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UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act	Docket Nos. RM20-10-000 AD19-19-000

POST-WORKSHOP COMMENTS OF TRANSMISSION ACCESS POLICY STUDY GROUP

The Transmission Access Policy Study Group ("TAPS") appreciates the opportunity to comment on issues raised during the September 10, 2021 Workshop concerning shared savings incentives for Grid Enhancing Technologies ("GETs").

INTRODUCTION AND OVERVIEW

As an association of transmission dependent utilities ("TDUs") in thirty-five states promoting open and non-discriminatory transmission access, TAPS has long recognized the need for a robust and efficiently utilized transmission infrastructure to provide non-discriminatory transmission access and foster competition. We therefore appreciate the Commission's efforts to examine the potential for advanced technologies to increase the capacity, efficiency, and reliability of transmission facilities. TAPS sponsored a witness, Steve Leovy (WPPI Energy), at the September 10, 2021 Workshop ("2021 Workshop").[1] We filed extensive comments, including comments addressing

[1] Second Supplemental Notice of Workshop (Sept. 9, 2021), eLibrary No. 20210909-3059; Transcript of Workshop to Discuss Certain Performance-based Ratemaking Approaches (Sept. 10, 2021), eLibrary No. 20211013-4001 ("2021 Workshop Tr.").

technology incentives, in this rulemaking process.[2] And we actively participated in the Commission's 2019 GETs Workshop,[3] as well as other GET-related proceedings.[4]

TAPS endorses the goal of adopting new technologies that can cost-effectively improve the ability of the system to transfer power. TAPS strongly supports deployment of GETs that are shown to deliver significant benefits relative to costs and risks in comparison to other alternatives, and where deployment is found to be productive, rather than potentially counterproductive, to other GETs then or anticipated to be deployed. To that end, in response to the recent Advance Notice of Proposed Rulemaking, TAPS is advocating changes to the planning process to ensure timely consideration, in an open and transparent regional process, of "quick fix" conventional solutions and GETs to reduce costs to consumers.[5]

But we strongly urge the Commission *not* to proceed with shared-savings GETs incentives, which effectively grant an uncapped return on equity ("ROE") to investments

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[2] Comments of TAPS Part III.C.1, *Inquiry Regarding the Commission's Elec. Transmission Incentive Pol'y,* Docket No. PL19-3-000 (June 26, 2019), eLibrary No. 20190626-5264 ("TAPS 2019 NOI Comments"); Reply Comments of TAPS Part VI, *Inquiry Regarding the Commission's Elec. Transmission Incentive Pol'y,* Docket No. PL19-3-000 (Aug. 26, 2019), eLibrary No. 20190826-5116 ("TAPS 2019 NOI Reply Comments"); Comments of TAPS Part XI (July 1, 2020), eLibrary No. 20200701-5410 ("TAPS 2020 NOPR Comments").

[3] TAPS sponsored Mr. Leovy as a panelist and submitted follow-up comments in the November 2019 Grid Enhancing Technologies Workshop, Transcript of Day 2 November 2019 Grid Enhancing Technologies Workshop (Nov. 6, 2019), eLibrary No. 20200106-4005 ("2019 Workshop Tr. Day 2"). Prepared Statement of Steven Leovy on Behalf of WPPI Energy and TAPS for the November 5-6 Workshop, (Nov. 12, 2019), eLibrary No. 20191112-4023 ("Leovy Statement"); Post-Workshop Comments of TAPS (Feb. 14, 2020), eLibrary No. 20200214-5154 ("TAPS GETs Post-Workshop Comments").

[4] *See* Post-Technical Conference Comments of TAPS, *Managing Transmission Line Ratings*, Docket No. AD19-15-000 (Nov. 1, 2019), eLibrary No. 20191101-5189, and comments supporting (with suggested modifications) the November 19, 2020 Notice of Proposed Rulemaking, Comments of TAPS, *Managing Transmission Line Ratings,* Docket No. RM20-16-000 (Mar. 22, 2021), eLibrary No. 20210322-5190 ("TAPS MTLR NOPR Comments").

[5] Comments of TAPS 2, 19-22, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection,* Docket No. RM21-17 (October 12, 2021), eLibrary No. 20211012-5388 ("TAPS ANOPR Comments").

that GETs developers claim involve little or no risk, and which cannot be demonstrated to be the minimum necessary to induce the desired behavior. The WATT/AEE Proposal considered at the 2021 Workshop[6] is particularly one-sided. As proposed, ratepayers will always pay actual project costs (including a Commission-approved ROE and potentially augmented by incentives including capitalized operations costs), *and* actual congestion costs, *and* the cost of the shared-savings incentive based on *estimated* savings relative to costs, regardless of whether the estimated savings actually materialize. All the risk is on the ratepayer, who could end up paying far more than if no GETs had been deployed. This cannot be squared with Federal Power Act ("FPA") requirements.

Further, the individual developer/transmission owner ("TO")-driven incentive approach—which is based on a narrow, project-specific view of GETs benefits and impacts—may not produce the more cost-effective and efficient solutions, resulting in consumers paying more. Even if estimated benefits from a specific GETs project materialize (despite RTO insistence that even they cannot accurately estimate benefits for this purpose), project cost plus shared-savings incentives could be more expensive to

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[6] The September 9 Second Supplemental Notice, 1 n.1, referred to the WATT Coalition and Advanced Energy Economy September 3, 2021 submission, WATT Coalition and AEE Shared Savings Proposal (Sept. 3, 2020), eLibrary No. 20210903-5088, as a shared-savings proposal to be discussed at the 2021 Workshop. That WATT/AEE submission was also separately posted as the "Shared Savings Proposal" on the Commission's official webpage for that Workshop. Workshop to Discuss Certain Performance-based Ratemaking Approaches (Sept. 10, 2021), https://www.ferc.gov/news-events/events/workshop-discuss-certain-performance-based-ratemaking-approaches-09102021; Shared Savings Proposal (Sept. 9, 2021), https://www.ferc.gov/media/shared-savings-proposal.

The shared-savings proposal contained in WATT/AEE's September 3, 2021 submission closely corresponds to pages 7-11 and Appendix B of the WATT and AEE Comments, Docket No. RM20-10 (July 1, 2020) eLibrary No. 20200701-5251 ("WATT/AEE 2020 NOPR Comments"). The April 15, 2021 Notice of the Workshop and the August 13 Supplemental Notice both identified the WATT/AEE 2020 NOPR Comments as the shared-savings proposal under consideration at the 2021 Workshop.

To avoid confusion, we will refer to the September 3, 2021 submission as the "WATT/AEE Proposal"; and we will refer to the WATT/AEE 2020 NOPR Comments where other portions of those comments are relevant.

consumers than a conventional transmission solution that produces equivalent or greater benefits. And consideration of GETs benefits for shared-savings incentives threatens to distort, distract from, or sidestep the planning process. This will not only undermine the regional planning processes that the Commission is seeking to bolster, as they are key to our ability to accommodate the nation's changing resource mix, but could result in counter-productive deployment of GETs, or deployments that open the door to discrimination in favor of the TO's load and generation.

Thus, shared-savings incentives to individual TOs and developers are the wrong way to make sure the right GETs are being implemented in a manner that results in more efficient use of our existing (or expanded) grid and reduced costs to consumers, while reliably serving load and accommodating the transformation of our resource mix. Measures to address the real obstacles to deployment identified at the 2019 and 2021 Workshops are essential to the success of any effort to promote efficient use of grid-enhancing technologies. In Part II.A below, TAPS identifies a number of important steps the Commission can and should take in order to do so.

If the Commission, nevertheless proceeds toward proposing shared savings incentives, it should not adopt the WATT/AEE Proposal but should instead include much more robust guardrails and consumer protections. *See* Part II.B below.

I. THE COMMISSION SHOULD NOT ADOPT SHARED SAVINGS INCENTIVES, PARTICULARLY IF STRUCTURED AS PROPOSED BY WATT/AEE

A. *Shared-savings incentives, on top of full cost recovery, are unjust and unreasonable*

Granting TOs and developers a share of estimated savings as an incentive, while shifting all risk to consumers who bear the full cost of the technology, as well as the

actual cost of congestion if claimed adjusted production cost ("APC") benefits do not materialize, would be a very bad idea. Such an incentive makes technologies that should be low-cost and low-risk into ones that are expensive and risky for consumers. During the 2019 Workshop, Dr. Joseph Bowring (Monitoring Analytics, LLC) explained: "Benefit sharing . . . is a terrible idea," resulting in an implied rate of return that is "uncapped" and "massively high."[7] They are contrary to FPA section 219(d)'s overarching just and reasonable requirement.

B. *Advocates of the shared-savings proposal make no demonstration that the proposed incentive is the minimum required to induce beneficial GETs deployment*

To start with a basic tenet of Commission regulation, it has not been shown that a shared-savings approach—much less the extreme WATT/AEE Proposal—is the minimum incentive required to achieve the desired behavior.[8] As the D.C. Circuit explained in *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955), "[i]f the Commission contemplates increasing rates for the purpose of encouraging exploration and development . . . it must see to it that the increase is in fact needed, and is no more than is needed, for the purpose."[9] It is hard to see how the WATT/AEE Proposal, which layers the "uncapped" and "massively high" implied rate of return associated with

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[7] 2019 Workshop Tr. Day 2, 307:17, 320:19-21 (Bowring, Monitoring Analytics). *See also* 2021 Workshop Tr., 36:7-12 (Fisher, EEI) (describing "values that could exceed the costs of installation"); *id.* 37:5-16 (Fisher, EEI) ("If we're not careful these benefits and assessments are going to be so large as to potentially be burdensome to customers . . . . [W]e're asking them to pay . . . either the TO or the developer, potentially a significant amount of money").

[8] *See* 2021 Workshop Tr., 11:7-12 (Leovy, TAPS).

[9] *See also Farmers Union Cent. Exch. v. FERC*, 734 F.2d 1486, 1503 (D.C. Cir. 1984) (rejecting incentive rates because the Commission '"must see to it that the increase is in fact needed, and is no more than is needed, for the purpose."' (quoting *City of Detroit*, 230 F.2d at 817)).

shared-savings incentives[10] on top of full cost recovery, can be "no more than is needed for the purpose."

C. *Absence of generally applicable benchmarks*

The WATT/AEE Proposal is a performance-based rate that fails to meet basic FPA requirements for such rates. The Commission has previously recognized that performance-based rates must be measured against some generally applicable benchmark. In declining to provide for performance-based rates in implementing FPA section 219, the Commission 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."[11] That characterization continues to be true.

Although not addressed by the WATT/AEE Proposal, or at the 2021 Workshop,[12] the need for a generally applicable performance benchmark is heightened when considering GETs shared-savings incentives because that baseline will be used not only to determine whether incentives are provided, but also to determine the amount of "savings" attributed to the GETs and thus the size of the financial incentive to be provided. For example, AARs have long been in use in several regions of the country.[13]

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[10] *See supra* note 7, at 5.

[11] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, P 271, *on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *clarified*, 119 FERC ¶ 61,062 (2007).

[12] *See* Leovy Statement at 10-11; TAPS GETs Post-Workshop Comments at 14.

[13] AARs have long been in use by AEP and a number of other utilities and have been adopted on a widespread basis in PJM and ERCOT. *Managing Transmission Line Ratings*, 177 FERC ¶ 61,179, P 51 (2021) ("MTLR Rule"). The MTLR Rule also points to Dominion, Entergy, and Exelon. *Id*. at PP 51, 196.

At the 2019 Workshop, David Patton (Potomac Economics) took the position that "AARs should be the baseline"; e.g., any shared-savings incentive for dynamic line ratings ("DLR") should be based on only the incremental benefit realized from DLRs, above and beyond the benefits that could be achieved from AARs.[14] To do otherwise would discriminate against proactive TOs (or TOs in regions, like PJM, where AARs are prevalent) by disproportionately rewarding TOs that fail to adopt inexpensive, proven AAR technology that generally expands transfer capacity and reduces congestion and associated costs.[15]

Such benchmarks, moreover, will need to be continuously reexamined as technology and industry standards evolve. For example, as discussed in Part II.B.2 below, with the issuance of the Managing Transmission Line Ratings Rule, which requires AARs on essentially all transmission lines, there should be no debate that AARs must now be part of any generally applicable performance benchmarks against which GETs benefits are measured. The Commission, however, is already actively considering

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[14] 2019 Workshop Tr. Day 2, 321:25 (Patton, Potomac Economics). *See also id.* Tr. Day 2, 322:1-5 (Patton, Potomac Economics) ("[I]f I'm a DLR and I'm looking at the WATT proposal, I wouldn't want you to assume AARs, because there goes 90 percent of my benefit . . . . I don't buy the argument that AARs are somehow unreliable, so we should start with . . . the ratings we have today") and 2019 Workshop Tr. Day 1, 76:18-24, (Nov. 5, 2019), eLibrary No. 20200106-4004 ("2019 Workshop Tr. Day 1"), (Bradish, AEP) ("[O]ur operators do use something called ambient adjusted ratings that I believe Lindsey wasn't pleased with, but we do use them. We've been using them for many years, apparently at our own peril, but we can apply them though to 40,000 miles of lines at fairly relative low cost, and so they do add additional capability").

[15] MTLR Rule P 85 ("[A]s the record demonstrates, despite differences across transmission systems, simply accounting for ambient air temperatures in transmission line ratings can reliably increase power transfer capability, resulting in significant reliability, operational, and economic benefits. Numerous commenters describe these benefits. For example, Potomac Economics estimates that the benefits to AAR implementation in MISO alone would have produced approximately $67 million and $49 million in reduced congestion costs in 2019 and in 2020, respectively." (footnotes omitted)). *See also id.* P 68 (noting comments from Potomac Economics, the MISO IMM, stating "that it conservatively estimates that the benefits of using AARs and emergency ratings in 2019 and 2020 would have been between 9% and 13% of the real-time congestion value, or $98 million and $114 million per year." (footnote omitted)).

whether to impose new DLR requirements that could raise the AARs benchmark just set by the MTLR Rule and eliminate any claimed need for a DLR incentive.[16] Unless performance benchmarks are continuously updated, shared-savings incentives will become a plainly inappropriate "'bonus' for good behavior"[17]— rewarding late-adopters and creating an incentive for TOs to delay implementation of appropriate solutions, abrogate their good utility practice obligations,[18] or—even worse—exacerbate problems, in hopes of later receiving an increased award.[19]

D. ***Absence of accurate quantification***

Even if the performance benchmark problem could be cured, the shared-savings incentives under consideration would not satisfy the 1992 Policy Statement's quantification requirement. That Policy Statement calls for quantification of consumer benefits to allow assessment of their value and the prospects for the benefit occurring, and to protect consumer interests as the FPA requires.[20] Even if the benefits assessment were limited to adjusted production cost savings,[21] such quantifications are too unreliable to use for setting shared-savings incentive rates for GETs.

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[16] *Id.* P 254. Indeed, issuance of a NOPR prodded interest in AAR deployment even in advance of Commission action on that NOPR. 2021 Workshop Tr., 286:1-8 (Leovy, TAPS).

[17] Order No. 679 (rightly rejecting such bonuses).

[18] The Commission should not provide above-cost incentives for investments that TOs already have an obligation to make. *See* TAPS 2019 NOI Comments at 34-37; TAPS 2020 NOPR Comments at 122-23.

[19] Leovy Statement at 12.

[20] *See Incentive Ratemaking for Interstate Nat. Gas Pipelines, Oil Pipelines, & Elec. Utils.*, 61 FERC ¶ 61,168, at 61,590, 61,600 (1992) ("1992 Policy Statement"), *reh'g denied*, 63 FERC ¶ 61,110 (1993). The 1992 Policy Statement was cited in *Cybersecurity Incentives Notice of Proposed Rulemaking*, 173 FERC ¶ 61,240, at 62,551 n.53 (2020).

[21] Some 2021 Workshop panelists would seek to include other, even harder-to-quantify benefits, which TAPS would oppose.

Panelists representing RTOs and independent market monitors ("IMMs") at the 2019 Workshop agreed that it would be impossible to quantify the future benefits from GETs accurately.[22] They explained that existing RTO benefits calculations are sufficient to enable transmission planners to evaluate the *relative* benefits of competing alternatives, but using those methodologies to calculate an *absolute* level of benefits to include an above-cost incentive in rates would be inappropriate.[23] As Neil Millar of the CAISO summarized, "I think we would have trouble defending that ourselves as a credible value."[24]

Under the WATT/AEE Proposal, only "mid-size" GETs projects go through any planning process; and even for those projects, GETs benefits estimates would be made

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[22] *See*, *e.g.*, 2019 Workshop Tr. Day 2, 312:7-9 (Patton, Potomac Economics) ("The idea that you could calculate benefits that are even close to accurate, especially when you go out in time, it's just not realistic."), *id.* 316:24–317:2 (Glazer, PJM) ("Can we calculate [the benefit]? Yes. What you then do with the calculation in terms of setting rates is I think those two are very different questions. I wouldn't answer the second one the same way as the first one."); *id.* 317:21–318:18 (Millar, CAISO) ("our economic evaluations are an important part of our transmission planning process . . . . We do put a lot of effort into that . . . . But to take one of those and say well we at the ISO are going to put a pin in this one and say that is valid for ratemaking purposes, we would have a lot of trouble with that . . . We could . . . follow a very prescribed set of assumptions and say okay, we will do the math for you, but that's where it would end because the long-term responsibility for that being a valid number for a very specific forecast, very specific set of outcomes, and landing on a long-term rate based on that, I think we would have trouble defending that ourselves as a credible value."); *id.* 320:7-10 (Bowring, Monitoring Analytics) ("So, yes, of course, [the RTO] can do [benefits] calculations, but they're wrong, and they're not going to be right over time and they're not a good basis for compensating people."); *See also* Leovy Statement at 12.

[23] *See* 2019 Workshop Tr. Day 2, 307:17-308:21 (Bowring, Monitoring Analytics) ("Benefit sharing, I think, is a terrible idea . . . you cannot calculate benefits. You cannot forecast benefits . . . . the idea that benefit sharing is a competitive way to go forward or is an appropriate way to do incentives technology is incorrect."). *See also* 2019 Workshop Tr. Day 2, 317:20-318:18 (Millar, CAISO) ("But to take one of [the calculations] and say well we at the ISO are going to put a pin in this one and say that is valid for ratemaking purposes, we would have a lot of trouble with that."); *id.* 319:1-4 (Lin, NYISO) ("In FERC Order [1000], the projects are compared against each other, not necessarily just on a benchmarking case, so we were able to come up with meaningful results from there."); *id.* 308:15-21 (Bowring, Monitoring Analytics) ("[T]he idea that benefit sharing . . . is an appropriate way to do incentives technology is incorrect."); *id.* 239:18–240:1 (Leovy, TAPS) ("a significant problem . . . with these incentives proposals is that we're basing incentives on something that's difficult to estimate.").

[24] 2019 Workshop Tr. Day 2, 318:16-18 (Millar, CAISO).

before considering other economic projects. Neither small projects nor projects in TO programs would go through a planning process, further undermining the reliability of any proffered benefit estimates. Absent a clawback, project sponsors would have every incentive to over-estimate those benefits.

Finally, the accuracy of benefit-cost estimates for GETs projects is particularly questionable in non-RTO regions. Most Order 1000 regional planning processes in non-RTO regions do not systematically consider adjusted production cost savings.[25] In such regions, there are no regional adjusted production cost modeling protocols in place to be leveraged; the basic data and models needed to perform such studies have never been assembled and validated. And they lack the type of independent oversight an RTO provides, increasing the potential for self-serving calculations.

These formidable estimation challenges highlight the significant problems with the shared-savings approach as applied to GETs. As noted by Edison Electric Institute's ("EEI") representative at the 2021 Workshop:[26]

> So in this approach you have to quantify with some level of precision, and you need some ability to compare and ensure that that made sense from a customer perspective because these are very low-cost technologies, and you're talking potentially about values that could exceed the costs of the installation.

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[25] For example, in the Order 1000 compliance process, the filing Florida utilities argued that use of production cost savings was too speculative in the absence of centralized dispatch. *Tampa Elec. Co.*, 148 FERC ¶ 61,172, P 406 (2014) ("Second Compliance Order"). Although it did not adopt their argument, the Commission "decline[d] to impose . . . [use of production cost modeling in Florida] at this time." *Id.* P 425.

[26] 2021 Workshop Tr., 36:7-12 (Fisher, EEI).

E. *Absence of any consequences if estimated benefits do not materialize, much less symmetry*

As the 1992 Policy Statement recognized,[27] performance-based rates should be symmetrical to avoid excessively burdening consumers. According to Katie Dykes (Connecticut Department of Energy and Environmental Protection ("CT DEEP")): "[A]s a general rule there should be at least some downside risk to developers if there is going to be significant upside earnings."[28] The WATT/AEE Proposal, however, would reward TOs/developers with potentially very substantial incentives based on estimated benefits, while subjecting them to no consequences whatsoever if the project underperforms. Such approach is contrary to the 1992 Policy Statement's symmetry requirement,[29] and the FPA's just and reasonable standard.

The WATT/AEE Proposal would not only eliminate any downside risk for TOs/developers, it would not even require them to return incentive payments they are awarded for estimated benefits that never materialize. The WATT/AEE Proposal would impose no true-up/clawback mechanism to protect consumers from paying both the cost of incentive payments tied to estimated shared savings, plus the cost of the congestion that was not mitigated to the extent estimated, even though the proposal does include after-the-fact calculations of actual benefits relative to costs for certain GETs.[30]

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[27] 1992 Policy Statement at 61,606-07.

[28] 2021 Workshop Tr., 117:3-5 (Dykes, CT DEEP).

[29] The 1992 Incentive Policy Statement states that if incentives are to reward utilities that succeed in achieving an objective, "incentive regulation should be designed to penalize utilities that fail to achieve [that objective]—opportunities for reward should be offset by a symmetric downside risk." 1992 Incentive Policy at 61,590.

[30] WATT/AEE Proposal at 12 (*ex post* benefits are "calculated and reported" for small projects).

Shared-saving proponents insist that after-the-fact benefit-cost calculations with a clawback will create too much uncertainty.[31] As explained by TAPS panelist Leovy, that argument simply confirms the existence of the risk that claimed benefits will never materialize, which the WATT/AEE Proposal would shift, along with all other risks, to consumers.[32] Dykes echoed that point:[33]

> Ex-ante incentives, in other words earning incentives before proving that the benefits have accrued, without a claw back can shift the entirety of the risk of savings not materializing onto ratepayers. I think that's always something that we look out for in those types of constructs.

TAPS panelist Leovy concluded:[34]

> I have a hard time reconciling the assertions that the risks are low with the unwillingness of proponents to shoulder those risks themselves. If the risks are truly as low as they're being proposed, then . . . there should not be this unwillingness to accept those risks as part of the benefit.

Thus, under the WATT/AEE Proposal, TOs and developers granted the incentive would face no adverse consequences from grossly overestimating savings relative to costs, inviting excessive rates with no consumer recourse. Given statutory limitations, a section 206 complaint, which by definition cannot be filed until *after* the three-year

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[31] For example, the WATT/AEE 2020 NOPR Comments at 13 assert that "as utilities would be very unlikely to undertake" GETs installations subject to *ex post* incentives calculation. *See also* 2021 Workshop Tr., 144:11-21(Gramlich, WATT); *id.* 145:12-16 (Gramlich, WATT).

[32] *See* 2021 Workshop, Tr. 110:18-111:6 (Leovy, TAPS) ("there's a question . . . of whether imposing an after the fact review that has teeth for the purpose of making adjustments to incentives, poses too many risks to proposers or to developers, and we've heard some people answer that question yes, it poses too many risks. But in the absence of that, all of those risks are still going to exist, they're just going to fall on ratepayers, so I think it's very clear that there are risks, and that if FERC adopts this sort of approach which we have many concerns about, . . . that will be important to consider those risks and account for them appropriately.").

[33] *Id.* 116:22-117:2 (Dykes, CT DEEP).

[34] *Id.* 125:15-20 (Leovy, TAPS).

period during which the shared-savings incentives rates are effective, would provide no opportunity for refunds of the wholly unjust and unreasonable incentive rates charged.

F. *Risks to the Planning Process*

A shared-savings incentive needlessly puts regional planning processes at risk:[35] complicating or distorting those processes if the benefit-cost calculations for determining the incentive are part of the process; or worse, sidestepping planning processes essential to ensuring selection of the more cost-effective and efficient solutions, at a time the Commission is working hard to reinforce those processes.

1. To the extent the benefits analysis used to determine the incentive payments is performed by the RTO through existing regional planning processes, doing so would complicate those crucial processes

At the 2019 Workshop, PJM's Craig Glazer warned that shared-savings incentives could make RTO planning processes more contentious and litigious:[36]

> If we now link the incentive to the individual cost benefit analysis we're doing, I guarantee you every one of those will be litigated . . . . If we're going to litigate the cost benefit on each one of those because now there's all these ratemaking incentives, we're going to be sitting here two-three years from now regretting what we did.

At the 2021 Workshop, Suzanne Glatz (PJM) similarly expressed concern about the impact of "turning the planning process into a forum for discussing ratemaking issues."[37] Jeremiah Doner (MISO) warned that it "would add another layer of complexity when

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[35] Part II.A below discusses ways to efficiently and cost-effectively integrate GETs into transmission planning processes without the burdens and problems that would be created by the shared-savings construct.

[36] 2019 Workshop Tr. Day 2, 288:18–289:3 (Glazer, PJM).

[37] 2021 Workshop Tr., 175:14-17 (Glatz, PJM).

we're looking at preferred solutions" that may have "unintended consequences as what that brings into the planning process . . . " [38] According to TAPS panelist Leovy, the shared savings incentive would "significantly complicate the existing process," [39] requiring RTO and stakeholder resources, that "risks providing a distraction, of side tracking" efforts to improve planning processes.[40]

2. WATT/AEE's proposal to assess GETs projects in separate newly created processes will be distorting and inefficient

The WATT/AEE Proposal will require the creation of new processes that threaten to distort existing transmission planning processes and impede the ability to achieve Order 1000's objective of selecting the most efficient and cost-effective alternatives.[41] Under the WATT/AEE Proposal, only "mid-size" projects go through any kind of a planning process. For those, WATT/AEE would insert a new stage into existing transmission planning processes during which GETs projects would be evaluated before, and separately from, other transmission and non-transmission alternatives.[42] This approach promises to cause all of the burdens and disruption that the RTO panelists warned of at the GETs Workshops, while also preventing transmission planners from fairly evaluating GETs and other alternatives head-to-head.

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[38] *Id.* 46:3-10 (Doner, MISO).

[39] 2021 Workshop Tr., 111:14-15 (Leovy, TAPS).

[40] *Id.* 112:7-8.

[41] *See also* 2021 Workshop Tr., 111:14-17 (Leovy, TAPS) ("Just the potential for this approach to significantly complicate the existing process, and to break the existing system in which we have a single entity in the case of an RTO."); *id.* 111:21-112:2 (Leovy, TAPS) ("And once we start having the ad hoc proposals . . . that's going to require RTO resources to evaluate that . . . all of which will distract from our fundamental problem of a separate process to improve not only the long-term planning processes, but the shorter term operational planning processes.").

[42] WATT/AEE Proposal at 3.

RTO panelists at the 2019 Workshop strongly opposed creation of the types of separate processes for evaluating GETs projects included in the WATT/AEE Proposal. NYISO panelist Lin, for example, warned that creating such a separate process could disrupt NYISO's existing Order 1000 planning process that is finally working.[43] Similarly, CAISO panelist Millar explained:[44]

> [W]e are concerned about having a second process overlaid on top of the one we already have in creating duplication and perhaps conflict, with people promoting one set of solutions on one side, a different competing set of solutions through the other process, and having to sort out through some litigation which process is supposed to prevail.

3. Section 205 proceedings are not "complementary to" nor a substitute for planning processes

For "small" GETs projects and TO programs, WATT/AEE propose that project sponsors propose the incentives they want directly to the Commission in a process they describe as "outside of and complementary to the planning processes" and "requir[ing] no change to existing planning processes."[45] But they concede that no planning process will apply. WATT/AEE assert that it is impractical for a $50,000 project to go through the

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[43] 2019 Workshop Tr. Day 2, 334:9-14 (Lin, NYISO) ("[P]lease do not invent another process on top of that."). *See also* TAPS 2019 NOI Comments at 29-30; *see also* 43-51, which likewise warned that creation of a benefits-based incentives system, separate from existing Order 890/1000 planning processes, would undermine the transmission planning processes which the Commission, RTOs, and stakeholders have worked hard to foster.

[44] 2019 Workshop Tr. Day 2, 333:19-25 (Millar, CAISO). *See also* 2019 Workshop Tr. Day 2, 286:11-18 (Glazer, PJM) ("[O]ne thing we don't need is another process."), 296:9-15 (Millar, CAISO). *See also,* 2021 Workshop Tr., 193:23-194:2 (Myhre, Alliant Energy) ("I would have some concern if we were to sort of break off the evaluation consideration of these technology solutions into their own separate process, and I think we need to keep that together within the ISO/RTO process.").

[45] WATT/AEE Proposal at 3.

full planning process.[46] Their concept is for TOs/developers to implement small GETs quickly (suggesting a six-month time frame).[47]

The WATT/AEE Proposal—that Commission rate proceedings be used to "validat[e]" the benefits calculation used to determine shared-savings incentives for small GETs projects, on a time frame that effectively precludes discovery or a hearing[48]—strains considerations of due process and, as discussed in Part I.G below, will impose heavy administrative burdens on the Commission under FPA section 205 to consider such requests. WATT/AEE's proposal is especially problematic given the challenges of accurately calculating the benefits of GETs projects. RTOs and IMMs participating in the 2019 Workshop agreed that even their benefits calculations are not sufficiently accurate or credible for ratemaking purposes.[49] The incentive calculations submitted by GETs project sponsors and their hired consultants will be even less reliable. Depending on individual TDUs and other stakeholders to police those incentive calculations through litigation is unreasonable; and the expense of such litigation could easily swamp GETs project costs (although not necessarily the claimed incentives), further inflating the consumer cost of technologies that are supposed to be affordable. All these concerns are heightened in the context of TO programs, since verification of claimed benefits is

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[46] WATT/AEE 2020 NOPR Comments at 7. They also concede that competition is not viable for small projects. *Id.* at 5.

[47] WATT/AEE 2020 NOPR Comments at 9.

[48] WATT/AEE Proposal at 5.

[49] *See* Part I.D above.

impossible in the context of TO programs where only the criteria for selecting projects, not the projects themselves, are to be identified.[50]

Even setting aside benefits calculation issues, Commission rate proceedings are not a substitute for consideration in a transmission planning process that meets the requirements of Orders 890 and 1000. And the proposed evasion of regional planning processes is extremely problematic. Efficient deployment of GETs requires the broad view afforded by a regional planning process. At the 2019 Workshop, Dr. Anjan Bose (Washington State University) described how more widespread adoption of a single technology or the implementation of multiple technologies could cause GETs to "fight each other."[51] AEP witness Bradish explained that this type of conflict is happening today even without widespread adoption, and "it gets harder to operate the grid with more [GETs] on it."[52] Operational interaction concerns were echoed at the 2021 Workshop,[53] with panelists also stressing the need for holistic study and to understand how the grid operator will apply GETs in order for them to be effectively evaluated.[54]

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[50] WATT/AEE Proposal at 6.

[51] 2019 Workshop Tr. Day 1, 80:6-12, 114:17–115:3 (Bose, Washington State University).

[52] *Id.* 90:18-23 (Bradish, AEP).

[53] For example, Yachi Lin of NYISO, pointed to real-world examples where the increase of transfer limits in one area resulted in an inadvertent decrease to another area. 2021 Workshop Tr., 247:2-12 (Lin, NYISO). Her comments were echoed by Eric Hsia (PJM), who emphasized the potential for interactions among GETs. 2021 Workshop Tr., 248:10-11 (Hsia, PJM) ("additional study is definitely needed to ensure that the overlapping installation does not introduce adverse impacts.").

[54] *See* 2021 Workshop Tr., 247:15-16 (Ali, AEP) ("we definitely will have to do more holistic scenario analyses around these."); *id.* 253:24-254:12 (Quier, PPL) ("once a line goes from going off static or ambient adjusted ratings and then over to dynamic which is variable . . . it does force you to look at that specific line holistically . . . it's no[t]…just looking at the rating in its own little like having tunnel vision . . . it's really important to just look at the whole protection of the line and how it affects the new limiting components.").

Such conflicts seem likely to be a particular problem in the United States, where devices from multiple vendors may be deployed simultaneously—either by a single TO/developer, or by different TOs/developers—in varied configurations and conditions on a dynamic AC grid made up of parts owned and maintained by a variety of entities. In this context, the potential for unintended consequences from widespread, piecemeal applications of new GETs is real. The failure to adequately understand and anticipate such consequences can have direct effects on electric service.

Thus, leaving benefits measurements and deployment decisions to TOs and developers seeking incentives endangers the planning process and potentially reliability. The ability to move GETs subject to shared-savings incentives if the initial installation does not yield the anticipated benefits[55] magnifies those risks.

G. *Challenges for the Commission*

Contrary to the claims of shared-savings incentives proponents,[56] the incentive approach will *not* make life easier for the Commission. Any such program will require rigorous oversight to make sure the resulting rates are just and reasonable, as the FPA requires.

Shared savings performance-based ratemaking is one of the more complex performance-based ratemaking methodologies,[57] triggering significant controversy and

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[55] *See* 2021 Workshop Tr., 143:3-7 (Wellinghoff, GridPolicy).

[56] *See* 2019 Workshop Tr. Day 2, 249:6-21, 250:11-22 (Gramlich, WATT); *see also* Grid-Enhancing Technology Conference Remarks Rob Gramlich, Grid Strategies LLC and WATT Coalition 2-3 (Nov. 12, 2019), eLibrary No. 20191112-4020.

[57] Department of Energy, Grid Modernization Laboratory Consortium, "State Performance-Based Regulation Using Multiyear Rate Plans for U.S. Electric Utilities," July 2017 at 4.8 ("Shared savings [performance-incentive mechanisms] are particularly complex."), https://gmlc.doe.gov/resources/state-performance-based-regulation-using-multiyear-rate-plans-u.s.-electric-utilities.

requiring modifications where it has been adopted.[58] And even if (over TAPS' objection) the Commission were to adopt a shared-savings incentives approach without an effective clawback if the assumed benefits do not materialize (and/or costs are higher), the need for after-the-fact benefit-cost calculations would not be eliminated. Rather, the Commission would need to have those calculations made and submitted for public scrutiny, so the Commission can determine whether the approach and the methodologies used result in just and reasonable rates, and to understand the impact of its policies and make any appropriate modifications.[59]

In addition, the Commission will need to frequently reassess the technologies eligible for incentives, as experience is gained and as technologies emerge, evolve, and become more proven. Consumers certainly should not pay incentive-elevated rates for truly experimental technologies; nor should the Commission provide incentives for investments that TOs are already obligated to make as part of good utility practice.[60]

Not only will the ongoing reassessments and oversight of the design of the shared-savings incentive program be burdensome, the procedural and administrative burdens of implementing the approach will be enormous. Commission assessment of individual incentive applications from project sponsors will involve examining benefits calculations that have not been fully vetted as part of the open and transparent RTO

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[58] State adoption of shared-savings incentives for demand-side management purposes shows the need for continuing oversight by the Commission, especially of benefits calculations. For example, California adopted a "relatively complex shared savings approach to compensation . . . . Disputes over net benefits soon developed . . . Disputes stretched over several years and proved intractable enough that the [California Public Utilities Commission] modified the mechanism." *Id.* at 6.9.

[59] The WATT/AEE suggestion that *ex post* benefits are "calculated and reported" for small GETs projects is clearly insufficient for this purpose. WATT/AEE Proposal at 12.

[60] TAPS 2019 NOI Comments at 34-37.

regional planning process. These benefits calculations will likely involve expert testimony and confidential information regarding the technology or the benefits calculations. Making these assessments within section 205's sixty-day timeframe will be very challenging for the Commission. Effective stakeholder involvement will be near-impossible—the cost and expertise required to participate effectively will be very high, with those efforts complicated by the need to secure and analyze confidential information. Even where the RTOs have a role, they cannot attest that their benefits methodologies accurately quantify the benefits;[61] thus, the task of doing so will fall to the Commission. Given the many assumptions and questions of fact that necessarily factor into any estimate of future benefits, at minimum an evidentiary hearing, with discovery, will be needed before granting shared-savings incentives—a costly process for all involved, which creates the potential for refunds with interest.[62] And the need to integrate the shared-savings incentives process into the formula transmission rates and associated protocols adds further hurdles and complexity. [63]

All these challenges are increased if, as envisioned by the WATT/AEE Proposal, small projects would be implemented (including applying for and securing Commission approval of shared-savings incentives) within a six-month time frame.[64] And it is even harder to understand how the Commission could fulfill its FPA responsibilities to ensure just and reasonable rates in approving shared-savings incentives for TO programs, which

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[61] *See supra* note 22, at 9.

[62] As noted above, addressing excessive benefits after-the-fact through a section 206 complaint cannot make customers whole.

[63] 2021 Workshop Tr., 113:3-12 (Bob Weishaar, Industrial Energy Consumers of America).

[64] *See* WATT/AEE Proposal at 5.

will not include project-specific benefit-cost calculations, but only the criteria to be used in selecting the small projects eligible for the shared-savings incentive. The Commission will need to fully evaluate all parameters of TO programs, which are particularly subject to opportunities for abuse, in a tight time frame. It is unclear how interested parties will have sufficient information to effectively comment on these challenging and novel issues.

Indeed, given the opportunities for discriminatory deployment of GETs to favor the TO's generation and load, and disadvantage competitors,[65] shared-savings incentives increase the need for the Commission to establish a process to independently monitor for discriminatory deployment. These opportunities are expanded if the TO/developer has the option to move the incentive-supported GETs equipment if the original location is not yielding savings, as advocated by some incentive proponents at the recent Workshop.[66]

II. THE AVAILABILITY OF BETTER PATHS FORWARD ARGUES AGAINST SHARED SAVINGS INCENTIVES; BUT IF ALLOWED, MUCH STRONGER SAFEGUARDS ARE NEEDED

A. *Rather than resort to problematic incentives, the Commission should take other actions to promote GETs deployment*

While the 2021 Workshop focused on shared-savings incentives, the most striking takeaway from the 2019 Workshop was how few panelists pointed to the lack of incentives as the obstacle to GETs deployment, or thought that benefits-based incentives made sense. Incentives were barely mentioned during the first day of that Workshop, in which panelists were specifically asked to address "current deployments of grid-enhancing technologies, and what actions the Commission could take to help alleviate

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[65] *See* TAPS GETs Post-Workshop Comments at 9, 16-17.

[66] 2021 Workshop Tr., 143:3-7 (Wellinghoff, GridPolicy).

any operational challenges or concerns" and "what challenges exist in current transmission planning processes."[67] Panelists identified a series of other barriers to GETs deployment, all apparently more pressing than incentives.[68] 2021 Workshop panelists highlighted the need for RTOs to gain familiarity with and accommodate GETs into their dispatch so they can be properly evaluated and used.[69]

Rather than attempt to counteract the TOs' inherent incentive to add transmission rate base by offering shared-savings GETs incentives[70] that are not only unlawful but likely to be very costly and potentially counterproductive to increasing the efficient use of the grid, TAPS urges the Commission to adopt better means to encourage appropriate deployment of GETs by addressing the real technology-specific obstacles to deployment. These include:

- Take technology-specific actions to enhance adoption based on evaluation of individual technologies.[71] The Managing Transmission Line Ratings Final Rule, which mandates widespread adoption of AARs and accommodation of DLR is a good

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[67] Grid-Enhancing Technologies, Agenda 1-2 (Nov. 12, 2019), eLibrary No. 20191112-4000.

[68] *See* TAPS GETs Post-Workshop Comments at 5-8 describing the real obstacles to deployment. These include: (1) GETs are not yet ready for prime time, requiring a lengthy process of working with GETs vendors through multiple iterations of the technology, just to get to the point of really assessing its potential positive and negative impacts; (2) black boxes provided by vendors who seek to protect what they view as proprietary information were insufficient to permit the modeling required to fully understand and assess the impacts of deploying these new technologies; (3) the need to evaluate potential interactions both between devices of the same type and with other new technologies that may be implemented.

[69] 2021 Workshop Tr., 115:24-116:2 (Dykes, CT DEEP); 283:4-11 (Patton, Potomac Economics).

[70] *See* TAPS GETs Post-Workshop Comments at 11, citing 2019 GETS Workshop Day 2 Tr. 306:14-24 (Bowring, Monitoring Analytics) ("[T]he idea that you could provide an adequate incentive to a TO to build a project which is one-one thousandth's the cost of a big transmission line by compensating by rate of return is simply a non-starter. It is impossible mathematically . . . I mean unless you want to give them a billion dollars, which I presume is outside the guidelines.").

[71] *See* Leovy Statement at 3-4.

example of that approach.[72] In issuing that Rule, the Commission opened a new docket (No. AD22-5) to further consider DLR implementation.[73]

- Require RTOs to accommodate grid-enhancing technologies that are sufficiently mature.[74] The Managing Transmission Line Ratings Final Rule's requirement that RTOs establish and maintain the systems and procedures necessary to allow TOs in their regions to electronically update transmission line ratings on at least an hourly basis[75] is an important step forward in this regard.

- Better integrate consideration of GETs into the planning process. This should include making more explicit the mandate to consider GETS as part of regional planning processes and expanding the MISO/PJM "quick fix" process,[76] to ensure timely consideration of GETs in conjunction with conventional projects, and assess interactions among GETs.[77] Complications from integrating GETs into planning processes are minimized without shared savings incentives.

- Ensure that GETs deployment is undertaken with safeguards to prevent them from being used by TOs to discriminate in favor of their own loads and generation.[78]

- Make clear that the Commission expects TOs to adopt low-cost, low-risk grid-enhancing technologies as part of good utility practice required by Commission tariff and other obligations. As TAPS panelist Leovy described at the 2019 Workshop:[79] "Standard best practice evolves over time. Utilities didn't need special incentives . . . to get rid of copper conductors and start installing aluminum conductors . . ." A

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[72] *Managing Transmission Line Ratings,* Order No. 881, 177 FERC ¶ 61,179 PP 83-89, 252 (2021).

[73] *Id.* P 36.

[74] *See* Leovy Statement at 3; TAPS MTLR NOPR Comments at 15-16; TAPS GETs Post-Workshop Comments at 8-9; 2021 Workshop Tr., 285:21-25 (Leovy, TAPS) ("for flow control, to really use that effectively, it would be great to be able to incorporate that into security constrain[ed] economic dispatch, and I don't believe we have those capabilities today, so maybe that's something else that we're seeking to have developed.").

[75] Order No. 881, P 9.

[76] I.e., the MISO/PJM Targeted Market Efficiency Projects ("TMEPs"), which are intended to provide relatively inexpensive and readily implementable solutions to address congestion along the MISO-PJM seam. *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,005, P 1 (2017). PJM's Director of Strategic Initiatives and Interregional Planning pointed to that process as a mechanism for considering GETs that could be extended to the regional planning process, noting "certainly we have the tools that we could do that today." 2021 Workshop Tr., 211:24-25 (Glatz, PJM).

[77] *See* TAPS ANOPR Comments at 19-22. *See also* 2021 Workshop Tr., 62:6-14 (Fisher, EEI) (incentive misalignment issues can be addressed through the planning process).

[78] *See* Leovy Statement at 4-6; TAPS MTLR Post-Technical Conference Comments at 6-9; TAPS GETs Post-Workshop Comments at 16-17.

[79] 2019 Workshop Tr. Day 2, 242:20–243:4 (Leovy, TAPS).

Commission statement as to what it expects from TOs to meet their tariff obligations can go a long way.[80]

- Support pilot projects in a manner that requires transparency as to the results, to help move more grid-enhancing technologies into the proven, "standard practice" category that TOs should be expected to adopt. For example, the Commission could assure cost recovery if the pilot has been evaluated and approved by the RTO in a transparent process, and pilot results are made broadly available.[81]

- Use the Commission's bully pulpit to highlight successful GETs that are willing to be transparent about how they operate, along with spotlighting the TO and RTO that supported them.[82]

In short, the evident significant shortcomings of the contemplated shared-savings incentives are made all the more indefensible given the availability of and need for better ways to encourage effective deployment of GETs.

B. *If the Commission nevertheless pursues shared-saving incentives, much more stringent ratepayer protections are required*

For the reasons discussed above, TAPS strongly urges the Commission not to adopt shared-savings incentives for GETs. If the Commission is determined to do so,

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[80] Leovy Statement at 2; 2019 Workshop Tr. Day 2, 242:9–243:8 (Leovy, TAPS). Indeed, prior to enactment of FPA section 215, which authorized this Commission to approve NERC reliability standards as mandatory and enforceable, the Commission issued a policy statement making adherence to then-existing NERC guidelines part of good utility practice required by tariffs. *Pol'y Statement on Matters Related to Bulk Power Sys. Reliability*, 107 FERC ¶ 61,052, P 23-25 ("[T]he Commission interprets the term 'Good Utility Practice' [as included in Commission open access tariffs] to include compliance with NERC reliability standards . . . . [T]he Commission expects ISOs and RTOs to perform their functions consistent with NERC reliability standards . . . . A failure to comply with such industry standards could in some circumstances affect Commission determinations as to whether rates are just and reasonable. For example, it may be appropriate to deny full cost recovery in circumstances where a transmission provider fails to provide full reliability of service."), *clarified*, 108 FERC ¶ 61,288 (2004).

[81] As explained in TAPS GETs Post-Workshop Comments at 18, to avoid disproportionate or otherwise unreasonable expenditures of ratepayer funds, the scale and cost of GETs pilots funded through transmission rates should be limited by both a per-pilot cap and a cap on the total pilot expenditures of any given RTO in a given year.

[82] Leovy Statement at 3; TAPS GETs Post-Workshop Comments at 11.

significant modification of the WATT/AEE Proposal is necessary, although not sufficient, to protect consumers and comply with the FPA.

1. Grant incentives only to GETs evaluated in an open and transparent regional planning process, with the benefits calculation made in the context of considering other economic projects

RTO representatives raised concerns about bringing the benefits calculation for GETs projects into their planning processes, but expressed even greater concerns about the harm caused by creating separate processes for consideration of GETs.[83] To mitigate the adverse impacts on the planning process, enable a wide-view evaluation of GETs interactions, and attempt to reduce the enormous challenges posed by the benefits estimation process, the Commission should subject GETs seeking incentives to an open and transparent regional transmission planning process that considers them in conjunction with conventional alternatives. Additional safeguards are necessary in non-RTO regions where there is no independent oversight.[84]

Thus, mid-size GETs should not be considered ahead of conventional projects as WATT/AEE propose. And small GETs and TO programs that do not proceed through the regional planning process, with independent oversight in non-RTO regions, should be ineligible for incentives. In any event, the Commission must be highly skeptical of benefit calculations of project sponsors and their consultants as the basis for incentives.

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[83] *See* Part I.F. above.

[84] *See* TAPS 2020 NOPR Comments at 116, 119-120.

2. Only incremental savings above those achievable by use of AARs should be considered in benefit-cost calculations

The recent MTLR Rule makes AARs mandatory. Thus, AARs are now part of the generally applicable performance benchmark that should be used to assess the incremental benefits from GETs. For example, recognizing that the Commission's recent initiation of a new proceeding to assess DLR implementation argues in favor of deferral of any incentives for DLRs, the "shared savings" from a DLR project should, at most, reflect only the incremental decrease in adjusted production costs from the project, beyond the reductions achievable from use of AARs. Likewise, the AAR benchmark should be applied to assess the benefits of technologies other than DLR, to the extent line ratings impact those benefits. It would be clearly unjust to charge consumers shared-savings incentives for claimed GETs benefits associated with AAR technology that the Commission has required.

3. Provide a clawback if estimated benefits do not materialize

To provide at least some semblance of the required symmetry (as consumers would still bear the full GETs cost plus the congestion not mitigated by the GETs), the Commission should require refunds, with interest, of shared-savings incentives awarded based on estimated savings that do not materialize.[85] The amount, if any, of such refunds shall be determined by *ex post* actual-benefit/actual-cost calculations, submitted pursuant to FPA section 205 and reviewed by the Commission as a required compliance filing to the original grant of the incentives. That process would entail another set of contentious

[85] Unless the developer/TO is precluded from any recovery of cost overruns beyond what was included in the initial cost-benefit estimate, the ex post calculation needs to consider cost overruns. Otherwise we are incenting low-ball cost estimates, without consequences.

calculations, with all the issues as to how those benefits are calculated and by whom. But that is no excuse to burden consumers with rates based wholly on estimates that the RTOs and IMMs at the 2019 Workshop said could not be relied upon for rate-setting (much less estimates made by consultants).

If benefits exceed the estimate used to calculate the shared-savings incentives, or the actual costs are lower than assumed, the amount of shared savings should not be trued-up to an amount greater than the incentive awarded. Because lawful incentives must be intended to induce voluntary prospective action,[86] no legitimate purpose would be served by enlarging the incentive after the actions have already occurred.

Suggestions at the 2021 Workshop that a TO/developer should have the opportunity to revise the deployment midstream (e.g., move the equipment) to increase benefits to the level used to calculate the incentive[87] would create a costly administrative nightmare for regional planners, the Commission, and customers. Because of the potential for adverse interactions among GETs, RTO evaluation and approval should be required before any such movement.

Thus, the *ex post* benefits calculation compliance filing would need to be filed under section 205, as would the refund report, which should include interest.[88] Given the

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[86] *See City of Charlottesville v. FERC*, 661 F.2d 945, 953-54 (D.C. Cir. 1981) (rejecting award of an incentive treatment where the factual record did not demonstrate that level of investment had changed as a result of the incentive policy); *see also Incentive Ratemaking for Interstate Nat. Gas Pipelines, Oil Pipelines, & Elec. Utils*., 61 FERC ¶ 61,168, at 61,594 (1992), *reh'g denied*, 63 FERC ¶ 61,110 (1993).

[87] 2021 Workshop Tr., 143:3-7 (Wellinghoff, GridPolicy); 143:19-24 (Gramlich, WATT); 148:2-16 (Hill, National Grid).

[88] *Compare* WATT/AEE Proposal at 12 (*ex post* benefits are "calculated and reported" for small projects).

potential for manipulation of the results and other controversies, an informational filing will not suffice; there is nothing ministerial about this process.

4. Restrict the shared-savings incentive to three years or less

The WATT/AEE Proposal would allow TOs and developers to extend the shared-savings incentives for successive three-year periods if, on reapplication, they qualify for the incentive. To be just and reasonable, incentive rates must materially affect voluntary, *prospective* behavior.[89] But allowing successive extensions of the three-year shared-savings incentive would not induce future conduct except to avoid imprudent action. It would not be good utility practice for a TO/developer to remove or cease to operate beneficial equipment for which it receives full cost recovery (including ROE), simply because the additional incentive has ended. Permitting potentially unlimited extensions also runs contrary to the concept of shared-savings incentives as a transitional mechanism, as discussed in Part II.B.5 below.

Shared-savings incentives should terminate after the conclusion of a three-year (or shorter) term. The Commission should not allow TOs/developers to reapply for additional three-year periods.

Further, in RTOs, TOs/developers should be required to secure RTO approval to remove or stop operating the GETs for which it has received incentives, consistent with current RTO requirements.[90] Oversight of such removal in non-RTO regions would similarly be appropriate.

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[89] *See supra* note 86, at 27.

[90] For example, MISO TOs are obligated to maintain their facilities in accordance with Good Utility Practice. Leovy Statement at 7 ("TO good utility practice obligations are reinforced by the Commission tariff."). *See* MISO Transmission Owner Agreement, Article 4, Section I.B ("Each Owner shall maintain its transmission facilities in accordance with Good Utility Practice.").

5. Sunset the shared savings incentive program in no more than five years, and provide for annual program evaluation and revision

The concept of limiting any shared savings incentive program so that it is transitional, to jump start the broader deployment of GETs, garnered considerable support. In response to a question from Commissioner Clements as to whether the incentive should be transitional—incentivizing installation of some amount of technology for a period, after which the technology would be mandated[91]—Judy Chang (MA EEA) endorsed the idea of incentives as a short-term mechanism to kickstart GETs installation.[92] Other panelists, including TAPS panelist Leovy, urged that if the Commission were to adopt any such incentive, it restrict them to a transitional measure.[93]

To that end, the Commission should sunset any shared-savings incentives program after no more than five years. Such a limitation would be consistent with the Commission's initial approach to granting an RTO incentive to first movers.[94]

Alternatively, the Commission should narrow the incentive program so it is more in the nature of a pilot or small-scale experiment.[95]

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[91] 2021 Workshop Tr., 141:7-14 (Chang, Massachusetts Energy and Environmental Affairs ("MA EEA")).

[92] *Id.* 131:16-132:1 (Chang, MA EEA).

[93] *Id.* 132:3-7 (Leovy, TAPS). *See also id.* 132:24-133:4 (Poulos, Consumer Advocates of PJM States); *id.* 133:18-21 (Dykes, CT DEEP). EEI's representative suggested treating shared-savings incentives as a duration-limited pilot, so we could get more experience with them. *Id.* 41:6-21 (Fisher, EEI).

[94] *See Regional Transmission Organizations*, Order No. 2000, 89 FERC ¶ 61,285, FERC Stats. & Regs. at 31,196 (1999) (limiting application of certain innovative pricing treatments involving moratoriums and returns to the period before January 1, 2005 (i.e., five years) as a transitional rate mechanism to encourage the earlier possible RTO filings), *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).

[95] *See* 2021 Workshop Tr., 41:18-24 (Fisher, EEI).

As discussed in Part I.G above, the Commission should also have an annual public process to assess the results of any shared savings incentive program and to revise the program and limit its application as appropriate based on that assessment.

6. Limit qualifying GETs projects to highly beneficial ones

The Commission should set the benefit-cost threshold for shared-savings incentives to a level no less than 30:1. It is irrational to use the 4:1 ratio proposed by WATT/AEE. WATT/AEE attempt to support that threshold by pointing to the 3.98:1 ratio that the 2020 Incentive NOPR proposed to use as the threshold for *ex ante* ROE incentives for transmission projects *exceeding* $25 million. But for projects less than or equal to $25 million—i.e., the cost of GETs projects addressed by the WATT/AEE proposal—the 2020 Incentive NOPR proposed a 33.91:1 threshold for *ex ante* ROE incentives.[96] Indeed, according to the 2020 Incentive NOPR, the *average* benefit-cost ratio for all projects of that size was 26.67:1.[97]

The Commission should not reward GETs whose benefit-cost ratio does not even exceed that of the *average* conventional economic transmission project costing $25 million or less, let alone the minimum benefit-cost ratio threshold that the 2020 Incentives NOPR proposed for granting incentives to such projects. For a GETs project that just meets the 4:1 minimum benefit-cost ratio threshold proposed by WATT/AEE,

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[96] *See Elec. Transmission Incentives Pol'y under Sec. 219 of the FPA*, 170 FERC ¶ 61,204, P 58 (2020) ("2020 Incentives NOPR"), *corrected*, 171 FERC ¶ 61,072 (2020) (intended to reflect the 75 percentile of economic projects). The threshold for *ex post* economic incentives would be set at the 90 percentile, at 5.17:1 for projects exceeding $25 million, and a 77.04:1 ratio for projects of $25 million or less. *Id.* P 59. These thresholds would be subject to recalculation every five years. See also Appendix A Tables 1-4. TAPS 2020 NOPR Comments (at 64-65) questioned, among other things, why we should be incenting C+ projects.

[97] *See* 2020 Incentives NOPR P 58.

the (consumer benefit):(consumer cost) ratio after paying the developer 25% of estimated net savings, as proposed by WATT/AEE for small projects, would be just 4.0:1.75 or 2.29:1.[98] WATT/AEE's stated preference for rewarding smaller projects[99] is no excuse for setting such a low bar. Especially given their assertion that smaller projects are more likely to have high benefit-cost ratios,[100] application of the 4:1 ratio to any, much less all, GETs projects cannot be justified based on "avoid[ing] discrimination" as between mid-size and smaller GETs projects.[101]

7. Apply caps on shared-savings percentage and total incentive compensation to all GETs and reduce those caps

For small GETs projects (costing $2.5 million or less), WATT/AEE propose to limit incentive awards to 25% of total adjusted production cost savings, and to cap the dollar amount paid as an incentive to $10 million during any three-year (renewable) period. WATT/AEE propose no restriction on the percentage or amount of the incentives awarded to "mid-size" projects costing more than $2.5 million and less than $25 million. Nor do they propose any such restrictions on the TO program shared-shavings incentives.

Even to the limited extent these "restrictions" apply, they all but ensure recovery of many multiples of the entire investment on applicable GETs investments. For a one-million dollar project, that $10 million shared-savings incentives cap represents guaranteed full cost recovery, *plus* an allowance for a 1,000% return on the expenditure.

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[98] A $1 million project that reduces APC by $4 million would meet the benefit-cost ratio threshold proposed by WATT/AEE. If 25% of net savings are awarded to the TO/developer on top of full cost recovery, consumers will pay the TO ($1 million + $0.75 million), or a total of $1.75 million.

[99] WATT/AEE 2020 NOPR Comments at 11-12, 17.

[100] *Id.* at 11.

[101] *Id.* at 11-12.

The windfall could be even greater, particularly for very inexpensive projects (e.g., topology optimization, which may have little or no capital cost).

Limiting incentive awards to 25% of APC savings can likewise still yield enormous, unreasonable returns. For example, if a GETs project achieved only what the 2020 Incentives NOPR calculated to be the *average* benefit-cost ratio of 26.67:1 for conventional economic projects under $25 million,[102] its sponsor could receive more than six times its full cost as a shared savings incentive on top of full cost recovery. And WATT/AEE assert that smaller GETs, which are subject to the 25% shared savings limitation, are likely to yield the greatest savings.[103]

The WATT/AEE Proposal's caps can also be easily evaded. Because GETs are often scalable, projects can be sized and designed to maximize returns and make the 25%/$10 million limits meaningless. For example, because the proposed caps would not apply to mid-sized projects, they could be avoided by combining small projects so that the total project cost exceeds $2.5 million. Or to avoid the $10 million cap, multiple projects—each defined to include only certain equipment or a small geographic area, and each subject to a separate $10 million cap—could be proposed instead of a single project.

Conspicuously absent from the WATT/AEE proposal are any guardrails that would be effective to prevent evasion. The challenges of doing so are highlighted by the Commission's recent revisions with regard to qualifying as a "small" renewable PURPA qualifying facility.[104] Litigating potential caps and the parameters for how they would be

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[102] 2020 Incentives NOPR P 58 & app. A, tbl.1.

[103] WATT/AEE Proposal at 7.

[104] A small renewable facility cannot qualify as a PURPA QF if it, along with other facilities located "at the same site" exceeds 80 MW. 16 U.S.C. § 796(17)(A)(ii). The Commission had defined "at the same site"

applied through individual section 205 proceedings will only add to the administrative challenges raised by this form of incentive.

The absence of *any* limits on the size of the incentives awarded to mid-size GETs projects is also unreasonable. WATT and AEE presume some competitive process will limit the percentage sought as an incentive for mid-size projects,[105] but there is reason to be skeptical. TAPS supports competitive processes for selecting regional transmission projects (which have yielded significant consumer savings where such competition has been permitted to operate),[106] but competition seems unlikely in the context of GETs that need to be installed on an individual TO's lines. Even though Order 1000 eliminated federal Rights of First Refusal ("ROFRs") in other contexts to foster competition, it made clear that incumbent TO property rights and TO rights to build upgrades to the facilities they own were unaffected by that Rule.[107] Competition cannot discipline incentives if the only entity that can practically deploy GETs in a congested area is the TO that owns

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using a hard cutoff at one mile. To prevent QFs from gaming this rule by locating facilities just over one mile apart to circumvent the 80 MW limit, the Commission's recent revisions to its PURPA rules established a rebuttable presumption that facilities located between one and ten miles apart are not "at the same site." 172 FERC ¶ 61,041 P 62 (2020). This allows utilities and others the opportunity to show that facilities between one and ten miles apart should be considered as a single QF, and therefore collectively fall within the 80 MW limit

[105] WATT/AEE Proposal at 3.

[106] *See, e.g.*, TAPS ANOPR Comments at 52-53.

[107] *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils*, Order No. 1000, 136 FERC ¶ 61,051 P 319 (2011), *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) ("[T]his Final Rule does not remove or limit any right an incumbent may have to build, own and recover costs for upgrades to the facilities owned by an incumbent, nor does this Final Rule grant or deny transmission developers the ability to use rights-of-way held by other entities, even if transmission facilities associated with such upgrades or uses of existing rights-of-way are selected in the regional transmission plan for purposes of cost allocation. The retention, modification, or transfer of rights-of-way remain subject to relevant law or regulation granting the rights-of-way."). *See also* Testimony of Craig Glazer, Vice President Federal Government Policy, PJM Interconnection, L.L.C. 5 (Nov. 6, 2019), eLibrary No. 20191112-4028.

those facilities. The WATT/AEE suggestion that RTOs rank proposed GETs claiming savings from relieving congestion in the same area[108] has limited impact, especially given their proposal to mute competition by requiring consideration of GETs *before* conventional economic projects.[109]

The prospects for competition disciplining the percentage savings sought as an incentive for mid-size GETs is even dimmer outside RTOs. There is no independent oversight of regional planning process, so the shared-savings "validation" process is open to question, particularly in regions that do not use production cost savings as a metric for identifying and selecting regional economic projects.[110]

The lack of limits on TO programs incentives is even more concerning, since there clearly will be no competition disciplining the incentives, individual projects need not be identified, and the process for determining (much less validating) the benefits calculation is wholly undefined.

To reduce the opportunity for "uncapped" and "massively high" returns on investment,[111] incentives for small GETs projects and TO programs (if permitted at all) should be limited to the lower of a much smaller percentage of the savings or a small multiple of cost (which the TO is already assured to recover, including ROE and applicable incentives), perhaps on a sliding scale depending on cost of the project/program. For mid-size projects, shared-savings incentive should be capped at the

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[108] WATT/AEE Proposal at 4.

[109] WATT/AEE Proposal at 3.

[110] *See* TAPS ANOPR Comments at 15-16, 18.

[111] *See supra* note 7, at 5.

lower of a smaller percentage of the savings or a small fraction of the cost. And safeguards would be required so caps cannot be gamed or evaded.[112]

8. Eliminate the TO Program Option

The WATT/AEE Proposal provides for TO programs for small projects, but includes no other parameters for such programs. A TO incentive filing "would specify the process [it] would use to deploy multiple GET small projects, including the criteria to decide which GET small projects are deployed."[113] But there are no limitations on the shared-savings incentives that may be requested. For example, WATT/AEE propose no minimum benefit-cost ratio; no limit on the percent of estimated savings or total incentives to be paid to the TO; and no limit on size of these programs (e.g., number of projects; total costs). The projects will not be subject to any regional planning evaluation (for adverse impacts or to calculate benefits). And because the Commission would be approving only the criteria the TO will use to select projects (and not the projects themselves), there is no opportunity for Commission verification of benefit calculations. There is also no independent oversight over these programs to ensure that they are not used to favor the TO's loads and generation. WATT/AEE provide no justification for exempting TOs from the limitations otherwise applicable to small projects (which TAPS hopes would be made more stringent, were the Commission to pursue a shared-savings incentive approach for GETs).

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[112] If a project has 30:1 benefits, even 3% of shared-savings would represent more than an 85% return on investment.

[113] WATT/AEE Proposal at 6.

Given the daunting challenges to ensure just and reasonable shared-system incentive rates through individual section 205 filings by what could be many TOs, the Commission should eliminate this option that is so prone to abuse. If the Commission nevertheless retains the TO program option, it must establish by rule a robust process (with advance benefit-cost estimation validation for each project and ex post calculation, with clawback, each through a section 205 proceeding), coupled with stringent limitations on eligible TO programs and all parameters of the shared-savings incentive.

9. Cap the size of GETs eligible for incentives significantly below $25 million

The WATT/AEE Proposal extends the shared-savings incentive to what they characterize as "mid-size" GETs, whose costs can reach as high as $25 million. That cost ceiling is too high and inappropriately rewards GETs that are unlikely to be the most cost-effective and efficient solutions, as confirmed by the WATT/AEE.

The White Paper included as Appendix C to the WATT/AEE 2020 NOPR Comments states that most of the technologies they are touting usually cost less than $10 million.[114] According to the WATT/AEE 2020 NOPR Comments, smaller projects are more likely to have high benefit-cost ratios.[115]

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[114] T. Bruce Tsuchida and Rob Gramlich, *Improving Transmission Operating with Advanced Technologies*, June 24, 2019, eLibrary No. 20190626-5212 at 17 ("[D]eployment of the operational technologies discussed in this white paper require a much smaller investment—at most usually less than $10 million.") (footnote omitted).

[115] WATT/AEE NOPR Comments at 11.

It is unreasonable to grant incentives to GETs exceeding $10 million, and the WATT/AEE Proposal offers no justification for doing so. Safeguards should also be put in place to avoid evasion of that limitation through project segmentation.[116]

10. Put in place a process to monitor for discriminatory deployments

To avoid rewarding TOs for anti-competitive GETs deployments that benefit the TO's generation and loads, processes to monitor for such deployments must be established.

CONCLUSION

TAPS urges the Commission not to proceed with shared-shavings incentives for GETs. If it nevertheless does proceed, it should adopt TAPS' suggestions to minimize the potential for those incentives to violate FPA mandates by, among other adverse impacts, unduly burdening consumers, undermining regional planning processes that are essential to our ability to select the more cost effective and efficient solutions, and incenting counter-productive deployments of technologies.

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[116] *Cf. supra* note 104, at 32-33.

Respectfully submitted,

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