

March 5, 2012

Via Hand Delivery

Hon. John Wellingshoff
Hon. Phillip Moeller
Hon. John Norris
Hon. Cheryl LaFleur
Federal Energy Regulatory Commission
800 First Street, NE
Washington, DC 20426

Re: *Promoting Transmission Investment Through Pricing Reform*, Docket No.
RM11-26-000

Dear Chairman Wellingshoff and Commissioners:

The undersigned entities, including state commissions, agencies, and attorneys general, consumer-owned utilities, and national and regional environmental, consumer, and energy policy NGOs, have read with interest the comments filed in response to the Commission's Notice of Inquiry in the above-referenced proceeding, and many of the undersigned entities filed such comments themselves. The diversity of our perspectives notwithstanding, we have reached similar conclusions regarding many of the significant issues raised in the NOI. We write now to highlight broad areas of agreement among our organizations, and to urge the Commission to consider this broad agreement in assessing current transmission incentive policies.

We share a belief in the importance of developing and maintaining a modern, robust electric transmission system. We recognize the benefits of investment in new transmission facilities, and welcome efforts to improve reliability, reduce congestion, and integrate renewable resources. However, we also share deep reservations about the manner in which the Commission has sought to promote new investment. The current incentive structure places unwarranted burdens on consumers, and diverts ratepayer capital away from other important electric infrastructure investments.

We encourage the Commission to modify its policies so as to better protect consumers and advance policy goals. We jointly support the following revisions to current Commission policies on the granting of transmission incentives:

- **The Commission should grant risk-reducing incentives first and award above-cost incentives rarely.**

Before awarding any transmission incentives, the Commission should determine whether a project has unusually high levels of risk. Where unusual risks are shown to be present, the Commission should first consider incentives that directly address and reduce such risks, such as recovery of construction work in progress ("CWIP") and abandoned plant incentives. The Commission should not approve return on equity ("ROE") incentives as

a matter of course, particularly where other factors—such as cost recovery under formula rates—will mitigate the risk associated with a project. Most often, if the CWIP and abandoned plant risk-reducing incentives are granted, they will obviate the need for an incentive ROE. Additional incentives—e.g., ROE adders—should be the exception rather than the rule, and would be appropriate only in extraordinary cases, such as those in which consumers will be tangibly benefitted by the use of an advanced technology whose risks make it unlikely to be deemed economic for the developer absent such incentives.

- **The Commission should not provide incentives to projects that transmission providers are already obligated to build.**

In some (if not many) cases, utilities invest in transmission projects because they are under a legal obligation to do so (perhaps contained in RTO-related agreements), or because the project must be built to ensure compliance with mandatory reliability standards. The Commission cannot ensure just and reasonable rates when it provides above-cost incentives to projects that transmission providers are already obligated to build, because the projects will be built regardless of incentive treatment. The Commission should treat as presumptively ineligible for above-cost incentives facilities that are designed to achieve compliance with mandatory reliability standards or that the applicant is otherwise required to construct, unless the applicant demonstrates that it is meeting the standard through the use of an advanced technology or practice that will provide tangible net benefits to consumers.

- **The Commission should not incent expensive solutions when lower-cost alternatives are available.**

It is not just and reasonable to charge customers for expensive transmission solutions (let alone to incentivize these solutions and charge customers even more) when less expensive means are available to satisfy a reliability need. Depending on the circumstances, a non-transmission alternative may prove to be a better option for solving a given concern.

- **The Commission should not base eligibility for above-cost rewards on project scale.**

The Commission's existing policy of making unusually large transmission projects preferentially eligible for incentives creates a misdirected reward structure, potentially encouraging transmission owners to short-change incremental system upgrades and ongoing management of peak demands in favor of solutions that are sporadic, large, and wires-based. The Commission should not direct incentives to projects simply because they are unusually large, but should instead focus on factors such as project riskiness and whether, by pioneering the application of innovative or advanced technologies, an investment creates identifiable public benefits beyond those of the project at issue.

- **The Commission should not apply ROE adders to cost overruns.**

Where ROE adders are approved, that approval should be applied to the lower of budgeted or actual costs. Under current policies transmission owners—particularly those with formula rates—are rewarded if they first underestimate project estimates in order to gain needed approvals and then build at the highest cost that will not be deemed imprudent, thereby inflating the rate base to which the above-cost equity return will apply. Applying incentives to budgeted rather than actual amounts will avoid rewarding cost overruns and improve the quality of the cost estimates that are prepared in the course of RTO planning processes and state commission proceedings. In terms of mechanics, we suggest that the cost estimate used during the RTO planning process or an analogous estimate in a non-RTO context be used to apply this limitation.

- **The Commission should not apply ROE adders to abandoned plant amounts.**

While it may be useful to protect incentive applicants against risks of loss in order to promote the construction of new transmission, applicants should not be economically indifferent to whether their projects actually enter service. Applicants should have incentives to complete their projects, so that the public receives the benefits that above-cost ROE adders are intended to yield. Moreover, promoting high-risk transmission projects that never get built crowds out more modest solutions and should not be a lucrative business model. The Commission therefore should not apply ROE adders to abandoned plant amounts in order to ensure that cancelled projects' investors do not collect more than the cost of their investment.

- **The Commission should identify types of projects that are presumptively ineligible for incentives.**

Certain types of projects typically lack a risk profile meriting incentive treatment. To ease administrative burdens and provide regulatory certainty, the Commission should compile a list of "baseline" or "low-risk" projects that are generally ineligible for incentives or face a high burden to demonstrate incentive-worthy risks.

- **The Commission should make the price of incentives transparent.**

The cost-based and above-cost (incentive) components of the rate of return for projects that receive incentives should be kept distinct, so that the Commission and the public can distinguish costs from rewards.

With respect to these core issues, the undersigned organizations are unified in urging the Commission to revise its current policy. We thank the Commission for its consideration and look forward to its action on the Notice of Inquiry.

Respectfully submitted,

**ENVIRONMENTAL,
CONSUMER, AND ENERGY
POLICY NGOS**

**STATE PUBLIC UTILITY
COMMISSIONS**

**STATE ATTORNEYS
GENERAL**

/s/ Allison Clements

Allison Clements
Director - The Sustainable
FERC Project
NRDC
40 W. 20th Street
NYC, NY 10011
(212) 727-4473
aclements@nrdc.org

/s/ Kevin DelGobbo

Kevin DelGobbo
Chairman
Connecticut Public Utilities
Regulatory Authority
10 Franklin Square
New Britain, CT 06051
(860) 827-1553
kevin.delgobbo@po.state.ct.us

/s/ George Jepsen

George Jepsen
Attorney General
Office of the Connecticut
Attorney General
55 Elm Street
Hartford, CT 06106
(860) 808-5318
AG.Jepsen@ct.gov

/s/ Johnathan Hladik

Johnathan Hladik
Energy Policy Advocate
Center for Rural Affairs
145 Main Street
Lyons, NE 68038
(402) 687-2103 Ext 1022
johnathanh@cfra.org

/s/ Joshua B. Epel

Joshua B. Epel
Chairman
Public Utilities Commission of
the State of Colorado
1560 Broadway, Suite 250
Denver, CO 80202
(303) 894-2000
Joshua.Epel@dora.state.co.us

/s/ Janice A. Dale

Janice A. Dale
Chief, Public Utilities
Bureau
Illinois Office of the
Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-3736
jdale@atg.state.il.us

/s/ Seth Kaplan

Seth Kaplan
Vice President for Policy and
Climate Advocacy
Conservation Law Foundation
62 Summer Street
Boston, MA 02110
(617) 850-1721
skaplan@clf.org

/s/ William Nugent

William Nugent
Executive Director
New England Conference of
Public Utilities Commissioners
50 Forest Falls Drive, Suite 6
Yarmouth, Maine 04096-6937
(207) 846-5440
director@necpuc.org

/s/ Jesse S. Reyes

Jesse S. Reyes
Patrick J. Tarmey
Assistant Attorneys General
Massachusetts Attorney
General
Office of Ratepayer
Advocacy
One Ashburton Place
Boston, MA 02108-1598
(617) 963-2432 (Reyes)
(617) 963-2577 (Tarmey)
jesse.reyes@state.ma.us
patrick.tarmey@state.ma.us

Rhode Island Division of Public
Utilities and Carriers

Peter F. Kilmartin,
Attorney General of the State
of Rhode Island

/s/ Mark S. Brownstein

Mark S. Brownstein
Chief Counsel, Energy
Program
Environmental Defense Fund
257 Park Avenue South, 17th
Floor
New York, New York 10010
(212) 616-1333
mbrownstein@edf.org

By: /s/ Leo J. Wold

Leo J. Wold
Assistant Attorney General
Rhode Island Department of
Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, ext. 2218
lwold@riag.ri.gov

By: /s/ Leo J. Wold

Leo J. Wold
Assistant Attorney General
Rhode Island Department of
Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, ext. 2218
lwold@riag.ri.gov

**ENVIRONMENTAL,
CONSUMER, AND ENERGY
POLICY NGOS (CONTINUED)**

CONSUMER ADVOCATES

**CONSUMER-OWNED
UTILITIES**

/s/ Dorothy Barnett

Dorothy Barnett
Executive Director
Climate + Energy Project
P.O. Box 1858
Hutchinson, KS 67504
Barnett@climateandenergy.org

/s/ Charles Acquard

Charles Acquard
Executive Director
National Association of State
Utility Consumer Advocates
8380 Colesville Road
Suite 101
Silver Spring, MD 20910
(301) 589-6313
charlie@nasuca.org

/s/ Ronald C. DeCurzio

Ronald C. DeCurzio
Chief Executive Officer
Massachusetts Municipal
Wholesale Electric
Company
P.O. Box 426
Ludlow, MA 01056
(413) 308-1326
RDeCurzio@mmwec.org

/s/ Abigail Dillen

Abigail Dillen
Earthjustice
Coal Program Director
156 William Street, Suite 800
New York, NY 10038
(212) 791-1881 Ext 8221
adillen@earthjustice.org

/s/ Elin Katz

Consumer Counsel
Connecticut Office of Consumer
Counsel
10 Franklin Square
New Britain, CT 06051
(860) 827-2900
occ.info@ct.gov

/s/ Stephen E. Kaminski

Stephen E. Kaminski
Vice President, Power
Resources and Access
New Hampshire Electric
Cooperative, Inc.
(603) 536-8655
kaminskis@nhec.com

/s/ Derek K. Murrow

Derek K. Murrow
 Energy & Climate Policy
 Director
 ENE (Environment Northeast)
 PO Box 583
 Rockport, ME 04856
 (203) 285-1946
 dmurrow@env-ne.org

/s/ Sandra Mattavous-Frye.

Sandra Mattavous-Frye
 People's Counsel
 Office of the People's Counsel
 1133 15th Street, N.W.
 Suite 500
 Washington, D.C. 20005-2710
 (202) 727-3071
 SMFrye@opc-dc.gov

/s/ John Twitty

John Twitty
 Executive Director
 TAPS
 4203 E. Woodland
 Springfield, MO 65809
 (417) 838-8576
 835consulting@gmail.com

/s/ Ginny Kreitler

Ginny Kreitler
 Senior Advisor, Energy &
 Environment
 National Audubon Society
 646 Lakeview Circle
 Newtown Square, PA 19073
 (610) 325-9809
 gkreitler@audubon.org

/s/ Andrea Maucher

Andrea Maucher
 Delaware Division of the Public
 Advocate
 John G. Townsend Building
 401 Federal Street, Suite 3
 Dover, Delaware 19901
 (302) 857-4620
 andrea.maucher@state.de.us

/s/ Sean T. Beeny

Sean T. Beeny
 Phyllis G. Kimmel
 Miller, Balis & O'Neil, P.C.
 1015 Fifteenth Street, NW
 Twelfth Floor
 Washington, DC 20005
 (202) 296-2960
 sbeeny@mbolaw.com

Attorneys for: Arkansas
 Electric Cooperative
 Corporation; Golden Spread
 Electric Cooperative, Inc.;
 Kansas Electric Power
 Cooperative, Inc.; North
 Carolina Electric
 Membership Corporation;
 PowerSouth Energy
 Cooperative; and Seminole
 Electric Cooperative, Inc.

/s/ Carl Zichella

Carl Zichella
 Director of Western
 Transmission
 Natural Resources Defense
 Council
 111 Sutter Street, 20th Floor
 San Francisco, CA 94104
 (415) 875-6119 (SF)
 czichella@nrdc.org

/s/ David Springe

David Springe
 Consumer Counsel
 Citizens' Utility Ratepayer
 Board
 1500 S.W. Arrowhead Road
 Topeka, KS 66604
 (785) 271-3200
 (785) 217-4662 (mobile)
 d.springe@curb.kansas.gov

/s/ Susan N. Kelly

Susan N. Kelly
 Senior Vice President,
 Policy Analysis and
 General Counsel
 American Public Power
 Association
 1875 Connecticut Avenue,
 NW, Suite 1200
 Washington, DC 20009
 (202) 467-2933
 skelly@publicpower.org

/s/ Jackson D. Morris

Jackson D. Morris
 Director of Strategic
 Engagement
 Pace Energy & Climate Center
 Pace Law School
 744 Broadway
 Albany, NY 12207
 (914) 539-1985
 jmorris@law.pace.edu

/s/ A. David Stippler

A. David Stippler
 Indiana Office of Utility
 Consumer Counselor
 115 W. Washington Street, Suite
 1500 South
 Indianapolis, IN 46204
 (317) 232-2494
 uccinfo@oucc.IN.gov

/s/ Mark Kresowik

Mark Kresowik
 Eastern Region Deputy Dir.
 Sierra Club's Beyond Coal
 Campaign
 50 F St NW Eighth Floor
 Washington, DC 20001
 (202) 675-7914
 mark.kresowik@sierraclub.org

/s/ Paula M. Carmody

Paula M. Carmody, Esq.
 People's Counsel
 Maryland Office of People's
 Counsel
 6 St. Paul Street, Suite 2102
 Baltimore, MD 21202-0000
 (800) 207-4055
 paulac@opc.state.md.us

/s/ David Olsen

David Olsen
 Managing Director
 Western Grid Group
 3804 Pacific Coast Highway
 Ventura, CA 93001
 (805) 653-6881 Office
 Dave@westerngrid.net

/s/ Stefanie A. Brand

Stefanie A. Brand
 Director, New Jersey Division of
 Rate Counsel
 31 Clinton Street, 11th Floor
 P.O. Box 46005
 Newark, New Jersey 07101
 (973) 648-2690
 sbrand@rpa.state.nj.us

/s/ Nancy L. Kelly

Nancy L. Kelly
 Senior Policy Advisor
 WRA
 2260 Baseline Rd., Suite 200
 Boulder, CO 80302
 (208) 234-0636
 nkelly@westernresources.org

/s/ Irwin A. Popowsky

Irwin A. Popowsky
 Consumer Advocate
 Pennsylvania Office of
 Consumer Advocate
 555 Walnut Street, 5th Floor
 Harrisburg, PA 17101-1923
 (717) 783-5048
 spopowsky@paoca.org

/s/ Byron L. Harris

Byron L. Harris
Director, Consumer Advocate
Division
Public Service Commission of
West Virginia
700 Union Building
Charleston, West Virginia 25301
(304) 558-0526
bharris@cad.state.wv.us

/s/ Charlie Higley

Charlie Higley
Executive Director
Citizens Utility Board of
Wisconsin
16 N. Carroll Street, Suite 640
Madison, WI 53703
(608) 251-3322
higley@wiscub.org