

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

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| 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.**

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COMMENTS OF THE ORGANIZATION OF PJM STATES, INC.

On March 20, 2020, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) issued a Notice of Proposed Rulemaking (“NOPR”) seeking comments on the scope and implementation of its electric transmission incentives regulations and policy.¹ In response, the Organization of PJM States, Inc. (“OPSI”)² respectfully submits the following comments.³

I. BACKGROUND

Section 1241 of the Energy Policy Act of 2005,⁴ codified as Section 219 of the Federal Power Act (“FPA”),⁵ directed the Commission to “establish, by rule, incentive-based . . . rate treatments for the transmission of electric energy in interstate commerce.”⁶ Section 219 required that all rates approved under the new FERC rules be “just and reasonable and not unduly discriminatory or preferential.”⁷ Consistent with that over-arching purpose of the FPA, the statute specified 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.”⁸ In response, the Commission issued Order No. 679 which described a variety of incentives that could be available to public utilities engaged in transmission. Among other things,

¹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204, (March 20, 2020) (“NOPR”).

² These comments were approved unanimously by the OPSI Board of Directors on July 1, 2020

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 incentive rule within the PJM Interconnection, L.L.C. (“PJM”) region.

⁴ Energy Policy Act of 2005, Pub. L. No. 109-58, sec. 1241, 119 Stat. 594 (2005).

⁵ 16 U.S.C. § 824s.

⁶ *Id.* § 824s(a).

⁷ *Id.* § 824s(d).

⁸ *Id.* § 824s(a).

Order No. 679 established a requirement that each applicant demonstrate a nexus between the incentive(s) sought and the risks and challenges of the investment being made.⁹

The Commission notes in the NOPR that in the eight years since its last formal review of the Commission’s transmission incentives policy, the landscape for planning, developing, operating, and maintaining transmission infrastructure has changed considerably. Accordingly, the Commission is now re-examining the scope and implementation of its transmission incentives policy and how it should evaluate future requests for transmission incentives.¹⁰ In particular, the Commission has stated a concern that its transmission incentive policy needs to be reformed to more closely align with the intent of FPA Section 219. Alignment with Section 219 requires the Commission to “establish, by rule, incentive-based . . . rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.”¹¹ To that end, the NOPR would revise Section 35.35 of the Transmission Incentives Regulations to incorporate a benefits test to receive transmission incentives and to remove the nexus test from Section 35.35(c) of the currently effective regulations.¹²

If adopted in a final rulemaking, the NOPR would also remove the requirement from the Commission’s 2012 Policy Statement¹³ that an applicant for a transmission project-specific ROE incentive based upon a transmission project’s economic or reliability benefits demonstrate that

⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

¹⁰ NOPR, at P 25.

¹¹ *Id.*, at P 219 (emphasis added).

¹² *Id.*, at P 37.

¹³ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (“2012 Policy Statement”).

base ROE or non-ROE incentives are insufficient to adequately address the needs of these transmission projects before seeking ROE incentives.¹⁴

The NOPR also proposes to retain non-ROE incentives, including the abandoned plant incentive, construction work in progress (“CWIP”) incentive, hypothetical capital structure, accelerated depreciation for rate recovery, and regulatory asset treatment.¹⁵

II. SUMMARY OF POSITION AND RECOMMENDATION

The major changes proposed in the NOPR are not needed to the foundation for transmission incentive policy set forth in Order Nos. 679/679-A, and confirmed in the Commission’s 2012 Policy Statement. The addition of a workable benefits test to the foundational risks and challenges nexus test could bring the Commission’s incentive policy further in line with the explicit consumer benefit requirement in FPA Section 219. However, the potential gains in alignment that may derive from the Commission’s benefit proposal in this NOPR will be eclipsed by the loss in alignment associated with the Commission’s proposal to eliminate much of the incentive policy foundation that has served to protect electricity consumers from unnecessary costs for many years now. The Commission should improve upon the existing incentive policy framework, not start over as proposed in the NOPR.

In cases where an incentive would likely help the development of a beneficial transmission project that otherwise would not have been developed, the Commission should look first to non-ROE incentives for all the reasons explained in the Commission’s 2012 Policy Statement.¹⁶

¹⁴ NOPR, at P 39.

¹⁵ *Id.*, at P 38.

¹⁶ *See*, 2012 Policy Statement (for instance, at PP 20-28, stating an expectation that any applicant seeking ROE incentives for risks and challenges demonstrate, among other things, that those risks and challenges were not already addressed through non-ROE incentives, and providing a non-exhaustive list of transmission projects beneficial to consumers that might satisfy the expectation).

Incentive policy should be designed to encourage lowering of project costs without loss of project benefits,¹⁷ as the Commission's *ex-post* concept for economic projects aims to do.¹⁸ Transmission incentive policy should also bolster and strengthen RTO transmission planning processes, not undermine them as the Commission's economic incentive proposal would do. Theoretically, OPSI agrees with the Commission that, in some cases there may be cost-beneficial reliability improvement available from reliability projects over and above those needed to meet established reliability standards. But, in that sphere, the drive for rate-base padding will be strong and the Commission has not proposed sufficient safeguards to ensure net benefit for consumers. Additional measures encouraging advanced technology may be appropriate, but here again, the incentive policy must be tailored with strong focus on consumer benefits. Unfortunately, the Commission's proposal falls short.

Given the passage of time and learnings gained since Order No. 679, it is clear that the ROE incentive for Transcos should be eliminated and the ROE incentive for RTO participation should be eliminated.¹⁹ No evidence exists demonstrating that the benefits of RTO membership are insufficient without an ROE adder. In no event should the ROE incentive for RTO participation be increased as put forth in the NOPR. OPSI supports increasing the disclosure and reporting requirements for incentive recipients. The Commission needs detailed and accurate information to ensure the continuing effectiveness of the incentives it has granted and of its incentive policy. The

¹⁷ *See*, 16 U.S.C. § 824s.

¹⁸ NOPR at PP 4, 43, 59.

¹⁹ The Michigan PSC believes that there may be benefits to providing some amount of incentive ROE added for independence given our state's two decades-long experience with independent transmission companies. Notwithstanding, the Michigan PSC encourages the Commission to continue to review its policies in a comprehensive manner to account for the overall ratemaking treatment, such as the allowed base ROE, any incentive ROE adders, the formula-based forward-looking rates, and the overall allowed rate of return for each transmission owner. The Commission needs to balance the risk with the appropriate level of return that may include incentives that provide just and reasonable rates.

Commission's concern about transmission owner burden in reporting is misplaced because any such burden can easily be avoided by not applying for transmission incentives.

Aside from the elimination of the ROE incentive for Transcos, OPSI does not support adoption of the changes in the NOPR. The Commission's proposal could benefit greatly from another round of information gathering that would complement the previously issued Notice of Inquiry ("NOI").²⁰ Holding one or more technical conferences to focus on specific technical areas such as reliability project incentive structuring, economic efficiency projects and advanced technology may further assist the Commission's decision-making process in this proceeding.

III. COMMENTS

A. The Commission Should Retain Its Current Risks/Challenges Framework as a Necessary Complement to Its Proposed Benefits Approach.

In comments in the underlying NOI in this case, OPSI expressed support for the Commission's objective to ensure that each transmission incentive the Commission grants be for the purpose of benefitting consumers.²¹ Although consumer benefit should be the objective of all Commission regulations under the FPA, Section 219 specifically requires it for the Commission's transmission incentive policy.²² Therefore, OPSI urged the Commission to incorporate a consumer benefits test into its incentive request evaluation process.²³

OPSI cautioned, however, that incorporation of a consumer benefits test into the Commission's process for evaluating transmission incentive requests cannot be an alternative to the risks/challenges framework for project evaluation that has been used since the Commission's

²⁰ *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019).

²¹ See, Comments of the Organization of PJM States, Inc., Docket No. PL19-3-000, at 2-3 (June 26, 2019) ("OPSI Comments").

²² 16 U.S.C. § 824s(a).

²³ OPSI Comments, at 5.

issuance of Order No. 679. Rather, the consumer benefits approach must be adopted as an addition to the current risks/challenges framework.²⁴ The two frameworks complement each other, as each is important and useful, and used together can achieve the objectives of Section 219. OPSI opposes the Commission’s proposal to eliminate the risks/challenges framework (which the Commission has also referred to in the past as the “nexus test”).²⁵

As the Commission rightly recognizes, use of only the current risks/challenges framework is flawed for not necessarily ensuring that consumers benefit from the projects incented.²⁶ The current framework only makes it more likely that the project facing risks/challenges will be developed and put into service. Just because a transmission project faces risks/challenges that can be overcome by granting an incentive does not necessarily mean that the project (or incenting the project) will benefit electricity consumers.

Conversely, the NOPR’s use of only the benefits test approach is flawed for needlessly providing incentives to developers of projects that do not face risks/challenges and could be developed absent the incentive. Projects with high net benefits or high benefit/cost ratios can garner widespread support and face fewer risks/challenges in their path to successful development. Providing an additional transmission incentive to a project that would be developed without the incentive does not benefit electricity consumers, no matter how high the project’s benefits or

²⁴ *Id.*, at 7.

²⁵ Order No. 679, 116 FERC ¶ 61,057 at P 26 (describing the risks and challenges nexus test as requiring each incentive to “. . . be rationally tailored to the risks and challenges faced in constructing new transmission. Not every incentive will be available for every new investment. Rather, each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. Our reforms therefore continue to meet the just and reasonable standard by achieving the proper balance between consumer and investor interests on the facts of a particular case and considering the fact that our traditional policies have not adequately encouraged the construction of new transmission.”).

²⁶ NOPR, at P 35 (stating that use of the nexus test has “focused applicants and the Commission on the risks and challenges of a transmission project rather than the purpose and language of FPA section 219, which is to benefit consumers . . .”).

benefit/cost ratio.²⁷ Rather, the transmission incentive would be a burden for electricity consumers: either a financial burden, in the case of an ROE incentive, or a risk-shifting burden, in the case of a non-ROE incentive.

It would be desirable for the Commission to have an incentive policy that encourages projects with high benefits and high benefit/cost ratios, but only to the extent that those projects would not have been successfully developed otherwise. In other words, the Commission should screen the projects having high net benefits and high benefit/cost ratios with the current risks/challenges framework, to eliminate those projects likely to be successfully developed without an incentive (*i.e.*, the ones not facing risks/challenges). As explained in the following incentive-specific sections of these comments, the projects that pass both tests—having high net benefits and high benefit/cost ratios and facing risks/challenges—should be considered for incentives.²⁸ Using this two-part approach will ensure that consumers truly benefit in accordance with Section 219 and the Commission’s stated objective.

B. ROE Incentives

1. Economic Project Incentive

²⁷ The Commission notes that FPA Section 219 does not require the Commission “to find that the transmission project would otherwise not occur without the incentive.” NOPR, at P 35. But, the fact that the statute does not specifically include this requirement is not surprising. The purpose of incentives is to encourage behavior or actions that would not likely occur otherwise. This fundamental concept need not be specifically stated in the statute, because it is inherent in the concept and definition of incentives.

²⁸ OPSI takes note of the Commission’s long-standing rebuttable presumption test, which is codified in subsection (i) of the Commission’s Transmission Incentives Regulations. FERC Transmission Incentives Regulations, 18 C.F.R. § 35.35(i). OPSI considers the Commission’s rebuttable presumption test to be only a first screen for incentive eligibility, namely, a screen to establish whether an incentive applicant is presumed to have met the statutory threshold requirement for ensuring reliability or reducing the cost of delivered power by reducing congestion. Clearly, the Commission can and does apply other, additional eligibility requirements to ensure transmission incentives are just and reasonable. Among these additional eligibility requirements, OPSI recommends that the Commission both retain the risk/challenge approach and add a benefits test for each incentive request, whether project-specific or company-wide (*e.g.*, the ROE incentive for RTO participation, if it is retained).

OPSI supports incorporating a benefit/cost test into the Commission’s incentive request evaluation process for economic projects, in combination with the risks/challenges framework. As explained above, this two-test approach, if properly applied, will ensure net benefits for consumers, as required by FPA Section 219, and avoid imposing costs on consumers for incentives that are not needed for the project to be constructed. As explained in this section, the Commission’s proposal for an economic project incentive has substantial shortcomings and will not result in the beneficial and cost-effective outcomes sought by the Commission.

As with the Commission’s proposal for the Abandoned Plant Incentive discussed in Section C.1 of these comments, eligibility for the Commission’s proposed Economic Project incentive should be limited to transmission projects that have been “selected in a regional transmission planning process for the purposes of cost allocation.”²⁹ Additionally, because not all transmission projects that have been selected by the RTO for inclusion in its regional transmission expansion plan for the purposes of cost allocation are subject to the RTO’s Order No. 1000 competitive selection process, this additional condition should be added to the eligibility requirements for economic project incentive applications.³⁰

a. The Commission Should Consider Developing a Standardized Benefit Metric for Purposes of Assessing Incentive Applications as Opposed to Relying on the Metric Used in Each RTO’s Transmission Planning and/or Cost Allocation Process.

As stated above, OPSI supports incorporating a benefit/cost test into the Commission’s incentive request evaluation process for Economic Projects, in combination with the risks/challenges framework, but that metric should be uniquely designed for the purpose of

²⁹ NOPR, at P 84 (proposing such an eligibility standard as establishing the effective date for recipients of the Abandoned Plant Incentive).

³⁰ For example, in PJM immediate need projects and lower voltage projects may be exempted from PJM’s competitive selection process.

assessing incentive applications. In addition to OPSI's recommended eligibility requirement for Economic Project Incentives described above, projects that have not received required construction approval from all appropriate state commissions or siting authorities should also be deemed ineligible if the project is abandoned, removed from the regional planning process or the like, to prevent continuing an Economic Project Incentive for a project that has subsequently become infeasible. OPSI is concerned that the Commission's proposals to rely on RTO analyses of the economic benefits and to leverage the benefit/cost tests used by RTOs for project planning purposes are vague, susceptible to manipulation, and pose dangers to RTO regional planning processes.

The Commission notes that, as part of the Order No. 1000 implementation, the RTOs use benefit metrics and benefit/cost tests to select economic projects for inclusion in their regional transmission expansion plans.³¹ The Commission states that it proposes to "leverage" these RTO processes for purposes of evaluating economic project incentive requests.³² The Commission also states that it proposes relying on RTO analyses of the economic benefits of transmission projects.³³ The Commission notes that many RTOs use some form of adjusted production cost test as well as other economic benefit metrics in their economic planning processes.³⁴ The Commission proposes to use the RTO's benefit metric in its analyses of applications for economic project incentives to the extent the RTO's benefit metric constitutes "adjusted production cost, similar measures of congestion reduction, and certain other quantifiable benefits that are verifiable and not duplicative."³⁵ The Commission proposes a specific and discrete rebuttable presumption that

³¹ NOPR, at P 30.

³² *Id.*, at P 44.

³³ *Id.*

³⁴ *Id.*, at P 50.

³⁵ *Id.*

“economic benefits measured in benefit-to-cost ratios derived by RTOs/ISOs for transmission projects within their footprints should be included in the determination of an applicant’s transmission project’s benefits.”³⁶

There is concern with the Commission’s proposal to use, for evaluating Economic Project Incentive applications, the benefit metric that each RTO has developed within its stakeholder process for purposes of transmission expansion planning and transmission cost allocation. This element of the Commission’s Economic Project Incentive proposal could inject conflicting motivations into each RTO’s transmission planning and cost allocation processes.

Establishing a fixed benefit/cost threshold for *ex-ante* economic project incentives and a fixed benefit/cost threshold for *ex-post* incentives will magnify the already-existing tendency for transmission-owning utilities to intentionally skew the RTO’s benefit metrics and benefit calculations in their favor. RTOs already face great pressure given the transmission planning and cost allocation implications associated with their benefit metric and benefit calculations. Because RTOs’ transmission planning and transmission cost allocation functions are so important, and yet susceptible to improper utility pressure, the Commission should not adopt any element in its NOPR that could disrupt or further threaten the integrity of those vital RTO processes.

Beyond the disruption that this element of the Commission’s proposal could cause to RTOs’ transmission planning and cost allocation processes, the Commission’s proposal leaves many unanswered questions regarding the subject of benefit metric. For example, not every Commission-jurisdictional RTO uses adjusted production cost in its economic transmission planning process, and, among those that do, they do not necessarily use the same variables,

³⁶ *Id.*

algorithms, or other input when performing their calculations. Also, there are many Order No. 1000 planning regions that are not in RTO zones. It is unclear whether the Commission would rely on the adjusted production cost analyses of the RTOs that use adjusted production cost in their economic planning process and some other metric for those RTOs that do not use adjusted production cost—and, if so, what other metric. Finally, the Commission should clarify the meaning of its phrase “similar measures of congestion reduction, and certain other quantifiable benefits that are verifiable and not duplicative,”³⁷ before moving forward with developing a benefit metric for the Economic Project Incentive.

In summary, the Commission has not presented either a reasoned or complete proposal with respect to a benefit metric used to evaluate Economic Project Incentive applications. A standardized test should apply to all projects seeking Economic Project Incentives. The details for calculating benefits under this standard test should be publicly posted. The Commission should lead a stakeholder process, or convene a technical conference, to explore the development of a single, standard net benefits test that can be applied in all regions, for use in combination with the risks/challenges framework, as part of a two-part test.

b. The Commission’s Proposal to Split the Economic Project Into *Ex-Ante* and *Ex-Post* Must be Improved Upon.

Although the Commission’s idea for splitting the economic project incentive between *ex-ante* and *ex-post* has merit, the proposal can be improved. For transmission projects that cost less than or equal to \$25 million, the Commission proposes a benefit-to-cost ratio threshold of 33.91 for an *ex-ante* 50 basis point economic benefit ROE incentive.³⁸ For transmission projects that

³⁷ NOPR, at P 50.

³⁸ *Id.*, at P 58.

cost more than \$25 million, the Commission proposes a benefit-to-cost ratio threshold of 3.98 for an *ex-ante* 50 basis point economic benefit ROE incentive.³⁹ In both cases, the Commission proposes to offer an additional 50-basis-point incentive for economic benefits as measured on an *ex-post* basis for projects in the top 10 percent of projects based on applying actual costs to the projected benefits.⁴⁰ The Commission suggests that the eligibility threshold for this *ex-post* incentive be 77.04 for transmission projects equal to or less than \$25 million and 5.17 for transmission projects greater than \$25 million.⁴¹ The Commission's idea for splitting the economic project incentive between *ex-ante* and *ex-post* can be improved upon by linking *ex-ante* with *ex-post*. For example, as explained in Section A above, OPSI recommends that the Commission employ two eligibility screens—a benefit/cost test and a risks/challenges demonstration in conjunction with each other.⁴² In addition to OPSI's recommendation that the Commission develop its own benefit metric to be used in benefit/cost calculations, the Commission should eliminate the large project/small project distinction and fix a single benefit/cost threshold for Economic Project Incentive eligibility.

There should be no distinction, as the Commission proposes, between large project (more than \$25 million) and small project (less than or equal to \$25 million) benefit/cost testing. OPSI sees no merit in establishing a two-class process. That approach may impose undue discrimination and will skew developer behavior to try to get its project either above or below the dollar cut-off depending on which is advantageous to obtaining incentives. For project incentive eligibility, what

³⁹ *Id.*, at P 57.

⁴⁰ *Id.*, at P 59.

⁴¹ *Id.*

⁴² OPSI also recommends that projects eligible for Economic Project Incentives be limited to those that have been selected in a regional transmission planning process and subject to the Order No. 1000 competitive selection process.

matters is the minimum net consumer benefit, not project size. If the Commission wishes to account for the existence of both large and small projects in a single benefit/cost eligibility threshold, OPSI would recommend weighting the benefit/cost ratios by project cost in Table 1 in Appendix A of the NOPR.⁴³

OPSI also recommends that the *ex-ante* incentive be awarded on a sliding scale of up to 50 basis points as a better alternative to that proposed in the NOPR. This sliding scale would be based both on the extent to which the project's benefit/cost ratio exceeds the minimum benefit/cost standard for eligibility⁴⁴ as well as the type and degree of risks/challenges faced by the project.⁴⁵ If the Commission adopts OPSI's alternative approach described here, the technical details associated with the sliding scale concept could be developed in a participatory process led by the Commission (such as a technical conference). Weights would need to be assigned to each of the two tests, project benefit/cost and risk/challenge, respectively, and a scale established for each test. The starting point on the benefit/cost scale would be the incentive threshold value. No basis points should be granted at the *ex-ante* stage absent a demonstration of risk/challenge, regardless of the project's benefit/cost ratio magnitude, as a project facing no risks or challenges needs no incentive to materialize. A project applicant at the top-end of the scale, having both a very high benefit/cost ratio and a very substantial risk/challenge, would be eligible for a maximum of 50 basis points in the *ex-ante* stage.

⁴³ NOPR, at Appendix A.

⁴⁴ This element of OPSI's proposal is responsive to the Commission's desire to reward high net benefit projects.

⁴⁵ In introducing the *ex-ante* and *ex-post* Economic Project Incentives, the Commission does not use the qualifier "up to" or describe the incentive as anything other than all or nothing. The Commission states "[w]e propose to grant ROE incentives to economic transmission projects based on economic benefit-to-cost tests, including a 50-basis-point ROE incentive for transmission projects that meet an ex-ante benefit-to-cost threshold, described below, and 50 additional basis points for transmission projects that demonstrate on an ex-post basis that they are able to satisfy a higher benefit-to-cost threshold when constructed." NOPR, at P 43.

As to the use of an *ex-post* incentive, OPSI supports the Commission's objective to induce project cost cutting. However, a pre-established benefit/cost ratio threshold, as proposed by the Commission, should not be employed, but, rather, the *ex-post* incentive could be awarded on a sliding scale based on the percentage increase in the project's *ex-post* benefit/cost ratio as compared to the project's *ex-ante* benefit/cost ratio.⁴⁶ Also, the maximum sum of basis points available for Economic Projects in the combined *ex-ante* and *ex-post* stages should be 50, rather than 100 as proposed by the Commission. A project that has obtained the entire 50 basis points at the *ex-ante* stage would have no need to apply for an *ex-post* incentive. Projects obtaining less than 50 basis points at the *ex-ante* stage may increase their reward in the *ex-post* stage, up to the 50 basis point maximum for the combined Economic Project Incentive.

Under OPSI's alternative *ex-ante/ex-post* approach, a developer having a project with a very high *ex-ante* benefit/cost ratio and very substantial risks/challenges may be able to obtain the entire 50 basis points at the *ex-ante* stage. Under the OPSI proposal, a project that opted to forego the *ex-ante* application, or was awarded a smaller incentive at the *ex-ante* stage, may be able to obtain the full 50 points if it is able to dramatically raise its benefit/cost ratio *ex-post*.⁴⁷

In competitive selection processes without cost commitment caps, and for purposes of obtaining an *ex-ante* incentive, developers may have reason to try to underestimate project costs. Splitting the availability of the *ex-ante* and *ex-post* incentive in the way OPSI has proposed here will dampen developers' motivations to artificially raise their project's *ex-ante* benefit/cost ratio by misrepresenting *ex-ante* project costs because the amount of the *ex-post* incentive will be based on the percentage increase in the benefit cost ratio between *ex-ante* and *ex-post*. Concerns about

⁴⁶ The risks/challenges screen is not relevant at the *ex-post* stage. Risks/challenges would have already been demonstrated at the *ex-ante* stage.

⁴⁷ In OPSI's proposal, the *ex-post* stage is designed only to reward successful cost cutting.

developers' drive to over-estimate project costs at the *ex-ante* stage so as to more easily achieve project cost reductions at the *ex-post* stage are mitigated because: (1) incentive eligibility is conditioned on being selected in the RTO's competitive selection process in which project cost is a selection criterion; (2) the screening inherent in the eligibility threshold benefit/cost ratio; and (3) the fact that award of basis points in the *ex-ante* stage is based, in part, on higher benefit/cost ratios.

Finally, OPSI's proposal to consider both benefits and risks/challenges at the *ex-ante* stage will lessen the weight given to the project's benefit/cost magnitude in the incentive request assessment. In addition, if the Commission adopts OPSI's sliding scale approach to incentive awards, rather than granting the entire *ex-ante* 50 basis points to any project passing the minimum threshold as proposed in the NOPR, high benefit/cost projects can obtain a higher award than low benefit/cost projects facing the same risk/challenge. OPSI's proposal would also eliminate the need to update the dividing line between small and large transmission projects for inflation because OPSI recommends eliminating the large/small project distinction.

2. Reliability Project Incentive

The NOPR would offer an ROE incentive of up to 50 basis points for transmission projects that provide significant and demonstrable, quantitative or qualitative, reliability benefits.⁴⁸ The Commission clarifies that transmission incentives are not necessary, and will not be granted, for transmission projects needed to meet mandatory reliability standards.⁴⁹ The Commission plainly states that eligibility for its proposed reliability ROE incentive will be open only to projects providing reliability benefits above and beyond the requirements of established North American

⁴⁸ NOPR, at P 65.

⁴⁹ *Id.*, at P 64.

Electric Reliability Corporation (“NERC”) reliability standards. Specifically, the Commission states that the reliability ROE incentive will be available only to “certain transmission projects that produce significant and demonstrable reliability benefits above and beyond the requirements of the NERC reliability standards.”⁵⁰

Although there may be merit in offering a transmission incentive (up to 50 ROE basis points) to projects that enhance reliability above or beyond a NERC-established minimum reliability standard or requirement (provided that the net consumer benefit of doing so is demonstrated and substantial), OPSI cannot support the Commission’s current proposal in the NOPR. Conditions for project eligibility have not been sufficiently specified; the proposal lacks an administrable benefit test; and no benefit/cost test has been proposed to ensure cost effectiveness. The Commission should remedy these flaws in a final rulemaking to guarantee that reliability incentives are awarded in extremely limited situations. If doing so is not possible, this incentive should be eliminated in a final rulemaking altogether.

The Commission should not grant a reliability project incentive to a developer that merely touts generic reliability benefits. Rather, the project must increase reliability over and above the minimum reliability level established by a particular, identified NERC standard.⁵¹ While the Commission refers to examples such as NERC’s Interconnection Reliability Operating Limit (“IROL”), System Operating Limit, and transmission planning (“TPL”) requirements,⁵² there is nothing in the NOPR that limits availability of the proposed reliability ROE incentive only to

⁵⁰ *Id.*

⁵¹ In the PJM context, OPSI seeks clarification whether PJM-planned baseline reliability projects would be eligible for the Commission’s proposed reliability project incentive. Given that those projects are included in PJM’s regional transmission expansion plan because they are needed to meet an established reliability standard, OPSI presumes they would be ineligible.

⁵² NOPR, at P 69-70.

projects that increase reliability over and above the minimum reliability level established by a particular, identified NERC standard. The Commission admits that its examples are “not an exclusive list.”⁵³ These technical conditions must be formalized and strictly enforced.

Importantly, under the NOPR, a benefit/cost ratio need not be calculated and net customer benefits need not be measured. The Commission states that applicants for the reliability ROE incentive must demonstrate “significant and demonstrable reliability benefits”⁵⁴ that are quantifiable, but will also recognize “the value of qualitative assessments of enhanced reliability.”⁵⁵ With respect to quantifiable benefits, the Commission gives examples such as “reduced loss of load probability, reduced unserved energy under various contingencies, reductions in reliability unit commitments, increases in import or export capability, and improvements in voltage stability.”⁵⁶ But, the Commission proposes no quantitative benefit metric. Rather, the Commission states only that, “[we] would then review the potential [quantifiable] reliability benefits to determine whether and how much of an ROE incentive the transmission project should be awarded.”⁵⁷ In other words, the assessment and determination is entirely subjective, even for quantifiable benefits.

To compound this error, the Commission would also “consider qualitative demonstrations that a transmission project provides one or more significant and demonstrable reliability benefits to address specific reliability needs.”⁵⁸ Such open-endedness and subjectivity creates fertile ground for undue discrimination and unjust/unreasonable rates. There must be some established

⁵³ *Id.*, at P 67.

⁵⁴ *Id.*, at P 65.

⁵⁵ *Id.*

⁵⁶ *Id.*, at P 74.

⁵⁷ *Id.*

⁵⁸ *Id.*

mechanism to ensure the Commission’s promise to award the incentive only to “certain transmission projects that produce significant and demonstrable reliability benefits above and beyond the requirements of the NERC reliability standards.”⁵⁹

For Form 730 reporting purposes, the Commission would require public utilities to report “the estimated annual economic benefits of each transmission project that is under construction that receives any transmission incentive using the same methodology that would have been used to justify an economic transmission incentive regardless of whether that transmission project actually received an economic transmission incentive.”⁶⁰ If the reliability project incentive recipient can calculate a benefit/cost ratio for post-incentive reporting requirements, then requiring submission of the project’s estimated benefit/cost ratio at the time of incentive application, as OPSI recommends herein, would not be unreasonable. Additionally, as with the Commission’s proposed Economic Project Incentive discussed in Section B above, the Commission proposes no screen or test, such as the risk/challenges framework, to assess whether the developer needs an incentive in order to enable development of the reliability project. Granting ROE incentives for projects that would be developed absent the incentive would not benefit consumers, but would, instead, only burden them with unnecessary additional costs. Consequently, the Commission should require reliability incentive applicants to demonstrate risk/challenge and draw a nexus between the incentive sought and the risk/challenge faced.

Finally, in the PJM context, OPSI has reservations about Supplemental Projects⁶¹ being eligible for the Commission’s proposed reliability incentive. Supplemental Projects are planned

⁵⁹ *Id.*, at P 64.

⁶⁰ *Id.*, at P 125.d (emphasis added).

⁶¹ Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Rate Schedule No. 24, § 1, OA Definitions – S – T.

by transmission-owning incumbent utilities outside of PJM's transmission planning function and are included in PJM's transmission expansion plan with only a perfunctory no-harm test conducted by PJM. There is little to no associated process to ensure that Supplemental Projects are good and beneficial projects. Either the process for assessing the worthiness of Supplemental Projects for inclusion in PJM's transmission expansion plan needs to be bolstered or eligibility of Supplemental Projects for the Commission's proposed reliability project incentive needs to be restricted.

OPSI does not support the Commission's proposal to make its reliability ROE incentive eligible to project developers asserting resilience benefits.⁶² Currently, there is no established definition of resilience and no minimum resilience standards. There are no established methods for demonstrating resilience benefits and no metric for assessing increases in resilience over and above a minimum standard. This resilience incentive element should be entirely eliminated from consideration until a strong foundation for resilience policy can be established.

C. ROE Cap

Citing changing investment conditions, the NOPR would allow the ROE incentives to exceed the zone of reasonableness when added to the base ROE. The NOPR would also modify Section 35.35(b)(2) of the Transmission Incentives Regulations to cap ROE incentives, including incentives to attract new investment, for increasing reliability, for transmission technology investment, and for joining and remaining in a Transmission Organization, to a total of 250 basis points.⁶³

Although the Commission is free to change its policies, it must justify its new approach. Here, the Commission offers no persuasive reason to support its proposal to change the existing

⁶² NOPR, at P 73.

⁶³ *Id.*, at P 76.

ROE cap approach that is based on the zone of reasonableness established in the transmission owner's most recent rate case as just and reasonable.⁶⁴ If the Commission, nevertheless, decides to depart from that approach, and to set a specific numerical basis point cap, the Commission needs to take into account the total potential ROE adders being made available and explain how and why the new approach will be just and reasonable. For example, OPSI recommends modifications of the Commission's ROE basis point proposals for the Economic Project Incentive (NOPR would provide 100, OPSI suggests up to 50), the advanced technology project ROE incentive (NOPR would provide 100, OPSI suggests up to 50), and the RTO-Participation Incentive (NOPR would provide 100, OPSI proposes 0). Accordingly, assuming the Commission accepts OPSI's recommendations on basis point availability, the cap should be 50 basis points.

D. Non-ROE Incentives

The NOPR would retain the non-ROE incentives, including the abandoned plant incentive, CWIP Incentive, hypothetical capital structure, accelerated depreciation for rate recovery and regulatory asset treatment.⁶⁵ The NOPR states that these non-ROE incentives facilitate the investment in and the development of transmission projects as they remove regulatory barriers and other impediments to investment.⁶⁶ OPSI supports retention of non-ROE incentives. Unlike a ROE incentive, most of these incentive types either shift risk (*e.g.*, abandoned plant incentive) or

⁶⁴ See, *Allegheny Energy, Inc., et al.*, 116 FERC ¶ 61,058 (July 20, 2006) at P 64, (“an ROE calculation may be based on a range of reasonable returns that takes into account a number of factors that may be both cost-related and policy-related, including [but not limited to] business risk factors and that courts have recognized that there is a zone of reasonable ROEs.”) (internal citation omitted) (internal quotations omitted); see also, *American Electric Power Service Corporation*, 116 FERC ¶ 61,059 at P 40 (July 20, 2006) (the Commission decided to determine the zone of reasonableness in a future proceeding, revealing its intent not to apply a single formulation).

⁶⁵ NOPR, at P 38.

⁶⁶ *Id.*

change the timing of revenue recovery (*e.g.*, CWIP incentive), rather than increasing the total revenue recovered by a transmission owner and the resulting costs borne by electricity consumers.

The Commission's 2012 Policy Statement established an expectation that an applicant for an ROE incentive will first have taken "all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project,"⁶⁷ The Commission's 2012 Policy Statement established a requirement that an applicant for a transmission project-specific ROE incentive based upon a transmission project's economic or reliability benefits demonstrate that base ROE or non-ROE incentives are insufficient to adequately address the risks and challenges faced by the transmission project before seeking ROE incentives. OPSI strongly supports retention of these expectations and requirements from the Commission's 2012 Policy Statement and strongly opposes the Commission's current proposal to eliminate them.⁶⁸

Order No. 679 established, and the Commission's 2012 Policy Statement reinforced, a requirement that applicants seeking incentives demonstrate "how the total package of incentives requested is tailored to address demonstrable risks and challenges."⁶⁹ It appears that the Commission's proposal to eliminate the risks/challenges approach would also result in the elimination of the Order No. 679 assessment regarding the total package of incentives requested. Contrary to the goal of "more closely align[ing]" transmission incentives policy with the statutory requirement that electricity consumers benefit,⁷⁰ the NOPR will mostly increase transmission owner revenue for projects that would have been completed anyway. To remain true to its stated

⁶⁷ 2012 Policy Statement, at P 1.

⁶⁸ NOPR, at P 39.

⁶⁹ 2012 Policy Statement, at P 10.

⁷⁰ NOPR, at P 2.

intent, the Commission should re-commit to the requirements and expectations in the 2012 Policy Statement. Focus should shift from ROE incentives back to non-ROE incentives. The Commission should recognize the value associated with the total package of incentives.

1. Abandoned Plant Incentive

The Abandoned Plant Incentive provides an opportunity to seek 100 percent recovery of abandoned project plant costs.⁷¹ To be eligible for the Abandoned Plant Incentive, the Commission requires the transmission project to have been “selected in a regional transmission planning process for the purposes of cost allocation.”⁷² If the project was selected in a regional transmission planning process for the purposes of cost allocation, that means the project automatically satisfies the first prong of the Commission’s rebuttable presumption test for incentive eligibility.⁷³

The Commission proposes to revise Section 35.35(j)(2) of the Transmission Incentives Regulations to change the start of the effective date for the Abandoned Plant Incentive from the date that the Commission issues an order granting 100 percent recovery of abandoned plant costs to the date that transmission projects are selected in a regional transmission planning process for the purposes of cost allocation.⁷⁴ The Commission proposes only to change the start date for the abandonment recovery back to the date of the project’s inclusion in the RTO’s transmission expansion plan. OPSI takes no position on this specific item.

E. The Transco Incentive Should be Eliminated

⁷¹ 18 C.F.R. § 35.35(d)(1)(vi).

⁷² NOPR, at P 84.

⁷³ 18 C.F.R. § 35.35(i)(1)(i) (the first prong of the Commission’s rebuttable presumption test for incentive eligibility is “[a] transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion . . .”).

⁷⁴ NOPR, at P 84.

The NOPR argues that there is no evidence of Transcos delivering the outcomes that the Commission had expected in establishing Transco incentives in Order No. 679.⁷⁵ As a result, the Commission believes the Transco business model no longer justifies incentives beyond those available to all public utilities.⁷⁶ The NOPR finds that, because the Commission's key reasoning for establishing a Transco ROE Incentive and a Transco ADIT Adjustment no longer applies, it is necessary to eliminate both of those incentives by removing current sections 35.35(b)(1) and 35.35(d)(2) of the Transmission Incentives Regulations.⁷⁷

In the underlying NOI proceeding, OPSI noted numerous shortcomings with the Commission's policy regarding incentives to Transcos.⁷⁸ Accordingly, OPSI supports the Commission's proposal to prospectively eliminate these two specific Transco incentives and suggests the Commission, contemporaneous with its elimination of these incentives, also terminate Transco ROE incentives that were previously granted.⁷⁹

F. The Current RTO-Participation Incentive Should be Eliminated

The NOPR would revise the existing Transmission Incentives Regulations to provide a fixed 100-basis-point RTO-Participation Incentive to transmitting utilities that transfer functional control over transmission facilities to a RTO/ISO.⁸⁰ This revision would increase the existing

⁷⁵ *Id.*, at P 87.

⁷⁶ *Id.*, at P 91.

⁷⁷ *Id.*

⁷⁸ OPSI Comments, at 11-12.

⁷⁹ The Michigan PSC believes that there may be benefits to providing some amount of incentive ROE added for independence given our state's two decades-long experience with independent transmission companies. Notwithstanding, the Michigan PSC encourages the Commission to continue to review its policies in a comprehensive manner to account for the overall ratemaking treatment, such as the allowed base ROE, any incentive ROE adders, the formula-based forward-looking rates, and the overall allowed rate of return for each transmission owner. The Commission needs to balance the risk with the appropriate level of return that may include incentives that provide just and reasonable rates.

⁸⁰ NOPR, at P 97.

RTO-Participation Incentive by 50 basis-points.⁸¹ OPSI opposes this revision and urges the Commission to instead explore other options for structuring this incentive, including but not limited to non-ROE incentives.⁸²

Although providing an incentive opportunity for utilities that join an RTO may be a “Congressional mandate,”⁸³ the reasonableness of the Commission’s implementation of the RTO-Participation Incentive, and its effect on consumers, has become highly questionable.⁸⁴ The Commission’s current implementation of the RTO-Participation Incentive, which through its perpetuity encourages utilities to both join and remain⁸⁵ in an RTO/ISO, goes beyond what is required by FPA Section 219(c), which only requires incentives for utilities that “join” an RTO/ISO.⁸⁶ Congress linked this incentive to those established for the purpose of benefiting consumers⁸⁷ and further required just and reasonable rates.⁸⁸ Without ensuring the consumer

⁸¹ *Id.*, at P 92.

⁸² OPSI Comments, at 10 (additionally arguing the Commission “use a risk/challenge framework and nexus test to assess whether the incentive requested under Subsection 219(c) (joining a Transmission Organization) is needed to overcome a barrier or hindrance which would otherwise thwart the applicant from joining the Transmission Organization (and, thus, thwart the achievement of the reliability improvement or the congestion reduction),” and “employ benefit metrics and use a benefit/cost test in its evaluation of incentive applications under Subsection 219(c) to ensure . . . that the reliability improvement or congestion reduction achieved through participation of the utility in the Transmission Organization benefits the consumers who bear those costs”).

⁸³ *Id.*, at P 97; *see also*, 16 U.S.C. § 824s(c) (“the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.”).

⁸⁴ OPSI Comments, at 9-11 (arguing for creation and use of threshold test(s) for awarding RTO-Participation Incentive, to ensure customers receive benefits identified in FPA Section 219; questioning the ongoing nature of the RTO-Participation Incentive as costs to customers may eventually begin to exceed benefits; “[f]or example, if a state law requires utility participation in a Transmission Organization, the utility is not likely to discontinue its participation and the costs to consumers of any incentive for the utility to participate in the Transmission Organization would be wasteful.” (citing Va. Code §56-579)).

⁸⁵ *See, Cal. PUC v. FERC*, 879 F.3d 966 (9th Cir. 2018) (holding that, due to FERC’s longstanding policy that incentives should only be awarded to induce future behavior, it arbitrarily and capriciously determined that a gas and electric company was eligible for an incentive to remain a member of an ISO when state law prevented the company’s departure without authorization).

⁸⁶ 16 U.S.C. § 824s(c).

⁸⁷ *Id.* (referencing the rule adopted “under this section” and described in subpart (a)).

⁸⁸ *Id.* § 824s(d).

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.⁸⁹

As the OPSI Board of Directors identified in a 2018 Letter to the Commission, the relevant circumstances have changed drastically since the inception of this incentive in 2006.⁹⁰ 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.⁹¹ The regulatory environment has likewise changed in many ways to the benefit of transmission investment and development, as the OPSI Letter noted:

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.⁹²

While the NOPR focuses on transmission owners' added roles and responsibilities upon RTO/ISO membership, including transmission planning processes implemented after Order No. 679 was issued,⁹³ it fails to weigh those duties against the clear and significant intrinsic benefits

⁸⁹ *Cal. PUC*, 879 F.3d at 977 (FERC has a “longstanding policy that ... there must be a connection between the incentive and the conduct meant to be induced” and that this policy “prohibits FERC from rewarding utilities for ... conduct which they are otherwise obligated to undertake”).

⁹⁰ OPSI Letter to FERC, (“OPSI Letter”), (December 21, 2018), at 1-2 (accessible at <https://opsi.us/wp-content/uploads/2019/03/FERC-Letter-Transmission-ROE-Incentive-Policy-Leter-12.21.18.pdf>).

⁹¹ *Regional Transmission Orgs.*, Order 2000, FERC Stats. & Regs. ¶ 31,089 at 30,993 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 30,092 (2000), *aff'd sub nom. Public Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁹² OPSI Letter, at 2.

⁹³ NOPR, at P 97.

of RTO/ISO participation. Rather than justifying an increase in the RTO-Participation Incentive to 100 basis-points, as the Commission proposes, the referenced changed circumstances in the industry support a decrease in the incentive and narrowing of the incentive to apply only to those utilities that need inducement to join a RTO/ISO.⁹⁴ These modifications would more closely align with the Congressional mandate in Section 219. The NOPR, by contrast, extends far beyond the statute. Therefore, OPSI opposes the Commission’s proposal to increase the RTO-Participation Incentive to 100 basis-points as well as the existing 50 basis-point RTO-Participation Incentive, and encourages a restructuring of this transmission incentive.

G. Incentives for Transmission Technologies

The NOPR states that the Commission’s current incentive policy with respect to new advanced technology projects and technology improvements to existing transmission projects “has not been effective.”⁹⁵ To address this, the Commission proposes to offer: (1) “a 100-basis-point ROE incentive on the cost of the specified transmission technology project (Transmission Technology Incentive)”⁹⁶; and (2) “a two-year regulatory asset treatment for costs related to deploying and operating that technology (Deployment Incentive).”⁹⁷ The NOPR cites as examples of such technologies “(1) advanced line rating management; (2) transmission topology optimization; and (3) power flow control”⁹⁸ and states that transmission system assets traditionally associated with the transportation of electric power, such as power lines, power poles, capacitors, and other substation equipment will generally not be eligible.⁹⁹ While providing these examples,

⁹⁴ See, *Cal. PUC*, 879 F.3d 966; see also, Va. Code §56-579 (Virginia state law requires certain electric utilities in the Commonwealth to join a regional transmission entity).

⁹⁵ NOPR, at P 100.

⁹⁶ *Id.*, at P 103.

⁹⁷ *Id.*

⁹⁸ *Id.*, at P 101.

⁹⁹ *Id.*

the Commission nevertheless stated that it would make a “case-by-case determination of eligibility based on the characteristics of the technology and the benefits that the technology offers.”¹⁰⁰

To obtain either the Transmission Technology Incentive (100-basis-point ROE adder) or the Deployment Incentive (regulatory asset treatment), the project must meet the benefit-to-cost threshold proposed for Economic Projects in Section IV.B.1.d of the NOPR.¹⁰¹ The Commission states that the two proposed incentives (Transmission Technology Incentive and Deployment Incentive) are intended to work in conjunction, but that each incentive may be sought individually.¹⁰²

The Commission explains the technologies eligible for the Transmission Technology Incentive and the Deployment Incentive are often not stand-alone projects, but, rather, are often technologies added to an existing or new transmission project.¹⁰³ For that reason, the Commission proposes to require separate tracking of costs for the technology portion of the project as well as the cost of the overall transmission project if it is not a stand-alone transmission technology project.¹⁰⁴

With respect to the proposed Deployment Incentive, the Commission explains that there are significant upfront costs involved with the technologies the Commission seeks to encourage, such as software and service-based costs in transmission operations, and that such costs are typically expensed in the year incurred.¹⁰⁵ To overcome this asserted obstacle, the Commission proposes to allow certain initial costs related to deploying technologies that are traditionally

¹⁰⁰ *Id.*, at P 102.

¹⁰¹ *Id.*, at P 103.

¹⁰² *Id.*

¹⁰³ *Id.*, at P 111.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*, at P 108.

expensed in the year incurred, to instead be deferred as a regulatory asset and included in rate base for purposes of determining a public utility's return on equity.¹⁰⁶ The Commission proposes to allow in the regulatory asset up to two years of certain initial costs for the installation and operation of the eligible transmission technology (beginning at the procurement stage), to be amortized over a five-year period.¹⁰⁷ The NOPR would prohibit renewals beyond the two years.¹⁰⁸ The NOPR describes the benefit to consumers of the Deployment Incentive as "increased efficiency and congestion savings" provided by these technologies.¹⁰⁹

First, an incentive for advanced technology projects associated with new projects and technology improvements added to existing transmission projects may have merit. However, OPSI questions the magnitude of the Transmission Technology Incentive (100-basis-point ROE adder). OPSI recommends up-to 50 ROE basis points, with availability on a sliding scale based on both the project's benefit/cost ratio and the risks/challenges test. OPSI also has reservations about regulatory asset treatment, as it adds to rate-base, and imposes costs on electricity consumers associated with the utility's full rate of return. To address concerns about "the implementation burden for transmission technologies,"¹¹⁰ the Commission should first look at incentive alternatives that do not add to rate-base.

Second, OPSI also supports the Commission's concept of using increased efficiency and congestion savings as the benefit metric for both the Transmission Technology Incentive and the Deployment Incentive. For both the Transmission Technology Incentive and the Deployment Incentive, the Commission proposes that the project must meet the benefit/cost threshold proposed

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, at P 109.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

for Economic Projects in Section IV.B.1.d of the NOPR. A post-construction benefit cost ratio of sufficient magnitude is necessary to ensure cost effectiveness of the project and associated net customer benefits. However, as OPSI has explained, the Commission's incentive policy, including the advanced technology proposal, cannot effectively assure that electricity consumers are benefitted without adding the risks/challenges framework to the NOPR's benefits approach.¹¹¹ Assuming that shortcoming is corrected and the remaining problems associated with the Commission's Economic Project Incentive proposal (as described in Section B above) are resolved, OPSI could support application of the Economic Project approach for measuring increased efficiency and congestion savings as the benefit metric for calculating the benefit/cost ratio for advanced technology applications.

Third, while the NOPR explains how advanced technologies are often not stand-alone projects, but, rather, are often elements added to an existing or new transmission project,¹¹² and how the contribution of the ROE adder for advanced technology will be calculated as a weighted average of project cost and technology cost for the purpose of calculating the overall ROE cap, the Commission doesn't explain how it expects the calculation of the benefit/cost test and benefit/cost thresholds for either the Transmission Technology Incentive or the Deployment Incentive to be conducted. In particular, if the Commission expects both the costs and the benefits of the advanced technology to be tracked and reported, separate and apart from the costs and benefits of the project to which the advanced technology is associated, it is not clear how that can be accomplished.

Consequently, while the Commission's intent is to encourage development and deployment of advanced technologies, the Commission's specific proposal has both problems and

¹¹¹ OPSI notes that as today's advanced technology projects become more mainstream, they would no longer satisfy the risks/challenges framework criteria, but the future's advanced technology projects may.

¹¹² NOPR, at P 111.

gaps which would make it problematic to implement and litigious to oversee. These gaps and problems need to be addressed so that an effective program for encouraging beneficial, cost-effective advanced technology can be implemented. This is an area where a technical conference or other vehicle for obtaining stakeholder input could be very useful.

Finally, the NOPR would provide pilot programs for eligible transmission technologies a rebuttable presumption for the Transmission Technology Incentive and the Deployment Incentive.¹¹³ The NOPR defines pilot program as a public utility-led deployment of an eligible transmission technology that costs less than \$25 million and operates on less than five percent of the applicant's system and has less than two years' duration.¹¹⁴ Although the idea of supporting worthy pilot programs may have merit, the Commission proposed no benefit metric for this incentive (thus preventing benefit/cost ratio calculation) and included no requirement for incentive applicants to demonstrate risks/challenges. In order to comply with the requirement of FPA Section 219 with respect to electricity consumer benefit, some demonstration of cost-effectiveness would be required. Without this, OPSI cannot support the Commission pilot program incentive proposal.

H. OPSI Supports Disclosure of Anticipated Incentives

The NOPR seeks comment on “whether it would be useful to require a public utility seeking incentives to disclose all reasonably anticipated incentives to transmission planning regions as part of the public utility's transmission project proposal.”¹¹⁵ The Commission also seeks comment on whether such a requirement should apply to all incentive applications or only to incentive

¹¹³ *Id.*, at P 112.

¹¹⁴ *Id.*

¹¹⁵ *Id.*, at P 114.

applications for an increased ROE.¹¹⁶ The Commission doesn't explain why it is suggesting this new disclosure requirement other than a general observation about "significant developments in the regional transmission planning process since the adoption of FPA section 219 and the Commission's issuance of Order Nos. 679 and 679-A."¹¹⁷

OPSI supports this proposed disclosure requirement. OPSI assumes the requirement would apply, in the case of the PJM region, whenever a transmission developer submits a proposed project into a PJM open window with respect to the competitive selection process, or, prior to the inclusion of a transmission project in PJM's Regional Transmission Expansion Plan. PJM should compile these individual disclosures into a list which shall be publicly posted and updated, at least quarterly, as circumstances change, with new information from each transmission developer that reasonably expects to submit an incentive application to the Commission, or has already submitted such application.

This sort of transparency requirement is important both for PJM's project tracking function and for general public awareness. Increasing awareness of developments that may impact transmission project cost is particularly important for projects subject to PJM regional or sub-regional cost allocation. Projects subject to PJM regional or sub-regional cost allocation impose costs on electricity consumers in states other than the location where such project will be physically located. Yet, information about such projects and their costs is not readily available outside the state where the project will be physically located. To the extent that a developer's incentive request would impose costs on electricity consumers regionally or sub-regionally, in addition to the underlying project costs, it is particularly important for electricity consumers to have information

¹¹⁶ *Id.*

¹¹⁷ *Id.*

about those potential costs, and the associated asserted benefits. The Commission’s proposed incentive disclosure requirement would help fill that gap, and OPSI supports it, both for ROE incentives and non-ROE incentives.

I. OPSI Supports Transparency and Increased Information Reporting

As the Commission recognizes, it has a statutory obligation to rigorously assess the transmission project cost, the incentive cost, and the asserted net benefits when a request for a transmission incentive(s) is submitted.¹¹⁸ As the Commission also recognizes, it has an obligation to continue to oversee the “effectiveness of individual incentive grants”¹¹⁹ after an incentive has been granted. To fulfill this continuing post-grant obligation, the Commission must have information on: (1) project cost; (2) incentive cost; (3) project benefit; (4) distribution of project costs among electricity consumers in the region; (5) distribution of incentive costs amongst electricity consumers in the region; and (6) distribution of project benefits among electricity consumers in the region. The Commission is correct that current Form 730 does not provide the data, projections, and related information the Commission needs to fulfill its post-grant obligation to ensure the continuing effectiveness of individual incentive grants.¹²⁰

As far as they go, OPSI supports the Commission’s proposed project cost and project characteristics modifications to Table 1 and Table 2 of Form 730 as explained in Appendix B of the NOPR. Requiring project-by-project submission of data/information will considerably improve upon the current aggregate submission. However, OPSI recommends that the Commission also collect data on the incentive cost, as well as distribution of project costs and incentive costs among electricity consumers in the region. Without this additional data, the

¹¹⁸ *Id.*, at P 115.

¹¹⁹ *Id.*

¹²⁰ *Id.*

Commission will not be able to assess whether each incentive granted actually benefits electricity consumers as required by FPA Section 219.

OPSI supports the Commission's proposal to collect project-specific benefit data in Tables 3 and 4 as shown in Appendix A of the NOPR. However, OPSI recommends that the Commission separately collect data, on a projected and actual basis, of the benefit of the project and the cost of the project, both denominated in dollars, in addition to a benefit/cost ratio. OPSI also recommends that the Commission collect data on distribution of both the project benefits and costs among electricity consumers in the region.

OPSI supports the NOPR's proposed requirement that the benefits reported in Form 730 (both projected and actual) be calculated for reliability projects and reliability incentives in the same way that benefits are calculated for economic projects/incentives (and advanced technology incentives).¹²¹ However, as explained in Section B above, the Commission should develop and apply a single standardized benefit metric for use in assessing economic incentive applications rather than using each RTO's benefit metric that is used for each RTO's transmission planning purposes.

OPSI does not support the NOPR's proposal to exempt recipients of the RTO-Participation Incentive from reporting the benefits and costs of that incentive on Form 730.¹²² The Commission has not explained why it proposes to limit Form 730 reporting only to project-based incentives or why the public should not also be informed regarding the costs and benefits of the RTO-Participation Incentive. Also, the Commission has not explained its rationale for proposing that applicants receiving "only the RTO-Participation Incentive must report only for transmission

¹²¹ *Id.*, at P 125.

¹²² *Id.*, at P 122.

projects that cost more than \$3 million.”¹²³ There should not be a different project-specific reporting threshold only for RTO-Participation Incentive recipients. In any event, OPSI recommends that the project-specific reporting threshold for all incentive recipients be set at \$0. Accordingly, OPSI also opposes the NOPR’s proposal that “reporting on benefits calculations, both the expected and the actual, should only apply to transmission projects that are \$25 million or more in scale.”¹²⁴ Electricity consumers bear the costs of projects under the Commission’s proposed cost reporting threshold as well as the costs of projects above it. Transparency of information provision is important for electricity consumers to assess whether or not they are benefitting, as required by FPA Section 219, and the Commission has not justified less transparency for projects falling under the Commission’s proposed cost reporting threshold.

OPSI opposes the Commission’s proposal to limit Form 730 reporting only to “five years after the date of completion of the transmission project.”¹²⁵ Unless the Commission terminates the transmission owner’s receipt of a project-based incentive at five years, the Commission should not terminate the reporting of costs and benefits at five years. As with the proposed cost reporting thresholds discussed above, reporting duration should not end after an arbitrary period of time, but should continue as long as the impact of the granted incentive continues.

OPSI considers the Commission’s concern regarding reporting burden on incentive recipients to be misplaced.¹²⁶ Transmission owners concerned about reporting burden need not apply for an incentive (or may renounce incentives they may already be receiving). On the other hand, electricity consumers must bear the burden of any incentive approved by the Commission

¹²³ *Id.*

¹²⁴ *Id.*, at P 124.

¹²⁵ *Id.*, at P 125.

¹²⁶ *Id.*, at P 126.

and implemented by the incentive recipient. Electricity consumers have no way to avoid that burden except for the option of not consuming electricity. For this reason, OPSI urges the Commission to give balanced consideration on the concept of burden.

IV. CONCLUSION

For the reasons explained above, OPSI requests that the Commission give due consideration to these comments. OPSI would suggest that holding one or more technical conferences to focus on specific technical areas such as reliability project encouragement, economic efficiency projects, and advanced technology may be quite helpful.

Respectfully Submitted,

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Dated: July 1, 2020

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 July 1, 2020.