



purpose of protecting consumers from unjust and unreasonable rates. In particular, NASUCA supports the elements of the Supplemental NOPR's proposal to advance the FPA's intent by limiting the RTO Participation Adder.

## I. COMMENTS

Section 219 of the Federal Power Act (FPA) requires the Commission to provide certain incentives to public utilities to spur investment in wholesale transmission assets, provided that resulting rates continue to be just and reasonable.<sup>4</sup> In Order Nos. 679 and 679-A, FERC adopted the RTO Participation Adder as a cost-of-equity-increasing incentive for utilities that “join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization.”<sup>5</sup> The Commission did not determine the appropriate size or duration of the RTO Participation Adder. However, applicants have subsequently requested, and have been granted, a 50-basis-point adder for joining and remaining in an RTO or ISO.<sup>6</sup> Under current FERC policy, there is no limit to how long customers must continue to pay wholesale transmission costs that are inflated by the RTO Participation Adder. Rather than address that flaw, the Prior NOPR proposed to double the level of the RTO Participation Adder to 100 basis points. That proposal was only supported by a narrow majority when the Commission lacked its full five-Commissioner contingent.

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<sup>4</sup> 16 U.S.C. § 824s(c)-(d).

<sup>5</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43293, 116 FERC ¶ 61,057, P 326 (2006), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 199 FERC ¶ 61,062 (2007).

<sup>6</sup> Supplemental NOPR, P 2.

Consistent with FERC's consumer-protection obligations,<sup>7</sup> the Supplemental NOPR proposes to modify the Original NOPR by removing the proposed doubling of the RTO Participation Adder, and instead codifying in § 35.35(f) of the Commission's regulations the current practice of granting a standardized 50-basis-point increase in return on equity as an incentive-based rate treatment for a transmitting utility that joins and remains in a Transmission Organization.<sup>8</sup> Additionally, the Commission proposes to adopt the clarification in the Prior NOPR that, in order to qualify for the RTO Participation Adder, the transmitting utility must turn over operational control of its transmission facilities to the RTO/ISO.<sup>9</sup> The Commission also requests comment on whether the RTO Participation Adder should be available only to transmitting utilities that join an RTO/ISO voluntarily and how that standard should be applied.<sup>10</sup> And finally, the Commission proposes to limit to three years the duration that a transmission utility may receive the RTO Participation Adder, and to adopt a requirement for each utility that has received an incentive for joining and remaining in an RTO or ISO for three or more years to submit a compliance filing revising its tariff to remove the incentive from its transmission tariff. As explained below, NASUCA supports these reforms as an important step toward re-focusing the Commission on its central obligation of protecting consumers from excessive rates.

In response to the proposal in the Prior NOPR to double the incentive for membership in a Transmission Organization, NASUCA and other commenters suggested that the Commission not only decline to increase the incentive, but also to phase-out, or at

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<sup>7</sup> 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, P 26 & n.33 (2014).

<sup>8</sup> Supplemental NOPR, P 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

least limit the duration of, the incentive.<sup>11</sup> As an appropriate response to these comments, the Commission proposes to both (1) tailor this incentive to continue to encourage transmission utilities to join an RTO/ISO by including the 50-basis point RTO Participation Adder in its regulations, rather than continuing the *status quo* of *ad hoc* application of the incentive, and (2) phase out the incentive after three years as the behavior has been undertaken and there is no longer a need for an incentive.<sup>12</sup>

For all of the reasons set out by the Commission, NASUCA supports this modification to the Prior NOPR. 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.”<sup>13</sup> But those benefits are difficult to measure accurately and even more difficult to trace to a voluntary decision by a public utility to take an action that it would not take absent the incentive. NASUCA agrees with the Commission’s conclusion that given the investments made since Order No. 679, the dollar impact of the RTO Participation Adder will continue to increase correspondingly, as will the other benefits accruing to transmission owners joining Transmission Organizations.<sup>14</sup> Consequently, there is no basis for increasing the RTO Participation Adder. Rather, the appropriate course is to eliminate or limit the adder. To that end, NASUCA supports, as an important first step, the Commission’s proposal to limit the RTO Participation Adder to transmitting utilities to three years after the utility has turned over operational control of its transmission facilities to a Transmission Organization.

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<sup>11</sup> Initial Comments, 17-20.

<sup>12</sup> Supplemental NOPR, P 9.

<sup>13</sup> Original NOPR, P 97.

<sup>14</sup> Supplemental NOPR, P 9.

The Commission notes, and NASUCA agrees, that continuing to allow transmitting utilities to retain the existing additional 50-basis point incentive for joining a Transmission Organization for a period of more than three years is no longer just and reasonable and may be unduly discriminatory or preferential.<sup>15</sup> Extending the period to receive an RTO Participation Adder for more than three years increases the significant, ongoing expense to customers of potentially duplicative transmission incentive adders, and does not incent any additional behavior by the utility in furtherance of a policy objective. For transmitting utilities that have participated in RTOs for more than three years, the RTO Participation Adder has largely fulfilled its purpose of encouraging the joining of the RTO. Utilities gain their own benefits from participating in an RTO/ISO, including more efficient dispatch over the transmission lines and reductions in congestion; the 50 basis point adder is not needed to ensure the transmission utilities stay in the RTO. Further, public utilities may choose to retain RTO/ISO membership for practical reasons, such as the operational difficulties associated with withdrawal or the obligation to pay substantial exit fees. As such, NASUCA supports the Commission's proposed requirement that each utility that has previously received an RTO Participation Adder for three years or more must submit a compliance filing removing the incentive from its transmission tariff or adding language to its transmission tariff to terminate its incentive three years from the date it turned over operational control of its transmission facilities.

The Commission requested comments regarding whether the RTO Participation Adder should only be given to transmitting utilities that join an RTO/ISO voluntarily, apart from any state law or other obligation. While there are certainly differing opinions

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<sup>15</sup> *Id.*, P 11.

regarding the inclusion of a voluntary requirement, public utilities that seek the RTO Participation Adder should bear the burden of demonstrating that their decision to join an RTO/ISO was voluntary. Allocating this burden to public utilities is consistent with the FPA and concepts of fundamental fairness because it simply requires public utilities to justify the rates they propose to recover from wholesale transmission customers.

**II. RESERVATION OF RIGHTS**

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

**III. CONCLUSION**

WHEREFORE, the National Association of State Utility Consumer Advocates respectfully requests that the Federal Energy Regulatory Commission fulfill its consumer-protection obligation by eliminating or limiting the current return on equity adder that is available to public utilities that join and remain in a Regional Transmission Organization or Independent System Organization.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that one copy of the foregoing pleading has this day been served by a means permitted by Rule 2010(f) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

*/s/ Jason T. Gray*

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