

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Electric Transmission Incentives Policy
Under Section 219 of the Federal
Power Act

Docket No. RM20-10-000

**ANSWER OF TRANSMISSION ACCESS POLICY STUDY GROUP
TO WIRES COMMENTS**

Pursuant to Rule 213(d)(2)(ii) of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.213(d)(2)(ii), the Transmission Access Policy Study Group (“TAPS”) answers the April 3, 2025 Joint Supplemental Comments filed by WIRES, the Edison Electric Institute (“EEI”), and GridWise Alliance, Inc. (referred to collectively as WIRES).¹

The WIRES Comments ask that the Commission either “terminat[e] the dockets that propose to diminish existing transmission incentives[,]” or, alternatively, provide a renewed opportunity for comments or “initiate a new, generic rulemaking proceeding” for the purpose of compiling a new evidentiary record on these issues.² The WIRES Comments later clarify that WIRES’ preference is for terminating “the above-captioned rulemaking proceeding,” i.e., Docket No. RM20-10.³ This rulemaking proceeding includes the “2020 Incentives NOPR”⁴ and the “2021 Supplemental NOPR.”⁵

¹ Joint Supplemental Comments of WIRES, The Edison Electric Institute, and GridWise Alliance (Apr. 3, 2025), eLibrary No. 20250403-5080 (“WIRES Comments”).

² *Id.* at 4.

³ *Id.* at 20.

⁴ *Elec. Transmission Incentives Pol’y Under Section 219 of the Fed. Power Act*, 170 FERC ¶ 61,204 (“2020 Incentives NOPR”), *corrected*, 171 FERC ¶ 61,072 (2020).

⁵ *Elec. Transmission Incentives Pol’y Under Section 219 of the Fed. Power Act*, 175 FERC ¶ 61,035 (2021) (“2021 Supplemental NOPR”).

As discussed below, WIRES' requests should be denied. Indeed, the stated basis for the requests—the need for expanded transmission investment—argues strongly for immediate action to avoid imposing excessive charges on consumers for that investment. In particular, TAPS urges prompt action on the 2021 Supplemental NOPR to shield consumers from an effectively permanent, but unnecessary, 50-basis point return on equity (“ROE”) adder for joining a Regional Transmission Organization or Independent System Operator (collectively referred to as “RTO”). TAPS agrees with Chairman Christie’s recent statement: “[T]he RTO participation adder, which increases the transmission owner’s ROE above the market cost of equity capital, is an involuntary gift from consumers.”⁶ This “gift” should end as soon as possible.

I. INTERESTS OF TAPS

TAPS is an association of transmission-dependent utilities (“TDUs”) in thirty-five states promoting open and non-discriminatory transmission access.⁷ As entities entirely or predominantly dependent on transmission facilities owned and controlled by others, TAPS members recognize the importance of a robust transmission grid, and have long been outspoken on the need for improved transmission and ways to get needed transmission built.⁸ But as municipal, cooperative, and investor-owned load-serving entities, TAPS members are responsible for providing reliable and affordable service to the consumers and businesses that rely on them and their members. Our paramount

⁶ *Orange & Rockland Utils., Inc.*, 187 FERC ¶ 61,110, P 4 (2024) (Christie, Comm’r, dissenting) (citing *Balt. Gas & Elec. Co.*, 187 FERC ¶ 61,030, P 5 (2024) (Christie, Comm’r, dissenting); *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,072, P 6 (2024) (Christie, Comm’r, dissenting)).

⁷ See TAPS, About Us, <https://www.tapsgroup.org/about-us/> (last visited Apr. 28, 2025). Jane Cirrincione, Northern California Power Agency, is the TAPS Chair; Kevin Gaden, Illinois Municipal Electric Agency, is the Vice Chair. Tom Heller is TAPS’s Executive Director.

⁸ See TAPS, Effective Solutions for Getting Needed Transmission Built at Reasonable Cost (June 2004), <https://www.tapsgroup.org/wp-content/uploads/2013/01/effectivesolutions.pdf> (“TAPS 2004 White Paper”).

concern is reliable service at reasonable cost to consumers, consistent with Federal Power Act (“FPA”) section 217(b)(4)’s⁹ directive that the Commission facilitate the planning and expansion of the grid to meet the reasonable needs of load-serving entities to satisfy their service obligations.

TAPS filed extensive comments in this docket with respect to the 2020 Incentives NOPR¹⁰ and the 2021 Supplemental NOPR.¹¹

II. COMMENTS

The Commission should deny WIRES’ request to terminate the 2021 Supplemental NOPR. The 2021 Supplemental NOPR proposes to adopt a 50-basis point rate of return on equity adder for joining an RTO (a level consistent with Commission precedent, but lower than the RTO adder proposed in the 2020 Incentives NOPR) and to limit that adder to the first three years after the transmission owner (“TO”) joins an RTO.¹² As the Commission correctly recognized in issuing that NOPR, a three-year incentive offers a material inducement while appropriately limiting the burden on ratepayers.¹³

⁹ 16 U.S.C. § 824q(b)(4).

¹⁰ Comments of Transmission Access Policy Study Group (July 1, 2020), eLibrary No. 20200701-5410 (“TAPS 2020 NOPR Comments”).

¹¹ Comments of Transmission Access Policy Study Group (June 25, 2021), eLibrary No. 20210625-5171 (“TAPS 2021 Supplemental NOPR Comments”); Reply Comments of the American Public Power Association and Transmission Access Policy Study Group on Supplemental Notice of Proposed Rulemaking (July 26, 2021), eLibrary No. 20210726-5133 (“APPA/TAPS 2021 Supplemental NOPR Reply Comments”).

¹² With the limited exception of the proposed elimination of the incentive for independent transcos (which we supported), TAPS opposed the changes proposed in the 2020 Incentives NOPR, which would have broadly changed the approach to ROE incentives and doubled the RTO adder to 100-basis points, among other things. Although we tried to suggest improvements (e.g., to recognize inclusive joint ownership; *see* TAPS 2020 NOPR Comments at 29-38), we urged that the Commission “*not* move forward to a final rule.” *Id.* at 8, 129.

¹³ *See, e.g.*, 2021 Supplemental NOPR, P 10 (“We believe that providing the Transmission Organization Incentive to transmitting utilities for a three-year period after they join a Transmission Organization and transfer operational control of their facilities to that organization will appropriately balance the different provisions of FPA section 219. In particular, we believe that providing an additional ROE for a time-

TAPS strongly supported the 2021 Supplemental NOPR in timely filed initial and reply comments¹⁴ and continues to do so now. Issuance of a final rule consistent with that NOPR is overdue and urgently needed to ensure that the anticipated transmission build-out is achieved at the “lowest reasonable rates.”¹⁵ Doing so would be consistent with a key objective of Order 1920-A,¹⁶ as well as Chairman Christie’s dissent in *Orange and Rockland Utilities, Inc.*:¹⁷

[T]he Order conditionally grants . . . a 50-basis point RTO participation adder on top of the existing . . . ROE, which, by definition, already represents the market cost of equity capital. So the adder is, by definition, a subsidy, as any ROE adder is — more “FERC candy” taken directly from consumers and redistributed to transmission owners.

In April 2021 two of my colleagues, including [then-Chairman Glick], joined me in voting to limit the RTO participation adder — the exact type granted herein — to three years after joining. [Now, over three years later], we have yet to take a final vote to implement that limit. As long as we do not, consumers will continue to pay these adders at a time when consumers are already facing rapidly rising monthly power bills.

limited period will further the purpose of section 219(c) by encouraging Transmission Organization membership and the formation of new Transmission Organizations where they do not currently exist, while ensuring that the resulting rates remain just and reasonable and not unduly discriminatory and preferential as required by section 219(d).” (footnotes omitted).

¹⁴ See TAPS 2021 Supplemental NOPR Comments; APPA/TAPS 2021 Supplemental NOPR Reply Comments.

¹⁵ “[T]he Commission’s primary mission is to assure the lowest possible reasonable rates consistent with the maintenance of adequate service.” *New Eng. Power Co.*, Op. No. 49-A, 10 FERC ¶ 61,279, 61,547 (1980) (citing *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 611 (1944)), *reh’g denied*, 11 FERC ¶ 62,140, *aff’d in part and remanded in part sub nom. NEPCO Mun. Rate Comm. v. FERC*, 668 F.2d 1327 (1981).

¹⁶ *Bldg. for the Future Through Elec. Reg’l Trans. Plan. & Cost Allocation*, Order No. 1920-A, 189 FERC ¶ 61,126, P 41 (2024) (“Order 1920-A”) (“the record in this proceeding affirms the Commission’s longstanding recognition that regional transmission planning that identifies more efficient or cost-effective transmission solutions helps to ensure cost-effective transmission development for customers and can yield better returns for every dollar spent than localized or piecemeal transmission solutions, while inadequate or poorly designed transmission planning processes can cause customers to foot the bill for piecemeal, inefficient, and less cost-effective transmission solutions.”), *on reh’g*, Order No. 1920-B, 191 FERC ¶ 61,026 (2025).

¹⁷ 187 FERC ¶ 61,110, P 1 (2024) (Christie, Comm’r, dissenting) (footnotes omitted).

WIRES attempts to justify its requests by pointing to the need for additional transmission investment.¹⁸ But the need for increased transmission investment is not new. Indeed, when the Commission issued the 2020 Incentives NOPR, it specifically cited the need for additional transmission to integrate the nation’s changing resource mix, as well as shifts in load patterns such as “the increased load needs of data centers in northern Virginia.”¹⁹

Moreover, those very drivers reinforce the need to promptly act on the 2021 Supplemental NOPR to eliminate excessive charges. In its earlier comments in this docket, TAPS provided an analysis showing that the annual consumer cost of the existing 50-basis point RTO adder was approximately \$400 million in 2017.²⁰ Given the significant transmission investments made in RTO regions since 2017, the cost of the adder is much heftier today, and it will further increase with the anticipated build-out.²¹

Nor does the need to comply with existing and new RTO and Commission rules justify a continued RTO adder.²² TOs in RTOs receive substantial benefits from their RTO participation; and they are already fully compensated, including a just and reasonable ROE, for complying with those rules. Although the WIRES Comments cite to

¹⁸ WIRES Comments at 2-4, 6-8, 11-12.

¹⁹ 2020 Incentives NOPR, PP 25-29.

²⁰ TAPS 2021 Supplemental NOPR Comments at 6-7; TAPS 2020 NOPR Comments at 107 & n.234. *See also* 2021 Supplemental NOPR, P 8 n.21 (citing TAPS’s comments in Docket No. PL19-3-000).

²¹ *See, e.g.*, Order 1920-A, P 39 (“transmission costs have become an increasing share of customers’ overall electricity bills in regions that saw a significant increase in transmission expenditures. Further, the Commission highlighted several studies in the record demonstrating that transmission investment is likely to increase substantially in coming years.”).

²² WIRES Comments at 10-11.

a few post-2021 rules, their arguments are essentially identical to those previously made in response to the 2021 Supplemental NOPR,²³ which TAPS and others fully rebutted.²⁴

The WIRES Comments²⁵ also repeat points that WIRES and EEI have made before, regarding the interpretation of FPA section 219(c), which “provide[s] for

²³ See, for example, Comments of Wires at 13-14 (July 1, 2020), eLibrary No. 20200701-5327 (footnotes omitted):

At the same time, the burdens and responsibilities placed on utilities that join RTOs/ISOs have never been greater. RTO/ISO membership imposes substantial and increasingly complex requirements on transmission utilities, including the loss of operational control, competitive risks (which are not functionally imposed outside the organized markets), and added administrative responsibilities and costs. The attached LEI White Paper details some of the risks, burdens, and responsibilities that RTO participation presents for utilities, including the following:

- RTO/ISO members must cede to the RTO/ISO significant control over transmission design, regional transmission planning, and transmission operations, limiting their decision-making ability with respect to important aspects of their transmission business.
- RTOs/ISOs often rely on stakeholder processes to develop market rules and tariff provisions, processes that involve a broad range of stakeholders and increase the costs and complexity of RTO/ISO participation for utilities.
- As the roles of RTOs/ISOs to oversee transmission planning have expanded in response to Order Nos. 890 and 1000, this has introduced new complexities into the regional transmission planning process, including time- and resource-intensive decision making processes.
- Rulemakings and Commission policies that apply only in RTOs/ISOs, while beneficial, increase market complexity and thus expose utilities to elevated risks.
- States whose utilities participate in RTOs/ISOs tend to implement more rigorous policies to reduce greenhouse gas emissions, including policies that promote renewable generation investment (including customer-owned generation), demand-side management, and energy efficiency, as well as electrification efforts. These changes in the resource mix and system demand create uncertainty and heighten risk, and RTOs/ISOs are beginning to account for these policy-driven risks in their regional transmission planning processes and their development of market and operating protocols.
- Utilities in RTOs/ISOs cannot centrally coordinate and plan all aspects of the electric system within their service territories, which hinders their autonomy in business and investment decision-making that caters to local customers.

EEI’s 2021 Initial and Reply Comments on the 2021 Supplemental NOPR similarly claim increased risks for TOs in RTO regions that resonate closely with those highlighted in the Supplemental Comments. See Initial Comments of the Edison Electric Institute at 6-12 (June 25, 2021), eLibrary No. 20210625-5127; Reply Comments of the Edison Electric Institute at 6-9 (July 26, 2021), eLibrary No. 20210726-5125.

²⁴ See TAPS 2021 Supplemental NOPR Comments at 4-6; APPA/TAPS 2021 Supplemental NOPR Reply Comments at 14.

²⁵ WIRES Comments at 8-9.

incentives to each transmitting utility or electric utility that joins a Transmission Organization.”²⁶ TAPS’s Supplemental NOPR comments demonstrated that the Supplemental NOPR is the best reading of FPA section 219(c).²⁷ And we highlighted how this interpretation is reinforced by reading section 219 as a whole,²⁸ including FPA section 219(d), which makes section 219(c), “subject to the requirements of sections [205] and [206] of this title that all rates, charges, terms, and conditions be just and reasonable and not unduly discriminatory or preferential.”²⁹ By inserting the just and reasonable standard into section 219 as an overriding limitation on all section 219 incentives, Congress incorporated the Commission’s long-standing precedents that require incentive rates to materially affect voluntary, prospective behavior.³⁰ A just and reasonable incentive is one that is “in fact needed, and . . . no more than is needed, for the purpose.”³¹

Thus, TAPS urges the Commission to deny the WIRES Comments’ requests to terminate the 2021 Supplemental NOPR proceeding, to reopen the record in this proceeding, or to initiate a “new, generic rulemaking proceeding on the issue of

²⁶ 16 U.S.C. § 824s(c).

²⁷ TAPS 2021 Supplemental NOPR Comments at 8-9; APPA/TAPS 2021 Supplemental NOPR Reply Comments at 4.

²⁸ TAPS 2021 Supplemental NOPR Comments at 9-11; APPA/TAPS 2021 Supplemental NOPR Reply Comments at 4-7.

²⁹ 16 U.S.C. § 824s(d).

³⁰ 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).

³¹ *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955); 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)).

transmission incentives policy.”³² There is ample record in this docket for the Commission to issue a final rule consistent with the objective of the 2021 Supplemental NOPR now. In doing so, we urge the Commission to consider the TAPS 2021 Supplemental NOPR Comments, which address various aspects of that NOPR, and include our narrowly crafted exception to the 2021 Supplemental NOPR’s proposal. That exception would grant TOs the three-year adder for all new transmission projects that use “inclusive joint ownership arrangements.” As discussed in TAPS’s comments in this docket,³³ inclusive joint ownership arrangements, which invite participation on reasonable and comparable terms to all load-serving entities in the relevant footprint, have been shown to provide significant benefits to consumers, including siting, planning, and cost reductions to all customers that bear the costs of the project.³⁴

CONCLUSION

For the reasons discussed above, TAPS urges the Commission to deny the requests made in the WIRES Comments. The Commission already has compiled an extensive record in the instant docket and there is no persuasive showing that more is

³² WIRES Comments at 21.

³³ See TAPS 2021 Supplemental NOPR Comments at 17-25. See also TAPS 2020 NOPR Comments at 29-38, which provide a detailed description of inclusive joint ownership arrangements and their benefits, citing (among other things) TAPS 2021 White Paper, Inclusive Joint Transmission Ownership Arrangements: An Effective Means to Site and Build Transmission Needed to Support our Changing Resource Mix (June 25, 2021), <https://www.tapsgroup.org/wp-content/uploads/2021/09/TAPS-Inclusive-Joint-Ownership-White-Paper.pdf>. No reply comments disputed TAPS’s showing of the benefits of inclusive joint ownership arrangements, or our tailored proposal to encourage such arrangements.

³⁴ Such consideration would be consistent with the 2012 Incentive Policy Statement and previous Commission recognition of the need to encourage such arrangements, see TAPS 2020 NOPR Comments at 29-30.

needed. TAPS further urges the Commission to act promptly on the 2021 Supplemental NOPR.

Respectfully submitted,

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