This document is scheduled to be published in the Federal Register on 04/26/2021 and available online at **federalregister.gov/d/2021-08215**, and on **govinfo.gov**

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM20-10-000]

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act

AGENCY: Federal Energy Regulatory Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission has proposed in this proceeding to revise its existing regulations that implemented section 219 of the Federal Power Act (FPA) in light of the changes in transmission development and planning over the last few years. This supplemental notice of proposed rulemaking proposes to modify the incentive proposed for transmitting and electric utilities that join Transmission Organizations in the March 20, 2020 notice of proposed rulemaking in this proceeding. In addition, pursuant to FPA section 206, we propose to require each utility that has received an incentive for joining and remaining in a transmission organization for three or more years to submit a compliance filing revising its tariff to remove the incentive from its transmission tariff.

DATES: Comments are due **[INSERT DATE 30 days after date of publication in the Federal Register]**. Reply comments are due **[INSERT DATE 45 days after date of publication in the Federal Register]**.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through http://www.ferc.gov, is preferred.

- Electronic Filing: Documents must be filed in acceptable native applications and

print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.
    - Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, DC 20426.
    - Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

David Tobenkin (Technical Information)
Office of Energy Policy and Innovation
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(202) 502-6445
david.tobenkin@ferc.gov

Adam Batenhorst (Legal Information)
Office of the General Counsel
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(202) 502-6150
adam.batenhorst@ferc.gov

Adam Pollock (Technical Information)
Office of Energy Market Regulation
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
(202) 502-8458
adam.pollock@ferc.gov

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS

Paragraph Numbers

I. Introduction .....2.
II. Background .....3.
III. Discussion .....5.
A. Incentive for Joining Rather than Remaining in Transmission Organizations.....6.
B. Transmission Organization Incentive Level .....10.
C. Voluntariness .....15.
D. Miscellaneous .....18.
IV. Information Collection Statement.....19.
V. Environmental Analysis .....23.
VI. Regulatory Flexibility Act .....24.
VII. Comment Procedures .....25.
VIII. Document Availability .....26.

I. Introduction

1. In a Notice of Proposed Rulemaking (NOPR) issued pursuant to section 219 of the Federal Power Act (FPA)[1] in this proceeding on March 20, 2020 (March NOPR), the Federal Energy Regulatory Commission (Commission) proposed reforms to revise its existing transmission incentives policy and corresponding regulations (Transmission Incentives Regulations)[2] in light of changes in transmission development and planning in the last few years.[3] In light of the responsive comments in this proceeding, pursuant to our authority under FPA section 219, we issue this Supplemental NOPR to propose and seek comment on a revised proposed incentive for transmitting and electric utilities[4] that

[1] 16 U.S.C. 824s.

[2] 18 CFR 35.35.

[3] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Notice of Proposed Rulemaking, 85 FR 18784, 170 FERC ¶ 61,204, *errata notice*, 171 FERC ¶ 61,072 (2020) (March NOPR).

[4] A transmitting utility is defined as an entity that owns, operates, or controls

join Transmission Organizations[5] (Transmission Organization Incentive).[6] In addition, pursuant to our authority under FPA section 206,[7] we propose to require each utility that has received an incentive for joining and remaining in a Transmission Organization for three or more years to submit a compliance filing revising its tariff to remove the incentive from its transmission tariff. We note that the draft Supplemental NOPR only refines the Transmission Organization Incentive and does not address the other proposals contained in the March NOPR.

II. Background

2. In relevant part, section 219 of the FPA states that the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.[8] As described in more detail in the March NOPR, Order Nos. 679 and 679-A adopted an incentive for utilities that "join and/or continue to be a member of an ISO, RTO, or other Commission-approved

---

facilities used for the transmission of electric energy. 16 U.S.C. 769(23). An electric utility is defined as a person or federal or state agency that sells electric energy. 16 U.S.C. 769(22).

[5] A Transmission Organization is defined as a Regional Transmission Organization (RTO), Independent System Operator (ISO), independent transmission provider, or other organization finally approved by the Commission for the operation of transmission facilities. 16 U.S.C. 796(29). For consistency with FPA section 219, in this final rule we use "Transmission Organization," rather than "RTO/ISO," as the Commission did in the March NOPR.

[6] The March NOPR defined this incentive as the "RTO-Participation Incentive." Accordingly, this Supplemental NOPR uses "RTO-Participation Incentive" when summarizing the March NOPR and commenter responses to the proposal in the March NOPR.

[7] 16 U.S.C. 824e.

[8] 16 U.S.C. 824s(c).

Transmission Organization."[9] While the Commission declined to make a finding on the appropriate size or duration of the incentive in Order No. 679, applicants have subsequently requested a 50-basis-point level for demonstrating they have joined an RTO or ISO, which the Commission has granted without modification.[10]

3. On March 21, 2019, in Docket No. PL19-3-000, the Commission issued a Notice of Inquiry seeking comment on the scope and implementation of its transmission incentives policy under FPA section 219.[11] The Commission posed several questions concerning an incentive for transmitting and electric utilities to join and remain in Transmission Organizations. In the March NOPR, the Commission proposed to revise its Transmission Incentives Regulations to more closely align the policy with the statutory language of FPA section 219 and to reflect changes in the electric industry that have taken place since the issuances of Order Nos. 679 and 679-A.[12] The Commission stated that an increased return on equity (ROE) remained an effective incentive to recognize the benefits, risks, and associated obligations of RTO membership and meet the requirements of FPA section 219(c).[13] The Commission proposed, among other things, to continue to permit transmitting utilities and electric utilities that join an RTO/ISO to recover prudently incurred costs associated with joining the RTO/ISO in their jurisdictional rates.

---

[9] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43293, 116 FERC ¶ 61,057, at P 326 (2006), *order on reh'g*, Order No. 679-A, 72 FR 1152, 117 FERC ¶ 61,345 (2006), *order on reh'g* 119 FERC ¶ 61,062 (2007).

[10] March NOPR, 170 FERC ¶ 61,204 at P 92.

[11] *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 84 FR 11759, 166 FERC ¶ 61,208 (2019) (2019 Notice of Inquiry).

[12] March NOPR, 170 FERC ¶ 61,204 at P 2.

[13] *Id.* P 97.

4. Additionally, the Commission proposed to standardize the RTO-Participation Incentive by doubling the level of the ROE adder that the Commission has commonly awarded as an incentive for electric and transmitting utilities that join and remain in Transmission Organizations, specifying that the level would be 100 basis points. The Commission also proposed to remove the existing requirement for this incentive that recipients participate in Transmission Organizations on a voluntary basis. The Commission proposed to apply the RTO-Participation Incentive prospectively to new applicants and to allow existing Transmission Organization Incentive recipients to increase the ROE level at which they receive this incentive to 100 basis points.

III. Discussion

5. We propose to modify the March NOPR proposal and revise proposed § 35.35(f) of the Commission's regulations to codify the Commission's current practice of granting a standardized 50-basis-point increase in ROE as an incentive-based rate treatment for a transmitting utility that joins and remains in a Transmission Organization and turns over operational control of the applicant's wholesale transmission facilities to the Transmission Organization. Additionally, we propose that this 50-basis-point increase in ROE be available for only the first three years after the transmitting utility transfers operational control of its facilities to the Transmission Organization. Additionally, we propose to adopt the clarification in the March NOPR that, in order to qualify for the Transmission Organization Incentive, the transmitting utility must turn over operational control of its transmission facilities to the Transmission Organization. Finally, we request comment on whether the Transmission Organization Incentive should be available only to transmitting utilities that join a Transmission Organization voluntarily. If so, we seek further comment on how the Commission should apply that standard and,

in particular, how the Commission should determine whether a transmitting utility's decision to join a Transmission Organization is voluntary.

A. Incentive for Joining Rather than Remaining in Transmission Organizations

6. FPA section 219(c) requires that the Commission provide incentives to each transmitting utility or electric utility that joins a Transmission Organization. After review of the comments received in response to the March NOPR, we believe that it is reasonable to read FPA section 219(c) to direct the Commission to provide an incentive for "join[ing]" a Transmission Organization and not for remaining in a Transmission Organization in perpetuity.

7. In response to the 2019 NOI and March NOPR, several commenters suggested that the Commission limit the duration of or phase out the incentive for membership in a Transmission Organization.[14] For example, Alliant states that, if the purpose of the incentive is to incent joining a Transmission Organization, a transmission incentive in perpetuity does not provide benefits commensurate with the intended goal.[15] Joint Commenters[16] question whether continued receipt of the incentive still serves the purpose

---

[14] *See, e.g.*, APPA Comments at 59-60; Connecticut Commission Comments at 29; Consumer Organization Groups Comments at 15-16; Delaware and District of Columbia Public Advocates Comments at 3; East Texas Coops Comments at 4; Kansas Commission Comments at 19; New Jersey Agencies Comments at 12; Northern Virginia Coop Comments at 16; State Utility Consumer Advocates Comments at 20; TAPS Comments at 110-112; Transmission Dependent Coops Comments at 6.

[15] Alliant, Comments, Docket No. PL19-3-000, at 41 (filed June 26, 2019).

[16] Joint Commenters in Docket No. PL19-3-000 include: the Aluminum Association; ELCON; APPA; Blue Ridge; California Municipals; California Commission; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; Electricity Consumers Resource Council; Industrial Energy Consumers of America; Maryland Office of People's Counsel; Modesto Irrigation District; State Utility Consumer Advocates; New York State Public Service Commission; Northern California Power Agency; Office of the People's Counsel for the District of Columbia; Public

of inducing a public utility to join, or retain its membership in, a Transmission Organization. Joint Commenters assert that, if the Commission retains the incentive, it should consider phasing out the incentive after a certain number of years of a public utility's membership in a Transmission Organization.[17] New Jersey Agencies state that a sunset period would allow transmission owners to receive an incentive for joining Transmission Organizations, while not overly burdening ratepayers.[18] According to the Connecticut Commission, FPA section 219(c) requires only that the Commission provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization, and does not foreclose a time-limited inducement, or require that any such incentive be perpetual.[19] TAPS similarly argues that FPA section 219(c) narrowly authorizes an incentive for joining a Transmission Organization, and that this incentive should also be limited in duration.[20]

8. Given that the statute only directs an incentive for entities that "join" a Transmission Organization, we believe that the Commission has latitude under the statute to tailor this incentive more narrowly to encourage joining, rather than remaining in, a Transmission Organization. We believe that providing the Transmission Organization incentive indefinitely may not be necessary to incentivize a transmitting

---

Utility Law Project of New York; Transmission Agency of Northern California; and Virginia Consumer Counsel.

[17] Joint Commenters, Comments, Docket No. PL19-3-000, at 71, 74-75 (filed June 26, 2019).

[18] New Jersey Agencies, Reply Comments, Docket No. PL19-3-000, at 11 (filed Aug. 26, 2019).

[19] Connecticut Commission Comments at 29-30.

[20] TAPS Comments at 110-111.

utility to join a Transmission Organization and, given the large impact that such an incentive has on ratepayers,[21] may not appropriately balance utility and ratepayer interests, particularly given the substantial benefits of Transmission Organization membership to participating utilities.

9. Accordingly, we propose to modify § 35.35(f) of the Commission's regulations to authorize an ROE adder for a period of three years after a transmitting utility newly joins a Transmission Organization. This three-year period would begin on the date the transmitting utility turns over operational control of its transmission facilities to the Transmission Organization. We propose that this incentive would not be available if the transmitting utility has previously been a member of a Transmission Organization. We further propose that, when a transmitting utility files tariff revisions to its formula or stated rate to implement this incentive, it must include language terminating the incentive three years after the date the transmitting utility turns over operational control of its transmission facilities to the Transmission Organization.

10. We believe that providing the Transmission Organization Incentive to transmitting utilities for a three-year period after they join a Transmission Organization and transfer operational control of their facilities to that organization will appropriately balance the different provisions of FPA section 219. In particular, we believe that providing an additional ROE for a time-limited period will further the purpose of section 219(c)[22] by encouraging Transmission Organization membership and the formation of new Transmission Organizations where they do not currently exist, while ensuring that the

---

[21] Commenters assert that the cost to ratepayers is around $400 million per year. *See* TAPS Comments, Docket No. PL19-3-000, at 97 (filed June 26, 2019).

[22] 16 U.S.C. 824s(c).

resulting rates remain just and reasonable and not unduly discriminatory and preferential as required by section 219(d).[23] This approach appropriately focuses the incentive on the transmitting utility's decision to "join" the Transmission Organization by providing a substantial incentive in the years after a transmitting utility joins a Transmission Organization, while protecting ratepayers by ensuring that the transmitting utility does not continue to collect that incentive long after it has joined the Transmission Organization. However, we seek comment on whether three years or another period is the appropriate duration for this incentive.

11. For similar reasons, we believe that continuing to allow transmitting utilities to retain the existing additional 50-basis-point incentive for joining a Transmission Organization for a period of more than three years may no longer be just and reasonable and may be unduly discriminatory or preferential. Accordingly, pursuant to section 206 of the FPA, we propose that each utility that has previously received an ROE incentive for joining and remaining in a Transmission Organization for three or more years must, within 30 days of the effective date of the final rule, submit a compliance filing removing the incentive from its transmission tariff or, if the transmitting utility joined an Transmission Organization in the previous three years, adding language to its transmission tariff to terminate its incentive three years from the date it turned over operational control of its transmission facilities.

B. Transmission Organization Incentive Level

12. We propose to modify § 35.35(f) of the Commission's regulations to adopt a 50-basis-point ROE adder consistent with Commission precedent, for the three years

---

[23] 16 U.S.C. 824s(d).

after the transmitting utility has turned over operational control of its transmission facilities to a Transmission Organization, it will be eligible for an increase in ROE of 50 basis points.[24] We believe that a 50-basis-point Transmission Organization Incentive for three years provides a material incentive to join Transmission Organizations without unduly burdening ratepayers.

13. In the March NOPR, the Commission highlighted the additional duties, responsibilities, and/or risks of Transmission Organization membership as support for the Commission's proposal to increase the incentive from 50 to 100 basis points.[25] While some commenters support this proposal, other commenters suggest that the additional duties, risks, and responsibilities do not justify doubling the amount of the incentive.[26] Other commenters submit that the incentive should be eliminated altogether.[27] We agree with commenters who advise that the benefits of Transmission Organization membership

---

[24] Applicants have consistently requested a uniform, 50 basis-point level for demonstrating they have joined a Transmission Organization. *See, e.g.*, *Gridliance West Transco LLC*, 160 FERC ¶ 61,003, at P 6 (2017), *order denying reh'g*, 162 FERC ¶ 61,101 (2018) (requesting a 50 basis-point ROE incentive); *Midcontinent Independent System Operator, Inc,* 150 FERC ¶ 61,004, at P 1, *order on clarification*, 151 FERC ¶ 61,269 (2015) (requesting a 50 basis-point ROE incentive); *American Electric Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 34, *order denying reh'g*, 121 FERC ¶ 61,245 (2007) (granting a 50 basis-point ROE incentive).

[25] *See* March NOPR, 170 FERC ¶ 61,204 at P 94; *see, e.g.*, AEP Comments at 9; Avangrid Comments at 15-16; California Utilities Comments at 11; EEI Comments at 15-17; Eversource Comments at 15-16; Exelon Comments at 12-19; ITC Comments at 8-9; WIRES Attachment at 12.

[26] *See, e.g.*, Alliant Comments at 13-14; APPA Comments at 54-56; California State Water Project Comments at 10; Connecticut Commission Comments at 27-28; Eastern Massachusetts Municipals Comments at 33-34; Public Interest Organizations Comments at 23; TAPS Comments at 107-108.

[27] *See, e.g.*, Joint State Entities Comments at 16; Ohio Commission Energy Advocate Comments at 14; State Utility Consumer Advocates Comments at 20.

support leaving the incentive offered for joining a Transmission Organization at 50 basis points rather than increasing it.

14. We note that there are many benefits of Transmission Organization membership, and that many of these benefits accrue to transmitting utilities.[28] These benefits include optimization of the transmission system, and regional transmission planning as well as access to numerous types of markets. With respect to the magnitude of the incentive for new members, we propose to find that, although ratepayer benefits and utility risks and responsibilities from Transmission Organization participation have increased since the issuance of Order No. 679, benefits to transmission owners, including access to more developed organized markets, have increased as well, such that 50 basis points, and not 100 basis points, as proposed in the March NOPR, continues to appropriately correspond to the benefits of utilities joining Transmission Organizations.[29] Additionally, as commenters point out, the actual amount of this incentive has increased, as the rate base for most transmitting utilities have risen considerably during this period.[30]

---

[28] *See* March NOPR, 170 FERC ¶ 61,204 at P 94.

[29] For example, MISO and SPP each estimate that membership brings multifactor benefits to members and ratepayers. MISO estimates that it provides $3.5 billion in total benefits annually to its members. MISO, 2020 Value Proposition, at 5 (Feb. 5, 2021), https://cdn.misoenergy.org/2020%20MISO%20Value%20Proposition%20Calculation%20Details521882.pdf. SPP estimates that its transmission planning, market administration, reliability coordination, and other services provide a net benefit to its members in excess of $2.2 billion annually. SPP, Value and Affordability Task Force Meeting, at 2 (June 20. 2019), https://www.spp.org/documents/60090/vatf%20materials_posting%2020190620.pdf.

[30] [30] For example, between September 2006 and July 2020, MISO North transmission owners' (excluding in the Cinergy zone, whose transmission owners subsequently left MISO) gross transmission-allocated rate base increased from $11.2 billion to $38.1 billion (excluding transmission in the MidAmerican and Entergy zones and Central Minnesota Municipal Power Authority and Prairie Power because they joined MISO and Cinergy because it left MISO subsequent to Order No. 679). *See* MISO, Transmission and Settlement and Pricing, Attach. O Data,

Correspondingly, the value of the incentive for potential new members has and will continue to increase. Given the transmission investments made since Order No. 679,[31] we believe that the dollar impact of the Transmission Organization Incentive will continue to increase correspondingly, as will the other benefits accruing to transmission owners joining Transmission Organizations that we describe above. Thus, upon reconsideration, we do not believe it is necessary to increase the Transmission Organization Incentive to 100 basis points.

15. In Order No. 679, the Commission declined to make a finding on the appropriate size or duration of the incentive for joining a Transmission Organization. Nevertheless, entities seeking to join a Transmission Organization have subsequently requested a uniform, 50-basis-point level ROE adder for demonstrating they have joined a Transmission Organization, which the Commission has granted without modification.[32]

---

https://www.misoenergy.org/markets-and-operations/settlements/ts-pricing/#nt=%2Ftspricingtype%3AAttachment%20O%20Data&t=10&p=0&s=Updated&sd=desc).

[31] Transmission investment by investor-owned electric companies and stand-alone transmission companies has steadily grown from $8.6 billion in 2006 to $23.4 billion in 2019, with $26.1 billion projected in 2020 and $27.1 billion projected in 2021. *See* EEI Business Analytics Group, Historical and Projected Transmission Investment, at 1 (Nov. 2020), https://www.eei.org/resourcesandmedia/Documents/Historical%20and%20Projected%20Transmission%20Investment.pdf; EEI, Transmission Investment: Adequate Returns and Regulatory Certainty Are Key, at 6 (June 2013), https://www.transmissionhub.com/wp-content/uploads/2018/12/EEI-White-Paper-on-Transmission-Investment.pdf.

[32] *See PPL Elec. Utilities Corp. and Pub. Serv. Elec. & Gas Co*., 123 FERC ¶ 61,068, at P 35 (2008) (finding that the "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."); *Republic Transmission, LLC*, 161 FERC ¶ 61,036, at P 32 (2017) (approving 50-basis-point incentive based on Republic's commitment to become a member of MISO and transfer operational control of the project to MISO once the project has been placed in service); *Pac. Gas & Elec. Co*., 148 FERC ¶ 61,195, at P 16

We have found in practice no reason to vary the size of this incentive and believe that there is no compelling reason to potentially vary on a case-by-case basis the level of the Transmission Organization Incentive. Codifying that 50-basis-point level ROE adder for the Transmission Organization Incentive will provide financial certainty for developers and potential third-party sources of capital funding for transmission projects, increase transparency regarding the size and duration of this incentive, and reduce the administrative burden of the application process for applicants and commenters. We believe that this proposed incentive level appropriately balances encouraging transmission owners to join Transmission Organizations with ratepayer considerations. We seek comment on whether 50 basis points is the appropriate level for this incentive.

16. Finally, FPA section 219(c) does not specify the form of the incentive for utilities that join a Transmission Organization. As such, we request comment as to whether there are alternative, non-ROE incentives that are more appropriate for the Transmission Organization Incentive.

C. Voluntariness

17. The Commission proposed in the March NOPR that transmitting or electric utilities that join and remain enrolled in a Transmission Organization are eligible for the Transmission Organization Incentive regardless of the voluntariness of their participation in the Transmission Organization. As stated in the March NOPR, FPA section 219(c) obligates the Commission to provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization and is silent about the obligation to do so.

(2014) (granting request for a 50-basis-point incentive "based on PG&E's commitment to remain a member of CAISO, and its commitment to transfer functional control of the Project to CAISO once the Project enters service").

Furthermore, the Commission noted that the issue of whether Transmission Organization membership is voluntary for certain transmitting utilities within Transmission Organizations has become subject to challenges at the Commission and litigation in federal courts.[33]

18. We note that multiple commenters suggest that the Commission offer an incentive only for utilities that join a Transmission Organization voluntarily and not for ones that are required to join or remain in an Transmission Organization by state law or other obligations.[34] Commenters argue that state laws, or other obligations, advance the Commission's goals of Transmission Organization membership and the purpose of FPA section 219(c).[35] Commenters also argue that awarding incentives for voluntary conduct is consistent with the Commission's policy of not rewarding past behavior.[36] Moreover, certain commenters state that courts favor or require that incentives be voluntary, and

---

[33] March NOPR, 170 FERC ¶ 61,204 at P 98 (citing *Cal. Pub. Util. Comm'n v. FERC*, 879 F.3d 966, 980 (9th Cir. 2018) (*CPUC v. FERC*) (remanding to the Commission the issue of whether PG&E was eligible for a 50-basis-point RTO-Participation Incentive for its continued participation in CAISO in light of protestors' arguments that PG&E's participation in CAISO is mandated by California state law); N.Y. State Dept. of Pub. Serv., Protest, Docket No. ER20-715-000, at 5 (filed Jan. 21, 2020) (protesting that Central Hudson Gas & Electric Corp. should not receive an RTO-Participation Incentive because it is already a member of NYISO)).

[34] *See, e.g.*, American Manufactures Comments at 24; APPA Comments at 57-58; California Commission Comments at 29-31; California Municipals Comments at 3; California State Water Project Comments at 7-9; Connecticut Commission Comments at 27-28; East Texas Coops Comments at 4; NESCOE Comments at 29-30; New England Public Systems Comments at 13-14 (arguing that the incentive should be eliminated for any entity required to be in an RTO/ISO); New Jersey Agencies Comments at 18-20; New York Coalition Comments at 13-16; Northern Virginia Coop Comments at 14-15; NRECA Comments at 49; Steel Manufacturers Comments at 11; 10 State Entities Comments at 13; Virginia Consumer Counsel Comments at 27-30.

[35] *See* APPA Comments at 58; California Commission Comments at 30.

[36] *See* California State Water Project Comments at 8.

assert that the Commission should therefore not adopt a policy to grant the incentive for conduct that is already required.[37] Furthermore, many commenters state that the RTO-Participation Incentive proposal in the March NOPR directly contravenes *CPUC v. FERC*, which stated "[a]n incentive cannot 'induce' behavior that is already legally mandated."[38]

19. Removing the voluntariness requirement, as proposed in the March NOPR, is not the only way that the Commission could reduce uncertainty regarding the application of a voluntariness requirement to individual transmitting or electric utilities. Rather, the Commission could retain Order No. 679's voluntariness requirement, add it to the Transmission Incentives Regulations, and clarify this requirement by providing guidance on the circumstances that would make participation voluntary. Accordingly, we request comment on whether the Transmission Organization Incentive should be available only to transmitting utilities that join a Transmission Organization voluntarily. If so, we seek further comment on how the Commission should apply that standard and, in particular, how the Commission should determine whether a transmitting utility's decision to join a Transmission Organization is voluntary. We also seek comment on whether the Transmission Organization Incentive should include an exception or exceptions to

---

[37] *See, e.g.*, Connecticut Commission Comments at 27; TAPS Comments at 109-110 (citing *Me. Pub. Utils. Comm'n v. FERC,* 454 F.3d 278, 289 (D.C. Cir. 2006); 10 State Entities Comments at 13 (citing *CPUC* v. FERC, 879 F.3d at 970 (granting petition for review and remanding for a determination on whether the purportedly incentivized conduct was mandated or voluntary)); Virginia Consumer Counsel Comments at 29-30 (citing *CPUC v.* FERC, 879 F.3d at 879).

[38] *CPUC v. FERC*, 879 F.3d at 974; *see* California Commission Comments at 30; California Municipals Comments at 2-3; California State Water Project Comments at 8; Connecticut Commission Comments at 28, n.50; NESCOE Comments at 30; New Jersey Agencies Comments at 11 and 18-19; New York Coalition Comments at 15, n.3; 10 State Entities Comments at 13.

a voluntariness requirement and the demonstration necessary to qualify for the exception by an applicant. For example, should the Commission allow an applicant to seek the Transmission Organization Incentive where states and/or other relevant electric retail regulatory authorities support receipt of such an incentive by the transmitting utility even though participation in the Transmission Organization is mandated by the state and/or other relevant electric retail regulatory authority? If the Commission adopts an exception or exceptions to a voluntariness requirement, how would an applicant show that it meets the exception or exceptions?

D. Miscellaneous

20. We propose to revise § 35.35(f) of our regulations to provide that the transmitting utility is only eligible for the Transmission Organization Incentive if it has not previously been a member of a Transmission Organization. We intend for the Transmission Organization Incentive to encourage transmitting and electric utilities to join Transmission Organizations, not to incent such utilities to change membership between Transmission Organizations or to alter their ownership structures. Allowing a utility that changes Transmission Organizations to extend the Transmission Organization Incentive or receive a new Transmission Organization Incentive would impose costs to ratepayers from integration and exit costs of leaving and joining Transmission Organizations without providing material benefits.

21. Further, to implement the proposed three year period for the Transmission Organization Incentive in § 35.35(f) of the Commission's regulations, we also propose that a transmitting or electric utility may not receive a Transmission Organization Incentive for transmission plant if the asset was already under the operational control of a Transmission Organization, whether as part of an affiliate or a separate owner.

Allowing a transmitting or electric utility to receive an incentive for such assets would unduly extend the duration of the incentive and would encourage sales or corporate restructuring of transmission assets for the sake of the incentive, which would not benefit ratepayers. Accordingly, we seek comment on whether, and, if so, what restrictions the Commission should impose on incentive eligibility based on sales/affiliate corporate restructurings or for transmission plant constructed by new affiliates. In particular, we request comment on whether new utility affiliates that build transmission, either within or outside of the service territory of existing operating companies, should be eligible for the Transmission Organization Incentive.

IV. Information Collection Statement

22. The information collection requirements contained in this Supplemental NOPR are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[39] OMB's regulations require approval of certain information collection requirements imposed by agency rules (including reporting, record keeping, and public disclosure requirements).[40] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number. The following discussion describes and analyzes the collection of information proposed to be modified by this Supplemental NOPR.

---

[39] 44 U.S.C. 3507(d).

[40] 5 CFR 1320

23. The Commission solicits comments on the Commission's need for the proposed information collection in this Supplemental NOPR which would revise the Commission's regulations and policy with respect to the mechanics and implementation of the Commission's transmission incentives policy; and with respect to the metrics for evaluating the effectiveness of incentives. All burden estimates for the proposed information collection is discussed in this Supplemental NOPR. These provisions would affect the following information: FERC-516, Electric Rate Schedules and Tariff Filings (OMB Control No. 1902-0096).

24. Interested persons may obtain information on the reporting requirements by contacting Ellen Brown, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 (via email DataClearance@ferc.gov or telephone (202) 502-8663).

25. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

26. Send written comments on FERC-516 to the Office of Management and Budget (OMB) through www.reginfo.gov/public/do/PRAMain, Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902-0096) in the subject line. Your comments should be sent within 30 days of publication of this notice in the Federal Register. OMB submissions must be formatted and filed in accordance with submission guidelines at www.reginfo.gov/public/do/PRAMain; Using the search function under the "Currently

Under Review field," select Federal Energy Regulatory Commission; click "submit" and select "comment" to the right of the subject collection.

27. Title: FERC-516, Electric Rate Schedules and Tariff Filings.

28. Action: Proposed revision of collection of information in accordance with RM20-10-000.

29. OMB Control No.: 1902-0096 (FERC-516).

30. Respondents for this Rulemaking: Transmitting utilities for which the Commission has granted incentive-based rate treatment for joining Transmission Organizations.

31. Frequency of Information Collection: One time for transmitting utilities for which the Commission has granted incentive-based rate treatment for joining Transmission Organizations.

32. Necessity of Information: Required to determine whether the transmitting utilities who have received the Transmission Organization Incentive for three years have updated their rates to remove the benefit, as described in this NOPR.

33. Internal Review: The Commission has reviewed the changes and has determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

34. The Commission estimates that no more than 190 transmitting utilities currently receive a 50-basis-point ROE incentive for membership in a Transmission

Organization.[41] The Commission estimates that the NOPR would affect the burden[42] and cost[43] of FERC-516 as follows:

Estimated Average One-time Change to FERC-516, Due to Proposed Changes in Supplemental NOPR in Docket No. RM20-10-000					
A. Area of Modification	**B. Number of Respondents**	**C. Annual Estimated Number of Responses per Respondent**	**D. Annual Estimated Number of Responses (Column B X Column C)**	**E. Average Burden Hours & Cost per Response**	**F. Total Estimated Burden Hours & Total Estimated Cost (Column D x Column E)**
Filings regarding updated rates reflecting the termination of the Transmission Organization Incentive	190	1	190	80 hours; $6,640	15,200 hours; $1,261,600
Total Proposed Changes for				80 hours; $6,640	15,200 hours; $1,261,600

[41] The sum of the "transmission owners" according to the websites of the six RTOs/ISOs is 190. The Commission uses this conservative estimate, while noting that not every transmitting utility has sought an incentive for membership in a Transmission Organization, and also that a parent company may seek the incentive on behalf of numerous affiliate companies.

[42] "Burden" is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[43] Commission staff estimates that respondents' hourly wages (including benefits) are comparable to those of FERC employees. Therefore, the hourly cost used in this analysis is $83.00 ($172,329 per year).

FERC-516 in Supplemental NOPR in RM20-10-000					

35. We seek comments on the estimated burden and the number of transmission owners affected by the proposed changes.

V. Environmental Analysis

36. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[44] We conclude that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Supplemental NOPR under § 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classification, and services.[45]

VI. Regulatory Flexibility Act

37. The Regulatory Flexibility Act of 1980[46] generally requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory

---

[44] *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[45] 18 CFR 380.4(a)(15).

[46] 5 U.S.C. 601-612.

alternatives that accomplish the stated objectives of a proposed rule and minimize any significant economic impact on a substantial number of small entities.[47] The Small Business Administration (SBA) sets the threshold for what constitutes a small business. Under SBA's size standards,[48] transmission owners fall under the category of Electric Bulk Power Transmission and Control (NAICS code 221121)[49], with a size threshold of 500 employees (including the entity and its associates).[50]

38. We estimate that 190 transmitting utilities are affected by the NOPR. We estimate that approximately 87.5% (or approximately 166 transmitting utilities) of those 190 entities are small entities, according to information collected from the websites of the six RTOs/ISOs. We estimate additional one-time costs associated with the NOPR (as shown in the table in paragraph 34) of: $6,640 each for the 190 filers (transmitting utilities in RTOs/ISOs) of FERC-516. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."[51] We do not consider the estimated cost to be a significant economic impact. As a result,

---

[47] *Id*. 603(c).

[48] 13 CFR 121.201.

[49] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, North American Industry Classification System, https://www.census.gov/eos/www/naics/.

[50] The threshold for the number of employees indicates the maximum allowed for a concern and its affiliates to be considered small.

[51] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act*, at 18 (May 2012), https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.

pursuant to section 605(b) of the RFA, the Commission certifies that the proposals in this Supplemental NOPR will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

39. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [**INSERT DATE 30 days after date of publication in the FEDERAL REGISTER**]. Reply comments are due [**INSERT DATE 45 days after date of publication in the FEDERAL REGISTER].** Comments must refer to Docket No. RM20-10-000, and must include the commenter's name, the organization it represents, if applicable, and its address in its comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

40. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

41. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Submission of filings other

than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VIII. Document Availability

42. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

43. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

44. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

List of Subjects in 18 CFR Part 35

Electric power rates
Electric utilities
Reporting and recordkeeping requirements

By direction of the Commission. Commissioner Chatterjee is dissenting with a separate statement attached.

Commissioner Danly is dissenting with a separate statement attached.
Commissioner Christie is concurring with a separate statement attached.

ISSUED: April 15, 2021

Nathaniel J. Davis, Sr.,
Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 35, chapter I, title 18, Code of Federal Regulations, as follows.

SUBPART G – TRANSMISSION INFRASTRUCTURE INVESTMENT PROVISIONS

1. The authority citation for subpart G continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 41 U.S.C. 7101-7352.

2. In § 35.35(f) is revised to read:

§ 35.35 Transmission infrastructure investment.

(f) *Incentives for joining a Transmission Organization.* For purposes of this incentive, Transmission Organization means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities. The Commission will permit transmitting utilities and electric utilities that join a Transmission Organization the ability to recover prudently incurred costs associated with joining the Transmission Organization in their jurisdictional rates. Additionally, for a transmitting utility that joins a Transmission Organization and turns over operational control of the applicant's wholesale transmission facilities to the Transmission Organization, the Commission will authorize a 50-basis-point increase in return on equity

for three years, commencing from the date the transmitting utility turns over operational control of the facilities, if the transmitting utility has not previously been a member of a Transmission Organization.

Appendix A: Abbreviated Names of Commenters

The following table contains the abbreviated names of all commenters in this docket.

Abbreviation	Commenter (Full Name)
ACORE	American Council on Renewable Energy
Advanced Energy Buyers	Advanced Energy Buyers Group
Advanced Energy Management	Advanced Energy Management Alliance
AEP	American Electric Power Company
Alliant	Alliant Energy Corporate Services, Inc./DTE Electric Company
Ameren	Ameren Services Company
Americans for a Clean Energy Grid	Americans for a Clean Energy Grid
American Manufacturers	American Manufacturers
APPA	American Public Power Association
Avangrid	Avangrid Networks, Inc.
AWEA	American Wind Energy Association
Blue Ridge	Blue Ridge Power Agency
CAISO	California ISO
California Commission	California Public Utility Commission
California Municipals	California Municipal Utilities Association
California State Water Project	California Department of Water Resources
California Utilities	Pacific Gas and Electric/San Diego Gas and Electric
Connecticut Commission	Connecticut Public Utilities Regulatory Authority
Consumer Organization Groups	Consumer Organization Groups
CTC Global	CTC Global Corporation
Delaware and District of Columbia Public Advocates	Delaware Division of the Public Advocate
East Texas Coops	East Texas and Northeast Texas Electric Cooperatives
Eastern Massachusetts Municipals	Eastern Massachusetts Consumer Owned Systems
EDF Renewables	EDF Renewables, Inc.
EEI	Edison Electric Institute
ELCON	Electricity Consumers Resource Council, American Chemistry Council, and American Forest & Paper Association
Energy Storage Association	Energy Storage Association

Eversource	Eversource Energy Service Company
Exelon	Exelon Corporation
GridLiance	GridLiance Holdco, LP
GridPolicy	GridPolicy, Inc.
Hiorns	Hiorns Smart Energy Networks
Individual Consumers	Individual Consumers
Institute for Policy Integrity	Institute for Policy Integrity at the New York University School of Law
ITC	ITC Holdings Corporation
Joint State Committees	Organization of MISO States
Kansas Commission	Kansas Corporation Commission
Louisiana Energy Users	Louisiana Energy Users Group
LS Power	LSP Transmission Holdings II, LLC
Maryland Commission	Maryland Public Service Commission
MISO	Midcontinent Independent System Operator, Inc.
MISO Transmission Owners	MISO Transmission Owners
National Grid	National Grid USA
Navopache	Navopache Electric Cooperative, Inc.
NESCOE	New England States Committee on Electricity
New England Public Systems	Massachusetts Municipal Wholesale Electric Company and New Hampshire Electric Cooperative Inc.
New Jersey Agencies	New Jersey Board of Public Utilities and the New Jersey Division of Rate Counsel
New York Coalition	New York State Public Service Commission, the City of New York, Multiple Intervenors, and Consumer Power Advocates
New York Transmission Owners	Indicated New York Transmission Operators
New York Transco	New York Transco, LLC
NextEra	NextEra Energy Transmission, LLC
Northern California Power Agency	Northern California Power Agency
Northern Virginia Coop	Northern Virginia Electric Cooperative, Inc.
NRECA	National Rural Electric Cooperative Association
Ohio Commission Energy Advocate	Public Utility Commission of Ohio Office of the Federal Energy Advocate
PJM	PJM Interconnection, L.L.C.
PJM Market Monitor	Independent Market Monitor for PJM Interconnection
PJM States	Organization of PJM States
PJM Transmission Owners	PJM Transmission Owners

Potomac Economics	Potomac Economics, LTD
Protect Our Power	Protect Our Power
Prysmian	Prysmian Group
Public Interest Organizations	Public Interest Organizations
R Street Institute	R Street Institute
Railroad Electrification Council	Railroad Electrification Council
Resale Power Group of Iowa	Resale Power Group of Iowa
Schulte Associates	Schulte Associates LLC
Smart Wires	Smart Wires
SMUD	Sacramento Municipal Utility District
SPP	Southwest Power Pool
SPP Transmission Owners	Indicated Southwest Power Pool, Inc. Transmission Owners
State Utility Consumer Advocates	National Association of State Utility Consumer Advocates
Steel Manufacturers	Steel Manufacturers Association
TAPS	Transmission Access Policy Study Group
Ten State Entities	Southern New England State Agencies
Transmission Dependent Coops	Transmission Dependent Utilities Systems
Union of Concerned Scientists	Union of Concerned Scientists
Virginia Consumer Counsel	Virginia Office of Attorney General, Division of Consumer Counsel
WATT Coalition	Working for Advanced Transmission Technologies Coalition and Advanced Energy Economy
WIRES	WIRES
XBRL US	XBRL US

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act

CHATTERJEE, Commissioner, *dissenting*:

1. I strongly oppose today's supplemental NOPR. It mischaracterizes the plain language of the Federal Power Act (FPA) in order to strip utilities of the Transmission Organization Incentive, even though the utility RTO/ISO membership has led to substantial consumer benefits and is vital to the energy transition and the development of much-needed transmission in the RTO/ISO regions.

The Supplemental NOPR Proposal Fails to Reasonably Implement the Statute

2. FPA section 219(c) requires that the Commission "provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."[1] Nowhere in the statute is the Commission directed to provide incentives only to each utility that *newly* joined a Transmission Organization, or to those that *voluntarily* joined a Transmission Organization. Indeed, by advancing these arbitrary restrictions,[2] the supplemental NOPR proposal will *eviscerate* the Transmission Organization Incentive and is therefore inconsistent with the statute.[3]

3. In Order No. 679, the Commission correctly explained that the "basis for the [Transmission Organization Incentive] is a recognition of the benefits that flow from membership in such organizations."[4] The Commission reasoned that it would be unduly discriminatory for the Commission to consider the benefits of membership in determining the appropriate ROE for new members but not for similarly situated entities that are already members.[5] In Order No. 679-A, the Commission found that the best way to ensure benefits to as many consumers as possible "is to provide an incentive that is

---

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

[2] For example, the supplemental NOPR does not explain how the majority arrived at a three-year incentive or even attempt to justify why three years is the appropriate duration for utilities to receive the incentive.

[3] Because so few utilities have joined a Transmission Organization in the last three years, today's proposal would eliminate the Transmission Organization Incentive for the vast majority of existing RTO members.

[4] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43293, 116 FERC ¶ 61,057, at P 331 (2006), *order on reh'g*, Order No. 679-A, 72 FR 1152, 117 FERC ¶ 61,345 (2006), *order on reh'g* 119 FERC ¶ 61,062 (2007).

[5] *Id.*

widely available to member utilities of Transmission Organizations."[6] The Commission determined that the Transmission Organization Incentive is "entirely consistent" with FPA section 219's purpose, which is to establish incentives "that benefit consumers by ensuring reliability and reducing the cost of delivered power."[7] Finally, the Commission explained that "limit[ing] the incentive to only utilities yet to join Transmission Organizations offers no inducement to stay in these organizations for members with the option to withdraw, and hence risks reducing Transmission Organization membership and its attendant benefits to consumers."[8]

4. The supplemental NOPR does not even attempt to grapple with any of the Commission's well-reasoned prior holdings. Rather, the majority merely offers a conclusory statement that a new interpretation is reasonable.[9] The majority provides no basis for its subtle but meaningful contortion of the statue, which, as noted above, requires that the Commission "provide for incentives to each . . . utility that joins a Transmission Organization" and does not – as the majority would have you believe – require the Commission "to provide an incentive for joining rather than remaining in a Transmission Organization."[10]

<u>The Supplemental NOPR Will Slow the Energy Transition and Stymie Needed Investments</u>

5. I could understand the majority's proposal to eviscerate the Transmission Organization Incentive if doing so accomplished an important or even articulable policy objective. But the proposal is—bafflingly—contrary to the current Administration's federal clean energy goals.[11] To meet such aggressive goals, we will need both robust

---

[6] Order No. 679-A, 117 FERC ¶ 61,345 at P 86.

[7] *Id*.

[8] *Id. By design*, the Supplemental NOPR proposal attempts to limit the incentive to utilities yet to join Transmission Organizations. *See supra* note 3.

[9] Supplemental NOPR at P 8 (offering nothing more than a blanket suggestion that the existing Transmission Organization Incentive "may not balance utility and ratepayer interests"). In addition to ignoring the increasing burdens placed on member utilities and the fact that the billions of dollars of benefits the RTOs/ISOs provide through utility membership accrue to consumers – not to the utilities, as the majority would have you believe – the majority completely disregards WIRES' clear warning that, with a proposal like today's, "there is a very real risk that RTO/ISO membership could remain static (at best) or shrink (at worst)." WIRES Comments at 14.

[10] *See* Supplemental NOPR at P 6.

[11] *See*, *e.g.*, Executive Order 14008, 86 FR 7619 (Jan. 27, 2021), *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad (setting forth the goal of "put[ting] the United States on a path to achieve net-zero emissions, economy-wide, by

organized markets and an enormous amount of investment in transmission,[12] and we will need to put Americans to work building the grid of the future.[13] If this Commission hopes to run fast toward these energy transition goals, it must not shoot itself in the foot by eliminating the Transmission Organization Incentive.

6. RTOs and ISOs, while imperfect, have been enormously successful in generating billions of dollars of annual benefits to consumers. MISO estimates that it produces between $3.1 and $3.9 billion of annual net economic benefits in the form of "improved reliability, compliance, more efficient use of existing assets and reduced need for additional assets."[14] PJM estimates its annual savings at between $3.2 and $4.0 billion in the form of more efficient regional transmission planning, lower aggregate generation reserve requirements, encouraging replacement of less-efficient generators, and reducing electricity production costs.[15] SPP estimates that savings from its markets and transmission planning services provide more than $2.2 billion of annual benefits.[16] According to National Grid, ISO-NE is expected to produce savings of more than $600 million per year.[17] Based on these four estimates, one could reasonably conclude that

---

no later than 2050"); *see also*, *e.g.*, Ronald Brownstein, *Infrastructure plan: How Biden's zero-carbon revolution would broaden the energy map*, CNN (Apr. 6, 2021), https://www.msn.com/en-us/news/us/infrastructure-plan-how-biden-s-zero-carbon-revolution-would-broaden-the-energy-map/ar-BB1fkZ5q (explaining that President Biden's American Jobs Plan includes "a provision that would require every state to generate all of its electricity by 2035 from fuels that do not produce any of the carbon emissions linked to global climate change").

[12] *See*, *e.g.*, Eric Wolff, *Down to the wire: Biden's green goals face a power grid reckoning*, Politico (Apr. 8, 2021), https://www.politico.com/news/2021/04/08/biden-green-goals-power-grid-480446 ("President Joe Biden's dream of a climate-friendly electric grid hangs on a slender wire: his administration's ability to speed the construction of thousands of miles of power lines.").

[13] *See* Fact Sheet, The American Jobs Plan, https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/ (setting forth the goal to "put hundreds of thousands of people to work" on projects to include "laying thousands of miles of transmission lines").

[14] *See* MISO, *2020 MISO Value Proposition*, (Feb. 2021), https://cdn.misoenergy.org/2020%20Value%20Propostion%20Exec%20Summary521884.pdf.

[15] *See* PJM, *PJM Value Proposition*, (Jul. 2019), https://www.pjm.com/-/media/about-pjm/pjm-value-proposition.ashx.

[16] *See* SPP, *14-to-1 The Value of Trust*, at 3 (May 2019), https://spp.org/documents/58916/14-to-1%20value%20of%20trust%2020190524%20web.pdf.

[17] National Grid Comments at 8 (citing Supplemental Answering Testimony of Kenneth B. Bowes on Behalf of the NETOs, Docket No. EL16-64, Exh. No. NET-02600

these RTOs/ISOs *alone* produce more than $10 billion of annual benefits for consumers.[18] Though the estimated $400 million annual cost of the Transmission Organization Incentive may appear large without any context,[19] it is quite literally pennies on the dollar when compared to the more than $10 billion of annual benefits to ratepayers generated from RTO/ISO membership. The majority has lost sight of the forest for the trees. I share the concern expressed by WIRES that any course-reversal "on maintaining the availability of the RTO/ISO Participation Incentive . . . would undermine the Commission's decades-long policy of supporting the development and expansion of RTOs/ISOs and the corresponding benefits to consumers they provide."[20]

7. Moreover, as we move towards a clean energy future, the importance of RTOs/ISOs will only continue to grow.[21] As just one example, large energy consumer Google, which recently articulated a goal of running on carbon-free energy everywhere by 2030,[22] put it this way:

> The key to managing [renewable] intermittency at low cost has been the ability to use large, interconnected, highly integrated electricity grids and associated liquid wholesale markets. As renewable penetrations grow, it will be critical to shift from balkanized, isolated electricity markets to regional,

---

at 9 and accompanying Exhibit No. NET-02601 (July 31, 2017)).

[18] This estimate is likely understated because it does not include the benefits to consumers from CAISO or NYISO. In addition, according to Renewable Energy Buyers Alliance (REBA), which advocates for "instituting organized wholesale markets in all regions of the country," the creation of an RTO in the Southeast would generate an estimated $19.2 billion in annual savings. REBA, *Organized Wholesale Markets*, https://rebuyers.org/programs/market-policy-innovations/organized-markets/.

[19] Supplemental NOPR at P 9 & n.21.

[20] WIRES Reply Comments at 5.

[21] *See, e.g.*, REBA, Organized Wholesale Markets, https://rebuyers.org/programs/market-policy-innovations/organized-markets/ ("[O]rganized wholesale markets produce billions in customer savings annually, they are critical to efficient decarbonization and clean energy integration, and increase customers' ability to drive the clean energy transition.").

[22] *See* Sundar Pichai, Our Third Decade of Climate Action: Realizing a Carbon-free Future (Sept. 14, 2020), https://blog.google/outreach-initiatives/sustainability/our-third-decade-climate-action-realizing-carbon-free-future.

> interconnected grids and markets. This will create larger balancing areas to better manage intermittency, increase price efficiency through greater liquidity and market transparency, and allow renewables to be delivered from distant but resource-rich geographies to the load centers where they are needed.[23]

8. Real world experience bears this out. We already have seen SPP successfully manage record levels of wind generation, which would not be possible if its footprint were broken into dozens of balancing areas.[24] SPP's CEO Barbara Sugg identified four factors behind SPP's successful integration of renewable energy: (1) SPP's large consolidated balancing authority takes advantage of its scale to match the many sellers of renewable power with a broad footprint of buyers; (2) SPP sits at the crossroads of the nation's highest wind and solar resources; (3) SPP has a robust transmission infrastructure that allows renewable energy to be sent long distances; and (4) SPP enjoys a robust day-ahead and real-time energy market.[25] SPP's impressive integration of wind paints a clear picture: RTOs provide a platform for a successful energy transition. That platform can only remain viable if existing utility members remain in RTOs.

9. I whole-heartedly agree with the current chorus of calls for more effective regional and interregional transmission planning, including more expansive competitive bidding processes and interregional planning.[26] But we cannot ignore that the RTO/ISO regions

---

[23] Google, Achieving Our 100% Renewable Energy Purchasing Goal and Going Beyond (Dec. 2016), https://www.gstatic.com/gumdrop/sustainability/achieving-100-renewable-energy-purchasing-goal.pdf. *See also* Advanced Energy Buyers Group, Organized Wholesale Markets and Advanced Energy Procurement (Jan. 2021), https://info.aee.net/hubfs/AEE_AEBG%20-%20WholesaleMkts_1.19.21.pdf ("[E]xpanding and improving [organized wholesale] markets would open new opportunities for large customers to meet their own emission reduction and renewable energy goals while also accelerating the broader energy transition.").

[24] On March 29, 2021, SPP broke four renewable records, with wind penetration surpassing 80% for the first time in SPP history and reaching a renewable penetration record of 84.2%. Kassia Micek, *SPP breaks four renewable, wind records causing power prices to dip negative*, S&P Global (Mar. 30, 2021) https://www.spglobal.com/platts/en/market-insights/latest-news/electric-power/033021-spp-breaks-four-renewable-wind-records-causing-power-prices-to-dip-negative.

[25] American Council for Renewable Energy, How Southwest Power Pool Sets Renewable Records Daily (Apr. 8, 2021), *https://acore.org/how-southwest-power-pool-sets-renewable-records-daily/*.

[26] *See, e.g.*, Americans for a Clean Energy Grid, *Planning for the Future, FERC's Opportunity to Spur More Cost-effective Transmission Infrastructure*, at 8 (Jan. 2021),

are the leaders and catalysts on these fronts. The Commission staff's 2020 State of the Markets Report noted that "four transmission planning regions . . . awarded to developers or requested proposals for new transmission projects as part of a competitive bidding process."[27] All four of these transmission planning regions are RTO/ISO regions – PJM, NYISO, SPP, and ISO-NE.[28] Commission staff also identified two promising developments pertaining to inter-regional transmission planning: (1) MISO's board approved an interregional project previously approved by PJM; and (2) MISO and SPP announced a joint project to find comprehensive, cost-effective projects along the MISO-SPP seam. Again, these developments are driven by RTO/ISOs. Now is not the time to undercut them.

10. Finally, the existing Transmission Organization Incentive modestly increases the overall ROE awarded to utilities in RTO/ISO regions. Preserving or increasing the incentive would better position such utilities to compete for capital, thereby enhancing large-scale transmission investment.[29] Stable incentives create much-needed "regulatory certainty for investors, planners, and transmission owners to inform decisions regarding long-term planning and the deployment of capital."[30] Lowering overall ROEs, as the majority proposes to do here, may push investment away from transmission projects and towards other sectors of the economy or to lower risk projects.

11. If the Commission is truly committed to advancing policies to build out our transmission system to deliver clean, reliable, and affordable energy services, it should not support today's proposal. A far better approach would be to move forward with a comprehensive suite of reforms to provide incentives for the transmission projects that

---

("As we look to the future, much more regional and inter-regional power exchange will be needed for national energy security, reliability, resilience, cost-effectiveness, and economic competitiveness.").

[27] Commission Staff, *State of the Markets 2020*, (Mar. 2021), https://www.ferc.gov/sites/default/files/2021-03/State-of-the-Markets-2020-Report.pdf.

[28] *Id.* MISO is engaging with stakeholders to develop its Long-Range Transmission Planning initiative to holistically assess the region's future transmission needs in light of expected resource evolution and electrification. *See* MISO, *Long-Range Transmission Plan Roadmap*, (Mar. 2021), https://cdn.misoenergy.org/20210317%20PAC%20Item%2003a%20Long%20Range%20Transmission%20Plan%20Initial%20Roadmap531009.pdf. I am not aware of any similar holistic region-wide initiative in the non-RTO/ISO planning regions.

[29] *See* London Economic, *Economic Considerations in the Matter of Transmission Incentives*, (July 2020), https://wiresgroup.com/wp-content/uploads/2020/07/LEI-Expert-Paper-on-FERC-NOPR_Electric-Transmission-Incentives-July-1-2020.pdf.

[30] WIRES Reply Comments at 4-5.

provide the most benefits to consumers.[31] Unfortunately, with today's order, the Commission has taken its eye off the ball.

For these reasons, I respectfully dissent.

_____
Neil Chatterjee
Commissioner

[31] March NOPR, 170 FERC ¶ 61,204, at PP 3-11. I support moving forward with a final rule that adopts the March NOPR proposal, albeit with some narrow adjustments. For example, rather than providing Economic Benefits Incentives to transmission projects based on their benefit-to-cost ratios, I would instead provide such incentives based on net benefits in an effort to ensure that the incentives flow to the most beneficial – likely regional and inter-regional – transmission projects.

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act

DANLY, Commissioner, *dissenting*:

1. That "that" is a word that the English language overtasks and that leads to confusion cannot be disputed. But "that" does not mean "to," and that is what the majority freights "that" with in this order. That is why I dissent.

2. Section 219(c) of the Federal Power Act provides that "the Commission shall . . . provide for incentives to each transmitting utility or electric utility *that* joins a Transmission Organization."[1] And this is what the Commission has done since this text was added to the Federal Power Act in 2005,[2] providing a 50-basis-point adder to the return on equity of transmission utilities in Regional Transmission Organizations (RTO).[3] These incentives do not expire unless the transmission utility leaves the RTO.[4]

3. The majority, however, states that it now "believe[s] that it is reasonable to read FPA section 219(c) to direct the Commission to provide an incentive for 'join[ing]' a Transmission Organization and not for remaining in a Transmission Organization in

---

[1] 16 U.S.C. 824s(c) (emphasis added).

[2] *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 326 (2006), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[3] *See Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035, at P 2 (2021).

[4] There is but one reasonable reading of this provision. "That" in this sentence is a relative pronoun. Its function is to introduce a restrictive relative clause. It does no more than identify the universe of entities eligible for the incentive. Its antecedent is "transmitting utility or electric utility." The same essential meaning would be conveyed were we to substitute another relative pronoun by treating the utilities as people. In that case, we could re-state the provision as: "the Commission shall . . . provide for incentives to each transmitting utility or electric utility *who* joins a transmission organization." This language admits for no limitation. It establishes a category of eligible entities (they must be transmission or electric utilities). It then restricts the category by requiring the satisfaction of a further condition (they must join an RTO). There is also no limitation in the verb. "Joins" is the 3rd person singular present active indicative form of the verb "to join." "Joins" is a simple aspect verb; it is neither completed nor continuous. Accordingly, a (somewhat) stilted Latinate expression of the Congressional mandate might read: "the utility joins; the Commission provides."

perpetuity."[5] The incentive, therefore, would be limited to "each transmitting utility or electric utility *to* join[] a Transmission Organization" and the incentive would expire after three years. I disagree because that is not what the statute says.

4. *First*, the Commission's new belief contradicts fourteen years of precedent interpreting unchanged statutory text.

5. *Second*, the Commission's consistent interpretation of the statute since its inception is correct. The Commission is to provide incentives to a utility "that joins" an RTO. The statute does not limit the incentive solely to encourage utilities "to join" an RTO; it does not address the issue of whether they "remain" in the RTO. If Congress intended the RTO adder to only apply as an incentive "to join" an RTO, it would have said so. It did not. The statute requires incentives to an entity "that joins" an RTO, full stop, no limitation.

6. It is not our role to second guess Congress. It is irrelevant whether the majority "believes" the RTO adder is no longer necessary as an incentive for a utility "that joins" an RTO to stay in the RTO. If the majority or anyone else has a problem with the statute, their sole recourse is through Congress.

7. Just as the statutory text is not limited to an incentive for a utility "to join" an RTO, it also is not limited to a utility that "voluntarily" joins a Transmission Organization. That word does not appear in the statute. I oppose inserting this further limitation into the statutory text.[6]

8. The majority also fails to consider the effects of its proposed change on utilities that have not yet joined an RTO. There are large portions of the country that have no RTO. Recent events suggest that utilities in these regions are contemplating joining an existing RTO or forming a new one. The Commission should be taking actions to encourage such decisions. Instead, we are proposing to reduce the benefits to utilities that join RTOs based on a strained, erroneous interpretation of the statute. Utilities considering RTO participation are sure to take note not only of the reduction in benefits attendant to RTO participation that the Commission proposes today, but also of the Commission's willingness to take extraordinary steps to reduce those benefits. This is

---

[5] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 175 FERC ¶ 61,035 at P 6.

[6] I recognize that the Ninth Circuit has ruled that under the Commission's Order No. 679 implementing the relevant statutory text "the voluntariness of a utility's membership in a transmission organization is logically relevant to whether it is eligible for an adder." *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966, 975 (9th Cir. 2018); *see 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 Court did not address the meaning of the statutory text itself.

not the signal we should be sending to utilities that, to date, have resisted RTO participation.

9. For similar reasons, I support a 100-basis point adder to a utility "that joins" an RTO. RTOs provide enormous cost benefits to consumers. We should continue to provide strong incentives to utilities to join and to remain in RTOs so that consumers can reap the cost benefits of power markets. That is what the statute requires, and I would strengthen these incentives for any utility "that joins" an RTO.

For these reasons, I respectfully dissent.

_____

James P. Danly
Commissioner

DEPARTMENT OF ENERGY
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act

CHRISTIE, Commissioner, *concurring*:

1. I concur with today's supplemental Notice of Proposed Rulemaking (NOPR) because it moves in the right direction.[1] I write separately, however, to explain my reasons.

2. The Commission has previously enumerated the benefits of RTO/ISO participation to both public utilities and consumers, so the costs and benefits of such membership are not at issue here. At a time, however, when transmission costs are already a significant and rising part of consumers' retail bills,[2] ROE adders needlessly burden consumers with substantial additional costs without demonstrable evidence that they actually incentivize the particular action they are aimed at incentivizing.

3. Given the state of play today, I agree with certain commenters that the RTO adder "provides an unnecessary windfall [with] no nexus to public utilities' decisions to join or remain in an RTO."[3] It may also be the case that such adders are duplicative of other

---

[1] *See* Supplemental NOPR at PP 9-11.

[2] *See, e.g.*, California Municipal Utilities Association July 1, 2020 Comments at 3 (explaining that "[s]ince 2001, the CAISO's TAC has risen by a whopping 700%," and "[s]ince 2010, spending on transmission has increased by almost 400%."); *see also* Transmission Access Policy Study Group July 1, 2020 Comments at 7 ("The impact of the current 50 basis point [RTO] adder on businesses and consumers is enormous—roughly $400 million per year and growing."); Monitoring Analytics, LLC, Independent Market Monitor for PJM, *State of the Market Report for PJM for 2020* at 17 (March 11, 2021), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2020/2020-som-pjm-vol1.pdf ("In 2020, for the first time since the start of the PJM RPM Capacity Market in 2007, the cost of transmission in the total price per MWh of wholesale power was greater than the cost of capacity.").

[3] Kansas Corporation Commission July 1, 2020 Notice of Intervention and Comments at 18; *see also* Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Connecticut Municipal Electric Energy Cooperative July 1, 2020 Comments at 12; New York State Public Service Commission, the City of New York, Multiple Intervenors, and Consumer Power Advocates July 1, 2020 Joint Comments at 16; State Entities July 1, 2020 Comments at 13; California Public Utilities Commission July 1, 2020 Comments at 40.

Commission incentives already granted to public utilities by virtue of their participation in an RTO/ISO.[4]

4. It bears repeating that while section 219 of the Federal Power Act (FPA) requires the Commission to provide certain incentives—such as an incentive for joining an RTO/ISO—it also requires that resulting rates continue to be just and reasonable.[5] As noted by the Delaware Division of Public Advocate and the Office of the People's Counsel for of the District of Columbia, "Congress did not intend for [FPA section 219], or the rules promulgated pursuant to it, to unjustly enrich utilities and RTO members at the customers' expense."[6] I agree.

5. I also agree with the supplemental NOPR's conclusion that section 219 of the FPA does not require an incentive for RTO/ISO participation to take the form of an ROE adder[7] and with its request for commenters to propose alternative, non-ROE incentives that would qualify under section 219.[8] Since the FPA does not require the award of ROE adders in this instance, I believe their use should be the subject of reassessment. I also share the concern previously expressed by Chairman Glick regarding "gratuitous handouts at customers' expense . . . ."[9]

6. In addition to the obvious impact on consumer costs, the broader reason for this need for reassessment goes to the very purpose of utility regulation. Utility regulation developed for one primary purpose: to protect captive customers of utility monopolies from the exercise of market power which monopolies, by definition, have and will exercise. Market power is, of course, the ability of a seller to charge and sustain a price above the price it could charge in a competitive market, resulting in an unfair and uneconomic transfer of wealth from captive customers to the monopoly (or near-monopoly).

7. So, utility regulation developed the cost-of-service model, which tries to duplicate the *results* of a competitive market where there is none. This is a challenge that one of my law students once described as trying to paint a rainbow. The painting will never be a rainbow, but you want to come as close as possible.

---

[4] National Association of State Utility Consumer Advocates July 1, 2020 Motion to Intervene and Comments at 20.

[5] 16 U.S.C. 824s(c).

[6] Delaware Division of the Public Advocate and the Office of the People's Counsel for the District of Columbia July 1, 2020 Comments at 2.

[7] *See* Supplemental NOPR at P 16.

[8] *Id*.

[9] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (2020) (Glick, Comm'r, dissenting in part at P 25).

8. One of the most important costs that utilities are allowed to recover in cost-of-service regulation is the cost of capital, which consists of the cost of debt and the cost of equity. The cost of equity is ROE. The Supreme Court of the United States set forth the constitutional standard for determining ROE in its workhorse case of *Bluefield Water Works v. Public Service Commission of West Virginia.*[10] The Court said, in a standard still in use today, that investors in a utility company had a right to a return that is:

> equal to that generally being made at the same time and in the same region of the country on investments in other business undertakings which are attended by *corresponding risks and uncertainties, but [a public utility] has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures.*[11]

9. Utility regulators, in setting an ROE, attempt to set the ROE based on the *actual market* for equity capital, taking into account, under the *Bluefield* standard, the level of risk faced by investors in a company that has a monopoly on a vital public service versus the level of risk undertaken by investors in a company in a fiercely competitive market. In the latter case, investors have no guarantee of receiving a single dollar of profit on their invested capital. Further, for riskier ventures in the energy sector, such as certificated facilities that face significant costs during the development phase, those risks can be factored into the determination of the actual cost of equity capital. Not all utilities face the same risks in each case.

10. That is all to say, setting the ROE is a fact-intensive inquiry that requires the regulator's best effort at determining the actual market cost of equity capital for investments of similar risk. Once it's set, however, *adding* basis points to the ROE makes the regulator not the *guardian against* market power, but the *facilitator of* it. For by definition, an ROE adder raises the cost of capital *above* the market cost, inflicting on consumers exactly the harm that utility regulation is supposed to prevent. In sum, an ROE adder is a subsidy.

11. As a result, absent a clear declaration from Congress that a FERC-authorized incentive must take the form of an ROE adder—which it did not require for RTO participation incentives—awarding an ROE adder for any length of time as a "reward" for joining an RTO/ISO may be inconsistent with FPA section 219's concurrent mandate that rates must be just and reasonable and not unduly discriminatory or preferential.

12. Because this supplemental NOPR proposes to limit the use of ROE adders for RTO/ISO membership to three years after joining—a welcome first move—I respectfully concur. I look forward, however, to commenters' responses regarding non-ROE incentives.

For these reasons, I respectfully concur.

---

[10] 262 U.S. 679 (1923).

[11] *Id*. at 692-93 (emphasis added).

_____
Mark C. Christie
Commissioner

[FR Doc. 2021-08215 Filed: 4/23/2021 8:45 am; Publication Date: 4/26/2021]