UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULAOTRY COMMISSION

Electric Transmission Incentives Policy Under Section Docket No. RM20-10

219 of the Federal Power Act

**Comments of Public Citizen, Inc.**

We strongly support efforts by the Commission to shield consumers from extravagant Return on Equity (ROE) adders, as they fail to achieve productive policy aspirations. We agree with the proposed rulemaking when it asserts that the Commission believes “that providing the Transmission Organization incentive indefinitely may not be necessary to incentivize a transmitting utility to join a Transmission Organization and, given the large impact that such an incentive has on ratepayers, may not appropriately balance utility and ratepayer interests”.[[1]](#footnote-1) And we could not have characterized it better than Commissioner Mark C. Christie:

*. . . transmission costs are already a significant and rising part of consumers’ retail bills, ROE adders needlessly burden consumers with substantial additional costs without demonstrable evidence that they actually incentivize the particular action they are aimed at incentivizing . . . such adders are duplicative of other Commission incentives already granted to public utilities by virtue of their participation in an RTO . . . section 219 of the FPA does not require an incentive for RTO/ISO participation to take the form of an ROE adder . . . adding basis points to the ROE makes the regulator not the guardian against market power, but the facilitator of it. For by definition, an ROE adder raises the cost of capital above the market cost, inflicting on consumers exactly the harm that utility regulation is supposed to prevent. In sum, an ROE adder is a subsidy . . . As a result, absent a clear declaration from Congress that a FERC-authorized incentive must take the form of an ROE adder—which it did not require for RTO participation incentives—awarding an ROE adder for any length of time as a “reward” for joining an RTO/ISO may be inconsistent with FPA section 219’s concurrent mandate that rates must be just and reasonable and not unduly discriminatory or preferential.*[[2]](#footnote-2)

The Commission’s proposal would limit a 50 basis point ROE adder for those transmission owners joining a Transmission Organization (commonly called RTOs or ISOs). Specifically, the proposal requires each utility that has received a financial incentive for joining and remaining in a Transmission Organization for three or more years to submit a compliance filing to remove the incentive from its transmission tariff. We agree with Commissioner Christie that this proposal “moves in the right direction,”[[3]](#footnote-3) but believe it can be improved to better protect consumers. Transmission costs have been escalating rapidly across the country and in our largest market, PJM[[4]](#footnote-4), so limiting or removing these adders will be a important start to controlling inflated costs charged to consumers.

**About Public Citizen**

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan,

research and advocacy organization representing the interests of household consumers.

Public Citizen is active before FERC promoting just and reasonable rates, and

supporting efforts for utilities to be accountable to the public interest. Our financial

details are located on our web site.[[5]](#footnote-5)

**Comments**

1. **The Commission should disallow ROE adders and instead focus solely on incentives for new transmission, such as construction work in progress and guaranteed cost recovery for project abandonment.**

The NOPR states that Federal Power Act “section 219(c) does not specify the form of the incentive for utilities that join a Transmission Organization” and asks “whether there are alternative, non-ROE incentives that are more appropriate for the Transmission Organization Incentive.”[[6]](#footnote-6) We believe that the Commission allows two forms of rate recovery that provide ample incentive for transmission owners that seek to voluntarily join an RTO.

First, the Commission can offer transmission developers seeking to join an RTO construction work in progress rate treatment. This allows a transmission developer to recover expenses as they occur, rather than waiting until the project is in operation.

Second, the Commission can authorize 100% rate recovery for prudently incurred expenses if the transmission project is cancelled due to no fault of the transmission developer.

A focus on new-build transmission will better align Commission incentives to encourage new investment, rather than simply shoveling ratepayer money at existing infrastructure, and better ensures that rates are “just and reasonable.”

1. **Public ownership of transmission can mollify the need for ROE adders**

The Commission’s assumption that transmission development and participation in RTOs requires an investor-owned financing model ignores the significant benefits that can accrue to consumers when such projects are publicly-owned. Among other benefits, a publicly-owned transmission system negates the need for any ROE adder. Therefore, as the Commission seeks “alternative, non-ROE incentives,” it should consider efforts to encourage public transmission ownership.

1. **The Commission should include public reporting detailing how much consumers are charged for the ROE adder, by utility recipient.**

The commission should provide an annual report detailing the total amount charged by each utility under the ROE adder policy. Surprisingly, it does not appear that the Commission currently has any comprehensive information, as the proposed rule simply “estimates that no more than 190 transmitting utilities currently receive a 50-basis-point ROE.”[[7]](#footnote-7) Adam Pollock with the Office of Energy Market Regulation at FERC provides an approximation that the NOPR will save consumers $350 million a year,[[8]](#footnote-8) but the Commission does not appear to have a firm number, or utility-specific figures. A reporting requirement by utility of the amount recovered from ratepayers under the RTO adder will provide transparency and help ensure just and reasonable rates, and will relieve the Commission from having to estimate the value of the subsidy, since recipients will disclose exact amounts.

1. **Any ROE adders should be eliminated if the transmission owner engages in significant corporate restructuring or a sale during the three year period.**

The NOPR asks “what restrictions the Commission should impose on incentive eligibility based on sales/affiliate corporate restructurings.”[[9]](#footnote-9) To prohibit the lucrative ROE adder from being exploited as a benefit to be extracted through a corporate restructuring, asset sale or merger, the Commission should immediately terminate it upon announcement of any significant sale or restructuring.

1. **ROE adders should be disallowed if RTO participation is mandated.**

The Commission’s NOPR asks: “should the Commission allow an applicant to seek

the Transmission Organization Incentive where states and/or other relevant electric retail regulatory authorities support receipt of such an incentive by the transmitting utility even though participation in the Transmission Organization is mandated

by the state and/or other relevant electric retail regulatory authority?”[[10]](#footnote-10)

The justification for offering an ROE adder is to incentivize RTO participation. If RTO participation is a requirement of state or federal law, then there is literally no need to incentivize participation, otherwise the ROE adder subsidy exists as nothing more than an egregious consumer-funded giveaway to a transmission owner.

1. **Transmission owners will likely have access to additional financial incentives, and the impediments to expanding transmission are process-related, not financial.**

ROE adders are unnecessary because transmission owners have access to other financial incentives. The U.S. Department of Energy just announced more than $8 billion in loan guarantees “to expand and improve the nation’s transmission grid.”[[11]](#footnote-11) And a June 2021 bipartisan agreement between key members of Congress and the Biden Administration would allocate $73 billion to “upgrade our power infrastructure, including by building thousands of miles of new, resilient transmission lines.”

Indeed, utilities have been significantly increasing investment in new transmission over the last several years[[12]](#footnote-12)—suggesting that ROE adder subsidies are unnecessary to incentivize new transmission investment.

Importantly, the primary barriers to expanding transmission capacity are not whether FERC provides a ROE adder for RTO membership, but the challenges associated with obtaining necessary regulatory approvals. FERC has already taken an important, constructive step to address these hurdles by announcing a joint federal-state task force to explore ways to pay and plan for transmission expansion.[[13]](#footnote-13) (In November 2020, Public Citizen advocated for FERC to “establish boards of state officials” to coordinate on transmission and RTO matters[[14]](#footnote-14)).

Respectfully submitted,

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1. NOPR, at 8. [↑](#footnote-ref-1)
2. https://ferc.gov/news-events/news/item-e-1-commissioner-mark-c-christie-concurrence-regarding-electric-transmission [↑](#footnote-ref-2)
3. https://ferc.gov/news-events/news/item-e-1-commissioner-mark-c-christie-concurrence-regarding-electric-transmission [↑](#footnote-ref-3)
4. See slides 12-13, https://pjm.com/-/media/committees-groups/user-groups/pieoug/2021/20210505/20210505-consumer-advocates-of-the-pjm-states-caps-presentation.ashx [↑](#footnote-ref-4)
5. www.citizen.org/about/annual-report [↑](#footnote-ref-5)
6. NOPR, at 16. [↑](#footnote-ref-6)
7. NOPR, at 34. [↑](#footnote-ref-7)
8. www.ferc.gov/media/transcript-5, page 54, at 3-6. [↑](#footnote-ref-8)
9. NOPR, at 20. [↑](#footnote-ref-9)
10. NOPR, at 19. [↑](#footnote-ref-10)
11. www.energy.gov/articles/doe-announces-825-billion-loans-enhance-electrical-transmission-nationwide [↑](#footnote-ref-11)
12. www.eia.gov/todayinenergy/detail.php?id=47316 [↑](#footnote-ref-12)
13. www.ferc.gov/news-events/news/staff-presentations-order-establishing-joint-federal-state-task-force-electric [↑](#footnote-ref-13)
14. See point #4 at pages 3-4, www.citizen.org/wp-content/uploads/FERC2021.pdf [↑](#footnote-ref-14)