

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

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

REPLY COMMENTS OF WIRES

WIRES, on behalf of its members,¹ respectfully submits the following Reply Comments on the Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on March 20, 2020 in the above-captioned proceeding.² In its initial comments on the Commission’s Incentives NOPR, WIRES strongly supported the Commission’s efforts to adopt and implement transmission rate incentives policies designed to promote and incentivize transmission investment needed to meet the future energy needs of customers and the nation.³

The Commission received initial comments from a wide range of interested parties in response to the Incentives NOPR. On one end of the spectrum are those who agree that there is a need to promote investment in the transmission system to support system reliability and resilience, reduce congestion, and facilitate achievement of public policy goals. Generally, they argue that the benefits of such infrastructure investments outweigh the costs of any additional

¹ WIRES is an international non-profit trade association of investor-, publicly- and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment service companies. WIRES promotes investment in electric transmission and state and federal policies that advance energy markets, economic efficiency, and consumer and environmental benefits through development of electric transmission infrastructure. This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the Regional Transmission Operator/Independent System Operator (“RTO/ISO”) associate members of WIRES. For more information about WIRES, please visit www.wiresgroup.com.

² *Elec. Transmission Incentives Policy Under Section 219 of the Fed Power Act*, 170 FERC ¶ 61,204 (2020) (“Incentives NOPR”).

³ Comments of WIRES, Docket No. RM20-10 (July 1, 2010) (“WIRES Initial Comments”).

incentives.⁴ On the other end of this spectrum, some commenters seek to narrow or eliminate statutorily mandated transmission incentives by questioning either the need for additional transmission investment or the value of the corresponding benefits from such investment.⁵ These commenters are largely driven by concerns over the potential for transmission incentives to increase costs. For its part, WIRES supports most aspects of the proposals in the Incentives NOPR and argues vigorously for the Commission to implement fully its statutory charge in section 219 of the Federal Power Act (“FPA”)⁶ to “promot[e] capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce....”⁷ WIRES focuses its reply comments on a limited set of discrete issues raised in the initial comments that warrant response.

I. REPLY COMMENTS

In the Incentives NOPR, the Commission proposes to standardize the RTO/ISO Participation Incentive at a uniform level of 100 basis points for each transmitting utility that joins and remains a member of an RTO/ISO.⁸ The Commission further clarifies that transmitting utilities that join and remain in an RTO/ISO are eligible for the RTO Participation Incentive

⁴ See e.g., Comments of The American Council on Renewable Energy, Docket No. RM20-10 (June 30, 2020); Comments of the American Wind Energy Association, Docket No. RM20-10 (July 1, 2020); Comments of the Edison Electric Institute, Docket No. RM20-10 (July 1, 2020); Comments of Americans for a Clean Energy Grid, Docket No. RM20-10 (July 1, 2020).

⁵ See e.g., Comments of the California Public Utilities Commission, Docket No. RM20-10 (July 1, 2020) (“CPUC Comments”); Comments of American Public Power Association, Docket No. RM20-10 (July 1, 2020) (“APPA Comments”); Comments of Transmission Access Public Study Group, Docket No. RM20-10 (July 1, 2020) (“TAPS Comments”); Comments of the National Rural Electric Cooperative Association, Docket No. RM20-10 (July 1, 2020) (“NRECA Comments”).

⁶ 16 U.S.C. § 824s.

⁷ 16 U.S.C. § 824s(b)(1); see, e.g., *Pacific Gas & Electric Co.*, 160 FERC ¶ 61,018 (2017).

⁸ Incentives NOPR at 99.

regardless of the voluntariness of their participation.⁹ WIRES' Initial Comments support both aspects of the NOPR proposal.¹⁰

A. There is No Basis in Statute or the Record to Eliminate or Sunset the RTO/ISO Participation Incentive.

Some commenters argue that the RTO/ISO Participation Incentive should either be eliminated or limited in duration to an arbitrary period of time.¹¹ These arguments essentially ask the Commission to re-write the Energy Policy Act of 2005,¹² either to remove the RTO/ISO Participation Incentive or to insert a sunset provision that Congress did not include, and they should be rejected out of hand.

As a threshold matter, it is worth reiterating that while the statute does not specify the incentives the Commission is required to provide a transmitting utility or electric utility for joining an RTO/ISO, it is nonetheless clear that the Commission does not have the discretion to provide **no incentive** for RTO/ISO membership.¹³ The fact of the matter is that the Commission is statutorily obligated to provide incentives for RTO membership. FPA section 219(c) requires the Commission to “provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.”¹⁴ Thus, it is clearly congressional policy that if a transmission owner joins an RTO or ISO, the Commission must provide it with an incentive. EAct 2005 mandates this incentive in addition to all other rate incentives, and the Commission has

⁹ *Id.* at 98.

¹⁰ WIRES Initial Comments at pp. 10-15.

¹¹ Comments of R Street Institute at p. 5, Docket No. RM20-10 (July 1, 2020) (supporting a 100 basis point adder for up to three years); Comments of National Association of State Utility Consumer Advocates at p. 20, Docket No. RM20-10 (July 1, 2020) (eliminate or phase out incentive in three years); TAPS Comments at 110-112 (limit incentive to ten years); Comments of Massachusetts Municipal Wholesale Electric Company, New Hampshire Electric Cooperative, Inc., and Connecticut Municipal Electric Energy Cooperative at pp 13-14, Docket No. RM20-10 (July 1, 2020) (phased out incentive within two years).

¹² Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005) (“EAct 2005”).

¹³ WIRES Initial Comments at p. 11.

¹⁴ *Id.* at 824s(c).

consistently reaffirmed that the RTO/ISO Participation Incentive is “consistent with the stated purpose of section 219 of the FPA.”¹⁵

The notion that the incentive for joining an RTO/ISO, once given, should be limited in duration to any arbitrary time period, is equally flawed. First, there is simply no basis in the record to draw an arbitrary line in the sand as to when any incentives for RTO participation should terminate. The proposals to sunset an RTO/ISO Participation Incentive range anywhere from shortly after joining to ten years after becoming a member, without a shred of evidence to link any of the proposed sunset times to reduced customer benefits or a reduction of transmission owner risks, burdens, and responsibilities.

Perhaps most importantly, there is no evidence that suggests that the benefits that flow to consumers from RTO/ISO participation do not decline over time, and as such, any incentives should remain in place for the duration of a utility’s membership. In fact, these benefits have increased over time as RTOs have expanded the services they provide. Likewise, the responsibilities and risks of RTO participation, for which the RTO Participation Incentive helps to compensate, have increased over time as well, largely as a result of that same expansion of RTO services. The RTO/ISO Participation Incentive is intended to reflect the benefits, as well as the responsibilities and risks, of RTO/ISO participation, neither of which decrease over time with a utility’s continued participation. Accordingly, the Commission should decline to adopt certain commenters’ proposal that it limit the duration of the RTO/ISO Participation Incentive.

Moreover, as WIRES explained in our initial comments, there are strong policy reasons why incentives need to be stable and predictable in order to be effective.¹⁶ Lasting incentives

¹⁵ See, e.g., *ITC Great Plains, LLC*, 126 FERC ¶ 61,223 at P 92 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 58 (2008); *Green Power Express, LP*, 127 FERC ¶ 61,031 at P 85 (2009), *reh’g denied*, 135 FERC ¶ 61,141 (2011).

¹⁶ WIRES Initial Comments at 9-10.

are the best way of providing regulatory certainty for investors, planners, and transmission owners to inform decisions regarding long-term planning and the deployment of capital. The record is clear that there is a correlation between the incentives granted to transmission owners and developers pursuant to the directives of EPCA 2005 and investment that has improved reliability, strengthened competitive markets, and enabled grid operators to better plan for, and recover from, disruptive events.¹⁷ Granting incentives only to eliminate those incentives or otherwise reduce them over time would inject a level of uncertainty into the transmission development process that will undermine transmission investment. The inevitable consequence of this uncertainty would be to undercut the effectiveness of incentives, in contravention of the mandate in FPA section 219 to promote “reliable and economically efficient transmission” and “capital investment in ... facilities for the transmission of electric energy in interstate commerce.”¹⁸ Moreover, the benefits that flow to consumers from transmission investment do not diminish over time and, as such, any incentives should remain in place for the life of the investments.

Finally, were the Commission to reverse course on maintaining the availability of the RTO/ISO Participation Incentive, it would undermine the Commission’s decades-long policy of supporting the development and expansion of RTOs/ISOs and the corresponding benefits to consumers they provide.¹⁹ This detrimental outcome is confirmed by the RTOs. Midcontinent

¹⁷ ScottMadden, Inc., *Informing the Transmission Discussion: A Look at Renewables Integration and Resilience Issues for Power Transmission in Selected Regions of the United States* at 20 (Jan. 2020) (“Significant transmission development followed the Energy Policy Act of 2005 and FERC incentives policy that followed; similar national policy could be beneficial in creating a framework for transmission development that would be supported by myriad stakeholders.”)

¹⁸ 16 U.S.C. 824s(b)(1).

¹⁹ *Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,089 at 31,025 (1999) (“Order No. 2000”), *order on reh’g*, Order No. 2000-A, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,092 (2000), *petitions for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (“by improving efficiencies in the management of the grid, improving grid reliability, and removing any remaining opportunities for discriminatory practices, the widespread development of RTOs will improve the

Independent System Operator, Inc. emphasized in its Initial Comments that the RTO/ISO Participation Incentive supports a diverse and stable membership, which allows RTOs/ISOs to operate in an efficient and reliable manner and extend the proven benefits of RTO/ISO membership to consumers as widely as possible.²⁰ Similarly, PJM Interconnection, LLC asserted in its Initial Comments that “[i]ncentivizing consistent and stable RTO membership is essential to the RTO’s ability to achieve grid reliability and consumer cost benefits.”²¹ Eliminating or gradually reducing the RTO/ISO Participation Incentive risks destabilizing RTO membership and the corresponding benefits it provides.

Accordingly, the Commission should not limit the duration of, or otherwise sunset, the RTO/ISO Participation Incentive once granted.

B. The Record Supports the Commission’s Proposed RTO/ISO Participation Incentive.

Some commenters argue that the record does not support an RTO/ISO Participation Incentive at its current level, much less an increase in the current adder to 100 basis points.²² To the contrary, the record compiled in this docket, in addition to the record from the Notice of Inquiry²³ leading up to the instant Incentives NOPR, amply supports the increased RTO/ISO Participation Incentive.

The Incentives NOPR spells out in detail how the benefits, as well as the duties and responsibilities, of RTO membership have increased over time.²⁴ Specifically, the Commission

performance of electricity markets in several ways and consequently lower prices to the Nation’s electricity consumers.”).

²⁰ Comments of the Midcontinent Independent System Operator, Inc. at pp. 8-9, Docket No. RM20-10 (July 1, 2020).

²¹ Comments of PJM Interconnection, LLC at 5, Docket No. RM20-10 (July 1, 2020).

²² Comments of Maryland Public Service Commission at 8, Docket No. RM20-10 (July 1, 2020); APPA Comments at pp. 54-55; TAPS Comments at pp. 105-109; NRECA Comments at pp. 8-11; CPUC Comments at pp. 11-16.

²³ *Inquiry Regarding the Commission’s Electric Transmission Incentives Policy*, 84 FR 11759 (Mar. 28, 2019), 166 FERC ¶ 61,208 (2019).

²⁴ Incentives NOPR at 94, 96.

explained that the benefits of RTO/ISO membership “include 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 reserves sharing, and increased access to an expanded set of diverse resources” and “have increased over time.”²⁵ The Commission further stated that the “duties and responsibilities associated with RTO/ISO membership have also increased since Order No. 679” and include

Loss of operational control of transmission to a third party; an obligation to build new transmission facilities at the direction of the RTO/ISO; diminished decision-making control over assets while retaining the responsibility of maintaining the system; meeting reliability standards; obligations to obey RTO/ISO rules; and an obligation to provide electric service even when foundational agreements can change, thereby changing the terms and conditions under which the transmitting utility initially agreed to participate in the RTO/ISO.²⁶

Moreover, a series of reports issued over the past decade amply demonstrate the tremendous benefits transmission investment provides and that the need for new transmission has never been greater.²⁷ Those opposing the Commission’s proposal to increase the RTO/ISO Participation Incentive either turn a blind eye to these reports or lightly acknowledge them by glibly brushing them aside.²⁸

Although the reports and industry developments highlighted by the Commission in the Incentives NOPR provide a more than sufficient basis for the proposed RTO/ISO Participation

²⁵ Incentives NOPR at 94.

²⁶ Incentives NOPR at 96.

²⁷ See e.g., The Brattle Group, *Employment and Economic Benefits of Transmission Infrastructure Investment in the U.S. and Canada*, at 33 (May 2011) (“Brattle Report”); The Brattle Group, *The Benefits of Electric Transmission: Identifying and Analyzing the Value of Investments* (July 2013); London Economics International, Inc. LLC, *Market Resource Alternatives: An Examination of New Technologies in the Electric Transmission Planning Process* (Oct. 2014); London Economics International, Inc. (“LEI”), *How Does Electric Transmission Benefit You?* (Jan. 2018) (LEI Report); The Brattle Group, *Recognizing the Role of Transmission in Electric System Resilience* (May 2018).

²⁸ “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.” John Adams, ‘Argument in Defense of the Soldiers in the Boston Massacre Trials,’ December 1770.

Incentive, WIRES supplemented the record with even more support for the proposal in a White Paper prepared by London Economics International LLC (“LEI”) outlining the benefits to consumers from participation by a transmission owner and developer in an RTO/ISO.²⁹ The LEI White Paper shows that RTOs provide access to low cost, cleaner power over a more reliable and resilient grid, and the benefits to consumers of RTO participation significantly outweigh the costs.³⁰

At the same time, the LEI White Paper examines the other side of the coin by detailing the risks, burdens, and responsibilities that RTO participation presents for utilities.³¹ The roles of RTOs/ISOs to oversee transmission planning have expanded in response to Order Nos. 890 and 1000, and this has introduced new complexities into the regional transmission planning process, including time- and resource-intensive decision making processes.³²

Utilities that participate in RTOs/ISOs should be compensated for these added responsibilities and risks, which they assume for the benefit of their customers. Absent a significant encouragement for continued full engagement, there is a very real risk that RTO/ISO membership could diminish, or at best remain static. Therefore, at this critical juncture, it is entirely appropriate that the Commission move forward with its proposal to provide an RTO/ISO Participation Incentive of 100 basis points in recognition of the value of RTO participation along with the challenges of membership. The data is clear – the benefits of RTOs and ISOs (and their future usefulness for policymakers and electric customers) coupled with the added risks and responsibilities of RTO participation more than balances this cost.

²⁹ See London Economics International, LLC, *Economic Considerations in the Matter of Electric Transmission Incentives* (July 2020) (“LEI White Paper”).

³⁰ *Id.* at 28-29.

³¹ *Id.* at 13-14; 16-18; 20-26.

³² *Id.* at 16-18.

II. CONCLUSION

For the reasons explained above, and for the reasons set forth in WIRES' initial comments, the Commission should adopt a 100 basis point adder for RTO/ISO participation by a transmitting utility for the duration of its membership as proposed in the Incentives NOPR.

Respectfully submitted,

/s/ Larry Gasteiger

Larry Gasteiger
Executive Director
WIRES
1325 G Street, N.W., Suite 500
Washington, DC 20005
Office: (202) 449-7673
Cellphone: (703) 980-5750
lgasteiger@exec.wiresgroup.com

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