133 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C. Docket No. ER11-1985-000

ORDER ON TRANSMISSION RATE INCENTIVES

(Issued December 30, 2010)

1. On November 1, 2010, PJM Interconnection, L.L.C. (PJM) submitted Public Service Electric and Gas Company's (PSE&G) proposed tariff revisions pursuant to sections 205 and 219 of the Federal Power Act (FPA)[1] and Order No. 679,[2] to implement requested transmission rate incentives for four separate projects: (1) The Burlington – Camden Project; (2) The West Orange Project; (3) The Middlesex Switch Rack Project; and (4) the Bayonne – Marion Project (collectively, the Projects).[3] Specifically, PSE&G requests: (1) inclusion of 100 percent of Construction Work in Progress (CWIP) in rate base; (2) authorization to recover 100 percent of all prudently-incurred development and construction costs if any of the Projects are abandoned or cancelled, in whole or in part, for reasons beyond its control; and (3) authority to assign these incentives to an affiliate, if construction and/or ownership of any of the Projects are assigned to such affiliate. For the reasons discussed below, we will deny PSE&G's request for incentive rate treatment and reject its proposed tariff revisions without prejudice.

I. Background

2. PSE&G is a wholly-owned subsidiary of Public Service Enterprise Group Inc. (PSEG). PSE&G states that the vast majority of its transmission system is located in the state of New Jersey, where it is responsible for providing transmission and distribution service to approximately 1.7 million natural gas customers and approximately 2.1 million

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[1] 16 U.S.C. §§ 824d, 824s (2006).

[2] *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).

[3] PSE&G filed a revised Attachment 7, Schedule H-10A to the PJM Open Access Transmission Tariff (OATT).

electric customers.[4] PSE&G is a transmission-owning member of the PJM regional transmission organization (RTO). The PJM OATT governs transmission service over PSE&G's transmission facilities.

3. PSE&G recovers its annual revenue requirement for transmission service provided within the PSE&G zone of PJM through a formula rate. The formula rate is set forth in Schedule H-10A of PJM's OATT.[5]

II. Filing

4. PSE&G requests transmission rate incentives for four projects that were approved as baseline upgrades through the PJM Regional Transmission Expansion Plan (RTEP) process.[6] PSE&G states that PJM's 2009 RTEP process identified numerous reliability violations in the PSE&G zone starting in 2013, and that PJM reviewed different alternatives to address these issues. In the end, PJM selected several baseline upgrades in the PSE&G zone, and PSE&G requests incentives for four of the upgrades in the instant filing. Specifically, PSE&G requests for each of the Projects: (1) inclusion of 100 percent of CWIP in rate base; (2) authorization to recover 100 percent of all prudently-incurred development and construction costs if any of the Projects are abandoned or cancelled, in whole or in part, for reasons beyond its control; and (3) authority to assign these incentives to an affiliate, if construction and/or ownership of any of the Projects are assigned to such affiliate.

A. Descriptions of the Projects

1. The Burlington – Camden Project

5. The Burlington - Camden Project is a baseline RTEP project that involves replacing existing 138 kV circuits with 230 kV circuits. PSE&G will upgrade the

[4] Filing at 5.

[5] *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303 (2008). PSE&G's formula rate currently incorporates a return on equity (ROE) of 11.68 percent, which is comprised of a base ROE of 11.18 percent and a 50 basis-point adder for continued membership in PJM.

[6] PJM is responsible for planning the enhancement and expansion of the PJM transmission system to ensure reliability. It identifies transmission system upgrades and enhancements necessary to ensure reliability through the RTEP. The RTEP is based on an analysis of applicable contingencies and reliability criteria, operational performance of the regional transmission system, and economic and environmental factors. The contingencies studied and the criteria used to determine reliability violations are based on PJM load and/or generator deliverability criteria and North American Electric Reliability Corporation (NERC) planning standards.

Burlington, Camden, Cinnaminson, Levittown, and Cuthbert Boulevard substations to 230 kV, and install new 230 kV circuits along the route. The circuit length of the project is 35 miles, including approximately 7 miles of underground circuits. The project will require the reinforcement or replacement of 100 towers. The project has the effect of ensuring reliability by addressing NERC Category C voltage violations. The PJM-specified in-service date for the Burlington – Camden Project is June 2014 and it is estimated to cost $381 million.

2. **The West Orange Project**

6. The West Orange Project is a baseline RTEP project that involves replacing existing 138 kV circuits with 230 kV circuits between PSE&G's West Orange, Roseland, and Metuchen substations. PSE&G will upgrade the West Orange, Marion Drive, Laurel Avenue, Fanwood, New Dover, Lafayette, and Woodbridge substations to 230 kV, and install new 230 kV circuits along the route. The circuit length of the project is approximately 67 miles, including 12.5 miles of underground circuits. PSE&G states that the West Orange Project will increase transfer capability into Roseland and reduce some of the power flow on the Branchburg-Reading-Roseland circuit, as well as other 230kV circuits in the Jersey Central Power and Light (JCPL) area. In addition, the project will resolve projected NERC Category C voltage violations. The PJM-specified in-service date for the West Orange Project is June 2014 and it is estimated to cost $336 million.

3. **The Middlesex Switch Rack Project**

7. The Middlesex Switch Rack Project is a baseline RTEP project in which PSE&G will construct a new 230 kV circuit from Branchburg to the Middlesex Switch Rack and build a new 230 kV substation at Middlesex. PSE&G will also separate the circuit from Branchburg to Somerville to Bridgewater into two independent circuits. The first circuit will go from Branchburg to Somerville to Bridgewater. The second circuit will be express from Branchburg to Bridgewater. The circuit length of the project is 17 miles. PSE&G states that the Middlesex Switch Rack Project will reduce congestion in the southern Jersey Central Power & Light (JCPL) area by providing a stronger connection to Branchburg and resolve projected NERC Category C voltage violations. The PJM-specified in-service date for the Middlesex Switch Rack Project is June 2014 and it is estimated to cost $125 million.

4. **The Bayonne – Marion Project**

8. The Bayonne – Marion Project is a baseline RTEP project in which PSE&G will construct a new 230 kV circuit from Bayonne to the Marion substation. The Bayonne substation will be reconfigured. There are currently two 138kV underground cables serving the Bayonne area load. If these circuits are interrupted, a loss of load will occur. To remedy this situation, a third circuit will be added from Bayonne to Marion. While it

will be constructed to 230 kV specifications, the circuit will initially be operated at 138 kV. The length of the project is 5 miles of underground 230 kV circuit. The PJM-specified in-service date for the Bayonne - Marion Project is June 2013 and it is estimated to cost $137 million.

B. Requested Incentives

1. CWIP

9. PSE&G requests inclusion of 100 percent of CWIP in rate base. PSE&G states that this incentive will allow PSE&G to recover financing costs before the Projects go into service. PSE&G argues that this will improve cash flow and provide assurance to lenders that PSE&G will be able to cover the interest on its debt during the construction period. PSE&G contends that this assurance will assist PSE&G with financing by improving the coverage ratios used by rating agencies to determine credit quality. PSE&G argues that inclusion of 100 percent of CWIP in rate base will result in better rate stability for customers by avoiding "rate shock" that could occur if CWIP is not permitted in rate base. According to PSE&G, including 100 percent of CWIP in rate base will also reduce the cost of the Projects by $182 million.[7]

a. Accounting Procedures

10. PSE&G proposes accounting procedures that it contends ensure that customers will not be charged for both capitalized allowance for funds used during construction (AFUDC) and corresponding amounts of construction work in progress in rate base. PSE&G states that it will use the Systems, Applications, and Products in Data Processing (SAP) plant accounting system. PSE&G asserts that it will use a unique work breakdown structure (WBS) element for project identification and work order numbers to accumulate construction costs for each individual project in accordance with Electric Plant Instruction No. 3, Components of Construction Cost, of the Uniform System of Accounts (USofA) and PSE&G's capitalization policy. PSE&G states that WBS is a tool to monitor actual and budgeted costs and includes an interest profile control indicator that allows PSE&G to ensure that only qualifying projects calculate AFUDC. PSE&G asserts that the interest profile indicator assigned to all unique WBS elements created for the four projects will be set to not calculate AFUDC on the Projects.

11. Additionally, PSE&G states that consistent with Sarbanes-Oxley 404 requirements, its Property Accounting group performs monthly reviews of AFUDC charges to ensure that only eligible projects receive AFUDC. Finally, PSE&G states that its independent auditor expresses its opinion in the FERC Form No. 1 as to the compliance of the required schedules with the Commission's USofA and published

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[7] Filing, Exhibit PEG-2 at 23.

accounting releases. PSE&G states that, if the independent auditor determines it necessary to verify the planned accounting for CWIP in rate base, it will do so. PSE&G represents that these procedures and controls ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP for the four projects for which it seeks 100 percent CWIP in rate base.[8]

2. Abandonment

12. PSE&G requests recovery of 100 percent of prudently incurred costs in the event that the Projects are abandoned as a result of factors beyond its control. PSE&G states that the Projects face numerous federal, regional, and state regulatory approvals and permits that may require consultation with a number of governmental agencies. PSE&G argues that not receiving any one of these approvals could result in one of the Projects being cancelled. Furthermore, PSE&G states that the Projects could be cancelled or modified through PJM's RTEP if they are no longer needed due to new investments or due to merchant transmission projects.

3. Assignment of Incentives to Affiliates

13. PSE&G requests authority to assign the proposed incentives to an affiliate if construction and/or ownership of the Projects are assigned to such an affiliate. PSE&G states that it has not made a decision to make such an assignment, but would like to ensure that the requested incentives are passed through to an affiliate in case of reassignment of construction and/or ownership of any of the Projects.

C. Eligibility for Incentives

14. PSE&G acknowledges that in order to receive incentives under Order No. 679 the Projects must meet the eligibility requirement of FPA section 219 by showing that the Projects either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. PSE&G further acknowledges that, in addition to satisfying the FPA section 219 requirement, it must also show that there is a nexus between the incentive sought and the investment being made and that the total package of incentives requested is tailored to address the demonstrable risks and challenges faced in undertaking the Projects.

1. Section 219 Requirement

15. PSE&G states that the Projects are eligible for incentives under section 219 of the FPA. PSE&G argues that the Projects meet the rebuttable presumption that they qualify for transmission incentives as provided in Order No. 679 because they were approved by

[8] *See* Filing, Exhibit No. PEG-2.

the PJM RTEP process as baseline upgrades that will help ensure reliability or reduce congestion.

2. Order No. 679 Nexus Requirement

16. PSE&G states 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, and that projects that are not routine are more likely to satisfy the nexus standard.[9] PSE&G notes that, in deciding whether a project is routine, the Commission stated that it will consider all relevant factors presented by the applicant, including the project's scope, its effect, and the challenges or risks faced by the project.[10] PSE&G argues that the Projects are not routine because of their size and scope; regional benefits; significant financial, regulatory, construction, and siting risks; and because they incorporate advanced technologies.

a. Scope

17. PSE&G states the Projects are large-scope transmission lines that traverse heavily-populated and environmentally-sensitive areas. PSE&G states that the Projects will, in aggregate, involve construction of approximately 124 miles of transmission line, with an estimated cost of $979 million. PSE&G also notes that three of the Projects involve construction of new underground circuits, which will account for approximately 25 of the 124 miles of lines.

b. Effects

18. PSE&G states the Projects will resolve near-term reliability criteria violations and thereby enhance the reliability of the PJM transmission system. PSE&G also states that the southern, central, and northern New Jersey sub-regions will be able to meet reliability criteria in future years. Furthermore, PSE&G contends that two of the Projects, the West Orange Project and the Middlesex Switch Rack Project, are expected to reduce transmission congestion.

c. Risks and Challenges

19. PSE&G states that the Projects will involve significant risks, including financial, regulatory, and environmental risks. PSE&G also states that the Projects will present a number of significant technical challenges.

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[9] Filing at 21 (citing *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084 (2007) (*BG&E*).

[10] *Id*. (citing *PPL Elec. Utils. Corp. and Pub. Serv. Elec. and Gas Co.*, 123 FERC ¶ 61,068 (2008) (*PPL*)).

20. PSE&G argues that the Projects present substantial financial risks. PSE&G states that, with an estimated cost of approximately $979 million, it is concerned that its financial metrics will be burdened by the financing for the Projects. PSE&G contends that the Projects represent an increase of approximately 83 percent in the company's current net investment in transmission plant, and that the Projects will constitute a significant addition to PSE&G's already substantial transmission expenditure plan.[11] PSE&G argues that it will be necessary for it to furnish significant outlays of cash, which will dramatically increase its debt levels, and that the Projects will require an average annual investment of more than $300 million over the peak 36 months of construction, the equivalent of more than 2.2 times PSE&G's historical average annual transmission capital expenditures.[12] PSE&G also contends that the Projects' long lead time compounds the financial risks by posing the risk of unhedgeable increases in materials and labor costs.

21. PSE&G argues that the Projects face significant regulatory challenges because they require approvals from various federal, regional, state, and local entities.[13] PSE&G stresses that the iterative nature of these approvals poses a risk to the Projects, including the added cost to materials and labor resulting from a delay in the Projects. PSE&G also states that it faces the risk of PJM cancelling one or more of the Projects through the RTEP process if that project is no longer needed.

22. PSE&G asserts that the Projects may encounter significant construction and environmental challenges due to their expected length and the terrain and geographic features that they will traverse, including wetlands, rivers, a railroad, and a national wildlife refuge. PSE&G contends that the timing of the construction of the Projects must be closely coordinated with the operations and outages of electric generating stations to ensure that the stability and operational impacts are minimal. Finally, PSE&G states that the technologies that PSE&G plans to incorporate into the Projects present significant challenges of their own, including the risk that the technologies or people with the expertise to construct, test, and install them might not be available when needed by PSE&G.

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[11] PSE&G states that, even before it commences the Projects, its transmission expansion plans include approximately $750 million for its share of the Susquehanna-Roseland line (2010 through 2015 expenditures) and approximately $1.5 billion for other transmission capital expenditures over the period 2011 through 2013. PSE&G states that its net transmission plant in service as of December 31, 2009 totaled $1.175 billion. Filing at 8.

[12] PSE&G notes that it intends to use a combination of internal and external sources to fund the construction of the Projects.

[13] Filing, Exhibit PEG-1E.

d. Total Package of Incentives

23. PSE&G argues that, considered as a whole, the incentives it has requested are tailored to the specific risks and benefits of the Projects. PSE&G states that the CWIP incentive is needed to cover the carrying costs of the substantial capital expenditures required by the Projects without impairing the credit metrics of PSE&G. PSE&G states that abandonment cost recovery reduces the risk of non-recovery of the investment for a project that faces so many technical and regulatory hurdles over its construction and in-service date. PSE&G also states that the incentives reduce the total revenue required from customers over the lives of the Projects both on a total and present value basis.

e. Technology Statement

24. PSE&G states that it will incorporate and deploy a series of advanced technologies that will enable the Projects to be operated as a "Smart Grid." PSE&G states that these technologies include advanced conductor configurations, gas-insulated substations, microprocessor-based relays and digital fault records, fiber optic protection and communications links, substation wide area networks, and integrated substation automation and equipment line monitoring.

III. Notice of Filing and Responsive Pleadings

25. Notice of the filings was published in the *Federal Register*, 75 Fed. Reg. 70,735 (2010), with protests and interventions due on or before November 22, 2010. Exelon Corporation and American Municipal Power, Inc. filed motions to intervene. Old Dominion Electric Cooperative (ODEC) filed a motion to intervene and comments. The New Jersey Division of Rate Counsel (NJ Rate Counsel) and the New Jersey Board of Public Utilities (NJPBU) each filed a motion to intervene and protest. On December 7, 2010, PSE&G filed an answer to NJBPU's and NJ Rate Counsel's protests.

26. NJBPU and NJ Rate Counsel (collectively, Protestors) urge the Commission to dismiss PSE&G's filing, deny PSE&G's request for incentive rates, or set this matter for a trial-type evidentiary hearing.

27. NJBPU asserts that PSE&G inappropriately aggregated four separate routine projects into one rate incentive filing and that, if reviewed separately, the Projects would fail to meet the requirements for granting of incentive rates. NJBPU asserts that the four projects are separate and distinct local reliability projects, proposed to relieve certain reliability criteria violations only in New Jersey. NJBPU asserts that approval of a project through the RTEP process does not automatically entitle transmission owners to incentive rates, and that the PJM RTEP reports that PSE&G submitted do not contain sufficient detail to determine actual congestion cost savings for these Projects.

28. Protestors argue that the Projects are routine projects that a utility is expected to undertake in the ordinary course of expanding the system to provide safe and reliable transmission service. Protestors assert that the 230 kV Projects are of considerably smaller scale than other large scale transmission backbone projects for which PSE&G has received incentive rate treatment in the past. Protestors also point out that the Projects are being constructed only in New Jersey, and therefore only require approval from agencies in the federal government and New Jersey. Protestors note that only two of the Projects are expected to reduce congestion and assert that PSE&G does not supply sufficient information on the Projects' reliability and congestion benefits in areas of PJM outside the PSE&G zone to support PSE&G's claim that the Projects will have regional benefits. NJ Rate Counsel further contends that this claim is contrary to PSE&G's own filing, in which one of the Projects is described as "local." Protestors find that there are no significant new, risky or untested technologies involved in the Projects, and NJBPU notes that PSE&G has not even fully committed to incorporating these technologies into any of the Projects. Protestors note that PJM's approval of an RTEP project does not automatically entitle the transmission owner to incentives.

29. NJ Rate Counsel argues that PSE&G fails to provide detailed cost support for the $979 million cost of the Projects and that the 2009 PJM Baseline Reliability Assessment Report shows that the Projects were expected to cost far less.

30. NJ Rate Counsel states that PSE&G's affiliate owns a substantial fleet of generating units, and that the PSE&G corporate family stands to gain from perpetuating transmission constraints by occupying the field of solutions to the reliability problem but not actually solving those problems. Furthermore, NJ Rate Counsel maintains that recent statements by PSE&G demonstrate that the pursuit of transmission investments is perceived as an attractive investment option, rather than a credit risk.

31. NJBPU argues that PSE&G's 2008 Moody's report, which PSE&G relies on in its filing, does not accurately represent the current financial climate and rating agency views. NJBPU instead interprets PSE&G's 2010 Moody's report to indicate that PSE&G will not suffer any downgrade in its credit rating in the absence of incentives and concludes that PSE&G has not demonstrated a need for CWIP.

32. In the event that CWIP is approved, NJ Rate Counsel urges the Commission to condition approval on: (1) PSE&G providing detailed and accurate cost support for the Projects at issue, and (2) imposition of a cap on the recovery of CWIP payments commensurate with the level of accurate project cost estimates. In the event that abandonment cost recovery is approved, NJ Rate Counsel urges the Commission to condition approval on: (1) PSE&G providing detailed and accurate cost support for the Projects at issue, (2) imposition of a cap on the recovery of abandonment payments commensurate with the level of accurate project cost estimates, and (3) PSE&G making a separate section 205 filing that identifies the development and construction costs for which it seeks recovery, that demonstrates that abandonment or cancellation is a result of

circumstances beyond its control, and that shows that recovery of such costs would be just and reasonable.[14]

33. NJ Rate Counsel and ODEC contend that any authorization to transfer incentives to an unnamed affiliate should be conditioned on the unnamed affiliate making a section 205 filing to incorporate into its rates any such incentives. NJBPU asserts that it is premature to grant PSE&G authority to assign the requested incentives to an affiliate because there is no underlying justification to grant the request at this time.

34. In its answer, PSE&G reiterates that the Projects satisfy the rebuttable presumption under Order 679 and that it has established the requisite nexus between the incentives sought and the risks of the Projects. PSE&G states that the Commission does not require transmission owners to segregate filings for which they seek incentive rates by individual project and that consolidated filings make more efficient use of Commission resources and allow more comprehensive review by the Commission. PSE&G argues that granting authority to assign the requested incentives to an affiliate is consistent with Commission precedent. Finally, PSE&G asserts that protestors' requests for evidentiary hearings should be rejected because there are no material facts in dispute.

IV. Discussion

A. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[15] the timely, unopposed interventions serve to make the entities that filed them parties to this proceeding.

36. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[16] prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority. We are not persuaded to accept PSE&G's answer and will therefore reject it.

B. Substantive Matters

37. We will deny PSE&G's request for incentive rate treatment and reject its proposed tariff revisions without prejudice, as discussed below.

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[14] In its comments, ODEC likewise states that the Commission should condition the abandonment incentive on a separate section 205 filing.

[15] 18 C.F.R. § 385.214 (2010).

[16] 18 C.F.R. § 385.213(a)(2) (2010).

38. In 2005, Congress added section 219 of the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities "for the purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion."[17] The Commission subsequently issued Order No. 679, which sets forth the criteria by which a public utility may obtain transmission rate incentives pursuant to section 219.

39. Order No. 679 interpreted section 219 to require that an applicant seeking incentive rate treatment for transmission infrastructure investments demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[18] The Commission also found in Order No. 679 that an applicant must demonstrate a nexus between the incentives being sought and the investment being made.[19] Therefore, an applicant must satisfy both the section 219 requirement and the nexus test to receive incentives.

1. Section 219 Requirement

40. Order No. 679 establishes a rebuttable presumption that the section 219 requirement is met if a transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission, or a project has received construction approval from an appropriate state commission or state siting authority.[20] In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which the transmission project 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.[21]

41. We find that each of the Projects individually satisfies the requirements of section 219 as a result of the rebuttable presumption established in Order No. 679. Each project was vetted and approved as part of PJM's 2009 RTEP as a baseline project. This means that PJM made a determination that each of the Projects mitigates congestion or ensures PJM's ability to continue to serve load reliably. In this regard, the Commission has held

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[17] 16 U.S.C. § 824s (2006).

[18] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

[19] *Id*. P 48.

[20] *Id*. P 58; 18 C.F.R. § 35.35(i) (2010).

[21] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

that the RTEP constitutes "a fair and open regional planning process," and thus qualifies for the rebuttable presumption provided in Order No. 679.[22]

2. Incentives and the Commission's Nexus Test

42. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate a nexus between the incentives being 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 incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[23]

43. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine.[24] The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, 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, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.[25]

44. As a preliminary matter, we recognize that, on some occasions, we have applied the nexus test to an aggregated group of projects when the applicant has submitted its request for incentives with respect to the group of projects.[26] We have also stated previously that individual projects, when considered in the aggregate, may not be routine for purposes of incentive treatment because they face significant risks and challenges in

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[22] *Duquesne Light Co*., 118 FERC ¶ 61,087, at P 62-68 (2007) (*Duquesne*); *see also BG&E*, 120 FERC ¶ 61,084 at P 41, *reh'g denied*, 122 FERC ¶ 61,204 (2008).

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

[24] *BG&E*, 120 FERC ¶ 61,084 at P 52-55.

[25] *Id*. P 54.

[26] *See, e.g., Pepco Holdings, Inc.,* 124 FERC ¶ 61,176 (2008).

constructing all the projects.[27] On other occasions, we have applied the nexus test to each individual project.[28]

45. However, PSE&G's filing has revealed the necessity to change Commission policy with respect to the application of the nexus test to groups of projects, and we do so here. Order No. 679 established that an incentive should be rationally tailored to the risks and challenges faced in constructing a new transmission project. [29] Therefore, in this and future cases involving application of Order No. 679 the Commission will require each applicant to demonstrate that there is a nexus between the incentive sought and the specific investment being made. An applicant may demonstrate that a number of individual projects are properly considered to comprise a single project, based on their characteristics and combined purpose, in which case the Commission will consider whether incentives are warranted for that single project.[30] Alternatively, a company may file for incentives for numerous individual and unconnected projects at the same time and even in a single filing, but the company still must provide sufficient justification for why each project qualifies for incentives. PSE&G has not indicated and has not demonstrated that these four projects are parts of a single overall project or share other characteristics to warrant reviewing the projects as a single project. Rather, it appears from the current record that they are four distinct projects, and we will review them as such.

46. Based on our review of PSE&G's filing, we find that PSE&G has provided insufficient information for the Commission to determine if each project meets the nexus requirement, as discussed below.

47. With regard to scope and effect, PSE&G provides information on the scope (i.e., length in miles, and expected total investment) of each project.[31] PSE&G also describes in general terms how the projects will provide reliability benefits to the mid-Atlantic region, as well as improvements for import capability and congestion relief in certain areas of PJM's New Jersey region.[32] However, PSE&G argues that the Projects are not routine because of their aggregate scope, in that they will involve construction of approximately 124 miles of transmission line and an estimated cost of $979 million,

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[27] *BG&E*, 120 FERC ¶ 61,084 at P 53.

[28] *See, e.g.*, *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008).

[29] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26; *id*. P 3 (incentives will "help with financing and up-front regulatory certainty for project investments"); P 27 (incentives may be appropriate "where the risks of a particular project exceed the normal risks undertaken by a utility").

[30] *Pacificorp,* 125 FERC ¶ 61,076, at P 39-40 (2008).

[31] Filing at 23 and Exhibit PEG-1 at 8-10.

[32] Filing, Exhibit PEG-1 at 15-17.

but does not address whether each individual project qualifies as non-routine given the scope of that project. For example, PSE&G also describes the congestion relief benefits of two of the Projects in general terms, but does not provide specific estimates of congestion cost savings of each project. We therefore find that PSE&G does not provide sufficient information to analyze the scope and effect of each project individually.

48. In discussing risks and challenges, PSE&G provides information about the various regulatory approvals that each project faces.[33] However, while PSE&G lists the regulatory approvals that each project requires in Exhibit PEG-1E to the filing, including those that appear related to environmental and construction risks, PSE&G only generally argues the Projects warrant incentives given environmental and construction risks facing the Projects and does not analyze these risks with respect to each project. In addition, PSE&G does not provide sufficient information regarding the financial risks of each project. PSE&G merely presents the financial risk of the Projects in the aggregate. Therefore, we find that PSE&G does not provide enough information to analyze the risks and challenges that each project faces.

49. We find that PSE&G has not met the requirements of the nexus test on a project-by-project basis. Accordingly, we will deny the requested incentives without prejudice to PSE&G refiling to demonstrate how each project meets the nexus requirement.

<u>The Commission orders</u>:

(A) PSE&G's request for transmission rate incentives is denied, as discussed in the body of this order.

(B) PSE&G's proposed revisions to Attachment H-10A of the PSE&G and PJM OATTs are hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement attached. Commission Norris is dissenting in part with separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[33] Filing, Exhibit PEG-1E.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oklahoma Gas and Electric Company — Docket No. ER11-112-000

PJM Interconnection, L.L.C. — Docket No. ER11-1985-000

(not consolidated)

(Issued December 30, 2010)

MOELLER, Commissioner, *concurring*:

As I have repeatedly stressed over the years, promoting investment in our nation's transmission infrastructure has been my top policy priority.[1] Earlier this year, I explained that:

> [r]obust electric transmission infrastructure is the ultimate "enabling" energy technology, as it can provide a more efficient electric system, enhanced reliability, increased access to less expensive and often cleaner resources, and the ability to harness location-constrained renewable resources. Conversely, the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation's bulk power system, and increases reliance on older and dirtier generating resources.[2]

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[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) (Moeller, Comm'r, concurring); *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 (2008) (Moeller, Comm'r, dissenting in part) ("… the Commission should do what it can to encourage capital investment in needed transmission infrastructure projects."); *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 125 FERC ¶ 61,250 (2008) (Moeller, Comm'r, dissenting) ("… now is not the time for this Commission to discourage investment in needed transmission infrastructure."); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,045 (2009) (Moeller, Comm'r, dissenting) ("The main issue here is whether needed transmission is being built … I have encouraged investment in transmission infrastructure …"); *Southern California Edison Co.*, 129 FERC ¶ 61,013 (2009) (Moeller, Comm'r, dissenting in part) ("The transmission that is needed in this nation will not be built unless the companies that build it can attract adequate investment dollars.").

[2] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) (Moeller, Comm'r, concurring).

With regard to the appropriateness of rate incentives, the Energy Policy Act of 2005 required the Commission to consider awarding such incentives to transmission infrastructure projects. Congress has also shown interest in how infrastructure investment can simultaneously create jobs and expand economic opportunity while improving reliability and reducing congestion on the nation's transmission grid. Thus, I continue to believe that this Commission should grant rate incentives when appropriate.

However, there are instances when I believe that incentives are not appropriate. In an earlier dissent, I explained that I would not support a request for incentives because the evidence submitted by the applicant was insufficient.[3] As I noted at the time, "an applicant must place sufficient evidence into the record that will allow us to make an informed analysis of the project, including a comparison to other projects that will not receive incentives."[4] While such a comparison may not be feasible in every instance, I continue to believe that applicants must provide sufficient record evidence to allow this Commission to make an informed decision.

Today, the Commission denies incentive rate treatment for four and six projects as requested by PSE&G and OG&E, respectively. As discussed more fully in both orders, each applicant failed to provide sufficient information to justify the award of incentives for these infrastructure projects. While PSE&G and OG&E were able to articulate the scope and risks of these projects, they did not provide sufficient detail regarding the corresponding effects and challenges of each project to allow the Commission to determine whether an individual project meets the nexus requirement.

Accordingly, I would strongly encourage that PSE&G and OG&E consider the detailed guidance provided in today's orders prior to filing a new application for transmission incentives. As noted in the orders, the parties may file a new incentives application for the projects that we deny incentive treatment today. If the parties believe they can sufficiently demonstrate that their projects satisfy the Commission's nexus requirements, I would encourage the parties to reapply with a new application.

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Philip D. Moeller
Commissioner

[3] *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana,* 125 FERC ¶ 61,250 (2008) (Moeller, Comm'r, dissenting)

[4] *Id.* Dissent at P 6.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. Docket No. ER11-1985-000

(Issued December 30, 2010)

NORRIS, Commissioner, *dissenting in part*:

I support the majority's decision in this order to change Commission policy with respect to the application of the Order No. 679 nexus test to groups of projects, and in particular the requirement that future applicants provide more project-specific information to demonstrate that the incentives they propose are warranted.[1] I respectfully dissent, however, from the Commission's decision to deny Public Service Gas & Electric Company's (PSE&G) request to include 100 percent of Construction Work in Progress (CWIP) for the four separate projects that are the subject of its filing.

Because my dissent in this order might be characterized as at odds with my recent concurring statement in *Potomac-Appalachian Transmission Highline, L.L.C. (PATH)*[2], I want to be clear how the concerns I express today align with those that I expressed in that proceeding. In *PATH*, I expressed my general concerns with the Commission's transmission rate incentive policies under Order No. 679, and suggested that the Commission should reassess these policies in light of the passage of time since that rulemaking and the Energy Policy Act of 2005 (EPAct 2005). As I stated there, I believe that transmission rate incentives must always work to benefit consumers.[3]

I dissent in part in this case because I am persuaded that PSE&G's proposal to include 100 percent of CWIP in rate base for its four projects would, if granted, work to benefit consumers.[4] For example, the record evidence suggests that including 100 percent of CWIP in rate base as requested would reduce PSE&G's revenue requirement

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[1] *PJM Interconnection, L.L.C.,* 133 FERC ¶ 61,273 at P 45 (2010).

[2] 133 FERC ¶ 61,152 (2010) Norris, *concurring*.

[3] *Id.* at pg. 4.

[4] I reach a similar conclusion with regard to the 100 percent CWIP incentive proposed by Oklahoma Gas and Electric Company that is addressed in a separate order issued today. *See Oklahoma Gas and Electric Co*., 133 FERC ¶ 61,274 (2010) (*OG&E*), Norris, *dissenting in part*.

for these projects by approximately $182 million, or 5.4 percent, on a nominal basis.[5] In other words, PSE&G's consumers would be required to pay the utility $182 million *less* in revenues over the useful life of the projects.[6]

Moreover, the record evidence demonstrates that including 100 percent of CWIP in rate base will avoid a significant rate shock for PSE&G's consumers when the four projects go into service by phasing in the increase to consumers over more years. Three of the projects have an in-service date specified by PJM of June 2014, while the fourth project (the Bayonne-Marion Project) has a PJM-specified in-service date of June 2013. PSE&G's filing demonstrates that adding the combined costs of these projects into rate base when they are placed in service would result in average annual revenue requirement increases of approximately $74 million, while those average annual increases would be approximately $34 million with 100 percent of CWIP in rate base.[7]

As I note above, I support the portion of today's order that changes the Commission's policy with respect to its application of the Order No. 679 nexus test to groups of projects. It is appropriate to require applicants for incentives to provide more specific information about the individual projects for which they seek such incentives, to allow the Commission to determine, for example, whether those individual projects are "routine" or "non-routine", which I agree can be probative.[8] This policy will be particularly useful for evaluating incentives such as abandoned plant, given that the risk of abandonment is likely to be highly specific to the circumstances of each individual project. However, this policy may not be as useful for evaluating CWIP, where the totality of the investment from multiple projects placed in service in the same timeframe can justify granting 100 percent CWIP, as the record in this proceeding demonstrates. I believe we should not apply the new policy announced in today's order in such a way as to foreclose the ability of applicants to specifically demonstrate that a group of projects that do not comprise a "single project" may still, when considered together, merit an incentive rate treatment that will benefit consumers, as 100 percent CWIP would here.

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[5] *See* Exhibit No. PEG-2, p. 23. Additionally, this evidence demonstrates that through the first full year all four projects are in-service, including 100 percent of CWIP in rate base would reduce the nominal revenue requirement imposed on consumers by approximately $13 million, or 8.4 percent. *Id.*

[6] PSE&G also notes that even assuming a time value of money of 5 percent, consumers would still benefit on a present value basis by $11 million.

[7] *Id.*

[8] *PJM*, 133 FERC ¶ 61,273 at P 43.

As I stated in *PATH*, rate incentives can and should be a "regulatory tool" to address risks and challenges, or provide additional possible rewards for projects that have the potential to provide consumer benefits.[9] In short, for the reasons stated above, I believe that in the circumstances presented by PSE&G in this proceeding, the CWIP incentive is an appropriate regulatory tool to address the particular challenges it faces in constructing this group of projects while also providing tangible benefits to consumers.

Finally, both this order and the *OG&E* order we issue concurrently today raise for me the broader question of whether 100 percent of CWIP in rate base is appropriately considered an "incentive" rate treatment that is analyzed under Section 219 of EPAct and Order No. 679. As these two proceedings demonstrate, entities are embarking on substantial new investments in transmission infrastructure, with total dollar amounts that may exceed or be a substantial percentage of their current rate base. Allowing the inclusion of 100 percent of CWIP in rate base in such circumstances may be more properly considered under general ratemaking principles, with an eye toward the benefits such rate treatment could provide both regulated entities and their consumers, rather than under an incentive-based ratemaking policy. As we engage in the broad discussion of our incentive rate policies that I suggested in *PATH*, I hope that we will consider this question.

For these reasons, I respectfully dissent in part.

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John R. Norris, Commissioner

[9] *PATH*, Norris, concurring, at pg. 4.