

March 5, 2012

FILED  
SECRETARY OF THE  
COMMISSION

2012 MAR -5 P 2:03

FEDERAL ENERGY  
REGULATORY COMMISSION

Via Hand Delivery

Hon. John Wellinghoff  
Hon. Phillip Moeller  
Hon. John Norris  
Hon. Cheryl LaFleur  
Federal Energy Regulatory Commission  
800 First Street, NE  
Washington, DC 20426

Re: *Promoting Transmission Investment Through Pricing Reform*, Docket No.  
RM11-26-000

Dear Chairman Wellinghoff and Commissioners:

The undersigned entities, including state commissions, agencies, and attorneys general, consumer-owned utilities, and national and regional environmental, consumer, and energy policy NGOs, have read with interest the comments filed in response to the Commission's Notice of Inquiry in the above-referenced proceeding, and many of the undersigned entities filed such comments themselves. The diversity of our perspectives notwithstanding, we have reached similar conclusions regarding many of the significant issues raised in the NOI. We write now to highlight broad areas of agreement among our organizations, and to urge the Commission to consider this broad agreement in assessing current transmission incentive policies.

We share a belief in the importance of developing and maintaining a modern, robust electric transmission system. We recognize the benefits of investment in new transmission facilities, and welcome efforts to improve reliability, reduce congestion, and integrate renewable resources. However, we also share deep reservations about the manner in which the Commission has sought to promote new investment. The current incentive structure places unwarranted burdens on consumers, and diverts ratepayer capital away from other important electric infrastructure investments.

We encourage the Commission to modify its policies so as to better protect consumers and advance policy goals. We jointly support the following revisions to current Commission policies on the granting of transmission incentives:

- **The Commission should grant risk-reducing incentives first and award above-cost incentives rarely.**

Before awarding any transmission incentives, the Commission should determine whether a project has unusually high levels of risk. Where unusual risks are shown to be present, the Commission should first consider incentives that directly address and reduce such risks, such as recovery of construction work in progress ("CWIP") and abandoned plant incentives. The Commission should not approve return on equity ("ROE") incentives as

a matter of course, particularly where other factors—such as cost recovery under formula rates—will mitigate the risk associated with a project. Most often, if the CWIP and abandoned plant risk-reducing incentives are granted, they will obviate the need for an incentive ROE. Additional incentives—e.g., ROE adders—should be the exception rather than the rule, and would be appropriate only in extraordinary cases, such as those in which consumers will be tangibly benefitted by the use of an advanced technology whose risks make it unlikely to be deemed economic for the developer absent such incentives.

- **The Commission should not provide incentives to projects that transmission providers are already obligated to build.**

In some (if not many) cases, utilities invest in transmission projects because they are under a legal obligation to do so (perhaps contained in RTO-related agreements), or because the project must be built to ensure compliance with mandatory reliability standards. The Commission cannot ensure just and reasonable rates when it provides above-cost incentives to projects that transmission providers are already obligated to build, because the projects will be built regardless of incentive treatment. The Commission should treat as presumptively ineligible for above-cost incentives facilities that are designed to achieve compliance with mandatory reliability standards or that the applicant is otherwise required to construct, unless the applicant demonstrates that it is meeting the standard through the use of an advanced technology or practice that will provide tangible net benefits to consumers.

- **The Commission should not incent expensive solutions when lower-cost alternatives are available.**

It is not just and reasonable to charge customers for expensive transmission solutions (let alone to incentivize these solutions and charge customers even more) when less expensive means are available to satisfy a reliability need. Depending on the circumstances, a non-transmission alternative may prove to be a better option for solving a given concern.

- **The Commission should not base eligibility for above-cost rewards on project scale.**

The Commission's existing policy of making unusually large transmission projects preferentially eligible for incentives creates a misdirected reward structure, potentially encouraging transmission owners to short-change incremental system upgrades and ongoing management of peak demands in favor of solutions that are sporadic, large, and wires-based. The Commission should not direct incentives to projects simply because they are unusually large, but should instead focus on factors such as project riskiness and whether, by pioneering the application of innovative or advanced technologies, an investment creates identifiable public benefits beyond those of the project at issue.

- **The Commission should not apply ROE adders to cost overruns.**

Where ROE adders are approved, that approval should be applied to the lower of budgeted or actual costs. Under current policies transmission owners—particularly those with formula rates—are rewarded if they first underestimate project estimates in order to gain needed approvals and then build at the highest cost that will not be deemed imprudent, thereby inflating the rate base to which the above-cost equity return will apply. Applying incentives to budgeted rather than actual amounts will avoid rewarding cost overruns and improve the quality of the cost estimates that are prepared in the course of RTO planning processes and state commission proceedings. In terms of mechanics, we suggest that the cost estimate used during the RTO planning process or an analogous estimate in a non-RTO context be used to apply this limitation.

- **The Commission should not apply ROE adders to abandoned plant amounts.**

While it may be useful to protect incentive applicants against risks of loss in order to promote the construction of new transmission, applicants should not be economically indifferent to whether their projects actually enter service. Applicants should have incentives to complete their projects, so that the public receives the benefits that above-cost ROE adders are intended to yield. Moreover, promoting high-risk transmission projects that never get built crowds out more modest solutions and should not be a lucrative business model. The Commission therefore should not apply ROE adders to abandoned plant amounts in order to ensure that cancelled projects' investors do not collect more than the cost of their investment.

- **The Commission should identify types of projects that are presumptively ineligible for incentives.**

Certain types of projects typically lack a risk profile meriting incentive treatment. To ease administrative burdens and provide regulatory certainty, the Commission should compile a list of "baseline" or "low-risk" projects that are generally ineligible for incentives or face a high burden to demonstrate incentive-worthy risks.

- **The Commission should make the price of incentives transparent.**

The cost-based and above-cost (incentive) components of the rate of return for projects that receive incentives should be kept distinct, so that the Commission and the public can distinguish costs from rewards.

With respect to these core issues, the undersigned organizations are unified in urging the Commission to revise its current policy. We thank the Commission for its consideration and look forward to its action on the Notice of Inquiry.

Respectfully submitted,

**ENVIRONMENTAL,  
CONSUMER, AND ENERGY  
POLICY NGOS**

**STATE PUBLIC UTILITY  
COMMISSIONS**

**STATE ATTORNEYS  
GENERAL**

/s/ Allison Clements

Allison Clements  
Director - The Sustainable  
FERC Project  
NRDC  
40 W. 20th Street  
NYC, NY 10011  
(212) 727-4473  
aclements@nrdc.org

/s/ Kevin DelGobbo

Kevin DelGobbo  
Chairman  
Connecticut Public Utilities  
Regulatory Authority  
10 Franklin Square  
New Britain, CT 06051  
(860) 827-1553  
kevin.delgobbo@po.state.ct.us

/s/ George Jepsen

George Jepsen  
Attorney General  
Office of the Connecticut  
Attorney General  
55 Elm Street  
Hartford, CT 06106  
(860) 808-5318  
AG.Jepsen@ct.gov

/s/ Johnathan Hladik

Johnathan Hladik  
Energy Policy Advocate  
Center for Rural Affairs  
145 Main Street  
Lyons, NE 68038  
(402) 687-2103 Ext 1022  
johnathanh@cfra.org

/s/ Joshua B. Epel

Joshua B. Epel  
Chairman  
Public Utilities Commission of  
the State of Colorado  
1560 Broadway, Suite 250  
Denver, CO 80202  
(303) 894-2000  
Joshua.Epel@dora.state.co.us

/s/ Janice A. Dale

Janice A. Dale  
Chief, Public Utilities  
Bureau  
Illinois Office of the  
Attorney General  
100 West Randolph Street  
Chicago, Illinois 60601  
(312) 814-3736  
jdale@atg.state.il.us

/s/ Seth Kaplan

Seth Kaplan  
Vice President for Policy and  
Climate Advocacy  
Conservation Law Foundation  
62 Summer Street  
Boston, MA 02110  
(617) 850-1721  
skaplan@clf.org

/s/ William Nugent

William Nugent  
Executive Director  
New England Conference of  
Public Utilities Commissioners  
50 Forest Falls Drive, Suite 6  
Yarmouth, Maine 04096-6937  
(207) 846-5440  
director@necpuc.org

/s/ Jesse S. Reyes

Jesse S. Reyes  
Patrick J. Tarmey  
Assistant Attorneys General  
Massachusetts Attorney  
General  
Office of Ratepayer  
Advocacy  
One Ashburton Place  
Boston, MA 02108-1598  
(617) 963-2432 (Reyes)  
(617) 963-2577 (Tarmey)  
jesse.reyes@state.ma.us  
patrick.tarmey@state.ma.us

Rhode Island Division of Public  
Utilities and Carriers

Peter F. Kilmartin,  
Attorney General of the State  
of Rhode Island

/s/ Mark S. Brownstein

Mark S. Brownstein  
Chief Counsel, Energy  
Program  
Environmental Defense Fund  
257 Park Avenue South, 17th  
Floor  
New York, New York 10010  
(212) 616-1333  
mbrownstein@edf.org

By: /s/ Leo J. Wold

Leo J. Wold  
Assistant Attorney General  
Rhode Island Department of  
Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400, ext. 2218  
lwold@riag.ri.gov

By: /s/ Leo J. Wold

Leo J. Wold  
Assistant Attorney General  
Rhode Island Department of  
Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400, ext. 2218  
lwold@riag.ri.gov

**ENVIRONMENTAL,  
CONSUMER, AND ENERGY  
POLICY NGOS (CONTINUED)**

**CONSUMER ADVOCATES**

**CONSUMER-OWNED  
UTILITIES**

/s/ Dorothy Barnett

Dorothy Barnett  
Executive Director  
Climate + Energy Project  
P.O. Box 1858  
Hutchinson, KS 67504  
Barnett@climateandenergy.org

/s/ Charles Acquard

Charles Acquard  
Executive Director  
National Association of State  
Utility Consumer Advocates  
8380 Colesville Road  
Suite 101  
Silver Spring, MD 20910  
(301) 589-6313  
charlie@nasauc.org

/s/ Ronald C. DeCurzio

Ronald C. DeCurzio  
Chief Executive Officer  
Massachusetts Municipal  
Wholesale Electric  
Company  
P.O. Box 426  
Ludlow, MA 01056  
(413) 308-1326  
RDeCurzio@mmwec.org

/s/ Abigail Dillen

Abigail Dillen  
Earthjustice  
Coal Program Director  
156 William Street, Suite 800  
New York, NY 10038  
(212) 791-1881 Ext 8221  
adillen@earthjustice.org

/s/ Elin Katz

Consumer Counsel  
Connecticut Office of Consumer  
Counsel  
10 Franklin Square  
New Britain, CT 06051  
(860) 827-2900  
occ.info@ct.gov

/s/ Stephen E. Kaminski

Stephen E. Kaminski  
Vice President, Power  
Resources and Access  
New Hampshire Electric  
Cooperative, Inc.  
(603) 536-8655  
kaminskis@nhec.com

/s/ Derek K. Murrow

Derek K. Murrow  
 Energy & Climate Policy  
 Director  
 ENE (Environment Northeast)  
 PO Box 583  
 Rockport, ME 04856  
 (203) 285-1946  
 dmurrow@env-ne.org

/s/ Sandra Mattavous-Frye

Sandra Mattavous-Frye  
 People's Counsel  
 Office of the People's Counsel  
 1133 15th Street, N.W.  
 Suite 500  
 Washington, D.C. 20005-2710  
 (202) 727-3071  
 SMFrye@opc-dc.gov

/s/ John Twitty

John Twitty  
 Executive Director  
 TAPS  
 4203 E. Woodland  
 Springfield, MO 65809  
 (417) 838-8576  
 835consulting@gmail.com

/s/ Ginny Kreitler

Ginny Kreitler  
 Senior Advisor, Energy &  
 Environment  
 National Audubon Society  
 646 Lakeview Circle  
 Newtown Square, PA 19073  
 (610) 325-9809  
 gkreitler@audubon.org

/s/ Andrea Maucher

Andrea Maucher  
 Delaware Division of the Public  
 Advocate  
 John G. Townsend Building  
 401 Federal Street, Suite 3  
 Dover, Delaware 19901  
 (302) 857-4620  
 andrea.maucher@state.de.us

/s/ Sean T. Beeny

Sean T. Beeny  
 Phyllis G. Kimmel  
 Miller, Balis & O'Neil, P.C.  
 1015 Fifteenth Street, NW  
 Twelfth Floor  
 Washington, DC 20005  
 (202) 296-2960  
 sbeeny@mbolaw.com

Attorneys for: Arkansas  
 Electric Cooperative  
 Corporation; Golden Spread  
 Electric Cooperative, Inc.;  
 Kansas Electric Power  
 Cooperative, Inc.; North  
 Carolina Electric  
 Membership Corporation;  
 PowerSouth Energy  
 Cooperative; and Seminole  
 Electric Cooperative, Inc.

/s/ Carl Zichella

Carl Zichella  
 Director of Western  
 Transmission  
 Natural Resources Defense  
 Council  
 111 Sutter Street, 20th Floor  
 San Francisco, CA 94104  
 (415) 875-6119 (SF)  
 czichella@nrdc.org

/s/ David Springe

David Springe  
 Consumer Counsel  
 Citizens' Utility Ratepayer  
 Board  
 1500 S.W. Arrowhead Road  
 Topeka, KS 66604  
 (785) 271-3200  
 (785) 217-4662 (mobile)  
 d.springe@curb.kansas.gov

/s/ Susan N. Kelly

Susan N. Kelly  
 Senior Vice President,  
 Policy Analysis and  
 General Counsel  
 American Public Power  
 Association  
 1875 Connecticut Avenue,  
 NW, Suite 1200  
 Washington, DC 20009  
 (202) 467-2933  
 skelly@publicpower.org

/s/ Jackson D. Morris

Jackson D. Morris  
 Director of Strategic  
 Engagement  
 Pace Energy & Climate Center  
 Pace Law School  
 744 Broadway  
 Albany, NY 12207  
 (914) 539-1985  
 jmorris@law.pace.edu

/s/ A. David Stippler

A. David Stippler  
 Indiana Office of Utility  
 Consumer Counselor  
 115 W. Washington Street, Suite  
 1500 South  
 Indianapolis, IN 46204  
 (317) 232-2494  
 uccinfo@oucc.IN.gov

/s/ Mark Kresowik

Mark Kresowik  
 Eastern Region Deputy Dir.  
 Sierra Club's Beyond Coal  
 Campaign  
 50 F St NW Eighth Floor  
 Washington, DC 20001  
 (202) 675-7914  
 mark.kresowik@sierraclub.org

/s/ Paula M. Carmody

Paula M. Carmody, Esq.  
 People's Counsel  
 Maryland Office of People's  
 Counsel  
 6 St. Paul Street, Suite 2102  
 Baltimore, MD 21202-0000  
 (800) 207-4055  
 paulac@opc.state.md.us

/s/ David Olsen

David Olsen  
 Managing Director  
 Western Grid Group  
 3804 Pacific Coast Highway  
 Ventura, CA 93001  
 (805) 653-6881 Office  
 Dave@westerngrid.net

/s/ Stefanie A. Brand

Stefanie A. Brand  
 Director, New Jersey Division of  
 Rate Counsel  
 31 Clinton Street, 11th Floor  
 P.O. Box 46005  
 Newark, New Jersey 07101  
 (973) 648-2690  
 sbrand@rpa.state.nj.us

/s/ Nancy L. Kelly

Nancy L. Kelly  
 Senior Policy Advisor  
 WRA  
 2260 Baseline Rd., Suite 200  
 Boulder, CO 80302  
 (208) 234-0636  
 nkelly@westernresources.org

/s/ Irwin A. Popowsky

Irwin A. Popowsky  
 Consumer Advocate  
 Pennsylvania Office of  
 Consumer Advocate  
 555 Walnut Street, 5th Floor  
 Harrisburg, PA 17101-1923  
 (717) 783-5048  
 spopowsky@paoca.org

/s/ Byron L. Harris

Byron L. Harris  
Director, Consumer Advocate  
Division  
Public Service Commission of  
West Virginia  
700 Union Building  
Charleston, West Virginia 25301  
(304) 558-0526  
bharris@cad.state.wv.us

/s/ Charlie Higley

Charlie Higley  
Executive Director  
Citizens Utility Board of  
Wisconsin  
16 N. Carroll Street, Suite 640  
Madison, WI 53703  
(608) 251-3322  
higley@wiscub.org