

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

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

COMMENTS OF AMEREN SERVICES COMPANY

I. Introduction

Ameren Services Company ("Ameren"), on behalf of Ameren Transmission Company of Illinois, respectfully submits the following comments in response to the Notice of Inquiry ("NOI" or "Inquiry")¹ issued by the Federal Energy Regulatory Commission ("FERC" or the "Commission") in the above captioned proceeding on March 21, 2019. The Commission seeks comment on the scope and implementation of its electric transmission incentives policy and regulations pursuant to section 1241 of the Energy Policy Act of 2005,² codified as section 219 of the Federal Power Act ("FPA").³

FPA section 219 directed the Commission to "establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion" through, for example, "promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce," "provid[ing] a return on equity that attracts new investment

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

² Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (codified as amended in scattered sections of 42 U.S.C. and 16 U.S.C.) (“EPAct 2005”).

³ 16 U.S.C. 824s.

in transmission (including related transmission technologies)", and "encourag[ing] deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve the operation of the facilities."⁴ The Commission implemented FPA section 219 in Order No. 679⁵ and in 2012 issued a Policy Statement to provide additional guidance and clarity with respect to certain aspects of its incentives policy.⁶

Since passage of EAct 2005, much has changed, yet the need for a robust transmission system remains, and in fact, has grown.⁷ Constructive Commission policy is key to enabling the investment in transmission that ensures reliability and facilitates an integrated grid of the future. The Commission has an opportunity through this Inquiry and other pending proceedings to recognize the significant customer value transmission enables and solidify its support for transmission investment. Chief among actions the Commission should take is to address the pending Midcontinent Independent System Operator, Inc.'s ("MISO") Transmission Owner cases regarding the methodology for determining base

⁴ FPA § 219, 16 U.S. Code § 824s.

⁵ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

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

⁷ See WIRES, *The Coming Electrification of the North American Economy: Why We Need a Robust Transmission Grid*, pp. ii-vii (March 2019) (finding that \$30-90 billion of transmission investments will be needed by 2030 to meet changing system needs and accommodate increasing electrification).

return on equity ("ROE").⁸ Transmission owners and investors need certainty and stability on base ROE. Once that is established, the Commission should reaffirm the 50 basis point ROE incentive for joining and remaining a member of an regional transmission organization ("RTO") or independent system operator ("ISO") (collectively, "RTO/ISO"),⁹ and then focus on generally modest reforms to its incentives policy as suggested herein. Ameren appreciates the opportunity to share its perspectives.

II. Executive Summary

Congress's direction to the Commission is clear: the Commission is to provide incentives for actions that benefit customers by ensuring reliability and reducing the cost of delivered power by reducing congestion.¹⁰ Congress afforded the Commission

⁸ See *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018).

⁹ See, e.g., *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084 (2007) (finding that, as "stated in Order No. 679-A, we will authorize incentive based rate treatment for public utilities that continue to be a member of an RTO. Section 219 of the FPA specifically provides that the Commission shall provide for incentives to each transmitting utility that joins a Transmission Organization. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219."); *PPL Elec. Utilities Corp. and Pub. Serv. Elec. & Gas Co.*, 123 FERC ¶ 61,068 (2008) (finding that a "50 basis point adder is appropriate. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219. The best way to ensure these benefits is to provide member utilities of an RTO with incentives for joining and remaining a member. As explained in Order No. 679-A, the decision to provide incentives is a policy one aimed at promoting particular policy objectives, unrelated to any particular project.").

¹⁰ Congress mandated incentive rate treatments for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing congestion through: (1) the promotion of capital investment in the enlargement, improvement, maintenance and operation of all facilities for the transmission of electric energy in interstate commerce; (2) provision of a return on equity that attracts new investment in transmission facilities; and (3) deployment of transmission technologies and other measures to increase capacity and efficiency

flexibility in the types of incentives, with the exception of the "return on equity that attracts new investment in transmission facilities (including related transmission technologies)," and did not provide guidance to the Commission on how to implement the new requirements except to require incentive-based rate treatments by rule and that all rates approved under the Commission's rule implementing FPA section 219 are subject to the requirements of FPA sections 205 and 206.¹¹ The Commission's current "risks and challenges" test inappropriately and narrowly focuses on the risks and challenges of a project, ignoring FPA section 219's overarching directive to incentivize transmission that benefits customers and provide a return on equity that attracts new investment. The Commission should revise its approach from one focused on risks and challenges to one focused on an investment's benefits, or value, to customers, consistent with the dictates of EPCA 2005.¹²

The Commission should also defend and retain the 50 basis point policy-based incentive provided to each transmitting utility or electric utility (herein referred to as "transmission utility") that becomes and remains a member of an RTO/ISO.¹³ The award

of existing transmission facilities and improve operation of the facilities. In addition, Congress directed the Commission to provide incentives to each transmitting utility or electric utility that becomes a member of a Transmission Organization. 16 U.S.C. §§ 824s(a) and (b).

¹¹ 16 U.S.C. 824(d) and 824(e).

¹² The threshold requirements of FPA section 219 should be met, and an applicant should have the opportunity to identify other attributes of an investment that bring value to customers, e.g., multi-state transmission projects, use of advanced technologies.

¹³ *See, Cal. Pub. Util. Comm'n v. FERC*, 879 F.3d at 974-75, 977; *see also Pacific Gas and Electric Co.*, 164 FERC ¶ 61,121 (2018) (establishing a briefing schedule to supplement the record on the specific questions raised on remand).

of an incentive in the form of equity basis points is appropriate, reflects the value to customers of a transmission utility's membership in an RTO/ISO, and compensates utilities for the additional risk associated with transferring control of utility assets and decision-making to a third party, and thus is justifiable on policy grounds.¹⁴ Time and again the benefits of RTOs/ISOs have been demonstrated. Customers, developers, and new entrants in roughly two-thirds of the country enjoy the benefits made possible by transmission utilities that turn over operational control of their transmission facilities to RTOs/ISOs.

Finally, the Commission should affirm certain of its offered rate incentives (i.e., hypothetical capital structure, accelerated depreciation), and continue to allow applicants, on a case-by-case basis, to explain and justify that use of the rate incentive will benefit customers. Given the significant role of RTOs/ISOs in determining which transmission projects are built and who should build them, the Commission should consider automatically granting a 100 percent abandoned plant incentive for projects approved in a regional plan¹⁵ that are cancelled due to factors beyond the control of the transmission owner. In addition, given the known benefits of Construction Work In Progress ("CWIP") (e.g., aids cash flow, reduces the cost of borrowing, reduces rate shock), the Commission should make 100 percent CWIP for projects approved in a regional plan an automatically approved ratemaking option for transmission utilities.

¹⁴ See, e.g., *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 31 (2007) (finding that "the decision to provide incentives for participation in an RTO is a policy one, aimed at promoting particular policy objectives, unrelated to any particular project.").

¹⁵ As used here, "approved" is not limited to projects selected in a regional plan for purposes of cost allocation. *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC 61,051 (2011).

III. Comments

Below Ameren addresses each of the following areas of Commission interest as described in Section II of the NOI: (A) whether the "risks and challenges" approach remains the most effective means of complying with Congress's directives in FPA section 219 and possible other approaches; (B) what expected benefits or project characteristics warrant incentives; (C) the types of incentives the Commission has awarded to date and whether they remain relevant and appropriate; (D) whether incentives should be revisited if there is a material modification to the project or a significant change in expected benefits; and (E) the need for metrics and reporting for the Commission to evaluate the effectiveness of incentives. Ameren addresses most, but not all of the issues, and where issues are addressed not every individual question is responded to. Instead, questions are addressed in a global manner.

A. Approach to Incentive Policy: Whether the "Risks and Challenges" Approach Remains the Most Effective Means of Complying with Congress's Directives in Section 219

The Commission states that it is considering whether the "risks and challenges" approach remains the most effective means of complying with FPA section 219, and asks whether providing incentives to address risks and challenges is an appropriate proxy for the expected benefits brought by transmission and identified in FPA section 219 (Q2); and whether its current approach of considering risks both in calculating a base ROE and in assessing the availability and level of any ROE adder for risks and challenges is appropriate (Q3). The Commission then offers two alternative approaches to the "risks and challenges" framework - expected project benefits and project characteristics - and seeks comment on those and ideas for other potential approaches. Finally, the Commission asks commenters

to address how each approach could or should be implemented, and the benefits and drawbacks.

The Commission should revisit its current "risks and challenges" approach and related nexus test which requires "applicants to demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges" with "sufficient explanation and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package" to ensure that "if some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE."¹⁶ (Q1). The "risks and challenges" approach is strained and overly complicated. The required showing for incentives should be straightforward, consistent with FPA section 219's emphasis on benefits to customers, and a request for an ROE incentive should not require a demonstration that the investment presents risks not already addressed by non-ROE incentives or otherwise reflected in the base ROE. As the Commission suggests, evaluation of the interrelationship of ROE and non-ROE incentives is difficult.¹⁷ When base ROE is added to the test, it becomes even more complex. In addition, the current approach creates a hurdle that minimizes FPA section 219's direction to the Commission to provide an incentive return on equity for transmission investments.¹⁸ The Commission should abandon its current test that is

¹⁶ 2012 Policy Statement at P 11 (citing to Order No. 679-A at P 27).

¹⁷ Inquiry at P 46.

¹⁸ FPA section 219(b)(2) states that the Commission's rule implementing section 219 shall "provide a return on equity that attracts new investment in transmission facilities (including related transmission technologies), and the condition precedent found in 219(a) concerns benefit to consumers through ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.

focused on risks and challenges and adopt a test focused on benefits to customers. (Q1, Q2, Q3). A Commission policy focused on benefits addresses the difficulties of the “risks and challenges” approach, and avoids the perception of encouraging risky projects or rewarding transmission developers to have more and take on added risk. Moreover, such an approach is more consistent with the statute which specifically references “benefiting consumers” by ensuring reliability and reducing the cost of delivered power by reducing congestion.

The Commission is not precluded from switching approaches. Rather, it was the Commission that linked “incentives” and “risks” in Order No. 679, when it could have as easily linked incentives with the demonstrable benefits of transmission investment.¹⁹ This is not to say that transmission projects, particularly those that span multiple states and require extensive coordination, do not present challenges, because they certainly do. However, a framework focused primarily on benefits ties more directly to and is consistent with FPA section 219, and can also recognize the importance and significance associated with transmission projects that present special challenges. If the Commission wants to incentivize transmission owners/developers to invest in and undertake projects of value to customers, it should recognize that there are often challenges associated with those projects and an ROE incentive can provide inducement to invest in the project that, while challenging and resource intensive, is the better one for customers.

The Commission asks whether directly examining a transmission project's expected benefits (Q4) or project characteristics (Q8) as an alternative approach to the current “risks and challenges” would improve its incentives policy, consistent with the goals of FPA section 219, and whether there are drawbacks. Examination of a project's expected benefits

¹⁹ Order No. 679 at P 25.

as a basis to award incentives would be an improvement over the current approach, and is consistent with the FPA section 219 requirements. Such an approach would provide a level of transparency and certainty to the incentive process, and would allow the Commission to incent the types of projects it seeks to have constructed. Applicants should have the opportunity to present a demonstration of expected benefits – qualitative and quantitative – in support of a requested incentive. Because the benefits of transmission are numerous and growing, an approach that does not exhaustively define the types of benefits will help prevent the Commission's incentives policy from becoming stale.²⁰

Understandably, the Commission's incentives policy should focus on those projects where the investment made has the potential to bring ample benefits to customers. The Commission should establish a rebuttable presumption that a project that is designed with a positive benefit-to-cost ratio is eligible for an ROE incentive.²¹ The level of the ROE incentive would then be a function of the projected benefits, as described below, for those projects designed to meet or exceed the threshold benefit-to-cost ratio. The Commission should also limit the application of the ROE incentive to the cost estimate that was used to determine at the time of approval whether the project was cost-effective. This avoids

²⁰ Smarter Energy Infrastructure: The Critical Role and Value of Electric Transmission (2018), available at: <http://www/eei/org/issuesandpolicy/transmission/Documents/2018%20Smarter%20Energy%20Infrastrucutre%20The%20Critical%20Role%20and%20Value%20of%20Electric%20Transmission.pdf>.

²¹ To avoid inadvertently restricting incentives, the Commission should retain some discretion to award an ROE incentive in the event there is a project that, by design, will not have a positive benefit-to-cost ratio (initially or otherwise), but the Commission nonetheless finds, on other grounds, that the project merits an ROE incentive.

revisiting the incentive based on changing benefits, and keeps the incentive tied to the cost component of the ratio used to approve the project.

As noted above, the 2012 Policy Statement limited the opportunity to receive a ROE incentive by forcing the applicant to first mitigate certain risks through use of non-ROE incentives, and requiring the applicant to tease out what project risks remain that are not already accounted for in the base ROE. A focus on the potential benefits of a transmission investment avoids the need for this type of analysis, is transparent and easily administered. Under this type of approach, the Commission could establish the ROE incentive as a function of the benefits of the project, and could use a sliding scale that provides a higher incentive ROE for projects that have multiple benefit streams. For example, a project may merit a 50 basis point (or more) ROE incentive if it is designed to address multiple needs more efficiently than separate/discrete projects and reduce the cost of delivered power, and may merit an additional 50 basis point ROE incentive if it also enhances access to new resources (including renewable resources) or incorporates design features that enhance resilience (e.g., storm hardening, enhanced communications technology). This type of approach would allow an applicant to rely on the quantitative assessments developed as well as qualitative factors to demonstrate the full value of its project. Alternatively, the Commission could have more targeted ROE incentives based on the level of a single benefit (e.g., 50 basis points for a net reduction in energy costs of \$400-500 million on a present value basis over 20 years). Importantly, this type of approach to determining incentive ROE avoids the need to cap the incentive at the top of the zone of reasonableness because the basis point incentive is not intended to compensate for risk as a part of the cost of equity. Rather, the incentive is more appropriately a

reflection of the value to customers. This approach provides certainty to transmission utilities/investors by making clear that an ROE incentive will not later be truncated if the top of the zone of reasonableness is reduced in a future base ROE case.

The Commission's list of "Incentive Objectives" provides a good starting point for the types of benefits (e.g., congestion reduction, efficient operations, enhanced power flow control, resilience) that can bring value to customers and warrant an ROE incentive whereas purely focusing on specific types of investments may be too limiting and exclude valuable investments.

B. Incentive Objectives

As the Commission explains, FPA section 219 directs it to promote certain specified goals, including promoting capital investment in the enlargement, improvement, maintenance, and operation of jurisdictional transmission facilities; providing an ROE that attracts investment in new transmission facilities and technologies; encouraging deployment of technologies and other measures that enhance the capability, efficiency, and operation of existing transmission facilities; incentivizing transmission owning public utilities to join an RTO; and allowing recovery of certain types of prudently-incurred costs.²² With that backdrop, the Commission seeks comment on what benefits or project characteristics warrant incentives, lists 12 benefits or project characteristics, poses a number of questions specific to each of those, and also asks commenters to consider: (1) how the Commission should define the benefit or project characteristic in question; (2) whether the Commission can quantify or measure the benefits or project characteristics, and where applicable, how it should do so; (3) how the Commission should incentivize the

²² Inquiry at P 19.

benefit or project characteristics if it decides to do so; and (4) the legal basis, extent and nature of the incentives.²³ For ROE adder incentives, the Commission expresses interest in knowing how many basis points would be appropriate and asks whether and how incentives other than ROE adders could encourage facilities with benefits or project characteristics like the 12 specifically mentioned.²⁴

As it did in Order No. 679, the Commission should interpret FPA section 219 to promote capital investment in a wide range of infrastructure investments that have either reliability or congestion benefits,²⁵ and should also provide guidance on the types of investments that may warrant an ROE incentive. The 2012 Policy Statement, albeit in the context of risks and challenges, listed the types of investments that may warrant an ROE incentive including projects that relieve severe or chronic congestion, unlock location-constrained resources, or apply new technologies that facilitate more efficient or reliable usage. These types of investments continue to be needed, as indicated by the Commission's identification of and questions regarding Economic Efficiency Benefits (Q22-Q25), Persistent Geographic Needs (Q26-Q28), Flexible Transmission System Operation (Q29-Q31), Improving Existing Transmission Facilities (Q37-Q43) and Unlocking Locationally Constrained Resources (Q47-Q49). Some of these categories would appear to have

²³ Inquiry at P 20.

²⁴ Inquiry at PP 22-35, encompassing Questions 17-56, reliability, economic efficiency, persistent geographic needs, flexible transmission system operation, security, resilience, improving existing transmission facilities, interregional transmission projects, unlocking locationally constrained resources, ownership by non-public utilities, Order No. 1000 transmission projects, and transmission projects in non-RTO/ISO regions.

²⁵ Order No. 679 at P 42.

overlapping objectives and, for purposes of these comments, have been grouped and collectively referred to as "Foundational Investments."

In addition to the above categories, the Inquiry seeks comment on areas of emerging interest such as Enhanced Reliability (Q17-Q19), Essential Reliability Services (Q20-Q21), Security and Resilience (Q34-Q36), as well as Interregional Transmission Projects (Q44-Q46), Ownership by Non-Public Utilities (Q50-Q51), and Order No. 1000 Projects (Q52-Q54).

Before turning to questions listed in each of the 12 categories, we address the Commission's opening questions regarding the legal basis, extent and nature of incentives, and how incentives other than ROE adders could encourage investments with the types of benefits and project characteristics outlined in the Inquiry.²⁶ There should be no question as to the legal basis for the Commission to provide incentives. Congress directed the Commission to establish by rule incentive-based rate treatments, including return on equity for new investments, and required all rates approved under any such rule are subject to the just and reasonable and not unduly discriminatory standard of FPA sections 205 and 206.²⁷ Moreover, the Commission granted requests for incentive treatments prior to the passage

²⁶ Inquiry at P 20.

²⁷ FPA § 219(d).

of EPAct 2005²⁸ and, before that, had policies regarding innovative rate treatments.²⁹ The concept of incentive rates is not new and, as the courts have recognized, there is no single formula for establishing a just and reasonable rate; rather what matters is whether the "end result" is just and reasonable.³⁰

As for other types of incentive rates, the Inquiry (Q69) seeks comment on types of incentives that could better encourage deployment of new technologies. Deployment of new technologies is a regular consideration for Ameren in its transmission planning, operations, and maintenance. Ameren's use and deployment of new technologies is a function of the reliability of the technology, user experience, and whether there is a benefit to customers. For example, Ameren has started to use drones to inspect transmission lines, and as policies regarding "line of sight" allow for the expanded use of drones, Ameren anticipates increased use. This could result in operations and maintenance cost savings, a flow through to customers under Ameren's formula rates. Ameren employed designs innovative at the time of project inception, including use of traveling wave fault technology that instantaneously provides fault location to the nearest tower, state of the art low-loss, high efficiency transformers with additional Smart Grid application of fiber optic based on

²⁸ *Western Area Power Administration*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement including 200 basis point ROE incentive), *reh'g denied*, 100 FERC ¶ 61,331 (2002) (affirming Commission grant of request for 200 basis point ROE incentive and ten-year depreciable life); *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,058 at P 1 (2004) (granting continued use of adjustment for revenue sharing between ratepayers and shareholders for non-tariffed new products and services).

²⁹ *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act*, 69 FERC ¶ 61,086 (1994).

³⁰ *See FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944).

temperature monitors, and a dynamic line rating feature that calculates a set of possible load/duration ratings. The Commission should allow applicants on a case-by-case basis to address the use of new technologies, demonstrate the benefits and propose an incentive, including a ROE incentive (stand-alone or in conjunction with a larger project). The Commission should also offer other ratemaking tools, like “split the savings rates” for investments in efficiency where the investment dollars may not be significant, but the value to customers is. Such an incentive may be particularly applicable to technologies that enable utilities to better control the flow of power.

Foundational Investments: Economic Efficiency (B2), Persistent Geographic Needs (B3), Flexible Transmission System Operation (B4), Unlocking Locationally Constrained Resources (B9),

The Commission states that it could tailor incentives to promote transmission projects that reduce congestion, facilitate interconnection of additional generation, and facilitate transmission of generation to load centers, and asks a series of questions on what seem to be four related but separate “Incentive Objectives” (B2, B3, B4 and B9). As a threshold matter, the Commission should neither tailor, prescribe, nor restrict incentives to only certain types of investments or projects. The Commission should remain open to providing incentives for myriad investments, including ones that, for example, “are scaled to more efficiently facilitate interconnection of, or transmission to, additional generation” (Q24), “will facilitate the interconnection of large amounts of resources” (Q47), or incorporate design features that enhance resilience (e.g., storm hardening, enhanced communications technology), as long as the investment benefits customers by ensuring reliability or reducing the cost of delivered power. This type of approach would be consistent with FPA section 219 which requires the Commission, by rule, to provide

incentive rate treatments that "promote capital investment in the enlargement, improvement, maintenance," "provide a return on equity that attracts new investment in transmission facilities," and "encourage[s] deployment of transmission technologies and other measures" to increase the capacity, efficiency and operation of existing facilities.

The Commission asks whether it should establish metrics (Q23, Q48), and if so, how the criteria should be established, and when more than one criteria applies, how to evaluate them in combination (Q25). As discussed in Section A, the level of ROE incentive should be a function of the expected benefit and value to customers, and the burden should be on the applicant to make that demonstration.³¹ However, the Commission should establish some framework, and provide illustrative examples to guide industry, perhaps based on projects that were previously granted an ROE incentive. For example, it may want to consider establishing ranges for ROE incentive relative to benefits or combinations of benefits, e.g., 25-50 basis point adder for investment that is expected to reduce congestion by \$20-\$50 million on average over the next three years, and an additional 25-50 basis point adder for an investment that also provides access for location-constrained resources, or accelerates an in-service-date, thereby providing greater value to customers (Q25). Projects like the MISO Multi-Value Projects would fall into this category,³² as

³¹ Case-by-case demonstration versus automatic approval is discussed in response to Q90.

³² *MTEP 17 MVP Triennial Review: A 2017 review of the public policy, economic and qualitative benefits of the Multi-Value Project Portfolio*, available at <https://www.misoenergy.org/planning/planning-test/multi-value-projects-mvps/#nt=%2Fmultivalueprojecttype%3AMVP%20Triennial%20%20Reviews&t=10&p=0&s=FileName&sd=desc> (last visited June 26, 2019) (detailing that MVP portfolio is expected to create \$12.1 to \$52.6 billion in net benefits over the next 20 years, and enable 52.8 million MWh of wind energy to meet renewable energy mandates and goals through the year 2031).

could transmission projects that address the interconnection needs of a significant portion of the commercially ready queue (Q49) and are jointly developed (with public or non-public utilities). Because not all benefits are easily quantifiable and not all regions will necessarily take a comprehensive view of benefits for all types of projects, the Commission should retain some flexibility to consider value to customers beyond the quantifiable benefits when providing ROE incentives. While the transparency and ease of administration make bright line metrics appealing, they can be limiting. As such, the Commission should not establish bright line metrics (Q23).

Emerging Interests: Enhanced Reliability and Essential Reliability Services (B1), Security (B5) and Resilience (B6)

The Commission asks whether it should tailor incentives to promote reliability projects that enhance transmission reliability above and beyond what is required by NERC reliability standards or other planning criteria (Q17), promote transmission that expands access to essential reliability services (e.g., frequency support, ramping, voltage support) (Q20); incentivize physical and cyber security enhancements at transmission facilities (Q32); and allow projects that enhance resilience to be eligible for incentives based on reliability-enhancing attributes (Q34) and the type of incentives that would be appropriate (Q36).

As stated above, the Commission's policy should not tailor incentives to particular types of projects. Rather, the Commission should consider when it evaluates a request for incentives whether the investment meets the threshold criteria of FPA section 219, any additional customer value from the investment, and whether the requested incentive is justified and otherwise just and reasonable pursuant to FPA section 205. Investments that demonstrably increase system resilience and reliability in the form of proactive measures

to address system threats should be eligible for an ROE incentive, either on a stand-alone basis or as part of a project whereas actions taken for enhanced reliability for a specified customer are more appropriate in an individualized service negotiation (e.g., defense installations).

Interregional Transmission Projects (B8)

The Commission explains that interregional transmission facilities have been scarce to date, despite such projects having the potential to provide more efficient power flow among regions and Order No. 1000's requirement for coordination among neighboring transmission planning regions. The Commission then asks whether it should use incentives to encourage development of interregional projects (Q44), whether all interregional projects should be eligible (Q46), and what types of incentives would be appropriate (Q46).

Incentivizing interregional transmission projects in isolation of the consideration of more fundamental reforms may make little difference to getting projects built. For example, planning cycles are not aligned, making cross-border projects difficult to identify. Consistency in system models, assumptions, supporting data, and scenario development are lacking, contributing to the lack of project identification. Likewise, restrictions (or overly prescriptive requirements) in Order No. 1000 on cost sharing may inhibit development.³³ The Commission should remove barriers first, and then provide incentives for transmission projects that can demonstrate potential value to customers. Interregional transmission projects arguably address the needs of a greater number of customers, increasing the value of those projects. Incentives aimed at transmission projects

³³ Order No. 1000 requires that an interregional transmission facility be selected in the regional plan for purposes of cost allocation of both the transmission planning regions in which it is proposed to be located.

that deliver that value serve to drive the desired behavior – transmission investment and development.

Order No. 1000 Transmission Projects (B11) and Automatic Approval

The Commission asks whether it should automatically grant CWIP, abandoned plant, and regulatory asset treatment incentives for projects selected in a regional plan for purposes of cost allocation (Q52), and what other incentives are appropriate and how they should be designed (Q53).

While projects selected in a regional plan for purposes of cost allocation should be afforded an automatic 100 percent abandonment incentive if the project is canceled for reasons beyond the transmission owner's control, subject to a FPA section 205 filing to review the specific costs, so too should other projects approved in a regional plan. Cost allocation should not be the determining factor for automatic abandonment. Such an incentive is appropriate in the context of regional planning generally, including for projects planned and displaced by other projects.³⁴

The Commission should make clear that, with the automatic nature of the 100 percent abandonment incentive, costs incurred from project inception are recoverable.³⁵

³⁴ See, e.g., *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (granting the abandonment incentive and noting that the regional transmission expansion planning ("RTEP") process "allows PJM to cancel a project that has been accepted in the RTEP should PJM conclude that the conditions that originally supported the construction of the expansion have changed (i.e., the RTEP is revised); this introduces an element of risk that is not faced by a utility proposing to build outside of an RTO planning context.").

³⁵ *San Diego Gas & Elec. Co. v. Federal Energy Regulatory Comm'n*, No. 16-1433 (D.C. Cir. 2019) (upholding FERC's decision that only costs incurred after the date of a Commission order on the request for abandoned plant incentive are eligible for 100 percent recovery).

With regard to CWIP, the Commission has said that this incentive provides rate stability and supports cash flow.³⁶ Thus, given the customer benefits, CWIP should be automatic for any project approved in a regional plan.

However, granting regulatory asset treatment on an automatic basis for projects selected in a regional plan for purposes of cost allocation or otherwise is premature. There is too little experience with the regulatory asset incentive to understand the scope and types of costs being included. In addition, unlike project costs to be recovered under an abandoned plant incentive and CWIP, there is little transparency into the costs amassed under a regulatory asset scheme.

The Commission, referring to several prior Commission orders,³⁷ also asks whether it should continue to use certain incentives to seek to place non-incumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 regional transmission planning processes, and whether the Commission should consider the requests under FPA section 205 or FPA section 219 (Q54). Allowing non-incumbent transmission developers to seek early approval of formula rates and replicate the formula rates for future affiliates help to place non-incumbent transmission owners in the same tariff/rate administrative posture as an incumbent and would seem appropriate, on a case-by-case basis, as an FPA section 205 matter more so than as a request for incentives under

³⁶ Order No. 679 at P 115.

³⁷ See, e.g., *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097 (2016) (granting Northeast Transmission Development, LLC's request for deferred recovery of pre-commercial costs through the establishment of a regulatory asset and authorization for other, yet-to-be formed affiliates of subsidiaries that develop transmission in the PJM region to replicate the formula rate and use certain of the rate incentive treatments).

FPA section 219 given section 219's focus on ensuring reliability and reducing the cost of delivered power. For similar reasons, section 205 case-by-case adjudication seems the more appropriate vehicle for regulatory asset requests.

C. Existing Incentives

The Commission seeks comment on the types of incentives it has awarded to date, whether the incentive remains relevant and appropriate, and whether the goals underlying the incentive could be incentivized more efficiently (e.g., whether a non-ROE incentive would be more appropriate than an ROE basis point adder). The Commission specifically seeks comment on ROE adder incentives for transmission-only companies, RTO/ISO participation, and advanced technology; and the non-ROE incentives of hypothetical capital structure, recovery of abandoned plant and accelerated depreciation.

RTO/ISO Participation ROE Incentive

With regard to the RTO/ISO participation ROE incentive, the Commission should defend and retain the 50 basis point policy-based incentive provided to each transmission utility that becomes and remains a member of a transmission organization regardless of whether that participation was mandated by regulation or legislation. The award of incentive in the form equity basis points is appropriate, reflects the value to customers of a transmission utility's membership in an RTO/ISO, as well as the additional risks of participation, and thus is justifiable on policy grounds. Moreover, denying the ROE incentive to companies required to be a member of an RTO/ISO would create an unlevel playing field in the competition for capital and should be avoided. Time and again the benefits of RTOs/ISOs have been demonstrated. Thus, there is no need for the Commission to revise the 50 basis point ROE incentive (Q61), and no basis for the Commission to award

it on a project-specific basis (Q65). The statute is clear; it requires the Commission to establish by rule incentive-based rate treatments, including incentives to each transmission utility that joins a transmission organization.

The Commission should not supplant the 50 basis point RTO/ISO incentive with other types of incentives that, while beneficial to customers, do not reflect the value to customers of transmission owners turning over operational control of billions of dollars of transmission facilities to an independent entity. FPA section 219(c)'s separate identification of an incentive for RTO/ISO membership is a clear indication of the value to customers Congress placed on transmission membership in an RTO/ISO, and the Commission's implementation of FPA section 219(c) to encourage ongoing membership is appropriate. Indeed, a decision that encourages a utility to join an RTO/ISO, but not remain in one would undermine the effectiveness of the RTO/ISO and significantly reduce customer benefits, contrary to the intent of Congress. There would be little-to-no long-term certainty over transmission planning, generator interconnection, or market pricing. Experience demonstrates the upheaval caused when transmission owners exercise their rights to relinquish RTO membership, or to leave one and join another.³⁸ Moreover, as Order No. 679 explained, "entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive this incentive."³⁹

³⁸ See, e.g., *American Transmission Systems, Inc.*, 140 FERC ¶ 61,226 (2012); *Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058 (2010).

³⁹ Order No. 679 at P 331.

RTO formation is voluntary under the Commission's regulations. Neither Order No. 888 in addressing formation of independent system operators⁴⁰ nor Order No. 2000⁴¹ mandated public utilities to join an RTO/ISO, and Congress was likely well aware of the voluntary nature of RTO/ISO participation in 2005. Both Order Nos. 888 and 2000 spoke to the potential benefits of RTO/ISO formation, benefits that are transparently quantified today. For example, MISO's 2018 value proposition study results, show between \$3.2 billion and \$3.9 billion in benefits to the region, the vast majority of which is attributable to increased load diversity and asset availability enabled by MISO's large footprint.⁴² PJM Interconnection, L.L.C. ("PJM") reports that its "regional grid and market operations produce net annual savings of \$2.8 billion to \$3.1 billion in ensuring reliability, providing the needed generation capacity and reserves, managing the output of generation resources to meet demand and procuring specialized services that protect grid stability."⁴³ The value to customers, made possible through the participation of electric utilities that join and continue to be members of an RTO/ISO, is a function of all of the utility's jurisdictional

⁴⁰ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996). The Commission stated that while it was not requiring any utility to form an ISO, it encouraged formation of properly structured ISOs.

⁴¹ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (2000). The Commission stated it was not mandating RTO participation, and was, as a matter of policy, adopting a voluntary approach to RTO formation.

⁴² *2018 Value Proposition Stakeholder Review Meeting, February 15, 2019*, [https://cdn.misoenergy.org/2018%20MISO%20Value%20Proposition%20-%2015Feb2019\(Final\)321318.pdf](https://cdn.misoenergy.org/2018%20MISO%20Value%20Proposition%20-%2015Feb2019(Final)321318.pdf) (last visited June 26, 2019).

⁴³ *PJM Value Proposition*, [https://www.pjm.com/about-pjm/~media/about-pjm/20151016-value-proposition.ashx](https://www.pjm.com/about-pjm/~/media/about-pjm/20151016-value-proposition.ashx) (last visited June 26, 2019).

transmission facilities that have been turned over to RTO/ISO operational control and as such, the ROE incentive should apply to those facilities and not simply certain projects (Q65). The Commission's current approach recognizes this, and should continue.⁴⁴

It is also worth mentioning that when a transmission owner turns over operational control of its transmission facilities to an independent third party and stakeholder processes, it comes at a cost to the transmission owner: (1) loss of decision-making control regarding how facilities are used while retaining the responsibility to maintain the system, meet reliability standards, and serve customers; (2) the inability to protect retail customers from increased costs and cost shifts associated with zonal placement decisions; and (3) an obligation to build and recover costs of new facilities directed by an RTO/ISO that, in the transmission owners judgment, may not be the better solution. When, in the judgment of the transmission owner, the value proposition for customers is no longer there, the decision is made to exit the RTO/ISO, which also comes at a cost.

In summary, the Commission should continue to incent RTO/ISO participation with an ROE incentive that reflects the customer value made possible by a utility joining and remaining a member of a Commission-jurisdictional RTO/ISO, and compensates for the additional risks of membership as discussed above. The ROE incentive for participation in an RTO/ISO should not be limited to a fixed period of time (Q64) because the value (and risk) of turning over operational control is ongoing throughout the term of membership and should be compensated accordingly, and it should not be awarded on a

⁴⁴ Order No. 679-B at P 21 ("a public utility member of an RTO is eligible for the Transmission Organization incentive rate treatment as to all of its jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization.").

project-specific basis (Q65) due to the fact that the total customer value derives from all facilities placed under RTO/ISO control, not just a specific project. The FPA section 219(c) incentive for each transmission utility or electric utility that joins an RTO/ISO is clearly a policy-based incentive that should be treated as such by the Commission.⁴⁵ Continuation of the 50 basis point ROE incentive is justified on the basis of the value RTOs deliver to customers as enabled by utility membership, and elimination of it, after more than a decade, undermines confidence in the Commission's policies, and smacks of a "bait-and switch."

Non-ROE Incentives

As explained elsewhere in these comments, the Commission's current suite of non-ROE incentives (e.g., hypothetical capital structure, accelerated depreciation), is largely right, and the Commission should continue to allow an applicant, on a case-by-case basis, to explain and justify how its use of the rate incentive will benefit customers. However, the Commission should provide for abandonment on an automatic basis for projects approved in a regional plan, and make 100% CWIP a regular ratemaking option for transmission utilities for projects approved in a regional plan.

D. Mechanics and Implementation

The Commission states it is considering whether incentives should be revisited if there is a material modification to the project or significant change in expected benefits, and asks for comment on whether particular types of incentives should automatically sunset and under what circumstances. The Commission poses specific questions regarding duration of incentives, whether to grant incentives case-by-case or automatically; whether

⁴⁵ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

the Commission can ensure that the combination of incentives is appropriate and produces just and reasonable rates; and whether the Commission should retain discretion in determining the appropriate level of ROE incentive.

Duration of Incentives

The Commission should not revisit the award of incentives, except in cases of outright and intentional misrepresentation (Q83, Q85, Q88). Incentives are typically requested early in the process and applicants use best available information and expert judgment to determine the costs and benefits of the project. In many cases, the benefits are determined through an RTO/ISO process. These benefits can change over time, up or down, as a result of many factors, including factors unrelated to the specific project (e.g., tariffs on steel). So too can the scope of projects change over time, and the Commission should not create a perverse incentive that would discourage transmission utilities from adapting their projects as necessary to deal with issues as they may arise. Indeed, to eliminate an incentive because a project has a material modification would actually serve as a disincentive. Layering after-the-fact reporting to assess whether project benefits materialized as expected (Q86, Q87, Q89) is fruitless and a costly burden that is unnecessary if the Commission adopts the recommendations above regarding use of a benefit-to-cost ratio threshold for project-specific incentive ROE eligibility and capping the application of the project-specific incentive ROE to the cost estimate used in the benefit-to-cost ratio calculation. This approach ensures value to customers and incents cost discipline.

Case-by-Case vs. Automatic Approach

The Commission suggests that consideration of an automatic approach to granting incentives may be beneficial (Q90), and asks which incentives should be awarded automatically. The Commission also asks whether there are improvements that could be made to the existing case-by-case approach. As suggested elsewhere in these comments, automatic grant of the abandonment incentive makes sense for projects approved in a regional plan and cancelled due to factors beyond the transmission owner's control. This would address a real tension with the Commission's current policy that limits the costs to be recovered to those incurred from the date of a Commission order granting the abandonment incentive. This aside, and if the Commission does not provide for an automatic approach for certain incentives as discussed above, the current process could be streamlined (Q92). Applicants for the non-ROE incentives dutifully report to the Commission all the virtues of these incentives that the Commission articulated in Order No. 679 to be true, and the Commission grants the incentives on that basis. Applicants and the Commission have spent considerable resources to secure non-ROE incentives that the Commission has already determined to be generally beneficial to customers and thus the Commission should consider ways to streamline the application process for these incentives.

Interaction Between Different Potential Incentives in Determining Level of ROE Incentive

The Commission acknowledges that it has provided little guidance regarding how to ensure that the combination of transmission incentives (ROE and non-ROE) is

appropriate and produces just and reasonable rates.⁴⁶ The Commission asks whether it should establish a more formulaic framework and the elements to include (Q93), or if the case-by-case approach continues, how it could provide more explanation in individual cases to describe how it derived the appropriate level and combination of incentives (Q94), and whether an ROE incentive, if granted, should be limited or bound by a range (Q95).

As discussed in Section A concerning approaches the Commission should use to analyze and award incentives, the Commission should revisit its use of the "risks and challenges" framework. (Q93) The focus on risks and challenges is poorly aligned with the goals of FPA section 219, and the test for whether a project merits an incentive ROE is strained. The Commission should have a simplified approach to granting incentives that is based on the value to the customer of the investment, as measured by the known and measurable benefits, e.g., production cost savings, as well as qualitative benefits. Use of a framework as discussed in Section A should be considered; it would provide clarity, direction to industry, and foster consistency in Commission determinations, which will provide certainty to investors. With a shift in approaches from "risks and challenges" to value, there is no tie to the cost of equity as is the case under the risks and challenges approach, and no financial theory against which to limit the incentives to upper end of the zone of reasonableness. (Q95) Under this approach, incentives will not later need truncation to stay within the zone of reasonableness, and this will provide investor certainty thereby promoting investment in transmission.

⁴⁶ Inquiry at P 46.

Bounds on ROE Incentives

The Commission acknowledges that the benefits of various transmission projects may vary substantially, and in some cases be difficult to compare, and explains that given the risks and challenges framework it has maintained discretion to determine the level of any granted ROE incentive. The Commission asks to what extent should the Commission retain the discretion (Q96), and if it retains discretion, should that discretion be bound to a pre-determined range (e.g., 50-100 basis points), and if so, what's the appropriate range (Q97).

As discussed above, the Commission should jettison the “risks and challenges” approach and develop a framework with metrics that indicate the level of ROE incentive for a given amount of value. The Commission can structure a framework that is guiding, but not a bright line, and not overly prescriptive, thus affording it discretion (Q96) while providing certainty regarding the process to transmission utilities. The Commission should, as discussed above, establish a framework focused on benefits, allow projects with a positive benefit-to-cost ratio to be eligible for incentives, structure the level of the incentive ROE as a function of the level of benefits, consider both quantitative and qualitative benefits, and apply the incentive ROE to the cost estimate used in the calculation of the benefit-to-cost ratio. In addition, the Commission should retain some flexibility for itself to provide an incentive ROE because, as the Commission has noted on many occasions, the industry is in transition.

E. Metrics for Evaluating Effectiveness of Incentives

The Commission explains it has a "longstanding policy that incentives should only be awarded to induce voluntary conduct," and that it can be difficult to identify the extent

to which a particular incentive motivates a developer to take a particular action.⁴⁷ The Commission then references FERC Form 730 which requires incentive recipients to provide information on the type of project (e.g., new, upgrade); actual capital spending as well as projected capital spending for the next five years; and completion status, among other things. The Commission states that additional transmission incentive-related data could help it better understand the effectiveness of the incentives program, including whether incentives motivate investment in and development of new transmission projects. The Commission asks what metrics it should use to measure effectiveness of incentives (Q98) and whether the obligation to file Form 730 should be expanded to all public utility transmission providers to provide a standard of comparison.

Additional collection of data will not help the Commission to determine whether a particular incentive motivated a particular investment. There are too many variables and externalities to consider. Public utilities in general sought incentives for significant transmission projects of interest to the Commission, of value to customers, and that are also likely more time consuming and difficult to manage than other projects. If the Commission is interested in large projects that can accomplish a number of objectives, it should not mire itself in the academic exercise of trying to figure out whether, for example, the use of hypothetical capital structure propelled an investment. It is more the case that the potential for an incentive ROE tipped the decision to build one project over another by compensating the utility for taking on the more challenging project that had the potential to deliver greater benefits (e.g., one holistic project as compared to several smaller ones).

⁴⁷ Inquiry at P 48.

In closing, through this Inquiry and other pending proceedings, the Commission has an opportunity to recognize the significant customer value that transmission enables and solidify its support for transmission infrastructure investment. A return to focusing on the basics is a critical step that should not be taken lightly or delayed given the need for significant investment in transmission. Chief among actions the Commission should take is to address the pending cases regarding the methodology for determining base ROE, reaffirm the 50 basis point ROE incentive for joining and remaining a member of a RTO/ISO, whether such participation was voluntary or not, shift its ROE incentive policy to focus on value, as opposed to risks and challenges, and then focus on the generally modest reforms to its incentives policy as suggested above.

Respectfully Submitted,

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