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 REPLY 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 reply comments.

I. INTRODUCTION

In these reply comments, the PIOs address several of the primary arguments made by the Transmission Owners (TOs) and Regional Transmission Organizations and Independent System Operators (RTOs/ISOs) in their support of retaining the return-on-equity (ROE)-based incentive for public utilities that join and/or continue to be a member of an RTO or ISO (RTO Participation Incentive or Incentive). While the TOs and RTOs/ISOs seek to retain the Incentive in perpetuity and without restrictions, they offer no quantitative or concrete evidence that such an indefinite Incentive is needed or appropriate for their continued participation in the RTOs/ISOs or to support needed transmission investments. PIOs continue to both support the Supplemental NOPR and offer their alternative proposal described in their initial comments that would retain

[1] Natural Resources Defense Council, Sierra Club, Sustainable FERC Project, and Western Grid Group.

the RTO Participation Incentive while limiting it only to projects approved through the regional planning process.

II. Supporters of Retaining the Incentive Still Provide No Evidence of the Risks and Costs Incurred in RTO/ISO Participation

The PIOs stated in their Initial Comments that "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."[2] The dearth of evidence continues in this proceeding despite the voluminous comments filed in response to the Supplemental NOPR.

The TOs and the RTOs/ISOs uniformly argue in their comments that the RTO Participation Incentive is needed as compensation for the risks incurred by their RTO/ISO participation.[3] Despite the additional opportunity provided by this proceeding to establish the existence and extent of such risks, these commenters fail to quantify the costs that they incur and the amount that would not be recovered without the 50-basis-point incentive. Ameren does acknowledge that the TOs may not actually be facing losses in the absence of the RTO Participation Incentive, noting that the TOs could still be kept "whole" for their costs without the Incentive.[4]

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[2] Joint Comments of Public Interest Organizations, Docket No. RM 20-10-000 (June 25, 2021) at 6 ("Initial PIO Comments").

[3] See for example, Comments of the Duke Companies at 5; Comments of Exelon Corporation at 9; Comments of the Indicated New York Transmission Owners at 12; Comments of the Indicated PJM Transmission Owners at 37-39; Comments of the Indicated MISO Transmission Owners at 9 and 39Comments of the New England Transmission Owners at 43;, Docket No. RM 20-10-000 (June 25, 2021).

[4] Comments of Ameren Services Company at 33.

Even where the TOs bring in expert witnesses, they fail to present concrete evidence of any need for such compensation. For example, London Economics, in their Affidavit prepared for the Midcontinent ISO (MISO) TOs, states that they "observe that transmission utilities (and their shareholders) incur costs and risks in joining an RTO....Although these uncertainties and burdens are difficult to estimate in dollar terms, they nevertheless reflect a cost to transmission owners, or at the minimum, a risk that requires compensation."[5] The PJM TOs similarly engaged a Chartered Financial Analyst (CFA), Ellen Lapson, to submit a supporting Affidavit, but she presents only a qualitative discussion of these risks rather than quantifying the extent to which any of the PJM TOs would in fact incur financial losses without the Incentive.

A related argument made uniformly by the TOs in their comments is that the benefits of RTOs/ISOs flow entirely to ratepayers and are not earned by the TOs. Again, there is no evidence provided showing how the frequently cited benefits estimates provided by the RTOs/ISOs flow exclusively to ratepayers, or that the TOs and their affiliates do not see any of these benefits.

To the contrary, in some cases it is the holding companies of the TOs in which investors own shares, some of which include merchant generators who may benefit from sales at market-based rates into the RTOs/ISOs. For example, in her Affidavit for the PJM TOs, Ellen Lapson states that:

> All of the benefits alluded to in this passage of the SNOPR accrue to electricity consumers, wholesale power sellers and power producers, but not one of those listed provides any benefit to the PJM Transmission Owners or their investors. In fact, Transmission Owners retain little value from RTO membership.[6]

[5] London Economics International LLC Aff. at 5.

[6] Lapson Aff. at P 11.

But this statement misses the fact that several of the PJM TOs joining their comments are within holding companies that also include wholesale power sellers.[7]

Other supporters of the earnings enhancements for RTO/ISO participation similarly dismiss any potential benefits accruing to the TOs and their holding companies. For example, WIRES simply states without evidence that a utility in a restructured market "obtains few, if any, of these benefits" and that vertically integrated utilities must pass through all revenues from market efficiencies."[8]

These claims stand in direct contrast to Ameren Missouri's and Entergy Mississippi LLC's filings with the Missouri[9] and Mississippi Public Service Commission (PSC)[10] respective investigations of the value of utility participation in MISO, where both companies tout the benefits of RTO membership.

In their comments, Ameren states that it "receives" the following benefits from such participation, which are "expected to exist for the life of Ameren Missouri's participation in MISO": liquid, transparent capacity market; market efficiencies arising from a co-optimized energy and ancillary services market; decreased operating reserve requirements; decreased planning reserve requirements; reduced manpower requirements, internal systems and operating

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[7] Including at a minimum, Exelon Corporation, PSEG, and American Electric Power.

[8] Comments of WIRES at Footnote 47.

[9] Order Directing Comments, File No. EW-2021-0104, Public Service Commission of the State of Missouri (Dec. 21, 2020), available at: https://efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=EW-2021-0104&attach_id=2021008986.

[10] Order Establishing Docket to Investigate the Membership of Entergy Mississippi LLC in the Midcontinent Independent System Operator, Public Service Commission of the State of Mississippi, 2021-AD-52 (Apr. 6, 2021), available at: https://www.psc.state.ms.us/InSiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=CTS_ARCHIVEQ&docid=658466.

costs; avoidance of pancaked transmission rates; and the ability to utilize non-Missouri sited generation resources to satisfy resource adequacy requirements without incurring additional transmission expense.[11]Ameren also states that it "struggles to develop a scenario where it would envision MISO participation not providing a net benefit."[12]

Entergy Mississippi, a cosigner of the MISO TO initial comments, states that the "on-going benefits of MISO membership" include "MISO's price and informational transparency which allows for increased market efficiency, better resource investment decisions, and enhanced system reliability; enhanced transmission planning coordination through MISO's region-wide view of needs and solutions; effective management of the seams around the MISO footprint; and more efficient operation of EML's generation fleet."[13] Entergy Mississippi also notes that "[a]side from the opportunity to collaborate with stakeholders and evaluate potential economic transmission projects, an important benefit of EML's participation in MISO is that doing so satisfies the obligation to engage in regional transmission planning imposed by FERC Order No. 1000."[14]

Moreover, in presentations to the investment community, several TO holding companies also describe the value of participation in the RTOs/ISOs:

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[11] Ameren Missouri's Response to Order Directing Comments, File No. EW-2021-0104, Public Service Commission of the State of Missouri (Feb. 16, 2021), at 1, available at: https://efis.psc.mo.gov/mpsc/commoncomponents/view_itemno_details.asp?caseno=EW-2021-0104&attach_id=2021012407.

[12] *Id.*, at 8.

[13] Entergy Mississippi LLC's Comments, Public Service Commission of the State of Missouri, 2021-AD-52 (June 28, 2021) at 1, available at: https://www.psc.state.ms.us/InSiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=CTS_ARCHIVEQ&docid=660956.

[14] *Id.* At 18. EML refers to Entergy Mississippi LLC.

- AEP reports that one contributor to an increase in its second quarter earnings is the "higher market prices in PJM which drove increased generation at Cardinal plant."[15]
- PSEG informed investors in July that its "generating assets mainly located in three competitive markets" (PJM, ISO-NE and the NYISO) are "positioned to benefit from market volatility."[16]
- During the Q&A at its annual meeting, Exelon was asked whether regulation or deregulation more profitable for the company, and in response noted that during the electric industry restructuring Exelon "became the largest utility in the U.S. by customers served, the largest competitive generator of clean electricity in the U.S., and the largest competitive retail electric supplier in the U.S. The deregulated structure of the electric industry, particularly in the PJM region, has been a key enabler of this growth, which likely would not have been possible under a system of traditional regulation."[17]

Despite the claims that RTO/ISO participation creates a "reputational risk,"[18] the TOs are enhanced by RTO/ISO efforts to highlight the benefits of the transmission system and advocate for its expansion.[19] At the same time, TOs face little risk from RTO/ISO membership, which

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[15] American Electric Power, 2nd Quarter 2021 Earnings Release Presentation, July 22, 2021, Slide 23, available at: https://www.aep.com/newsroom/resources/earnings/2021-07/2Q21EarningsReleasePresentation.pdf.

[16] PSEG July 2021 Investor Update, Slide 27, available at: https://s24.q4cdn.com/601515617/files/doc_presentations/2021/07/PSEG-July-2021-Investor-Update-Updated-071421.pdf.

[17] Exelon Annual Meeting Shareholder Q&A at 14 (Apr. 27, 2021), available at: https://investors.exeloncorp.com/static-files/67a88484-b352-4f15-a1ed-af8b7e5e77ac.

18 Comments of Exelon Corporation at 17; Lapson Aff. at P 13(c).

19 See for example, https://www.pjm.com/-/media/library/reports-notices/special-reports/2019/the-benefits-of-the-pjm-transmission-system.pdf.

rarely if ever constrains the TOs' ability to plan local projects outside of regional planning efforts.[20]

The PIOs agree that the RTOs/ISOs provide significant benefits, but such benefits flow to both consumers and multiple market participants, and these arguments cannot therefore be used to support the continued award of the RTO Participation Incentive.

III. The TOs Seek Compensation for Actions Contrary to Consumer and other Public Interests

Multiple TOs include participation in the stakeholder process as one of the primary risks of RTO/ISO membership, and state that such participation is needed to protect their own interests. Yet the interests that the TOs are seeking to protect can be seen as contrary to public participation, consumer, and public interest benefits and values, as shown by the following examples:

- AEP refers to RTO/ISO policies that "are driven by a diverse stakeholder body whose views and interests are often contrary to the Transmission Owner's."[21]
- PPL notes that "the RTO membership is proving increasingly costly as the RTOs are influenced more and more by the needs of the wholesale generation market—as well as the interests of other stakeholders such as customers, environmental groups, and others."[22]
- Ameren states that the "frequent rule changes" resulting from the stakeholder process are "often more focused on removing barriers to entry than protecting customers,"

[20] See Initial PIO Comments at 7.

[21] Comments of American Electric Power, Inc., Docket No. RM20-10 (June 25, 2021).

[22] Comments of PPL Electric Utilities Corporation**,** Docket No. RM20-10 (June 25, 2021).

and includes as examples of such rule changes Order Nos. 841 and 2222, which allow for greater participation, respectively, by storage and distributed energy resources in the wholesale markets and hold the promise of significant consumer benefits.[23]

The Duke Companies provide as one example of the "added cost and manpower needs to defend the intended delegation of responsibilities,"[24] the "months of litigation" that the PJM TOs engaged in to defend the exclusion of certain supplemental projects from the PJM transmission planning process.[25] Such an argument is essentially claiming that the Incentive is needed to compensate the TOs for litigating against the expansion of regional transmission planning.

Not only should the Commission disregard any argument that the Incentive is needed to protect TOs from the costs incurred in protecting their interests from consumer and environmental representation.

IV. Vague Threats of Departure from the RTOs/ISOs Are Not a Basis for the Commission's Decision

The TO and RTO comments are filled with vague statements about the potential for the TOs to leave the RTO/ISOs or seek "alternative arrangements," but do not verify that such actions would actually be taken or are even being considered with any seriousness. A few examples of these statements are:

> Without the continued incentive for transmitting utilities to join and remain in the RTO/ISO, public utilities may become more inclined to look for alternatives that better reflect the internal risk/reward trade-off to the public utility and its customers.[26]

[23] Comments of Ameren Services Company at 31 and Footnote 86.

[24] Comments of the Duke Companies at 6.

[25] *Id.* at 7-8

[26] Comments of Ameren Services Company at 39.

> Eliminating that incentive would very much change the balance of costs and benefits, and the AEP Transmission Companies undoubtedly would have to consider whether full RTO membership continues to make sense for customers and shareholders.[27]

> Notwithstanding the time and cost associated with exiting an RTO, the Commission's proposed policy will give Transmission Owners a reason to reconsider whether to continue their RTO membership and may prompt some to pursue alternative arrangements.[28]

> If the risks of RTO membership are no longer compensated by the RTO Incentive, Transmission Owners must reevaluate whether RTO membership is contrary to this fiduciary duty. Faced with an evaporating RTO Incentive, Transmission Owners have alternative options that would provide many of the benefits of RTO markets without the risks.[29]

> The benefits of regional wholesale markets in New England could be achieved with a less substantial transfer of operating authority over the NETOs' assets if the contractual arrangements that produced the current ISO-NE structure were re-opened. The NETOs did not consider this option before the Supplemental NOPR was issued, but they have the right to do so in the face of the Commission's proposal to eliminate primary benefit they receive in return for their voluntary actions.[30]

MISO and SPP even stretch to connect resilience benefits to customers during extreme weather with the RTO Incentive, noting that "[a]s summer approaches and ERCOT again urges electricity conservation' in the face of hot weather, now is not the time to diminish the transmission incentives that keep RTOs together."[31]

None of these statements indicate actual TO plans to depart. Nor do the TOs discuss the significant costs likely to be incurred in departing the RTO/ISO, although in the above-

[27] Comments of American Electric Power, Inc. at 12

[28] Comments of Exelon Corporation at 27.

[29] Comments of the Indicated PJM Transmission Owners at 22, referring to the fiduciary duties to shareholders.

[30] Comments of the New England TOs at 43.

[31] Joint Comments of MISO and SPP at 28.

referenced Mississippi PSC proceeding, Entergy Mississippi describes the significant disadvantages and costs of leaving MISO.[32]

Given the absence of evidence in this proceeding of uncompensated costs, and the TO admissions of benefits of belonging to an RTO (see statements in Section III), the Commission should not consider vague, generalized statements of uncompensated harm as the basis for its decision in this proceeding.

V. The Current RTO Adder Does Not Incentivize Regional and Interregional Transmission Projects

Many RTOs and TOs argue that the proposal in the Supplemental NOPR is directly contrary to an expansion of transmission to achieve clean energy goals. A few examples are:

> "Rescinding and limiting" the RTO incentive "is counter to getting large scale, regional and multiregional transmission planned and developed."[33]
>
> Increasing transmission investment is thus commonly recognized as a key predicate to achieving substantial nationwide reductions in greenhouse gas emissions. Reducing incentives to participate in RTOs which provide centralized planning and optimization of such transmission infrastructure investments, and reducing the returns earned on transmission investment in RTOs, is simply at odds with these goals.[34]
>
> If this proposal results in a final rule, the Commission would single handedly mute any chance the Biden Administration has in accomplishing its clean energy goals.[35]
>
> The RTO Participation Incentive provides a strong financial incentive for transmission owners to pursue the construction of large transmission regional and inter-regional projects.[36]

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[32] Entergy Mississippi LLC, June 28, 2021, at 20-25.

[33] Comments of Ameren Services Company at 43.

[34] Comments of the Indicated SPP Transmission Owners at 10.

[35] Comments of the New England Transmission Owners at 54.

[36] Comments of PSEG at 4.

Would that these comments accurately characterized the state of transmission planning in the RTOs. As pointed out in the PIOs' Initial Comments: "Instead of being incorporated into regional planning, most approved new projects serve local needs or reconstruction of aging facilities, with like-for-like replacements."[37] It is for that reason that in the Advanced Notice of Proposed Rulemaking released last week, the Commission asks "whether the current transmission planning processes may be resulting increasingly in transmission facilities addressing a narrow set of transmission needs, often located in a single transmission owner's footprint. To the extent that the requirements of the regional transmission planning process result in transmission providers expanding predominately local transmission facilities, that process may fail to identify more efficient or cost-effective transmission facilities needed to accommodate anticipated future generation."[38]

Despite these limitations of the current state of transmission planning, the RTO Participation Incentive has been awarded indiscriminately to all transmission within the TOs' entire rate base within the RTO/ISO footprints.[39] Therefore, in contrast to the claims of the TOs, simply continuing the current Incentive is not aligned with needed reforms to transmission planning to achieve carbon reduction goals.

The PIOs therefore restate here their alternative proposal in the Initial Comments for the Commission to retain the incentive but "subject it to restrictions that will increase the benefits from TO participation in the RTOs/ISOs."[40] Specifically, "for TOs currently in an RTO/ISO that

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[37] PIO Initial Comments at 7.

[38] 176 FERC ¶ 61,024 (July 15, 2021) at P 37.

[39] PIO Initial Comments at 7.

[40] *Id.* at 9.

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."[41]

To this end, the PIOs highlight the comments of the California Public Utilities Commission (CPUC) and California Department of Water Resources (CDWR) urging the Commission "to clarify that projects planned outside of the regional planning process should not be eligible for incentives, including the ROE adder" if the Commission does not eliminate incentive.[42] The CPUC and CDWR state that "most transmission projects are proposed by incumbent transmission owners and do not undergo any external review by the Commission or the applicable RTO to determine if the projects are, in fact, needed and whether the resulting rates will be just and reasonable."[43]

VI. CONCLUSION

The PIOs appreciate the opportunity to provide these reply comments and urge the Commission to reject the arguments of the TOs and RTOs/ISOs in support of a mechanism that would simply provide additional earnings without achieving meaningful additional benefits.

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[41] *Id.* at 10.

[42] Comments of CPUC and CDWR at 55.

[43] *Id.*

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