UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.

I. Background and Executive Summary

Consolidated Edison Company of New York, Inc. ("Con Edison") and Orange & Rockland Utilities, Inc. ("O&R;" together with Con Edison, the "Companies") respectfully submit these comments in response to the Federal Energy Regulatory Commission's ("FERC" or the "Commission") March 29, 2019 Notice of Inquiry ("NOI") Regarding the Commission's Transmission Incentives Policy.[1] Con Edison is a regulated utility operating in New York City and Westchester County in New York State and is engaged in the generation, transmission, distribution and wholesale and retail sale of electric power, gas and steam in New York City and Westchester County. O&R is a regulated utility operating in Orange, Rockland and part of Sullivan counties in New York State and in parts of New Jersey. O&R is engaged in the transmission, distribution and wholesale and retail sale of electric power and gas.

The Companies support the Commission's initiative to evaluate its approach to transmission incentives. Transmission plays a critical role in creating and maintaining an efficient, resilient, renewables-enabled and modern grid. During the years following the Commission's issuance of Order Nos. 679 and 679-A,[2] and its 2012 Incentives Policy

[1] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (March 21, 2019) ("NOI").

[22] Order No. 679, 116 FERC ¶ 61,057 (July 20, 2006) ("Order No. 679"), rehear'g granted and denied in part, Order No. 679-A, 117 FERC ¶ 61,345 (December 22, 2006) ("Order No. 679-A").

Statement,[3] which together (consistent with Federal Power Act section 219) govern the grant of transmission incentives today, the country has experienced changes in the way transmission is planned, developed, operated and maintained. Specifically, the country has experienced an advancement in development of renewable generation and storage, as well as adoption of demand response, distributed energy resources and energy efficiency. These new resources seek grid interconnection, shift load patterns, and may increase the need to rethink system resiliency. These changes, taken together, will result in need for even more electric transmission development, and, therefore, a fresh review of the Commission's incentives policy to assess whether the policy continues to "ensure reliability and reduce the cost of delivered power by reducing transmission congestion," consistent with the Commission's statutory mandate.

Under its current policy, the Commission awards two types of incentives: (a) risk-reducing rate treatments and (b) adders to return on equity ("ROE"). The risk-reducing incentives include 100% abandoned plant recovery, 100% construction work in progress ("CWIP"), and regulatory assets, while ROE adders are available for transmission-only companies (the "Transco Adder"), participation in an RTO/ISO (the "RTO Adder"), and for the additional risks and challenges of a project. To encourage the development of needed transmission, the Commission should update its incentives policy to: (1) treat 100% abandoned plant recovery and 100% construction work in progress ("CWIP") as automatic ratemaking tools, rather than as incentives, while retaining the Commission's other risk-reducing incentives; (2) adopt a benefits-based approach to awarding incentive ROE adders, in addition to its current risks and challenges approach, considering benefits such as congestion relief and the

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

achievement of other public policy goals; and (3) use ROE incentive adders to incentivize project cost management.

II. Comments

A. Risk-Reducing Incentives

The current risk-reducing incentives provided by the Commission include 100% abandoned plant recovery, 100% CWIP, regulatory asset treatment, hypothetical capital structure, and accelerated depreciation. These incentives provide value to project developers and transmission owners and are effective at incentivizing transmission investment. Accordingly, they merit retention. Because the 100% abandoned plant recovery and 100% CWIP rate treatments are also important aspects of ratemaking, the Commission should include them as regular ratemaking tools rather than as incentives.

Specifically, the Commission's policy on abandoned plant recovery should allow for 100% recovery, rather than only 50% recovery in the absence of an incentive, as a non-discretionary, automatic element of ratemaking when a project is included in a regional planning process and abandoned for reasons outside of a developer's control.[4] Transmission projects are complex and face greater risks today than when the Commission first developed the policy. For example, a developer may be required to abandon a transmission project due to changes to the regional plan, including changes in forecast electric demand, which is outside of the developer's control.[5] Abandoned plant recovery provides developers with certainty to enable them to propose and finance transmission projects without incurring significant termination risk, which

[4] *See* NOI at P. 42, 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?").

[5] Project abandonment due to cost overruns exceeding a cost cap agreed to in the RTO/ISO selection process should *not* be considered an element outside of the developer's control, and such costs should not be eligible for abandonment recovery.

would only increase total projects costs unnecessarily. Project costs incurred prior to abandonment should not require a discretionary incentive grant, nor should they be subject to forfeiture, unless abandonment occurs for reasons within a developer's control. Of course, a developer would make a Section 205 filing to establish the effective date of its incentives.

Allowing for 100% CWIP to be automatic would effectively encourage investment in transmission by mitigating risks during project development.[6] The CWIP incentive helps developers to maintain cash flow through difficult development challenges, including siting, and lengthy new transmission construction. As the Commission noted in Order No. 679, recovery of 100% CWIP in rate base "removes an impediment – inadequate cash flow - that [the Commission's] current regulations can present to those investing in new transmission."[7] While FERC's policies typically allow for 50% CWIP under normal ratemaking, 100% CWIP currently requires an incentive grant. Allowing 100% CWIP to be automatic in the rate would help to streamline the ratemaking process and provide certainty to developers as projects advance.

The Commission should continue to retain and award on a case-by-case basis its other risk-reducing incentives (regulatory asset treatment, hypothetical capital structure, and accelerated depreciation), as it does today,[8] as each is helpful to (and relied upon by) developers, enabling needed investment in new transmission.

B. Incentive Adders to Return on Equity

[6] *See* NOI at P. 40, Q 70 ("Should the Commission continue to provide regulatory asset treatment and CWIP as incentives? Should these incentives be granted automatically to certain types of transmission projects? If so, how would the Commission determine what types of transmission projects?").

[7] *See* Order 679 at P.29.

[8] *See* NOI at P. 41, 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?"); *See also* NOI at P. 43 Q 80 ("Should the Commission continue to consider accelerated depreciation as an incentive?").

Pursuant to the Commission's 2012 Incentive Policy Statement,[9] applicants seeking incentive ROE adders must demonstrate the need for the incentives based on a project's "risks and challenges." Applicants must demonstrate that the risk-reducing incentives or the project's base ROE do not already account for the project's risks and challenges. In its NOI, the Commission asks: (i) "Should the Commission retain the risks and challenges framework for evaluating incentive applications?" and (ii) "Would directly examining a transmission project's expected benefits improve the Commission's transmission incentives policy […]?"[10]

The "risk and challenges" framework to awarding ROE adder incentives continues to be appropriate in circumstances where a transmission project faces unique challenges and above-average risk. The Commission should therefore retain this approach as an option for transmission developers to request incentives, while also adding the ability to award incentive ROE adders based on the benefits provided by a project.

Considering project benefits would be consistent with the directives in the Energy Policy Act of 2005, codified as Federal Power Act section 219. The statute requires the Commission to "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 of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.*" (emphasis added). Considering the benefits of a project would appropriately tie the incentive awards to the consumer benefits, directly in line with the

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

[10] *See* NOI at P. 15, Q 1 ("Should the Commission retain the risks and challenges framework for evaluating incentive applications?"); *See also* NOI at P. 16, Q 4 ("Would directly examining a transmission project's expected benefits improve the Commission's transmission incentives policy, consistent with the goals of section 219? Are there drawbacks to this approach, particularly relative to the current risks and challenges framework?").

statute. Sanctioning a benefits-based approach for ROE adders could also provide better clarity to applicants on how to apply for and justify the adder.

1. Types of Benefits and Justification

Providing for a benefits-based approach allows the Commission to use incentives to encourage project proposals that meet the Commission's policy goals for transmission development, while focusing on benefits to customers. For example, the Commission could award ROE adders to projects that provide value by reducing congestion, enabling integration and deliverability of renewables, reducing regional greenhouse gas emissions, and improving the resilience of the system. The Commission could also structure its incentives to promote investment in certain new technologies that will improve grid operations, for example by allowing cost recovery of storage assets included as part of or in lieu of a traditional transmission project. Such an incentive would be consistent with the statute, as it requires the Commission to establish incentives to "encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities."[11]

The Commission should provide flexible rules for developers to demonstrate the benefits their projects bring. [12] Because there is a range of benefits that a project could contribute, some of which may be measurable (such as congestion reduction) and some of which may not fit easily into a cost-benefit test (such as resilience), developers should have flexibility to defend their

[11] *See* Federal Power Act section 219 (b).

[12] *See* NOI at P. 17, Q 11 ("If an incentive is conditioned upon a transmission developer meeting benefit-to-cost benchmarks, what types of benefits and costs should a transmission developer include, and the Commission consider to support requests for such incentives? Should there be measurement and verification, and if so, over what time period? If expected benefits do not accrue, should the incentive be revoked?").

project's benefits without being required to meet a pre-defined metric.[13] Developers should support their project's benefits in the application, demonstrating its value as well as its cost-effectiveness. Ways that developers can manifest value could include quantified congestion savings or customer cost reductions relative to other alternatives; the amount of renewables integrated into the system consistent with federal, state or local requirements; or regional emissions reductions enabled by the project.[14]

In addition, projects that exhibit resilience benefits could also apply for an incentive adder.[15] The Commission should allow the resilience definition used in awarding incentives to vary by region, based on the potential threats that face each region. Current efforts underway at RTO/ISOs may help to inform these incentives. In addition, applicants would need to demonstrate the resilience benefits in accordance with any action the Commission takes in its ongoing inquiry into resilience.[16]

One way developers may demonstrate the benefits of a project approved through a regional planning process would be to rely on the ISO/RTO selection report.[17] While competitive

[13] *See* NOI at P. 16, Q 5 ("If the Commission adopts a benefits approach, should it lay out general principles and/or bright line criteria for evaluating the potential benefits of a proposed transmission project? If so, how should the Commission establish the principles or criteria?; Q 9 ("Should incentives be conditioned upon meeting benefit-to-cost benchmarks, such as a benefit-cost ratio? If so, what benefit-to-cost ratios should be used?").

[14] *See* NOI at P. 24, Q 22 ("Should the Commission tailor incentives to promote projects that accomplish the outcomes of reducing congestion or facilitating access to additional generation?"); *See also* NOI at P. 31, Q 47 ("Should the Commission use incentives to encourage the development of transmission projects that will facilitate the interconnection of large amounts of resources?"); *See also* NOI at P. 31, Q 48 ("If so, what metrics could the Commission consider when evaluating whether a transmission project facilitates the interconnection of generation?").

[15] *See* NOI at P. 28, Q 34 ("Should transmission projects that enhance resilience be eligible for incentives based upon their reliability-enhancing attributes?"); Q 35 ("If so, how could the Commission consider or measure the benefits of an individual project towards grid resilience?").

[16] FERC docket AD18-7.

[17] For other types of projects, the developer would be required to justify the benefits provided by the project through other means.

processes vary by region, selection reports often evaluate projects based on a range of metrics and indicate where projects may meet or exceed benefits outlined in the solicitation. Because tariffs task the ISO/RTOs with selecting a project based on a weighted range of metrics, including costs, the selection report could provide an additional source of information for identification or confirmation of benefits. While reliance on the selection report would be appropriate for projects selected through reliability or public policy planning processes, it may not be appropriate for economic transmission projects where stakeholders evaluate and vote on transmission projects based on their estimated cost-benefit ratios. Because, for example, New York's economic planning process requires a stakeholder evaluation and vote, the proposing developer of an economic project there should be required to include incentives that it would apply for in its proposal for stakeholder consideration.

2. Mechanics of Implementation

The Commission should continue its review of ROE adder incentives on a project-specific basis. In awarding incentives based on project benefits, the Commission could tailor the incentive, setting the magnitude and duration of the adder based upon the type of benefit the project delivers.[18] The Commission could develop ranges of potential adders based on values provided by projects. In addition, the duration of adders could vary based upon the type of benefit. For example, benefits associated with reducing congestion may be shorter lived, while

[18] *See* NOI at P. 17, Q 8 ("If the Commission grants incentives based on expected benefits, should the level of the incentive vary based on the level of the expected benefits relative to transmission project costs? If so, how should the Commission determine how to vary incentives based on the size of benefits?"); *See also* NOI at P. 44, Q 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?"); Q 84 ("How should the Commission structure a durational component to its incentives? For example, should the Commission provide that transmission incentives automatically sunset after a certain period?").

benefits such as resilience or integrating renewables may have a longer duration, as they render longer-term benefit.

Once the Commission awards an incentive, it should not revisit or "true up" the incentive to actual, realized benefits (*e.g.*, realized congestion reduction).[19] Transmission developers and their investors require regulatory certainty. Revising rate elements after the investment commitment will diminish investor confidence, potentially increasing cost of capital and detracting investors from proposing future transmission projects.

Finally, the Commission should not limit the grant of benefits-driven adders to competitively procured projects. For example, transmission owners performing upgrades to existing facilities identified through a regional planning process should be eligible for adders on the same basis (i.e., consumer benefit) as the competitively procured project, as envisioned by the statute.

3. Incentive Adders should not be Subject to Limitation

The Commission should retain its discretion in granting incentives, and not subject incentives to a maximum limitation within a pre-determined range or zone of reasonableness. Capping incentives within a zone of reasonableness could limit the Commission's ability to encourage the development of projects that produce additional value to consumers and meet the Commission's policy goals. Rather, the Commission should grant ROE incentive adders that recognize a project's benefits, in accordance with the statute, even if resulting in an overall ROE above the zone of reasonableness used to establish the project's base ROE. Developers would be

[19] *See* NOI at P. 44, Q 86 ("Should there be a process of measurement and verification (or audit) to determine if the expected benefits accrued to consumers?"); Q 88 ("Should the Commission consider eliminating an incentive if the project fails to realize its anticipated benefits?").

required to demonstrate the additional value their project affords consumers in their Section 205 rate filing.[20]

4. Incentive Adders in support of Project Cost Management

In addition to awarding ROE adders as an incentive based on project benefits, the Commission should also consider the use of ROE adders as a tool for project cost management. For example, the Commission could award additional adders for projects that agree to cost containment provisions in their rates, as such projects assume additional risk that warrant additional consideration for ROE incentives. Importantly, the Commission should be flexible in considering what types of cost containment mechanisms merit incentive adders, and to what costs those adders might apply. For example, the Commission may award additional adders for costs within a cap, while maintaining its current policy that incentives should not apply to costs incurred above an agreed-upon cost cap. Additionally, the Commission could award incremental incentives to developers for completing projects at a cost below a cap that share the benefit of lower project cost with customers. Since regions may implement cost containment differently, the Commission may wish to establish general principles for use of incentives within cost containment provisions, and allow flexibility with respect to implementation.

Recent transmission rate settlements for public policy transmission projects proposed by New York Transco, LLC ("NY Transco")[21] and NextEra Energy Transmission New York, Inc. ("NEETNY") [22] illustrate a way to use incentives as a cost management tool. In those

[20] *See* NOI at P. 45, Q 91 ("The Commission's current policy is that the total ROE may not exceed the zone of reasonableness. If a transmission 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?").

[21] FERC Docket ER15-572.

[22] FERC Docket ER16-2719.

settlements, NY Transco and NEETNY receive a progression of additional incentive ROE adders depending on how far below the rate filing's project cost estimates the ultimate project costs are. The settlements also include disincentives should the projects final costs exceed the project cost estimates. Specifically, while the settlements allow depreciation and debt recovery for the full amount of the overrun, 20% of costs above the cap do not earn any equity return, and the remaining 80% of costs above the cap retain the base ROE, but do not earn any ROE incentive adders. The base ROE and incentive adders apply to all project costs up to the cap. This rate design effectively incentivizes project developers to manage costs to estimates, while also allowing recovery of all prudently incurred costs, even if above the cap.

To provide incentives for developers to propose cost containment measures in the future, the Commission could create a rebuttable presumption that a developer that submits a cost management proposal will receive a specified level of ROE adders. If a developer constructs a project on or under its budget estimate at the time of project selection, it earns the full (or additional) adder. If the constructed project exceeds that budget, the developer forfeits the ROE adder, or incurs a negative adder (*i.e.*, reduction in base ROE) on the excess spend, the amount of which would be determined when filed with the Commission for cost recovery. All prudently incurred costs would, consistent with utilities' constitutional rights, be recoverable; however, the ROE applicable to the overrun, including the adders, would be at risk. Such a policy would encourage developers to manage to their cost estimates.

III. Incentive ROE Adder for Participation in an RTO/ISO

In addition to the ROE adders for "risk and challenges," the Commission currently also provides ROE adders for transmission-only companies and participation in an RTO/ISO.[23] The

[23] *See* NOI at P. 38, Q 61 ("Should the Commission revise the RTO-participation incentive?").

Energy Policy Act of 2005 mandates that the Commission "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization." The Commission's current implementation, through the 50 basis point RTO Adder, meets the requirement in the statute and deserves retention. However, the Commission should continue to allow flexible implementation of this adder, as it has in recent settlements, if the settling parties voluntarily agree to alternatives. Moreover, the Commission could provide flexibility in the value of the adder, for example, by allowing bundling of a variety of additional considerations (such as 70 basis points for RTO participation *and* providing congestion relief as a package). Flexible implementation of the RTO Adder remains consistent with the statute, while retaining ratemaking options.

IV. Conclusion

The Commission's transmission incentive policy provides important tools to mitigate risk and provide regulatory certainty for developers seeking to build new transmission. As mandated in the Energy Policy Act of 2005, these incentives "promote 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" and "provide a return on equity that attracts new investment in transmission facilities." Including an additional approach for incentive ROE adders based on project benefits could help the Commission have greater latitude and better align its incentives policy with the statute, while providing additional clarity to project developers. The Commission should embrace this framework, while also retaining the existing risk-reducing incentives and converting the 100% abandoned plant recovery and 100% CWIP incentives into automatic ratemaking tools. Together,

these changes would provide important and needed regulatory certainty and investment protection to ensure that developers build transmission critical to the country's energy future.

The Companies respectfully request that the Commission consider these comments when taking action in this proceeding.

Dated: June 26, 2019
New York, New York

Respectfully submitted,

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE & ROCKLAND UTILITIES, INC.

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