

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

Notice of Proposed Rulemaking)
Electric Transmission Incentives Policy) Docket No. RM20-10-000

**MOTION TO INTERVENE AND COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ appreciates the opportunity to provide these Comments in response to the issues raised in the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) March 20, 2020 Notice of Proposed Rulemaking (“NOPR”) regarding potential revisions to its transmission incentives policy.² NASUCA appreciates the Commission’s inquiry into potential improvements that could better align the current incentives policy with the Federal Power Act’s (“FPA”) central purpose of protecting consumers from unjust and unreasonable rates. NASUCA is pleased that elements of the NOPR advance the FPA’s central purpose—e.g., the proposal to eliminate the incentive adder for independent transmission companies (“Transco Adder”). On balance, however, the NOPR is a step in the wrong direction because many elements of the NOPR would make it difficult, if not impossible, to determine that incentive rates are just and reasonable. To avoid that result, any final rule established in this proceeding should be consistent with the following Comments.

¹ Individual NASUCA consumer advocate members reserve the right to file separate comments regarding the issues discussed in these comments.

² The NOPR was published in the *Federal Register* on April 2, 2020, making July 1, 2020 the date on which comments are due. 85 Fed. Reg. 18,784 (Apr. 2, 2020).

I. MOTION TO INTERVENE

NASUCA is a voluntary association of 58 state utility consumer advocate offices. NASUCA members represent the interests of utility consumers in 44 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA's full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal utility regulators and in the courts. NASUCA's associate and affiliate members are recognized utility consumer advocates in their respective jurisdictions.

The NOPR implicates NASUCA's interests because it implicates the level of wholesale transmission rates that are ultimately assessed to end-use customers. NASUCA has a direct interest in the outcome of this proceeding. NASUCA's interests cannot adequately be represented by any other party. NASUCA's participation in this proceeding will advance the public interest. Consequently, the Commission should grant this motion and permit NASUCA to intervene in this proceeding for all purposes.

II. COMPLIANCE WITH RULE 203

The exact name of the movant is the National Association of State Utility Consumer Advocates. NASUCA's principal place of business is located at 8380 Colesville Road, Suite 101, Silver Spring, Maryland, 20910. Service of pleadings, documents, and communications in this proceeding should be made on the following:

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III. INTRODUCTION AND RELEVANT BACKGROUND

A. **All Incentive Rate Treatments Must Be Consistent with the FPA’s Consumer-Protection Focus.**

The FPA is a consumer-protection statute.³ Sections 205 and 206 of the FPA are the means by which the Commission protects consumers.⁴ Those provisions prohibit public utilities from charging rates that are “unjust and unreasonable.”

In 2005, Congress amended the FPA by adding new section 219(a), which directed the Commission to establish 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.⁵ FPA section 219(d) expressly provides that all incentive rates approved section 219 must satisfy the just and reasonable requirement set forth in FPA sections 205 and 206.⁶

B. **Currently, the Commission Uses a “Risks and Challenges” Approach to Ensure that Incentives are Consistent with the FPA’s Consumer-Protection Focus.**

On July 20, 2006, the Commission issued Order No. 679, adding § 35.35 to the Commission’s regulations to implement transmission incentives, thereby fulfilling the rulemaking requirement in FPA section 219(a).⁷ As the Commission explained:

The longstanding rule is that utility rate regulation must adequately balance both consumer and investor interests. It is not enough to ensure that investors are properly compensated, and it is not enough to ensure that consumers are protected

³ See, e.g., *Pa. Water & Power Co. v. FPC*, 343 U.S. 414, 418 (1952); *New England Power Generators Ass’n v. ISO New England Inc.*, 146 FERC ¶ 61,038 at P 26 & n.33 (2014).

⁴ 16 U.S.C. §§ 824d, 824e.

⁵ Energy Policy Act of 2005, Pub. L. No. 109-58, sec. 1241 (codified at 16 U.S.C. § 824s).

⁶ 16 U.S.C. § 824s(d).

⁷ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (2006), *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FEC ¶ 61,062 (2007).

against excessive rates. Our policies must ensure both outcomes and, in doing so, strike the appropriate balance between these twin objectives.⁸

Consequently, to receive an incentive under Order No. 679, an applicant must satisfy the statutory threshold set forth in FPA section 219(a) by demonstrating that the transmission facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.⁹ If the applicant satisfies that threshold, it *must then demonstrate that there is a nexus* between the incentive sought and the investment being made.¹⁰ The Commission stated that it would apply the FPA section 219(a) threshold and the nexus test on a case-by-case basis.¹¹ Under this case-by-case nexus analysis, the “most compelling” candidates for incentives were “new projects that present special risks or challenges, not routine investments made in the ordinary course of expanding the system to provide safe and reliable transmission service.”¹²

On November 15, 2012, the Commission issued a policy statement to provide additional guidance regarding its evaluation of applications for transmission incentives under FPA section 219 and Order No. 679.¹³ Based on its determination that “additional guidance...is necessary to encourage transmission infrastructure investment while maintaining just and reasonable rates,”¹⁴ the Commission clarified that an applicant seeking an ROE incentive for risks and challenges would be expected to demonstrate that:

⁸ Order No. 679 at P 21.

⁹ *Id.*, at P 24. As detailed below, NASUCA submits that the requirement for projects to ensure reliability or reduce costs is contrary to the statutory requirement to ensure reliability and reduce costs.

¹⁰ *Id.*, at P 26.

¹¹ *Id.*, at PP 22, 24.

¹² Order No. 679-A at PP 1, 23, 60.

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

¹⁴ *Id.* at P 1.

(1) the proposed transmission project faces risks and challenges that were not either already accounted for in the applicant's base ROE or addressed through non-ROE incentives; (2) it is taking appropriate steps and using appropriate mechanisms to minimize its risk during transmission project development; (3) alternatives to the transmission project had been, or would be, considered in either a relevant transmission planning process or another appropriate forum; and (4) it commits to limiting the application of the ROE incentive to a cost estimate.¹⁵ The 2012 Policy Statement served to reframe the "nexus test" to focus more directly on the requirements of Order 679."¹⁶ Thus, since their formal adoption in Order No. 679 in 2006, section 219 incentives have been predicated on a showing that the requested incentive is responsive to the risks and challenges of the project such that the incentive directly assists in overcoming the risks and challenges posed. That showing has been, as it must, inherently linked to the requirement that rates be just and reasonable.

C. In Docket No. PL19-3, NASUCA Identified Revisions to Order No. 679 That Could Further Align the Commission's Incentives Policy with the FPA's Consumer-Protection Focus.

On March 21, 2019, the Commission issued a Notice of Inquiry in Docket No. PL19-3 ("2019 Notice of Inquiry"), seeking comment on the scope and implementation of its electric transmission incentives policy.¹⁷ NASUCA participated in the 2019 Notice of Inquiry proceeding as part of the "Joint Commenters," a diverse group composed of state public utility commissions, industrial users of electricity, public power utilities, consumer

¹⁵ *Id.* PP 20-28.

¹⁶ *Id.* at P 1.

¹⁷ *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, 166 FERC ¶ 61,208 (2019).

advocates, and associations representing such entities.¹⁸ Of particular relevance here, the

Joint Commenters:

- expressed their support for beneficial transmission infrastructure development, but emphasized the need to ensure that wholesale transmission rates remain just and reasonable;
- explained that the existing framework established under Order No. 679 and the 2012 Policy Statement for evaluating applications for project-specific incentives remains generally sound;
- demonstrated that a framework that awarded incentives based on a project’s “expected benefits” would not comply with FPA section 219 and would conflict with the Commission’s regional planning rules and policies;
- recommended a 15-year sunset for project-specific ROE adders, unless, prior to the sunset date, the Commission determines the adder is no longer needed or effective;
- supported elimination of the Transco Adder;
- supported elimination of the incentive ROE for joining or remaining in a Regional Transmission Organization (“RTO Participation Adder”); and
- recommended requiring Transmission Owners to submit measurement and verification plans that would track and quantify the consumer benefits generated by a project.¹⁹

D. On Balance, the NOPR Is a Step in the Wrong Direction.

In the March 20, 2020 NOPR, the Commission proposed to revise its transmission incentives policy. Unfortunately, in developing the NOPR, the Commission appears to have ignored many of the Joint Commenters’ policy recommendations. Though purporting “to more closely align [the Commission’s incentives policy] with the statutory language

¹⁸ Docket No. PL19-3, *Inquiry Regarding the Commission’s Electric Transmission Incentives Policy*, Joint Commenters Initial Comments (June 26, 2019) and Joint Commenters Reply Comments (August 26, 2019).

¹⁹ *See, e.g.*, Docket No. PL19-3, Joint Commenters Initial Comments at 5-7 (summarizing key policy recommendations).

and purpose of FPA section 2019,”²⁰ key elements of the NOPR produce the opposite result.

Notably, the proposal to replace the “risks and challenges” approach with a “benefits” framework is inconsistent with the customer-protection purpose of the Federal Power Act and would eliminate the essential nexus between the incentive and the project investment decision. The Commission’s proposed shift from a “risks and challenges” based incentive approach to a benefits-based approach will result in the payment of costly incentives to transmission projects likely to be built anyway, with or without incentives, and thereby serves to increase the cost of transmission projects borne by customers while providing no clear customer benefit. Transmission incentives should not be awarded as a routine matter to all projects meeting the enhanced threshold benefit-cost showing, as the Commission proposes. Rather, in accordance with section 219 of the FPA, the transmission development incentive should be reserved for projects in which the incentive will serve as an impetus for and actually stimulate action on a beneficial transmission project by addressing the challenges or risks that serve as an impediment to the development of the project.

The transmission planning initiatives underway within and outside an RTO will cause projects that demonstrate high levels of economic benefit to be built without the need for additional incentives. Paying an incentive to highly economic projects will only add costs to the project and deliver nothing more than what a transmission planning process is supposed to provide. Under the Commission’s proposal, customers will be forced to pay an incentive on projects that should be developed through the RTO *and* an incentive for

²⁰ NOPR at PP 3, 32.

being a member in an RTO because the RTO is believed to enable the development of needed and beneficial projects. The benefits-based incentive is duplicative of the RTO benefit adder and will expose customers to excessive incentives cost that provide no incremental benefit over simply being a member of an RTO.

Similarly, the Commission's proposal to double the RTO participation incentive ROE adder in perpetuity will only add costs and provide no discernable benefits to customers who have paid very expensive RTO Participation Adder for many years. The Commission's proposal to increase the incentive on assets already committed to RTO management, in some cases for decades, will only exacerbate customer cost and provide no additional benefit. If transmission owners see sufficient benefit in RTO membership, they will join and remain in an RTO regardless of the adder. The continuing stream of RTO participation incentives that accrue to RTO members, with no corresponding commitments on the part of the RTO participants to efficiently manage transmission costs or satisfy other accountability metric, does not promote any actionable outcome of benefit to customers such that an incentive is warranted. The proposed doubling of RTO Participation Adder exacerbates this windfall to transmission owners and incentivizes no particular change in behavior among eligible public utilities that would benefit customers.

NASUCA continues to believe that incentive rate treatment can be an effective means of encouraging the behavior of private entities to meet policy objectives. However, any incentives must ultimately satisfy the FPA's mandate that the rates resulting from the incentives be just and reasonable. To that end, NASUCA believes that some elements of the NOPR, such as the proposal to eliminate the Transco Adder, are warranted. On balance,

however, the proposals in the NOPR fail to protect consumers. To address that deficiency, any final rule should be consistent with the following Comments.

IV. COMMENTS

A. **The Risks and Challenges Framework for Project-Specific Incentives is an Important Consumer Protection that the Commission Should Retain.**

In implementing section 219 of the FPA, Order Nos. 679 and 679-A established a “nexus test,” which required proponents of an incentive to demonstrate a connection between the total package of incentives sought and the proposed investment, in light of the risks and challenges facing a transmission project seeking incentives under FPA section 219.²¹ The NOPR proposes to depart from that well-established approach and instead focuses on granting incentives based on the “benefits” to consumers of transmission infrastructure investment identified by Congress in FPA section 219: ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.²² The principal problem with the NOPR’s proposal is that it contravenes sections 205 and 206 of the FPA.

Under the proposed framework, incentives are not conditioned on or tied to a showing that they will directly promote the achievement of the benefits expressly identified in section 219. Although the FPA does not explicitly require a nexus test,²³ NASUCA believes a nexus test is an essential component of a section 219 application because it is designed to assure that the requested incentives benefit customers as FPA section 219

²¹ Order No. 679 at P 26; Order No. 679-A at P 27.

²² NOPR at PP 3, 34.

²³ *Id.* at P 35.

explicitly requires.²⁴ Awarding incentives to a project solely on the basis of reliability or economic benefits, without considering a project’s risks or challenges, will necessarily result in higher project costs but provides no assurance that the incentive otherwise benefits customers by mitigating project risks and challenges. If risks and challenges are not addressed, the additional cost of incentives cannot be shown to provide customer benefits, especially for projects that demonstrate compelling benefit-cost results and are likely to be constructed, with or without incentives. This is precisely why the Commission has employed a nexus test for section 219 incentives in the past. The Commission has not provided any legal or policy basis for overhauling that long-standing approach.

A nexus showing enables a finding that the incentive is just and reasonable.²⁵ The current incentive rules and nexus requirement are to “benefit consumers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment.”²⁶ Granting incentives based solely on whether a project reduces congestion or enhances reliability, as is proposed new rule 35.35(c), does not ensure that the resulting rates are reasonable, but it *will* increase rates in a manner that has no correlation to encouraging the new investment.

A core objective of transmission incentive policy is to ensure beneficial projects are built in an economic fashion. Project benefits are necessary, but not sufficient to satisfy the requirements of FPA section 219 for granting transmission investment incentives. The nexus showing serves to filter out beneficial projects that would be built through normal

²⁴ The FPA requires the Commission to establish an incentive rate treatment “for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.” NOPR at P32 (emphasis original) citing 16 U.S.C. 824s(a).

²⁵ Joint Commenters Initial Commenters at 8-21; Joint Commenters Reply Comments at 5-15.

²⁶ Order No. 679 at P 26 (internal quote omitted).

processes without the need for costly incentives. Awarding a higher ROE for the “benefits” of a project that has already been identified as economic or necessary for system reliability would unnecessarily inflate costs for a project that would be built anyway, and would result in a windfall to the transmission owner.

The Commission’s current “risks and challenges” approach is working and has helped support a robust amount of transmission investment.²⁷ Nevertheless, the Commission believes that additional reform may be needed to satisfy its obligation under FPA section 219 in the current transmission planning landscape.²⁸ The transmission planning processes at RTOs and in other regional and interregional planning forums routinely consider the items prompting the Commission’s concern, including the changing mix in resources used to generate electricity, the need to facilitate integration of new generation resources, and changes in load patterns and demand. A properly-functioning transmission planning process should already be identifying the more efficient or cost-effective projects to ensure reliability and reduce the cost of delivered power by reducing transmission congestion.²⁹ Customers have paid RTO Participation Adder for many years to account for the benefits of RTO, including the aforementioned planning efforts. There has been no showing that the current transmission planning process is or will be inadequate to address the evolving transmission planning landscape such that the Commission should abandon its long-standing nexus-test for project-specific transmission incentives. Transmission incentive policy should not be used to address potential deficiencies in the

²⁷ NOPR at P 26, 31; *see also* Docket No. PL19-3, Joint Commenters Initial Comments at 10-11 and Reply Comments at 6 n.10.

²⁸ NOPR at PP 24-30.

²⁹ Docket No. PL19-3, Joint Commenters Initial Comments at 24-25 and Reply Comments at 12-14 n.38.

planning or cost allocation process.³⁰ Moreover, it is fundamentally inconsistent to ask customers to pay incentives both for RTO participation *and* to address to address potential deficiencies in the transmission planning or cost allocation process.

The NOPR would authorize an expansive range of transmission ratemaking incentives upon a showing that the facilities for which an applicant seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. NASUCA recommends that the Commission retain its current “risks and challenges” approach to assess transmission incentives because it is more likely to incentivize specific beneficial conduct than the proposed benefits-based approach.

B. Awarding Incentive ROEs to Economic Projects Will Increase Wholesale Transmission Rates Without Incentivizing Any Desired Behavior.

The NOPR proposes to offer 50-basis-points of ROE incentives for transmission projects that meet an economic benefit-to-cost ratio in the top 75th percentile of transmission projects examined over a sample period, and an additional 50-basis-points of ROE incentives for transmission projects that demonstrate ex-post cost savings that fall in the 90th percentile of transmission projects studied over the same sample period, as measured at the end of construction. Regional or local transmission projects are eligible for this incentive.³¹ NASUCA opposes this proposal as contrary to FPA sections 205 and 206, unnecessary, arbitrary, and overly complicated.

Incentives should directly encourage transmission investment that otherwise would not be made. But, while the Commission’s proposed benefit approach references the

³⁰ Docket No. PL19-3, Joint Commenters Initial Comments at 26 and Reply Comments at 11 n.33.

³¹ NOPR at P 43.

statutory goal of ensuring reliability and reduced congestion cost, under its proposal the incentive will be available for projects that are already the most likely to be built. As such, it will simply increase the costs of these projects without producing or driving customer benefits.

NASUCA does not believe this proposal will incentivize anything; rather, it will only reward projects already likely to be selected in a regional planning process and thereby impose additional, unnecessary costs on customers. RTOs use sophisticated software modeling to identify the relative benefits and costs of proposed new transmission projects premised upon transmission projects' economic benefits.³² The identification of benefits is already a fundamental aspect of an RTO's regional transmission planning function. Transmission projects that demonstrate sufficient economic benefits, as measured by the degree to which such benefits exceed related transmission project costs, are developed through the RTO transmission planning processes and transmission owner agreements. There is no need to incur expensive incentive costs for these projects; doing so will reduce the economic benefits of a project and could invite more controversy over the need for and cost allocation of the transmission project.

Incentives should not be awarded as a routine matter to all projects meeting the enhanced threshold benefit-cost showing as the Commission proposes. Rather, in accordance with section 219 of the FPA, the transmission development incentive should be reserved for projects in which the incentive will serve as an impetus for and actually stimulate action on a beneficial transmission project by addressing the challenges or risks that serve to impede the development of the project.

³² *Id.* at P 30.

Finally, the proposal to provide *ex ante* and *ex post* benefits are flawed.³³ The proposed 50-basis-point incentive for *ex ante* benefits is problematic, and invites litigation, because it is based on arbitrary thresholds and subjective estimates of costs and benefits.³⁴ The proposed 50-basis-point incentive for *ex-post* benefits may appear less problematic because it is based on actual, as opposed to estimated, costs.³⁵ But being less deficient than the *ex ante* proposal is not sufficient to satisfy the just and reasonable requirement. Without a nexus test, as discussed above, neither the *ex ante* nor the *ex-post* components of the NOPR’s proposal are consistent with the FPA.

C. Section 219 Does Not Permit a Standalone Incentive Adder for Reliability Benefits.

The Commission proposes to offer public utilities an ROE incentive for transmission projects “that provide significant and demonstrable reliability benefits above and beyond the requirements of NERC reliability standards” as established by quantitative analysis, “where possible,” or qualitative analysis.³⁶ The NOPR provides a nonexclusive set of examples of reliability benefits.³⁷ The fatal flaw with this proposal is that section 219 does not permit a standalone incentive for reliability benefits. Rather, section 219(a) expressly limits incentive rate treatment to projects that benefit consumers by “ensuring reliability and reducing the cost of delivered power.”³⁸ As a creature of statute, the Commission cannot exercise authority Congress has not granted.³⁹

³³ *Id.* at P 43.

³⁴ *Id.* at PP 43, 56-58.

³⁵ *Id.* at PP 43, 59-62.

³⁶ *Id.* at PP 5, 64.

³⁷ *Id.* at PP 65-67.

³⁸ 16 § U.S.C. § 824s(a) (emphasis added).

³⁹ *See, e.g., Cal. Indep. Sys. Operator. Corp. v. FERC*, 372 F.3d 395, 398 (D.C. Cir. 2004).

Assuming the Commission had the statutory authority to establish a standalone reliability incentive (and it does not), it failed to explain why such an incentive is necessary. The NERC reliability standards are comprehensive and successful at keeping the Bulk Electric System reliable. Even if the Commission adopt a policy that encourages transmission investment to achieve a level of reliability significantly above and beyond what NERC standards and other planning requirements dictate, the Commission provides no basis for doing so. It does not identify the type of project designs or reliability enhancements, beyond the NERC standards, that could provide additional benefits to customers that would warrant the payment of reliability incentives.

Finally, setting aside these threshold errors of law and policy, the NOPR does not propose any criteria for evaluating reliability benefits.⁴⁰ The NOPR concedes that reliability benefits are difficult, if not impossible, to quantify.⁴¹ Such an ill-defined, vague proposal would invite litigation.

In sum, NASUCA opposes the NOPR's reliability incentive because it contravenes the FPA, is open-ended and inadequately defined, does not require a showing of quantifiable benefits, and therefore provides no reasonable basis for concluding that the difficult-to-quantify reliability benefits will exceed the cost of an expensive incentive.

D. Capping ROE Incentives at the Upper End of the Zone of Reasonableness Is Necessary to Ensure a Just and Reasonable ROE.

The Commission must ensure that rates adopted under this section 219 remain just and reasonable.⁴² Currently, the Commission uses the upper end of the zone of

⁴⁰ NOPR at PP 66-67.

⁴¹ *Id.* at PP 65, 74.

⁴² 16 U.S.C. § 824s(d).

reasonableness as a measure of the market assessment of the boundaries for a just and reasonable ROE. The Commission recognizes its obligation to establish ROEs for public utilities that both reflect the financial and regulatory risks of a particular transmission project and that are sufficient to attract capital investment.⁴³ Yet, the arbitrary 250-basis-point cap that it proposes will be available even if that cap produces a total return that exceeds the upper end of the zone of reasonableness.⁴⁴

The proposal to set this cap at 250-basis-points is arbitrary and would fail to assure that transmission incentives fall within a market-based measure of a just and reasonable ROE. Because this ROE cap is arbitrary and disconnected from a market measure of a reasonable ROE, the Commission would be unable to determine the total ROE of transmission utilities, inclusive of incentive ROE adders, is just and reasonable and continues to be just and reasonable.⁴⁵ Thus, the Commission would be unable to satisfy the express mandates of sections 205 and 206. NASUCA recommends the retention of a zone of reasonableness boundary for section 219 incentives.

E. Non-ROE Incentives Should be Considered on a Case-by-Case Approach, Prioritized Relative to ROE Incentives, and Subject to Ongoing Review.

The Commission proposes to continue providing non-ROE incentives.⁴⁶ Generally, NASUCA supports the Commission's review and determination of non-ROE incentives on

⁴³ NOPR at P 77.

⁴⁴ *Id.* at P 76.

⁴⁵ Furthermore, consideration of additional incentives is premature given the current uncertainty in the method for developing base ROE. The Commission recently announced changes in Opinion 569-A to the base ROE methodology that may increase utilities' base ROEs. That Opinion is being appealed and may be subject to rehearing. The Commission should wait until a final determination on base ROE methodology is determined before determining whether additional ROE incentives are necessary and appropriate.

⁴⁶ NOPR at PP 83-84.

a case-by-case basis according to the particular circumstances presented by a particular applicant and project.⁴⁷ NASUCA reiterates its recommendation that the Commission reaffirm its expectation that project developers request and implement risk-reducing incentive rate treatments before authorizing recovery of ROE adders.⁴⁸ Additionally, as part of the Commission’s mandate to ensure just and reasonable rates, NASUCA recommends that the Commission commit to undertaking a thoughtful review of previously authorized incentives to determine whether the incentives are still needed.⁴⁹

F. The Commission Should Adopt the Proposal to Eliminate the Transco Adder.

Prior to issuance of Order No. 679, the Commission granted incentives to independent transmission companies on a case-specific basis.⁵⁰ In Order No. 679, the Commission formalized the Transco Adder. It found that the Transco business model: (1) can respond “rapidly and precisely to market signals indicating when and where transmission investment is needed;” (2) “eliminat[es] competition for capital between generation and transmission functions and thereby maintaining a singular focus on transmission;” (3) “enhances asset management and access to capital markets and provides greater incentives to develop innovative services;” and (4) facilitates “nondiscriminatory access to all grid users;” and (5) eliminates incentives “to maintain congestion in order to protect their owned generation.”⁵¹ The Commission has gained considerable experience with the Transco Adder. Finding a reduction in expected benefits, it has reduced the level

⁴⁷ Docket No. PL19-3, Joint Commenters Initial Comments at 79, 85-86.

⁴⁸ *Id.* at 79.

⁴⁹ *Id.* at 86.

⁵⁰ *See, e.g., Michigan Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343 at PP 15, 17 (2005).

⁵¹ Order No. 679 at P 224.

of the Transco Adder over time.⁵² In the NOPR, the Commission observed that it has not seen evidence that stand-alone transmission companies have delivered the outcomes expected in Order No. 679, and proposes to eliminate incentives available to these companies.

For all of the reasons set out by the Commission, NASUCA supports the elimination of the Transco Adder.⁵³ The Commission's ample experience with the Transco Adder simply does not support continuation of this incentive. In addition to the Commission's rationale for eliminating the Transco Adder, NASUCA also notes that maintaining the Transco Adder would be duplicative of other proposals in the NOPR. Specifically, independent transmission companies could receive an RTO Participation Adder and an economic or reliability benefits adder for projects they construct as the result of a regional planning process. That result is patently unjust and unreasonable.

NASUCA appreciates the Commission's decision to scrutinize the need for the Transco Adder. This decision demonstrates the prudence of undertaking a periodic review of transmission incentive adders to determine whether the incentive is still justified and results in just and reasonable rates. NASUCA encourages the Commission to adopt this approach with all incentives.

G. Incentives for RTO Participation Should Not Be Increased and Should Be Phased Out After a Reasonable Time Period.

The Commission established a 50-basis-point RTO Participation Adder in Order No. 679.⁵⁴ Since its adoption, the RTO Participation Adder has been criticized on a number

⁵² See *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,252 at P 45 (2015) (explaining the current cap of 50-basis-points).

⁵³ NOPR at PP 87-91.

⁵⁴ Order No. 679 at P 326.

of grounds, including that it is an unnecessary windfall that is not responsible for public utilities' decisions to join or remain in an RTO.⁵⁵ In response to the 2019 Notice of Inquiry, NASUCA asked the Commission to eliminate the RTO Participation Adder. At a minimum, NASUCA asked the Commission to limit the RTO Participation Adder to situations where a public utility is induced to join an RTO.⁵⁶ Notwithstanding these criticisms, the NOPR proposes not only to maintain the RTO Participation Adder, but to increase it from 50-basis-points to 100-basis-points for all public utilities that join or remain a member of an RTO.⁵⁷ NASUCA opposes that proposal.

The basis for the RTO Participation Adder is “a recognition of the benefits that flow from membership in such organization and the fact [that] continuing membership is generally voluntary.”⁵⁸ The Commission notes that RTO participation provides many benefits, including: access to large competitive markets, optimization of the transmission system, regional transmission planning that supports more efficient or cost-effective transmission development to meet regional transmission needs, reduction of the costs of carrying reserves through reserve sharing, and increased access to an expanded set of diverse resource. NASUCA would point out that these RTO attributes are beneficial not only to utility customers but also to transmission owners and load serving entities. Thus, there is no basis for concluding that the RTO Participation Adder is responsible for inducing transmission-owning utilities to continue to maintain their voluntarily membership in RTOs.

⁵⁵ See, e.g., *Cal. Pub. Utils. Comm'n v. FERC*, 879 F.3d 966 (9th Cir. 2018).

⁵⁶ Docket No. PL19-3, Joint Commenters Initial Comments at 71-73.

⁵⁷ NOPR at P 97.

⁵⁸ *Id.* at P 92 (quoting Order No. 679 at P 326).

While public utilities will gladly accept incentives for joining, or continuing their voluntary membership in RTOs for as long as such incentives are made available, the Commission cites no credible evidence to support a finding that the RTO Participation Adder causes public utilities to join or remain in an RTO. NASUCA believes that the RTO Participation Adder is unnecessary. The risks of RTO membership are generally low because the majority of transmission projects are proposed by transmission owners, and all prudently-incurred costs associated with the transmission planning and transmission development activities are recoverable from customers.

The RTO Participation Adder is duplicative of the proposed incentives for economic and reliability benefits in proposed rule 35.35(d)(1) because the transmission projects resulting from RTO participation are the same projects supporting claims for economic and reliability benefit adders. Customers will be asked to pay one incentive for the benefits of economic or reliability projects and pay another incentive for these same RTO participation benefits.

The Commission should not saddle customers with the significant, ongoing expense of duplicative transmission incentive adders. Under no circumstances should the Commission double the RTO Participation Adder, which has largely fulfilled its purpose at least for the many utilities that have participated in RTOs for more than 10 years. Rather, the Commission should eliminate the RTO Participation Adder altogether. To the extent the Commission maintains the RTO Participation Adder at all, it should “phase out” that incentive after a certain period of time following a public utility’s initial decision to join an RTO, e.g., three years.

H. The Commission Should Not Adopt a Standalone Incentive for Transmission Technologies.

For “transmission technologies that enhance reliability, efficiency, capacity, and improve the operation of new or existing transmission facilities,” the Commission proposes up to a 100-basis-points “Transmission Technology Incentive” adder, which would be granted on a case-by-case basis.⁵⁹

NASUCA supports the use of innovative technologies that can enhance the capacity, efficiency, and operation of the transmission grid. However, NASUCA opposes the proposal to add a new incentive through a revision to the Commission’s incentive policy. Transmission providers are already required to consider transmission and non-transmission alternatives on a comparable basis.⁶⁰ Instead of establishing a standalone incentive, the Commission should promote equitable consideration of transmission and non-transmission alternatives by specifying that applicants for a return-enhancing incentive must show that they considered innovative technologies and other measures to reduce scope and/or risk of a proposed project before seeking a project-specific ROE adder.

I. NASUCA Supports the Enhanced Reporting Requirements and Greater Oversight of Authorized Incentives.

The Commission noted that “current information collection related to FPA section 219 is insufficient to determine the effectiveness of individual incentive grants or to evaluate the Commission’s overall incentives program.”⁶¹ Thus, the Commission proposed

⁵⁹ NOPR at P 105; *see generally id.* at PP 105-09.

⁶⁰ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 at P 148 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁶¹ NOPR at P 115.

revisions to Form 730 that would require public utilities to provide additional information that the Commission can review to determine whether “existing and proposed incentives are successfully meeting the objections of FPA section 219.”⁶²

As a threshold matter, any insufficiency of “current information collection related to FPA 219” calls into question the basis for many of the NOPR’s proposals. For example, if the Commission lacks information to determine that the risks and challenges approach is not effective, there is no basis for scrapping that approach and replacing it with the proposed “benefits” framework. Likewise, if the Commission lacks information to determine that the RTO Participation Adder is an effective means of encouraging public utilities to join or remain in an RTO, there is no basis for increasing the RTO Participation Adder.

Nonetheless, NASUCA supports transparency in the granting and evaluation of incentives to ensure that they remain appropriate. Enhanced reporting obligations can serve that goal. Further, NASUCA believes that the Commission should revisit incentives after they have been granted to ensure they are providing value to consumers and remain just and reasonable.⁶³ If an incentive is no longer serving its intended purpose and providing benefits to customers, it should be terminated.

V. RESERVATION OF RIGHTS

NASUCA reserves its right to posit and address any additional issues that it or others may identify or raise herein.

⁶² *Id.*; *see generally id.* at PP 115-126.

⁶³ *See* Docket No. PL19-3, Joint Commenters’ Initial Comments at 86.

VI. CONCLUSION

WHEREFORE, the National Association of State Utility Consumer Advocates respectfully requests that the Federal Energy Regulatory Commission consider these comments as determines whether to adopt the proposed rules and any changes thereto.

Respectfully submitted,

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Dated July 1, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list prepared by the Secretary for the above-captioned docket in accordance with the requirements of Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.2010.

DATED at Washington, DC this the 1st of July 2020.

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