UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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

COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL (ELCON)

The Electricity Consumers Resource Council (ELCON) respectfully submits these comments on the April 15, 2021 Supplemental Notice of Proposed Rulemaking (Supplemental NOPR)[1] in the above-captioned docket, in which the Federal Energy Regulatory Commission (FERC or Commission) proposes and seeks comment on a revised incentive for transmitting and electric utilities that join Transmission Organizations (Transmission Organization Incentive) under Section 219 of the Federal Power Act (FPA).[2] The Supplemental NOPR follows a March 20, 2020 Notice of Proposed Rulemaking (March NOPR).[3]

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 community—we own and operate hundreds of major facilities and are significant consumers of electricity in the footprints of all organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members' operations. Further, ELCON members rely upon the transmission of electricity by FERC-jurisdictional utilities. Accordingly, any changes to the Commission's transmission incentives policy will have a direct financial impact on ELCON members.

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[1] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035 (2021).
[2] 16 U.S.C. § 824s.
[3] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Notice of Proposed Rulemaking, 170 FERC ¶ 61,204, errata notice, 171 FERC ¶ 61,072 (2020).

INTRODUCTION

ELCON supports the Commission's efforts to gather additional information by issuing the Supplemental NOPR, and in general we support the proposed actions as an improvement over both the current Transmission Organization Incentive and what was proposed in the March NOPR. ELCON agrees that the Transmission Organization Incentive should be limited in size and duration. We urge the Commission to consider further empirical analysis to establish, as Section 219 requires, a Transmission Organization Incentive that benefits consumers by reducing the cost of delivered power.[4]

I. ELCON SUPPORTS LIMITING THE TRANSMISSION ORGANIZATION INCENTIVE BUT URGES THAT A FINAL RULE BE SUPPORTED BY FURTHER EMPIRICAL ANALYSIS

ELCON agrees with the Commission's proposal in the Supplemental NOPR to strike a balance between the interests of transmission owners and consumers in establishing a Transmission Organization Incentive that "provides a material incentive to join Transmission Organizations without unduly burdening ratepayers."[5] In particular, ELCON supports a limited term for any Transmission Organization Incentive. The plain language of Section 219 requires the Commission to provide an incentive for utilities to "join" a Transmission Organization but does not require that an incentive remain in effect for perpetuity.[6]

However, in proposing a return on equity (ROE) incentive that would be in place for three years, the Commission has not provided an analytical framework for judging whether (or why) that specific duration—and the associated ratepayer burden—is "just and reasonable and not unduly discriminatory or preferential," as required by Section 219(d). The same critique applies to the level (or size) of the incentive. Given that the Commission is revising the March NOPR's proposed 100 basis point Transmission

[4] 16 U.S.C. § 824s(a).
[5] Supplemental NOPR at P 12.
[6] *See, e.g.*, Supplemental NOPR at P 8.

Organization Incentive down to 50 basis points, presumably it has performed some empirical analysis and found that the just and reasonable rate is 50 rather than 100 basis points. But the Supplemental NOPR's explanation of that decision is couched in vague language and relies on unsupported assertions of consumer benefits.[7]

In order to issue a supportable final rule, the Commission must make an empirical determination, as required by Section 219(a), that the selected level and duration of the incentives actually benefit consumers "by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[8] See Section I.A. below. In fulfilling its obligations under Section 219, however, the Commission should conduct an independent, objective analysis and not rely on claims of benefits and costs submitted by interested parties in public comments. See Section I.B. below.

FERC's analysis should take into account the unprecedented increase in transmission investment in recent years and the cost impacts to consumers resulting from those investments. As the Supplemental NOPR observed, "between September 2006 and July 2020, [Midcontinent Independent System Operator (MISO)] North transmission owners' … gross transmission-allocated rate base increased from $11.2 billion to $38.1 billion…,"[9] and "[t]ransmission investment by investor-owned electric companies and stand-alone transmission companies has steadily grown from $8.6 billion in 2006 to $23.4 billion in 2019, with $26.1 billion projected in 2020 and $27.1 billion projected in 2021."[10] In this context, assertions of the consumer benefits of

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[7] *See, e.g.*, Supplemental Notice at P 14 ("With respect to the magnitude of the incentive for new members, we propose to find that, although **ratepayer benefits**…**have increased since the issuance of Order No. 679**, benefits to transmission owners, including access to more developed organized markets, have increased as well, such that 50 basis points, and not 100 basis points, as proposed in the March NOPR, continues to appropriately correspond to the benefits of utilities joining Transmission Organizations.") (emphasis added). The Supplemental NOPR further states in conclusory fashion that "[w]e believe that a 50-basis-point Transmission Organization Incentive for three years provides a material incentive . . . without unduly burdening ratepayers," *id.* at P 12, and that [w]e believe that this proposed incentive level appropriately balances encouraging transmission owners to join Transmission Organizations with ratepayer considerations," *id.* at P 15.
[8] 16 U.S.C. § 824s(a).
[9] Supplemental NOPR at P 14, n. 30.
[10] Supplemental NOPR at P 14, n. 31.

transmission incentives—and the practical need for them—should be viewed with skepticism unless they are rigorously supported.

A. Section 219 Requires That Incentives Benefit Consumers

The overarching purpose of Section 219 is to benefit consumers. Section 219(a) states that incentive based rate treatments are "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power… ."[11] Thus, the starting point for any Transmission Organization Incentive should be an independent evaluation by the Commission of the cost to consumers and the reliability impacts of Regional Transmission Organizations (Transmission Organizations or RTOs). There has been little progress towards such an assessment since 2008, when the Government Accountability Office (GAO) concluded:

> FERC officials, industry participants, and experts lack consensus on whether RTOs have brought benefits to their regions. Many agree that RTOs have improved the management of the transmission grid and improved generator access to it; however, there is no consensus about whether RTO markets provide benefits to consumers or how they have influenced consumer electricity prices. FERC officials believe RTOs have resulted in benefits; however, FERC has not conducted an empirical analysis of RTO performance or developed a comprehensive set of publicly available, standardized measures to evaluate such performance. Without such measures, FERC will remain unable to demonstrate the extent to which RTOs provide consumers and others with benefits—information that could aid FERC in its evaluation of its decision to encourage the creation of RTOs and help address divisions about which benefits RTOs have provided.[12]

ELCON members have seen firsthand, mostly anecdotally, the benefits RTOs bring—including efficiencies in the dispatch of generation, the orderly entry and exit of resources based on price signals, as well as enhanced transparency of planning processes and the wider availability of buying and selling arrangements. However, a

[11] Section 219(a) of the FPA, 16 USC §824s(a).
[12] U.S. GAO, *FERC Could Take Additional Steps to Analyze Regional Transmission Organizations' Benefits and Performance*, see https://www.gao.gov/products/GAO-08-987.

rigorous and independent analysis of the benefits and costs to consumers and the reliability impacts of RTOs has yet to be performed by the Commission, its staff, or a contractor under FERC's supervision.

The connection between transmission incentives—or transmission development generally—and the total cost of delivered power is an area the Commission should explore, particularly as it pushes for a heightened focus on transmission planning and cost allocation.[13] For example, the cost of electricity (inclusive of the cost of transmission) is transparently provided by market monitors in just two of the six FERC-jurisdictional markets—PJM Interconnection, LLC (PJM) and ISO-New England, Inc (ISO-NE).[14] FERC can and should explore the impact of transmission incentives and investment on the cost of delivered power, as Section 219 requires.

B. In Assessing Costs and Benefits, the Commission Should Verify Estimates by Outside Parties

Based on statements in the Supplemental NOPR and in Commissioner Chatterjee's dissent, ELCON is concerned that the Commission is accepting quantitative assessments of costs and benefits by interested outside parties without independently assessing the basis for and accuracy of the assessments. In particular:

- The Supplemental NOPR cites an outside source for an estimate of the "large impact that [the Transmission Organization Incentive] has on ratepayers," which is a cost of approximately $400 million per year.[15]
- The Supplemental NOPR further states "MISO estimates that it provides $3.5 billion in total benefits annually to its members" and the Southwest Power Pool (SPP) "estimates that its transmission planning, market administration, reliability

[13] See https://www.ferc.gov/news-events/news/staff-presentations-order-establishing-joint-federal-state-task-force-electric

[14] See https://www.publicpower.org/system/files/documents/Measuring-the-Performance-Wholesale-Electricity-Markets.pdf, p. 5.

[15] Supplemental NOPR at P 8. Note 21 states "Commenters assert that the cost to ratepayers is around $400 million per year. See TAPS Comments, Docket No. PL19-3-000, at 97 (filed June 26, 2019)." We happen to agree with TAPS' estimate, but we are troubled that the Commission does not provide its own estimate of the cost of its policy in rates under its jurisdiction.

coordination, and other services provide a net benefit to its members in excess of $2.2 billion annually."[16]

- Commissioner Chatterjee's dissent then takes the $400 million per year estimate and compares it to estimates of RTO benefits, also using outside sources:

> RTOs and ISOs, while imperfect, have been enormously successful in generating billions of dollars of annual benefits to consumers. MISO estimates that it produces between $3.1 and $3.9 billion of annual net economic benefits …. PJM estimates its annual savings at between $3.2 and $4.0 billion …. SPP estimates that savings from its markets and transmission planning services provide more than $2.2 billion of annual benefits. According to National Grid, ISO-NE is expected to produce savings of more than $600 million per year. Based on these four estimates, one could reasonably conclude that these RTOs/ISOs alone produce more than $10 billion of annual benefits for consumers. Though the estimated $400 million annual cost of the Transmission Organization Incentive may appear large without any context, it is quite literally pennies on the dollar when compared to the more than $10 billion of annual benefits to ratepayers generated from RTO/ISO membership.[17]

In no case is there any indication that the Commission (or Commissioner Chatterjee) has independently evaluated these various assessments of costs and benefits. In its role as an independent and objective decision maker, and, recognizing the inherent biases of interested parties filing comments, the Commission should carefully assess claims about costs and benefits before making decisions that rely on them. Specifically, ELCON questions the Commission's continued blanket acceptance of RTOs' estimates of RTO benefits.

II. SECTION 219 DOES NOT CALL FOR FERC TO USE INCENTIVES TO FORM NEW TRANSMISSION ORGANIZATIONS

The Supplemental NOPR describes the purpose of Section 219 as: "encouraging Transmission Organization membership **and the formation of new Transmission Organizations where they do not currently exist**…" and that, accordingly, "we seek

[16] Supplemental NOPR at P 14, n. 29 (citations omitted).
[17] Commissioner Chatterjee Dissent at P 6.

comment on whether three years or another period is the appropriate duration for this incentive."[18] ELCON believes this is a misreading of Section 219. The policy goal of encouraging new RTO formation is not contemplated in Section 219 and should not be used to justify incentives. Section 219(c) states that "the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization."[19] There is simply no language in Section 219 that provides for incentivizing the formation of new Transmission Organizations.

III. THE COMMISSION SHOULD RECOGNIZE THE BENEFITS OF REGULATORY CERTAINTY

In the Supplemental NOPR, the Commission requests comment on "alternative, non-ROE incentives that are more appropriate for the Transmission Organization Incentive."[20] As ELCON has submitted in previous comments,[21] we urge the Commission to avoid frequent revision of its transmission incentives policy (this is now the fourth policy change in the implementation of a statute enacted in 2005). The statute does not require multiple re-examinations, and each re-evaluation of the Commission's transmission incentives policy introduces regulatory uncertainty that, counterproductively, tends to stifle investment in large capital projects like transmission infrastructure. In other words, regulatory certainty is a non-ROE transmission incentive. Once the Commission settles on a new transmission incentives policy in this docket, ELCON asks that it refrain from revisiting the issue unless circumstances change significantly.

CONCLUSION

ELCON appreciates the Commission's efforts to gather information to enable it

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[18] Supplemental NOPR at P10 (emphasis added).
[19] 16 USC §824s(c).
[20] Supplemental NOPR at P 16.
[21] See https://elcon.org/comments-of-the-electricity-consumers-resource-council-elcon-american-chemistry-council-acc-and-american-forest-paper-association-afpa-docket-no-rm20-10-000-electric-transmission-incenti/

to more faithfully implement Section 219 of the FPA. As discussed above, ELCON urges the Commission to independently assess the consumer benefits of Transmission Organization membership as a prerequisite before assigning the level and duration of the Transmission Organization Incentive. We also ask the Commission to refrain from using Section 219 as an RTO expansion policy and to recognize the benefits of regulatory certainty in promoting transmission investment.

Respectfully submitted,

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Document Content(s)