

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

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

Docket No. RM20-10-000

COMMENTS OF THE STATE ENTITIES

Pursuant to the Federal Energy Regulatory Commission's (the Commission) March 25, 2020 Notice of Proposed Rulemaking¹ (NOPR) in the above-referenced proceeding, Connecticut Attorney General William Tong, California Attorney General Xavier Becerra, Illinois Attorney General Kwame Raoul, Maryland Attorney General Brian Frosh, Massachusetts Attorney General Maura Healey, Michigan Attorney General Dana Nessel, Rhode Island Attorney General Peter F. Neronha, the Connecticut Department of Energy and Environmental Protection, the Connecticut Office of Consumer Counsel, and the Maine Office of the Public Advocate (together, State Entities) provide the following comments.

Based on the record in this proceeding, there is no demonstrated need to modify existing transmission incentives except in the limited instances discussed below, such as to better reflect states' clean energy policy choices and related statutory requirements. Accordingly, adoption of all other rule changes as proposed in the NOPR would be arbitrary and capricious, and constitute unreasoned decision-making under the Administrative Procedure Act, 5 U.S.C. §§ 551, *et seq* (APA), under which a reviewing court shall hold unlawful and set aside agency findings and

¹ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (2020).

conclusions that are contrary to law, including agency actions that are unsupported by substantial evidence. 5 U.S.C. § 706(2).

If the Commission does adopt the proposals set forth in the NOPR, the State Entities support the proposal to end the incentives for Transcos and to cap total incentives, but to do so using the zone of reasonableness test. The State Entities oppose incentives for ISO and RTO participation, especially if such participation is mandatory. Importantly, the State Entities urge the Commission to incorporate the expanded benefits concepts identified below and in the 2013 Brattle Group report² (Brattle Report) as elements of production cost analysis in determining the award of incentives to transmission developers, especially those concepts that will facilitate construction of long-range and other transmission projects necessary to support state decarbonization and other policy goals. State Entities strongly submit that incentive policy needs to work with and facilitate competition in transmission development. Finally, the State Entities urge the Commission to advance transmission planning reform, both intra- and inter-regionally, to achieve the goals of Section 219 of the Federal Power Act (FPA), as amended by the Energy Policy Act of 2005,³ and provide a more reliable and efficient transmission system at least cost to ratepayers that respects and accommodates state policies.

INTRODUCTION AND BACKGROUND

In this proceeding, the Commission seeks to revise its electric transmission incentives policy to stimulate the development of transmission infrastructure to support the nation's

² The Brattle Group, *A WIRES Report on The Benefits of Electric Transmission: Identifying and Analyzing the Value of Investments* (2013), <https://cleanenergygrid.org/uploads/WIRES%20Brattle%20Rpt%20Benefits%20Transmission%20July%202013.pdf> (last visited June 29, 2020).

³ 16 U.S.C. § 824s.

evolving generation mix. The stated intent of the rulemaking is to more closely align the Commission's incentive policy with the statutory terms of Section 219 of the FPA.⁴

The State Entities

The Connecticut Attorney General (CTAG) is an elected Constitutional official and the chief legal officer of the State of Connecticut. CTAG's responsibilities include intervening in various judicial and administrative proceedings to protect the interests of the citizens and natural resources of the State of Connecticut and in ensuring the enforcement of a variety of laws of the State of Connecticut, including Connecticut's Unfair Trade Practices Act and Antitrust Act, so as to promote the benefits of competition and to assure the protection of Connecticut's consumers from anti-competitive abuses. CTAG's request for leave to intervene in these proceedings is in furtherance of these overall responsibilities.⁵

The California Attorney General is the chief law officer of the State of California.⁶ With exceptions not relevant here, the California Attorney General has charge, as attorney, of all legal

⁴ 16 U.S.C. § 824s.

⁵ The CTAG has previously initiated or intervened in a number of recent Commission proceedings addressing important policy issues affecting the electric industry and electric ratepayers in Connecticut and New England. These proceedings include Commission Docket Nos: AD18-7, *Grid Resilience in Regional Transmission Organizations and Independent System Operators*; RM18-1, *Grid Reliability and Resiliency Pricing*; RP16-301, *Iroquois Gas Transmission System, LP*; ER16-1023, *ISO New England, Inc., et al*; EL16-19, *ISO New England, Inc.*; CP16-21, *Tennessee Gas Pipeline Company, L.L.C.*; ER-13-185, *ISO New England, Inc.*; EL-13-033; *Environment Northeast, et al. v. Bangor Hydro-Electric Company, et al.*; ER12- 1455, *ISO New England, Inc.*; ER12-953, *ISO New England, Inc.*; EL11-66, *Martha Coakley, Massachusetts Attorney General, et al. v. Bangor Hydro-Electric Company, et al.*; IN12-007, *Constellation Energy Commodities Group, Inc.*; ER11-1943, *ISO New England, Inc.*; RM11- 026, *Promoting Transmission Investment Through Pricing Reform*; EL11-20, *PJM Power Providers Group v. PJM Interconnection LLC*; ER10-902, *ISO New England Inc. and New England Power Pool*; ER10-787, *ISO New England Inc. and New England Power Pool Participants Committee*; EL10-50, *New England Power Generators Association v. ISO New England Inc.*; EL09-47, *Richard Blumenthal v. ISO New England, Inc.*; ER09-1051, *ISO New England Inc. and New England Power Pool*; ER09-197, *ISO New England, Inc. Comments of Southern New England State Agencies, ISO New England Inc. and New England Power Pool*; ER09-197, *ISO New England, Inc.; Inquiry Regarding the Commission's Electric Transmission Incentives Policy*; PL19-3.

⁶ Cal. Constitution, Art. V, § 13.

matters in which the State is interested.⁷ More specifically, the California Legislature has authorized the California Attorney General to intervene in any administrative proceeding upon a showing that the proceeding involves conduct, programs, or products which may have the effect of impairing, polluting, or destroying the natural resources of California.⁸ Such natural resources include land, water, or any other natural resources that may contribute to the health, safety, welfare, or enjoyment of a substantial number of persons.⁹ Therefore, the California Attorney General has the “unique authority to protect the environment of the State of California.”¹⁰

The Office of the Illinois Attorney General represents the People of the State of Illinois on public utility issues in proceedings before state and federal regulatory agencies and in state and federal courts. The Illinois Attorney General is directed by statute “to protect the rights and interests of the public in the provision of all elements of electric . . . service both during and after the transition to a competitive market, and . . . to ensure that the benefits of competition in the provision of electric . . . services to all consumers are attained.”¹¹ Further, the Illinois Attorney General is vested “with responsibility to initiate, enforce and defend all legal proceedings on matters relating to the provision, marketing, and sale of electric . . . service whenever the Attorney General determines that such action is necessary to promote or protect the rights and interests of all Illinois citizens, classes of customers, and users of electric . . . services.”¹²

⁷ Cal. Gov’t Code § 12511.

⁸ Cal. Gov’t Code § 12612.

⁹ Cal. Gov’t Code § 12605.

¹⁰ *City of Long Beach v. City of Los Angeles*, 19 Cal.App.5th 465, 476 (2018).

¹¹ 15 ILCS 205/6.5(b).

¹² 15 ILCS 205/6.5(c).

The Massachusetts Attorney General is the chief legal officer of the Commonwealth of Massachusetts and is authorized by both state common law and by statute to institute proceedings before state and federal courts, tribunals and commissions as she may deem to be in the public interest. The Massachusetts Attorney General is further authorized expressly by statute to intervene on behalf of public utility ratepayers in proceedings before the Commission and has appeared frequently before the Commission.¹³

The Attorney General of Maryland is the State's chief legal officer with general charge, supervision, and direction of the State's legal business. The Attorney General has the authority to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. The Attorney General has previously commented on proposed rules and intervened in actions before the Commission.¹⁴

Dana Nessel is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to the provisions of the Const 1963, art 5, § 21, and mandate of the qualified electorate of the State of Michigan, and she is head of the Department of Attorney General created by the Executive Organizations Act, 1965 PA 380, ch 3, MCL 16.150 et seq. The Michigan Attorney General has the right, by both statutory and common law, to intervene and appear on behalf of the People of the State of Michigan in any court or tribunal, in any cause or matter, civil or criminal, in which the People of the State of Michigan may be a party or interested.¹⁵

¹³ MASS. GEN. LAWS ch. 12, § 11E.

¹⁴ Md. Const. art. V, § 3(a)(2); Md. Code Ann., State Gov't § 6-106.1.

¹⁵ MCL 14.28; *People v O'Hara*, 278 Mich 281; 270 NW2d 298 (1936); *Gremore v Peoples Community Hospital Authority*, 8 Mich App 56; 153 NW2d 377 (1967); *Attorney General v Liquor Control Comm'n*, 65 Mich App 88; 237 NW2d 196 (1975); *In re Certified Question*, 465 Mich 537, 543-545; 638 NW2d 409 (2002).

The Rhode Island Attorney General is a public officer charged by common law and by statute with representing the State of Rhode Island, the public interest, and the people of the State, including with respect to electric or gas industry matters that affect electric or gas consumers in Rhode Island. Pursuant to § 42-9-6 of the General Laws of Rhode Island of 1956, as amended, the Attorney General is the “legal advisor of all state boards, divisions, departments, and commissions and the officers thereof. . . .” Under the common law, he is the representative of the public, empowered to bring actions to redress grievances suffered by the public as a whole. Participation by the Attorney General in the instant proceeding is sanctioned by law and consistent with the public interest.

The Connecticut Department of Energy and Environmental Protection (Connecticut Department) has statutory authority over the state's energy and environmental policies and for ensuring that the state has adequate and reliable energy resources.¹⁶ The Connecticut Department is tasked with interacting with the regional transmission operator in response to state and regional energy needs and policies.

The Connecticut Office of Consumer Counsel is the statutorily designated ratepayer advocate in all utility matters concerning the provision of electric, natural gas, water, and telecommunications services. The Office of Consumer Counsel is authorized by statute to intervene and appear in any federal or state judicial and administrative proceedings where the interests of utility ratepayers are implicated.

¹⁶ Conn. Gen. Stat. §§ 22a-2d; 16a-3a.

The Maine Office of the Public Advocate is charged by Maine statute to represent the interests of consumers of utility services¹⁷ and is authorized to intervene in federal proceedings “in which the subject matter of the action affects the consumers of any utility doing business in this State.”¹⁸

Section 219 of the FPA

Prior to 2005, the Commission considered requests for transmission incentives pursuant to section 205 of the FPA.¹⁹ In 2005, Congress amended the FPA to address incentives policy.²⁰ In 2006, the Commission implemented section 219 by issuing Order No. 679, which established the Commission's basic approach to transmission incentives and enumerated a series of potential incentives that the Commission would consider.²¹ The Commission subsequently refined its approach to transmission incentives in a 2012 incentives policy statement, which provided guidance on the Commission's interpretation of Order No. 679 and its approach toward granting transmission incentives but did not alter the Commission's regulations or Order No. 679's basic approach to granting transmission incentives.²²

Overall, Section 219 of the FPA recognizes the need for capital investment in transmission and required the Commission to “establish, by rule, incentive-based (including performance-based) rate treatments for the transmission of electric energy in interstate commerce by public utilities for the purpose of benefitting consumers by ensuring reliability and reducing

¹⁷ 35-A M.R.S. § 1701 *et. seq.*

¹⁸ 35-A M.R.S. § 1702(5).

¹⁹ 16 U.S.C. § 824d; *see also Me. Pub. Utils. Comm'n v. FERC*, 454 F.3d 278, 287 (D.C. Cir. 2006).

²⁰ Energy Policy Act of 2005, Pub. L. No. 109-58, sec. 1241.

²¹ Order No. 679, *Promoting Transmission Investment through Pricing Reform*, 116 F.E.R.C. ¶ 61,057 (2006).

²² *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,149 (2012).

the cost of delivered power by reducing transmission congestion.”²³ Congress included among its goals promoting “capital investment in the enlargement, improvement, maintenance and operation of all facilities for the transmission of electric energy in interstate commerce” As the Commission states in the NOPR, a central element of Section 219 is that incentives are to ensure the reliability of the transmission system and reduce the cost of delivered power by reducing transmission congestion. Notice at P 93.

Contents of the NOPR

The Commission proposes the following changes²⁴ to its transmission incentives policies:

First, the Commission is shifting from the risks and challenges approach used to evaluate requests for transmission incentives adopted in Order No. 679 and instead focus on granting incentives based on the benefits to consumers.

Second, the NOPR proposes a 50 basis points return on equity (ROE) incentive for transmission projects that provide sufficient economic benefits if such benefits exceed related transmission project costs. Specifically, the NOPR offers 50 additional basis points of ROE incentives for transmission projects that demonstrate ex-post cost savings at the end of construction that fall in the 90th percentile of transmission projects studied over the same sample period.

Third, the NOPR offers up to 50 basis points of ROE incentives for transmission projects that can demonstrate potential reliability benefits by providing quantitative analysis, where possible, as well as qualitative analysis.

²³ 16 U.S.C. § 824s.

²⁴ NOPR, PP 3-11.

Fourth, the NOPR allows utilities with projects that are selected in a regional transmission planning process for the purposes of cost allocation to recover 100 percent of abandoned plant costs from the date that such projects are selected in the planning process for the purposes of cost allocation, rather than from the date of an order granting such recovery.

Fifth, the NOPR proposes to eliminate the ROE incentives available to Transcos.

Sixth, the NOPR will double to 100 basis points the ROE incentive for transmission companies that join and/or continue to be a member of an independent system operator (ISO), regional transmission organization (RTO), or other Commission-approved transmission organization regardless of whether participation is voluntary.

Seventh, the Commission is proposing to offer (1) a stand-alone, 100-basis-point ROE incentive for specified transmission technology project; and (2) specialized regulatory asset treatment incentives for transmission technologies that enhance reliability, efficiency, and capacity, and improve the operation of new or existing transmission facilities.

Eighth, the Commission intends to impose a 250 basis-point cap on total ROE incentives.

Finally, the Commission proposes technical modifications to the information collected from transmission incentive applicants in FERC-730, Report of Transmission Investment Activity (Form 730).

Commissioner Glick issued a statement dissenting in part to the NOPR (Partial Dissent), agreeing with the majority on the issues of awarding incentives based on a project's benefits, rather than its risks and benefits, and limiting incentives for Transcos. However, Commissioner Glick expressed deep concern that several of the proposed changes ignore the "bedrock principle" that incentives should actually incent needed projects and that the majority's proposals would reinforce the status quo. He also concluded that the NOPR failed to address state public

policy needs and missed the opportunity to appropriately incentivize build-out of new and innovative projects needed to build the grid of the future.

ARGUMENT

I. **The State Entities' Position Reflects Guiding Principles Articulated In Response To The Commission's Notice of Inquiry In PL19-3.**

The State Entities support measures that encourage the efficient use of existing transmission facilities, and construction of new facilities only where necessary to ensure the transmission grid's reliability, efficiency, and ability to integrate clean-energy generation resources, consistent with the states' energy policy objectives and requirements. The Commission must encourage achievement of these important ends in a manner that is efficient and cost effective, thereby minimizing ratepayer costs.²⁵

Recent years have seen significant transmission build-out in many RTOs. Also, in the California ISO (CAISO) territory, there are no longer the system-wide transmission reliability or congestion issues that existed in the mid-2000s.²⁶ Accordingly, and with the limited exceptions described below that will better protect ratepayers and help ensure a safer and more reliable transmission system, the State Entities strongly submit that there is no basis to intervene in the existing competitive market by modifying transmission policy incentives, and certainly no reason to simply increase such incentives. In fact, most of the NOPR's proposed changes will either fail to incentivize meritorious projects or impede efforts to advance important transmission projects

²⁵ The Commission must closely scrutinize the proposed incentives consistent with its duty under the FPA to ensure that consumers are not charged excessive costs. *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016); see *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1207 (D.C. Cir. 1987) ("The Commission stands as the watchdog providing 'a complete, permanent and effective bond of protection from excessive rates and charges.'" (Starr, J., concurring) (quoting *Atl Ref. Co. v. Pub. Service Comm'n*, 360 U.S. 378, 388 (1959)).

²⁶ Comments of the California Public Utilities Commission in Commission Docket No. PL19-3 at 12-13 (June 26, 2019).

necessary to maintain the efficiency and reliability of a rapidly changing interstate transmission system. Several of the proposed changes are unnecessary and will have a materially adverse impact on ratepayers. Thus, adopting the entire suite of proposed rule changes based on the record in this proceeding would constitute an arbitrary and capricious outcome under the APA. Further, adopting the proposed rule would eventually lead to the Commission approving unjust and unreasonable rates, which is prohibited under Section 219.²⁷ The Commission must avoid those results.

The State Entities submit, as a subset of those entities did in their response to the Notice of Inquiry in Docket PL19-03, that transmission incentives must reflect the following principles, consistent with Section 219:

- A reliable and efficient transmission system must be planned and built in a way that protects ratepayer interests. Therefore, incentives should not be awarded automatically, but only as needed to induce voluntary conduct. Fundamentally, no incentives should be granted to transmission providers for doing what they already are obligated to do.
- Applicants seeking incentive rates in connection with new transmission construction should be required to demonstrate that lower cost alternatives to the project have been considered in a regional planning process and that the needs that the proposed project addresses cannot be achieved more efficiently and effectively by using advanced or alternative technologies (including non-wires alternatives).
- Financial incentives are not the sole means to induce efficient operation and expansion of the grid. To better ensure that transmission providers act in the public interest, the Commission should consider reforming transmission planning generally, more closely identifying standards for the efficient and cost-effective use of existing facilities that constitute good utility practice and are part of the *quid pro quo*, under which regulated entities receive regulated rates and returns on prudently invested capital.²⁸
- Incentives policies, and in fact all transmission policies, need to recognize state public policies and goals and cannot work at cross-purposes with those goals.

²⁷ 16 U.S.C. § 824s(d).

²⁸ Some of the State Entities have consistently advanced these policies before the Commission. See *Comments of New England State Agencies*, Docket No. PL19-03.

These principles inform the response of the State Entities to the NOPR, as set forth below.

II. Comments On Particular NOPR Provisions

A. Elimination of Transco-Specific Incentives

The State Entities agree with the Commission’s determination that there is no evidence that incentives for Transcos²⁹ are needed, and support elimination of such incentives.

B. Fixed Cap For Incentives and Elimination of the Zone of Reasonableness Test

The Commission’s proposed use of a fixed cap is a substantial departure from the Commission’s practice of evaluating transmission incentive amounts based on the zone of reasonableness test. The Commission’s use of “ranges of presumptively just and reasonable ROEs based on the risk profile of a utility or group of utilities to inform [the Commission’s] decision of whether an existing ROE has become unjust and unreasonable” and capping incentives at the top of that zone of reasonableness is well-established and protects ratepayers from excessive costs.³⁰ Reviewing federal courts have consistently approved the Commission’s use of the zone of reasonableness.³¹ Accordingly, the Commission should retain the zone of reasonableness in establishing utility ROE.

If the Commission does modify or replace the zone of reasonableness test in favor of a basis points cap, the State Entities urge the Commission to reject the 250 basis point cap proposed in the NOPR and instead require that any such cap equal the lower of 100 basis points

²⁹ The Commission defines a Transco as a stand-alone transmission company that has been approved by the Commission and that sells transmission service at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility. 18 CFR 35.35(b)(1); Order No. 679, 116 FERC ¶ 61,057 at P 201.

³⁰ Opinion No. 569, *Ass’n of Bus. Advocating Tariff Equity Coalition of MISO Transmission Customers v. Midcontinent Indep. System Operator, Inc.*, 169 FERC ¶ 61,129 at P 57 (2019).

³¹ See, e.g., *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017); *Pac. Gas & Elec. v. FERC*, 306 F.3d 1112, 1116 (D.C. Cir. 2002).

or an incentives award set by a zone of reasonableness test.³² Given the substantial amount of recent and ongoing transmission build-out, this more modest cap of 100 basis points is likely sufficient to facilitate continued investment without over-burdening ratepayers with excessive costs.

C. RTO Participation Incentive

The State Entities strongly disagree with the NOPR’s proposal to modify the incentive for a transmission owner to join and remain in an ISO, RTO, or other Commission-approved transmission organization even if such participation is mandatory. The proposed RTO participation incentive is a handout and must be rejected. In articulating this position, the State Entities agree with dissenting Commissioner Glick’s fundamental principle that:

[I]ncentives must actually incentivize something. A payment that does not incentivize anything is a handout, not an incentive. Handing out customers’ money to transmission owners without a strong belief that that money will induce beneficial conduct is unjust and unreasonable and inconsistent with Congress’ intent behind section 219.³³

As noted above, incentives must be granted to “facilitate investment,” not to “reward investments that would happen in any event.” *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 130 (D.C. Cir. 2019); *see also Cal. Pub. Utils. Comm’n v. FERC*, 879 F.3d 966, 970 (9th Cir. 2018) (granting petition for review and remanding for a determination on whether the purportedly incentivized conduct was mandated or voluntary). In fact, transmission incentives may only be awarded if they materially affect investment decisions. *See, San Diego Gas & Elec.*

³² Awarding incentives without regard to case-specific circumstances would be a substantial and unwarranted change in Commission policy. *San Diego Gas and Electric v. FERC*, 913 F.3d at 132 (highlighting that the Commission’s incentive policies are appropriately premised on case-by-case, fact-specific determinations, including “case-by-case applications based on appropriate showings”).

³³ Partial Dissent at P 4.

Co. v. FERC, 913 F.3d 127, 138 (9th Cir. 2019) (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 25 (2006)).

Granting an ROE incentive adder to encourage required conduct improperly commandeers benefits that consumers otherwise would enjoy through lower rates, transferring them to the transmission owner without reason. For example, in the Notice of Inquiry, Docket PL19-03-00, which preceded this NOPR, the Commission explained that “[t]ransmission owners are already required to address many facets of reliability through compliance with the [NERC] reliability standards and various other planning criteria.” The Commission must clarify that incentives—especially ROE adders—will not be awarded for projects needed to meet these standards. Satisfying mandatory reliability requirements is at the heart of a transmission owner’s obligation to operate prudently and consistent with good utility practice. Projects needed to meet these standards therefore fall well within the range of activities compensated by a transmission owner’s base ROE. The same goes for projects undertaken by transmission providers in fulfillment of an obligation to construct, which is undertaken as part of joining an ISO or RTO and other activities required by tariff or contract, including the requirement to follow good utility practice.

Moreover, nothing in the record demonstrates any need to *double* the participation incentive, as the NOPR proposes. The current 50-basis point incentive has successfully encouraged transmission owners to join RTOs and, across the country, there is robust participation in such organizations. Increasing the incentive by an additional 50 basis points, without evidentiary support that there is a need for such an increase, is arbitrary and capricious, and will do nothing but reduce benefits for ratepayers, resulting in unjust and unreasonable rates.

D. Incentives To Facilitate Congestion Reduction

The Commission proposes “to limit measurement of economic benefits to adjusted production costs or similar measures of congestion reduction.”³⁴ The Commission should reject the NOPR’s proposal for the reasons set forth below.

As an initial matter, demonstrating that a project’s benefits exceed its costs does not, by itself, justify the awarding of incentives. Unless the incentives materially affect investment decisions, awarding the incentive is simply a handout that would reduce the net benefits that consumers would have enjoyed otherwise. More fundamentally, as the majority acknowledges and Commissioner Glick agrees, most RTO transmission planning is already based on production cost modeling. “With respect to transmission projects’ economic benefits, transmission planning regions typically evaluate the economic efficiency of transmission projects through production cost modeling.” *Id.* The Commission adds: “In RTO/ISO regions, all regional transmission projects selected in a regional transmission plan for purposes of cost allocation, and sometimes other transmission projects premised primarily on their economic benefits, are evaluated through production cost or similar modeling.” *Id.*³⁵

The NOPR’s presumption that incentives should be given to projects with higher benefit-to-cost ratios using a narrow approach for evaluating benefits will lead to two negative outcomes. It will provide more money to projects that would score well in most current

³⁴ NOPR at P 48.

³⁵ The 2013 Brattle Group report notes that the PJM Interconnection (PJM), the Independent System Operator of New England (ISO-NE), and the Energy Reliability Council of Texas (ERCOT) rely primarily on the traditional production cost simulations to determine whether the economic value a transmission project outweighs its costs. Midwest Independent System Operator (MISO), the Southwest Power Pool (SPP), and the California Independent System Operator (CAISO) have expanded the scope of analyzing transmission projects to include a broader range of benefits, such as reduced system losses, increased system reliability, and access to lower-cost renewable generation.

transmission planning programs, and thus would get built anyway. In short, what benefits transmission planners measure for will determine what transmission is built. If benefits are limited to congestion relief, for example, projects that most relieve congestion will be awarded incentives. But if those projects would score well and get selected anyway, the incentive would serve no purpose and fails to ensure just and reasonable rates. The second problem is that if the range of benefits evaluated is too limited, key projects may be overlooked because the valuable benefits associated with these projects simply will not be considered.

In addition, focusing exclusively on measures like traditional adjusted production cost will artificially skew transmission project evaluation. This is so because not all the benefits provided by a given transmission project are directly quantifiable. Parties in Docket No. PL19-3 emphasized the diverse benefits that transmission can provide, with multiple parties referencing work by the Brattle Group that identified and categorized the wide range of potential transmission benefits that can be provided to ratepayers. Commissioner Glick, too, noted the Brattle Report in his partial dissent to the NOPR, and encouraged commenters “to discuss whether and how the Commission should factor additional considerations, such as those outlined by the Brattle Group, into its process for granting incentives.”³⁶

The State Entities support certain recommendations set forth in the Brattle Report and urge the Commission to implement such concepts in this rulemaking. As an initial matter, the State Entities agree that when assessing the benefits of a new regional or inter-regional transmission project or major upgrade, it is appropriate to consider the extent to which the project will reduce congestion. In addition, however, ISO and RTO transmission planners should fully consider all other potential benefits of a project. Failure to do so will lead to

³⁶ Partial Dissent at P 9.

uneconomic results that are not just and reasonable for ratepayers. An unduly narrow focus on production costs will result in highly beneficial projects being rejected, while projects with fewer benefits to ratepayers will get approved, allowing projects to proceed that, from a broader perspective, do not have commensurate costs and benefits.³⁷ Even when evaluating transmission projects that are clearly justified on reliability or economic grounds, an analysis based solely on traditional production cost simulations will provide an inherently limited economic analysis. Consideration of other transmission-related benefits (*e.g.*, storm hardening, increased competition in wholesale markets, congestion relief, deferral of new generation, impacts to greenhouse gas emissions, and de-carbonization benefits) that accrue over time better ensures selection and construction of the most beneficial projects.

1. Consider all Benefits

Production cost simulations are a standard tool for transmission planners. However, transmission planners only use simulations that provide estimates of the short-term dispatch cost savings under simplified system conditions. These simplified simulations only yield benefit estimates reflecting a subset of total production cost savings. Use of these simplified assumptions will only yield a small portion of the overall economy-wide benefits that major transmission projects can provide to ratepayers. Stated simply, important benefits such as reducing or eliminating zonal pricing separation in capacity markets, are considered difficult to estimate and therefore ignored by transmission planners. Failure to account for these benefits

³⁷ The U.S. Court of Appeals for the Seventh Circuit has stated of transmission benefits: “To the extent that a utility benefits from the costs of new facilities, it may be said to have ‘caused’ a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.” *ICC v. FERC*, 576 F 3d at 476. *See*, WIRES June 26, 2013 Petition for Statement of Policy, Docket No. RM13-18-000. Recognizing that transmission benefits may not be precisely quantifiable in every case, the court stated: “We do not suggest that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.” Instead the court instructed regulators to ensure that transmission benefits and cost responsibility are at least “roughly commensurate” with one another. *Id.* at 47.

leads to the rejection of projects needed to meet the grid of the future, a negative result for states and ratepayers.

Using such conventional analytical tools and simplified assumptions will produce familiar results, and lead to the construction of the kinds of transmission projects that have been constructed in the past, and projects, moreover, that fail to account for state clean energy policy objectives. The problems posed by such outdated methods of evaluation are now apparent in New England, where ISO-NE is reviewing bids submitted in the region's first competitive transmission solicitation pursuant to Order No. 1000. In that evaluation, ISO-NE is prioritizing "cost and speed . . . as the two most important evaluation factors" for review of submitted proposals.³⁸ ISO-NE's position diverges substantially from the framework proposed in the Brattle Report, as well as that of the states within the region and their elected officials. For example, Massachusetts' U.S. senators have urged ISO-NE to prioritize "state climate, energy and health goals" in evaluating the proposals, noting that, in ISO-NE's established evaluation methodology, "environmental impacts were given the lowest priority and health impacts not considered at all."³⁹ To achieve system-wide benefits that are potentially significant but difficult to estimate, it will be necessary to at least calculate their likely range and magnitude. Functionally, omitting consideration of such benefits altogether assigns them a value of zero, resulting in a material undervaluing of the total benefits such projects provide. This is particularly true for project benefits that are policy-driven or policy-dependent, such as economy-wide de-carbonization. The State Entities urge the Commission to avoid such a result.

³⁸ ISO New England Inc., Draft Boston 2028 Request for Proposal (RFP) - Review of Phase One Proposals at 8 (June 16, 2020), <https://www.iso-ne.com/committees/planning/planning-advisory/> (last visited June 29, 2020).

³⁹ RTO Insider, June 9, 2020, p.13.

2. Consider All Regional Benefits in Interregional Planning.

One fundamental goal of Order No. 1000 was to address the lack of interregional transmission planning. Even after Order No. 1000, most transmission planning is, generally, reactive to reliability needs internal to an ISO or RTO, or occurs in response to a major new generator interconnection. Interregional project evaluation is often nothing more than evaluating whether a new project in an adjacent ISO or RTO will cause negative impact on one's own grid. Further, to the extent there is interregional planning, cost allocation is particularly difficult given the tendency of neighboring regions to evaluate interregional projects based only on the subset of benefits that are common to the planning processes of each of the respective regions involved. However, in some situations, the overall benefits of a transmission project may exceed the benefits realized in a particular region because additional benefits may accrue to ratepayers and generators in a neighboring ISO or RTO. Focusing only on common benefits results in the consideration of a narrower set of benefits in interregional projects than are considered for intra-regional projects. To avoid this outcome in interregional planning, the State Entities recommend that the Commission require neighboring regions to evaluate interregional projects' benefits in the context of the full set of potential benefits that are considered for regional projects in each region and then incorporate these benefits in considering incentives. This approach will assist planners and policy makers in better understanding all the benefits of interregional projects to their planning region and making decisions that are more efficient from an interregional perspective and well-aligned with the interest of all affected regions. Without an inclusive recognition of all potential benefits for each of the neighboring regions, coordinated interregional planning in compliance with Order No. 1000 will not be able to identify and ensure the development of many projects that benefit two or more regions.

3. Consider Long-Term Benefits.

Currently, ISO and RTO transmission planners and regulators employ planning methodologies that differ by the number of years analyzed (*i.e.*, planning horizons), how benefits are estimated over the short-term and long-term, and whether levelized or present values are used in the benefit and cost estimations. In addition, there also may be regional variations in the benefit-to-cost threshold that projects must satisfy to be approved. Careful review of how benefits and costs accrue over time and across future scenarios will assist planners in optimizing the timing of transmission investments from a long-term value perspective, which will be particularly important for those ISOs and RTOs in which states have prioritized or mandated a low or zero-carbon grid. As noted by Commissioner Glick and numerous commentators, including some ISOs and RTOs such as ISO-NE and NYISO, to achieve a grid that will support a pathway to a de-carbonized future, it will be necessary to look further ahead in time and over a broader range of possible solutions than is typically done today.

The benefits of transmission investments may also extend beyond the direct benefits to electricity market participants. This is the case when some of the economy-wide benefits of transmission investments accrue to society more broadly and are not typically considered within the scope of electricity costs, generator profits, or system reliability. For example, a reduction of greenhouse gas emissions due to a shift in generation resources towards more renewable energy resources resulting from a transmission upgrade can provide a substantial benefit to ratepayers and further states' clean energy policy objectives. Without a market that places an explicit monetary cost on the emissions, however, benefits associated with reduced emissions will not result in reduced costs to electricity customers. As noted above, many states have explicit

statutory, zero-carbon directives and the benefits accruing from these efforts needs to be considered in intra- or interregional transmission project evaluation.

In sum, the State Entities recommend that the Commission award transmission incentives subsequent to a broad and thorough evaluation of project benefits that incorporates more than production cost analyses.

E. Innovative Technologies

The State Entities also submit, consistent with Commissioner Glick's partial dissent, that the NOPR's proposed incentive for new and enhanced technologies should be rejected. As some of the State Entities stated in their prior comments in Docket PL19-03, grid-enhancing technologies often cost a small fraction of a conventional transmission solution, but are not frequently deployed, either because they do not provide the same return on equity as the conventional solution or because they are viewed as unfamiliar or unproven. The State Entities urge the Commission to take action to eliminate that outcome, which harms ratepayers and is not just and reasonable.

Part of the difficulty in evaluating innovative technologies is that transmission operators (TOs) are allowed to recover through rates the cost of assets, such as poles, wires, transformers, and other equipment, but generally cannot recover costs of other improvements to operational techniques and practices—such as the use of dynamic line ratings—that are in consumers' best interests but do not involve large, rate base additions and, so, do not offer substantial profit opportunities for transmission owners. In fact, in ISO-NE, not only have innovative technologies not been extensively employed in the RTO's first and only competitive transmission

procurement, but RTO staff has stated that non-wires alternatives (NWAs) would not even be considered for selection.⁴⁰

The State Entities note that the Commission has looked at this issue before. The 2012 Policy Statement states the Commission’s expectation that incentive applicants be able to “demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum.”⁴¹ The Commission should maintain and strengthen that requirement.

F. Reforming Transmission Planning to Facilitate State Public Policy Goals

Unless the full range of potential benefits is included in a production cost model, the proposed NOPR incentives will tend to support conventional transmission solutions. Similarly, the NOPR’s unsatisfactory proposal to address innovative technologies will do little except reinforce the status quo and facilitate neither states’ policy goals nor just and reasonable rates for ratepayers. And the grid status quo is not the grid needed. As Commissioner Glick noted:

No one can deny the fundamental transition taking place in the electricity sector. As the NOPR recognizes, the generation fleet is turning over and, with that, we are seeing a rapid shift away from large, central-station resources located close to customers and toward renewable resources, such as wind and solar, that are often geographically constrained. That shift is a function of rapidly changing customer preferences, improving economics, and public policy. Although the exact path that the transition will take is hard to predict, one thing seems pretty clear: We will need a lot more transmission.⁴²

Similarly, the New York ISO, in its 2019 report, Reliability and Market Considerations for A Grid in Transition, noted:

⁴⁰ See, <https://www.iso-ne.com/event-details?eventId=137639&load.more=1>, Brent Oberlin, Competitive Transmission Solicitation Enhancements, July 17, 2019, slide 21 (last visited June 29, 2020).

⁴¹ 2012 Policy Statement at P 25.

⁴² Partial Dissent at P 13.

Without market based incentives for investment in renewable resources and absent a more robust transmission system to move power to load, state policies could promote a resource mix where new renewable resources increasingly displace the output from existing renewable or other zero-emitting resources.⁴³

Ultimately, the bulk power system increasingly connects generation sources located farther away from load centers, especially weather-influenced renewable energy resources. Also, the rise of distributed energy resources, especially electric vehicles and other energy storage sources of both load and supply, will add new and variable flows into the system, creating new challenges for a system designed around centralized dispatch. For these and other reasons, the grid increasingly will need to do several things, including operate more flexibly than the current system; capture the benefits of large-scale geographic diversity to manage supply integration challenges and costs, while avoiding duplicative and costlier local infrastructure; and integrate new technologies to enhance resilience and system coordination and incentives may well provide an important tool to accomplish this.

As Commissioner Glick concludes in the Partial Dissent, however, the NOPR focuses mostly on traditional production cost models that encourage the types of transmission resources that are already getting built, and will not incentivize projects that have the potential to greatly decrease the cost of delivered power by accessing regions with substantial, but largely undeveloped potential for providing clean and reliable renewable generation to the grid. That result is particularly problematic because the big—*i.e.*, long-haul, high-voltage—transmission projects that have the potential to provide enormous economic and reliability benefits over the long-term take decades to develop and construct. This will be a particular problem for areas like

⁴³ *Reliability and Market Considerations for A Grid in Transition: A Report From the New York Independent System Operator* at 17, (Dec. 20, 2019), <https://www.nyiso.com/documents/20142/2224547/Reliability-and-Market-Considerations-for-a-Grid-in-Transition-20191220%20Final.pdf/61a69b2e-0ca3-f18c-cc39-88a793469d50> (last visited June 29, 2020).

New England where state laws and policies are already mandating a drive to a zero carbon grid in the next decades, while at the same time many of the non-emitting resources needed to meet this goal are located at some distance from load centers, necessitating major, long distance transmission upgrades.

This leads to the central need of reforming transmission planning generally to support state public policy goals. Financial incentives are not the only, and may not be the best, tool to induce efficient operation and expansion of the grid to meet states' goals. Significant investments in transmission have occurred since the Commission effectuated the directives of Section 219. In turn, transmission costs have increased substantially over the last decade. Nationwide, investments in electric transmission facilities grew from approximately \$2 billion per year during the late 1990s to approximately *\$20 billion per year* during the five years ending in 2019.⁴⁴ Transmission costs are a material component of residential retail electric rates. A key issue, therefore, is how to build out needed transmission projects in a manner that protects ratepayers and ensures just and reasonable rates.

To better ensure that transmission providers act in the public interest, the Commission should consider reforming transmission planning, further emphasizing the advantages of competition and more closely scrutinizing the prudence of transmission owner investments, and identifying standards for the efficient and cost-effective use of existing facilities that constitute good utility practice and are part of the quid pro quo for receiving incentives as well as regulated rates and returns on prudently invested capital.

⁴⁴ Johannes P. Pfeifenberger, et al., *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value*, The Brattle Group, 14-15 (April 2019), https://brattlefiles.blob.core.windows.net/files/15987_brattle_competitive_transmission_report_final_with_data_tables_04-09-2019.pdf (Brattle April 2019 Report) (last visited June 30, 2020).

CONCLUSION

The State Entities support the proposal to end the incentives for Transcos and to cap total incentives, but to do so using the zone of reasonableness test. The State Entities oppose incentives for ISO and RTO participation, especially if such participation is mandatory. The State Entities urge the Commission to incorporate the broad and more comprehensive benefits concepts that are identified in this filing and originated in the 2013 Brattle Report as elements of production cost analysis when determining the award of incentives to transmission developers, particularly those concepts that will identify important, long-range projects necessary to support state de-carbonization and other goals. Further, more competition is needed and incentive policy needs to work with and facilitate competition. Finally, the State Entities respectfully urge the Commission to advance the overarching goal of transmission planning reform, both intra- and inter-regionally, in order to achieve the goals of Section 219 and provide a more reliable and efficient transmission system at least cost to ratepayers that respects and accommodates state policies.

Respectfully Submitted,

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Dated: July 1, 2020

CERTIFICATE OF SERVICE

I, Robert Snook, hereby certify that on this day I caused the foregoing to be served upon all parties identified on this agency's service list for this proceeding.

Robert Snook
Robert Snook

Dated: July 1, 2020