

October 8, 2019

The Honorable Neil Chatterjee, Chairman
The Honorable Richard Glick, Commissioner
The Honorable Bernard L. McNamee, Commissioner
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, FERC
Docket No. PL19-3-000

Dear Chairman Chatterjee and Commissioners:

The Commission's Notice of Inquiry (NOI) in the referenced proceeding seeks comments "on the scope and implementation of the Commission's transmission incentives policy and on how the Commission should evaluate future requests for transmission incentives in a manner consistent with Congress's direction in section 219." NOI P 2. The undersigned entities have approached the NOI's questions from diverse perspectives. Our differences notwithstanding, we have reached similar conclusions regarding certain significant issues raised by the Commission. This letter highlights these areas of agreement among our organizations, and urges the Commission to give these positional agreements consideration in assessing whether—and, if so, how—to modify current transmission incentive policies.

- Incentives should be awarded only where needed to induce voluntary conduct. No incentives should be granted to transmission providers for doing what they already are obligated to do.

Granting an ROE incentive adder to encourage required conduct confiscates some of the benefits that consumers otherwise would enjoy and transfers them to the transmission owner.¹ For example, the NOI explains that "[t]ransmission owners are already required to address many facets of reliability through compliance with the [NERC] reliability standards and various other planning criteria." NOI P 22. We urge the Commission to make clear that incentives—especially ROE adders—will not be awarded for projects needed to meet these standards. Satisfying mandatory reliability requirements is at the heart of a transmission owner's obligation to operate prudently and consistent with good utility practice. Projects needed to meet these standards therefore fall well within the range of activities compensated by a transmission owner's base ROE. The same principle generally applies to projects undertaken by transmission providers in fulfillment of an obligation to construct undertaken as part of joining an ISO or RTO and other activities required by tariff or contract, including the requirement to follow good utility practice.

¹ The reason for granting incentives is to "facilitate investment," not to "reward investments that would happen in any event." *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 130 (D.C. Cir. 2019); *see also Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966, 970 (9th Cir. 2018) (granting petition for review and remanding for determination whether the purportedly incentivized conduct was mandated or voluntary).

- Applicants seeking incentive rates in connection with new transmission construction should be required to demonstrate that lower cost alternatives to the project—including non-transmission alternatives or use of advanced technologies—have been considered in a regional planning process, state siting process or other appropriate forum.

The 2012 Policy Statement states the Commission’s expectation that incentive applicants be able to “demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum.” 2012 Policy Statement P 25. The Commission should strongly reaffirm that requirement. Applicants seeking incentives for new construction should be required to demonstrate that consideration was given to whether alternative solutions, including advanced technologies or measures that improve the performance of existing facilities, could provide a more effective and efficient solution for meeting transmission needs.

- Incentives should continue to be rewarded on a case-by-case and not automatic basis.

Awarding incentives without regard to case-specific circumstances would be a substantial and unwarranted change in Commission policy.² Replacement of fact-specific inquiries with consideration only of whether the proposed project includes a desired characteristic, promises a certain benefit, or addresses some yet undetermined circumstance, would preclude meaningful review by the Commission, consumers, and other affected stakeholders of whether an application satisfies the statutory purpose and requirements of section 219.

- The Commission should continue to emphasize risk-reducing incentives over return-enhancing incentives.

The 2012 Policy Statement required incentive applicants to “first examine the use of risk-reducing incentives before seeking an incentive ROE based on a project’s risks and challenges.”³ The Commission should continue to consider risk-reducing incentives before return-enhancing ones like ROE adders. Risk-reducing incentives, including allowing recovery of Construction Work in Progress, pre-commercial costs, or abandoned plant costs, mitigate certain risks that can inhibit transmission investment. In contrast, ROE adders make new transmission facilities more expensive, which can exacerbate rather than alleviate cost allocation and siting challenges.

² *San Diego Gas and Electric v. FERC*, 913 F.3d at 132 (highlighting that the Commission’s incentive policies are appropriately premised on case-by-case, fact-specific determinations, including “case-by-case applications based on appropriate showings”).

³ Promoting Transmission Investment Through Pricing Reform, 141 FERC ¶ 61,129, P 11 (2012) (Policy Statement).

- In lieu of expanding the use of incentives to promote new construction, the Commission should review the current transmission planning requirements, including the use of competitive processes to solve identified needs, and direct changes where necessary to promote customer benefits.

A common theme in the NOI comments is that transmission owner incentives are poorly aligned with consumer interests. Other things being equal, transmission owners prefer higher rates and returns, while consumers want the opposite. Transmission owners favor new-build solutions which add to rate base, even if the underlying needs could be addressed at lower cost by other means. The Commission should address these issues under the existing rubrics by increasing the rigor of transmission planning processes and more closely scrutinizing the prudence of investments included in cost-of-service rates. At the same time, the Commission should identify which transmission providers are using competitive processes to identify or implement solutions in an effective way, and examine what makes those processes effective and beneficial to consumers. The Commission then should consider directing other transmission providers to adopt similar processes.

- The Commission should continue to require that any awarded ROE incentive be limited to the cost estimate utilized at the time of RTO approval.

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 RTO participation adder should be scaled back.

An RTO participation adder arguably had value as an encouragement to potential members during the formative stages of these regional organizations. Where no RTO exists yet, the continued availability of a participation adder may be justified to seek to induce transmission owners to join one. But in much of the country, the membership bonus has done its job and outlived its usefulness. We submit that there is no evidence that customers must pay transmission providers an ROE adder in perpetuity to induce them to remain in an RTO they joined decades ago. And if the adder is not needed to achieve that end, then it is an unwarranted windfall.

- Financial incentives are not the only tool—and may not be the best tool—to induce efficient operation and expansion of the grid. To better ensure that transmission providers act in the public interest, the Commission should consider reforming transmission planning, more closely scrutinizing the prudence of transmission owner investments, and identifying standards for the efficient and cost-effective use of existing facilities that constitute good utility practice and are part of the quid pro quo for receiving regulated rates and returns on prudently invested capital.

As noted above, we support efforts to subject transmission owners to more competitive pressure, and encourage the Commission to open an inquiry to consider how more progress can be made toward that end. Meanwhile, transmission service remains generally monopolistic and is likely to

remain so for the foreseeable future. Vigorous regulation of transmission rates and services by this Commission—the only entity with authority to regulate interstate transmission—thus remains essential. The undersigned believe that increasing the rigor of the Commission’s cost-of-service rate regulation and of Commission-mandated transmission planning processes could go a long way toward addressing concerns identified by some commenters in this proceeding, including the planning of too much local (non-regionally-planned) transmission and too little inter-regional transmission in some parts of the country. We likewise believe that improving regional transmission planning and increasing the rigor of the Commission’s cost-of-service regulation is the best way to promote more rapid adoption of technologies and practices that enhance the value of existing transmission facilities at relatively low cost. For example, the Commission could require regional and local planning processes to consider (and to explain in writing) whether proposed transmission facilities or upgrades could be delayed or avoided by the use of practices or technologies that meet the identified needs more cost effectively, including through the use of dynamic line ratings, power flow technologies, software enhancement, or other methods. The Commission also could require similar analyses in all transmission rate filings that provide for recovery of the cost of new or upgraded transmission facilities, including informational filings under formula rates. By shedding light on the benefits and limits of these advanced technologies and practices, the required filings would help the Commission define circumstances in which their use is required as good utility practice—and where the failure to use them in lieu of new construction is imprudent.

Thank you for your consideration of these views.

Respectfully submitted,

**CONNECTICUT PUBLIC UTILITIES
REGULATORY AUTHORITY**

**CONNECTICUT DEPARTMENT OF
ENERGY AND ENVIRONMENTAL
PROTECTION**

/s/ Seth Hollander

/s/ Robert Snook

By:

By:

Marissa Paslick Gillett, Chair

Katie Dykes, Commissioner

Seth Hollander
Assistant Attorney General
Robert Luysterborghs
Principal Attorney
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051
(860) 827-2681

Robert Snook
Assistant Attorney General
Kirsten S. P. Rigney
Legal Director, Bureau of Energy
Technology Policy
10 Franklin Square
New Britain, CT 06051
(860) 827-2657

**NEW HAMPSHIRE PUBLIC UTILITIES
COMMISSION**

/s/ David K. Wiesner

By:

David K. Wiesner
Director of Legal Division/Senior
Hearings Examiner
New Hampshire Public Utilities
Commission
21 South Fruit Street, Suite 10
Concord, NH 03301-2429
(603) 271-2431

**VERMONT DEPARTMENT OF PUBLIC
SERVICE**

/s/ Edward McNamara

By:

Edward McNamara
Director of Planning
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601
(802) 828-2358

**MINNESOTA PUBLIC UTILITIES
COMMISSION**

/s/ Katie Sieben

By:

Katie Sieben
Commission Chair
Minnesota Public Utilities Commission
121 7th Place E, Suite 350
Saint Paul, MN 55101-2147
(651) 201-2250

**PUBLIC SERVICE COMMISSION OF THE
DISTRICT OF COLUMBIA**

/s/ Craig W. Berry

By:

Craig W. Berry
Attorney Advisor
District of Columbia Public Service
Commission
1325 G Street, NW, Suite 800
Washington, DC 20005
(202) 626-9181

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

/s/ Aspasia V. Staevska

By:

Aspasia V. Staevska
Counsel for the Pennsylvania Public
Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
(717) 425-7403

**MAURA HEALEY, ATTORNEY
GENERAL OF MASSACHUSETTS**

/s/ Donald W. Boecke

By:

Rebecca Tepper
Donald W. Boecke
Assistant Attorneys General
Massachusetts Attorney General's
Office
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2408

**WILLIAM TONG, ATTORNEY GENERAL
OF CONNECTICUT**

/s/ John S. Wright

By:

John S. Wright
Lauren H. Bidra
Assistant Attorneys General Attorney
General's Office
10 Franklin Square
New Britain, CT 06051
(860) 827-2620

**CONNECTICUT OFFICE OF CONSUMER
COUNSEL**

/s/ Joseph A. Rosenthal

By:

Richard Sobolewski
Acting Consumer Counsel

Joseph A. Rosenthal
Ten Franklin Square
New Britain, CT 06051
(860) 827-2900

**MASSACHUSETTS MUNICIPAL
WHOLESALE ELECTRIC COMPANY**

/s/ Ronald C. DeCurzio

By:

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

**NEW HAMPSHIRE ELECTRIC
COOPERATIVE, INC.**

/s/ Stephen E. Kaminski

By:

Stephen E. Kaminski
Power Planning and Policy Advisor
New Hampshire Electric Cooperative,
Inc.
579 Tenney Mountain Hwy
Plymouth, NH 03264
(603) 536-8655

**TRANSMISSION ACCESS POLICY
STUDY GROUP**

/s/ Cynthia S. Bogorad

By:

Cynthia S. Bogorad
William S. Huang
Spiegel & McDiarmid LLP
1875 Eye Street NW, Suite 700
Washington, DC 20006
(202) 879-4000

**AMERICAN PUBLIC POWER
ASSOCIATION**

/s/ John E. McCaffrey

By:

John E. McCaffrey
Regulatory Counsel
2451 Crystal Drive, Suite 1000
Arlington, VA 22202
(202) 467-2900