



projects.<sup>4</sup> Among other things, Dayton requested that the Commission grant a 50 basis point RTO Participation Incentive, with the resulting ROE not to exceed the upper end of the zone of reasonableness, to apply to Dayton’s entire transmission rate base.<sup>5</sup> Dayton explained that the Commission has a long-standing policy to provide a 50 basis point adder to the base ROE of a transmission owner’s entire rate base to encourage transmission-owning utilities to join an RTO.<sup>6</sup> Dayton has been a PJM member since 2004 but has not had a rate case since then to seek this incentive.<sup>7</sup>

On August 17, 2020, the Commission issued its order establishing paper hearing procedures on Dayton’s request for the RTO Participation Incentive.<sup>8</sup> The Commission explained that a paper hearing was necessary to “explore whether Dayton has shown that its participation in PJM or another RTO is voluntary, as required for it to be entitled to the adder, or if such participation is mandated by Ohio law.”<sup>9</sup>

On September 10, 2020, WIRES filed a Motion to Intervene Out-of-Time in this proceeding. As explained in the motion, WIRES promotes investment in electric transmission and state and federal policies that advance energy markets, economic efficiency, grid resilience, and consumer and environmental benefits through development

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<sup>4</sup> August 17 Order at P 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at P 15.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at P 22.

<sup>9</sup> *Id.* (citing *CPUC v. FERC*, 879 F.3d 966, 979 (2018)).

of electric power infrastructure.<sup>10</sup> WIRES members support investment in needed and beneficial transmission infrastructure – investments that are critical to ensure a reliable, cost-effective, and modern bulk power system.<sup>11</sup> In a recently proposed rule that is currently pending, the Commission proposed to provide a transmitting utility that joins and remains a member of an RTO with a standardized RTO Participation Incentive of 100 basis points regardless of the voluntariness of the utility’s participation in the RTO.<sup>12</sup> WIRES strongly supported the Commission’s proposal.<sup>13</sup> WIRES moved to intervene out-of-time in the instant proceeding because the Commission’s decision to set for hearing of Dayton’s request for an RTO Participation Incentive has potential impacts for WIRES members that were not reasonably foreseeable prior to the issuance of the August 17 Order. WIRES’s motion is pending before the Commission.

## **II. THE COMMISSION SHOULD GRANT DAYTON’S REQUEST FOR AN RTO PARTICIPATION INCENTIVE**

In the Proposed Incentives Rule, the Commission proposed to standardize the RTO Participation Incentive at a uniform level of 100 basis points to a transmitting utility that joins and remains a member of an RTO/ISO.<sup>14</sup> The Commission further clarified that transmitting utilities that join and remain in an RTO/ISO would be eligible for the

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<sup>10</sup> WIRES Intervention at p. 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Elec. Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 at P 98 (2020) (“Proposed Incentives Rule”).

<sup>13</sup> See Comments of WIRES, Docket No. RM20-10 at 10-15 (filed July 1, 2020).

<sup>14</sup> Proposed Incentives Rule at 99.

RTO Participation Incentive regardless of the voluntariness of their participation.<sup>15</sup> As the Commission explained, permitting some RTO/ISO members to receive an RTO Participation Incentive, while disallowing the incentive for entities that are required to join or remain in an RTO/ISO, would create an unlevel playing field in the competition for investment capital.<sup>16</sup> WIRES strongly supported this modification and clarification to the RTO Participation Incentive.

As an initial matter, the Commission should adopt as final the Proposed Incentives Rule as soon as possible. Doing so would resolve the need for further action on the question of whether RTO membership must be voluntary in order to qualify for the RTO Participation Incentive and render that issue in the instant proceeding moot. The Commission should act expeditiously on the pending rulemaking proceeding.

Regardless of whether the Commission resolves the issue first in the Proposed Incentives Rule or in this proceeding, on the topic of conditioning an incentive for RTO membership based upon whether membership in an RTO is voluntary, the statute is refreshingly plain and unambiguous. Simply put, the Commission is statutorily obligated to provide an incentive for RTO membership. Specifically, section 219(c) of the Federal Power Act (“FPA”) requires the Commission to “provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization.”<sup>17</sup> Thus, congressional policy is clear that if a transmission owner joins an RTO or ISO, FERC

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<sup>15</sup> *Id.* at 98.

<sup>16</sup> *Id.*

<sup>17</sup> 16 U.S.C. 824s(c).

must provide it with an incentive for its participation in that RTO or ISO. Moreover, the statute draws no distinction between utilities that voluntarily join an RTO/ISO and those utilities that are required to join an RTO/ISO. Rather, the incentive is to be provided to “each transmitting utility or electric utility that joins a Transmission Organization,”<sup>18</sup> and the statute provides no further qualification or condition for the incentive.

Even if the language of FPA section 219(c) were not plain and unambiguous on its face, the Commission should not condition the RTO Participation Incentive upon a transmission owner’s membership in an RTO/ISO being voluntary under state statute, as such statutes, including Ohio Revised Code section 4928.12, are preempted by federal law and policy. The Commission has exclusive jurisdiction over transmission service and the terms and conditions of that service, and Congress has established a regulatory scheme to govern that service. As a result, states cannot mandate that utilities make section 205 filings.<sup>19</sup> In addition, section 219 of the FPA and Commission rulings also create a federal policy that makes RTO participation voluntary. Thus, state statutes that mandate participation in an RTO are at odds with this federal statute and policy and are preempted. Notwithstanding this conflict between federal and state statutes, to date no utility has challenged these state statutes. Instead, utilities like Dayton, have chosen to join and remain in in their respective RTOs and this decision makes participation in RTO voluntary.

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<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Com. Of Mass. Dept. of Public Utilities v. U.S.*, 729 F.2d 886, 888 (1st Cir. 1984).

State statutes that require RTO participation conflict with sections 202 and 219 of the FPA and the Commission's general policy on voluntary RTO participation. RTOs are a Commission-jurisdictional construct developed under the authority vested in the Commission by Congress through the FPA.<sup>20</sup> The Commission does not require RTO participation but rather encourages voluntary participation in RTOs.<sup>21</sup> The Commission's policy is based in part on Congress's directive in section 202 of the FPA to the Commission "both 'to divide the country into regional districts for the *voluntary* interconnection and coordination of facilities for the generation, transmission, and sale of electric energy' and 'to promote and encourage such interconnection and coordination within each such district and between such districts.'"<sup>22</sup> These regional districts perform the same function as the RTOs and ISOs of today. And Congress directed that participation in those districts be voluntary. Moreover, in section 219 of the FPA, Congress directed the Commission to establish *incentives* for participation in an RTO, which also suggests Congress's desire to encourage but not mandate participation in an RTO. Congress chose not to limit its directive to provide incentives to utilities whose participation in an RTO is strictly voluntary. Thus, Congress and the Commission have established a federal policy that RTO participation is voluntary. State laws mandating participation in RTOs conflict with the Commission's policy and Congress's intent in

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<sup>20</sup> *Reg'l Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285 at p. 142 (1999), *order on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (2001), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>21</sup> *Id.*

<sup>22</sup> *Pub. Util. Dist. No. 1 of Snohomish Cty v. FERC.*, 272 F.3d 607, 612 (D.C. Cir. 2001)(citing to FPA Section 202(a), 16 U.S.C. § 824a(a)) (emphasis added).

sections 202 and 219 of the FPA.

Finally, there are strong policy reasons for not conditioning an incentive for RTO participation on whether the participation is voluntary or not. The RTO Participation Incentive is rooted in the recognition that RTO participation provides benefits not only to the utilities that participate but, more importantly, to the customers they serve.<sup>23</sup> For decades, the Commission has acknowledged the numerous benefits from RTO participation. For example, in Order No. 2000, the Commission indicated that the benefits of RTOs include (among other things):

Increased efficiency through regional transmission pricing and the elimination of rate pancaking; improved congestion management; more accurate estimates of ATC; more efficient management of parallel path flows; more efficient planning for transmission and generation investments; increased coordination among state regulatory agencies; reduced transaction costs; facilitation of the success of state retail access programs; facilitation of the development of environmentally preferred generation in states with retail access programs; improved grid reliability; and fewer opportunities for discriminatory transmission practices.<sup>24</sup>

These benefits, which RTOs/ISOs continue to provide, translate into more competitive rates and higher quality service for consumers.<sup>25</sup>

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<sup>23</sup> Proposed Incentives Rule at P 97.

<sup>24</sup> *Regional Transmission Organizations*, Order No. 2000, 1996-2000 FERC Stats. & Regs. Preambles ¶ 31,089 at 30,996 (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).

<sup>25</sup> Order No. 2000 at 31,025 (“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 performance of electricity markets in several ways and consequently lower prices to the Nation’s electricity consumers.”).

In Order No. 679, the Commission indicated that “[t]he basis for the [RTO participation] incentive is a recognition of the benefits that flow from membership in such organizations”<sup>26</sup> and that an incentive for RTO participation was adopted “in recognition of the benefits such organizations bring to customers, as outlined in detail in Order No. 2000.”<sup>27</sup> Additionally, in Order No. 679-A, the Commission found that “[t]he consumer benefits, including reliability and cost benefits, provided by Transmission Organizations are well documented, and the best way to ensure those benefits are spread to as many consumers as possible is to provide an incentive that is widely available to member utilities of Transmission Organizations.”<sup>28</sup> According to Order No. 679-A, the incentive for transmission organization membership is “entirely consistent” with the purpose of FPA section 219 to establish incentives “that benefit consumers by ensuring reliability and reducing the cost of delivered power.”<sup>29</sup>

As demonstrated in WIRES Comments on the Proposed Incentives Rule, the benefits to consumers from participation by a transmission owner in an RTO/ISO have been thoroughly examined and supported in a recent White Paper prepared for WIRES by London Economics International LLC (“LEI”) entitled “Economic Considerations in the Matter of Electric Transmission Incentives.”<sup>30</sup> RTOs/ISOs provide access to low cost,

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<sup>26</sup> Order No. 679 at P 331.

<sup>27</sup> *Id.* at P 312.

<sup>28</sup> Order No. 679-A at P 86.

<sup>29</sup> *Id.*

<sup>30</sup> See London Economics International, LLC, *Economic Considerations in the Matter of Electric Transmission Incentives* (July 2020) (“LEI White Paper”).



cleaner power over a more reliable and resilient grid.<sup>31</sup> Moreover, the benefits to consumers of RTO/ISO participation significantly outweigh the costs.<sup>32</sup>

While the Commission has appropriately recognized the benefits of RTOs and ISOs, less has been written about the centrality of these organizations to meeting the future needs of the electric system. Simply stated, it is the continuing benefits to customers that accrue by the transmission owner becoming a full and active participant in the RTO/ISO, including participation in all of its studies and processes, that provides the basis for the incentive. As consumers and policymakers place new demands on the grid, RTOs and ISOs will offer a valuable platform to realize state and federal policy goals while also capturing the benefits of regionalization for customers. Indeed, RTOs and ISOs can provide a pathway to achieve a range of desired outcomes – including electrification, renewable integration, enhanced resilience, and carbon reduction – in a cost-effective manner that efficiently conveys these benefits to consumers.

At the same time, the burdens and responsibilities placed on utilities that join RTOs/ISOs have never been greater. RTO/ISO membership imposes substantial and increasingly complex requirements on transmission utilities, including the loss of operational control, competitive risks (which are not functionally imposed outside the organized markets), and added administrative responsibilities and costs. The LEI White

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<sup>31</sup> *Id.* at 28-29.

<sup>32</sup> *Id.*

Paper details some of the risks, burdens, and responsibilities that RTO/ISO participation presents for utilities, including the following:

- RTO/ISO members must cede to the RTO/ISO significant control over transmission design, regional transmission planning, and transmission operations, limiting their decision-making ability with respect to important aspects of their transmission business.<sup>33</sup>
- RTOs/ISOs often rely on stakeholder processes to develop market rules and tariff provisions, processes that involve a broad range of stakeholders and increase the costs and complexity of RTO/ISO participation for utilities.<sup>34</sup>
- As the roles of RTOs/ISOs to oversee transmission planning have expanded in response to Order Nos. 890 and 1000, this has introduced new complexities into the regional transmission planning process, including time- and resource-intensive decision making processes.<sup>35</sup>
- Rulemakings and Commission policies that apply only in RTOs/ISOs, while beneficial, increase market complexity and thus expose utilities to elevated risks.<sup>36</sup>
- States whose utilities participate in RTOs/ISOs tend to implement more rigorous policies to reduce greenhouse gas emissions, including policies that promote renewable generation investment (including customer-owned generation), demand-side management, and energy efficiency, as well as electrification efforts. These changes in the resource mix and system demand create uncertainty and heighten risk,<sup>37</sup> and RTOs/ISOs are beginning to account for these policy-driven risks in their regional transmission planning processes and their development of market and operating protocols.<sup>38</sup>

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<sup>33</sup> *Id.* at 13.

<sup>34</sup> *Id.* at 14.

<sup>35</sup> *Id.* at 16-18.

<sup>36</sup> *Id.* at 20.

<sup>37</sup> *Id.* at 21-23.

<sup>38</sup> *Id.* at 24-25.

- Utilities in RTOs/ISOs cannot centrally coordinate and plan all aspects of the electric system within their service territories, which hinders their autonomy in business and investment decision-making that caters to local customers.<sup>39</sup>

All of the consumer benefits described above, in addition to the added responsibilities and risks for utilities that participate in RTOs/ISOs, exist separate and apart from whether a utility's participation in an RTO or ISO is voluntary or not. Therefore, consistent with the plain language of FPA section 219(c) and longstanding Commission policy relating to the benefits to consumers and risks to utilities of participation in RTOs/ISOs, the Commission should grant Dayton's request for an RTO Participation Incentive.

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<sup>39</sup> *Id.* at 25-26.

### III. CONCLUSION

For the foregoing reasons, WIRES respectfully requests that the Commission grant Dayton's request for an RTO Participation Incentive.

Respectfully submitted,

/s/ Larry Gasteiger

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October 16, 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 compiled by the Secretary in this proceeding.

Dated at Washington, DC this 16th day of October, 2020.

/s/ Larry Gasteiger

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