

122 FERC ¶ 61,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Commonwealth Edison Company and  
Commonwealth Edison Company of Indiana, Inc.

Docket Nos. EL07-41-001  
ER07-583-003

ORDER ON REHEARING

(January 18, 2008)

1. This order addresses requests for clarification and rehearing of an order issued by the Commission on June 5, 2007.<sup>1</sup> The June 5 Order denied a petition for declaratory order (petition) requesting incentive rate treatment proposed by Commonwealth Edison Company, filed on behalf of itself and its wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd), and set ComEd's proposed cost-of-service formula rate for hearing and settlement judge procedures. We grant rehearing in part, as set forth below.

**I. Background**

2. On March 1, 2007, in Docket No. ER07-583-000, ComEd filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>2</sup> proposed revisions to Attachment H-13, Schedule 7 and Schedule 8 of the PJM Interconnection, L.L.C. (PJM) open access transmission tariff (tariff) for the ComEd pricing zone (ComEd Zone). ComEd requested a May 1, 2007 effective date for the revised tariff sheets which implemented a transmission cost-of-service formula rate for the ComEd Zone.

3. On March 1, 2007, in Docket No. EL07-41-000, ComEd also filed a petition seeking authorization to recover incentives for investment in certain new transmission

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<sup>1</sup>*Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238 (2007) (June 5 Order).

<sup>2</sup> 16 U.S.C. § 824d (2000).

projects under Order No. 679.<sup>3</sup> Specifically, ComEd requested that the Commission approve the following incentive rate treatments for two transmission projects in Chicago, Illinois,<sup>4</sup> as consistent with Order No. 679: (1) a 150 basis points return on equity (ROE) incentive for the two specified projects;<sup>5</sup> and (2) the ability to recover 50 percent

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<sup>3</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (Order No. 679), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (January 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007). In section 1241 of the Energy Policy Act of 2005 (EPA 2005), Pub L. No. 109-58, § 1241, 119 Stat 594, 961 (2005), Congress added new section 219 to the FPA, directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to FPA section 219, including the incentives requested by ComEd.

<sup>4</sup> One project is the West Loop Project, a new high voltage transmission upgrade project that is part of a major expansion of ComEd's transmission network in Chicago, with an estimated cost of \$345 million. The West Loop Project is broken into two phases. Phase I, a 138 kilovolt (kV) switchyard, was placed into service in December 2006. Phase II of the West Loop Project, which involves construction of a 345 kV switchyard, two new 345 kV lines, and two 138 kV lines, is scheduled to be put into service by June 1, 2008. The other project is the Grenshaw Project, which was placed into service in May 2006 at a cost of \$48 million and consisted of the construction of a 138 kV switchyard, the reconfiguration of two 138 kV transmission lines, and the reconfiguration of two 138 kV distribution lines. The combined estimated cost of the Projects is \$393 million.

<sup>5</sup> More specifically, ComEd requested a 150 basis points ROE incentive above the base ROE (not to exceed the upper end of the zone of reasonableness), that will be determined pursuant to ComEd's proposed formula rate in Docket No. ER07-583-000, to be applied to: (a) the net transmission plant-in-service for the completed Grenshaw Project, (b) the net transmission plant-in-service for the completed Phase I of the West Loop Project, (c) the CWIP balance for Phase II of the West Loop Project, and ultimately, (d) the net transmission plant for Phase II of the West Loop Project. This requested ROE incentive was in addition to a previously-granted 50 basis point adder for membership in a regional transmission organization (RTO), and resulted in an overall requested ROE of 13.7 percent.

construction work-in-progress (CWIP) in rate base for Phase II of the West Loop Project.<sup>6</sup>

4. On March 30, 2007, the Director, Division of Tariffs and Market Development – East, acting under delegated authority, issued a deficiency letter, directing ComEd to submit additional support for its incentive requests in the petition and its FPA section 205 filing. On April 12, 2007, ComEd filed a response to the deficiency letter, renewing its request for an effective date of May 1, 2007.

5. The June 5 Order denied ComEd's petition in Docket No. EL07-41-000, and accepted, subject to nominal suspension, refund, conditions, and set for settlement and hearing ComEd's proposed formula rate in Docket No. ER07-583-000. The June 5 Order made specific findings on several issues in Docket No. ER07-583-000. First, the Commission accepted ComEd's formula capital structure. Second, the Commission directed ComEd to remove the provisions of its proposed formula rate that permit any future inclusion of CWIP. Third, the Commission rejected ComEd's request for a blanket inclusion of 50 percent CWIP in rate base for all transmission investment, finding that ComEd had not met the requirements of Order No. 298.<sup>7</sup> Finally, the Commission denied waiver of certain filing requirements relating to ComEd's recovery of Post-Employment Benefits Other Than Pension costs, denied waiver of the requirement to file an attestation, and granted certain other requested waivers of the Commission's regulations. The June 5 Order found that apart from these specific findings, ComEd's proposed formula rate raised issues of material fact that could not be resolved based on the record, and accordingly, the Commission established hearing and settlement judge procedures for further review of ComEd's FPA section 205 filing.

6. The June 5 Order denied ComEd's request for incentives, stating that while the entire West Loop Project had met the rebuttable presumption of eligibility for incentives

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<sup>6</sup> This requested incentive was in addition to ComEd's request in Docket No. ER07-583-000 for approval to include 50 percent CWIP in rate base for *all* transmission investment. Thus, ComEd effectively requested approval to include 100 percent of CWIP in rate base for Phase II of the West Loop Project.

<sup>7</sup> See *Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455, *order on reh'g*, Order No. 298-A, FERC Stats. & Regs. ¶ 30,500 (1983), *order on reh'g*, Order No. 298-B, FERC Stats. & Regs. ¶ 30,524 (1983).

under section 219 of the FPA, ComEd had not satisfied the Commission's "nexus" requirement for the projects.<sup>8</sup>

7. The Commission noted, however, that ComEd's proposal to use underground cross-linked polyethylene (XLPE) cable as part of Phase II of the West Loop Project may be similar to the request in *The United Illuminating Company*<sup>9</sup> for an ROE rate incentive for employing advanced transmission technologies. The Commission found that it was not clear whether ComEd was requesting a rate incentive for its use of advanced transmission technology, but in any case ComEd had not provided sufficient support for the approval of a rate incentive for the use of advanced transmission technology in the petition. The Commission further stated that its denial of the incentives for the projects is without prejudice to ComEd making a future filing that is fully supported for a rate incentive based on its use of advanced transmission technologies.

8. On June 15, 2007, ComEd submitted a compliance filing in this proceeding, as directed by the Commission in the June 5 Order. On July 5, 2007, ComEd and the Illinois Municipal Electric Agency (IMEA) filed requests for rehearing of the June 5 Order.<sup>10</sup>

9. On January 16, 2008, the Commission approved an uncontested settlement agreement, which resolves all outstanding issues in the proceedings with the exception of ComEd's pending request for rehearing in Docket No. EL07-41-000 and the portion of ComEd's rehearing request in Docket No. ER07-583-003 that seeks inclusion of 50 percent of CWIP in rate base for Phase II of the West Loop Project. Under the settlement agreement, ComEd's requests for rehearing, with the exception of the issues noted below, and IMEA's request for rehearing are deemed withdrawn.<sup>11</sup> Further, the settlement

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<sup>8</sup> June 5 Order, 119 FERC ¶ 61,238 at P 52-70.

<sup>9</sup> 119 FERC ¶ 61,182 (2007) (*United Illuminating*).

<sup>10</sup> ComEd filed separate requests for rehearing in Docket Nos. EL07-41-000 and ER07-583-000.

<sup>11</sup> See *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 122 FERC ¶ 61,030. Article 5 of the settlement agreement clarifies that all other portions of ComEd's rehearing request in Docket No. ER07-583 and the rehearing requests filed by settling parties, other than ComEd, in Docket No. ER07-583 are deemed withdrawn 30 days from the date of the Commission order approving the settlement. We note, however, that the 30-day period for the rehearing requests in Docket No. ER07-583 to be deemed withdrawn has not passed. However, we will not address these requests for

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agreement provides an ROE of 11.5 percent, which includes a base ROE of 11 percent and a 50 basis point ROE incentive for ComEd's continuing membership in PJM. Further, the settlement agreement details that "[f]or purposes of determining future incentive ROEs under Order No. 679, and without waiving any party's right to challenge any future ComEd filing seeking incentives, the highest incentive for any given project approved by the Commission shall be 13.0 [percent] unless and until ComEd supports a new ROE analysis establishing a Commission-approved range of reasonableness."<sup>12</sup>

## **II. Requests for Rehearing**

10. Consistent with the settlement agreement filed in Docket Nos. ER07-583-000 and ER07-583-002, all pending requests for rehearing are deemed withdrawn, with the exception of ComEd's requests for rehearing filed in Docket No. EL07-41-001 and its limited request for rehearing of CWIP in Docket No. ER07-583-003, filed on July 5, 2007.

11. Specifically, ComEd states that the June 5 Order errs in: (1) finding that Phase II of the West Loop Project is routine and denying ComEd's request for an ROE incentive and inclusion of CWIP in rate base; (2) finding that the Greshaw Project and Phase I of the West Loop Project are routine and denying an ROE incentive; (3) failing to grant, at least conditionally, incentives for ComEd's use of advanced transmission technologies; and (4) rejecting ComEd's request to include 50 percent CWIP in rate base pursuant to Order No. 298.<sup>13</sup>

## **III. Discussion**

### **A. ComEd's Request for Rehearing in Docket No. EL07-41-001**

12. ComEd raises several issues on rehearing common to all of its transmission projects, as discussed below.

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rehearing in this order. If a party raises a concern with these requests for rehearing before the 30-day period passes, we will address those concerns in a future order.

<sup>12</sup> ComEd October 10, 2007 Settlement Agreement at section 3.3.

<sup>13</sup> In support of its request for rehearing, ComEd also alleges that the Commission erroneously relied on transmission investment ratios, factual errors, and stale and irrelevant information to support its findings.

13. First, ComEd argues that the Commission erred by finding that all of the projects fall into the category of “routine investments made in the ordinary course of business,” thereby not being eligible for incentive rate treatment under Order No. 679. ComEd asserts that it provided testimony demonstrating that the Projects are major, complex projects with significant improvements to reliability and represent the most expensive transmission infrastructure investment ever made by ComEd.

14. For example, ComEd argues that the petition showed that the projects exceed NERC planning standards and will significantly improve reliability of service to the Chicago business district, by reconfiguring the transmission supply to provide redundant supply to load centers and minimizing the consequences of the loss of a major hub station. ComEd claims that reliability standards more stringent than the lowest common denominator approach of the NERC planning standards<sup>14</sup> are appropriate for service to Chicago, consistent with the Commission’s policy in Order No. 672 and the *Policy Statement on Matters Related to Bulk Power System Reliability*.<sup>15</sup> ComEd argues that the consequences of a loss of a major hub station in a major population and financial center, such as Chicago, are so high that investment in transmission projects that exceed NERC reliability standards should be encouraged through incentives.

15. Moreover, ComEd states that in its petition, it described the special construction challenges faced by ComEd for the remaining construction, including digging tunnels under the Chicago River, under an expressway, and around subways, all of which indicate that these complex projects are not routine.

16. ComEd asserts that, although the June 5 Order notes ComEd’s acknowledgment that the Grenshaw Project does not qualify for a rebuttable presumption of eligibility for incentives, it fails to render a finding concerning Grenshaw’s eligibility for incentives based on the substantial supporting evidence presented by ComEd. ComEd argues that the Grenshaw Project in particular is eligible for incentives because it was undertaken as a necessary part of the overall construction plan to increase reliability to the critical Chicago business district and because it satisfies reliability standards that go beyond the planning standards of the North American Electric Reliability Corporation (NERC).

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<sup>14</sup> ComEd explains that the Commission expresses concern that the NERC reliability standards process might result in the “lowest common denominator” approach described in *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh’g*, Order No. 672-A, FERC Stats. & Regs. ¶ 31,212 (2006).

<sup>15</sup> 108 FERC ¶ 61,288 (2004).

17. ComEd further argues that the Commission erroneously relied on ratios of transmission investment to support its finding that the West Loop and Grenshaw Projects are routine investments. According to ComEd, the Commission presumes that a utility's investment in eligible projects must be a certain percentage of its historical investment or its current net transmission plant in service, but this presumption is contrary to the conclusion in *Duquesne Light Co.*<sup>16</sup> ComEd claims that the June 5 Order fails to adhere to the principle that FPA section 219 cannot be read so narrowly as to require that investment in eligible projects be at a high level in relation to current transmission base. ComEd argues that if utilities can only obtain incentives for projects that constitute a significant percentage of transmission rate base, then many utilities will seek to base their request for incentives on as many projects as possible, without regard to the individual project's size or complexity or its importance to ensuring reliability or reducing congestion.

18. ComEd states that it intentionally did not include what might reasonably be considered routine projects in its petition, including smaller baseline projects included in PJM's Regional Transmission Expansion Plan (RTEP). In contrast, other transmission owners have included all or most baseline and transmission-owner initiated RTEP projects in their requests.<sup>17</sup> ComEd argues that comparing the investment in projects for which a utility is seeking incentives to the utility's total transmission investment can be unfair to utilities, such as ComEd, that have invested significantly in transmission

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<sup>16</sup> 118 FERC ¶ 61,087 (2007) (*Duquesne*). ComEd states that the Commission found "[s]ection 219 of the FPA cannot be so narrowly read as to allow incentive based rate treatment only if the cost of the project in absolute terms or in relation to the applicant's current transmission base is high, if the proposal crosses several jurisdictions, if the project takes a long time to complete, and if the applicant would otherwise be required to build the project without an incentive. Indeed, the Commission may find that incentive rate treatment is appropriate even if these characteristics are not present, as long as the proposed project ensures reliability or reduces the cost of electric energy by reducing congestion, and a nexus is shown." *Duquesne*, 118 FERC ¶ 61,087 at n.40.

<sup>17</sup> ComEd argues that it has taken a conservative approach, requesting incentives for only two of its 13 baseline projects and for one of its 18 RTEP projects included in the 2006 RTEP. ComEd argues that its investment is expected to be \$393 million, which is \$210 million and \$350 million more than Duquesne Light Company (Duquesne) and Trans-Allegheny Interstate Line Co. (TrAILCo) expect to incur, respectively, for their investments. *Duquesne*, 118 FERC ¶ 61,087 at P 7; *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 15 (2007) (*TrAILCo*).

infrastructure, and it asserts that this ratio says nothing about the projects or their ability to improve reliability.

19. Similarly, Witness McDonald testified that revenues associated with the requested ROE incentives would generate additional cash flow to help finance the remaining construction and favorably impact credit metrics and ComEd's credit quality. According to ComEd, Witness Avera explained that the requested 150 basis point ROE adder is rationally related to ComEd's investment in its transmission infrastructure, noting generally that credit agencies have emphasized the nexus between investors' expectations for allowed returns and increased transmission investment.

20. Finally, ComEd points to three instances where the Commission relied on erroneous assumptions or facts to support its determination. First, ComEd alleges that the Commission was mistaken when it stated that ComEd provided no data to support its claim that its expected total investment in the Grenshaw and West Loop Projects would be roughly equivalent to its total investment in transmission plant additions during the 2001-2004 period. According to ComEd, Witness Robert K. McDonald testified that the magnitude of these projects and their impact on cash flow is significant because they have higher costs than those typically incurred for transmission plant additions; in fact, the investment in these projects is nearly the same as the entire investment of about \$400 million in transmission plant from 2001 to 2004. Second, ComEd alleges that the June 5 Order erroneously stated that total investment for the Projects was only 14 percent of ComEd's current net transmission plant in service of \$1.68 billion. In fact, the expected total investment for the projects represents 23 percent of net transmission plant in service, as the Commission's calculation only took into account the cost of Phase II of the West Loop Project, and not the completed projects. And third, ComEd contends that the June 5 Order was in error when it stated that \$729 million in new transmission investment since 2003 did not include the projects.<sup>18</sup> ComEd states that, in fact, the \$729 million figure includes the Grenshaw Project, Phase I of the West Loop Project, and 50 percent of CWIP for Phase II of the West Loop Project. ComEd states that if investment for the West Loop and Grenshaw Projects were backed out of this figure, the corresponding figure would be \$499 million in new transmission investment.

21. Further, ComEd argues that the June 5 Order erred by denying ComEd's request for inclusion of 50 percent CWIP in rate base for Phase II of the West Loop Project and by determining that ComEd did not demonstrate a sufficient nexus. ComEd asserts that the Commission's finding that "the project completion date is 2008 and [ComEd] has

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<sup>18</sup> The Commission cited to ComEd's March 1, 2007 FPA section 205 filing at 7; ComEd March 1, 2007 petition at 19.



demonstrated an ability to retire significant amounts of debt, and attract investment as recently as February 2006”<sup>19</sup> is based on stale information, does not indicate the financial risks facing ComEd today, and does not form a reasonable basis for denying ComEd’s request for incentives. ComEd notes that in *TrAILCo*, issued a few days before the June 5 Order, the Commission approved a request for inclusion of an ROE incentive for a \$50 million project with a completion date in December 2007. ComEd states that the Commission’s denial of CWIP in rate base for Phase II of the West Loop Project based on its projected completion date was arbitrary and capricious and is inconsistent with *TrAILCo*. ComEd asserts that the Commission, in denying its requested CWIP incentive, did not distinguish *TrAILCo* from Phase II of the West Loop Project, which is far more complex, is five times as expensive (\$250 million), has a longer construction schedule (expected completion date of June 2008), will employ underground XLPE cable, and involves special construction challenges.

22. ComEd states that Witness McDonald presented testimony on the current financial and other risks faced by ComEd, claiming that the CWIP incentive would allow ComEd to earn an additional \$10.6 million in revenues on its pre-commercial operation construction costs, providing additional cash flow during the remaining construction of Phase II of the West Loop Project. This additional cash flow would provide regulatory certainty to ComEd and its investors, help ComEd maintain its credit ratings, allow ComEd to attract capital at reasonable prices, reduce the amount of borrowing required to complete the Projects, impact credit metrics favorably, and enhance ComEd’s credit quality.

23. ComEd argues that the Commission failed to give adequate weight to Witness McDonald’s testimony that ComEd’s then-current credit ratings were just above investment grade and that Standard & Poor’s rating of ComEd’s senior unsecured debt was below investment grade. Further, the rating agencies have made it clear the ability to receive timely cost recovery with minimal regulatory lag is a critical aspect of the underlying credit quality of a utility. ComEd explains that its credit rating has fallen since it filed its petition on March 1, 2007; Standard & Poor’s downgraded ComEd’s corporate credit ratings to BB, which is below investment grade and has “junk” status in June 2007.

24. ComEd argues that the Commission should have found that ComEd’s credit ratings adversely affect its credit risk, noting that the Commission granted the incentives requested in *TrAILCo* based on the finding that *TrAILCo*’s affiliated operating

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<sup>19</sup> ComEd July 5, 2007 Request for Rehearing, Docket No. EL07-41-001, at 24 (citing June 5 Order, 119 FERC ¶ 61,238 at P 61).

companies' credit ratings were below investment grade and adversely affect TrAILCo's financial risk. Further, ComEd states that in *United Illuminating*, the Commission noted that the credit rating was "the lowest investment grade rating used by [Moody's Investors Service]."<sup>20</sup> ComEd argues that it demonstrated a lower credit rating for its senior unsecured debt in its petition.

25. We make the following project-specific findings.

**1. Commission Determination; Phase II of the West Loop Project**

26. We grant rehearing for Phase II of the West Loop Project. Upon further consideration, we find that this RTEP baseline transmission project satisfies the nexus requirement for an ROE incentive. We also find that ComEd has demonstrated a nexus for the recovery of CWIP in rate base.

27. On July 24, 2007, while ComEd's request for rehearing was pending, the Commission issued an order in *Baltimore Gas & Electric Co.*<sup>21</sup> In that order, we elaborated on the nexus test, stating that "when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, *shown that the project faces risks and challenges that merit an incentive*. By definition, projects that are not routine under our analysis articulated above face inherent risks and challenges and/or provide benefits that are worthy of incentives."<sup>22</sup> The Commission then found that all baseline projects in the PJM RTEP qualified as non-routine and, thus, satisfied the nexus requirement for an ROE incentive, stating that:<sup>23</sup>

We note that PJM's scrutiny of baseline projects is significant in our analysis of whether a project has met the nexus test. Pursuant to the PJM Operating Agreement, PJM is required to adopt a single regional plan that will maintain the reliability of the PJM grid in a manner that supports competition in the PJM region. Projects that are identified as "baseline" projects in the PJM RTEP process are those that benefit

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<sup>20</sup> ComEd July 7, 2007 Request for Rehearing, Docket No. EL07-41-001, at 21 (citing *United Illuminating*, 119 FERC ¶ 61,182 at P 64).

<sup>21</sup> 120 FERC ¶ 61,084 (2007) (*Baltimore Gas & Electric*).

<sup>22</sup> *Id.* P 54 (emphasis added).

<sup>23</sup> *Id.* P 58 (internal citations omitted).

customers in one or more transmission owner zones for the purpose of maintaining reliability or mitigating congestion on the PJM grid. Such projects therefore are, by definition, regional projects and thus, not routine. The Commission therefore finds that the regional benefits provided by PJM-approved baseline projects serve to make these facilities non-routine for purposes of the nexus requirement for an ROE incentive.

28. Thus, similar to our conclusion that the baseline projects at issue in *Baltimore Gas & Electric* were not routine, we find that Phase II of the West Loop Project, a baseline project in the 2006 PJM RTEP, is not routine in nature and therefore is eligible for the ROE incentive under Order No. 679. We therefore find that Phase II of the West Loop Project qualifies for the 150 basis point ROE incentive. Our finding here will bring the overall ROE for the Phase II of the West Loop Project to 13 percent, which remains within the agreed-upon upper end of the range of reasonableness set forth in the settlement agreement.

29. ComEd points out in its rehearing that on June 1, 2007, its creditworthiness was downgraded to “junk” status. In Order No. 679, the Commission held that the CWIP incentive can result in a better credit rating and lower cost of capital, which benefits customers and remains consistent with the goals of section 219.<sup>24</sup> The Commission will grant ComEd’s request for 50 percent of CWIP in rate base for Phase II of the West Loop Project pursuant to Order No. 679. Given the volatility in ComEd’s creditworthiness during the construction period, including the fact that its corporate credit rating was downgraded to “junk” status by Standard and Poor’s prior to the June 5 Order, these facts support granting this incentive.<sup>25</sup> Particularly, the immediate cash infusion resulting from this incentive may help to offset the difficulties in financing resulting from the volatility in ComEd’s credit rating during the construction period. Moreover, consistent

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<sup>24</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 115. The Commission is taking official notice of ComEd’s credit rating pursuant to Rule 508(d) of the Commission’s Rules of Practice, 18 C.F.R. § 385.508(d)(2007).

<sup>25</sup> *Id.* See also *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 58-60 (2007) (finding that inclusion of 100 percent of CWIP in rate recovery for the transmission projects would reduce risk of a downgrade of the applicant’s corporate credit and debt ratings); *Baltimore Gas and Electric*, 120 FERC ¶ 61,084 at P 67 (2007) (stating the Commission’s intention for the CWIP incentive was to provide immediate cash flow for companies who take on projects with long lead times and, as a result, face cash flow difficulties or an adverse effect on its credit rating).

with Order No. 679, we find that authorizing recovery of CWIP in rate base for ComEd will enhance its cash flow, reduce interest expense, assist ComEd with financing, and improve ComEd's coverage ratios used by rating agencies to determine credit quality by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a further downgrade in ComEd's debt ratings. For this reason, we grant ComEd's request for rehearing to include, pursuant to Order No. 679, 50 percent of CWIP in rate base for Phase II of the West Loop Project.<sup>26</sup> As discussed below, we also permit the inclusion of 50 percent CWIP in rate base pursuant to Order No. 298, as requested by ComEd, resulting in an overall CWIP recovery of 100 percent for Phase II of the West Loop Project.

**2. Commission Determination; Phase I of the West Loop Project and the Greshaw Project**

30. We deny rehearing concerning ComEd's request for incentives for the Greshaw Project and Phase I of the West Loop Project. ComEd's requests for rehearing on these projects are not germane to our findings here.

31. Notwithstanding whether either project is a baseline project in the PJM RTEP, the Commission has made clear that it will also consider a project's planning and completion dates when determining whether incentives may be appropriate. As we stated in Order No. 679, "[t]he purpose of our Rule is to benefit customers by providing real incentives to encourage new infrastructure, not simply increasing rates in a manner that has no correlation to encouraging new investment."<sup>27</sup>

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<sup>26</sup> We note that ComEd's comparison to *TrAILCo* in its request for rehearing on the requested CWIP incentive is misplaced. We reject this comparison because the *TrAILCo* project cited by ComEd — a static VAR compensator — received an ROE incentive and not a CWIP incentive, which is at issue here. Order No. 679 explained that different incentives are predicated on different requirements. *See, e.g., Baltimore Gas and Electric*, 120 FERC ¶ 61,084 at P 67 (stating that the Commission considers a range of factors, including whether a transmission project will create cash flow difficulties as a result of long lead times and will have an adverse impact on credit ratings, in its determination of whether a particular project qualifies for 100 percent of CWIP in rate base). Accordingly, the Commission's granting of an ROE incentive in a different proceeding has no bearing on our action concerning a CWIP incentive in the instant case.

<sup>27</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 6.

32. Here, the Grenshaw Project and Phase I of the West Loop Project were completed prior to ComEd's request for incentives and granting the requested incentives for completed projects does not encourage new infrastructure. The Grenshaw Project was placed into service in May 2006 at a cost of \$48 million. Phase I of the West Loop Project was completed in December 2006 at a cost of \$95 million.<sup>28</sup> ComEd filed its request for incentives for these completed projects on March 1, 2007. ComEd has not demonstrated why it needs a 150 basis point ROE incentive to encourage investment that has already been made in these completed transmission projects.

33. While Order No. 679 does consider incentives for projects that have begun the planning process, stating that "[e]ven where a project already has been planned or announced, the granting of incentives may *help in securing financing* for the project or *may bring the project to completion sooner* than originally anticipated,"<sup>29</sup> such circumstances are not presented in this case. ComEd has not demonstrated that the ROE incentive it requests for Phase I of the West Loop Project and the Grenshaw Project will help it to achieve financing for these projects. Nor can ComEd show that the ROE incentive will help it to bring these two projects to completion sooner, since they were already completed before ComEd filed its request.

34. ComEd nonetheless asserts that it is entitled to the requested ROE incentive for these completed projects in recognition for its commitment to provide reliable service, over and above the minimum level required by NERC reliability standards, to critical load in the Chicago Central Business District.

35. ComEd argues that in granting these incentives, the Commission will send the message that transmission investment decisions where NERC reliability standards are viewed as the "floor" rather than a "ceiling" are decisions that the Commission is willing to reward.<sup>30</sup> ComEd further argues that denying incentive treatment for these completed projects would generally send the wrong signal to investors contemplating a decision to commit capital to an expanded transmission grid.

36. We are not persuaded by ComEd's arguments. Order No. 679 directs applicants to demonstrate how their requested ROE incentive is "tailored to address the demonstrable risks and challenges faced in undertaking the project," by establishing a nexus "between

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<sup>28</sup> ComEd March 1, 2007 petition at 7, Attachment B (Sterling Affidavit).

<sup>29</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 35 (emphasis added).

<sup>30</sup> ComEd April 12, 2007 Response to Deficiency Letter at 5-6.

the rate treatments sought and the attraction of new capital.”<sup>31</sup> ComEd’s nexus justification on these completed projects replicates historical risks that are no longer present, because the projects were already completed.

37. ComEd claims that the Commission erred in relying on ratios of transmission investment to deny incentives. Though the Commission noted the historic transmission investment data included in ComEd’s request, the denial of incentives was based on a number of factors and was not based exclusively on any one. Since ComEd has not demonstrated how its requested incentives for the Greshaw Project and Phase I of the West Loop Project are necessary to encourage new investment in transmission, we deny ComEd’s request for rehearing with regard to these completed projects.

### **3. Advanced Transmission Technologies**

#### **a. Request for Rehearing**

38. ComEd notes that although the June 5 Order found that ComEd’s proposal to use underground XLPE cable in the West Loop Project may be entitled to an ROE incentive for use of an advanced transmission technology under section 1223 of EPAct 2005,<sup>32</sup> it did not grant any incentives but rather invited ComEd to submit a new application. ComEd argues that, consistent with *Duquesne*, the Commission should have conditionally approved ComEd’s petition to the extent that it sought an incentive ROE based on the West Loop Project’s use of advanced transmission technology and that it should have directed ComEd to provide additional support in a compliance filing rather than a new application. ComEd contends that the Commission has recognized that the use of XLPE cable in highly concentrated urban areas meets the standard set forth in Order No. 679 and section 1223 of EPAct 2005.<sup>33</sup>

#### **b. Commission Determination**

39. Absent good cause, we look unfavorably on parties raising new issues on rehearing that should have been raised earlier because such behavior is disruptive to the administrative process and has the effect of moving the target for parties seeking a final administrative decision.<sup>34</sup> We are generally reluctant to consider evidence submitted

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<sup>31</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

<sup>32</sup> Pub L. No. 109-58, § 1223, 119 Stat 594, 953 (2005).

<sup>33</sup> *Citing United Illuminating*, 119 FERC ¶ 61,182 at P 71, 73, n.45.

<sup>34</sup> *Baltimore Gas & Electric Co.*, 91 FERC ¶ 61,270, at 61,922 (2000).

after the Commission has already acted because of the need for timely action and the disinclination to chase a moving target -- especially at the rehearing stage, when other parties are unable to respond.<sup>35</sup>

40. Further, even if we were to entertain this new request for an incentive on rehearing, it is patently deficient and could not be accepted.<sup>36</sup> ComEd does not specify the level of ROE incentive it seeks for advanced transmission technologies. ComEd does not specify whether it requests a separate ROE incentive for advanced transmission technology in addition to its requested transmission investment adder of 150 basis points, or in lieu of the 150 basis point transmission investment adder, or if it is simply arguing that the Commission should take ComEd's use of advanced transmission technology into account when considering the 150 basis point ROE incentive request. Without this information, the Commission and interested parties are unable to make a determination of what exactly the requested incentive is, and whether the requested incentive rate will be just and reasonable.

**B. Request for Rehearing in ER07-583-003 Concerning 50 Percent CWIP Pursuant to Order No. 298**

**1. Request for Rehearing**

41. ComEd states that the June 5 Order erred in rejecting ComEd's request to include 50 percent of CWIP in rate base, stating that its proposal was adequately supported and consistent with prevailing Commission precedent. ComEd argues that it did not attempt to evade the requirements of Order No. 298. Instead, it contends that its request was in accordance with the Commission's traditional policy, which "allow[s], in the typical case, 50 percent of CWIP in rate base."<sup>37</sup> Further, ComEd notes that Order No. 298 requires

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<sup>35</sup> *Cities and Villages of Albany and Hanover v. Interstate Power Co.*, 61 FERC ¶ 61,362, at n.4 (1992). We note that ComEd's circumstance stands in contrast with Duquesne's request, in that ComEd modified the premise of its ROE incentive request on rehearing, effectively creating an impermissible moving target, whereas Duquesne's request for an incentive for its TOI projects was clearly articulated in its original filing.

<sup>36</sup> See *Municipal Light Boards of Reading and Wakefield Massachusetts v. Federal Power Commission*, 450 F.2d 1341, 1346 (1971).

<sup>37</sup> ComEd July 5, 2007 Request for Rehearing, Docket No. ER07-583-003, at 18 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 22 (explaining that the Commission's policies regarding the recovery of CWIP "seek to balance investor and consumer interests by allowing, in the typical case, 50 percent of CWIP in rate base"))).

submission of the statement required in the Commission's regulations in 18 C.F.R. § 35.13(h)(38) (2007) (Statement BM) to identify the specific projects for which CWIP is sought. ComEd argues that it did submit a Statement BM in Exhibit No. CWE-104 of the section 205 filing and made clear that of approximately \$99.78 million in non-incentive CWIP costs requested, about \$87.6 million of those costs were incurred in connection with Phase II of the West Loop Project. Further, ComEd states that it provided detailed explanations of Phase II of the West Loop Project to the Commission.

42. ComEd argues that the June 5 Order erroneously states that ComEd failed to provide a specific construction project for which it seeks to include 50 percent CWIP in rate base, as its request to include 50 percent of CWIP costs associated with Phase II of the West Loop Project accounts for nearly 90 percent of the CWIP costs that ComEd seeks to include in its rate base. ComEd asserts that the Commission's rejection is premised on the notion that ComEd was seeking blanket approval of 50 percent CWIP in rate base that would be put in place indefinitely. However, ComEd argues that this characterization grossly distorts its actual request, pointing out that although it seeks the ability to include 50 percent CWIP in rate base, any such inclusion would have to be justified with the appropriate Statement BM, and customers would have the opportunity through the formula rate protocols to review and challenge any such statement as provided in the formula protocols.<sup>38</sup>

43. ComEd argues that its request was consistent with recent decisions accepting substantially similar proposals for other PJM members and that the June 5 Order fails to distinguish these decisions. Specifically, in *Duquesne*, the Commission accepted a proposal for including 100 percent of CWIP in rate base without analyzing the request under Order No. 298.

44. ComEd requests that it be permitted to make a supplemental compliance filing in the instant docket incorporating 50 percent of CWIP in rate base without the need to initiate a new proceeding under section 205 of the FPA.

## **2. Commission Determination**

45. As explained above, ComEd presented two separate CWIP requests in the underlying proceedings: (1) in its petition filed in Docket No. EL07-41-000, ComEd requested "inclusion within rate base of the remaining 50 percent of [CWIP] incurred, and estimated to be incurred, in connection with the construction costs for Phase II of the

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<sup>38</sup> ComEd states that to the extent that there is any concern about the adequacy of those protocols, that issue will be addressed at hearing.



West Loop Project” pursuant to Order No. 679;<sup>39</sup> and (2) in the section 205 filing in Docket No. ER07-583-000, ComEd sought to include “50 percent of all transmission CWIP in rate base.”<sup>40</sup>

46. Here, we will examine the merits of the request for rehearing presented in Docket No. ER07-583-003, since we have addressed the merits of the requests for rehearing in Docket No. EL07-41-001 above. ComEd’s request for rehearing here focuses on two alleged “errors” in the Commission’s June 5 Order. Contrary to the Commission’s findings, ComEd argues that its request: (1) was adequately supported, and (2) was consistent with Commission precedent.

**a. Adequacy of Support**

47. We will grant rehearing of ComEd’s request for 50 percent of CWIP in rate base, pursuant to Order No. 298, with respect to Phase II of the West Loop Project.<sup>41</sup> We agree that ComEd has demonstrated that Phase II of the West Loop Project is “prudent and consistent with a least cost energy supply program” based on the Illinois Commerce Commission’s order on ComEd’s application for certificate of public convenience and necessity,<sup>42</sup> consistent with the Commission’s regulations for CWIP.<sup>43</sup> ComEd may recover 50 percent CWIP in rate base for Phase II of the West Loop Project.

48. However, we deny rehearing on ComEd’s other request to the extent that ComEd seeks to include 50 percent of CWIP in rate base for all transmission investment. ComEd very clearly states in its Statement BM that it is “proposing to include 50 percent of

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<sup>39</sup> ComEd March 1, 2007 petition at 4.

<sup>40</sup> ComEd March 1, 2007 FPA section 205 filing at 5.

<sup>41</sup> The Commission is therefore granting ComEd the permission to include 50 percent of CWIP in rate base pursuant to Order No. 298 in conjunction with the permission in Docket No. EL07-41-001 to include an additional 50 percent of CWIP in rate base pursuant to Order No. 679, for a total of 100 percent of CWIP in rate base for Phase II of the West Loop Project.

<sup>42</sup> ComEd March 1, 2007 petition, Ex. No. B-5, at 7 (Order on Certificate of Public Convenience and Necessity), “[T]he proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is *the least cost means* of satisfying the service needs of its customers” (emphasis added).

<sup>43</sup> 18 C.F.R. § 35.13 (h)(38) (2007).

[CWIP] for *all transmission investment* in rate base.”<sup>44</sup> ComEd makes no demonstration in its request for rehearing how “all transmission investment in rate base” “is prudent and consistent with a least-cost energy supply program.”<sup>45</sup> Instead, in its request for rehearing, ComEd focuses on its contention that 90 percent of the CWIP costs that it proposes to include in rate base are associated with Phase II of the West Loop Project, for which ComEd states it has provided the necessary information.<sup>46</sup> While we agree that ComEd provides the relevant information in Statement BM for Phase II of the West Loop Project, its specific request was not limited to just this project. ComEd disagrees with the Commission’s characterization of its request as seeking “blanket” approval for CWIP, but then goes on to seek this very treatment.<sup>47</sup>

49. Under section 35.13 of the Commission’s regulations, a public utility seeking to recover CWIP in rate base must submit Statement BM to allow the Commission to review the prudence of CWIP costs. The “prudence of investment decisions and associated costs is a matter of fact in each case” and as such, the Commission must have the ability “to *review and judge the prudence of those costs as those costs are incurred or claimed in rate base*, (emphasis added) rather than at a later point in time when a project has been abandoned and a potentially unwise investment has already been made.”<sup>48</sup> ComEd’s formula protocols do not involve ComEd filing the appropriate Statement BM with the Commission pursuant to section 205. As this proposal is not consistent with the Commission’s regulations on CWIP, we deny rehearing.

50. In performing the duty to determine the prudence of specific costs, the appropriate test is to determine whether those costs are those that a reasonable utility management, or the management of another jurisdictional entity, would have made in good faith, under

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<sup>44</sup> ComEd March 1, 2007 FPA section 205 filing, Appendix C, Exh. No. CWE-104, at 1 (Statement BM) (emphasis added).

<sup>45</sup> 18 C.F.R. § 35.13 (h)(38) (2007).

<sup>46</sup> ComEd July 5, 2007 Request for Rehearing, Docket No. ER07-583-003 at 19. While perhaps true that the Phase II of the West Loop Project costs account for approximately 90 percent of current construction costs that ComEd seeks to include in rate base, this figure neglects to consider future costs for which ComEd is effectively seeking approval of this CWIP treatment.

<sup>47</sup> *Id.*

<sup>48</sup> See Order No. 298, FERC Stats. & Regs. ¶ 30,455 at 30,516 (emphasis added).

the same circumstances and at the relevant point in time.<sup>49</sup> A prudence analysis must evaluate a utility's decision on the basis of information available to the utility at the time the decision is made. We therefore are required to make a case-specific finding of prudence in granting CWIP in rate base.<sup>50</sup>

51. Further, ComEd's formula rates and the accompanying protocols do not explain how the rates associated with its blanket CWIP request will be allocated to the different wholesale customer classes pursuant to the section 35.13 (h)(26) of the Commission's regulations. The Commission must review CWIP proposals on a project-specific basis to ensure that the appropriate wholesale customers pay for such CWIP costs. For example, it is unclear how the CWIP costs of future projects — potentially at or above 500 kV — would be allocated if we granted a blanket approval here.

**b. Consistency with Commission Precedent**

52. ComEd claims that its request for including 50 percent CWIP in rate base in its formula rate is consistent with the approved proposal in *Duquesne*, in which Duquesne requested approval for 100 percent CWIP in rate base for a new high voltage transmission upgrade project. ComEd notes that the Commission approved this incentive for Duquesne without analyzing the request under Order No. 298.

53. To the contrary, Duquesne's incentive request was for a tangible project, in contrast to ComEd's broader request for "all transmission investment in rate base" at issue here. The findings on the construction costs in *Duquesne* were project-specific and fact-specific. ComEd's proposal for 50 percent of CWIP in rate base for *all* transmission investment thus are not comparable to the proposal in *Duquesne*.

54. Rejecting ComEd's request in its FPA section 205 filing for 50 percent of CWIP in rate base for all transmission investment is consistent with Commission precedent. For example, the Commission rejected a similar CWIP request in *Empire District*. The Commission stated in that order that "[Empire District Electric Company] included no details on specific projects and did not describe the nature of the projects for which it was requesting Other CWIP treatment."<sup>51</sup> While ComEd did provide details for Phase II of the West Loop Project in Statement BM, ComEd's request is similar to *Empire District* in that by requesting this CWIP treatment for *all transmission investment*, the Commission cannot determine if such future projects will meet the appropriate standards the

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<sup>49</sup> *Violet v. FERC*, 800 F.2d 280, 283 (1st Cir. 1986).

<sup>50</sup> *Empire District Electric Co.*, 58 FERC ¶ 61,037 (1992) (*Empire District*).

<sup>51</sup> *Empire District*, 58 FERC at ¶ 61,081(1992).

Commission has required for CWIP treatment.

55. For these reasons, the Commission will permit ComEd to include up to 50 percent of CWIP in rate base for Phase II of the West Loop Project under Order No. 298, and an additional 50 percent CWIP in rate base for Phase II of the West Loop Project pursuant to Order No. 679, but deny ComEd's requests for 50 percent of CWIP in rate base for all transmission investment.

### C. ComEd's Compliance Filing

56. Based on the Commission's finding in this order, we will require ComEd to submit a compliance filing in Docket No. ER07-583. ComEd must amend its tariff sheets to reflect CWIP recovery with a project-specific listing in Attachment 5 of its tariff sheets. This permission does not allow ComEd to include this treatment for all future projects in perpetuity without submitting a section 205 filing containing the appropriate supporting information. ComEd must be sure that the revised tariff language in its compliance filing leaves no uncertainty regarding the specific nature of this CWIP treatment (i.e., only Phase II of the West Loop Project has been granted approval of this treatment).

57. We note that in ComEd's initial filing, it had proposed to include CWIP balances in the Gross Plant Allocator and the Net Plant Allocator. Inclusion of CWIP in these allocators is inappropriate for two reasons. First, the costs and credits associated with these allocators do not involve plant under construction. There is no justification for allocating operations and maintenance expenses, for example, associated with a plant that is not yet in operation. Second, ComEd had proposed to include CWIP in the numerator, and not in the denominator of these allocators, thus further overstating these costs that were impermissibly allocated to transmission. ComEd must remove CWIP from these allocators in its compliance tariff sheets.<sup>52</sup>

58. For a company to include CWIP in rate base, the Commission's regulations require the company to propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base.<sup>53</sup> To satisfy this requirement, ComEd states it will cease to accrue AFUDC on the 100 percent of CWIP that is included in rate base simultaneously with the inclusion of

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<sup>52</sup> We note that ComEd filed tariff sheets with its pending settlement agreement that are consistent with the Commission's policy on Gross and Net Plant Allocators, but these tariff sheets have not been acted on yet.

<sup>53</sup> 18 C.F.R. § 35.25 (2007) (recovery of CWIP in rate base).

such amount in rate base. To reflect the fact that 100 percent of CWIP will be included in rate base, a regulatory liability will be recorded to offset 100 percent of the AFUDC recorded. ComEd's explanation, however, lacks certain details necessary for the Commission to conclude that double recovery will indeed be avoided.

59. In its compliance filing, ComEd must describe its accounting treatment to offset, as a regulatory liability, 100 percent of recorded AFUDC related to Phase II of the West Loop Project. ComEd must also describe its accounting for the regulatory liability once Phase II of the West Loop Project goes into service. ComEd's accounting should provide proposed journal entries demonstrating its accounting along with narrative explanations describing the basis for the accounting entries, including a description of procedures and controls that ComEd will implement to prevent improper capitalization.<sup>54</sup>

60. Further, with regard to the granted CWIP treatment for Phase II of the West Loop Project, ComEd must propose the means by which it will seek recovery of revenues related to the CWIP in rate base from the effective date of May 1, 2007 to the issuance date of this order. ComEd must show the amounts it seeks to recover on a monthly basis, and explain how it will calculate a refund interest rate.

The Commission orders:

(A) ComEd's request for rehearing is hereby granted in part and denied in part, and as discussed in the body of this order.

(B) ComEd is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>54</sup> See, e.g., The United Illuminating Co.'s March 23, 2007 filing, Docket No. ER07-653-000, at Exh. Nos. UI-13, UI-14 and UI-15; Boston Edison Company's October 25, 2004 filing, Docket No. ER05-69-000, at Exh. Nos. BE-2 (at 4-5) and BE-6; American Transmission Company LLC's October 30, 2003 filing, Docket No. ER04-108-000, at Exh. Nos. ATC-9 and ATC-10.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company and  
Commonwealth Edison Company of Indiana, Inc.

Docket Nos. EL07-41-001  
ER07-583-003

(Issued January 18, 2008)

KELLY, Commissioner, *dissenting in part*:

This order, among other things, addresses requests for rehearing of the Commission's previous determination to deny incentive rate treatment proposed by Commonwealth Edison Company (ComEd). In today's decision, the majority stands by our original decision to deny incentives for the already completed Greshaw and West Loop Phase I Projects. With this, I agree. However, I disagree with the majority's decision to reverse our denial of incentives for West Loop Phase II Project.

Order No. 679-A clearly finds that incentives should not be made available to "routine investments made in the ordinary course" of business of the transmission provider.<sup>1</sup> While these investments may yield good and useful projects, incentives are not needed to ensure that these types of investments be made. For these investments, normal rate recovery, including regulated return, should be more than adequate. Incentives are to be made available to those special projects that face the types of unique or excessive risks or challenges that incentives can address.<sup>2</sup> If we award incentives to projects indiscriminately, i.e. to projects that do not face unique or excessive risks or challenges, then "incentive ratemaking" just becomes the "new, normal" rate recovery. I believe this would be unjust and unreasonable because it would result in transmission customers having to pay a premium for the type of service they would, and should, get for their normal rates. Also it would ultimately destroy the purpose of incentives, which is to provide a special spur to bring about change that would likely not occur without them. To attempt to ensure that incentives are granted in a measured and appropriate way, I have long been an advocate of this Commission's adopting specific criteria that would be consistently applied in a critical analysis of whether each project seeking incentive rate treatment is facing unique or excessive risks or challenges. I believe that we would not find ourselves in the situation we do today if we had engaged in this type of decision making.

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<sup>1</sup> Order No. 679-A, 117 FERC ¶ 61,345, at P 60 (2006).

<sup>2</sup> *Id.* P 21.

In a recently decided case, *Baltimore Gas & Electric Co.*,<sup>3</sup> the majority awarded incentive rate treatment to two baseline projects in PJM's Regional Transmission Expansion Plan (RTEP). As a result, the majority reverses itself here because the West Loop Phase II Project is also a baseline project in PJM's RTEP. ComEd seeks rehearing here relying on the BG&E Order precedent. ComEd argues here that because its West Loop Phase II Project was a baseline project in the 2006 PJM RTEP, it should receive incentive treatment like that awarded to the BG&E projects. The majority agrees. I dissented from the BG&E Order because I found faulty the reasoning that, because the BG&E projects were baseline projects in the PJM RTEP, they faced unique or excessive risks and challenges worthy of incentive ratemaking. Given the fact that the inclusion as baseline projects in the 2006 PJM RTEP was enough to garner transmission incentives in the BG&E Order, the majority is now hard pressed not to award similar incentives in the case here. As a result, we significantly compound the error of the BG&E Order.

After this order, it is clear that the Commission is on the road to approving incentive rate treatment for not only every PJM RTEP baseline project, but also, I fear, for almost every transmission project in the country. I reach this conclusion because a PJM RTEP baseline project is defined (in both this order and the BG&E order) as one that will "benefit customers in one or more transmission owner zones."<sup>4</sup> Because almost every transmission project in the country will "benefit customers in one or more transmission zones," I fear that incentive rate making is now poised to become the new, normal rate recovery methodology for transmission investment. I believe this result clearly identifies a fundamental need to change course and institute a reasoned, criteria-based decision-making process for awarding transmission incentives. I believe the Commission has strayed from its original goal, i.e., to give incentives to those projects that need them to meet unique or excessive risks and challenges. Apparently, we will now, in keeping with the decision here and the BG&E Order precedent, be giving incentives to every transmission project that can be seen to benefit customers in one or more transmission owner zones. I do not believe that this is what Congress intended when it authorized the Commission to provide incentive rate making in appropriate circumstances. I do not think this well serves the country's transmission customers.

In prior proceedings, I have identified the criteria I would advocate using in a critical analysis to determine what projects merit incentives.<sup>5</sup> Using those criteria, and applying them to ComEd's West Loop Project Phase II, I find that this project does not warrant incentive rate treatment because it does not present any unique or excessive risks

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<sup>3</sup> 120 FERC ¶ 61,084 (2007) (BG&E Order).

<sup>4</sup> *Id.* P 58.

<sup>5</sup> *See Amer. Elec. Power Serv. Corp.*, 118 FERC ¶ 61,041 (2007).

or challenges. It provides adequate, reliable transmission service in Chicago and it is therefore a routine investment made in the ordinary course of ComEd's business.

ComEd describes Phase II of its West Loop Project as a transmission upgrade to significantly improve the "reliability of service to the Chicago central business district."<sup>6</sup> This upgrade is designed to meet ComEd's own criteria for reliability for Chicago (ComEd Criteria). The development of the ComEd Criteria was informed by its interpretation of reliability standards adopted by NERC and by ComEd's regional reliability entity, ReliabilityFirst.<sup>7</sup> ComEd states that its reliability criteria "go beyond the requirements of the Planning Standards of NERC and ReliabilityFirst."<sup>8</sup> The in-service date of Phase II of the West Loop Project is June 2008.

There is nothing about the West Loop Project Phase II that commends it for special incentive rate treatment. This, of course, is not to say that it is not a good and useful project. It is. But it is, also, a project that should be undertaken in the ordinary course of ComEd's business. Upgrading the transmission service in Chicago so that it meets ComEd's reliability criteria for Chicago, whether or not those criteria exceed NERC's and ReliabilityFirst's planning standards, is part of ComEd's core business, not something special or unique or subject to excessive risks or challenges.

With regard to ComEd's request for 100 percent CWIP, Order 679 proposed including 100 percent of CWIP in rate base to account for the cash flow effects of long lead times required to plan and construct new transmission.<sup>9</sup> The projected in-service date of Phase 2 of the West Loop Project is June 2008, roughly six months from now. This does not meet the definition of "long lead time", and, therefore, even if incentive rate treatment were warranted for this project, it would not meet the nexus requirement for CWIP treatment.

Finally, even if this project were eligible for incentive rate making treatment, it would not be eligible for a premium return on equity (ROE). In adopting Order 679, the Commission explained: "In many instances, an incentive-based ROE is appropriate because our traditional policies are not sufficient to encourage new investment."<sup>10</sup> In this

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<sup>6</sup> ComEd Petition for Declaratory Order for Incentive Rate Treatments, transmittal letter at 6.

<sup>7</sup> *See id.* at 8.

<sup>8</sup> *See id.* 4.

<sup>9</sup> Order No. 679, 117 FERC ¶ 31,222, at P 103 (2006).

<sup>10</sup> *Id.* P 94.



case, ComEd has failed to explain why its standard ROE is not sufficient to encourage investment in Phase II of the West Loop Project. Indeed, the fact that this project is a baseline project in PJM's RTEP counsels that ComEd will invest in it in its routine course of business.

For these reasons, I respectfully dissent in part from this order.

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Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company and  
Commonwealth Edison Company  
of Indiana, Inc.

Docket Nos. EL07-41-001  
ER07-583-003

(Issued January 18, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

I have serious concerns about the majority's treatment of two issues in today's order. Those issues are the consideration of advanced technologies and the application of the nexus requirement to proposals for an incentive ROE adder. The Commission established general principles regarding both of these issues in our Order No. 679 rulemaking proceeding. Unfortunately, I believe that the majority misapplies those principles in today's order.

To place my concerns in context, it is useful to review the Commission's recent statements concerning incentives for transmission infrastructure investment in the Order No. 679 rulemaking proceeding and in subsequent specific cases.

*The Order No. 679 Rulemaking Proceeding*

Order No. 679 was issued in July 2006 before I joined the Commission. Pursuant to the Congressional directives in section 1241 of EPAct 2005, Order No. 679 established procedures by which the Commission would consider applications for incentives for transmission infrastructure investment.<sup>1</sup> Among the important requirements established in Order No. 679, the Commission stated that applicants for such incentives must provide a "technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why there were not deployed."<sup>2</sup> In explaining this requirement, the Commission recognized that in enacting section 1241, the Congress envisioned a connection to section 1223 of EPAct 2005, which required the Commission to encourage the deployment of advanced transmission technologies.<sup>3</sup> The Commission also noted that the list of advanced transmission technologies in section 1223 was not "exclusive of

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<sup>1</sup> Order No. 679 at P 1.

<sup>2</sup> *Id.* P 302.

<sup>3</sup> *Id.* P 290, 302.

advanced technologies that may be employed and considered for incentive ratemaking treatment,”<sup>4</sup> and that such new technologies would be adopted when they are cost-effective.<sup>5</sup> In addition, the Commission stated that it would consider incentives for advanced technologies on a case-by-case basis “through the same evaluation process as other technologies.”<sup>6</sup>

Addressing another important issue, the Commission stated in Order No. 679 that not every incentive would be available for every new investment. The Commission required each applicant to demonstrate that there is a “nexus between the incentive sought and the investment being made.”<sup>7</sup> Explaining how this nexus requirement would apply to requests for incentive ROE adders, the Commission stated that it would not necessarily grant such adders to “every new investment that increases reliability or reduces congestion.”<sup>8</sup> To illustrate this point, the Commission stated that “routine investments made to comply with existing reliability standards may not always qualify for an incentive-based ROE.”<sup>9</sup>

I agree with the Commission’s recognition in Order No. 679 that the Congress envisioned a linkage between section 1241 and section 1223 of EPCRA 2005. That linkage is important to encouraging improved transmission efficiency and use of the EPCRA 2005 advanced transmission technologies. I also agree with the Commission’s above-noted statements in Order No. 679 regarding application of the nexus requirement to requests for incentive ROE adders. I believe that in providing an incentive ROE adder for transmission construction, the Commission should focus on encouraging investment decisions beyond the upgrades required to meet a utility’s service obligations or the minimum standard for good utility practice. Targeting incentive ROE adders in this way to investments that provide incremental benefits (*e.g.*, those resulting from the deployment of best available technologies that increase efficiency, enhance grid operations, and result in greater grid flexibility) does not undermine the Commission’s commitment to protecting the reliability of the interstate electric transmission system.

The Commission’s issuance of Order No. 679 attracted many requests for rehearing. In December 2006, I supported Order No. 679-A, in which the

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<sup>4</sup> *Id.* P 290.

<sup>5</sup> *Id.* P 288.

<sup>6</sup> *Id.* P 288-89.

<sup>7</sup> *Id.* P 26.

<sup>8</sup> *Id.* P 94.

<sup>9</sup> *Id.*

Commission made several important statements and clarifications. For example, the Commission again recognized that in enacting section 1241 of EPAct 2005, the Congress highlighted the importance of investment in economically or technologically efficient transmission infrastructure.<sup>10</sup> Noting that no party sought rehearing regarding the determinations in Order No. 679 on advanced technologies, the Commission reiterated the requirement that applicants for incentive rate treatment must provide a technology statement.<sup>11</sup>

The Commission also clarified that the nexus requirement means that the incentives sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.<sup>12</sup> The Commission stated that in presenting a package of incentives, applicants must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the inter-relationship of those elements.<sup>13</sup> Consistent with that requirement, the Commission stated that in evaluating whether an applicant had satisfied the nexus requirement, it would examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project.<sup>14</sup> The Commission also stated that if some of the incentives in a package reduce the risks of the project, then that fact would be taken into account in any request for an enhanced ROE.<sup>15</sup> Each of these statements came in the context of responding to concerns that the nexus requirement would be too easy to satisfy.<sup>16</sup>

Further responding to concerns that the nexus requirement was not sufficiently rigorous, the Commission reiterated that not all projects would be able to meet the nexus requirement. The Commission stated that the most compelling cases for incentive ROE adders are new projects that present special risks or challenges, not routine investments made in the ordinary course of expanding the system to provide safe and reliable transmission service.<sup>17</sup> The Commission also rejected arguments that incentive ROE adders should apply to transmission rate

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<sup>10</sup> Order No. 679-A at P 14.

<sup>11</sup> *Id.* P 10, n. 10.

<sup>12</sup> *Id.* P 21. In making this clarification, the Commission also stated that it retained its discretion to provide policy-based incentives. *Id.* n. 37.

<sup>13</sup> *Id.* P 27.

<sup>14</sup> *Id.* P 21.

<sup>15</sup> *Id.* P 6, 27.

<sup>16</sup> *Id.* P 20.

<sup>17</sup> *Id.* P 23, 60.

base that has already been built, stating that the purpose of section 1241 is to attract new investment in transmission.<sup>18</sup> More generally, the Commission clarified that it did not intend to grant incentive ROE adders “routinely.”<sup>19</sup>

*Individual Cases Implementing Order No. 679 Principles*

In the year since the issuance of Order No. 679-A, the Commission has applied the principles established in that rulemaking proceeding to a number of applications for transmission infrastructure investment incentives. I have frequently written separately in those cases to highlight the importance of advanced technologies and other issues that I believed received inadequate consideration in the applicants’ filing and/or the Commission’s order.

One promising trend in those cases is progress in consideration of advanced transmission technologies. I believe that the linkage between incentives pursuant to section 1241 of EPAct 2005 and the advanced technologies identified in section 1223 is engendering positive responses from transmission developers to consider and incorporate advanced technologies into their projects. I have highlighted this positive development in several of my separate statements. For example, in February 2007, I stated that Duquesne Light Company’s technology statement – which discussed underground construction of a high-voltage transmission line and use of what Duquesne characterized as a state-of-the-art forced cooling system – constituted “a small step toward appropriate consideration of advanced transmission technologies.”<sup>20</sup> I cautioned, however, that I expected to see a more thorough evaluation of the feasibility of using state-of-the-art technologies in any future petition for declaratory order seeking incentive rate treatments.<sup>21</sup>

In May 2007, the Commission granted The United Illuminating Company’s request for a 50 basis point incentive ROE adder in recognition of the company’s plans to use underground XLPE cable technology.<sup>22</sup> Despite certain questions as to the process by which United Illuminating decided to use that technology and the apparent absence of consideration of other advanced technologies, I stated that United Illuminating made an adequate demonstration that its requested incentive ROE advanced technologies adder was appropriate. Nonetheless, I dissented from

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<sup>18</sup> *Id.* P 61.

<sup>19</sup> *Id.* P 7, 67.

<sup>20</sup> *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007), separate statement of Commissioner Wellinghoff at 2.

<sup>21</sup> *Id.* at 2-3.

<sup>22</sup> *The United Illuminating Company*, 119 FERC ¶ 61,182 (2007).

the order because the Commission – without adequate support – had previously granted United Illuminating a 100 basis point ROE adder for all new transmission it may construct. In light of that unsupported incentive already approved for United Illuminating, I could not support burdening consumers with additional costs associated with a further incentive ROE adder for the company.<sup>23</sup>

Also in May 2007, I wrote separately to an order that granted an incentive ROE adder for the TrAIL Project.<sup>24</sup> Although I disagreed with the Commission’s rationale for granting Trans-Allegheny an incentive ROE adder, I stated that it would have been appropriate to grant some incentive adder over the company’s base ROE to recognize its deployment of advanced technologies in the static VAR compensator to be installed at the Black Oak Substation.<sup>25</sup>

In November 2007, Southern California Edison Company provided with its incentives application a more detailed technology statement that described how the company incorporated advanced technologies into its plans for the Devers-Palo Verde II Project and the Tehachapi Project. In light of those commitments as to advanced technologies, as well as the incremental benefits associated with increasing the availability of renewable energy resources through the Tehachapi Project, I supported SoCal Edison’s incentive ROE adder request.<sup>26</sup>

Meanwhile, the Commission appears to be moving in an unfortunate direction in implementing the principles established in the Order No. 679 rulemaking proceeding. While paying little attention to applicants’ technology statements, the Commission has begun to apply the nexus requirement in what I consider to be a troubling manner with regard to proposals for incentive ROE adders. Of particular concern are the Commission’s recent orders on Baltimore Gas and Electric Company’s incentives proposal. In July 2007, the Commission provided “further guidance” as to how it will distinguish between routine and non-routine investments for purposes of incentives applications, and it indicated that any project determined to be a non-routine investment automatically satisfies the nexus requirement.<sup>27</sup> After a technical conference, the Commission applied that guidance and concluded in a November 2007 order that six additional BG&E

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<sup>23</sup> *Id.*, separate statement of Commissioner Wellinghoff at 2-3.

<sup>24</sup> *Trans-Allegheny Interstate Line Company*, 119 FERC ¶ 61,219 (2007).

<sup>25</sup> *Id.*, separate statement of Commissioner Wellinghoff at 2.

<sup>26</sup> *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007), separate statement of Commissioner Wellinghoff at 1-2.

<sup>27</sup> *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084 at P 50, 54 (*BG&E I*).

projects were not routine investments and, therefore, satisfied the nexus requirement and warranted incentive ROE adders.<sup>28</sup>

I dissented from both of these orders. In my July dissent, I stated that despite receiving a Commission Staff deficiency letter on the subject, BG&E provided only general information concerning its consideration of advanced technologies, rather than a more appropriately detailed discussion.<sup>29</sup> In my November dissent, I noted that even after the Commission's clear statement in July that an applicant must provide "detailed factual information" in an incentives application, as well as additional opportunities to supplement the record, BG&E still had not satisfied its evidentiary burden to justify an incentive ROE adder.<sup>30</sup> I also stated that concerns raised by the Public Service Commission of Maryland remained more compelling to me than BG&E's arguments in support of an incentive ROE adder.<sup>31</sup> In her dissent from the November order, Commissioner Kelly expressed similar concern about the precedent set by granting the requested incentive ROE adder based on "unconvincing" record evidence. She also wisely warned that based on the November order, distinguishing between routine and non-routine investments in the future would be "complicated at best."<sup>32</sup>

I am concerned that, notwithstanding the intervening issuance of Order No. 679-A, the Commission has effectively returned to the policy on incentive ROE adders reflected in its October 2006 order in *Bangor Hydro-Electric Company*.<sup>33</sup> In that case, the Commission reversed the Presiding Judge's finding that applicants seeking an ROE incentive had not satisfied their evidentiary burden. As I stated in my *Bangor-Hydro* dissent, the Commission then made an incentive ROE adder applicable to virtually all new transmission projects undertaken by the applicants, including those that the record indicated would be built even without that incentive.<sup>34</sup> In light of the *BG&E* orders discussed above, the nexus requirement established in the Order No. 679 rulemaking proceeding is now likely to produce a similar, misguided result. I find little consolation in the majority's decision in

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<sup>28</sup> *Baltimore Gas and Elec. Co.*, 121 FERC ¶ 61,167 at P 27, 33 (2007) (*BG&E II*).

<sup>29</sup> *BG&E I*, separate statement of Commissioner Wellinghoff at 2.

<sup>30</sup> *BG&E II*, separate statement of Commissioner Wellinghoff at 1. *See also BG&E I* at P 52 (requirement for "detailed factual information").

<sup>31</sup> *BG&E II*, separate statement of Commissioner Wellinghoff at 1.

<sup>32</sup> *BG&E II*, separate statement of Commissioner Kelly at 3.

<sup>33</sup> 117 FERC ¶ 61,129 (2006) (*Bangor-Hydro*).

<sup>34</sup> *Id.*, separate statement of Commissioner Wellinghoff at 1, 3.

today's order that ComEd is not entitled to an incentive ROE adder for projects that the company completed prior to submitting its incentives application. Although I agree with the majority that granting incentive ROE adders for completed projects "does not encourage new infrastructure," that finding does not reassure me that the majority is applying a sufficiently rigorous nexus requirement.

*ComEd's Request for Rehearing on Incentive ROE Adder*

The above discussion brings us to today's order, in which the majority grants in part ComEd's request for rehearing of a June 2007 order in which the Commission, among other actions, denied the company's request for an incentive ROE adder.<sup>35</sup> The majority now grants ComEd an incentive ROE adder for Phase II of the West Loop Project. Quoting from the July *BG&E* order and with virtually no further analysis, the majority concludes that Phase II of the West Loop Project is not routine in nature and, therefore, satisfies the nexus requirement and qualifies for a 150 basis point incentive ROE adder. In making this determination, the majority makes no reference to the extensive discussion in the underlying order that previously led the Commission to reach the opposite conclusion.<sup>36</sup> Despite the requirement of Order No. 679-A, the majority also fails to examine whether the decision in today's order to grant rehearing and include CWIP in rate base for Phase II of the West Loop Project reduces the project's risks and is relevant to the appropriate size of an incentive ROE adder in the same package.<sup>37</sup>

Also of concern is the majority's dismissive tone with regard to ComEd's proposal for an incentive ROE adder based on its use of advanced technologies for Phase II of the West Loop Project. In the underlying order, the Commission acknowledged that ComEd's proposal to use underground XLPE cable at 345 kV as part of Phase II of the West Loop Project may be similar to the use of advanced transmission technologies for which the Commission granted an incentive ROE adder to United Illuminating. I agreed with that characterization, as well as with the Commission's statement that it was not clear whether ComEd had requested a rate incentive for its use of an advanced transmission technology. In light of that

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<sup>35</sup> *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007).

<sup>36</sup> *Id.* P 53-70.

<sup>37</sup> The Commission has previously conducted this examination required by Order No. 679-A and concluded that it was appropriate to grant only an incentive ROE adder smaller than that proposed by the applicant. *See Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 57 (2007); *Southern California Edison Co.*, 121 FERC ¶ 61,168 at P 129 (2007).



lack of clarity in ComEd's proposal, the Commission stated that the denial of incentives in the underlying order was "without prejudice to ComEd making a future filing that is fully supported for a rate incentive based on its use of advanced technologies."<sup>38</sup>

In today's order, however, the majority uses what I see as unnecessarily harsh language regarding ComEd's plans to use advanced technologies, declaring the company's "new request for an incentive on rehearing" to be "patently deficient." I agree with the majority that procedural concerns preclude granting ComEd's request for an incentive ROE advanced technologies adder at this stage of the proceeding, as the company is seeking an incentive based specifically on those grounds only in its request for rehearing, when the Commission's regulations prohibit other parties from responding to the company's arguments. Nonetheless, I believe that applicants should be recognized for incorporating advanced technologies into their projects, and I am concerned that the majority's tone on this issue may send the wrong message to transmission developers.

For all of these reasons, I respectfully dissent in part from today's order.

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Jon Wellinghoff  
Commissioner

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<sup>38</sup> *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 71 (2007).