

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

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

**Docket No. PL19-3-000**

**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.

This topic is especially relevant in light of the modifications under consideration to the base return on equity (“ROE”) in various complaint proceedings and the NOI proceeding in Docket No. PL19-4. The Organization of MISO States, Inc. (“OMS”)<sup>1</sup> appreciates the opportunity to provide comments and hereby respectfully submits comments on the Commission’s inquiry.<sup>2</sup>

**I. BACKGROUND**

On December 19, 2018, the OMS Board of Directors sent a letter (“December Letter”) to all five sitting FERC Commissioners to express concerns with existing ROE incentive policy and to suggest re-evaluation of the use of ROE incentives in order to “ensure that customers pay no

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<sup>1</sup> 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.

<sup>2</sup> 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 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.

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more than is necessary to develop and maintain a reliable and efficient transmission grid...”<sup>3</sup> The December Letter expressed concern that some incentives have become overly generous and that they are no longer incenting the intended behavior, resulting in excessive costs to customers. The December Letter is attached to these Comments.

As explained in the December Letter, the OMS and several associate members are concerned that given the wide variety of transmission risks already accounted for in the calculation of the base ROE that incentives should be “targeted and exceptional.”<sup>4</sup> The OMS raised a specific concern with the RTO participation adder, questioning whether it should be applied in perpetuity. The letter also explained the need to balance all types of incentives, including other non-ROE regulatory mechanisms, which are the subject of Section II.C.2. of these Comments.

In addition to the December Letter, the OMS was recently involved in two proceedings related to specific ROE incentives. First, on December 15, 2017, Ameren filed an application for a 100 basis point ROE adder for two projects built as part of the 17 MISO-approved Multi-Value Projects.<sup>5</sup> The OMS argued that Ameren had not shown that the proposed incentive adders were necessary to attract capital and that granting them was not in the public interest.<sup>6</sup> The OMS further argued that Ameren failed to show that the projects’ risks were not captured in existing incentives or existing base ROE, that it failed to show it had taken appropriate steps to mitigate risk, and that

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<sup>3</sup> The “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](https://www.misostates.org/images/stories/Filings/FERC/2018/ROE_Incentive_Letter_to_FERC_12-18-18_final_with_signature.pdf).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> Ameren Services Company Filing, Docket No. ER18-463-000, at 1 (Dec. 15, 2017).

<sup>6</sup> Intervention and Protest of the Organization of MISO States, Docket No. ER18-463-000 (Jan. 5, 2018) (“OMS Protest”).

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it failed to establish a nexus between the risks and the requested incentives.<sup>7</sup> On February 20, 2018, FERC denied the incentive adder for both projects due to their late stage of development which mitigated their associated risks,<sup>8</sup> but upon rehearing, the Commission granted one component of the project a 50 point adder.<sup>9</sup> As this case illustrates, a case-by-case review for particular incentives is important, especially when considering the risks associated with individual projects. Importantly, the Commission reaffirmed its prior finding that projects that are almost complete face lower risks and that this should be considered when determining if an applicant has met the nexus test.<sup>10</sup>

Second, OMS commented in a proceeding seeking to reduce the independence adder granted to three ITC Operating Companies whose independence had come into question. On April 20, 2018, a Complaint was filed alleging that the ITC companies were no longer entitled to their Transco adders, which they had received since 2003, because ITC merged with market participants, weakening its independence.<sup>11</sup> OMS filed comments arguing that the Transco adder should be removed if FERC determined that the ITC companies were no longer sufficiently independent to warrant the adder.<sup>12</sup> The Commission found that the merger reduced but did not eliminate ITC's independence from market participants and lowered its Transco adder from 50 basis points to 25.<sup>13</sup> This case illustrates the need for transparent criteria when granting Transco

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<sup>7</sup> *Id.* at 5-13.

<sup>8</sup> *Midcontinent Independent System Operator, Inc.*, 162 FERC ¶ 61,099, at P 58 (2018).

<sup>9</sup> *Ameren Services Company*, 165 FERC ¶ 61,083, at P 21 (2018) ("November 2018 Order").

<sup>10</sup> *Id.* at P 13.

<sup>11</sup> *Consumers Energy Company*, Complaint, Docket No. EL18-140-000, (Apr. 20, 2018) ("Consumers Complaint")

<sup>12</sup> OMS, Notice of Intervention and Comments of the Organization of MISO States, Docket No EL18-140-000, at 3 (May 10, 2018) ("OMS Comments").

<sup>13</sup> *Consumers Energy Company*, 165 FERC ¶ 61,021, at P 73 (2018).

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adders. It is unclear how FERC determines the level of independence of a Transco and how it assigns an incentive to such a level of independence. As OMS explained, an entity is either independent or it is not. If an entity cannot operate free of influence from market participants, then it should not be granted the independence adder, and if the Commission has already granted an independence adder and it can be shown that a material risk that a market participant can influence planning or operating decisions, the Commission should revoke that company's independence adder.

As is further outlined below, the very fact that the Commission in the ITC Operating Companies proceeding eventually reduced the independence adder that had been previously granted shows the need for continued monitoring of not only independence adders, but all adders, to monitor their continued need.

## **II. COMMENTS**

The OMS agrees with the Commission's observation that there have been significant developments in how transmission is planned, developed, and operated since the last time the Commission issued an order or policy statement providing guidance on the evaluation of transmission incentives. Some of the key developments serve to reduce the need for transmission incentives, including gaining experience with competitive transmission development, observed transmission build, and continued evolution of benefit analysis in the planning process. However, consumers are not seeing the full benefits of these positive changes. Section 219 of the Federal Power Act ("FPA") states that the Commission must create incentives "for the purpose of benefiting *consumers* by ensuring reliability and reducing the cost of delivered power by reducing

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transmission congestion”.<sup>14</sup> The policy approach that the OMS suggests in these comments is a logical first step in ensuring that incentives are properly limited to instances where additional benefit to consumers is created and that such benefit would not have otherwise been achieved in absence of the incentive.

The OMS is also concerned that overly-incenting transmission investment could negatively impact investment in other electric assets necessary for reliability (such as generation and distribution assets) as well as investment in innovative solutions such as non-transmission alternatives that already face large procedural hurdles for development. While considered in RTO planning processes, these non-transmission alternatives often don’t have access to guaranteed revenues (including returns) like transmission projects do.

**A. Approach to Incentive Policy**

As a general principle, the OMS believes that the Commission should not automatically grant incentives, regardless of whether risks, benefits, or project characteristics are the main focus of consideration. The Commission should reduce its reliance on ROE incentive adders because much of a company’s transmission risk is already accounted for in the company’s base ROE and because the Commission’s risk-mitigating incentives address the practical totality of risks that are not already accounted for in base ROE. Non-ROE incentives are better suited to encourage development of riskier transmission projects that benefit consumers and that would not have been built in the absence of these risk-mitigating incentives.

The Commission should only grant ROE incentive adders in extraordinary circumstances and for specific projects. Simply showing that the project reduces congestion, uses new

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<sup>14</sup> 16 U.S.C. § 824s (2012), (emphasis added)

technology, or that it was approved in a regional transmission plan, is not sufficient to justify granting ROE adders. None of these factors should be used as the basis for granting an ROE-incentive adder.

The Commission should not delink the granting of ROE incentives adders from the showing of extraordinary project risk on a case-by-case basis. To prevent extensive litigation and simplify the incentive approval process, the Commission should clearly define the required evidence to be submitted to show extraordinary risk. This would lower the administrative burden associated with determining the appropriate total ROE, while still requiring applicants to prove that their request for a particular incentive has merit.

### **1. Incentives Based on Project Risks and Challenges**

The OMS believes that the risk and challenges assessment should remain the primary consideration for granting a request for incentives for several reasons. Risk is important in measuring the total cost of a project. Since capital markets consider risk, the Commission should not disregard project-specific risk considerations while evaluating incentives needed to potentially overcome difficulty in obtaining financing. The regulatory and financial risks of transmission investment are accounted for in the base ROE determination.<sup>15</sup> While there may be project-specific risks not captured by the base ROE, these specific risks are better addressed through risk-mitigating incentives. Notably, the Commission should make clear that the purpose of the base

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<sup>15</sup> See, e.g., *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43294 (Jul. 31, 2006), FERC Stats. & Regs. ¶ 31,222 at P 27 (2006), order on *reh'g*, Order No. 679-A, 72 FR 1152 at P 15 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236, order on *reh'g*, 119 FERC ¶ 61,062 (2007).

ROE is not to cover risks that arguably cannot be addressed through risk-mitigating incentives.<sup>16</sup>

If any such extraordinary project risks exist, they must be addressed on a case-by-case basis as part of an ROE adder consideration.<sup>17</sup>

## **2. Incentives Based on Expected Project Benefits**

Consideration of benefits to customers should play a role in guiding the criteria for granting transmission incentives, but it cannot and should not be separated from or replace a risk analysis. Risk analyses are and will always be the foundation of investment decisions. Ignoring risks cannot lead to targeted well designed investment incentives. While investors look at risk factors, an analysis of benefits is the cornerstone of transmission planning processes and cost allocation. Focusing on benefits rather than risks will link incentives to transmission planning and cost allocation rather than to investment decisions. Under such an approach, incentives will not influence investment decisions, they will simply add a complication to the already complex process of identifying benefits for transmission planning and cost allocation purposes. Indeed, benefits can be very difficult to measure, are often unique to the particular circumstances of a project, and vary from region to region. Establishing a framework for benefit evaluation could prove challenging and highly contentious.

Project risks, on the other hand, can be mitigated with incentives, while the benefits of a transmission project are not affected by incentives. An incentive based purely on benefits does not

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<sup>16</sup> See, e.g., Ms. Lapson Cross-Answering Testimony on behalf of the MISO Transmission Owners, Exhibit No. MTO-39 at 42,43, Table No. 5. (June 15, 2015) (listing risks mentioned in Opinion No. 531 at P 149 that are not addressed through risk-mitigating incentives).

<sup>17</sup> If the Commission is concerned about the ability of base ROEs to capture regulatory and financial risks, one way to better capture these risks in base ROE would be to use company-specific ROEs. The OMS discusses why an RTO-wide ROE does not allow for an accurate accounting of a specific utilities risk profile in concurrently filed comments in regards to the PL19-4 NOI. See, Comments of the Organization of MISO States, Docket No. PL19-4-000 (to be filed on June 26, 2019).

incentivize any specific conduct. Once a project is selected in the transmission process, incentives do not necessarily increase the likelihood of development of such a transmission project because of the obligations to build included in most Transmission Owners Agreement and the contractual commitments in competitive solicitation proceedings. Incentives cannot incentivize behavior that the utility is contractually obligated to perform.<sup>18</sup> While RTO tariffs may provide for exceptions to the obligation to build these exceptions are often associated with circumstances where the selected project is challenged or unforeseen risks render the project too onerous for the utility to handle the investment.<sup>19</sup> These opt-out provisions support OMS' position that risk-mitigating incentives are best suited to directly and more effectively address the issues that may lead a utility to opt-out of building a project after being selected in the transmission planning process.

Only projects that have significant benefits to customers that would not otherwise be built should be considered for transmission incentives. But, in determining the appropriate incentive needed to incentivize transmission development of such projects, a risk analysis is always necessary.

### **3. Incentives Based on Project Characteristics**

The OMS is open to including three project characteristics identified in this inquiry as factors to consider in the process of granting incentives: projects located in areas of persistent need, interregional projects, and projects that unlock constrained resources. These characteristics should not be used to define areas where incentives are granted automatically. Instead, project developers should be able to submit evidence as part of a case-by-case justification for addressing

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<sup>18</sup> *Cal. Pub. Util. Comm'n v. FERC*, 879 F.3d 966 (9<sup>th</sup> Cir. 2018) at 978.

<sup>19</sup> *See, e.g.*, MISO Tariff, Attachment FF, Sections, VI.C and VIII.G.



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extraordinary risks related to these project characteristics that is not already addressed through other means. The Commission should consider further proceedings to determine the type of evidence necessary to demonstrate these risks.

## **B. Incentive Objectives**

The OMS opposes the blanket-authorization of incentives to achieve policy objectives because this approach would result in the misallocation of resources. The Commission should tailor incentives to meet the key statutory objective of “benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion,”<sup>20</sup> and investigate the continuing usefulness of granted incentives over time. Consideration of consumer benefits should be done on the basis of a cost-benefit analysis clearly showing that: (1) the benefits of the transmission project to customers outweigh the total costs of the project including the incentives granted, (2) there is a direct connection between the incentive granted and the benefit to customers, and (3) the benefits would not be realized without the incentive. According to section 219(b) of the FPA, one of the general objectives of the Commission’s incentive policy should be to:

[P]romote reliable and economically efficient transmission *and generation* of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce, regardless of the ownership of the facilities.<sup>21</sup>

This objective should be met with non-ROE incentives. Notably, the statutory objective is to promote generation as well as transmission development. Transmission development is

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<sup>20</sup> 16 U.S.C. § 824s(a) (2012).

<sup>21</sup> 16 U.S.C. § 824s(b)(1) (2012). Emphasis added.

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necessary to support decentralized power sources, however overinvestment in transmission due to very generous incentives can divert capital from generation investment. Over generous transmission investments, therefore, can frustrate the statutory objective to promote reliable and economically efficient generation of electricity. The Commission should not grant blanket, generous transmission incentives that would divert capital investments in generation and other electric assets.

Section 219 of the FPA also directs the Commission to:

[P]rovide a return on equity that attracts *new* investment in transmission facilities (including related transmission technologies.)<sup>22</sup>

This objective shows a fundamental distinction between the base ROE and the incentive ROE. The incentive ROE is designed to promote high risk new development with much higher than average risk, while the base ROE should only be high enough to allow for the maintenance of current transmission. This issue was litigated as part of the ongoing MISO ROE complaint proceedings.<sup>23</sup> The MISO TOs argued that a base ROE at the midpoint or median of the DCF range would not encourage new transmission investment, particularly investments in riskier transmission projects.<sup>24</sup> In response, the Complainant Aligned Parties (including the OMS) explained the objective of a base ROE determined pursuant to sections 205 or 206 of the FPA is not to encourage new transmission investment or to attract capital for riskier new transmission investments. That is

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<sup>22</sup> 16 U.S.C. § 824s(b)(2) (2012).

<sup>23</sup> Docket Nos. EL14-12 and EL15-45.

<sup>24</sup> *Arkansas Electric Cooperative Corporation, v. ALLETE, Inc.*, Answering Testimony of Dennis D. Kramer on behalf of the MISO TOs, Docket No. EL15-45-000, Exhibit No. MTO-20 at 29:5-11 (October 20, 2015) (stating a reduction of the base ROE “would result in a greater focus on development of BRPs and other local transmission projects in lieu of MEPs or MVPs that present greater risk...”).

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the purpose of incentive ROEs approved under Section 219 of the FPA. These incentive ROEs are intended to encourage new, risky transmission, and are to be applied on a case-by-case basis. OMS and others alerted the Commission to the risk of overcompensating existing transmission by establishing an ROE designed to incentivize new risky transmission investment.<sup>25</sup> The Commission should take this opportunity to clarify that the objective of the base ROE is not to encourage new transmission investment, but rather to address typical financial risks of transmission investment.

Section 219 further directs the Commission to grant incentive adders to:

[E]ncourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities.<sup>26</sup>

Non-ROE incentives can help encourage deployment of technologies and other measures that enhance capacity, efficiency, and operation of existing transmission facilities. However, the Commission should not grant blanket ROE adders to all transmission projects using new technology. At a minimum, the Commission should provide guidance as to what constitutes new technology and require applicants asking for an incentive based on new technology to explain how the new technology promotes greater efficiency in the operation of transmission facilities.

Finally, Section 219 directs the Commission to:

“[A]llow 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*

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<sup>25</sup> *Arkansas Electric Cooperative Corporation, v. ALLETE, Inc.*, Initial Decision, 155 FERC ¶ 63,030 at PP 629, 632, and 633 (2016); *See also*, Initial Brief of Complainant Aligned Parties, Docket No. EL15-45, at 150-156 (March 24, 2016).

<sup>26</sup> 16 U.S.C. § 824s(b)(3) (2012).

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related to transmission infrastructure development pursuant to [Section on National Interest Corridors]”.<sup>27</sup>

Although this statutory language discusses reliability and congestion corridors, it supports OMS’ positions taken in the Ameren case and other cases that granting incentives necessarily requires the Commission to look at the “prudence” of the costs incurred. Consideration of prudence of costs requires the Commission to look at each incentive application on a case-by-case basis. The Commission’s proposal in this NOI to track benefits of incentives for the life of the incentive is a step in the right direction and can also serve as a mechanism to track prudence of costs for the life of the incentive.

Finally, because 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.<sup>28</sup> The OMS believes that resilience is currently, and correctly, addressed by NERC, the Regional Reliability Entities, state regulatory commissions, municipalities, cooperatives, and utilities.<sup>29</sup> The OMS generally agrees with the grid resilience discussion put forward by the Commission as a qualitative concept. However, 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.<sup>30</sup>

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<sup>27</sup> 16 U.S.C. § 824s(b)(4) (2012). Emphasis added.

<sup>28</sup> Comments of the Organization of MISO States, Docket No. AD18-7-000 (May 9, 2018), at 7(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”).

<sup>29</sup> Motion for Leave to Respond and Response to Certain Reply Comments of the Organization of MISO States, Docket No AD18-7, at 7 (June 14<sup>th</sup>, 2018).

<sup>30</sup> *Id.* at 10.

## **C. Existing Incentives**

### **1. ROE-Adder Incentives**

#### **i. Transmission-Only Companies**

The NOI asks whether or not the Transmission-only ROE adder should be available to independent transmission-only companies. The OMS views independence as an “either-or” proposition.<sup>31</sup> FERC has established a framework to ensure the high level of independence of companies receiving the Transco adder by limiting stock ownership by market participants to less than 5%.<sup>32</sup> The OMS has argued the Independence Adder should be revoked if the applying company is owned by a market participant that can influence its planning or operating decisions.<sup>33</sup>

#### **ii. RTO/ISO Participation**

Compared to the time when Order No. 2000 was issued, the benefits of participating in an RTO/ISO are now widely known. There are sufficiently compelling incentives to join and to remain a member of an RTO without the need for an RTO-membership ROE adder as a means to encourage continuation of such membership. The increasing maturity and broadening roles of RTOs, the increased ability to effectively hedge both operating and financial risks through RTO-sponsored activities, and the reduction in reliability risks attributable to RTO membership together make the permanent RTO-membership ROE adder redundant.

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<sup>31</sup> 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.

<sup>32</sup> *ITC Holdings Corp.*, 111 FERC ¶ 61,149, at PP 23-27 (2005).

<sup>33</sup> OMS Comments at 3.

Today, a primary reason that transmission owners avoid RTO membership is for governance or jurisdictional reasons. An RTO participation adder does nothing to address these governance and jurisdictional concerns. While section 219(c) of the FPA calls for the Commission to “provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization,”<sup>34</sup> the statute does not require the incentive to be in the form of an ROE adder. If the Commission wants to incentivize utilities to join an RTO or ISO, it must design incentives tailored to address these governance concerns.

iii. Advanced Technology

Some of today’s current incentives may actually reduce the motivation to pursue advanced technology. The OMS is concerned with the implications of investments getting put into transmission that may act as a diversion to investment in other advanced technology. Therefore, project-specific ROE incentives to promote advanced technology need to be evaluated in comparison to other traditional transmission-focused incentives to evaluate whether or not the two are on a level playing field.

**2. Non-ROE Transmission Incentives**

Non-ROE and ROE incentives need to be evaluated in conjunction with each other. For example, in the 2012 Policy Statement the Commission pointed to “risk-reducing incentives,” such as CWIP and abandoned plant incentives, as the first place applicants should go to reduce risks not addressed in the base ROE before seeking an incentive based on the risks and challenges

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<sup>34</sup> 16 U.S.C. § 824s(c) (2012).

approach.<sup>35</sup> The Commission pointed out how these types of incentives are critical to overcoming many of the risks associated with obtaining financing as they “ease the financial pressures associated with transmission development.”<sup>36</sup> The OMS supports this general structure going forward. During evaluation, the record must show that additional incentives are achieving something distinct (i.e., addressing separate risks) from that of a non-ROE adder prior to awarding additional incentives. If the Commission can incent behavior effectively through the use of Non-ROE incentives instead of ROE adder incentives, OMS would urge the commission to do so.

#### **D. Mechanics of Implementation**

The Commission should maintain the general approach of requiring incentive applicants to show that the incentives requested are tailored to address the risks of the new transmission project. Then, projects should be awarded non-ROE incentives to address project specific risks. Finally, if these first two actions do not mitigate the risk adequately, then the Commission should consider ROE adders on a case-by-case basis. While there is a need for more guidance in quantifying the value of each incentive and the package of interactive incentives, the Commission should avoid adopting a formulaic approach to valuing incentives and determining when an ROE adder is needed. Furthermore, the Commission should avoid automatic authorization of incentives and must be able to remove the incentive when no longer needed.

##### **1. Duration of Incentives**

The OMS supports limitations to the duration of incentives. The Commission should tie its proposal to limit the duration of the incentives with its proposal to measure the effectiveness of

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<sup>35</sup> *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 at P 11 (2012) (“2012 Policy Statement”).

<sup>36</sup> *Id.* at 12.

incentives. Incentives should end when there are no benefits to customers that can be directly attributed to the continuation of such incentives. Providing a transparent process to measure and verify the continued effectiveness and need for the incentives would also help to reduce the need to litigate incentives at the outset because customers will have the assurance that the incentives will only remain in place for as long they are needed. The knowledge that incentives could be removed or modified, with inclusion of a prudency review, would provide a strong check on the costs associated with transmission investment.

## **2. Case-by-Case vs. Automatic Granting**

An automated process for granting incentives would prevent the Commission from complying with the requirement of Section 219 of the FPA to ensure that incentives benefit consumers and the requirement that it look at the prudence of costs incurred. Blanket incentive authorizations, with or without a threshold criteria, limit the ability of customers to challenge unjust incentives because they essentially establish a presumption that the incentive is just and reasonable, unless proven otherwise. Customers that want to challenge the automatic incentive will have to meet the heightened burden under Section 206 of the FPA to show that the approved incentive is unjust and unreasonable, rather than simply challenging the justness and reasonableness of the proposed incentive in the filing. Furthermore, Section 219(d) of the FPA requires that “all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.” The Commission cannot automatically make such a determination under Section 219 of the FPA, the same way that it cannot automatically find all Section 205 filings just and reasonable, and cannot automatically find all rates challenged under Section 206 unjust



and unreasonable. The nature of the just and reasonable standard under Sections 205, 206 and 219 of the FPA requires a case-by-case assessment of the relevant record.

### **3. Interaction Between Different Potential Incentives in Determining the Correct Level of ROE Incentives**

As the Commission recognizes in the NOI, there is now little guidance regarding what level of transmission incentives should be provided or how to ensure that the combination of transmission incentives provided is appropriate and produces rates that are just and reasonable.<sup>37</sup> The OMS encourages the Commission to provide more guidance on the relationship between the various incentives and the cumulative value of those incentives in the context of the nexus test.

This guidance is particularly important when it comes to ROE adders. While the Commission requires incentive applicants to “demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant’s base ROE or addressed through risk-reducing incentives,”<sup>38</sup> utilities typically resort to the examples in paragraph 21 of the 2012 Policy Statement to justify the need for a project ROE adder. The Commission should avoid a formulaic approach to determining whether an ROE adder is needed. For example, not all the projects that use advance technology face risks that are not addressed through traditional ratemaking or through risk-mitigating incentives. Furthermore, the deployment of new technology must be shown to benefit customers in a specific, direct way.

The appropriate effective ROE authorized for any transmission project should accurately reflect all of the associated risks assumed by equity investors. This fact makes the relationship between the risk mitigations granted and the rate of return incentives authorized fundamentally

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<sup>37</sup> NOI, 166 FERC ¶ 61,208, at P 46.

<sup>38</sup> 2012 Policy Statement, 141 FERC ¶ 61,129 at P 20.

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simple and indisputable. If a more accurate risk profile is used to determine the base ROE, the need for additional incentives will likely be reduced.

#### **E. Metrics for Evaluating the Effectiveness of Incentives**

The OMS encourages the Commission to establish a transparent process for measuring the effectiveness and continuing need for incentives. This process should also review, where possible, the prudence of the costs incurred by the utility associated with the granted incentive. If it is not clear that a particular incentive that has already been granted is encouraging its intended behavior and is not benefiting consumers, then it should be terminated after a sufficient evaluation period.

### **III. CONCLUSION**

WHEREFORE, for the reasons stated herein the Commission should evaluate the granting of ROE incentive adders on a case-by-case basis. It should keep benefits to consumers at the forefront of any analysis it conducts to decide whether or not to grant a transmission incentive, but not eliminate risk analyses.

There should be no automatic granting of incentives. The Commission should clarify that the objective of the base ROE is not to incentivize new, risky transmission development. To incentivize risky transmission development with clear benefits to consumers, the Commission should continue to grant non-ROE incentives tailored to mitigate project specific risks first. Only then and in extraordinary circumstances where project risks cannot be mitigated and the project would not be built absent an extra incentive, should the Commission grant ROE-incentive adders for specific projects.

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The OMS submits these comments because a majority of the members have agreed to generally support them. Individual OMS members reserve the right to file separate comments regarding the issues discussed in this pleading.

Respectfully submitted,  
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Dated June 26, 2019

**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 26<sup>th</sup> day of June, 2019.

/s/ *Marcus Hawkins*

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December 19, 2018

Chairman Neil Chatterjee  
Commissioner Cheryl LaFleur  
Commissioner Kevin McIntyre  
Commissioner Richard Glick  
Commissioner Bernard McNamee

Chairman Chatterjee and Commissioners,

The Organization of MISO States' Board of Directors and several associate members<sup>1</sup> ("Supporters") have been participating in cases before the Federal Energy Regulatory Commission ("Commission") on issues related to transmission owner return on equity ("ROE"), including incentive adders, since their inception. As groups that represent retail regulators and customers in RTO/ISO regions, we advocate for policies that balance the authorization of sufficient rates of return to encourage the investment on needed transmission against concerns about excessive costs to customers.

The Commission is currently evaluating a new policy for the establishment of the base ROE. The base ROE, as currently conceived, generally evaluates and incorporates industry-wide risk in its estimation process. As such, the granting of ROE incentives on top of the base ROE should be targeted and exceptional. Supporters have concerns that at least some incentive adders have become overly generous and do not change or incent the intended behavior on the part of the transmission owners, resulting in excessive costs to customers. Ineffective adders may also be an unintended disincentive to development of non-transmission alternative solutions for reliability and congestion concerns.

The RTO adder is of particular concern and warrants scrutiny by FERC. And the most concerning element is that this adder will last in perpetuity. However, the landscape has changed drastically since 2006 when these adders were first initiated. After more than 15 years of experience with RTOs, the resulting benefits to utility members are now better understood. RTOs are no longer a new policy experiment. Moreover, transmission owners may no longer need an additional incentive adder to simply join an RTO. FERC should assess whether it is just and reasonable to allow the collection of an additional 50 basis points on all existing and incremental rate base indefinitely for every transmission owner in every RTO.



Additionally, over the years, FERC has provided regulatory mechanisms such as formula rates, projected revenue requirements that are trued up to capture any under-recovery, abandoned plant and construction work in progress, all of which reduce transmission owners' risk and should be carefully examined in the context of this and other ROE incentives.

Supporters appreciate the statements of Commissioners Chatterjee, Glick, and LaFleur at the October 18, 2018 open meeting acknowledging that the time is ripe to review ROE incentive policy. Supporters are encouraged by the desire to re-evaluate use of ROE incentives, and urge the Commission to consider not only policy around the application of new incentive requests, but also existing incentives that do not or cannot incentivize the desired behavior and outcomes.

Supporters look forward to the opportunity to be part of the process to review ROE incentive policy to ensure that customers pay no more than is necessary to develop and to maintain a reliable and efficient transmission grid.

Sincerely,

Ted Thomas  
President  
Organization of MISO States

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<sup>1</sup> In addition to the OMS Board, the following associate members of OMS join this letter: the Office of Arkansas Attorney General, the Indiana Office of Utility Consumer Counselor, the Iowa Office of Consumer Advocate, Michigan-Citizens Against Rate Excess, the Office of the Minnesota Attorney General, the Minnesota Department of Commerce, the Mississippi Public Utilities Staff, the Missouri Office of the Public Counsel, and the Citizens Utility Board of Wisconsin.

Document Content(s)

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