

127 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Baltimore Gas and Electric Company

Docket No. ER09-745-000

ORDER GRANTING TRANSMISSION RATE INCENTIVES

(Issued May 29, 2009)

1. On February 20, 2009, Baltimore Gas and Electric Company (BG&E) filed revised tariff sheets to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)¹ to implement Order No. 679² transmission rate incentives for its portion of the 230-mile, 500 kV Mid-Atlantic Power Pathway (MAPP) Project. Specifically, BG&E requests a return on equity (ROE) transmission rate adder of 150 basis points for the construction of 10.4 miles of new transmission facilities. BG&E also requests authorization to recover 100 percent of all prudently incurred costs if the MAPP Project is abandoned for reasons beyond BG&E's control. For the reasons discussed below, we grant BG&E's requested incentives and accept for filing BG&E's revised tariff sheets, effective June 1, 2009, as requested.

I. Background

A. Description of BG&E

2. BG&E, a wholly owned subsidiary of Constellation Energy Group, Inc. (Constellation), provides electric transmission and distribution and gas distribution service to Baltimore and all or part of ten counties in central Maryland. BG&E formerly operated as an integrated electric utility; however, pursuant to state legislation, BG&E

¹ 16 U.S.C. § 824d (2006).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

restructured its electric utility operations to separate generation and other competitive businesses from energy delivery operations. As a result, BG&E's current operations consist of retail electricity delivery and wholesale transmission operation. BG&E's facilities include 1,300 miles of high-voltage electric transmission lines and 24,000 miles of distribution lines.³

B. BG&E's Formula Rate and Prior Incentive Rate Filings

3. On March 20, 2006, in Docket No. ER05-515-000, BG&E and Pepco Holdings, Inc. (PHI) on behalf of its operating affiliates (Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric), filed a Settlement Agreement regarding the implementation of formula rates. The Settlement Agreement established (1) an initial ROE of 10.80 percent for all BG&E and PHI transmission facilities placed in-service prior to January 1, 2006; (2) an 11.30 percent ROE for all BG&E and PHI transmission facilities placed in-service on or after January 1, 2006; (3) a base ROE of 10.80 percent onto which any transmission rate incentive would be added; and (4) BG&E's and PHI's right to make filings at any time to implement any transmission incentive mechanisms. The Commission approved the Settlement Agreement on April 19, 2006.⁴

4. On February 28, 2007, in Docket No. ER07-576-000, BG&E filed revised tariff sheets to PJM's OATT seeking, *inter alia*, Commission approval of a 50-basis point incentive adder to its base ROE of 10.80 percent for all jurisdictional facilities in recognition of its continuing membership in PJM. On July 24, 2007, the Commission issued an order granting the 50-basis point incentive adder in recognition of BG&E's continued membership in PJM, which resulted in an overall ROE of 11.3 percent.⁵

C. Mid-Atlantic Power Pathway Project

5. The MAPP Project is a PJM backbone project involving the construction of approximately 230 miles of new transmission line through the service territories of Virginia Electric and Power Company (VEPCO), PHI, BG&E, and Public Service

³ BG&E's February 20, 2009 Incentive Rate Application (Incentive Proposal), Docket No. ER09-745-000, Exhibit No. BGE-6 at 8.

⁴ *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

⁵ *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *reh'g denied*, 122 FERC ¶ 61,034, *reh'g denied*, 123 FERC ¶ 61,262 (2008) (*BG&E Order on Rehearing*).

Electric and Gas Company (PSE&G). The MAPP Project will (1) begin at VEPCO's Possum Point Station in northern Virginia; (2) cross the Potomac River into Maryland; (3) extend across southern Maryland; (4) go under the Chesapeake Bay; (5) traverse Maryland's Eastern Shore; (6) extend up the Delmarva Peninsula; and (7) terminate at PSE&G's Salem and Hope Creek Switching Stations in southern New Jersey. The MAPP Project will be an overhead 500 kV line to be built along existing rights-of-way, except for the submarine HVDC cable, which will go under the Chesapeake Bay. The MAPP Project will relieve load deliverability criteria violations that are projected to occur by 2012 in the Delmarva Peninsula. It will also bring relief to the Baltimore-Washington area in light of the retirement of the Benning and Buzzard Point generating facilities. In addition, the MAPP Project, when considered in conjunction with proposals to develop new nuclear generating facilities at North Anna and Calvert Cliffs, will deliver additional megawatts to the Baltimore/Washington area.⁶

6. VEPCO's and BG&E's portions of the MAPP Project involve 0.2 miles and 10.4 miles of facilities, respectively, and are projected to be in service by December 2011. Their estimated costs are \$7 million and \$65 million, respectively. PHI is responsible for approximately 200 miles of new transmission line to be in service in 2013 at an estimated cost of \$950 million. PSE&G is responsible for 4 to 10 miles of facilities at an estimated cost of \$150 million with an in-service date of 2013.

7. On March 3, 2008, VEPCO requested a 150-basis point ROE incentive for its portion of the MAPP project, which would result in an ROE of 12.9 percent. Similarly, on August 18, 2008, PHI requested a 150-basis point ROE adder which would result in an ROE of 12.8 percent. In addition, PHI requested incentives for CWIP and abandonment. VEPCO's, PHI's and BG&E's portions of the MAPP Project were included in PJM's 2007 Regional Transmission Expansion Plan (RTEP) as PJM baseline projects. The Commission approved VEPCO's and PHI's requested incentives.⁷ The MAPP Project was approved for construction as a baseline project by the PJM Board. However, the PSE&G portion of the MAPP Project is undergoing further review by PJM.

8. On November 3, 2008, PSE&G requested a 150-basis point ROE incentive as well as the abandonment incentive. In addition, PSE&G requested authority to assign the project to an affiliate. PSE&G's requested incentives were granted by the Commission

⁶ PJM 2007 RTEP at 69-73.

⁷ *Pepco Holding, Inc.*, 125 FERC ¶ 61,130 (2008) (*PHI Incentive Rate Order*); *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 (2008) (*VEPCO Incentive Rate Order*).

contingent upon approval from the PJM Board of Managers of PSE&G's portion of the MAPP Project as a baseline RTEP project.⁸

II. Incentive Rate Proposal

9. BG&E requests that it be granted (1) a 150-basis point ROE adder to its currently-effective ROE of 11.3 percent for the MAPP Project, resulting in an overall ROE of 12.8 percent; and (2) authorization to recover all prudently incurred costs if the MAPP Project is abandoned or cancelled for reasons beyond the control of BG&E. BG&E requests an effective date of June 1, 2009.

A. Risks and Challenges

10. PHI and BG&E are responsible for the 20 miles of new transmission line between PHI's Chalk Point Station and BG&E's Calvert Cliffs Substation. Pursuant to a Construction and Coordination Agreement, PHI will construct the facilities, with 9.6 miles on its existing right-of-way and 10.4 miles on BG&E's existing Calvert Cliffs right-of-way. BG&E states that since the existing Calvert Cliffs right-of-way was designed for only a single circuit on steel lattice towers; there is no room for a 500 kV circuit. Thus, BG&E states that the existing single circuit structure will have to be removed and a double circuit 500 kV line will have to be built on new structures. BG&E states that this arrangement presents siting and construction challenges. PHI and BG&E have engaged in discussions regarding the Chalk Point to Calvert Cliffs portion of the MAPP Project to optimize use of engineering and construction resources for coordinating the design and construction phases for this line segment.⁹

11. BG&E describes the upgrade at the Calvert Cliffs substation and nuclear power plant as complex. BG&E owns an existing switchyard that accepts generation output from Calvert Cliffs Units No. 1 and No. 2 that accommodates five 500 kV circuits: one circuit from each unit, two circuits that connect to BG&E's Waugh Chapel Substation, and a single circuit that connects to Chalk Point. BG&E states that the MAPP Project's 500 kV circuit is proposed to interconnect at the already-crowded Calvert Cliffs switchyard.

⁸ *Public Service Electric and Gas Co.*, 126 FERC ¶ 61,219 (2009) (*PSE&G Incentive Rate Order*).

⁹ PHI Incentive Rate Proposal, Docket No. ER08-1423-000, Exhibit PHI-1 at 15-16 (Aug. 18, 2008).

12. BG&E also states that a third 1,650 MW nuclear reactor unit has been proposed for the Calvert Cliffs site. The preliminary design for the new unit includes a new switchyard with two new 500 kV circuits connecting the new and existing switchyards. With three new 500 kV circuits converging at the existing Calvert Cliffs switchyard, BG&E states that it will be responsible for expanding its switchyard and developing a design and circuit routing that ensures reliability, maintains proper clearances among the numerous circuits, and can be sequentially constructed to minimize the impact on plant operations.¹⁰

13. BG&E estimates the total cost for its portion of the line, plus the interconnection at the Calvert Cliffs Substation, to be approximately \$65 million. BG&E's estimate includes \$42 million for the 500 kV line, consisting of \$20 million for material, \$19 million for construction, and \$3 million for engineering, permitting, and other support costs. BG&E's estimate also includes \$10 million for a new 500 kV bay and breaker at the Calvert Cliffs Substation. Finally, BG&E's estimate reflects an internal capital allocation of \$13 million to accommodate currently unknown scope issues.¹¹

B. Technology Statement

14. BG&E states that its portion of the MAPP Project is being designed by PHI to (1) assure a unified design, (2) enable the MAPP Project to be a smart grid, and (3) make the transmission of energy over the PHI/BG&E facilities more efficient. The advanced transmission technologies identified in its proposal are the same as those set forth in PHI's request for incentives for its portion of the MAPP Project.¹² Those advanced transmission technologies include: (1) microprocessor-based relays, (2) digital fault recorders, and (3) fiber optic protection and communication links.

15. The use of microprocessor-based relays at the Calvert Cliffs Substation, according to BG&E, will be designed to coordinate with comparable relays owned by PHI at the Chalk Point Substation. BG&E explains that microprocessor-based relays improve performance sensitivity and speed, reliability, availability and efficiency and contain many new capabilities unavailable in older electromechanical relays. BG&E describes the digital fault recorders to be used in the MAPP Project as smart technology that allows system operators to quickly analyze system operations and performance. BG&E states

¹⁰ Incentive Proposal, Exhibit No. BGE-1 at 8-9.

¹¹ Incentive Proposal, Exhibit No. BGE-1 at 11.

¹² It should be noted that BG&E, like PHI, has not requested a separate advanced technologies incentive adder to its base ROE.

that although digital fault recorders have been in existence for many years, modern digital fault recorders provide many new features including a combination of traditional fault recording with disturbance recording, sequence of event recording, power quality analysis and many other features not previously available or affordable in a single recording platform.

16. BG&E states that fiber optic protection and communication links support mission-critical telecommunications and teleprotection applications. According to BG&E, which cites PHI's Technology Statement, high capacity fiber communications systems allow the interconnection of utilities and also provide the necessary communication for support of back-up control centers and full compliance with NERC regulations. Finally, BG&E states that it considered other advanced technologies for the project, but determined that they were not appropriate due to cost factors, technological limits, and/or the limited scope of the MAPP Project at the Calvert Cliffs Substation. The non-selected technologies included advanced conductor materials, pole and power designs, substation-wide-area networks, and "smart" remote terminal units and sensors.¹³

III. Notice of Filing and Responsive Pleadings

17. Notice of BG&E's filing was published in the *Federal Register*, 74 Fed. Reg. 14,113 (2009), with interventions and protests due on or before March 13, 2009. Timely motions to intervene, raising no substantive issues, were filed by PHI, American Municipal Power—Ohio, Inc., PJM, and Old Dominion Electric Cooperative. The Maryland Office of People's Counsel (People's Counsel) filed a timely motion to intervene, protest, and request for hearing, and the Public Service Commission of Maryland (Maryland Commission) filed a notice of intervention and protest. PSE&G filed an out-of-time motion to intervene, raising no substantive issues. On March 17, 2009, BG&E filed an answer to the protests.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, PSE&G's interest in the case, and the absence of any undue prejudice or delay, we grant PSE&G's late-filed motion to intervene.

¹³ Incentive Proposal, Exhibit No. BGE-15 at 2-5.

19. Rule 213(a) of the Commission's Rules and Practice and Procedure, 18 C.F.R. § 385.213(a) (2008), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to accept BG&E's answer and will therefore reject it.

B. Section 219 Demonstration

20. In the Energy Policy Act of 2005 (EPAAct 2005), Congress added section 219 to the FPA,¹⁴ 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 how a public utility may seek transmission rate incentives pursuant to section 219.

21. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks its incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.¹⁵ Order No. 679 also 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 a project has received construction approval from an appropriate state commission or state siting authority.¹⁶ We consider below each of these criteria.

1. Proposal

22. BG&E states that the MAPP Project meets the rebuttable presumption under Order No. 679 based on the project's approval by the PJM Board and its inclusion in PJM's 2007 RTEP as a baseline project. Further, BG&E notes that the Commission has previously acknowledged that the MAPP Project has satisfied the requirements of section

¹⁴ Pub. L. No. 109-58, § 1241 119 Stat. 594 (2005). Section 219 is codified at 16 U.S.C. § 824s (2006).

¹⁵ 18 C.F.R. § 35.35(i) (2008).

¹⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 58. Order No. 679-A clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion. *Id.* P 49.

219.¹⁷ Finally, BG&E notes that the MAPP Project is a major west-to-east PJM transmission project identified by the Department of Energy to address reliability and congestion-related issues in one of the National Interest Electric Transmission Corridors.

2. Protests

23. People's Counsel argues that BG&E has not satisfied the factors set forth in EAct 2005. Specifically, People's Counsel contends that the four goals identified in section 1241 of EAct 2005¹⁸ are "conjunctive," meaning that all four goals must be met. People's Counsel states that these goals are (1) promoting capital investment in interstate commerce transmission facilities, (2) providing an ROE that attracts new investment in transmission facilities, (3) encouraging the deployment of transmission technologies and other measures to increase the capacity and efficiency of existing transmission facilities and improve their operations, and (4) allowing recovery of a company's prudently incurred costs.¹⁹ People's Counsel reasons that because BG&E is using internal financing without seeking investment from the financial community and BG&E's portion of the MAPP Project does not further the implementation of advanced technologies, BG&E's proposal for incentives fails to meet all four goals and must be rejected. People's Counsel acknowledges that the Commission rejected a similar argument involving BG&E on the basis that People's Counsel's premise was "inconsistent with the statute,"²⁰ but claims that the Commission did not provide any basis for its interpretation.

3. Commission Determination

24. We find that the MAPP Project meets the requirements of section 219 as a result of the rebuttable presumption established in Order No. 679. The MAPP Project as a whole was included in the PJM 2007 RTEP – a fair and open regional planning process – as a baseline project, which means that PJM determined that the project is regional in nature and will mitigate congestion or ensure PJM's ability to continue to serve load reliably. Because each portion of the MAPP Project is dependent on the other portions to achieve the reliability and congestion relief benefits, our evaluation here focuses on the

¹⁷ Incentive Proposal at 11, citing *PHI Incentive Rate Order*, 125 FERC ¶ 61,130 at P 75-76, *VEPCO Incentive Rate Order*, 124 FERC ¶ 61,207 at P 66.

¹⁸ Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961 (2005).

¹⁹ People's Counsel Protest at 15.

²⁰ People's Counsel Protest at 18; *BG&E Order Denying Rehearing*, 123 FERC ¶ 61,262 at P 20-23.

MAPP Project in its entirety.²¹ There are significant region-wide benefits attributable to the MAPP Project including increased import capability, reduced congestion, and improved reliability in the Mid-Atlantic region.²² To be fully realized, these benefits depend on the construction of each of the planned segments of the MAPP Project.

25. We reject People's Counsel's contention that BG&E's proposal must be denied unless all four goals identified in section 1241 of EPCRA 2005 have been met. As People's Counsel acknowledges, the Commission previously rejected this argument, specifically finding that:

We do not read section 219(b) as establishing a checklist of conditions that must be met before the Commission may authorize incentives in any particular case; rather, we read it as establishing general policy objectives to guide the rulemaking mandated in section 219(a) (and satisfied by the Commission in Order No. 679).²³

C. Nexus Demonstration

26. Order No. 679 requires that an applicant seeking a transmission rate incentive demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."²⁴ The Commission stated that the most compelling case for incentives are new projects that present special risks or challenges, not routine investments made in the ordinary course of business of expanding the system to provide safe and reliable transmission service.²⁵

27. In the *BG&E Incentive Rate Order*, the Commission clarified how it will evaluate projects to determine whether they are routine.²⁶ Specifically, to determine whether a

²¹ See *PSE&G Incentive Rate Order*, 126 FERC ¶ 61,219 at P 50.

²² *PHI Incentive Rate Order*, 125 FERC ¶ 61,130 at P 55; *PSE&G Incentive Rate Order*, 126 FERC ¶ 61,219 at P 50.

²³ *BG&E Order on Rehearing*, 123 FERC ¶ 61,262 at P 21.

²⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

²⁵ *Id.* P 23.

²⁶ *BG&E Incentive Rate Order*, 120 FERC ¶ 61,084 at P 52-55.

project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, or effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing, long lead times, regulatory and political risks, specific financing challenges, or other impediments).

28. As discussed in greater detail below, the Commission finds that BG&E has demonstrated a nexus between the incentives it has requested and the risks and challenges it faces in implementing its portion of the MAPP Project. The Commission further finds that the MAPP Project is non-routine.

D. 150-Basis Point Incentive for New Transmission

1. Proposal

29. BG&E requests a 150-basis points ROE adder for its portion of the MAPP Project. BG&E is responsible for 10.4 miles of 500 kV backbone transmission line from Chalk Point to Calvert Cliffs plus equipment at the Calvert Cliffs Substation. BG&E states that its anticipated equipment cost of \$65 million is approximately 20 percent of BG&E's projected transmission investment for 2009-2011 and is larger than BG&E's RTEP investments in any previous calendar year. In addition, BG&E states that the primary benefit of its section of the MAPP Project is to serve as a pathway to enable the overall project benefits for the Delmarva Peninsula and New Jersey. BG&E states that another benefit of its portion is to provide a conduit for new nuclear generation in northern Virginia and southern Maryland into the Baltimore-Washington area, onto the Delmarva Peninsula and into southern New Jersey.²⁷

30. BG&E states that its portion of the MAPP Project poses risks and challenges. For example, BG&E states that a significant amount of coordination will be necessary between BG&E and PHI, since each utility owns a portion of the Chalk Point to Calvert Cliffs line. Further, BG&E states that there are permitting challenges associated with certain project components: the high visual profile of the double circuit 500 kV towers; the Patuxent River crossing; and the fact that one of the terminals of the Chalk Point to Calvert Cliffs line is at a nuclear power plant. BG&E also expects engineering challenges associated with the new third nuclear unit at Calvert Cliffs. Finally, BG&E

²⁷ Incentive Proposal, Exhibit No. BGE-11, *citing* 2007 RTEP at 107.

states that the aggressive construction schedule for the overall project requires the commitment of funds before all of the permitting processes are completed.²⁸

31. BG&E also states that it faces financial challenges and risks associated with its portion of the MAPP Project. BG&E will rely on internal funding from Constellation, whose credit rating was downgraded when it was on the brink of bankruptcy in mid-September 2008. BG&E states that it expects that its major expenditure on its portion of the MAPP Project will be heavily scrutinized by Constellation, especially since the cash will be needed from 2009 through 2011, but the revenues will not begin until 2011 when BG&E's portion of the MAPP Project is placed in service. In addition, BG&E states that there is uncertainty with respect to its recovery of costs within PJM. BG&E notes that costs for 500 kV lines are socialized across all of PJM, although this cost allocation is pending appeal in federal court.²⁹ Further, BG&E states that the flow-through of wholesale costs to retail rates may be limited to "what is politically acceptable."³⁰

2. Protests

32. The Maryland Commission and People's Counsel argue that BG&E has not demonstrated that the requested ROE adder of 150 basis points bears a sufficient nexus to BG&E's portion of the MAPP Project, in terms of special risks and advanced technologies. People's Counsel argues that BG&E's portion of the MAPP Project is routine. Specifically, People's Counsel argues that BG&E's portion of the MAPP Project faces minimal risks compared to the other segments because it is only 4.5 percent of the entire length of the MAPP Project; it will be constructed on an already existing BG&E right-of-way within a single state; and it does not cross any bodies of water or wetlands.

33. People's Counsel argues that under the Consolidated Transmission Owners Agreement that BG&E executed when it became a part of the PJM RTO, BG&E agreed to construct and own or finance enhancements or expansions applicable to the PJM Region specified in the RTEP. People's Counsel also argues that because the MAPP Project will resolve projected reliability violations on BG&E's facilities, it will ensure that BG&E is able to meet its obligations under the requirements of the Maryland public

²⁸ Incentive Proposal, Exhibit No. BGE-13 at 12.

²⁹ Incentive Proposal, Exhibit No. BGE-13 at 13-14; *PJM Interconnection, LLC*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008), *appeal pending, Illinois Commerce Commission v. FERC*, Docket Nos. 08-1306, 08-1780, 08-2071, 08-2124, 08-2239 (7th Cir.).

³⁰ Incentive Proposal, Exhibit No. BGE-13 at 12-14.

utilities laws to “furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical and efficient, considering the conservation of natural resources and the quality of the environment.”³¹ Further, People’s Counsel argues that BG&E is already compensated with a 50-basis point ROE incentive for being a member of PJM, and thus has agreed to undertake the obligation to build facilities as directed by PJM’s RTEP.

34. People’s Counsel argues that BG&E’s portion of the MAPP Project does not serve to attract new investment in transmission facilities. People’s Counsel asserts that because BG&E will fund its portion of the MAPP Project internally, BG&E is only “competing” with other Constellation subsidiaries for funding and is not “attracting” new investment in the sense Congress intended in section 219.³²

3. Commission Determination

35. As discussed herein, we find that a sufficient nexus exists between the incentive requested by BG&E and the investment BG&E will be required to make for the MAPP Project. We find that the MAPP Project is not a routine project, given the project’s scope, effects, and the risks and challenges that the construction of the project will present. Indeed, the MAPP Project will cost approximately \$1.4 billion³³ and will have an estimated length of 230 miles. Thus, we grant BG&E’s requests for a 150-basis point ROE adder.

36. The MAPP Project will span four states and is a PJM RTEP baseline project. As such, the MAPP Project will provide regional as well as local benefits. The MAPP Project will improve import capability, reduce congestion, and improve reliability in the Mid-Atlantic region.³⁴ The Commission finds that the ROE incentive adder BG&E requests will promote these goals by recognizing the importance of these new facilities and the risks and challenges inherent in bringing them to completion. In addition, the overall MAPP Project faces challenges presented by its large scope and size, requiring approvals from multiple municipalities and state siting authorities, and various federal approvals. A failure to obtain the necessary permits by any utility involved with the MAPP Project could adversely affect the entire MAPP Project.

³¹ MD. CODE ANN., PUB. UTIL. COS. § 5-303 (2008).

³² People’s Counsel Protest at 20-21.

³³ Incentive Proposal, Exhibit No. BGE-6 at 10.

³⁴ *PG&E Incentive Rate Order*, 126 FERC ¶ 61,219 at P 50.

37. In response to People’s Counsel’s and the Maryland Commission’s assertion that the Commission’s review of BG&E’s incentive rate request should focus on the BG&E segment alone, we clarify that BG&E’s portion of the MAPP Project is an integral part of the MAPP Project as a whole. The risks and challenges faced by each partner to the MAPP Project, as well as the need for coordination among those partners, could affect the construction of the entire project.³⁵

38. We also reject People’s Counsel’s claim that BG&E’s investment in the MAPP Project is not the type of investment contemplated in section 219(b) of the FPA because it is funded internally by Constellation. The Commission rejected this same argument by the People’s Counsel previously.³⁶ Further, in Order No. 679, the Commission explained that it expected that an incentive ROE would “make transmission projects more attractive, and therefore more likely, *when transmission projects must compete for capital in vertically-integrated utilities* as well as in transmission and delivery utilities.”³⁷

³⁵ In the *PSE&G Incentive Rate Order*, the Commission encouraged prospective owners of a transmission project for which multiple owners intend to request transmission rate incentives for their segments of the project—and where those multiple owners intend to rely on the scope, effects, and risks and challenges of the entire project as a basis for qualifying for such incentives -- to submit a single joint filing requesting transmission rate incentives applicable to the entire project. Such an application must demonstrate that the segments are appropriately viewed as constituting a single project. When presented with one such filing for a project, the Commission can analyze most effectively the overall scope, effects, and risks and challenges of the project as it evaluates requested transmission rate incentives. The submittal of a single joint filing will also avoid the need for piecemeal review of a project through individual applications for incentives that may obscure the relationship among integral parts of a project and the overall project’s characteristics and benefits. A prospective owner retains the option of filing a separate request for transmission rate incentives for its segment of a transmission project that involves multiple owners, in isolation from the other prospective owners. In such instances, however, the individual prospective owner may not be able to rely on the overall scope, effects, and risks and challenges of the entire project as a basis for qualifying for the requested incentives. *PSE&G Incentive Rate Order*, 126 FERC ¶ 61,219 at P 55. Because BG&E’s instant filing was made before the Commission issued the *PSE&G Incentive Rate Order*, BG&E did not have the opportunity to take heed of the Commission’s encouragement.

³⁶ *BG&E Order on Rehearing*, 123 FERC ¶ 61,262 at P 26-27.

³⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91 (emphasis added).

E. Abandonment Incentive

1. Proposal

39. BG&E requests authorization to recover 100 percent of all of its prudently-incurred development and construction costs if the MAPP Project is abandoned or cancelled for reasons beyond the control of BG&E's management. BG&E states that it is unprepared to commit to an outlay of such significant sums for construction of its portion of the MAPP Project without pre-approval of abandonment costs. BG&E further states that this incentive is necessary because there are many aspects of the MAPP Project for which it has no direct responsibility or control, including the siting and permitting. BG&E states that the abandonment incentive only mitigates the risks associated with termination of the MAPP Project, but does not protect it from challenges asserting that its costs for the MAPP Project were not prudent or that the abandonment was not outside of BG&E's control.³⁸

2. Protests

40. Neither People's Counsel nor the Maryland Commission objects to the proposed abandonment incentive. However, People's Counsel argues that "the promise of such recovery substantially reduces risk" and thus the level of ROE adder should reflect this reduced risk.

3. Commission Determination

41. We agree with BG&E that the abandonment incentive it seeks will be an effective means to encourage the completion of BG&E's portion of the MAPP Project because that incentive will reduce the risk of non-recovery of costs. In addition to challenges presented by its scope and size, the MAPP Project will require a series of approvals from multiple municipalities, multiple state siting authorities, and various federal entities. In addition, the MAPP Project risks cancellation should any portion of the project fail to receive siting authority. These factors, considered as a whole, introduce a significant element of risk. Under these circumstances, authorizing recovery of BG&E's prudently incurred abandonment costs will help BG&E ameliorate this risk. We note that this authorization is consistent with the Commission's approvals on the other segments of the MAPP Project.³⁹

³⁸ Incentive Proposal, Exhibit No. BGE-13 at 13.

³⁹ See, e.g., *PSE&G Incentive Rate Order*, 126 FERC ¶ 61,219 at P 65.

F. Return on Equity

1. Proposal

42. BG&E requests an ROE incentive of 150 basis points for new transmission to be added to its currently-effective 11.30 percent ROE for a total ROE for its portion of the MAPP Project of 12.80 percent. BG&E states that when it applies the Commission-approved discounted cash flow model, it calculates a range of reasonableness of 9.6 percent to 15.8 percent.⁴⁰ BG&E contends that its requested ROE of 12.80 percent is well below the upper end of the zone of reasonableness. Further, BG&E states that its requested 150-basis point ROE adder is consistent with ROE adders that the Commission has approved for the other portions of the MAPP Project.

43. To arrive at the cost of common equity, BG&E applied a discounted cash flow analysis to a proxy group of transmission-owning utilities, which it states is consistent with Commission methodology.⁴¹ BG&E states that it used a starting sample of 12 transmission-owning members of PJM, the New York Independent System Operator, Inc. (NYISO), and the ISO New England, Inc. (ISO-NE), with publicly traded stock.⁴² In addition, BG&E states that it evaluated its RTO proxy group through several risk measures, including Standard and Poor's (S&P) corporate credit rating. Because BG&E's S&P credit rating is BBB, BG&E excluded companies with credit ratings more than one rating notch below BBB and one rating notch above BBB.

44. BG&E also excluded from its proxy group: (1) companies that do not pay common dividends; (2) companies for which no Value Line data or Institutional Broker's Estimate System growth rate was currently available; (3) companies that have recently been involved in merger and acquisition activity; and (4) UGI Corporation because it is

⁴⁰ Incentive Proposal, Exhibit No. BGE-11.

⁴¹ Incentive Proposal, Exhibit No. BGE-6 at 34-35, *citing Bangor Hydro-Elec. Co.*, 109 FERC ¶ 61,147 (2004), Opinion No. 489, 117 FERC ¶ 61,129, at P 3 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008), *order granting clarification*, 124 FERC ¶ 61,136 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 95 (2008) (*PATH*); *Virginia Electric Power Co.*, 123 FERC ¶ 61,098, at P 60 (2008).

⁴² BG&E's proposed proxy group includes: Allegheny Energy, Inc.; American Electric Power, Inc.; Consolidated Edison, Inc.; Dominion Resources, Inc.; DPL Inc.; FirstEnergy Corp.; FPL Group, Inc.; Northeast Utilities; NSTAR; PEPCO Holdings, Inc.; PPL Corp.; and Public Service Enterprise Group Inc. *See* Exhibit No. BGE-6 at 35.

primarily a natural gas company. BG&E states that the implementation of the above criteria resulted in its 12-company proxy group. BG&E excluded three companies from its final proxy group because they had a low-end cost of equity less than 100 basis points above Moody's monthly yields on BBB bonds averaging 7.8 percent over the six-month period ending December 2008.⁴³

2. Protests

45. People's Counsel and the Maryland Commission argue that not all transmission owners involved in a project should be awarded the same incentive ROE, regardless of their actual contributions, risks, challenges or advanced technologies. Specifically, they argue that BG&E should not be rewarded for challenges faced by other transmission owners in completing the MAPP Project.

3. Commission Determination

46. The Commission grants BG&E a ROE of 12.80 percent for its portion of the MAPP Project, which consists of its already approved base return of 11.30 percent and its requested ROE adder of 150 basis points for investment in new transmission. The Commission finds that an ROE of 12.80 percent is an appropriate level within the Commission-determined range of reasonableness of 9.58 percent to 14.42 percent.⁴⁴

47. The Commission finds that BG&E's 12-company proxy group, which includes transmission-owning members of PJM, NYISO, and ISO-NE, is a good starting point to develop an individual proxy group that takes into account comparative risks.⁴⁵ Protestors have not contested the use of PJM, NYISO and ISO-NE companies as the starting point for the analysis, nor have they contested the application of the risk screens employed by BG&E. The Commission also finds that the Corporate Credit Rating screen

⁴³ Incentive Proposal, Exhibit No. BGE-6 at 55-56.

⁴⁴ While using the cites that BG&E footnoted from Value Line, the Commission found several discrepancies where BG&E failed to update their numbers when computing the growth in shares for the BR+SV calculation. As a result, the Commission's top end of the range of reasonableness was 138 basis points below that of BG&E. The Commission's final proxy group includes American Electric Power, FirstEnergy Corp., Northeast Utilities and Public Service Enterprise Group. BG&E's final proxy group included the Commission's four companies and DPL, Inc.

⁴⁵ *VEPCO Formula Rate Order*, 123 FERC ¶ 61,098 at P 60.

that BG&E used is consistent with Commission precedent.⁴⁶ In addition, the Commission finds it appropriate to exclude a company from the proxy group if its low-end ROE is within about 100 basis points above the appropriate cost of debt.⁴⁷

48. The Commission finds that BG&E's portion of the MAPP Project is an integral part of the MAPP Project as a whole.⁴⁸ The risks and challenges faced by the MAPP Partners as well as the need for coordination among them could impact the construction of the entire project. Therefore, granting the requested 150-basis point ROE adder will encourage investors to invest in the MAPP Project.

G. Total Package of Incentives

1. Proposal

49. BG&E contends that its total package of incentives – the ROE adder of 150-basis points for new construction and the abandonment incentive – are designed to meet the specific risks its faces. First, BG&E states that the incentives are designed to address different challenges. Specifically, it states that the abandonment incentive mitigates the risk associated with the termination of the MAPP Project while the ROE adder is designed to ensure that BG&E earns a reasonable return on its investment. Second, BG&E states that the incentives it is requesting are commensurate with the risks and incentives for other participants in the MAPP Project as well as other PJM incentive projects. For example, BG&E notes that PHI requested and was granted a CWIP incentive. BG&E contends that this additional incentive for PHI (which BG&E did not request) was reasonable given PHI's larger investment in the MAPP Project.⁴⁹

2. Protests

50. People's Counsel and the Maryland Commission argue that BG&E's request for the abandonment incentive lowers BG&E's need for the requested ROE incentive adder due to BG&E's siting and permitting risks being reduced. In addition, they contend that

⁴⁶ *PATH*, 122 FERC ¶ 61,188 at P 95. While BG&E has proposed Value Line's Safety Rank, Financial Strength Rating, and beta, the Commission finds the use of the Corporate Credit Rating to be sufficient.

⁴⁷ *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 94 (2009).

⁴⁸ *PSE&G Incentive Rate Order*, 126 FERC ¶ 61,219 at P 49.

⁴⁹ Incentive Proposal, Exhibit No. BGE-13 at 13-17.

BG&E's formula rate reduces BG&E's financial risks. People's Counsel also argues that awarding a 150-basis point adder to BG&E will result in a "lack of symmetry" for transmission incentives because PHI's portion of the MAPP Project is estimated to cost \$950 million while BG&E's portion is only estimated to cost \$65 million.

51. The Maryland Commission believes that a CWIP incentive for BG&E would be more appropriate than the ROE adder. It contends that the CWIP recovery period would be during the time BG&E's investments are being made rather than after the new facilities are placed in service.

3. Commission Determination

52. As noted earlier, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,⁵⁰ the Commission has, in prior cases, approved multiple rate incentives for particular projects.⁵¹ This is consistent with our interpretation of FPA section 219 as authorizing 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 the FPA section 219 and that there is a nexus between the incentives being proposed and the investment being made.

53. BG&E has sufficiently demonstrated that the MAPP Project faces risks and challenges that warrant the requested package of incentives. As discussed herein, we are not persuaded by comments that the 150-basis point incentive is unreasonable or asymmetrical.⁵² The 150-basis point adder is reasonable in light of the risks of this project, and BG&E's portion of the MAPP Project being integral to the overall success of the MAPP Project as a whole.

⁵⁰ Order No. 679, FERC Stats. & Regs. ¶ 31, 222 at P 55.

⁵¹ See, e.g., *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008); *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007).

⁵² The Commission further finds that BG&E's existing formula rate and its proposed ROE adder are not mutually exclusive, but together will encourage investors to invest in a variety of transmission projects. Thus, the Commission rejects Peoples Counsel's recommendation to reduce the level of the proposed ROE adder.

54. The Commission dismisses the Maryland Commission's suggestion to substitute a CWIP incentive for BG&E's requested 150 basis point ROE adder. BG&E did not request a CWIP incentive. Rather, it tailored its package of incentives to meet its particular needs. We find that BG&E's total package of incentives for the MAPP Project is reasonable.

H. Request for Hearing

1. Protest

55. People's Counsel contends that a hearing is required to resolve disputed facts and to evaluate the credibility of BG&E's witnesses. The Maryland Commission requests a hearing to "further" examine BG&E's actual risks and challenges, and any advanced technologies to be used in BG&E's portion of the MAPP Project to ensure that any incentives are appropriate and will not result in unjust and unreasonable rates.

2. Commission Determination

56. We deny these requests for hearing, which address issues relating to the risks and challenges of the MAPP Project. As discussed *supra*, we have already addressed these issues based on the record in this proceeding.

The Commission orders:

(A) BG&E's requests for incentives are hereby granted, as discussed in the body of this order.

(B) The proposed tariff sheets are hereby accepted for filing, effective June 1, 2009, as requested, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company

Docket No. ER09-745-000

(Issued May 29, 2009)

KELLY, Commissioner, *dissenting*:

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

I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings in order to determine whether the 10.4 mile, \$65 million BG&E project warrants incentive rate treatment.¹ Based on those criteria, I conclude that it does not.

BG&E identifies two benefits that its portion of the MAPP Project will provide when completed. First, it will serve as a pathway that enables overall project benefits for the Delmarva Peninsula and New Jersey. Second, it will provide a conduit for nuclear generation in northern Virginia and southern Maryland into the Baltimore and Washington D.C. areas. Amazingly, BG&E does not expand on these statements—they serve as the whole of BG&E's examination of the specific benefits produced by its portion of the MAPP Project.² In the absence of analysis or discussion of said benefits, I cannot find that BG&E has demonstrated that its portion of the MAPP Project produces broad public interest benefits. BG&E seems to argue that the project warrants incentive rate treatment merely because the Commission has granted incentives to sponsors of other portions of the MAPP Project.³ That fact, however, does not relieve BG&E of the

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

² Exhibit No. BGE-13 at page 11.

³ See *Virginia Electric and Power Company*, 124 FERC ¶ 61,207 (2008), *Pepco Holdings, Inc.* 125 FERC ¶ 61,130 (2008).

requirement that it demonstrate that there is a nexus between the incentive it seeks and the investment it proposes to make.

The \$65 million investment is neither large by public utility standards in absolute terms nor relative to BG&E's existing transmission plant in service.⁴ Moreover, I cannot support incentives for this project as it will be constructed entirely within existing BG&E right-of-way and is scheduled to be in-service in a year and a half. Additionally, any risks and challenges related to construction and coordination, such as they are, should be mitigated by the fact that it is Pepco, not BG&E, that will actually build BG&E's 10.4 mile project.

Finally, it is not clear whether BG&E is under an obligation to construct its portion of the MAPP Project. BG&E seems to suggest otherwise where it states that there is a "voluntary aspect" to its investment.⁵ However, in the very next statement it notes that there is an obligation to build under PJM's tariff. What precisely these statements are meant to communicate is lost.

For these reasons, I respectfully dissent from this order.

Sudeen G. Kelly

⁴ In May 2009, in Docket No. ER05-515-000 *et al.*, BG&E filed its 2009 Formula Rate Annual Update. The total transmission gross plant identified therein is \$733.5 million and transmission net plant is \$446.2 million. BG&E's investment here represents 8.8% and 14.6% of those figures, respectively.

⁵ Exhibit No. BGE-13 at page 13.