

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

Notice of Proposed Rulemaking)
Electric Transmission Incentives Policy) Docket No. RM20-10-000

**COMMENTS OF THE ORGANIZATION OF MISO STATES, INC.,
THE SOUTHWEST POWER POOL REGIONAL STATE COMMITTEE, INC., AND
THE ORGANIZATION OF PJM STATES, INC.**

On March 20, 2020, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a Notice of Proposed Rulemaking (“NOPR”) regarding its transmission incentives policy.¹ The Organization of MISO States, Inc. (“OMS”), the Southwest Power Pool Regional State Committee, Inc. (“SPP RSC”), and the Organization of PJM States, Inc. (“OPSI”) (collectively, the “Joint Committees”) appreciate the opportunity to share their views on the issues raised in the NOPR.²

The OMS is a non-profit, self-governing organization comprised of representatives from the seventeen regulatory bodies with jurisdiction over entities participating in MISO and serves as the regional state committee. The purpose of the OMS is to coordinate regulatory oversight among its members, to make recommendations to MISO, the MISO Board of Directors, the Commission, and other relevant government entities and state commissions as appropriate, and to intervene in proceedings before the Commission to express the positions of the OMS member agencies.

The SPP RSC is a non-profit, self-governing organization comprised of representatives from the eleven regulatory bodies with jurisdiction over entities participating in the Southwest Power Pool (“SPP”) and serves as the regional state committee. The purpose of the SPP RSC is

¹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (2020) (“NOPR”).

² The Minnesota Department of Commerce and the Minnesota Office of Attorney General, associate members of the OMS, join these comments.

to provide collective state regulatory agency input on matters of regional importance related to the development and operation of bulk electric transmission. The SPP RSC is comprised of retail regulatory commissioners from agencies in Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas.

OPSI is an inter-governmental organization of utility regulatory commissions from the 14 state jurisdictions either, wholly or partly, in the service area of PJM Interconnection, LLC (“PJM”), a Commission-approved regional transmission operator. PJM operates the high-voltage electric transmission grid and wholesale electricity market within its service area. OPSI’s activities include, but are not limited to, coordinating data/issues analyses and policy formulation related to PJM, its operations, its Independent Market Monitor, and related Commission matters. OPSI’s activities and actions include formal engagement at FERC as well as engagement in the PJM stakeholder process.

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I. BACKGROUND

The Federal Power Act (“FPA”) is a consumer-protection statute.³ While incentives can be an effective means of modifying the behavior of private entities to meet policy objectives, they must only be approved in accordance with the consumer protections that are embedded in the FPA. Against that backdrop, on December 19, 2018, the OMS Board of Directors sent a letter to all five sitting FERC Commissioners to express concern with the Commission’s existing return on equity (“ROE”) incentive policy and to suggest re-evaluation of the use of ROE incentives in order to “ensure that customers pay no more than is necessary to develop and maintain a reliable and efficient transmission grid.”⁴ On December 21, 2018, the OPSI Board of Directors also sent a letter to the Commission stating that transmission incentives, “should reflect specific goals and risks to be truly merited. OPSI has concerns that at least some incentive adders have become overly generous and do not change or incent the intended behavior... resulting in excessive costs to customers.”⁵

The SPP RSC also wrote a letter to the Commission stating “it would be more appropriate and effective to encourage interregional transmission development through interregional planning processes rather than through the Commission’s incentives policy.”⁶ The SPP RSC also argued that, “The Commission should not create a specific, automatic incentive for interregional projects

³ See, e.g., *Pa. Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952); *New England Power Generators Ass’n v. ISO New England Inc.*, 146 FERC ¶ 61,038 at P 26 & n.33 (2014).

⁴ The “OMS December Letter” can be found at: https://www.misostates.org/images/stories/Filings/FERC/2018/ROE_Incentive_Letter_to_FERC_12-18-18_final_with_signature.pdf (last accessed on July 1, 2020) (“OMS December Letter”) (last accessed on July 1, 2020).

⁵ The “OPSI December Letter” can be found at: <https://opsi.us/wp-content/uploads/2019/03/FERC-Letter-Transmission-ROE-Incentive-Policy-Leter-12.21.18.pdf> (“OPSI December Letter”) (last accessed on July 1, 2020).

⁶ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Comments of the Southwest Power Pool Regional State Committee, Docket PL19-3 (August 28, 2019) (“SPP RSC Incentives NOI Comments”).

because such projects already 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.”⁷

II. SUMMARY OF COMMENTS

The Joint Committees call on the Commission to clarify three main aspects of this proposal. First, how would a benefits-based approach benefit customers better than a “risks and challenges” based approach, and why hasn’t the Commission included a risk-based analysis as a component of this proposal? Second, how will this proposal ensure that incentives granted under this approach actually benefit customers? And third, how would raising the RTO-participation adder benefit customers?

State and local regulators have a mandate to ensure that retail customers pay just and reasonable rates.⁸ Because of this mandate, they often participate in the Commission’s ROE proceedings to ensure that the wholesale rates passed through to retail customers are just and reasonable. For this reason, the Joint Committees prefer the Commission’s current “risks and challenges” approach because it is more likely to incentivize specific conduct than the proposed benefits-based approach. The underlying benefits of a project remain unchanged whether or not an incentive is granted. Granting incentives to beneficial projects simply increases the costs to customers. An incentives approach focused on mitigating project risks addresses investors’ specific concerns and can incentivize the new transmission investment that section 219 of the FPA intended. It is important to ensure that incentives themselves produce benefits and not just

⁷ *Id.*

⁸ *Ass’n of Bus. Advocating Tariff Equity, v. Midcontinent Indep. Sys. Operator, Inc.*, Supplemental Comments of the Organization of MISO States, Inc., Docket Nos. EL14-12-003 and EL15-45-000 (February 13, 2019) (“OMS Supplemental Comments”).

the projects that receive the incentives. Granting incentives without ensuring that they themselves produce benefits makes already beneficial projects less cost-effective.

Next, as will be discussed below, the Joint Committees believe that the NOPR is not tailored to incentivize behaviors that benefit customers and that this NOPR, in some instances, proposes to exacerbate that problem by further diluting the link between incentives and just and reasonable rates which could make the Commission's ROE incentives policy potentially harmful to consumers. The NOPR does not contain a framework to adequately ensure that incentives actually encourage specific conduct. The NOPR does not explain what will happen if an incentive is shown to not be needed, and the NOPR does not explain how the Commission intends to limit the duration of incentives.

Finally, the Joint Committees ask the Commission to clarify why it is necessary to double the Regional Transmission Organization ("RTO") participation adder and grant it in perpetuity, especially in light of well-documented benefits of RTO participation. The risks of RTO membership that this incentive was supposed to mitigate are much better understood than they were 15 years ago. The Joint Committees do not support this adder existing at all, let alone raising it to 100 basis points because it only serves to raise rates to customers without incentivizing any particular action that benefits customers.

III. COMMENTS

A. Shift from Risks and Challenges to Benefits

The Commission proposes to no longer assess projects based on their risks and challenges and, instead, proposes to move to a framework that grants incentives based on the "benefits to

consumers.”⁹ The FPA requires the Commission to establish an incentive rate treatment “for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion”¹⁰ and the Commission has cited enhancing reliability and reducing congestion as benefits.¹¹ However, it is the incentive treatment that has to result in these benefits in order to be justified, not just the underlying project benefits. Existing project benefits do not themselves justify incentive-based rate treatment. While the Commission’s proposed benefit approach may appear on the surface to more closely align its policy with the statutory language, incentivizing projects that are already the most likely to be built simply increases the costs of these projects without benefitting consumers. Incentives must directly encourage transmission investment that otherwise would not be made.

The NOPR targets only those projects that are already most likely to be selected and built in a regional transmission planning process. The Commission should identify which beneficial projects are not being built and why in order to provide targeted incentives granted on a case-by-case basis to encourage their development. Simply granting incentives based on project benefits does not guarantee that projects that are needed or wanted are actually built.

The Commission has previously described the risks and challenges projects face as financial and regulatory risk.¹² In Order 679, the Commission wrote, “each [incentive] will be applied in a manner that is rationally tailored to the risks and challenges faced in constructing new transmission,” and the Commission stated that this could take place in several contexts

⁹ NOPR at P 3.

¹⁰ 16 U.S.C. § 824s(a).

¹¹ *Id.*

¹² *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, 117 FERC ¶ 61,345 at P 15 (2006) (“Order 679-A”).

discussed throughout order 679 and 679-A.¹³ The Commission’s current “risk and challenges” approach at least attempts to ensure that incentives are only granted to projects that actually need them, and the inclusion of a risks-based framework *in addition* to a benefits-based framework would do a better job of protecting consumers than the benefits-based framework alone. The OMS and OPSI have supported this approach in previous comments.¹⁴ Granting incentives based on whether or not a project reduces congestion above a certain cost-effectiveness threshold or increases reliability does not ensure that the resulting rates are reasonable. This is especially true if the project was likely to be built, given its high level of cost-effectiveness, without an incentive.

The Commission should clarify how the proposed benefits framework will promote benefits for consumers more effectively than a benefits and risks-based framework. The net-effect of indiscriminately granting a benefits-based incentive would only be to make projects that would be built in the absence of the incentive needlessly more costly and less cost-effective, which is what this proposal would do. Furthermore, the Commission should clarify how it intends to ensure that the incentives themselves provide benefits to consumers. If the Commission grants incentives to projects that are already beneficial and to projects that will already be built per operation of the regional planning process and corresponding contractual commitments, the incentive adders will

¹³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 at P26 (2006) (“Order 679”).

¹⁴ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Comments of the Organization of MISO States, Inc., Docket No. PL19-3 (filed Jun. 26, 2019) (“OMS Incentives NOI Comments”). (“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 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.” *Inquiry Regarding the Commission’s Policy for Determining Return on Equity*, Comments of the Organization of PJM States, Inc., Docket No. PL19-4 at 7 (filed Jun. 26, 2019) (“To be clear, OPSI is proposing that the Commission employ benefit metrics and use benefit/cost analyses in addition to its current risks/challenges assessment, rather than instead of that current assessment process.”)

simply increase the costs of these beneficial projects to consumers, altering the cost-benefit ratio and resulting in unjust rates.

Section 219 of the FPA requires an “incentive-based” rate treatment.¹⁵ Incentives must incite or stimulate some type of action. Section 219 of the FPA uses verbs like “promote,” “attract,” and “encourage.”¹⁶ There should be a showing that any incentive attracts new investment that would not have otherwise occurred. Without that showing, the incentive is not just and reasonable. This does not, however, require a showing that the project would not have been built but-for the incentive. The Joint Committees oppose new and distinct just and reasonable standard for ROE incentives.

Finally, changing the framework from risks and challenges approach to one based solely on benefits does not conform with the fundamental way financial markets work. Financial markets provide an opportunity for investors to earn a return on investment, and the decision to invest is informed by the risks an investor must accept to secure that return. As the benefits of a project increase and become more well-known, the risks associated with that project decrease, and the resulting return changes accordingly in an efficiently functioning market. Benefits do not form an independent dimension of this risk-return interplay, and an incentive approach that interferes with this fundamental aspect of markets will distort the balance in financial markets and results in inefficient allocation of resources.

¹⁵ 16 U.S.C. § 824s.

¹⁶ *Id.*

B. Incentive ROE Reforms**1. ROE Incentives for Economic Benefits**

The NOPR proposes to provide a 50 basis point incentive adder to economic projects that meet certain benefit-to-cost ratios in the regional planning process and a 50 basis point incentive adder for projects that meet a benefit-to-cost ratio after construction.¹⁷ The Joint Committees do not believe that this proposal would incentivize anything and would only reward projects already likely to be selected in a regional planning process. This proposal does not propose a safeguard to distinguish between projects that would actually need an incentive and which ones do not. A risks-based analysis would assist the Commission greatly in ensuring incentives are granted in a just and reasonable manner. Furthermore, the Joint Committees believe the identification of benefits is already a fundamental aspect of an RTO's regional transmission planning function, introducing overlap with the proposed RTO participation incentive.

The OMS has stated in its past comments that a benefits approach tied to a regional planning process will only complicate the already complex process of identifying benefits for transmission planning and cost allocation purposes.¹⁸ Simply adding costs to beneficial projects will artificially alter the cost-benefit ratio of projects, increasing the chances of beneficial projects being reevaluated in subsequent planning years, potentially delaying construction. Furthermore, by simply increasing costs, the benefits approach increases the stakes of parties in cost allocation proceedings associated with beneficial projects, thereby increasing the likelihood of lengthy cost allocation litigation.

The Commission should clarify why this proposal does not propose a safeguard to distinguish between projects that actually need an incentive and which ones do not. The

¹⁷ NOPR at P 43.

¹⁸ OMS Incentives NOI Comments at 17.

Commission should clarify how it intends to ensure that these incentives, and not just the projects themselves, will benefit consumers. The Commission should also clarify how it intends to ensure that these incentives are independently creating quantifiable benefits for consumers, separate and distinct from the benefits received from the regional planning process in light of the higher costs imposed on the public. The Joint Committees are familiar with the way regional planning processes determines benefits, but the proposal to use benefit-cost-ratios from regional transmission planning processes for ROE purposes is not appropriate. The Commission should clarify why it believes that layering another concept on top of this complex process will not further complicate an already complicated regional transmission planning process. The Commission should also clarify why these proposed incentives are not time-limited.

2. **Reliability Benefits**

The Commission has also proposed a 50 basis points adder for projects that provide reliability benefits above and beyond the NERC reliability requirements. Notably, the NOPR would allow applicants to demonstrate these benefits in an open-ended fashion without any criteria to guide how to determine these benefits.¹⁹ Past OMS comments have stated that incentives should be clearly defined²⁰ and noted that there is no industry accepted definition of resilience.²¹ The NERC reliability standards are comprehensive and successful at keeping the Bulk Electric System reliable. It is unclear what type of benefits, beyond the NERC standards, could provide additional benefits to customers. The Joint Committees oppose the NOPR's open-ended reliability incentive because it is likely to result in a flurry of incentive requests nationwide

¹⁹ NOPR at P 65-67.

²⁰ *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, Comments of the Organization of MISO States, Docket PL19-4 at p. 6 (June 26, 2020) ("OMS Base ROE NOI Comments").

²¹ *Id.* at 12

that state commissions and customers may have to litigate with no guidance as to the appropriate metrics to measure the additional reliability benefits.

The Commission should clarify how projects will qualify for this reliability incentive and why consumers should pay for this additional reliability. It is clear, however, that consumers should not pay extra for infrastructure that utilities are already required to build in compliance with NERC standards. Similar to the discussion above related to economic benefit analysis, the Commission must ensure that this incentive does not negatively impact RTO planning processes by introducing new benefit and cost considerations that further complicate reliability planning processes.

The Commission should not implement the reliability incentive until it is clear what metrics it will use to measure additional benefits. Once the Commission has done this, the Joint Committees would be supportive of the Commission convening a technical conference or a separate proceeding to define the reliability criteria contemplated and explore how their use would benefit consumers. Alternatively, the Commission could direct the RTOs, in consultation with NERC, to propose and file with the Commission specific thresholds or metrics above which incentives based on reliability can demonstrate that would constitute additional benefits to consumers.

C. Ensuring Reasonableness of ROE

In the NOPR, the Commission proposes to cap the amount of incentives it will grant at 250 basis points and will no longer bind the level incentives granted by a zone of reasonableness.²² The proposal to set this cap at 250 points is arbitrary, and the proposal to no longer subject

²² NOPR at P 78.

incentives to a zone of reasonableness as calculated using market-based methodologies to estimate the range of potentially just and reasonable returns is also arbitrary.

This would constitute a fundamental break with the way the Commission currently determines whether or not ROEs are just and reasonable, and the zone of reasonableness, as it currently exists, is a customer protection measure that should not be abandoned. The proposed cap would render the Commission unable to review an entire ROE package to determine if it is just and reasonable. This arbitrary administrative cap runs afoul of the Supreme Court ruling that “A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.”²³

As has been discussed above just because a methodology could produce just and reasonable rates does not mean that it will, and that is the Joint Committees’ primary concern. The zone of reasonableness reflects a market perspective on what a just and reasonable return is. Unlike the zone of reasonableness, the 250 basis points cap proposed in the NOPR is an arbitrary, administratively set number that has no connection with what return investors require in the capital marketplace. The Commission should not separate its analysis of base and incentive ROE. Because this ROE cap is arbitrary and disconnected from the market reality, the Commission would be unable to determine the justness and reasonableness of the total ROE of utilities.²⁴

The just and reasonable standard of review is the same in sections 205, 206, and 219 of the FPA. However, the Commission is proposing to cap the reasonableness of the ROE differently under section 219 than under sections 205 and 206 of the FPA, which still use the market-based

²³ *Bluefield Waterworks & Imp. Co. v. Public Service Commission*, 262 U.S. 679, 693 (1923).

²⁴ Furthermore, consideration of additional incentives is premature given the current uncertainty in the method for developing base ROE. The Commission recently announced changes in Opinion 569-A to the base ROE methodology that may increase utilities’ base ROEs. That Opinion is being appealed and may be subject to rehearing. The Commission should wait until a final determination on base ROE methodology is determined before determining whether additional ROE incentives are necessary and appropriate.

zone of reasonableness. The Commission must explain how the different treatment of the ROE cap impacts the just and reasonable standard of review under sections 205, 206, and 219. As proposed in the NOPR, the Joint Committees oppose the Commission’s departure from using the top of the zone of reasonableness to cap the total ROE of public utilities.

D. Non-ROE Incentives

The Commission proposes to grant a 100% abandoned plant incentive when a project is selected in a regional process for the purpose of cost allocation. Currently this incentive is granted when the Commission issues an order granting 100% recovery.²⁵ The NOPR states that applicants will continue to be required to demonstrate in an FPA section 205 filing that the transmission projects were abandoned for reasons outside of its control and that the costs incurred were prudent.²⁶ The Commission should require a prudence review of abandoned cost recovery changes and set forth the criteria for parties to challenge the prudence of this incentive both in and out of a filed Commission docket. The Commission should clarify how abandoned cost recovery changes would require prudence review covering any expansion of the cost-recovery period. Section 219 mentions the ability to recover prudent costs,²⁷ but this incentive cannot be provided automatically without a showing that all the project costs incurred prior to abandonment were prudent and that the abandonment occurred for reasons beyond the control of the utility.

In regards to non-ROE incentives generally, the Joint Committees support a case-by-case approach, and the Commission should undertake a prudence review of any non-ROE incentives

²⁵ NOPR at P 84.

²⁶ *Id.*

²⁷ 16 U.S.C. § 824s (“The rule shall... allow recovery of—

(A) all prudently incurred costs necessary to comply with mandatory reliability standards issued pursuant to section 824o of this title; and

(B) all prudently incurred costs related to transmission infrastructure development pursuant to section 824p of this title.”)

granted consistent with FPA section 219. In the NOI docket, the OMS was supportive of FERC granting non-ROE incentive adders before granting incentive adders,²⁸ and the Commission should clarify how it intends to prioritize non-ROE incentive adders. The Commission should also clarify why these incentives are not time-limited.

E. Incentives Available to Transcos

The Commission wrote that it has not seen evidence that stand-alone transmission companies (“Transcos”) have delivered the outcomes expected in Order No. 679 and proposes to eliminate incentives available to these companies. The Joint Committees support the elimination of incentive adders available to Transcos.²⁹ The Joint Committees believe that this proposal to eliminate the Transco adder is a perfect example of the reason for the Commission to have a program to review previously granted adders to ensure they continue to be appropriate over time.

F. Incentives for RTO Participation

The Commission proposes to increase the adder for RTO participation from 50 basis points to 100 basis points for all utilities that join or remain a member of an RTO.³⁰ The FPA is clear: there is nothing that statutorily requires the Commission to incentivize a utility to remain in an RTO after it has joined.³¹ In the December 2018 letter referenced above, the OMS questioned the need to continue granting the current 50 basis point RTO participation adder in

²⁸ OMS Incentives NOI Comments at 18.

²⁹ The Michigan PSC believes that there may be benefits to providing some amount of incentive ROE added for independence given our state’s two decades-long experience with independent transmission companies. Notwithstanding, the Michigan PSC encourages the Commission to continue to review its policies in a comprehensive manner to account for the overall ratemaking treatment, such as the allowed base ROE, any incentive ROE adders, the formula-based forward-looking rates, and the overall allowed rate of return for each MISO TO. The Commission needs to balance the risk with the appropriate level of return that may include incentives that provide just and reasonable rates.

³⁰ NOPR at P 97.

³¹ 16 U.S.C. § 824s (“the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.”)

perpetuity, especially in light of changes within the industry landscape that have removed much of the risk of participating in an RTO that existed 15 years ago.³² The OMS specifically questioned the value of the 50 basis points RTO participation adder as it exists now, arguing that it did not appear to be causing any action that would not have occurred in its absence.³³ The Joint Committees believe that the RTO participation adder is unnecessary. There is no evidence that the incentive compelled any public utility to join, or remain in, an RTO. Rather, public utilities join RTOs for a host of reasons, e.g., they may be “forced” in if surrounding utilities have joined, they may be compelled by state law to join, etc. Likewise, there are numerous reasons by public utilities remain in RTOs, e.g., avoidance of exit fees, access to markets, operational efficiencies, etc.

While the Joint Committees believe a risk-based approach is more conducive to promoting projects through the use of incentives, it is arbitrary that the Commission is proposing to move away from this framework for project-based incentives while relying upon risk in its incentive proposal for RTO participation.³⁴ The Commission should engage in evaluation of risk in the context both of this adder and every other incentive adder in this proposal.

The benefits to consumers from RTO participation are high, as cited in the NOPR,³⁵ and the risks to utilities are low, partially due to the fact that the majority of projects are still proposed by the local Transmission Owner and, in part, because all of the costs utilities may incur with their transmission planning and transmission development activities have guaranteed recovery. Some of the benefits listed in Order 2000 include improved congestion management, more

³² OMS December Letter.

³³ See December letters *supra* at fn. 2 and 3.

³⁴ NOPR at P 97.

³⁵ *Id.*

accurate estimates of available transmission capacity, more effective management of parallel path flows, and reduced transaction costs.³⁶ The Commission should clarify why the proposal would further incent RTO participation when the risks are well known and the benefits are well documented.

There are many reasons why utilities join an RTO. The Commission has not shown that doubling would be a cost-effective way to induce RTO participation or keep utilities in an RTO. Indeed, the need for any incentive for RTO participation has not been demonstrated. Eliminating the RTO participation adder would allow the Commission additional flexibility to grant incentives while still maintaining just and reasonable rates. For that reason, the Joint Committees oppose this incentive. The incentives granted for RTO participation could be better spent on actionable conduct. Therefore, the Commission should eliminate this adder.

G. Incentives for Transmission Technologies

For certain transmission technologies, the Commission proposes up to a 100 basis point adder granted on a case-by-case basis.³⁷ Arguably, a technology incentive is more likely to encourage discrete policy objectives than the other incentives contemplated in this proposal. Encouraging discrete policy objectives is one of the primary ways the Commission has differentiated incentives and base ROE.³⁸

A few examples that the Commission listed in the reliability incentives section included advanced line rating management, transmission topology optimization, and power flow control.³⁹ The Commission proposes to grant this incentive based on the percentage of the total project costs

³⁶ *Regional Transmission Orgs.*, Order 2000, FERC Stats. & Regs. ¶ 31,089 at 30,993 (1999), Order on Reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 30,092 (2000), aff'd sub nom. *Public Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir 2001).

³⁷ NOPR at P 105-109.

³⁸ NOPR at 78. See Order 679-A fn. 19 (“In contrast to a base-level ROE that reflects the financial and regulatory risks of an investment, an “incentive” has been more typically associated with specific basis point additions to a base ROE to satisfy discrete policy objectives”).

³⁹ NOPR at P 72.

that the technology component comprises. For instance, a developer with a \$100 million transmission project that is awarded the transmission technology incentive on a \$10 million transmission technology project sub-component, would contribute 10 basis points to its 250 basis point cap. Some technologies such as Dynamic Line Ratings (“DLRs”) have the potential to bring benefits to consumers should they be more widely used. The OMS has supported the more widespread use of DLRs, where cost-effective, but modifying federal ROE policy is not the Joint Committees’ preferred approach to encourage their use.⁴⁰

This incentive is more likely than others to encourage behavior that would not have occurred in the absence of the incentive. So long as these incentives are granted on a case-by-case basis and can be shown to benefit consumers in a specific, direct way, these incentives should help overcome economic and regulatory hurdles which make it difficult for advanced technologies to be considered within the RTO planning processes.

H. Disclosure of Anticipated Incentives

The Commission proposes to require public utilities seeking incentives to disclose all reasonably anticipated incentives to transmission planning regions as a part of the transmission project proposal.⁴¹ The Joint Committees support transparency in the granting and evaluation of incentives and believes that the Commission should revisit incentives after they have been granted to ensure they are providing value. The Commission considered revisiting incentives to check for their effectiveness in the 2019 incentives NOI, and the OMS supported this.⁴² The Commission

⁴⁰ OMS NOI Reply Comments at 14 (“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 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.”)

⁴¹ NOPR at 114.

⁴² OMS Incentives NOI Comments at 18.

should specify a program for doing this and how it would increase transparency. For example, there is already a process for disclosure of anticipated benefits in the competitive projects process, and there are often lower base ROEs and fewer incentives in the bids.

I. Program Management

In the NOPR, the Commission noted that “current information collection related to FPA 219 is insufficient to determine the effectiveness of individual incentive grants or to evaluate the Commission’s overall incentives program.”⁴³ The Joint Committees support a review of the effectiveness of incentives after they are granted in an ongoing monitoring program with authority to end an incentive if it is no longer being shown as effective. The Joint Committees believe that if a party cannot show an incentive is effective, the Commission should rescind the incentive. The Commission should clarify what the process would be should an incentive be shown to be ineffective in benefitting customers.

J. Important Items not Covered in the NOPR

There are important issues that the Commission did not address in the NOPR. First, this NOPR does not consider interregional projects. These projects may face challenges that regional projects do not, and simply incentivizing regional projects in the way that the NOPR proposes will make the interregional planning process more cumbersome and litigious in the same way the NOPR would for the regional planning process.⁴⁴

The Commission did not include any provisions in this proposal governing how it intends to review the effectiveness and duration of the incentives granted as a result of the implementation

⁴³ NOPR at P 115.

⁴⁴ The Louisiana Public Service Commission, Mississippi Public Service Commission, and Council of the City of New Orleans oppose the creation of a special incentive applicable to interregional projects simply because they are interregional projects. Interregional and regional projects should be evaluated for incentives using the same criteria and on a case-by-case basis. Further, the concerns regarding the adoption of the proposed “benefits to consumers” approach expressed in these comments would equally apply to regional and interregional projects.

of this proposal. The Commission has not afforded itself any way to suspend ineffective aspects of this proposal and to sunset any incentives that are no longer producing benefits to consumers. A failure to set up a procedure or timeline to review and sunset ineffective incentives could result in unjust and unreasonable rates being granted as a matter of course. The Commission proposes to increase the amount of information that it collects, and this information should be used to support a process of measurement and verification to determine whether incentives are actually bringing about the benefits promised. If not, the Commission should modify or eliminate the incentive.

Next, it does not appear that the Commission has considered limiting its use of incentives. To the contrary, the Commission is increasing its use of incentives. While the Commission is proposing to eliminate one incentive, the independent Transco ROE adder, the NOPR creates a whole new range of incentives which can be granted on an open-ended basis, notably the proposed reliability and technology adders. The Joint Committees strongly encourage the Commission to limit its use of incentives to only those situations where they actually incent behavior that has a direct benefit to customers and that would not occur absent the availability of the incentive. This NOPR does not do that.

Finally, the Joint Committees are concerned that the policies in this NOPR may undermine the objectives of the Order No. 1000 competitive transmission processes.⁴⁵ The Commission should clarify how competitive projects will receive these incentives. Specifically, representations regarding the total ROE that a developer would need to build a project should be binding in subsequent incentive proceedings if the developer wins the contract to build the project.

⁴⁵ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), order on reh'g, Order No. 1000-A, 139 FERC ¶ 61,132, order on reh'g and clarification, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), aff'd sub nom. *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

The Commission should also clarify how it will ensure that competitively bid projects do not receive any more in incentive adders than anticipated in their bid.

K. Conclusion

WHEREFORE, the Joint Committees respectfully requests that the Commission consider these comments and clarify its current proposal. Individual committee members reserve the right to file separate comments regarding the issues discussed in these comments. The Joint Committees submit these comments because the following members generally support this request:

OMS

Arkansas Public Service Commission
 Illinois Commerce Commission
 Indiana Utility Regulatory Commission
 Iowa Utilities Board
 Kentucky Public Service Commission
 Louisiana Public Service Commission
 Michigan Public Service Commission
 Minnesota Public Utilities Commission
 Mississippi Public Service Commission
 Missouri Public Service Commission
 Montana Public Service Commission
 New Orleans City Council Utilities
 Regulatory Office
 North Dakota Public Service Commission
 South Dakota Public Utilities Commission
 Public Utility Commission of Texas
 Wisconsin Public Service Commission

The Manitoba Public Utilities Board did not participate in the vote on this filing.

SPP RSC

Arkansas Public Service Commission
 Iowa Utilities Board
 Kansas Corporation Commission
 Louisiana Public Service Commission
 Missouri Public Service Commission
 Nebraska Public Service Commission
 New Mexico Public Regulation Commission
 North Dakota Public Service Commission
 Oklahoma Corporation Commission
 South Dakota Public Utilities Commission
 Public Utility Commission of Texas

OPSI

Public Service Commission of the District of
 Columbia
 Illinois Commerce Commission
 Indiana Utility Regulatory Commission
 Kentucky Public Service Commission
 Maryland Public Service Commission
 Michigan Public Service Commission
 New Jersey Board of Public Utilities
 North Carolina Utilities Commission
 Public Utilities Commission of Ohio

The Delaware Public Service Commission, Pennsylvania Public Utilities Commission, Virginia State Corporation Commission, and Public Service Commission of West Virginia abstained.

Respectfully submitted,

/s/ Marcus Hawkins

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Dated July 1st, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list prepared by the Secretary for the above-captioned docket in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010.

DATED at Madison, Wisconsin this the 1st of July 2020.

/s/ Marcus Hawkins

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