

155 FERC ¶ 61,304
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

PJM Interconnection, L.L.C. and
Commonwealth Edison Company

Docket No. ER16-1499-000

ORDER REJECTING TRANSMISSION INCENTIVE RATE FILING

(Issued June 24, 2016)

1. On April 25, 2016, PJM Interconnection, L.L.C. (PJM) submitted, on behalf of Commonwealth Edison Company (ComEd), and pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² revisions to its Open Access Transmission Tariff (Tariff).³ The proposed revisions request an abandonment plant transmission rate incentive for ComEd's Loretto-Wilton Center transmission project (Loretto-Wilton Project) in accordance with Section 219 of the FPA and Order No. 679.⁴ We deny ComEd's requested incentive and therefore reject the proposed Tariff revisions, as discussed below.

¹ 16 U.S.C. § 824s (2012).

² 18 C.F.R. pt. 35 (2015).

³ PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT ATT H-13A, OATT Attachment H-13A - Commonwealth Edison Company, 11.0.0.

⁴ *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).

I. Background and Loretto-Wilton Project

2. ComEd is an operating subsidiary of Exelon, a Pennsylvania corporation. ComEd maintains more than 91,000 miles of overhead and underground transmission and distribution facilities in northern Illinois, as well as transmission facilities in Northern Indiana owned by its subsidiary Commonwealth Edison Company of Indiana, and provides delivered electric power to more than 3.8 million customers. ComEd does not own any generation facilities. ComEd states that it transferred operational control over its transmission facilities to PJM on May 1, 2004.
3. ComEd states that the Loretto-Wilton Center line is a nearly 40 mile, 345 kV line that generally runs from Livingston County to about 3 miles north of the town of Wilton Center in Will County, Illinois.⁵ ComEd explains that its Loretto-Wilton Project will mitigate the sag limitations on the Loretto-Wilton Center line and replace the station conductor at Wilton Center.⁶
4. ComEd states that, initially, its Loretto-Wilton Project was one of nine proposals submitted in response to PJM's 2014/2015 Long-Term Market Efficiency proposal window, in which PJM solicited proposals to address energy market congestion on the Loretto-Wilton Center line. ComEd further states that when PJM evaluated the nine proposals that were submitted for energy savings, it found that none of the proposals met the standards to be qualified as a market efficiency project.⁷
5. Subsequently, ComEd explains, the Loretto-Wilton Center line was identified by PJM as limiting the import of additional capacity resources into the ComEd Locational Delivery Area in the 2018/2019 Reliability Pricing Model (RPM) Base Residual Auction. As a result of the limitation of the Loretto-Wilton Center line, clearing prices in the 2018/2019 RPM Base Residual Auction were higher for the ComEd Locational Delivery Area than the Regional Transmission Organization (RTO)-wide price and prices within other Locational Delivery Areas.⁸ ComEd states that given the Base Residual Auction results, PJM determined that the nine proposals it received to address energy market

⁵ ComEd Transmittal at 4.

⁶ ComEd Filing, Attachment No. 1, Declaration of Thomas W. Leeming at para. 3.

⁷ ComEd Transmittal at 10 & n.44 (citing July 9, 2015 Transmission Expansion Advisory Committee Meeting, Market Efficiency Update presentation at 18-19, <<http://pjm.com/~media/committees-groups/committees/teac/20150709/20150709-market-efficiency-update.ashx>>).

⁸ *Id.* at 4.

congestion on the Loretto-Wilton Center line might also provide capacity-market-related benefits. As a result, ComEd states that PJM reevaluated the nine proposals considering benefits to both the energy and capacity markets. ComEd states that on February 16, 2016, after conducting a market efficiency analysis considering these potential benefits, PJM determined that ComEd's proposal had the highest benefit-to-cost ratio of the proposed projects. Specifically, ComEd states that PJM determined that ComEd's proposal would reduce the cost of capacity prices in the ComEd Locational Delivery Area each year and, over the course of 15 years, the Loretto-Wilton Center project will reduce capacity costs and provide customers in the ComEd zone a collective savings of approximately \$742 million. ComEd further states that this savings is generated by its project which was originally projected to cost \$11.5 million (now projected to come in under that amount), which yields a benefit-to-cost ratio of 64.5 or 6450 percent.⁹

6. ComEd explains that on February 19, 2016, PJM sent notice to ComEd confirming its designation to develop the Loretto-Wilton Project as a market efficiency project in the Regional Transmission Expansion Plan. ComEd further states that the PJM Board of Managers (PJM Board) approved designation of ComEd's project and PJM has incorporated the project into Schedule 12-Appendix A.¹⁰

II. Requested Incentive

7. ComEd requests that the Commission grant its requested abandonment incentive for the Loretto-Wilton Project, so that ComEd may potentially seek to recover 100 percent of its prudently-incurred costs for the project as of February 16, 2016, the date that PJM designated ComEd as the constructing entity for the Loretto-Wilton Project, should the project be cancelled for reasons beyond its control. Alternatively, ComEd requests that the Commission allow it to recover costs incurred as of the date of this filing.

8. ComEd argues that the Loretto-Wilton Project satisfies the requirements of section 219 of the FPA, because PJM selected the project through its Regional Transmission Expansion Plan process. ComEd asserts that as part of that process, PJM performed market efficiency analysis on the nine proposals submitted to resolve congestion on the Loretto-Wilton Center line and affirmatively established that ComEd's project will reduce congestion and therefore reduce capacity prices in the ComEd Locational Delivery Area.

⁹ *Id.* at 7-8, 10.

¹⁰ *Id.* at 7-8 & n.32 (citing PJM, Filing, Docket No. ER16-1232-000 (filed Mar. 18, 2016)).

9. ComEd also asserts that its requested abandonment incentive satisfies the Commission's nexus test under Order No. 679, requiring applicants to demonstrate that requested incentives are rationally related and "tailored to address the demonstrable risk or challenges faced by the applicant."¹¹ ComEd explains that a recently filed protest, which challenges the inclusion of ComEd's Loretto-Wilton Project in the PJM Regional Transmission Expansion Plan and its cost allocation, is pending in Docket No. ER16-1232-000.¹² ComEd asserts that the pendency of that protest, and the prospect of potentially extended litigation about whether the project will remain in the Regional Transmission Expansion Plan, poses a real and immediate risk to the ability of ComEd to recover its costs.¹³

10. ComEd states that it is concerned that the existing protest to PJM's designation has put ComEd's shareholders at risk if – at the Commission or on appeal – PJM's designation is overturned. ComEd asserts that the abandonment incentive is narrowly tailored to address this specific risk because it will provide ComEd the security to incur costs and move forward with this essential transmission construction project in a timely fashion so that ComEd will meet PJM's required in-service date of June 1, 2019. Further, ComEd states that if PJM's designation is not final and beyond challenge, and if ComEd's work is therefore cancelled for reasons beyond ComEd's control, then ComEd faces substantial uncertainty, and the abandonment incentive specifically ameliorates this risk.¹⁴

11. In addition, ComEd asserts that because of the potential for litigation, including possible appeals, which all take time, ComEd will face uncertainty for much of the expedited construction timeline. ComEd states that this is exactly the kind of risk the abandonment incentive is designed to mitigate.¹⁵

¹¹ ComEd Transmittal at 11 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48).

¹² On March 18, 2016, in Docket No. ER16-1232-000, PJM submitted amendments to Schedule 12-Appendix A of the PJM Tariff to incorporate cost responsibility assignments for new baseline upgrades, one of which is ComEd's Loretto-Wilton Project, included in the recent update to the Regional Transmission Expansion Plan approved by the PJM Board on February 17, 2016.

¹³ ComEd Transmittal at 2.

¹⁴ *Id.* at 12.

¹⁵ *Id.*

12. ComEd states that PJM has included its project in the planning parameters for the 2019/2020 RPM Base Residual Auction which will be conducted in May 2016.¹⁶ ComEd states that it has begun incurring costs to plan and construct this project because delaying these activities would mean ComEd would risk not meeting the June 1, 2019 in-service date for this project, which would undermine capacity deliveries that are planned for June 1, 2019.¹⁷

13. ComEd also requests waiver, to the extent necessary, of section 35.13 of the Commission's regulations as they relate to cost of service and revenue information to support its filing, including waivers of section 35.13(c), (d), (e), and (h) of the Commission's regulations, 18 C.F.R. §§ 35.13(c), (d), (e), and (h). Finally, ComEd requests that, to the extent that its filing fails to contain any information otherwise required for technical compliance with the Commission's regulations, its compliance with such regulations be waived.

III. Notice of Filing and Responsive Pleadings

14. Notice of ComEd's filing was published in the *Federal Register*, 81 Fed. Reg. 25,661 (2016), with interventions and protests due on or before May 16, 2016. The Illinois Commerce Commission filed a timely notice of intervention. Timely motions to intervene were filed by American Municipal Power, Inc. and Public Service Electric and Gas Company. H-P Energy Resources LLC (H-P Energy) filed a timely motion to intervene and protest.¹⁸

15. On May 18, 2016, ComEd submitted a motion to answer H-P Energy's motion to intervene and protest.

A. H-P Energy Protest

16. H-P Energy requests that the Commission reject ComEd's incentive request and proposed tariff revisions. H-P Energy points to its pleadings in Docket No. ER16-1232-000, highlighting two arguments that the Commission should reject ComEd's filing in the instant proceeding.¹⁹ First, H-P Energy argues that ComEd's Loretto-Wilton Project

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 11.

¹⁸ H-P Energy requests that its protest and answer in Docket No. ER16-1232-000, be incorporated by reference in the instant proceeding.

¹⁹ *See supra* note 11. H-P Energy submitted a protest to PJM's filing, challenging PJM's conduct of its 2014/2015 Long-Term Market Efficiency proposal window and its (*continued ...*)

should not be built, because, according to H-P Energy, it would be wasteful overbuilding and would impose millions of dollars of unnecessary costs on consumers over the next 40 years.²⁰ Second, H-P Energy disputes ComEd's claim that it was necessary for ComEd to start work on or about March 14, 2016. H-P Energy argues that a PJM/Exelon study indicates the Loretto-Wilton Project would take no more than 24 months and that ComEd need not start work before June 1, 2017, at the earliest. H-P Energy argues that ComEd apparently rushed to start work on the Loretto-Wilton Project after H-P Energy's *proviso* request to the PJM Board was posted on February 10, 2016, to buttress ComEd's filing in this proceeding by enabling ComEd to claim that H-P Energy's request was putting cost recovery for their work at risk.²¹

B. ComEd Answer

17. ComEd responds that H-P Energy does not dispute that the Loretto-Wilton Project meets the Commission's requirements for the requested incentive treatment. First, ComEd argues, the project was approved through a fair and open regional planning process run by PJM and found to yield considerable annual benefits by relieving congestion, and thus reducing the cost of delivered power. ComEd asserts that the requested incentive therefore has a clear nexus to the investment being made.²²

18. Second, ComEd asserts that H-P Energy's pleadings in both the instant proceeding and in Docket No. ER16-1232-000, are "convincing evidence that ComEd faces a "demonstrable risk [with regards to its Loretto-Wilton Project]," because, according to ComEd, H-P Energy seeks to displace the ComEd Loretto-Wilton Project in favor of its own project. ComEd further asserts that if H-P Energy is successful in its goal, ComEd could be left having expended funds on an abandoned project that ComEd was directed to

decision to select ComEd's Loretto-Wilton Project in the Regional Transmission Expansion Plan for purposes of cost allocation. On May 24, 2016, Commission staff issued a deficiency letter to PJM, stating that additional information was required in order to process the filing.

²⁰ H-P Protest at 2-3.

²¹ *Id.* at 3.

²² ComEd Answer at 3.

work on by PJM. ComEd states that protecting ComEd from such risks beyond ComEd's control is the purpose of the Commission's transmission incentive policy.²³

19. Finally, ComEd asserts that this is not the correct forum to address any issues other than the merits of the abandonment incentive.²⁴

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁵ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁶ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept ComEd's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

22. Section 219 of the FPA required the Commission to establish, by rule, incentive based rate treatments for new transmission infrastructure investment meeting certain criteria.²⁷ Pursuant to section 219, in Order No. 679, the Commission established, among other incentives, that a public utility may seek to recover 100 percent of prudently incurred costs associated with abandoned transmission projects, if such abandonment is outside of the utility's control.²⁸ As a means of encouraging transmission investment, the abandonment incentive is designed to reduce the risk of non-recovery of costs traditionally associated with project development.²⁹

²³ *Id.*

²⁴ *Id.* at 4.

²⁵ 18 C.F.R. § 385.214 (2015).

²⁶ 18 C.F.R. § 385.213(a)(2) (2015).

²⁷ 16 U.S.C. § 824s(a) (2012).

²⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

²⁹ *Id.*

23. In Order No. 679, the Commission required that an applicant seeking a transmission incentive thereunder must demonstrate that there is a nexus between the incentive sought and the investment being made.³⁰ 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. The Commission noted that the nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

24. We deny ComEd's requested abandonment incentive and therefore reject the proposed Tariff revisions. As stated above, an applicant must demonstrate that the specific incentive requested under Order No. 679 is "tailored to address the demonstrable risks or challenges faced by the applicant."³¹ We find that ComEd has not met this requirement. In its application, ComEd cites only a single risk: citing the pendency of a protest in another proceeding, ComEd states that the Loretto-Wilton Project could be canceled as a result of potential disputes relating to competitive transmission development proposals.³² However, as the Commission has previously found, the risk that the transmission planning region could discontinue its selection of a project in the regional transmission plan is not a project-specific risk; instead, this type of risk – the only risk cited by ComEd – is faced by every entity developing a transmission facility in PJM.³³ We therefore deny ComEd's requested abandonment incentive.³⁴

25. We note that our rejection of ComEd's requested abandonment incentive is based on the specific facts and circumstances of this case. We also note that the Commission will explore broader policy considerations related to competitive transmission development processes and the Commission's transmission incentives policy at a technical conference to take place on June 27-28, 2016.³⁵

³⁰ *Id.* P 26.

³¹ *Id.* P 8; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

³² ComEd Transmittal at 2.

³³ *See Kanstar Transmission, LLC*, 152 FERC ¶ 61,209, at PP 32-33 (2015).

³⁴ Our finding is without prejudice to ComEd later submitting a request for the abandonment incentive for the Loretto-Wilton Project that demonstrates that the specific incentive requested under Order No. 679 is tailored to address demonstrable risks or challenges.

³⁵ *See Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000 (Mar. 17, 2016) (Notice of Technical Conference).

26. Because we deny ComEd's requested abandonment incentive and reject the proposed Tariff revisions, we also deny its requests for waiver.

The Commission orders:

ComEd's requested abandonment incentive and requests for waiver are hereby denied, and the proposed Tariff revisions are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.