

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

Incentives for Advanced)	Docket Nos. RM22-19-000
Cybersecurity Investment)	
)	
Cybersecurity Incentives)	RM21-3-000

**REPLY COMMENTS ON BEHALF OF
ELECTRICITY CONSUMERS RESOURCE COUNCIL
(ELCON)**

Pursuant to the Notice of Proposed Rulemaking issued by the Federal Energy Regulatory Commission (Commission) in the proceedings referenced above on September 22, 2022 (NOPR),¹ the Electricity Consumers Resource Council, on behalf of itself and its members (ELCON), hereby submits reply comments in support of certain initial comments submitted in these dockets on November 7, 2022.

The NOPR proposes revisions to the Commission’s regulations consistent with the Infrastructure Investment and Jobs Act of 2021, which directs the Commission to promulgate rules for incentivizing certain cybersecurity expenditures by public utilities.² As set forth in greater detail below, ELCON endorses the arguments of parties urging the Commission to narrow its proposal relating to the implementation of adders to return on equity (ROE) associated with eligible investments.

¹ *Incentives for Advanced Cybersecurity Investment*, Notice of Proposed Rulemaking, 180 FERC ¶ 61,189 (issued Sept. 22, 2022).

² 16 U.S.C. 824s-1 (2021). As set forth in the statute, eligible expenditures include advanced cybersecurity technologies that enhance the security posture of public utilities by improving their ability to protect against, detect, respond to, or recover from a cybersecurity threat and costs associated with participation in cybersecurity threat information sharing programs. *Id.* The Commission proposes to provide incentive rate treatment to jurisdictional public utilities and non-public utilities under the Federal Power Act (FPA). *See* NOPR at n.3.

REPLY COMMENTS

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies create a wide range of products from virtually every segment of the industrial manufacturing community. ELCON members own and operate hundreds of major facilities and are significant consumers of electricity within the footprints of all organized markets and other regions throughout the United States. Many of ELCON's members generate electricity and maintain interconnections for excess power sales. ELCON members may also purchase electricity from and rely on the transmission of electricity by Commission-jurisdictional utilities.

ELCON members have a unique perspective on reliability issues. ELCON members' views on reliability are driven by the need to protect billion-dollar assets and to remain competitive in international markets. In all instances, reliable electricity supply at just and reasonable rates is essential to the operations of ELCON's members.

As large manufacturers, ELCON members themselves have powerful business-based incentives to undertake prudent expenditures related to cybersecurity, and they support such expenditures by public and non-public utilities. For regulated public utilities, there are already in place cost recovery mechanisms, such as formula transmission rates, to enable utilities to recoup the costs of their cybersecurity programs through their Commission-authorized revenue requirements and rates. For this reason, ELCON recommends that the Commission target its rulemaking efforts on incenting the expenditures that will achieve meaningful improvements in cybersecurity risk mitigation at the lowest reasonable cost to consumers. This will require the Commission to carefully balance the objectives of the newly enacted provisions in section 219 of the FPA with the Commission's obligations under FPA sections 205 and 206 to protect consumers by ensuring that public utility rates are just, reasonable, and not unduly discriminatory.³

³ See 16 U.S.C. § 824s-1(e) (explaining that rates remain subject to the requirements sections 205 and 206 of the FPA, §§ 824d, 824e, and must preclude double recovery).

Because the incentives for voluntary investment in cybersecurity are strong and the risks of such investment are low, particularly for public utilities, ELCON is concerned by the Commission's proposal to authorize recovery of a 200-basis point incentive ROE adder for cybersecurity investments and echoes the call by several industry associations and groups for restraint in adopting the proposed adder. Although FPA section 219 provides that the Commission "shall establish, by rule, incentive-based, including performance-based, rate treatments" for investments in cybersecurity technologies, the statute does not prescribe the types or levels of such treatments.⁴ Further, nothing in the Infrastructure Investment and Jobs Act of 2021 requires the Commission to provide an ROE adder as an incentive, much less an adder of this magnitude.

Consistent with the comments filed in this proceeding by the American Public Power Association (APPA), ELCON respectfully requests that the Commission reconsider the proposal for a 200-basis point ROE adder associated with eligible investments.⁵ A lower ROE adder, when combined with the rate recovery mechanisms already in place to assure that public utilities recover their reasonable and prudent costs, would accomplish the Commission's objective of fostering enhanced investment in cybersecurity protections without needlessly burdening ratepayers. The National Rural Electric Cooperative Association (NRECA) similarly suggests that, rather than prescriptively specify the adder level at 200 basis points, the Commission instead allow requests for adders of up to 200 basis points.⁶ The Transmission Access Policy Study Group (TAPS) likewise requests that the Commission lower the proposed ROE incentive adder, citing the strong business case for utilities to engage in cybersecurity

⁴ See generally 16 U.S.C. § 824s-1.

⁵ See Comments of the American Public Power Association, *Incentives for Advanced Cybersecurity Investment*, Docket No. RM22-19-000 (APPA Comments) (filed Nov. 7, 2022), at 4, 10-11 (recommending that ROE incentives be limited to 50 basis points).

⁶ See Comments of the National Rural Electric Cooperative Association, *Incentives for Advanced Cybersecurity Investment*, Docket Nos. RM22-19-000, *et al.* (filed Nov. 7, 2022), at 10.

investment.⁷ APPA and TAPS also suggest that the adder remain in place for a three-year period, rather than the five years suggested by the Commission in the NOPR, which ELCON agrees is a sound recommendation that will limit the exposure of consumers to increased costs.⁸

ELCON concurs in the comments provided by APPA, NRECA, and TAPS with respect to the level of the proposed ROE adder. If the Commission proceeds with its proposal to adopt an ROE-based incentive in its Final Rule, ELCON urges the Commission to adopt a reduction in the level of the proposed ROE adder.

CONCLUSION

For the foregoing reasons, ELCON respectfully requests that the Commission issue its final rule in these proceedings consistent with the comments set forth above.

Respectfully Submitted,

/s/ Travis Fisher

Travis Fisher

President and CEO

Electricity Consumers Resource Council

1101 K Street NW, Suite 700

Washington, DC 20005

tfisher@elcon.org

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⁷ See Comments of Transmission Access Policy Study Group, *Incentives for Advanced Cybersecurity Investment*, Docket No. RM22-19-000 (TAPS Comments) (filed Nov. 7, 2022), at 2, 16-18 (explaining that 50 basis points would be consistent with incentive adders that the Commission has authorized in the past and noting that cybersecurity investments are low-risk and assure a business' reputational value and continuity of service).

⁸ See APPA Comments at 15-16; TAPS Comments at 18.