

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

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

**REPLY COMMENTS OF WIRES**

WIRES,<sup>1</sup> on behalf of its members, respectfully submits the following Reply Comments on the Supplemental Notice of Proposed Rulemaking (“Supplemental NOPR”) issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on April 15, 2021 in the above-captioned proceeding.<sup>2</sup> For the reasons explained below, the Commission should retain the current rule allowing a Transmission Owner to receive an incentive to join and remain in an RTO for the entire duration of its membership. Alternatively, WIRES suggests that the Commission defer action on the Supplemental NOPR to coordinate with its consideration of overlapping issues proposed in the newly-established concurrent Commission generic proceeding and provide greater certainty in its return on equity (“ROE”) incentives policy.

In the initial comments on the Supplemental NOPR, WIRES, along with a diverse group of industry stakeholders including Regional Transmission Organizations (RTOs), clean energy-focused groups, state legislators, an independent market monitor, utilities, and other trade associations, urged the Commission to retain the longstanding 50-basis-point incentive for RTO

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<sup>1</sup> WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies. WIRES promotes investment in electric transmission 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 Owner/Independent System Operator (“RTO/ISO”) members of WIRES. For more information about WIRES, please visit [www.wiresgroup.com](http://www.wiresgroup.com).

<sup>2</sup> *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035 (2021).

participation on various legal and policy grounds.<sup>3</sup> On the other end of the spectrum, other commenters urged the Commission to restrict or eliminate this important incentive despite the well-documented and significant benefits to consumers and the risks and burdens to utilities of participation in current RTOs. WIRES focuses its reply comments on a limited set of discrete issues that warrant response.

## I. REPLY COMMENTS

The Commission's longstanding precedent under Order No. 679 has been that utilities that join and remain in RTOs receive a 50-basis-point ROE incentive.<sup>4</sup> Despite the burdens and risks to utilities of participation in current RTOs, the Commission now proposes to slash the RTO-participation incentive in the Supplemental NOPR even though a year ago it sought to double it.

WIRES' initial comments strongly opposed the elimination of the incentive. WIRES demonstrated that the Commission's proposed action in the Supplemental NOPR did not meet

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<sup>3</sup> See e.g., Hon. Charles J. Otto, Maryland House of Delegates, Letter in support of a continued incentive participate policy for entities that belong to a Regional Transmission Organization, Docket No. RM20-10 (June 22, 2021); Comments of ITC Holdings Corp., Docket No. RM20-10 (June 23, 2021); Comments of American Electric Power Service Corporation, Docket No. RM20-10 (June 25, 2021); Comments of Ameren Services Co., Docket No. RM20-10 (June 25, 2021); Comments of Renewable Energy Buyers Alliance, Docket No. RM20-10 (June 25, 2021); Initial Comments of PPL Electric Utilities Corp., Docket No. RM20-10 (June 25, 2021); Comments of Americans for a Clean Energy Grid, Docket No. RM20-10 (June 25, 2021); Comments of New England Transmission Owners, Docket No. RM20-10 (June 25, 2021); Comments of Edison Electric Institute, Docket No. RM20-10 (June 25, 2021); Initial Comments of Duke Energy Ohio, Inc., et al., Docket No. RM20-10 (June 25, 2021); Comments of Indicated PJM Transmission Owners, Docket No. RM20-10 (June 25, 2021); Comments of Duquesne Light Co., Docket No. RM20-10 (June 25, 2021); Comments of Exelon Corp., Docket No. RM20-10 (June 25, 2021); Joint Comments of Midcontinent ISO, Inc. and Southwest Power Pool, Inc., et al., Docket No. RM20-10 (June 25, 2021); Comments of Public Service Electric & Gas Co., Docket No. RM20-10 (June 25, 2021); Joint Comments of Pacific Gas & Electric Co., et al., Docket No. RM20-10 (June 25, 2021); Comments of Indicated SPP Transmission Owners, Docket No. RM20-10 (June 25, 2021); Comments of Indicated New York Transmission Owners, Docket No. RM20-10 (June 25, 2021); Comments of American Clean Power Association; RM20-10 (June 25, 2021); Initial Comments of MISO Transmission Owners, Docket No. RM20-10 (June 25, 2021); Comments of Advanced Energy Economy, et al., Docket No. RM20-10 (June 25, 2021); Comments of PJM Interconnection, LLC, Docket No. RM20-10 (June 25, 2021); Comments of Potomac Economics, Ltd., Docket No. RM20-10 (June 25, 2021); Hon. Gene Yaw, Pennsylvania State Senator letter in support for regional transmission organizations, Docket No. RM20-10 (June 25, 2021).

<sup>4</sup> *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*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

the burden of showing both that the existing rule is unjust and unreasonable and that the proposed replacement is just and reasonable; instead, it would result in a confiscatory rate. WIRES further showed that the Commission's long-standing precedent in Order No. 679 was properly decided, and the language, purpose, and legislative history of FPA section 219 requires that the RTO participation incentive be available to a utility that participates in an RTO for the entire duration of its membership.<sup>5</sup> Finally, WIRES explained that compelling policy reasons support the existing RTO participation incentive, including facilitating the development and integration of renewables, encouraging competitive generation markets and the growth of RTOs, and minimizing the risk of RTO exit.

**A. The Record Does Not Demonstrate Any Benefits of RTO Membership to Utilities that Outweigh the Burdens and Risks.**

WIRES' Initial Comments conclusively demonstrated that the Supplemental NOPR is based on an erroneous assumption that utilities benefit from RTO membership in a way that outweighs the burdens and risks of membership.<sup>6</sup> As WIRES pointed out, while the increasing burdens of RTO membership have been well-documented, there is nothing in the record specifying how utilities benefit from RTO membership.<sup>7</sup> Compounding the error, the Commission mistakenly attributed to RTO member utilities a short list of benefits (such as reduced energy prices and lower capacity costs) that actually accrue to consumers.

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<sup>5</sup> The only evidence in the record as to what Congress intended with the RTO participation incentive is an affidavit provided by former Representative Joe Barton, who at the time was the Chairman of the House Energy and Commerce Committee and was House sponsor of the Energy Policy Act of 2005 who swore that the incentive was not meant to be "a one-time payment." See WIRES Comments, Exhibit 1, Affidavit of the Honorable Joe Barton, Docket No. RM20-10 (June 25, 2021).

<sup>6</sup> See Comments of WIRES at page 11, Docket No. RM20-10 (June 25, 2021).

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

Several commenters echo the Commission’s mistaken assertions and assumptions about the benefits to utilities of RTO membership as the primary (if not exclusive) basis for contending that the current RTO/ISO participation incentive is not warranted.<sup>8</sup> However, apart from making bald assertions of purported benefits or simply parroting the benefits mentioned (but nowhere to be found in the record) in the Supplemental NOPR, none of the commenters point to or provide any evidence demonstrating or documenting the supposed benefits. In the final analysis, however, the Commission cannot base its actions on a presumption that utilities are benefitting significantly from RTO membership. Instead, the Commission must articulate the benefits, delineate them between the beneficiaries, and weigh them against the burdens, which so far, it has failed to do.

**B. Alternatively, the Commission Should Defer Action on the Supplemental NOPR and Coordinate with the Advanced Notice of Proposed Rulemaking in Docket No. RM21-17.**

In the Commission’s recently-issued Advanced Notice of Proposed Rulemaking (“ANOPR”) on regional transmission planning, cost allocation, and generator interconnection, the Commission posed the question of whether any ROE adder incentive available for RTO/ISO participation should be limited in applicability to regional, and not local, transmission facilities when those regional transmission facilities are selected as the more efficient or cost-effective solution to an identified transmission need.<sup>9</sup> That issue involves consideration of the same ROE incentive at the very core of the instant proceeding. As a result, the Commission has now opened two ongoing concurrent generic proceedings examining similar issues related to the

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<sup>8</sup> See e.g., Comments of Organization of PJM States, Inc., Docket No. RM20-10 (June 23, 2021); Comments of Coalition of Midcontinent Independent System Operator, Inc. and Transmission Cooperatives, Docket No. RM20-10 (June 25, 2021); Comments of New England States Committee on Electricity, Docket No. RM20-10 (June 25, 2021).

<sup>9</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 at P. 61 (2021).

RTO/ISO participation adder incentive. Further adding to the confusion around the Commission's incentives policy, the Commission recently addressed issues relating to the RTO participation incentive policy in a case-specific section 205 rate proceeding.<sup>10</sup> As Commissioner Chatterjee observed in his dissent in *Dayton*, the Commission's scattergun approach to revising its RTO participation incentives policy "creates unnecessary procedural disarray."<sup>11</sup> The intertwined and overlapping nature of the pending generic proceedings requires that consideration of any modifications to the RTO participation incentive be done in a coordinated fashion.

Given the risks involved with transmission development, WIRES has urged the Commission to provide regulatory certainty with respect to ROE policies, including ROE incentives, so that transmission owners will have the opportunity to earn a just and reasonable return on their investments.<sup>12</sup> Others have urged the Commission to avoid frequent revisions to its transmission incentives policy that "introduces regulatory uncertainty that, counterproductively, tends to stifle investment in large capital projects like transmission infrastructure."<sup>13</sup> Coordinating consideration of any potential action in the Supplemental NOPR with the Commission's consideration of overlapping issues in the ANOPR will provide a more efficient process, minimize the burden on stakeholder resources, and reduce regulatory uncertainty regarding the impact on utilities' ROEs. Accordingly, the Commission should defer

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<sup>10</sup> *Dayton Power and Light Co.*, 176 FERC ¶ 61,025 (2021) ("*Dayton*").

<sup>11</sup> *Dayton*, (Chatterjee dissenting at P 3).

<sup>12</sup> See Supplemental Comments of WIRES at page 18, Docket No. PL19-04 (June 18, 2020).

<sup>13</sup> Comments of the Electricity Consumers Resource Council (ELCON) at page 7, Docket No. RM20-10 (June 25, 2021) (noting that this is now the fourth policy change in the implementation of the provision enacted in 2005).

action in the instant docket and coordinate its consideration of the RTO participation incentive with any action it takes in the ANOPR proceeding.

## **II. CONCLUSION**

For the reasons set forth above and submitted in WIRES' initial comments, the Commission should retain the current rule allowing a utility to receive an incentive for joining and remaining in an RTO for the entire duration of the utility's RTO membership. Alternatively, the Commission should defer action on the Supplemental NOPR to coordinate with its consideration of interrelated ROE adder incentive issues in its ANOPR proceeding and provide greater certainty on its ROE incentives policy.

Respectfully submitted,

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