

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's
Electric Transmission Incentives
Policy

Docket No. PL19-3-000

**COMMENTS OF MASSACHUSETTS MUNICIPAL
WHOLESALE ELECTRIC COMPANY AND NEW
HAMPSHIRE ELECTRIC COOPERATIVE, INC.**

Massachusetts Municipal Wholesale Electric Company (MMWEC) and New Hampshire Electric Cooperative Inc. (NHEC) (together, Public Systems) hereby respond to the Federal Energy Regulatory Commission's (the Commission) March 21, 2019, Notice of Inquiry¹ concerning its transmission incentives policy.

Public Systems commend the Commission for its continued attention to transmission costs and development. As entities responsible for providing a broad range of energy services to their members, Public Systems depend on a robust and reliable grid. While we are supportive of efforts to improve or expand the existing transmission grid where necessary, we urge the Commission to ensure that its policies promote needed investment without unnecessarily burdening the entities that pay transmission costs.

We submit that the Commission's current incentives policy, developed through Order Nos. 679 and 679-A² and the Commission's 2012 Policy Statement,³ strikes the

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

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

³ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

right balance. It does so through ensuring risk-reducing incentives are tailored to address the actual risks and challenges faced by a project,⁴ and deeming return on equity (ROE) adders appropriate only where a transmission owner has taken steps to reduce project risk (including through risk-reducing incentives) but still faces risks not compensated by its base ROE.⁵

While the Commission's existing approach to project-specific incentives is working well, Public Systems suggest two discrete changes to the Commission's incentives policy. First, the Commission should reconsider the use of a perpetual ROE adder to incentivize participation in independent system operators and regional transmission organizations (collectively, RTOs). While such incentives may have been justified during the formative years of RTO development, their continued application is no longer just and reasonable, particularly in light of their significant costs to consumers. Second, the Commission should strengthen incentives for joint ownership, in recognition of the risk-reducing benefits of these arrangements.

Finally, Public Systems urge the Commission to consider whether continued impediments to transmission development may be more appropriately and efficiently addressed through planning reforms rather than expanded use of incentives.

⁴ *See id.* P 16.

⁵ *See id.* PP 20, 22.

I. COMMUNICATIONS

Correspondence and communications concerning this submission should be directed to:

Brian Thomson
Senior Project Manager for Regulatory
Services
MASSACHUSETTS MUNICIPAL WHOLESALE
ELECTRIC COMPANY
P.O. Box 426, Moody Street
Ludlow, MA 01056
Tel. (413) 589-0141
Fax (413) 589-1585
Email: bthomson@mmwec.org

Stephen E. Kaminski
Power Planning and Policy Advisor
NEW HAMPSHIRE ELECTRIC
COOPERATIVE, INC.
579 Tenney Mountain Highway
Plymouth, NH 03264-3154
Tel. (603) 536-8655
Email: kaminski@nhec.com

Scott H. Strauss
Jeffrey A. Schwarz
Amber L. Martin
SPIEGEL & MCDIARMID LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
Tel. (202) 879-4000
Fax (202) 393-2866
Email: scott.strauss@spiegelmcd.com
jeffrey.schwarz@spiegelmcd.com
amber.martin@spiegelmcd.com

II. PUBLIC SYSTEMS

MMWEC is a political subdivision of the Commonwealth of Massachusetts and a New England Power Pool (NEPOOL) Participant engaged, *inter alia*, in the procurement and development of bulk power supply resources for its twenty municipal electric system members and others. *See* Mass. St. 1975, ch. 775. In the exercise of its statutory powers, MMWEC acquires electric energy and ancillary services from the wholesale markets administered by ISO New England Inc. (ISO-NE or ISO). MMWEC and its members

purchase regional network transmission service pursuant to the ISO-NE Open Access Transmission Tariff (OATT).

NHEC is a consumer-owned electric distribution cooperative that provides retail electric distribution service to its more than 80,000 member consumer accounts located in nine of New Hampshire's ten counties. NHEC is a NEPOOL Participant, a purchaser in New England wholesale markets, and a purchaser of Regional Network Service under the ISO-NE OATT.

III. COMMENTS

Rather than respond individually to each of the questions posed in the NOI, Public Systems offer general comments regarding the appropriateness of the Commission's current incentive policies and suggests opportunities for improvement.

A. The Commission should continue to assess project-specific incentive requests based on risks and challenges approach. (Questions 1, 2, and 4)

Public Systems urge the Commission to retain the current risks and challenges framework for assessing incentive requests.

When the Commission uses incentive rates to promote beneficial conduct, "it must see to it that the increase is in fact needed, and is no more than is needed."⁶ By focusing the Commission's review on the critical question of whether particular incentives are needed to induce an investment and realize its benefits, the Commission's risks and challenges approach meets this standard by ensuring that awards are appropriately tailored to address actual impediments to transmission development. And

⁶ See *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955), *cert denied sub nom. Panhandle E. Pipe Line Co. v. City of Detroit*, 352 U.S. 829 (1956).

because this approach avoids “reward[ing] investments that would happen in any event,”⁷ and prefers risk-reducing incentives over ROE adders,⁸ the Commission’s policy generally addresses those impediments at least cost.

This approach is both legally sound and, based on the facts on the ground, appears to be working. Nationwide, investments in electric transmission facilities grew from approximately \$2 billion per year during the late 1990s to approximately \$20 billion per year during the last five years.⁹ In New England specifically, the region’s transmission owners invested nearly \$11 billion in transmission between 2002 and 2018.¹⁰ Public Systems urge the Commission to refrain from “fixing” that which is not broken, and to retain the risks and challenges framework for assessment of incentives requests.

B. Limited and discreet changes to the Commission’s incentive policy may be warranted.

1. The Commission should reconsider the contours of the RTO adder. (Questions 61-66)

While the RTO participation adder may have been a useful inducement to encourage participation in novel grid operation arrangements during the early years of RTO formation, in New England (if not in other RTO/ISO regions of the country) such participation is now part of the regulatory landscape and well understood by transmission companies. More than twenty years after ISO-NE’s formation, and fifteen years after the

⁷ See *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 130 (D.C. Cir. 2019).

⁸ Order 679, PP 20-21.

⁹ Johannes P. Pfeifenberger, et al., *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value* at 14-15, Brattle Group (2019), https://brattlefiles.blob.core.windows.net/files/15987_brattle_competitive_transmission_report_final_with_data_tables_04-09-2019.pdf (Brattle April 2019 Report).

¹⁰ See *Transmission*, ISO New England, <https://www.iso-ne.com/about/key-stats/transmission> (last visited June 25, 2019).

implementation of the region's participation adder,¹¹ this incentive appears to have outlived its usefulness. At this point, Public Systems are concerned that the participation adder is not an inducement to maintain membership but instead an unwarranted windfall to the region's transmission owners.

Accordingly, Public Systems suggest that the Commission revise the RTO adder in three specific ways: First, the adder should be eliminated immediately for any transmission owner whose participation in an RTO is mandated. Second, for other transmission owners currently participating in an RTO, the RTO adder should be phased out. We suggest that the adder be cut in half (to 25 basis points) after the first year, and eliminated entirely after the second year. Third, for any future RTO members deemed eligible to receive a 50 basis point adder, the adder should sunset after ten years.

Limiting the RTO adder as suggested would be consistent with the directive in Federal Power Act section 219(c) that the Commission "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."¹² There is no requirement that such incentives be perpetual, and, for the reasons stated here, no sound policy basis for doing so.

2. The Commission should strengthen incentives for joint ownership. (Questions 50-51)

The Commission has sought to encourage joint ownership by public power entities as "increasing opportunities for investment in the transmission grid, as well as

¹¹ In 2004, the Commission approved a 50 basis point adder for RTO membership, which is included as part of the base ROE rate, and charged against the entire New England transmission rate base. *Bangor Hydro-Elec. Co.*, 106 FERC ¶ 61,280, P 245 (2004). See ISO-NE, Transmission, Markets and Services Tariff, Attachment F (Implementation Rule), § II.A.2.(a)(iii).

¹² 16 U.S.C. § 824s(c).

ensuring nondiscriminatory access to the transmission grid by transmission customers.”¹³

In the 2012 Policy Statement, the Commission stated that an applicant seeking ROE incentives must demonstrate that it has taken actions to appropriately minimize its risks during project development, and identified joint ownership arrangements as a risk-reducing measure to be considered.¹⁴ While the Commission stopped short of requiring joint ownership opportunities at that time, Public Systems ask the Commission to strengthen its inducement of joint ownership now.

Investments in transmission can provide transmission-dependent utilities (TDUs) with an important hedge against increasing transmission rates. But opportunity to invest has been limited to date. Public Systems thus request the Commission to further encourage joint ownership by these entities in two ways. First, the Commission should expressly require that an incentive applicant seeking an ROE adder state whether or not it is open to investment on reasonable terms by financially qualified TDUs located in the relevant footprint (e.g., the state or region), and identify the criteria to qualify for such participation. If the applicant is unwilling to consider joint ownership, it should explain why that is the case. Second, the Commission should adopt a rebuttable presumption that where an applicant has not provided a meaningful opportunity for joint ownership on

¹³ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, P 776 (2011) (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, P 593 (2007) (subsequent history omitted)), *reh’g denied*, Order No. 1000-A, 139 FERC ¶ 61,132, *on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (*per curiam*), *reh’g en banc denied*, No. 12-1232 (D.C. Cir. Oct. 17, 2014). See also Order No. 1000-A, 139 FERC ¶ 61,132, P 81.

¹⁴ 2012 Policy Statement P 24 (“[A]pplicants may take measures to mitigate risks associated with siting and environmental impacts by pursuing joint ownership arrangements. The Commission encourages incentives applicants to participate in joint ownership arrangements and agrees with commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks.”)

load-ratio basis to TDUs in the footprint that will bear the cost, the applicant has not taken all appropriate steps to minimize its risks and is not entitled to an ROE adder. Together, these measures will facilitate joint ownership while achieving section 219's goal of "encouraging a deep pool of participants."¹⁵

C. The Commission should examine whether changes to regional transmission planning processes could more efficiently and effectively address concerns regarding transmission investment.

While the Commission's existing incentives policy generally appears to be working, Public Systems ask the Commission to consider whether reforms to other aspects of transmission development policy are warranted. Properly structured incentives can encourage development of beneficial projects that may otherwise have been too risky for the applicant to undertake, but how projects are planned, and who builds them, are equally important parts of the equation.

In the nearly ten years since the Commission issued Order No. 1000, New England has yet to run a single competitive solicitation for new transmission development.¹⁶ ISO-NE's tariff requires the use of competitive solicitations to meet new regional transmission needs,¹⁷ but offers an exception for "time-sensitive needs" of less

¹⁵ Order 679, P 354. *See also* Order 679-A, P 102; *Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, P 19 n.23 (2011) ("[E]ncouraging public power participation in such projects is consistent with the goals of section 219 of the FPA by encouraging a deep pool of participants.").

¹⁶ ISO-NE has announced plans, however, to issue in December 2019 its first request for proposals for a competitively developed transmission solution. Brent Oberlin, *Competitive Transmission Solicitation Enhancements: Order 1000 Competitive Transmission Solicitation and Other Planning Process Enhancements* at slide 2, ISO New England (June 13, 2019), https://www.iso-ne.com/static-assets/documents/2019/06/a07_tc_2019_06_13_presentation.pdf.

¹⁷ ISO-NE, *Transmission, Markets and Services Tariff*, Section II, Attachment K §§ 4.3 (Competitive Solution Process for Reliability Transmission Upgrades and Market Efficiency Transmission Upgrades), 4A.5-4A.8 (solicitation process to meet identified Public Policy Requirements through Public Policy Transmission Upgrades).

than three years.¹⁸ In the case of such “time-sensitive needs,” competitive solicitations are not used, and the incumbent transmission owner is required to develop and construct the solution.¹⁹ To date, each identified reliability need has been deemed “time-sensitive”—and therefore assigned to an incumbent transmission owner—or has otherwise been resolved by non-competitive solutions to other needs.²⁰ As a result, New England has yet to realize the competitive benefits promised in Order No. 1000.

The New England story seems to be consistent with the one being written in much of the country: the Brattle Group reports that, between 2013-2017, only \$540 million out of the \$20 billion of average annual transmission investments in the U.S. (less than 3%) were attributable to competitive transmission investments.²¹

Public Systems request that the Commission review with fresh eyes the record compiled in its competitive transmission development docket,²² and consider convening regional technical conferences to assess whether barriers to competition continue to exist in each RTO, and, if so, whether tariff changes are needed to address any such impediments.²³

¹⁸ See *id.* Att. K § 4.1(j)(i).

¹⁹ See *id.* §§ 4.1(j)(ii), 4.2.

²⁰ See, e.g., Informational Filing of ISO New England Inc. Regarding Transmission Projects Pursuant to Section 4.1(j)(iii) of Section II of the Transmission, Markets and Services Tariff, *Cent. Me. Power Co.*, Docket No. ER13-193-000 (Jan. 31, 2019), eLibrary No. 20190131-5302 (identifying projects included in the Regional System Plan exempted from competitive solicitations due to time sensitive need); Informational Filing of ISO New England Inc. Regarding Transmission Projects Pursuant to Section 4.1(j)(iii) of Section II of the Transmission, Markets and Services Tariff, *Cent. Me. Power Co.*, Docket No. ER13-193-000 (Jan. 30, 2018), eLibrary No. 20180130-5338.

²¹ Brattle April 2019 Report at 18.

²² *Competitive Transmission Development Rates Technical Conference*, Docket No. AD16-18-000.

²³ See generally Comments of MMWEC, *Competitive Transmission Development Rates Technical Conference*, Docket No. AD16-18-000 (Oct. 3, 2016), eLibrary No. 20161003-5126.

IV. CONCLUSION

Public Systems respectfully request that the Commission take these comments and the refinements proposed herein into account as it considers changes to its electric transmission incentives policies.

Respectfully submitted,

/s/ Scott H. Strauss

Scott H. Strauss
Jeffrey A. Schwarz
Amber L. Martin

*Attorneys for
Public Systems*

Law Offices of:
Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 879-4000

June 26, 2019