UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Athens Utilities Board, *et al.*, Petitioners,	)	Docket Nos. EL21-40-000 TX21-1-000
v.	)	
Tennessee Valley Authority, Respondents.	)	

CENTER FOR BIOLOGICAL DIVERSITY'S COMMENTS IN RESPONSE TO COMPLAINT AND PETITION[1]

Petitioners seek an order under Federal Power Act ("FPA") Sections 210 and 211A requiring the Tennessee Valley Authority ("TVA") to provide interconnection and transmission services.[2] TVA, however, asserts that the Federal Energy Regulatory Commission ("FERC" or "Commission") lacks the power even to *consider* Petitioners' request, on the grounds that such relief is beyond FERC's jurisdiction.[3]

The Center for Biological Diversity (the "Center") takes no position on the Local Power Companies' ("LPC") specific request. Instead, the Center submits these comments to further explain why the Commission should reject TVA's erroneous legal claim that FERC is toothless to provide appropriate oversight where TVA engages in anti-competitive practices antithetical to the purposes of the FPA and other relevant authorities. As discussed below, FERC has the power to issue an appropriate order against TVA, and should exercise that authority where a Section

[1] Pursuant to Rule 214, the Center for Biological Diversity intervened in this proceeding on February 1, 2021 on behalf of its more than 1.7 million members and online activists, including hundreds served by TVA distributors, concerned about the urgent need to expedite the renewable energy transition to protect human health, the natural environment, and species from the ravages of climate change. *See* Center's Feb. 1, 2021 Mot. to Intervene.

[2] Complaint and Petition For Order Under Federal Power Act Sections 210 and 211A Against TVA (Jan. 11, 2021) ("Pet. Br.") (citing 16 U.S.C. §§ 824i, 824j-1).

[3] Pet. Br., Exhibit ("Exh.") No. LPC-0007 (Letters from TVA).

211A order will further important public interest objectives, including increasing effective competition and advancing the vital clean energy transition.

A. Federal Power Act Section 212(j) Does Not Constrain the Commission's Authority to Police TVA's Discriminatory Practices Under Section 211A.

The principal legal question the Commission must resolve is whether, in adding Section 211A of the Federal Power Act in 2005[4], and thereby authorizing FERC to redress discriminatory practices by "unregulated transmitting utilities," Congress intended to carve out an exception that would leave the millions of customers in TVA's service territory without any recourse when faced with that very discrimination. As detailed in Petitioners' submission, and as further discussed below, the clear answer to that question is "no"—there is no "TVA exception" to Section 211A.

The only basis for TVA's claim to a TVA exception is Federal Power Act Section 212(j), enacted as part of the 1992 Public Utility Regulatory Policies Act ("PURPA") amendments more than a decade *before* Section 211A's enactment.[5] As Petitioners have explained, the TVA Act prohibits TVA from expanding the geographic area of its electric service territory (the "TVA Fence").[6] Cross-referencing that limitation, Section 212(j) provides that an electric utility—such as TVA—that, by Federal law, may not supply electricity outside a prescribed service area may not be required, "under Section 211," "to provide transmission services to another entity if the electricity to be transmitted will be consumed within the area set forth in such Federal law . . . ."[7]

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[4] Pub. Law 109-58, Title XII, Subtitle C, § 1231, 119 Stat. 955 (Aug. 8, 2005) (codified at 16 U.S.C. § 824j-1).

[5] Pub. Law 102-486, Title VII, Subtitle B, § 722(j), 106 Stat. 2919 (Oct. 24, 1992) (codified at 16 U.S.C. § 824k(j)).

[6] Pet Br. at 15 (citing 16 U.S.C. § 831n-4(a)).

[7] 16 U.S.C. § 824k(j)).

TVA claims that even though Section 212(j) only cross-references Section 211, the Section 212(j) restriction also cabins FERC's authority under Section 211A.[8] However, the plain language and Congressional history of the relevant provisions demonstrate that TVA is mistaken.

Section 201(f) of the Federal Power Act excludes federal agencies like TVA from FERC jurisdiction "unless such provision makes specific reference thereto."[9] But in 2005, Congress specifically added Section 211A, which expanded FERC's regulatory jurisdiction precisely to "unregulated transmission utilit[ies]"—defined as those entities that "own[ ] or operate[ ] facilities used for the transmission of electric energy in interstate commerce," and "is an entity described *in section 201(f)*."[10] This unambiguously includes TVA.[11]

As to these formerly unregulated transmission entities, Section 211A provides that FERC "may" require such an entity to "provide transmission services — (1) at rates that are comparable to those that the unregulated transmitting utility charges itself; and (2) on terms and conditions (not related to rates) that are comparable to those that the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential."[12] There is simply nothing in Section 211A that suggests there is a special exception for TVA.

Nonetheless, TVA claims that Section 212(j) still governs, asserting that Congress' judgment in 1992 to limit FERC's authority under Section 211 is somehow relevant to FERC's express power over "unregulated transmitting utilities" like TVA pursuant to Section 211A. TVA is not simply claiming that FERC lacks the authority to second guess TVA's case-by-case

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8 *See supra* n.3.

9 16 U.S.C. § 824(f).

10 *Id.* § 824j-1(a) (emphasis added).

11 *See also* Pet. Br. at 23-24 (discussing legislative history of Section 211A).

12 *Id.* § 824j-1(b).

determinations whether to grant a request for transmission services. Rather, TVA asserts a far more broad-reaching, unreviewable power: to impose a bright line policy that TVA will reject *all* such transmission service requests, regardless of the consequences to the distributors and customers that Congress intended to protect by giving FERC oversight responsibilities for "unregulated transmitting utilities" under Section 211A.[13]

As Petitioners persuasively argue, the relevant rules of statutory construction demonstrate that TVA misapprehends its purported immunity from Section 211A.[14]

Indeed, the case for FERC authority over TVA here is even stronger than FERC's determination in *Iberdrola Renewables, Inc. v. BPA* ("*Iberdrola*") that the Bonneville Power Authority ("BPA") is not immune from Section 211A review.[15] In that proceeding, BPA, like TVA here, argued that FERC's Section 211A authority was constrained by a provision of Section 212—in that case, Section 212(i)(5), which expressly precludes a Section 211 order that would impair BPA's implementation of its own mandates.[16]

However, in that case, BPA also made an argument even more far-reaching: that FERC jurisdiction would conflict with the Ninth Circuit's exclusive jurisdiction to review BPA's compliance with the agency's statutory mandates.[17]

Rejecting these arguments, FERC found that "Section 211A of the FPA grants the Commission broad legal authority to require unregulated transmitting utilities to provide

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13 *See* TVA Reaffirmation of Policy On Requests To Use The TVA Transmission System To Deliver Power To Local Power Companies (declaring a TVA policy to deny *all* "requests for transmission service to serve load within the [TVA] Fence") (filed as Pet. Exh. No. LPC-008).

14 Pet. Br. at 19-23.

15 137 FERC ¶ 61,185 (2011), *reh'g denied*, 141 FERC ¶ 61,233 (2012).

16 16 U.S.C. § 824k(i)(5).

17 137 FERC ¶ 61,185, at Par. 22; 141 FERC ¶ 61,233, at Par. 13.

comparable transmission service," and concluded that this authority extends to BPA, regardless of the Ninth Circuit's jurisdiction.[18] Similarly, the Ninth Circuit itself recognized FERC's authority and mandate under Section 211A, noting that in giving FERC new authorities under this Section, "Congress sought to open access and increase competition."[19]

The critical distinction between the BPA argument rejected in *Iberdrola*, and TVA's argument here, is that TVA does not claim that FERC's exercise of authority over TVA would somehow conflict with the jurisdiction of any other authority besides TVA itself. Thus, if FERC could exercise authority over BPA despite the Ninth Circuit's separate jurisdiction over that agency, FERC certainly has the power to issue a Section 211A order exercising authority over TVA itself—which, again, is precisely what Congress intended in enacting Section 211A.

Moreover, while the argument FERC rejected in *Iberdrola* concerned a purported conflict in mandates, here TVA does not claim that it could not *choose* to enter into the arrangement Petitioners seek. Rather, TVA asserts the unilateral authority to decide that it will refuse to entertain such requests under any and all circumstances. It is just this kind of discriminatory treatment that Congress sought to address in enacting Section 211A, which was intended to "open access and increase competition" for "unregulated transmitting utilit[ies]" such as TVA.[20]

In short, FERC authority is a vital backstop against a utility like TVA that refuses to allow open access under comparable terms.

Finally, TVA's untenable legal position also improperly discounts the role Congress intended for TVA's distributors, who have their own responsibility to the retail customers they

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[18] *Id.* at Par. 20-22.

[19] *Northwest Reqs. Utilities v. FERC*, 798 F.3d 796, 808 (9th Cir. 2015). The Court's ruling was limited to finding petitioners lacked statutory standing, but the Court could only conclude that petitioners' interests were contrary to the statutory scheme by recognizing that Section 211A authorized FERC to issue an order against BPA.

[20] *Id.*

serve.[21] In 1992, Congress encouraged distributors to develop appropriate programs to benefit their customers and the environment, and charged TVA with taking these programs into account.[22] While most utility regulators—including FERC itself—are subject to at least some nominal judicial oversight regarding whether utilities are acting in the best interest of their customers, in TVA's history there has been essentially no accountability for TVA's decisions regarding the terms on which it provides service.[23]

Against this backdrop, it makes perfect sense that Congress would have intended that Section 211A apply to TVA. In short, TVA's position that it has unfettered discretion to entirely ignore the needs of its LPCs, with an across-the-board policy rejecting all requests for transmission services under any circumstance, flies in the face of the TVA Act, and only further supports the conclusion that FERC has the authority to step in when doing so is appropriate and necessary.

For all these reasons, the Center urges FERC to determine that it has the authority under Sections 210 and 211A to order TVA to provide interconnection and transmission service.

B. The Commission Should Exercise Its Discretionary Authority Over TVA Where Doing So Will Further The Public Interest, And In Particular Where A FERC Order Will Advance The Renewable Energy Transition To Combat Climate Change.

While Section 211A plainly gives FERC the authority to assert jurisdiction over TVA, it does not require FERC to act. Rather, Section 211A provides that FERC "may" issue an order for transmission service on comparable terms, and that FERC should consider the "public

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21 *See* 16 U.S.C. § 831i.

22 Pub. Law 102-486, Title 1, Subtitle B, § 113, 106 Stat. 2798 (Oct. 24, 1992) (codified at 16 U.S.C. § 831m-1).

23 *See generally* Richard S. Wirtz, *TVA, the Court, and Power Rates, A Study in Judicial Review*, 49 Tenn. L. Rev. 709 (Summer 1982) (discussing precedents finding TVA decisions largely unreviewable).

interest" in determining whether to do so.[24] Since an order under Section 211A is naturally tied to a request for interconnection under Section 210, which has a similar "public interest" provision,[25] the Center submits that the scope of the Commission's inquiry as to the "public interest" should be the same.

As the Supreme Court has explained, in considering the use of the term "public interest" in the PURPA amendments that included Section 210, FERC is called upon to consider the objective to "reduce reliance on fossil fuels," based on the Commission's long-standing judgment that the country benefits from renewable energy development and the "resulting decrease in the Nation's dependence on fossil fuels."[26] Accordingly, in evaluating whether to grant a Section 210 and 211A order concerning TVA, FERC should pay particular attention to whether granting such an Order will advance the vital clean energy transition.[27]

TVA is unfortunately moving in the wrong direction. FERC oversight, and in particular the prospect of subjecting TVA to effective competition pursuant to Section 211A, provides a unique opportunity to further the clean energy transition in and near TVA's massive service territory.

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[24] 16 U.S.C. § 824j-1(c)(3).

[25] *Id.* § 824i(c)(1).

[26] *American Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 417-418 (1983). While the Court was specifically discussing the purpose of the "public interest" standard in PURPA Section 210, 16 U.S.C. 824a-3(b), that same language was included in the same statute to amend Federal Power Act Section 210, 16 U.S.C. § 824i, and thus should be presumed to have the same meaning there. *See Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 595 (2004) (reiterating the "presumption that identical words used in different parts of the same act are intended to have the same meaning" (quoting *Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932))).

[27] *See also* Rich Glick and Matthew Christiansen, *FERC and Climate Change*, 40 Energy L. J. 1, 6 (2019) ("[I]t is hard to imagine a consideration more relevant to the 'public interest' than the existential threat posed by climate change."). The most recent Congressional direction for utilities to "reduce emissions and meet 100 percent of the power demand in the United States through clean, renewable, or zero emission energy sources" also indicates that the clean energy transition should be a vital component of the public interest inquiry. Pub. Law 116-260, Division Z, § 11003 (2020); *see also* Executive Order 14008, § 201 (Jan. 27, 2021) (recent Order announcing a federal policy "to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy").

1. TVA Is Both Clinging To Its Fossil Fuel Portfolio, While Also Thwarting Others' Efforts To Advance The Clean Energy Transition In The Region.

As Petitioners note, TVA operates enormous coal and gas power plants to serve its 9 million customers over a seven-state region.[28] Thus, while TVA has made some progress in reducing its greenhouse gas ("GHG") emissions, TVA's massive fossil fuel portfolio is fundamentally at odds with the urgent need for rapid GHG reductions to address the climate crisis.[29]

TVA does not plan to fundamentally change course in the coming years. To the contrary, pursuant the agency's 2019 Integrated Resource Plan ("IRP"), TVA will still be emitting more than 34 million tons of CO_2 *per year* in 2038.[30] That IRP further provides that in the coming years, TVA will build as much as 8,600 MW of *new* fossil fuel capacity.[31] Indeed, this month, TVA announced plans to build two new fossil fuel plants[32]—a move fundamentally at odds with the National objective to decarbonize the entire electricity sector by 2035.[33] In short, at a

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[28] Pet. Br. at 10; *see also* TVA, Our Power System, *available at* *https://www.tva.com/energy/our-power-system*.

[29] The Commission is well versed in the "existential threat posed by climate change," *see FERC and Climate Change* at 6, and thus the need to urgently and steeply reduce the Nation's GHG emissions to address the climate crisis. *See*, *e.g.*, U.S. Global Change Research Program, *4th National Climate Assessment, Summary Findings* (2018), *available at* *https://nca2018.globalchange.gov*.

[30] *See* TVA 2019 IRP, Final Envt'l Impact Stmt., Vol. II, at 5-27, *available at* https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/default-document-library/site-content/environment/environmental-stewardship/irp/2019-documents/tva-2019-integrated-resource-plan-volume-ii-final-eis.pdf?sfvrsn=99a30a7d_4.

[31] *See* TVA 2019 IRP, Vol. 1, at 9-3 to 9-4, *available at* https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/default-document-library/site-content/environment/environmental-stewardship/irp/2019-documents/tva-2019-integrated-resource-plan-volume-i-final-resource-plan.pdf?sfvrsn=44251e0a_4.

[32] *See* Paradise and Colbert Combustion Turbine Plants Draft Envt'l Assessment (Feb. 2021), *available at* https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/environment/tva-pct-cct-draft-ea_012721ce7c1f4b-9224-4685-a17c-84af3ad7568b.pdf?sfvrsn=c0df9d02_5.

[33] *See* Executive Order 14008, § 205 (Jan. 27, 2021).

moment when the Nation's power supply must be rapidly transitioned away from GHG-emitting fossil fuels, TVA is doubling down on a fossil fuel future.

Making matters worse—and of particular relevance here—at the same time TVA is largely maintaining its fossil fuel *status quo*, the agency has taken action on numerous fronts to make it more difficult for homeowners, businesses, and LPCs to free themselves from TVA's fossil fuel-heavy power system by generating their *own* renewable energy. As TVA has noted, it views Distributed Energy Resources ("DER")—such as rooftop and community solar, battery storage, and energy efficiency—as forms of "competition" it must combat. Thus, TVA explained in a recent Securities and Exchange Commission filing that it:

> faces *competition* in the form of emerging technologies. Improvements in energy efficiency technologies, smart technologies, and energy storage technologies may reduce the demand for centrally provided power. The growing interest by customers in generating their own power through DER has the potential to lead to a reduction in the load served by TVA as well as cause TVA to re-evaluate how it operates the overall grid system to continue to provide highly reliable power at affordable rates.[34]

Accordingly, in recent years TVA has taken a number of concrete steps to make it more difficult for third parties to access DER for themselves.

First, the new power contracts of concern to Petitioners have terms that severely constrain LPCs' freedom to rely on renewable energy and DER rather than continuing to be tied to TVA power.[35]

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[34] TVA Sept. 30, 2020 SEC Annual Report at 21, *available at* https://www.sec.gov/ix?doc=/Archives/edgar/data/1376986/000137698620000030/tve-20200930.htm (emphasis added).

[35] *See* Pet. Exh. No. LPC-0014 at Section 2(e); *see also* TVA "Flexibility Proposal," *available at* https://www.tva.com/environment/environmental-stewardship/environmental-reviews/nepa-detail/flexibility-proposal; *accord* William Driscoll, *Lawsuit challenges TVA's anti-solar "never-ending contracts" with its utility customers*, PV Magazine, Aug. 21, 2020, *available at* https://pv-magazine-usa.com/2020/08/21/lawsuit-challenges-tvas-anti-solar-never-ending-contracts-with-its-utility-customers/ (explaining that the contracts severely constrain the amount of power the LPCS "can procure from non-TVA sources such as solar").

Second, in 2018, TVA imposed its first-ever Grid Access Charge ("GAC"), substituting a portion of its volumetric rates with fixed charges.[36] In imposing these charges to be paid regardless of energy usage, TVA claimed its prior volumetric rates "over-incentivize consumer installation of DER."[37]

Third, along with the GAC, TVA lowered volumetric prices for its largest commercial customers. According to TVA itself, this rate change was necessary in light of companies' "sustainability goals and commit[ment] to purchase up to 100% of their energy resources from renewable resources."[38]

Fourth, in 2019, TVA eliminated its Green Power Providers Program, which had provided for at least some small level of full retail net metering for solar installations.[39]

And *finally*, just recently, TVA decided to allow LPCs to put solar customers into their own rate class, which will further discourage DER development by allowing class-specific charges that will only further disincentivize DER investments.[40]

In short, TVA is both failing to fundamentally change its energy portfolio to address the climate crisis, while also moving on numerous fronts to make it more difficult for its customers

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[36] TVA 2018 Rate Change Final Envt'l Assessment, *available at* https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/environment/environmental-stewardship/nepa-environmental-reviews/tva-2018-rate-change-final-ea-may-4-2018.pdf?sfvrsn=e35817b_3.

[37] *Id.* at 6.

[38] *Id.* at 3.

[39] TVA's Changes To Green Power Providers Program Finding of No Significant Impact, *available at* https://tva-azr-eastus-cdn-ep-tvawcm-prd.azureedge.net/cdn-tvawcma/docs/default-source/environment/environmental-stewardship/nepa-environmental-reviews/tva-green-power-providers-fonsi-12-20-2019.pdf?sfvrsn=b6f5dd3e_5.

[40] Tim Sylvia, *TVA allows power companies to charge anti-solar fixed fees*, PV Magazine, Feb. 3, 2021, *available at* https://pv-magazine-usa.com/2021/02/03/tva-allows-power-companies-to-charge-anti-solar-fixed-fees/; *see also, e.g.*, Ari Peskoe, *Unjust, Unreasonable, and Unduly Discriminatory: Electric Utility Rates And The Campaign Against Rooftop Solar*, 11 Tex. J. Oil Gas & Energy L. 211 (2016) (discussing how fixed fees discourage DER).

to act on their own, because TVA views such developments as competition that it should thwart, rather than clean energy development that the agency should encourage.

2. FERC Should Grant A Section 210 And 211A Petition Against TVA Where Effective Competition Will Support Clean Energy Development.

Congress and the Commission have long recognized the vital connection between opening energy markets to competition and economically transitioning away from fossil fuels.[41] As Chairman Glick recently put it, "[e]liminating barriers to competition can, among other things, facilitate the deployment of new, relatively clean technologies—such as wind, solar, and energy storage—that are increasingly the lowest-cost option for meeting the nation's electricity needs."[42]

Given TVA's efforts to "stifle[ ] all competition,"[43] particularly from DER but also from other non-TVA providers that may well include clean energy projects, it is evident that appropriately increasing competition within TVA's market can and should be a vital driver for clean energy, while also protecting consumers.

Indeed, since TVA introduced its new power contracts, other LPCs, such as Memphis Light, Gas and Water ("MLGW"), have been exploring what might be gained by leaving TVA's service. MLGW's analysis has shown that precisely through investments in renewable energy and energy efficiency, leaving TVA presents a vital opportunity to bring cost savings to MLGW's customers.[44]

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41 *See, e.g.*, *Am. Elec. Power Serv. Corp*., 461 U.S. at 405.

42 *FERC and Climate Change* at 5; *see also id.* at 14 ("Ensuring a level playing field through competition should indirectly facilitate a reduction in GHG emissions by ensuring that existing market rules do not become barriers to new technologies, which are generally cleaner than many conventional forms of electricity generation.").

43 Pet. Br. at 4.

44 *See, e.g.*, July 2020 MLGW Integrated Resource Plan Report ("MLGW IRP"), *available at* http://www.mlgw.com/images/content/files/pdf/MLGW-IRP-Final-Report_Siemens-PTI_R108-20.pdf; Ellen

The Center accordingly urges that, in considering whether a Section 210 and 211A order against TVA should be issued in the public interest, the Commission centrally consider whether the requested relief will lead to more clean energy development in the region.

To be sure, remaining TVA customers have expressed concerns with FERC allowing TVA customers to defect from TVA, echoing TVA's speculation that loss of some of TVA's customer base could straddle remaining customers with higher energy costs.[45] As a threshold matter, the Commission should view these concerns with particular skepticism when voiced by TVA customers that have already entered into TVA's new long-term contracts. Those customers have no realistic alternative to take advantage of the relief afforded by Section 211A, so are arguably "unreliable litigants" of what might be gained—or lost—from applying Section 211A against TVA.[46]

Moreover, BPA made similar arguments in *Iberdrola*, claiming that granting Section 111A relief would "inappropriately transfer [ ] costs" to other customers.[47] However, after the Commission granted Section 111A relief, BPA found that it could accommodate complainants'

Meyers, *Study finds Memphis utility could save $1.9B, add more renewables by leaving TVA*, S&P Global, June 1, 2020, *available at* https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/study-finds-memphis-utility-could-save-1-9b-add-more-renewables-by-leaving-tva-58871926. MLGW's IRP assumes that the utility would sever ties with TVA, rather than rely on TVA transmission as Petitioners request here. MLGW IRP at 38-39; *see also* Feb. 22, 2021 Comments of $450M For Memphis (detailing benefits of MLGW defection).

[45] *See, e.g.*, Feb. 17, 2021 Comments and Protest of the City of Columbia Board of Public Utilities.

[46] *Northwest Reqs. Utilities*, 798 F.3d at 809 (finding BPA customers who challenged FERC's 211A authority over BPA to be "unreliable litigants under Section 211A," given that their objectives differed from those Congress sought to promote by adding this provision). Local governments, associations, and other entities that may also object to FERC's authority here are similarly unreliable litigants to the extent they receive direct financial support from TVA, a practice about which the Center has raised concerns directly to TVA. *See* Feb. 2020 Petition to TVA Concerning Misuse of Ratepayer Funds, available at https://www.biologicaldiversity.org/programs/energy-justice/pdfs/Petition-to-The-Tennessee-Valley-Authority-Concerning-Use-of-Ratepayer-Funds.pdf (documenting TVA direct payments to cities and other outside entities); *see also* Anderson, *et al.*, *Strings Attached: How Utilities Use Charitable Giving To Influence Politics and Increase Investor Profits* (Energy and Policy Institute, Dec. 2019), available at https://www.energyandpolicy.org/wp-content/uploads/2019/12/Strings-Attached-how-utilities-use-charitable-giving-to-influence-politics-and-increase-investor-profits.pdf

[47] 137 FERC ¶ 61,185, at Par. 44.

requests while also continuing to provide economic service.[48] Similarly, here—particularly where TVA has claimed that it categorically will deny *all* requests for transmission service, rather than considering the impact of such a request on a case-by-case basis—there are no grounds to assume that a request would have any particular adverse consequences for TVA's remaining customers.

To the contrary, it would be more reasonable to anticipate that, if faced with the prospect that distributors might defect if dissatisfied with the services they are receiving from TVA, the agency will become more responsive to its customers' objectives, including their desire to attain the economic benefits of renewable energy—rather than continuing to thwart renewable energy development on the grounds that it competes with TVA's fossil-fuel heavy generation.

It also bears emphasizing in this regard that, contrary to how TVA is currently operating, the agency in fact has its own statutory mandate to *encourag*e renewables—and thus the Commission would be acting in a manner *consistent* with another federal agency's organic statute by gauging an application for relief under Section 111A by looking to whether it will further the clean energy transition.

In particular, as noted, in amending the TVA Act in 1992, Congress directed that TVA incorporate "energy conservation and efficiency, and renewable energy resources" into its planning processes, including by allowing LPCs to "recommend cost-effective energy efficiency opportunities, rate structure incentives, and renewable energy proposals . . . ."[49] And more recently, in amending the TVA Act again in 2004, Congress made it clear that TVA must

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[48] 141 FERC ¶ 61,233, at Par. 33.

[49] Pub. Law 102-486, Title 1, Subtitle B, § 113, 106 Stat. 2798 (Oct. 24, 1992) (codified at 16 U.S.C. § 831m-1).

prioritize "environmental stewardship" in carrying out its mission,[50] and should work to address the "economic, environmental, social, [and] physical well-being of the people of the service area."[51]

These directives plainly encompass the urgent need for TVA to reduce its massive carbon footprint. Accordingly, it would be entirely consistent with both the FPA and the TVA Act for the Commission to consider a request for relief against TVA under Section 211A by evaluating the degree to which the requested relief will open TVA's service territory up to effective competition that will further the transition to a clean energy economy.

Conclusion

For the foregoing reasons, the Center respectfully urges the Commission to find that FERC possesses the authority to issue an FPA Section 210 and 211A order directing TVA to provide interconnection and transmission service when appropriate, and to grant such a request where FERC determines that doing so will further the vital national objective to rapidly move the Nation's electricity system away from fossil fuels and toward renewable energy resources.

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[50] Pub. Law 108–447, Div C, Title VI, § 601, 118 Stat. 2963 (Dec. 8, 2004) (codified at 16 U.S.C. § 831a(b)(5)).

[51] *Id.* § 831a(g)(1)(K).

Respectfully submitted,

/s/ Howard M. Crystal
Howard M. Crystal
Legal Director, Energy Justice Program
hcrystal@biologicaldiversity.org

/s/ Anchun Jean Su
Anchun Jean Su
Program Director, Energy Justice Program
jsu@biologicaldiversity.org

Center for Biological Diversity
1411 K Street N.W., Suite 1300
Washington, D.C. 20005
(202) 809-6926

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 22nd day of February, 2021.

/s/ Howard M. Crystal
Howard M. Crystal
Center for Biological Diversity
1411 K Street N.W., Suite 1300
Washington, D.C. 20005
(202) 809-6926
hcrystal@biologicaldiversity.org