

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Electric and Gas Company

Docket No. ER09-249-000

(Issued March 17, 2009)

Attached is the separate statement by Commissioner Kelly concurring in part and dissenting in part, to an order issued on March 13, 2009, in the above-referenced proceeding, *Public Service Electric and Gas Company*, 126 FERC ¶ 61,219 (2009).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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KELLY, Commissioner, *concurrence in part and dissent in part*:

This order addresses a request for transmission rate incentives filed by Public Service Electric and Gas Company (PSE&G). PSE&G requests the following incentives for its investment in the proposed project: 1) a 150 basis-points return on equity (ROE) transmission rate incentive as applicable to PSE&G's portion of the Mid-Atlantic Power Pathway Project (MAPP Project); 2) authority to recover 100% of all prudently-incurred development and construction costs if the project is abandoned or cancelled for reasons beyond PSE&G's control; 3) authority to assign its project authorizations to an affiliate.

I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings in order to determine whether the PSE&G project warrants incentive rate treatment.¹ Based on those criteria, I conclude that the project warrants incentives, but not all the incentives requested.

I concur with two decisions made in today's order. I support granting PSE&G authority to recover 100% of all prudently-incurred development and construction costs if the project is abandoned or cancelled for reasons beyond PSE&G's control. PSE&G is undertaking one portion of a project that involves multiple owners and is ultimately subject to regulatory authorities in multiple states. As the order notes, failure of other owners to obtain regulatory approval for their portions of the project may compromise the entire project. Also, I agree that PSE&G should have the authority to assign its project authorizations to an affiliate. Additionally, I agree with the order's efforts to encourage the individual owner-applicants associated with one transmission project to submit a single joint filing requesting incentives. A collective application for transmission incentives provides the Commission with a full set of facts, and properly avoids piecemeal review.

¹ See *American Electric Power Service Corporation*, 118 FERC ¶ 61,041 (2007).

I dissent from one decision made in today's order. In its application, PSE&G asserts that a 150 basis point ROE adder "provides for the cash flow needed to cover the carrying costs of the substantial capital expenditures required without impairing the credit metrics of PSE&G."² The order approves the ROE adder request on this basis. I disagree with this decision, as it authorizes an incentive with a long-term time horizon account for risks and challenges faced in the short-term. Contrary to PSE&G's assertion, cash flow problems are solved with CWIP rate treatment, not with ROE adders. This is also made clear in Order 679. In that Order, the Commission acknowledged that utilities can experience cash flow risks in building transmission; however, the Commission explained that giving such utilities the ability to include 100% of prudently incurred transmission-related CWIP in rate base and the ability to expense prudently incurred "pre-commercial" costs is the way to mitigate those risks. Order 679 states that such rate treatments will provide "rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs."³ PSE&G did not seek CWIP recovery in its application and fails to explain why a 150 basis point ROE adder should serve as a substitute.

For these reasons, I concur in part and dissent in part.

Suedeen G. Kelly

² Public Service Electric and Gas Company Nov. 5, 2008 Request for Incentive Rate Treatment for Mid-Atlantic Power Pathway, Docket No. ER09-249-000, at 20.

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 115 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).