

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

**Inquiry Regarding the Commission’s)
Electric Transmission Incentives Policy)**

Docket No. PL19-3-000

REPLY COMMENTS OF THE ORGANIZATION OF MISO STATES

On March 21, 2019 the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a Notice of Inquiry (“NOI”) seeking comment on the scope and implementation of its electric transmission incentives regulations and policy. The Organization of MISO States, Inc. (“OMS”)¹ appreciates this opportunity to respond to the comments of several parties in this docket and to further clarify its position on several specific topics.²

At a high level, THE OMS continues to support the Commission’s current practice of granting ROE-incentive adders only upon a demonstration on a case-by-case basis of extraordinary risk that cannot be mitigated with risk-reducing incentives. The Commission should ensure that all incentives are granted only when they benefit consumers and when transmission projects would not be built absent such specific incentives. When granting incentives, the Commission should first consider incentives that do not increase the costs of projects before granting incentives that do. All incentives must encourage specific behavior sought by the Commission, and incentives should not compensate utilities for doing what they are otherwise obligated to do. For example,

¹ OMS is a non-profit, self-governing organization of representatives from each retail regulator with jurisdiction over entities participating in the Midcontinent Independent System Operator, Inc. (“MISO”) and serves as the regional state committee in the region. The purpose of the OMS is to coordinate regulatory oversight among the states, including recommendations to MISO, the MISO Board of Directors, the Commission, other relevant government entities, and state commissions as appropriate to express the positions of OMS member agencies.

² The OMS submits these comments after they were approved by a majority of its Board of Directors. The Illinois Commerce Commission abstained. The Manitoba Public Utilities Board and the Montana Public Service Commission did not participate. Nothing in these comments should be read as assertions or arguments by state and local regulators that are applicable to state and local return on equity proceedings. Individual state and local regulators have their own proceedings and applicable precedent regarding return on equity.

incentives should not be granted for building a transmission project pursuant to a contract that includes certain economic parameters considered in a competitive transmission project. And incentives should not be granted for doing something that makes economic sense, such as remaining in an RTO or ISO. Finally, incentives should benefit electric customers both when granted and throughout the life of the incentive. The OMS strongly supports the Commission's proposal to measure the efficacy of the incentives throughout their life and encourages the Commission to limit the duration of incentives.

Some commenters in this docket call on the Commission to continue granting the RTO-participation adder because they claim the adder will benefit customers. However, these parties offer no evidence on how customers benefit from an incentive that pays utilities to join and remain in an RTO/ISO when the economic advantages of joining and remaining in an RTO/ISO are widely known and more than sufficient to incentivize the desired conduct. The OMS supports the notion of including a cost-benefit test as part of the incentive granting process proposed by some participants.

I. COMMENTS

A. Risks and Challenges Framework

As stated in its Initial Comments, the OMS continues to believe that a case-by-case assessment of risks and challenges is the approach that remains the most effective way for the Commission to comply with the requirements of Section 219 of the Federal Power Act ("FPA").³ The OMS is not supportive of granting incentives solely based on project benefits because these benefits are more appropriately considered in transmission planning and cost allocation

³ 16 U.S.C. 824s.

proceedings. However, the OMS is supportive of the Commission including a cost-benefit test in the incentive granting process that is separate from the nexus test as detailed by the Organization of PJM States (“OPSI”) in their Initial Comments in this docket.⁴

OPSI then states that not all projects that improve reliability or reduce transmission congestion benefit consumers.⁵ The OMS agrees that there is no direct correlation between project benefits (whether or not they are determined in a planning process) and benefits to consumers for purposes of Section 219 of the FPA. Incentives only benefit consumers when they are necessary and efficient in incentivizing a behavior that benefits consumers. For example, if a transmission project does not need an ROE-adder to be built, granting the adder will not benefit customers even if the project reduces congestion and increases reliability. For this reason, the cost-benefit test in a planning process should be separate and distinct from the cost-benefit test for purposes of granting incentives. Incentives should only be granted in extraordinary circumstances and must be shown to benefit consumers. Such a showing can be done by conducting a cost-benefit analysis like the one proposed by OPSI.

Transmission development is booming in a way that it was not in 2005.⁶ Requiring analysis of the benefits to customers will only increase the quality of projects that get built. Therefore, the Commission should start requiring applicants to use a cost-benefit test in conjunction with the nexus test. Section 219 states that all rates approved under this section are subject to the

⁴ Comments of the Organization of PJM States, Inc., Docket No. PL19-4 at 2-9 (filed Jun. 26, 2019) (OPSI Initial Comments).

⁵ *Id.* at 3.

⁶ Utilities Continue to Increase Spending on Transmission Infrastructure. Energy Information Administration (February 9, 2018). <https://www.eia.gov/todayinenergy/detail.php?id=34892>

requirements of Sections 205 and 206.⁷ The OMS agrees with OPSI⁸ that using a cost-benefit test would make it more likely that any incentive granted is just and reasonable than if the Commission did not use this test.

The OMS reiterates that it does not support granting incentives solely based on project benefits alone. The cost-benefit analysis discussed above is solely meant to supplement the Commission's current risks and challenges framework.

B. RTO-Participation Adder

Joining and remaining in an RTO is a complex analysis that involves balancing many interests and receiving the RTO-participation adder is but one factor in an analysis to join or remain in an RTO. The OMS believes that today utilities receive sufficient benefits from membership in an RTO and that the RTO-participation adder is no longer needed to encourage Transmission Owners that have joined an RTO to remain in an RTO.

Section 1241(c) of the Energy Policy Act of 2005 ("EPAct 2005")⁹ requires the Commission to "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."¹⁰ However, the form of these incentives need not be an ROE-adder and the duration of the incentive need not be in perpetuity. In Order No. 679, the Commission wrote, "[W]e will approve, *when justified*, requests for ROE-based incentives for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved

⁷ 16 U.S.C. 824s.

⁸ OPSI Initial Comments at 6.

⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, sec. 1261 *et seq.*, 119 Stat. 594 (2005).

¹⁰ 16 U.S.C. 824(c).

Transmission Organization.”¹¹ The Commission has described the RTO-participation adder as “an inducement for utilities to join, and remain in, Transmission Organizations.”¹² This particular adder is no longer encouraging utilities to join or remain in an RTO and the Commission should not continue to grant it. The uncertainties regarding RTO participation have dramatically dropped following almost 20 years of experience since Order No. 2000 was issued. Furthermore, as the OMS explained in its Initial Comments, there is no nexus between the RTO-participation adder and the willingness of utilities to join or remain in an RTO/ISO. The main obstacle to attracting utilities outside of RTOs/ISOs to join is typically governance. The economic and operational benefits of participating in an RTO/ISO are now widely known and sufficient to incentivize utilities to remain in the RTO/ISO.¹³

Some Transmission Owners (“TOs”) made the argument that since the benefits of their participation in an RTO provide benefits to customers that do not decrease over time that the RTO-participation adder likewise should not decrease over time.¹⁴ However, they provide no support for these factual assertions. In fact, these Transmission Owners fail to explain why an ROE participation adder of 50 basis points given to almost all TOs that request it is needed to incentivize

¹¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91.

¹² Order No. 679-A, 117 FERC ¶ 61,345 at P 86.

¹³ The Commission has written:

[B]enefits [of RTOs] will include: increased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of ATC; more effective management of parallel path flows; more efficient planning for transmission and generation investments; increased coordination among state regulatory agencies; reduced transaction costs; facilitation of the success of state retail access programs; facilitation of the development of environmentally preferred generation in states with retail access programs; improved grid reliability; and fewer opportunities for discriminatory transmission practices. All of these improvements to the efficiencies in the transmission grid will help improve power market performance, which will ultimately result in lower prices to the Nation's electricity consumers.

Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,024.

¹⁴ Initial Comments of Edison Electrical Institute, Docket No. PL19-3 at 19 (filed Jun. 26, 2019) (EEI Initial Comments).

new TOs to join RTOs/ISOs or prevents TOs in RTOs/ISOs from leaving. As stated above, the OMS believes that ROE-incentive adders should both encourage action that would not have otherwise occurred *and* benefit consumers. If a utility is already a member of an RTO and will remain a member of an RTO without the adder, then no action needs to be induced for consumers to benefit. This adder does not exist solely to reward utilities for unlocking benefits from participation in an RTO.

Some commenters have stated that the Commission's language in Order No. 679-A stating that this incentive should be "widely available" for the entire duration of a utility's membership in an RTO means the Commission should simply grant this incentive indiscriminately, merely upon request.¹⁵ This is already the case and it needs to change. The just and reasonable standard and Section 219 requirement that incentives benefit customers demand that the Commission revisit its policy of granting RTO-participation adders. The statutory language does not require that this adder be automatically granted. It just means that the Commission should consider it. Should the Commission find that this incentive is still useful, it should place a limit on its duration to ensure that granting it remains justified.

The PJM TOs wrote, "The benefits and risks of RTO participation remain the same regardless of the reason a transmission owner joins and remains in an RTO, and the RTO Incentive should not depend on the reason for joining or remaining in an RTO."¹⁶ The volatility of the risks or benefits is irrelevant. If the RTO-participation adder did and does not encourage a utility to join

¹⁵ Order No. 679-A, 117 FERC ¶ 61,345 at P 86.

¹⁶ Initial Comments of the PJM Transmission Owners, Docket No. PL19-3 at 4. (Filed June 26, 2019) (PJM TO's Initial Comments).

or remain in an RTO then the 50 basis points the utility receives are being unjustly passed on to consumers.

The MISO TOs wrote, “The Commission should maintain its existing ROE incentive for RTO participation and should consider *additional* enticements for RTO participation.”¹⁷ Again, the OMS disagrees that year over year it is becoming riskier for TOs to remain in RTOs, which is the only reason that the Commission should increase an incentive. In fact, there is no evidence of concrete risks of RTO/ISO participation. On the contrary, experience has shown the many advantages of RTO/ISO participation.

Not only should the Commission reject the proposal to grant additional incentives for simply remaining members of RTOs, it should eliminate the RTO-participation adder and look for more tailored ways to incentivize new participation in RTOs/ISOs. If the Commission decides to retain the RTO-participation adder, the Commission should require recipients to show throughout the duration of the incentive why it is still needed and terminate the incentive when it is no longer needed. RTO-participation adder recipients should also be required to do more than simply remain in the RTO/ISO.

AEP wrote, “Moreover... the customer benefits of RTO participation are much bigger than the cost of the RTO Participation Adder, and these benefits accrue whether or not there is a state law requirement mandating participation.”¹⁸ Similarly, benefits to customers accrue regardless of whether or not a utility receives the RTO-participation adder. EEI wrote, “[T]he benefits of RTO

¹⁷ Initial Comments of the MISO Transmission Owners, Docket No. PL-19-3 at 6. (Filed June 26, 2019) (MISO TO’s Initial Comments.)

¹⁸ Comments of American Electric Power Company, Inc., Docket No. PL19-3, at 7 (Filed June 26, 2019) (AEP Initial Comments).

participation... do not disappear after some predetermined period.”¹⁹ That is correct.²⁰ But, again, it is irrelevant by itself when trying to determine whether or not to grant and RTO-participation adder. Adders that do not incentivize any specific behavior are not incentives. Rather, they are unjust and unreasonable windfalls passed on to customers. None of these commenters are stating that TOs would leave an RTO/ISO if the RTO-adder was removed. In fact, in certain places it may not even be legally, operationally, economically, or electrically possible for a TOs to leave the RTO/ISO. If a utility receives benefits in excess of the RTO-participation adder, or if it cannot leave the RTO/ISO, it would not forgo those benefits and leave if the adder was removed.

The MISO TOs wrote, “The incentive further promotes the voluntary participation in RTOs by providing transmission owners investment certainty and a stable return on investment, which further benefits consumers.”²¹ The assumption they make is that all utilities face equal risk and that TOs all need exactly 50 basis points to justify their membership in an RTO. This is far too simplistic as it assumes the risk of joining an RTO in 2005 is the same as remaining in an RTO in 2019, that they receive no additional benefit year over year, and that every utility in an RTO faces the same level of risk. Therefore, the RTO-participation adder should be eliminated.

In evaluating whether a 50 basis point adder identified as being for “RTO participation” remains necessary to produce that result, the Commission should not forget the other enormous reward, directly tied to RTO participation, that has been and may continue to be provided to transmission owners in certain RTOs, including MISO. We refer here to the Commission’s past

¹⁹ EEI Initial Comments at 19.

²⁰ MISO and PJM’s growing value MISO TOs at 9. *2018 Value Proposition Stakeholder Review Meeting*, Midcontinent Independent System Operator, Inc., at 2 (Feb. 15, 2019), [https://cdn.misoenergy.org/2018%20MISO%20Value%20Proposition%20-%2015Feb2019\(Final\)321318.pdf](https://cdn.misoenergy.org/2018%20MISO%20Value%20Proposition%20-%2015Feb2019(Final)321318.pdf) (“2018 MISO Value Proposition”).

²¹ Initial Comments of the MISO TOs at 9-10.

policy of using midpoint-based rather than median-based measures of central tendency in setting base ROEs for MISO, and ISO-NE transmission owners. The rationale for this statistically suspect approach has been directly tied to RTO participation—the notion that an RTO-wide ROE should be suited for the RTO members with especially high (or low) equity costs. This approach is under review in Docket No. PL19-4 and the ongoing MISO ROE and *Coakley* paper hearings, and we trust that the Commission will consider therein our comments recommending a change of approach. We raise it here only in order to note that this approach has itself functioned as an enormous *de facto* reward for RTO participation. Consider, for example, the proxy results adopted in Opinion No. 551. The upper midpoint, which was used to set the base ROE, was 10.32%. MISO-area ratepayers continue to pay that 10.32% base ROE, subject to further proceedings. In that same distribution, however, the upper median was 89 basis points lower, at 9.43%.²² Thus, even before adding another 50 basis points as an explicit RTO participation adder, these results included an implicit RTO participation adder of 89 basis points.

The Commission should require recipients of this adder to show that it is in fact encouraging action that would not have otherwise occurred. Even if the Commission finds that the explicit 50 basis point RTO participation adder remains justified for now, it should provide for the adder to be phased out, uniformly and equitably, over time. At minimum, it should provide for periodic re-examination of whether the adder continues to mitigate risk and incent action that

²² This distribution is shown in Appendix B to the Docket No. EL14-12 Initial Decision. A similar pattern of range-based values exceeding percentile-based values is prevalent in the results of DCF and other methods applied to electric utility proxies, in part because the Commission's tests for outliers tend to exclude results in the distribution's low tail while retaining results in the distribution's high tail. For this and other reasons, most of the retained results typically fall in the lower half of the retained range.

would not have otherwise occurred, and provide for this incentive to be withdrawn if and when that finding ceases to apply.

C. The OMS Believes that the Granting of Incentives Based on Interregional Characteristics, While Worthwhile in some Instances, Should not be Automatic, and that there may be Better Methods of Encouraging These Projects²³

The OMS previously wrote, “The OMS is open to including three project characteristics identified in this inquiry as factors to consider in the process of granting incentives.”²⁴ One of those project characteristics the OMS was open to incenting was the development of interregional projects, but the interregional planning process may be a better place than incentives policy to start looking for openings to encourage interregional transmission development. For example, recently the OMS and the SPP RSC have begun to analyze whether further improvements to the planning processes of their respective regions might be needed in order to benefit ratepayers, especially as it relates to overcoming issues with identifying beneficial interregional projects along RTO seams.²⁵

The Commission should not create a specific, automatic incentive for interregional projects as interregional projects fit neatly within the Commission’s current risks and challenges framework and can be analyzed on a case-by-case basis in order to encourage their development. Nonetheless, there may be rare circumstances in which RTOs identify a beneficial project with extraordinary risk stemming specifically from its interregional characteristics that could be

²³ The Louisiana Public Service Commission does not support Section C of these Reply Comments because it does not support special ROE adders for seams/interregional projects.

²⁴ Comments of the Organization of MISO States, Docket No. PL19-3, at 8 (Filed June 26th, 2019) (OMS Initial Comments).

²⁵ Seams Coordination Effort <https://www.misostates.org/index.php/work-products/seams-coordination-effort>.

appropriately mitigated with an incentive adder because these projects may face additional siting, technology, and jurisdictional risks.

Many commenters discussed interregional projects when contemplating incentives based on a project's characteristics. The R Street Institute supported incentives for interregional projects, citing the indifference of transmission owners to look at these types of projects and the insular nature of RTOs.²⁶ The comments indicated that getting TOs on board by providing a greater financial incentive to consider interregional projects would overcome these structural hurdles and lead to consumer benefits.²⁷ Other commenters, such as the Advanced Energy Economy, supported incentives for interregional projects as a means to unlock low-cost renewable resources.²⁸ While the OMS believes these ideas have merit and need further exploration, it is not yet clear that an automatic ROE incentive created specifically for this purpose is currently the best way to bring about more interregional projects.

Other commenters, such as the Transmission Access Policy Study Group²⁹, the American Public Power Association³⁰, Public Interest Organizations³¹, and the WATT coalition,³² opposed incentives based on project characteristics. Some did so because it would lead to an assumption of benefits without assessment, opening the door to incenting a project that doesn't lead to any

²⁶ Comments of The R Street Institute, Docket No. 19-3, at 2 (Filed June 18, 2019). (R Street Comments).

²⁷ *Id.* at 3-7.

²⁸ Comments of Advanced Energy Economy, Docket No. PL19-3 at 12-15 (AEE Initial Comments)

²⁹ Comments of Transmission Access Policy Study Group, Docket No. PL 19-3 at 81-83 (TAPs Comments)

³⁰ Initial Comments of The Joint Commenters, Docket PL19-3 at 53 (Filed June 26, 2019) (Comments of Joints Commenters).

³¹ Joint Comments of Public Interest Organizations on The Commission's Notice of Inquiry, Docket No. PL19-3 at 25-27 (Filed June 26, 2019).

³² WATT Coalition Initial Comments, Docket No. PL19-3 at 8 (Filed June 26, 2019).

benefits. Others opposed the incentives based on interregional project characteristics arguing that the Commission should re-evaluate the Order No. 1000 interregional coordination process.³³ Others asked the Commission to ensure cost allocation methodologies are in place that recognize all of the benefits from interregional transmission projects, including delivered cost of energy and to allocate the costs to all who benefit.³⁴

The OMS is sympathetic to this point given the position discussed earlier related to the RTO-participation adder. These commenters all suggested the planning process of the various regions is the proper place to initially encourage interregional projects that lead to benefits. The OMS agrees for the most part. That said, the OMS encourages the Commission to remain cognizant of the many challenges that may be faced in the development of seams projects, and to address them on a case-by-case basis.

D. Incentive Objectives -- Resilience

As there is no industry accepted definition of resilience, the OMS does not support providing incentives that increase resilience. The OMS stands by the position it took in the DOE Notice of Proposed Rulemaking docket recognizing that the majority of disruptions to electric service occur on the distribution system.³⁵ The OMS believes that resilience is currently, and correctly, addressed by NERC, the Regional Reliability Entities, state regulatory commissions, municipalities, cooperatives, and utilities.³⁶ Should the Commission decide to incentivize

³³ TAPs Comments at 83.

³⁴ Comments of Joints Commenters at 53.

³⁵ Comments of the Organization of MISO States, Docket No. AD18-7-000 at 8 (May 9, 2018), (citing Department of Energy, Quadrennial Energy Review, Second Installment at 4-2 (2017), available at <https://energy.gov/epsa/quadrennial-energy-reviewsecond-installment> (“Quadrennial Energy Review”).

³⁶ Motion for Leave to Respond and Response to Certain Reply Comments of the Organization of MISO States, Docket No AD18-7 at 7 (June 14th, 2018).

resilience projects at transmission level, it should do so subject to specific and pre-determined parameters defining resilience benefits and apply these parameters to individual transmission projects on a case-by-case basis. The Commission should not allow utilities to capitalize O&M costs or any costs based on a utility's understanding of the resilience benefits achieved with these costs.

In its initial comments, EEI wrote, "Since the issuance of Order No. 679, additional challenges have arisen regarding transmission investments to promote resilience and reliability."³⁷ While the industry-wide discussion of resilience is beneficial, there is no need at this point for additional incentives to address resilience at the transmission level.³⁸

Nonetheless, certain commenters have offered a way to integrate resilience into the Commission's incentives policy. AEP wrote that utilities should be allowed to submit a "Resilience and Security Action Plan," and that upon review, the Commission should grant an ROE-incentive adder at an appropriate level to encourage the identified investments.³⁹ EEI also discussed ways a public utility could develop plans for the Commission to describe potential actions a utility could take in anticipation of receiving a resilience adder.⁴⁰

The OMS has previously highlighted local, state, regional, and federal actions that are already underway at that time to ensure reliability and resilience as the Commission has proposed defining it.⁴¹ While ensuring a resilient power system requires resilience of all components of the

³⁷ Initial Comments of EEI at 20.

³⁸ *Id.* at 10.

³⁹ AEP Initial Comments at 2.

⁴⁰ EEI Initial Comments at 28.

⁴¹ OMS NOPR Comments at 8-14.

system, it cannot be overstated that electricity outages overwhelmingly result from disruptions on the distribution systems (over 90 percent of electric power interruptions)⁴² both in terms of duration and frequency of outages, which are largely due to weather. If power system resilience issues do arise in the future, they are likely to originate within the state and local jurisdictional distribution systems, where state and local regulators, with a focus on resilience (and reliability) for customers, already have a number of activities underway to address potential concerns.⁴³ Therefore, the OMS continues to urge the commission not to consider enhancing ‘resilience’ at the transmission level as it reevaluates its incentives policy.

E. Market Monitor Comments

Potomac Economics recommended that the Commission issue a rulemaking that:

- Provides market-based incentives for transmission owners to provide increased capability through dynamic ratings by allocating the congestion surplus to the transmission owners;
- Improves transmission outage scheduling and coordination by allocating the costs of outages to transmission owners and expanding RTO outage coordination authority;
- Considers possible market-based incentives for topology optimization; and
- Provides market-based incentives for investment in new transmission by allocating rights related to the congestion benefits and capacity market benefits associated with the new transmission.⁴⁴

While the changed behaviors that Potomac Economics seeks to promote may well be beneficial, the proposed incentives may not be the appropriate way to foster them. The Commission, and/or RTOs, could simply require Transmission Owners to do some of these things

⁴² Comments of the Organization of MISO States, Docket No. AD18-7-000 (filed May 9, 2018), at 7 (“OMS Initial Comments”), citing Department of Energy, Quadrennial Energy Review, Second Installment at 4-2 (2017), available at <https://energy.gov/epa/quadrennial-energy-review-second-installment> (“Quadrennial Energy Review”).

⁴³ *Id.* at 7

⁴⁴ Comments of Potomac Economics, Ltd., Docket No. 19-3 at 21 (Filed June 25, 2019).

without the use of incentives. Moreover, incentives scaled to market calculations (such as awarding the congestion surplus to transmission owners) may be disproportionate to the reasonable cost of implementing those changed behaviors, and disproportionate to what it would take to motivate transmission owners to implement them. Furthermore, it may be difficult to measure the effectiveness of these recommendations. Market based incentives should not replace case-by-case incentives evaluation.

II. CONCLUSION

For the reasons stated above, if the Commission must grant incentives, it should ensure that the recipients of any incentive should be able to show that the incentive is mitigating risk and benefiting consumers, both when the incentive is granted and for the life of the incentive.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY certify that I have this day caused the foregoing document to be served, *via* electronic mail, upon each person designated on the Official Service List compiled by the Secretary in these proceedings.

DATED at Madison, Wisconsin this the 26th day of August, 2019.

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Dated August 26, 2019

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