

149 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

RITELine Illinois, LLC
RITELine Indiana, LLC

Docket Nos. ER11-4069-001
ER11-4070-002

ORDER DENYING REHEARING

(Issued December 18, 2014)

1. In this order, we deny the request for rehearing of RITELine Illinois, LLC and RITELine Indiana, LLC (collectively, RITELine Companies) of the Commission's October 14, 2011 order,¹ which accepted in part, and rejected in part, the RITELine Companies' proposal for transmission rate incentives for the RITELine Project.²

I. Background

2. On July 18, 2011, the RITELine Companies submitted an application for acceptance of a formula rate and approval of rate incentives for the RITELine Project (July 18, 2011 Filing). The RITELine Companies stated that they expect to place the RITELine Project into service approximately five to six years after obtaining regional transmission expansion plan (RTEP) approval by PJM Interconnection, L.L.C. (PJM), and they estimated the cost of the RITELine Project to be \$1.6 billion.

¹ *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 (2011) (October 14 Order).

² The RITELine Project consists of approximately 420 miles of 765 kV transmission line that is projected to strengthen the transmission system in Illinois, Indiana, and Ohio. The RITELine Project will include five 765 kV substations and other appurtenant transmission facilities. In addition, the RITELine Project is expected to permit the integration of approximately 5,000 megawatts (MW) of additional renewable generation.

3. The RITELine Companies requested an overall rate of return on equity (ROE) of 12.7 percent, including certain incentive ROE adders pursuant to sections 205 and 219 of the Federal Power Act (FPA)³ and Order No. 679.⁴ However, the RITELine Companies stated that they could support an incentive ROE of 13.2 percent, which includes a base ROE of 10.7 percent plus ROE adders of: (1) 50 basis points for regional transmission organization (RTO) participation; (2) 50 basis points for the use of advanced transmission technology; and (3) 150 basis points to compensate for the risks and challenges associated with investing in new transmission (risk adder). The RITELine Companies also proposed that the risk adder only apply to the RITELine Project cost estimate established at the time of RTO approval, unless the cost of the RITELine Project is increased due to changes required as a result of the siting process and/or changes specifically directed by PJM. The RITELine Companies also requested authorization to: (1) recover 100 percent construction work in progress (CWIP); (2) recover 100 percent of their prudently-incurred costs associated with the RITELine Project in the event that the RITELine Project must be abandoned for reasons outside of their control (abandonment); (3) establish a regulatory asset that will include all expenses not capitalized and included in CWIP that are incurred in connection with the RITELine Project prior to the rate year in which costs are first flowed through to customers pursuant to PJM's open access transmission tariff (OATT); and (4) use a hypothetical capital structure of 55 percent equity and 45 percent debt until long-term financing is in place and the RITELine Project has been placed into service.

4. In the October 14 Order, the Commission found that the RITELine Companies were not entitled to a rebuttable presumption that the RITELine Project satisfies the requirements of section 219 of the FPA because the RITELine Project has not been approved in PJM's planning process or received siting approval from the relevant state siting authorities.⁵ Further, the Commission found that the RITELine Companies did not provide the Commission with the necessary support to determine whether the RITELine Project ensures reliability or reduces the cost of delivered power by reducing congestion, which section 219 of the FPA requires for transmission incentives. Rather than rejecting the RITELine Companies' request for incentives, the Commission approved the RITELine Companies' request for certain incentives, conditioned upon the RITELine

³ 16 U.S.C. §§ 824d, 824s (2006).

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁵ October 14 Order, 137 FERC ¶ 61,039 at P 34.

Project being included in the PJM RTEP, and directed the RITELine Companies to submit a compliance filing within 30 days of receiving approval of the RITELine Project's inclusion in the PJM RTEP to notify the Commission of any such approval.⁶ In addition, the October 14 Order found that the RITELine Companies sufficiently demonstrated a nexus between the risks and challenges they are undertaking to develop and construct the RITELine Project and the incentives they requested.⁷ To date, the RITELine Companies have not submitted a compliance filing notifying the Commission that the RITELine Project has been included in the PJM RTEP.

5. The Commission granted, conditioned upon the RITELine Project receiving PJM RTEP approval, the RITELine Companies' request for CWIP recovery, abandonment cost recovery, regulatory asset treatment, and the use of a hypothetical capital structure, as well as their request for an additional ROE adder for the risks and challenges of the RITELine Project, reduced to 100 basis points, and a 50-basis-point ROE adder for membership in an RTO. However, the Commission denied the request for a separate advanced technology incentive adder of 50 basis points for the use of a six-conductor bundle in conjunction with trapezoidal stranded conductors in the RITELine Project. The Commission granted the RITELine Companies a base ROE of 9.93 percent, rather than the requested 10.7 percent, based on the Commission's corrected median value of the RITELine Companies' discounted cash flow (DCF) analysis.⁸ The resulting overall ROE, which includes the ROE adders granted by the Commission, was 11.43 percent. In addition, the Commission accepted the RITELine Companies' proposal that the 100-basis-point incentive ROE adder for the risks and challenges of the RITELine Project only apply to the cost estimate established at the time of RTO approval, unless the cost of the RITELine Project is increased due to changes required as a result of the siting process and/or changes specifically directed by PJM.⁹

⁶ *Id.* P 38.

The insufficiency of the above-noted studies does not require rejection of the RITELine Companies' request for incentives. Rather, the Commission has previously found that the PJM RTEP is a fair and open regional planning process that evaluates projects for reliability and/or congestion effects. [Citations omitted.] Therefore, we will approve incentives as discussed herein, conditioned upon the [RITELine] Project being included in the PJM RTEP.

⁷ *Id.* PP 52-53.

⁸ *Id.* P 73.

⁹ *Id.* PP 60-64.

II. Discussion

6. The RITELine Companies assert that the October 14 Order erred in: (1) finding that the RITELine Companies' studies of congestion and reliability benefits were insufficient to satisfy section 219 of the FPA; (2) conditioning its grant of incentives on the RITELine Project's approval in PJM's RTEP and finding that the RITELine Companies are not eligible for abandoned plant cost recovery in the event PJM does not include the RITELine Project in the RTEP; (3) reducing the investment incentive granted to the RITELine Project by 50 basis points (from 150 basis points to 100) below the level granted to other comparable transmission projects without justifying its departure from its prior policy, especially given the RITELine Companies' novel proposal to limit incentives so that they would not apply to cost overruns; (4) denying the RITELine Companies' request for a 50-basis-point incentive adder for the use of new technology, particularly where the RITELine Companies are the only applicant to date to demonstrate that the use of this new technology improves the efficiency of electric transmission and reduces costs to consumers; (5) using the median of the high and low values derived from the RITELine Companies' DCF analysis in order to establish the just and reasonable base ROE for the RITELine Project, rather than adjusting the ROE in light of the substantially higher midpoint in the ROE range; and (6) eliminating PPL Inc. entirely from the proxy group used to calculate the base ROE when only the low-end value for that company was found to be economically illogical.

7. As the Commission explained in the October 14 Order,¹⁰ it reviews incentive proposals on a case-by-case basis. For example, the nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.¹¹ Consistent with Order No. 679,¹² the Commission has, in prior cases, approved multiple rate

¹⁰ October 14 Order, 137 FERC ¶ 61,039 at P 100.

¹¹ In a policy statement issued on November 15, 2012, the Commission provided additional guidance, reframing its nexus test. However, the Commission stated that it will apply the new policy statement to incentive applications received after the date of issuance of the policy statement. *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at 2 (2012). Thus, the new policy statement does not apply to the instant proceeding.

¹² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

incentives for particular projects.¹³ This is consistent with our interpretation of FPA section 219's authorization to the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of section 219 and that there is a nexus between the incentives proposed and the investment made. As further discussed below, we are not persuaded to grant rehearing of the Commission's determinations in the October 14 Order based on the arguments made in the request for rehearing.

A. Section 219 Requirement

1. Request for Rehearing

8. The RITELine Companies argue that their analyses and supporting information were as thorough and comprehensive as any analyses presented in previous incentive rate proceedings in which the Commission determined that the section 219 standard has been satisfied. In addition, other than the PSEG Companies'¹⁴ unsupported protest, the RITELine Companies argue that no party sponsored analyses or studies contradicting any aspect of their analyses.¹⁵

9. With regard to the RITELine Companies' congestion analyses, the RITELine Companies state that the October 14 Order raised two specific concerns with the congestion study. First, the RITELine Companies state that the October 14 Order suggests that the RITELine Companies' showing on how the RITELine Project will reduce congestion "relies heavily" on the ability of the RITELine Project to integrate approximately 5,000 MW of additional wind generation in Illinois and nearby areas in the Midwest Independent Transmission System Operator, Inc. (MISO).¹⁶ Second, the

¹³ *Atlantic Grid Operations A, LLC*, 135 FERC ¶ 61,144, at P 127 (2011) (Atlantic Grid) (internal citations omitted) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at PP 55, 59, 61 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *see also Cent. Maine Power Co.*, 125 FERC ¶ 61,182, at P 100 (2008) (granting both abandonment and ROE incentives).

¹⁴ The PSEG Companies comprise Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

¹⁵ RITELine Companies Request for Rehearing at 6.

¹⁶ *Id.* at 7 (quoting *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 at P 36).

RITELine Companies state that the October 14 Order then criticizes that reliance because there is “no guarantee that these [wind] projects will be built.”¹⁷

10. The RITELine Companies argue that none of the previously approved incentive orders required that an applicant “guarantee” that any specific wind project would be built to satisfy section 219 of the FPA for incentives. The RITELine Companies argue that there have been numerous cases in which the Commission determined that the applicants met the section 219 standards based on the applicant’s reasonable projections of wind development supported by the amount of wind generation under construction, the amount of wind generation in the existing RTO interconnection queues, and/or the amount of wind generation that would be needed to meet state renewable portfolio standards (RPS) obligations.¹⁸ The RITELine Companies assert that none of the orders approving incentives in *Green Power Express*, *Pioneer*, and *Tallgrass* found that the applicants had provided the Commission with a “guarantee,” or ruled that the applicants were required to provide a “guarantee,” as to which specific wind projects would be built or even the total amount of wind generation that ultimately would be built. The RITELine Companies argue that the October 14 Order stands in stark contrast to the Commission’s rulings in these and other prior incentive requests, and for the October 14 Order to require the RITELine Companies to “guarantee” the amount of wind projects that will be developed in the region to meet the section 219 standards is arbitrary and capricious.¹⁹

11. Additionally, the RITELine Companies argue that the Commission consistently has looked favorably upon studies that showed “substantial power production cost savings due in substantial part to increased transfer capability that would reduce congestion and allow transportation of low-cost wind energy to displace higher cost energy from fossil fuel sources.”²⁰ The RITELine Companies state that this is precisely

¹⁷ *Id.* (quoting *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 at P 36).

¹⁸ *Id.* at 7-8 (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 38 (2009) (*Green Power Express*), *reh’g denied*, 135 FERC ¶ 61,141 (2011); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (*Pioneer*), *settlement approved*, 129 FERC ¶ 61,065 (2009), *clarification granted and reh’g denied*, 130 FERC ¶ 61,044, at P 50 (2010); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at PP 8, 41 (2008) (*Tallgrass*), *settlement approved*, 132 FERC ¶ 61,114 (2010)).

¹⁹ *Id.* at 9 (citing *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 256 (D.C. Cir. 2007)).

²⁰ *Id.* at 9 (citing *Tallgrass*, 125 FERC ¶ 61,248 at P 41).

the type of analysis that their consultants undertook to support their conclusion that the RITELine Project will reduce system-wide production costs by up to \$630 million annually.²¹

12. The RITELine Companies also argue that the October 14 Order overlooks the reasons for refining the modeling assumptions, which were the basis of their consultants' assumption that 8,000 MW of wind would be imported from MISO. The RITELine Companies state that, rather than relying on the 2010 MISO model, its consultants relied on the more current data in PJM's Regional Planning Process Task Force (RPPTF)²² update (made on February 25, 2011) in which PJM staff estimated that PJM would need 32,000 MW of wind generation to meet state RPS requirements by 2021 (and 41,000 MW by 2026). The RITELine Companies argue that the October 14 Order fails to explain why it was unreasonable or inappropriate for its consultants to rely on PJM's more current data in preparing the modeling assumptions. Notwithstanding, the RITELine Companies assert that the assumption that 8,000 MW of wind would be imported from MISO would be valid even if the Commission ignored the refinements and relied on the 2010 data rather than the more recent 2011 data.²³

13. Furthermore, the RITELine Companies maintain that their consultants' assumption that 8,000 MW of wind power could be imported from MISO was supported by expert witness testimony, which explained that there are 5,000 MW of wind projects in South Dakota and 1,000 MW of projects in Iowa that seek to interconnect to the PJM grid in Illinois, and that there are 8,500 MW of merchant transmission requests to interconnect with the Commonwealth Edison system in Northern Illinois. The RITELine Companies argue that the October 14 Order never discusses, much less acknowledges, the expert witness testimony detailing the basis for that assumption. In light of the evidence they provided in support of their underlying assumption that 8,000 MW of wind could be imported from MISO, the RITELine Companies argue that there is no basis for the Commission to challenge the RITELine Project's congestion benefit analysis on the ground that such assumption was unexplained or unsupported, or that the consultants made "refinements" to accommodate the most up-to-date RTO information.²⁴

²¹ *Id.* at 9-10.

²² The RPPTF evaluates and makes recommendations to the Members Committee to reform the present interconnection queue and study process. www.pjm.com/committees-and-groups/task-forces/rpptf.aspx.

²³ RITELine Companies Request for Rehearing at 10-11.

²⁴ *Id.* at 11.

14. In addition, the RITELine Companies argue that the October 14 Order disregards those aspects of their analyses that demonstrate how the RITELine Project will reduce existing transmission congestion between the Commonwealth Edison and the American Electric Power Company transmission zones. For example, the RITELine Companies explain that their consultants' analyses showed the significance of the existing locational marginal price differences between these zones, and how those differences have steadily increased from 2007-2010. The RITELine Companies maintain that their consultants demonstrated that the severity of congestion increases market prices by forcing dispatch of higher-cost resources and creates system operations and reliability concerns. Based on the congestion analyses that they submitted, the RITELine Companies assert that the RITELine Project will significantly reduce these congestion concerns, regardless of the amount of new wind facilities that are constructed.²⁵

15. With regard to the RITELine Companies' reliability analyses, the RITELine Companies argue that the Commission's criticism that "it is unclear whether the reliability violations that the RITELine Companies claim that the Project would mitigate are unaddressed by PJM's RTEP Process" is without merit.²⁶ First, the RITELine Companies state their expert witness explained that the powerflow models were specifically adjusted to take into account nine separate transmission reinforcements that are expected to be undertaken via the PJM RTEP and other processes regardless of whether the RITELine Project is constructed. Therefore, the RITELine Companies argue, contrary to the October 14 Order's suggestion, their expert witness purposefully accounted for these reinforcements to ensure that there would be no double-counting of benefits, and the RITELine Companies' analyses are net of any reliability benefits that will result from reinforcements that already have been approved. The RITELine Companies further explain that, as provided in expert witness testimony, the reinforcements already included in the RTEP will not address the numerous first and second contingency violations that will remain without the RITELine Project.²⁷

16. Second, the RITELine Companies argue that the October 14 Order misapprehends the nature of the approved changes to the PJM study process. As the RITELine Companies' expert witness explained in his testimony, PJM has approved "Light Load Criteria" that will appropriately focus on light-load problems where the impacts of new wind generation often will be most profound. The RITELine Companies argue that the

²⁵ *Id.* at 12.

²⁶ *Id.* at 12-13 (quoting *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 at P 37).

²⁷ *Id.* at 13.

new “Light Load Criteria” will more accurately assess those concerns and confirm the conclusion that the RITELine Project is an appropriate vehicle to address those concerns. Further, the RITELine Companies argue that the October 14 Order overlooks their expert witness’s uncontroverted testimony explaining that his analyses studied over 100,000 contingencies to support his conclusions that there will be 14 first contingency and 29 double contingency violations in 2016 without the RITELine Project, and 31 first contingency and 73 double contingency violations in 2021 without the RITELine Project. The RITELine Companies state that the 100,000 studied contingencies are in stark contrast to the 140 contingencies that were studied in analyses that the Commission found to satisfy the section 219 standard in *Desert Southwest Power, LLC*.²⁸

2. Commission Determination

17. We find the RITELine Companies’ arguments that they met the FPA section 219 criteria through the submitted congestion and reliability benefits studies unpersuasive. In the October 14 Order, the Commission found that the RITELine Companies did not provide the necessary support for the Commission to determine whether the RITELine Project ensures reliability or reduces the cost of delivered power by reducing congestion. In particular, the October 14 Order noted that the congestion study submitted by the RITELine Companies heavily relied on the integration of 5,000 MW of additional wind generation in Illinois and nearby MISO regions to demonstrate congestion reduction.²⁹ RITELine Companies also submitted the results of the Strategic Midwest Area Transmission study and the MISO Regional Generation Outlet Study to support their belief that PJM will recognize the value provided by the RITELine Project. However, we find the MISO-related studies to be unpersuasive and PJM to be in the best position to determine the value to be provided within its region by the RITELine Project. In addition, we note that the RITELine Companies acknowledged, in their July 18, 2011 Filing, that they must, and intend to, participate in the RTEP and that the RTEP process is essential to the RITELine Project. Therefore, rather than outright rejecting the requested incentives based on failure to meet the section 219 requirement, the Commission conditioned the incentives upon the RITELine Project being included in the PJM RTEP, something that all parties recognize is essential for the RITELine Project to move forward.

²⁸ *Id.* 13-14 (citing *Desert Sw. Power, LLC*, 135 FERC ¶ 61,143, at P 41 (2011) (*Desert Southwest*)).

²⁹ October 14 Order, 137 FERC ¶ 61,039 at P 36.

18. With respect to the RITELine Companies' argument that the October 14 Order stands in stark contrast to the Commission's rulings in orders approving incentives in *Green Power Express*, *Pioneer*, and *Desert Southwest*, we find that the October 14 Order is consistent with those orders.³⁰ The Commission reviews applications on a case by case basis and rules on a specific application based upon the facts presented in that case, not the facts presented in another proceeding. While the Commission may compare one study to another, the conclusion of that comparison is not the determining factor for a specific case. Based upon the record presented before us, in both the original filing and on rehearing, we find that the RITELine Companies have not sufficiently demonstrated that the Project will ensure reliability or reduce the cost of delivered power by reducing congestion.

19. Further, with regard to the modeling assumptions, the October 14 Order found that "the congestion study had several significant refinements to the modeling assumptions regarding amounts, types, and placement of new renewable generation capacity in the PJM region," and "it is unclear what the study relied on to make these assumptions and, consequently, it is unclear what the congestion benefits of the [RITELine] Project would be absent these assumptions."³¹ While it was not inappropriate for the RITELine Companies to submit PJM's RPPTF update as evidence of the amount of wind generation capacity needed in PJM, the RITELine Companies' arguments do not persuade us to find that the October 14 Order erred in finding that the congestion benefits are unclear because the RITELine Companies only established that "8,000 MW of wind power *could* be imported from MISO."³² While 8,000 MW of wind power could theoretically be imported from MISO, it is still speculative as to whether such wind power would give rise to the congestion benefits claimed by the RITELine Companies to be eligible for incentives, including ROE incentives. Therefore, we find that the October 14 Order properly concluded that the congestion study submitted by the RITELine Companies did not rise to the level of support needed for the Commission to determine that the RITELine Project would reduce the cost of delivered power by reducing congestion.

20. With regard to the reliability study submitted by the RITELine Companies, the October 14 Order found that the study was insufficient to satisfy the threshold section 219 requirement because "it is unclear whether the reliability violations that the

³⁰ *Pioneer*, 126 FERC ¶ 61,281 at PP 37-41; *Green Power Express*, 127 FERC ¶ 61,031 at PP 38-43; and *Desert Southwest*, 135 FERC ¶ 61,143 at PP 40-45.

³¹ October 14 Order, 137 FERC ¶ 61,039 at P 36.

³² RITELine Companies Request for Rehearing at 11 (emphasis added).

RITELine Companies claim that the [RITELine] Project would mitigate are unaddressed by PJM's RTEP process."³³ We are not persuaded by the RITELine Companies' arguments in their request for rehearing that their proposed RITELine Project would mitigate the reliability violations referenced in the application. It is not clear whether the reliability violations referenced would be mitigated by other projects that have already been approved or are already being considered in the PJM RTEP process. Moreover, until PJM includes the RITELine Project in its RTEP to account for these or other potential reliability violations, which may already be addressed by other projects, it is unclear whether this project mitigates these concerns. While Order No. 679 does not require an incentives applicant to get regional planning or state approvals to be eligible for incentives,³⁴ the lack of such approvals can present a challenge for an incentives applicant to overcome the concern that a proposed project is too speculative to be eligible for incentives. Thus, we find no error in the October 14 Order's finding that the RITELine Companies' congestion and reliability benefits studies were insufficient to meet the section 219 requirements.

B. Abandonment

1. Request for Rehearing

21. The RITELine Companies argue that the Commission failed to address the policy reasons raised in the application in conditioning their request for abandonment costs on the RITELine Project being included in the PJM RTEP. In particular, the RITELine Companies state that the Commission's refusal to permit recovery of abandonment costs for projects that are not included in a regional transmission plan will provide a strong disincentive for companies to invest the time and resources up front for the extensive engineering and planning studies needed to evaluate and support projects such as the RITELine Project. The RITELine Companies assert that factors beyond the control of a project's sponsors may often result in a project not being included in the regional plan despite extensive planning efforts prior to consideration by an RTO. Therefore, the RITELine Companies argue that this factor further supports allowing them to seek recovery of abandonment costs even if they ultimately do not obtain RTEP approval of the RITELine Project. The RITELine Companies contend that the Commission failed to address these arguments and, therefore, failed to engage in reasoned decision-making.³⁵

³³ October 14 Order, 137 FERC ¶ 61,039 at P 37.

³⁴ Indeed, all public utilities are not in RTOs or ISOs.

³⁵ RITELine Companies Request for Rehearing at 15-16 (citing *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); *Hatch v. FERC*, 654 F.2d

2. Commission Determination

22. We are not persuaded by the RITELine Companies' argument on rehearing that the Commission should rule in their favor in light of policy reasons, including any disincentive to investment, rather than find that recovery of a project's abandonment costs should be conditioned upon the project being included in a regional transmission plan. The October 14 Order conditioned the RITELine Project's abandoned plant incentive on being included in the PJM RTEP because, as required by section 219 of the FPA, the RITELine Companies failed to provide the Commission with the necessary support to find that the RITELine Project ensures reliability or reduces the cost of delivered power by reducing congestion.³⁶ Moreover, Schedule 12 of the PJM Tariff sets forth the assignment of cost responsibility for RTEP projects. Therefore, without the RITELine Project being included in the RTEP, it is unclear who the RITELine Companies would collect abandonment costs from since they would not have any customers.

23. As noted above, rather than outright rejecting the requested incentives based on failing to meet the section 219 requirements on this basis, though, the Commission conditioned the incentives, including the abandoned plant incentive, upon the RITELine Project being included in the PJM RTEP.³⁷ Once the RITELine Project is included in the PJM RTEP and the planning process includes a finding that the RITELine Project will ensure reliability or reduce the cost of delivered power by reducing congestion, as established in Order No. 679,³⁸ the RITELine Project will be entitled to the rebuttable presumption that the FPA section 219 standards are met. And with this rebuttable presumption, the RITELine Project would qualify for incentives. Nothing in the RITELine Companies' request for rehearing persuades us that an applicant should be eligible for the abandoned plant cost recovery incentive based on policy grounds if, at the outset, the applicant fails to meet the FPA section 219 requirements. Therefore, we find no error in the October 14 Order conditioning the abandoned plant cost recovery incentive on the RITELine Project being included in the PJM RTEP.

825, 834 (D.C. Cir. 1981); *Delmarva Power & Light Co. v. FERC*, 770 F.2d 1131, 1143 n.9 (D.C. Cir. 1985)).

³⁶ October 14 Order, 137 FERC ¶ 61,039 at PP 36, 38.

³⁷ *Id.* P 38.

³⁸ *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 57-58.

C. Risk Adder

1. Request for Rehearing

24. The RITELine Companies request rehearing of the Commission's reduction of their requested risk adder from 150 basis points to 100 basis points. The RITELine Companies argue that this reduction is a significant policy change and that the courts have held that a federal agency may not depart from its prior policies and practices without providing an explanation for the change.³⁹ The RITELine Companies also argue that the Commission's normal policy and practice is to grant a 150-basis-point ROE adder investment incentive to similarly situated transmission projects pursuant to Order No. 679.⁴⁰

25. In addition to failing to explain why the RITELine Project was not granted a risk adder equivalent to that granted other similarly situated projects, the RITELine Companies argue that the Commission failed to recognize the value of the RITELine Companies' proposed limitation on cost overruns. The RITELine Companies explain that, because they agreed to bear additional risk in connection with their 150-basis-point ROE incentive request, the RITELine Project merited, if anything, a larger incentive than comparable projects. The RITELine Companies conclude that the Commission failed to justify imposing a 50-basis-point reduction to the risk adder in light of accepting the

³⁹ RITELine Companies Request for Rehearing at 17 (citing *Greater Boston Television Corp. v. FCC*, 444 F.2d at 852).

⁴⁰ RITELine Companies Request for Rehearing at 17-18 (citing *Desert Southwest*, 135 FERC ¶ 61,143 at P 91; *Western Grid Dev., LLC*, 130 FERC ¶ 61,056, at PP 95-98, *reh'g denied*, 133 FERC ¶ 61,029 (2010); *Baltimore Gas & Elec. Co.*, 127 FERC ¶ 61,201, at P 53 (2009), *reh'g denied*, 130 FERC ¶ 61,210, at P 31 (2010); *Pioneer*, 126 FERC ¶ 61,281 at P 56; *Pub. Serv. Elec. & Gas Co.*, 126 FERC ¶ 61,219, at P 74 (2009), *reh'g denied*, 131 FERC ¶ 61,028, at PP 27-28 (2010); *Tallgrass*, 125 FERC ¶ 61,248 at P 58 (2008), *settlement approved*, 132 FERC ¶ 61,114 (2010); *Cent. Maine Power Co.*, 125 FERC ¶ 61,182, at P 90 (2008), *motion to lodge granted and reh'g dismissed*, 129 FERC ¶ 61,153 (2009), *reh'g denied*, 135 FERC ¶ 61,236 (2011); *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 91 (2008); *PacifiCorp*, 125 FERC ¶ 61,076, at P 53 (2008); *Duquesne Light Co.*, 125 FERC ¶ 61,028, at P 49 (2008); *Va. Elec. & Power Co.*, 124 FERC ¶ 61,207, at P 120 (2008); *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176, at P 116 (2008)).

RITELine Companies' proposal on cost overruns that will shift some of the risk of the RITELine Project from customers to project sponsors.⁴¹

2. Commission Determination

26. We disagree with the RITELine Companies' contention that reduction of the risk adder by 50 basis points in the October 14 Order represents a departure from Commission policy; there is no policy guaranteeing a project 150 basis points, but rather any ROE adder depends on the risks and challenges of that particular project. Here, in light of the other incentives conditionally granted, some of which reduce the very financial and regulatory risks that RITELine Companies cite as support for an ROE adder, the October 14 Order properly found that the requested 150 basis point ROE adder was too high and reduced it accordingly.⁴² Under Order No. 679, the granting of incentives is on a case-by-case basis,⁴³ and nothing in the RITELine Companies' request for rehearing persuades us to find that the October 14 Order erred in reducing the ROE risk adder. As for the RITELine Companies' proposed limitation in the event of cost overruns, while we acknowledge that in this respect they have accepted somewhat greater risk in doing so, other incentives granted counter-balance that somewhat greater risk and in fact on balance warrant a reduction in the ROE risk adder. Thus, we find that the October 14 Order did not err in reducing the requested 150-basis-point adder to 100 basis points. We note that in addition to the adder of 100 basis points for risks and challenges, the Commission granted an adder of 50 basis points for RTO participation and the requested CWIP and abandonment incentives. As we found in the October 14 Order, this total package of incentives is tailored to the risks and challenges of the RITELine Project.

⁴¹ RITELine Companies Request for Rehearing at 19-20.

⁴² October 14 Order, 137 FERC ¶ 61,039 at P 63. *See also PJM Interconnection, L.L.C. and Public Service Electric and Gas Company*, 137 FERC ¶ 61,253, at PP 60-61 (2011) (reducing the requested incentive from 100 basis points to 25 basis points); *Atlantic Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 78 (2011) (reducing the requested incentive from 150 basis points to 100 basis points); *Public Service Electric and Gas Company*, 129 FERC ¶ 61,300, at P 35 (2009) (reducing the requested incentive from 150 basis points to 125 basis points), *reh'g dismissed*, 137 FERC ¶ 61,010 (2011).

⁴³ In Order No. 679, the Commission stated that it will allow, when justified, an incentive-based ROE. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91.

D. Advanced Technology

1. Request for Rehearing

27. The RITELine Companies challenge the Commission's denying their request for a 50-basis-point incentive adder for the use of new technology, particularly where they were the first Order No. 679 applicant to demonstrate that the use of the new technology improves the efficiency of electric transmission and reduces costs to consumers. In this regard, the RITELine Companies state that the RITELine Project will use a six-conductor bundle, as opposed to the standard four-conductor bundle used in 765 kV transmission lines, in conjunction with trapezoidal stranded conductors. The RITELine Companies assert that no other 765 kV transmission project uses this combination of technologies, and thus warrants a stand-alone 50-basis-point advanced technology incentive ROE adder. The RITELine Companies contend that the Commission offered no objective standard in the October 14 Order to determine when a new technology is "sufficient" to warrant an incentive and disregarded the RITELine Companies' study quantifying the consumer benefits of using this new and more efficient technology. The RITELine Companies contend that their proposed new technology is of the kind and type contemplated by section 1223 of the Energy Policy Act of 2005⁴⁴ and that the Commission's denial of the requested incentive adder was arbitrary and capricious.⁴⁵

28. In support of their contention, the RITELine Companies point to the Commission's decision in *Atlantic Grid* granting a stand-alone advanced technology incentive ROE adder.⁴⁶ In *Atlantic Grid*, the RITELine Companies assert, the Commission granted this stand-alone adder for the project's use of underwater high-voltage direct current transmission cables. Although the cables themselves were not a new technology, the RITELine Companies maintain that the Commission granted the requested ROE adder because the Commission found that the applicants proposed to use a combination of technologies in a different way. The RITELine Companies argue that, similar to *Atlantic Grid*, the RITELine Project will use a combination of existing technologies in a different way. Moreover, the RITELine Companies assert that the application of this combination will produce real benefits to consumers, whereas the RITELine Companies maintain that the applicants in *Atlantic Grid* did not provide a study demonstrating that their use of new technology will make the transmission of electricity more efficient or reliable. The RITELine Companies state that the study

⁴⁴ Pub. L. No. 109-58, § 1223, 119 Stat. 594 (2005).

⁴⁵ RITELine Companies Request for Rehearing at 21-22.

⁴⁶ *Atlantic Grid*, 135 FERC ¶ 61,144 at P 77.

submitted in their application shows that the new technology employed in the RITELine Project would save between \$11 million and \$29 million per year in power supply costs and this study met the Commission's Order No. 679 standard for promoting new technologies that benefit the public by increasing transmission efficiencies. They argue that the Commission's failure to address the merits of this study was arbitrary and capricious.⁴⁷

2. Commission Determination

29. In evaluating a request for a stand-alone advanced technology incentive ROE adder, the Commission has explained that it reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve efficiency, as the Commission explained in the October 14 Order.⁴⁸ Because both technologies cited by the RITELine Companies are already in use and the RITELine Companies failed to demonstrate that the simple combination of these two technologies is novel or innovative, we find that the October 14 Order did not err in denying the request.

30. Furthermore, the RITELine Companies misinterpret the Commission's decision in *Atlantic Grid*. While the Commission recognized that there were two other high-voltage direct current transmission projects in existence at the time of that Commission decision, the Commission found that "a multi-terminal topology has never been executed using [voltage sourced converter] technology and no multi-terminal project been commissioned in the past two decades."⁴⁹ This is an example of an applicant using an existing technology in a way that was never previously done before. A new application of existing technology can create novelty or innovativeness. Coupled with the finding that the technology would improve efficiency by increasing the capability to transmit power through the transmission lines, a stand-alone advanced technology adder was warranted in *Atlantic Grid* on the factual record in that proceeding. However, unlike *Atlantic Grid*, the RITELine Companies proposed to simply combine two in-service technologies and did not demonstrate to the Commission that this combination reflects a new or innovative

⁴⁷ RITELine Companies Request for Rehearing at 22-24.

⁴⁸ *NSTAR Electric Co.*, 127 FERC ¶ 61,052, at P 27 (2009); *United Illuminating Co.*, 126 FERC ¶ 61,043, at P 14 (2009).

⁴⁹ *Atlantic Grid*, 135 FERC ¶ 61,144 at P 77.

use of the technology. The October 14 Order thus appropriately denied the RITELine Companies request for a stand-alone advanced technology adder.⁵⁰

E. Median vs. Combination of Median and Midpoint

1. Request for Rehearing

31. The RITELine Companies challenge the Commission's use of the median of the high and low values derived from the RITELine Companies' DCF analysis as the measure of central tendency of the zone of reasonableness in order to establish the just and reasonable allowed base ROE for the RITELine Project. The RITELine Companies contend that, instead, the Commission should have used the midpoint, or a combination of the median and midpoint values, as the measure of central tendency. The RITELine Companies assert that the median value for the proxy group does not properly reflect the range of ROE values, is inappropriate for application to the RITELine Project and the group of utilities that have invested in the RITELine Project, and is insufficient to meet the goal of promoting investment in transmission infrastructure and ensuring the RITELine Companies' ability to maintain credit and attract capital.⁵¹

32. The RITELine Companies state that the Commission's use of the median was arbitrary and capricious because: (1) the Commission departed from prior electric cases that used the midpoint without an adequate explanation of its reasons for doing so; and (2) the un rebutted expert testimony in the proceeding demonstrates that the midpoint is a better indicator of central tendency than the median.⁵² In addition, the RITELine Companies argue that, by only using the median, the Commission has failed to reflect the shortcomings in the median calculation, which are in many respects offset by use of the midpoint.⁵³

⁵⁰ With respect to the RITELine Companies' study concerning the value of the combination of using a six-conductor bundle in conjunction with trapezoidal stranded conductors, the Commission did not need to address the merits of the study for purposes of determining if a stand-alone advanced technology adder was warranted because the RITELine Companies did not demonstrate the prerequisite requirement for the adder—that is, novelty or innovativeness.

⁵¹ RITELine Companies Request for Rehearing at 24-25.

⁵² *Id.* at 28 (citing the testimony of Dr. William Avera, Ex. No. RIT-500 at 47-56).

⁵³ *Id.* at 25.

33. The RITELine Companies further argue that the Commission cannot assume that the midpoint is unjust and unreasonable in this case because it has used the midpoint to establish the allowed ROE in a large number of electric cases, including several cases involving the ROE determination for a single utility.⁵⁴ Based on their witness Dr. Avera's testimony, the RITELine Companies state that the median calculation has several significant flaws. In particular, the RITELine Companies argue that the median does not better address concerns over skewing of the distribution of reasonable DCF results than the midpoint, and that the midpoint does not ignore the companies other than those at the end of the range of reasonableness.⁵⁵ They further argue that the purpose of the Commission's DCF analysis is to produce a zone of reasonableness, and the midpoint provides a better representation of a single ROE applicable to this range than does the median, which ignores the boundaries of the range entirely.⁵⁶

34. The RITELine Companies state that they asked the Commission, if it were not willing to use the midpoint, to determine the just and reasonable base ROE based on a combination of the midpoint and median, thereby accounting for the advantages and disadvantages of both methods. The RITELine Companies assert that the Commission did not address this suggestion or any of the positions and arguments set forth in their expert testimony, as it was required to do to satisfy its obligation to engage in reasoned decision-making.⁵⁷

2. Commission Determination

35. In their rehearing request, RITELine Companies contend that the Commission erred in using the median of the proxy company ROEs to determine the central tendency of the zone of reasonableness. RITELine Companies assert that the Commission should have adopted its expert witness's testimony that the proper measure of the central tendency is the midpoint of the zone of reasonableness or a combination of the midpoint and the median, rather than just the median.

⁵⁴ *Id.* at 25-26.

⁵⁵ *Id.* at 28 (citing *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 298 (D.C. Cir. 2001)).

⁵⁶ *Id.* at 28-29.

⁵⁷ *Id.* at 29-30 (citing *Greater Boston Television Corp.*, 444 F.2d at 852; *Hatch*, 654 F.2d at 834; *Delmarva Power & Light Co.*, 770 F.2d at 1143 n.9).

36. We are not persuaded that the Commission improperly used the median in determining the central tendency of the zone of reasonableness for purposes of setting RITELine Companies' ROE. Indeed, using the median as the measure of central tendency in this proceeding recognizes important differences in the purpose of the analysis that the Commission conducts when it sets an ROE for an individual utility rather than for a group comprising all of the utilities within an RTO. Moreover, this approach is consistent with current Commission precedent concerning the appropriate measure of central tendency in cases involving an individual utility.

37. In *Golden Spread Electric Coop., Inc.*,⁵⁸ the Commission modified its policy concerning the proper measure of the central tendency of the zone of reasonableness in cases involving individual utilities in order to require the use of the median, rather than the midpoint. Since then, the Commission has consistently held that the median is the most accurate measure of central tendency for a single utility.⁵⁹ In *Southern Cal. Edison Co.*,⁶⁰ the Commission explained that, by applying the median, rather than the midpoint, the Commission gives "consideration to more of the companies in the proxy group, rather than only those at the top and bottom. This will lessen the impact of any single proxy company whose ROE is atypically high or low." In 2013, the United States Court of Appeals for the District of Columbia Circuit denied an appeal of this aspect of the Commission's *S. Cal. Edison Co.* decision,⁶¹ rejecting contentions similar to those made by RITELine Companies in their rehearing request. Therefore, we deny rehearing on this issue.⁶²

⁵⁸ 123 FERC ¶ 61,047 (2008).

⁵⁹ October 14 Order, 137 FERC ¶ 61,039 at P 73; *see also Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152 at P 65 (2010).

⁶⁰ *Southern Cal. Edison Co.*, 131 FERC ¶ 61,020, at P 85 (2010) (quoting *Transcon. Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,427 (1998) (*Transcontinental Gas*), *aff'd*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied*, *N.C. Util. Comm'n v. FERC* 203 F.3d 53 (D.C. Cir. 2000); *Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,081 (1998) (relying on *Transcontinental Gas* and stating that the median is preferable to the midpoint in setting ROE because it lessens the impact of atypical outliers in the proxy group)).

⁶¹ *S. Cal. Edison Co. v. FERC*, 717 F.3d 177 (D.C. Cir. 2013).

⁶² We note that, subsequent to issuing the October 14 Order, the Commission changed its practice for determining the base ROE for public utilities by adopting a two-step DCF methodology, rather than a one-step DCF methodology like the one RITELine

(continued...)

38. For these reasons, we conclude that application of the median rather than the midpoint or a combination of the two for determining a base ROE for the RITELine Project is appropriate and consistent with Commission precedent. Therefore, we find no error in the October 14 Order's use of the median of the high and low values derived from a DCF analysis in order to establish the just and reasonable allowed base ROE for the RITELine Project.

F. Proxy Group

1. Request for Rehearing

39. Finally, the RITELine Companies contend that the Commission acted arbitrarily and capriciously in eliminating PPL Inc. entirely from the proxy group used to calculate the just and reasonable allowed base ROE for the RITELine Project. The RITELine Companies explain that they applied Commission precedent to remove from the final calculation the low-end DCF numbers that did not conform with economic logic, because the numbers were more than 100 basis points below the cost of debt for comparable companies. However, they state that, where a single DCF result for a company that otherwise belongs in the proxy group is excluded because it is unreliable, the other result for that company is not automatically excluded as well. The RITELine Companies explain that the low-end and high-end DCF results occur due to the use of two different sources (Value Line and IBES) for the growth rates used in the analysis. They state that the fact that one growth rate may produce a cost of equity that fails tests of economic logic says nothing about the soundness of the second, independent value. Moreover, in many cases, the Commission has only used Value Line to determine the growth rate with

Companies provided in this case. *See Martha Coakley, Mass. Attorney Gen., et al. v. Bangor Hydro-Elec. Co., et al.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014). When the Commission announces such a policy change while a case is pending, “the decision regarding whether to apply that new policy on rehearing is ‘committed, in the first instance, to the agency’s sound discretion.’” *N.C. Utils. Comm’n v. FERC*, 741 F.3d 439, 449-450 (4th Cir. 2014) (*quoting Nat’l Posters, Inc. v. NLRB*, 720 F.2d 1358, 1364 (4th Cir. 1983)). Because the Commission had already issued an order in the instant proceeding addressing all issues on the merits before the issuance of Opinion No. 531 and the proceeding is now at the rehearing stage, applying the new policy would effectively require the Commission and the parties to revisit all issues concerning the determination of RITELine Companies’ base ROE anew, thereby producing regulatory inefficiency and uncertainty. We, therefore, find it inappropriate to apply the ROE policy established in Opinion No. 531 to this proceeding.

IBES used to make the analysis more reliable. The RITELine Companies argue that the exclusion of the Value Line result simply because the newly added IBES growth rate failed to provide a second, reliable cost of equity would remove a valid data point, inappropriately excluding a comparable utility for the analysis. The RITELine Companies state that this renders the DCF analysis less, not more, reliable.⁶³ The RITELine Companies add that the Commission has no consistent policy in this area, and in recent cases the Commission has accepted analyses that use the high-end value for a proxy company, even when the low-end value has been rejected, in developing the reasonable range for the company.⁶⁴ The RITELine Companies conclude that the Commission has not provided a reasoned basis for excluding the reasonable PPL Inc. value from its range of proxy results, nor has it explained why it applied a different policy on the issue in this case than in similar prior cases.

2. Commission Determination

40. The one-step DCF methodology used in this case determines separate high and low-end equity estimates for each proxy company.⁶⁵ In the RITELine Companies' analysis, when PPL Inc.'s low-end cost of equity was removed by RITELine Companies from the proxy group analysis, the corresponding high-end cost of equity was not removed. As we stated in Opinion No. 489, the use of only one end of the DCF calculation would skew the Commission's one-step DCF methodology.⁶⁶ Therefore, in cases using the one-step DCF methodology, when we have eliminated either the high-end or low-end ROE outlier of a company, we also have eliminated the corresponding low-end or high-end ROE of that company.⁶⁷ Finding no error in the October 14 Order's removal of PPL Inc. from the proxy group used to calculate the just and reasonable allowed base ROE for the RITELine Project, we deny rehearing on this issue.

⁶³ RITELine Companies Request for Rehearing at 30-31.

⁶⁴ *Id.* at 31-32 (citing *Southern Cal. Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070 at 61,266 (2000); *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135, at P 20 (2008); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306, at P 26 (2008); Atlantic 15 Filing, Coyne Test., Docket No. ER08-374-000, at Ex. Nos. ATL-4 at 32 & ATL-7 at 2 (filed Dec. 21, 2007)).

⁶⁵ Opinion No. 531, 147 FERC ¶ 61,234 at PP 24-26.

⁶⁶ *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 at P 54 (2006).

⁶⁷ *Pioneer*, 126 FERC ¶ 61,281 at P 94; *Atlantic Grid*, 135 FERC ¶ 61,144 at P 95 (excluding from the proxy group companies whose low-end ROE is within about 100 basis points above the cost of debt).

The Commission orders:

The RITELine Companies' request for rehearing is hereby denied.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RITELine Illinois, LLC
RITELine Indiana, LLC

Docket Nos. ER11-4069-001
ER11-4070-002

(Issued December 18, 2014)

MOELLER, Commissioner, *dissenting in part*:

In my initial dissent in this proceeding, I observed that “[n]ow is not the time for this Commission to begin retreating from its incentive policy on needed transmission lines.” And today, if we are going to produce less carbon dioxide when generating electricity, we’ll need more transmission lines to move cleaner sources of power to those who need it. In particular, because RITELine will allow power to move from the west to the east, this project can help nuclear and wind power move from the west, where it is produced, to the east, where it is needed.

¹

This action thus sets up a collision between two federal agencies that regulate the energy industry. That is, while the Environmental Protection Agency is moving to limit carbon dioxide, which will require more transmission lines, this Commission is changing its policies on transmission incentives in a manner that actually discourages the very transmission that will be needed to satisfy EPA requirements.

In reducing the usual incentive from 150 to 100 basis points, the Commission makes a significant policy change without justification for that change.

Philip D. Moeller
Commissioner

¹ See the application submitted by RITELine at page 27, submitted on July 18, 2011 in Docket No. ER11-4070.