

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

Inquiry Regarding the Commission's)
Electric Transmission Incentives Policy)

Docket No. PL19-3-000

**INITIAL COMMENTS OF
THE MISO TRANSMISSION OWNERS**

Pursuant to the Federal Energy Regulatory Commission's ("Commission") March 21, 2019 Notice of Inquiry regarding the Commission's electric transmission incentives policy,¹ the MISO Transmission Owners² submit these initial comments in support of continuing (with slight modifications) the Commission's current regulations and policies governing transmission rate incentives adopted in Commission Order No. 679.³

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

² The MISO Transmission Owners for this filing consist of: ALLETE, Inc. for its operating division Minnesota Power (and its subsidiary Superior Water, L&P); Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Cleco Power LLC; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wolverine Power Supply Cooperative, Inc.

³ *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*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

The Commission's current incentive policies have fostered significant new investment in needed transmission expansion and membership in Commission-authorized Regional Transmission Organizations ("RTO") and Independent System Operators ("ISO"), which have resulted in considerable benefits to electric power consumers. Given the obvious benefits of the Commission's current incentives policies, the Commission should retain its current policies and, in some cases, broaden them as discussed in more detail below.⁴

I. BACKGROUND

The MISO Transmission Owners are a diverse group of investor-owned transmission owners and cooperatives, including both vertically integrated and independent transmission companies, that own transmission facilities over which the Midcontinent Independent System Operator, Inc. ("MISO") provides transmission service. A group of transmission owners came together to form MISO in 1998, and the MISO Transmission Owners remain active participants in the MISO Midwest Transmission Expansion Plan ("MTEP") process and are responsible for constructing new transmission facilities and upgrading existing transmission facilities as directed by MISO. Several MISO Transmission Owners have received Commission approval for various transmission rate incentives for transmission projects that will provide significant benefit to customers in MISO in the decades to come, and all MISO Transmission Owners receive a 50-basis point adder to their base return on equity ("ROE") in recognition of the benefits associated

⁴ The MISO Transmission Owners take no position regarding the Commission's policies on other transmission rate incentives not discussed in these comments. Individual MISO Transmission Owners may provide their own comments on these policies, and the MISO Transmission Owners reserve the right to comment on such policies in their reply comments in this proceeding.

with their participation in MISO.⁵ Collectively, as of MISO’s most recent MTEP in 2018, transmission owners in MISO have invested more than \$19 billion in transmission expansion and upgrades since MISO’s first MTEP in 2003 (with another \$3.3 billion approved in MTEP 2018),⁶ including more than \$6.5 billion in widely beneficial Multi-Value Projects (“MVP”),⁷ and transmission owners in MISO collectively have placed more than \$37 billion in total transmission investment under MISO’s functional control.⁸ These transmission facilities comprise a market region serving approximately 42 million people and connect more than 188 GW of generation to serve those customers.⁹

II. COMMENTS

The MISO Transmission Owners support the Commission’s efforts to encourage investment in transmission expansion through the use of transmission rate incentives and appreciate the Commission entertaining comments on this important topic. The MISO Transmission Owners’ comments focus on three of the Commission’s current transmission rate incentives policies: (1) the RTO-participation incentive; (2) inclusion of 100 percent

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004 (2015) (granting the MISO Transmission Owners a 50-basis point adder to their base ROE for participation in MISO).

⁶ *MTEP 18 Transmission Expansion Plan*, Midcontinent Independent System Operator, Inc., 2 (Dec. 13, 2018), <https://cdn.misoenergy.org/MTEP18%20Full%20Report264900.pdf> (“2018 MTEP Report”).

⁷ *Regionally Cost Allocated Project Reporting Analysis: 2011 MVP Portfolio Analysis Report, MVP Project Status April 2019*, Midcontinent Independent System Operator, Inc. (Apr. 29, 2019), <https://cdn.misoenergy.org/MVP%20Dashboard117055.pdf>.

⁸ 2018 MTEP Report at 171 (“With its 50 Transmission Owner members, MISO has more than \$37.9 billion in transmission assets under its functional control.”).

⁹ *Id.* at 175.

construction work in progress (“CWIP”) in rate base; and (3) authorization to recover 100 percent of prudently-incurred costs associated with projects that are abandoned for reasons beyond the utility’s control (“abandoned plant recovery”). These current Commission policies have been successful to date in facilitating the development of new transmission facilities that benefit ratepayers by ensuring reliability and reducing transmission congestion, including particularly in the MISO region with the Commission’s approval of various incentives for several MVP owners and other transmission incentives for transmission owners in MISO. Because the Commission’s current transmission incentive policies have led to significant investment in new transmission facilities and growth and stability of Commission-approved RTOs, there is no need for the Commission to re-think and constrict its incentive policies at this time. Likewise, the continued need for additional transmission development further compels a conclusion that the Commission should stay the course on promoting transmission investment through the use of transmission incentives.

However, to build upon the current success and to provide stability and ease administrative burdens both for the Commission and for investors in transmission facilities, the Commission should consider some modest refinements to certain of its current incentives, as discussed in more detail below.

A. The Commission’s Current Transmission Rate Incentives Policies Should Be Largely Retained but Slightly Modified to Promote Efficiency and Regulatory Certainty

1. The Need for and Challenges Associated with Transmission Investment Necessitate that the Commission Continue to Provide Transmission Rate Incentives

The Commission’s current rate incentive policies have fostered the development of significant transmission projects that otherwise may be delayed or abandoned absent

approval of transmission incentives. While the Commission's past efforts to encourage transmission investment through rate incentives should be applauded, additional transmission investment is needed to meet customer needs, maintain system reliability, and interconnect large quantities of location-constrained renewable resources to meet state and federal renewable energy mandates and goals and to satisfy increasing retail customer demands for renewable energy.¹⁰ As the Commission recognized in the NOI,¹¹ the electric industry has undergone and is undergoing sweeping changes including an evolution in the generation mix and the number of new resources and resource types seeking transmission services, shifts in load patterns, and an increased emphasis on the reliability and resilience of the transmission system.

In the face of a continuing need for increased transmission investment to meet the challenges of today's electric industry, transmission developers continue to encounter significant uncertainty in the current regulatory and economic climate. Investment in transmission infrastructure is a long-term proposition, and investors require assurances that they will recover their investment and earn a reasonable return. An uncertain regulatory environment wrought by years of litigation before the Commission and courts addressing how transmission owner ROEs are established, long-lead times for construction of transmission infrastructure, uncertain regulatory approval and siting processes, increasing threats from natural and man-made causes, the long depreciable life of transmission assets,

¹⁰ As of June 2018, MISO has more than 17 GW of registered, in-service renewable energy resources, whose broad access to the multi-state MISO region is facilitated by the transmission facilities owned and operated by MISO's transmission-owning members. *See id.*

¹¹ NOI at P 13.

and the need for redoubled efforts to protect physical and cyber-security, grid reliability, and resilience, necessitate Commission policies to ensure that investors in transmission facilities will be assured recovery of their investment and a return commensurate with these considerable risks. The Commission's rate incentive policies have fostered increased investment in transmission infrastructure; changes designed to restrict such incentive policies will only further exacerbate the uncertainty surrounding transmission investment and encourage investors to look at other investment options at a time of significant need for grid expansion. The Commission should not take any action that would reverse course.

2. *The Commission Should Continue to Encourage RTO Participation by Continuing its Current RTO-Participation ROE Incentive Adder*

In its NOI, the Commission presents several questions regarding the current design of and potential changes to its current RTO-participation incentive.¹² The Commission should maintain its existing ROE incentive for RTO participation and should consider additional enticements for RTO participation.

As an initial matter, section 1241(c) of the Energy Policy Act of 2005 ("EPAAct 2005")¹³ requires the Commission to "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."¹⁴ The EPAAct 2005 mandates this incentive separate and apart from other rate incentives designed to promote

¹² *Id.* at P 38 (Questions 61-66).

¹³ 16 U.S.C. § 824s; Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594.

¹⁴ *Id.* § 824s(c).

transmission construction.¹⁵ While EPC Act 2005 does not mandate a specific type of transmission organization “incentive,” the Commission repeatedly has indicated that its current RTO-participation incentive ROE adder is “consistent with the stated purpose of section 219 of the [Federal Power Act (“FPA”)].”¹⁶ This continues to be the case.

As the Commission has long recognized, RTO membership provides benefits not only to the utilities that participate, but also to the customers that are served by the RTO. Even prior to the Commission’s current incentive rate policies adopted in Order No. 679, the Commission long ago acknowledged the numerous benefits from the creation of RTOs, benefits that cannot possibly be realized without the participation of transmission-owning utilities in RTOs:

[I]ncreased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of ATC; more efficient management of parallel path flows; more efficient planning for transmission and generation investments; increased coordination among state regulatory agencies; reduced transaction costs; facilitation of the success of state retail access programs; facilitation of the development of environmentally preferred generation in states with retail access programs; improved grid reliability; and fewer opportunities for discriminatory transmission practices.¹⁷

¹⁵ See Order No. 679-A at P 87 (“Section 219(c), applicable to the Transmission Organization incentive, is separate from the construction incentives in subsection (b), and therefore was not intended to directly encourage construction.”).

¹⁶ See, e.g., *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 92 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 58 (2008); *Green Power Express, LP*, 127 FERC ¶ 61,031, at P 85 (2009), *reh’g denied*, 135 FERC ¶ 61,141 (2011).

¹⁷ *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,089, at 31,024 (1999), *order on reh’g*, Order No. 2000-A, 90 FERC ¶ 61,201, 1996-2000 FERC Stats. & Regs., Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001). The Commission indicated that the list of benefits does not include all benefits that RTOs may provide. *Id.* at 30,996.

These benefits, which RTOs continue to provide, translate into more competitive rates and higher quality service for consumers.¹⁸

In Order No. 679, the Commission indicated that “[t]he basis for the [RTO membership] incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary.”¹⁹ The Commission adopted its RTO-participation incentive “in recognition of the benefits such organizations bring to customers, as outlined in detail in Order No. 2000.”²⁰ Additionally, in Order No. 679-A, the Commission found that “[t]he consumer benefits, including reliability and cost benefits, provided by Transmission Organizations 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 of Transmission Organizations.”²¹ According to Order No. 679-A, the incentive for transmission organization membership is “entirely consistent” with the purpose of FPA section 219²² to establish incentives “that benefit consumers by ensuring reliability and reducing the cost of delivered power.”²³

¹⁸ See *id.* at 31,025 (“[B]y improving efficiencies in the management of the grid, improving grid reliability, and removing any remaining opportunities for discriminatory transmission practices, the widespread development of RTOs will improve the performance of electricity markets in several ways and consequently lower prices to the Nation’s electricity consumers.”).

¹⁹ Order No. 679 at P 331.

²⁰ *Id.* at P 312.

²¹ Order No. 679-A at P 86 (emphasis added).

²² 16 U.S.C. § 824s.

²³ Order No. 679-A at P 86; see also *supra* note 16 and accompanying text.

The Commission's past pronouncements of RTO benefits have truly come to fruition in MISO. As noted above, MISO's transmission-owning members have invested billions of dollars in cost-beneficial transmission expansion, including in MVPs that provide broad regional benefits by strengthening reliability and grid resilience, providing economic benefits, and facilitating compliance with public policy goals and objectives by creating expansive new transmission capacity to accommodate the growing interconnection of renewable resources.

But the consumer benefits provided by MISO do not stop there. In its 2018 "Value Proposition" study, MISO estimates between \$3.2 billion and \$3.9 billion in annual economic benefits to customers in the MISO region from MISO's regional services and markets.²⁴ These benefits include: improved reliability; more efficient energy dispatch; more cost-effective procurement of reserves; wind integration; compliance; and generation investment deferral brought by footprint diversity, generator availability, and demand response.²⁵ Were it not for the participation of MISO's transmission owners, customers would not realize any of the benefits of MISO's RTO markets and services.

The incentive for transmission organization membership is important because it provides significant benefits to customers as found in Order No. 2000, reiterated in Order Nos. 679 and 679-A, and as shown by experience in MISO. The incentive further promotes the voluntary participation in RTOs by providing transmission owners investment certainty

²⁴ 2018 *Value Proposition Stakeholder Review Meeting*, Midcontinent Independent System Operator, Inc., at 2 (Feb. 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) ("2018 MISO Value Proposition").

²⁵ *Id.* at 2-3.

and a stable return on investment, which further benefits consumers. Accordingly, the Commission should not at this time entertain changes to its RTO-participation incentive.

3. *The Commission Should Permit Recovery of 100 Percent Construction Work in Progress and Abandoned Plant Costs As Routine Rate Treatment Rather Than an Incentive*

The NOI poses a series of questions regarding the Commission's transmission rate "incentives" allowing 100 percent recovery of CWIP in rate base²⁶ and 100 percent abandoned plant recovery.²⁷ Because of their significant benefit both to consumers and transmission developers alike, the Commission should revise its regulations and policies to allow 100 percent recovery of such costs routinely as a ratemaking method, rather than treating abandoned plant recovery and CWIP as incentives for which a transmission developer must apply in advance and satisfy all of the requirements applicable to other transmission rate incentives.

Both recovery of 100 percent CWIP in rate base and abandoned plant recovery encourage transmission investment by reducing project uncertainties, financial burdens, and credit and cash flow risks, which benefit both the transmission owner and its customers. As the Commission explained in Order No. 679, including 100 percent of CWIP in rate base relieves "pressures on [utility] finances caused by its transmission development program," provides "up-front regulatory certainty" and "improved cash flow[s]" for utilities and rate stability for customers,²⁸ and enables utilities to obtain "a

²⁶ NOI at P 40 (Questions 70-71).

²⁷ *Id.* at P 42 (Questions 77-79).

²⁸ Order No. 679 at P 115.

higher credit rating and lower cost of capital, thus benefiting customers.”²⁹ The Commission has approved CWIP in rate base because it helps transmission projects stay on schedule, offers a prompt return on investment, improves utility cash flow, enhances the utilities’ credit quality and debt ratings,³⁰ and results in better rate stability for customers.³¹ CWIP recovery also helps to avoid “rate shock” for customers³² and reduces customer costs by avoiding the need to capitalize and recover funds expended during construction once the project has gone into service (i.e., AFUDC) that would otherwise occur if CWIP recovery in rate base is not allowed.³³

²⁹ *Id.*

³⁰ *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 6 (2008); *see also id.* at P 42 (approving PPL’s request to recover 100 percent of CWIP in rate base because the incentive “enhance[s] [PPL’s] cash flow, reduce[s] interest expense, assist[s] Petitioners with financing, and improve[s] Petitioners’ coverage ratios used by rating agencies to determine credit quality by replacing non-cash [Allowance for Funds Used During Construction (“AFUDC”)] with cash earnings . . . [t]his, in turn, will reduce the risk of a down grade in Petitioners’ debt ratings.”); *see also ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at PP 80-82; *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at PP 32-33 (2009); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284, at PP 57-61 (2007).

³¹ *See Green Power Express LP*, 127 FERC ¶ 61,031, at P 67; *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 42 (2008) (“By allowing CWIP for the Project, the rate impact of the Project can be spread over the entire construction period and will help consumers avoid a return on and of capitalized AFUDC.”).

³² *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,229, at P 78 (2011) (“As explained in prior orders, 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.”); *Okla. Gas & Elec. Co.*, 135 FERC ¶ 61,038, at P 52 (2011) (“By granting OG&E CWIP Recovery, the rate impact can be spread over the entire construction period mitigating any potential rate shock to OG&E’s customers”).

³³ *Duquesne Light Co.*, 166 FERC ¶ 61,074, at P 32 (2019) (finding that CWIP recovery in rate base “will help consumers avoid a return on and of capitalized” AFUDC).

Because of the considerable benefits of CWIP both to the transmission owner and consumer that the Commission has previously recognized, the Commission should modify its rate policies to allow automatically 100 percent CWIP recovery as a general rate policy rather than an “incentive” under FPA section 219. As the Commission currently allows 50 percent CWIP recovery as a general policy,³⁴ changing to a general policy of making 100 percent CWIP automatically available without preauthorization will provide all of the benefits that the Commission has articulated in its transmission rate incentive precedent without departing significantly from its existing general ratemaking methods.

Similarly, the Commission should revise its abandoned plant recovery policy to remove the “double hurdle” of requiring two filings to recover 100 percent of prudently-incurred abandoned plant costs. Under the Commission’s current ratemaking policies, a utility can recover 50 percent of any prudently-incurred abandoned plant costs by applying to the Commission under FPA section 205³⁵ for cost recovery after the project has been abandoned, and the Commission’s incentive policies outlined in Order No. 679 allow for 100 percent recovery of abandoned plant costs if the utility first obtains preauthorization from the Commission to seek 100 percent recovery of such costs at a later date if the project is canceled for reasons outside of the utility’s control. The Commission repeatedly has approved utility requests for 100 percent abandoned plant recovery incentives as a means through which to mitigate the special risks associated with transmission investment that

³⁴ Order No. 679 at P 22 (stating that the Commission’s general policy is to allow the inclusion of 50 percent of CWIP in rate base).

³⁵ 16 U.S.C. § 824d.

are beyond the control of the utility, such as the regulatory risks associated with the requirement to obtain approvals from multiple regulatory and siting authorities.³⁶

By reducing the financial risk associated with the possibility that a facility may need to be abandoned for reasons outside of the control of the developer, abandoned plant recovery reduces financing costs, which benefits both the investor and consumer. Moreover, because the Commission requires a utility to demonstrate to the Commission the prudence of its investments prior to obtaining recovery through rates, the abandoned plant recovery policy ensures that adequate safeguards are in place to protect consumers from paying for imprudent investments by the transmission developer, even if the Commission eliminates the requirement to seek preauthorization for 100 percent abandoned plant recovery. For these reasons, the Commission should modify its incentive rate policies to allow 100 percent abandoned plant recovery a general ratemaking policy, subject to the Commission's prudence review in an FPA section 205 proceeding, rather than an incentive for which the applicant must satisfy the Order No. 679 requirements as a prerequisite.

Making 100 percent CWIP recovery in rate base automatically available and providing eligibility to recover 100 percent of prudently-incurred abandoned plant costs without preauthorization are particularly appropriate in the RTO context, where individual transmission owners have ceded their control over planning decisions to the RTO as part of a regional planning process. RTOs can and do occasionally approve transmission

³⁶ See, e.g., *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at P 31; *Great River Energy*, 130 FERC ¶ 61,001, at P 33 (2010); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 47; *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284, at P 63.

projects in one planning cycle, only to re-evaluate and revise or cancel a project in a subsequent planning cycle.³⁷ Allowing transmission owners in RTOs the certainty that they will be eligible for 100 percent recovery of prudently-incurred investments in RTO-authorized investments that are later canceled for reasons beyond their control without first having to receive preauthorization from the Commission for such eligibility will further encourage RTO membership and allow transmission owners to ensure that ceding transmission planning authorities and decision-making to the RTO will not result in the incurrence of stranded investments. Likewise, given the significant transmission build-out that RTOs have recently approved and continue to approve, coupled with the obligation to build that most RTO transmission owners undertake by joining the RTO, providing more timely cost recovery through the automatic availability of 100 percent CWIP in rate base will afford RTO transmission-owning members better cash flow that will facilitate the completion of the RTO's transmission expansion plans.

The current process of applying for these ratemaking methods as “incentives” and the timing of when to submit the applications introduce unnecessary cost recovery risk for ratemaking approaches that the Commission customarily grants. Requiring preliminary applications for these ratemaking treatments, as is required under the Commission's current incentives policies, also taxes the Commission's limited resources by requiring the

³⁷ Moreover, at least in MISO, an approved and in-progress regional transmission project can be displaced by an interregional transmission project, which presents the very real possibility of significant stranded investment for the owner of the displaced regional transmission project. *See Ameren Servs. Co. v FERC*, 893 F.3d 786 (D.C. Cir. 2018) (affirming Commission orders directing MISO to revise its Open Access Transmission, Energy and Operating Reserve Markets Tariff to permit an interregional transmission project to displace a regional transmission project in the MTEP).

Commission's staff to review each application. The Commission can mitigate such administrative burdens and risks by establishing a ratemaking policy that automatically allows for 100 percent recovery of CWIP in rate base without preauthorization and eliminates the additional requirement to obtain preauthorization to seek 100 percent of prudently-incurred abandoned plant costs, rather than treating these mechanisms as "incentives" under FPA section 219 and Order No. 679 for which the utility must apply in advance.

B. Responses to Specific Commission Questions

The MISO Transmission Owners offer below responses to specific Commission questions identified in the NOI.

Question 61: Should the Commission revise the RTO-participation incentive?

No, the Commission should take no action at this time to modify its RTO-participation incentive. As an initial matter, providing an incentive for membership in a transmission organization is a statutory mandate.³⁸ While the EPAAct 2005 did not mandate the exact form of transmission organization membership incentive, the statute makes clear that the Commission must encourage membership in Commission-authorized RTOs and other transmission organizations. The incentive that the Commission has chosen (generally, a 50-basis point ROE adder) has successfully led to significant growth in and stability of RTO membership since it has been in place. Revoking or materially altering the RTO-participation incentive now, after numerous utilities have sought and obtained the adder and joined an RTO, would undermine their reasonable expectations and the

³⁸ See *supra* note 14 and accompanying text.

regulatory certainty and finality associated with previous Commission actions. It would also fail to account for the fact that, as the Commission has recognized, RTO participation is usually voluntary.

Also, as noted above, RTOs provide considerable benefits to the regions they serve, with MISO estimating between \$3.2 billion and \$3.9 billion in annual benefits to its multi-state region, including reliability, savings from deferred generation investment due to footprint diversity and reduction in needed reserves, and market benefits resulting from MISO's centralized generation commitment and dispatch.³⁹ The cost of a 50-basis point ROE adder on transmission investment in the MISO region is modest in comparison to these regional benefits. Such benefits can only be provided if transmission owners join and remain members of the MISO RTO, and the 50-basis point adder both encourages new membership and provides additional encouragement to remain in the RTO. The Commission should not seek to undo those benefits by modifying its RTO incentive at this time.

Finally, the 50-basis point RTO-participation incentive compensates utilities that join RTOs for the risks associated with ceding operational and planning control to the RTO's independent administration under rules designed through a stakeholder process where such stakeholders do not always share the operating values and priorities of the asset owners. Such risk would otherwise go uncompensated or undercompensated if the Commission eliminates or modifies its current RTO-participation adder.

³⁹ 2018 MISO Value Proposition at 2-3.

Question 62: Should the Commission consider providing incentives other than ROE adders for utilities that join RTO/ISOs, such as the automatic provision of CWIP in rate base or the abandoned plant incentive for all transmission-owning members of an RTO/ISO? If so, what other types of incentives would be appropriate?

The Commission should not consider providing other types of incentives *in lieu of* an incentive ROE adder for RTO membership. As noted above, the current 50-basis point RTO-participation incentive has worked well to promote RTO participation at a minimal cost compared to the myriad benefits RTOs provide. The Commission should, however, consider modifying its CWIP and abandoned plant recovery policies as discussed in more detail above and in response to specific NOI questions below.

Question 63: If the Commission continues to provide ROE adders for RTO/ISO participation, what is an appropriate level for an ROE adder?

A 50-basis point ROE adder for RTO participation remains appropriate. This adder consistently has been applied since the early days of RTOs and the subsequent formal adoption of transmission rate incentives in Order No. 679 in response to EPAct 2005, and there is no reason to reconsider that amount at this time. Keeping the existing adder promotes regulatory certainty for investors and supports stability of cash flow for transmission-owning utilities. The adder also ensures RTO stability and facilitates the creation of billions of dollars of RTO economic benefits to consumers in exchange for the modest cost of the adder.

Question 64: Should the RTO-participation incentive be awarded for a fixed period of time after a transmission owner joins an RTO or ISO?

No, the RTO adder should continue to apply as long as a transmission owner remains a member of an RTO. In EPAct 2005, Congress mandated that the Commission

provide an incentive for utilities that join transmission organizations, and did not set a time limit or otherwise suggest that the incentive expire after a period of time. In Order No. 679, the Commission correctly and appropriately interpreted Congress's mandate to be that the RTO incentive should apply as long as a transmission owner remains a member of an RTO. Considering the immense benefits created by RTOs, the Commission should not at this time take any action to discourage RTO participation. RTO participation is almost always voluntary, and the incentive facilitates the stability of RTO membership. Such stability would be compromised if the RTO adder were designed to expire after a certain period, because, assuming no other consequences from withdrawing from an RTO, time-limiting the adder could create a perverse incentive to utilities to join an RTO to obtain the adder, withdraw from the RTO when the adder expires, and then re-join the RTO or join another RTO to obtain the incentive again.

Question 65: Should the RTO-participation adder be awarded on a project-specific basis?

No, the RTO-participation adder should be awarded generically and should not be tied to specific projects. As the Commission previously has noted,⁴⁰ the purpose of the RTO-participation adder is to encourage membership in a Commission-approved transmission organization, not to incent the construction of any specific project or project type. The Commission has at its disposal numerous other incentives that can be tailored to specific projects or types of projects. Nothing in EAct 2005 section 1241(c) suggests that Congress envisioned a project-specific RTO-participation adder.

⁴⁰ See *supra* note 15 and accompanying text.

Question 66: In Order No. 679, the Commission found that “the basis for the incentive is a recognition that benefits flow from membership in such organizations and the fact that continuing membership is generally voluntary.” Should voluntary participation remain a requirement for receiving RTO/ISO incentives?

No, voluntariness should not be a prerequisite to receiving the RTO-participation adder. Robust participation in RTOs by transmission-owning public utilities provides myriad consumer benefits, as discussed above, regardless of whether one or more of an RTO’s members participate voluntarily or are mandated to participate. Moreover, conditioning the incentive on voluntary participation could result in disparate and discriminatory treatment among transmission owners in RTOs where some states in the RTO’s footprint mandate RTO participation while other states do not. Differing treatment among transmission-owning members in the same RTO would serve to disadvantage those transmission owners who do not receive the incentive in competing with other members of the same RTO for capital investment.

Question 70: Should the Commission continue to provide regulatory asset treatment and CWIP as incentives? Should these incentives be granted automatically to certain types of transmission projects? If so, how should the Commission determine what types of transmission projects?

As discussed above, the Commission should allow 100 percent recovery of CWIP in rate base, but such recovery should be automatically available as a ratemaking method rather than being an incentive for which a transmission owner must apply in advance. As the Commission has found, allowing 100 percent recovery of CWIP ultimately benefits consumers because it provides more timely recovery of costs.⁴¹

⁴¹ See *supra* Section II.A.3.

Question 77: Should the Commission grant the abandoned plant incentive automatically, rather than on a case-by-case basis? Under what circumstances might an automatic award of the abandoned plant incentive be appropriate?

The Commission should adopt a policy that automatically allows a utility to pursue recovery of 100 percent of its prudently-incurred costs associated with abandoned plant investment rather than continuing its existing policy of requiring preauthorization for an abandoned plant “incentive” to be sought on a case-by-case basis. Automatically granting the eligibility to recover prudently-incurred costs associated with abandoned plant investments is appropriate, particularly for members of RTOs and other Commission-authorized transmission organizations. First, providing automatic eligibility to seek recovery of 100 percent of abandoned plant costs reduces investment risk by providing a mechanism to recover costs incurred in pursuit of projects that are canceled for reasons beyond the control of the recovering utility. Second, such a proposal would be more administratively efficient than the Commission’s current policy, which requires two filings to obtain 100 percent abandoned plant recovery: (1) the preauthorization filing; and (2) the prudence/cost recovery filing. Third, customers would still be protected because a utility seeking abandoned plant cost recovery would still be required to make a filing under FPA section 205 to demonstrate that the costs that it seeks to recover were prudently-incurred and that the reason for the cancellation was beyond the utility’s control. Finally, in the RTO context, utilities face the additional risk that a project may be canceled or substantially modified by the RTO in its independently-administered regional planning process, resulting in stranded costs for the utility. Providing automatic abandoned plant cost recovery eligibility for RTO members mitigates this additional risk and removes a potential disincentive to RTO participation.

Question 78: How, if at all, could the Commission grant the abandoned plant incentive without encouraging transmission developers to pursue unnecessarily risky transmission projects or take unnecessary risks in transmission development? Could such behavior be reduced if the developer shared some risk associated with the abandonment, e.g., 10 percent of abandonment costs? If so, what level of developer risk is appropriate?

The requirement to demonstrate prudence through an FPA section 205 filing mitigates any such risk. Such risk is further mitigated for utilities that participate in RTOs, because the RTO independently decides which transmission projects will be pursued through the regional planning process, which looks holistically at costs, benefits, and needs, and (at least in MISO) requires that only the most efficient or cost-effective proposals are pursued. Accordingly, there is no need for the Commission to adopt any such “shared risk” proposal.

Question 79: How should the Commission evaluate whether the costs of an abandoned facility were prudently incurred?

The Commission should continue to require an FPA section 205 filing to demonstrate prudence prior to authorizing the recovery of any specific abandoned plant costs. Even if the Commission eliminates the “double hurdle” of requiring preauthorization for abandoned plant recovery eligibility, the Commission need not make any changes to its FPA section 205 prudence review process.

Question 83: Should the Commission limit the duration of a granted transmission incentive? If so, should this limit be based on the type of incentive granted?

No, the duration of incentives should not be limited. Transmission investment is a long-term proposition for which regulatory certainty and stability of cash flows are key to attracting such investment. Limiting the duration of incentives ignores the long-term nature of transmission investment and undermines both regulatory certainty and cash flow

stability. Additionally, limiting the duration of the RTO-participation adder, 100 percent CWIP, and abandoned plant incentives would be particularly inappropriate. The RTO-participation incentive adder is designed to encourage stable membership in RTOs and limiting the incentive would provide perverse incentives to change RTO membership once the incentive terminates. Time limits on CWIP and abandoned plant recovery are likewise unnecessary because these incentives, by their nature, expire naturally when a transmission project is placed into service and its construction costs have been recovered through the timely recovery of CWIP or a project is abandoned and the utility obtains Commission authorization to recover its prudently-incurred costs.

Question 84: How should the Commission structure a durational component to its incentives? For example, should the Commission provide that transmission incentives automatically sunset after a certain period?

As discussed in response to the previous question, the Commission should not limit the duration of incentives. Doing so undermines regulatory certainty and presents unnecessary risks to cash flow and the financing of transmission construction and operation, and ignores the long-term nature of transmission investment.

Question 85: Should the Commission provide that a transmission incentive can be eliminated or modified upon a material change to the transmission project? How would such an elimination or modification be implemented? What should constitute such a material change? How would the Commission and interested parties be informed of such a material change?

No, the Commission should not allow modification or elimination of incentives based upon allegations of a material change to a project. Not all material changes present negative consequences or undermine the basis for which the Commission initially granted the incentive. Furthermore, the promotion of regulatory certainty and facilitation of stable

cash flows to encourage investment in transmission remain important even if a project undergoes a material change. It would be administratively burdensome (both to the transmission owner and the Commission) to require a transmission owner to re-apply for or re-justify previously-granted incentives in the event that a project experiences a material change.

Question 86: Should there be a process of measurement and verification (or audit) to determine if the expected benefits accrued to consumers?

While the question is unclear, the MISO Transmission Owners interpret this question as asking whether an after-the-fact review would occur that could result in revocation of a previously-granted incentive. If this interpretation is accurate, then no, there should not be any *post hoc* review to determine whether anticipated benefits have materialized. Transmission planning and cost allocation are, by their nature, forward looking with estimated costs and benefits examined up front to determine if a project satisfies relevant, Commission-authorized cost-benefit thresholds or other requirements. Requiring future review to determine whether expected benefits accrue and revoking incentives if such expected benefits do not materialize would be contrary to the forward-looking nature of transmission planning and would undermine any sense of regulatory certainty for investors. Transmission planning is based on a set of assumptions that may or may not come to pass; yet typically transmission decisions are not revisited after a project goes into service if the assumptions do not prove true.

However, if the Commission does adopt an after-the-fact review, the Commission should also permit transmission owners whose projects provide benefits in excess of those estimated at the time that an incentive was granted to petition the Commission for

additional incentives in recognition of the additional benefits provided. In other words, any after-the-fact review of incentives and benefits should be a two-way street.

III. COMMUNICATIONS

The MISO Transmission Owners request that all correspondence, communications, pleadings, and other documents related to this proceeding be addressed to:

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IV. CONCLUSION

The MISO Transmission Owners respectfully request that the Commission consider these comments in deciding whether to make any changes to its current transmission rate incentive regulations and policies.

Respectfully submitted,

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