

125 FERC ¶ 61,079
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Maine Power Company

Docket No. EL08-74-000

ORDER CONDITIONALLY GRANTING PETITION
FOR DECLARATORY ORDER

(Issued October 20, 2008)

1. Central Maine Power Company (Central Maine) filed a petition for declaratory order requesting that the Commission authorize transmission rate incentives pursuant to Order No. 679¹ for the planned Maine Power Reliability Program Project (Project). Specifically, Central Maine requests a 150-basis point adder to its base-level return on equity (ROE), recovery in rate base of 100 percent of construction work in progress (CWIP), and guaranteed recovery of prudently incurred costs if the Project is abandoned in whole or in part as a result of factors beyond its control (abandonment). For the reasons discussed below, with one modification, we conditionally grant Central Maine's petition, subject to ISO New England Inc. (ISO-NE) approving the Project in its Regional System Plan (RSP) as a Reliability Transmission Upgrade (RTU).

I. Petition

A. Maine Power Reliability Program

2. Central Maine initiated the Maine Power Reliability Program (Program) to address reliability concerns raised by ISO-NE in its 2006 RSP. The Program was a collaborative effort among Central Maine, ISO-NE, and other interested entities to identify and study the reliability needs of Maine's bulk power transmission system and to develop transmission and non-transmission solutions to meet these needs. ISO-NE directed all aspects of the Program's system planning studies,

¹ *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).

chaired the Program's study group,² and oversaw the work performed by Central Maine and its consultants. The Program resulted in a Needs Assessment Study that found that by 2012 Maine's transmission system will violate three of the North American Electric Reliability Corporation's (NERC) Transmission Planning Reliability Standards³ and two subsequent studies that evaluated transmission and non-transmission solutions to address the potential NERC violations. Central Maine states that it developed the Project based on these studies.

B. Description of the Project

3. The planned Project consists of approximately 245 miles of new 345 kV transmission line, 74 miles of new 115 kV transmission line, 10 miles of rebuilt 345 kV transmission line, 155 miles of rebuilt 115 kV transmission line, and upgrades to Central Maine's existing substations. The proposed transmission corridor is an approximately 370 mile right-of-way with a width of 170 to 500 feet.⁴ The Project's currently estimated cost is \$1.4 billion, with approximately \$1.1 billion associated with transmission lines and \$300 million associated with substations. Central Maine expects construction to begin in mid-2009, with a target in-service date of 2012 in order to meet its future reliability needs.

² The study group included representatives from ISO-NE, Northeast Utilities, Maine Public Service Company, and the Northern Maine Independent System Administrator. Central Maine's Petition at 12 (Petition).

³ The Needs Assessment Study found that when tested under N-0 (normal operations prior to any contingency), N-1 (the system can withstand the first contingency, which may involve the loss of one or more system components, without affecting service to customers), and N-1-1 (a regional control area must be designed to withstand the most severe single outage on its system without the occurrence of instability, and within 30 minutes of the first outage, the system must be prepared for the next most severe outage) conditions the Maine transmission system would violate three NERC reliability standards: (1) TPL-001-0 - System Performance Under Normal (No Contingency) Conditions (Category A); (2) TPL-002-0 - System Performance Under Loss of a Single Bulk Electric System Element (Category B); and (3) TPL-003-0 - System Performance Following Loss of Two or More Bulk Electric System Elements (Category C). *Id.* at 13-14.

⁴ *Id.* at 16.

4. While the Project will generally follow existing utility corridors owned by Central Maine, Maine Electric Power Company (MEPCO), and Public Service Company of New Hampshire, Central Maine will be required to negotiate right-of-ways along the corridor and expects to purchase approximately 580 parcels of land in approximately 23 towns. The major 345 kV transmission line will travel between the Newington, New Hampshire substation and Orrington, Maine. Central Maine asserts that the planned additional 345 kV circuits from Orrington to the greater Portland area and onto the Maine-New Hampshire interface will increase the capacity to export power to southern New England.⁵ Central Maine has divided the construction of the Project into five phases based on the most critical reliability needs of its system.

C. Requested Incentives

1. 150 Basis Point ROE Adder

5. Central Maine requests that the Commission authorize a 150 basis point ROE adder to offset the financial risks and regulatory challenges faced by the Project. Central Maine states that authorizing the proposed ROE adder will result in an ROE of 13.14 percent,⁶ which would not exceed the upper end of the zone of reasonableness authorized for the New England Transmission Owners in Opinion No. 489.⁷ Central Maine contends that its anticipated \$1.4 billion investment in the Project represents a substantial financial commitment for a company of its size and financial resources and creates significant financial risks. Central Maine argues that the proposed ROE incentive will improve its cash flow, benefit its financial metrics, and preserve its credit quality. Central Maine also argues that because it has not yet obtained any of the necessary siting approvals for the Project, a 150 basis point ROE adder will encourage investment in the Project by offering investors a return commensurate with its siting, regulatory, and financial risks.⁸

⁵ *Id.*

⁶ *Id.* at 63.

⁷ *Bangor Hydro-Electric Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (Opinion No. 489 Rehearing Order).

⁸ Petition at 58-59.

6. Central Maine argues that a 150 basis point ROE adder is consistent with Commission precedent. Central Maine contends that its Project has a greater size, scope, and cost than the projects at issue in *BG&E*⁹ and *Duquesne*,¹⁰ where the Commission authorized ROE adders of 100 basis points. Central Maine acknowledges that in *PPL*¹¹ the Commission recently authorized an ROE adder of 125 basis points rather than the requested 150 basis points, but argues that it is facing additional risks and challenges warranting a higher ROE adder. Central Maine states that the magnitude of the investment required for its Project (\$1.4 billion) is greater than the investment required in *PPL* and the relative value of its investment in relation to its transmission plant in service is more dramatic than in *PPL*. Central Maine states that it is also facing significant siting, construction, regulatory, financial, and environmental risks and challenges. Central Maine argues that given these risks and challenges, the requested ROE adder is necessary to provide it with the incentive to confirm its long term financial commitments to the Project and to send the appropriate signals to the financial community.

7. Central Maine argues that there are equitable considerations for the Commission to consider when deciding whether to authorize the requested ROE adder. Central Maine explains that the Project was planned and included in the RSP before the Commission issued the Opinion No. 489 Rehearing Order and restricted application of the ROE adder authorized in Opinion No. 489 for all RSP projects to only those projects placed in service by December 31, 2008.¹² Central Maine argues that the Commission has found that parties that make substantial commitments in good faith reliance on Commission orders with the reasonable expectation that the then-prevailing Commission policy will remain in effect

⁹ *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (July BG&E Order), *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007) (November BG&E Order), *order denying reh'g of July BG&E Order*, 122 FERC ¶ 61,034, *order denying reh'g of November BG&E Order*, 123 FERC ¶ 61,262 (2008) (collectively, *BG&E*).

¹⁰ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*).

¹¹ *PPL Elec. Utils. Corp.* 123 FERC ¶ 61,068, *reh'g denied*, 124 FERC ¶ 61,229 (2008) (*PPL*).

¹² At the time of Opinion No. 489, the RSP was known as the Regional Transmission Expansion Plan.

should not be prejudiced by the application of a subsequent and contrary policy.¹³ Central Maine argues that the Commission should apply this reasoning here to guarantee that it receives the substantial benefits upon which it relied when it made commitments in capital, manpower, and other resources in planning and developing the Project. Central Maine claims that denying it the ROE adder under these circumstances would discourage transmission owners from going forward with expensive but necessary transmission projects for fear that an authorized incentive might later be changed without notice.

8. Finally, Central Maine argues that if the Commission authorizes a 150 basis point ROE adder, the resulting ROE will be just and reasonable. Central Maine states that a 150 basis point adder would raise its ROE to 13.14 percent, which does not exceed the upper end of the zone of reasonableness for New England Transmission Owners that the Commission established in Opinion No. 489. Central Maine states that the upper end of this zone of reasonableness is 13.84 percent (which, according to Central Maine, includes a 74 basis point adjustment for updated bond data to the 13.1 percent ROE). Central Maine also states that the Commission expressed willingness in Order No. 679 to grant incentive ROEs at the upper end of the zone of reasonableness in order to encourage utilities to build needed transmission.

2. CWIP

9. Central Maine contends that including 100 percent of CWIP in rate base is necessary because of the size, capital-intensive nature, and time needed to construct the Project. Central Maine contends that CWIP will ease the pressure on its finances because it will allow it to recover the significant financing costs (both equity and debt) of construction on a current basis during the construction period and thus reduce long-term capital costs. Central Maine also states that authorizing CWIP will reduce the interest expense for customers, replace non-cash Allowance for Funds Used During Construction (AFUDC) with cash earnings, spread the impact of new plant over the entire construction period, reduce the cost of the Project by over \$150 million, and reduce “rate shock” for customers in New England.

¹³ Petition at 62 (citing *New England Power Pool*, 96 FERC ¶ 61,228, at 61,925-26 (2001); *Great Lakes Gas Transmission Ltd. P’ship*, 72 FERC ¶ 61,081, at 61,427 (1995)).

10. Central Maine argues that authorizing CWIP will provide it with up-front regulatory certainty, increase its cash flow, and decrease the amount of borrowing necessary to finance the Project. Central Maine estimates that its cash flow to interest ratio during the construction period will decline from 4.4 to 3.4, which will be viewed negatively by lenders and possibly result in a reduction in Central Maine's credit rating. Central Maine claims that including 100 percent of CWIP in its rates will improve this ratio to 4.2 during the height of construction, which is more characteristic of a company with credit ratings equal to Central Maine's current BBB+/A- credit ratings.¹⁴

3. Abandonment

11. Central Maine requests recovery of 100 percent of prudently incurred costs in the event that the Project is abandoned as a result of factors beyond its control.¹⁵ Central Maine states that it seeks this incentive because it expects to spend approximately \$30 million in pre-construction costs in order to determine whether the Project is feasible from a siting, environmental, financial, and technological perspective. Central Maine states that it still must obtain permits and negotiate for rights-of-way along various portions of the Project and that it has yet to obtain siting authority from the Maine Public Utilities Commission (Maine Commission), which may require that Maine Transmission Owners withdraw from ISO-NE and create greater uncertainty regarding the recovery of its costs. Central Maine contends that allowing recovery of abandoned plant costs is consistent with its rights under the TOA if it is included in the RSP, will enable it to hedge some of its substantial and unique risks, and will encourage investment in the Project.

D. Eligibility for ROE, CWIP, and Abandonment Incentives

12. Central Maine acknowledges that in order to receive incentives under Order No. 679 an applicant must show that its Project is eligible for incentives under

¹⁴ *Id.* at 63-65.

¹⁵ It is unclear from Central Maine's petition whether it seeks abandonment as an incentive under Order No. 679 or a Commission finding that it is entitled to abandonment under the Transmission Operating Agreement (TOA) between ISO-NE and participating Transmission Owners. However, because we find that Central Maine qualifies for abandonment under Order No. 679, we will treat its request as a request for incentives.

section 219 of the Federal Power Act (FPA)¹⁶ because it either ensures reliability or reduces the cost of delivered power by reducing transmission congestion. Central Maine further acknowledges that in addition to satisfying the section 219 requirement, an applicant must also demonstrate that there is a nexus between the incentive sought and the investment being made and that total package of incentives requested is tailored to address the demonstrable risks and challenges that the applicant faces in undertaking the Project.

1. Section 219 Requirement

13. Central Maine claims that the Project is presumptively eligible for incentives under section 219 of the FPA. Central Maine acknowledges that the Project has not yet received final RSP approval or confirmation from ISO-NE that the Project will reduce congestion or ensure reliability. However, Central Maine states that the Project is the result of a fair and open regional planning process because it has been planned through and received preliminary approvals in the RSP process. Central Maine also states that the Project will be included in the October 2008 RSP as a planned RTU and that the Commission has previously indicated that it will consider incentives for projects still undergoing a regional planning process and make any authorized incentives contingent on the Project receiving final regional approval.

14. Central Maine also argues that the Project is presumptively eligible for incentives because it has submitted an application for a Certificate of Public Convenience and Necessity (CPCN) to the Maine Commission. Central Maine estimates that the approval process will take more than a year to complete. However, Central Maine states that in Order No. 679-A the Commission provided for the possibility that it would authorize incentives before state proceedings were completed, and that it in *Xcel Energy*¹⁷ it authorized incentives before the completion of the CPCN proceeding on the condition that the applicant would not include any incentives in its rates until it received the CPCN. Central Maine commits that it will not include any incentives in its rates until it receives the CPCN from the Maine Commission.

¹⁶ 16 U.S.C. § 824s (2006).

¹⁷ *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 53 (2007) (*Xcel Energy*).

2. Order No. 679 Nexus Requirement

15. Central Maine states the Commission has 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 in evaluating whether the applicant has met this test it has found the question of whether a project is “routine” to be particularly probative.¹⁸ Central Maine notes that in considering whether a project is routine the Commission stated that it will consider all relevant factors presented by the applicant, including project’s scope, effect, and the challenges or risks faced by the project.¹⁹

a. Scope

16. Central Maine states that the Project’s size and scope are significant because it involves approximately 485 miles of new and rebuilt transmission line along an approximately 370 mile transmission corridor, requires a capital commitment of approximately \$1.4 billion, which is four to five times the size of Central Maine’s current electric transmission plant investment, and will result in its transmission plant in service being six times more than its existing total transmission plant in service. Central Maine states that this is the largest project in its history and that it is undertaking it voluntarily.

b. Effects

17. Central Maine asserts that the Project will reduce line losses, assure a safe and secure supply of power in Maine, improve power quality and operating efficiency, increase opportunities for new renewable generation (particularly wind generation), and reduce congestion.²⁰ Central Maine also claims that the Project will enhance reliability, decrease the risk of cascading outages, voltage collapse, and widespread blackouts, eliminate the potential for future NERC violations, and improve system performance for scheduling, outage coordination, and maintenance.²¹

¹⁸ Petition at 46 (citing *PPL*, 123 FERC ¶ 61,068 at P 31).

¹⁹ *Id.* (citing July BG&E Order, 121 FERC ¶ 61,084 at P 54).

²⁰ *Id.* at 24.

²¹ *Id.* at 25.

18. Central Maine states that by 2012 the level of system losses on its existing transmission system will range from 18 MW to 120 MW, but that the Project is expected to reduce this range to 15 MW to 88 MW. Central Maine argues that this expected reduction will save customers by reducing energy and capacity purchases. Central Maine estimates that the combined value of energy and capacity savings will be between \$35 million and \$60 million (net present value in 2008 dollars).²²

19. Central Maine argues that the Project is uniquely situated to provide opportunities for access to renewable generation. Central Maine claims that the Project has the potential to provide reliable access to nearly 1,650 MW of potential wind generation in Maine, 3,000 MW of hydroelectric power under development in Quebec, and 5,000 to 7,000 MW of hydroelectric and wind power under development in Brunswick/Newfoundland and Labrador.²³ Central Maine also states that the Project will result in production efficiencies and a reduction in emissions, including greenhouse gas emissions.

20. Central Maine argues that the Project will relieve transmission congestion in areas identified as constrained by the U.S. Department of Energy (DOE). Central Maine states that the Project will improve north-to-south and south-to-north thermal transfer limits within Maine by approximately 725 MW. Central Maine also states that the Project will improve north-to-south and south-to-north thermal transfer limits between Maine and New Hampshire by approximately 900 MW and 625 MW, respectively.²⁴

c. Risks and Challenges

21. Central Maine claims that it faces significant siting, construction, regulatory, financial, and environmental risks and challenges in developing the Project. Central Maine argues that the Project faces difficult siting challenges because, in addition to a CPCN from the Maine Commission, it must receive siting authority and permits from multiple Maine municipalities. Central Maine explains that the preferred route for the proposed new transmission lines is expected to

²² *Id.* at 25-26.

²³ *Id.* at 26.

²⁴ *Id.* at 27-28.

cross approximately 80 Maine municipalities,²⁵ at least 36 of which have dimensional standards and use restrictions that appear to present challenges to the Project's current design. Central Maine also states that it must acquire approximately 580 parcels of land in approximately 23 towns.²⁶

22. Similarly, Central Maine argues that the Project faces significant regulatory challenges. In addition to approval from the Maine Commission and Maine municipalities, Central Maine states that it must receive approval from the Maine Department of Environmental Protection, the United States Army Corps of Engineers, and the United States Fish and Wildlife Services. Central Maine also argues that the possibility that Maine will withdraw from ISO-NE presents substantial and unique risks. Central Maine contends that Maine's withdrawal from ISO-NE would create uncertainty about the continued economic viability of the Project and the treatment of costs attributable to the Project.

23. Central Maine claims that the Project faces engineering and construction challenges. Central Maine states that to complete the critical components of the Project by 2012 it must operate under an aggressive development and construction schedule that requires parallel path engineering and construction sequencing. As a result of this schedule, Central Maine states that it must place significant capital at risk in order to make the necessary long-term commitments before it receives final construction approval.²⁷ For example, Central Maine states that it will have to pre-order five to six autotransformers valued at \$4 to \$7 million each without receiving any regulatory approval.²⁸ Central Maine states that because its transmission system cannot be shut down during construction, the construction of the Project will take years to complete and require it to carefully plan and coordinate outages with ISO-NE and other Maine utilities, coordinate system maintenance and improvements with a variety of system constraints (e.g., system demand, location and availability of generation and transmission resources, and equipment and line ratings), and address physical constraints that may drive the sequence in which improvements are integrated into the transmission system. Central Maine also states that there has been a steady increase in construction costs. Central Maine states it is still considering the use of different types of

²⁵ *Id.* at 28.

²⁶ *Id.* at 4.

²⁷ *Id.* at 30.

²⁸ *Id.* at 31.

advanced technologies and that the use of any advanced technologies will present unique design and construction challenges which will lead to increased costs.²⁹

24. Central Maine argues that the Project presents financial and corporate challenges. Central Maine estimates the Project's cost at \$1.4 billion, which is four to five times its current electric transmission plant investment. Central Maine states that the Project is the largest transmission development project in its history. Central Maine estimates that when the Project is complete, its transmission plant in service will be \$1.85 billion, which is six times the existing total transmission plant in service.³⁰ Central Maine states that it will use a combination of equity and debt to finance the Project. Central Maine states that equity financing will be sourced first by Central Maine foregoing the payment of dividends to its parent company, Energy East, and then by contributions of equity capital from Energy East. Central Maine states that the initial debt financing may come primarily from bank credit and a portion from short maturity securities. Central Maine states that if financial conditions change it may choose to finance initial debt capital with long-term securities. Central Maine further states that as the Project is brought into service any short-term debt will be refinanced with long-term debt securities, which means that the capital structure and terms of its financing are not yet finalized.³¹

25. Central Maine claims that the financial investment required to construct the Project will require substantial outlays of cash, which will negatively affect its cash flows, weaken its coverage ratios and other financial metrics, and create significant obstacles to raising the required capital on reasonable terms. Central Maine argues that the size and scope of the Project and the current condition of the financial market make it difficult and costly to raise capital. Central Maine states that it is devoting significant executive and management resources to the Project in lieu of other business opportunities, which creates a significant risk for the company should the Project not go forward. Central Maine also states that it faces risks and challenges because it is undertaking another significant transmission project³² with the Maine Public Service Company while at the same time it is undertaking the Project at issue in this proceeding.

²⁹ *Id.* at 33-34.

³⁰ *Id.* at 24.

³¹ *Id.* at 34-35.

³² This project is the subject of the proceeding in Docket No. EL08-77-000. Its total cost is approximately \$625 million.

26. Central Maine states that there are environmental challenges caused by the fact that the Project's preferred route crosses over numerous protected natural resources, including rivers, wetlands, vernal pools, streams, and protected habitat. In order to create the least disruption to the environment possible, Central Maine states that it plans to use special construction equipment (e.g., vehicles with high floatation tires), construction mats in wetlands, or through timing (e.g., winter construction on frozen ground, which Central Maine asserts is frequently less disruptive than construction during the spring or summer). Central Maine states that it may also have to undertake additional mitigation measures at the direction of the Maine Department of Environmental Protection and, if it adversely impacts the environment, pay restoration, enhancement, or other compensatory costs.

d. Total Package of Incentives

27. Central Maine argues that the total package of incentives requested will provide certainty and offset its significant financial risks. Central Maine asserts that it has carefully tailored its petition to request only those incentives that will offset the demonstrable risks and challenges associated with the Project. Central Maine argues that the incentives it has requested adequately mitigate its risks and will encourage outside investment in the Project. Central Maine asserts that while each of the incentives will independently mitigate specific and identifiable risks, the total package of incentives will ensure that the Project is completed.³³

E. Technology Statement

28. Central Maine states that it has decided to use above ground cables rather than underground cables because underground cables are five to ten times more expensive and would impose a greater financial burden on Central Maine's customers. Central Maine also claims that above ground cables permit it to use existing right-of-ways. Central Maine asserts that while the Project is still undergoing preliminary design it is considering several types of advanced transmission technologies. For example, Central Maine states that it is considering using a larger conductor size than it normally uses for its transmission projects, light detection, ranging to collect topographic and spatial data in lieu of traditional surveying methods, composite conductors, and real-time rating technology.³⁴ Central Maine states that while it has not requested incentives for

³³ *Id.* at 69-71.

³⁴ *Id.* at 38-39.

advanced technology in its petition, it reserves the right to submit a future petition seeking an additional 50-basis point ROE adder for the use of advanced transmission technologies.

II. Notice of Filing and Responsive Pleadings

29. Notice of the filing was published in the *Federal Register*,³⁵ with comments and interventions due on or before August 1, 2008. The Attorneys General of the State of Connecticut and the Commonwealth of Massachusetts, the Connecticut Office of Consumer Counsel (CT OCC), the Massachusetts Municipal Wholesale Electric Company (MMWEC), the New England Conference of Public Utilities Commissioners, Inc. (NECPUC), and the Public Advocate of the State of Maine (Maine Public Advocate) filed timely motions to intervene. The Connecticut Department of Public Utility Control (CT DPUC), the Maine Commission, and the Massachusetts Department of Public Utilities (Mass DPU) filed notices of intervention.

30. The Maine Commission, NECPUC, and the Maine Public Advocate (Joint Protesters) filed a joint motion to hold Central Maine's petition in abeyance and a joint protest. MMWEC filed a separate protest.³⁶ Central Maine filed an answer to the Joint Protesters' motion and an answer to the protests. The Maine Commission filed an answer to the answer.

III. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁷ the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding.

³⁵ 73 Fed. Reg. 40,335 (2008).

³⁶ Mass DPU filed a protest in which adopts the arguments of the Joint Protesters. The Attorney General of Connecticut and CT OCC adopt the arguments in MMWEC's protest. CT DPUC adopts the arguments of both the Joint Protesters and MMWEC.

³⁷ 18 C.F.R. § 385.214 (2008).

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³⁸ prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority. We are not persuaded to accept Central Maine's answer or the Maine Commission's answer to Central Maine's answer and will therefore reject them.³⁹

B. Substantive Matters

1. Motion to Hold Petition in Abeyance

a. Protest

33. The Joint Protesters filed a motion requesting that the Commission hold Central Maine's petition in abeyance pending the outcome of Central Maine's recently initiated CPCN proceeding before the Maine Commission.

34. The Joint Protesters state that holding Central Maine's petition in abeyance will ensure that the Commission has the benefit of the Maine Commission's extensive review of the Project, guarantee that the Commission reviews the Project in its final form, and avoid the administrative inefficiency of the Commission having to revisit its decision if the facts upon which it relied on in adjudicating the petition change as a result of the CPCN proceeding.

35. The Joint Protesters argue that the Commission can grant the motion for abeyance and still act on Central Maine's petition before the peak of Central Maine's spending on the Project. The Joint Protesters claim that because peak spending will occur in 2010 and 2011, the Commission will have time to act as long as the Maine Commission concludes the CPCN proceeding by the second quarter of 2009. The Joint Protesters contend that Central Maine's request for a quick decision is not justified because construction of the Project cannot begin until the required certificates and permits are in place, and that incentives cannot be conditioned on state siting approval because it is impossible at this stage in the CPCN proceeding to determine the final parameters of any project that the Maine Commission might approve.

³⁸ *Id.* § 385.213(a)(2).

³⁹ However, because it responds to a procedural motion, we accept Central Maine's answer to the motion for abeyance. *See id.* § 385.213(a)(3).

36. The Joint Protesters argue that holding Central Maine's petition in abeyance is consistent with the Commission's intent, expressed in Order Nos. 679 and 679-A, to coordinate its consideration of incentives with the state siting authority.⁴⁰ Finally, the Joint Protesters state that unless the Commission holds the petition in abeyance the Maine Commission cannot contest the Project's merits without prejudging the pending CPCN proceeding.

b. Answer

37. Central Maine argues that the Commission should deny the motion because the Commission's evaluation of whether a transmission project deserves incentive treatment is different than the determinations that will be made in the CPCN proceeding. Central Maine states that in Order No. 679-A the Commission provided for the possibility that it would authorize incentives before state proceedings were completed, and that in *Xcel Energy* it authorized incentives before the completion of the CPCN proceeding.

38. Central Maine recognizes that construction will not commence until the CPCN is issued, but asserts that delaying a ruling in this proceeding until the Maine Commission acts would have an adverse effect on its interests. Central Maine states that it is likely that the Maine Commission will make a decision in the CPCN proceeding in the second quarter of 2009 and that it would be beneficial to Central Maine if it had authorization for the incentives as soon as practicable because investors and ratings agencies are and will continue to be very interested in whether Central Maine receives authorization for the transmission rate incentives. Central Maine states that it has already begun to plan for financing the Project and it is currently discussing its future financing needs with lenders and rating agencies.

c. Commission Determination

39. We deny the motion. The Commission decides petitions for incentives pursuant to section 219 and Order No. 679 under different criteria than the Maine Commission decides CPCN applications. When faced with a request for incentives pursuant to section 219 and Order No. 679, the Commission examines whether the project reduces congestion or ensures reliability, and determines whether there is a nexus between the incentive sought and the investment being made. In contrast, when the Maine Commission evaluates a CPCN application it

⁴⁰ Joint Protesters' Motion for Abeyance and Protest at 6 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 54; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 5) (Joint Protesters).

determines whether the project is needed—a different standard that permits inquiry into a broader range of issues.⁴¹ Given these different standards, and the different questions they raise, there is no risk that the Commission will prejudge Central Maine’s pending CPCN proceeding by ruling on its petition for incentives. Similarly, because the issues relevant to the Commission’s decision are different than the issues relevant to the Maine Commission’s decision, there is no significant increase in administrative efficiency to be gained by holding the petition in abeyance pending the outcome of the CPCN proceeding.⁴²

40. Moreover, although construction cannot begin until the Maine Commission rules on the CPCN application, a Commission decision on the petition will provide Central Maine with a greater degree of certainty as it discusses its future financing needs with lenders and rating agencies. This is consistent with the goals of section 219, which directed the Commission to provide rate incentives that “promote reliable and economically efficient transmission . . . by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy.”⁴³

⁴¹ For example, the Maine Commission will examine whether the project harms the applicant’s ratepayers or the ratepayers of another utility, is required because of open market forces, creates duplication of services, is in another utility’s service territory, benefits the region economically, proposes the most economic and preferable route, and maintains the safety and reliability of the grid. *See* Public Utilities Commission Requirements when Constructing Transmission Lines of 100 kV or Higher, <http://www.maine.gov/mpuc/industries/electricity/electric%20restructuring/ERCProj-PUC-Permit-Description.pdf> (last visited Oct. 1, 2008).

⁴² There may be some overlap between the two inquiries insofar as approval of a CPCN petition gives rise to a rebuttable presumption that a project satisfies section 219’s eligibility requirement; however, CPCN approval is neither necessary to satisfy the section 219 requirement nor sufficient to demonstrate that there is a nexus between the incentive sought and the investment being made.

⁴³ 16 U.S.C. § 824s(b)(1).

2. Section 219 Requirement

a. Protest

41. MMWEC argues that the Commission should deny Central Maine's petition because the Project fails to satisfy section 219's threshold criteria for incentive rate treatment. MMWEC states that to be eligible for incentives under section 219 an applicant must show that its project either ensures reliability or reduces the cost of delivered power by reducing transmission congestion. MMWEC observes that the Commission has established a rebuttable presumption that a project satisfies section 219's threshold requirements if it: (1) 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 (2) has received construction approval from an appropriate state commission or state siting authority. MMWEC asserts that the Project does not currently qualify for either of these rebuttable presumptions because it has not received state siting approval or been included in ISO-NE's RSP. MMWEC acknowledges Central Maine's claim that the Project will be included in the October 2008 RSP, but notes that Central Maine requested approval of its proposed incentives by September 29, 2008.

b. Commission Determination

42. In Order No. 679, the Commission stated that an applicant for transmission incentives must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁴⁴ The Commission established a rebuttable presumption that a project is eligible for incentives under section 219 if it: (1) 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 (2) has received construction approval from an appropriate state commission or state siting authority.⁴⁵ The Commission also

⁴⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

⁴⁵ *Id.* P 57-58. In Order No. 679-A, the Commission clarified 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. Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.⁴⁶

43. We find that the Project does not qualify for either rebuttable presumption because it has neither been approved as an RTU in ISO-NE's RSP nor received final siting approval from the Maine Commission. However, the Project is currently undergoing consideration in the RSP process. Accordingly, we will authorize incentives contingent on the Project receiving final RSP approval as an RTU.

3. Obligation to Build

a. Protest

44. MMWEC and the Joint Protesters contend that the Project should not be eligible for incentives because Central Maine has a contractual obligation to build new transmission included in ISO-NE's RSP, subject to approval by the relevant state siting authorities. MMWEC states that Central Maine already receives a 50 basis point ROE adder for its membership in ISO-NE and contends that it is unreasonable to require customers to pay incentives that compel the performance of Central Maine's contractual obligation. MMWEC acknowledges that the Commission rejected this same argument in *Northeast Utilities*,⁴⁷ where it expressed concern that accepting such a narrow interpretation of the Commission's authority would prevent it from granting an ROE transmission investment incentive under any circumstance. MMWEC states that it disagrees with the Commission's decision in *Northeast Utilities* because refusing incentives in New England, where transmission owners are contractually obligated to build, would not hinder the Commission in granting incentives in regions of the country where transmission owners have not voluntarily assumed the obligation to build.

b. Commission Determination

45. We reject MMWEC's and the Joint Protesters' argument as a collateral attack on *Northeast Utilities*. In *Northeast Utilities*, the Commission rejected the

⁴⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

⁴⁷ *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044, at P 89 (2008) (*Northeast Utilities*).

assertion that projects in ISO-NE's RSP are ineligible for incentives merely because the transmission owner may have a contractual obligation to build them. The Commission found that this argument was a narrow interpretation of Order No. 679 and that accepting it would deny the Commission the ability to exercise the authority it was expressly granted under section 219.⁴⁸ As MMWEC itself acknowledges, it makes the same argument in this proceeding that the Commission rejected in *Northeast Utilities*. Accordingly, we reject the argument as a collateral attack on *Northeast Utilities*.

4. Incentives and the Commission's Nexus Test

a. Protest

46. MMWEC argues that the Project is routine because Central Maine must complete the upgrades to avoid projected future violations of NERC reliability criteria. MMWEC contends that a transmission project whose fundamental benefits purport to be remedying of deficiencies, the reduction of the risk of violations of reliability criteria, and the reduction of the risk of cascading outages, voltage collapses, and widespread blackouts should not be considered "non-routine" because constructing such projects is a transmission owner's core responsibility and a requirement of good utility practice.

47. MMWEC asserts that the size of Central Maine's investment in the Project relative to its transmission investment over the past five years should not justify a finding that the Project is non-routine. MMWEC argues that the size of the investment, both in absolute terms and relative to Central Maine's overall size, is a function of Central Maine's failure to address growing reliability problems in a more timely fashion. MMWEC argues that, at a minimum, the Commission should require Central Maine to explain why corrective action was not taken before the reliability of the regional bulk power system was placed at risk. Absent further explanation, MMWEC contends that Central Maine's need to invest billions of dollars to build new facilities by 2012 is self-imposed and the result of its failure to undertake needed actions in previous years.

48. MMWEC contends that Central Maine has failed to demonstrate that it must build the Project entirely on its own or that it attempted to spread its financial risk through some type of joint participation or similar arrangement that would allow it to self-fund its portion of the Project. MMWEC argues that such arrangements have been used by other incentive applicants, are encouraged by the

⁴⁸ *Id.*

Commission, lessen financial risk, and reduce the need for offsetting incentives. MMWEC asserts that customers should not pay for incentives to offset risks absent a showing that Central Maine has taken all reasonable measures to mitigate those risks. MMWEC argues that when evaluating incentive requests the Commission should consider whether an applicant had the opportunity to arrange a joint participation or similar agreement, and if so, whether it pursued the opportunity. MMWEC argues that Central Maine's failure to address whether it even considered an alternative business model should be taken into account in assessing its justification for incentive rate treatments, and at a minimum, the Commission should not approve incentives unless and until Central Maine explains whether other participation arrangements were considered, and if so, why they were rejected. MMWEC contends that the strategic choice to reject alternative investment options should not provide a basis for incentives. Similarly, MMWEC argues that the Project's cost, while enormous, might have been considerably less if the Project had been implemented in stages over a period of years rather than as a package in the near-term.

49. MMWEC and the Joint Protesters also argue that Central Maine does not need incentives because it already offers investors an 11.64 percent return on investment that is virtually guaranteed because of its formula rates. The Joint Protesters contend that companies with formula rates face materially less risk than those with stated rates because costs can be recovered quickly and with a minimal expenditure of resources. The Joint Protesters claim that where formula rates assure timely recovery of costs, incentive treatment is neither needed nor justified.

50. MMWEC contends that Central Maine has presented no evidence that the Project offers substantial regional (and not merely intra-Maine) benefits. MMWEC states that while Central Maine contends that the Project will result in an increase in capability across the Maine-New Hampshire interface it has presented no assessment of the extent to which this increase will expand the ability to move resources from Maine into southern New England. MMWEC argues that the petition demonstrates that Central Maine proposed the Project to address significant transmission weaknesses within Maine and that Central Maine would have been obligated to build the Project whether or not it provides any ancillary regional benefits.

51. MMWEC argues that if the Commission finds that the Project is not routine it should find that Central Maine has failed to demonstrate that there is a nexus between the incentives being sought and the investment being made because it has failed to show how the incentives address the Project's unique risks and challenges. MMWEC argues that Central Maine has failed to explain how or why the proposed incentives offset, mitigate, or otherwise address the siting challenges posed by the Project. MMWEC adds that unlike the case in *PPL* all of the

Project's siting approvals are within a single state. MMWEC also contends that, with the exception of the possibility that Maine might withdraw from ISO-NE, the regulatory and financial risks cited by Central Maine are not unique to the Project. Additionally, MMWEC argues that Central Maine has failed to demonstrate how its requested incentives address the concern that Maine will withdraw from ISO-NE. Finally, MMWEC also argues that Central Maine has made no showing that the environmental risks it anticipates are unique or mitigated by the requested incentives. MMWEC states that any special measures to minimize or mitigate environmental impacts will increase the Project's *base* cost, which Central Maine will recover through formula rates.

b. Commission Determination

52. 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 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."⁴⁹

53. 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. 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, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).⁵⁰ The Commission also explained that when an applicant has

⁴⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁵⁰ July BG&E Order, 120 FERC ¶ 61,084 at P 52-55.

adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.⁵¹

54. Central Maine has presented evidence on the Project's scope, effect, and risks. Based on this evidence, we find that Central Maine has adequately demonstrated that the Project is not routine, and thus, has sufficiently demonstrated a nexus between the incentives sought and the investment being made.

55. We find that the Project's size and scope indicate that it is not a routine transmission investment. The Project's size is significant because it will involve approximately 485 miles of new and rebuilt transmission lines along an approximately 370 mile transmission corridor. The Project also requires a major capital commitment of approximately \$1.4 billion, which makes it the largest project in Central Maine's history. Over the last five years, Central Maine has spent approximately \$17 million annually on transmission projects. However, the Project will require an average annual investment of nearly \$280 million. The Project is also a substantial financial commitment relative to Central Maine's total transmission plant in service and total electric plant in service. When the Project is completed, Central Maine estimates that its transmission plant in service will be \$1.85 billion—six times more than its existing total transmission plant in service. Similarly, the Project's cost is four to five times the size of Central Maine's current electric transmission plant investment.

56. MMWEC does not dispute the significant size and scope of the Project. Rather, it argues that the Project should be disqualified from receiving incentives because its size and scope are the result of Central Maine's failure to previously address growing reliability problems in a more timely fashion, its decision to build the Project by itself, and its failure to implement the Project in stages over a period of years. MMWEC and the Joint Protesters also argue that the Project does not need incentives because Central Maine has formula rates. We reject these arguments. There is nothing in Order No. 679, Order No. 679-A, or subsequent Commission precedent that requires an applicant for incentives to show that it proposed necessary investment at the earliest sign of a potential problem, addressed reliability concerns in a "timely fashion," investigated joint financing arrangements, will build the Project on a specific timetable, or lacks formula rates. In fact, in *BG&E* and *Duquesne* the Commission granted incentives to applicants

⁵¹ *Id.* P 54.

with formula rates. What is required is that the applicants demonstrate a nexus between the incentives being sought and the investment being made.

57. Similarly, MMWEC does not contest that the Project will have positive effects or that it will face challenges. Rather, it attempts to downplay its positive effects by claiming that they will primarily be felt within Maine and to discount its challenges by claiming that many are self imposed. We disagree and find that the Project will have the effect of reducing congestion by increasing interface transfer capability. The Project will also reduce the range of transmission line losses in Maine by up to one third, increase energy and capacity cost savings by \$35 million to \$60 million, and open access to nearly 1,650 MW of proposed wind generation, 3,000 MW of hydroelectric generation, and 5,000 MW to 7,000 MW of new hydroelectric and wind power under development in Canada.

58. We also find that the Project faces significant siting, construction, regulatory, financial, and environmental risks. For example, Central Maine will encounter siting challenges because the Project's 370 mile transmission corridor is expected to cross approximately 80 municipalities, 23 towns, and require the purchase of nearly 580 parcels of land. Central Maine will also face significant challenges in mitigating the Project's environmental impact because its preferred route crosses over numerous protected natural resources, including rivers, wetlands, vernal pools, streams, and protected habitat. The Project also requires approval from the Maine Department of Environmental Protection, the United States Army Corps of Engineers, the United States Fish and Wildlife Services, and numerous municipalities in Maine. The Project faces the additional unique regulatory risk that Maine will withdraw from ISO-NE. Additionally, the Project requires a lead time of up to 18 months and requires that Central Maine "pre-order" expensive construction materials.

59. We note that MMWEC argues that the Project is routine because Central Maine must complete the upgrades to avoid projected future violations of NERC reliability criteria. We reject this argument. A project is not disqualified from incentive treatment because it remedies potential violations of reliability criteria. On the contrary, section 219 specifically authorizes incentives for transmission projects that ensure reliability.⁵²

⁵² *Id.* P 51 ("It is important to clarify first what the Commission did, and did not, hold in Order Nos. 679 and 679-A [W]e held that routine investments 'to meet existing reliability standards' may not always qualify for incentives. However, we did not hold that, if a project's primary or sole purpose is to maintain reliability, it should not be eligible for incentives. Indeed, to do so would have
(continued...)

60. Finally, MMWEC argues that if the Commission finds that the Project is not routine it should find that Central Maine has failed to demonstrate that there is a nexus between the incentives being sought and the investment being made. We reject this argument as a collateral attack on *BG&E*. In *BG&E*, the Commission explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.⁵³ As we have explained, Central Maine has adequately demonstrated that its Project is not routine.

5. Specific Incentives and Total Package of Incentives

a. Protest

61. MMWEC and the Joint Protesters argue that Central Maine should not receive the total package of incentives requested.

62. MMWEC and the Joint Protesters argue that Central Maine has failed to demonstrate that its current ROE of 11.64 percent is insufficient to attract investment or that it needs an ROE incentive to mitigate risk if the Commission authorizes CWIP. MMWEC and the Joint Protesters argue that by authorizing CWIP Central Maine will maintain solid investment grade bond rating credit metrics in the BBB+/A- range (where it is today).

63. The Joint Protesters argue that granting an ROE adder in addition to CWIP extracts money from ratepayers without any justification. The Joint Protesters note that, unlike other cases where the Commission has authorized an ROE incentive, Central Maine's bond rating has not been recently downgraded and its credit outlook has not been described by credit rating agencies as "negative."⁵⁴

been to disregard the plain language of section 219, which required the Commission to adopt a rule that 'promote[s] reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce.'") (internal citations omitted).

⁵³ *Id.* P 54.

⁵⁴ Joint Protesters at 13 (citing *United Illuminating Co.*, 119 FERC ¶ 61,182, at P 64 (2007); *PPL*, 123 FERC ¶ 61,068 at P 6.).

The Joint Protesters also argue that granting abandonment will eliminate any remaining credit risk. The Joint Protesters state that abandonment coupled with CWIP should insulate Central Maine, its lenders, and its equity investors from the investment risks associated with the Project. The Joint Protesters state that authorizing the requested ROE adder would raise Central Maine's ROE to 13.14 percent and raise the Project's cost (assuming that there are no major cost overruns) to between \$4.20 and \$4.38 billion.⁵⁵

64. Similarly, MMWEC and the Joint Protesters argue that Central Maine's concerns about cash flow can be addressed by authorizing CWIP and abandonment. MMWEC and the Joint Protesters assert that Central Maine has failed to show that these incentives, coupled with its current 11.64 percent ROE, are inadequate to finance the Project. MMWEC argues that an ROE incentive is not necessary to protect Central Maine against the possibility that significant cancellation costs will result if the Project does not receive the requisite regulatory approvals. MMWEC argues that this concern can be addressed by providing assurance that prudently-incurred costs will be recovered.

65. MMWEC and the Joint Protesters argue that Central Maine has failed to demonstrate that it requires an ROE adder at or near the high end of the zone of reasonableness. MMWEC cites *Bangor Hydro-Electric Co.* to show that not every rate within the zone is *per se* just and reasonable.⁵⁶ MMWEC and the Joint Protesters argue that Central Maine has failed to show that a 150 basis point adder is justified, given its formula rate and the prospect that the Commission will authorize abandonment and CWIP. MMWEC argues that Central Maine cannot distinguish this case from *PPL*, where the Commission reduced a requested ROE adder of 150 basis points to 125 basis points.

66. The Joint Protesters argue that Central Maine's request for an ROE adder and its request for CWIP are redundant. The Joint Protesters contend that Central Maine has made only two original arguments for its requested ROE adder: (1) that a 150 basis point adder is appropriate because the Commission has granted 100 and 125 basis point adders for projects smaller in scope; and (2) "equitable considerations" require granting a 150 basis point adder.

67. The Joint Protesters contend that the Commission should not authorize the ROE incentive merely because it has authorized large adders in other cases

⁵⁵ *Id.* at 14.

⁵⁶ *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038, at P 11 (2008).

because this says nothing about whether Central Maine has met its burden of justifying its requested ROE adder or whether an ROE at the high end of the zone of reasonableness is just and reasonable. Similarly, the Joint Protesters reject Central Maine's equity argument as a collateral attack on the Opinion No. 489 Rehearing Order, which restricted the 100 basis point ROE to projects completed by December 2008. Moreover, the Joint Protesters argue that Central Maine cannot rely on Opinion No. 489 because in undertaking the studies and initial planning for the Project, it was only meeting its contractual obligations.

68. The Joint Protesters also state that Central Maine's request for an ROE adder neglects the fact that a substantial incentive is already built into Central Maine's rate. The Joint Protesters explain that in Opinion No. 489 the Commission granted a base level ROE of 10.4 percent, which it increased to reflect the change in bond prices. The Joint Protesters assert that Central Maine seeks a very high ROE adder in addition to the adder that was granted in the Opinion No. 489 Rehearing Order, which the Joint Protesters claim is no longer justified because of falling bond yields. The Joint Protesters argue that the Commission should either revise the range of reasonableness or consider the requested adder subsumed by the changed conditions and thus no longer necessary.⁵⁷ The Joint Protesters assert that the Commission should either adjust Central Maine's ROE to reflect current bond yields or the New England Transmission Owners' ROE should be set for hearing in order to determine whether the ultimate rate is just and reasonable.

69. Finally, the Joint Protesters argue that if the Commission authorizes an ROE adder it should be reduced because it is authorized up-front rather than at the end of the project.

b. Commission Determination

i. ROE Incentive

70. We find that Central Maine has demonstrated that the Project is non-routine and that the significant risks and challenges faced by the Project warrant the granting of an ROE incentive. Central Maine faces siting risks because the Project

⁵⁷ The Joint Protesters state that the Commission has determined that, even when a base ROE was established in a settlement, hearing procedures would be established to determine the utility's overall range of reasonableness and a determination of where, within that range, its base level ROE should be set *Duquesne*, 118 FERC ¶ 61,087 at P 57.

is expected to be built along a 370 mile transmission corridor, cross approximately 80 municipalities, and require the purchase of nearly 580 parcels of land. Central Maine faces construction risks because the Project has an accelerated construction schedule and requires the pre-ordering of costly construction materials. Central Maine faces regulatory risks because the Project must be approved by at least two state agencies, two federal agencies, and potentially 80 municipalities. Central Maine faces environmental risks because the Project's preferred route crosses sensitive environmental areas and will require Central Maine to adjust its construction process. Central Maine also faces significant financial risks, given the magnitude of the Project's \$1.4 billion cost. Our decision to authorize an ROE incentive is consistent with section 219's goal of encouraging transmission investment.

71. Although Central Maine has sufficiently demonstrated that the Project faces risks and challenges that warrant an ROE incentive, we agree with MMWEC and the Joint Protesters that a 150 basis point adder is not justified in this case. We find that Central Maine's overall risk is reduced by our decision, discussed below, to authorize the requested CWIP and abandonment incentives. Accordingly, based on the facts of this case and as discussed below,⁵⁸ we authorize a 125 basis point ROE incentive adder for the Project,⁵⁹ to be bound by the upper end of the zone of reasonableness established in Opinion No. 489. This ROE incentive is contingent upon the Project being approved as an RTU in ISO-NE's RSP. In Opinion No. 489, the Commission determined a low-end ROE of 7.3 percent, as represented by Consolidated Edison, Inc. (Con Ed), and a high-end ROE of 13.1 percent, as represented by PPL Corporation (PPL). The Commission then set the New England Transmission Owners' base-level ROE at the 10.2 percent midpoint.⁶⁰

72. The Opinion No. 489 Rehearing Order modified the high-end implied cost of equity and the midpoint ROE for the New England Transmission Owners.⁶¹ As

⁵⁸ See *infra* P 88.

⁵⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 6 ("If some of the incentives in the package reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE.").

⁶⁰ Opinion No. 489 Rehearing Order, 122 FERC ¶ 61,265 at P 8.

⁶¹ *Id.* P 9-13; 19-22.

a result, the zone of reasonableness for the New England Transmission Owners is 7.3 percent to 13.5 percent,⁶² with a midpoint ROE of 10.4 percent,⁶³ a 0.2 percent increase from Opinion No. 489.

73. The “going-forward” ROE for New England Transmission Owners is 11.64 percent, including the 50-basis point incentive for RTO participation and the 74-basis point adjustment reflecting updated bond data, applicable as of November 1, 2006 (10.4 + 0.5 + 0.74).⁶⁴ Our granting of a 125 basis point adder, in conjunction with its 11.64 percent base level ROE as determined by the Opinion No. 489 Rehearing Order, results in a 12.89 percent ROE (10.4 + 0.5 + 0.74 + 1.25) and falls within the upper range of the zone of reasonableness of 7.3 percent to 13.5 percent.

74. We reject the Joint Protesters claim that a recent decline in U.S. Treasury bond yields makes the 74-basis point upwards adjustment to the current New England Transmission Owners’ midpoint ROE inappropriate under current market conditions.⁶⁵ While it is true that the bond yields upon which the adjustment to

⁶² On rehearing, the New England Transmission Owners argued that the Commission incorrectly calculated the “r” factor in the $br + sv$ growth rate formula due to a failure to use an updated exhibit. The use of the updated exhibit would have caused the original high-end implied cost of equity of 13.1 percent to be increased to 13.7 percent, in order to take into account that the “r” amount for PPL increased from 15.6 percent to 16.5 percent when it is calculated employing a methodology largely similar to the one that the Commission used for *SoCal Edison*, 92 FERC ¶ 61,070, at 61,623 (2000) (*SoCal Edison*). The Commission accepted this revision for PPL, but also determined that the *Value Line* inputs for “r”, as required by *SoCal Edison*, were not calculated using the proper inputs. The exhibits calculated “r” by dividing end-of-the-year earnings per share (EPS) by the end-of-the-year book value per share (BV), which resulted in an “r” value for PPL of the aforementioned 16.5 percent. Rather than using the EPS / BV calculation, the use of the *Value Line* “return on common equity” input lowers the “r” value for PPL for the $br + sv$ growth rate by 0.2 percent, from 16.5 percent to 16.3 percent, and the implied high-end ROE proportionally by 0.2 percent, from 13.7 percent to 13.5 percent.

⁶³ Opinion No. 489 Rehearing Order, 122 FERC ¶ 61,265 at P 22.

⁶⁴ *Id.* at P 2-3.

⁶⁵ Kivela Affidavit at P 6-13.

the midpoint ROE in Opinion No. 489 was made have declined approximately 120 basis points, this is only one element that determines the midpoint and it has no impact on the zone of reasonableness. The 74 basis point bond adjustment applies only to the midpoint ROE and does not apply to either the low-end or high-end implied cost of equity.

75. Given the time that has elapsed since Opinion No. 489 was issued, we believe that it is appropriate to perform a discounted cash flow analysis using more recent data to verify that those findings are still valid. The Commission recently performed a similar analysis based on the Opinion No. 489 methodology in *VEPCO*.⁶⁶ In *VEPCO*, the Virginia Electric and Power Company (VEPCO) began with a similar group of fifteen northeast transmission owners⁶⁷ for its proxy group before additional screens were applied and reduced the proxy group. Central Maine and VEPCO are both rated BBB+ by Standard & Poor's, which results in companies rated below BBB or above A- being screened out of the proxy group.⁶⁸ VEPCO's proxy group thus provides a reasonable comparison for determining the zone of reasonable returns for Central Maine. In *VEPCO*, the zone of reasonableness was determined to be 9.46 percent to 14.4 percent,⁶⁹ so the 12.89 percent ROE granted to Central Maine falls well within this range. Therefore, the zone of reasonableness approved in *VEPCO* demonstrates that the continued use of the New England Transmission Owners' zone of reasonableness of 7.3 percent to 13.5 percent is appropriate.

76. With respect to the Joint Protesters' claim that the premium to book value that Iberdrola S.A. has offered to acquire Energy East (Central Maine's parent)

⁶⁶ *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 (2008) (*VEPCO*).

⁶⁷ These fifteen transmission owners all belong to ISO-NE, the New York Independent System Operator, Inc., or PJM Interconnection, L.L.C.

⁶⁸ In addition to the screening the utilities based upon their corporate credit ratings, the VEPCO proxy group also excludes: (1) utilities that are not currently paying cash dividends; (2) utilities that have announced a merger during the six-month period used to calculate the dividend yields; (3) utilities primarily operating as natural gas companies; (4) utilities that do not have both an IBES (International Brokers Estimation System) growth rate and *Value Line* data; and (5) utilities with unsustainably high growth rates.

⁶⁹ *VEPCO*, 124 FERC ¶ 61,207 at P 120.

implies that investors require an ROE below 11.0 percent,⁷⁰ we dismiss this argument for the following reasons. Investors consider many factors when valuing companies in acquisitions beyond the price to stated book value, including various measures of price to estimated future cash flows and earnings as well as current asset replacement costs. Due to the historic cost nature of book value, which does not take into account the inflation of depreciated asset values, it is not unusual for a company to pay a sizable premium to book value in an acquisition and this fact does not necessarily have implications for the ROE demanded by investors to finance a new transmission project. In addition, Central Maine, with about 600,000 electric customers, represents just one of the six major electric and gas subsidiaries of Energy East,⁷¹ which has over 2.7 million electric and gas customers according to *Value Line*. As Central Maine represent less than one-quarter of Energy East's customer base and the Project may have a much higher risk profile than Energy East as a whole, we believe it is inappropriate to attempt to relate the implied ROE in a merger between Iberdrola S.A. and Energy East to the ROE incentive requested and granted by the Commission in this proceeding.

ii. **CWIP**

77. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.⁷² The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.⁷³

78. We find that Central Maine has shown a nexus between the proposed CWIP incentive and its investment in the Project. Central Maine's investment in the Project is four to five times its current electric transmission plant investment

⁷⁰ Kivela Affidavit at P 18-22.

⁷¹ Other major subsidiaries of Energy East include New York State Electric & Gas, Rochester Gas & Electric, Connecticut Natural Gas, Southern Connecticut Gas, and Berkshire Gas.

⁷² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁷³ *Id.* P 115.

and will result in an estimated transmission plant in service which is six times its existing total transmission plant in service. Moreover, the Project is the largest transmission project in Central Maine's history.

79. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP will enhance Central Maine's cash flow, reduce interest expense, assist Central Maine with financing, and improve the coverage ratios used by rating agencies to determine Central Maine's credit quality by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a down grade in Central Maine's debt ratings. Considering the relative size of Central Maine's \$1.4 billion investment in the Project, we find that authorization of the CWIP incentive is appropriate. This CWIP incentive is contingent upon the Project being approved as an RTU in ISO-NE's RSP.

80. We also find that allowing Central Maine to recover 100 percent of CWIP in its rate base will result in better rate stability for customers. As we have explained in prior orders,⁷⁴ when certain large-scale transmission projects come on line, there is a risk that consumers may experience "rate shock" if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of the Project can be spread over the entire construction period and will help consumers avoid a return on and of capitalized AFUDC.⁷⁵

81. We disagree with MMWEC and Joint Protesters' argument that authorizing an ROE incentive and CWIP is redundant. These incentives address different risks and challenges, and granting recovery of 100 percent of CWIP in rate base will provide benefits to consumers and Central Maine, as discussed above.

82. Our acceptance of Central Maine's proposal to recover 100 percent of CWIP in rate base is conditioned upon Central Maine fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities in its future section 205 filing.⁷⁶ In its future section 205 filings to implement a stand-alone

⁷⁴ See, e.g., *American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007); *PPL*, 123 FERC ¶ 61,068 at P 40-P 43.

⁷⁵ *Id.*

⁷⁶ *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455 (1983), *order on reh'g*, Order No. 298-B, FERC Stat. & Regs. ¶ 30,524 (1983).

balancing account mechanism to recover the CWIP revenue requirement, Central Maine must provide a detailed explanation of its accounting methods and procedures to: (1) implement the stand-alone balancing account, (2) comply with 18 C.F.R. § 35.13(h)(38) and § 35.25, and (3) maintain comparability of financial information.⁷⁷ Finally, since recovery of CWIP on a formula basis is not permitted without prior Commission review to ensure the CWIP standards are met, Central Maine must submit annual FERC-730 reports.⁷⁸

iii. Abandonment

83. Central Maine requests recovery of 100 percent of prudently incurred costs in the event that the Project is abandoned for reasons beyond its control. In Order No. 679, the Commission found that abandonment is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁷⁹ We find that Central Maine has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. Thus, we will grant Central Maine's request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is a result of factors beyond the Central Maine's control, which must be demonstrated in any subsequent section 205 filings for recovery of abandoned plant.⁸⁰

84. We find that this incentive will be an effective means to encourage the Project's completion. For example, in addition to the challenges presented by its scope and size, the Project requires approvals from multiple municipalities within Maine, state siting authority, and various federal approvals. Moreover, the Project risks cancellation should it fail to receive state siting authority. These factors introduce a significant element of risk; authorizing abandonment will help ameliorate this risk by providing Central Maine with some degree of certainty as it moves forward.

⁷⁷ See, e.g., *American Transmission Co., LLC*, 105 FERC ¶ 61,388 (2003), *order granting clarification*, 107 FERC ¶ 61,117, at P 16-17 (2004); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 44-45, *reh'g denied*, 121 FERC ¶ 61,009 (2007) (*TrAILCo*), *PPL*, 123 FERC ¶ 61,068 at P 45.

⁷⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 121.

⁷⁹ *Id.* P 163.

⁸⁰ *Id.* P 165-66.

85. We will not determine the justness and reasonableness of Central Maine's abandoned plant recovery, if any, until Central Maine seeks such recovery in a section 205 filing. Order No. 679 specifically reserves the prudence determination for the later section 205 filing which every utility is required to make if it seeks abandonment recovery.⁸¹ At this stage of the proceeding, we are granting this incentive, subject to Central Maine making the appropriate demonstration in a future section 205 filing.

iv. Total Package of Incentives

86. As we have stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.⁸²

87. We find that Central Maine has shown that the total package of incentives is tailored to address the demonstrable risks and challenges faced by the Project.⁸³ As we have stated, Central Maine faces significant risks and challenges in constructing the Project; we agree with Central Maine that authorizing the ROE incentive, CWIP, and abandonment will encourage investors to invest in the Project despite these risks.

88. Order No. 679-A provided that if some of the incentives in the total package of requested incentives reduce a project's risk, the Commission will take that fact into account when considering any request for an enhanced ROE.⁸⁴ While Central Maine's requested incentives fall within the scope of incentives

⁸¹ *Id.* P 165-66.

⁸² *See id.* P 55; *see also, e.g., Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at 60,122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne*, 118 FERC ¶ 61,087 at P 55 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery), *PPL*, 123 FERC ¶ 61,068 at P 39, 42, 46 (approving ROE at the upper end of the zone of reasonableness, 100 percent CWIP, and 100 percent abandoned plant recovery).

⁸³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

⁸⁴ *Id.* P 8.

outlined in Order No. 679, we find that authorizing CWIP and abandonment reduce its overall risk. The ability to include CWIP in rate base will result in an infusion of cash and reduced financial risk during construction. Moreover, an entity allowed to include CWIP in rate base is not required to refund the prudently-incurred costs collected.⁸⁵ Similarly, abandonment ensures that investors will recover a return on and investment, thereby further reducing financial risk associated with these investments.⁸⁶ Accordingly, we find that a 125 basis point ROE adder (rather than 150 basis points) for the Project is warranted.⁸⁷

89. Finally, we deny the Joint Protesters' request to set this matter for hearing. In general, the Commission sets matters for a trial-type evidentiary hearing only to resolve material issues of law and fact. In this case, however, since Central Maine has satisfied the requirements of Order No. 679 based on the record presented in its petition, we conclude that setting this matter for hearing is not appropriate.

⁸⁵ *Id.* P 116 (“[W]here an applicant has satisfied our nexus requirement and has been granted authority to recover CWIP or abandoned plant, and subsequently the applicant’s project is unable to obtain state or federal siting authority (and thus no showing is made with respect to ensuring reliability or reducing the cost of delivered power by reducing congestion because the applicant was relying upon those processes) we would not require refunds for the costs already prudently-incurred by the applicant. To require refunds in such circumstances would be contrary to our long-standing policy, which permits recovery of all prudently-incurred costs.”) (original footnote omitted).

⁸⁶ *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 167 (“[A] utility that receives approval to recover abandoned plant in rate base would likely face lower risk and thus may warrant a lower ROE than would otherwise be the case without this assurance.”).

⁸⁷ *See S. Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007); *reh’g denied*, 123 FERC ¶ 61,293 (2008).

The Commission orders:

The petition for declaratory order is hereby conditionally granted, with one modification, subject to ISO-NE including the Project in the RSP as an RTU, as discussed in the body of this order.

By the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement to be issued at a later date.
Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Maine Power Company

Docket No. EL08-74-000

(Issued October 20, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

The majority authorizes a 125 basis point incentive ROE adder for Central Maine in connection with the Maine Power Reliability Program Project. Because of my concerns about certain aspects of Central Maine's application, I would grant Central Maine a smaller incentive ROE adder. Therefore, I dissent in part.

As I have discussed previously, I believe that consideration of advanced technologies and their associated risks and challenges is an appropriate component of the nexus analysis that the Commission conducts in evaluating applications for incentives under Order No. 679.¹ I also stated nearly two years ago that I expected to see a more thorough evaluation of the feasibility of using state-of-the-art technologies in future applications for incentive rate treatments.² Although Central Maine characterized a short section of its application as a "Technology Statement,"³ I believe that Central Maine has failed to provide enough detail about its proposed use of advanced technologies in this project to warrant an incentive ROE adder that would reflect the risks and challenges associated with such technologies. I continue to encourage future applicants for incentive ROE adders to provide more detailed information on this important issue.

Nonetheless, it is noteworthy that the subject project will significantly increase the availability of renewable energy resources. Central Maine states that this project could provide reliable access to a portion of the substantial wind and hydroelectric power that is under development in Maine, Quebec, New Brunswick, and Newfoundland and Labrador.⁴ I have stated previously that amid heightened concerns about climate change

¹ See, e.g., *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (dissent in part of Commissioner Wellinghoff at 1-4); *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044 (2008) (dissent of Commissioner Wellinghoff at 2-3).

² See *American Elec. Power Serv. Corp.*, 118 FERC ¶ 61,041 (2007) (concurrence of Commissioner Wellinghoff at 6).

³ Petition at 37-39. See also Smith Affidavit at 16.

⁴ Petition at 26.

and dependence on foreign oil, it is essential that our country take steps to accelerate the integration of clean, reliable, domestic renewable energy resources into our energy portfolio.⁵ In light of the broad and substantial benefits associated with increasing the availability of renewable energy resources, I continue to believe that it is appropriate for the Commission to provide investment incentives in this area. I caution, however, that in granting such incentives, it remains important for the Commission to promote the use of intelligent and efficient technologies that optimize operation of the facilities at issue. Balancing these considerations, I would grant Central Maine a 75 basis point incentive ROE adder for this project.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

⁵ See *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (concurrence of Commissioner Wellinghoff at 2).