THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Incentives for Advanced Cybersecurity Investment; Cybersecurity Incentives	))	Docket Nos. RM22-19-000; RM21-3-000

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

The Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Notice of Proposed Rulemaking ("NOPR") and Notice Terminating Proceeding on September 22, 2022 in the above-captioned docket (the "Proposed Rule") to "establish rules for incentive-based rate treatments for certain voluntary cybersecurity investments by utilities."[1] The Proposed Rule also terminates the NOPR proceeding in Docket No. RM21-3-000 (December 2020 Cybersecurity Incentives NOPR).[2] The Interstate Natural Gas Association of America ("INGAA") respectfully submits these comments pursuant to the comment procedures set forth in the Proposed Rule.[3]

As directed by the Infrastructure and Jobs Act ("IJA"),[4] FERC proposes, under section 219A of the Federal Power Act, to incent electric utilities to make certain voluntary expenditures, that can either be capitalized costs or expenses, that materially enhance their security posture and to participate in cybersecurity threat information sharing programs. The Commission proposes a framework for (1) evaluating whether certain cybersecurity investments

[1] NOPR; Notice terminating proceeding; *Incentives for Advanced Cybersecurity Investment; Cybersecurity Incentives;* 180 FERC ¶ 61,189 (2022).
[2] *Id.* at P. 12.
[3] INGAA is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in the United States. INGAA's 26 members represent the majority of interstate natural gas transmission pipeline companies in the U.S. INGAA's members, which operate approximately 200,000 miles of interstate natural gas pipelines, serve as an indispensable link between natural gas producers and consumers. Its members' interstate natural gas pipelines are regulated by the Commission pursuant to the Natural Gas Act ("NGA"). 15 U.S.C. §§ 717-717w (2018).
[4] Infrastructure and Jobs Act, Pub. L. 117-58, section 40123, 135 Stat. 429, 951 (to be codified at 16 U.S.C. § 824s-1).

qualify for an incentive, including eligibility criteria to determine whether an investment is eligible for an incentive and use of a pre-qualified list (the "PQ List") to identify the types of expenditures eligible for an incentive, (2) the type of incentive a utility could receive for an eligible cybersecurity expenditure, and (3) the duration and expiration conditions for incentives.[5]

Comments

INGAA offers the following comments on specific components of framework as it relates to the overall security posture of the energy sector and as a basis for a potential proposal for interstate natural gas pipelines.

The IJA's directive focuses on electric utilities, however, *all* critical infrastructure sectors face similar security threats and vulnerabilities. In fact, the natural gas and electric industries share many of the same security threats, and it is for these reasons that interstate gas pipelines coordinate closely on cybersecurity and physical security issues. Because measures to secure *any* critical infrastructure asset against cyberattacks furthers the public interest, INGAA supports incentives for cybersecurity investments by electric utilities and encourages the Commission to put forth a proposal that incents all the entities that it regulates, including interstate natural gas pipelines, to invest in cybersecurity protections. Any such corresponding proposal for interstate natural gas pipelines could include return on equity adders, treatment of eligible cybersecurity expenditures as a regulatory asset, and/or expedited rate recovery.[6]

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[5] NOPR at P. 18.

[6] While the Proposed Rule does not explicitly reference or modify the NGA regarding gas incentives and, thus, does not apply to interstate natural gas pipelines, FERC Commissioner Phillips correctly noted in his concurrence that cybersecurity threats face both the electric and gas industries and welcomed comment on whether incentives should be extended to gas pipelines, at least with regard to information sharing between industries. *See* Commissioner Phillips' concurrence at P. 6.

Eligibility Criteria

INGAA supports the Commission's proposal that, to be eligible for incentives, a cybersecurity investment must materially improve the overall security posture of the electric utility, and that such a materiality determination should be made by considering the sources7 listed in the Proposed Rule. INGAA would also suggest including specific recommendations from the Federal Bureau of Investigation and the National Security Agency. These two agencies have valuable intelligence and analysis capabilities that the energy sector frequently leverages and that might offer important insight into the materiality of the investment.

INGAA also agrees that eligible investments must be voluntary and not "already mandated by CIP Reliability Standards, or otherwise mandated by local, state, or Federal law."[8] While we note that Chairman Glick has "significant concerns"[9] over incentivizing cybersecurity investments rather than mandating standards, and how such incentives might create unintended security gaps across electric utilities, we concur with Commissioner Clements's remarks that the intent of this Proposed Rule is to "fill that gap"[10] while the regulatory requirements mature. To support this objective, the Commission has proposed an incentive duration of, among other qualifiers, five years from when the incentive enters service or at which time the investment becomes mandatory by the Commission or other local, state, or Federal law.[11][12]

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[7] NOPR at P. 21.
[8] *Id.* at P. 20.
[9] Federal Energy Regulatory Commission. (September 22, 2022). Commission Meeting Transcript September 2022. https://www.ferc.gov/media/commission-meeting-transcript-september-2022, p. 26, L. 4.
[10] *Id.* at p. 38, L. 23.
[11] NOPR at P. 46.
[12] INGAA is neither concurring with nor opposing the proposed duration of the incentives. Rather, we are noting the timeline as evidence that the Commission recognizes that these incentives are intended to encourage utilities to make investments in *advanced* technologies that exceed existing requirements until such time as those technologies become conventional or mandated.

Proposed Approaches for Evaluating Cybersecurity Expenditure Eligibility

The Commission proposes a PQ List that entitles certain expenditures to a rebuttable presumption of eligibility for an incentive.[13] INGAA supports the Commission's rebuttable presumption as to what qualifies for incentives since it provides both utilities and customers with transparency and efficiency as to what investments should be eligible for this program. INGAA further believes the items listed in the proposed initial PQ List[14] are a good foundation for the types of voluntary investments that materially improve a utility's cybersecurity posture.

FERC also proposes a case-by-case approach to allow utilities to file for incentive-based treatment that satisfies the eligibility criteria, wherein the utility would bear the burden of demonstrating in its filing that the expenditure meets the Commission's requirements.[15] INGAA likewise supports this approach, and believes that utilizing both the PQ List and a case-by-case approach concurrently will encourage more utilities to make qualifying investments that might not otherwise be included in the PQ List, thereby strengthening the security posture of the Bulk-Power System.

Conclusion

Given all critical infrastructure sectors face similar or shared cybersecurity threats, and due to the common security concerns between the gas and electric sectors, the Commission should incent interstate natural gas pipelines to invest above and beyond that which is already required within pipeline security regulations to materially improve the security of their systems, through return on equity adders, treatment of eligible cybersecurity expenditures as a regulatory asset, and/or expedited rate recovery.

[13] NOPR at PP. 25-27.
[14] *Id.* at P. 28.
[15] *Id.* at P. 32.

Respectfully submitted,

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