UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

MOTION TO INTERVENE AND COMMENTS OF DUKE ENERGY CORPORATION

On March 21, 2019, the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Notice of Inquiry ("NOI") seeking comment on the scope and implementation of its electric transmission incentives regulations and policy.[1] Duke Energy Corporation ("Duke Energy") hereby submits these comments supporting: (1) the retention of the Commission's Order No 679[2] incentives (with proposed modifications to certain non-ROE incentives); (2) Commission flexibility in considering other incentives and ratemaking treatments to allow for the goals of Section 219 of the Federal Power Act ("FPA") to be satisfied; and (3) the award of incentives and ratemaking treatments for the duration of the transmission project(s).

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

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

I. DESCRIPTION OF DUKE ENERGY AND MOTION TO INTERVENE

Duke Energy serves as the ultimate parent entity to: companies that are transmission-owning members of Regional Transmission Organizations ("RTOs");[3] companies that own transmission and provide transmission service in non-RTO regions;[4] companies that are active in constructing and purchasing generation to meet the needs of their retail customers in both retail choice and non-choice states; several commercial transmission developers; and companies that own merchant generation, with a focus on renewable generation. Duke Energy's Electric Utilities and Infrastructure unit operates primarily through the regulated utilities of DEC, DEP, DEF, DEI, DEK, and DEO, with a service area of 95,000 square miles, and 31,000 miles of electric transmission lines. Duke Energy's intervention in this proceeding is in the public interest, and Duke Energy's interests will not be adequately represented by any other party.[5] Duke Energy therefore respectfully requests that its motion to intervene be granted.

[3] Duke Energy Indiana, LLC ("DEI") is a transmission owner that participates in the Midwest Independent Transmission System Operator, Inc. ("MISO"). Duke Energy Ohio, Inc. ("DEO"); Duke Energy Kentucky, Inc. ("DEK") are transmission owners that participate in the PJM Interconnection, LLC ("PJM").

[4] Duke Energy Carolinas, LLC ("DEC"); Duke Energy Progress ("DEP"); and Duke Energy Florida, LLC ("DEF").

[5] Duke Energy's affiliates are also providing comments in this proceeding as part of the PJM Transmission Owners group and MISO Transmission Owners group. Duke Energy seeks to separately intervene and comment to highlight certain key issues that are of particular relevance to a diversified company like Duke Energy.

II. THE CONTINUING NEED TO ENCOURAGE TRANSMISSION DEVELOPMENT

Although enacted nearly fourteen years ago, the goal of Section 219 of the FPA — to incentivize transmission investment to benefit customers by ensuring reliability and reducing the cost of delivered power—continues to grow in importance as substantial investment is needed to expand, improve, maintain, and operate the electric grid of the future, capable of reliably and cost-effectively meeting consumers' changing demands and expectations.[6] The Commission correctly notes it has been nearly 13 years since the Commission promulgated Order No. 679 establishing its transmission incentive policies,[7] but FPA Section 219 remains in full force, and need for transmission investment continues to grow. During the last 13 years, annual transmission investment has averaged $15 billion.[8] But to address the changing needs of the bulk power system due to new technologies and electrification, continued and increased transmission investments are required. For example, a recent report found that $30-90 billion of incremental transmission investments will be necessary in the U.S. by 2030 to reliably and cost-effectively meet the needs of an increasingly electrified economy and changing resource mix, with an additional $200-600 billion needed from 2030 to 2050.[9] In addition, given that a large portion of the transmission system was built in the 1960s and 1970s,

[6] 16 U.S.C. § 824s. *See also* Duke Energy comments in Docket No. RM11-26 (Sept. 12, 2011).

[7] NOI at P 2.

[8] *The Coming Electrification of the North American Economy* at ii,17 (https://wiresgroup.com/new/wp-content/uploads/2019/03/Electrification_BrattleReport_WIRES_FINAL_03062019.pdf).

[9] *Id.*

significant replacements and upgrades are required now and in the coming years to maintain and enhance system performance.[10] The Commission incentive policies are necessary to encourage this needed transmission development, but as discussed below, now is a critical time for the Commission reaffirm its commitment to the incentives established in Order No. 679 and consider new and more flexible incentive policies better adapted to encourage the transmission investment needed for the future.

III. COMMENTS ON INCENTIVES POLICIES

As noted above, the need for transmission investment will continue to grow in the coming years to build the electric grid of the future that meets consumers' changing expectations while ensuring reliable electric service and reducing the cost of delivered power by reducing transmission congestion. Given the "many impediments to investing in new transmission"[11] and to meet the burgeoning capital needs discussed above, adequate returns on investments in transmission, including appropriate incentives, must be set with a long-term perspective that will provide regulatory certainty and continuity throughout both the construction and life of the transmission asset. The Congressional goal of meeting the country's long-term transmission requirements will not be achieved by retreating from awarding incentives. Instead, as discussed herein, the Commission should continue to apply Order No. 679 incentives (with modification of certain non-

[10] Smarter Energy Infrastructure at 5; (http://www.eei.org/issuesandpolicy/transmission/Documents/2018%20Smarter%20Energy%20Infrastructure%20The%20Critical%20Role%20and%20Value%20of%20Electric%20Transmission.pdf).

[11] *See* Order No. 679-A at P 25.

ROE incentives), should be flexible in applying and considering new incentives and ratemaking treatments, and should allow for application of such incentives and ratemaking treatments for the duration of the transmission project.

A. FERC Should Retain its Currently-Available Incentives and Consider Streamlining Certain Non-ROE Incentives

1. FERC Should Retain its Currently-Available Incentives and Not Impose Limitations on Those Incentives

In Order No. 679, the Commission found that FPA Section 219 "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."[12] Accordingly, the Commission established a number of incentives designed to meet the statutory requirements of Section 219 and promote the development of important transmission projects. The incentives established by the Commission include: (1) an incentive-based Return on Equity ("ROE"); (2) inclusion of 100% Construction Work in Progress ("CWIP") in rate base; (3) the use of a hypothetical capital structure; (4) accelerated depreciation; (5) recovery of 100% of the costs of an abandoned project; (6) deferred cost recovery mechanisms; and (7) single-issue ratemaking treatment for incentive applications specific to a particular project.[13] In compliance with Section 219, the

[12] Order No. 679 at P 5.

[13] Order No. 679 at P 84. The Commission also adopted incentives for transmission-only companies and for the use of advanced technologies.

Commission also established an ROE incentive adder for transmission owners who join or remain in RTOs ("RTO Incentive").[14]

Duke Energy supports EEI's comments that the Commission should retain these incentives. They are an important component in promoting electric transmission development and continue to serve the purpose identified by the Commission. The Commission should clarify that it will retain the existing incentives, and should also reaffirm (as consistent with the directives of FPA Section 219)[15] the availability of the RTO Incentive to all transmission owners who participate in an RTO/ISO for the duration of their membership, regardless of whether RTO membership is voluntary or mandated by a state or other regulatory body. Transmission-owning members of RTOs relinquish significant control over their operations and planning to the RTO, and the RTO Incentive is appropriate to compensate for the attendant risks.

2. FERC Should Consider Automatically Allowing Certain Non-ROE Incentives for Projects Approved through Regional Planning Processes

Currently, the Commission rebuttably presumes that transmission projects that "result from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission satisfy the requirements of this Rule."[16] Transmission projects that are approved in

[14] Order No. 679 at P 206.

[15] 16 U.S.C. § 824s(c).

[16] Order No. 679 at P 58. *See also* Order No. 679-A at P 41 (a regional planning process "has the ability to determine whether a given project is needed, whether it is the better solution, and whether it is the most cost-effective option among other alternatives").

regional planning processes are subject to open and transparent stakeholder review and evaluated against alternatives that can meet the region's needs on a more cost effective or efficient basis. This results in a robust regional planning process where the selected project is found to be both needed and appropriate. In order to improve certainty and streamline the incentive review process, Duke Energy encourages the Commission to consider modifications to both the abandonment and CWIP incentives to grant automatic approval for recovery of 100% of abandoned plant costs, and inclusion of 100% CWIP in rate base if the project was selected and approved through a regional planning process, either within an RTO/ISO or in a non-RTO region.[17]

Because the abandonment incentive is designed to allow for the recovery of prudently-incurred costs for selected projects that are subsequently cancelled due to factors outside of the transmission owner's control, Duke Energy also recommends the Commission allow transmission owners to fully recover 100% of the prudently-incurred costs associated with the abandoned project as of the date the project was submitted for inclusion in the regional plan, as a significant portion of costs can be incurred prior to approval in the regional plan. Recovery of specific abandoned plant costs would remain

[17] See NOI 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?"); NOI Q 16 ("Should transmission projects with certain characteristics be awarded incentives automatically?"); NOI Q. 52 ("Should [CWIP, abandoned plant, and regulatory asset treatment] or other incentives be granted automatically for transmission projects selected in a regional transmission plan for purposes of cost allocation?"); 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?").

subject to review under FPA Section 205, as under the current incentives policy. By granting abandonment and CWIP incentives to transmission projects selected and approved in a regional planning process by rule, as opposed to the current case-by-case approach,[18] the Commission can eliminate uncertainty and ensure more timely cost recovery, which promotes transmission investment.

For transmission projects proposed to be developed in non-RTO/ISO regions,[19] the Commission should consider allowing its rebuttable presumption to apply to any of the risk-reducing incentives where applicants are able to show that the transmission project was approved through a fair and open planning process that considers and evaluates projects for reliability, congestion and/or to meet public policy requirements, such as through the regional Order No. 890 and Order No. 1000 planning processes outlined in the transmission owner's tariff and approved by FERC or through state processes that identify transmission needs. For example, states may implement competitive request for proposal processes to meet certain clean energy or other public policy goals and identify transmission needs to satisfy those goals on a cost-effective basis.[20] Transmission projects developed to meet such state-mandated goals through competitive processes

[18] Even under its current incentive policies, requests for abandonment and CWIP incentives are regularly approved for projects selected and approved in a regional transmission plan. Reconsidering how the Commission awards these incentives could streamline process and promote efficiencies.

[19] *See* NOI Q 55 ("Are there factors that discourage developers of transmission projects in non-RTO/ISO regions from seeking incentives?").

[20] *See e.g.*, New England Clean Energy Connect, https://www.necleanenergyconnect.org/project-overview.

overseen by the state should be found to have been developed through a fair and open planning process and be entitled to a rebuttable presumption of qualification for incentive rate treatments that is already available for projects resulting from regional planning.[21]

3. Costs Associated with Unsuccessful Order No. 1000 Proposals Should Not Be Considered in the Commission's Incentive Process

Duke Energy notes that recovery of costs associated with *unsuccessful* Order No. 1000 proposals for transmission projects in the regional planning process should not be allowed in the Commission's incentive process.[22] Allowing recovery of costs for unsuccessful Order No. 1000 proposals could lead to unintended behavior of developers submitting several subpar proposals without concern, knowing that their costs to develop the proposals will be covered. This could lead to additional regional planning time, resources and expenses to evaluate these inferior proposals and clog up the process.

Development of proposals is traditionally an expense of doing business for developers, win or lose. This process should result in developers focusing their efforts on developing one or a few very good proposals that have a greater chance of being successful, rather than spreading the same amount of time, effort and expense to develop several proposals with a lower probability of success. If developers are then awarded the ability to recoup all costs for rejected proposals, then this paradigm would be in conflict

[21] *See* Order No. 679 at P 58.

[22] *See* NOI Q 71 ("Should the costs of unsuccessful Order No. 1000 proposals be recoverable through regulatory asset and deferred pre-commercial cost recovery incentives? If so, what costs are appropriate for recovery?").

and could potentially lead to less robust proposals and an inefficient planning process. Also, it is unclear how these costs would be recovered and who would be eventually paying for them as they would not be tied to a successful project.

B. The Commission Should Be Flexible in Considering New Ways to Incentivize Transmission Investment to Achieve the Goals of FPA Section 219

1. FERC Should Maintain Flexibility in Considering Incentives Tailored to Specific Projects

Consistent with Order No. 679's approach of allowing for incentives to be "tailored to particular circumstances,"[23] the Commission should maintain its overall flexibility to match appropriate incentive rate treatment to transmission development on a case-by-case basis.

For example, the Commission could consider allowing capitalization of the expenses related to initiatives that provide for more flexible transmission operations,[24] improve security and resilience,[25] and use new and innovative technologies to improve existing transmission facilities,[26] rather than only considering an ROE adder incentive or in lieu of treating them as O&M expenses. Examples of such initiatives could include: projects that improve the resilience of the transmission grid (e.g., select vegetation management costs, storm hardening, implementation of advanced flow technologies and fiber communications), projects that entail the use of cyber and physical security to

[23] Order No. 679 at P 43.

[24] *Id.* at P 26.

[25] *Id.* at PP 27-28.

[26] *Id.* at P 29.

improve the operation and security of facilities (e.g., cloud- and subscription-based software), and projects that optimize the use of existing transmission assets (e.g., dynamic line rating, topology optimization, or storage).[27] Initiatives and projects like these appropriately reflect FPA Section 219's directive 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."[28] The age of the existing transmission system and its need for maintenance and enhancement,[29] coupled with the threats the transmission system is facing,[30] make consideration of resilience and maintenance even more critical. For example, one threat that the transmission system is facing is bigger storms. In less than two decades the annual number of billion-dollar weather disaster events that Duke Energy has encountered have increased six-fold, and costs have risen from $1 billion each to as much as $12 billion.[31] To continue to satisfy its Congressional mandate, the Commission should make clear that its incentive policy will be implemented to support such initiatives to address resilience and maintenance, including storm hardening.

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[27] *See* Smarter Energy Infrastructure at 5, *supra* note 10 (discussing the age of the transmission system and the need to maintain it and enhance its performance).

[28] 16 U.S.C. § 824s.

[29] *See* Smarter Energy Infrastructure at 5, *supra* note 10.

[30] *See, e.g.*, EBA Annual Meeting, "Natural Disasters and Utility Infrastructure: Regulations, Technologies, and Policies that Promote System Resiliency and Disaster Recovery Without Breaking the Bank" (May 7, 2019) (discussing natural disasters and extreme weather, and how companies can initiate improvements and technological fixes to address these situations); https://www.eba-net.org/assets/1/6/Tues_9_GS_Natural_Disaster_Binder.pdf

[31] *Id.* at p. 21.

2. The Commission Should Consider Broader Rate Treatments that Could Encourage Transmission Investment, Including Single-Issue Filings for Transitioning from Historic to Forward-Looking Formula Rates

As discussed in Section III.B.1, FERC's incentives approach thus far has been a case-by-case, project-by-project, analysis of specific incentives and whether they are justified. While such specific incentive analyses should continue (as discussed above), the Commission should also consider more holistic methods of satisfying the goals of FPA Section 219. For example, a broad "rate treatment"[32] that would promote capital investment for transmission facilities and allow for recovery of prudently incurred costs would be to implement a policy allowing for single-issue FPA Section 205 filings to transition from historic transmission formula rates to forward-looking formula rates.

Forward-looking formula rates allow for companies to recover transmission expenditures closer in time to their incurrence, improving cash flow, income recognition, and enabling full recovery of prudent transmission investment with a reduction in timing lags. The Commission has explained that forward-looking formula rates are a reasonable means to avoid lag in cost recovery,[33] and that transitioning from historic to forward-looking rates affects only the timing of recovery (not the amount of recovery).[34] In *International Transmission Co.*,[35] the Commission found that eliminating cost recovery lag through the use of forward-looking rates allowed for improved focus "on transmission

[32] 16 U.S.C. § 824s(a).

[33] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 at P 77 (2012),

[34] *Ameren Ill. Co.*, 141 FERC ¶ 61,264 at P 32 & n.81 (2012).

[35] 116 FERC ¶ 61,036 (2006) ("*ITC*").

infrastructure, development and maintenance," and that the ability to project a revenue requirement in forward-looking formula rates allows for funding "necessary transmission infrastructure projects, especially large multi-year capital projects that will relieve congestion and improve reliability."[36] Relieving congestion and ensuring reliability are principal purposes of FPA Section 219,[37] and thus the ability to move from historical to forward-looking rates as part of a single-issue filing would allow for Congress' goals to be carried out.

By way of example, North Carolina has experienced a boom in solar projects in recent years, loading the DEP transmission system to its limits where any new generation would cause transmission line overloads, and causing constrained areas in DEC's territory.[38] Such constraints, in North Carolina and beyond, limit the ability to integrate more renewable generation or advance electric vehicle infrastructure. Therefore, where applicants can show that future projects can address such constraints or improve reliability, the Commission should allow for single-issue filings for transitioning to forward-looking rates.

The Commission has recognized the benefits of single-issue ratemaking in the context of incentives:

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[36] *ITC* at P 19.

[37] 16 U.S.C. § 824s(a).

[38] *See* http://www.oasis.oati.com/DUK/DUKdocs/DEP-DEC_Generator_Interconnection_Requirements_and_Locational_Guidance_5-9-2018_FINAL.pdf. *See also* Post-Technical Conference Comments of Duke Energy Corporation, Docket No. AD19-10-000 (June 26, 2018).

> [S]ingle-issue ratemaking can provide a significant incentive for achieving the infrastructure investment goals of section 219 because it can provide assurance that the decision to construct new infrastructure is evaluated on the basis of the risks and returns of that decision, rather than the additional uncertainty associated with re-opening the applicant's entire base rates to review and litigation.[39]

Although in *ITC* the Commission rejected attempts to re-open other components of the applicant's formula rate for review when the applicant sought to move from historical to forward-looking formula rates,[40] in recent proceedings seeking to move from historical to forward-looking formula rates, multiple other areas of the applicants' formula rates have been re-opened for hearing and settlement procedures.[41] Thus, the Commission should allow single-issue filings for transitions from historical to forward-looking formula rates where the applicant demonstrates plans to engage in transmission projects that will relieve congestion and/or improve reliability.

C. Incentives Should Be Certain and Awarded for the Duration of the Project

Once granted, the Commission should not limit the duration of transmission incentives – they should last for the duration of the project.[42] Uncertainty about the longevity of an incentive is the opposite of what is needed to encourage investment. Investors have many options and industries from which to choose for their investments,

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[39] Order No. 679 at P 191.

[40] *ITC* at PP 19, 30 (rejecting protestors' arguments for review of ROE and capital structure in conjunction with the move to forward-looking formula rates).

[41] *See, e.g.,* FERC Docket Nos. ER19-1475, ER18-194, ER18-195.

[42] NOI 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?").

and regulatory certainty with stable returns are key issues in their decision as to where to invest their capital. The Commission has recognized that "it can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to the construction of those facilities will not later be altered in a manner that undermines the basis for the financing of those facilities."[43]

As such, to provide regulatory certainty, the Commission should determine the appropriate incentives at the start of the project and should apply for the duration of the project's useful life.[44]

IV. COMMUNICATIONS

The following persons are designated for the receipt of communications and service in this proceeding:

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[43] Order No. 679 at P 36.

[44] NOI 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?

V. CONCLUSION

For the reasons stated above, the Commission should retain Order No 679 incentives (with proposed modifications to certain non-ROE incentives), consider other incentives and ratemaking treatments to allow for the goals of Section 219 of the FPA to be satisfied, and the award of incentives and ratemaking treatments for the duration of the transmission project(s).

Sincerely,

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day caused to be served a copy of the foregoing upon all parties on the service list in these proceedings in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2018).

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