UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

INITIAL COMMENTS OF THE PJM TRANSMISSION OWNERS

The PJM Transmission Owners[1] respectfully submit the following comments in response to the Notice of Inquiry ("NOI") issued by the Federal Energy Regulatory Commission ("Commission") on March 21, 2019 in the above-captioned docket.[2]

I. INTRODUCTION

Transmission is the backbone of the bulk electric system and therefore vital to any future enhancement or expansion of the system. While the nation continues to debate the future of our energy policy, it is without question that policy will require a reliable and efficient transmission system to succeed. Furthermore, with a future that many predict will include a heavy penetration of renewable resources, increased use of electric vehicles, and growing customer desire for choice on their energy use, the importance of the transmission system to serve these needs will only increase. Thus, it is vital to the success of the electric system that any rate structure

[1] The PJM Transmission Owners joining the filing are: American Electric Power Company, Inc.; The Dayton Power and Light Company; Dominion Energy Services, Inc. on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duke Energy Corporation on behalf of its affiliates Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., and Duke Energy Business Services LLC; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of its affiliates American Transmission Systems, Incorporated, Jersey Central Power & Light Company, Mid-Atlantic Interstate Transmission LLC, West Penn Power Company, The Potomac Edison Company, Monongahela Power Company, and Trans-Allegheny Interstate Line Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and UGI Utilities Inc.

[2] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019) ("NOI"). The PJM Transmission Owners address selected issues raised in the NOI and identify those questions they are responding to in the footnotes of this pleading. These comments reflect the collective comments of the PJM Transmission Owners. Several Transmission Owners will also address additional issues through their individual comments.

governing transmission development and maintenance provide sufficient incentive to attract the capital investment necessary to ensure that transmission system can continue to match the growing demands of that system.

Importantly, transmission development is not without risk. In recognition of the risk that transmission owners face in developing projects, Congress included a section in the Energy Policy Act of 2005 ("EPACT 2005"), codified as Section 219 to the Federal Power Act ("Section 219"), that directed the Commission to develop an incentive rate regime to promote investment in the development and maintenance of the transmission system. In response, the Commission promulgated Order Nos. 679 and 679-A, which established a series of rate incentives to promote the investment in transmission projects necessary to ensure reliability and reduce the cost of delivered power for transmission customers by reducing transmission congestion.[3] Since the implementation of the Commission's current transmission incentive policy, the development of transmission has increased due in part to the ability of the existing incentives to attract more capital investment through more robust returns, a reduction in the administrative burden on cash flow, and certainty that utilities will be able to recover the prudently incurred costs of their investments. However, despite the increase in transmission development since 2006, additional investment needs continue as the bulk electric system continues to evolve. Transmission must be developed to match this evolution, and the risks and challenges facing transmission development continue. Those risks include the traditional types of risk and challenges that Section 219 and the incentives enumerated in Order No. 679 were designed to combat and new risks as

[3] *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").

Transmission Owners seek to add new technologies to their systems and continue to compete for capital investment.

Through its NOI, the Commission presents an opportunity to establish important policy concerning transmission rate incentives that will support the current growth in transmission development and promote future development initiatives in areas that the Commission has identified as providing important benefits to the electric system, its customers and the nation. In evaluating its existing policy, the Commission should ensure that the existing incentives remain in place. The existing suite of incentives as mandated by Section 219 and outlined in Order Nos. 679 and 679-A is critical to addressing the risks and obstacles that Transmission Owners face and to ensuring that sufficient capital is in place to support their projects. The Commission should also draw on the body of precedent available in approving the existing incentives and find ways to ease the administrative burden of applying for certain incentives, such as the abandoned plant incentive, that are routinely sought and approved.

The Commission must also preserve the existing incentive for all transmission owners that join and remain in a Regional Transmission Organization or Independent System Operator.[4] Exercising its exclusive jurisdiction over the wholesale markets and transmission rates, the Commission promoted the development of RTOs in Order No. 2000. Studies demonstrate that RTOs provide important benefits to customers through their management and operation of the

[4] The PJM Transmission Owners in these Comments refer to RTOs and ISOs collectively as "RTOs".

transmission system and wholesale markets.[5] However, as discussed *infra*,[6] the risks, such as the Transmission Owner giving up control of their system and assets to join and participate in RTOs, are significant. Thus, it is essential for the Commission to continue to encourage transmission owners to join and remain in an RTO through the incentive for RTO membership at least at its current level and existing form. That incentive recognizes the important benefits created by membership in an RTO and seeks to offset, at least in part, some of the risks. Importantly, the incentive should remain available for the entire time the transmission owner remains in the RTO and should be available regardless of the reason for joining or remaining.

Finally, the Commission should also use the NOI process to identify new benefits that can be incentivized through the Commission's transmission rate policies. The Commission highlights some of these important benefits that include flexible transmission operation, improving security and resilience, and use of innovative technology. The Commission should take these important benefits into account in a meaningful way when considering the level of incentives granted under the existing incentive framework. A more robust transmission incentive policy that maintains the existing transmission rate incentive regime but also seeks to take into account additional benefits vital to the system will ensure that the nation's transmission backbone remains available to reliably accommodate the grid of the future.

[5] *See e.g.*, PJM Interconnection L.L.C., *PJM Value Proposition*, https://www.pjm.com/about-pjm/~/media/about-pjm/20151016-value-proposition.ashx (last visited June 26, 2019) (describing the benefits provided by membership in PJM Interconnection L.L.C. ("PJM")); *MISO Value Proposition*, Midcontinent Independent System Operator, Inc., https://www.misoenergy.org/about/miso-strategy-and-value-proposition/miso-value-proposition/ (describing the benefits provided by membership in Midcontinent Independent System Operator, Inc. ("MISO")). The benefits of PJM membership are discussed in more detail in Section III.B.

[6] *See* Section III.B.

II. THE ENERGY POLICY ACT OF 2005 RECOGNIZED THE NEED FOR TRANSMISSION DEVELOPMENT AND DIRECTED THE COMMISSION TO ESTABLISH IMPORTANT TRANSMISSION INCENTIVES TO PROMOTE THAT DEVELOPMENT.

Transmission is crucial to the electric system and requires continuous investment to ensure the proper functioning of that system. As the electric system continues to evolve, investment in the transmission system is crucial to ensuring a reliable and efficient electric power system. Recognizing the need to promote investment in the continued development of transmission infrastructure, Congress amended the Federal Power Act ("FPA") as part of EPACT 2005 to require the establishment of incentive-based rate treatments for the transmission of electric energy in interstate commerce. Specifically, Section 219 requires the Commission to establish incentive based rates that, among other things:

> (1) promote reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce . . . ;
>
> (2) provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies); [and]
>
> (3) 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[.][7]

Congress also recognized the important role that RTOs play in the development and operation of efficient and effective transmission systems and wholesale energy markets. Thus, as part of EPACT 2005, Congress also required that the Commission provide for incentives to each transmitting utility or electric utility that joins an RTO.[8]

[7] 16 USC § 824s.

[8] *Id.* at (c).

In adding Section 219, Congress codified the importance of transmission investment and expressed its desire to promote such investment through the establishment of transmission rate incentives. Through the language of Section 219, Congress stressed the importance of transmission investment to ensuring a "reliable" and "economically efficient" transmission system.[9] Congress also made clear that the rate incentives should not just be for the development of new projects but should also promote investment in the "enlargement, improvement, maintenance, and operation" of the existing transmission system.[10] In doing so, Congress recognized that the existing transmission system is critical to all future expansion and enhancement and, therefore, must be continuously improved and properly maintained. Congress also recognized the competition for dollars that maintaining and improving the existing system faces both internally within the utilities tasked with those roles and externally from other opportunities for investment. Finally, Congress specifically identified a desire that the transmission incentives developed by the Commission should encourage development of technologies that "increase the capacity and efficiency" and "improve the operation" of the existing transmission system.[11]

In response to Congress's directive in Section 219, the Commission issued Order No. 679. In Order No. 679, the Commission found that "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

[9] *Id.* at (b)(1).

[10] *Id.*

[11] *Id.* at (b)(3).

[12] Order No. 679 at P 5.

incentives designed to meet the statutory requirements of Section 219 and promote the development of important transmission projects. In compliance with Section 219, the Commission established a Return on Equity ("ROE") incentive adder for transmission owners who join or remain in RTOs ("RTO Incentive").[13] The Commission also established the following incentives: (1) authorization for recovery of 100% of the prudently incurred costs of an abandoned project; (2) an incentive-based ROE; (3) recovery of Construction Work in Progress ("CWIP"); (4) the use of a hypothetical capital structure; (5) accelerated depreciation; (6) deferred cost recovery mechanisms; (7) a provision for accumulated deferred income taxes; and (8) single-issue ratemaking treatment for incentive applications specific to a particular project.[14] In implementing these incentives, the Commission found that not every incentive would be available for every project. However, as a whole, the incentives would be sufficient to meet the requirements of Section 219 and encourage investment in future transmission infrastructure.

In the NOI, the Commission questions whether there are additional steps that the Commission can take to further incentivize transmission development. As discussed in more detail below, further action by the Commission may be appropriate. The existing incentives required by Section 219 and implemented by Order No. 679 have been effective in promoting transmission development and providing critical risk mitigation and investment certainty necessary to attract the capital required for building transmission infrastructure during the time they have been in place. *However, they must be maintained*. The Commission should reaffirm that it will retain the existing risk-reducing incentives to ensure they continue to meet their stated purposes.[15] The Commission should also reaffirm the availability of the incentive for RTO

[13] *Id*. at P 206.

[14] *Id*. at P 84. The Commission also adopted incentives for transmission-only companies and for the use of advanced technologies.

[15] NOI at Q 38.

membership for all transmission-owning members of RTOs, regardless of whether a transmission owner's participation in an RTO is supported by state legislation. The breadth of the Commission's discretion is at its zenith when addressing transmission rates and policy and a transmission owners' RTO incentive should not be dictated by state action.[16] The Commission can then build on the existing framework to further incentivize transmission development or reward the use of new and innovative technologies necessary to meet both the outcomes outlined in Section 219 and the future needs of the electric power grid.

III. THE COMMISSION'S EXISTING INCENTIVE POLICIES ARE EFFECTIVE AND MUST BE MAINTAINED WITH MINOR MODIFICATION AND CLARIFICATION.

A. The Commission Should Retain the Existing Rate Reducing Incentives Implemented in Order No. 679.

Transmission development has increased dramatically since Order No. 679 became effective, and the risk-reducing incentives implemented by Order No. 679 have helped to promote that increase.[17] However, significant additional investment in transmission is necessary to meet the future challenges facing the nation's electric power grid. Experts believe that the United States will require between $30 and $90 billion dollars of transmission investment by 2030 due to the increasing electrification of the economy.[18] The requirement will increase by an additional $200 to $600 billion by 2050.[19] In the PJM region, PJM believes that future

[16] *See Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("[T]he breadth of agency discretion is . . . at zenith when the action assailed relates primarily . . . to the fashioning of policies, remedies and sanctions . . . .").

[17] From 2006 to 2016, utility investment in transmission more than doubled from approximately $8 billion to over $20 billion. While spending has increased across all regions, the PJM region in particular has seen significant increases in transmission investment. *See Utilities continue to increase spending on transmission infrastructure,* U.S. ENERGY INFO. ADMIN., Feb. 9, 2018, https://www.eia.gov/todayinenergy/detail.php?id=34892#.

[18] *See The Coming Electrification of the North American Economy: Why We Need a Robust Transmission Grid*, WIRES, pp. ii-vii (March 2019).

[19] *Id*.

transmission investment will be needed to address PJM's shifting generation fleet, the increase of renewables, aging infrastructure and generator deactivations.[20] While the risk-reducing incentives implemented by Order No. 679 pursuant to Section 219 have helped to mitigate the investment and regulatory risk posed by transmission development, the development process remains difficult and risky. Thus, to ensure the continued investment in transmission infrastructure, the Commission must keep the existing incentives in place.

Large transmission projects can require multiple years for planning, development and construction, and projects face significant siting, construction, regulatory, and financing risks. In the PJM Transmission Owners' experience, the development, permitting and construction of major transmission projects in PJM can take longer as these projects often face additional challenges because they cross state lines and require the permitting approval of multiple regulatory entities.[21] Depending on the planned route, transmission projects may also require additional permits from various federal agencies, which can involve lengthy review periods.[22] In short, the "unique and substantial challenges" faced by large transmission projects identified by the Commission in Order No. 679 are no less significant today than they were when Congress enacted Section 219 of the FPA and the Commission issued Order No. 679.[23]

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[20] *The Value of Transmission,* PJM Interconnection., L.L.C (2019), https://www.pjm.com/-/media/about-pjm/newsroom/fact-sheets/the-value-of-transmission.ashx.

[21] *See, e.g.*, *PPL Electric Utilities Corp. and Pub. Serv. Electric and Gas Co*, 123 FERC ¶ 61,068, at P 47 (2008) (discussing the risk associated with a project that requires approvals from multiple jurisdictions, along with various federal approvals and could be cancelled through the PJM planning process). These challenges are not unique to the PJM region.

[22] For example, the Susquehanna-Roseland Project required an environmental study from the National Park Service, which took nearly three years to complete. *See Susquehanna to Roseland 500kV Transmission Line Right-of-Way and Special Use Permit Final Environmental Impact Statement*, NATIONAL PARK SERVICE, https://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49285 (last visited June 26, 2019).

[23] Order No. 679 at PP 24-25.

The existing risk-reducing incentives outlined in Order No. 679 are effective in mitigating the challenges associated with transmission development, and the Commission should retain these incentives to ensure that the risks associated with building transmission are addressed for future transmission development.[24] In Order No. 679, the Commission adopted a policy to allow transmission owners to include 100 percent prudently incurred CWIP in rate base and to expense prudently incurred "pre-commercial" costs.[25] The Commission found that these incentives provide "up-front" rate certainty and rate stability and improve the cash flows for transmission owners by easing the pressure on their finances.[26] The Commission found that recovery of CWIP and pre-commercial costs removes a disincentive to transmission development, which can involve long lead times and risk to the Transmission Owner that the project may not go forward.[27] Those risks remain and in some cases may have worsened as the opposition to new transmission development remains significant.[28] Transmission owners are frequently drawn into prolonged disputes with consumer groups and municipalities seeking to either prevent or reroute transmission projects. The inclusion of 100 percent CWIP in rate base also promotes rate stability and alleviates rate shock, which can happen when the costs of large transmission projects are placed into rate base.[29] Moreover, including 100% CWIP in rate base

[24] NOI at Q 70.

[25] Order No. 679 at P 115.

[26] *Id.*

[27] *Id.* at P 117.

[28] *New York Indep. Sys. Op., Inc.*, 151 FERC ¶ 61,004, at PP 80-81 (2015) ("[A]llowing NY Transco to include 100 percent of CWIP in rate base removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward.") (quotations omitted).

[29] *Duquesne Light Co.*, 166 FERC ¶ 61,074, at PP 30-32 (2019) (discussing the benefit to rate stability and increased cash flows 100 percent CWIP approval will create); *United Illuminating Co.*, 167 FERC ¶ 61,126, at P 36 (2019) ("[W]e find that the CWIP Incentive will help insulate United Illuminating's customers from rate shock that might otherwise accompany the use of AFUDC."); *PPL Electric Utilities Corp.*, 141 FERC ¶ 61,021, at P 43 (2012) (authorizing inclusion of 100 percent of CWIP in rate base and

is consistent with Section 219's requirement to promote capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy.[30]

The Commission also adopted a policy that would allow applicants to file an overall rate of return based on a hypothetical capital structure rather than the company's actual capital structure,[31] and a policy that provides for accelerated depreciation for new transmission projects that meet the goals of section 219. As the Commission explained, accelerated depreciation increases the cash flow of the public utility and thereby provides an incentive to new transmission development, in satisfaction of Section 219(a).[32] These incentives provide flexibility to address potentially unique financial and cash flow requirements for each company.[33] The issues surrounding financial and cash flow requirements remain and transmission owners need the financial flexibility to ensure that they can address the financial needs of each of their new capital additions through the development process.[34] The Commission should retain the incentives and continue to approve hypothetical capital structures on a case-by-case basis that reflect the needs of the transmission owner requesting the

explaining that "when certain large-scale transmission projects come on line, there is a risk that consumers may experience 'rate shock' if CWIP is not permitted in rate base.").

[30] 16 U.S.C. 824s(b)(1)).

[31] Order No. 679 at P 131 (describing the hypothetical capital structure incentive as "appropriate for consideration under section 219 because it has been demonstrated to foster the development of transmission investment").

[32] *Id.* at P 146.

[33] *Id.* at P 123.

[34] *See e.g.*, *Duquesne Light Co.*, 167 FERC ¶ 61,081, at PP 30-31 (2019); *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at 66 (2012) (finding that "[a]pproval of the hypothetical capital structure will: (1) reduce the effects on rates resulting from swings in the actual capital structure due to varying cash demands during the construction phase; (2) provide a more consistent cash flow during the construction phase; and (3) contribute to receiving and maintaining an investment grade credit rating profile during the financing phase of the project, thus lowering the overall cost of capital."); *see also* NOI at QQ 72, 73, 80-82.

incentive.[35] Finally, consistent with Section 219's requirement to promote capital investment in transmission of electric energy, the Commission allows transmission owners to make use of deferred cost recovery mechanisms such as a regulatory asset to increase the certainty of cost recovery.[36] It also provides an opportunity for transmission owners to ensure the recovery of pre-commercial costs in certain instances.[37]

Maintaining all of the existing incentives will continue to provide regulatory and investment certainty and help to ameliorate some of the risk inherent in transmission development. Regulatory certainty is important to investors as they decide where to place their capital. Changes to the existing framework to remove incentives that are designed to eliminate or mitigate investment risk could drive away current investors that have chosen to invest in the transmission infrastructure that has been developed under the incentive regime established by Order No. 679 in satisfaction of Congress's mandate in Section 219.[38] Also crucial to attracting important investment is ensuring that the Commission's incentive policies provide the necessary ROE incentives to provide appropriate returns to investors given the risk of the project. A transmission owner's base ROE reflects the overall business risks of the transmission owner. However, incentive adders are also necessary to reflect the additional risks and benefits created by specific projects.[39] In enacting Section 219, Congress recognized that ROE incentives were

[35] NOI at Q 76.

[36] 16 U.S.C. 824s(b)(1); Order No. 679 at P 178 ("The intent of the deferred recovery mechanism is to increase the certainty of cost recovery to encourage more transmission investment.").

[37] Order No. 679 at P 175.

[38] *See* Letter from Barclays Capital and Credit Suisse Securities (USA), LLC, Docket RM11-26-000 (filed Sept. 12, 2011); Letter from J.P. Morgan Securities Inc., Docket No. RM11-26-000 (filed Sept. 13, 2011) (discussing how, in light of the long planning-horizons and immense scope of transmission projects, incentives that mitigate risk (*e.g.*, abandoned plant recovery and CWIP) allow investors to view them with the attractive security of a risk-adjusted rate of return.).

[39] NOI at QQ 96-97.

the preferred rate mechanism and directed the Commission to adopt incentives to promote development of transmission projects. The market provides multiple opportunities for capital investment and, therefore, the returns available for transmission projects must be sufficient to attract necessary capital and compensate for any risks associated with transmission development and the specific project at issue. Moreover, it is important that the Commission not change its rules regarding incentives to negatively impact a project-specific ROE incentive after the incentive is established. If the transmission owner cannot be assured that it can rely on the incentive adder in full for the life of the project, it could prevent the transmission owner from attracting important and necessary investment for the project. This would undermine the purpose of the incentive.

In the NOI, the Commission questions whether it may be more appropriate to look at the benefits of a project (as opposed to the risks and challenges) when crafting incentives.[40] While it is crucial that the Commission retain the existing risks and challenges framework, it should also consider the expected project benefits when establishing the level of incentives that a project is eligible to receive. However, while benefits are important in evaluating a project for incentives, the Commission should also continue to recognize the risks and challenges the project faces. Expected benefits are not always a sufficient proxy for the risks and challenges of development, particularly in RTOs where a transmission owner may be directed to build a project that the RTO determines will benefit the system. In such instances, the transmission owner faces the same risks and challenges regardless of the level of project benefits ultimately provided to the system. Section 219 requires incentives that attract investment in transmission, and the Commission must

[40] *Id*. at QQ 4-5.

not lose sight of the risks and challenges facing such investment when providing the necessary incentives. Accordingly, the existing incentive regime must be maintained.[41]

B. The Commission Must Retain the RTO Incentive and Should Clarify that it Applies Equally to All Transmission Owning Utilities that Join and Remain in an RTO.

Consistent with Congressional directives and Section 219(c),[42] the RTO Incentive provides important incentives for a transmission owner to join and remain in an RTO, and the Commission should reaffirm the availability of the RTO Incentive to all transmission owning utilities that join and remain in an RTO. Additionally, to the extent that the Commission has concerns about the Court of Appeals for the Ninth Circuit's decision in *Cal. Pub. Util. Comm'n v. FERC*,[43] the Commission should make use of the record in this proceeding to clarify that a transmission owner that joins and remains in an RTO will be eligible for the RTO Incentive regardless of why the transmission owner is participating.[44]

Under Section 205 of the FPA ("Section 205"), all rates for or in connection with Commission-jurisdictional sales and transmission services are subject to Commission review to assure that they are just and reasonable, and not unduly discriminatory or preferential.[45] As part of its reforms of the wholesale electricity market, the Commission encouraged transmission owners to establish and transfer operational control of their facilities to certain regional non-profit entities to, among other things, promote competition and coordinate efficient and non-discriminatory transmission service.[46] The Commission found that inducing utilities to join and

[41] *Id*. at QQ 1-2.

[42] 18 USC § 824s(c).

[43] 879 F.3d 966 (9th Cir. 2018).

[44] NOI at Q 61.

[45] 16 U.S.C. §§ 824d(a), (b), (e); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 773-74 (2016); *see also Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 254 (D.C. Cir. 2007).

[46] *See Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 536-37 (2008).

remain in RTOs is consistent with the purpose of Section 219 to provide incentive-based rate treatments that benefit consumers by ensuring reliability and reducing the cost of delivered power.[47] As the Commission emphasized, "the consumer benefits, including reliability and cost benefits, provided by [t]ransmission [o]rganizations are well documented," and the "best way to ensure those benefits are spread to as many consumers as possible is to provide an incentive that is widely available to member utilities . . . and is effective for the entire duration of a utility's membership in the [t]ransmission [o]rganization."[48]

The reliability and consumer benefits provided by RTOs are well-documented.[49] In Order No. 2000, the Commission found that RTOs would provide significant benefits to customers, including, but not limited to, increased efficiency through regional transmission pricing, improved congestion management, improved grid reliability, and more efficient planning for transmission and generation investments.[50] The Commission concluded that "[a]ll of these improvements to the efficiencies in the transmission grid will help to improve power market performance, which will ultimately result in lower prices to the Nation's electricity consumers."[51] Congress recognized these benefits in EPACT 2005, when it specifically required

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[47] *See* Order No. 679-A, at P 86.

[48] *Id*. (footnote omitted).

[49] The Commission, Congress, and courts all have recognized the many, and significant, benefits that flow from such organizations to the public. *See, e.g.*, *Morgan Stanley*, 554 U.S. at 536-37 (noting that regional transmission organizations combine multiple utility power grids into a single transmission system to "reduce technical inefficiencies caused when different utilities operate different portions of the grid independently," and "perform other functions, such as running auction markets for electricity sales and offering contracts for hedging against potential grid congestion"); *Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278, 280-81 (describing anticipated public benefits from regional transmission organizations, including reduction of regional pricing disparities, creation of efficient markets for new power generators, and elimination of transmission inefficiencies and opportunities for discrimination); 16 U.S.C. § 824s(c).

[50] *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, 31,024 (1999), 65 Fed.Reg. 810, 829 (2000), *on reh'g*, Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092, 65 Fed.Reg. 12,088 (2000) (codified at 18 C.F.R. § 35.34), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[51] *Id*.

the development of incentives for "each transmitting utility or electric utility that joins a Regional Transmission Organization."[52] In Order No. 679, the Commission found that implementing an ROE incentive for utilities to join and remain in RTOs was entirely consistent with the stated purpose of Section 219.[53] The Commission further held that the best way to ensure that the benefits of RTOs are spread to as many consumers as possible is to provide an RTO incentive that is widely available to member utilities and lasts throughout the utility's membership in the RTO.[54]

The benefits of RTO membership codified in Section 219 and identified by the Commission in Order Nos. 2000 and 679 are as relevant today as they were when the orders were issued. For example, PJM recently reported that its "operations, markets and planning result in annual savings of $3.2−4 billion[, which] represent the vital functions that PJM provides and that lead to less cost to consumers[.]"[55] The integrated PJM transmission system allows for region-wide sharing of capacity and leveraging of load diversity that has reduced the need for additional generation by up to $3.78 billion annually.[56] Importantly, PJM also forecasts that the RTO structure will continue to produce significant benefits into the future. PJM estimates that transmission upgrades approved by PJM between 2014 and 2023 are estimated to reduce costs to customers by more than $288 million in combined annual load payments and annual production costs.[57] Similarly, PJM projects that recently approved interregional projects with the MISO are

[52] 18 USC § 824s(c).

[53] Order 679-A at P 86.

[54] *Id.* at P 86.

[55] *PJM Value Proposition*, PJM Interconnection L.L.C., https://www.pjm.com/about-pjm/~/media/about-pjm/20151016-value-proposition.ashx (last visited June 26, 2019).

[56] *The Benefits of the PJM Transmission System*, PJM Interconnection L.L.C., at 1, April 16, 2019, https://www.pjm.com/-/media/library/reports-notices/special-reports/2019/the-benefits-of-the-pjm-transmission-system.pdf.

[57] *Id.* at 53.

expected to yield more than $100 million in congestion savings in just the first four years of operation, despite having a total capital cost of only $20 million. As PJM points out, these benefits and others are unlocked by having a broad, inter-zonal transmission system, which connects adjoining transmission-owning utilities.[58]

While the benefits to customers from their transmission owning utilities' participation in an RTO are clear, RTO membership is not without its risks to the transmission owner. Transmission owners who join an RTO turn over operational control of their systems to the RTO and, as a result, surrender the ability to independently plan for and manage their transmission systems. Transmission owners are also subject to a number of operational and coordination issues that they would otherwise avoid.

Transmission owners who join RTOs also subject themselves to broad RTO governance, and their operations become subject to changing market rules governed by increasingly larger and more diverse stakeholder groups with divergent interests.[59] These risks are only heightened in an RTO such as PJM, which represents thirteen states and the District of Columbia, each with its own separate policy goals. Moreover, when a transmission owner joins an RTO, it is required to develop or sign important foundational agreements that govern its rights and commitments to the RTO and the delegation of responsibility between the RTO and the transmission owner. Those agreements may change or be challenged over the course of the transmission owner's RTO membership and such changes could significantly alter the agreed-upon delegation of rights

[58] *Id.* at 4.

[59] And the processes for developing these rules continue to evolve. For example, at a recent Congressional hearing, Commissioner LaFleur stated, "We've heard a lot recently about potential ways to relook at Order No. 719 and improve stakeholder processes and I think that we should be alert to ways to do that." *Oral Testimony of Cheryl A. LaFleur Commissioner Federal Energy Regulatory Commission Before the Committee on Energy and Commerce Subcommittee on Energy United States House of Representatives*, Hearing on Oversight of the Federal Energy Regulatory Commission Hearing at 52:41 (June 12, 2019).

and responsibilities between the RTO and the transmission owner. Moreover, the composition of an RTO is always subject to change and such change can result in increased cost for the transmission owner or operational burden.[60]

Particularly relevant to this proceeding, transmission owners in an RTO may also be required by the RTO to build certain projects they would not otherwise choose to build.[61] In PJM for example, Schedule 6 of the PJM Operating Agreement allows PJM to designate a PJM Transmission Owner as the Designated Entity to build a transmission project.[62] Additionally, if a developer selected to build a Reliability Project fails to perform, the incumbent PJM Transmission Owner may be required to serve as the backstop entity to construct the project. Thus, a PJM Transmission Owner may find itself responsible for constructing a project that it neither proposed nor developed. PJM may also cancel the project for reasons outside of the control of the PJM Transmission Owner it designated to construct the project. While the Commission provides an abandonment incentive, that incentive does not address all of the risks for the transmission owner in that instance. The transmission owner must still demonstrate that all of its costs were prudently incurred. These risks create uncertainty and regulatory and investment risk that may not be present for non-RTO member transmission owners completely in control of their own systems and transmission planning.

Given the requirements and obligations that RTO membership placed on RTO-member transmission owners when the Commission first established the RTO Incentive, the 50 basis point ROE adder was reasonable. Since then, the requirements and obligations associated with

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[60] *E.g., Indicated SPP Transmission Owners v. Sw. Power Pool, Inc.*, 162 FERC ¶ 61,213 (2018), *reh'g denied*, 165 FERC ¶ 61,005 (2018).

[61] *See* PJM Operating Agreement, Schedule 6 §§ 1.5, 1.7. Schedule 6 of the PJM Operating Agreement is referred to as the Regional Transmission Expansion Plan or "RTEP". PJM can designate the transmission owner in certain instances specified in § 1.5.8(l).

[62] *Id.*

RTO membership have only increased. Consequently, while an increase in the RTO Incentive might very well be justified under current facts and circumstances, at a minimum the Commission should maintain the RTO Incentive at 50 basis points.[63]

The RTO Incentive recognizes the important benefits that RTOs provide to customers and the significant risks RTO membership can impose on transmission owners and provides a degree of investment and regulatory certainty by ensuring that at least some risk of RTO membership is offset by an increase in ROE. The RTO Incentive makes RTO membership a more attractive option for shareholders, which in turn, properly incentivizes transmission owners to join and remain in RTOs and ensures that the benefits of RTO membership are spread to as many consumers as possible. Accordingly, the Commission should maintain the RTO Incentive for transmission owners that join and remain in an RTO for the entire period they remain in the RTO. The Commission should not limit the RTO Incentive to new transmission owners or only award the RTO Incentive for a finite period of time.[64] The Commission should also continue to award the RTO Incentive to the transmission owner and not make the incentive a project-specific incentive.[65] As discussed above, the benefits to customers of RTO membership coupled with the risks RTO membership confer to transmission owners justify making the RTO Incentive eligible to all transmission owning utilities, regardless of whether a utility seeks the adder for joining an RTO or for remaining in an RTO. As the Commission recognized in Order No. 679, establishing a different policy would create perverse incentives for utilities to join an RTO, avail themselves

[63] NOI at Q 63.

[64] *Id*. at Q 64.

[65] *Id*. at Q 65.

of the RTO Incentive for the period allowed, and then leave the RTO.[66] Stability and certainty are important for both investors and customers.

The benefits and risks of RTO participation remain the same regardless of the reason a transmission owner joins and remains in an RTO, and the RTO Incentive should not depend on the reason for joining or remaining in an RTO.[67] The Commission's questions regarding the RTO Incentive in the NOI seem to be based on questions about *Cal. Pub. Util. Comm'n v. FERC*.[68] Importantly, the Ninth Circuit's decision did not find that application of the RTO Incentive to transmission owners whose RTO membership was required by a state utility commission to be unjust and unreasonable or otherwise improper. Rather, the Ninth Circuit found that the Commission had failed to justify such application on the record before it.[69] If the Commission has concerns, it can use this opportunity to clarify that its intent in Order No. 679 was to allow all transmission owning utilities to be eligible for the RTO Incentive, regardless of the reason for participation.

Specifically, the Commission should clarify that the benefits of RTO membership to consumers warrant providing the adder for participation in an RTO regardless of the reason for joining and remaining.[70] This would be consistent with the express terms of Section 219, which directs the Commission to develop incentives for all transmission owning utilities that participate in an RTO[71] and would also be sound reasoning as a matter of policy.[72] Similarly, the risks of

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[66] Order No. 679 at P 331.

[67] NOI at Q 66.

[68] 879 F.3d at 974.

[69] *Id*.

[70] NOI at QQ 61, 63.

[71] 18 USC § 824s(c).

[72] It would also be consistent with the Commission's decision in Order No. 679 to decline conditioning the applicability of the RTO Incentive on why a transmission owner *joined* an RTO.

RTO membership and the investment needs of the transmission owner are the same regardless of whether a transmission owner's membership is voluntary or involuntary. Differentiating between transmission owners on this basis would therefore be unduly discriminatory. If the Commission limits application of the RTO Incentive to utilities based on their reason for joining an RTO, the Commission will place certain utilities at a disadvantage for attracting capital investment. The Commission would also create needless investment uncertainty in circumstances where a state considers requiring its incumbent utilities to join an RTO. Removing the RTO Incentive in response to state action will effectively allow the states, and not the Commission, to determine whether the RTO Incentive is available for a particular transmission owner's RTO membership. This would contravene the express terms of Section 219 and the Commission's jurisdiction over transmission rates.

C. The Commission Should Find All Transmission Projects Directed by a Government Entity or RTO To Be Eligible for Recovery of 100% of Prudently Incurred Abandonment Costs.

In Order No. 679, the Commission interpreted Section 219's mandate and established the abandonment incentive to allow transmission owners to recover 100 percent of prudently-incurred costs associated with abandoned projects be included in transmission rates if the abandonment was outside the control of management.[73] The Commission found that the incentive would be an effective means to encourage transmission development by reducing the risks of not recovering costs for projects that are abandoned for reasons outside the control of the transmission owner.[74] However, recognizing that it retained a duty to ensure that costs recovered through rates are just and reasonable, the Commission conditioned this incentive on a requirement that the transmission

[73] Order No. 679 at P 163.

[74] Order 679-A at P 104.

owner submit a filing under Section 205 demonstrating the prudency of the abandoned costs.[75] While the abandonment incentive remains an effective means of mitigating some of the risk and uncertainty inherent in transmission development, the Commission should amend its existing incentive policy to make all projects that a transmission owner is directed to build by an RTO or a government entity be eligible for 100% recovery of prudently incurred abandonment costs. Specifically, the Commission should provide that such projects are eligible for the abandonment incentive if cancelled for reasons beyond the transmission owner's control, subject to a Section 205 filing to demonstrate the prudency of the costs to be recovered.[76]

Since issuing Order No. 679, the Commission has routinely granted authorization to recover 100% of abandoned project costs when requested, particularly within RTOs where development risk is often compounded by the need to secure permits and approvals in multiple jurisdictions and the fact that the RTO retains the decision of whether the project should be continued.[77] In granting these requests, the Commission has consistently affirmed that the abandonment incentive serves important risk-mitigation functions. However, the Commission has found that only costs incurred after the date of the Commission order approving the abandonment incentive are eligible for 100 percent recovery. In reaching this conclusion, the Commission explains that to allow otherwise would be to incent conduct that has already occurred.[78]

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[75] Order No. 679 at P 166.

[76] NOI at QQ 52, 53, 62 and 77.

[77] *See, e.g., PPL Electric Utilities Corp. and Pub. Serv. Electric and Gas Co*, 123 FERC ¶ 61,068, at P 47 (granting the abandonment incentive and noting that "[d]ependence upon approval by multiple jurisdictions introduces a significant element of risk to the [Project] that is not faced by utilities building transmission facilities within a single jurisdiction.); *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at PP 58-59 (2011) (granting the abandonment incentive and finding that the need to obtain routing and other regulatory approvals from various state commissions "introduce a significant element of risk"); *Citizens Energy Corp.*, 129 FERC ¶ 61,242 (2009) (granting the abandonment incentive).

[78] *See, e.g. San Diego Gas & Electric Co.*, 157 FERC ¶ 61,056, at PP 10, 21 (2016).

In the NOI, the Commission asks whether there are certain circumstances in which an automatic award of the abandoned plant incentive might be appropriate.[79] The Commission should make all projects where a transmission owner is directed to build by an RTO or a government entity eligible for 100% recovery of prudently incurred abandonment costs if the project is cancelled for reasons beyond a transmission owner's control.[80] Doing so would ease the administrative burden of having to request the abandonment incentive for each project that a transmission owner is directed to build and ensure that the transmission owner can recover 100 percent of its prudently incurred costs. The incentive would also eliminate instances where 100 percent recovery of costs was denied for similarly situated transmission owners and projects due solely to the timing of the request.[81] When a transmission owner is directed to build a project by an RTO or a government entity, the concerns raised by the Commission in orders rejecting the abandonment incentive (*i.e.*, that the incentive must be used to *incentivize* conduct) do not apply, because the transmission owner is required to build a project that has already been found to support the policy objectives in Section 219 as implemented through Order No. 679. Similarly, any concerns that making all such projects eligible for automatic authorization for the abandonment incentive will incentivize transmission owners to take unnecessary risks are unfounded.[82] The decision to build the project is outside of the transmission owner's control, and the scope and nature of the project is already defined by the RTO or government entity. The

[79] NOI at Q 77.

[80] *Id*. at QQ 90-91

[81] For example, in PJM, baseline projects included in the RTEP are presumed to not be routine, obviating the need for the transmission owner to make such a showing prior to receiving the incentive. *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 58 (2007) ("Projects that are identified as 'baseline' projects in the PJM RTEP process are those that benefit customers in one or more transmission owner zones for the purpose of maintaining reliability or mitigating congestion on the PJM grid. Such projects therefore are, by definition, regional projects and thus, not routine.").

[82] NOI at QQ 77 and 78.

Commission has granted this type of treatment in some RTOs where the RTO directs the project to be built and should use this incentive process to extend this treatment to all projects directed to be built by an RTO or government entity.[83]

Making projects directed to be built by an RTO or governing entity eligible for 100% abandonment cost recovery is also appropriate given the additional uncertainty faced by transmission owners who are directed to construct projects through RTO planning processes such as the PJM RTEP. As discussed above, transmission owners in PJM often face the challenge of having to secure multiple permits and approvals from a number of different state agencies, each with its own requirements. Additionally, as the transmission provider, PJM can direct a transmission owner to construct a project that the transmission owner would not have otherwise built, and PJM may then cancel the project if PJM later concludes that the conditions supporting the construction need for the facility have changed.[84] This introduces a significant element of risk that a project may be abandoned for reasons entirely outside of the transmission owner's control.

The Commission can mitigate these risks and provide additional regulatory certainty by finding a project will be eligible for 100% recovery of prudently incurred abandonment costs if the transmission owner is directed to build the project and the project is then then cancelled for reasons outside of the transmission owner's control. In order to fully address the risk that a project may be cancelled, the abandonment incentive should cover all costs associated with the

[83] *E.g.*, Sw. Power Pool Open Access Transmission Tariff at Attachment J, Section VIII (Uncompleted Network Upgrades).

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

development of a project, including any pre-construction and development costs. The certainty of this cost recovery removes an obstacle to developing transmission infrastructure and is consistent with both long-standing Commission precedent[85] and Section 219(b)(1) of the FPA. The Commission will still have the ability to review the prudency of the costs when the transmission owner makes the necessary filing pursuant to Section 205 to recover the costs through its transmission rates.[86] At that time, the project will be subject to the necessary prudency review to ensure that the costs the transmission owner seeks to recover were prudently incurred.

IV. THE COMMISSION SHOULD CONSIDER ADDITIONAL INCENTIVE POLICIES TO PROMOTE IMPORTANT DEVELOPMENT PRIORITIES.

A. The Commission Should Take Into Account Other Benefits when Considering the Level of Incentives Granted.

Although the Commission should retain the existing incentives, the Commission need not limit itself to consideration of reliability and economic benefits when determining the total incentives to provide for a given project. Rather, the Commission should establish other benefits that can be taken into account when considering the level of incentives granted under the existing risk-reducing incentive framework.

While economic and reliability benefits may be the focus of Section 219, the statute does not limit the Commission's consideration to economic and reliability benefits when evaluating a transmission owner's request for incentives. Rather, Section 219 provides the Commission with flexibility to consider other metrics when establishing incentive-based rate treatment. Section 219 (b)(2) directs the Commission to provide a ROE that attracts new investment in transmission

[85] *See, e.g.*, *Southern California Edison Co.*, 112 FERC ¶ 61,014 at P 58-61 (2005), *reh'g denied*, 113 FERC ¶ 61,143, at PP 9-15 (2005).

[86] NOI at Q 79.

facilities (including related transmission technologies).[87] Similarly, Section 219 (b)(3) directs the Commission to develop incentives to "encourage deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities . . . ."[88] Both of these provisions provide the Commission with a broad mandate to consider benefits beyond reliability and transmission congestion, and the Commission should not limit its analysis to these types of benefits when evaluating requests for incentives under the framework adopted in Order No. 679.[89]

In the NOI, the Commission highlights a number of potential benefits that may warrant incentive treatment, including projects that provide for more flexible transmission operations,[90] improve security and resilience,[91] and use new and innovative technologies to improve existing transmission facilities.[92] These types of projects are important to ensure a reliable, resilient, and efficient transmission system. Accordingly, the Commission should support the construction of such projects. While the Commission does not need to create specific incentives for these types of projects, it can and should give strong consideration to the benefits those projects provide when evaluating the scope and extent of incentives requested by a project.[93] The Commission also does not need to adopt a specific formulaic approach to its review of these type of incentive requests. Rather, it should review the benefits in combination with the risks to ensure it places the necessary value on the benefits when approving the overall incentive.[94] For example, if a

[87] 16 USC § 824(s)(b)(2).

[88] 16 USC § 824(s)(b)(3).

[89] NOI at QQ 4, 12.

[90] *Id*. at P 26.

[91] *Id*. at PP 27-28; QQ 32-36

[92] *Id*. at P 29; QQ 37-43.

[93] *Id*. at QQ 6-7.

[94] *Id.* at QQ 92-93.

transmission owner seeking a project-specific ROE incentive for a baseline reliability project in PJM demonstrates that the project will also improve the security and resilience of the PJM transmission system, the Commission should take those benefits into consideration when determining the level of ROE incentive that is appropriate for the project. The Commission should consider increasing the ROE incentive based on the additional benefits provided. As discussed below, the Commission should also implement a policy allowing projects to go beyond the upper bound of the zone of reasonableness in situations where a reliability or economic project provides certain other enumerated benefits to the system.[95]

Allowing for additional or increased incentives in these instances would incentivize transmission owners to develop projects that achieve multiple goals, even if the project is selected for development based on only one of the benefits provided (*i.e.* an Economic Project in PJM).[96] The Commission could also designate additional classes of benefits that will qualify a project for enhanced incentive-based treatment under the existing risk-reducing incentive framework, but retain the flexibility to review projects that provide such benefits or characteristics on a case by case basis. The Commission adopted this treatment of advanced technologies in Order No. 679.[97] However, to date, the Commission appears to have placed limited emphasis on advanced technologies when considering incentive requests. The NOI provides the Commission an important opportunity, consistent with Sections 219(b)(2) and (b)(3), to enhance and expand this process to include other types of projects that it will consider when establishing the level of incentives that a project is eligible to receive. Accordingly, the

[95] *Id.* at Q 5.

[96] *Id*. at Q 6.

[97] Order No. 679 at P 288.

Commission should identify specific projects that qualify for such treatment in its incentive process.[98]

However, if the Commission considers the benefits of a project when granting incentives, the Commission should clarify that the incentive will be established based on the initial benefit analysis that gave rise to the project and the incentive award.[99] The incentives should not be subject to re-measurement over a project's life.[100] The incentive should also last for the duration of the project where appropriate and not be limited based on the type of the incentive granted.[101] Investment certainty is important, and the circumstances and system conditions used to determine benefits may change for reasons entirely outside of a transmission owner's control. For example, if a project is granted benefit-based incentives due to the resilience benefits that it provides to the system, those incentives should not be altered or revoked if the benefits change as a result in a change in system topography over the life of the project.[102] Re-measurement of benefits over the life of a project would greatly increase the risk to shareholders and investors and would limit the usefulness of any benefit-based incentives to promote transmission development.

B. The Commission Should Create Incentives That Allows Transmission Owners to Capitalize Expenses for Projects that Address Important Objectives

[98] NOI at QQ 30, 32, 37, 40, 43, 69, 70.

[99] *Id*. at QQ 10, 85-89.

[100] *Id*. at Q 11.

[101] *Id*. at Q 83.

[102] *Id*. at Q 41.

The existing risk-reducing incentives mitigate some of the risk and encourage investment in new transmission projects. However, the Commission should also consider developing an incentive to allow transmission owners to capitalize certain operational expenses that provide specified benefits to their existing transmission systems or address important policy objectives.[103] As the transmission system continues to evolve, more and more funds are spent on software and grid management applications, some of which are currently booked as an expense. Similarly, transmission owners are expensing increasingly large amounts on vegetation management following the initial clearing of a right of way in an effort to maintain the reliability and longevity of their transmission assets, and in some cases may be required to expand vegetation management beyond the right-of-way to ensure safe operating conditions. Transmission owners may also seek to apply North American Reliability Corporation ("NERC") vegetation management standards to lower voltage transmission facilities (notwithstanding that there is no NERC requirement to do so) to promote the reliability of their entire systems. The increased spend associated with these decisions can cause internal competition for dollars, and may limit the transmission owner's ability to invest in new and innovative technologies.

By allowing transmission owners to capitalize certain expenses, such as innovative software or vegetation management, the Commission can provide a relatively low-cost mechanism to incentivize transmission owners to consider and implement innovative solutions that could ultimately offset the need for more expensive transmission projects that would otherwise be capitalized. The Commission should allow for capitalization of certain expenses based on a demonstration that the expenses will extend the life of the assets or allow the assets to operate more efficiently. This demonstration, which could be made on a case-by-case basis,

[103] *Id*. at QQ 32, 41.

would properly incentivize transmission owners to invest in new and innovative solutions, and would be entirely consistent with the mandates in Section 219 that the Commission ensure the reliability of the transmission system and "encourage deployment of . . . other measures to increase the capacity and efficiency of existing transmission facilities . . . ."[104]

C. The Commission Should Revisit Its Decision to Cap ROE Adder at the Higher End of the Zone of Reasonableness

Finally, the Commission should reconsider its existing policy of capping ROE incentives at the higher end of the zone of reasonableness. In Order No. 679, the Commission affirmed that it would grant an ROE incentive on a case-by-case basis to all public utilities for investments in transmission facilities that benefit consumers by ensuring reliability or reducing the cost of delivered power.[105] However, the Commission stated that any incentive-based ROE would be capped at the higher end of the zone of reasonableness.[106]

In the NOI, the Commission asks whether the upper limit on incentive-based ROEs should be retained.[107] The Commission should move away from use of the higher end of the zone of reasonableness as a blanket cap on incentive-based ROEs. While ROE certainty is important, the current cap on incentive-based ROEs limits the Commission's ability to provide the full suite of incentives required under Section 219. The cap also places significant uncertainty that the incentive granted to address the risks a project will face and the benefits it will provide will actually be realized by the Transmission Owner. Importantly, as the Commission recognized in Order No. 679, "it can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to

[104] 16 USC § 824s(a), (b)(3); NOI at Q 43.

[105] Order No. 679 at P 91.

[106] *Id.*

[107] NOI at Q 95.

construction of those facilities will not be later altered in a manner that undermines the basis for financing of those facilities."[108] To create certainty for investors and attract the necessary capital investment, ROE incentives should apply for the life of the project. However, as the Commission is well aware, the zone of reasonableness for a transmission owner can change over time as market conditions change. If a transmission owner's ROE zone of reasonableness is reduced at a point in the future, the incentives granted to mitigate the risks of a project may lose some or all of their value. Certainty is critical to ensuring proper investment.

Accordingly, the Commission should revisit its decision to cap ROE adders at the higher end of the zone of reasonableness.

[108] Order No. 679 at P 36.

V. CONCLUSION

WHEREFORE, for the above reasons, the PJM Transmission Owners respectfully request that the Commission accept these comments and, for the reasons discussed above, the Commission should maintain its existing incentive policies with the minor modifications and clarification discussed above and the additional incentive policies to promote important development priorities outlined above. The PJM Transmission Owners appreciate the opportunity to have their comments considered by the Commission in this process.

Respectfully submitted,

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