UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Commission's Policy for Determining Return on Equity	))	Docket No. PL19-04-000

SUPPLEMENTAL COMMENTS OF WIRES

Pursuant to the Notice of Inquiry ("NOI") issued by the Federal Energy Regulatory Commission ("Commission" or "FERC") on March 21, 2019 in the above-captioned proceeding,[1] WIRES, on behalf of its members, hereby submits the following Supplemental Comments. WIRES filed initial comments in response to the NOI.[2] Although the Commission has not issued a generic rule for public utility base return on equity ("ROE") in the NOI proceeding, the Commission has made sweeping substantive changes to its base ROE methodology in other case-specific proceedings. WIRES believes those case specific determinations, while offering steps in the right direction, do not fully resolve the need for regulatory certainty and stable ROEs into the future. WIRES respectfully requests the Commission take further action in this proceeding to address those issues.

Investment in transmission needs to be encouraged now more than ever. Over the past several months, the COVID-19 pandemic health crisis has devastated the economy and highlighted the need for decisive action to spur a sustained, robust and vigorous economic recovery. Although the current COVID-19 situation has challenged many industries, it has shown now more than ever the benefits of cleaner air and the contribution that clean energy can have in the future.

[1] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, 166 FERC ¶ 61,207 (2019).

[2] Initial Comments of WIRES, Docket No. PL19-4-000 (June 26, 2019) ("WIRES Comments").

Transmission development is necessary to achieve that future, as well as to further enhance grid resiliency, and should be part of any planned economic recovery. Moreover, the COVID-19 pandemic has highlighted how investment in transmission infrastructure can help provide national security and safety during a crisis—due to the investment already made in transmission infrastructure, the transmission grid has performed admirably during the pandemic, enabling the continued reliable delivery of critical electricity to families, hospitals, public health and safety officials, and other essential businesses as the country fights the virus.

In light of the clear need to ensure a reliable electric grid, FERC must focus on establishing an ROE methodology that will provide regulatory certainty, support much needed transmission investment and produce just and reasonable results. WIRES's Supplemental Comments are prompted by these developments and provide a more complete record to assist the Commission in adopting additional generic policy changes in this proceeding and to inform and guide its decision-making in other related case-specific proceedings.[3]

I. EXECUTIVE SUMMARY

WIRES is an international non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers, transmission customers, regional grid managers, and equipment and service companies.[4] WIRES promotes investment in electric transmission and state and federal policies that advance energy markets, economic efficiency, and consumer and environmental benefits through development of electric power infrastructure. WIRES has long supported investment in needed and beneficial transmission infrastructure – investments that

[3] This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the RTO/ISO associate members of WIRES.

[4] For more information about WIRES, please visit www.wiresgroup.com.

Congress and the Commission have recognized are critical to ensure a resilient, reliable, cost-effective, modern, and clean bulk power system.

Electric transmission investment in the United States remains critical for ensuring efficient and reliable electric service and enabling the ongoing transition to new generating sources. As the Commission recognized this year, there are numerous drivers underlying the need for new transmission infrastructure, including the evolution in the nation's resource mix, an increase in the number of new resources seeking transmission service, shifts in load patterns, implementation of reformed transmission planning processes, and new challenges to maintaining the reliability of transmission infrastructure.[5] Numerous studies show that transmission investment provides enormous value and that the need for new transmission has never been greater.[6] For these reasons, the Commission should adopt policies that promote investment, and no such policy is of greater import than the methods used to set ROEs on those investments. Stable and adequate ROEs are critical to attract reasonably priced investment capital to this challenging business. The Commission should take advantage of this proceeding to provide additional clarity and certainty to its policy for determining base ROEs and to establish a methodology that will be applied henceforth in proceedings under sections 205 and 206 of the Federal Power Act ("FPA").[7]

As discussed in more detail below, WIRES believes that using all four financial models, rather than the three recently adopted by the Commission, would further enhance the setting of ROEs at just and reasonable levels sufficient to attract capital for investment in vital transmission

[5] *Elec. Transmission Incentives Policy Under Section 219 of the Fed. Power Act*, 170 FERC ¶ 61,204 at PP 25-30 (2020) ("Incentives NOPR").

[6] *See e.g.*, The Brattle Group, *Employment and Economic Benefits of Transmission Infrastructure Investment in the U.S. and Canada*, at 33 (May 2011) ("Brattle Report"); London Economics International, Inc. ("LEI"), *How does Electric Transmission Benefit You?* (Jan. 2018) ("LEI Report").

[7] 16 U.S.C. §§ 824d and 824e.

infrastructure going forward. An ROE methodology that uses a refined form of the Capital-Asset Pricing Model ("CAPM") known as the Emprical CAPM ("ECAPM"), Expected Earnings model, and Risk Premium model in addition to the Discounted Cash Flow ("DCF") model will result in a more robust and predictable ROE analysis that more accurately reflects the information that investors use in analyzing their investment opportunities. Relying on an ROE methodology that incorporates only three of the four methodologies, like the Commission's recent decision in Opinion No. 569-A,[8] would make the methodology more susceptible to producing volatile results, could impact transmission-owning public utilities' ability to attract capital and invest in transmission infrastructure, and could violate the *Hope* and *Bluefield* capital attraction standard.[9] While financial markets are impacted by many factors, using only three methodologies futher risks missing the full picture of the markets and increases the likelihood that ROEs are not set appropriately. Simply put, using four models is better and more comprehensive.

Absent additional changes, the base ROE methodology adopted in Opinion No. 569-A may be insufficient to provide stable and appropriate ROEs into the future. Although an improvement over the Opinion No. 569 methodology, it will not fully address the reality that transmission is the backbone of the Bulk Electric System and continued investment is necessary to meet the needs of the future economy while helping to spur the economic recovery. Numerous factors underscore the value of transmission as well as the need for additional investment in our nation's electric transmission system, including the need to maintain and enhance reliability, satisfy changing

[8] *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc*., Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) ("Opinion No. 569-A").

[9] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n,* 262 U.S. 679, 693 (1923) ("*Bluefield*"); *see also FPC v. Hope Nat. Gas. Co.*, 230 U.S. 591, 603 (1944) ("*Hope*") "[T]he return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks… [and] should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.") (together, "*Hope* and *Bluefield*").

consumer needs, adapt to an evolving fuel mix for electric generation that is increasingly comprised of renewable and clean energy resources that need to be transported from remote locations to market centers, serve the potential for increased demand due to increased penetration of electric vehicles and other electrification efforts, and integrate and accommodate new technologies. Increasing frequency and intensity of storms, cyber- and physical-security threats, and resilience risks to withstanding both expected and unexpected events all point toward critical investment needs. In addition, sufficient investment in transmission infrastructure helps ensure that the grid can adapt and remain strong in the face of other crises such as the COVID-19 pandemic. While other industries have partially or completely shut down, transmission owners have continued to provide uninterrupted, reliable, and safe service to support hospitals, grocery stores, and communities they serve. For example, transmission owners' prior preparation and adaptation to new load levels, planning requirements, social distancing, maintenance challenges and other measures have enabled transmission owners to continue serving struggling communities as they cope with the pandemic and emerge from it. On top of that, building electric transmission is a risky, capital-intensive, on-going, long-term commitment. It is critical that the Commission's policies encourage investment in transmission-owning public utilities. There is significant competition for capital, and the base ROE methodology espoused in Opinion No. 569-A fails to consider the full range of inputs that guide investor decision making.

Going forward, the Commission should also make certain additional modifications to the methodology set forth in Opinion No. 569-A to set ROEs at just and reasonable levels sufficient to attract investment for needed transmission infrastructure. WIRES and many of its members sought to intervene in the MISO proceeding to address the deficiencies in Opinion No. 569. The Commission rejected those late interventions and therefore did not address the concerns raised by

WIRES. Given the decision not to address the issues raised by WIRES in Opinion No. 569-A, the Commission should address those issues and concerns in this docket. The proposed adjustments, discussed in more detail herein, further refine the four-model methodology to set base ROEs sufficient to attract capital investment in needed transmission consistent with the *Hope* and *Bluefield* standards.

Finally, because no process is guaranteed to produce an ROE that is just and reasonable and both sufficiently attractive for investors and cost effective for customers under any and all circumstances, the Commission should reserve its ability to exercise its judgment when necessary so that the end result of its analysis is a just and reasonable ROE. One way for the Commission to do this is comparing the outcome of its analysis to state-authorized ROEs. FERC ROE policy should be to establish ROEs to reflect the greater risk associated with transmission investments that comprise the larger interconnected bulk power system relative to distribution investments. If needed, FERC should allow itself sufficient flexibility to use state ROEs as a benchmark and make necessary adjustments for transmission, which is inherently riskier than distribution investment. The Commission can also take into account current financial market conditions compared to historic norms. Providing the ability to make such refinements, when supported by the record, would allow the Commission to ensure that the results of its base ROE methodology comport with the broader context of investor expectations and market conditions, and therefore provide a just and reasonable return on investments in transmission infrastructure.

II. The Commission's Recent ROE Decisions Have Sown Confusion and Its Most Recent Ruling Could Undermine Needed Investment in Transmission Infrastructure

The Commission has struggled for several years to develop a base ROE methodology that satisfies legal standards, provides certainty, sends appropriate signals to potential investors in

transmission, is cost effective for consumers, and withstands judicial scrutiny. The Commission issued the instant NOI in March 2019 to broadly re-examine its ROE methodology while it was simultaneously grappling with complex proceedings to establish base ROEs for transmission owners in New England and the Midwest. The intertwined, overlapping nature of these multiple proceedings has resulted in a series of orders that has continued to inject uncertainty and undermined the Commission's state goal of ensuring transmission build. This history is detailed below.

On September 30, 2011, a group of complainants filed a complaint under FPA section 206 alleging that the 11.14 percent base ROE used in the New England Transmission Owners' ("NETOs") formula rates was unjust and unreasonable. On May 3, 2012, the Commission set NETO I for hearing and settlement judge procedures. On December 27, 2012, while NETO I was still pending before the Commission, a group of complainants filed a second complaint ("NETO II") alleging that the NETOs' then-still-effective base ROE was unjust and unreasonable. The Commission set NETO II for hearing and settlement judge procedures on June 19, 2014. On July 31, 2014, a third complaint was filed, alleging that the NETOs' then-still-effective base ROE was unjust and unreasonable ("NETO III"). On November 24, 2014, the Commission set NETO III for hearing. On April 29, 2016, a fourth complaint against the NETOs' ROE was filed ("NETO IV"). The Commission set NETO IV for hearing on September 20, 2016.

In November 2013, a coalition of large industrial and commercial electric energy customers filed a joint complaint ("MISO I") asking FERC to, among other things, find the base ROE used in the Midcontinent Independent Transmission System Operator, Inc. Transmission Owners' ("MISO TOs") and American Transmission Corporation's ("ATC") formula transmission rates to be unjust and unreasonable and reduce the base ROEs from 12.38 percent and 12.2, respectively,

to 9.15 percent.[10] The Commission subsequently issued an order in October 2014, preliminarily finding the base ROE to be unjust and unreasonable and establishing settlement and hearing judge procedures on the base ROE issue.[11] In February 2015, before this complaint was adjudicated, a group of municipal organizations and electric cooperatives filed a second complaint ("MISO II") to preserve and extend the refund effective date established in the first complaint.[12] The MISO II complaint sought a determination that the base ROE is unjust and unreasonable and requested that it be lowered to no higher than 8.67 percent, while also seeking consolidation with the MISO I proceeding.

In June 2014, the Commission issued Opinion No. 531 in response to NETO I.[13] In Opinion 531, the Commission adopted a new two-step DCF methodology for determining the base ROE for public utilities. The Commission also found that the midpoint of the zone of reasonableness produced by the two-step DCF analysis in that case was too low to satisfy the requirements of *Hope* and *Bluefield* and that the NETOs' base ROE should be set at the midpoint of the upper half of the zone of reasonableness.[14]

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[10] Complaint of the Association of Businesses Advocating Tariff Equity, Coalition of MISO Transmission Customers, Illinois Industrial Energy Consumers, Indiana Industrial Energy Consumers, Inc., Minnesota Large Industrial Group, and Wisconsin Industrial Energy Group, Docket No. EL14-12-000 (filed Nov. 12, 2013).

[11] *Ass'n of Business Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,049 (2014).

[12] Complaint Requesting Fast Track Processing and Motion to Consolidate of Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, and Hoosier Energy Rural Electric Cooperative, Docket No. EL15-45-000 (filed Feb. 12, 2015).

[13] *Coakley v. Bangor Hydro-Elec. Co*., Opinion No. 531, 147 FERC ¶ 61,234 ("Opinion No. 531"), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014) ("Opinion No. 531-A"), order on reh'g, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) ("Opinion No. 531-B"), *rev'd, Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

[14] Opinion No. 531 at P 148.

In December 2015, after settlement negotiations in MISO I failed, an Administrative Law Judge, applying the new methodology established in Opinion No. 531, issued an initial decision recommending that the MISO TOs' base ROE be lowered to 10.32 percent.[15] The Commission affirmed the initial decision in Opinion No. 551, finding that, because the midpoint of the DCF zone did not satisfy the requirements of *Hope* and *Bluefield*, the just and reasonable base ROE for the MISO TOs should be set at the central tendency of the upper half of the zone of reasonableness[16] pursuant to the two-step DCF methodology established in Opinion No. 531. Similarly, in MISO II, no settlement was reached and an Administrative Law Judge issued an initial decision recommending a base ROE of 9.70 percent.[17]

In April 2017, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated and remanded Opinion No. 531.[18] The court held that under FPA section 206, FERC must first find that an existing rate is unjust and unreasonable before establishing a new rate that it determines to be just and reasonable.[19] The court explained that the Commission cannot simply declare that an existing ROE is unjust and unreasonable because it exceeds the single ROE value produced by a DCF analysis.[20] As the court noted, "the zone of reasonableness creates a broad range of potentially lawful ROEs rather than a single just and reasonable ROE…."[21] In response to the court's ruling, the Commission proposed another new ROE methodology in a

[15] *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 63,027 (2015).

[16] *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234, P 9 (2016) ("Opinion No. 551").

[17] *Ark. Elec. Coop. Corp. v. ALLETE, Inc.*, 155 FERC ¶ 63,030 (2016).

[18] *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017) ("*Emera Maine*").

[19] *Id*, at 27.

[20] *Id*.

[21] *Id*. at 26.

case-specific proceeding, which applied to electric transmission owning utilities in New England.[22] FERC established a paper hearing to examine how this methodology should apply to the four ROE complaint proceedings (NETO I, II, III, and IV) pending before the Commission involving those utilities.

Because Opinion No. 551 relied on the methodology in Opinion No. 531, which was vacated by the D.C. Circuit, the Commission issued an order in November 2018 directing briefs in the two pending ROE complaints against the MISO TOs seeking comment on how the methodology that it had proposed in October 2018 in response to *Emera Maine* should be applied in the MISO proceeding ("Briefing Orders").[23]

Under the proposed new methodology, the Commission would first establish a composite zone of reasonableness by averaging the results of the DCF, CAPM, and the Expected Earnings model. This composite zone of reasonableness would be divided into quartiles to determine presumptively just and reasonable ROEs for (1) below-average risk utilities, (2) average risk utilities, and (3) above-average risk utilities. Under this methodology, any complaint or challenge to an existing base ROE filed pursuant to FPA section 206 would be dismissed if the Commission determines that the existing base ROE falls within a quartile of the presumably just and reasonable base ROEs for a utility of similar risk. If the Commission determines that an existing base ROE is unjust and unreasonable under this standard, the Commission would then determine a new just and reasonable base ROE by averaging the estimated cost of equity produced by each of the three financial models referenced above, in addition to the result of the Risk Premium model.

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[22] *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018) (Coakley Briefing Order).

[23] *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,118 (2018) ("MISO Briefing Order"); *see also Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC ¶ 61,030 (2018) ("NETO Briefing Order") (together with NETO Briefing Order, the "Briefing Orders").

Recognizing the significance that its proposed ROE methodology would have to all FERC-jurisdictional public utilities, FERC issued this NOI in March 2019 to seek comments from a broader group of stakeholders regarding whether, and if so how, it should modify its policies concerning the determination of base ROEs. FERC specifically sought feedback on each of the four financial models proposed in the Briefing Orders.[24]

WIRES filed comments in response to the NOI.[25] WIRES generally supported the proposal for the Commission to employ four financial models in its ROE analysis, instead of relying solely on the DCF model. As described in the WIRES Comments, the proposed methodology relied on several financial models used by investors to set the ROE, mitigating the effect of distortions that may occur if the Commission relied on only one model such as the Commission's application of the DCF model. WIRES further explained that the methodology also provided a statutorily appropriate framework for determining whether an existing ROE has become unjust and unreasonable. In addition, WIRES contended that the proposed ROE methodology was best-suited to promote investment in new transmission needed to accomplish the objectives of ensuring efficient and reliable electric service and enabling the ongoing transition to new generating sources. As a result, WIRES urged the Commission to adopt the proposed methodology, with certain modifications, as the best means of attracting critical capital to these risky, but sorely needed, investments on a national basis.

While the NOI docket was still pending, the Commission issued Opinion No. 569[26] which made drastic changes to its proposed ROE methodology. In Opinion No. 569, the Commission

[24] NOI at P 28.

[25] Initial Comments of WIRES, Docket No. PL19-4-000 (June 26, 2019) ("WIRES Comments").

[26] *Ass'n of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc*., Opinion No. 569, 169 FERC ¶ 61,129 (2019) ("Opinion No. 569").

stated that it will use the DCF and CAPM models, but not the Expected Earnings or Risk Premium models.[27] To determine whether the existing ROE has become unjust and unreasonable, the Commission would determine the relevant utility's risk profile and then identify a range of presumptively just and reasonable base ROEs within the overall zone of reasonableness for that utility based on its risk profile.[28] The Order No, 569 analysis would proceed in this sequence:

> [the Commission] will apply the DCF and CAPM models separately to the applicable proxy group, producing two zones of reasonableness: a DCF zone of reasonableness and a CAPM zone of reasonableness. Then the top of the DCF zone of reasonableness will be averaged with the top of the CAPM zone of reasonableness and the bottom of the DCF zone of reasonableness will be averaged with the bottom of the CAPM zone of reasonableness to determine a single composite zone of reasonableness for use in both the first and second prong analysis under FPA section 206. If an existing ROE is found to be unjust and unreasonable, the replacement ROE will be set at the central tendency of the composite zone of reasonableness or the central tendency of the upper or lower halves of the composite zone of reasonableness depending upon whether the utility is of average, above average, or below average risk, respectively.[29]

Given the sweeping, but flawed, changes to the base ROE methodology adopted in Opinion No. 569 and the potential generic industry-wide implications of the methodology, multiple parties sought rehearing of the Commission's determination, and numerous non-parties, including WIRES, filed for late intervention and rehearing.

In Opinion No. 569-A, the Commission granted rehearing to revise its restrictive ROE methodology to (1) include the Risk Premium model along with the DCF and CAPM models under both prongs of its FPA section 206 analysis; (2) alter the weighting of short and long term growth rates in the two-step DCF model; (3) consider use of Value Line growth rates in future CAPM analyses; (4) increase the high end outlier test; and (5) divide the overall composite zone of

[27] *Id*. at P 31.

[28] *Id.* at P 60.

[29] *Id*. at P 437.

reasonableness into equal thirds rather than using a quartile approach. While the Commission declined to adopt the Expected Earnings model in its revised methodology, the Commission expressly stated that "we do not necessarily foreclose its use in future proceedings" if parties can address the Commission's concerns with the model.[30] The Commission also denied the motion for late intervention by WIRES.

In addition, the Commission acted in the instant NOI docket, but only with respect to its policy for determining base ROEs for natural gas and oil pipelines.[31] In the Gas & Oil Pipeline ROE Policy Statement, the Commission revised its policy for analyzing interstate natural gas and oil pipeline base ROEs to conform to the methodology established for public utilities in Opinion Nos. 569 and 569-A, with certain exceptions to account for differences among the industries.[32] Notably, neither Opinion No. 569-A nor the Gas and Oil Pipeline ROE Policy Statement indicated whether the Commission plans any further action in the instant proceeding to address the Commission's policy on base ROEs for public utilities.

III. COMMENTS

A. The Need For Transmission Investment Has Only Increased.

The economic consequences of the current COVID-19 pandemic health crisis have been severe. At present, the country faces unemployment and economic contraction at levels not seen since the Great Depression. The need for quick, decisive action to promote investment in major infrastructure projects that can help spur a sustained, robust and vigorous economic recovery has never been greater.

[30] Opinion No. 569-A at P 132.

[31] *Inquiry Regarding the Commission's Policy for Determining Return on Equity*, 171 FERC ¶ 61,155 (2020) ("Gas & Oil Pipeline ROE Policy Statement").

[32] *Id*. at P 2.

WIRES strongly supports ROE policies that promote investments in needed transmission facilities and adequate ROEs to attract capital to transmission projects. Transmission investments generate various benefits, including (a) lowering the costs of delivered power to consumers, (b) bolstering the resilience and reliability of the electric power system, (c) enabling the integration of new clean generation facilities, and (d) facilitating state renewable energy goals, utility targets to reach zero net carbon emissions, and customer desires for cleaner energy supplies. The evidence is clear that transmission investments made pursuant to Commission policies supporting investment after the implementation of the Energy Policy Act of 2005 have significantly reduced congestion costs, allowed the generation fleet to modernize and become cleaner, and reduced the need for reliance on Reliability-Must-Run contracts in RTO markets.

Notwithstanding these accomplishments, several WIRES-sponsored studies on the continuing need for transmission investment and the corresponding benefits from such investment indicate that more is needed. A WIRES-sponsored study issued in the aftermath of the last economic recession found that transmission investment in the range of $12 billion to $16 billion annually over the course of a 20-year period would stimulate $30 billion to $40 billion in annual economic activity (sales and resales of goods and services) and support 150,000 to 200,000 full-time jobs each year over the 20-year period.[33] The economic benefits from a sustained period of robust capital investment in transmission projects would be impactful and extensive and would be incremental to the additional reliability, resilience, and other benefits.

In 2018, WIRES had LEI perform a study of the broader economic changes produced by two hypothetical, but typical transmission projects, one in each of two Commission-jurisdictional

[33] The Brattle Report at 33.

interconnections.[34] LEI evaluated the short-term, medium-term, and long-term benefits of these upgrades. In the short-term, transmission upgrades create construction-related jobs and economic ripple effects from these jobs. LEI's study showed that, in the short-term, transmission projects with a combined investment of $3 billion created over 5,000 jobs and increased gross domestic product by over $700 million annually.

In the medium-term, investment in these transmission projects lowered the cost of electricity for consumers, producing broader economic gains through enhanced consumer purchasing power for other goods and services. Such investment increased earnings available to generators by increasing their sales opportunities while still lowering market prices through more optimized, efficient dispatch, and increased opportunities for the dispatch of renewable resources, thereby lowering emissions. The projects produced several billion dollars in economic benefits in the medium-term that were shown to be realized over a broad geographic area.

In the long-term, LEI showed that well-planned transmission brings significant reliability value. For example, transmission investment can dampen or neutralize the cost impacts of unexpected events in the market such as severe weather events, operating much like an insurance policy. LEI estimated the value of these investments by modeling the energy system with and without the new investments, showing that the transmission investments enabled reductions in energy cost spikes and the avoidance of supply interruptions. LEI identified close to $2 billion of additional economic benefits from the two projects over the long-term.

In a 2019 report prepared for WIRES, the Brattle Group estimated that $30 billion to $90 billion of incremental transmission investments will be necessary in the United States by 2030 to meet the changing needs of the system due to electrification, with an additional $200 to $600

[34] LEI Report.

billion needed from 2030 to 2050. These investments are in addition to the investments needed to maintain the existing transmission system and to integrate renewable generation built to meet existing load. Brattle explained that this level of investment is equivalent to $3 billion to $7 billion per year on average through 2030, a 20-50% increase over annual average spending on transmission during the past ten years, and $7 billion to $25 billion per year on average between 2030 and 2050, a 50-170% annual increase in transmission investment.[35] Even if some of this investment is not ultimately required, the expected changes in how energy is produced will require strong public policy support for new transmission investments.

More recently, a report released by ScottMadden, Inc. in January 2020 further demonstrated the pressing need for more transmission investment in all regions of the country to meet the challenges posed by changing energy resources, increasing electrification, and a greater need and preference for location constrained renewables integration, in addition to addressing ever-growing concerns about the risks to the resilience of the North American electric power system.[36] Despite the well-documented evidence that transmission is needed across the country to support both resilience and integration of renewable resources, the ScottMadden Report found that the evolution of policy has failed to support this growing need as both ROEs and transmission incentive adders which drove significant investments through the 2000s are being reduced.[37] Moreover, time is of the essence, as state-mandated renewables goals with targets as early as 2030

[35] The Brattle Group, *The Coming Electrification of the North American Economy, Why We Need A Robust Transmission Grid*, (March 2019).

[36] ScottMadden, Inc., *Informing the Transmission Discussion: A Look at Renewables Integration and Resilience Issues for Power Transmission in Selected Regions of the United States*, (January 2020) ("ScottMadden Report").

[37] *Id*. at 19 and 295.

are looming, while transmission projects in this country can face a timeline for development of roughly ten or more years.[38]

B. Adequate ROEs Are Necessary To Achieve Needed Transmission Investment

The record is clear on the correlation between ROEs and the level of investment that will occur. During the last few decades of the last century, transmission ROEs were primarily set by state regulatory commissions who almost universally applied the same ROE to transmission and distribution investments. The result was a widely-acknowledged underinvestment in transmission facilities. The clear lesson to be gleaned is that robust investment flows from ROEs that adequately compensate utilities for the unique and substantial risks associated with construction of new transmission facilities. ROEs that merely equal those set for less risky distribution assets will result in under-investment in transmission and deny customers the benefits of a reliable and robust grid that result from investment in needed transmission infrastructure.

Congress implicitly recognized this conclusion in section 219 of the FPA which directs FERC to adopt ratemaking practices that will promote transmission investment. The Commission explicitly recognized the unique risks of transmission investment in Opinion No. 531:

> The financial and business risks faced by investors in companies whose focus is electric transmission infrastructure differ in some key respects when compared to other electric infrastructure investment, particularly state-regulated electric distribution. For example, investors providing capital for electric transmission infrastructure face risks including the following: long delays in transmission siting, greater project complexity, environmental impact proceedings, requiring regulatory approval from multiple jurisdictions overseeing permits and rights of way, liquidity risk from financing projects that are large relative to the size of a balance sheet, and shorter investment history.[39]

[38] *Id*. at 42.

[39] Order No. 531 at P. 149.

The simple fact is that building new transmission is very difficult. While the need for additional transmission has been increasing, building it has become even harder. Public opposition to electric transmission projects is a frequent occurrence because transmission lines are generally constructed above ground and are not confined to a single geographic location, and because the benefits of transmission are not readily apparent to much of the public. Electric transmission investment often requires obtaining multiple regulatory approvals from federal, state and local authorities, requiring transmission owners to expend considerable political capital to overcome inevitable state and local opposition which has become much more organized. Such opposition is especially problematic for transmission facilities that provide interstate benefits that may not be apparent to those living in the vicinity of new lines. The risk always exists that even after spending considerable time and money, risks and challenges that are outside a transmission owner's control will cause a project to be discontinued. The same level of risk rarely exists for the construction of distribution facilities. The ROEs approved by the Commission for transmission should take these risks into account so that adequate capital will be attracted to transmission investment. Opinion Nos. 531 and 551 correctly acknowledge the additional risk associated with transmission investment and refer to the need to set ROEs at a level likely to attract capital.[40]

Moreover, given the risks involved in transmission development, it is imperative that the Commission provide regulatory certainty that transmission owners will have the opportunity to earn a just and reasonable return on their investments. Therefore, the Commission should also adopt ROE policies that are robust enough to withstand the test of time (i.e., produce base ROEs that are sufficient to attract capital under a wide range of different market conditions) and that provide meaningful information to participants in Commission proceedings and investors as to

[40] *Id*. at P148; Opinion No. 531-B at P 48; Opinion No. 551 at P 250.

whether existing ROEs are likely to be changed. The Commission's ROE policies have been in flux for nearly a decade. While establishing a methodology that yields ROEs sufficient to attract capital must remain the primary goal, WIRES also urges the Commission to adopt an ROE policy that is sufficiently durable to stand the test of time and thereby provide badly needed certainty to the industry, investors, and participants in Commission proceedings.

C. The Commission Should Use Four Diverse Financial Models, Including The Expected Earnings Model, To Achieve A Just And Reasonable Base ROE.

Pursuant to Executive Order 13868, "[i]t is the policy of the United States to promote private investment in the Nation's energy infrastructure…."[41] A soundly based ROE methodology that uses multiple financial models including the Expected Earnings model, is a necessary prerequisite for meeting the Nation's goal of attracting the capital needed to maintain and grow the country's transmission infrastructure.

The Commission is legally required to establish ROEs "commensurate with returns on investments in other enterprises having corresponding risks . . . [and] sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[42] The use of all four financial models—the DCF, ECAPM, Expected Earnings, and Risk Premium models—when establishing a new just and reasonable base ROE provides the Commission with critical information that better reflects the scope of data considered by investors and provides necessary predictability for transmission owners and customers. It will also encourage deployment of transmission technologies that will improve transmission facilities and

[41] Exec. Order No. 13868, 84 Fed. Reg. 15495 (Apr. 10, 2019), *Promoting Energy Infrastructure and Economic Growth*.

[42] *Hope*, 320 U.S. at 603; *see also Bluefield*, 262 U.S. at 692-93; *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989).

operations. The Commission has made progress with the changes to its base ROE methodology in Opinion No. 569-A, but in this policy proceeding, the Commission must adopt a durable methodology. The most durable methodology is one that employs all four models in its determination of base ROEs. Such a robust method is how the Commission will best meet its obligation to support transmission development and establish base ROEs commensurate with returns on other investments of similar risk.

In the Coakley Briefing Order and in the MISO Briefing Order, the Commission explained at length why it was necessary to rely on the four financial models in establishing a new just and reasonable base ROE. Specifically, the Commission explained that, "[w]hile some investors may give some weight to a DCF analysis, it is clear that other investors place greater weight on one *or more of the other methods* for estimating the expected returns from a utility investment."[43] The Commission added that "cost of equity estimates based on all four of the methods . . . are a reasonable measure of investor expectations, since they are among the information that investors rely upon when making investment decisions."[44]

As WIRES explained in its NOI comments, the Commission should rely on multiple financial models used by investors when determining base ROEs because such an approach would mitigate the effect of distortions that may occur if the Commission were to rely on only one model.[45] No single financial model captures perfectly the myriad factors that investors consider or accurately reflects all market conditions.[46] The Commission itself observed that none of these methods conclusively determines or estimates the expected return for an individual firm and that

[43] MISO Briefing Order at P 37 (emphasis added).

[44] *Id*. at 37.

[45] *See* WIRES Comments at 10-16.

[46] *Id*. at 12-14.

each possesses its own way of examining investor behavior, its own premises, and its own set of simplifications of reality.[47] However, by equally weighting the results of the DCF, ECAPM, Expected Earnings, and Risk Premium models, the Commission's original proposal would help avoid illogical or unjust and unreasonable results by providing additional data points used by investors.[48]

The investment community employs various forms of the four financial models outlined in the MISO Briefing Order and Coakley Briefing Order—including the Expected Earnings model—to determine the cost of equity. Investors recognize that each of the four financial models has its own advantages, but that each has shortcomings as well. This is largely because each financial model relies on assumptions that may have limitations or unreasonably fluctuate with market conditions. The use of multiple diverse financial models to calculate allowed ROEs is the best method available to overcome the inherent shortcomings of individual models and the related assumptions for applying them in regulatory proceedings.[49]

The Commission recognized this fact in the Briefing Orders and in the NOI. For example, in the Briefing Orders, the Commission quoted Roger Morin, the author of New Regulatory Finance:

> In the absence of any hard evidence as to which method outdoes the other, *all relevant evidence should be used* and weighted equally, in order to minimize judgmental error, measurement error, and conceptual infirmities. A regulator should rely on the results of *a variety of methods* applied to a variety of comparable groups, and not on one particular method.[50]

[47] Coakley Briefing Order at 34.

[48] WIRES Comments at 11.

[49] *Id*. at 14.

[50] Coakley Briefing Order at P 36; MISO Briefing Order at P 38 (quoting Roger A. Morin, New Regulatory Finance, at 429 (Public Utilities Reports, Inc. 2006) ("Morin")) (emphasis added).

The Commission concluded that, "by providing four different approaches to estimating the cost of equity and determining ROEs, using these models together reduces the risk associated with relying on only one model; that is the risk of misidentifying the just and reasonable ROE by relying on a flawed cost of equity estimate."[51]

In addition to the fact that investors use a variety of models to inform their investment decisions, the use of multiple models also represents a valid remedy to concerns over how the DCF model performs under various circumstances, while avoiding the "unclear" reasoning that concerned the court in *Emera Maine*.[52] As the Commission recognized, the DCF model has significant limitations.[53] For example, the DCF model is particularly sensitive to varying market conditions, including interest rates, as it assumes conditions will remain stable and therefore has been unduly affected by anomalous market conditions that arose following the 2008 recession.[54] That capital market conditions have been increasingly volatile underscores the critical need for a multiple model approach that uses all four models and does not narrowly depend on the results of just one or two. Also, in Opinion No. 531, the Commission found that relying on the DCF model without consideration of the results of other relevant models created significant concerns about model risk because there was record evidence that the market conditions that are critical inputs to the model were "outside of the normal range."[55] In addition to concerns about model risk, sole reliance on the DCF model is not consistent with investors' expectations because "[i]nvestors do

[51] MISO Briefing Order at P 40; *see also* Coakley Briefing Order at P 38.

[52] *Emera Maine*, 854 F.3d at 28-29; *see also, e.g.*, NOI at P 33 (questioning the performance of the DCF model).

[53] *Id.*

[54] *See* Morin at 432-33.

[55] Opinion No. 531 at P 145 & n. 286.

not necessarily subscribe to any one method."[56] In sum, the limitations inherent in the DCF model suggest that it is necessary to also include the results of other financial models into the Commission's base ROE analyses.

Inclusion of the Expected Earnings model is thus critical to ensure a just and reasonable ROE. The Expected Earnings model serves as a counterweight to the other models, as it is a form of comparable earnings analysis that provides a direct measure of observable investor expectations for future returns.[57] Although it is an improvement over the two-model methodology in Opinion No. 569, an abbreviated three-model methodology like the one adopted in Opinion No. 569-A continues to send mixed signals to both investors as well as transmission owners considering infrastructure development projects. Adherence to a limited approach, in any way, runs counter to the Commission's efforts to support needed investment in transmission infrastructure because it does not provide the full range of information for the Commission to reach a reasoned and well-supported determination about ROEs. A methodology that leaves out critical information results in unnecessary risk in establishing ROEs that are insufficient to attract needed capital and allow the Nation to maintain and grow its transmission infrastructure.

D. The Commission Should Allow The Expected Earnings Model In Its ROE Analysis To Be Consistent With The Capital Attraction Standard of *Hope* and *Bluefield*.

Inclusion of the Expected Earnings model as part of the Commission's methodology for establishing a just and reasonable base ROE is a necessary component for purposes of meeting the *Hope* and *Bluefield* capital attraction standard. The Expected Earnings model is one of the models on which investors rely to make decisions. In the Coakley Briefing Order and MISO Briefing

[56] *Coakley* Briefing Order at P 35 (quoting Morin at 429).

[57] Opinion No. 531 at P 147.

Order, the Commission found that the record demonstrated that this model was among those that investors use to estimate the expected return from an investment in a company.[58] The Commission has found that the Expected Earnings model, which calculates the earnings an investor expects to receive on the book value of a particular stock, is useful because it corroborates the results produced by the DCF model.[59] For example, in Opinion No. 551, the Commission relied upon the results of an Expected Earnings analysis to find that a mechanical application of the DCF model would not satisfy the requirements of *Hope* and *Bluefield*.[60] However, in Opinion No. 569, the Commission backtracked, finding that "it is not appropriate to use the Expected Earnings model in [its] new base ROE methodology"[61] because "the record does not support departing from [its] traditional use of market-based approaches to determine ROE."[62] The Commission reaffirmed its determination in Opinion No. 569-A, stating that the record lacked evidence that "investors use such data to directly value equities, determine the cost of equity, or make investment decisions without consideration of the market price of the relevant equities."[63]

Evidence in the NETOs' ROE case demonstrates that investors do consider Expected Earnings in their decisions. As discussed by John D. Quackenbush, who in addition to serving as Chairman of the Michigan Public Service Commission was manging director and senior investment analyst for UBS Global Asset Management for ten years, testified that "sell-side reports

[58] Coakley Briefing Order at 34; MISO Briefing Order at 36.

[59] Opinion No. 531 at P 200 (citing Opinion No. 551, 156 FERC ¶ 61,234, at P 230).

[60] Opinion No. 551, 156 FERC ¶ 61,234, at P 9.

[61] Opinion No. 569 at P 200.

[62] *Id.* at P 201.

[63] Opinion No. 569-A at P 126.

make clear that investors are extremely cognizant of expected earnings" and "[t]he Expected Earnings approach is an available, significant, and commonly used tool in an investor's toolbox."[64]

Since the inception of public utility regulation, regulators have used the "comparable earnings" standard to determine public utility base ROE, and now, investors still rely on this practice and place significant weight on the comparable earnings standard when evaluating public utility equity. For instance, the comparable earnings approach as expressed in the Direct Testimony of Pauline Ahern[65] on behalf of United Water New Rochelle Inc.:

> "[t]he comparable earnings approach is derived from the 'corresponding risk' standard of the landmark cases of the U.S. Supreme Court. Therefore, it is consistent with the *Hope* doctrine that the return to the equity investor should be commensurate with returns on investments in other firms having corresponding risk. The [Comparable Earnings Model ("CEM")] is based upon the fundamental economic concept of opportunity cost which maintains that the true cost of an investment is equal to the cost of the best available alternative use of the funds to be invested. The opportunity cost principle is also consistent with one of the fundamental principles upon which regulation rests: that regulation is intended to act as a surrogate for competition and to provide a fair rate of return to investors. The CEM is designed to measure the *returns expected to be earned on the book common equity, net worth, or partners' capital of similar risk enterprises*."[66]

This aspect of evaluating expected returns is especially pertinent with the advent of many utilities now being owned by diversified holding companies and infrastructure investment groups forming competitive transmission entities to invest equity into developing transmission projects. This investor behavior is attested to by Dr. William Avera in his explanation of the modern relevance

[64] Reply Paper Hearing Brief of the New England Transmission Owners Attachment B Reply Affidavit of John D. Quackenbush, CFA at 20.

[65] Commission EPCOR Water rate case Docket No. WS-01303A-17-025, Ahern Rebuttal Exhibit Schedule PMA-29. (Ahern is the co-author of "Comparable Earnings: New Life for an Old Precept").

[66] New York Public Service Commission Case 09-W-0824, Concerning Fair Rate of Return Prepared Direct Testimony of Pauline M. Ahern, CRRA at 66 (emphasis added.)

of the *Hope* comparable earings standard noting that "[w]hen corporate parents are considering whether capital invested in a subsidiary will likely yield an adequate return to justify the risk, they clearly consider accounting returns on book value."[67]

State Commissions are not only informed by, but also utilize, the comparable earnings approach through the Expected Earnings model in the direct determination of the fair rate of return as demonstrated in the Arizona Corporation Commission EPCOR Water rate case, in which a comparable earnings analysis was recommended by Commission Staff and directly utilized in the setting of the Commission-approved ROE.[68] As testified by an Arizona Corporation Commission Staff witness: "[i]t can be further noted that my CE *analysis is based upon market data* (through the use of M/B) and is thus essentially a market test. In addition, my CE *analysis also uses prospective returns and thus is not backward looking.*"[69]

As an initial matter, the Commission's analysis of the *Hope* and *Bluefield* capital attraction standard with respect to the Expected Earnings model in Opinion No. 569 and Opinion No. 569-A is flawed. *Hope* and *Bluefield* require that the Commission establish a base ROE that is "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."[70] In Opinion No. 569, the Commission attacks the use of Expected Earnings as not consistent with *Hope*. The Commission errs by analyzing the Expected Earnings model in a vacuum. Specifically, the Commission's narrowly-focused objections misstate the intended purpose of the model within the Commission's originally-proposed ROE methodology.

[67] Reply Declaration of Dr. William E. Avera in Support of Reply Brief of Potomac-Appalachian Transmission Highline, LLC on the Commission's Return on Equity Policy, Docket No. ER09-1256 *et al*. at 13, June 15, 2020.

[68] Arizona Corporation Commission EPCOR Water rate case Docket No. WS-01303A-17-0257.

[69] Arizona Corporation Commission EPCOR Water rate case Docket No. WS-01303A-17-0257 Commission Staff Direct Testimony of Yue "Nick" Liu at 20-21 (emphasis added).

[70] *Hope*, 320 U.S. at 603.

The Expected Earnings model is especially valuable when it is used in conjunction with other models to establish a just and reasonable base ROE. By focusing only on the alleged deficiencies of the Expected Earnings model in isolation, rather than how the Expected Earnings model helps mitigate the limitations in the other models with which it would be used, the Commission misses the larger objective of *Hope* and *Bluefield*—to ensure that transmission-owning public utilities can attract investment capital. Relying on only three financial models to determine base ROE undermines the Commission's ability to achieve that objective.

For example, the Commission in Opinion No. 569 and Opinion No. 569-A criticizes the Expected Earning model's use of the book value of a particular stock, as opposed to its market value. Opinion No. 569 and Opinion No. 569-A state that, because investors cannot purchase an investment in a public utility at book value, the Expected Earnings model does not represent "returns on investments in other enterprises having corresponding risks" and thus using the model does not satisfy *Hope*.[71] What is important to consider is that the actual investors in transmission-owning public utilities are often their corporate parents, which, by definition, are investing at book value, not market price. This is an additional compelling reason to include the Expected Earnings model that, to WIRES' knowledge, has not heretofore been presented to the Commission and should help address the Commission's remaining concerns with the model.[72]

Furthermore, the Commission's objections focus on the use of Expected Earnings in isolation of the other models, rather than in conjunction with them, and therefore misses the mark. The Expected Earnings model satisfies *Hope* and *Bluefield* as part of the Commission's four-model

[71] Opinion No. 569 at PP 201-202 (internal citations omitted); Opinion No. 569-A at P 126. Additionally, the Commission states that the simplicity of the Expected Earnings model does not justify its use when it otherwise does not advance *Hope*'s objectives. Opinion No. 569 at P 207 (internal citations omitted).

[72] This is further explained in the PATH reply brief and declarations filed June 15, 2020 in Docket No. ER09-1256, *et al*.

proposal because it contributes to an overall reflection of investor behavior that supports capital attraction. Including at least one methodology that utilizes book-value concepts provides a stabilizing influence in the event that inputs in the other models produce anomalous results at any time.[73] Including the Expected Earnings model in the Commission's determination of ROE reflects a key balancing component of utility ratemaking that no other model accounts for, and it must be a factor in the Commission's ROE analysis to ensure that base ROEs are just and reasonable. Furthermore, it is worth remembering that the ROE, once determined, is applied to the book value of the assets, not a market value. This arguably makes the Expected Earnings one of the most effective models for determining an appropriate ROE. Without the use of Expected Earnings in the base ROE analysis, the results are unjust and unreasonable and will not support capital attraction or investment in transmission. Accordingly, the Commission should utilize the Expected Earnings model in establishing a new just and reasonable base ROE.

E. Although Using All Four Financial Models In ROE Determinations Is Necessary, Certain Additional Modifications Are Needed To Achieve A Just And Reasonable ROE.

While the Commission's decision to not use the Expected Earning model is the most evident, and troubling, limitation in the most recent iteration of its methodology from the initial proposal, there are other changes that are also needed to ensure a robust and sufficient ROE methodology.

For instance, the Commission should have recognized that the record evidence on state ROEs must be treated as an implicit floor on the returns that investors require for investments in electric transmission. The Commission thus erred with respect to state ROEs both by understating their importance and failing to acknowledge their implications. The Commission stated in Opinion

[73] WIRES Initial Comments at 15.

No. 569 that it "need not" consider state ROE evidence, except as a "check given the model risk."[74] And yet the Commission acknowledges that state ROEs may apply to distribution companies which "feature lower risks than transmission companies subject to Commission ROEs." *Id.* This acknowledgement is consistent with an undisturbed finding of Opinion No. 531:

> investors providing capital for electric transmission infrastructure face risks including the following: long delays in transmission siting, greater project complexity, environmental impact proceedings, requiring regulatory approval from multiple jurisdictions overseeing permits and rights of way, liquidity risk from financing projects that are large relative to the size of a balance sheet, and shorter investment history. We find that these factors increase the NETOs' risk relative to the state-regulated distribution companies.

Opinion No. 531 at P 149.

The Commission's conclusion that state ROEs deserve less consideration because they are "less precise"[75] thus fails to recognize that state ROEs provide critical information because electric transmission ROEs must be higher than state ROEs to reflect additional risk. In Opinion No. 569, the Commission cites state ROEs as supportive of its decision under prong one of its FPA section 206 analysis. The Commission recounted that the relevant range for state ROEs, including the ROEs for all integrated utilities and most distribution-only utilities, was "from 9.5 percent to 10.4 percent."[76] An ROE that is not above or at least near the top of this range would be insufficient to attract capital given the return on investments of comparable risk.[77]

[74] Opinion No. 569 at P 363.

[75] *Id.*

[76] *Id*. at P 522.

[77] The state ROE evidence was not as significant in the MISO Briefing Order because the result there was closer to the upper, rather than the lower, end of the state ROEs range for the complaint time period.

In addition, the Commission's decision to account for risk at two distinct points in its ROE analysis does not withstand scrutiny. The Commission first accounts for a utility's risk in creating a proxy group of similarly-situated utilities that the Commission uses to establish a zone of reasonableness.[78] The Commission then accounts for risk a second time in dividing the zone of reasonableness into thirds composed of utilities of high risk, average risk, and low risk.[79] There is no basis for the Commission to consider risk this second time after already taking risk into account in composing the proxy group.

Finally, the Commission should allow for a full range of presumptively just and reasonable ROEs that it uses for purposes of the first prong of its FPA section 206 analysis, consistent with the spirit of *Emera Maine*. In that decision, the Court found that it is not enough for the Commission to invalidate a rate under FPA section 206 just because the existing ROE is greater than the pinpoint ROE that it determines to be the just and reasonable replacement under the second prong of its FPA section 206 analysis.[80] In other words, the Commission cannot collapse the two prongs of its FPA section analysis into one. As the Court emphasized, there is a range of potentially lawful ROEs within the zone of reasonableness, not just a single (or narrow set of) just and reasonable ROEs.[81]

While Opinion No. 569-A expands the range of presumptively just and reasonable ROEs for an average risk utility from one-fourth of the zone of reasonableness to one-third of the zone of reasonableness, it is still relatively narrow and not as complete as possible to be durable in the

[78] Opinion No. 569 at PP 387-389.

[79] *Id.* at PP 57-68.

[80] *Emera Maine* at 25 ("To satisfy its dual burden under section 206, FERC was required to do more than show that its single ROE analysis generated a new just and reasonable ROE and conclusively declare that, consequently, the existing ROE was *per se* unjust and unreasonable.").

[81] *Id.* at 26.

long-run. Consequently, it may conflict wth FPA section 206 because it shifts the burden that FPA section 206 places on a complainant to demonstrate that an existing ROE is unjust and unreasonable to the utility to demonstrate that any ROE that falls outside of this narrow range is just and reasonable. And the range of presumptively just and reasonable ROEs will have concrete impacts on transmission investment and should be as wide and complete as possible (including reflecting all four methodologies, as discussed above). Minor changes in market conditions or the composition of the relevant proxy group will be more likely to shift inappropriately the range of presumptively just and reasonable ROEs such that transmission companies could face unwarranted and more frequent (and potentially pancaked) complaints. A better approach to constructing a range of presumptively just and reasonable ROEs would be the one recently submitted in this docket by EEI and the NETOs, under which the Commission would rely on the middle 50 percent of the composite zone of reasonableness to evaluate existing ROEs.[82] This approach results in an expanded range of presumptively just and reasonable returns consistent with *Emera Maine*, but remains conservative in that it disregards both the highest and lowest one-fourths of proxy group results.

[82] PATH also filed this approach in Docket No. ER12-2708-007 *et al.*

IV. CONCLUSION

The Commission should take further action in this proceeding to resolve the uncertainty surrounding its base ROE methodology and establish a policy consistent with the recommendations made in these comments. WIRES recommends a framework that employs all four of the previously proposed ROE models, including the Expected Earnings model. Use of all four models, along with certain appropriate modifications, will ensure that ROEs meet the standards of *Hope* and *Bluefield* and attract capital investment in needed transmission infrastructure.

Respectfully submitted,

/s/ *Larry Gasteiger*

Larry Gasteiger
Executive Director
WIRES
1325 G Street, N.W., Suite 500
Washington, DC 20005
Office: (202) 449-7673
Cellphone: (703) 980-5750
lgasteiger@exec.wiresgroup.com

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