

135 FERC ¶ 61,244  
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.

Northeast Transmission Development, LLC

Docket No. EL11-33-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 16, 2011)

1. On April 6, 2011, Northeast Transmission Development, LLC (Northeast Transmission) filed a petition for a declaratory order (Petition) pursuant to section 219 of the Federal Power Act (FPA),<sup>1</sup> Rule 207 of the Commission's Rules of Practice and Procedure,<sup>2</sup> and Order No. 679<sup>3</sup> seeking approval of certain transmission rate incentives in connection with two proposed transmission projects, the Liberty East Project and the Kanawha Project (collectively, Projects).

2. As discussed herein, the Commission grants and denies, in part, Northeast Transmission's application. The Commission conditionally grants the request for transmission rate incentives including: (i) deferred recovery of pre-commercial costs through a regulatory asset, (ii) recovery of abandonment costs for each project, provided that the abandonment is a result of factors beyond Northeast Transmission's control, (iii) a 50 basis point return on equity (ROE) adder for Regional Transmission Organization (RTO) participation, and (iv) a 30-year depreciable life for each project. The Commission grants Northeast Transmission's incentive rate requests contingent on PJM Interconnection, L.L.C. (PJM) including the Liberty East Project and the Kanawha Project as economic enhancements in the Regional Transmission Expansion Plan (RTEP) through its regional planning process. However, the Commission rejects Northeast

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<sup>1</sup> 16 U.S.C. § 824s (2006); Energy Policy Act of 2005, Pub. L. No. 109-58, 1241, 119 Stat. 594, 961-62 (2005) (EPAAct 2005).

<sup>2</sup> 18 C.F.R. § 385.207 (2011).

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

Transmission's request for authorization to use a forward-looking formula rate subject to true-up, without prejudice to Northeast Transmission providing additional justification for such a rate in a subsequent proceeding.

## **I. Background**

### **A. Description of Northeast Transmission**

3. Northeast Transmission is a non-incumbent transmission developer whose business is to develop, own, and operate high-voltage transmission facilities in the PJM service area. Northeast Transmission is a member of the LS Power Group, which has been involved in the development, construction, or operation of over 20,000 MW of generation in the United States.<sup>4</sup> LS Power Group affiliates are engaged in transmission development and have planned over 1,000 miles of transmission to help deliver renewable resources, reduce constraints, and/or increase reliability. Among other projects, LS Power Group affiliates are building a portion of the Texas renewable transmission projects known as "CREZ" and building a 500 kV transmission line in Nevada.<sup>5</sup>

### **B. Description of the Projects**

4. Northeast Transmission estimates that the proposed Liberty East Project will consist of approximately 30 miles of a new, single or double circuit 230 kV transmission line in southeastern Pennsylvania from the Hunterstown substation to a new Conewago substation, which would be located in York County, Pennsylvania near the intersection of the existing Jackson-Three Mile Island 230 kV lines and the existing West Shore-Brunner Island 230 kV transmission lines. The Liberty East Project is estimated to cost \$110 million to \$140 million for single-circuit configuration or \$130 million to \$165 million for double-circuit configuration.<sup>6</sup> Northeast Transmission anticipates that the Liberty

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<sup>4</sup> The LS Power Group consists of LS Power Development, LLC, a Delaware limited liability company owned by private individuals and associated entities and the primary operating company for the group; LS Power Associates, L.P.; and their affiliates and controlled subsidiaries. *See* LS Power Marketing, LLC, Updated Market Power Analysis, Docket No. ER96-1947-029 (Jul. 30, 2010).

<sup>5</sup> *See Central Transmission, LLC*, 135 FERC ¶ 61,145, at n.5 (2011) (*Central Transmission*) (citing LS Power Group's recent press announcements of new transmission development projects).

<sup>6</sup> Northeast Transmission Petition at 8.

East Project will meet the PJM Benefit/Cost Ratio threshold for economic enhancements under the 2010 RTEP protocol<sup>7</sup> and reduce costs for customers in PJM. Northeast Transmission states that PJM's preliminary analysis indicates that the Liberty East Project passed with a Benefit/Cost Ratio of 2.28 to one for single-circuit configuration and 2.13 to one for double-circuit configuration. According to Northeast Transmission, the total estimated project benefits of the Liberty East Project over 15 years, on a net present value basis, are anticipated to be approximately \$475 million, with net PJM customer savings of approximately \$265 million for single-circuit configuration, and approximately \$525 million, with net customer savings of approximately \$275 million for double-circuit configuration.

5. Northeast Transmission anticipates that the Liberty East Project will address critical congestion issues in and around Pennsylvania including the 5004/5005 Interface congestion, which according to Northeast Transmission, is consistently listed as a top 10 PJM constraint. Northeast Transmission explains that the market simulation results presented to the October 6, 2010 PJM Transmission Expansion Advisory Committee (TEAC) meeting indicated that the 5004/5005 Interface was anticipated to create a total of \$287.6 million in congestion charges to PJM customers in 2010, which is 17 percent of the entire \$1.6 billion PJM-projected congestion costs in 2010.

6. Northeast Transmission estimates that the proposed Kanawha Project will consist of approximately 100 miles<sup>8</sup> of a new, single or double circuit 345 kV transmission line in West Virginia and Virginia from the existing Kanawha River substation to the existing Bath County substation. The Kanawha Project is estimated to cost \$190 million to \$240 million for single-circuit configuration or \$225 million to \$325 million for double-circuit configuration.<sup>9</sup> Northeast Transmission anticipates that the Kanawha Project will meet the PJM Benefit/Cost Ratio threshold for economic enhancements under the 2010 RTEP protocol and reduce costs for customers in PJM. Northeast Transmission states that PJM's preliminary analysis indicates that the Kanawha Project passed with a Benefit/Cost Ratio of 3.34 to one for single-circuit configuration and 3.27 to one for

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<sup>7</sup> See PJM Operating Agreement, Schedule 6, Regional Transmission Expansion Planning Protocol. PJM uses a Benefit/Cost Ratio to determine whether an economic enhancement or expansion will be included in the RTEP process. To be included, a project's benefit/cost ratio must meet a threshold of at least 1.25 to one. Economic expansions (also referred to as market efficiency expansions) are those that will reduce the costs of meeting load but are not needed to meet load reliably.

<sup>8</sup> Northeast Transmission Petition at 22.

<sup>9</sup> Northeast Transmission Petition at 9.

double-circuit configuration. According to Northeast Transmission, the total estimated project benefits over 15 years, on a net present value basis, are anticipated to be approximately \$1.2 billion, with net PJM customer savings of approximately \$800 million for single-circuit configuration, and approximately \$1.6 billion, with net customer savings of approximately \$1.0 billion for double-circuit configuration.

7. Northeast Transmission anticipates that the Kanawha Project will address critical congestion issues in and around the AP South Interface, which according to Northeast Transmission, is consistently listed as a top PJM constraint. Northeast Transmission explains that the market simulation results presented to the October 6, 2010 PJM TEAC meeting indicated that the AP South Interface was the most expensive transmission constraint in PJM and would cost PJM customers \$401.9 million in congestion charges in 2010, which is 24 percent of the entire \$1.6 billion congestion costs projected PJM-wide in 2010. Northeast Transmission further explains that PJM projected future congestion costs, using 2010 assumptions, at the AP South Interface at \$909.3 million to PJM customers in 2013, \$803.6 million to PJM customers in 2016, and \$801.7 million to PJM customers in 2019.

8. According to Northeast Transmission, other variations in the configuration of the Projects may be developed by Northeast Transmission and PJM in an effort to optimize the projects' benefits. Northeast Transmission states in its Petition that the requested incentives are intended to apply to these variations, and that it is not aware of any potential changes to the Projects at this time.<sup>10</sup>

### **C. Technology Statement**

9. Although Northeast Transmission is not requesting incentives for the use of innovative transmission technologies, it provides an advanced technology statement in its Petition as required by Order No. 679.<sup>11</sup> Northeast Transmission explains that it anticipates deploying several advanced transmission technology elements for the Liberty East and Kanawha Projects. Northeast Transmission notes that the Liberty East Project will incorporate fiber-optic technologies via optic cables in the shield wire; microprocessor-based protective relays; microprocessor-based supervisory control and data acquisition (SCADA) equipment for real-time monitoring and control; digital fault recorders; advanced conductor for the entire length of the line and application of IEC 61850 substation communication standards for wide area substation-to-substation communications. Northeast Transmission notes that the Kanawha Project will

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<sup>10</sup> Northeast Transmission Petition at 9 n.16.

<sup>11</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 302.

incorporate optical ground wires, microprocessor-based protective relays, microprocessor-based SCADA equipment for real-time monitoring and control; and digital fault recorders.

10. Northeast Transmission states that the proposed deployment of microprocessor-based relays and digital fault recorders will automatically assist reliability and operations with minimum intervention by the transmission operator. These technologies will perform self-diagnostic activities and report corrective action. Northeast Transmission states that these features reduce the potential for damage to other facilities and provide critical information on system disturbances.<sup>12</sup>

11. Northeast Transmission states that these technologies meet Order No. 679 and EPCRA 2005 standards because they will increase the capacity, efficiency, or reliability of the Projects and the interconnected transmission system.<sup>13</sup> Although the Projects will use advanced technology, Northeast Transmission does not seek any additional rate incentive for such use.

**D. Requested Effective Date**

12. Northeast Transmission requests the Commission issue an order within sixty days of the filing of its Petition, and requests an effective date of June 6, 2011. Relevant to this proceeding, Northeast Transmission indicates its intent to become a transmission owner in PJM by executing the Transmission Owners Agreement and turn over operational control of the Projects to PJM. Northeast Transmission indicates that it anticipates that PJM will designate it to be responsible for constructing and owning the Liberty East Project and the Kanawha Project as soon as the summer of 2011.

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<sup>12</sup> Northeast Transmission explained that it also considered employing other advanced technologies including high-temperature low-sag conductors and underground cables; however, it does not anticipate using them at this time. Northeast Transmission Petition at 35.

<sup>13</sup> Northeast Transmission provides a caveat to the effect that, as market efficiency projects, the additional cost of using advanced technology must be balanced with the benefits. Northeast Transmission also states that actual use of advanced technologies is dependent on final engineering, cost assessments and scope of work coordination between Northeast Transmission and the owner of substations to which the Projects will interconnect.

## II. Notice of Filing and Responsive Pleadings

13. Notice of Northeast Transmission's petition was published in the *Federal Register*, 76 Fed. Reg. 20,973 (2011), with interventions, comments, and protests due May 6, 2011. Timely motions to intervene were filed by Exelon Corporation, Dominion Resources Services, Inc.,<sup>14</sup> Baltimore Gas and Electric Company, PHI Companies,<sup>15</sup> FirstEnergy Service Company,<sup>16</sup> Duquesne Light Company, PSEG Companies,<sup>17</sup> ITC Companies,<sup>18</sup> PPL PJM Companies,<sup>19</sup> and Old Dominion Electric Cooperative. The Pennsylvania Public Utility Commission submitted a notice of intervention. American Electric Power Service Corporation (AEP)<sup>20</sup> and the Joint Consumer Advocates (the Joint

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<sup>14</sup> Dominion Resources Services, Inc. filed on behalf of Virginia Electric and Power Company.

<sup>15</sup> PHI Companies consist of Pepco Holdings, Inc., Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company.

<sup>16</sup> FirstEnergy Service Company filed two motions to intervene: (1) on behalf of itself and its affiliates Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, American Transmission Systems, Inc., The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company, and Pennsylvania Power Company and (2) on behalf of its load-serving and transmission owning affiliates – The Cleveland Electric Illuminating Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, The Toledo Edison Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, FirstEnergy Solutions Corp., American Transmission Systems, Incorporated and Trans-Allegheny Interstate Line Company.

<sup>17</sup> PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade, LLC.

<sup>18</sup> ITC Companies consist of International Transmission Company; Michigan Electric Transmission Company, LLC; ITC Midwest LLC; and ITC Great Plains, LLC.

<sup>19</sup> The PPL PJM Companies consist of PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC.

<sup>20</sup> AEP filed on behalf of its affiliates Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power

(continued...)

Advocates)<sup>21</sup> filed timely motions to intervene and comments. The Designated PJM Transmission Owners (PJM Transmission Owners) filed a protest.<sup>22</sup> Northeast Transmission filed an answer in response to the comments and protest.

### **III. Discussion**

#### **A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>23</sup> the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and/or an answer unless otherwise ordered by the decisional authority.<sup>24</sup> We are not persuaded to accept Northeast Transmission's answer and will, therefore, reject it.

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Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company.

<sup>21</sup> The Joint Advocates include the Pennsylvania Office of Consumer Advocate, Maryland Office of People's Counsel, New Jersey Division of Rate Counsel, West Virginia Consumer Advocate Division, Delaware Division of the Public Advocate, and the Virginia Division of Consumer Counsel.

<sup>22</sup> The PJM Transmission Owners are AEP, on behalf of its affiliates Baltimore Gas and Electric Company, Duquesne Light Company, Exelon Corporation, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company and Trans-Allegheny Interstate Line Company; PHI Companies; The PPL PJM Companies; PSEG Companies; and Virginia Electric and Power Company, doing business as Dominion Virginia Power.

<sup>23</sup> 18 C.F.R. § 385.214 (2011).

<sup>24</sup> 18 C.F.R. § 385.213(a)(2) (2011).

**B. Rate Incentive Requests**

16. Northeast Transmission requests rate incentives under section 219 of the FPA and Order No. 679. Northeast Transmission seeks separate rate incentives for its Liberty East Project and the Kanawha Project. Specifically, Northeast Transmission seeks (1) deferred recovery of pre-commercial costs through the creation of a regulatory asset for each project, (2) full recovery of prudently-incurred costs if the Liberty East Project or the Kanawha Project is abandoned after inclusion in the PJM RTEP for reasons beyond Northeast Transmission's control, (3) a ROE adder of 50 basis points for participating in a Regional Transmission Organization (RTO), contingent on Northeast Transmission's ROE being within the zone of reasonableness with the RTO adder included, and (4) a 30-year depreciable life for each project when Northeast Transmission submits its FPA section 205 filing seeking cost recovery. In addition, Northeast Transmission seeks a declaration that it is appropriate to recover its costs through a forward-looking formula rate subject to a true-up under the PJM tariff.

**1. FPA Section 219 Requirements****a. Ensuring Reliability/Reducing Congestion**

17. In the Energy Policy Act of 2005, Congress added section 219 to the FPA,<sup>25</sup> directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Northeast Transmission.<sup>26</sup> In Order No. 679, the Commission 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.<sup>27</sup>

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<sup>25</sup> Pub. L. No. 109-58, 119 Stat. 594, § 1241.

<sup>26</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062.

<sup>27</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

18. 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.<sup>28</sup> 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.<sup>29</sup> The Commission also 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.<sup>30</sup>

**i. Northeast Transmission's Proposal**

19. Northeast Transmission states that the proposed rate incentives and treatments will be subject to the Projects' approval in the RTEP. Northeast Transmission indicates that it anticipates that PJM will designate it to be responsible for constructing and owning the Projects in the summer of 2011. Market simulation results and PJM analysis of each project was presented at the October 6, 2010 and February 3, 2011 PJM TEAC meetings, respectively.<sup>31</sup> Northeast Transmission asserts that if PJM approves the Projects for inclusion in the RTEP as an economic enhancement, the Projects will meet Order No. 679's rebuttable presumption and qualify for rate incentives since the Projects will result from a fair and open regional planning process.<sup>32</sup>

**ii. Comments and Protests**

20. AEP states that Northeast Transmission's reliance on the 2010 RTEP process to support the Projects' benefits is misplaced. AEP notes that PJM plans to re-evaluate the Projects using the 2011 market efficiency analysis as part of the 2011 RTEP because of

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<sup>28</sup> *Id.* P 58; 18 C.F.R. § 35.35(i) (2011).

<sup>29</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

<sup>30</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 n.39.

<sup>31</sup> PJM periodically prepares an updated RTEP pursuant to its RTEP protocol, with input from the PJM TEAC and written comments from the stakeholders.

significant changes in input assumptions. AEP argues that references to summer 2011 and the 2010 RTEP are not meaningful. AEP and PJM Transmission Owners argue that, even assuming a sufficient nexus is established, the granting of incentive rates should be conditioned on approval in the PJM RTEP process and should not prejudice PJM's RTEP determination. They further argue that the Commission should expressly confirm that its decision on nexus is not intended to influence or direct PJM's decisions regarding the need for the Projects, the assignment of construction responsibility and ownership, or any other issues to be decided by PJM under the RTEP process as set forth in the PJM Operating Agreement.

21. Finally, AEP requests that any order addressing Northeast Transmission's Petition should be clear that its findings do not supplant the RTEP process, and that PJM has the primary responsibility to determine independently whether the Projects will produce market efficiencies such that they should be included in the RTEP.

### iii. Commission Determination

22. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>33</sup> Order No. 679 establishes a rebuttable presumption that this standard is met if the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission, or if a project has received construction approval from an appropriate state commission or state siting authority.<sup>34</sup> The Commission has also 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.<sup>35</sup>

23. The Commission finds that Northeast Transmission is not entitled to a rebuttable presumption for the Projects since they have not been approved in the PJM planning process or received construction approval from the relevant state authorities. Even so, consistent with Commission precedent, we will approve, as discussed below, certain incentives for each project requested by Northeast Transmission contingent on PJM

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<sup>33</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* P 58 n.39.

including each project in the RTEP as an economic enhancement.<sup>36</sup> We find that PJM's approvals will provide sufficient assurance that the Projects will provide economic benefits to the PJM system.

24. We disagree with protestors' claims that Northeast Transmission's reliance on the 2010 RTEP process is misplaced or that a finding on the Petition will prejudice the PJM planning process. In this case, the Projects have not yet received approval through the RTEP process. However, in Order No. 679, the Commission indicated that it would consider a request for incentive treatment for a project which is still undergoing consideration in a regional planning process, but may make any requested rate treatment contingent upon the project being approved under the regional planning process.<sup>37</sup> In this respect, Northeast Transmission's proposal is consistent with this approach.

25. As we have stated previously, the Commission has found that evaluation of projects through a Commission-approved regional planning process is not a prerequisite to granting incentives.<sup>38</sup> Furthermore, the Commission has found that "ruling on a request for incentives pursuant to Order No. 679 does not prejudice the findings of a particular transmission planning process or the siting procedures at state commissions."<sup>39</sup>

26. In its future section 205 filing to implement its incentive-based requests, Northeast Transmission must provide evidence of PJM's RTEP approval.<sup>40</sup> As a result of the Commission approving rate incentives, Northeast Transmission must submit FERC-730 reports annually.<sup>41</sup>

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<sup>36</sup> *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 93 (2010) (*Primary Power*).

<sup>37</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

<sup>38</sup> *Green Power Express*, 127 FERC ¶ 61,031, at P 42 (2009) (*Green Power*); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 43 (2008) (*Tallgrass*); and *Central Maine Power Co.*, 125 FERC ¶ 61,182, at P 42 (2008).

<sup>39</sup> *Green Power*, 127 FERC ¶ 61,031 at P 42 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 40 (2009), *order on reh'g and clarification*, 130 FERC ¶ 61,044 (2010) (*Pioneer*); and *Tallgrass*, 125 FERC ¶ 61,248 at P 43).

<sup>40</sup> See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49. See also *Green Energy*, 129 FERC ¶ 61,165 at P 30 (directing further filing).

<sup>41</sup> FERC-730 annual reports must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h) (2011). These reports contain actual, projected and incremental transmission investment

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27. Northeast Transmission requests an effective date for the approved rate incentives of June 6, 2011. While we grant the approved rate incentives as of the date of this order, subject to RTEP approval, such approval does not constitute an effective date for ratemaking purposes under section 205 of the FPA. Northeast Transmission may begin applying the approvals in its accounting, as may be discussed more fully in the determinations below.<sup>42</sup>

**b. Incentives and the Commission's Nexus Test**

**i. Northeast Transmission's Nexus Argument**

**(a) Scope and Effect**

28. Northeast Transmission requests incentives separately for the Liberty East Project and the Kanawha Project and asserts that there is a nexus between the incentives sought and the investment made in each of the projects. Northeast Transmission states that the scope of each of the projects is significant. It anticipates that the Liberty East Project will consist of 30 miles of new transmission line and will cost approximately \$110 million to \$165 million, depending on which project configuration PJM approves. Northeast Transmission anticipates that the Kanawha Project will consist of 100 miles of new transmission line and will cost approximately \$190 million to \$325 million. Northeast Transmission argues that the Projects are not routine, because they would be one of the first major transmission lines approved in PJM as market efficiency projects.<sup>43</sup>

29. Northeast Transmission asserts that the Projects are predicted to produce broad, regional congestion relief benefits. Specifically, the current configurations for the Liberty East and Kanawha Projects produce an estimated present value of energy market benefits of \$525 million and \$475 million, respectively. Northeast Transmission points out that this present value results in a Benefit/Cost ratio of 2.28 to one (single-circuit configuration) or 2.13 to one (double-circuit configuration) for the Liberty East Project and 3.34 to one (single-circuit configuration) or 3.27 to one (double-circuit configuration)

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information. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 367-76.

<sup>42</sup> Granting approval for accounting purposes is separate from approval for rate purposes and the former does not govern or constrain the latter. *Pioneer*, 130 FERC ¶ 61,044 at P 28; *Illinois Power Co.*, 87 FERC ¶ 61,028 (1999).

<sup>43</sup> Northeast Transmission Petition at 13 (noting distinguishing factors for PJM's market efficiency project b1153, Conemaugh-Seward 230kV and Conemaugh 500/230kV transformer that has an estimated cost of \$21 million).

for the Kanawha Project. Northeast Transmission explains that these Benefit/Cost ratios of each of the projects are significantly higher than the 1.25 to one threshold required by the PJM Tariff to qualify as economic enhancements. The total estimated project benefits of the Liberty East Project over 15 years, on a net present value basis, are anticipated to be approximately \$475 million, with net PJM customer savings of approximately \$265 million for single-circuit configuration, and approximately \$525 million, with net customer savings of approximately \$275 million for double-circuit configuration. The total estimated project benefits of the Kanawha Project over 15 years, on a net present value basis, are anticipated to be approximately \$1.2 billion, with net PJM customer savings of approximately \$800 million for single-circuit configuration, and approximately \$1.6 billion, with net customer savings of approximately \$1.0 billion for double-circuit configuration.

30. Northeast Transmission anticipates that the Liberty East Project will address critical congestion issues in and around Pennsylvania including the 5004/5005 Interface congestion, which according to Northeast Transmission, is consistently listed as a top 10 PJM Constraint with frequent occurrence. Northeast Transmission explains that the market simulation results presented to the October 6, 2010 PJM TEAC meeting indicated that the 5004/5005 Interface was anticipated to create a total of \$287.6 million in congestion charges to PJM customers in 2010, which is 17 percent of the entire \$1.6 billion PJM-projected congestion costs in 2010.

31. Northeast Transmission anticipates that the Kanawha Project will address critical congestion issues in and around the AP South Interface, which according to Northeast Transmission, is consistently listed as a top PJM Constraint with frequent occurrence. Northeast Transmission explains that the market simulation results presented to the October 6, 2010 PJM TEAC meeting indicated that the AP South Interface was the most expensive transmission constraint in PJM and would cost PJM customers \$401.9 million in congestion charges in 2010, which is 24 percent of the entire \$1.6 billion congestion costs projected PJM-wide in 2010. Northeast Transmission further explains that PJM projected future congestion costs, using 2010 assumptions, at the AP South Interface at \$909.3 million to PJM customers in 2013, \$803.6 million to PJM customers in 2016, and \$801.7 million to PJM customers in 2019.

**(b) Risks and Challenges**

32. Northeast Transmission asserts that the Liberty East Project and the Kanawha Project face substantial risks and challenges. Northeast Transmission asserts that the Projects will be one of the first major transmission lines approved as economic enhancements in PJM, and the costs and benefits of constructing the project will be

subject to annual review under the PJM Operating Agreement.<sup>44</sup> According to Northeast Transmission, changes in system conditions, such as changes in load forecasts and fuel prices, could affect each of the projects' eligibility as economic enhancements, resulting in significant financial risks if PJM removes the Projects from a future RTEP due to changes outside of Northeast Transmission's control. Northeast Transmission states that the financial risks could number in the millions or even the tens of millions of dollars, depending on when removal occurs.<sup>45</sup>

33. Northeast Transmission points out that it will be one of the first unaffiliated new-entrant transmission developers in PJM and that PJM transmission owners have opposed new entrants in other proceedings. Northeast Transmission states that it faces additional hurdles and scrutiny associated with applying to be a new public utility in Pennsylvania for the Liberty East Project, and Virginia, and West Virginia for the Kanawha Project – hurdles that are not faced by incumbent transmission owners. Northeast Transmission lists several additional permitting and regulatory approvals including a certificate of public convenience from the Pennsylvania Public Utility Commission for the Liberty East Project and certificates of public convenience and necessity from the West Virginia Public Service Commission and Virginia State Corporation Commissions for the Kanawha Project, and other approvals from federal and state agencies.<sup>46</sup> Northeast Transmission posits that the Pennsylvania Public Utility Commission certificate process may represent a case of first impression, as the Pennsylvania statute was recently amended.

34. Northeast Transmission states that the Liberty East Project and the Kanawha Project will face many challenges and risks in developing and construction. The Projects are expected to be subject to multiple layers of regulatory review and approvals. According to Northeast Transmission, the Kanawha Project faces right-of-way concerns, siting and permitting challenges, conservation and environmental risk factors. With regard to environmental risks, Northeast Transmission states that the Kanawha Project will cross the federally-protected George Washington and Monongahela National Forests.

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<sup>44</sup> Northeast Transmission Petition at 16 (citing PJM Operating Agreement, Schedule 6, RTEP protocol § 1.5.7(f)).

<sup>45</sup> *Id.* at 17 (noting that risk declines over time while cumulative expenses increase).

<sup>46</sup> *Id.* at 18-21 and Attachments 6-7 (identifying significant reviews, including the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Pennsylvania Public Utility Commission (Pennsylvania PUC) and Department of Transportation, as well as local and county approvals).

Northeast Transmission argues that the scope of the Virginia State Corporation Commission's review is uncertain given that the portion of the Kanawha Project located in Virginia could be entirely on U.S. Forest Service land. Northeast Transmission argues that routing this large transmission project through this protected area presents special risks and challenges. Northeast Transmission will also be required perform environmental assessments required by National Environmental Policy Act for the portions of the Kanawha Project that will also pass through federal lands, in addition to complying with the Endangered Species Act, Migratory Bird Treaty Act, and Bald and Golden Eagle Protection Act requirements for each project.

35. According to Northeast Transmission, these risks are magnified when viewed together. Northeast Transmission states that it is creating a new transmission utility with oversight and approvals required from the Commission, PJM, various state commissions, and other entities.

36. Further, Northeast Transmission lacks an existing rate base or revenue stream to cover the initial development and construction costs associated with the Projects. According to Northeast Transmission, the initial investments in development and construction of each project will represent negative cash flow for the non-incumbent and, when complete, the Projects will represent 100 percent of Northeast Transmission's plant in service.

## **ii. Comments and Protests**

37. PJM Transmission Owners argue that the Commission should reject as irrelevant two of the arguments Northeast Transmission posits in its attempt to show a nexus between the incentives it requests and its proposed investment in the Projects: (1) that the Projects entail some greater risk simply due to their status as market efficiency projects; and (2) that Northeast Transmission faces greater risks because it is not an incumbent transmission owner. According to PJM Transmission Owners, the risks of "changes in system conditions, such as changes in load forecasts and fuel prices" as cited by Northeast Transmission are not unique to the Projects. They explain that such risks can force suspension or cancellation of any baseline transmission project that is approved in the RTEP.

38. They further argue that the risks of non-incumbency do not create a nexus between the Projects' risks and the incentives proposed. PJM Transmission Owners argue that the risk as a non-incumbent transmission owner has little to do with the risks of the specific transmission projects proposed, but instead relates to uncertainty regarding Northeast Transmission's rights based on its status as a non-incumbent transmission owner. The PJM Transmission Owners request that the Commission make clear that any finding of a nexus between the incentives requested and the investments in the Projects will not establish that the Projects are needed to promote market efficiency, nor a mandate to PJM

to assign construction responsibility to Northeast Transmission if the Projects are included in RTEP.

39. AEP states that, for the reasons set out in PJM Transmission Owners' protest, it believes that certain arguments made by Northeast Transmission do not support a nexus between the risks posed by the Projects and the requested incentives.

### iii. Commission Determination

40. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant for a transmission rate incentive must demonstrate that there is a nexus between the incentive sought and the investment being made. In evaluating whether an applicant has satisfied the nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between the incentives, and how any requested incentives address the risks and challenges faced by the project.<sup>47</sup> In Order No. 679-A, the Commission clarified that its 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."<sup>48</sup> The nexus test is fact-specific and the Commission reviews each application on a case-by-case basis.

41. 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.<sup>49</sup> 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

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<sup>47</sup> 18 C.F.R. § 35.35(d) (2011); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

<sup>48</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>49</sup> *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh'g*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.<sup>50</sup>

42. More recently, the Commission recognized that the application of the nexus test may be unclear when an applicant presents multiple projects as a group for consideration for transmission rate incentive treatment.<sup>51</sup> The Commission found that on some occasions, it has applied the nexus test to an aggregate group of projects when the applicant has submitted its request for incentives with respect to the group of projects.<sup>52</sup> The Commission has 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 constructing all of the projects.<sup>53</sup> On other occasions, the Commission has applied the nexus test to each individual project.<sup>54</sup> In *PJM*, the Commission found that the applicant's filing revealed the necessity to change Commission policy with respect to the application of the nexus test to groups of projects.<sup>55</sup> The Commission stated that 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.<sup>56</sup> 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.<sup>57</sup>

43. The Commission finds that Northeast Transmission has demonstrated that the Liberty East Project and the Kanawha Project are non-routine, based on each of its scope,

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<sup>50</sup> *Id.* P 54.

<sup>51</sup> *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010) (*PJM*).

<sup>52</sup> *Id.* P 44 (citing *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008)). *See also PacifiCorp*, 125 FERC ¶ 61,076 (2008).

<sup>53</sup> *See BG&E*, 120 FERC ¶ 61,084 at P 53.

<sup>54</sup> *See, e.g., Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008).

<sup>55</sup> *See PJM*, 133 FERC ¶ 61,273 at P 45.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

effects, risks, and challenges. Each of the projects, as currently designed, is expected to meet PJM's Benefit/Cost requirements for economic enhancements.

44. We find that each of the projects face significant risks including those posed by potentially being the one of first transmission lines approved as economic enhancements through PJM's RTEP process. As economic enhancement projects, each of the projects face risks beyond Northeast Transmission's control, even after being accepted by the RTEP process, including changing load forecasts and fuel prices, which could reduce the Projects' Benefit/Cost ratio, resulting in either of the Projects' removal from a subsequent RTEP. As Northeast Transmission argued, if this were to happen late in the development process, this cancellation could result in significant financial losses. Northeast Transmission also faces a number of risks at the federal, state, and local level. Each of the projects will face a variety of construction and environmental approvals from the U.S. Fish and Wildlife Service, U.S. Forest Service, and U.S. Army Corps of Engineers.

45. We disagree with PJM Transmission Owners and AEP that the arguments made by Northeast Transmission do not support a nexus between the risks posed by the Projects and the requested incentives. For the reasons discussed above, Northeast Transmission has demonstrated that the risk associated with each of the projects makes them non-routine and warrants the incentives granted herein. Although we agree with PJM Transmission Owners that changes in system conditions, such as changes in load forecasts and fuel prices, can force suspension or cancellation of any baseline transmission project, such risks could reduce the Projects' cost/benefit ratios, resulting in either of the Projects' removal from a subsequent RTEP as a result of the Projects not meeting the minimum cost/benefit ratio of 1.25 to one.

46. Northeast Transmission states that it and PJM may continue to develop variations in the configuration of the Projects to optimize the projects' benefits and suggests that it intends the requested authorizations to apply to future variations in the Projects.<sup>58</sup> We reiterate that it is the Commission's policy to review each request for incentives on its own merits and on a case-by-case basis.<sup>59</sup> Although the Commission does not extend a pre-approved authorization for any future project without a specific showing justifying the incentive on a project-by-project basis,<sup>60</sup> our policies also recognize that there may be

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<sup>58</sup> Northeast Transmission Petition at 9 n.16 (stating that Northeast Transmission is not aware of any potential changes at this time).

<sup>59</sup> *Pacific Gas & Electric Co.*, 123 FERC ¶ 61,067 (2008); *Central Maine Power Co.*, 125 FERC ¶ 61,079 (2008).

<sup>60</sup> *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,265, at P 51 (2008).

changes to a project as it is evaluated through the relevant regional transmission planning and state regulatory processes. In *Pioneer*, we held that such changes will not necessarily alter the basis upon which the Commission granted transmission incentives.<sup>61</sup> If the Liberty East Project or the Kanawha Project is modified in a manner that renders invalid the basis for granting the transmission incentives in this order, Northeast Transmission should seek another declaratory order or seek approval of changes in the subsequent section 205 filing.<sup>62</sup> Likewise, to the extent it believes that either of the Projects is modified in a manner that renders invalid the basis for the transmission incentives that we authorize in this order, an entity or the Commission may raise its concerns when Northeast Transmission makes its section 205 filing to establish its rates under the PJM tariff or in a section 206 proceeding.<sup>63</sup>

47. Consistent with Order No. 679, the declaratory finding here rules only on whether Northeast Transmission's proposals qualify for incentive-based treatment and the incentives Northeast Transmission may adopt. Therefore, Northeast Transmission must seek to put the rates into effect through a separate FPA section 205 filing demonstrating that "the rates in which the applicant seeks to recover any incentives are just and reasonable and not unduly discriminatory."<sup>64</sup>

48. In addition, the Commission will consider below the specific incentives requested by Northeast Transmission for each project and, as necessary, address whether there is a nexus between the incentives sought and the investment being made and whether the total package of incentives is tailored to address the risks and challenges faced by the Projects. Our findings herein have no bearing on the PJM RTEP review process of the Projects.

## **2. Deferred Recovery of Pre-Commercial Expenses**

### **a. Northeast Transmission's Proposal**

49. Northeast Transmission states that Order No. 679 and FPA section 35.35(d)(i)(viii) support its request for deferred cost recovery of all prudently incurred start-up and development costs, from each of the projects' inception through commercial

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<sup>61</sup> *Pioneer*, 130 FERC ¶ 61,044 at P 21 (clarifying that project changes developed in a regional transmission planning processes will not necessarily alter the basis for granting incentives).

<sup>62</sup> *See Central Transmission*, 135 FERC ¶ 61,145 at P 42.

<sup>63</sup> 16 U.S.C. § 824e (2006).

<sup>64</sup> *See Order No. 679*, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

operation, through the creation of a regulatory asset. Northeast Transmission indicates that its regulatory asset will include all prudently incurred costs for the relevant time period, including initial feasibility study costs, engineering, consultant and attorney fees, and regulatory approval costs. Northeast Transmission states that it will begin to book costs to the regulatory asset on the date of the Commission's declaratory order and proposes to accrue carrying charges on the regulatory asset until such time as it is included in rate base at which time the asset will be amortized over five years.<sup>65</sup>

Northeast Transmission proposes to calculate carrying charges based on its debt costs and the ROE that is ultimately approved by the Commission. Northeast Transmission states that the deferred cost recovery is contingent on PJM approving each of the projects in the RTEP and the Commission approving rates for the Projects.

50. Northeast Transmission asserts that its request addresses the unique circumstances of its development of the Projects. Northeast Transmission notes that as a non-incumbent it has no transmission tariff, and thus it cannot currently recover its development costs. Northeast Transmission states this incentive will provide regulatory certainty, facilitate financing and provide additional assurance to lenders and investors that any prudently incurred costs will be recovered.<sup>66</sup>

51. Northeast Transmission states that the Commission has approved this incentive in similar circumstances and asserts that the Commission should do so in this instance.<sup>67</sup> Northeast Transmission commits to making a section 205 filing for each project for recovery of specific costs included in the regulatory asset, consistent with Commission precedent.

**b. Comments and Protests**

52. The Joint Advocates submit that it is not appropriate for the Commission to authorize the creation of a regulatory asset for market efficiency projects because such projects are likely subject to greater levels of scrutiny, change, delay and substantial revisions than the reliability projects that normally come before the Commission seeking such incentives. As such, the Joint Advocates submit that the current Petition is premature in this regard.

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<sup>65</sup> Northeast Transmission Petition at 23 (citing *Green Energy*, 129 FERC ¶ 61,165 at P 40).

<sup>66</sup> *Id.* at 24.

<sup>67</sup> *Id.* (citing *Green Energy*, 129 FERC ¶ 61,165 at P 41; *Green Power*, 127 FERC ¶ 61,031 at P 59).

53. Alternatively, if the Commission grants Northeast Transmission the authority to create a regulatory asset for pre-commercial expenses, then the Joint Advocates submit that the Commission include certain conditions to any grant of authority to create a regulatory asset and only the actual costs of the pre-commercial expenses should be included with no carrying charges. The Joint Advocates argue that Northeast Transmission lists certain initial expenses that could potentially be treated for accounting purposes as capital items as opposed to expense items.<sup>68</sup> At this stage of the process, the Joint Advocates indicate that it would not be reasonable to attempt to identify or authorize the ultimate ratemaking treatment of these costs. As such, the Joint Advocates request that any such costs and their ratemaking treatment should be subject to further review during Northeast Transmission's section 205 filing to ascertain whether such costs were prudently incurred and would result in just and reasonable rates. The Joint Advocates request that the Commission's order should be clear that the ability to create a regulatory asset is no guarantee of future recovery.

54. The Joint Advocates point out that Northeast Transmission's Petition provides that no cost recovery of pre-commercial costs is possible until the Projects are placed in service.<sup>69</sup> The Joint Advocates explain, however, that if the Projects are included in the PJM RTEP, and Northeast Transmission is accepted into PJM as a transmission owner, a completed section 205 filing authorized by the Commission would trigger the ability for Northeast Transmission to begin collecting these costs. As such, Joint Advocates posit that Northeast Transmission should further explain its proposed recovery of pre-commercial costs.

**c. Commission Determination**

55. The Commission grants Northeast Transmission's request for authorization to establish a regulatory asset, as of the date of this order, conditioned upon the Projects being approved in PJM's RTEP as economic projects. Granting this incentive will allow Northeast Transmission to defer recovery of prudently incurred pre-commercial costs from each of the projects' inception. The Commission finds the incentive is tailored to Northeast Transmission's risks and challenges because this incentive will provide it with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the Projects on reasonable terms.

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<sup>68</sup> Joint Advocates at 9 (citing Petition at 23).

<sup>69</sup> Joint Advocates at n.1 (citing Petition at 18, 24).

56. We disagree with the Joint Advocates' assertion that the current Petition is premature in its request for a regulatory asset. While we conditionally grant Northeast Transmission's request for authorization to establish the regulatory asset to defer pre-commercial expenses from inception until the regulatory asset is included in rate base, Northeast Transmission cannot recover the costs deferred as a regulatory asset until it has made its FPA section 205 filing to establish just and reasonable rates. Parties such as the Joint Advocates will be able to challenge these costs at that time. Northeast Transmission will also have to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred. We clarify that our conditional approval of the regulatory asset incentive in this order is not a Commission assurance that the costs will be recovered in future rates, but only an indication that the Commission may allow the utility's authorized rates to include the relevant costs.<sup>70</sup>

57. We authorize Northeast Transmission to amortize the regulatory asset over five years, consistent with rate recovery<sup>71</sup> and conditioned on Northeast Transmission making the appropriate demonstration that PJM approved the project for inclusion in the RTEP.

58. Northeast Transmission requests approval to accrue carrying charges on the regulatory asset based on Northeast Transmission's actual cost of debt and the overall ROE that the Commission ultimately approves for the Projects. Consistent with its proposal, we approve Northeast Transmission's request to accrue a carrying charge on the regulatory asset from the date of this order until the regulatory asset is included in rate base. The Commission has previously approved use of a carrying charge based on debt costs and ROE.<sup>72</sup> Northeast Transmission is directed to record the carrying charges on the regulatory asset by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-operating Income, consistent with the Commission's accounting requirements.<sup>73</sup>

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<sup>70</sup> See *Pioneer*, 130 FERC ¶ 61,044 at P 28 (citing *Illinois Power Co.*, 87 FERC ¶ 61,028 (1999)).

<sup>71</sup> See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 59; *Primary Power*, 131 FERC ¶ 61,015 at P 117.

<sup>72</sup> See, e.g., *Primary Power*, 131 FERC ¶ 61,015 at P 111, 117 (approving five-year amortization period and carrying charges based on cost of capital, including ROE).

<sup>73</sup> *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, Order No. 552, 58 FR 17982 (April 7, 1993), FERC Stats. & Regs. ¶ 30,967 (1993).

Once Northeast Transmission begins to recover the regulatory asset in rate base as part of its revenue requirement, it will earn a return on the unamortized balance of the regulatory asset and, therefore, must stop accruing carrying charges at that time.<sup>74</sup>

**3. 30-year Depreciable Life for Rate Recovery**

**a. Northeast Transmission's Proposal**

59. Northeast Transmission requests permission to use a 30-year depreciable life for rate recovery for each of the projects. Northeast Transmission defends its request to use a depreciable life that is less than the estimated useful life of the Projects, noting that it is not requesting the 15-year accelerated depreciation permitted by Order No. 679. Northeast Transmission chooses the 30-year depreciable life to align depreciation cash flow with the cash flow needed to amortize its debt. According to Northeast Transmission, it plans to finance the Projects on a non-recourse basis, and 30 years is the maximum term available.

60. Northeast Transmission asserts that the requested depreciable life will ensure that debt can be retired without the use of equity funds. Northeast Transmission claims that, because the Projects are its only assets, failure to align the depreciation schedule with the debt amortization schedule will affect the Projects more than a project that is part of a larger rate base. Northeast Transmission cites the risk that meeting debt obligations will consume funds that could otherwise be used to return capital to equity investors, and asserts that such use will raise the cost of equity and may create a disincentive for equity investment. Northeast Transmission asserts that the 30-year depreciable life will ensure that cost incurrence and revenue recovery are properly synchronized. Also, Northeast Transmission asserts that, should longer term financing become available, the interest rate on a 30-year loan would be lower than the longer term financing.

**b. Comments and Protests**

61. AEP requests that the Commission reject the 30-year depreciable life proposed by Northeast Transmission because, according to AEP, Northeast Transmission seeks to use a 30-year depreciable life for the proposed Projects solely for financing reasons, without regard for the actual useful life of the assets.<sup>75</sup> According to AEP, PJM analyzes the

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<sup>74</sup> See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 60; *Pioneer*, 126 FERC ¶ 61,281 at P 84.

<sup>75</sup> AEP at 5 (citing Northeast Transmission Petition at 28).

market efficiency of projects assuming a 45-year life<sup>76</sup>, and such a policy incentivizes transmission owners to build higher quality, longer lasting projects. AEP argues that the life of these projects is typically anticipated to be much longer, often on the order of 60 years or more and a 45-year life would be more appropriate for market efficiency projects such as the Projects proposed by Northeast Transmission, to better align the depreciation of the projects with the life over which they should be maintained in service.

**c. Commission Determination**

62. The Commission finds that the 30-year depreciable life requested by Northeast Transmission is reasonable, conditioned upon the Liberty East Project and the Kanawha Project being approved in PJM's RTEP as economic projects. We find that Northeast Transmission's proposed approach is reasonable in the context of rate recovery and will ensure a constant revenue stream. In response to AEP, the Commission has approved capital cost recovery periods that were less than the physical life of the facilities.<sup>77</sup> Specifically, Northeast Transmission has demonstrated the need to synchronize the cost incurrence and its revenue recovery in order to ensure a cash flow to cover the principal payments of its debt. We also agree with Northeast Transmission's statement that in the current market, the financing of the Projects over 30 years is an acceptable cost alternative and will result in significant savings for consumers through lower financing costs.

63. For accounting purposes, Northeast Transmission is required to depreciate its Liberty East Project and Kanawha Project over each of its economic service lives in a systematic and rational manner and separately recognize as regulatory liabilities in Account 254, Other Regulatory Liabilities, any difference between depreciation expense recognized for accounting purposes and depreciation expense included in the development of rates. This accounting treatment is consistent with requirements of the Commission's Uniform System of Accounts,<sup>78</sup> Order No. 552,<sup>79</sup> and Order No. 679.<sup>80</sup>

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<sup>76</sup> AEP at 5 (citing PJM 2010 market efficiency presentation to TEAC on May 12, 2010, slide 14); PJM 2011 Market Efficiency presentation to TEAC on March 10, 2011, slide 13.

<sup>77</sup> See, e.g., *Citizens Energy Corp.*, 129 FERC ¶ 61,242, at P 23 (2009) (approving 30-year levelized fixed rate of recovery of capital requirements); *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008) (finding a 15-year accelerated depreciation schedule to be appropriate).

<sup>78</sup> 18 C.F.R. Part 101 (2011).

#### **4. Recovery of Abandoned Project Cost**

##### **a. Northeast Transmission's Proposal**

64. Northeast Transmission requests that it be permitted to recover 100 percent of prudently incurred costs, including pre-commercial expenses and construction costs, if the Projects are abandoned due to an event beyond its control, after approval in the RTEP as economic projects. Northeast Transmission notes that it bears all risk of the Projects' failure to meet the economic thresholds to be designated as market efficiency projects. Northeast Transmission asserts that if PJM approves and designates it to develop the projects, it is appropriate to shift the risk to the expected beneficiaries of the Projects.

65. Northeast Transmission cites Order No. 679 for the holding that recovery of abandoned plant costs is an "effective means to encourage transmission development by reducing the risks of non-recovery of costs."<sup>81</sup> Northeast Transmission asserts that it faces substantial abandonment risk because it must obtain multiple regulatory approvals, described above, and because RTEP economic enhancements face the risk of cancellation or modification if market fundamentals change.<sup>82</sup> Thus, Northeast Transmission states that the Projects face the risk of PJM re-evaluating the Projects and removing them from the RTEP due to unforeseen changes, even if they acquire the required permits and approvals.

66. Northeast Transmission asserts that it would be difficult to commit its investors' equity and its resources to the Projects, even after designation by PJM, without assurance of recovery of project costs in the event of cancellation for reasons beyond its control. Northeast Transmission requests that the Commission permit it to recover 100 percent of prudently incurred costs if the Projects must be abandoned due to forces outside of Northeast Transmission's control, after PJM has designated it to build the Projects.<sup>83</sup>

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<sup>79</sup> Order No. 522, FERC Stats. & Regs. ¶ 30,967.

<sup>80</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 153.

<sup>81</sup> *Id.* P 163.

<sup>82</sup> *See* Northeast Transmission Petition at 25.

<sup>83</sup> Northeast Transmission Petition at 25 (citing *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008); *Tallgrass*, 125 FERC ¶ 61,248).

Northeast Transmission commits to making a section 205 filing prior to recovery of any abandoned plant costs, consistent with Commission precedent.<sup>84</sup>

**b. Comments and Protests**

67. The Joint Advocates argue that if the Projects are included in the PJM RTEP and the Commission approves the abandonment incentive sought here, then Northeast Transmission bears virtually no risk in regard to this “patently for-profit endeavor.”<sup>85</sup> In the Joint Advocates’ view, it is not unreasonable for investors to forego a profit until such time as the projects are placed in service, because, according to the Joint Advocates, investors enjoy a 100 percent money back guarantee if the projects never proceed to completion.

**c. Commission Determination**

68. The Commission grants the requested incentive, conditioned upon the Liberty East Project and the Kanawha Project being approved in PJM’s RTEP as economic projects. As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.<sup>86</sup> The Commission finds that Northeast Transmission has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. The Commission agrees with Northeast Transmission that, even after initial RTEP approval, the Projects face risks outside of Northeast Transmission’s control. Contrary to the Joint Advocates’ assertion, these risks, both commercial and regulatory, are not insubstantial. Furthermore, Northeast Transmission has already incurred development costs in the design of these projects. Approval of the abandonment incentive will both attract financing for the Projects, and protect Northeast Transmission from further losses if either of the Projects should be cancelled for reasons outside Northeast Transmission’s control. Thus, the Commission will grant Northeast Transmission’s request for recovery of 100 percent of prudently incurred costs associated with the Projects in the event of abandonment, provided that the abandonment is a result of factors beyond Northeast

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<sup>84</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

<sup>85</sup> The Joint Advocates at 8-9.

<sup>86</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

Transmission's control, which must be demonstrated in any subsequent FPA section 205 filing for recovery of abandoned plant.<sup>87</sup>

69. The Commission will not determine the justness and reasonableness of Northeast Transmission's abandoned plant recovery, if any, until Northeast Transmission seeks such recovery in a FPA section 205 filing.<sup>88</sup> Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.<sup>89</sup> We note that, should either of the Projects be cancelled before they are completed, it is unclear whether Northeast Transmission will have any customers from which to recover its abandonment costs. At such time, Northeast Transmission will be required to demonstrate in its section 205 filing that abandonment was beyond its control, provide for rate authorization consistent with the PJM tariff allowing for recovery of abandonment costs that were prudently incurred, and propose a rate and cost allocation method to recover the costs in a just and reasonable manner.<sup>90</sup>

## 5. RTO Participation Adder

### a. Northeast Transmission's Proposal

70. Northeast Transmission requests a 50-basis point incentive rate adder to its ROE upon becoming a PJM member.<sup>91</sup> Northeast Transmission intends to become a PJM transmission owner under the Transmission Owners Agreement and will turn over operational control of the Projects to PJM. Northeast Transmission agrees as a policy matter that transmission companies should actively participate in the transmission planning process and indicates that it takes its RTO participation responsibilities

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<sup>87</sup> *Id.* P 165-66.

<sup>88</sup> *Primary Power*, 131 FERC ¶ 61,015 at P 124.

<sup>89</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

<sup>90</sup> *See Pioneer*, 130 FERC ¶ 61,044 at P 27; *Green Power*, 127 FERC ¶ 61,031 at P 52.

<sup>91</sup> Northeast Transmission requests no other ROE adders, and affirms that its request is contingent on the resulting ROE being within the zone of reasonableness.

seriously. Northeast Transmission notes that the LS Power Group has been actively participating in the PJM Transmission Expansion Advisory Committee discussions for almost two years.

71. According to Northeast Transmission, the Projects will be one of the first major transmission line projects approved by PJM as an economic enhancement. In addition, Northeast Transmission asserts that it will be one of the first non-incumbent owners of a transmission line in PJM operating at cost of service rates. Northeast Transmission claims that the Projects will provide substantial benefits to consumers that would not be possible without Northeast Transmission joining the RTO structure.

72. In light of its development risks and competition for capital and resources from other projects, including other RTO transmission projects, Northeast Transmission notes that it is not seeking other ROE adders, such as for being an independent transmission company, or Transco, or a project specific adder, stating that the RTO-membership adder will assist it in attracting equity for the Projects.

**b. Commission Determination**

73. Northeast Transmission has stated that it intends to turn over operational control of the Projects to PJM, and that it will become a Participating Transmission Owner. In Order No. 679-A, the Commission stated that we would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Regional Transmission Organizations.<sup>92</sup> Therefore, provided that at least one of the Projects is included in the RTEP as discussed above and that Northeast Transmission takes all the necessary steps to turn over operational control of the project to PJM and becomes a Participating Transmission Owner, the Commission grants Northeast Transmission's requested 50 basis point adder for RTO participation. We note that no party has protested the requested incentive for a 50 basis point ROE incentive adder for RTO participation for the Liberty East or Kanawha Projects.

74. Incentive-based ROEs, like other incentives offered under Order No. 679, are to be filed with the Commission for approval in a section 205 filing before the rates reflecting such incentives can be charged.<sup>93</sup> Accordingly, our determination here is subject to Northeast Transmission's overall ROE being within the zone of reasonableness, to be determined when it makes its future FPA section 205 filing.

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<sup>92</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. *See also Green Power*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

<sup>93</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

## 6. Total Package of Incentives

### a. Northeast Transmission's Proposal

75. Throughout its petition, Northeast Transmission stresses that it has declined to seek other incentives that are available and that its individual requests are tailored to meet the risks faced by the Projects. Northeast Transmission states that it has tailored its request to the minimum package of incentives needed given the risks and challenges faced by the Projects, consistent with ensuring just and reasonable rates.<sup>94</sup>

### b. Commission Determination

76. The Commission has stated that in evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between any incentives, and how any requested incentives address the demonstrable risks and challenges faced by the applicant in constructing the project.<sup>95</sup> This test is fact-specific and requires the Commission to review each application on a case-by-case basis.

77. The Commission finds that the total package of incentives and the inter-relationship of the requested incentives is tailored to address the demonstrable risks and challenges faced by Northeast Transmission in developing the Projects as economic enhancements for inclusion in the PJM RTEP. The requested incentives for each project are contingent on each project being included in the PJM RTEP as an economic enhancement project. The regulatory assets incentive will allow for deferred recovery of the pre-commercial expenses and provide Northeast Transmission with up-front regulatory certainty, rate stability, and improved cash flow, thereby easing pressures on its finances caused by transmission development activities. Furthermore, approval of recovery of pre-commercial expense, including carrying charges, will provide regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the Projects on reasonable terms. Likewise, the 30-year depreciable life will facilitate financing and is tailored to available credit terms. The abandonment incentive will encourage transmission development by reducing the risks of non-recovery of prudently incurred costs associated with abandoned transmission projects if such

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<sup>94</sup> Northeast Transmission Petition at 29.

<sup>95</sup> 18 C.F.R. § 35.35(d); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 (“[T]he incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.”).

abandonment is outside the developer's control. Finally, the 50-basis point RTO participating adder is an appropriate means to encourage parties to join and participate in an RTO and will facilitate Northeast Transmission's ability to raise capital. The overall ROE will be bound by the upper end of the zone of reasonableness to be determined when Northeast Transmission makes its future FPA section 205 filing and conditioned on the Projects' approval in the RTEP as discussed above.

**7. Cost and Formula Rate Issues**

**a. Northeast Transmission's Proposal**

78. In addition to its requests for rate incentives, Northeast Transmission requests authorization to recover its costs through a forward-looking formula rate that will track its costs on an estimated basis, rather than historic costs. Northeast Transmission proposes to rely on cost and load projections, subject to an annual true-up with interest using FERC Form No. 1 data. Northeast Transmission states that it will file its rate, which will feature comprehensive rate update protocols used in existing PJM transmission rates.<sup>96</sup> Northeast Transmission explains that, because the Projects will constitute all of its rate base, it and its equity investors are subject to greater risk of "regulatory lag," due to a mismatch in costs and rates. According to Northeast Transmission, reducing this lag will improve its financial position, reduce risk and lower the cost of financing.

79. Northeast Transmission cites Commission orders as approving forward-looking formula rates, subject to true up, as a reasonable method to avoid a lag in cost recovery, while protecting consumers by ensuring that they pay actual costs, and requests that the Commission authorize its use of a forward-looking formula rate.<sup>97</sup>

**b. Commission Determination**

80. As discussed above, the Commission authorizes incentives for Northeast Transmission's proposed projects under section 219 of the FPA and Order No. 679. Our

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<sup>96</sup> According to Northeast Transmission, these protocols address implementation issues, such as timing of rate updates, cost support, posting on the PJM website, submittal of an informational filing and contact information.

<sup>97</sup> Northeast Transmission Petition at 31 (citing *Michigan Electric Transmission Co., LLC*, 117 FERC ¶ 61,314, at P 17 (2006); *International Transmission Co.*, 116 FERC ¶ 61,036, at P 19 (2006)).

decision in this declaratory order is confined to the particular incentives being approved in the instant proceeding and does not constitute approval of any particular rate.

81. In Order 679-A, the Commission clarified that an independent transmission company could apply for multiple incentives, including for a formula rate.<sup>98</sup> The Commission has granted this incentive to applicants that have demonstrated, through tariff sheets, that their proposed formula rate is just and reasonable.<sup>99</sup> In this case, Northeast Transmission requests approval for the use of a cost of service formula rate structure without tariff sheets or any demonstration that the formula rate will be just and reasonable. Accordingly, we deny Northeast Transmission's request for approval for the use of a formula rate at this time but note that Northeast Transmission may make a filing under section 205 in the future to request approval of a specific formula rate. The justness and reasonableness of any such rate will be determined through a future FPA section 205 proceeding.<sup>100</sup>

## 8. Other Issues

### a. Comments and Protests

82. PJM Transmission Owners assert that PJM may not assign construction responsibility of a non-merchant RTEP project to an entity other than a zonal transmission owner. They claim that the only basis upon which Northeast Transmission may claim that PJM should assign construction responsibility for any transmission construction that emerges from the consideration of the Projects in the RTEP process is the Commission's decision in *Primary Power*,<sup>101</sup> of which the PJM Transmission Owners and others have requested rehearing. PJM Transmission Owners argue that the

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<sup>98</sup> Order 679-A, FERC Stats. & Regs. ¶ 31,236 at P 71 n.108.

<sup>99</sup> See, e.g., *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 3 (2010) ("On December 28, 2007, PATH filed proposed tariff sheets with the Commission, pursuant to section 205 of the Federal Power Act, to be included in PJM Interconnection, L.L.C.'s Open Access Transmission Tariff. The tariff sheets sought to implement a transmission cost of service formula rate and incentive rate authorizations for the Project.").

<sup>100</sup> See, e.g., *American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 26-28 (2006).

<sup>101</sup> *Primary Power*, 131 FERC ¶ 61,015.

Commission should reverse its decision in *Primary Power*, in which case Northeast Transmission would not be eligible to construct the Projects.

83. They further argue that even under the Commission's decision in *Primary Power*, PJM retains discretion in the assignment of construction and ownership responsibility. According to PJM Transmission Owners, there are sound reasons for PJM to prefer assigning construction responsibility for baseline required transmission enhancements to zonal transmission owners. Therefore, even if the Commission affirms its interpretation of *Primary Power*, there would still be no assurance that PJM would assign Northeast Transmission to build the Projects. Thus, they request that the Commission condition any approval of incentives on the designation of Northeast Transmission as the entity responsible for constructing the Projects.

**b. Commission Determination**

84. We disagree with PJM Transmission Owner's claim that PJM may not assign construction responsibility of a non-merchant RTEP project to an entity other than a zonal transmission owner. The Commission determined in *Primary Power* that PJM should treat an application for a project by a non-existing transmission owner no differently than any other application for a project. PJM would need to adequately justify its action if it denied the sponsor of the project the right to construct that project and receive the economic benefit of its project.<sup>102</sup> Arguments to reverse the Commission's decision in *Primary Power* may be addressed in that docket.<sup>103</sup> Finally, consistent with our decision in *Primary Power*, we deny PJM Transmission Owners' request to condition any approval of incentives on the designation of Northeast Transmission as the entity responsible for constructing the Projects.<sup>104</sup>

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<sup>102</sup> *Id.* P 65.

<sup>103</sup> See *Primary Power, LLC*, Docket No. ER10-253-001.

<sup>104</sup> See *Primary Power*, 131 FERC ¶ 61,015 at P 62 (finding that the PJM Tariff permits, but does not require, PJM to designate an entity other than an incumbent transmission owner, as the entity to build a certain project if that project is included in the RTEP as a baseline reliability project or economic project).

The Commission orders:

Northeast Transmission's Petition is granted in part, and denied in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.