

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

| | | |
|---------------------------------------|---|-------------------------|
| Athens Utilities Board, <i>et al.</i> |) | |
| Petitioners, |) | |
| |) | Docket Nos. EL21-40-000 |
| v. |) | TX21-1-000 |
| |) | |
| Tennessee Valley Authority |) | |
| Respondent. |) | |

Comment of Southern Alliance for Clean Energy

For over two decades, a bipartisan consensus at the Commission has held to the guiding principle that open access transmission service benefits consumers and the public interest. In the Energy Policy Act of 2005 (“EPAAct 2005”), Congress embraced that principle and empowered the Commission, through Section 211A of the Federal Power Act (“FPA”), to extend the benefits of open access nationwide, including to regions served by utilities not generally regulated by the Commission. The Petitioners in this proceeding are local power companies (“LPCs”) served by the Tennessee Valley Authority (“TVA”) who wish to receive unbundled transmission service from TVA. TVA has withheld unbundled transmission service from these LPCs as a means to force them into above-market, long-term, full-requirements energy contracts. It is hard to imagine a set of facts that more directly contravenes the open access principles that the Commission and Congress have embraced, or that more starkly illustrates the damaging consequences of vertical market power left unchecked.

The Southern Alliance for Clean Energy (“SACE”) respectfully submits these Comments in support of the Complaint and Petition (“Petition”) filed in this proceeding. SACE supports the Petition because TVA has used its monopoly power to stifle the growth of clean energy and energy efficiency, while foisting the exorbitant costs of its Eisenhower-era coal fleet on captive ratepayers. Enacted for this purpose, Section 211A grants the Commission clear authority to grant the requested relief.

SACE also supports the LPCs’ request for an order under FPA Section 210. Ordering TVA to provide transmission service would facilitate LPC access to low-cost clean energy, lowering electric bills and yielding environmental and public health benefits. In light of these benefits, the Commission should find that the requested order under Section 210 is in the public interest.

I. Background on SACE

SACE is a non-profit organization that promotes responsible and equitable energy choices to ensure clean, safe, and healthy communities throughout the Southeast. Founded in 1985 under its original name the Tennessee Valley Energy Coalition, SACE has championed rate-payer protections and tracked the environmental and energy policies of the Tennessee Valley Authority. Now headquartered in Knoxville, Tennessee, SACE has over 30 years’ experience as a leading voice calling for smart energy policies in our region that help protect our quality of life and treasured places. SACE has more than 15,000 members and online activists in the states served by TVA who are concerned about reducing emissions that contribute to extreme weather from climate change; creating jobs

and economic development in the clean energy sector; and reducing electric bill burdens through effective efficiency programs. SACE intervened in this proceeding on January 26, 2021.

II. The Commission May Order TVA to Provide Unbundled Transmission Service Under Section 211A

Section 211A provides the Commission clear authority to order TVA to provide transmission service to third parties that is comparable to the service it provides its own generators. TVA acknowledges, as it must, that it is an unregulated transmitting utility¹ subject to Section 211A.² Nevertheless, TVA clearly believes it has no obligation to provide unbundled transmission service on comparable terms to LPCs. As the Petition details, TVA has refused all such requests.³

TVA's legal justification for refusing unbundled service to the LPCs can only be guessed at from its terse statement that "Section 211A of the FPA does not grant FERC any additional authority to order TVA to wheel power."⁴ Although hardly

¹ Section 211A defines an "unregulated transmitting utility" as "an entity that (1) owns or operates facilities used for the transmission of electric energy in interstate commerce; and (2) is an entity described in section 824(f) of this title." 16 U.S.C. § 824j-1(a). Section 824(f) includes the "United States, State, political subdivision of a State, or agency or instrumentality thereof." 16 U.S.C. § 824(f).

² Tennessee Valley Authority, Annual Report (Form 10-K), Securities and Exchange Commission, file no. 000-52313 at 24 (Nov. 15, 2015) ("2015 Form 10-K"), available at <https://www.sec.gov/Archives/edgar/data/1376986/000137698615000047/tve-09302015x10k.htm> ("Under Section 211A of the FPA, TVA is subject to FERC review of the transmission rates and the terms and conditions of service that TVA provides others to ensure comparability of treatment of such service with TVA's own use of its transmission system and that the terms and conditions of service are not unduly discriminatory or preferential.").

³ Petition at 12-14, 27.

⁴ See Petition Exhibit No. LPC-0007 at 6.

clear, this statement does not appear to rely on the implausible notion that orders under Section 211A are subject to Section 212(j). Such a view would contradict the plain text of Section 212(j), which limits its application to orders under Section 211.⁵ It would also contradict Section 212's savings provision, which states that the provisions of Section 212, including Section 212(j), "shall not be construed as limiting or impairing any authority of the Commission under any other provision of law."⁶

Rather, we infer from the above-quoted statement that TVA's position is that Section 211A does not authorize mandatory wheeling at all. This position is equally implausible. Section 211A plainly encompasses wheeling. A transmitting utility that refuses to provide wheeling service is not providing "transmission services . . . on terms and conditions . . . that are comparable to those under which the unregulated transmitting utility provides transmission services to itself and that are not unduly discriminatory or preferential."⁷ TVA's reading of Section 211A, we can only guess, must be based on some notion that Section 211 presents the more specific authority with respect to wheeling. Or, perhaps TVA will contend that a plain text reading of these provisions yields "absurd" or "inconsistent" results

⁵ 16 U.S.C. § 824k(j); *see also E. Ky. Power Coop.*, 111 FERC ¶ 61,031, at n.17 (2005) ("Section 212(j), on the other hand, provides that with respect to an electric utility which is prohibited by federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, *no order issued under section 211* may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such federal law, unless the order is in furtherance of a sale of electric energy to that electric utility.") (emphasis in original).

⁶ 16 U.S.C. § 824k(e)(1).

⁷ 16 U.S.C. § 824j-1(b).

insofar as TVA is shielded from mandatory wheeling under Section 211 but not under Section 211A. If this is indeed TVA's position, it badly misinterprets the relevant provisions of the FPA and ignores basic principles of statutory interpretation.

Both Section 211 and Section 211A authorize the Commission to compel a utility to provide transmission service to third parties. But Sections 211 and 211A are discrete grants of authority that employ different procedures, apply to different entities, and carry different remedies. Indeed, Congress showed its understanding that Sections 211 and Section 211A provide discrete pathways to compel transmission service in Section 211A(h), which provides that: "The provision of transmission services under [Section 211A(b)] does not preclude a request for transmission services under section 824j of this title [Section 211]."⁸ If Section 211A somehow did not provide an additional grant of authority to require wheeling service, Section 211A(h) would be rendered not only superfluous, but nonsensical.

The possibility that Sections 211 and 211A could each require mandatory wheeling does not justify reading any limitation into Section 211A that does not appear in statutory text. The Commission rejected a nearly identical argument in Order No. 888. There, utilities argued that the Commission could not require wheeling under Section 206 because "mandatory wheeling is to be governed exclusively by section 211."⁹ The Commission correctly reasoned that Sections 206

⁸ 16 U.S.C. § 824j-1(h).

⁹ *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 21,569 (1996), *order*

and 211 were separate authorities and that Section 211's specific treatment of wheeling service did not limit its authority to require open access transmission tariffs under Section 206.¹⁰

Section 211A must be given its full effect as written, even if it overlaps with Section 211 under some circumstances. The Supreme Court has instructed that: "Redundancies across statutes are not unusual events in drafting, and so long as there is no 'positive repugnancy' between two laws . . . a court must give effect to both."¹¹ Overlapping laws must be given their full effect unless doing so would render one or the other "wholly superfluous"¹² – an exacting standard that is not met "so long as each [statute] reaches some distinct cases."¹³

There is no "positive repugnancy" between Sections 211 and 211A. To the contrary, as noted above, Section 211A(h) explicitly contemplates that the two are discrete authorities that may be applied against the same utility. And, Section 212(e) states that Section 211 "shall not be construed as limiting or impairing any authority of the Commission under any other provision of law." Those provisions conclusively establish that Congress intended Section 211A to be an additional authority that coexists alongside Section 211. But even if those provisions were not

on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

¹⁰ *Id.* at 21,570.

¹¹ *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992) (quoting *Wood v. United States*, 16 Pet. 342, 363, 10 L.Ed. 987 (1842) (internal citation omitted)).

¹² *Id.*

¹³ *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 144 (2001) (citation omitted).

in the FPA, the fact that Section 211A can result in mandatory wheeling does not render the two sections anywhere close to “wholly superfluous.” The two provisions most certainly “reach some distinct cases” and indeed apply to different entities,¹⁴ employ different processes,¹⁵ and authorize different actions by the Commission.¹⁶

Given that the statutory text is clear, the Commission need not guess as to why Congress applied the “anti-cherry picking amendment” to Section 211 but not Section 211A. Nevertheless, there is an obvious reason why Congress may have made that choice: the entity-specific limitations that seemed beneficial in the context of Section 211’s applicant-driven adjudicative process no longer seemed so in the context of Section 211A’s discretionary policy-making authority.

Between 1992 (when Sections 211 and 212 were enacted¹⁷) and 2005 (when Section 211A was enacted¹⁸) the Commission proved that open access transmission

¹⁴ Section 211A applies to a narrower set of entities than section 211—the Commission may issue orders under section 211A only to “unregulated utilities,” rather than section 211’s more sweeping “[a]ny electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale.”

¹⁵ Section 211 authorizes the Commission to issue an order requiring wheeling only in response to a request by a third party, while Section 211A authorizes the Commission to issue orders or rules on its own initiative. *Compare* 16 U.S.C. § 824j(a) *with* 16 U.S.C. § 824j-1(b).

¹⁶ An order under Section 211 affects only the relationship between an applicant and the transmission operator ordered to provide wheeling. 16 U.S.C. § 824j(a). In contrast, an order under Section 211A applies to the transmission operator as a whole, with any interconnected entity able to request access to comparable transmission service. 16 U.S.C. § 824j-1(b).

¹⁷ *See* Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992) (codified at 42 U.S.C. ch. 134 § 13201 et seq.).

¹⁸ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (codified at 15 U.S.C. § 717c-1).

policy works. In those years, the Commission issued Order No. 888 and other seminal orders, had them held up in Court,¹⁹ and made open access a reality.

Section 211A gave the Commission authority to extend those benefits nationwide. But, unlike Section 211, Congress left the reach and procedural implementation of Section 211A entirely to the Commission's judgment. Section 211 places the Commission in a constrained, adjudicative role; the process is initiated by applicants, contemplates applicant-specific remedies, and is subject to detailed procedures and entity-specific limitations.²⁰ In Order No. 888, the Commission explained that these features made Section 211 ill-suited to achieve a broad open access policy.²¹ By contrast, Section 211A places the Commission in a policymaking role rather than an adjudicative one. Section 211A empowers the Commission to proceed "by rule or order"²² and leaves the process and ultimate decision entirely to the Commission's discretion. Moreover, unlike Sections 211 and 212, Section 211A contains no entity-specific terms for either TVA or the Bonneville Power Administration ("BPA"). But, Section 211A(c)(3) does give the Commission discretion to narrow the scope of entities to which Section 211A applies based on public interest criteria of its own determination.²³ Given the trust that Congress placed in the Commission's judgment to implement Section 211A and to decide the

¹⁹ *See Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

²⁰ *See generally* 16 U.S.C. §§ 824j & 824k.

²¹ Order No. 888 at 21,562–63.

²² 16 U.S.C. § 824j-1(b).

²³ 16 U.S.C. § 824j-1(c)(3).

entities to which it should apply, it is hardly surprising that Congress declined to dictate how Section 211A should apply to TVA, BPA or any other specific entity.

III. The Commission Should Order TVA to Provide Comparable Transmission Service to LPCs in the Tennessee Valley

An order under section 211A would end TVA's discriminatory denial of comparable transmission service to LPCs, and could lead to significant savings on consumer electric bills while unlocking new development of clean energy in the Tennessee Valley.

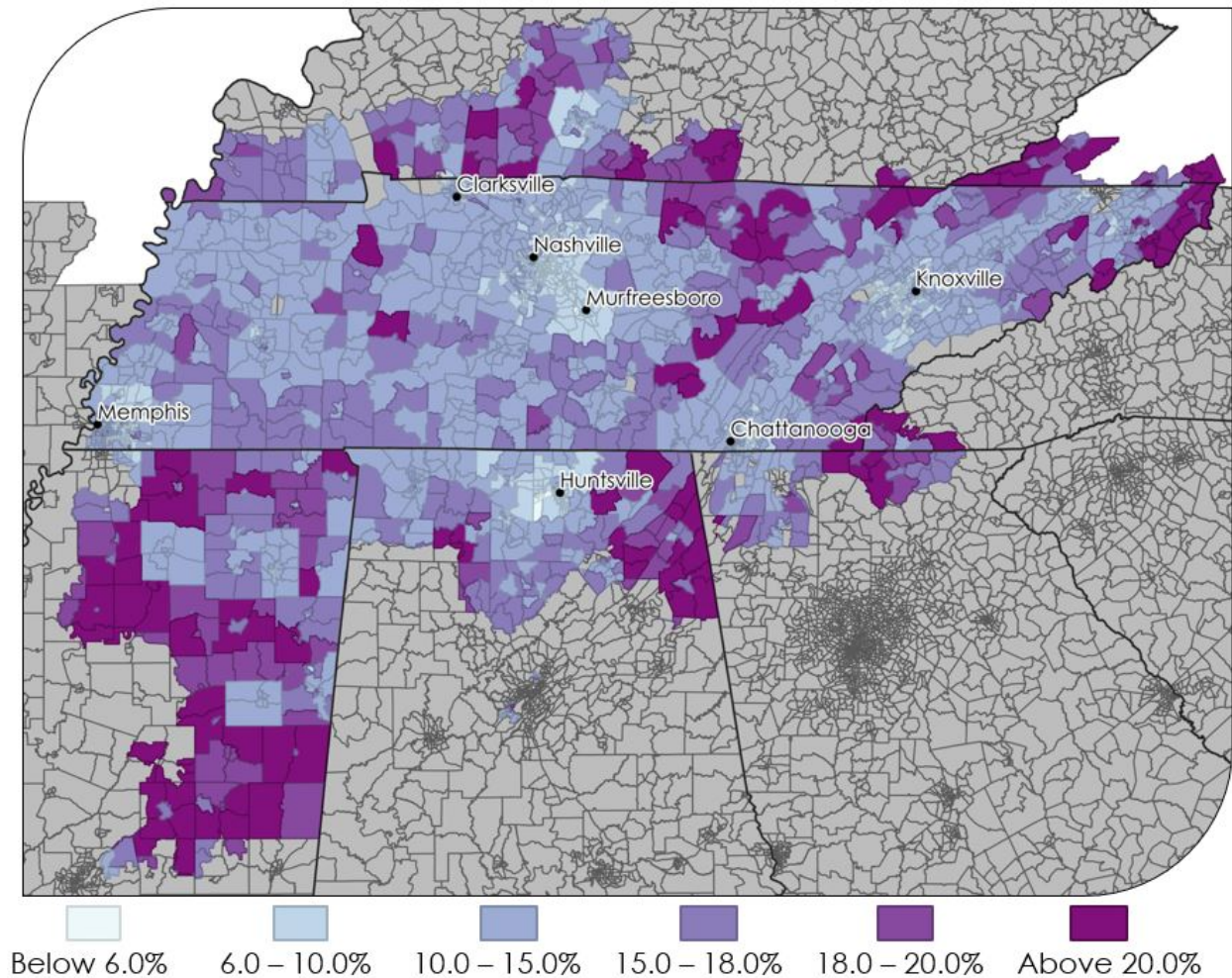
A. Insulated from competition, TVA is not providing affordable electricity

TVA no longer delivers electricity on terms that are competitive with other suppliers. This proceeding has arisen because the petitioner LPCs believe they can save tens to hundreds of millions of dollars with access competitive sources of supply.²⁴ The consequence of TVA's inefficiency is that low-income households throughout its service territory face unaffordable energy burdens. SACE has analyzed energy burdens (energy costs as a percentage of income) across the TVA footprint using census data. The results are stark. Generally, energy burdens above 6% are considered high.²⁵ But low-income households in TVA's service territory have average energy burdens of 12%. And, as Figure 1 indicates, in many areas of the Tennessee Valley, low-income households face energy burdens that exceed 20%.

²⁴ Petition at § V.D.

²⁵ See Fisher, Sheehan and Colton, Home Energy Affordability Gap Analysis, available at www.homeenergyaffordabilitygap.com/.

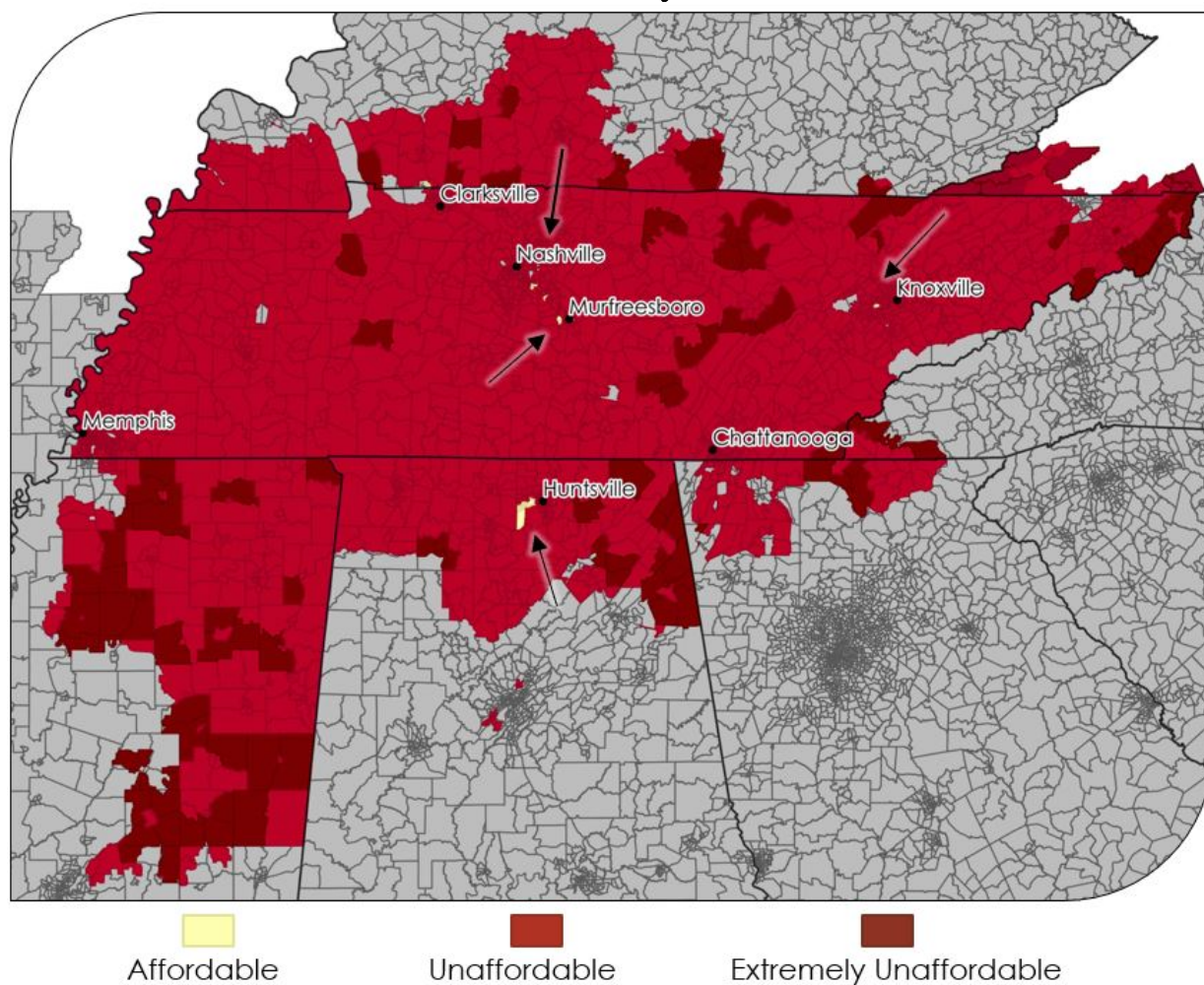
Figure 1
Energy Burdens of Low-Income Households within TVA's Service Territory



In fact, SACE's analysis found that within TVA's service territory there are 273 rural census tracts where energy burdens for low-income households exceeded 20%.²⁶ The census tracts with the highest low-income energy burdens tended to be in rural areas, though there are also census tracts within metropolitan areas with high energy burdens that are less visible on these maps.

²⁶ Heather Pohnan, *Visualizing Energy Affordability*, presented at ACEEE Rural Energy Conference (October 2018), available at <https://cleanenergy.org/wp-content/uploads/Heather-Pohnan-Visualizing-Energy-Affordability.pdf>.

Figure 2²⁷
Affordability of Energy Burdens of Low-Income Households within TVA's Service Territory



TVA tends to frame affordability in terms of the average residential rates (cents/kWh). But energy burdens are a better metric of affordability. An exclusive focus on rates ignores the fixed charges (discussed below) that TVA imposes on LPCs and that flow through to customer bills. A focus on rates also ignores TVA's poor performance on energy efficiency (also discussed below), which frequently

²⁷ *Id.*

presents the most effective tool for lowering energy burdens to vulnerable communities.

B. Insulated from competition, TVA has been slow to exploit low-cost renewable energy and energy efficiency resources

Renewable energy sources are increasingly the most cost-effective options. Lazard's latest report on the Levelized Cost of Energy shows wind and solar as the least expensive resources in the country in 2020.²⁸ TVA has access to low-cost wind power from western resources, but has declined to take advantage of that opportunity to date.²⁹ Within TVA's region, solar resources are highly cost-effective. According to recent analysis by the U.S. Energy Information Administration ("EIA"), capital costs for solar PV with tracking in the Tennessee Valley region are below the national average.³⁰ Likewise, in analysis performed for TVA customer Memphis Light, Power, and Water ("MLGW") in 2019, Siemens found that the least expensive resource to serve MLGW load was local solar.³¹

Yet TVA has been slow to reap the cost advantage of solar energy. Every year SACE benchmarks utilities across the Southeast to compare solar deployment

²⁸ Lazard, Levelized Cost of Energy Analysis - Version 14.0 (October 2020), available at <https://www.lazard.com/media/451419/lazards-levelized-cost-of-energy-version-140.pdf>.

²⁹ See Dave Flessner, *Environmentalists Blast TVA For Killing Major Wind Project*, Chattanooga Times Free Press (Dec. 31, 2017); Russell Gold, *Superpower: One Man's Quest to Transform American Energy* at 241–45 (2019) (stating that TVA declined a wind power offering in 2017 at \$18.50 per megawatt hour).

³⁰ U.S. EIA, *Assumptions to the Annual Energy Outlook 2021: Electricity Market Module* at 7 (February 2021), available at <https://www.eia.gov/outlooks/aeo/assumptions/pdf/electricity.pdf> (showing capital costs in the SRCE region to be lower than those in 63% of other regions and solar PV with storage capital costs lower than those in 58% of other regions).

³¹ Siemens, *Integrated Resource Plan Report: Memphis Light, Gas, and Water* (July 2020), available at <http://www.mlgw.com/images/content/files/pdf/MLGW-IRP-Final-Report-Siemens-PTI-R108-20.pdf>.

using a watts per customer metric. TVA has remained at the bottom of these rankings. In 2019 TVA had 99 W/customer, compared to the regional average of 325 W/customer. TVA's current resource plan will bring it up to 303 W/customer in 2023, when the regional average is expected to rise to 819 W/customer according to a compilation of utility resource plans.³²

Figure 3³³
Solar Watts per Customer for Large Electric Systems in the Southeast:
2019 Historical and 2023 Projection based on Current Utility Plans

| Systems with > 500,000 Customers | 2019 Solar Watts/customer | 2023 Projected Solar Watts/customer |
|--|--------------------------------------|--|
| Duke Energy Progress | 1,755 | 2,718 |
| Tampa Electric | 428 | 1,827 |
| Dominion Energy SC | 807 | 1,809 |
| Georgia Power | 533 | 1,435 |
| Duke Energy Carolinas | 585 | 887 |
| Florida Power & Light | 265 | 839 |
| <i>Southeast Average</i> | <i>325</i> | <i>819</i> |
| Duke Energy Florida | 155 | 722 |
| Santee Cooper | 31 | 664 |
| Oglethorpe Power | 186 | 550 |
| Alabama Power | 59 | 395 |

³² SACE, *Solar in the Southeast Annual Report* (June 23, 2020), available at <https://cleanenergy.org/wp-content/uploads/Solar-in-the-Southeast-Report-2020-1.pdf>.

³³ *Id.* at 6.

| | | |
|-----------------------------------|-----------|------------|
| Tennessee Valley Authority | 99 | 303 |
| Seminole Electric Cooperative | 34 | 301 |
| NC Electric Cooperatives | 62 | 98 |

In addition to slow-walking utility scale solar, TVA has also stymied the growth of distributed solar. In 2018, TVA changed its rate structure to emphasize a new fixed charge, called the Grid Access Charge (“GAC”), which reduces the variable rate while adding a fixed fee based on an average of the previous five years of load. The GAC has the predictable result of undermining the economics of distributed solar and energy efficiency. In a presentation to its Rates and Contracts committee, TVA stated that its proposed rate restructuring would decrease the number of economic on-site solar installations by about 40%.³⁴ In its Finding of No Significant Impact for the 2018 Wholesale Rate Change TVA stated that flat to negative load growth results in “little need for new energy sources” and that the rate changes (including the GAC) will “mitigat[e] the effects of uneconomic development in distributed energy resources.”³⁵

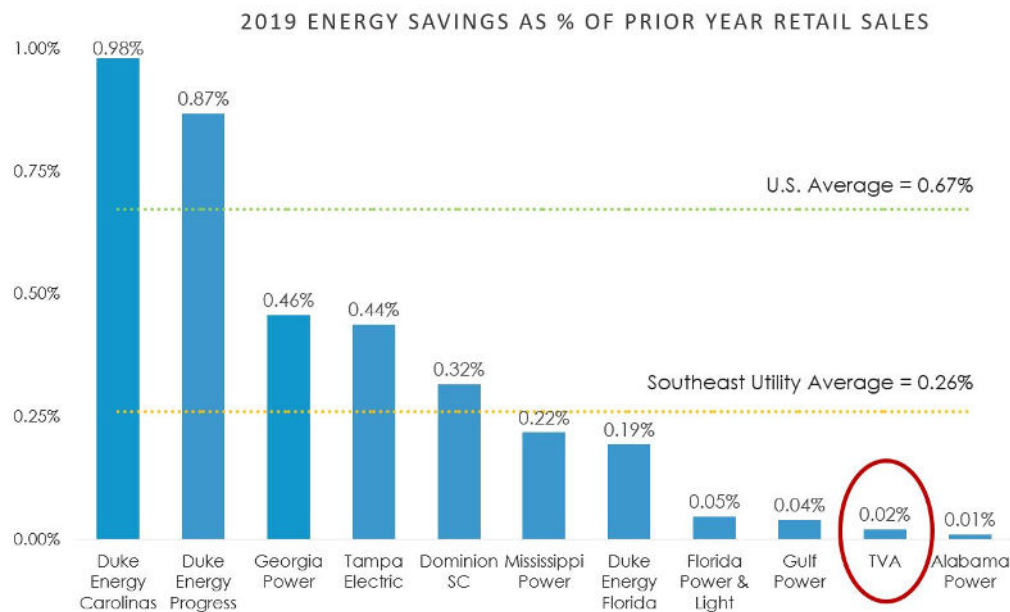
TVA has also failed to pursue energy efficiency. TVA has slashed the energy efficiency programs it offers to residential and small business customers, resulting in a sharp drop in energy savings. TVA’s annual energy savings peaked in 2014 at

³⁴ TVA, Strategic Pricing Plan, Rates & Contracts at 5 (July 6, 2017) available at https://cleanenergy.org/wp-content/uploads/TVPPA-RC_7_6_2017_Final.pdf.

³⁵ TVA, *Finding of No Significant Impact: 2018 Wholesale Rate Change* at 1 (May 4, 2018), available at <https://www.tva.com/Environment/Environmental-Stewardship/Environmental-Reviews/2018-Rate-Change>.

733 GWh, and have dropped dramatically by 96% to a mere 29 GWh in 2019 (the latest year of complete data).³⁶ Analysis by SACE shows that this recent gutting of investment in energy efficiency by TVA puts it near the bottom of utilities in the Southeast, a region that itself is in the bottom nationally for energy efficiency.³⁷

Figure 4³⁸
Comparison of Energy Efficiency Savings for Major Southeast Utilities in 2019



With TVA retreating on energy efficiency, some LPCs have sought to pick up the slack, such as the Save the Pennies program in Memphis that helps weatherize low-income housing. However, the implementation of the GAC by TVA in 2018 created a disincentive for LPCs to implement energy efficiency programs. If LPCs actively lower their load below the average from the past five years they will not see

³⁶ Based on SACE analysis of EIA Form 861 filings from 2010-2019.

³⁷ SACE, *Energy Efficiency in the Southeast, Third Annual Report* (Jan. 26, 2021), available at <https://cleanenergy.org/wp-content/uploads/22Energy-Efficiency-in-the-Southeast22-third-annual-report-2021.pdf>.

³⁸ *Id.* at 6.

their bills from TVA reduced as much as they would have prior to TVA’s rate structure change.³⁹

C. Insulated from competition, TVA has continued to rely on an old and inefficient fleet of fossil fuel-fired generators

TVA has not taken advantage of low-cost clean energy resources, and instead continues to run a fleet of old and inefficient coal-fired power plants. As of 2019, the latest year of complete EIA data, the capacity-weighted age of TVA’s fleet is older than that of 84% of utilities, and TVA’s coal fleet is older than that of 96% of utilities with coal plants.⁴⁰ TVA’s old coal and gas combustion turbine (CT) power plants are operating at inefficient heat rates and contribute significantly to carbon emissions.

Figure 5⁴¹
TVA Fossil Generators

| Power Plant | Year Built | Capacity (MW) | Heat Rate ^a (BTU/kWh) | CO ₂ Emissions ^b (short tons) | Retirement Date |
|--------------------------------|------------|---------------|----------------------------------|---|-----------------|
| <i>Coal-Fired Power Plants</i> | | | | | |
| Shawnee | 1953-1955 | 1,524 | 11,227 | 7,353,629 | None |
| Kingston | 1954-1955 | 1,314 | 11,799 | 2,740,385 | None |
| Gallatin – coal | 1956-1959 | 1,222 | 10,998 | 5,881,405 | None |
| Bull Run | 1967 | 950 | 10,346 | 1,460,863 | 2023 |

³⁹ The GAC is based on an LPC’s average usage over the previous 5 years, and was designed to be revenue neutral if usage remains constant.

⁴⁰ SACE used the EIA’s 2019 data from Form 860 to compare all utilities that own more than 80 MW of operating generating capacity.

⁴¹ Extracted from EIA data from forms 860 and 923.

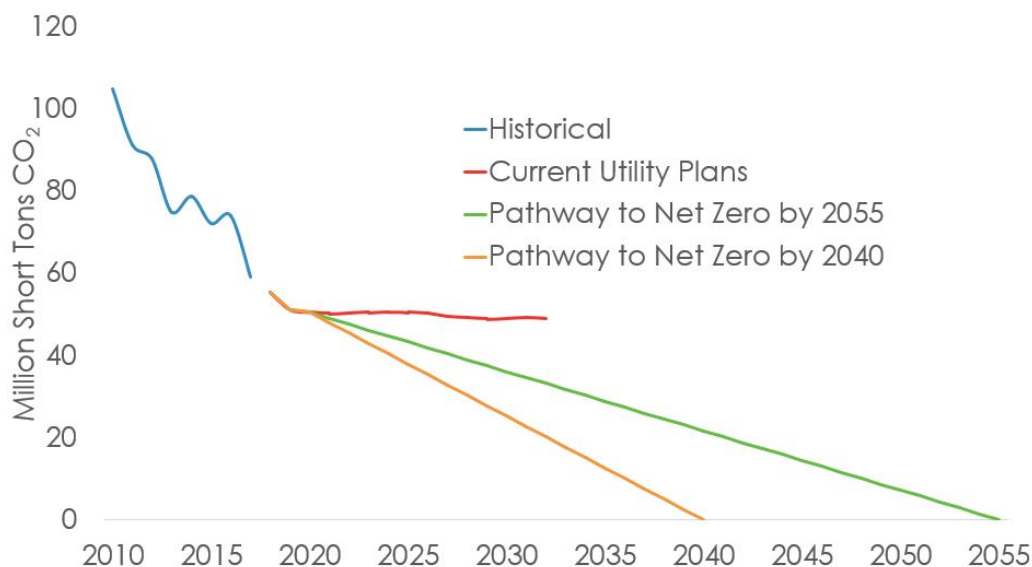
| | | | | | |
|--|---------------|-------|--------|------------|------|
| Cumberland | 1973 | 2,531 | 10,166 | 10,872,233 | None |
| Red Hills (under contract) | 2001 | 500 | 11,253 | 3,274,191 | None |
| <i>Gas Combustion Turbine Power Plants</i> | | | | | |
| Allen CT | 1971- 1972 | 604 | N/A | 5,629 | None |
| Colbert | 1972 | 463 | 13,141 | 50,834 | None |
| Gallatin – gas | 1975 | 646 | 12,379 | 39,342 | None |
| Johnsonville | 1975, 2000 | 1,388 | 25,766 | 471,837 | None |
| Brownsville Peaker | 1999 | 448 | 11,487 | 378,446 | None |
| Gleason Generating Facility | 2000 | 553 | 10,815 | 336,749 | None |
| Lagoon Creek | 2001 | 1,582 | 9,459 | 1,697,047 | None |
| Kemper County | 2002 | 362 | 12,226 | 297,282 | None |
| Marshall Energy Facility | 2002 | 670 | 11,539 | 210,924 | None |
| <i>Gas Combined Cycle Power Plants</i> | | | | | |
| TVA Southaven CC | 2003 | 880 | 7,169 | 1,636,536 | None |
| Magnolia Power Plant | 2003 | 977 | 7,016 | 2,216,853 | None |
| Caledonia | 2003 | 780 | 7,044 | 1,629,032 | None |
| Ackerman | 2006 | 828 | 7,212 | 1,278,623 | None |
| John Sevier | 2012 | 970 | 7,121 | 1,939,022 | None |
| Paradise CC | 2017 | 1,129 | 7,036 | 2,353,401 | None |
| Allen CC | 2018 | 1,133 | 6,603 | 664,743 | None |

^a2018 heat rate calculated using Form EIA-923 data.

^b2018 annual CO₂ emissions calculated using Form EIA-923 data.

TVA has reduced carbon emissions over the past two decades by retiring 8.4 GW of coal capacity and building 9.9 GW of new gas capacity. But, as Figure 5 shows, TVA maintains numerous old coal plants that it does not plan to retire within its 20-year planning window. In fact, under TVA's current plans, it will continue to operate three of the top ten most polluting power plants in the Southeast through 2030.⁴² For these reasons, SACE expects TVA to achieve almost no further reduction in carbon emissions over the next 15 years – a critical time for mitigating climate change. Figure 6 compares TVA's existing plans to the trajectories needed to reach net zero by 2040 and 2055.

Figure 6⁴³
TVA's Annual CO₂ Emissions from Current Plans compared to a Net Zero Trajectory
PLANS VS. NET-ZERO PATHWAYS



⁴² SACE, *Tracking Decarbonization in the Southeast: Generation + CO₂ Emissions Report* (August 2020), available at <https://cleanenergy.org/wp-content/uploads/22Decarbonization-in-the-Southeast22-Aug-2020.pdf>.

⁴³ *Id.* at 16.

D. Competition will bring down rates in the Tennessee Valley

If the Commission declines to issue an order under Section 211A, it should expect a continuation of the status quo. TVA will continue to run old coal plants while underinvesting in clean energy and failing to address energy burdens in its territory. TVA will continue to lock its customers into long-term contracts because they lack any alternative. On the other hand, if the Commission does issue an order under Section 211A, competition will help to drive down costs and advance the transition to clean energy. LPCs will be able to take advantage of low-cost clean energy resources and thereby reduce local pollution and carbon emissions. LPCs will also be able to supplement power supply with local renewable resources, reducing line losses and leading to a more efficient and more resilient grid.

The LPCs will realize cost savings as well. For example, Siemens found that MLGW could save its customers \$99-122 million annually through alternate suppliers relative to TVA's long-term partnership agreement.⁴⁴ These figures understate what MLGW could save because they include the cost to MLGW of constructing duplicative transmission facilities to connect to alternate suppliers.⁴⁵ Siemens found that, if MLGW can wheel power through TVA's system instead of building redundant transmission lines across the Mississippi River, it would be "mutually beneficial to both parties" and that maintaining open electrical connections between TVA and MLGW even after MLGW was no longer a full

⁴⁴ Siemens, *Integrated Resource Plan Report: Memphis Light, Gas, and Water* (July 2020), available at http://www.mlgw.com/images/content/files/pdf/MLGW-IRP-Final-Report_Siemens-PTI_R108-20.pdf.

⁴⁵ *Id.* at 38–39.

requirements customer “would provide valuable and undeniable reliability and resiliency benefits for the entire eastern interconnection of the U.S. power grid.”⁴⁶

The Siemens study for MLGW also showed the potential for LPCs to reduce carbon emissions through access to alternative suppliers. MLGW’s alternate portfolios analyzed by Siemens had lower estimated carbon emissions as compared to the base case because of the extensive use of low-cost renewable energy, energy efficiency, and demand response. The two lowest-cost alternative portfolios evaluated by Siemens resulted in approximately half the carbon emissions as compared to a base case in which MLGW remained with TVA.⁴⁷

Further, if LPCs can access TVA’s transmission system, TVA will have to be more responsive to their demands. This could drive TVA to increase its use of the low-cost clean energy resources that residents and LPCs want.⁴⁸ Indeed, several of TVA’s largest LPC customers – including Memphis, Nashville, Knoxville, and Chattanooga – have enacted clean energy requirements. These cities are passing clean energy requirements because their citizens and businesses want them. A recent study showed that Nashville will be at a disadvantage in attracting businesses because of TVA’s lack of a clean energy plan and the resulting lack of options the city of Nashville has to pursue clean energy.⁴⁹

⁴⁶ *Id.* at 116.

⁴⁷ *Id.*

⁴⁸ See SACE, *Poll Shows Majority of Tennessee Voters Support Solar and Oppose Fixed Charges on Bill or Restrictions to Customer Choice* (Dec. 4, 2017), available at <https://cleanenergy.org/news-and-resources/poll-shows-majority-tennessee-voters-support-solar-oppose-fixed-charges-bill-restrictions-customer-choice/>.

⁴⁹ David Gardiner and Associates, *Nashville Carbon Competitiveness* (September 2020), available at <https://www.dgardiner.com/nashville-carbon-competitiveness/>.

Providing LPCs with access to TVA's transmission system will not result in abrupt change. TVA has captured 93% of its LPC customers, representing approximately 81% of LPC load, in self-renewing contracts with 20-year termination notice periods. The remaining LPC customers have power agreements with 5-year termination periods, and none has yet provided notice of termination. Therefore, even were TVA to lose load due to alternative suppliers, it would not occur for at least five years. And it would be limited in quantity: even if every single LPC on a five-year agreement immediately gave notice of termination, and none decided to enter partial requirements agreements with TVA, the most load that TVA could lose would be roughly 19%.

TVA warns that wheeling power to departing LPCs “would spread TVA’s fixed costs across a diminishing customer base, increasing rates in some of the most economically challenged areas of the country.”⁵⁰ There is no basis to credit this claim. Indeed, TVA recently conceded that it could lose roughly ten to twelve percent of its load without adverse consequences to ratepayers.⁵¹ Specifically, in an August 2019 board meeting TVA CEO Jeff Lyash made clear that “up to loss of about 10% load doesn’t create a significant financial impact for us, it wouldn’t create a significant rate issue for our customers.”⁵²

⁵⁰ See Petition Exhibit No. LPC-0007 at 3.

⁵¹ TVA Board of Directors Meeting at 2:02:00 (Aug. 22, 2019) available at <https://www.tva.com/about-tva/our-leadership/board-of-directors/meetings-archive/2019/08/22/default-calendar/tva-board-meeting---august-22-2019>.

⁵² *Id.*; see also *id.* at 2:03:01 (“up to 10-12% it’s not a significant risk. . .”); *id.* at 2:01:13 (TVA Chief Operating Officer John Thomas states, “[a]bout 10% . . . , there’s not really a material impact overall on TVA’s financial results”).

Even if departing loads exceeded that amount, however, with prudent planning over the five-year window there should be little risk of fixed costs being foisted on remaining customers. Departing LPCs will pay for unbundled transmission service,⁵³ and thus no fixed transmission costs need go unrecovered. With regard to generation costs, as shown in Figure 5 above, TVA's fleet contains numerous old coal and simple cycle gas plants. TVA does not disclose unit-level costs. But, given the age of these resources and their poor heat rates, it is reasonable to conclude that these resources have high operating costs. If needed to reduce load, TVA has the flexibility to shut down these legacy plants and reduce overall costs, while also reducing its exposure to current and future environmental regulations.

IV. The Commission Should Issue An Order Under FPA Section 210 Formalizing Interconnection Arrangements Between the LPCs and TVA

SACE supports the LPCs' request that the Commission issue an order under FPA section 210 formalizing interconnection with TVA. Such an order would facilitate LPCs' access to low-cost clean energy, with the potential to lower electric bills and reduce pollution.

Section 210 applies to TVA as an electric utility.⁵⁴ It provides that the Commission may "issue an order requiring (A) the physical connection of . . . the transmission facilities of any electric utility, with the facilities of such applicant" and "(C) such sale or exchange of electric energy or other coordination, as may be

⁵³ See Petition at 38.

⁵⁴ 16 U.S.C. § 796(22)(B).

necessary to carry out the purposes of any order under subparagraph (A).”⁵⁵ To issue an order under section 210, the Commission must find that the order:

- (1) is in the public interest,
- (2) would—
 - (A) encourage overall conservation of energy or capital,
 - (B) optimize the efficiency of facilities and resources, or
 - (C) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and
- (3) meets the requirements of section 824k [FPA section 212] of this title.⁵⁶

In this case, an order facilitating unbundled transmission service to LPCs would serve the public interest, encourage the conservation of energy and capital, and optimize the efficient use of facilities and resources consistent with Section 210 by increasing competition and opening opportunities for LPCs to avail themselves of the economic and emissions reductions benefits of clean energy.

The Commission has regularly held that the availability of transmission services generally enhances competition in power markets and lowers costs to consumers, therefore benefiting the public interest.⁵⁷ Additionally, the Commission has found that enabling increased competition through interconnection orders has the specific benefit of optimizing the use of existing transmission facilities.⁵⁸ The Commission recognized these benefits when it ordered interconnections between

⁵⁵ 16 U.S.C. § 824i(a)(1).

⁵⁶ 16 U.S.C. § 824i(c).

⁵⁷ *Ill. Mun. Elec. Agency v. Ill. Power Co.*, 86 FERC ¶ 61045, 61176 (1999) (construing *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61125, 61615 (1993), *cited by* *Sierra Pac. Power Co.*, 89 FERC ¶ 61234, n.8 (1999)); *Kiowa Power Partners, LLC*, 99 FERC ¶ 61251, 62095–96 (2002); *S. Cross Transmission LLC*, 137 FERC ¶ 61206, at *6 (2011); *Mountain Breeze Wind, LLC*, 166 FERC ¶ 61200, at *9 (2019).

⁵⁸ *Laguna Irrigation Dist. Pacific Gas and Elec. Co.*, 95 FERC ¶ 61305, 62040 (2001).

TVA and an LPC in the *East Kentucky* cases.⁵⁹ The Commission found that the interconnection would allow the LPC to increase its membership, gain access to more economical sources of power, and enable increased competition.⁶⁰ Based on these benefits, the Commission concluded the interconnection optimized the use of system resources, conserved energy and capital, and served the public interest consistent with the requirements of section 210.⁶¹ As in *East Kentucky*, formalizing unbundled transmission arrangements between TVA and the LPCs would check TVA's monopolistic behavior, lower costs, optimize the use of existing transmission facilities, and conserve energy and capital.

Opening up LPC access to alternative sources of electricity would also advance the transition to clean energy in TVA's service area. The Commission has recognized that increased access to renewable energy "would encourage the conservation of energy and capital" in the context of a Section 210 order.⁶² Beyond lowering costs for consumers, increasing integration of clean energy technology serves the public interest by reducing the emission of carbon and other pollutants.⁶³

Whether by allowing LCPs to access alternative suppliers or by encouraging TVA to be more responsive to consumer needs, formalizing interconnection agreements for unbundled transmission service would encourage growth of low-cost

⁵⁹ *E. Ky. Power Coop.*, 111 FERC ¶ 61,031, at P 38 (2005); *E. Ky. Power Coop.*, 114 FERC ¶ 61,035, at P 62 (2006) [hereinafter "*East Kentucky II*"].

⁶⁰ *East Kentucky II*, 114 FERC ¶ 61,035 at P 62.

⁶¹ *Id.*

⁶² *Aero Energy, LLC*, 115 FERC ¶ 61128, 61461 (2006).

⁶³ *See Ill. Mun. Elec. Agency v. Ill. Power Co.*, 86 FERC ¶ 61045, 61176 (1999) (finding that reducing the emission of air pollution is in the public interest in the context of a Section 210 order).

clean energy in the region. Accordingly, the Commission should find that the requested order under Section 210 would serve the public interest and encourage conservation of energy and capital.

V. Conclusion

SACE urges the Commission to issue an order pursuant to FPA Section 211A requiring TVA to provide transmission services to LPCs on a comparable basis to the transmission it provides itself, and to issue the requested order under FPA Section 210 formalizing interconnections between TVA and Petitioners.

/s/ _____
Sam Walsh
Harris, Wiltshire & Grannis LLP
1919 M St. NW
Washington DC, 20002
(202) 730-1306
swalsh@hwglaw.com

Carter Hall
Daniel Franz
Earthjustice
1001 G Street, NW, Suite 1000
Washington, DC 20001
(202) 667-4500
chall@earthjustice.org
dfranz@earthjustice.org

Aaron Stemplewicz
Earthjustice
1617 John F. Kennedy Blvd., Suite 1130
Philadelphia, PA 19103
(215) 717-4524
astemplewicz@earthjustice.org

Counsel to Southern Alliance for Clean Energy

Dr. Stephen A. Smith
Maggie Shober
Southern Alliance for Clean Energy
PO Box 1842
Knoxville, TN 37901
(865) 637-6055
sasmith@cleanenergy.org
maggie.shober@cleanenergy.org

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 at this 22nd day of February, 2021.

/s/ Carter Hall

Carter Hall

Earthjustice

1001 G Street, NW, Suite 1000

Washington, DC 20001

(202) 667-4500

chall@earthjustice.org