UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Electric Transmission Incentive Policy	Docket No. PL19-3-000

**REPLY COMMENTS OF
TRANSMISSION ACCESS POLICY STUDY GROUP**

The Transmission Access Policy Study Group ("TAPS") appreciates the opportunity to reply to comments submitted on the March 21, 2019 Notice of Inquiry Regarding the Federal Energy Regulatory Commission's ("the Commission") Electric Transmission Incentives Policy ("NOI"). TAPS' comprehensive initial comments[1] provided detailed responses to the NOI's questions and addressed many of the arguments made in the wide-ranging comments submitted by others in response to the NOI. To avoid burdening the already extensive record in this proceeding, these limited reply comments are focused on providing perspective on certain comments, and addressing issues not covered in TAPS Comments.[2] Omission of any subject or position from this reply should be construed as reaffirming the position taken in TAPS Comments, not agreement with a contrary view.[3]

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[1] Comments of Transmission Access Policy Study Group (June 26, 2019), eLibrary No. 20190626-5264 ("TAPS Comments").

[2] All initial comments in this proceeding were filed on June 26, 2019, and are available on eLibrary.

[3] For example, while various initial comments point to Transco transmission investments to ask for continuation (and even expansion) of the Transco Adder (Initial Comments of GridLiance ("GridLiance"); Comments of ITC Holdings Corp. ("ITC") at 27-31), they fail to demonstrate why what they tout as a highly successful business model requires encouragement through a return on equity ("ROE") incentive. TAPS relies on its Comments (at 4, 92-96) to demonstrate the need to reevaluate the Transco Adder. *See also* Initial Comments of Alliant Energy Corporate Services, Inc. and DTE Electric Company ("Alliant/DTE") at 35-39; Comments of the Public Utilities Commission of Ohio's Office of the Federal

Specifically, the TAPS reply comments address the following:

- Other commenters confirm the need to strengthen the encouragement of inclusive joint ownership arrangements;
- Comments reveal widespread recognition of the effectiveness of the Commission's risks and challenges approach, as now implemented, in spurring needed transmission investment, and broad support for continuation of risks and challenges-based incentives;
- Requests for supplementing project-based risks and challenges incentives with ROE incentives based on benefits and/or characteristics are contrary to Section 219 of the Federal Power Act ("FPA")[4] and would undermine its objectives;
- Many agree that transmission planning processes, rather than increased ROE incentives, are the key to achieving Section 219's goals;
- The Commission should not create exceptions to the requirement for case-by-case evaluation of incentives;
- The Commission should not adopt shared savings incentives that make low-risk/low-cost technologies expensive for consumers; and
- Calls to perpetuate (or even enhance) the regional transmission organization ("RTO") Adder should be rejected; instead, the Adder should be time-limited or otherwise reduced.

I. INITIAL COMMENTS HIGHLIGHT THE NEED TO STRENGTHEN SUPPORT FOR INCLUSIVE JOINT OWNERSHIP ARRANGEMENTS

TAPS Comments strongly urge the Commission to retain and strengthen the 2012 Policy Statement's[5] encouragement of joint ownership with public power.[6] To achieve the many benefits these arrangements provide[7]—thereby advancing FPA Section

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Energy Advocate ("Ohio PUC") at 10.

[4] 16 U.S.C. § 824s, referred to as "Section 219".

[5] *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 P 24 & n.33 (2012) ("2012 Policy Statement").

[6] *See* TAPS Comments at 6-14, 85-87, 95-96. *See also id.* at 102-06 (need for and appropriateness of applying a hypothetical capital structure to public power ownership).

[7] Those benefits (summarized in TAPS Comments at 7-9) include planning: inclusive joint ownership

219(b)(1)'s goal of promoting capital investment in the grid "regardless of the ownership of the facilities," and fulfilling Section 217(b)(4)'s[8] directive that the Commission "facilitate[] the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities"—TAPS asks that the Commission:

- strengthen the 2012 Policy Statement (P 24 n.33) by changing "may be" to "is" (i.e., "Evidence regarding whether an applicant for incentives considered joint ownership arrangements is ~~may be~~ relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development");

- establish a rebuttable presumption that an incentive applicant's failure to provide a meaningful opportunity for joint ownership on a load-ratio-share basis to the transmission-dependent utilities ("TDUs") that will bear the cost of the facility demonstrates that the applicant has not sufficiently minimized risk prior to seeking incentives; and

- *if* the Commission grants ROE incentives for less-than-fully independent Transcos, do the same for inclusive joint ownership arrangements. Broad ownership participation has many of the governance benefits of a fully independent Transco, e.g., preventing one owner from steering the project in a direction that serves its generation interests.

Others join TAPS in demonstrating the many benefits inclusive joint ownership arrangements bring to achieving Section 219's objectives, as well as the existing barriers to public power ownership. For example, Joint Commenters[9] highlight the

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makes joint planning real, and results in a better and more efficient transmission system planned to meet multiple needs. A key example is CapX2020, consisting of eleven investor-owned, municipal, and rural cooperative utilities in Minnesota, North Dakota, South Dakota, and Wisconsin that jointly plan needed transmission upgrades and have opportunities to jointly own those facilities, resulting in $2 billion of transmission investment—the largest development of new transmission in the upper Midwest in 40 years. A new outgrowth of that effort is the CapX2020 utilities' recent announcement of "CapX2050"—their plan to study the Upper Midwest transmission system to identify system improvements and infrastructure upgrades that may be needed to achieve the ambitious 2050 carbon reduction goals established or proposed by utilities and policymakers, CapX2020, *Upper Midwest Utilities to Study Transmission Grid in Light of Ambitious Carbon Reduction Goals*, http://www.capx2020.com/documents/FINAL-CapX2050-study-press-release-8-16-2019.pdf (last visited Aug. 21, 2019).

[8] 16 U.S.C. § 824q(b)(4).

[9] Joint Initial Comments of the Aluminum Association, the American Chemistry Council, the American Forest and Paper Association, the American Public Power Association, Blue Ridge Power Agency, the California Municipal Utilities Association, the California Public Utilities Commission, the Cities of

Commission's long recognition that joint ownership arrangements mitigate risks associated with siting and environmental impacts and diversify financial risk; and they stress the need to enable TDUs to hedge increasing transmission costs through joint ownership.[10] GridLiance, supported by an affidavit from James Pardikes ("Pardikes Affidavit"), MCR Performance Solutions, demonstrates the role of public power participation in transmission ownership in creating a more reliable transmission grid and more competitive wholesale markets. They show the significant barriers to such participation[11] and document the resulting public power under-investments,[12] despite the interest of many in increasing their investment.[13] GridLiance and the Pardikes Affidavit show that the transmission planning disadvantage faced by public power entities significantly impacts reliability, resulting in service not comparable to what public utility transmission owners ("TOs") provide their own end-users and at higher cost. "Grid reliability and resilience should not depend on who provides the wholesale and retail service to an end-user if their circumstances are otherwise similar."[14]

Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, the Electricity Consumers Resource Council, the Industrial Energy Consumers of America, Maryland Office of People's Counsel, the Modesto Irrigation District, the National Association of State Utility Consumer Advocates, the New York Public Service Commission, Northern California Power Agency, the Office of the People's Counsel for the District of Columbia, the Public Utility Law Project of New York, the Transmission Agency of Northern California, and the Virginia Office of the Attorney General Division of Consumer Counsel ("Joint Commenters") at 52-55.

[10] *See also* Comments of the National Rural Electric Cooperative Association ("NRECA") at 9-11, 30-33; Comments of East Texas Electric Cooperative, Inc., and Northeast Texas Electric Cooperative, Inc. ("ETEC") at 3.

[11] GridLiance at 11-17; Pardikes Affidavit at 41-42.

[12] Pardikes Affidavit at 5-23.

[13] *Id.* at 26.

[14] GridLiance at 9-10; Pardikes Affidavit at 24-26. *See also* Pardikes Affidavit at 29-35 (describing other barriers to public power transmission ownership). This powerful evidence exposes the fallacy of Alliant/DTE's (at 33) comparability-based opposition to incenting joint ownership arrangements with public power.

TAPS' proposals for strengthening Commission encouragement of public power participation, summarized above, are echoed by others.[15] GridLiance has proposed a different mechanism to address the issue—a new Joint Ownership Incentive "awarded on a project-specific basis to jurisdictional utilities and non-public utilities that partner on new transmission projects that meet two objective, pre-defined criteria: (1) have been approved by a Commission-approved regional or local transmission planning process; and (2) that are at least 15% owned, in aggregate, by non-public utilities."[16]

TAPS prefers its own proposals for inducing inclusive joint ownership arrangements: they build on the Commission's existing approach adopted in the 2012 Incentive Policy to advance joint ownership as a risk-reducing measure; and they strive to do so without adding costs to consumers. However, if the Commission does not adopt the TAPS approach, it should give serious consideration to GridLiance's Joint Ownership Incentive, as it may be implemented consistent with TAPS Comments. One way or the other, any Commission modification to its incentives policy should include measures to strengthen its encouragement of inclusive joint ownership arrangements with public power entities.[17]

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[15] *See* Joint Commenters at 55-56. *See also* NRECA at 9-11, 30-33 (urging adoption of a precondition to incentives, particularly return-enhancing incentives); ETEC at 3.

[16] GridLiance at 1.

[17] The only "strong objections" to incenting public power ownership were voiced by "Consumer Organizations" (which consist of Block Grain Belt Express-Missouri; Block RICL; Citizens to Stop Transource – York; The Coalition for Rural Property Rights; CHARGE (NJ); Eastern Missouri Landowners Alliance; Missouri Landowners Alliance; Protect Sudbury, Inc.; Residents Against Giant Electric; Say NO to NECEC; Stop B2H Coalition; STOP Transource Power Lines MD, Inc.; Kerry Beheler; Rob Danielson; Jonathan Hisey; Alison Millsaps; Keryn Newman; Matthew Stallbaumer; and David Ulery) at 25-27. But those comments confuse merchant transmission developers with non-public utilities (which they mischaracterize as having no captive customers) and ignore FPA Section 219(b)(1)'s express directive to promote capital investment in transmission facilities "regardless of the ownership of the facilities."

II. MANY AGREE THE CURRENT RISKS AND CHALLENGES APPROACH TO PROJECT-BASED INCENTIVES IS EFFECTIVE

TAPS Comments demonstrate that neither fundamental reform of the Commission's current risks and challenges approach to project-based incentives, nor enhancement of cost-increasing incentives, is warranted.[18] The approach adopted in Order 679,[19] as refined in the 2012 Policy Statement (to emphasize risk-reducing incentives), combined with the assurance of cost recovery plus a Commission-regulated ROE, reversed the long-term decline in transmission investment that spurred Congress to enact Section 219. The skyrocketing transmission investment since 2006 shows no signs of slowing down. Because the current approach is clearly effective in getting needed transmission built (without exacerbating the dramatic associated transmission rate increases), TAPS urges it be retained with only limited modifications—i.e., that any ROE incentives be restricted to ten years, and capped at a reasonable level through a mechanism not dependent on the top of the proxy group.

A broad range of comments reinforces TAPS' demonstration of increasing transmission investment under the Commission's existing incentive policies.[20] Several

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[18] TAPS Comments at 14-26.

[19] *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (2006) ("Order 679"), *on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006) ("Order 679-A"), *clarified*, 119 FERC ¶ 61,062 (2007).

[20] *E.g.*, Initial Comments of the New Jersey Board of Public Utilities and the New Jersey Division of Rate Counsel ("New Jersey") at 7-17; Comments of Southern New England State Agencies ("Southern New England State Agencies") at 4-9; NRECA at 7 n.20. *See also* Initial Comments of NextEra Energy Transmission, LLC ("NextEra") at 4-5 (noting increased investment in transmission since 1999); Initial Comments of the MISO Transmission Owners ("MISO TOs") at 4, 6 (existing transmission incentives have led to significant and increased investment in new transmission infrastructure); Initial Comments of WIRES ("WIRES") at 3 (recognizing resurgence of transmission investment in last two decades); Initial Comments of Eversource Energy Service Company ("Eversource") at 2 (". . . Order No. 679 has been successful in incentivizing significant new transmission infrastructure projects. . . . [T]he availability of incentives under Order No. 679 has been instrumental in incentivizing the construction of a number of major transmission projects that have resulted in significant benefits to New England consumers, including

confirm that the pace of transmission investment has continued to grow even after the 2012 Policy Statement significantly limited awards of project-based ROE incentives.[21] Invenergy[22] points to traditional utilities' increasing interest in transmission investment as a change in business strategy, and notes that competitive developers (including affiliates of traditional utilities) are vying to do the same,[23] concluding (at 8):

> When a new transmission project is announced today, companies are clamoring to build it. It makes no sense to continue to award ROE incentives as a matter of course when there are so many companies ready, willing and able to construct new transmission. Indeed, today there may be many non-incumbent transmission developers that can undertake transmission projects more cheaply than the traditional utility relying on a traditional ROE without incentives.

Others note the absence of empirical data showing the effectiveness of ROE incentives,[24] with some highlighting the massive growth in "self-approved" transmission investments

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reducing congestion costs by several hundred million dollars each year."); *see also id.* at 10-11.

[21] *See, e.g.*, Joint Commenters at 12 ("according to the EEI, Brattle, and EIA figures cited above, there was no drop-off in transmission investment after the Commission issued its 2012 Policy Statement, which scaled back the award of incentive ROE adders. To the contrary, transmission investment increased significantly in the years following 2012."); Alliant/DTE at 5 (interest in and development of MISO transmission projects has grown over the past ten years); Comments of the New England States Committee on Electricity ("NESCOE") at 5 (documenting dramatic increase in transmission investment over the last decade).

[22] Comments of Invenergy Wind Development North America LLC, Invenergy Solar Development North America LLC, Invenergy Thermal Development LLC, and Invenergy Storage Development LLC ("Invenergy") at 7-8.

[23] *See also* Initial Comments of Competitive Transmission Developers ("BHE/GridLiance") at 4, which characterize "incentives that inflate investment returns . . . as . . . likely counterproductive to prevailing in Order No. 1000 transmission planning processes."

[24] *See* NRECA at 5-8; New Jersey at 18-19. *See also* Comments of Transmission Dependent Utility Systems ("TDU Systems") at 4-6 (substantial increase in transmission investment over the last decade may well be attributable to the expanded use of formula rates, which Order 679, P 386, recognized as risk reducing and conducive to large transmission expansion programs, and the enhanced role of regional transmission planning, noting the lack of evidence linking transmission expansion to ROE adders).

that receive no incentives.[25] Accordingly, some argue for modifying the current risk and challenges approach to constrict the availability of ROE incentives.[26]

Many commenters highlight the value and effectiveness of risk-reducing incentives (e.g., recovery of construction work in progress ("CWIP"), regulatory asset treatment of pre-certification expenses, recovery of 100% prudent plant costs abandoned for reasons beyond the control of the TO) in fostering transmission development.[27] Those calling for some or all of these incentives to be made automatic (an approach with which TAPS strongly disagrees[28]) stress their significant contribution to promoting transmission construction. For example, EEI (at 11-12) expressly acknowledges that risk-reducing incentives have helped facilitate transmission investment.[29]

Given the well-documented success of the Commission's risks and challenges approach as now implemented, it is not surprising that relatively few commenters suggest the Commission abandon it in favor of a benefits-based approach.[30] While some ask the

[25] *See* New Jersey at 16-18 (questioning need for ROE incentives in light of the dramatic growth in "supplemental projects" that do not receive incentives).

[26] For example, some would restrict risks and challenges-based ROE incentives to projects that provide demonstrable consumer benefits. *See, e.g.*, Comments of the Organization of MISO States ("OMS") at 8 ("Only projects that have significant benefits to customers that would not otherwise be built should be considered for [risk and challenges-based] transmission incentives"); Alliant/DTE at 8; TDU Systems at 13-14. Others ask the Commission to include a cost review as well as cost/benefit analysis (New Jersey at 18-21; Notice of Intervention and Opening Comments of California Public Utilities Commission ("CPUC") at 34-39), or to reconsider Order 679's rejection of the "but for" test. TDU Systems at 14-15.

[27] *See, e.g.*, Joint Commenters at 77-80, 87-89; NRECA at 11-14.

[28] *See* Part V below.

[29] *See also* Initial Comments of the Edison Electric Institute ("EEI") at 9 (quoting investor comments in the rulemaking leading to Order 679 that recognize risk-reducing incentives (e.g., CWIP and abandoned plant) as increasing the attractiveness of transmission investment); Initial Comments of PJM Transmission Owners ("PJM TOs") at 8-11 (value of risk-reducing incentives); BHE/GridLiance at 4 (competitive developers focus more on risk-reducing incentives to provide certainty to further spur transmission development).

[30] While ITC (at 19-20) and the Comments of Ameren Services Company ("Ameren") (at 7-13) call for a general switch to benefits-based incentives, others advocating abandonment of risks and challenges focus

Commission to *also* grant incentives on grounds beyond those designed to address a project's risks and challenges, doing so would be inconsistent with FPA requirements as discussed in Part III below. In short, the Commission's current approach to incentives works; there is no basis for reforming it to expand the availability or increase the level of incentives.

III. CALLS FOR ENHANCED "FLEXIBLE" PROJECT-BASED ROE INCENTIVES SHOULD BE REJECTED

EEI and a number of its members call for a "flexible" approach to incentives.[31] In their view, the Commission should award ROE incentives based on any combination of risks and challenges and/or benefits/characteristics (including but not limited to those identified in the NOI), with no limitation on their magnitude (i.e., not constrained by any zone of reasonableness or otherwise). And they urge that ROE incentives remain in place for the life of the project, with no risk of downward adjustment in the event the claimed benefits on which incentives were justified do not materialize.[32]

The primary argument of those asking the Commission to go beyond risks and challenges-based ROE incentives is to point to the value and benefits of transmission investments[33]—investments for which TOs are already amply rewarded with assurance of

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on the need to incent what they characterize as low-risk, low-cost transmission investments and operational practices (e.g., Advanced Energy Economy ("AEE") at 5; WATT Coalition Initial Comments ("WATT") at 4-5). *See* Part VI below.

[31] *See, e.g.*, EEI at 3-17, 24-30; Initial Comments of PPL Electric Utilities Corporation ("PPL") at 4-5; Comments of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. ("ConEd") at 5-8. *See generally* Comments of Exelon Corporation ("Exelon") at 9-10, 15-18, with limitations described below.

[32] On top of that, some urge that some or all risk-reducing incentives be made available automatically in at least some circumstances. *See* Part V below.

[33] *See, e.g.*, EEI at 24-28; Ameren at 8-11; ITC at 19; Exelon at 16-18. *See also* WIRES' "value-framework" at 6-7.

cost recovery plus a Commission-regulated ROE. But the fact that transmission investments may be beneficial and valuable does not mean that additional incentives are appropriate. To the contrary, because value-based pricing of a monopoly service has long been recognized as contrary to just and reasonable rates,[34] all they've done is confirm that these additional benefits-based ROE incentives would impose undue burdens. Conspicuously absent is any demonstration that the elevated costs imposed by additional benefits-based ROE incentives will not make it harder to secure the regional planning process and state approvals necessary for transmission construction, thereby undermining Section 219's objectives.[35]

This "free for all" approach to project-based incentives clearly violates Section 219 and is counter-productive to its goals. Where not justified on the basis of risks and challenges, ROE incentives would be more than is necessary to induce the intended behavior, and thus greater than the "return on equity that attracts new investment in transmission facilities" as authorized by Section 219(b)(2). Granting incentives on the basis of benefits or characteristics will not ensure that they are rationally related to *promoting* transmission investment as Section 219(b)(1) mandates.[36] Rather than adhering to Section 219(d)'s directive by producing tailored incentives that are "in fact needed, and [are] no more than is needed, for the purpose" as required for rates to be just and reasonable,[37] benefits- or characteristics-based incentives will amount to a "'bonus' for good behavior"—an approach the Commission rightly rejected in Order 679 (P 26).[38]

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[34] *See* TAPS Comments at 28 & n.97.

[35] *See id.* at 31-32.

[36] *Id.* at 26-28.

[37] *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955) ("*City of Detroit*"). *Accord Farmers Union*

For these reasons, TAPS Comments strongly oppose granting incentives based on benefits or characteristics, and urge that incentives be limited to those needed to induce investment given the project's risks and challenges, consistent with the 2012 Policy Statement. [39] TAPS also identifies the numerous legal and practical difficulties with predicating incentives on the objectives identified in the NOI.[40] We nevertheless provide core principles that are necessary (although not sufficient) to ensure that any incentive policy that incorporates benefits is consistent with Section 219[41]—principles that would not be satisfied by the various proposals for flexible benefits-based incentives.

In opposing benefits- or characteristics-based incentives, TAPS finds itself in good company. For example, the CAISO (at 2-3) persuasively demonstrates why ROE incentives should be based on the project's risks and challenges, not benefits:[42]

Cent. Exch., Inc. v. FERC, 734 F.2d 1486, 1503 (D.C. Cir. 1984) ("*Farmers Union*"). *See also* Order 679-A PP 25, 27 (incentives are awarded only where they "materially affect" decisions and are "tailored to address the demonstrable risks and challenges").

[38] *See Pub. Utils. Comm'n of Cal. v. FERC,* 367 F.3d 925, 931 (D.C. Cir. 2004) ("In general, cost-based ratemaking already ensures just and reasonable rates by providing for the recovery of costs, plus a rate of return on equity commensurate with investments bearing similar risk. If the Commission wants to depart from this formula and offer additional incentives, it must carefully tailor them, lest it run afoul of the requirement that rates be 'just and reasonable.' Otherwise, the 'incentives' are nothing but windfalls.").

[39] *See* TAPS Comments at 26-60.

[40] *See id.* at 60-92.

[41] *Id.* at 34-51. These principles include: (a) The Commission should not provide above-cost incentives for investments that TOs already have an obligation to make, and should limit such incentives to truly exemplary voluntary projects; (b) Benefits must be calculated in relation to costs, which must be confirmed before ROE incentives are implemented; (c) Benefits claimed as the basis for incentives must be clearly defined and quantified, with the applicant bearing the burden of proof on the level of claimed benefits and projected costs; (d) Incentives should be restricted to no more than ten years; (e) If not limited to no more than ten years, any benefits-based incentives regimen must include accountability for claimed project benefits; (f) The Commission should put in place measures to protect consumers from the cost of excessive incentives; (g) To ensure that only cost-effective and efficient projects receive incentives, any benefits-based incentives system must respect and support the Order 1000 and Order 890 planning processes; and (h) When an applicant has not been open to joint ownership arrangements with public power, there will be a rebuttable presumption that it has not taken all appropriate steps to minimize its risks.

[42] *See also* Comments of the California Independent System Operator ("CAISO") at 4-11.

> [T]here is no direct correlation between the net benefits a project approved in a regional transmission planning process provides or the type of transmission need a project meets, and the ROE adder that is necessary to attract capital or encourage a developer to build the project. Further, regional transmission planners ultimately determine what their transmission needs are; what projects should be constructed to meet those needs; and who should build them. These types of regional planner decisions should not create ROE adders for individual transmission projects. Rather, any project-based ROE adder should be tied to the specific risks and challenges of the project to the transmission developer the planning region has selected to construct it.

Others argue forcefully that allowing benefits- or characteristics-based incentives, rather than restricting incentives to those needed to overcome risks and challenges not addressed by the base ROE and risk-reducing incentives and measures, is inconsistent with the Commission's obligation to maintain just and reasonable rates.[43]

A fundamental fallacy underlying benefits-based incentives is laid bare by their advocates' argument against accountability if the claimed benefits that provide the basis for the incentive award do not materialize or evaporate, or if costs increase. Some even point to the difficulty in determining benefits as a reason to not provide for accountability and reduction of incentives if the benefits are not produced or sustained.[44] But "faith-

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[43] *See* Joint Commenters at 15-17; Southern New England State Agencies at 13-16; CPUC at 43. *See also* NRECA at 14-16, 20-23, 25-26.

[44] *See, e.g.,* Ameren at 26 (after-the-fact reporting to assess whether benefits materialized is a "fruitless and a costly burden" because benefits can change over time as a result of many factors, and the scope of the project may change); Exelon at 20 ("applicant should not be punished if its good faith estimates of benefits do not come to fruition given the difficulties in accurately estimating benefits, changes in project use from the use anticipated when the project was developed, or other changed circumstances. . . . [E]conomic benefits of a transmission project will vary based on the prices of the fuels used in power production, changes in the generation resource mix, and changes in demand, among other factors."); WIRES at 12 (benefits of transmission change over time due to various factors, but it would be highly problematic to reduce incentives if benefits diverge from those anticipated). *See also* Joint Comments of Public Interest Organizations on the Commission's Notice of Inquiry ("PIO") at 38 ("there will almost certainly be large discrepancies between forecasted and actual benefits because of changes in technology and cost (for

based" incentives cannot be squared with Section 219(d)'s express directive that the resulting rates be just, reasonable, and not unduly discriminatory or preferential.[45]

Vague threats that holding TOs accountable would "chill" investment[46] should not be credited. TOs would still be assured recovery of their costs, plus a reasonable ROE—only above-cost incentives for non-existent benefits would potentially be at risk. Nor can reliance concerns justify irrevocable, life-of-facility benefits-based incentives. EEI's attempt to support that view by quoting (at 8) one sentence from Order 679, P 36, ignores its context. The quoted concern related to the potential for the Commission to undermine project financing by unilaterally altering the terms of previously approved incentives. Any such concern, however, can and should be addressed by limiting the incentives' duration and establishing accountability requirements in the initial approval order. Paragraph 36 of Order 679 addressed incentives that "may extend over several years," and allowed applicants to "propose specific time periods by which their incentive-based proposals will not be 're-opened' in a manner incompatible with the nature of the initial approval"; it did not require life-of-facility incentives or disallow re-openers compatible with the initial approval. Indeed, "to ensure that ratepayers are . . . adequately protected," Order 679, P 36, went on to provide for accountability as to whether the "plan is delivering the benefits that formed the basis for the Commission's initial approval" (by, for example, periodic assessments "to determine whether and how the applicant is providing the anticipated benefits and thus that the approved incentives need not be

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example solar and batteries).").

[45] *See* TAPS Comments at 26-28, 34-42, 111-12.

[46] *See, e.g.*, Comments of National Grid USA ("National Grid") at 20-21.

revisited"). This crucial balance between investor and ratepayer interests must be maintained. If the Commission were to allow benefit-based incentives, any order approving such incentives should limit their duration and provide for accountability.[47]

Generalized endorsement by EEI and some of its members of the benefits and characteristics objectives identified in the NOI is undermined by the recognition by others that such incentives are inappropriate.[48] For instance, Exelon (at 22-24) opposes characteristics-based incentives (noting that characteristics are divorced from Section 219's focus on consumer benefits) and states (at 27) that incentives for enhancing reliability beyond what is required by mandatory standards are "unnecessary . . . to incent utilities to invest in such project[s]." The assurance of cost recovery, with a Commission-determined base ROE, already provides ample inducement for investments in enhanced reliability, security, and resilience;[49] additional benefits-based incentives will invite gold-plating.[50] And proponents of such incentives ignore the significant

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[47] To that end, TAPS asks that the projected costs (against which benefits should be calculated) be confirmed before ROE incentives are implemented; that incentives be limited to no more than ten years; and if the term is not so restricted, that the Commission periodically test whether the project is actually delivering the claimed benefits on which the incentives are premised, and terminate or reduce the incentive if the claimed benefits are not achieved and maintained. *See* TAPS Comments at 37-42, 110-13.

[48] *See, e.g.*, Joint Commenters at 40-53, 57-66 (opposing benefits-based incentives for numerous of the NOI's identified objectives); NRECA at 26-30, 33-34 (same); CPUC at 45-46 (incentives unnecessary to induce compliance with mandatory reliability standards, and no reason to encourage going beyond those standards); Southern New England State Agencies at 25-37 (addressing inappropriateness of financial incentives on the basis of various benefits and characteristics identified in the NOI). *See also* Part IV regarding the substantial consensus that incentives are ineffective to promote interregional projects.

[49] Exelon's request (at 27-28) for a Commission policy statement acknowledging the value of such investments to better assure cost recovery is undermined by Exelon's March 28, 2019 Technical Conference testimony that its six utilities "have not experienced any issues with recovery on the prudent investments around the physical and cybersecurity." Transcript from March 28, 2019 Technical Conference at 151:14-16, *Security Investments for Energy Infrastructure Tech. Conferences*, Docket No. AD19-12-000 (Apr. 26, 2019), eLibrary No. 20190426-4001 ("Security Conference Transcript").

[50] *See* TAPS Comments at 60-63 (quoting, among other things, American Electric Power Company, Inc. ("AEP") statements at the March 28, 2019 Technical Conference that investments in resiliency and reliability of the grid are "really probably one of [the] least risky investments we can make," Security

difficulties and administrative challenges associated with quantifying the benefits in a manner that appropriately excludes benefits associated with required additions.[51]

The Commission should also reject suggestions by EEI and others[52] that as an additional incentive, the Commission allow capitalization of expenses incurred for operation and maintenance of transmission (including compliance with NERC-required vegetation management and cyber and physical security), so that TOs earn a return on those costs. TOs are fully compensated for such expenses when they are incurred; they should not be granted incentives for simply doing what is already required to comply with mandatory tariff requirements and good utility practice.[53] The requests of EEI and others to capitalize such expenses, moreover, is a strong indication that current base ROEs significantly exceed TOs' actual cost of capital and should be lowered.[54]

Calls for benefits-based incentives for objectives beyond those included in the NOI[55] ignore Section 219(a)'s express focus on "benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission

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Conference Transcript at 78:18-19). For that reason, Comments of AEP, at 14-17, that call for enhanced ROE for expenditures undertaken pursuant to a company-specific Resilience and Security Action plan are suspect. In addition, they should be rejected for the reasons discussed in TAPS Comments at 70-74.

[51] *See* TAPS Comments at 34-51, 60-63, 70-73.

[52] *See, e.g.*, EEI at 27; WIRES at 9-10; PJM TOs at 29-30.

[53] *See* TAPS Comments at 35-37, 60-64, 70-73.

[54] *See id.* at 77-78 and Part VI below.

[55] *See, e.g.*, PIO at 10 (proposing additional benefits objectives (e.g., environmental and employment benefits) beyond those in the NOI); Initial Comments of the American Wind Energy Association ("AWEA") at 9-10 (urging a holistic accounting of benefits, including environmental). *See also* Initial Comments of Americans for a Clean Energy Grid ("ACEG") at 2, 12-13, 15 (urging the Commission not to artificially limit benefits to be incented to those related to reliability and reductions in the cost of power by reducing congestion, and advocating a wide range of benefits including environmental, employment and economic development.).

congestion."[56] And those advocating incentives based on qualitative as well as quantitative potential benefits,[57] on an additive basis where a project advances multiple goals,[58] and without analysis of the relationship of those benefits to project cost, overlook Section 219(d)'s just and reasonable requirements and the associated well-established Commission policy.[59]

Finally, suggestions that no outer bounds should be placed on incentives violate Section 219's twin directives that incentives be sufficient to "attract[] new investment in transmission facilities (including related transmission technologies)," but "subject to the requirements of [Sections 205 and 206] that all rates . . . be just and reasonable and not unduly discriminatory or preferential."[60] Ameren's suggestion that because benefits-based incentives are not awarded based on risk, they should not be restricted by any zone of reasonableness[61] ignores those fundamental requirements. And, as explained in TAPS Comments (at 116-17), setting an outer-bound limit on incentives sends an important signal to state and local siting and permitting authorities, their constituents, and ratepayers generally that charges for new transmission lines will not be untethered from costs. Consistent with these requirements and objectives, TAPS Comments urge adoption of a fixed cap on total ROE incentives: all company-wide ROE incentives

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[56] *See Nat'l Ass'n for the Advancement of Colored People v. Fed. Power Comm'n*, 425 U.S. 662, 671 (1976) (FERC's predecessor agency was authorized to consider the consequences of discriminatory employment only to the extent they are directly related to establishment of just and reasonable rates).

[57] *See, e.g.*, Ameren at 10; ITC at 19.

[58] *See, e.g.*, PJM TOs at 27. *See also* ITC at 8 (50 to 100 adder benefits-based ROE adder, with multi-value projects automatically entitled to maximum ROE adder of 100 basis points).

[59] *See* TAPS Comments at 26-30, 32-43, 52-60. *See also id.* at 60-85, 87-92 (discussing the incentive objectives identified in the NOI).

[60] Section 219(b)(2), (d).

[61] Ameren at 10-11.

would be limited to no more than 50 basis points and all project-specific incentives limited to no more than 100 basis points, allowing a maximum cumulative adder of 150 basis points for any one rate base component.[62]

IV. TRANSMISSION PLANNING PROCESSES, RATHER THAN INCREASED ROE INCENTIVES, ARE THE KEY TO ACHIEVING SECTION 219'S GOALS

TAPS Comments stress the central role of robust transmission planning processes in achieving Section 219's objective of promoting transmission investment that benefits consumers while ensuring just and reasonable rates. Order 1000 found that given significant transmission investments being made, regional planning and interregional coordination are needed to ensure the most cost-effective and efficient projects get built,[63] i.e., "the *right* transmission facilities,"[64] and thereby produce just and reasonable rates.[65] Through Order 679-A's rebuttable presumption and the 2012 Policy Statement's expectation that applicants show that transmission and non-transmission alternatives to the project have been or will be considered in the relevant planning process, the risks and challenges approach supports regional and RTO planning processes that the Commission has worked for more than a decade to foster.[66] Benefits-based incentives, however, threaten to undermine those processes.[67] TAPS pointed to the planning processes as the

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[62] *See* TAPS Comments at 117-18.

[63] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, PP 42-50 (2011) ("Order 1000"), *reh'g denied*, Order No. 1000-A, 139 FERC ¶ 61,132, *on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012*), review denied sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (per curiam).

[64] Order 1000, P 50 (emphasis added).

[65] *Id.* PP 42-50, 58-59.

[66] *See* TAPS Comments at 22-24.

[67] *See id.* at 30-32, 57-59.

better way to promote various benefits objectives identified in the NOI, noting that if these processes are not yielding sufficient additions of the type the Commission seeks to foster, they can and should be modified. If the Commission nevertheless allows benefits-based incentives, TAPS urges the Commission do so in a way that relies on, rather than encourages evasion of, the Order 890 and Order 1000 planning processes, and to reject benefits-based incentives for projects that do not undergo an Order 1000 planning process or a robust, fully transparent, and replicable Order 890 planning process. [68]

TAPS is not alone in urging the Commission to strengthen regional planning requirements for incentives, especially if it moves towards benefits-based incentives. For example, to provide greater assurance that projects awarded return-enhancing transmission incentives will likely provide consumer benefits that justify the incentives, Joint Commenters urge that approval of a project in a Commission-approved regional transmission planning process be made a prerequisite for incentive rate treatment under Section 219.[69] Others call for disqualifying from incentives "self-approved projects" that lack independent review.[70]

Even those whose views on incentives are quite different from those of TAPS agree that improved transmission planning, rather than ROE incentives, is the key for achieving Section 219's objectives.[71] For example, AWEA rightly recognizes that

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[68] *See id.* at 43-51.

[69] Joint Commenters at 18. *See also* TDU Systems at 15 ("the Commission should not authorize ROE adders for any project not selected in a regional or inter-regional transmission planning process).

[70] Initial Comments of LSP Transmission Holdings II, LLC ("LSP") at 1, 3-4. *See also* TDU Systems at 19 (addressing "Supplemental Projects" in PJM).

[71] Potomac Economics oddly suggests market-based incentives (including allocating Financial Transmission Rights or Financial Capacity Transfer Rights) be used to incentivize *merchant* transmission whose investment is not recovered through rates, Comments of Potomac Economics, Ltd. ("Potomac

"potential transmission investments are not typically sidelined by inadequate rates of return. Rather, in most cases, substantial private capital is already available for new transmission development, even at current rates of return, and it is other barriers that stand in the way of the projects."[72] Identifying as barriers "the complex and uncertain process for transmission permitting, planning, and cost allocation," AWEA observes that absent improvements to transmission planning and cost allocation "incentives simply add additional costs to the project, which in turn can undermine the project's attractiveness to the customers who ultimately pay for the project and make it harder to get over these hurdles."[73] NextEra similarly emphasizes the critical role of the regional transmission planning process in identifying needs and the projects to be constructed: "Awarding ROE incentives . . . would not result in more of [particular types] of projects being identified in the planning process and constructed, and would needlessly add to the cost."[74]

Economics") at 17. While TAPS agrees that non-incumbent projects can be cost-effective (*see* Potomac Economics at 18, pointing to recent Order 1000 processes), that observation reinforces the need to support and reinforce RTO transmission planning processes, rather than incent (through assignment of financial rights whose proceeds would otherwise be distributed to load) merchant transmission that is not necessarily subject to those processes.

[72] AWEA at 2.

[73] *Id.* at 3. *See also* PIO at 2-3, 5, 8 (discussing shortcomings in the existing planning processes and cost allocation).

[74] NextEra at 15 (discussing projects to facilitate efficient interconnection of generation). *See also id* at 17 (discussing unlocking locationally constrained resources). NextEra points to expansion of the projects subject to competitive processes to maximize consumer benefits. *Id*. at 6-7, 20. *See also* LSP at 9-11. While competitive bidding of transmission projects can provide an important means to get needed transmission built at reasonable cost (*see* TAPS Comments at 20), the Commission should not undermine the associated consumer benefits by providing incentives for cost-contained bids as urged by ConEd at 10 and in Comments of New York Transco, LLC at 9-10. Nor should the Commission rebuttably presume that accepted cost-contained bids are just and reasonable as advocated by NextEra at 9 (*see also* BHE/GridLiance at 9-12 (bids accepted in a qualifying competitive process are necessarily just and reasonable)). *See* Comments of Transmission Access Policy Study Group at 22, 28-29 (Oct. 3, 2016), *Competitive Transmission Dev. Tech. Conference*, Docket No. AD16-18-000, eLibrary No. 20161003-5264 (no incentive is warranted for "cost-contained" bids; the Commission is obligated to ensure cost- contained

Indeed, with only limited exceptions,[75] there is a strong consensus among commenters that incentives are *not* helpful to getting needed interregional transmission projects built; rather, the focus must be on improving the processes for identifying and approving such projects.[76] A number of commenters, moreover, agree with TAPS that by increasing the cost of potential new projects, ROE incentives are counter-productive—making the project more difficult to justify when costs are balanced against benefits and more difficult for states to approve.[77] As explained in TAPS Comments (at 82-83), rather than allow for benefit-based incentives, now is an appropriate time for the Commission to revisit and strengthen the interregional coordination required by Order 1000.

V. THE COMMISSION SHOULD REJECT CALLS TO DEVIATE FROM CASE-BY-CASE EVALUATION OF INCENTIVES

TAPS and others strongly advocate for retention of the Commission's case-by-case approach to granting incentives.[78] In contrast, EEI and others ask the Commission

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bids are just and reasonable).

[75] *See* Initial Comments of Avangrid Networks ("Avangrid") at 32-33 (advocating 200 basis point ROE incentive for interregional projects); Comments of the R-Street Institute ("R-Street Institute") at 3 (seeking "bonus" ROE incentives or share of production cost savings for interregional project).

[76] *See* ITC at 15-16 (Order 1000 interregional coordination needs to be reformed, "Without necessary reforms, these projects are unlikely to be built because the transmission planning processes for interregional projects are unworkable"); NextEra at 17 ("The lack of interregional projects is not symptomatic of an unwillingness on the part of utilities and developers to invest in or construct interregional projects. Rather, it reflects a failure of the regional and interregional planning processes to identify projects that meet the criteria for inclusion in the plans of more than one region for purposes of cost allocation."); Ameren at 18-19 (interregional coordination and cost allocation are "fundamental reforms" that need to be addressed before incentives can have any impact); AEE at 12-15 (triple hurdle for interregional projects is a significant barrier to interregional projects); PIO at 25-26 (interregional coordination is a failure and needs improvement); ACEG at 3, 5 (urging a single, multi-regional process to address disincentives in current interregional coordination process); Joint Commenters at 53 ("any perceived lack of interregional projects since Order No. 1000 was implemented likely has less to do with the Commission's incentive rules and more to do with the requirements for planning and cost allocation for interregional projects under the rules adopted in various regions"); NRECA at 30 ("The issue [for interregional projects] is not sufficient incentives but rather addressing and adopting appropriate cost allocation.").

[77] Invenergy at 4, 6. *See also* Southern New England State Agencies at 28.

[78] *See* TAPS Comments at 52-55, 107-08, 113-14. *See also* Joint Commenters at 6, 77-80, 87-89, 95-97;

to treat one or more of the risk-reducing incentives as automatic where a project is directed by an RTO through its planning process or selected for regional cost allocation in an Order 1000 planning process, to mitigate the risk of subsequent cancellation by the RTO or regional planning process.[79]

Although some characterize risk-reducing incentives as benefitting both TOs and customers,[80] these incentives can increase rates to consumers. For example, the abandoned plant incentive increases (from 50% to 100%) the prudently incurred costs borne by ratepayers if the project is abandoned for reasons beyond the TO's control. The incentive shifts the burden of risky projects entirely to ratepayers—a doubling of cost responsibility not altered by the after-the-fact review of the amount of prudently-incurred costs and the cause of the abandonment. Thus, the Commission has rightly insisted that this and other risk-reducing incentives be justified on a case-by-case basis. Indeed, given the recognized hazards of extending such incentives to *all* transmission projects (however authorized),[81] it is not surprising that few suggest they be made generally available as a ratemaking practice.[82]

NRECA at 16-18, 38, 43; CPUC at 23-30; OMS at 16-17; NESCOE at 14-15, 29.

[79] *See, e.g.*, EEI at 14-17 (projects selected in regional transmission plans should automatically be eligible for abandoned plant incentive); PJM TOs at 21-25 (abandoned plant incentive should be automatic for RTO-directed or government-directed projects); AEP at 18-19 (same); WIRES at 12 (abandoned plant incentive should be automatic for RTO-approved projects), Ameren at 19-20 (abandoned plant incentive and CWIP (but not regulatory asset treatment) should be automatic for projects selected for regional cost allocation in a regional plan).

[80] *See, e.g.*, MISO TOs at 12.

[81] *See* NOI Q 78.

[82] The few commenters that would more generally automate certain risk-reducing incentives (e.g., MISO TOs at 10-15 (CWIP and abandoned plant incentives should be made available as a matter of routine ratemaking, particularly for RTO-required projects); ConEd at 3 (CWIP and abandoned plant incentives should be made available as a matter of general ratemaking, not as an incentive); Eversource at 23-24 (same)) offer no demonstration why a generic change in the Commission's transmission ratemaking policy is warranted. They fail to demonstrate that as to all transmission projects, the additional costs and risks

Abandoned plant and CWIP incentives should remain subject to case-by-case determination even for RTO-required projects or projects selected for regional cost allocation pursuant to Order 1000. The burden of requesting such incentives is low—as proponents of such automation concede, abandoned cost incentives are "routinely granted . . . when requested, particularly within RTOs."[83] And making either or both of these incentives automatic in such circumstances would improperly remove their risk-reducing impacts from the Commission's evaluation of the total package of incentives, resulting in unjust and unreasonable rates.[84] Especially where EEI and others are seeking to increase and expand ROE incentives, and where EEI admits that risk-reducing incentives makes transmission investment more attractive to investors,[85] the Commission cannot, consistent with its FPA obligations, grant risk reducing incentives outside the process where it evaluates the need and appropriate level of the requested ROE incentive as part of the total package of incentives, as required by Order 679 and the 2012 Policy Statement.[86]

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borne by ratepayers meet the just and reasonable standard. For example, they offer no demonstration that shifting all risk to customers would not improperly encourage risky projects, particularly those not approved through a regional process. *See* TAPS Comments at 108. Nor do they address the excessive returns that would result from removing the ROE-reducing impact of those incentives from consideration in evaluating the total package of incentives as discussed below.

[83] PJM TOs at 22. *See also* MISO TOs at 12. While MISO TOs request for automation of CWIP and abandoned plant for RTO-approved investment as a further encouragement of RTO participation (*id*. at 13-14), they also (at 6-10) support continuation of the current RTO Adder, with no reduction to take account of automating those incentives. As discussed in Part VII below, there is no need to enhance the incentive for RTO participation.

[84] *See* TAPS Comments at 52-55, 107-08.

[85] EEI at 11-12. *See also S. Cal. Edison Co.*, 112 FERC ¶ 61,014, P 61 & n.49 (2005) (100% recovery of abandoned plant may warrant a reduced ROE).

[86] *See* Order 679-A P 27; 2012 Policy Statement P 6.

VI. THE COMMISSION SHOULD NOT ADOPT AN INCENTIVES POLICY THAT MAKES LOW-RISK/LOW-COST TECHNOLOGIES EXPENSIVE FOR CONSUMERS

A. The Commission Should Reject Proposals for "Split-the-Savings" Incentives

Although the NOI did not specifically request comments on split-the-savings incentives, a number of commenters propose them, mostly for new technologies claimed to be highly beneficial, low-risk, and low-cost.[87] The Commission should reject those proposals. Such incentives would perversely transform "low-cost" technological solutions into expensive ones for consumers, and funnel compensation to TOs potentially many times greater than actual cost—an outcome fundamentally inconsistent with the requirement to tailor incentives that are "in fact needed, and [are] no more than is needed, for the purpose."[88] Such incentives would also add to RTO uplift charges, because an extra charge—on top of the locational marginal prices actually paid by load-serving entities ("LSEs")—would need to be collected from LSEs in order to pay TOs the incentive.

The various split-the-savings incentives proposed by commenters[89] are performance-based rates,[90] but fail to meet the Commission's basic requirements for such

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[87] *See, e.g.*, WATT at 5-6 (recommending that TOs receive 25% of congestion savings for "innovative technologies focused on grid operations"—i.e., "hardware, software and associated protocols applied to existing transmission facilities that increase the network's operational transfer capacity."); Potomac Economics at 9 (recommending that TOs receive revenues from RTOs "equal to some or all of the congestion surpluses"); PIO at 36 (supporting WATT's shared-savings proposal for advanced technology); ACEG at 6, 32-33 (supporting WATT's shared-savings proposal); AEE at 17, 21-22 (supporting WATT's proposed shared-savings approach). *See also* AWEA at 5, 8, 16, 19-20, 26 (recommending shared-savings incentives and supporting WATT, but also stating that it "believe[s] that performance-based incentives compensated through shared savings provides a better option than focusing on the technology itself"). National Grid (at 57-82) is an outlier in proposing to apply split-the-savings incentives to a much wider range of TO actions and investments.

[88] *City of Detroit* at 817.

[89] *See, e.g.*, WATT at 5-9; Potomac Economics at 8-11.

rates. As TAPS explained in its Comments (at 80), the Commission has previously recognized that performance-based rates must be measured against some generally applicable benchmark; and it has found that "the current state of the industry structure—a multitude of transmission-owning entities, many that do not directly control their transmission assets and operate in diverse geographical regions with very different customer densities, system ages and configurations—makes the determination of generally applicable performance benchmarks unworkable."[91] The Commission has also concluded that performance-based rates should be symmetrical—i.e., opportunities for reward should be offset by a symmetric downside risk for TOs who fail to meet the applicable benchmark.[92]

The commenters advocating split-the-savings incentives ignore this guidance. They identify no generally applicable performance benchmark. Nor have they explained what has changed to make the determination of a generally applicable benchmark workable, warranting a departure from the Commission's earlier finding. And they recommend one-way ratchets—i.e., performance-based rewards without symmetrical penalties, as if all TOs are above-average.

The wrong-headedness of this approach is underscored by comments that support split-the-savings incentives for beneficial low-cost, low-risk TO actions *because* the existing risks and challenges framework does nothing to incent them.[93] Such comments

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[90] *See*, *e.g.*, AEE at 11.

[91] Order 679, P 271.

[92] TAPS Comments at 28 (citing *Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines, and Electric Utilities*, 61 FERC ¶ 61,168, at 61,606-07 (1992)).

[93] *See* AEE at 5. *See also* WATT at 4-5.

fail to recognize the basic underpinnings of monopoly regulation and cost-based rates: TOs are regulated monopolists; and they are essentially guaranteed full cost recovery (with a Commission-determined ROE) in return for adequately maintaining and expanding their transmission systems in a prudent, cost-effective matter.[94] No business in a competitive market would survive for long if it refused to implement low-cost, low-risk actions and investments that provide significant benefits to its customers. And such actions and investments are, and should be, requirements of good utility practice. That the risk and challenges framework does not provide additional financial incentives for such actions and investments is not a defect of the approach; it is a confirmation that no such incentive is necessary or appropriate. Commenters who argue that above-cost incentives should be paid to TOs in these circumstances are simply asking the Commission to endorse and formalize the payment of monopoly rents to TOs.

The dangers of heading down this path are illustrated by the specific shared-savings incentives proposed by certain commenters. Because they fail to set an appropriate "best-practices" standard of TO action and investment to use as the applicable performance benchmark,[95] their proposals financially reward late-adopters and create an incentive for TOs to hold the system hostage by delaying implementation of appropriate solutions or, even worse, exacerbating problems. Under Potomac Economics' and WATT's incentives proposals for Dynamic Ratings technology, for example, TO compensation is higher if congestion from existing transmission

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[94] *See, e.g.*, *New England Power Pool*, 97 FERC ¶ 61,093, at 61,477 (2001) (incentive denied to avoid "unjustly reward[ing] NEP for doing what it is supposed to do *i.e.*, to adequately maintain its facilities in a prudent, cost-effective manner."), *order on reh'g*, 98 FERC ¶ 61,249 (2002).

[95] 97 FERC at 61,480.

infrastructure is worse.[96] Giving TOs a financial interest in maintaining or creating congestion—either real, or based on overly conservative static line ratings—is a giant step in the wrong direction; and it is especially pernicious if the activity being awarded the incentive is an operational practice that will continue to receive above-cost payments so long as infrastructure to eliminate the congestion is not constructed.

Claims that no- or low-capital-investment actions should receive above-cost incentives because they are discouraged by the existing cost-based regulation system are likewise misplaced.[97] As TAPS Comments explained (at 77), if a utility's authorized ROE is equal to its actual cost of capital, it should be indifferent between operations and maintenance ("O&M") expenses that are recovered in the year they are incurred, versus equivalent long-term capital expenditures. If TOs are indeed selecting less-efficient, capital-intensive transmission expansions over deployment of superior O&M technologies, that may well be an unintended side-effect of excessive ROEs on rate base. The proper response in that case is to take a hard look at ROEs and any above-cost ROE incentives. Attempting to address the problem by also creating new above-cost incentives for O&M expenditures will only exacerbate market distortions.[98]

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[96] Potomac Economics at 9 (since the incentive is based on the "shadow price," which represents the production cost savings from relieving a binding constraint by one MW, multiplied by the MW difference between the Dynamic Rating and static rating, the more significant the constraint, the larger the incentive received by the TO for implementing Dynamic Rating); WATT at 5-6.

[97] *See*, *e.g.*, WATT at 7 (stating that deployments of these beneficial operational technologies "currently do not affect the TO's bottom line," so a financial incentive is appropriate to encourage adoption of such low cost/low risk grid operations technology).

[98] *See also* TAPS Comments at 77-78.

B. Dynamic Ratings Technology

Much of the discussion of split-the-savings incentives is focused on Dynamic Ratings technology and other methods of managing existing transmission infrastructure. WATT, Potomac Economics, and certain environmental public interest groups, for example, endorse a split-the-savings approach for TOs that implement Dynamic Ratings technology—perhaps including up to 100% of the congestion savings realized.[99]

For the reasons discussed above and in its initial comments,[100] TAPS opposes such treatment. If adoption of this or other operational technologies is as beneficial and low-cost/low-risk as WATT contends,[101] it should be mandated as part of the tariff's good utility practice requirements, without need of additional incentives.[102] As TAPS has explained, "Novel technologies will become the norm if they deliver; and keeping up with good utility practice as it evolves is the TO's baseline obligation."[103] And if the performance of these technologies is less assured, the Commission should be wary of placing its thumb on the scale, favoring them over competing technologies and transmission and other non-transmission alternatives.[104] In addition, to the extent that proponents of advanced technologies are correct that they can substitute for the construction of new transmission infrastructure,[105] they should be evaluated in Order 890

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[99] *See* note 87.

[100] TAPS Comments at 74-80.

[101] WATT at 4-5.

[102] *See* TAPS Comments at 34-36.

[103] *Id.* at 75.

[104] *See*, *e.g.*, NextEra at 23 (competition should lead to more innovative proposals to resolve transmission needs without incentives).

[105] *See*, *e.g.*, PIO at 21-22, 34; AEE at 3, 11-12, 16-19, 23; WATT at 3.

and Order 1000 planning processes where their benefits and costs—including the costs of any claimed incentives—can be fully considered.

Assessing the treatment of Dynamic Ratings technology needs to start with better understanding the advantages and pitfalls of applying it and the reasons why it has not already been adopted. The Commission's upcoming technical conference regarding management of transmission line ratings in Docket No. AD19-15-000[106] is an important first step in that direction.

The Commission should also consider the extent of TO authority to decide whether or not to implement these technologies. Potomac Economics' assertion that RTOs currently lack adequate authority with respect to Dynamic Ratings technology,[107] for example, is particularly troubling, because it is paired with a blunt admission that TOs can use their control over facility ratings to exercise market power. According to Potomac Economics (at 7):

> To the extent that the transmission owner owns generation or serves load in a load pocket served by its transmission facilities, the transmission owner may have an incentive to provide higher or lower ratings depending on how prices in the load pocket affect its net revenues and costs.

If TOs have retained the ability to use their control over transmission to benefit their generation function—by either refusing to implement Dynamic Ratings technology, or adopting static ratings that understate actual transfer capability—that fundamentally challenges the underpinnings of open access and the reasons why RTOs exist.

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[106] eLibrary No. 20190628-3060; *see also* Supplemental Notice of Technical Conference (Aug. 20, 2019), eLibrary No. 20190820-3010.

[107] Potomac Economics at 15. Potomac Economics also asserts (*id.*) that "Transmission owners must retain primary responsibility for determining ratings and must approve the parameters and methodologies . . .".

In the Order 2000 NOPR, the Commission expressly recognized the potential for market manipulation from allowing TOs to retain the ability to set facility ratings, and it proposed that RTOs assume that function.[108] In response to industry comments, the Commission modified that proposal in the final rule and allowed TOs to retain that function; but it "encourage[d] . . . such ratings to be determined, to the extent practical, by mutual consent of the transmission owner and the RTO, taking into account local codes, age and past usage of the facilities."[109] The Commission also stated that "as an RTO gains experience operating or directing the operation of the transmission facilities in its region, we expect this responsibility to migrate to the RTO, as facility ratings have at least an indirect effect on the ability of the RTO to perform other RTO minimum functions (e.g., planning and expansion, ATC and TTC)."[110]

RTOs have had almost two decades of additional experience since Order 2000; and the emergence of Dynamic Ratings technology appears to enhance the ability of TOs to use facility ratings to exercise market power. In considering technologies for managing line ratings—and certainly before granting any rate incentive that might further enshrine and reward existing TO control over facility ratings—the Commission should revisit whether and what steps should be taken to migrate this function to the RTO.

Finally, TAPS urges the Commission to actively engage with state regulators on Dynamic Ratings and other technologies for managing line ratings, both at the technical conference in Docket No. AD19-15-000, and elsewhere. Potomac Economics states that

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[108] *Regional Transmission Organizations*, 64 Fed. Reg. 31,390, 31,420-21 (proposed May 13, 1999).

[109] *Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. at 31,105 (1999), *order on reh'g*, Order No. 2000-A, 90 FERC ¶ 61,201 (2000), *appeal dismissed for want of standing sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[110] FERC Stats. & Regs. at 31,105-06.

there were $37 million in savings for Entergy alone from selective deployment of Dynamic Ratings technology in 2017-2018.[111] If benefits of this magnitude are clearly demonstrated, state regulators may well require utilities to adopt them.

I. THE COMMISSION SHOULD REJECT CALLS TO DOUBLE DOWN ON THE RTO ADDER

Many commenters[112]—including state regulators[113]—join TAPS[114] in calling for revisiting and scaling back or eliminating the RTO Adder. Various TOs, however, argue for unlimited retention of the RTO Adder[115] and even increased RTO participation incentives,[116] asserting that the cost to consumers is outweighed by the benefits of RTO membership. But the highlighted benefits demonstrate that additional and significant inducements to continue RTO membership exist beyond costly ROE adders, undermining the need to perpetuate them.

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[111] Potomac Economics at 12.

[112] *E.g.*, Joint Commenters at 71-73; Initial Comments of Old Dominion Electric Cooperative at 2-3; Comments on Notice of Inquiry by the Office of the Ohio Consumers' Counsel at 12-13; Comments of TDU Systems at 25-29.

[113] New Jersey at 6 ("[T]he need for the RTO participation adder simply does not exist."); Southern New England State Agencies at 38-39 ("At least as concerns New England—if not elsewhere—there is no reasonable basis to continue to require customers to pay the TOs to take an action that they have themselves concluded is in their collective self-interest."); NESCOE at 26-27 (The Commission should revisit the RTO adder to ensure, on case-by-case basis, why an adder is or continues to be warranted); OMS at 13-14 (RTO participation incentive need not be an ROE adder; should be designed to address governance issues); CPUC at 50-51 ("[T]here is no principled or reasoned justification for awarding an incentive for membership in the CAISO."); Comments of the Organization of PJM States at 11 ("[N]on-ROE incentives may be better tailored to the Section 219(c) goal of promoting participation in Transmission Organizations," than ROE adders.).

[114] TAPS Comments at 96-101.

[115] LSP at 15; Exelon at 36-38; MISO TOs at 7-8; Avangrid at 36-37; EEI at 17-21; PJM TOs at 20.

[116] AEP at 2 ("Given the large benefits of RTOs in comparison to the costs of the participation incentive, and the ability of RTOs to help enhance grid resilience and security, an increase in the size of the [RTO Adder] would be justified. RTOs provide very substantial benefits to customers. These public benefits far exceed the current 50 basis point incentive.").

As explained in TAPS Comments, Section 219's directive to the Commission to create an RTO participation incentive came at a time when RTOs were still a relatively new and novel undertaking. But, as Duquesne Light Company notes, "[t]he benefits of RTO participation initially enumerated when the RTO Incentive adder was first implemented have increased exponentially" in the nearly 15 years since Order 679.[117] PJM notes that it provides a total estimated annual savings of $3.2 to $4 billion to the energy marketplace.[118] According to EEI, other RTOs offer similar levels of benefits.[119] These substantial benefits—which accrue to TOs as well as consumers[120]—demonstrate that the potency of inducements to drive and maintain RTO membership aside from the RTO Adder. Given the growing cost burden of the RTO Adder,[121] it should be time-limited or otherwise reduced.

Scaling back the RTO Adder is consistent with Section 219(c)'s mandate to incentivize utilities to *join* an RTO.[122] EEI, however, urges the Commission to read the statute as mandating that the RTO Adder continue in perpetuity.[123] But Section 219

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[117] Comments of Duquesne Light Company at 5.

[118] Comments of PJM Interconnection, L.L.C. ("PJM") at 7.

[119] EEI at 20-21.

[120] *See, e.g.,* MISO TOs at 7 ("RTO membership provides benefits . . . to the utilities that participate").

[121] TAPS Comments at 97 (impact of RTO Adder roughly $400 million annually and growing). *See also Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038, Commissioner Glick Concurrence P 4 (2019) ("The Commission's current approach to incentivizing RTO participation hands transmission owners across the country hundreds of millions of dollars every year with little indication that any of that money makes a meaningful difference in their decisions to enter or remain in an RTO"); *see also id.* P 4 n.13 ("PG&E alone earns $30 million annually from the RTO-Participation Incentive. *See* Protest of the California Public Utilities Commission, Docket No. ER16-2320-001, at 9-10; *see also* Protest of the California Public Utilities Commission, Docket No. ER18-169-000, at 10 (stating that SoCal Edison would earn over $25 million from the RTO-Participation Incentive in 2018).").

[122] TAPS Comments at 99.

[123] EEI at 19 ("The statute is clear that the Commission should provide an incentive not just for joining, but also for remaining in, an RTO/ISO.").

contains no such directive,[124] as PJM implicitly recognizes.[125] Indeed, the absence of such requirement is consistent with the expectation that the benefits of RTO membership would sustain membership over time.

Likewise, PJM's choice not to include an exit fee[126] does not justify the Commission providing an RTO Adder, much less one that extends across all RTOs. Exit fees are primarily intended to cover the costs to the RTO and its other members of a TO's departure from an RTO.[127] To the extent that PJM is concerned that its lack of exit fee may lead to increased membership instability, it is not hamstrung by its current choice—PJM may work with its members to address those concerns.

Thus, as advocated in TAPS Comments, the RTO Adder should be limited to no more than ten years from the date a TO (or its predecessor) initially joined an RTO (or the RTO Adder should be otherwise reduced), and should be awarded only to those TOs whose RTO participation is voluntary.

CONCLUSION

The Commission should take into account TAPS comments in considering whether and how to revise its transmission incentives policies.

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[124] TAPS Comments at 99 ("If Congress had intended the incentive be permanent, it would have so required.").

[125] *See* PJM at 2-3 (describing RTO Adder as important tool in achieving Congress's energy policy goals, but stopping short of arguing that a perpetual adder is required by statute).

[126] PJM at 8.

[127] *Am. Wind Energy Ass'n. v. Sw. Power Pool, Inc.*, 167 FERC ¶ 61,033, P 59 (2019) ("[T]he purpose of an exit fee is to: (1) ensure the RTO/ISO's ability to recover its costs and service its debt; (2) ensure withdrawing members do not impose increased responsibility for the RTO/ISO's financial obligations on remaining members; and (3) 'ensure that prospective members are serious and have enough of an interest in the RTO' and 'help provide stability and avoid volatility in the membership.'") (internal citations omitted).

Respectfully submitted,

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