franchised utilities’ credit to their affiliates, or cash sweeps and dividends that “strip[] the utility when the parent is stressed.”³⁶³ All may be much easier to obscure in a complex corporate maze like that the Transaction would create, which requires regulators to impose strong, proactive, prophylactic measures to protect captive ratepayers from this often imperceptible abuse.

Concerns raised in proceedings surrounding NextEra’s previous attempts to acquire franchised utilities demonstrate the potential for harm here. In 2016, the Hawaii Public Utilities Commission (Hawaii PUC) rejected NextEra’s application to acquire Hawaiian Electric Company (HECO).³⁶⁴ The Hawaii PUC found that NextEra failed to propose sufficient protections against “the potential risks posed by its corporate affiliations or by events not of [HECO’s] own making, such as the adverse actions of NextEra or one of its subsidiaries or affiliates.”³⁶⁵ The Hawaii PUC also expressed concern that the transaction would expose HECO to bankruptcy risks that would harm ratepayers.³⁶⁶ In 2017, NextEra sought to acquire Oncor and applied for approval from the Public Utility Commission of Texas (PUCT).³⁶⁷ The PUCT denied the application, finding that the proposed acquisition would subject Texas ratepayers to additional, uncompensated risks.³⁶⁸ Specifically, NextEra premised its proposal on the ability to link Oncor’s credit profile with its own and sought to eliminate two existing ring-fencing protections to facilitate this: (1) restrictions on NextEra’s ability to appoint, remove, and replace

³⁶² Supplemental Policy Statement at P 21.

³⁶³ Joshua C. Macey, *Presentation on NextEra-Dominion Acquisition*, Va. Energy Comm’n, at 8 (Aug. 18, 2026), https://apps.dlas.virginia.gov/User_db/frmView.aspx?ViewId=7276&s=7 sition.

³⁶⁴ See Hawaii PUC Order.

³⁶⁵ *Id.* at 3.

³⁶⁶ *Id.* at 3.

³⁶⁷ See PUCT Order.

³⁶⁸ See *id.* at 3-4.

Oncor’s directors; and (2) the ability of a defined shareholder group to veto dividends and capital and operating budgets.³⁶⁹ Without these protections in place, the PUCT found that the acquisitions would unacceptably increase risk to Oncor ratepayers due to “the expansive and diversified structure of NextEra Energy and its affiliates” as well as the obligation for Oncor ratepayers to support a substantial portion of NextEra’s consolidated debt.³⁷⁰

Taken together, the unprecedented size and complexity of the holding company created by the Transaction present a wide spectrum of opportunities for improper cross-subsidization.

2. Existing regulatory authorities are ill-equipped to prevent these harms.

As the only regulator with authority to consider the full geographic scope of the Transaction, the Commission is best positioned to protect against these harms. Again, the potential for improper cross-subsidization in this proceeding derives from the scale and complexity of the entity that would result from the Transaction. State regulators have neither the jurisdictional purview nor the resources to police all possible intra-corporate activities that could lead to benefit transfers from captive ratepayers to NextEra shareholders.

Applicants disagree, contending that existing state and federal regulatory authorities will “protect against the potential for future cross-subsidization effects on . . . rates.”³⁷¹ But this assertion confuses the Commission’s responsibility under section 203. Congress forbade the Commission from approving a transaction unless it finds that the transaction will *not* result in cross-subsidization.³⁷² As proponents of the Application, Applicants bear the burden to make this showing.³⁷³ It is not enough to claim that the Commission and state regulators *may* mitigate

³⁶⁹ *See id.* at 6.

³⁷⁰ *Id.* at 3.

³⁷¹ *See* Application at 34.

³⁷² *See* 16 U.S.C. 824b(a)(4).

³⁷³ *See* Supplemental Policy Statement at P 23.

the effects of cross-subsidization caused by the Transaction after they occur. Nor may the Commission defer cross-subsidization questions to unspecified future state and federal proceedings if the Transaction will create the conditions for improper cross-subsidization to occur. Unless Applicants demonstrate that the Transaction will *not* result in cross-subsidization, the Commission cannot approve the Application.

Applicants' reliance on *Tenaska Alabama Partners, L.P.* for this point is misplaced.³⁷⁴ There, the Commission approved Alabama Power Company's acquisition of a single combined cycle facility.³⁷⁵ The Commission dismissed concerns that the plant's output could one day be sold to an affiliate because any such sale would require Commission approval and the Alabama Public Service Commission could address potential retail rate issues.³⁷⁶ These circumstances bear no resemblance to the Transaction at issue here, which would create a utility holding company of unprecedented scale, that fuses a large competitive development platform with a massive captive customer base. As described at length above, these represent the exact conditions Congress feared in amending section 203 and the Commission warned about in the Supplemental Policy Statement as creating the potential for systemic cross-subsidization.³⁷⁷ To this end, the Commission must determine *now* whether the Transaction may result cross-subsidization and act to prevent it; it cannot pass the buck to regulators to address those concerns at a later date.

As regards the affected states, the Application lists the relevant laws and regulations that apply to affiliate transactions.³⁷⁸ These largely consist of codes of conduct and requirements for

³⁷⁴ See Application at 34, n.104 (citing *Tenaska Alabama Partners, L.P.*, 191 FERC ¶ 61,190, at P 65 (2025)).

³⁷⁵ *Tenaska Alabama Partners, L.P.*, 191 FERC ¶ 61,190 at PP 2-3.

³⁷⁶ *Id.* P 65.

³⁷⁷ See Supplemental Policy Statement at PP 13-14.

³⁷⁸ See Application at 35-38.

state commission approval of affiliate contracts. For instance, the Virginia Affiliates Act³⁷⁹ prevents VEPCO from entering into any contracts or loans with affiliates absent approval by the Virginia SCC.³⁸⁰ It also gives the Virginia SCC the power to exclude related payments from VEPCO's accounts or prohibit VEPCO from issuing dividends to affiliated interests.³⁸¹ Each of these responsibilities imposes significant burdens on the Virginia SCC, however. Every affiliate contract or loan that DEV seeks to enter creates a new Virginia SCC docket, wherein the Virginia SCC has a maximum of 90 days to act before the requested contract or loan goes into effect.³⁸² Its authorities to disallow affiliate payments or dividends require the Virginia SCC to act on its own initiative,³⁸³ which necessarily entails constant monitoring to determine the possibility of improper activity. Where the significantly expanded size and complexity of VEPCO's new parent would make the incidence of affiliate transactions across additional states much more likely, the volume of associated responsibilities would quickly overwhelm the regulator. Nor do these state regulators have sufficient ongoing visibility into actions taking place at the holding company level that could trickle down to affect in-state ratepayers. This type of whack-a-mole enforcement that each of the listed states employ simply cannot substitute for broadly applicable protections.

To be sure, some of the implicated states have the obligation to review the Transaction before it may move forward. However, this only includes regulators in Virginia, North Carolina, and South Carolina. Florida has no regulatory authority to review the Transaction. And in each of these states, the regulators have a mandate only to protect the interests of ratepayers within

³⁷⁹ See Va. Code § 56-76 *et seq.*

³⁸⁰ See Va. Code §§ 56-77, -82.

³⁸¹ See Va. Code §§ 56-78, -83.

³⁸² See Va. Code §§ 56-77, -82.

³⁸³ See Va. Code §§ 56-78, -83.

them. The Virginia SCC will not take into account the Transaction's effects on North Carolina, and the Public Service Commission of South Carolina (PSCSC) will not consider Florida ratepayer interests. Only the Commission can take a holistic view into the Transaction's potential effects. For this reason, the Commission cannot defer to the incomplete collection of state regulators to protect against improper cross-subsidization for a Transaction that will affect at least 44 states.

D. The Commission Must Reject the Application or Require Applicants to Implement Additional Protective Measures as a Condition of Approval.

In order to prevent against the structural potential for cross-subsidization that the Transaction creates, the Commission should either reject the Application outright or condition any approval on the imposition of strong prophylactic measures. Given the unprecedented size, scale, and complexity of the resulting entity, only robust ring-fencing protections are likely to provide sufficient risk mitigation.

The Commission has stated previously that “applicants must adopt sufficient safeguards, including any necessary cash management controls . . . to prevent any cross-subsidization between holding companies and their new subsidiaries prior to receiving section 203 approval.”³⁸⁴ As examples of possible safeguards, the Commission listed “restrictions on upstream transfers of funds” and ring fencing.³⁸⁵ Similarly, in the Supplemental Policy Statement, the Commission stated that applicants could demonstrate the lack of cross-subsidization issues by proposing ring-fencing measures.³⁸⁶ The Commission provided, as an example, the following ring-fencing structure applicable to internal corporate financings, which present particular concerns with respect to the Transaction:

³⁸⁴ Order No. 669 at P 143.

³⁸⁵ *Id.* P 143.

³⁸⁶ See Supplemental Policy Statement at P 24.

- (1) the holding company participates in the money pool as a lender only and it does not borrow from the subsidiaries with captive customers;
- (2) where the holding company system includes more than one public utility, the money pool for subsidiaries with captive customers is separate from the money pool for all other subsidiaries;
- (3) all money pool transactions are short-term (one year or less), and payable on demand to the public utility;
- (4) the interest rate formula is set according to a known index and recognizes that internal and external funds may be loaned into the money pool;
- (5) loan transactions are made pro rata from those offering funds on the date of the transactions;
- (6) the formula for distributing interest income realized from the money pool to money pool members is publicly disclosed; and
- (7) the money pool administrator is required to maintain records of daily money pool transactions for examination by the Commission by transaction date, lender, borrower, amount, and interest rate(s).³⁸⁷

While the Commission has stated that it will usually defer to state-adopted protections because “retail customers typically represent the vast majority of load served by a franchised public utility, and ring-fencing measures typically affect the entire corporation,” it noted that it may nevertheless impose such protections if state-adopted procedures “can be shown to be inadequate.”³⁸⁸

Here, the wide geographic scope of the Transaction demands the Commission impose sufficient nationwide protections. State-required conditions will be inadequate by definition unless they reach the entire corporate structure, and the Commission cannot sit back and wait to assess whether any of the many affected states does so. Indeed, if the Commission acts on the

³⁸⁷ *Id.*

³⁸⁸ *Id.* P 23.

Transaction by the date requested by Applicants, it will do so on or before the date of any of the reviewing state commissions.³⁸⁹ To protect against the type of internal corporate financing transactions that enable improper cross-subsidization, the Commission should impose ring-fencing measures similar to those discussed in the Supplemental Policy Statement. These should include: (1) separate capital structures between NextEra and its franchised utility subsidiaries; (2) firm restrictions on dividends and inter-affiliate lending; (3) firewalls between NextEra's finances and its franchised utility subsidiaries'; (4) independent directors; (5) blanket prohibitions on utility guarantees, loans, pledges, credit support, cross-defaults, and asset transfers; and (6) actual corporate separation. Such broadly protective measures will help to insulate captive ratepayers against the type of harm that originates at the holding company level, often outside of the reach of most state regulators.

VII. WAIVER REQUESTS

The Commission should deny Applicants' requests for waiver of the Part 33 filing requirements in their entirety. Applicants seek to withhold precisely the information necessary for the Commission and intervenors to assess whether the largest utility merger in U.S. history is consistent with the public interest, including complete information on energy affiliates, wholesale customers, jurisdictional facilities, and the Merger Agreement's schedules and exhibits. Applicants have not met their burden to demonstrate that this information is

³⁸⁹ See *Dominion Energy Inc.*, Docket No. PUR-2026-00112, at 1, 9 (Va. State Corp. Comm'n July 21, 2026), <https://www.scc.virginia.gov/docketsearch/DOCS/8dkr01!.PDF> (extending deadline for Virginia SCC action to 180 days from the July 15, 2026 filing date, rendering a January 11, 2027 deadline); *Joint Petition of Dominion Energy South Carolina, Inc., Dominion Energy, Inc., and NextEra Energy, Inc. for Review and Approval of a Proposed Business Combination Between Dominion Energy, Inc. and NextEra Energy, Inc.*, Docket No. 2026-186-EG (Pub. Serv. Comm'n of S.C. Aug. 18, 2026), <https://dms.psc.sc.gov/Attachments/Matter/2620544f-53cf-4909-9bb1-5cef4e415dec> (setting final order date of January 29, 2027); *In the Matter of Joint Application of Dominion Energy, Inc., Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina, NextEra Energy, Inc., WG Development Corp., and CS Holdco, LLC for Approval of Proposed Merger*, Docket No. E-22, Sub 791, at 6 (N.C. Utils. Comm'n), <https://starw1.ncuc.gov/NCUC/ViewFile.aspx?Id=794c3721-f99d-40ff-bb61-13b1119b71c9> (setting a February 23, 2027 hearing date).

immaterial; to the contrary, the Commission’s statutory mandate under section 203 requires independent verification of the Transaction’s competitive effects, not reliance on Applicants’ characterizations.

Indeed, the Commission’s own staff has confirmed the inadequacy of Applicants’ filing. On September 23, 2026, the Director of the Division of Electric Power Regulation issued a deficiency letter determining that the Application “is deficient and the Commission requires additional information in order to process it,” and that the Application “will not be a completed application” until that information is submitted.³⁹⁰ The deficiency letter demands, among other things, identification of all subsidiary entities seeking section 203 authorization, substantiation of Applicants’ “*de minimis*” competitive overlap claims with supporting calculations and underlying data, explanation of data discrepancies in the competitive analysis, and identification of Dominion’s cost-based-rate customers and the Transaction’s effect on their rates.³⁹¹ The Commission staff’s independent identification of these informational gaps reinforces—and in some areas directly overlaps with—the informational deficiencies identified in this protest.

The precedents Applicants cite to support this request are also inapposite: None involved the combination of three vertically integrated franchised utilities with captive customers across multiple balancing authority areas in both organized and non-organized wholesale markets. The unprecedented scale of this Transaction—exceeding 118 GW of combined generating capacity and affecting more than ten million captive ratepayers across four states—demands unprecedented scrutiny, not unprecedented deference. Granting these waivers would prejudice intervenors, undermine the procedural integrity of this proceeding, and establish a perverse

³⁹⁰ Deficiency Letter at 2, 7.

³⁹¹ *See id.* at 2-7.

precedent that the vigor of Part 33's disclosure requirements is inversely proportional to the magnitude of the transaction under review.

A. The Commission's Statutory Obligation to Ensure that the Transaction is Consistent with the Public Interest Militates Against a Waiver of Part 33 Application Requirements.

The Commission's public interest review under section 203 is not a ministerial exercise. It requires the Commission to independently evaluate whether a proposed transaction will have an adverse effect on competition, rates, and regulation, and whether it will result in cross-subsidization or the pledge or encumbrance of utility assets inconsistent with the public interest.

Part 33 of the Commission's regulations implements the filing requirements that enable the Commission to carry out its statutory public interest review under section 203.³⁹² These requirements are designed to provide the Commission with the information it needs to evaluate whether a proposed transaction is consistent with the public interest, including detailed information about the Applicants' business activities, corporate structures, energy affiliates, jurisdictional facilities, customer lists, the competitive effects of the transaction, and the potential for cross-subsidization. Since "[a]pplicants bear the burden of proof" to demonstrate that their customers will be protected, and because a "central factor in the [Commission's] public[]interest analysis" under section 203 is whether the parties "have taken sufficient steps" to ensure a transaction "will not increase customers' rates",³⁹³ this mandate cannot possibly be discharged where the applicant has withheld the very data on which the Commission's evaluation depends.

Notwithstanding the comprehensive filing requirements set forth in Part 33, the Commission has, in practice, granted limited waivers of certain filing requirements when the

³⁹² See 18 C.F.R. pt. 33; *see also* *Implementation of Amended Section 203(a)(1)(B) of the Federal Power Act*, Order No. 855, 166 FERC ¶ 61,120, at P 33 (2019) (describing the FERC-519 information collection as "necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 203.").

³⁹³ *Louisville Gas & Elec. Co. v. FERC*, 149 F.4th 693, 703 (D.C. Cir. 2025) (quoting *KYMEA*, 45 F.4th at 168, 177).

applicant otherwise provides “sufficient information to evaluate the proposed transaction.”³⁹⁴

This standard, articulated in *PSI Energy* and subsequently followed in *Destec Energy, Inc.*³⁹⁵ and *Citizens Utils. Co.*³⁹⁶, requires the Commission to determine on a case-by-case basis whether the information provided is adequate for the Commission to evaluate the transaction’s effects on competition, rates, regulation, and cross-subsidization.

This waiver standard is not a statutory entitlement but rather a discretionary exercise of the Commission’s regulatory authority. The Commission may not waive statutory provisions themselves; it may only waive regulatory filing requirements to the extent the information at issue is not necessary for its statutory review.³⁹⁷ Where a waiver results in the omission of information material to the Commission’s public interest analysis, the Commission’s grant of the waiver may undermine its ability to discharge its statutory obligations. The Commission must therefore ensure that any waiver it grants does not compromise its capacity to evaluate the Transaction’s effects on competition, rates, regulation, and cross-subsidization, or leave the public record insufficient for parties to meaningfully participate in the proceeding.

In the case of the Transaction, the scope of the Commission’s obligations and the informational predicates for discharging them are at their apex. The Commission should not waive the very filing requirements that enable it to fulfill them. The implications of these requirements heightened where, as here, the applicants are the sole source of the competitive data on which the Commission’s analysis depends. The Competitive Analysis Screen and the vertical market power analysis are only as reliable as the data on which they are based. If the

³⁹⁴ *PSI Energy, Inc.*, 60 FERC ¶ 62,131, at 63,342 (1992).

³⁹⁵ *Destec Energy, Inc. and NGC Corp.*, 79 FERC ¶ 61,373, at 62,575 (1997).

³⁹⁶ *Citizens Utils. Co.*, 41 FERC ¶ 62,064, at 63,180 (1987).

³⁹⁷ See *PEI Power II, LLC, Letter Order*, Docket No. ER01-1764-000, App. A at 2 (June 7, 2001) (denying requests for waiver of section 203 statutory provisions and emphasizing that “provisions of section 203 are statutory in nature and may not be waived”) (citing *Resources Recovery (Dade County), Inc.*, 20 FERC ¶ 61,138 (1982)).

Commission permits Applicants to withhold information that would allow independent verification of their competitive claims, the Commission has no means of discharging its statutory obligation to consider the potential anticompetitive consequences of the Transaction.³⁹⁸

The Part 33 requirements not only equip the Commission to complete its own analysis but equip intervenors with the information necessary to participate meaningfully in the proceeding.³⁹⁹ Parties cannot evaluate Applicants' competitive representations, hold harmless commitments, or cross-subsidization assurances on the basis of an incomplete record. The right of intervenors to participate in section 203 proceedings is meaningless if the applicant is permitted to control which facts are made available for scrutiny.

Granting the requested waivers would place the Commission in the untenable position of relying on Applicants' own characterizations of the Transaction's competitive effects without the independent evidentiary basis to verify those characterizations. The D.C. Circuit has warned that the Commission must "look behind" applicants' representations and engage independently with the evidence; it may not adopt an "ostrich-like approach" to evidence that contradicts applicants' claims, and it must ensure that its decision-making is based on an independent evaluation of the record.⁴⁰⁰ Granting these waivers would not merely permit the Commission to look the other way, it would require the Commission to do so, by depriving it of the evidentiary basis to look anywhere at all.

³⁹⁸ *Gulf States Utils. Co. v. FPC*, 411 U.S. 747, 760 (1973).

³⁹⁹ See 18 C.F.R. § 33.2; Order No. 855, 166 FERC ¶ 61,120 at P 33 (describing the FERC-519 information collection as "necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of section 203").

⁴⁰⁰ See *EDF v. FERC*, 2 F.4th 953, 975 (D.C. Cir. 2021) (holding that the Commission's failure to engage with evidence of self-dealing and to provide a cogent explanation of its reasoning rendered its decision arbitrary and capricious).

B. Applicants' Cited Precedent in Favor of Waivers Do Not Reflect the Circumstances of this Proceeding.

None of the precedent that Applicants supply supports their sweeping waiver requests.

To the contrary, the factual and transactional contexts of the cited proceedings are fundamentally distinguishable from the Transaction in every material dimension: the type of transaction,⁴⁰¹ the scale of the transaction,⁴⁰² the nature of the entities involved,⁴⁰³ the markets at issue,⁴⁰⁴ and the scope of the Commission's public interest concerns.⁴⁰⁵

PSI Energy is the foundational case on which Applicants principally rely. In that proceeding, the Commission granted waivers of filing requirements under subsections (d), (h), (i), and (q) of Section 33.2, as well as complete waivers of Exhibits A, B, D, and H, and partial waivers of Exhibits G, I, and J, finding that the applicant had "provided sufficient information to evaluate the proposed transaction."⁴⁰⁶ However, *PSI Energy* was decided in 1992—more than three decades ago—in a fundamentally different regulatory landscape, before the Commission adopted the Merger Policy Statement, Order No. 642, or Order No. 669 and its current framework for evaluating cross-subsidization. The transaction at issue in *PSI Energy* did not involve the combination of multiple vertically integrated utilities with captive customers

⁴⁰¹ See *Nat'l Energy & Gas Transmission, Inc.*, 108 FERC ¶ 62,148 (2004) (involving an intra-corporate reorganization, not a merger of two vertically integrated utilities); *Citizens Utils. Co.*, 41 FERC ¶ 62,064 (1987) (concerning Citizens request to purchase some ownership stake in another public utility, but not to exceed 1% stake).

⁴⁰² See *MACH Gen, LLC*, 113 FERC ¶ 61,138 (2005) (involving the acquisition of additional equity shares from existing equity partners in a generation-only entity, of which the equity owners had no stake in transmission facilities, nor a stake in vertically integrated utilities); *Boston Generating, LLC*, 113 FERC ¶ 61,109 (2005) (involving a generation-only entity that sought to modify its stock asset classes); *EBG Holdings LLC*, 119 FERC ¶ 62,172 (2007) (waiving filing requirements for a merger of generation-only entities with no interests in transmission or vertically integrated utilities).

⁴⁰³ *Destec Energy, Inc.*, 79 FERC ¶ 61,373 (1997) (regarding an independent power producer of modest scale, not a franchised utility with millions of captive customers).

⁴⁰⁴ *Alfalfa Elec. Coop., Inc.*, 105 FERC ¶ 61,311 (2003) (involving a rural electric cooperative—an entity categorically different in scale, market presence, and regulatory complexity from the Applicants, with limited market presence, no material competitive overlap in wholesale markets, and a straightforward corporate structure that reduces the Commission's informational burden).

⁴⁰⁵ *Northbrook N.Y., LLC*, 130 FERC ¶ 62,128 (2010) (lacking any connection to Section 203 merger approvals, as this matter implicates hydropower sales, and inapposite to the instant matter's public interest inquiry.)

⁴⁰⁶ *PSI Energy, Inc.*, 60 FERC ¶ 62,131 (1992).

spanning four states, operations across multiple RTOs and balancing authority areas, and combined generating capacity exceeding 118 GW. PSI Energy merely sought to acquire certain transmission facilities at a time before open access requirements. No intervenors participated in the docket, and the Commission observed that “[n]o comments were received.”⁴⁰⁷ Reliance on *PSI Energy* as blanket authorization for waivers in a transaction of this magnitude is not legally justifiable.

Applicants place particular emphasis on the Commission’s recent order in *Constellation Energy*, which reiterated the “sufficient information” standard by reference to the same line of precedent the Application cites, including *PSI Energy*, *Destec Energy*, and *Citizens Utils.*⁴⁰⁸ The *Constellation Energy* proceeding, however, is distinguishable in several critical respects. First, while *Constellation Energy* involved a combination of large competitive generation owners and operators, it did not involve any vertically integrated franchised utilities, a world-leading generation and transmission development platform, or nearly the structural complexity that the Transaction presents. Second, the Commission’s grant of waivers in *Constellation Energy* does not establish that waivers are appropriate in all large transactions. *Constellation Energy* must be read in the context of its specific factual record, and protestors in that proceeding raised concerns about the adequacy of the applicants’ filing, which the Commission addressed on a case-specific basis. The Commission’s tailored waiver analysis in *Constellation Energy* does not establish a categorical rule that waivers are appropriate in all large transactions; it merely confirms that the Commission must independently evaluate the sufficiency of each record. Third, *Constellation Energy* acknowledged that the Commission’s practice of granting waivers is predicated on the

⁴⁰⁷ *PSI Energy, Inc.*, 60 FERC ¶ 62,131 (1992).

⁴⁰⁸ *Constellation Energy Corp.*, 192 FERC ¶ 61,074 (2025).

application containing “sufficient information to evaluate the proposed transaction.”⁴⁰⁹ This standard is case-specific and requires the Commission to evaluate, in each proceeding, whether the information provided is in fact adequate. The information Applicants have provided is not sufficient to permit the Commission or intervenors to independently and comprehensively evaluate the unprecedentedly complex Transaction’s effects on competition, rates, regulation, and cross-subsidization without the withheld exhibits.

Accordingly, the Commission’s willingness to grant Part 33 waivers in proceedings involving merchant generators operating exclusively in competitive wholesale markets provides no support for comparable waivers here. Unlike those transactions, the proposed combination of FPL, VEPCO, and DESC implicates the core concerns animating section 203: the protection of captive ratepayers from the competitive, rate, regulatory, and cross-subsidization harms that can arise when traditional utilities with cost-based obligations consolidate market power. The required statutory analyses are both quantitatively larger and qualitatively different in a transaction of this scale. The Commission’s informational needs are correspondingly greater, and the waiver precedents Applicants cite offer no basis for relaxing them.

C. The Unprecedented Scale of the Transaction Demands Unprecedented Scrutiny—Not Unprecedented Deference.

In a transaction of this magnitude—involving three vertically integrated utilities with over ten million captive customers—the grant of broad filing waivers would be without precedent and would risk depriving the Commission and intervenors of the information necessary to evaluate the Transaction’s consistency with the public interest. The proposed combination of NextEra and Dominion would create, by any measure, the largest electric utility holding company in the United States and the largest investor-owned utility in the world, making

⁴⁰⁹ *Constellation Energy Corp.*, 192 FERC ¶ 61,074 (2025) (citing *PSI Energy*).

this transaction fundamentally different, and a magnitude more consequential, than any section 203 application previously considered by this Commission. As discussed above, the Application itself makes this point, by revealing the sheer scale of the generating capacity, customers, and electric and gas infrastructure involved.

To reiterate the scale: NextEra, through its subsidiaries, owns or operates approximately 83.3 GW of net generating capacity,⁴¹⁰ including approximately 45.6 GW through NEER across over 40 states and Canada,⁴¹¹ and approximately 35.9 GW of nameplate generating capacity through FPL in the FPL balancing authority area.⁴¹² Dominion controls a portfolio of approximately 32.5 GW of electric generation,⁴¹³ including approximately 21 GW of aggregate nameplate capacity through VEPCO and over 6 GW through DESC.⁴¹⁴ The combined entity would thus control in excess of 118 GW of generating capacity—a figure that dwarfs the generating portfolios of any of the entities involved in the precedents cited by the Applicants.

FPL serves more than six million retail customer accounts across an approximately 35,000-square-mile service territory and a population of approximately 12 million people in Florida.⁴¹⁵ VEPCO serves approximately 2.8 million residential, commercial, large load, industrial, and governmental customers in Virginia and North Carolina.⁴¹⁶ DESC serves approximately 800,000 electric customers and approximately 500,000 regulated natural gas customers in South Carolina.⁴¹⁷ In total, Dominion provides service to approximately 4.1 million primarily electric utility customers.⁴¹⁸ The combined entity would thus serve approximately 10.1

⁴¹⁰ See Macan Aff. at 15.

⁴¹¹ Application at 4.

⁴¹² *Id.*

⁴¹³ See Macan Aff. at 15.

⁴¹⁴ See Application at 10-11.

⁴¹⁵ *Id.* at 4.

⁴¹⁶ *Id.* at 10.

⁴¹⁷ *Id.* at 11.

⁴¹⁸ *Id.* at 9.

million retail utility customer accounts—all of them captive customers of vertically integrated utilities subject to cost-based regulation.

As of December 31, 2025, Dominion’s portfolio alone includes 10,800 miles of electric transmission lines and 80,400 miles of electric distribution lines.⁴¹⁹ The combined entity’s transmission assets would span PJM, ISO-NE, and the Southeast, including the FPL and DESC balancing authority areas, implicating four separate state regulatory commissions (the Virginia SCC, the North Carolina Utilities Commission, the PSCSC, and the Florida PSC) in addition to the Commission itself. The combined entity would hold interests in interstate natural gas pipelines including MVP, Sabal Trail Transmission, and the Florida Southeast Connection pipeline.⁴²⁰ DESC owns natural gas local distribution operations serving approximately 500,000 customers and approximately 400 miles of gas transmission pipelines and 20,000 miles of distribution mains.⁴²¹

In light of the tremendous scale of the proposed Transaction, the Commission must ensure that it has all the considerable information necessary to assess whether the Transaction would be consistent with the public interest. Granting the requested waivers would impermissibly frustrate its ability to do so.

D. The Specific Categories of Withheld Information Undermine Independent Verification.

Applicants have requested that the Commission waive a significant portion of the filing requirements set forth in Part 33.⁴²² Specifically, Applicants seek waivers of the following informational requirements:

⁴¹⁹ *Id.* at 10.

⁴²⁰ *See id.* at 8-9.

⁴²¹ Macan Aff. at 83.

⁴²² Application at 2.

- **Exhibit A – Business Activities (18 C.F.R. § 33.2(c)(1)).** Applicants request waiver “to the extent it would require the submission of additional information” regarding their business activities beyond the description provided in Section II of the Application.⁴²³
- **Exhibit B – Energy Subsidiaries and Affiliates (18 C.F.R. § 33.2(c)(2)).** Applicants request waiver of “the requirement to provide additional information with respect to Applicants’ current energy affiliates.”⁴²⁴
- **Exhibit C – Organizational Charts (18 C.F.R. § 33.2(c)(3)).** Applicants request partial waiver “to the extent necessary to permit them to include only those parent companies, energy subsidiaries, and energy affiliates of Applicants that are relevant to the Transaction.”⁴²⁵
- **Exhibit D – Joint Ventures, Strategic Alliances, Tolling Arrangements, or Other Business Arrangements (18 C.F.R. § 33.2(c)(4)).** Applicants request complete waiver of the requirement to submit a separate Exhibit D, asserting that the Transaction “will not affect any joint ventures, strategic alliances, or other business arrangements of Applicants separate from the Transaction.”⁴²⁶
- **Exhibit E – Common Officers or Directors.** Applicants request complete waiver, asserting that “[t]here are currently no common officers or directors shared between NextEra on one hand, and Dominion on the other hand.”⁴²⁷
- **Exhibit F – Wholesale Power Sales Customers and Unbundled Transmission Services Customers (18 C.F.R. § 33.2(c)(6)).** Applicants request complete waiver, asserting that the Transaction “will not alter any existing wholesale power sales or transmission services” and that a list of wholesale customers “would not assist the Commission in the evaluation of the Transaction.”⁴²⁸
- **Exhibit G – Jurisdictional Facilities (18 C.F.R. § 33.2(d)).** Applicants request waiver of “any requirement to describe the jurisdictional facilities owned, operated, or controlled by Applicants’ parent companies, subsidiaries, affiliates, and associate companies not relevant to the Transaction.”⁴²⁹
- **Exhibit H – Narrative Description of the Proposed Transaction (18 C.F.R. § 33.2(e)).** Applicants request waiver “to the extent it would require the submission of additional information” beyond the description provided in the Application.⁴³⁰

⁴²³ Application at 40-41.

⁴²⁴ *Id.* at 41.

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.* at 42.

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.* at 43.

- **Exhibit I – Contracts Related to the Transaction (18 C.F.R. § 33.2(f)).** Applicants request waiver “to the extent it would require submission of the exhibits, schedules or other ancillary documents described or referenced in the Merger Agreement,” asserting that “such information would not aid the Commission in its evaluation of the Transaction.”⁴³¹
- **Exhibit K – Maps (18 C.F.R. § 33.2(h)).** Applicants request waiver of the requirement to file maps beyond those provided for the VEPCO, DESC, and FPL service territories, asserting that additional maps “would not be relevant to the Commission's analysis of the Transaction.”⁴³²
- **Section 33.5 – Proposed Accounting Entries.** Applicants request complete waiver, asserting that FPL, VEPCO, and DESC do not intend “to reflect or account for any aspect of the Transaction in their books.” Applicants state that if the Transaction does affect these entities’ jurisdictional assets, they will submit a filing within six months of closing.⁴³³

Among the most significant categories of withheld information are: (1) Exhibit B information regarding the full scope of Applicants’ energy affiliates; (2) Exhibit F, the list of wholesale power sales customers and unbundled transmission service customers; (3) Exhibit G, the description of jurisdictional facilities owned, operated, or controlled by Applicants' affiliates and associate companies; and (4) the exhibits, schedules, and ancillary documents to the Merger Agreement. Applicants assert, in conclusory terms, that this information is “not necessary”⁴³⁴ or “would not assist the Commission” in evaluating the Transaction.⁴³⁵

The waiver of Exhibit F (wholesale power sales customers) is particularly problematic in this regard. The Commission’s regulations require applicants to provide “[a] description and location of wholesale power sales customers and unbundled transmission services customers served by the applicant or its parent companies, subsidiaries, affiliates and associate

⁴³¹ *Id.*

⁴³² *Id.* at 43-44.

⁴³³ *Id.* at 44.

⁴³⁴ *Id.* at 2, 46.

⁴³⁵ *Id.* at 42.

companies.”⁴³⁶ This information is directly relevant to the Commission’s evaluation of horizontal and vertical market power under 18 C.F.R. §§ 33.3 and 33.4 and the Competitive Analysis Screen. Without a complete list of wholesale customers, the Commission and intervenors are unable to independently verify the geographic scope of Applicants’ market presence, the extent of their overlapping sales activity, or the accuracy of Applicants’ characterization of their competitive overlap as “*de minimis*.”⁴³⁷

Applicants’ own competitive analysis illustrates the importance of this information. In ISO-NE, the Applicants’ combined post-Transaction market share under the EC measure reaches approximately 10 percent in certain pricing periods, with HHI changes of up to 78 points.⁴³⁸ In the Dominion Submarket—a highly concentrated market where Dominion controls approximately 60–71 percent of installed capacity and the post-Transaction HHI ranges from 3,435 to 4,420⁴³⁹—any additional information about market participants, uncommitted capacity, or sales activity could materially affect the competitive analysis. While Applicants report that HHI changes are small, this conclusion rests on Applicants’ own data and analytical assumptions, which the Commission and intervenors have no independent means to verify in the absence of the withheld information.

Similarly, the waiver of Exhibit G (jurisdictional facilities) prevents the Commission and intervenors from independently assessing the full scope of jurisdictional facilities that may be affected by the Transaction, facilities that are relevant to the evaluation of both horizontal and vertical market power.⁴⁴⁰ And the waiver of the Merger Agreement’s exhibits, schedules, and

⁴³⁶ 18 C.F.R. § 33.2(c)(6).

⁴³⁷ See e.g., Application at 4.

⁴³⁸ *Id.* at 22.

⁴³⁹ See App. at 18; Macan Aff. at 51.

⁴⁴⁰ See 18 C.F.R. § 33.2(d).

ancillary documents (Exhibit I) deprives the Commission of the contractual details that may bear on the Transaction's competitive effects, rate implications, and potential for cross-subsidization.

Applicants assert they have provided "sufficient information," but sufficiency cannot be judged by what Applicants have chosen to disclose, it must be judged by what the Commission requires to discharge its statutory obligations. No applicant can be permitted to define the contours of the Commission's own review. If the Commission permits Applicants to withhold Exhibits B, D, E, F, G, and the Merger Agreement's schedules and exhibits—while also waiving the full organizational chart requirement, the additional maps requirement, the full narrative description requirement, and the proposed accounting entries requirement—in the largest utility merger in U.S. history, the Commission will have established that the scope of Part 33's filing requirements is inversely proportional to the scale of the transaction.

This result would invert the logic of Part 33. The Commission's filing requirements were designed to ensure that the Commission has the information necessary to evaluate whether a transaction is consistent with the public interest. The larger and more complex the transaction, the more information the Commission needs. Indeed, section 203 was amended and Order No. 669 was promulgated precisely because transactions involving "traditional utility associate companies with wholesale or retail customers served under cost-based regulation" present unique cross-subsidization risks.⁴⁴¹ Waiving the very exhibits that inform this analysis would frustrate Congressional intent. An order permitting the withholding of material competitive data in a transaction of this magnitude would create precedent that effectively converts Part 33's comprehensive disclosure framework into an optional one.

⁴⁴¹ See Order No. 669 at P 169.

The requested waivers prejudice not only the Commission itself, but on intervenors and the public. The Part 33 filing requirements serve a dual purpose: they provide the Commission the information it needs to conduct its own analysis, and intervenors with the information necessary to evaluate the applicants' claims and participate meaningfully in the process. Without the withheld information, parties are left to accept or challenge Applicants' competitive representations on the basis of an incomplete record, a result inconsistent with the Commission's obligation to ensure consistency with the public interest.

Commission staff's September 23, 2026 deficiency letter reinforces the necessity of denying the requested waivers. The staff has independently determined that the Application is deficient in areas that directly overlap with the informational gaps identified in this protest, including the adequacy of Applicants' competitive analysis data, the sufficiency of their *de minimis* overlap claims, and the completeness of their rate-impact analysis. If the Commission staff determines that the Application as filed does not contain sufficient information for the Commission to process it, it follows that the Application does not contain sufficient information for intervenors to meaningfully evaluate it. The Commission should therefore deny the requested waivers in their entirety and require Applicants to provide all information required under Part 33 of the Commission's regulations. In the alternative, the Commission should at minimum require Applicants to supplement the record with Exhibits B, F, G, and the Merger Agreement schedules and exhibits before issuing any order on the merits.

VIII. CONCLUSION

For the foregoing reasons, Public Interest Organizations respectfully request that the Commission deny the Application as incomplete or inconsistent with the public interest absent the protective conditions outlined herein.

Respectfully submitted,

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September 29, 2026

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated this 29th day of September 2026.

/s/ Katherine L. Rogers
Katherine L. Rogers