

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

Inquiry Regarding the Commission’s Policy for Determining Return on Equity )  
 )  
 ) Docket No. PL19-4-000  
 )

**JOINT MOTION FOR EXPEDITED ACTION OF  
THE EDISON ELECTRIC INSTITUTE AND WIRES**

**I. INTRODUCTION**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,<sup>1</sup> the Edison Electric Institute (“EEI”) and WIRES LLC<sup>2</sup> (“WIRES” and together with EEI, “Joint Movants”) respectfully move for the Commission to take expedited action in this proceeding, which the Commission initiated on March 21, 2019, by issuing a Notice of Inquiry regarding the Commission’s policy for determining base return on equity (“ROE”).<sup>3</sup> EEI submitted Initial Comments in this proceeding on June 26, 2019, Reply Comments on July 26, 2019, and Supplemental Comments on May 11, 2020.<sup>4</sup> WIRES submitted Initial Comments on June 26, 2019 and Supplemental Comments on June 18, 2020.<sup>5</sup> As discussed below, Joint Movants request that the Commission take definitive

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<sup>1</sup> 18 C.F.R. § 385.212.

<sup>2</sup> This filing is supported by the full supporting members of WIRES, but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

<sup>3</sup> *Inquiry Regarding the Commission’s Policy for Determining Return on Equity*, 166 FERC ¶ 61,207 (2019) (“NOI”).

<sup>4</sup> Initial Comments of the Edison Electric Institute, Docket No. PL19-4-000 (June 26, 2019) (“EEI Initial Comments”); Reply Comments of the Edison Electric Institute, Docket No. PL19-4-000 (July 26, 2019) (“EEI Reply Comments”); Motion for Leave to File Supplemental Comments and Supplemental Comments of the Edison Electric Institute, Docket No. PL19-4-000 (May 11, 2020) (“EEI Supplemental Comments”).

<sup>5</sup> Initial Comments of WIRES, Docket No. PL19-4-000 (June 26, 2019); Supplemental Comments of WIRES, Docket No. PL19-4-000 (June 18, 2020) (“WIRES Supplemental Comments”).

and necessary action in the instant docket to develop a base ROE methodology for public utilities that it will apply going forward and that will be applicable to the electric industry as a whole.

## II. BACKGROUND

Joint Movants have previously described the recent Commission and judicial proceedings that are relevant to the Commission's base ROE methodology.<sup>6</sup> Relevant here, on May 21, 2020, the Commission issued an order in the ongoing Midcontinent Independent System Operator, Inc. Transmission Owners' ("MISO TOs") proceedings in Docket Nos. EL14-12-004 and EL15-45-013 that applied a revised methodology for analyzing the base ROE component of public utility rates under section 206 of the Federal Power Act ("FPA").<sup>7</sup> In particular, in Opinion No. 569-A, the Commission granted rehearing of Opinion No. 569 to, among other things, use the two-step discounted cash flow ("DCF") model, capital-asset pricing model ("CAPM"), and Risk Premium model, but not the Expected Earnings model, under both steps of the Commission's FPA section 206 analysis. The Commission also divided the overall composite zone of reasonableness into equal thirds to establish ranges of presumptively just and reasonable ROEs for public utilities of below-average, average, and above-average risk.<sup>8</sup> With respect to this NOI proceeding, the Commission found that it was not "inappropriate for the Commission to establish a new base ROE policy in these MISO complaint proceedings when it has also issued the Base ROE NOI to obtain input on this topic from interested parties."<sup>9</sup>

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<sup>6</sup> See EEI Supplemental Comments at 8-10; Motion to Intervene Out-of-Time, Motion to Lodge, and Request for Rehearing of Edison Electric Institute, at 7-13, Docket Nos. EL14-12-003 and EL15-45-000 (Dec. 19, 2019) ("EEI Opinion No. 569 Rehearing Request"); WIRES Supplemental Comments at 6-13; *see also* NOI at PP 4-27.

<sup>7</sup> *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019), *order on reh'g*, Opinion No. 569-A, 171 FERC ¶ 61,154, at P 2 (2020).

<sup>8</sup> Opinion No. 569-A at P 2.

<sup>9</sup> *Id.* at P 205.

Concurrently with its issuance of Opinion No. 569-A, the Commission issued in this proceeding a policy statement on determining base ROE for natural gas and oil pipelines.<sup>10</sup> In the Policy Statement, the Commission stated that, “we revise our policy for analyzing interstate natural gas and oil pipeline [base] ROEs to adopt the methodology established for public utilities in Opinion Nos. 569 and 569-A, with certain exceptions to account for the statutory, operational, organizational and competitive differences among the industries.”<sup>11</sup> Neither the Policy Statement nor Opinion No. 569-A indicated whether the Commission intends to take further action in this NOI proceeding concerning the Commission’s base ROE policy for public utilities.

### **III. MOTION FOR EXPEDITED ACTION**

With this Motion, Joint Movants renew their request that the Commission act promptly in this general proceeding to make any revisions to its base ROE methodology and to provide guidance on the prospective application of that methodology.<sup>12</sup> This proceeding contains extensive record evidence from a variety of stakeholders that provides the Commission with a robust and recent record upon which to act. The Commission must act in this proceeding to provide clarity to the electric utility industry, as a whole, regarding the Commission’s base ROE methodology going forward, as it has apparently done with issuance of its Policy Statement for jurisdictional natural gas and oil pipelines.

The Commission initiated this generic proceeding because it correctly understood the significance of its base ROE policy to all Commission-jurisdictional public utilities.<sup>13</sup> In the

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<sup>10</sup> *Inquiry Regarding the Commission’s Policy for Determining Return on Equity*, 171 FERC ¶ 61,155 (2020) (“Policy Statement”).

<sup>11</sup> Policy Statement at P 2.

<sup>12</sup> See EEI Supplemental Comments at 11-13; EEI Opinion No. 569 Rehearing Request at 46-54; WIRES Supplemental Comments at 5-13, 32.

<sup>13</sup> NOI at PP 3, 28.

NOI, the Commission “[recognized] the potentially significant and widespread effect of our ROE policies upon public utilities” and, as a result, solicited public comments to inform the Commission as it re-evaluated its base ROE policies.<sup>14</sup> The Commission explained that, “[a]lthough the Commission requested briefing on some of the issues below in the [New England Transmission Owners’] and MISO Briefing Orders, this proceeding will provide *all interested stakeholders* with the opportunity to comment on the Commission’s ROE policy in light of the decision in *Emera Maine*.”<sup>15</sup>

As the Commission predicted, the NOI garnered significant interest from stakeholders. The Commission received approximately 175 initial comments and 30 reply comments in the NOI docket. Joint Movants and other parties have also submitted supplemental comments that, among other things, requested that the Commission act in this proceeding in response to this voluminous record.<sup>16</sup> These comments represent a major devotion of time and resources by stakeholders to provide the Commission with reasoned comments and expert testimony on this important issue. The Commission should carefully consider and address the substantial record in this proceeding before making any industry-wide revisions to its base ROE policies.

The Commission’s issuance of Opinion Nos. 569 and 569-A, however, suggest that the Commission has instead chosen to use the MISO TOs’ proceeding to make potentially sweeping changes to the Commission’s base ROE policies that would be applicable to all public utilities. Joint Movants have previously indicated that an adjudicatory proceeding is not the appropriate

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<sup>14</sup> *Id.* at P 3.

<sup>15</sup> *Id.* at P 28 (emphasis added); see *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).

<sup>16</sup> See EEI Supplemental Comments at 11-13; WIRES Supplemental Comments at 5-13; Motion to Submit Out-of-Time Comments and Comments of the SPP Transmission Group, at 4-7, Docket No. PL19-4-000 (Jan. 31, 2020); Supplemental Comments of the New England Transmission Owners, at 6-8, Docket No. PL19-4-000 (May 12, 2020).

venue for the Commission to promulgate broad policy changes that could potentially impact the methodology for determining base ROEs for all Commission-jurisdictional public utilities, especially when the Commission had already separately initiated this generic proceeding and developed such a robust record.<sup>17</sup> Significantly, Opinion Nos. 569 and 569-A address discrete FPA section 206 complaints involving the base ROEs of the MISO TOs for specific historical time periods dating back to 2013. Given the dated and narrow administrative record of those proceedings, the Commission should not use Opinion No. 569-A to potentially establish an industry-wide base ROE methodology for calculating just and reasonable returns for all investor-owned electric utilities going forward. By contrast, the Commission has amassed a substantial administrative record in this NOI proceeding that contains substantive comments from stakeholders across the country and is not tied to a specific time period.

Furthermore, the public utilities that are parties to the MISO TOs' proceedings represent only a small subset of jurisdictional public utilities that have base ROEs on file with the Commission.<sup>18</sup> The Commission's issuance of the NOI strongly signaled to public utilities outside of MISO that the Commission would not use an adjudicatory proceeding to make industry-wide modifications to its base ROE methodology. The vast majority of these public utilities were not party to the contested MISO TOs proceeding and had no reason to believe that involvement in the MISO TOs' proceeding was necessary. The MISO TOs proceeding therefore does not contain a developed, comprehensive record that addresses the concerns of entities outside of the MISO TOs proceeding.

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<sup>17</sup> EEI Supplemental Comments at 11.

<sup>18</sup> In Opinion No. 569-A, the Commission denied EEI's and various other entities' motions to intervene out-of-time and the requests for rehearing that were included with those motions to intervene out-of-time. *See* Opinion No. 569-A at PP 26- 30.

In addition to being procedurally unsound, the Commission’s issuance of Opinion Nos. 569 and 569-A has caused unnecessary uncertainty within the electric utility industry regarding the state of the Commission’s base ROE policy. The Commission must act promptly in this proceeding to provide much-needed clarity. First, the import of the NOI and its relationship to Opinion No. 569-A remains unclear. Despite the robust administrative record in this proceeding, Opinion No. 569-A suggests—but does not explicitly state—that the Commission does not intend to take further action in this docket (*i.e.*, issue a notice of proposed rulemaking or policy statement). If the Commission does not intend to take further action in this proceeding (despite Joint Movants’ and other stakeholders’ strong urging for the Commission to do so), then the Commission should terminate this proceeding to provide regulatory certainty to the industry.<sup>19</sup> Second, Opinion No. 569-A provides no guidance regarding whether the revised base ROE methodology will apply in FPA section 205 proceedings.<sup>20</sup> Public utilities contemplating future FPA section 205 filings to revise the level of the base ROE in their Commission-jurisdictional rates therefore face tremendous uncertainty regarding the Commission’s analysis in these types of cases in the future.

Finally, Opinion No. 569-A does not substantively address the extensive comments and expert testimony contained in this NOI proceeding. The NOI also raised additional issues that are not addressed in the MISO TOs’ proceeding. Opinion No. 569-A’s analysis of the Expected Earnings model is but one example of a topic on which the Commission should address arguments made in the NOI proceeding. In Opinion No. 569-A, the Commission denied requests

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<sup>19</sup> To be clear, Joint Movants do not support such action as it would ignore the significant record developed by numerous entities concerning the Commission’s base ROE methodology.

<sup>20</sup> Opinion No. 569-A at P 263 (“There is no section 205 filing before use in this proceeding and we are not making any determinations regarding whether or how the presumptively just and reasonable ranges used in this order would apply in the context of a section 205 filing.”).

for rehearing of its decision to exclude the Expected Earnings model from its base ROE analysis in those specific FPA section 206 proceedings.<sup>21</sup> However, the Commission went on to state that it “[does] not necessarily foreclose its use in future proceedings if parties can demonstrate that the concerns discussed above have been addressed.”<sup>22</sup> The record in this proceeding contains extensive evidence—including evidence from Joint Movants—to support the Commission’s use of the Expected Earnings model in its base ROE methodology.<sup>23</sup> Additionally, there is significant evidence in this proceeding laying out better, more sustainable approaches for establishing a range of presumptively just and reasonable base ROEs; for example, Joint Movants proposed an expanded quartile approach.<sup>24</sup> The Commission’s failure to address these and other arguments leaves the electric industry in a state of uncertainty concerning the Commission’s base ROE policy. Accordingly, to provide regulatory certainty and address the extensive record developed by a broad array of participants in this proceeding, the Commission should take definitive and necessary action in the instant docket to develop a base ROE methodology that it will apply going forward and that will be applicable to the electric utility industry as a whole.

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<sup>21</sup> *Id.* at P 125.

<sup>22</sup> *Id.* at P 132.

<sup>23</sup> *See, e.g.*, EEI Supplemental Comments at 18-21; WIRES Supplemental Comments at 19-28; Comments of the MISO Transmission Owners, Docket No. PL19-4-000, at 17-20, 22-23, (June 26, 2019); Initial Comments of the New England Transmission Owners, Docket No. PL19-4-000, at 44, 51-52, 62 (June 26, 2019).

<sup>24</sup> EEI Supplemental Comments at 35-40; WIRES Supplemental Comments at 30-31.

#### IV. CONCLUSION

For the foregoing reasons, Joint Movants request that the Commission act in this proceeding to implement Joint Movants' proposed adjustments to the Commission's base ROE methodology and FPA section 206 analysis. Joint Movants look forward to continued dialogue with the Commission on these issues.

Respectfully submitted,

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