

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

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

## INITIAL COMMENTS OF AVANGRID NETWORKS

Avangrid Networks, Inc. (“Avangrid Networks”) respectfully submits these comments in response to the March 21, 2019 Notice of Inquiry Regarding the Commission’s Electric Transmission Incentives Policy (“Incentive NOI”)<sup>1</sup> issued by the Federal Energy Regulatory Commission (“Commission”) in the above-captioned docket. In this proceeding, the Commission is seeking comments on the scope and implementation of its transmission rate incentives regulations and policy.

## I. BACKGROUND

Section 1241 of the Energy Policy Act of 2005 (“EPAcT 2005”),<sup>2</sup> codified as section 219<sup>3</sup> of the Federal Power Act (“FPA”), directed the Commission to initiate a rulemaking to establish transmission rate incentives to promote public utility investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing

<sup>1</sup> *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019).

<sup>2</sup> Pub. L. No. 109-58, sec. 1241, 119 Stat. 594 (2005).

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

transmission congestion. In 2006, the Commission implemented section 219 of the FPA by issuing Order No. 679,<sup>4</sup> which established the Commission's standard for approval of public utility requests for transmission rate incentives requiring applicants to demonstrate a nexus between each incentive requested and the investment being made, aptly referred to as the "nexus test". On rehearing the Commission issued Order No. 679-A, and revised the incentive policy's requirement that an applicant establish a separate nexus between each incentive requested and the investment being made, to instead require that an applicant demonstrate that the total package of requested incentives is tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.<sup>5</sup>

On May 19, 2011, the Commission issued a notice of inquiry seeking public comment regarding the scope and implementation of the Commission's electric transmission incentive policy and on November 15, 2012 it issued a Policy Statement, which clarified that a transmission rate incentive applicant may be eligible for an incentive return on equity ("ROE") based on a project's risks and challenges ("ROE Incentive Adder") if the project-specific risks and challenges are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives.<sup>6</sup>

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<sup>4</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222 ("Order No. 679"), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats & Regs. ¶ 31,236 (2006) ("Order No. 679-A"), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>5</sup> Order No. 679 at P 6.

<sup>6</sup> *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) ("2012 Policy Statement").

## II. INTEREST OF AVANGRID NETWORKS

Avangrid Networks, through its electric operating subsidiaries that include Central Maine Power Company, Maine Electric Power Company, Inc., New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, and The United Illuminating Company, is an ISO New England Inc. (“ISO-NE”) and New York Independent System Operator Inc. (“NYISO”) transmission owner. In addition, Avangrid Networks actively participates as a transmission developer in state-sponsored requests for proposals and in Order No. 1000<sup>7</sup> competitive transmission solicitations sponsored by the Midcontinent Independent System Operator, Inc. (“MISO”) and PJM Interconnection (“PJM”). Consequently, Avangrid Networks and its various subsidiaries have a direct and substantial interest in the issues under consideration in this proceeding.

## III. COMMUNICATIONS

All communications and service related to this filing should be directed to the following:

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<sup>7</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

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Avangrid Networks respectfully requests waiver of Rule 203(b)(3) of the Commission's regulations,<sup>8</sup> in order to permit designation of more than two persons for service in this proceeding.

#### **IV. COMMENTS**

##### **A. The Commission's Approach to Evaluating Requests for Incentives**

In accordance with Order No. 679, the Commission applies a rebuttable presumption that an applicant has met the requirements of FPA section 219 if the project was selected in a fair and open regional planning process and/or obtained construction approval by the appropriate state commission or state siting authority.<sup>9</sup> An applicant must satisfy the statutory threshold of section 219 and demonstrate that the fair and open regional planning process or that the state siting authority made a specific finding that its project will benefit customers by ensuring system reliability and/or reducing the cost of delivered power by alleviating system congestion.<sup>10</sup> Further, to obtain approval of project-specific transmission rate incentives, the Commission requires that an applicant

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<sup>8</sup> 18 C.F.R. § 385.203(b)(3).

<sup>9</sup> Order No. 679 at P 58.

<sup>10</sup> *Id.* at P 58.

satisfy the nexus test, and thus, establish that the total package of requested incentives has a nexus to the proposed investment and is rationally tailored to address the demonstrable risks and challenges of the project.<sup>11</sup> A series of measured and targeted revisions to the Commission's incentives policy can help further incent future capital investments that benefit customers. As discussed below, the Commission's approach to evaluating requests for transmission rate incentives is an established regulatory framework that can be carefully refined to ensure the Commission continues to satisfy its obligations under section 219 of the FPA. Specifically, while the Commission's rate incentive policy has encouraged substantial investment in electric transmission, modifications should be made to broaden the applicability of incentive treatment so that it is fully consistent with the goals of section 219.

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

### **a. The Commission should retain the risks and challenges framework.**

The Commission should retain the risks and challenges framework for evaluating transmission rate incentive applications and continue to allow an applicant the flexibility necessary to demonstrate why its project may merit an ROE Incentive Adder, and at what level, based on the project's risks and challenges, the ROE Incentive Adder should be set. In Order No. 679, the Commission adopted the risks and challenges framework to strike an appropriate balance to ensure investors are fairly compensated and consumers are adequately protected against excessive rates. The Commission should retain the risks and

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<sup>11</sup> 2012 Policy Statement at P 6 and P 10.

challenges framework for evaluating incentive applications because it helps ensure that the resulting rates are just and reasonable. Under the Commission's nexus test, an applicant must establish that the total package of incentives requested is rationally tailored to address the demonstrable risks and challenges faced in undertaking the project. Each application should continue to be evaluated on a case-by-case basis so that the Commission may weigh and examine the particular facts and unique circumstances attributable to a project.

The Commission's 2012 Policy Statement delineated a four part showing that an applicant must make to demonstrate that its project warrants consideration of an ROE Incentive Adder. The four part showing requires a transmission rate incentive applicant to: (1) identify the project-specific risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives; (2) demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development; (3) demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum; and (4) commit to limiting the application of the ROE Incentive Adder based on the project's risks and challenges to a cost estimate.<sup>12</sup> To demonstrate that its project faces risks and challenges that are not either already accounted for in its base ROE or could be addressed through risk-reducing

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<sup>12</sup> 2012 Policy Statement at PP 20-30.

incentives the Commission expects that an applicant identify the project-specific risks and challenges for which an ROE Incentive Adder is requested.

In the 2012 Policy Statement, the Commission found that three particular types of transmission projects “may face the types of risks and challenges that may warrant an incentive ROE based on the project’s risks and challenges that are not either already accounted for in the applicant’s base ROE or could be addressed through risk-reducing incentives:

1. projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
2. projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;
3. projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.”<sup>13</sup>

However, it is clear that the 2012 Policy Statement did not make it a requirement that an applicant’s project neatly fit into one of the aforementioned project types in order to warrant a risks and challenges ROE Incentive Adder. In fact, the 2012 Policy Statement indicates that “[t]his list [of project types] is not exhaustive” and “that reliability-driven projects may [also] be considered.”<sup>14</sup>

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<sup>13</sup> *Id.* at P 21.

<sup>14</sup> *Id.* at P 22.

The Commission did not expressly limit ROE Incentive Adder eligibility to only those projects that are of the type listed above nor does it require that an applicant affirmatively demonstrate that its project falls within one of those project types. The 2012 Policy Statement does not seem to establish “project type” as a burden that an applicant must satisfy for its project to merit an ROE Incentive Adder. Instead, the 2012 Policy Statement’s discussion regarding project types that face the types of risks and challenges that may warrant an ROE Incentive Adder is a partial list of examples of the types of projects that the Commission believed, in 2012, are indicative of the types of projects that “may warrant an incentive ROE.”<sup>15</sup> In fact, the Commission indicated that it expects that “applicants will seek an incentive ROE based on a project’s risks and challenges for projects that provide demonstrable consumer benefits by making the transmission grid more efficient, reliable, and cost-effective.”<sup>16</sup> There are other types of transmission projects that do not fall within the 2012 Policy Statement’s list that may be challenging to develop, own and operate, and that provide substantial benefits to customers, the electric system and the environment. Examples include projects that enhance system resiliency, through investment in physical assets and/or information systems to enhance cyber-security, and projects that are selected to help states and regions achieve public policy objectives such as clean energy and renewable portfolio standards.

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<sup>15</sup> *See id.*

<sup>16</sup> *See id.*



The Commission took a contrary position in its May 14, 2019 Order on Transmission Rate Incentives (the “*Pequonnock Order*”) by denying The United Illuminating Company’s (“UI”) request for an ROE Incentive Adder on the basis that UI did not show “that the Pequonnock Project falls within the types of projects that the Commission in the 2012 Policy Statement indicated may” warrant an ROE Incentive Adder based on the project’s risks and challenges that are not either already accounted for in the applicant’s base ROE or could be addressed through risk-reducing incentives.<sup>17</sup> On rehearing UI has taken the position that the Commission has erred (1) by misapplying its Policy Statement and (2) by barring UI’s eligibility for an ROE Incentive Adder based on UI’s alleged failure to meet a requirement that the 2012 Policy Statement does not purport to require. To the extent the Commission does not grant UI’s request for rehearing of the *Pequonnock Order*, the Commission should issue a Policy Statement following the acceptance of public comment in this proceeding that unambiguously concludes that the Commission will no longer limit risk and challenge ROE Incentive Adder eligibility to a subset of distinct project types. Limiting eligibility of an applicant’s request for an ROE Incentive Adder based on the risks and challenges of a project to a type of project that only falls within three distinct categories will serve to stunt innovation, chill transmission investment, undermine investor confidence, and be contrary to Congress’s statutory directive to the Commission, articulated in section 219 of the Federal Power Act.

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<sup>17</sup> *The United Illuminating Co.*, 167 FERC ¶ 61,126 at P 62 (2019) (“*Pequonnock Order*”).

- b. The Commission’s consideration of risks in calculating a public utility’s base ROE and in assessing the availability and level of an ROE Incentive Adder for a project is appropriate so long as the Commission uses separate evaluative methodologies in doing so.**

It is appropriate for the Commission to continue considering risks both in calculating a public utility’s base ROE and in assessing the availability and level of an ROE Incentive Adder for the risks and challenges of a project so long as the Commission uses separate methodologies to evaluate each of the two distinct inquiries. The manner in which the Commission evaluates enterprise risk with respect to a public utility’s base ROE and the way it assesses the availability and level of an ROE Incentive Adder for the risks and challenges attributable to a public utility’s investment in a transmission project call for two separate and distinct evaluative methodologies.

In determining a public utility’s base ROE, the Commission is required to establish a return on a public utility’s investment that is “reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties”<sup>18</sup> and “should be sufficient to assure confidence in the financial integrity of the *enterprise*, so as to maintain its credit and to attract capital.”<sup>19</sup> Enterprise risk is evaluated at the parent company level because investors rely on market-related data, which is sourced by compiling a proxy group of public utilities with comparable

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<sup>18</sup> *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n of W. Va.*, 262 U.S. 679, 693 (1923).

<sup>19</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (emphasis added).

risk. Conversely, to evaluate whether a public utility's transmission investment warrants an ROE Incentive Adder, the Commission evaluates the public utility's project-specific risks that are assessed based on the relevant facts and unique circumstances attributed to a particular public utility's project-specific investment.

Each inquiry, whether it is an evaluation of a public utility's base ROE or an evaluation of a public utility's project-specific risks, is similar in the sense that the attendant rate of return of each must satisfy the *Hope* and *Bluefield* standards and be sufficient to attract capital to either the enterprise or to a particular transmission project. However, the Commission's base ROE inquiry differs in that it must ensure that the resulting ROE is sufficient to maintain the financial health and integrity of the enterprise; whereas, a project-specific ROE Incentive Adder is evaluated based on the demonstrable risks that are specific to a particular project that are not either already accounted for in the public utility's base ROE or could be addressed through risk-reducing incentives. An ROE Incentive Adder is not authorized by the Commission so that the public utility may maintain the financial health of the enterprise. It is authorized so that the public utility may attract sufficient capital to finance a specific transmission investment. The Commission authorizes a public utility's request for an ROE Incentive Adder to address the demonstrable risks and challenges of a particular transmission investment, which are not exclusive to the public utility's financial risk. Although project-specific risks may include financial risk, other project-related risks could include, but are not limited to, those risks attributable to siting, construction, land acquisition, employment of a resilient design, and deployment of advanced technology.

A public utility's recovery of its Commission-approved, project-specific ROE Incentive Adder should not be affected by a subsequent Commission determination to adjust the top end of the zone of reasonableness of that public utility's base ROE. Once an ROE Incentive Adder is approved, the public utility should be authorized to recover the incentive for the entire useful life of the transmission asset. The justness and reasonableness of a public utility's project-specific ROE Incentive Adder corresponds to the risks of the particular investment and to a project-specific zone of reasonableness that encapsulates those specific risks, and not to a zone of reasonableness that corresponds to the risks of a public utility's entire enterprise.

The Commission should not limit a public utility's recovery of a project-specific ROE Incentive Adder based on a post-hoc downward adjustment of the top end of the zone of reasonableness of the public utility's base ROE because the public utility's project-specific zone of reasonableness is attributed to the risks applicable to the public utility's project-specific investment and are completely different and separate from the public utility's enterprise risks. Therefore, a public utility's recovery of its project-specific ROE Incentive Adder should go unaffected by any post-hoc downward adjustment of the top end of the zone of reasonableness of the public utility's base ROE and should be recovered over the entire useful life of the asset.

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

The Commission should not abandon the well-established risks and challenges framework that was adopted in Order No. 679 (and carefully refined in the 2012 Policy Statement) and replace it with an entirely new framework that is specific to an evaluation

of an applicant's representation of project-specific benefits. Instead, the Commission should make surgical improvements to the current risks and challenges framework that will further the goals of section 219 of the FPA. The Commission should continue to examine project-specific benefits that an applicant purports will be realized if the applicant is able to overcome the risks and challenges that the applicant will face during the development and construction of the project within the framework of the nexus test. An applicant should not be required to demonstrate project-specific benefits in addition to what the Commission already requires under its current transmission rate incentives policy. The Commission already directly examines transmission project benefits through its evaluation of projects by way of the risks and challenges framework, and therefore it should not revise the nexus test to require a more elaborate demonstration of project benefits beyond what the rebuttable presumption already requires.

An applicant's project is entitled to the Commission's rebuttable presumption so long as it meets the FPA section 219 requirement of ensuring reliability or reducing congestion. This can be established if the project (1) is selected in a fair and open regional planning process; and/or (2) obtains construction approval from an appropriate state commission or state siting authority. If the Commission finds that an applicant's transmission project satisfies the Commission's rebuttable presumption, the applicant should automatically be eligible for the risk-reducing incentives of inclusion of 100 percent of Construction Work in Progress in rate base ("CWIP Incentive") and/or 100 percent of prudently incurred costs in the event the project is abandoned, in whole or in

part, for reasons outside of the public utility's reasonable control ("Abandoned Plant Incentive").

An RTO/ISO and state siting authority are already tasked with examining the need for a particular investment and to determine whether the proposed project would maintain bulk electric system reliability, alleviate congestion, and/or satisfy state public policy. If the Commission takes into account a transmission project's expected benefits to satisfy the rebuttable presumption or to account as a factor that helps satisfy the nexus test, the Commission should rely on findings made by the Regional Transmission Organization / Independent System Operator ("RTO/ISO") and/or the state siting authority, that support the expected project benefits, and not second guess those findings. The Commission should allow an applicant to claim project benefits as a factor that helps satisfy the overall nexus test, but not require an applicant to demonstrate project benefits beyond what is required under the Commission's rebuttable presumption to warrant incentive eligibility.

The Commission has also shown a willingness to grant an applicant's request for an ROE Incentive Adder based on the risks and challenges of the project if the project is planned, in part, to benefit customers and the bulk electric system by relieving chronic or severe grid congestion.<sup>20</sup> The 2012 Policy Statement also identifies two other types of projects, *i.e.*, projects that purport to (1) unlock location constrained generation; or (2)

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<sup>20</sup> *Midcontinent Ind. Sys. Op., Inc. et al.*, 162 FERC 61,099 (2018) *reh'g granted, in part, and denied, in part*, 165 FERC ¶ 61,083 (2018) *see also NextEra Energy Transmission New York, Inc.*, 162 FERC 162 ¶ 61,196 (2018); *New York Transco, LLC*, 151 FERC ¶ 61,004 (2015).

apply new technologies, as examples of the types of projects, that may face the types of risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives. These types of projects, on their face, are the types of projects that demonstrate inherent customer, system, and public policy benefits, but the Commission has also indicated that reliability-driven projects provide similar benefits.

As noted above, the 2012 Policy Statement clarified that the Commission's list of three project types is not exhaustive; therefore, the Commission should further clarify in this proceeding that it will, on a going forward basis, recognize that resilience-based projects, reliability-driven projects, projects that enable the interconnection of large-scale renewable energy generating facilities and/or zero emission/carbon-neutral electric generating facilities, and other types of projects that provide benefits to customers, the bulk electric system, and the environment, are indicative of the types of projects that may warrant an ROE Incentive Adder based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives. The Commission should give equal weight for instance, to the benefits that are attendant to reliability projects compared to the benefits attributed to congestion alleviating projects, and not give discriminatory or preferential treatment to one type of project benefit over another. The Commission should take a flexible, case-by-case approach, and accept project benefits as factors that help satisfy the overall nexus test. Establishment of bright line criteria for the evaluation of potential benefits of a proposed transmission project would not satisfy the intent of section 219. Rather, it could

cause the opposite effect and discourage transmission investment because bright-line criteria would be too inflexible to meet transmission system investment needs and would have a chilling effect on a public utility's ability to innovate and invest in advanced technology.

The Commission has discretion to grant an applicant's request for approval of certain transmission rate incentives if the proposed incentives are rationally tailored to address the risks and challenges of investing in, developing, constructing, operating and maintaining new transmission. If the Commission considers an applicant's project-specific benefits, those benefits should be evaluated as factors that help satisfy the nexus test.

The Commission should not condition its analysis of project benefits on specific benefit-to-cost benchmarks, benefit-to-cost ratios, or benefit-cost-estimates. Nor should the Commission consider the revocation of incentives if estimated project-specific benefits are not realized. That approach is fraught with problems and would lead to an inflexible transmission rate incentive policy that could inhibit future transmission investment, rather than encourage it. RTOs/ISOs study and model expected project benefits on an *ex ante* basis during a fair and open regional planning process. Project benefits are not calculated nor projected in a vacuum. Planning models and economic models all rely on inputs for the various exogenous factors that affect an RTO's/ISO's analysis. This may include a region's anticipated resource mix (additions/retirements), fuel prices and availability, emissions limits and prices, customer load, etc., which are often subject to input assumptions for twenty or more years into the future. RTO/ISO



models are imperfect, and the impact of the differences between projected and actual exogenous factors over time can have a significant effect on whether the forecasted project benefits are achieved or not. Therefore, the Commission should not revisit whether project benefits are eventually realized. An additional and post hoc layer of regulatory review employed to examine whether project benefits are achieved as intended will inhibit, rather than encourage, transmission investment. A rate incentive applicant would not be able to rely on a Commission order granting incentives if an *ex post* calculation of project benefits could lead to a post hoc reversal of or revision to the Commission's order. If for instance, a complainant is permitted to demonstrate that an *ex post* calculation of project benefits differs from the *ex ante* estimate previously performed by a third party RTO/ISO or a state agency, it would be egregious for the Commission to revise or reverse its prior determination authorizing incentive treatment. That result is inapposite to the statutory mandate of section 219 of the FPA and could cause transmission investments to plummet in frequency and dollar amount.

By directly examining project benefits, rather than taking them into account as a potential factor that helps satisfy the nexus test, the Commission would risk supplanting the analysis and thorough review of an RTO/ISO stakeholder process and/or the state siting authority's findings and careful evaluation of the project, with a revised conclusion that may or may not be accurate. Section 219 of the FPA was not meant to be a duplicative layer of regulatory review of whether a project provides the necessary benefits to warrant construction, but instead, was meant to encourage transmission investment. The Commission should not revise its transmission incentives policy to

directly examine project benefits. Instead, the Commission should continue to take project benefits into account in its evaluation of a rate incentive application under the risks and challenges framework, which will encourage transmission investment, rather than inhibit it by establishing a layer of unnecessary and duplicative regulatory review.

If the Commission decides to consider implementing a separate benefits framework, it should initiate a Notice of Proposed Rulemaking and obtain additional comments on a principle-based framework to evaluate project-specific benefits in transmission rate incentive applications. The Commission should not propose to adopt any bright line rule or metrics for this purpose.

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

The Commission should take into account a project's unique characteristics that together are factors that help satisfy the nexus test and may further support Commission approval of an ROE Incentive Adder based on the risks and challenges of the project. For example, transmission projects located in regions with persistent transmission needs, interregional transmission projects, transmission projects that unlock location constrained resources, are all types of projects that could face significant risks and challenges. The Commission should consider each project characteristic identified by the applicant that contributes to the risks and challenges of the project a factor that helps satisfy the nexus test. The Commission should evaluate project characteristics within the risks and challenges framework and not create bright line criteria to evaluate those characteristics.

**B. Incentive Objectives****1. Economic Efficiency Benefits**

The Commission has previously tailored transmission rate incentives that promote projects that achieve outcomes of reducing congestion or facilitating interconnection to location constrained generation. The Commission should consider an applicant's request for risk-reducing incentives where applicable, and an ROE Incentive Adder if the benefits provided through the reduction of congestion or facilitation of location constrained generation warrant one. The Commission should evaluate these projects on a case-by-case basis and not establish bright line metrics or criteria for the purpose of evaluation. Each RTO/ISO analyzes projects that purport to alleviate congestion and achieve economic efficiencies differently; therefore, the Commission should avoid imposing a bright line test to evaluate these types of projects, because doing so would be too inflexible to accommodate diverse transmission planning procedures that are unique to each RTO/ISO.

The Commission should consider incentivizing transmission projects that are scaled to more efficiently facilitate interconnection of, or transmission to, location constrained generation. If an applicant proposes to construct a long lead interconnection facility or Clustering Enabled Transmission Upgrade that allows for the clustering of several renewable energy projects, thus helping to alleviate an interconnection queue backlog, and interconnecting generation that would not otherwise have access to the bulk electric system, the Commission should consider authorizing risk-reducing incentives for that project, and where applicable, an ROE Incentive Adder based on the risks and challenges

of the project that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives.

## **2. Persistent Geographic Needs**

The Commission should take into account evidence supplied by an applicant that demonstrates that an applicant's transmission project enhances reliability, resilience, and/or provides particular economic efficiency benefits that are needed by and relevant to a specific geographic area. An applicant may make this demonstration by indicating what the specific geographic needs are and whether the project is proposed to satisfy those needs. If an applicant supplies evidence demonstrating that its project will satisfy certain geographic needs, the applicant should include a description of how the project is planned and intended to satisfy the specific geographic needs. The Commission should consider satisfaction of a geographic need a factor that helps satisfy the nexus test.

A geographic area should be identified on a case-by-case basis. If an applicant's project purports to satisfy a need of a certain geographic area by way of a transmission investment, then the applicant should identify the exact geographic area that will benefit from the transmission investment and how that benefit addresses a need in that specific geographic area. If the applicant's project faces certain risks and challenges to meet the geographic need, the project should be eligible for risk-reducing incentives and/or an ROE Incentive Adder if the risks and challenges are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives.

### 3. Security

Avangrid Networks is fully aligned with the Commission’s position, as expressed in the Incentive NOI, that security is a priority and that “[e]nhancing the physical and cyber-security of existing jurisdictional transmission facilities, including new facilities, can improve the facilities’ ability to contribute to the reliability of the bulk power system.”<sup>21</sup> Avangrid Networks and its subsidiaries closely follow physical and cyber security requirements at transmission facilities as set forth by the North American Electric Reliability Corporation Critical Infrastructure Protection (“NERC CIP”) Standards. By incentivizing physical and cybersecurity enhancements beyond the NERC CIP Standards, the Commission can ensure that transmission facilities and the grid, as a whole, is more secure.

The NERC CIP Standards generally focus on the physical and cyber security of Bulk Electric System (“BES”) Cyber Assets. Qualifying physical security investments should include measures that protect other assets at transmission facilities, as well as defense and in-depth security for the BES Cyber Assets. Qualifying cyber security investments should include measures that protect all networks used by the transmission facility, not just isolated protection of the BES Cyber Assets. Incentives should include recovery of costs through the transmission tariffs. If a major investment is expected to impact the security of the grid at a high level, the Commission should incentivize developers to make such investments by implementing mechanisms to recover costs more

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<sup>21</sup> Incentive NOI at 22.

quickly, *e.g.*, accelerated depreciation incentive recovery periods of three-to-five years. The overall reason for this proposed incentive treatment is to capture the short depreciable life of a cyber security investment and other components of advanced technology.

The Commission should define “Security” based on specific types of investments that can demonstrate a proven reduction in risk. A broad definition or criteria for the physical or cyber security should be developed to give companies assurance that their investments could be recovered and ensure a more secure grid. This approach would create a stronger incentive for transmission developers than defining security investments based on performance, which would delay the recovery of costs (for instance, by forcing companies to wait for the collection of performance data).

In the Incentive NOI, the Commission highlights its concerns related to the risks tied to investing in, using, and implementing new technologies, which together may affect the willingness of transmission developers to enhance existing transmission facilities by way of advanced technologies. This may be the case as new technologies are developed and others become obsolete. The Commission’s policies should not serve to be a disincentive for the deployment of new technologies. The Commission’s incentive policy should not dictate the eligibility of a specific technology or the acceptable use of a specific technology, but the desired end result of security and reliability that the technology helps to achieve. The Commission should also develop a review process to consider new technologies if companies or best practices and controls can demonstrate equal or better security and reliability than provided by older technology.

#### 4. Resilience

As the Commission notes, it has previously proposed to define “resilience” as “the ability to withstand and reduce the magnitude and/or duration of disruptive events, which includes the capability to anticipate, absorb, adapt to, and/or rapidly recover from such an event.”<sup>22</sup> The Commission should consider an applicant’s request for transmission rate incentives based on a project’s resilience attributes. Resilience attributes are those that are intended to improve the resilience of the bulk electric system, and the Commission should evaluate project-specific resilience attributes in a flexible manner and on a case-by-case basis. For instance, a resilient project design could be proposed in response to new base flood elevation design criteria to help protect bulk electric system equipment from rising sea levels and more frequent and severe weather events.<sup>23</sup> Projects that enhance the resilience of the grid should be rewarded for providing this significant benefit to customers as well as for the enhanced safety and security provided to the bulk electric system. Accordingly, transmission projects that include resilience attributes should be eligible for rate incentives that appropriately reflect anticipated risks. In addition, if the risks and challenges of employing that resilience measure are not either already accounted for in the applicant’s base ROE or could be addressed through risk-reducing incentives, then the Commission should treat that resilience measure as a factor

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<sup>22</sup> *Inquiry Regarding the Commission’s Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 at P 28 (2019) citing *Grid Reliability and Resilience Pricing and Grid Resilience in Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,012 at P 23 (2018).

<sup>23</sup> See e.g., *Pequonnock Order* at 26.

that helps satisfy the nexus test and further supports the Commission's approval of an ROE Incentive Adder.

The Commission should consider the benefits of an individual project toward grid resilience as comprehensively as the record allows. The Commission should accept evidence that demonstrates that the proposed resilience measure would reduce risks and address challenges, and that the applicant is implementing the measure to improve the ability of the bulk electric system to continue reliable operation in the presence of outside disturbances including those caused by weather and physical or cyber-attack.

The Commission should assess the appropriateness of incentives for measures that enhance the resilience of the transmission system on a case-by-case basis, based on the facts relevant to a particular project, the unique circumstances that justify the project-specific resilient investment, and the risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives. Similarly, a public utility should be eligible for an ROE Incentive Adder at the level that is warranted based on the expected resilience benefits and measures employed. The Commission should not set a specific level or range of acceptable ROE Incentive Adder levels that the Commission believes are appropriate for particular types of investments on a "one-size-fits-all" basis. Rather, the Commission should allow the applicant to propose a certain ROE Incentive Adder level and support it based on available evidence. The Commission should evaluate the resilience measure as a factor that contributes to the overall risks and challenges of the project. It should not evaluate an



applicant's request for an ROE Incentive Adder as a stand-alone resilience ROE Incentive Adder.

The Commission should not impose limitations on an applicant's demonstration of resilient attributes. The Commission should not undermine the resilient attributes of an applicant's project based on a belief that the applicant's proposed manner of construction is conventional or that the intended use of advanced technology to ensure that the project is resilient is not sufficiently novel or innovative. In the *Pequonnock Order*, the Commission determined that the Pequonnock Substation Project's resilient design is conventional because UI intends to use "a combination of additional fill, concrete, stone, and higher retaining walls" and does not evince risks and challenges that are not either already accounted for in UI's base ROE or could be addressed through risk-reducing incentives.<sup>24</sup> The Commission should employ a more flexible evaluative methodology for projects that employ resilient attributes like the Pequonnock Substation Project. It should assess the appropriateness of incentives for measures that enhance the resilience of the transmission system on a case-by-case basis based on the facts relevant to a particular project and the unique circumstances that justify the project-specific resilient investment. If the risks and challenges of employing that resilience measure are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives, then the Commission should treat that resilience measure as a factor that helps

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<sup>24</sup> *Pequonnock Order* at P 64.

satisfy the nexus test, further supporting the Commission’s approval of an ROE Incentive Adder based on the risks and challenges of the project.

## **5. Improving Existing Transmission Facilities Through the Use and Implementation of Advanced Technologies**

Prior to the issuance of the 2012 Policy Statement the Commission “consider[ed] an applicant’s proposed use of an advanced transmission technology both: 1) as part of the overall nexus analysis, accounting for the risks and challenges associated with utilizing such advanced technology into that overall nexus analysis;<sup>25</sup> and 2) where an applicant seeks a stand-alone incentive ROE based on its utilization of an advanced technology.”<sup>26</sup> The Commission was concerned, however, that by allowing applicants the option to request either (1) a risk and challenge ROE Incentive Adder where the risks and challenges associated with the proposed use of advanced technology is factored into the Commission’s nexus analysis, or (2) a stand-alone ROE Incentive Adder based on the applicant’s proposed use of advanced technology, it would “contribute to confusion, including with respect to the distinct standards that the Commission” applied in those two contexts.<sup>27</sup> As a solution, the Commission declared that it would “no longer consider

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<sup>25</sup> 2012 Policy Statement at 23 *citing Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 59 (2008) (“[t]he associated challenges can be incorporated into the overall nexus analysis, but the technology does not, in and of itself, appear to justify a separate advanced technology adder.”); *RITELine*, 137 FERC ¶ 61,039 at P 62 (2011).

<sup>26</sup> 2012 Policy Statement at 23 *citing The United Illuminating Co.*, 126 FERC ¶ 61,043 at P 14 (2009); *see also NSTAR*, 127 FERC ¶ 61,052 at P 27 (2009).

<sup>27</sup> 2012 Policy Statement at P 23.

requests under Order No. 679 for a stand-alone incentive ROE based on an applicant's utilization of an advanced technology.”<sup>28</sup>

Prior to the issuance of the 2012 Policy Statement, the Commission would review an applicant's request for a stand-alone advanced technology ROE Incentive Adder under the Commission's standard adopted in *NSTAR Electric Company* (“*NSTAR*”).<sup>29</sup> In *NSTAR*, the Commission denied NSTAR's request for a stand-alone advanced technology ROE Incentive Adder “for use of a Static VAR Compensator because NSTAR had not identified either any unusual characteristics of or risks, challenges, or benefits associated with that technology that warrant incentive treatment.”<sup>30</sup> On rehearing, the Commission affirmed its conclusion, but explained “that in reviewing requests for separate incentive ROE adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology...”<sup>31</sup>

By way of comparison, the Commission reviews an applicant's request for a risk and challenge ROE Incentive Adder for projects that propose to use advanced technology under the *RITELine Indiana & Illinois LLC* (“*RITELine*”) standard. Under the *RITELine* standard, the Commission is to consider the risks and challenges that are specific to the

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<sup>28</sup> *Id.*

<sup>29</sup> *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 (2008), *order on reh'g granted in part and denied in part*, *NSTAR Elec. Co.*, 127 FERC ¶ 61,052 (2009) (“*NSTAR*”).

<sup>30</sup> *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 at P 76 (2008).

<sup>31</sup> *NSTAR Elec. Co.*, 127 FERC ¶ 61,052 at P 27 (2009) *citing* *United Illuminating Co.*, 126 FERC ¶ 61,043 at P 14 (2009).

applicant's proposed use of advanced technology a factor that helps satisfy the overall nexus test, which may therefore warrant the approval of an ROE Incentive Adder for the risks and challenges of the project.<sup>32</sup> The Commission granted RITELine a 100 basis point ROE Incentive Adder for the risks and challenges of the Reliability Interregional Transmission Extension Project, but denied RITELine's request for a separate advanced technology adder.<sup>33</sup> The Commission found that RITELine's proposed use of several different advanced technologies was not sufficiently novel or innovative to warrant a separate advanced technology adder.<sup>34</sup> However, while the Commission found that the advanced technologies that RITELine proposed to use did not warrant a separate advanced technology adder, the Commission "recognized that the risks and challenges of using certain technologies and techniques may be worthy of consideration in the overall nexus analysis."<sup>35</sup> The Commission ruled that RITELine's proposed use of advanced technology is "a factor that helps satisfy the overall nexus analysis" and supports the Commission's "granting of an ROE adder for the Projects' risks and challenges."<sup>36</sup> The Commission did not use the "sufficiently novel or innovative" determination in *RITELine* to bar RITELine's eligibility to obtain a risks and challenges ROE Incentive Adder. The Commission used the "sufficiently novel or innovative" analysis, which accords with the

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<sup>32</sup> *RITELine Indiana & Illinois LLC*, 137 FERC ¶ 61,039 at P 62 (2011) ("*RITELine*"), *reh'g denied*, 149 FERC ¶ 61,238 (2014).

<sup>33</sup> *RITELine* at P 62.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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

analysis used in *NSTAR*, to evaluate RITELine’s request for a separate advanced technology ROE Incentive Adder - not to evaluate RITELine’s request for a risks and challenges adder.

One of the major reasons that the Commission eliminated the ability of an applicant to submit and for the Commission to consider a request for a stand-alone advanced technology ROE Incentive Adder was to mitigate the propensity for confusion that the use of two “distinct standards” (*NSTAR* versus *RITELine*) to evaluate an ROE Incentive Adder that is requested for a project that proposes to utilize advanced technology could have on the applicant proposing to use the technology and on the Commission tasked with evaluating the facts surrounding the proposed use of that technology. The elimination of the opportunity to apply for a stand-alone advanced technology ROE Incentive Adder, therefore, resulted in the parallel elimination of the *NSTAR* standard that seemed to compel an applicant to show that the proposed use of the advanced technology is a “new or innovative domestic use of the technology...”<sup>37</sup>

“As a result” of the issuance of the 2012 Policy Statement, the Commission only “consider[s] deployment of advanced technologies as part of the overall nexus analysis

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<sup>37</sup> See *The United Illuminating Co.*, Docket No. ER19-1359-000, Joint Protest of the Massachusetts Attorney General Maura Healey, The Connecticut Public Utilities Regulatory Authority, The Connecticut Department of Energy and Environmental Protection, William Tong, Attorney General for the State of Connecticut, and the Connecticut Office of Consumer Counsel at 16 (Apr. 5, 2019) citing 127 FERC ¶ 61,052 at 27 (2009); see also *The United Illuminating Co.*, 126 FERC ¶ 61,043, at P 14 (2009).

when an ROE is sought.”<sup>38</sup> By retaining that particular approach in the 2012 Policy Statement, the Commission retained the *RITELine* standard and **not** the *NSTAR* standard.<sup>39</sup> However, the Commission’s *Pequonnock Order* adopted the State Parties’<sup>40</sup> argument under *NSTAR* as an acceptable rationale to bar UI’s eligibility for an ROE Incentive Adder based on the risks and challenges of the Pequonnock Substation Project. Since the Commission’s 2012 Policy Statement eliminated the Commission’s willingness to evaluate stand-alone ROE Incentive Adders for an applicant’s proposed use of advanced technology, the Commission should make clear in a revised policy statement that the Commission no longer evaluates stand-alone advanced technology ROE Incentive Adders; and therefore, it no longer uses the “new or innovative domestic use of [] technology” standard adopted in *NSTAR*.<sup>41</sup> The Commission should reaffirm its commitment to analyzing applicant requests for risk and challenge ROE Incentive Adders for projects that include risks and challenges that are relevant to an applicant’s use and implementation of advanced technology under the Commission’s *RITELine* standard.

The Commission should accept evidence from rate incentive applicants that is demonstrable of the benefits of the deployment of advanced technology and take into account the risks and challenges applicants will face in implementing the technology. An applicant may provide evidence via testimony and exhibits of how the deployment of

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<sup>38</sup> 2012 Policy Statement at P 23 *citing Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 59 (2008); *RITELine*, 137 FERC ¶ 61,039 at P 62 (2011).

<sup>39</sup> (Emphasis added).

<sup>40</sup> *Supra* note 34.

<sup>41</sup> 2012 Policy Statement at 17.

advanced technologies and other measures to enhance capacity, efficiency, and operation of the grid increases or improves the capabilities or operations of existing transmission facilities. The Commission should not revert back to its pre-2012 policy of reviewing requests for stand-alone advanced technology ROE incentives. The 2012 Policy Statement indicates that the Commission will review an applicant's use of advanced technology as a factor that helps satisfy the nexus test.<sup>42</sup> Reviewing advanced technology as part of the overall nexus test will spark more innovation and more creativity among project developers seeking to improve the transmission system.

If the Commission decides to incent grid management technology, including dynamic line rating technology that is typically recovered through operations and maintenance expenses within cost-of-service rates, the Commission should consider applicant requests to capitalize Operation and Maintenance ("O&M") expense and include the costs that are attributable to these technologies in rate base as a regulatory asset. The Commission should also consider applicant requests to amortize those costs and grant such amortization period if it is demonstrably just and reasonable; otherwise, the Commission could deny the proposed amortization period and recommend an amortization period that is just and reasonable and better suited to the particular facts of the applicant's request.

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<sup>42</sup> 2012 Policy Statement at P 23.

## **6. Interregional Transmission Projects**

The Commission should use its transmission rate incentives policy to encourage the development of interregional transmission projects. To date, no interregional transmission project has been successfully selected in an Order No. 1000 interregional planning process, permitted by all applicable state siting authorities, constructed, and placed in service. Significant incentives are needed to encourage interregional transmission project investment. Immense challenges associated with the development of transmission lines that are planned to traverse long distances across multiple regions include the acquisition of a portfolio of land rights, various state-specific siting authority approvals, review under two or more RTO/ISO tariffs, and compliance with a variety of utility interconnection and construction standards, and together, make a robust ROE Incentive Adder necessary to address the myriad risks and challenges that are applicable to transmission investments of this size and scope. Therefore, the Commission should adopt a transmission rate incentives policy that enables applicant eligibility of an ROE Incentive Adder at the level of 200 basis points or greater if the applicant's project is selected by way of an interregional planning process.

An interregional transmission project that is selected through a fair and open interregional planning process and/or approved for construction by all necessary state siting authorities should be eligible, upon application to the Commission, to obtain an ROE Incentive Adder at the level of 200 basis points or greater for the risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives. The Commission should consider benefits



of an individual interregional transmission project through the risks and challenges framework and determine whether the purported benefits are factors that help satisfy the nexus test. Interregional transmission projects should be evaluated on a case-by-case basis, and depending on the project, the applicant should be eligible for risk-reducing incentives and/or a substantial ROE Incentive Adder at a level of 200 basis points or greater.

## **7. Unlocking Location Constrained Generation Resources**

The Commission should use risk-reducing incentives, and where the applicant faces risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives, an ROE Incentive Adder, to encourage the development of transmission projects that will facilitate the interconnection of large amounts of location constrained generation resources, particularly the interconnection of large-scale renewable energy generating facilities or other zero emission/carbon-neutral electric generating facilities that help states achieve public policy goals. The Commission has articulated that "investments in [projects that unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets] may face the types of risks and challenges that may warrant an incentive ROE based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives."<sup>43</sup> For example, transmission developers should be appropriately

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<sup>43</sup> 2012 Policy Statement at P 21.

incentivized to “create additional incremental capacity without significant construction... [allowing] for more efficient balancing of variable energy resources, and/or that provide increased grid stability.”<sup>44</sup> In line with the Commission’s commitment to evaluate each application on a case-by-case basis and to consider whether the “total package of incentives requested is tailored to address the risks and challenges of a project [,]” the Commission should consider whether the requested transmission rate incentives have a nexus to the risks and challenges that the applicant faces to facilitate the interconnection of location constrained generation resources.<sup>45</sup> By implementing such an approach, the Commission can do its part to incent transmission investment in projects that help unlock location constrained generation resources and further enable the interconnection of large-scale renewable energy generating facilities and other zero emission/carbon-neutral electric generating facilities that help states achieve public policy goals.

#### **8. Order No. 1000 Transmission Projects**

A key aspect of Order No. 1000 required the RTOs/ISOs to implement tariff revisions that set forth a series of procedures to identify public policy needs and to ensure consideration of proposed solutions or projects to meet those needs. Public policy project planning processes may enable substantial transmission investments that are capable of interconnecting large-scale renewable energy generating facilities and other zero emission/carbon-neutral electric generating facilities that help states achieve public policy goals. A public policy, reliability, or economic/market efficiency transmission

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 5.

project will satisfy the Commission's rebuttable presumption of rate incentive eligibility so long as it is selected in a fair and open regional transmission planning process and/or approved for construction by a state commission or state siting authority. Accordingly, the Commission should automatically grant an applicant's request for the CWIP Incentive and Abandoned Plant Incentive, so long as the incentives (1) are requested, (2) meet the Commission's criteria, and (3) are to support a transmission project that is selected in an RTO's/ISO's regional transmission plan. Incumbent projects that are selected as a backstop solution for an identified transmission system need also warrant Commission approval of automatic risk-reducing incentive treatment.

### **C. Existing Incentives**

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

##### **a. Transmission-Only Companies**

The Commission should continue to incent applicants that use the transco business model. Companies that use the transco business model invest in transmission projects that provide sustained benefits to customers and the bulk electric system. An applicant seeking to obtain an ROE Incentive Adder because of its use of the transco business model ("Transco Incentive") should be required to demonstrate the benefits that the transco business model will provide to applicable customers and to the relevant portion of the bulk electric system. The Commission should encourage market participant affiliates to employ the transco business model where doing so demonstrates benefits to customers and to the bulk electric system. Market participant affiliates should not be automatically barred from eligibility of the Transco Incentive because there are unique circumstances

where customer and system benefits could be lost if such an arbitrary rule is adopted by the Commission. The Transco Incentive should be awarded on an RTO/ISO basis and should not exclude assets that a transco company obtains through acquisition if it can be demonstrated that the acquisition satisfies section 203 of the Federal Power Act.<sup>46</sup>

**b. RTO/ISO Participation**

The RTO-participation ROE Incentive Adder (“RTO Participation Adder”) incents transmission owners and transmission developers to surrender operational control of their transmission assets to an RTO/ISO and to become and remain an active participant in the RTO/ISO stakeholder process. The Commission has set the RTO Participation Adder at the current level of 50 basis points. The RTO Participation Adder incents transmission owners to (1) take on the risk of surrendering operational control of their transmission assets; (2) participate in the RTO/ISO regional transmission planning process; and (3) work cooperatively with the RTO/ISO, other transmission owners, market participants, and governmental entities to ensure the transmission system remains reliable and is further developed and maintained at least cost. Transmission owners that participate in an RTO/ISO devote substantial time and resources to actively participate in the stakeholder process to ensure that market rules result in just and reasonable rates for native load customers. The Commission should preserve the RTO Participation Adder, and therefore, the Commission should not arbitrarily revise, revoke, or sunset a participating transmission owner’s continuous eligibility to recover the RTO Participation

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<sup>46</sup> 16 U.S.C. § 824b (2018).

Adder in any manner based on the record of this Incentive NOI proceeding. By incentivizing the regionalization of the grid, stakeholders are able to more efficiently and comprehensively identify a specific transmission project's reliability and economic benefits. As the Commission stated in Order No. 679, "[r]egional planning processes can help determine whether a given project is needed, whether it is the better solution, and whether it is the most cost-effective option in light of other alternatives."<sup>47</sup> This type of regional process greatly assists stakeholders to fully examine different transmission alternatives throughout a large territory and understand impacts on neighboring systems.

If not for the RTO Participation Adder, transmission owners may decide that the risks and costs associated with joining these larger organizations are too high. Utilities may determine that they are better suited to make certain decisions themselves, rather than engaging in regional transmission planning processes to help make decisions and gain access to information that might not be directly relevant to that transmission owner's system or to its native load customers. This is not the result that the Commission or RTOs/ISOs are seeking to achieve. Rather, these regional processes are intended to help demonstrate that a project ensures reliability, reduces congestion, and/or lowers customer costs. Without the RTO Participation Adder, RTOs/ISOs risk losing valuable stakeholders and their participation in the regional planning process, as transmission owners may decide it makes more sense to make decisions on a utility-by-utility basis. These risks and benefits are continuous and participant-specific in nature. Therefore, the

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<sup>47</sup> Order No. 679 at P 58.

RTO Participation Adder should be authorized and remain authorized, so long as a transmission owner continues to participate in an RTO/ISO, and should be awarded on a participant-specific basis.<sup>48</sup>

## **2. Non-ROE Transmission Incentives**

### **a. Regulatory Asset/Deferred Recovery of Pre-Commercial Costs and CWIP**

The Commission should continue to offer regulatory asset treatment and the inclusion of 100 percent of Construction Work in Progress in rate base because those incentives help public utilities obtain a steady stream of cash-flow during sustained periods of significant capital investment and also help prevent customer rate shock. The CWIP Incentive should be granted automatically if an applicant meets the Commission's rebuttable presumption, and ultimately, the Commission should consider applicant requests for deferred recovery and/or regulatory asset treatment on a case-by-case basis.

### **b. Hypothetical Capital Structure**

The Commission should continue to accept applicant proposals to establish a hypothetical capital structure (1) when an applicant lacks a history of transmission investment and its commensurate rate base is insufficient to demonstrate a mature debt-to-equity ratio, or (2) when the facts and circumstances related to a particular transmission project warrant the applicant's eligibility. The hypothetical capital structure incentive should be available to project-specific transmission companies and new

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<sup>48</sup> In addition to the RTO Participation Adder, any project selected through the fair and open regional planning process should automatically be eligible for the CWIP Incentive or the Abandoned Plant Incentive. *See supra* Section IV.2.a and IV.2.c.

transmission-owning entities. The Commission should not set a specific postage stamp hypothetical capital structure that is applicable to all transmission rate incentive applicants or transmission-owning utilities, nor should the Commission cap the upper limit of the cost of equity. Establishing a set *pro forma* hypothetical capital structure that is applied in a blanket manner across the industry would ignore the unique nature and needs of certain transmission projects and new transmission-owning entities. The Commission should encourage utilities to invest in transmission by adopting a flexible policy to review hypothetical capital structure debt-to-equity ratios, and to take into account the unique circumstances and factors surrounding each transmission investment on a case-by-case basis. The facts and particular circumstances, as well as the risks and challenges of the particular project, should dictate whether a certain hypothetical capital structure may be appropriate.

The Commission should not cap the equity percentage of a debt-to-equity ratio at an upper limit unless the applicant requests that it do so. If, pursuant to an applicant's request, capping the equity percentage at an upper limit would lead to a just and reasonable result for a particular project, then the Commission should consider a cap, but only on case-by-case basis, and not as a blanket policy. An equity cap is more appropriate for settlement purposes or if an applicant specifically requests it to ensure the rate incentive request is just and reasonable.

**c. Recovery of the Cost of Abandoned Plant**

The Abandoned Plant Incentive addresses utility risks in undertaking transmission investment by mitigating the risk that ratepayers and shareholders may have to bear

substantial costs related to a transmission investment that is cancelled, in whole or in part, for reasons outside of the utility's reasonable control. The D.C. Circuit Court of Appeals has held that "[b]y assuring recovery of costs of projects abandoned for reasons beyond their developers' control, the Abandonment Incentive 'provid[es] companies with more certainty during the pre-construction and construction periods,'<sup>49</sup> 'thereby facilitating investment in these projects.'"<sup>50</sup> The Commission has determined that abandoned plant recovery is appropriate when a public utility, for instance, is unable to obtain necessary land rights.<sup>51</sup> Further, "[a]n applicant for the Abandoned Plant Incentive must show that it faces the kinds of known but uncontrollable cancellation risks that, without the incentive, could impair the applicant's ability to attract investment to the project, or raise the utility's – and, in turn, ratepayers' – cost of such investment."<sup>52</sup>

The Commission should consider revising its transmission rate incentives policy and grant the Abandoned Plant Incentive automatically to those applicants whose projects meet the Commission's rebuttable presumption. If abandonment is outside of the reasonable control of management, then transmission owners should be authorized to recover 100 percent of their prudently incurred costs inclusive of carrying charges

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<sup>49</sup> *San Diego Gas & Elec. v. FERC*, \_\_F.3d\_\_\_\_\_, 3 (D.C. Cir. 2019) at 6 (citing Policy Statement at P 14).

<sup>50</sup> *Id.* (citing Order No. 679 at P 155).

<sup>51</sup> Order No. 679 at P 165; *S. Cal. Edison Co.*, 129 FERC ¶ 61,246 at P 68 (2009), *order denying clarification or reh'g*, 133 FERC ¶ 61,254 (2010), *order denying reh'g and clarification*, 134 FERC ¶ 61,200 (2011); *Pioneer Transmission, LLC*, 126 FERC ¶ 61, 281 (2009).

<sup>52</sup> *San Diego Gas & Elec.*, at 6.



associated with abandoned investments booked to an account accruing Allowance for Funds Used During Construction. To disallow such costs would increase transmission investment risks exponentially and greatly discourage prudent transmission development.

**d. Accelerated Depreciation**

The Commission should continue to consider accelerated depreciation as an incentive (“Accelerated Depreciation Incentive”) because it encourages investment to resolve substantial transmission needs. The Accelerated Depreciation Incentive improves cash flow and decreases the propensity for rate shock. That is particularly important to new transmission-owning entities, which have little-to-no rate base and are seeking stable financing and a low cost of borrowing to fund their projects. Accelerated depreciation may also help eliminate regulatory lag related to cost recovery of investments in advanced technology and physical and cyber security.

It is important that the Commission continue to consider accelerated depreciation periods that are tailored to the particular risks and challenges of a project. For instance, the Commission has approved instances of a fifteen year accelerated depreciation period to lessen the financial burden of significant transmission investments and it should continue to consider transmission rate incentive requests for accelerated depreciation treatment on that basis.<sup>53</sup> The specific facts and particular circumstances of each applicant’s project should be reviewed on a case-by-case basis. In Order No. 679, the Commission recognized the importance of reviewing applicant requests for accelerated

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<sup>53</sup> *Weststar Energy, Inc.*, 122 FERC ¶ 61,268 at P 48 (2008).

depreciation in a flexible manner, and that a 15 year depreciation period may be appropriate for some utilities, and that it would consider, on a case-by-case basis, “depreciable lives of less than 15 years because shorter depreciable lives may be appropriate in certain cases, such as advanced technologies for which the useful life is not necessarily known.”<sup>54</sup> The Commission should continue to employ the policy it propounded in Order No. 679 in regard to its consideration and review of applicant requests for the Accelerated Depreciation Incentive and it should not revise or revoke the current policy in any manner.

#### **D. Mechanics and Implementation**

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

In order to ensure a fair process in which risks, challenges, and benefits are reasonably known by investors, the Commission should not impose duration limitations or conditions on its authorization of incentive rate treatment unless that particular treatment is specifically requested by the applicant. As the Commission has consistently recognized, long-term transmission projects may necessitate incentives that last many years in order to appropriately support such long-term investment.<sup>55</sup> Investors require reasonable assurance that ratemaking proposals will not be altered after the fact in a manner that undermines transmission owner confidence. The transmission owner must have confidence in the Commission’s regulatory policies in order to make substantial capital expenditure decisions and to meet investor expectations to fund and finance such

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<sup>54</sup> Order No. 679 at P 149.

<sup>55</sup> Order No. 679 at P 36.

investments on favorable terms for customers. Therefore, consistent with well-reasoned Commission policy, the Commission should not re-open or reconsider prior Commission approvals of applicant requests for transmission rate incentives. The duration of ROE Incentive Adders should only be limited to the extent an applicant requests them to be, and not be duration-limited *sua sponte* by way of Commission order. If the Commission ordered an ROE Incentive Adder duration limitation *sua sponte*, doing so would undermine project certainty and unfairly increase transmission owner and shareholder investment risk.

The Commission should not structure a durational component for incentives or automatically sunset rate incentives after a certain period. A durational component or sunset on incentive recovery would undermine investor confidence and discourage investments that may otherwise benefit the grid and an applicant's customers. The Commission's current incentive policy provides strong protections to customers by requiring applicants to explain how customers can be confident that the applicant's plan will deliver expected project benefits. Transmission rate incentives approved by the Commission should not be revoked or revised post hoc unless requested by the applicant pursuant to FPA section 205.

## V. CONCLUSION

Avangrid Networks respectfully submits these comments to the Commission for its consideration.

Respectfully submitted,

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