

**In the Matter of the Commission’s )  
Investigation Into the Implementation of )  
the Federal Infrastructure Investment ) Case No. 22-755-AU-COI  
and Jobs Act )**

distribution cooperatives serve nearly 400,000 residential, commercial, and industrial customers in service territories encompassing primarily rural areas in 77 of Ohio's 88 counties. The members of OREC are also the member-owners of Buckeye Power, Inc.,<sup>2</sup> an Ohio non-profit corporation and generation and transmission cooperative. Buckeye Power, Inc. produces and procures at wholesale all the electric capacity and energy required by its member electric distribution cooperatives and obtains transmission service to meet the needs of its members.

All of OREC's member distribution cooperatives are small utilities that sell less than 4 million megawatt hours of electricity per year, meeting the criteria for the small utility set-aside in the Infrastructure Law. All of OREC's member distribution cooperatives operate as non-profit cooperatives, meaning that they operate for the benefit of their customer-owners, not shareholders. OREC's members serve in the predominantly rural areas of the State of Ohio and have much less customer density than Ohio's investor-owned and municipal utilities. The Ohio distribution cooperatives therefore have many more miles of electric distribution lines and facilities per customer than other utilities and service to their members can be easily disrupted by weather and other events impacting those distribution facilities. Many OREC members provide electric service in economically disadvantaged communities as shown by the DOE Justice 40 criteria and maps.

OREC recognizes and appreciates the Commission's review and incorporation of its comments relating to these grants filed on September 22, 2022. OREC provides the following comments on the draft concept paper, as described in more detail below: (1) the Commission should adopt the Climate and Economic Justice Screening Tool (CEJST) for determining Justice40 disadvantages communities; (2) the set aside for small entities should be increased to reflect the

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Power Company; Tricounty Rural Electric Cooperative, Inc.; Union Rural Electric Cooperative, Inc.; and Washington Electric Cooperative, Inc.

<sup>2</sup> Buckeye Power, Inc. has an additional 25<sup>th</sup> member, Midwest Energy & Communications, which operates in both Ohio and Michigan.

resiliency goals associated with this funding and to be more in line with federal criteria; and (3) the requirement that applicants comply with NERC CIP and other legal standards should only apply where the applicant is legally required to meet such standards to avoid putting an undue burden on smaller entities.

## **1. Justice40 Mapping**

OREC recommends that the Commission adopt a more inclusive definition of “disadvantaged communities” using the Climate and Economic Justice Screening Tool (CEJST). Objective #3 of the Commission’s draft proposal, focusing on the demonstration of beneficial community impact, defines disadvantaged communities as those represented in the DOE’s Energy Justice Map Tool – Disadvantaged Communities Reporter. However, this tool narrowly defines Disadvantage Communities (“DACs”). The Biden-Harris administration has stated that the CEJST is an “essential step” in implementing the Justice40 Initiative and “ensuring that the benefits of Federal programs are reaching communities that are overburdened by pollution and historic underinvestment.”<sup>3</sup>

The DOE has issued more recent FAQs<sup>4</sup> indicating acceptance of the use of the Climate and Economic Justice Screening Tool (CEJST) to define DACs.<sup>5</sup> Since disadvantage communities are targeted to receive 40% of federal funds, the Commission should adopt a tool that creates a more inclusive definition of DACs. As a result, OREC requests that the Commission allow for the

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<sup>3</sup> White House Press Release, November 22, 2022. <https://www.whitehouse.gov/ceq/news-updates/2022/11/22/biden-harris-administration-launches-version-1-0-of-climate-and-economic-justice-screening-tool-key-step-in-implementing-president-bidens-justice40-initiative/> (last accessed February 9, 2023).

<sup>4</sup> See Frequently Asked Questions on the Grid Resilience and Innovation Partnerships (GRIP) Program, under “Review Process and Criteria” available at: <https://www.energy.gov/gdo/frequently-asked-questions-grid-resilience-and-innovation-partnerships-grip-program> (last accessed February 9, 2023). Though these FAQs relate to the GRIP Program, the GRIP and the Grid Resilience Formula Grants programs are both found under Section 40101 of the IIJA.

<sup>5</sup> The Climate and Economic Justice Screening Tool is available here: <https://screeningtool.geoplatform.gov/en/#5.91/38.941/-83.128> (last accessed February 9, 2023).

use of the CEJST screening tool to ensure more disadvantaged communities benefit from the federal funding under the IIJA.

## **2. Set Aside for Small Entities**

OREC requests that the Commission increase the set aside for small entities, defined as eligible entities that sell not more than 4,000,000 megawatt hours (MWh) of electricity per year, to reflect the resiliency goals associated with this funding and to be more in line with federal criteria. Under Section 2, Criteria, the Commission has proposed a set aside of 11% for small entities.<sup>6</sup> The primary objective in the Grid Resilience Formula Grants under Section 40101(d) is to improve resilience of the electric grid. To meet this purpose, the funding criteria should focus on the geographic area covered by aged and/or undersized infrastructure for each utility, rather than on total customer numbers.

OREC requests that the Commission use a different metric based on geographic service area for determining the level of funding to be set aside for small entities. If the Commission were to base the set aside on the service areas covered by each utility, the Commission would find that over 35% of the state is served by small entities like electric cooperatives. A 35% allocation is more in-line with the allocation to small entities at the federal level under Section 40101 of the IIJA, which is a minimum of 30%.<sup>7</sup>

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<sup>6</sup> Although Buckeye opposes using customer count as the basis for the small entity set-aside allocation, as further explained herein, if the Commission does adopt this methodology, Buckeye does not believe the customer count used to calculate the 11% small entity set-aside is accurate. The PUCO's draft program narrative states that it relied upon information found in EIA-Form 861 to determine the customer count but it appears the PUCO did not include information submitted by smaller utilities who use EIA-Form 861S (the short form). As a result, the 11% set-aside fails to take into account customer data from a number of electric cooperatives and likely a number of municipal utilities as well. Buckeye estimates the set-aside for small entities would increase by 1.5% -2% if this additional data were properly included.

<sup>7</sup> Topic Area I under Section 40101(c) creates a small entity set-aside of thirty percent of the total funding available. See 42 U.S.C. §18711(c)(5) and DOE's Grid Resilience and Innovation Partnerships (GRIP) Funding Opportunity Announcement (FOA) Number: DE-FOA-0002740, p. 31.

In addition, 100% of the funding provided to small entities like OREC’s member-cooperatives that operate as non-profits will benefit their end-use customers rather than shareholders or other investors.<sup>8</sup> This is because resiliency projects by electric cooperatives are ultimately funded by their members, and thus reduced costs for those projects results in reduced costs for their members. Because the biggest consideration by the Commission is how much the funding will benefit communities, the fact that every dollar of funding to electric cooperatives will ultimately benefit their members in the form of reduced costs should encourage a higher set aside for small entities.

Kentucky has recognized the benefits of providing IIJA funding to small public power entities, such as electric cooperatives, rather than investor owned utilities (“IOUs”), recognizing that large entities like IOUs “have access to private resources,” . . . “a more robust customer base for financial stability, [and] greater access to other federal [IIJA] grid resilience programs.”<sup>9</sup> Using this reasoning, Kentucky’s draft Section 40101(d) Program Narrative allocates 100% of the 40101(d) funding to small utilities and certain state-owned distribution systems. Kentucky recognized that a larger customer base provides greater financial stability and access to other federal funding opportunities and thus is a reason *not* to provide additional funding to these entities. Buckeye encourages the Commission to take an approach similar to that used by Kentucky and prioritize allocating 40101(d) funding to smaller utilities rather than large and well-funded investor-owned utilities.

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<sup>8</sup> This is also true for other small entities like municipal utilities.

<sup>9</sup> See Bipartisan Infrastructure Law – Section 40101(d), Draft Program Narrative dated August 9, 2022, p. 5, available at [https://eec.ky.gov/Documents/Build/OEP\\_Sec40101d-Narrative\\_PublicReview.pdf](https://eec.ky.gov/Documents/Build/OEP_Sec40101d-Narrative_PublicReview.pdf) (last accessed February 9, 2023).

### 3. NERC CIP Requirements

The Commission should remove funding requirements that require applicants to comply with inapplicable legal standards. Objective #5 of the proposal (ensure project success) requires an applicant to demonstrate the project will be successful and lists several metrics “for ensuring project success and sustainability” including:

*A plan for how the project will comply with cybersecurity standards and best practices, including the North American Electric Reliability Corporation Critical Infrastructure Protection (NERC CIP) standards and the National Institute of Standards and Technology (NIST) Cybersecurity Framework.*

While OREC supports the concept that the projects should contain plans to comply with cybersecurity standards and best practices, the standards listed may not be legally required or applicable to smaller entities. For example, NERC CIP standards only apply to utilities that own or operate generation or high voltage transmission lines of 100 kV or greater.<sup>10</sup> Most Ohio distribution cooperatives do not own these types of facilities and are thus not subject to the onerous requirements of NERC CIP. Requiring cooperatives to meet these standards would pose an incredibly high standard and will likely act as a barrier to participation. OREC requests that the Commission make clear in its proposal that it will only consider compliance with NERC CIP and other standards in awarding grants *to the extent the applicant is legally required to meet such standards.*

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<sup>10</sup> NERC is given authority under Section 215 of the Federal Power Act to enforce reliability standards on “all users, owners and operators of the bulk-power system.” FPA § 215(b)(1), 16 U.S.C. § 824o(b)(1). NERC uses the term “Bulk Electric System” or “BES” to identify the scope of its authority. NERC defines “BES” to generally mean “all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy.” See the NERC Glossary available at [https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary\\_of\\_Terms.pdf](https://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf) (last accessed on February 6, 2023) for a full definition.

## CONCLUSION

WHEREFORE, Ohio Rural Electric Cooperatives, Inc. respectfully requests that the Commission consider the comments submitted above in association with its draft concept paper.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on this 9th day of February, 2023. The PUCO's e-filing system will electronically serve notice of the filing of this document on counsel for all parties.

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