

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

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

**COMMENTS OF THE
ORGANIZATION OF PJM STATES, INC.**

On April 15, 2021, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) issued a supplemental Notice of Proposed Rulemaking (“NOPR”) seeking comment on a revised proposed incentive for transmitting and electric utilities that join Transmission Organizations (“Transmission Organization Incentive”).¹ In response, the Organization of PJM States, Inc. (“OPSI”)² respectfully submits the following comments in support of the Commission’s proposal.³

I. BACKGROUND

On March 20, 2020, the Commission issued the underlying notice of proposed rulemaking (“initial NOPR”) to reform and revise its existing transmission incentives policy and corresponding regulations.⁴ One such existing transmission incentive that FERC examined in the initial NOPR was the “RTO Participation Incentive,”⁵ or the perpetual 50 basis point increase to

¹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035, (April 15, 2021) (“Supplemental NOPR”).

² Unanimously approved by the OPSI Board on June 17, 2021.

³ OPSI is generally a PJM-focused organization, and these comments are offered primarily as they pertain to the application of the Commission’s Transmission Organization Incentive rule within the PJM Interconnection, L.L.C. (“PJM”) region.

⁴ *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) (“Initial NOPR”).

⁵ Supplemental NOPR at n. 6.

transmission rate base return on equity (“ROE”) that the Commission regularly grants to transmitting utilities or electric utilities that join a Commission-approved Transmission Organization (“RTO” or “ISO”). That existing transmission incentive is the sole subject of the supplemental NOPR.⁶

Section 219 of the Federal Power Act (“FPA”), requires that the Commission, “to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.”⁷ Section 219 also requires any such rate of incentive to be “just and reasonable and not unduly discriminatory or preferential.”⁸ The statute further specifies that the transmission incentives must be “for the purpose of benefiting customers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.”⁹ This is not how the transmission incentive is presently being applied and should be corrected by the Commission.

The Commission has abandoned its initial NOPR proposal to increase the RTO Participation Incentive from 50 basis points to 100 basis points. The Commission now proposes a revised Transmission Organization Incentive to remain¹⁰ as a 50 basis point ROE adder granted to companies who join an RTO for the first time, but to expire three years after the company joins the RTO.¹¹ The Commission’s proposed three-year term of the Transmission Organization

⁶ *Id.* at P 1.

⁷ 16 U.S.C. § 824s(c).

⁸ *Id.* § 824s(d).

⁹ *Id.* § 824s(a).

¹⁰ Supplemental NOPR at P 15 (proposing to codify an amount for this incentive for the first time, at 50 basis points; previously, entities joining an RTO uniformly sought this amount, “which the Commission has granted without modification.” (citation omitted)).

¹¹ *Id.* at P 9 (“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”).

Incentive would apply to all entities regardless of when they join or joined an RTO for the first time.¹²

In Comments submitted in the initial NOPR, OPSI “oppose[d] the Commission’s proposal to increase the RTO-Participation Incentive to 100 basis points . . . and encourage[d] a restructuring of this transmission incentive.”¹³ Consistent with its recommendation in those initial NOPR comments, OPSI supports removing the 50 basis points ROE adder.

II. COMMENTS

A. OPSI SUPPORTS THE COMMISSION’S TRANSMISSION ORGANIZATION INCENTIVE PROPOSAL WITH CLARIFICATION

The Commission is correct to seek to impose an expiration date upon the 50 basis points adder incentive that has been awarded to transmission owners for joining an RTO or ISO. The incentive in perpetuity goes beyond the requirements of Section 219 and thereby imposes unnecessary and unjustified costs upon ratepayers. For this reason, and because current industry circumstances and factors such as risks, responsibilities, and benefits to utilities from participating in an RTO or ISO do not reasonably call for it, the Commission is similarly correct to withdraw its proposal to increase the amount of this ROE adder incentive.

Section 219 of the FPA requires the Commission to provide an incentive to each utility that “joins” a Transmission Organization.¹⁴ The Commission believes “that providing the Transmission Organization incentive indefinitely may not be necessary to incentivize a

¹² *Id.* at P 11 (proposing “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.”).

¹³ Comments of the Organization of PJM States, Inc., Docket No. RM20-10-000, at 28 (July 1, 2020) (“OPSI Initial NOPR Comments”).

¹⁴ 16 U.S.C. § 824s(c).

transmitting utility to join a Transmission Organization,”¹⁵ and OPSI agrees.¹⁶ The Commission further believes that, “given the large impact that such an incentive has on ratepayers²¹ [maintaining it indefinitely] may not appropriately balance utility and ratepayer interests, particularly given the substantial benefits of Transmission Organization membership to participating utilities.”¹⁷

Again, OPSI agrees, and argued similarly in its initial NOPR comments:

Congress linked this incentive to those established for the purpose of benefiting consumers and further required just and reasonable rates. Without ensuring the consumer benefits that FPA Section 219 requires, OPSI fears the RTO-Participation Incentive will, more often than not, simply amount to a net charge to consumers and a reward to utilities.

... [T]he relevant circumstances have changed drastically since the inception of this incentive in 2006. The intent of this RTO-Participation Incentive adder was to compensate for the unknown factors associated with joining a new transmission entity. Since then the benefits of RTO participation are well documented, including but not limited to the Commission’s Order No. 2000, which identified such examples as improved congestion management, more accurate assessments of Available Transmission Capability, more effective management of parallel path flows, and reduced transaction costs. The regulatory environment has likewise changed in many ways to the benefit of transmission investment and development
.....

After more than 15 years of experience with RTOs, the resulting benefits RTO participation provides to utility members are now better understood. Additionally, over the years, FERC has provided regulatory mechanisms such as formula rates, abandoned plant recovery and construction work in progress recovery, all of which reduce transmission owners’ risk and the need for this [RTO-Participation] incentive adder.¹⁸

¹⁵ Supplemental NOPR at P 8.

¹⁶ OPSI Initial NOPR Comments at 26 (stating that the RTO Participation Incentive “through its perpetuity encourages utilities to both join and remain in an RTO/ISO” and “goes beyond what is required by FPA Section 219(c)”) (emphasis in original) (citation omitted).

¹⁷ Supplemental NOPR at P 8 (n. 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)”; *see also* Supplemental NOPR at P 14 (“since the issuance of Order No. 679, benefits to transmission owners, including access to more developed organized markets, have increased”).

¹⁸ OPSI Initial NOPR Comments at 26-27 (citations omitted).

Accordingly, this incentive should not be granted in perpetuity and doing so is not just and reasonable.

The Commission also proposed to find that circumstances are such “that 50 basis points, and not 100 basis points, as proposed in the [initial] NOPR, continues to appropriately correspond to the benefits of utilities joining Transmission Organizations.”¹⁹ For all the reasons stated above, OPSI agrees with the Commission’s proposal not to increase this transmission incentive.

Additionally, as the Commission points out, “the actual amount of this incentive has increased, as the rate base for most transmitting utilities have risen considerably” since the issuance of Order No. 679.²⁰ The Commission believes that, “[g]iven the transmission investments made since Order No. 679, . . . 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.”²¹ Not only are the above more reasons for the Commission to refuse to increase the amount of this ROE adder incentive, but indicate the adder has been wrongly applied all along. As transmission owners increasingly replace aging infrastructure, they currently earn bonus returns on assets that would have likely been built regardless of RTO membership. Applying the ROE adder incentive to all projects in rate base, including Supplemental Projects,²² over-incentivizes transmission owners to

¹⁹ Supplemental NOPR at P 14 (citation omitted).

²⁰ *Id.*

²¹ *Id.* (citation omitted).

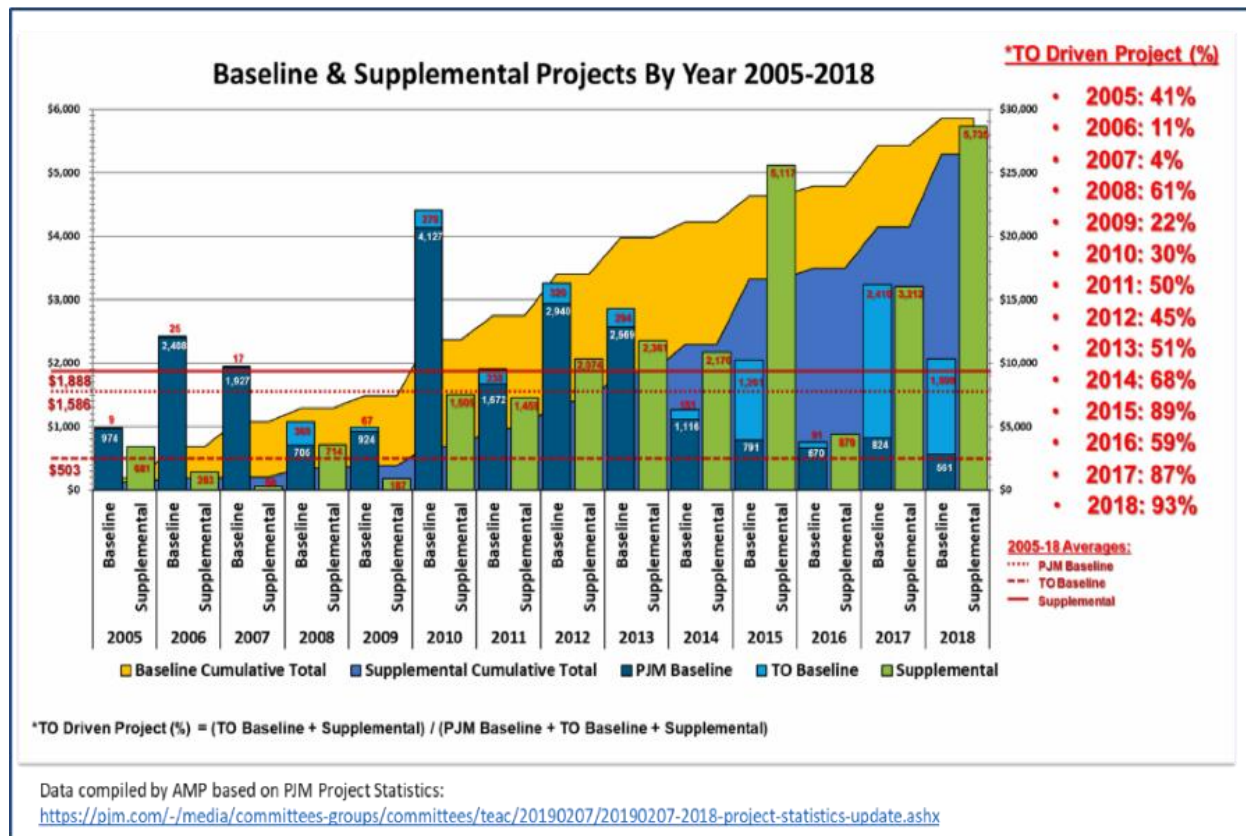
²² PJM Operating Agreement, Section 1, Definitions S-T (“Supplemental Project” shall mean a transmission expansion or enhancement that is not required for compliance with the following PJM criteria: system reliability, operational performance or economic criteria, pursuant to a determination by the Office of the Interconnection and is not a state public policy project pursuant to Operating Agreement, Schedule 6, section 1.5.9(a)(ii). Any system upgrades required to maintain the reliability of the system that are driven by a Supplemental Project are considered part of that Supplemental Project and are the responsibility of the entity sponsoring that Supplemental Project.).

rebuild only the grid of the past – without RTO oversight – as opposed to vying for or creating regionally planned projects that provide system-wide benefits which are imperative for the grid of the future. These latter, cooperatively undertaken projects will benefit customers throughout the RTO, and depend on RTO membership and participation for planning and construction, while the former do not. In other words, transmission owners have been, but no longer should be, allowed to apply the RTO participation incentive to projects that do not require RTO participation.

Transmission owners are well-aware of their ability to earn an additional return on transmission, like Supplemental Projects, that includes little-to-no RTO involvement, evidenced by the explosion in Supplemental Project spending in PJM, compared to the relatively anemic amount of baseline investment.²³ Paying transmission owners more money to do something they have an obligation to do without RTO participation is incentivizing transmission owners to focus on Supplemental Projects. The RTO participation adder should have always been about incentivizing transmission owners to invest in projects that could not be planned without RTO participation, or the value of the project is enhanced by RTO participation, such as the application of competition to planning. Today, this would include baseline projects or certain categories of Supplemental Projects, the planning of which a transmission owner could choose to turn over to the RTO. There may be significant value to RTO participation today, but states and consumers deserve all of the value of RTO participation – something they have yet to receive on the issue of transmission. Continuing to pay transmission owners more for something they must do absent RTO participation amounts to nothing more than economic rent.

²³ See Figure 1, as delivered by PJM Load Group to the PJM Planning Committee Special Session – M-3 Process Lessons Learned meeting, July 12, 2019 (Item 3 - “M-3 Process Lessons Learned PJM Load Group Perspective”).

Figure 1 (in millions of dollars):



The Commission seeks comment “on whether three years or another period is the appropriate duration for this incentive”²⁴ and “on whether 50 basis points is the appropriate level for this incentive,”²⁵ among other things. However, OPSI wishes not to comment on either of those values other than to support the Commission’s proposal to remove this ROE adder incentive and to refrain from increasing the amount of the incentive.

As Commissioner Christie remarked in his concurrence to the supplemental NOPR:

Market power is . . . 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).

²⁴ Supplemental NOPR at P 10.

²⁵ *Id.* at P 15.

...[S]etting 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.

...[A]warding 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.²⁶

Nevertheless, Commissioner Christie went on to opine that the supplemental NOPR proposal to limit the use of the Transmission Organization Incentive to three years is "a welcome first move."²⁷

OPSI agrees that the supplemental NOPR is a welcome first move and supports the Commission's proposals, particularly with the clarification that the incentive for transmission owners that join RTOs only applies to transmission projects identified by the RTO as baseline projects for reliability or economic efficiency.

IV. CONCLUSION

For the reasons explained above, OPSI requests that the Commission implement its proposals as stated in the supplemental NOPR to limit transmission incentives, and to apply those incentives only to RTEP baseline projects identified by the RTO as needed for reliability and market efficiency.

²⁶ Commissioner Christie Concurrence to Supplemental NOPR, at PP 6-11 (emphasis in original).

²⁷ *Id.* at P 12.

Respectfully Submitted,

/s/ **Gregory V. Carmean**

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. Section 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

s/s Gregory V. Carmean

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Dated at Newark, Delaware this June 23, 2021.