131 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Public Service Electric and Gas Company Docket No. ER09-249-001

ORDER DENYING REHEARING

(Issued April 15, 2010)

1. This order addresses requests for rehearing of the Commission's order issued on March 13, 2009 (March 13 Order).[1] In the March 13 Order, the Commission granted Public Service Electric and Gas Company (PSE&G) a package of incentive rates, including a return on equity (ROE) adder of 150 basis points, in connection with PSE&G's portion of the Mid-Atlantic Power Pathway Project (MAPP Project). The authorization was contingent upon PSE&G's portion of the MAPP Project being approved by PJM's Board of Managers as a Regional Transmission Expansion Plan (RTEP) project. For the reasons set forth below, we will deny rehearing.

I. Background

2. PSE&G is a transmission-owning member of the PJM Interconnection, L.L.C. (PJM) regional transmission organization (RTO). Under the PJM consolidated Transmission Owners Agreement (TO Agreement), PJM's transmission owners are required, subject to certain restrictions, to construct and own or finance transmission enhancements or expansion specified by PJM in the RTEP project or to expand or modify transmission facilities as may be required under the PJM open access transmission tariff (OATT).

3. A detailed description of the MAPP Project, as it relates to the separate segments to be built by PSE&G's three project co-sponsors, Pepco Holding, Inc. (PHI), Virginia Electric and Power Company (VEPCO), and Baltimore Gas and Electric Company, is

[1] *Public Service Electric and Gas Co.*, 126 FERC ¶ 61,219 (2009).

included in *Pepco Holding*, *Inc.*, 125 FERC ¶ 61,130, at P 3-9 (2008), *reh'g pending* (*PHI Rate Incentive Order*), *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207, at P 5-7 (2008), *reh'g pending* (*VEPCO Rate Incentive Order*), and *Baltimore Gas and Electric Co.*, 127 FERC ¶ 61,201, at P 5-7 (2009), *order on reh'g*, 130 FERC ¶ 61,210 (2010). The MAPP Project is a planned 230-mile, 500 kV transmission line between northern Virginia and southern New Jersey undertaken for reliability purposes. PSE&G's portion of the MAPP Project is expected to cost about $150 million and involves constructing a 4-10 mile transmission line terminating at the Salem and Hope Creek Switching Stations in southern New Jersey.

4. On November 3, 2008, as supplemented on November 5, 2008 and January 12, 2009, PSE&G requested authorization, pursuant to sections 205 and 219 of the Federal Power Act (FPA)[2] and Order No. 679,[3] to recover, in PSE&G's formula rate,[4] a 150 basis-point ROE transmission rate incentive as applicable to PSE&G's portion of the MAPP Project. PSE&G also requested authority to recover 100 percent of all prudently-incurred development and construction costs if the MAPP Project is abandoned or cancelled for reasons beyond PSE&G's control. In addition, PSE&G requested authority to assign its project authorizations to an affiliate, if PSE&G so chooses.

5. As further detailed below, the Commission granted all of the requested authorizations, based upon the finding that PSE&G satisfied the criteria set forth in sections 205 and 219 of the FPA and Order No. 679, and contingent upon PSE&G's portion of the MAPP Project being approved by PJM's Board of Managers as a RTEP project.

II. Rehearing Requests

6. On April 13, 2009, the Maryland Public Service Commission (Maryland Commission) and the Maryland Office of People's Counsel (People's Counsel) filed requests for rehearing of the March 13 Order.

7. On April 28, 2009, PSE&G filed an answer to the rehearing requests.

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[2] 16 U.S.C. §§ 824d and 824s (2006).

[3] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[4] *See* Schedule H-10A, Attachment 7, of the PJM OATT.

III. Discussion

A. Procedural Matters

8. As an initial matter, we note that People's Counsel adopts by reference all of the Maryland Commission's rehearing arguments. Hence, we will refer to only the Maryland Commission's rehearing request; our discussion of it effectively addresses People's Counsel's rehearing request.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. Accordingly, we will reject PSE&G's answer.

B. Section 219 Requirement to Ensure Reliability or Relieve Congestion

10. Section 219 of the FPA directs the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. Order No. 679, which the Commission issued pursuant to section 219, sets forth the criteria by which a public utility may obtain transmission rate incentives.

11. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facility for which it seeks an incentive either ensures reliability or reduces the cost of delivered power by reducing transmission congestion.[5] Order No. 679 establishes a rebuttable presumption that the standard is met if: (i) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (ii) a project has received construction approval from an appropriate state commission or state siting authority.[6]

1. March 13 Order

12. In the March 13 Order, the Commission applied the rebuttable presumption to the MAPP Project in its entirety, stating that each portion of the MAPP Project is dependent on the other to achieve the reliability and congestion relief benefits attributable to the

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[5] 18 C.F.R. § 35.35(i) (2009).

[6] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 58. Order No. 679-A further clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion. *Id.* P 49.

project.[7] The Commission concluded, for reasons previously articulated in the *PHI Rate Incentive Order*, that there are significant region-wide benefits attributable to the MAPP Project, including increased import capability and congestion relief.[8] The Commission further found, however, that the benefits, to be fully realized, depend on the construction of the MAPP Project in each of its planned segments. Because PJM included the MAPP Project – and PSE&G's portion of it – in its 2007 RTEP, the Commission found that PSE&G's portion conditionally satisfied Order No. 679's rebuttable presumption.[9]

13. With regard to the aforementioned condition, the Commission reiterated its finding in Order No. 679 that the Commission would consider a request for an ROE incentive rate, even where the project at issue is pending approval in a regional planning process.[10] Order No. 679 further noted that, in such a circumstance, it may be appropriate to make any requested rate treatment contingent upon the outcome of the regional planning process.[11] Applying that approach to this case, the Commission conditioned its finding that PSE&G's portion of the MAPP Project has satisfied Order No. 679's rebuttable presumption contingent upon its approval as an RTEP project.[12]

2. <u>Rehearing Requests</u>

14. The Maryland Commission objects to the Commission's decision to evaluate PSE&G's rate incentive request with respect to the MAPP Project as a whole. The Maryland Commission argues that PHI's investment in its portion of the MAPP Project far exceeds PSE&G's investment, and that PHI will face special challenges that PSE&G will not, including the overhead crossing of the Delaware River and the underwater crossing of the Chesapeake Bay. The Maryland Commission agrees that PSE&G and all transmission owners involved in the MAPP Project are entitled to some incentive treatment. However, the Maryland Commission claims that the Commission awarded the ROE adder in this case without regard to PSE&G's actual undertaking.

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[7] March 13 Order at P 22.

[8] *Id.*

[9] *Id.* P 22.

[10] *Id.* P 23.

[11] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

[12] March 13 Order at P 23.

3. Commission Determination

15. In evaluating PSE&G's incentive rate request, the Commission considered the challenges involved with the MAPP Project as a whole, and the challenges faced by PSE&G as a participant in that broader project. The Commission found that the MAPP Project will involve significant regulatory, siting and construction risks,[13] and that PSE&G's participation in that project will require a substantial investment in transmission facilities well over its average annual investment in recent years.[14] Additionally, the Commission found that the 150 basis-point adder will improve PSE&G's cash flows, which are taken into account in the financial metrics used to attract external funding.[15]

16. Furthermore, in the March 13 Order, the Commission indicated for the first time that, while a prospective owner of a separate segment of a transmission project involving multiple owners may continue to file a separate request for rate incentives for its segment, we encouraged them to file jointly if they intend to rely on the scope, effects and risks and challenges of the entire project as a basis for qualifying for such incentives. The Commission explained that, when presented with one such filing, the Commission can analyze most effectively the project as it evaluates the requested incentives. The Commission also stated that, although a prospective owner retains the option of filing a separate request for transmission rate incentives for its segment of a transmission project that involves multiple owners, the individual prospective owner that files in isolation from other prospective owners may not be able to rely on the overall scope, effects, risks and challenges of the entire project as a basis for qualifying for the incentive rates.[16] Nevertheless, because the Commission first articulated the foregoing principle in the March 13 Order, we did not hold PSE&G to that standard.

17. Accordingly, we will deny rehearing with respect to arguments concerning our evaluation of the MAPP Project as a whole. We further discuss below the risks and challenges facing PSE&G as a participant in the MAPP Project and the nexus of these factors to the requested incentives.

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[13] March 13 Order at P 51. The Commission noted the testimony of Rodney Dickens, who attested to the specific regulatory, siting and construction risks that PSE&G, not PHI, will face in building its portion of the project.

[14] *Id*. P 52.

[15] *Id.*

[16] *Id.* P 55.

C. Nexus Demonstration of ROE Adder

18. Order No. 679 requires that an applicant seeking a transmission expansion incentive rate demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[17] The Commission stated that the most compelling case for incentives are new projects that present special risks or challenges, not routine investments made in the ordinary course of business of expanding the system to provide safe and reliable transmission service.[18]

19. In *Baltimore Gas and Electric Co.*,[19] the Commission clarified how it will evaluate projects to determine whether they are routine. As explained therein, to determine whether a project is routine, the Commission will consider all relevant factors presented by the applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, sizes, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risk, specific financing challenges, other impediments).[20]

1. March 13 Order

20. The Commission found that a sufficient nexus exists between the incentive rate requested by PSE&G and the investment PSE&G will be required to make in the MAPP Project. Finding that PSE&G's portion of the MAPP Project is an integral part of the project as a whole, the Commission first considered the risks and benefits of the MAPP Project as a whole, noting that it will span four states (which poses environmental and regulatory challenges) and improve import capability, reduce congestion, and improve reliability in the Mid-Atlantic region (providing regional and local benefits).[21] The Commission further considered the risks faced specifically by PSE&G, including the

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[17] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

[18] *Id.* P 23.

[19] 120 FERC ¶ 61,084 (2007).

[20] *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 at P 52 (2007).

[21] March 13 Order at P 48-50.

increased regulatory challenges posed by the fact that New Jersey is a “Home Rule” state where the utility must negotiate with each municipality individually in terms of right-of-ways, zoning approval, permits and easements.[22] The Commission also found that PSE&G’s portion of the MAPP Project faces increased completion risks because it is tied to the overall MAPP Project, which faces challenges presented by its large scope and size, requiring approvals from multiple municipalities, multiple state siting authorities, and various federal approvals. A failure to obtain the necessary permits by any utility involved with the MAPP Project could adversely impact the entire MAPP Project.[23]

21. The Commission further found that the MAPP Project will require a substantial investment in transmission facilities well over that of PSE&G’s average annual investments in recent years. The Commission agreed that the 150 basis-point adder will improve PSE&G’s cash flows, which are taken into account in the financial metrics used to attract external funding. The Commission also found that the requested incentives and the cash flow implications attributable to PSE&G’s authorized formula rate are not mutually exclusive but rather, together, will operate to encourage investors to invest in the MAPP Project.[24]

2. Rehearing Request

22. The Maryland Commission argues that the Commission should adopt standards to guide its determination as to whether a project is “routine” and whether there is a sufficient nexus between the project and the incentive sought. The Maryland Commission contends that Commission orders concerning incentive awards lack consistency and transparency and reflect an ad hoc approach resulting in arbitrary and capricious incentive awards, in violation of the FPA.

23. The Maryland Commission also asserts that, in applying the nexus test, the Commission should evaluate the extent to which the transmission owner’s generation affiliates benefit from the transmission project. The Maryland Commission claims that the incentive pricing regulations allow transmission owners to profit from transmission enhancements that increase the access of their generation affiliates to PJM’s system, without any cost allocation to the generation affiliates. The Maryland Commission

[22] *Id.* P 51.

[23] *Id.*

[24] March 13 Order at P 51. *See also, Duquesne Light Co.*, 125 FERC ¶ 61,028, at P 57 (2008) (*citing VEPCO Rate Incentive Order*, 124 FERC ¶ 61,027, at P 113 (2008)).

asserts that that the Commission should balance the public and private benefits that result from a transmission project and, if the transmission owner's generation affiliates will benefit from the project, adjust the ROE incentive to reflect such benefit. PSE&G responds that backbone transmission projects by their nature eliminate congestion and thereby allow generation to flow more readily to load and that the MAPP Project is no different. PSE&G argues that nowhere in PSE&G's pleadings or in the March 13 Order was it suggested that the MAPP Project is needed to allow the Salem and Hope Creek nuclear plants to increase output as suggested by the Maryland Commission. Rather, any impact on those nuclear plants is limited to reliability benefits in terms of improving reactive performance and transient stability margins for the nuclear generation in Southern New Jersey.[25]

24. The Maryland Commission further posits that the Commission summarily concluded, without reasoned basis or analysis, that PSE&G's portion of the MAPP Project is entitled to the same 150 basis point incentive ROE adder as PHI's portion. The Maryland Commission expresses concern that a 150 basis-point incentive ROE adder does not bear sufficient nexus to PSE&G's portion of the MAPP Project in terms of special risk or advanced technology as compared to PHI's portion. In addition, the Maryland Commission claims that PJM transmission owners already receive a 50 basis-point membership adder to coordinate with PJM and each other regarding (among other things) RTEP planning and investment, and, therefore, PSE&G will earn a total of 200 additional basis points for its portion of the MAPP project.

3. <u>Commission Determination</u>

25. We reject as beyond the scope of this proceeding the Maryland Commission's argument that this Commission should adopt standards for determining whether a project is routine or bears a sufficient nexus to the incentives being sought. In Order No. 679-A, the Commission rejected assertions that it should establish specific criteria for evaluating eligibility for incentives and instead stated that it would, on a case-by-case basis, require each applicant to justify the incentives it requests.[26] Since issuing Order No. 679-A, the

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[25] PSE&G also notes that the *VEPCO Rate Incentive Order* found that the MAPP Project, plus the new nuclear generating facilities at North Anna and Calvert Cliffs, will provide a significant source of energy to the Delmarva Peninsula and New Jersey. PSE&G argues that ensuring that the transmission grid is sufficient to continue to deliver the output of interconnected nuclear generation plants will inure to customers in the region in providing both low cost generation supply and reliable service. *Id.* at n.9 (*citing VEPCO Rate Incentive Order*, 124 FERC ¶ 61,027 at P 8).

[26] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 24 ("The purpose of the Final Rule was to establish criteria

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Commission has consistently rejected requests for standardized criteria and, consistent with our precedent, we will do so here.[27]

26. We also reject the Maryland Commission's argument that the Commission should consider whether and to what degree the transmission owners' generation affiliates may benefit from the project. The Maryland Commission maintains that transmission projects may benefit PSE&G's generation affiliates, but it alleges no specific benefits to PSE&G's generation affiliates beyond its vague assertion. In any event, Order No. 679 does not require an examination of whether any affiliates or non-affiliates have generation assets that are interconnected to the grid and which will be less congested after the new transmission line is constructed, and we decline to expand Order No. 679 to include such an examination. The Maryland Commission's proposal could hinder efforts to increase transmission investment under EPAct 2005 and Order No. 679 by reducing incentives to transmission investment by the very entities that Congress directed the Commission to encourage to build transmission. Further, the Maryland Commission's suggestion that the ROE incentives should be calibrated based in part on benefits of a project to the transmission owner's generation affiliates would, in effect, have the Commission adopt a form of cost-benefit analysis. But, Order No. 679 determined not to adopt a cost-benefit analysis for incentives requests.[28]

27. We disagree with the Maryland Commission's claim that the 150 basis-point incentive ROE adder does not bear sufficient nexus to PSE&G's portion of the project in terms of special risks or advanced technology as compared to PHI's portion. As explained in the March 13 Order and above, we analyzed PSE&G's proposed incentives in the context of its participation in the MAPP project, and in particular, analyzed the particular regulatory, siting, and construction risks faced by PSE&G as a participant in that project.[29] As noted in the *PHI Rate Incentive Order*, there are significant region-

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to be applied in individual cases, not to provide an exhaustive list of situations where incentives will be granted or denied.").

[27] *Baltimore Gas and Electric Co.*, 127 FERC ¶ 61,201, at P 27 (2009) (*citing Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 at P 52-55), *order on reh'g*, *Baltimore Gas and Electric Co.*, 130 FERC ¶ 61,210, at P 39 & n.64 (2010) (*citing* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 24 ("The purpose of the Final Rule was to establish criteria to be applied in individual cases, not to provide an exhaustive list of situations where incentives will be granted or denied.")).

[28] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at p 65; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 35.

[29] *See* March 13 Order at P 48-52, 55.

wide benefits attributable to the MAPP Project, including increased import capability and congestion relief.[30]

28. Specifically, in the March 13 Order, the Commission took into account the financial, regulatory, and environmental risks, technical challenges, and use of advanced transmission technologies associated with the MAPP Project in its determination of whether an ROE adder should be granted for PSE&G's participation in the MAPP Project.[31] The Commission found that PSE&G had shown a sufficient nexus between the risks and challenges it faced to warrant the conditional granting of a 150 basis point ROE adder.[32] Similarly, we took into account the risks associated with PJM cancelling the project through the RTEP process, the numerous federal and state approvals needed, and the inability of PSE&G or another co-owner to get the necessary permits and siting approvals that could cause cancellation of the project, when we conditionally granted the abandonment incentive.[33] The Commission then looked at the total package of incentives and found that PSE&G had sufficiently demonstrated that it faces risks and challenges as a participant in the MAPP project that warrants the full package of incentives. The Commission noted that unlike PHI, PSE&G did not ask for Construction Work in Progress cost recovery.[34] The Commission's regulations require the applicant to demonstrate, *inter alia*, that the "total package of incentives is tailored to address the demonstrable risk or challenges faced by the applicant in undertaking the project."[35] The Commission found in the March 13 Order that PSE&G had sufficiently demonstrated the risks and challenges it faces as a participant in the MAPP Project to warrant the granting of the total package of incentives, including the 150 basis point ROE adder and the abandonment incentive, contingent on PSE&G portion of the MAPP Project being approved by PJM's Board of Managers as a RTEP project.[36]

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[30] *PHI Rate Incentive Order* at P 22.

[31] *Id.* P 48-52.

[32] March 13 Order at P 48.

[33] *Id.* P 51.

[34] *Id.* P 75.

[35] 18 C.F.R. § 35.35(d) (2009).

[36] We note that, subsequent to issuance of the March 13 Order, the 2009 RTEP 2014 Baseline Analysis revealed that the Indian River to Salem portion of the MAPP Project, which includes PSE&G's portion of the MAPP Project, is not required through

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29. Regarding the Maryland Commission's suggestion that the 200 basis-point ROE adder for the MAPP Project, which included the 50 basis points ROE adder for PSE&G's membership in PJM, is excessive, the Commission considered the justness and reasonableness of the 150 basis point ROE project adder with the previously granted 50 basis point ROE for RTO participation in the March 13 Order's section 205 analysis of the ROE. The Commission determined that the two ROE adders, when added to PSE&G's base ROE of 11.18 that was accepted as part of its formula rate filing, would result in an overall ROE for PSE&G's portion of the MAPP Project of 13.18 percent which is in the range of reasonable returns based on the discounted cash flow analysis submitted by PSE&G, as supported by expert testimony.[37] The Commission thus found that the combination of the 150 basis point ROE project adder and the 50 basis point ROE adder for RTO participation would result in just and reasonable rates. We therefore reject the Maryland Commission's rehearing request regarding the awarding of 200 basis points of ROE adders for PSE&G's portion of the MAPP Project.

D. <u>Other Rehearing Arguments</u>

30. The Maryland Commission further contends that the Commission acted arbitrarily and capriciously, and contrary to its own regulation, policy and prior incentive pricing orders, by failing to consider other available and more targeted ratemaking treatments in determining the appropriate incentive ROE for PSE&G. The Maryland Commission claims that the March 13 Order does not provide a sufficient explanation as to why PSE&G's formula rates and guaranteed recovery of abandonment costs do not operate to reduce the need for a full 150 basis point ROE adder. The Maryland Commission states that granting the entire package of incentives may indeed attract more investors for PSE&G, but that the Commission has never before articulated investor satisfaction alone as a basis for awarding ROE adders. The Maryland Commission opines that incentive packages should be designed to attract investors in transmission, but must also protect consumers from unnecessary costs. Finally, the Maryland Commission asserts that the Commission should hold an evidentiary hearing to analyze the package of incentives granted.

<u>Commission Determination</u>

31. We disagree with the Maryland Commission's arguments that the Commission failed to adequately consider more targeted ratemaking treatments, including a reduction

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2024 and currently has not been included in the PJM RTEP. *See Baltimore Gas & Elec. Co.*, 130 FERC ¶ 61,210, at P 4 (2010).

[37] March 13 Order at P 62.

of the requested 150 basis point ROE adder. For all of the reasons articulated in the March 13 Order and recited above, the Commission found that the 150 basis point ROE adder proposed by PSE&G is just and reasonable and appropriate for PSE&G's portion of the MAPP Project. Moreover, contrary to the Maryland Commission's claim, the Commission did not rely on investor satisfaction alone as a basis for awarding the ROE adder in this case. Again, as noted above, the March 13 Order analyzed PSE&G's requested incentives in accordance with the requirements of FPA sections 205 and 219 and Order No. 679, including consideration of the need to remedy the adverse effects of transmission congestion and ensure reliability.[38] Further, in the March 13 Order, the Commission specifically rejected the Maryland Commission's argument, repeated on rehearing, that PSE&G's requested incentives should be reduced because PSE&G has a formula rate. As stated in the March 13 Order, the requested incentives and cash flow implications attributable to PSE&G's authorized formula rate are not mutually exclusive but rather, together, will operate to encourage investors to invest in the MAPP Project.[39] The Maryland Commission proffers no new arguments on rehearing which warrant reversal of that finding. Finally, because we are rejecting the Maryland Commission's arguments on rehearing, we will not direct an evidentiary hearing in this case.

<u>The Commission orders</u>:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[38] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 41.

[39] March 13 Order at P 52.