

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

Electric Transmission Incentives Policy) Docket No. RM20-10-000
Under Section 219 of the Federal Power Act)

JOINT COMMENTS OF PUBLIC INTEREST ORGANIZATIONS

Pursuant to the Supplemental Notice of Proposed Rulemaking (Supplemental NOPR) issued by the Federal Energy Regulatory Commission (Commission) in the above-captioned proceeding on April 15, 2021, and the Notice Granting Extensions of Time issued on May 11, 2021, the undersigned Public Interest Organizations (PIOs),¹ respectfully submit the following comments.

I. Introduction

Almost 15 years ago, in Order No. 679, the Commission stated that it would approve requests for a return-on-equity (ROE)-based incentive for public utilities that join and/or continue to be a member of an Independent System Operator (ISO), Regional Transmission Organization (RTO), or other Commission-approved Transmission Organization (RTO Participation Incentive or Incentive).² Order No. 679 did not establish a fixed incentive amount and the Commission explained that it “will consider the appropriate ROE incentive when public

¹ Natural Resources Defense Council, Sierra Club, Southern Environmental Law Center, Sustainable FERC Project, and Western Grid Group.

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43293, 116 FERC ¶ 61,057, at P 326 (2006).

utilities request this incentive.”³ Since then, the Commission has consistently granted a 50-basis-point adder without modification.⁴

In the March 20, 2020 Notice of Proposed Rulemaking in this docket (March 2020 NOPR), the Commission proposed to establish a fixed 100-basis-point RTO Participation Incentive.⁵ In the Supplemental NOPR, the Commission has modified its position, and now proposes to codify the practice of granting a 50-basis-point RTO Participation Incentive and to limit that Incentive to the first three years after the transmitting utility transfers operational control of its facilities to the Transmission Organization.⁶

The PIOs recognize that the RTOs/ISOs provide numerous benefits to customers and market participants, including facilitating the integration of renewable resources and reducing production costs, among others. But this docket is not about the widely recognized RTO/ISO benefits and instead addresses whether the RTO Participation Incentive is justified in its current or a modified form – and the two issues should not be conflated.

The PIOs support the Supplemental NOPR, and also offer an alternative proposal for consideration that would retain the RTO Participation Incentive with specific conditions on the utilities eligible to receive the Incentive. This alternative proposal, explained in Section III.B., would use the Incentive to encourage the development of regional transmission projects and

³ *Id.*

⁴ Supplemental NOPR at P 2.

⁵ *Id.* at P 4.

⁶ *Id.* at P 5.

plans, thereby creating a stronger nexus between the Incentive and the action induced by the Incentive.

II. Responses to Arguments in Support of the RTO Participation Incentive

Multiple commenters supporting the RTO Participation Incentive argue that the costs of the Incentive are justified by the benefits provided by the RTO/ISOs and that the Incentive is needed to compensate the transmission owners (TOs) for the significant risks of RTO/ISO participation. But neither of these arguments justifies the continued receipt of this Incentive for the entire transmission rate base of all TOs participating in an RTO/ISO.

A. RTO/ISO Benefits Are Unrelated to the Participation Incentive

Commenters supporting the proposed expansion of the RTO Participation Incentive in the March 2020 NOPR repeatedly cite the same benefits estimates provided by the PJM Interconnection (PJM), Midcontinent ISO (MISO) and Southwest Power Pool (SPP) as a primary justification for the RTO Participation Incentive.⁷ In his dissent, Commissioner Chatterjee directly compares these data with the estimated cost of the Incentive, asserting that “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.”⁸

⁷ See for example, Comments of the PJM Transmission Owners at 3; Comments of the PJM Interconnection at 8-9; Comments of American Electric Power Company, Inc. at 8; Comments of the MISO Transmission Owners at 10-12; Comments of WIRES at 12-13 (citing London Economics International White Paper); Comments of the Indicated SPP Transmission Owners at 3; Comments of Ameren Services Company at 21-22; Comments of ITC Holdings Corp. at 7-8, Docket No. RM 20-10-000 (July 1, 2020).

⁸ Commissioner Chatterjee Supplemental NOPR Dissent at P 6. A rough cost estimate of the incentive was provided by the Transmission Access Policy Study Group (TAPS) of \$400 million per year for the 50-basis point adder, which has served as the only estimate of the cost cited in this proceeding. See Comments of TAPS, Docket No. RM20-10-000 (July 1, 2020) at 107.

The fact that the RTOs/ISOs provide significant benefits compared with other planning and market frameworks is not in dispute and is not the issue under consideration. However, as several commenters on the March 2020 NOPR pointed out, there is no evidence in the record that the RTO Participation Incentive is required for transmission owners to join or remain in an ISO/RTO,⁹ nor did any TO assert that it would leave an ISO/RTO without such an incentive. One reason for the absence of such a demonstration is summed up in R Street’s comments: “Once transmission owners join an RTO, it is a difficult and costly process to leave. Given that, the ROE adder for RTO membership is not an incentive for transmission owners to stay in the RTO.”¹⁰ Therefore, as the Public Interest Organizations comments on the 2020 NOPR stated, the RTO-Participation Incentive “serves as free money, lacking any proof of inciting action or decisions across the industry.”¹¹

For these reasons, RTO/ISO expansion is likely to continue with or without the RTO Participation Incentive. A number of western utilities recently submitted statements of interest in joining SPP,¹² citing multiple benefits as determined in a 2020 analysis by the Brattle Group, which include reduced production costs and additional wheeling revenues.¹³ Several of these utilities are not even eligible for the RTO Participation Incentive, as public power,

⁹ See for example, Comments of the American Public Power Association at 52; Comments of the National Association of State Utility Consumer Advocates at 20 and Comments of the New England States Committee on Electricity at 21, Docket No. RM20-10 (July 1, 2020).

¹⁰ Comments of R Street Institute, Docket No. RM20-10-000 (July 1, 2020) at 5. See also Comments of the American Public Power Association at 53 noting that “experience to date indicates that transmission owners typically have little practical opportunity to unilaterally remove themselves from any RTO/ISO membership altogether.”

¹¹ Joint Comments of Public Interest Organizations, Docket No. RM20-10-000 (July 1, 2020) at 23.

¹² See <https://spp.org/western-services/rto-west/>

¹³ *Western Energy Imbalance Service and SPP Western RTO Participation Benefits*, prepared by The Brattle Group for the Southwest Power Pool, December 3, 2020.

cooperatives, or projects of the Western Area Power Administration--which demonstrates that the Incentive is not necessary to promote membership in RTOs/ISOs. Furthermore, recently enacted laws in Colorado and Nevada require their utilities to join an RTO by 2030, with exceptions in only limited circumstances.¹⁴

The Commission correctly recognized this disconnect between the Incentive and the decision to remain in an RTO/ISO in the Supplemental NOPR, finding that “providing the Transmission Organization incentive indefinitely may not be necessary to incentivize a transmitting utility to join a Transmission Organization and, given the large impact that such an incentive has on ratepayers, may not appropriately balance utility and ratepayer interests, particularly given the substantial benefits of Transmission Organization membership to participating utilities.”¹⁵

B. The Purported Risks of RTO Participation Do Not Justify an Incentive

Many TOs and other supporters of the RTO Participation Incentive argue that the Incentive is needed to compensate the TOs for the risks they undertake in RTO/ISO participation. The purported risks include ceding of control of transmission operation and the obligation to build transmission; the complexity of the stakeholder process and the participation

¹⁴ S.B.21-072, 73rd Gen. Assembly, 1st Reg. Sess. (Colo. 2021), available at: <https://leg.colorado.gov/bills/sb21-072>; S.B. 448, 81st (2021) Sess. (Nev. 2021), available at: <https://www.leg.state.nv.us/App/NELIS/REL/81st2021/Bill/8201/Text>.

¹⁵ Supplemental NOPR at P 8.

of multiple stakeholders; and state policies that impact the resource mix and the incorporation of policies into regional transmission planning processes and market and operating protocols.¹⁶

As the Commission stated in the March 2020 NOPR, such risks are actually “ongoing duties and responsibilities of RTO/ISO membership.”¹⁷ While the March 2020 NOPR argues that the RTO Participation Incentive compensates the TOs for carrying out such duties and responsibilities, we are aware of no analysis showing that the 50-basis point incentive is at all commensurate to the costs associated with the risks or responsibilities of joining an RTO, which have never been quantified to our knowledge.

Furthermore, the TOs have been able to protect themselves from many of the “risks” listed in their comments. As several parties pointed out in their March 2020 NOPR comments, the costs associated with joining and participating in an RTO/ISO are already recoverable through the transmitting utility’s jurisdictional rates, meaning that the Incentive is at least partially redundant.¹⁸ Insofar as the RTO Participation Incentive is meant to actually compensate for the costs incurred due to RTO/ISO membership, it is a windfall.

Despite the TOs’ claims that they are exposed to risks associated with turning over responsibility for transmission operation and planning to the RTO/ISO, they have in fact managed to maintain a significant amount of control over their transmission projects. For example, in August 2020, the Commission determined that the PJM TOs retained exclusive

¹⁶ *See for example*, Comments of WIRES at 13-14 (citing London Economics International White Paper); Comments of the MISO Transmission Owners at 15-17; Comments of the PJM Transmission Owners at 10-13; Comments of ITC Holdings Corp. at 8, Docket No. RM20-10-000 (July 1, 2020).

¹⁷ March 2020 NOPR at 93.

¹⁸ *See for example*, Joint Comments of Public Interest Organizations at 23; Comments of the American Public Power Association at 56; Comments of the National Association of State Utility Consumer Advocates at 20, Docket No. RM20-10-000 (July 1, 2020).

Section 205 filing rights with respect to “end of life” transmission projects, whereas PJM had responsibility, and the corresponding filing rights, only as related to planning for the “expansion” or “enhancement” of the transmission system.”¹⁹ As discussed below, these “end of life” or supplemental projects, comprise the overwhelming majority of new transmission investment in PJM. In addition, the TOs’ risks are minimized by the limited competition in transmission, and, if they did not wish to build a particular project, they could opt to waive their Right of First Refusal (ROFR).

Instead of being incorporated into regional planning, most approved new projects serve local needs or reconstruction of aging facilities, with like-for-like replacements. For example, in 2020 PJM’s Board of Directors approved \$413 million in baseline transmission investments as part of its Regional Transmission Expansion Plan (RTEP) process, while the TOs reported \$4.7 billion, over 10 times that amount, in “supplemental projects,” which address local rather than regional needs and do not require Board approval.²⁰ MISO’s Board approved 515 new projects at an estimated cost of \$4.159 billion, with \$755 million (18 percent) being baseline reliability projects and \$2.8 billion (67 percent) deemed “other projects,” the majority of which address localized reliability needs.²¹ Despite the high preponderance of “local” projects developed by the TOs, the RTO Participation Incentive has been awarded to the entire rate base of the TOs within RTOs/ISOs.

¹⁹ See PJM Interconnection LLC, Docket No. ER20-2046-000, Order Accepting Proposed Tariff Revisions (Aug. 11, 2020) at P 81-86.

²⁰ PJM, Regional Transmission Expansion Plan (February 28, 2021) at 4 and 58.

²¹ MTEP20 Report, MISO (July 2020) at 13-14.

Notwithstanding this evidence that comparatively few projects are developed through the RTO/ISO planning process, Commissioner Chatterjee argues in his dissent that “RTO/ISO regions are the leaders and catalysts” in “more expansive competitive bidding processes and interregional planning,” quoting the 2020 FERC State of the Market report’s finding that four transmission planning regions, all of which were RTOs/ISOs, “awarded to developers or requested proposals for new transmission projects as part of a competitive bidding process.”²² But according to this same report, in 2020 “over 800 line-related transmission projects within Commission-jurisdictional transmission planning regions were scheduled to go into service,” and that “of all line-related transmission projects scheduled to go into service during 2020, four were selected as part of a competitive bidding process...”²³ This report further establishes that competitively bid and interregionally planned projects are the exception to the general practice in which TOs maintain a significant level of control over what they are able to build, rather than an inevitable product of RTO membership.

III. Support for Supplemental NOPR and Additional Options for Consideration

The PIOs recommend two options for Commission action: finalize the proposal in the Supplemental NOPR or alternatively, retain the RTO Participation Incentive with restrictions.

A. The Supplemental NOPR’s Proposal Is a Reasonable Solution

Given the absence of any demonstration of need for the RTO Participation Incentive, the PIOs support the Supplemental NOPR’s proposal to grant the Incentive for “only the first three years after the transmitting utility transfers operational control of its facilities to the

²² Commissioner Chatterjee Supplemental NOPR Dissent at P 9.

²³ State of the Markets 2020, Federal Energy Regulatory Commission Staff (March 2021) at 14.

Transmission Organization.”²⁴ A three-year limitation represents a reasonable compromise that avoids too dramatic a departure from current policy and provides consistency for entities in the process of considering participation in an RTO/ISO. The Incentive, however, should only be available to a TO that is joining an RTO or ISO, and not an imbalance market or other coordinated market, which implicate none of the operational or planning control concerns alleged by TOs.

In response to Commissioner Christie’s statement in his concurrence that he “looks forward to responses regarding non-ROE incentives,”²⁵ the PIOs note that any such non-ROE incentives should be subject to all the same recommendations in these comments as for the ROE-based incentive.

B. The Commission Should Consider an Alternative Option for the Incentive

An alternative option to finalizing the Supplemental NOPR is for the Commission to codify the 50-basis-point RTO Participation Incentive but also subject it to restrictions that will increase the benefits from TO participation in the RTOs/ISOs. The undifferentiated award of the RTO Participation Incentive addresses only RTO/ISO membership, but not necessarily the integrated transmission planning benefits that the Commission has expected RTOs/ISOs to produce. Rather than applying the Incentive to all transmission investments, we propose an option in which the Incentive would be used as a mechanism to expand the scope of projects that are included in RTO/ISO regional transmission planning, while avoiding rewarding and encouraging local projects developed outside the regional planning process.

²⁴ Supplemental NOPR at P 5.

²⁵ Supplemental NOPR, Commissioner Christie Concurrence at P 12.

Under this option, for TOs currently in an RTO/ISO that were previously awarded the RTO Participation Incentive, only those projects that were selected through the regional planning process will continue to receive the Incentive, and only new projects selected through these processes will receive it in the future.

TOs that newly join an RTO would receive the Incentive for three years for their full rate base, after which their receipt of the Incentive would be subject to this project restriction. If none of their projects were selected through regional planning, then the Incentive would end after the three-year period, but could be granted in the future for regionally planned projects.

This approach has the advantage of rewarding the TO for future participation in regional planning, thus maintaining and growing the portion of its rate base that is eligible for the Incentive.

These recommendations for expanded participation in regional planning are not themselves endorsing regional transmission planning in its current state. The PIOs recognize that significant improvements are needed in regional and interregional planning, especially in the incorporation of public policy goals (rather than simply the “consideration” of such policies), accounting for greater corporate procurement of renewable resources and shifts in demand resulting from electrification, as well as adoption of a holistic consideration of multiple values and benefits of transmission. The PIOs encourage the Commission to work towards achieving such needed improvements within a separate rulemaking.

C. The Incentive Should Only be Granted where RTO/ISO Participation is Voluntary

An incentive should not reward behavior that would have occurred regardless of the incentive, which requires such behavior to be undertaken on a voluntary basis. A TO wishing to receive the incentive under the Supplemental NOPR proposal should be required to provide evidence of its voluntary participation, such as the absence of any state mandate to participate in an RTO, or a provision in their agreement with the RTO/ISO allowing for its departure.²⁶ This would not be a burdensome requirement.

For TOs required by a state to join an RTO/ISO, one option to consider under the Supplemental NOPR proposal would be to allow the TOs to request the Incentive in the future for those projects approved in a regional planning process, but the TO would not automatically receive the incentive for the first three years.

IV. Conclusion

The PIOs urge the Commission to consider these comments, and to reach a final decision on the RTO Participation Incentive that does not provide additional earnings to the TOs without a demonstrated benefit.

²⁶ *See for example* the Commission’s finding that Pacific Gas & Electric Company’s participation in the California ISO is voluntary: “CAISO’s currently-effective Transmission Control Agreement—a Commission-jurisdictional agreement on file with the Commission... allows PG&E to withdraw from CAISO by providing two-years’ written notice to other CAISO members and receiving the necessary regulatory approvals.” 168 FERC ¶ 61,038 (July 18, 2019) at P 51.

Respectfully Submitted,

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Comments of Public Interest Organizations