UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Electric Transmission Incentives Policy	)	Docket No. PL19-3-000

INITIAL COMMENTS OF
THE EDISON ELECTRIC INSTITUTE

I. INTRODUCTION

The Edison Electric Institute ("EEI") respectfully submits the following comments in response to the Notice of Inquiry Regarding the Commission's Transmission Incentives Policy ("NOI") issued by the Federal Energy Regulatory Commission's ("FERC" or "Commission").[1] EEI is the association that represents all U.S. investor-owned electric companies. Our members provide electricity for about 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. EEI's members are committed to providing affordable and reliable electricity to customers now and in the future.

Through the NOI, the Commission seeks comment on the

> scope and implementation of its electric transmission incentives regulations and policy pursuant to section 1241 of the Energy Policy Act of 2005 ("EPAct 2005"), codified as section 219 of the Federal Power Act ("FPA"), which directed the Commission to use transmission incentives to help ensure reliability and reduce the cost of delivered power by reducing transmission congestion.[2]

[1] *Inquiry Regarding the Commission's Transmission Incentive Policy*, 166 FERC ¶ 61,208 (2019) ("NOI").

[2] *Id*. at P 1.

EEI members own and operate transmission facilities in all regions of the country and, as such, are impacted directly by and can provide a broad-based perspective on the issues raised in the NOI.

II. EXECUTIVE SUMMARY

Transmission is the backbone of the Bulk Electric System and continued investment in transmission assets is necessary to meet the needs of the future. The Commission has undertaken this inquiry into electric transmission incentives simultaneously with an inquiry into whether and how it should revise its transmission return on equity ("ROE") policy in Docket No. PL19-4-000.[3] It is crucial that the Commission's ROE policy allows public utilities to earn a sufficient return to attract the capital continually needed to invest in the transmission system. At the same time, public utilities also must be able to benefit fully from any transmission incentives, including ROE incentive adders, that may be awarded pursuant to the Commission's incentives policy established pursuant to FPA section 219 to promote capital investment and promote more efficient use of the transmission system. To avoid unintended consequences, EEI encourages the Commission to consider the important policy issues raised in the two dockets independently.

As discussed herein, the NOI raises appropriate questions regarding changes that may be needed to the Commission's transmission incentives policy to continue to incentivize the investment needed to build the electric grid of the future. These needs include meeting changing customer expectations, using the system more efficiently, facilitating the use of new technologies and cleaner resources while continuing to benefit customers by ensuring reliability and reducing transmission congestion which reduces the cost of delivered power. Any discussion on how the

[3] *Inquiry Regarding the Commission's Policy for Determining Return On Equity*, 166 FERC ¶ 61,207 (2019) ("ROE NOI").

Commission's transmission incentive policy is evaluated going forward must be addressed within the context of the Commission's statutory mandate under FPA section 219 to create incentive treatments that promote capital investment, provide a ROE that attracts new investment in transmission facilities, increase the capacity and efficiency of existing transmission facilities, and provide an incentive for joining and remaining a member of an RTO or ISO. The Commission's current suite of incentives available under Order No. 679 provides regulatory certainty and continues to meet the goals outlined in the order as well as section 219 of the FPA and should be retained.[4] Due to today's dynamic and evolving energy environment, the Commission should also be open to new incentives or favorable rate treatments that may be proposed by applicants.

While underscoring the need for transmission investment, the changing energy landscape also highlights the benefits that customers receive from transmission investments. Thus, the Commission should consider the benefits to customers that the proposed transmission project for which incentives are being sought provides in addition to the risks and challenges. To ensure that the Commission's policies continue to promote reliable and economically efficient transmission capital investment that meets the needs of the future, the Commission should support incentives that not only mitigate financial risk, but also recognize the benefits that today's transmission projects provide. The Commission should be flexible in its review and allow public utilities to support the need for incentives by demonstrating benefits or risks (or both benefits and risks) that support the need for incentives based on a variety of characteristics.

[4] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

To provide regulatory certainty to public utilities and the investment community, the incentives should be effective for the life of the asset.

III. COMMENTS

A. The Federal Power Act Requires that the Commission Establish Incentive-Based Rate Treatments to Promote Investment and Increase Efficient Use of Existing Transmission Facilities.

Through the NOI, the Commission seeks comment "on the scope and implementation of the Commission's transmission incentives policy and on how the Commission should evaluate future requests for transmission incentives in a manner consistent with Congress's direction in section 219 of the FPA."[5] The NOI raises appropriate questions regarding the changes that may be needed to the Commission's transmission incentive policy to build the electric grid of the future to meets consumers' changing expectations while continuing to benefit consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Any discussion on how the Commission's transmission incentive policy is evaluated going forward needs to be addressed within the context of the Commission's statutory mandate under FPA section 219 to create incentive treatments that promote capital investment, provide an ROE sufficient to attract investment, and increase the capacity and efficiency of existing transmission facilities.

In 2005, Congress amended the FPA to require that the Commission establish by rule incentive-based rate treatments for public utilities. Specifically, Congress commanded that:

> Not later than 1 year after the date of enactment of this [Section 219 of the Federal Power Act], the Commission *shall* establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose

[5] NOI at P 2.

> of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.[6]

Congress directed, in part, that the incentives *shall*:

- promote capital investment in the enlargement, improvement, maintenance and operation of all electric transmission facilities;
- provide a return on equity that attracts new investment in transmission facilities; and
- encourage technologies and measures to increase the capacity and efficiency of existing transmission facilities and the operation thereof.[7]

Congress further directed that the Commission *shall* provide incentives to each utility that joins a Transmission Organization[8] which is defined as a Regional Transmission Organization ("RTO"), Independent System Operator ("ISO"), independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.[9] Thus, the statute, without limitation, requires that the Commission "shall" provide incentives to each utility that joins a Commission-approved RTO or ISO. Accordingly, the incentive for joining and continued participation in an RTO/ISO should, as required by the statute, be provided to all utilities that meet the requirement.

In addition, based on the consistent use of the word "shall," it is clear that Congress intended that the Commission provide transmission incentives to promote transmission construction. Similarly, subsection 219(b) of the statute, as referenced above, states that incentives are to be provided for, among other things, investment in enlargement, improvement, maintenance, and operation of *all* electric transmission facilities. This language indicates that

[6] 16 U.S.C. § 824s(a) (2012) (emphasis added).

[7] *Id.* § 824s(b) (emphasis added).

[8] *Id.* § 824s(c).

[9] *Id.* § 796(29).

incentives are to be provided to incumbent transmission owners for the purpose of ongoing investment in their core transmission business.

Experience has shown that the existing transmission incentives established pursuant to section 219 encourage transmission investment. Accordingly, the Commission should both retain these existing transmission incentives and consider additional incentives that would further support grid resilience, such as congestion alleviation, grid security, and development of new technologies. The Commission recognized this obligation under section 219 in Order No. 679, stating that:

> Some commenters have argued that few or no incentives are needed to encourage new transmission investment. We reject these comments as fundamentally inconsistent with section 219. Section 219 reflects Congress' determination that the Commission's traditional ratemaking policies may not be sufficient to encourage new transmission infrastructure. Although section 219 does not permit approval of rates that are inconsistent with section 205 or 206, section 219 nonetheless constitutes a clear directive that "the Commission shall establish, by rule, incentive-based . . . rate treatments . . . for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion" (emphasis added). We therefore cannot simply rely on existing ratemaking policy to faithfully implement section 219.[10]

Section 219 outlines the goals that the Commission should seek to achieve through its transmission incentives policy. While section 219 gives the Commission flexibility in its identification of and approach to awarding incentives, the goal and purpose of the statute is to provide incentives that promote capital investment for the benefit of consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. However, the Commission's current policy is that awarded ROE incentives are constrained by the top of the zone of reasonableness used to set a base ROE. While this approach may provide

[10] Order No. 679 at P 5.

some formulaic certainty to the Commission, it may not sufficiently encourage public utilities to make the type of investments contemplated by section 219. As such, customers would not benefit fully from the transmission investments encouraged by the incentive rate treatments that the Commission is required to develop under section 219 of the FPA. It is through this prism of the Commission's responsibilities under the FPA and the overall value and benefits that transmission provides to customers that EEI approaches these comments.

B. The Commission Should Recognize the Value of Electric Transmission and Provide Regulatory Certainty by Retaining Current Incentives and Providing Additional Incentives, Both of Which Will Support the Transmission Investment Needs of the Future.

Transmission is the backbone of the Bulk Electric System and continued investment is necessary to address the demands of the future. These include changing consumer needs; an evolving fuel mix for electric generation that is marked by the continued addition of renewable and clean energy resources that need to be transported from remote locations to market centers; the potential for higher demand due to increasing market penetration of electric vehicles; and the need to integrate and accommodate new technologies. All of these trends underscore the value of transmission and the need for additional investment in our nation's electric transmission system.[11]

Building and maintaining electric transmission is a multi-billion-dollar and ongoing long-term commitment. For example, EEI members invested $21.9 billion in transmission infrastructure in 2017 and expect to invest an additional $90 billion in the transmission system

[11] The electric transmission system's vital role in providing clean energy, increasing reliability and resilience, alleviating costly congestion, and meeting the needs of the future is discussed in *Smarter Energy Infrastructure: The Critical Role and Value of Electric Transmission* (March 2019), http://www.eei.org/issuesandpolicy/transmission/Documents/2018%20Smarter%20Energy%20Infrastructure%20The%20Critical%20Role%20and%20Value%20of%20Electric%20Transmission.pdf.

through 2021[12] to make it more efficient, more dynamic, and more secure, and to continue to provide customers with affordable, reliable, safe, and increasingly clean energy. Accordingly, the Commission's policies should provide sufficient certainty to continue to encourage this investment going forward. This includes avoiding the creation of regulatory and investment uncertainty by revisiting incentives once they have been awarded or limiting their duration. Investors have a global suite of industries from which to choose for their investments and regulatory certainty of stable returns is a key component in their analysis. The Commission has recognized that "[i]t can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to construction of those facilities will not later be altered in a manner that undermines the basis for the financing of those facilities."[13]

Accordingly, as discussed below, the Commission's current suite of incentives as outlined in Order No. 679 remains appropriate and should be retained. These incentives are an important component in promoting electric transmission development, continue to serve the purpose identified by the Commission in Order No. 679, meet the requirements of section 219 of the FPA, and will support the transmission needs of the future. These existing incentives include the incentive for participation in an RTO/ISO, recovery of costs of abandoned facilities, Construction Work in Progress ("CWIP") and pre-commercial expenses, hypothetical capital structure, accelerated depreciation, requests for deferred cost recovery (including regulatory asset

[12] Edison Electric Institute, "Historical and Projected Transmission Investment" (October 2018), https://www.eei.org/resourcesandmedia/Documents/bar_historical_and_projected_trans_investment.pdf. Investment of investor-owned electric companies and stand-alone transmission companies. Actual investment figures were obtained from the EEI Property & Plant Capital Investment Survey supplemented with FERC Form 1 data. Projected investment figures were obtained from the EEI Transmission Capital Budget & Forecast Survey supplemented with data obtained from company 10-k reports and investor presentations.

[13] Order No. 679 at P 36.

treatment), project-specific incentives, and single-issue ratemaking. Public utilities also can seek incentives for being an independent transmission company or for using new technologies.

This suite of incentives has provided certainty of cost recovery to public utilities and investors and continues to serve the purposes for which the Commission created them pursuant to section 219. For example, in giving public utilities "the ability to include 100 percent of prudently incurred transmission-related CWIP in rate base and to expense prudently incurred 'pre-commercial' costs," the Commission indicated that "[t]hese rate treatments will further the goals of section 219 by providing up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs."[14] Investors also recognize the certainty that the incentives established in Order No. 679 affords. In comments filed with the Commission in response to Order No. 679, J.P. Morgan Securities, Barclay's Capital and Credit Suisse Securities (USA) LLC indicated that "[p]olicies that mitigate project risk (e.g., CWIP, abandoned plant recovery) and/or incentives that increase expected returns make transmission projects relatively more attractive than they would be without such treatment by providing investors an appropriate risk-adjusted rate of return."[15] The challenges in building electric transmission have not diminished since the passage of section 219 of the FPA and the issuance of Order No. 679; rather, the need for these incentives remains today.

This is not to say that changes should not be made or that the Commission's transmission incentive policy should not evolve. After six years of experience with Order No. 679, the

[14] *Id.* at P 115.

[15] *Promoting Transmission Investment through Pricing Reform*, Letter from Barclays Capital and Credit Suisse Securities (USA) LLC, Docket No. RM11-26-000 (filed Sept. 12, 2011); *Promoting Transmission Investment through Pricing Reform*, Letter from J.P. Morgan Securities Inc., Docket No. RM11-26-000 (filed Sept. 13, 2011).

Commission determined that additional guidance and clarity with respect to certain aspects of its transmission incentives policy was needed and issued the 2012 Policy Statement to accomplish this.[16] The Commission in the 2012 Policy Statement refined its implementation of section 219 of the FPA and accomplished several purposes: it 1) reframed the nexus test to focus more directly on the requirements of Order No. 679; 2) showed how applicants could take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce project risk, before seeking an incentive ROE; 3) provided general guidance to inform applications for an incentive ROE based on a project's risks and challenges; and 4) provided additional transparency with respect to the impacts of the Commission's incentives policy.

As discussed herein, given the continued challenges to permitting, siting, and building electric transmission and the changes in the industry since 2012, it is appropriate for the Commission to undertake a review of its transmission incentive policy to ensure that it continues to further the goals and requirements of FPA section 219. These challenges include, for example, increased challenges with permitting and siting transmission lines; RTO/ISO processes that require consensus-based decision making on critical assets; increasing state and federal tensions over resource adequacy and transmission; and growing concerns over the physical and cyber-security of critical assets. All of these challenges increase the risks, costs, and time inherent in transmission development.

To ensure that the Commission's policies continue to promote reliable and economically efficient transmission capital investment that meets the needs of the future, the Commission should support incentives that not only mitigate financial and regulatory risk, but also recognize

[16] *Promoting Transmission Investment Through Policy Reform*, Policy Statement, 141 FERC ¶ 61,129 (2012) ("2012 Policy Statement").

the benefits that today's transmission projects provide to customers. The Commission should consider changes to its incentives policy to consider the value and benefit to customers in addition to the "risk" of a project. This is consistent with the statutory requirement that transmission incentives provide benefits to customers.

C. The Commission Should Retain the Currently-Available Risk-Reducing Incentives and Grant the Abandoned Plant Incentive Automatically for Projects Selected in Regional Plans Subject to a Section 205 Filing.

The Commission should continue to permit public utilities to request the currently-available risk-reducing incentives (including CWIP, hypothetical capital structure, accelerated depreciation, deferred cost recovery, and regulatory asset treatment) and should make recovery of 100 percent of abandoned plant costs[17] automatically available for projects selected in regional transmission planning processes. Recovery of specific abandonment costs will remain subject to review under section 205, as under the current incentives policy.

1. The ability to request CWIP, hypothetical capital structure, pre-commercial costs, accelerated depreciation, deferred cost recovery, and regulatory asset treatment reduces financial and regulatory risk and provides benefits to customers and should be retained.

The current risk-reducing incentives, including CWIP, hypothetical capital structure, regulatory asset treatment for pre-commercial costs, abandonment (as discussed in section 2 below), deferred cost recovery and accelerated depreciation[18] advance the goals of section 219 of the FPA and should be retained. These risk-reducing incentives have helped facilitate transmission investment in furtherance of the Commission's objectives of providing regulatory

[17] *Id.* at P 11.

[18] *See* Q 70) Should the Commission continue to provide regulatory asset treatment and CWIP as incentives; Q 72) Should the Commission continue to utilize hypothetical capital structures as a transmission incentive? If so, what entities should be eligible to apply for a hypothetical capital structure; Q 80) Should the Commission continue to consider accelerated depreciation as an incentive?

certainty, rate stability, and improved cash flow. These incentives benefit both customers and public utilities and should continue to be available going forward.

In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently incurred, transmission-related CWIP in their rate base.[19] The Commission stated that this rate treatment furthers the goals of FPA section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[20] This rationale is still true today because including 100 percent of CWIP in rate base benefits both public utilities and customers by enhancing the public utility's cash flow, reducing interest expense, assisting with financing, and reducing the risk of a downgrade in debt rating—which increases the cost of capital and, therefore, the costs ultimately borne by customers. In addition, the inclusion of 100 percent CWIP in rate base promotes rate stability and alleviates the potential for rate shock to customers when large projects go into service.[21] For example, in granting the 100 percent CWIP incentive to the Susquehanna Roseland 500 kV Line, the Commission explained that

> when certain large-scale transmission projects come on line, there is a risk that consumers may experience "rate shock" if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of the [project] can be spread over the entire construction period which reduces the amount of Allowance for Funds Used During Construction that the customer ultimately pays.[22]

[19] Order No. 679 at PP 29, 117.

[20] *Id*. at PP 103 n.70, 115; 2012 Policy Statement at P 12 (this incentive "addresses timing issues associated with the recovery of financing costs for large transmission investments and allows recovery of a return on construction costs during the construction period rather than delaying cost recovery until the plant is placed into service").

[21] *PPL Elec. Utils. Corp. and Pub. Serv. Elec. & Gas Co.*, 123 FERC ¶ 61,068, at PP 42-43 (2008), *reh'g denied*, 124 FERC ¶ 61,229 (2008).

[22] *Id.* (internal citation omitted).

Moreover, including CWIP in rate base is consistent with section 219(b)'s requirement to promote capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy.

The Commission also allows applicants for incentives to request a rate of return based on a hypothetical capital structure, instead of the company's actual capitalization. This incentive may provide flexibility for project financing in appropriate contexts, including consortium projects.[23] The hypothetical capital structure incentive can aid in raising capital during construction and can help in maintaining low debt costs while a company's actual debt-to-equity ratio varies. As the Commission noted in Order No. 679, the hypothetical capital structure incentive "is appropriate for consideration under section 219(b) . . . because it has been demonstrated to foster the development of transmission investment."[24]

The Commission's incentives policy also allows public utilities to propose an accelerated depreciation period as short as 15 years, and the Commission will consider on a case-by-case basis shorter depreciation for assets such as advanced technology whose useful life may not be known.[25] This incentive encourages transmission development by providing improved cash flow, allowing public utilities to better position themselves for longer-term transmission investments.[26]

[23] Order No. 679 at PP 123, 131.

[24] *Id.* at P 131.

[25] *Id.* at P 149.

[26] *Id*. at PP 135, 146.

Finally, deferred cost recovery mechanisms, including regulatory asset treatment, are also available to increase the certainty of cost recovery, which facilitates transmission investment.[27] Specifically, it permits the company to defer recovery of prudently incurred pre-commercial operation costs associated with new transmission investments[28] and is consistent with section 219's requirement to promote capital investment in transmission of electric energy.[29] The Commission should continue to offer this treatment.

The Commission has had over 10 years of experience with the benefits that these risk-reducing incentives have for customers, and both the Commission and applicants understand the circumstances in which these incentives should be requested and granted. Given this experience, the Commission should retain these risk-reducing incentives because they reduce project uncertainties, financial burdens, and credit and cash flow risk for public utilities and their customers. Accordingly, these risk-reducing incentives further the requirements of section 219 by promoting reliable and economically efficient transmission.

2. The Commission should make projects that are selected in regional transmission plans automatically eligible for recovery of 100 percent of abandonment costs, subject to a section 205 filing.

In Order No. 679, the Commission found that allowing applicants to seek recovery of 100 percent of prudently-incurred costs associated with abandoned transmission projects when such abandonment is outside the control of the public utility is an appropriate incentive to encourage transmission development by reducing the risk of non-recovery of costs.[30] Prior to permitting a

[27] *Id.* at P 178. *See Midamerican Transco Cent. California Transco, LLC*, 147 FERC ¶ 61,179, at P 32 (2014) (granting request "to establish a regulatory asset for the recovery of all prudently incurred pre-commercial costs that are not capitalized and included in CWIP . . . as a regulatory asset").

[28] 2012 Policy Statement at P 13 n.16.

[29] Order No. 679 at P 178 ("The intent of the deferred recovery mechanism is to increase the certainty of cost recovery to encourage more transmission investment.").

[30] *Id*. at P 163.

utility to include these costs in transmission rates, the Commission requires that the utility make a section 205 filing to ensure the prudency of the costs and to prevent double recovery.[31] Automatically allowing the recovery of 100 percent of abandoned plant costs for projects that are approved as part of a regional transmission planning process and are cancelled due to reasons beyond the public utility's control, subject to a section 205 filing to review the specific costs, would further the goals of section 219.[32] There are numerous circumstances that can cause a project to be abandoned that are outside of a public utility's control. These include denial of permits (by state, federal, or local authorities), inability to obtain rights of way, changes in federal or state policies that occur during the permitting process (e.g., environmental or wildlife regulations), delays in federal or states siting schedules, and changes in transmission needs, among others. For example, in 2013, the California Independent System Operator ("CAISO") awarded Gates-Gregg, a competitive Order No. 1000 transmission project, to PG&E and MidAmerican Transmission, in conjunction with Citizens Energy Corporation. In 2019, the CAISO recommended cancelling the project because its analysis showed that the project was no longer needed for reliability.[33]

Under current Commission policy, a public utility only may recover up to 50 percent of prudently incurred abandonment costs for costs that are incurred before the date of the order

[31] *Id.* at P 166.

[32] *See* Q 77) Should the Commission grant the abandoned plant incentive automatically, rather than on a case-by-case basis? Under what circumstances might an automatic award of the abandoned plant incentive be appropriate; Q 90) What are the benefits and drawbacks of granting incentives on a case-by-case basis, as compared to being granted automatically, with or without related threshold criteria? Would an automatic approach based on established threshold criteria provide additional certainty? If so, how; Q 62) Should the Commission consider providing incentives other than ROE adders for utilities that join RTO/ISOs, such as the automatic provision of CWIP in rate base or the abandoned plant incentive for all transmission-owning members of an RTO/ISO? If so, what other types of incentives would be appropriate?

[33] *See* http://www.caiso.com/Documents/ISO_BoardApproved-2018-2019_Transmission_Plan.pdf at pages 127-133); CAISO TPP presentation 2-14-19. Per slide #14 of the 2/4/19 presentation, $29 million had been spent on the Gates-Gregg project when it was cancelled.

granting the incentives.[34] Making the abandonment incentive automatic will provide more regulatory certainty and allow public utilities to recover fully 100 percent of the prudently incurred costs associated with the abandoned project from its inception, as opposed to waiting for the date of the Commission's order approving the abandoned plant incentive. This is especially important because extensive costs can be incurred prior to approval of the project in the regional planning process. Recovery of specific abandonment costs would remain subject to a section 205 filing to ensure prudency.[35]

Especially in regions that can direct transmission owners to construct projects, allowing public utilities to be eligible to recover 100 percent abandonment costs for projects selected in a regional plan can alleviate the risk that the region subsequently may direct the cancellation of such projects.[36] Making the abandoned plant incentive automatic for projects approved through a regional planning process does not encourage the undertaking of unnecessarily risky projects or taking unnecessary risks in transmission development because the regional planning processes have sufficient guardrails in place.[37] Recovery of 100 percent of abandoned plant costs should

[34] *See* e.g. *San Diego Gas & Elec. Co. v. Federal Energy Regulatory Comm'n*, No. 16-1433 (D.C. Cir. 2019) (upholding FERC's decision that only costs incurred after the date of a Commission order on the request for abandoned plant incentive are eligible for 100 percent recovery).

[35] For example, the Cardinal-Hickory Creek 345 kV project that was included in MISO's regional transmission expansion plan received approval for the abandoned plant incentive as of date of FERC order. The estimated cost of the project is $492-$543 million, of which ITC had incurred approximately $10 million in CWIP. *American Transmission Co. LLC*, 166 FERC ¶ 61,025 (2019); *ITC Midwest LLC*, 166 FERC ¶ 61,024 (2019). The Commission noted in Order No. 679-A that it has granted the abandonment incentive subject to the project eventually being included in the regional transmission plan. Order No. 679-A at P 106.

[36] *See Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 61 (2007) (granting the abandonment incentive and noting that the regional transmission expansion planning ("RTEP") process "allows PJM to cancel a project that has been accepted in the RTEP should PJM conclude that the conditions that originally supported the construction of the expansion have changed (i.e., the RTEP is revised); this introduces an element of risk that is not faced by a utility proposing to build transmission outside of an RTO planning context").

[37] *See* Q 78) How, if at all, could the Commission grant the abandoned plant incentive without encouraging transmission developers to pursue unnecessarily risky transmission projects or take unnecessary risks in transmission development? Could such behavior be reduced if the developer shared some risk associated with the abandonment, e.g., 10 percent of abandonment costs? If so, what level of developer risk is appropriate?

be automatic for RTO/ISO members because projects eligible for this incentive would be included in the regional transmission plan. The automatic nature of the abandoned plant incentive can also apply in non-RTO/ISO regions for projects selected in regional plans.

While providing regulatory certainty and reducing risk of nonrecovery of costs, this also would protect customers from paying for costs that were not prudently incurred. This is because the Commission retains its authority to review the specific costs when the public utility makes its section 205 filing to recover the abandonment costs.[38] At that time, the costs will be subject to prudency review, just as they are under the Commission's current policy on the abandoned plant incentive. Prudently incurred development costs and other costs expended prior to selection of the project in the regional transmission plan should be subject to recovery if the project is later abandoned for reasons outside the public utility's control. The certainty of this cost recovery removes an element of unfairness in developing transmission infrastructure and is consistent with both long-standing Commission precedent[39] and section 219(b)(1) of the FPA.

D. The Commission Should Retain the Legislatively-Mandated Incentive for Joining and Continuing to Participate in an RTO/ISO in Its Current Form.

FPA section 219(c) requires that the Commission provide for incentives to each transmitting utility or electric utility that becomes a member of a Transmission Organization.[40] The Commission should continue its current practice of approving, "when justified, requests for

[38] *See* Q 79) How should the Commission evaluate whether the costs of an abandoned facility were prudently incurred?

[39] See, e.g., *Southern California Edison Co*., 112 FERC ¶ 61,014, at PP 58-61, *reh'g denied*, 113 FERC ¶ 61,143, at PP 9-15.

[40] 16 U.S.C. 824s(c) which states "[I]n the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization. The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the Transmission Organization that provides transmission service to such utility.

ROE-based incentives for public utilities[41] that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization."[42] Congress's directive was not tied to specific investments or projects. Rather, it was a policy directive that the Commission should incentivize membership in RTOs/ISOs. The Commission should recognize this and continue to incentivize membership in an RTO/ISO because it appropriately reflects the value that RTOs/ISOs bring. The public utility should continue to retain the incentive for the duration of the public utility's membership in an RTO/ISO.[43]

In Order No. 679, the Commission clarified that

> entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive this incentive. The basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary. Our interpretation of the statute is that eligibility for this incentive flows to an entity that "joins" a Transmission Organization and is not tied to when the entity joined. As some commenters note, to do otherwise could create perverse incentives for an entity to actually leave Transmission Organizations and then join another one. It would also be unduly discriminatory for the Commission to consider the benefits of membership in determining the appropriate ROE for new members but not for similarly situated entities that are already members.[44]

In Order No. 679-A, the Commission reaffirmed its rationale and indicated

> Section 219 specifically provides that "the Commission shall . . . provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization." The stated purpose of section 219 is to provide incentive-based rate treatments that benefit consumers by ensuring reliability and reducing the cost of delivered power. We consider an inducement for utilities to join, and remain in, Transmission Organizations to be entirely consistent with those purposes. The consumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented, and the best way to ensure those

[41] Order No. 679 at P 330. "Further, although section 219(c) refers to incentives for "transmitting utilities" and "electric utilities" that join Transmission Organizations, it also contains the provision "to the extent within its jurisdiction." Accordingly, the rule will apply to jurisdictional public utilities."

[42] *Id*. at P 326.

[43] *See* Q 64) Should the RTO-participation incentive be awarded for a fixed period of time after a transmission owner joins an RTO or ISO?

[44] Order No. 679 at P 331 (internal footnote omitted)

> benefits are spread to as many consumers as possible is to provide an incentive that is widely available to member utilities of Transmission Organizations and is effective for the entire duration of a utility's membership in the Transmission Organization.[45]

The Commission's interpretation of FPA section 219(c) still rings true today. The statute is clear that the Commission should provide an incentive not just for joining, but also for remaining in, an RTO/ISO. The Commission has indicated that a "utility is presumed eligible for an RTO incentive 'if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going' and need not provide additional justification as to the necessity or benefits of the incentive."[46] Importantly, the benefits of RTO participation derive from all assets under RTO control and do not disappear after some pre-determined period. Thus, the incentive for participation in an RTO/ISO should apply to all assets turned over to RTO control, and not just individual projects, and should apply for the duration of RTO membership. As the Commission recognized, the statute does not place any time limits on the incentive. The Commission has noted that to do otherwise would be nothing more than a "bait and switch" opportunity and would create perverse incentives to leave an RTO/ISO and then join another.[47]

As noted in Order No. 679-A, there are significant customer benefits associated with a public utility joining an RTO/ISO. In creating RTOs/ISOs, the Commission believed that the benefits would include:

> increased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of [Available Transmission Capacity]; more effective management of parallel path flows; more efficient planning for transmission and generation investments; increased coordination among state regulatory agencies; reduced transaction costs;

[45] Order No. 679-A at P 86 (internal footnote omitted).

[46] *Midcontinent Independent System Operator, Inc*., 150 FERC ¶ 61,004, at P 41 (2015) (internal citation omitted).

[47] Order No. 679 at P 331.

> 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.[48]

The Commission indicated that "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."[49] Since the issuance of Order No. 679, additional challenges have arisen regarding transmission investments to promote resilience and reliability. The Commission recently convened a technical conference to explore how federal and state authorities can provide incentives and cost recovery for security investments in energy infrastructure. At the technical conference, Chris Crane, the President and CEO of Exelon Corporation, observed in remarking upon the effectiveness of the existing transmission incentives in promoting investment that "the ROE adder for the RTO . . . recognizes the benefit of the regional transmission operations."[50] He further noted that "the best way for us to have a much more secure and robust grid is to be able to lean on the neighbors at times as required."[51]

As the Commission envisioned, RTOs and ISOs provide significant benefits to customers that the individual RTOs/ISOs have quantified. For example, the Midcontinent Independent System Operator ("MISO") states that, with growing energy demands throughout MISO's footprint, its services help ensure reliable, least-cost delivered energy. MISO's Value Proposition documents how MISO unlocks billions in annual benefits for the region. In 2018,

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[48] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, 89 FERC ¶ 61,285 at 89-90 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[49] *Id*. at 90.

[50] *Security Investments for Energy Infrastructure*, Transcript, p. 121:24-25, 122:1-6, Docket No. AD19-12-000 (Mar. 28, 2019).

[51] *Id.*

those efforts provided between $3.2 billion and $3.9 billion in regional benefits, driven by enhanced reliability, more efficient use of the region's existing transmission and generation assets, and a reduced need for new assets.[52] PJM Interconnection L.L.C. ("PJM") indicates that its "regional grid and market operations produce annual savings of $2.8 billion to $3.1 billion in ensuring reliability, providing the needed generating capacity and reserves, managing the output of generation resources to meet demand and procuring specialized services that protect grid stability."[53] The Southwest Power Pool ("SPP") indicates that savings from SPP's markets and transmission-planning efforts make up just a portion of the overall value that it affords to its members. SPP estimates that these and other services, including reliability coordination, training and more, provide benefits to its members in excess of $1.7 billion annually at a benefit-to-cost ratio of 14-to-1.[54]

In light of the well-documented benefits of RTO/ISO membership, the 50 basis point incentive the Commission provides to public utilities that join and continue to be members of an RTO/ISO should be retained.[55] As the Commission previously determined, a "public utility member of an RTO is eligible for the Transmission Organization incentive rate treatment as to

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[52] https://cdn.misoenergy.org/20190215%20Value%20Proposition%20Review%20Presentation319473.pdf

[53] https://www.pjm.com/about-pjm/~/media/about-pjm/20151016-value-proposition.ashx

[54] https://www.spp.org/documents/58916/14-to-1%20value%20of%20trust%2020190524%20web.pdf

[55] *PPL Elec. Utilities Corp. and Pub. Serv. Elec. & Gas Co.*, 123 FERC ¶ 61,068, at P 35 (2008) (finding that a "50-basis-point adder is appropriate. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219. The best way to ensure these benefits is to provide member utilities of an RTO with incentives for joining and remaining a member."); *Republic Transmission, LLC*, 161 FERC ¶ 61,036, at P 32 (2017) (approving 50 basis point RTO Participation Incentive "based on Republic's commitment to become a member of MISO and transfer operational control of the Project to MISO once the Project has been placed in service"); *Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,195, at P 16 (2014) (granting request for a 50 basis point RTO Participation Adder "based on PG&E's commitment to remain a member of CAISO, and its commitment to transfer functional control of the Project to CAISO once the Project enters service").

See Q 61) Should the Commission revise the RTO-participation incentive? Q 63) If the Commission continues to provide ROE adders for RTO/ISO participation, what is an appropriate level for an ROE adder?

all of its jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization."[56] It is this act of turning over functional operational control over a transmission owner's transmission assets that provides substantial benefits to customers.[57] Having functional control over all of the transmission assets in its region allows an RTO/ISO to engage in coordinated regional planning to find the most economic solutions for all the customers in the region. This is not done on a project specific basis. Simply put, benefits of RTO participation derive from all assets subject to functional control of the RTO, and not just from individual projects. Thus, the Commission should reject the notion of applying the RTO adder only to specific projects.

While significant benefits accrue to customers as a result of a public utility joining an RTO/ISO, the public utility undertakes significant ongoing risks to provide these benefits to customers. These include, among others: (1) loss of operational control of transmission facilities to a third party, coupled with the obligation to build new transmission facilities at the direction of the RTO/ISO, which may force a transmission owner to prioritize investments that it would not otherwise make; (2) diminished decision-making control over assets, while retaining the responsibility of maintaining the system, meeting reliability standards, and providing electric service; (3) increased risk that foundational agreements will change, thereby changing the terms and conditions under which the public utility initially agreed to participate in the RTO/ISO; (4) regular modification of RTO/ISO rules and (45 the obligation to pay exit fees should a public utility decide that it is beneficial for its customers to leave the RTO/ISO.[58]

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[56] Order No. 679-B at P 21.

[57] *See* Q 65) Should the RTO-participation adder be awarded on a project-specific basis?

[58] Discussions in the West to move to an expanded day-ahead market without giving up operational control over their transmission facilities illustrate the tangible nature of these risks.

Accordingly, providing the legislatively-mandated incentive for joining or remaining in an RTO/ISO is provided for more than remaining a member of an RTO/ISO as it is reflective of the benefits provided to customers and the risks undertaken by the public utility. Although all public utilities that own and operate transmission facilities are subject to these risks and requirements, the risks are amplified for public utilities that have relinquished some functional control over their transmission facilities.

In addition, maintaining the current incentive is necessary to provide sufficient regulatory certainty to attract investment. Investors have a universe of options for their investment dollars and base investment decisions on the overall rate of return, which includes the current incentive for membership in an RTO/ISO. Retroactively changing policy on which investors relied in making investment decisions creates regulatory uncertainty. This, in turn, affects credit ratings and the utility's ability to attract investment for these long-lived resources. Ensuring regulatory certainty should be an important component of the Commission's policy going forward. Finally, allowing some RTO members to receive the RTO incentive, while disallowing the RTO incentive for those companies that are required to join or remain in an RTO, would create an uneven playing field in the competition for investment capital, a result that Commission policy should avoid. Companies that are required to join an RTO/ISO face the same added risks and contribute to the value proposition of the RTO/ISO just like companies that voluntarily participate. Therefore, they should be entitled to the same 50 basis point adder for participation.

Although public utilities that are not members of RTOs/ISOs provide significant benefits to customers by investing in transmission facilities that meet the requirements of section 219, Congress recognized the increased burdens incurred by public utilities that join an RTO/ISO by

including sub-section (c).[59] Accordingly, the Commission should continue to recognize the benefits provided to customers and the risks incurred by a public utility in becoming a member of an RTO/ISO and should retain the existing incentive in its current form.

E. The Commission Should Consider the Value and Benefits That a Project Provides to Customers in Evaluating a Request for Incentives.

In Order No. 679, the Commission recognized some of the challenges associated with constructing transmission projects.[60] As previously discussed, these challenges will increase going forward. Accordingly, when evaluating a request for transmission incentives, the Commission should consider the value and benefits, including those identified in the NOI itself, of a proposed project in conjunction with the risks of the project.

1. The Commission Should Consider the Value and Benefits of a Proposed Project.

In Order No. 679, the Commission indicated

> It is true that our reforms adopted in the Final Rule provide "incentives" to construct new transmission, but they do not constitute an "incentive" in the sense of a "bonus" for good behavior. Rather, as we explain below, each will be applied in a manner that is rationally tailored to the risks and challenges faced in constructing new transmission. Not every incentive will be available for every new investment. Rather, each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made.[61]

In the 2012 Policy Statement, the Commission declined to "specifically identify project characteristics or risks and challenges that would merit an incentive ROE" and chose to continue to "allow applicants the flexibility necessary to demonstrate why their projects may merit an incentive ROE, and at what level, based on those project's risks and challenges" while providing

[59] 16 U.S.C. § 824s(c).

[60] *See, e.g.*, Order No. 679 at PP 24-25.

[61] *Id.* at P 26.

guidance to inform applications.[62] In adopting the risks and challenges approach in Order No. 679, the Commission specifically rejected a "but for" test as inconsistent with congressional intent.[63] In reaffirming the decision, the Commission indicated that

> The "but for" test requires an applicant to show that a facility would not be constructed unless the incentive is granted. We reject that test because it erects an evidentiary hurdle that could only, in very rare cases, be satisfied. There are many impediments to investing in new transmission, including siting concerns, financing challenges, rate recovery concerns, etc. It is therefore unreasonable to expect or require an applicant to show that a facility could not be constructed "but for" the removal of a single impediment – e.g., increased cash flow through 100 percent construction work-in-progress (CWIP) or an enhanced ROE. This test could rarely, if ever, be satisfied, particularly given that incentives are ordinarily sought before investment decisions are made and, hence, before any siting impediments are even confronted.[64]

This rationale still applies today. The Commission should continue to provide flexibility and allow applicants to demonstrate why their project merits an incentive or a specific rate treatment. Rather than just asking applicants to demonstrate the risks or challenges of a project, the Commission also should allow applicants to demonstrate that their projects provide benefits to customers that would merit an incentive or specific rate treatment.

Questions 1-3 in the NOI ask if the Commission should retain the risks and challenges framework and Questions 4-11 in the NOI ask if directly examining a project's benefits would improve the Commission's transmission incentive policy. The Commission should continue to use its case-by-case approach in evaluating requests for incentives. Additionally, the Commission should include the expected benefits of a project in its analysis. These benefits would include, but not be limited to, ensuring reliability or reducing the cost of delivered power

[62] 2012 Policy Statement at P 17.

[63] Order No. 679 at P 48; Order No. 679-A at P 25.

[64] Order No. 679-A at P 25 (emphasis in original).

by reducing transmission congestion.[65] As discussed below, the expected benefits and project characteristics listed in section B of the NOI ("Incentive Objectives") are appropriate considerations in the Commission's analysis.

The Commission declined to set forth bright-line criteria for evaluating risks and challenges in the case-by-case approach that it adopted in Order No. 679. Similarly, the Commission should not lay out bright-line criteria for evaluating the potential benefits of a transmission project. Developing high-level, broad, and flexible principles to evaluate a project's benefits will help ensure that the Commission's transmission incentives policy evolves and encourages public utilities to make transmission investments to address the challenges of the future. In keeping with this flexibility, the Commission should allow public utilities to propose the specific package of incentives (e.g., ROE incentives or rate treatments) requested for a particular project and to demonstrate that the benefits of the project, the risk and challenges of the project, or a combination thereof, warrant the grant of those incentives. The Commission would then continue to make determinations on a case-by-case basis, as it does today, requiring applicants to justify the incentives requested.[66] Once an incentive has been granted, then the Commission should not undermine the regulatory certainty needed to support investment by retroactively removing the incentive either in whole or in part.[67]

[65] Section 219(b) of the FPA lists additional benefits that should be considered by the Commission.

[66] Order No. 679 at P 43. This approach would apply to incentives other than abandonment which should be granted automatically, as discussed in section C due to their demonstrated benefits to customers.

[67] This could constitute a violation of the prohibition on retroactive ratemaking. *See Consol. Edison Co. of New York, Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) (citing, *inter alia*, *Towns of Concord, Norwood, & Wellesley, Mass. v. FERC* 955 F.2d 67, 71 n.2 (D.C. Cir. 1992) ("The rule against retroactive rate increases prohibits the Commission from adjusting current rates to make up for a utility's over- or undercollection in prior periods.") (internal citations omitted)).

2. The NOI provides appropriate examples of the types of characteristics that the Commission may use in evaluating a request for incentives and should provide flexibility to propose other characteristics.

The NOI provides a list of the types of benefits that the Commission should consider when evaluating a request for incentives. These include improving reliability (Q 17-21), efficiently using the transmission system (Q 22-25), meeting a geographic need (Q 26-28), providing more flexible transmission operations (Q 29-31), enhancing physical and cyber-security (Q32-33), improving resilience (Q 34-36), improving existing facilities (Q 37-43), unlocking regionally constrained resources (Q 47-49), and using advanced technology (Q 67-69). This is an appropriate list that highlights the types of criteria the Commission should use in evaluating the benefits that a request for incentives provides to customers. With respect to these characteristics, the Commission asks whether incentives should be tailored to promote these types of projects or if certain types of projects should be incentivized.[68] The Commission should not be prescriptive in the types of projects that should be incentivized and instead should adopt a flexible policy that allows applicants to propose specific projects that meets the needs in their region.

The Commission also should be flexible in the types of incentives that it grants. In some cases, such as RTO/ISO participation, an ROE incentive may be appropriate, while in other cases favorable rate treatment may be appropriate. Examples of favorable rate treatment could include allowing projects that improve security or provide more flexible operations to be included in rate base as a regulatory asset or allowing operation and maintenance costs, such as vegetation management, line patrols, cloud software applications, or IT/data analysis, to be capitalized.

[68] *See* Q 13) If the Commission adopts an approach based on project characteristics, should it lay out general principles and/or bright line criteria for identifying or evaluating those characteristics?

All of the characteristics highlighted in the NOI constitute criteria for the types of benefits that a project can provide and that the Commission can use to evaluate whether to grant a request for incentives. However, the Commission should not consider this an exhaustive list. Instead, it should allow public utilities the flexibility to demonstrate other benefits associated with a particular transmission project that render it eligible for incentives or favorable rate treatments. Additional benefits beyond those the Commission cited in the NOI could include for example, whether the project promotes or supports other federal policies or meets the multiple needs of the evolving grid. Specific examples include: using advanced technologies such as sensors that detect issues on a transmission line; new technologies such as storage; rebuilding an existing line that also increases system resilience by eliminating the need for a Special Protection Scheme; projects that protect against electromagnetic pulse ("EMP") attacks; projects that also provide synthetic inertia or otherwise correct for the fault duty impacts of asynchronous generation such as renewables; and projects that provide load-serving entities with the flexibility to serve their customers using a variety of resource types with geographic diversity.

With regard to improving resilience, a public utility could review its system and develop a company-specific resilience-plan for submission to FERC. The plan would include a detailed rationale as to how the enumerated actions would improve the system's resilience. The plan could include actions such as: reducing the number of substations designated as NERC critical transmission substations; deploying a private communications network; using resilient designs and materials, such as EMP hardened control houses, coated insulators, or composite core insulators; and the broad adoption of regular penetration testing to simulate attacks on computer systems to discover potential points of exploitation. Thus, the Commission should be flexible and open to different approaches and should not prescribe how the benefits are supported. A

flexible approach will help ensure that customers receive the benefits provided by the Commission's incentives policy.

F. The Commission Should Promote Regulatory Certainty by Granting Incentives for the Life of the Asset.

To promote regulatory certainty, transmission incentives should be effective for the life of the asset and not subject to any durational limits.[69] Public utilities require shareholder/investor support in the form of capital investment and regulatory support in the form of sound ratemaking policy in order to build, own, and operate the transmission infrastructure that ensures reliable and affordable service to customers. Retroactively changing policy on which investors relied in making investment decisions or otherwise limiting the duration of transmission incentives creates regulatory uncertainty. This in turn affects credit ratings and the ability to attract investment for these long-term resources that are a vital part of the energy infrastructure and, as such, must be maintained and protected against cyber and physical threats on an ongoing basis. Public utilities need to have regulatory certainty that the transmission incentives that they relied upon when embarking on a project will not be taken away at a later date due to changing circumstances that may be beyond their control.

Commission policy as outlined in Order Nos. 890[70] and 1000[71] guides transmission planning for reliability, public policy, and economic projects. In determining which transmission

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[69] *See* 83) Should the Commission limit the duration of a granted transmission incentive? If so, should this limit be based on the type of incentive granted?

[70] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

[71] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (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. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

projects will be needed, transmission planners look 10-20 years into the future using a variety of forecasting tools. Once a transmission project is identified through this process, it may take10-20 years to build a high-voltage transmission line. This includes planning, scoping, mapping, environmental review, public comment, project approval, siting, permitting (at the federal, state, and local levels), negotiating with tribes, land acquisition, and construction. Thus, the need for a project, the benefits of a project, and investment decisions by public utilities and investors are made are all based on the information available long before construction on a project begins. Similarly, the request for incentives filed before construction begins is based on the benefits and risks of the project known at that time. Risks associated with new investment include capital outlay, especially for development, longer investment horizons, permitting and regulatory risk, and heightened competitive bidding. These risks increase the uncertainty associated with transmission development today. Due to the long-time frames associated with construction of transmission projects, the risks evolve and change over the development and construction of the project, and new risks may arise during the entire process. Accordingly, to provide regulatory certainty, the Commission should determine the appropriate incentives, and these should be retained for the life of the asset.[72] This approach promotes reliable and economically efficient transmission consistent with section 219 of the FPA.

G. The Commission Should Evaluate Requested Incentives Independently from ROE.

Consistent with long-standing Supreme Court precedent established in *Hope* and *Bluefield*, the Commission is required to set a return on shareholder investment at a level that is

[72] *See* Q 85) Should the Commission provide that a transmission incentive can be eliminated or modified upon a material change to the transmission project? How would such an elimination or modification be implemented? What should constitute such a material change? How would the Commission and interested parties be informed of such a material change; Q 86) Should there be a process of measurement and verification (or audit) to determine if the expected benefits accrued to consumers?

"commensurate with returns on investments in other enterprises having corresponding risks,"[73] and that is "sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise capital necessary for the proper discharge of its public duties."[74] The fundamental ratemaking standards established by the Supreme Court in *Hope* and *Bluefield* provide boundaries for the Commission's cost-based rate analysis. Thus, the Commission should ensure that the ROE, in and of itself, is sufficient to attract capital. At the same time, public utilities also must be able to benefit fully from any transmission incentives that may be awarded pursuant to the Commission's incentives policy established pursuant to FPA section 219 to promote capital investment and promote more efficient use of the transmission system.

The Commission's current policy constrains awarded incentives to the top of the zone of reasonableness associated with a base ROE. Although this approach may provide some formulaic certainty to the Commission, it may not allow public utilities to benefit fully from the incentive-based rate treatments that the Commission is required to develop under FPA section 219. It is crucial that the Commission's ROE policy enable public utilities to earn a sufficient return to attract capital. At the same time, public utilities also must receive the full benefits of any transmission incentives, including ROE incentive adders, that they may be awarded. Accordingly, requests for transmission incentives should be evaluated independently from the base ROE.[75] ROEs should be set at the level required to attract investment. Public utilities

[73] *FPC v. Hope*, 320 U.S. 591, 603 (1944) ("*Hope*").

[74] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 693 (1923) ("*Bluefield*"); *see also Hope*, 320 U.S. at 603.

[75] *See* Q 93) Should the Commission establish a more formulaic framework for determining the appropriate level and combination of incentives? If such a framework is created, what elements should it include; Q 95) The Commission's current policy is that the total ROE may not exceed the zone of reasonableness. If a transmission

should not need to rely on transmission incentives to achieve the level of return required to attract investment. Rather, incentives should be provided to incent specific benefits or other project attributes that go beyond the baseline requirements.

Accordingly, any ROE incentive should not be constrained by the top end of the range of the zone of reasonableness. Limiting transmission incentives to the top end of the zone of reasonableness frustrates the objectives of section 219 by limiting the effectiveness of awarded incentives. The Commission should take a holistic approach to determining the appropriate incentives that should be granted with respect to a particular project to ensure that the goals of section 219 of the FPA are met. If the Commission is reluctant to move away from its current formulaic approach entirely, then, at a minimum, it should allow transmission providers to demonstrate in their incentives request why their transmission incentives should not be capped at the top end of the range of the zone of reasonableness.

IV. CONCLUSION

EEI appreciates the opportunity to submit comments in response to the NOI. As section 219 of the FPA recognizes, supportive policies are needed to attract investment in transmission to meet evolving customer needs and demands. Commission policies to date have appropriately recognized the benefits provided to customers through transmission investment and have provided risk-reducing incentives that should be retained. The Commission also has recognized the benefits provided to customers as a result of a public utility joining and remaining a member of an RTO/ISO, and this incentive should be retained in its current form. Going forward, the Commission should continue to evaluate the risks and challenges of a project but also should

project qualifies for ROE incentives, should there be an upper limit or range that the total ROE cannot exceed? If so, what is the appropriate limit or range? Should this vary based on how the Commission sets base ROE?

consider the benefits a project provides and should be flexible in evaluating request for incentives. This will help ensure that public utilities can be innovative in their requests and that customers receive the benefits envisioned in section 219 of the FPA. EEI looks forward to continuing the dialogue with the Commission on this important issue.

Respectfully submitted,

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