

137 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

RITELine Illinois, LLC
RITELine Indiana, LLC

Docket Nos. ER11-4069-000
ER11-4070-000

ORDER ON TRANSMISSION RATE INCENTIVES
AND FORMULA RATE PROPOSAL

(Issued October 14, 2011)

1. On July 18, 2011, RITELine Illinois, LLC (RITELine Illinois) and RITELine Indiana, LLC (RITELine Indiana) (collectively, RITELine Companies) filed an application, pursuant to sections 205 and 219 of the Federal Power Act (FPA)¹ and Order No. 679,² for acceptance of a formula rate and approval of rate incentives for the Reliability Interregional Transmission Extension Project (RITELine Project or Project). For the reasons discussed below, we will accept in part, and reject in part, the proposal, to be effective October 17, 2011, as requested. We also direct the RITELine Companies to submit compliance filings within 30 days of the issuance of this order, as discussed below.

I. Proposal

A. Petitioners

2. The RITELine Project is being developed by American Electric Power Company (AEP), Commonwealth Edison (ComEd), Electric Transmission America, LLC (ETA),³

¹ 16 U.S.C. §§ 824d; 824s (2006).

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

³ ETA is a joint venture between AEP Transmission Holding Company, LLC (ATHC), and MidAmerican Energy Holdings Company America Transco, LLC.

and RITELine Transmission Development, LLC (RTD), which is comprised of ETA and Exelon Transmission Company (ETC), a wholly-owned subsidiary of Exelon Corporation (collectively, Project Developers). RITELine Illinois and RITELine Indiana will be the public utility operating companies of the RITELine Project.⁴ RITELine Illinois will own the Illinois portion of the Project, and RITELine Indiana will own the Indiana portion of the Project. The RITELine Companies state that they will recover costs through a single formula rate and will transfer functional control of the Project to PJM Interconnection, LLC (PJM) once it's completed.⁵

B. Description of the Project

3. The RITELine Companies describe the Project as an approximately 420-mile, 765 kV project that will strengthen the transmission system in Illinois, Indiana, and Ohio. The Project will include five 765 kV substations and other appurtenant transmission facilities. In addition, the Project is expected to permit the integration of approximately 5,000 megawatt (MW) of additional renewable generation. The RITELine Companies state that they expect the Project to be placed into service approximately five to six years after obtaining regional transmission expansion plan (RTEP) approval by PJM, and has an estimated cost of \$1.6 billion. Further, the RITELine Companies state that the Project will interconnect with a portion of the proposed Pioneer Transmission, LLC 765 kV project (Pioneer Project).

4. The RITELine Companies state that the Project will begin at a new Blue Creek substation on the Indiana/Ohio border, running west through Indiana to Kewanee, Illinois, and then north to Byron, Illinois. In addition, there is a segment from Kewanee to Collins that connects to ComEd's 765 kV transmission system in Illinois. The RITELine Companies state that the Indiana portion will run from the Illinois-Indiana border to the proposed Meadow Lake substation, where it will be connected with the Pioneer Project to AEP's Greentown substation, and then run from the Greentown substation to the Blue Creek substation.⁶

⁴ RITELine Illinois will be owned 25 percent by RTD and 75 percent by ComEd. RITELine Indiana will be owned 25 percent by RTD, 37.5 percent by ATHC, and 37.5 percent by ETA.

⁵ Transmittal Letter at 3.

⁶ *Id.* at 4-7.

C. Request for Incentives

5. The RITELine Companies request several transmission rate incentives pursuant to sections 205 and 219 of the FPA and Order No. 679. First, the RITELine Companies request an overall return on equity (ROE) of 12.7 percent. However, the RITELine Companies state that they can 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 propose that the risk adder only apply to the project cost estimate established at the time of RTO approval, unless the cost of the Project is increased due to changes required as a result of the siting process and/or changes specifically directed by PJM. The RITELine Companies state that cost increases other than those incurred due to the siting process or to comply with changes required by PJM would not qualify for the risk adder.

6. Second, the RITELine Companies seek authorization for 100 percent construction work in progress (CWIP) in rate base during the development and construction period for the Project. They state that they face significant financial challenges, and 100 percent CWIP recovery will alleviate further downward pressures on their financial condition by ensuring adequate cash flow.⁷

7. Third, the RITELine Companies request approval to recover 100 percent of their prudently-incurred costs associated with the Project in the event that the Project must be abandoned for reasons outside of their control. They state that this incentive is appropriate because the Project has not received PJM RTEP approval, and the RITELine Companies may fail to obtain the requisite regulatory approvals or the necessary rights-of-way.⁸

8. Fourth, the RITELine Companies seek authorization to establish a regulatory asset that will include all expenses not capitalized and included in CWIP that are incurred in connection with the Project prior to the rate year in which costs are first flowed through to customers pursuant to PJM's open access transmission tariff (OATT), including authorization to amortize the regulatory asset with interest over five years for cost recovery purposes. Further, the RITELine Companies request authorization to use the

⁷ *Id.* at 40.

⁸ *Id.* at 41-42.

allowance for funds used during construction (AFUDC) rate for accrual purposes until the regulatory asset is included in rate base.⁹

9. Fifth, the RITELine Companies request approval of a hypothetical capital structure of 55 percent equity and 45 percent debt until long-term financing is in place and the Project has been placed into service.¹⁰

D. Formula Rate Proposal

10. The RITELine Companies also propose to establish a formula rate and protocols, under which costs are projected and then trued up to actual costs once they are known. The RITELine Companies state that the proposed formula rate is designed to track increases and decreases in actual costs and projected capital addition. In addition, a true-up mechanism will be implemented at the end of each rate period to ensure that any deviation from actual costs during the rate period is reflected in an adjustment (with interest) to the annual transmission revenue requirement in the subsequent rate period. They further state that the formula rate provides for the recovery of: (1) a return on rate base and associated taxes; (2) taxes other than income taxes; (3) depreciation expense; and (4) other operation and maintenance expenses, less revenue credits. The RITELine Companies explain that they will not assess charges to customers until the Project is included in PJM's RTEP, at which time the formula rate and protocols will be resubmitted by PJM to be incorporated in the PJM tariff.¹¹

E. Technology Statement

11. The RITELine Companies state that they are entitled to an additional ROE incentive of 50 basis points because they are employing advanced technologies which they claim will positively impact reliability, efficiency, and environmental sensitivity in the manner Congress intended through section 1223 of the Energy Policy Act of 2005 as implemented by the Commission through Order No. 679.¹² The RITELine Companies request the ROE incentive adder for the use of one advanced transmission technology associated with advanced conductor design. Specifically, the RITELine Project will use a six-conductor bundle in conjunction with trapezoidal stranded conductors. The

⁹ *Id.* at 8 n.9.

¹⁰ *Id.* at 8-9.

¹¹ *Id.* at 49-52.

¹² *Id.* at 63; Ex. RIT-201 at 3 (citing Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005)).

RITELine Companies explain that they will use a number of other advanced transmission technologies to enhance the performance of the RITELine Project, which include: (1) efficient and resilient transformers and reactors; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; and (6) switchable shunt reactors.

12. According to the RITELine Companies, use of a six-conductor bundle, as opposed to a four-conductor bundle, will reduce line-loss by approximately 20 percent for resistive losses and 60 percent for corona losses compared to similarly situated 765 kV lines. In addition, the RITELine Companies state that the six-conductor design will reduce audible noise and broadcast frequency interference. The RITELine Companies note that six-conductor bundles is a technology previously used on only one recently built line, AEP's Jackson Ferry-Wyoming line in West Virginia and Virginia. In addition, the RITELine Companies note that the line-losses on the RITELine Project will be reduced even further by incorporating trapezoidal stranded conductors in the bundled design, a technology that the RITELine Companies state has never been previously used for 765 kV lines.¹³

F. SMART Study and MISO's Regional Generator Outlet Study

13. The RITELine Companies state that prior to agreeing to collaborate on the development of the Project, AEP and Exelon Corporation conducted various transmission studies that indicated the need to strengthen the extra high voltage (EHV) transmission system in the Midwest. In addition, the RITELine Companies state that various regional studies have focused on the need to strengthen the Midwest transmission grid in order to accommodate the growing development of renewable energy projects and to address numerous reliability concerns. The RITELine Companies explain that the RITELine Project study process was built upon the analyses undertaken in these studies. In particular, the RITELine Companies submit two studies for the Commission's review: (1) the Strategic Midwest Area Transmission (SMART) Study; and (2) the Midwest Independent System Operator, Inc. (MISO) Regional Generator Outlet Study (RGOS).¹⁴

14. The RITELine Companies state that the SMART Study is the result of ETA, together with American Transmission Company, Xcel Energy, Exelon Corporation, MidAmerican Energy Company, and NorthWestern Energy studying the development of an EHV transmission overlay in the upper Midwest portion of the country. The study analyzes the reliability and economic benefits of an overlay project, as well as the potential to interconnect and deliver substantial amounts of wind-powered generation that

¹³ Ex. RIT-200 at 46-48.

¹⁴ *Id.* at 10.

could be developed to meet current and future state and potentially federal renewable portfolio standards (RPS). In addition, the RITELine Companies state that the study sponsors hired Quanta Technology LLC, an independent consulting firm, to undertake a study of alternatives, using various assumptions, which would permit participants to evaluate and rank the alternatives.

15. The RITELine Companies explain that Phase I of the SMART Study focused on various overlay alternatives designed to enable the integration of over 56 gigawatts of wind generation, and to provide significant reliability and economic benefits to the region. Phase II of the SMART Study, which was conducted by Quanta Technology LLC, evaluated the economic benefits for the alternatives that were selected in Phase I. The RITELine Companies note that the RITELine Project was a key component in both of the preferred alternatives that were identified in Phases I and II of the SMART Study.¹⁵

16. The RITELine Companies state that the MISO RGOS was designed to study the potential development of a set of regionally coordinated transmission projects that would be planned and designed to enable MISO members and load-serving entities within the MISO footprint to meet both state RPS obligations and renewable energy goals at the least cost to consumers. The RITELine Companies explain that the MISO RGOS was designed to provide MISO members and stakeholders a platform to analyze alternative transmission plans to reliably and economically interconnect renewable resources across the Midwest. In addition, the RITELine Companies state that the RITELine Project is part of the 765 kV overlay developed in the MISO RGOS.¹⁶

II. Notice of Filing and Responsive Pleadings

17. Notice of the RITELine Companies' filing was published in the *Federal Register*, 76 Fed. Reg. 44,319 (2011), with interventions and protests due on or before August 8, 2011. The Illinois Commerce Commission (Illinois Commission) submitted a notice of intervention, and the PSEG Companies,¹⁷ Exelon Corporation, and the PPL PJM Companies¹⁸ filed timely motions to intervene. Clean Line Energy Partners LLC

¹⁵ *Id.* at 10-11.

¹⁶ *Id.* at 11-12.

¹⁷ The PSEG Companies are comprised of: Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC.

¹⁸ The PPL PJM Companies for this filing consist of: PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC;

(continued)

(Clean Line Energy) submitted a timely motion to intervene and comments in support of the filing. In addition to their timely intervention, the PSEG Companies filed a timely protest.

18. On August 17, 2011, the Illinois Commission submitted comments out-of-time. In addition, on October 12, 2011, Northern Indiana Public Service Company filed a motion to intervene out-of-time.

19. On August 23, 2011, and September 1, 2011, the RITELine Companies submitted answers to the PSEG Companies' protest and the Illinois Commission's comments, respectively.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), we will grant Northern Indiana Public Service Company's late-filed motion to intervene given its interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the RITELine Companies' answers because they have provided information that assisted us in our decision-making process.

B. Section 219 Requirement

22. In Energy Policy Act of 2005,¹⁹ Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by the RITELine Companies.

PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC.

¹⁹ Pub. L. No. 109-58, § 1241, 119 Stat. 594.

23. Pursuant to section 219, an applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”²⁰ Also, as part of this demonstration, “section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.”²¹

24. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.²² Order No. 679 established a process for an applicant to follow to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) 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 (2) a project has received construction approval from an appropriate state commission or state siting authority.²³ 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.²⁴

1. Proposal

25. The RITELine Companies acknowledge that they do not meet the rebuttable presumption under Order No. 679 but believe that they provide enough evidence for the Commission to make an independent finding under section 219. The RITELine Companies state that the incentives requested are supported by comprehensive economic and engineering analyses that are based upon extensive powerflow studies and production cost studies. Specifically, the RITELine Companies state that the RITELine Project will ensure reliability by alleviating current transmission loading issues in northern Illinois

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²¹ *Id.* P 8 (citing 16 U.S.C. §§ 824(d)-(e)).

²² 18 C.F.R. § 35.35(i) (2011).

²³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

²⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

and Indiana that are expected to worsen as state RPS requirements “ramp up further” and additional wind generation is developed in western MISO, Illinois, and Indiana. For example, the RITELine Companies explain that the powerflow analyses demonstrate, based on a 2016 base case, that first contingency and double contingency violations decrease from 14 to 2 first contingencies and from 29 to 15 double contingencies with the RITELine Project in-service. In addition, the RITELine Companies state that first contingency incremental transfer capability and first contingency total transfer capability analyses were performed and demonstrated that the RITELine Project will enable the integration of 5,000 MW nameplate capacity of new wind generation in Indiana, Illinois and the western MISO.²⁵

26. In addition, the RITELine Companies state that the Project will reduce the cost of delivered power by reducing congestion and support integration of renewable generation to meet state RPS standards.²⁶ For example, the RITELine Companies explain that the Brattle Testimony’s PROMOD market simulation shows that the 2021 locational marginal prices would be reduced from \$5.90/MWh to \$3.80/MWh between ComEd and the Indiana and southern Michigan portion of AEP, and from \$8.10/MWh to \$6.40/MWh between ComEd and the Ohio portion of AEP. In addition, the Brattle Testimony concludes that the combination of additional wind integration and congestion relief offered by the RITELine Project would reduce system-wide production costs by \$630 million annually.

2. Protests and Comments

27. The PSEG Companies argue that the RITELine Companies cite to irrelevant or inappropriate factors or information in support of their assertion that the Project would provide reliability and congestion benefits. For instance, the PSEG Companies argue that the RITELine Companies’ reliance on the SMART study and the MISO RGOS are no substitute for studies conducted by the Commission-approved planner for the region in which the Project will be developed. The PSEG Companies argue that neither MISO nor the SMART study participants have responsibility for planning transmission in the PJM region. For this reason, the PSEG Companies argue that it is of no consequence whether the RITELine Project was included in the MISO study or the SMART study. The PSEG Companies argue that the only point relevant is that the Project has not been evaluated by the PJM RTEP process.²⁷

²⁵ Transmittal Letter at 22-25.

²⁶ *Id.* at 26 (citing Ex. RIT-600 at 15-51 (Brattle Testimony)).

²⁷ PSEG Companies Protest at 5-7.

28. With regard to the Project's reliability benefits, the PSEG Companies argue that the RITELine Companies have failed to assert that there are any North American Electric Reliability Corporation (NERC) Reliability Criteria violations that are in fact unaddressed by PJM's existing RTEP or operational processes. The PSEG Companies argue that the RITELine Companies merely speculate about potential reliability violations and make broad-brush generalizations suggesting that every Transmission Loading Relief event or every switching event has a reliability impact. The PSEG Companies argue that, although the RITELine Companies point to PJM studies indicating the need to build certain transmission facilities, the facilities that PJM determined were needed did not include the RITELine Project. Therefore, the PSEG Companies state that there has been no determination by PJM that the RITELine Project is in fact needed for reliability.²⁸

29. With regard to the Project's congestion benefits, the PSEG Companies contest the source of the Brattle report's assumptions regarding the quantity of wind generation that should be modeled. Specifically, the PSEG Companies contest the following assumptions made by the Brattle report's authors: "refined the wind assumptions for PJM based on an analysis conducted by PJM's Regional Planning Task Force"²⁹ (RPPTF) and other data. The PSEG Companies argue that the RPPTF is a stakeholder body that does not itself conduct any analyses. The PSEG Companies note that the RPPTF reviews presentations by both PJM and other stakeholders, but there is no indication in the Brattle Testimony of what materials the RPPTF or the Brattle authors actually relied on.³⁰

30. The PSEG Companies also argue that PJM RTEP approval is required under Order No. 1000³¹ as a prerequisite to regional cost allocation. The PSEG Companies state that PJM RTEP approval ensures that proposed projects will be properly vetted with an opportunity for input by representatives of the parties who will pay for the projects.³² The PSEG Companies argue that when a developer is seeking regional cost allocation but

²⁸ *Id.* at 7-8.

²⁹ *Id.* at 8 (quoting Ex. RIT-303 at 6).

³⁰ *Id.*

³¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49,842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

³² PSEG Companies Protest at 14-15 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 539).

has opted not to first obtain RTEP approval, then that proposal should be deemed premature and the developer should be directed to submit their proposal through the regional transmission planning process. Alternatively, the PSEG Companies state that the Commission must condition the effectiveness of any rate or the award of any incentives to be recovered upon PJM RTEP approval.³³

3. Answer

31. The RITELine Companies argue that the PSEG Companies did not submit any analyses that call into question the accuracy of the comprehensive economic and reliability planning studies submitted with the RITELine filing. The RITELine Companies further state that the PSEG Companies' primary concern regarding the various studies they submitted to support their conclusions is that these studies do not substitute for the analysis required in the PJM RTEP. The RITELine Companies do not dispute this claim.³⁴

4. Commission Determination

32. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment to demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.³⁵ Order No. 679 establishes a rebuttable presumption that this standard is met if the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission, or if a project has received construction approval from an appropriate state commission or state siting authority.³⁶

33. However, the Commission has stated that a project that does not qualify for the rebuttable presumption may nevertheless satisfy the FPA section 219 standards if the project sponsor presents a factual record supporting a finding that the project is needed to maintain reliability or reduce congestion.³⁷ In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals

³³ *Id.* at 15.

³⁴ RITELine Companies' August 23, 2011 Answer at 5-6.

³⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

³⁶ *Id.*

³⁷ *Id.* P 57.

demonstrating that the FPA section 219 criteria are met.³⁸ The Commission also has stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.³⁹

34. The RITELine Companies are not entitled to a rebuttable presumption that the Project satisfies the requirements of section 219 because the Project has not been approved in PJM's planning process or received siting approval from the relevant state siting authorities. However, the RITELine Companies have included studies in their filing attempting to support their assertion that the Project ensures reliability and/or reduces the cost of delivered power by reducing congestion. We have evaluated these studies and 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.

35. The Commission has previously granted requests for rate incentives for projects that have not relied on section 219's rebuttable presumption. However, in those cases, the applicants clearly demonstrated reliability or congestion concerns that the proposed project would address and supported such assertions with comprehensive and clear data, as well as internal and, in several cases, external studies.⁴⁰ By contrast, in several recent cases, applicants have neither relied on Order No. 679's rebuttable presumptions nor made a sufficient independent demonstration that the proposed projects would ensure reliability or reduce the cost of delivered power by reducing congestion.⁴¹

36. Here, the RITELine Companies have not provided the Commission with the necessary support to determine whether the Project ensures reliability or reduces the cost of delivered power by reducing congestion. The congestion study submitted by the RITELine Companies relies heavily on the ability of the Project to reduce congestion by

³⁸ See *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007); see also *Green Power Express LP*, 127 FERC ¶ 61,031, at P 41 (2009) (*Green Power Express*).

³⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 & n.39.

⁴⁰ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 (2008) (*Tallgrass*).

⁴¹ *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010) (*Primary Power*); *W. Grid Dev., LLC*, 130 FERC ¶ 61,056 (2010) (*Western Grid*); *S. Cal. Edison Co.*, 129 FERC ¶ 61,246 (2009) (*SoCal Edison*); *Green Energy Express, LLC*, 129 FERC ¶ 61,165 (2009) (*Green Energy Express*), order on reh'g, 130 FERC ¶ 61,117 (2010).

integrating approximately 5,000 MW of additional wind generation in Illinois and nearby MISO regions.⁴² However, although there are substantial amounts of wind generation in the PJM and MISO generator interconnection queues, there is no guarantee that these projects will be built. In addition, the congestion study had several significant refinements to the modeling assumptions regarding the amounts, types, and placement of new renewable generation capacity in the PJM region.⁴³ For example, the RITELine Companies' wind assumptions were based on PJM's RPPTF that used 32,000 MW as a target for wind procurement for PJM by 2021, which exceeds the 24,400 MW of wind generation assumed to be installed within the PJM footprint in the MISO model. Of this 32,000 MW wind generation needed to meet PJM RPS requirements, the RITELine Companies assumed that 8,000 MW of wind generation would be imported from MISO, which yielded the total PJM wind capacity. It is unclear what the study relied on to make these assumptions and, consequently, it is unclear what the congestion benefits of the Project would be absent these assumptions.

37. The Commission also finds that the reliability study submitted by the RITELine Companies is insufficient to satisfy the threshold section 219 requirement. That study reflects a 2016 light load model and a 2021 shoulder peak model. The RITELine Companies state that these two load levels were chosen because light load periods are when transmission loading issues have been occurring as energy is moved west-to-east in MISO and PJM.⁴⁴ However, it is unclear whether the reliability violations that the RITELine Companies claim that the Project would mitigate are unaddressed by PJM's RTEP process. The RITELine Companies state that PJM has approved changes to its current planning studies to analyze the reliability concern that the RITELine Project is intended to address.

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 transmission planning process that evaluates projects for reliability and/or congestion effects.⁴⁵ Therefore, we will approve

⁴² Ex. RIT-303 at 1.

⁴³ *Id.* at 2.

⁴⁴ Ex. RIT-200 at 30.

⁴⁵ *E.g.*, *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 41 (2010); *see also* *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 41 (2007) (*BG&E*), *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *reh'g denied*, 122 FERC ¶ 61,034, *reh'g denied*, 123 FERC ¶ 61,262 (2008); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 62-68; *Virginia Elec. & Power Co.*, 124 FERC ¶ 61,207, at P 32.

incentives as discussed herein, conditioned upon the Project being included in the PJM RTEP. We direct the RITELine Companies to submit a compliance filing within 30 days of the approval of the Project in the PJM RTEP, notifying the Commission of any such approval. The RITELine Companies must provide in this compliance filing evidence that the planning process included a finding that the Project will ensure reliability or reduce the cost of delivered power by reducing congestion, consistent with Order No. 679-A.⁴⁶

39. With regard to the PSEG Companies' argument that Order No. 1000 requires RTEP approval as a prerequisite to regional cost allocation, the RITELine Companies are not seeking regional cost allocation in this filing. Furthermore, the RITELine Companies acknowledge in their answer that regional planning approval is a prerequisite for their formula rate to be included under Schedule 12 of the PJM OATT.⁴⁷ Accordingly, we reject this argument as beyond the scope of the filing.

C. Order No. 679 Nexus Requirement

40. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."⁴⁸ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

41. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.⁴⁹ In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a 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, effect on region); (2) the effect of the project (e.g.,

⁴⁶ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49; see also *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 57 (2008).

⁴⁷ RITELine Companies August 23, 2011 Answer at 6.

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

⁴⁹ *BG&E*, 120 FERC ¶ 61,084 at P 48.

improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).⁵⁰ Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.”⁵¹

1. Proposal

42. The RITELine Companies argue that they meet the nexus requirement due to the scope, effects, and risks and challenges associated with the Project.⁵² The RITELine Companies state that the Project, with an estimated cost of \$1.6 billion (\$1.2 billion invested in Illinois and \$0.4 billion invested in Indiana), is among the largest projects that the Commission has reviewed for incentive rate treatment from a cost perspective. And, the RITELine Companies state that it is one of the most expensive transmission projects undertaken by AEP, ComEd or ETA.⁵³ The RITELine Companies further state that the Project is being developed to enhance the capability of the regional transmission system to advance national and state energy policies by allowing for the interconnection of approximately 5,000 MW of new renewable energy. In addition, the RITELine Companies state that the Project will take approximately five to six years to complete after obtaining RTEP approval.

43. The RITELine Companies state that from an electrical perspective, the Project is large by any standard. For example, the Project will consist of approximately 420 miles of 765 kV line, which is the highest alternating current voltage in the United States. In addition, the Project will include five 765 kV substations and other appurtenant transmission facilities and must obtain nearly all of the rights-of-way for construction.

44. The RITELine Companies state that the Project will bring reliability benefits to PJM, reduce the cost of delivered power by reducing congestion, and facilitate the integration of substantial wind generation resources that will support state RPS goals. The RITELine Companies state that the Project is a quintessential multi-value transmission project. In addition, the RITELine Companies explain that the value created

⁵⁰ *Id.* P 52-55.

⁵¹ *Id.* P 54.

⁵² Transmittal Letter at 33-34.

⁵³ *Id.* at 34-35.

by this \$1.6 billion Project, from a combined wind integration, reliability, and congestion relief perspective, make it one of the most efficient expansion projects ever presented to the Commission for incentive rates.⁵⁴

45. The RITELine Companies argue, among other things, that they face many risks and challenges including: financial challenges; siting challenges, planning process challenges, and industry challenges. First, with regard to financial challenges, the RITELine Companies explain that they are start-up companies with no business history, no credit rating, and no debt repayment history. Therefore, the RITELine Companies state that it will be challenging to secure substantial cash flows to cover ongoing development costs, especially in the early phases of the development. For this reason, the RITELine Companies explain that the incentives requested will significantly enhance the Project's overall financial strength such that the RITELine Companies can obtain the desired BBB credit rating.⁵⁵

46. Second, the RITELine Companies explain that the Project has not been included in the PJM RTEP, and they have not obtained the rights-of-way for the Project or state certification siting approval. The RITELine Companies state that, in Indiana, there is no formal siting process, so they will have to negotiate with numerous individual landowners and, if unsuccessful, initiate individual eminent domain proceedings in each county circuit court. The RITELine Companies note that there is a siting process in Illinois, but they must first obtain approval from the Illinois Commerce Commission to construct the Project along the proposed path, and then, if necessary, initiate eminent domain procedures in the local courts. The RITELine Companies state that these procedures have the potential to increase costs and add delay.⁵⁶

47. Third, the RITELine Companies state that coordinating the Project through the planning process with PJM and its stakeholders will be a major undertaking and require a substantial commitment of time and resources. The RITELine Companies state that PJM does not yet have a formal process in place to evaluate projects like the RITELine Project that bring value through the combination of reliability, wind integration, and economic benefits. In addition, the RITELine Companies state that the PJM RTEP process could

⁵⁴ *Id.* at 36 & n.35 (citing *Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067, at P 9-11 (2008)).

⁵⁵ *Id.* at 36.

⁵⁶ *Id.* at 37.

be complicated by virtue of the Commission's NOPR proceeding on transmission planning.⁵⁷

48. Finally, the RITELine Companies state that they will face industry challenges. For example, the RITELine Companies explain that the planning, engineering, design, operation and maintenance of 765 kV bulk transmission lines and substations are complex, requiring special skill sets. In addition, the RITELine Companies explain that the quantity of EHV facilities and equipment required for the Project enhances the riskiness of the Project, as does the need for specialized labor in an increasingly aging labor market, and there are increasing costs of materials.⁵⁸

2. Protests

49. The PSEG Companies argue that the RITELine Companies' request for incentives and the effectiveness of their formula rate must be conditioned on PJM RTEP approval. The PSEG Companies further argue that the PJM RTEP process is the exclusive mechanism for determining whether proposed projects are the right scope, size, and cost and meet PJM's transmission planning needs. The PSEG Companies state that Schedule 6 of the PJM Operating Agreement sets forth a comprehensive regional scheme through which PJM, with input from its stakeholders, plans for the short- and long-term transmission needs of the entire PJM region. The PSEG Companies further state that once a project is submitted into the PJM RTEP process, the project is studied to determine whether it would address system needs for relieving congestion and/or ensuring reliability.⁵⁹

50. The PSEG Companies state that approval by the PJM RTEP is a necessary prerequisite for cost recovery from PJM transmission customers and, therefore, the recovery of any costs of the Project from PJM customers first must be conditioned on having such project approved through the RTEP. Further, the PSEG Companies argue that, to the extent that the Commission finds that the RITELine Project satisfies the Commission's requirements for incentive rates, it may not pre-authorize recovery of any costs associated with the Project from customers pursuant to Schedule 12 of the PJM OATT without conditioning such recovery on the Project first obtaining approval through the approved regional planning processes. More specifically, the PSEG Companies argue that this condition is crucial in the instant case because the RITELine Companies have asked for an effective date 90 days after the filing for its abandonment cost protection and

⁵⁷ *Id.* at 37-38.

⁵⁸ *Id.* at 38.

⁵⁹ PSEG Companies Protest at 8-9.

related regulatory asset approval, and have made it clear that these protections would apply even if the Project is never endorsed through the PJM planning process. Therefore, without conditioning approval on PJM RTEP, it could later be construed as a retroactive approval of abandonment cost recovery on a regional basis irrespective of whether the regional planners deem the project necessary and appropriate under applicable planning criteria.⁶⁰

3. Answer

51. The RITELine Companies state that, in granting Order No. 679 incentives in advance of regional planning approval in prior cases, the Commission has made clear that the grant of incentives is not intended to pre-judge whether the projects should be included in applicable regional transmission plans. Therefore, the RITELine Companies note that they understand the need to submit their Project for approval in the PJM regional planning process and the regional planning approval is a prerequisite for their formula rate to be included under Schedule 12 of the PJM OATT. Further, the RITELine Companies reiterate that they intend to submit the Project for PJM planning approval in the near future, noting that PJM is considering positive changes to the RTEP process that will facilitate a thorough and fair evaluation of the Project.⁶¹

4. Commission Determination

52. We find that the RITELine Companies have sufficiently demonstrated a nexus between the considerable risks and challenges they are undertaking to develop and construct the RITELine Project and the incentives they have requested.

53. We find that the RITELine Project is not routine based on the Project's scope, effects, and risks and challenges. First, the scope of the Project is significant, as the 420 mile 765 kV transmission line is estimated to cost approximately \$1.6 billion. Second, the Project will permit the integration of approximately 5,000 MW of new wind generation in Illinois, Indiana and western MISO.⁶² Third, we find that the RITELine Companies face significant risks and challenges in developing the Project. For example, because Indiana does not have a formal siting process, the RITELine Companies likely will have to obtain rights-of-way for that portion of the Project by negotiating with

⁶⁰ *Id.* at 10-11.

⁶¹ RITELine Companies August 23, 2011 Answer at 6.

⁶² *PacifiCorp*, 125 FERC ¶ 61,076, at P 45 (2008) (finding that the “construction or enhancement of transmission facilities designed to provide access to [remote renewable resources on a large-scale] is not routine”).

individual landowners and/or initiate eminent domain proceedings in the local circuit court for each county traversed by the Project. Fourth, we consider the risks and challenges associated with using the six-conductor bundle in conjunction with the trapezoidal stranded conductors, as well as other advanced technologies discussed in the RITELine Companies' technology statement, to be relevant to the overall nexus analysis.

54. We note that the RITELine Companies will not be able to recover costs through the PJM tariff without first submitting the Project to PJM for RTEP approval and PJM making a filing with the Commission to include the tariff sheets under PJM's tariff. Moreover, the incentives granted herein are being conditioned on the Project being approved in the PJM RTEP as further discussed elsewhere in this order.

D. Return on Equity Adders

1. Proposal

55. The RITELine Companies request three ROE adders for a total of 250 basis points. First, the RITELine Companies request a 50-basis-point adder for transferring functional control over the Project facilities to PJM. The RITELine Companies state that they will join PJM and granting that 50-basis-point adder is consistent with Commission precedent.⁶³

56. Second, the RITELine Companies request a 50 basis point adder for the use of one advanced technology. Specifically, the RITELine Companies are requesting the adder for the use of a six-conductor bundle in conjunction with trapezoidal stranded conductors. The RITELine Companies note that, while one other transmission line uses the six-conductor bundle, no other 765 kV transmission project uses the combination of six-conductors with trapezoidal stranding.⁶⁴

57. Finally, the RITELine Companies request a 150-basis-point adder based on the risks and challenges associated with investing in the Project. The RITELine Companies propose that this risk adder only apply to the Project cost estimate established at the time of RTO approval, unless the cost of the Project is increased due to changes required as a result of the siting process and/or changes specifically directed by PJM. Therefore, the

⁶³ Transmittal Letter at 57; Ex. RIT-500 at 84 & n.106 (citing *Pepco Holdings, Inc.*, 121 FERC ¶ 61,169, at P 15-16 (2007)).

⁶⁴ Transmittal Letter at 63.

RITELine Companies note that cost increases other than those incurred due to the siting process or to comply with changes required by PJM will not qualify for the risk adder.⁶⁵

2. Protests

58. The Illinois Commission argues that the 150 basis point risk adder proposed by the RITELine Companies is excessive. In *Atlantic Grid Operations*, the Illinois Commission notes that a 150-basis-point adder was proposed by the applicants on the basis of increased risk, but the Commission reduced the risk adder to 100 basis points because the applicants, like the RITELine Companies, also were seeking other rate incentives such as abandonment and regulatory asset. Therefore, the Illinois Commission argues that to the extent that the Commission grants the RITELine Companies the other rate incentives it is seeking in its application, the Commission should set the upper limit of any ROE adders for the RITELine Companies at 100 basis points.⁶⁶

3. Answer

59. The RITELine Companies state that it is appropriate for the Commission to grant their requested ROE adders due to the risks and challenges presented by the Project. In addition, the RITELine Companies argue that the Illinois Commission does not address the RTO adder or the advanced technology adder, but requests that the Commission “set the upper limit of any ROE adders for RITELine at 100 basis points.” The RITELine Companies also state that it is appropriate to separately grant the technology adder because they will deploy new technologies. Further, the RITELine Companies argue that the Commission should reject the Illinois Commission’s suggestion that the approval of the abandoned plant incentive warrants a reduction in the risk adder or to the adders in general. The RITELine Companies state that the incentive ROE is largely related to the scope and effects of the Project on reliability and congestion.⁶⁷ When considered as a whole, the RITELine Companies state, the proposed ROE package achieves a balance between the goals of promoting needed transmission development and the concerns of consumers.

⁶⁵ *Id.* at 8.

⁶⁶ Illinois Commission Protest at 6.

⁶⁷ RITELine Companies Answer at 6 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 84 (2010) (*PATH Rehearing Order*)).

4. Commission Determination

60. We will grant the requested 50-basis-point RTO adder, provided that: (1) the Project is included in the PJM RTEP, as discussed above; (2) the RITELine Companies take all the necessary steps to turn over operational control of the Project to PJM; and (3) the RITELine Companies become Participating Transmission Owners. The RITELine Companies state that they will join PJM and relinquish functional control of their transmission operations to PJM.⁶⁸ In Order No. 679-A, the Commission stated that it would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Transmission Organizations.⁶⁹

61. We deny 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 Project. The Commission has explained that in evaluating a request for a stand-alone advanced technology incentive adder, 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.⁷⁰ We note that both of the technologies for which the RITELine Companies request a stand-alone advanced technology incentive adder are currently in use, and have been for some time. The RITELine Companies themselves note the use of a six-conductor bundle in AEP's Jackson Ferry-Wyoming 765 kV transmission project, originally introduced in 1990. Furthermore, the use of trapezoidal stranded conductors, and their associated benefits, is well-documented.⁷¹ The RITELine Companies have not demonstrated that the combination of two in use technologies is sufficiently novel or innovative such as to warrant a separate advanced technology ROE adder.⁷²

62. Although the six-conductor bundle in conjunction with the trapezoidal stranded conductors does not warrant a separate advanced technology adder, the Commission has

⁶⁸ Ex. RIT-500 at 84-85.

⁶⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86; *see also Green Power Express*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

⁷⁰ *NSTAR Elec. Co.*, 127 FERC ¶ 61,052, at P 27 (2009).

⁷¹ *PacifiCorp*, 125 FERC ¶ 61,076 (2008).

⁷² The Commission granted the advanced technology adder in *Atlantic Grid Operations A LLC*, 135 FERC ¶ 61,144 (2011) (*Atlantic Wind*), finding that it used multiple advanced technologies, two of which were first-of-a-kind. *Id.* P 77.

recognized that the risks and challenges of using certain technologies and techniques may be worthy of consideration in the overall nexus analysis.⁷³ Accordingly, as discussed above, the use of the proposed technologies including the six-conductor bundle in conjunction with trapezoidal stranded conductors in the Project is nevertheless a factor that helps to satisfy the overall nexus analysis.

63. We will grant a 100-basis-point adder for the risks and challenges of the Project, conditioned upon the Project being included in the PJM RTEP, as discussed above. Indeed, the Project faces numerous risks and challenges, including the task of obtaining rights-of-way through several counties without the benefits of a state siting process. In addition, the Project is planned to extend 420 miles, cost \$1.6 billion, and integrate approximately 5,000 MW of renewable generation. Moreover, as noted above, we find that the risks and challenges associated with use of advanced technologies discussed in the RITELine Companies' technology statement are relevant to the overall nexus analysis and support our granting of an incentive ROE adder for the Projects' risks and challenges. We find that the RITELine Companies have shown a nexus between such an adder and the size, scope, benefits, and risks and challenges of the Project. However, we are reducing the RITELine Companies' requested 150-basis-point adder to 100 basis points in consideration of the total package of incentives conditionally granted in this order. We find that granting 100 basis points is just and reasonable in light of the other incentives that the Commission is conditionally granting the RITELine Companies herein, some of which reduce certain financial and regulatory risks that the RITELine Companies cite as support for a 150-basis-point incentive ROE adder.⁷⁴

64. In addition, we accept the RITELine Companies' proposal that this incentive adder only apply to the Project cost estimate established at the time of RTO approval, unless the cost of the Project is increased due to changes required as a result of the siting process and/or changes specifically directed by PJM. This commitment will help contain costs to consumers. Accordingly, cost increases other than those incurred due to the siting process or to comply with changes required by PJM would not qualify for this incentive adder.

⁷³ *Tallgrass*, 125 FERC ¶ 61,248 at P 59 (“To the extent that the nature of this project requires a more significant application of this technique than is commonly seen, the associated challenges can be incorporated into the overall nexus analysis, but the technique does not, in and of itself, appear to justify a separate advanced technology adder.”).

⁷⁴ *See, e.g., Atlantic Wind*, 135 FERC ¶ 61,144 at P 78.

E. Return on Equity

1. Proposal

65. The RITELine Companies request a base ROE of 10.7 percent and an overall ROE, with incentives, of 12.7 percent. The RITELine Companies state that an overall ROE of 12.7 percent falls well below the upper end of the zone of reasonableness of 7.2 percent to 15.0 percent.⁷⁵ The RITELine Companies note that the midpoint and median in the zone of reasonableness are 11.1 percent and 10.0 percent, respectively.⁷⁶

66. The RITELine Companies assert that they can support an overall ROE of 13.2 percent. Although, the RITELine Companies recognize that the Commission has concluded that the appropriate measure of central tendency for a single utility of average risk is the median, the RITELine Companies propose a base ROE that is between the midpoint and the median.⁷⁷ Specifically, the RITELine Companies propose a base ROE of 10.7 percent.⁷⁸ The RITELine Companies further note that when their proposed base ROE of 10.7 percent is added to the requested incentives of 250 basis points, the overall ROE would equal 13.2 percent.

67. To arrive at its proposed base ROE, the RITELine Companies state that they relied on the discounted cash flow methodology currently prescribed by the Commission, and applied it to a national proxy group of other electric utilities with comparable investment risks to the Project Developers.⁷⁹ The RITELine Companies state that they used a national proxy group, consistent with the approach approved in the *PATH Rehearing Order* where the Commission found that “mere geographic proximity” is not the sole

⁷⁵ Ex. RIT-500 at 6.

⁷⁶ *Id.* at 55.

⁷⁷ Transmittal Letter at 54-55 & n.63 (citing *S. Cal. Edison Co.*, 131 FERC ¶ 61,020, at P 92 (2010)).

⁷⁸ Ex. RIT-500 at 82.

⁷⁹ *Id.* at 5 (citing *see, e.g., S. Cal. Edison Co.*, 131 FERC ¶ 61,020; *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006) (*Bangor Hydro*); *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), *modified on other grounds sub nom. Pub. Serv. Comm'n v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005); *S. Cal. Edison Co.*, 92 FERC ¶ 61,070 (2000), *reh'g denied*, 108 FERC ¶ 61,085 (2004)).

basis for inclusion of companies in a proxy group.⁸⁰ Therefore, the RITELine Companies used a starting sample of 25 predominantly electric utilities.⁸¹

68. The RITELine Companies explain that they included companies in their proxy group that: (1) are currently paying dividends; (2) have an S&P corporate credit rating between BBB- and BBB+; (3) have available Value Line data and IBES growth rate data; (4) have not been recently involved in merger and acquisition activity; and (5) have sustainable growth rates below 13.3 percent.⁸² The RITELine Companies state that they then excluded six companies from the proxy group because their low-end cost of equity was below or not sufficiently higher than the expected yields on BBB utility bonds, averaging 6.0 percent over the six-month period ending May 2011.⁸³ In addition, the RITELine Companies excluded ITC Holdings Corp. because its high-end cost of equity estimate was an extreme outlier, consistent with the rationale adopted by the Commission in *Bangor Hydro*.⁸⁴

2. Protests

69. The Illinois Commission argues that the RITELine Companies' DCF analysis is not consistent with the Commission's most recent determinations with respect to the conduct of such tests. Specifically, the Illinois Commission argues that the Commission has used the median as a measure of central tendency in a proxy group for determining an

⁸⁰ Ex. RIT-500 at 29-30 (citing *PATH Rehearing Order*, 133 FERC ¶ 61,152).

⁸¹ RITELine Companies' proposed national proxy group includes: Alliant Energy; Ameren Corp.; American Electric Power Co. Inc.; CenterPoint Energy; Cleco Corp.; CMS Energy; DTE Energy Co.; Edison International; Entergy Corp.; Great Plains Energy; Hawaiian Electric; IDACORP, Inc.; Integrys Energy Group Inc.; ITC Holdings Corp.; Pepco Holdings Inc.; PG&E Corp.; Pinnacle West Capital; Portland General Electric; PPL Corp.; Public Service Enterprise Group; TECO Energy; SCANA Corp.; Sempra Energy; Westar Energy; and Wisconsin Energy Corp. Ex. RIT-503.

⁸² Ex. RIT-500 at 29, 42.

⁸³ Dr. Avera states that he eliminated six companies from the proxy group due to their low-end cost of equity below or not sufficiently above the cost of debt. *Id.* at 40-42. However, Dr. Avera appropriately eliminated seven companies due to their low-end cost of equity not being sufficiently above the cost of debt. Ex. RIT-503.

⁸⁴ Ex. RIT-500 at 42 (citing *ISO New England Inc.*, 109 FERC ¶ 61,147, at P 205 (2004)).

appropriate return on equity.⁸⁵ Therefore, the Illinois Commission argues that the 10.0 percent base ROE estimated by the use of the median is the more appropriate ROE to be used for the RITELine Project as opposed to the 10.7 percent base ROE recommended by Dr. Avera and proposed by the RITELine Companies.⁸⁶

3. Answer

70. The RITELine Companies argue that, if the Commission approves their requested overall incentive ROE of 12.7 percent with the cost overrun limitation, the significance of the base ROE component is reduced. The RITELine Companies argue that, while the Commission has used the median in single-company cases to determine the appropriate ROE, the Commission should consider Dr. Avera's recommendation that here, for this partnership reflecting investment of subsidiaries of three varied public utility holding companies (AEP, Exelon, and Mid-American Energy) with assets and service territories spanning the nation, the median value for the proxy group alone does not properly reflect the range of ROE values. In addition, the RITELine Companies argue that competition for investor funds is intense and investors are free to invest their funds wherever they choose, and the RITELine Companies can only expect to attract investors if the Commission approves a return commensurate with those from other investments with comparable risk. Therefore, the RITELine Companies argue that they will be better able to compete for capital if the base ROE is 10.7 percent.⁸⁷

4. Commission Determination

71. We find that the 25 companies identified by the RITELine Companies are an appropriate starting point for developing a proxy group that reflects comparable risks. While geographic proximity may be a relevant factor in identifying companies with comparable risks, it is not the sole basis for inclusion of companies in a proxy group.⁸⁸ We also find that the corporate credit rating screen that the RITELine Companies used is consistent with Commission precedent.⁸⁹

⁸⁵ Illinois Commission Protest at 4-5 (citing *So. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 87; *Atlantic Wind*, 135 FERC ¶ 61,144 at P 91).

⁸⁶ Illinois Commission Protest at 6.

⁸⁷ RITELine Companies Answer at 2-4.

⁸⁸ *PATH Rehearing Order*, 133 FERC ¶ 61,152 at P 60.

⁸⁹ *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 95 (2008). While the RITELine Companies have proposed Value Line's Safety Rank

72. However, we find that the RITELine Companies improperly left in the high-end cost of equity for PPL Corporation when setting the appropriate zone of reasonableness. When we eliminate either the high- or low-end ROE outlier of a company, we also have eliminated the corresponding low- or high-end ROE of that company.⁹⁰ Thus, when we eliminate the high-end ROE for PPL Corporation, we determine that the appropriate zone of reasonableness for the RITELine Companies is 7.15 percent to 13.65 percent. The resulting midpoint and median are 10.40 percent and 9.93 percent, respectively.

73. We find it appropriate to grant the RITELine Companies a base ROE of 9.93 percent, which is the corrected median value of the RITELine Companies' DCF analysis. The Commission has found that the median of the DCF analysis is appropriate for establishing the base ROE for an individual utility.⁹¹ For this reason, we reject the alternative methods for establishing a base ROE proposed by the RITELine Companies. This base ROE, combined with the incentive ROE adders that are conditionally granted above, produces an overall ROE of 11.43 percent, which falls within the zone of reasonableness.

74. We direct the RITELine Companies to make a compliance filing within 30 days of the date of this order that revises their formula rate, which is also discussed further below, to reflect the changes to the ROE that are required in this order.

F. Construction Work in Progress

1. Proposal

75. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized allowance for funds used during construction (AFUDC) and corresponding amounts of CWIP in rate base.⁹² To satisfy this requirement, the RITELine Companies

and Financial Strength Rating, we find the use of the corporate credit rating to be sufficient.

⁹⁰ *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 58; *Bangor Hydro*, 117 FERC 61,129 at P 54.

⁹¹ *PATH Rehearing Order*, 133 FERC ¶ 61,152 at P 65 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302, at P 8-15 (2004); *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044 (2010) (*Pioneer*); *S. Cal. Edison Co.*, 131 FERC ¶ 61,020 at P 84-93).

⁹² 18 C.F.R. § 35.25 (2011).

state that they will use the PowerPlant System to maintain their accounting records for CWIP electric plant assets both during construction and after their projects are placed in-service.⁹³ The RITELine Companies state the PowerPlant system includes the capability to identify specific work orders or projects that should not be included in the calculation and capitalization of AFUDC. The work orders related to the Project will be identified in the PowerPlant system, and AFUDC will not be calculated on their balances.

76. Public utilities that receive a current return on CWIP through rate base recover this cost in a different period than it would ordinarily be charged to expense under the general requirements of the Uniform System of Accounts (USofA). To promote comparability of financial information between entities, the Commission has required a specific accounting treatment or the use of footnote disclosures to recognize the economic effects of having CWIP in rate base.⁹⁴ The RITELine Companies request authorization to use footnote disclosures consistent with disclosures previously authorized by the Commission.⁹⁵

2. Commission Determination

77. We will grant the RITELine Companies' request to include 100 percent of CWIP in rate base, conditioned upon the RITELine Project being approved in the PJM RTEP, as discussed above. The RITELine Companies indicate that their proposed accounting treatment will prevent a double recovery of CWIP and capitalized AFUDC on the same rate base items. We find that the proposed procedures in Exhibit No. RIT-700 demonstrate that the RITELine Companies have accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent the RITELine Companies are allowed to include CWIP in rate base.

78. We will authorize the RITELine Companies to provide footnote disclosures in the notes to the financial statements of its annual FERC Form No. 1 and its quarterly FERC Form No. 3-Q that: (1) fully explain the impact of the CWIP in rate base; (2) include details of AFUDC not capitalized because of the CWIP in rate base for the current year,

⁹³ See Ex. RIT-700 at 11.

⁹⁴ See, e.g., *Am. Transmission Co., LLC*, 105 FERC ¶ 61,388 (2003), *order on reh'g*, 107 FERC ¶ 61,117 (2004); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (*TrailCo*), *order on reh'g*, 121 FERC ¶ 61,009 (2007); *S. Cal. Edison Co.*, 122 FERC ¶ 61,187, *order on compliance filing*, 125 FERC ¶ 61,337 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (*PATH*); *Tallgrass*, 125 FERC ¶ 61,248.

⁹⁵ See Ex. RIT-700 at 12.

the previous two years, and the sum of all years; and (3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amount of AFUDC not capitalized because of the inclusion of CWIP in rate base.

G. Abandoned Plant Recovery

1. Proposal

79. The RITELine Companies request that they be permitted to recover 100 percent of prudently incurred costs, including pre-commercial expenses and construction costs, if the Project, or a component thereof, is abandoned due to an event beyond their control. The RITELine Companies note that this treatment will enhance their ability to obtain financing at lower debt costs, while also allowing the RITELine Companies to begin reserving labor and acquiring rights-of-way.⁹⁶ In support, the RITELine Companies cite Order No. 679, where the Commission held that recovery of abandoned plant costs is an “effective means to encourage transmission development by reducing the risks of non-recovery of costs.”⁹⁷

80. The RITELine Companies also request that the Commission not condition approval of the abandoned plant incentive on the Project’s approval in the PJM RTEP. The RITELine Companies assert that the right to seek recovery of abandonment costs is appropriate even if the RITELine Project is not included in the RTEP because there is a significant difference between conceptual projects that are proposed merely based on the location of congestion, and projects that are backed by detailed planning studies. The RITELine Companies note that high-quality projects are subject to opposition in the PJM planning process for a number of reasons. Thus, the RITELine Companies note that the Project faces the risk of PJM evaluating the Project through particular, and sometimes narrow, study parameters. Further, the RITELine Companies explain that despite all the planning efforts expended prior to having the Project considered by an RTO, PJM may not include the Project in the regional plan for factors beyond their control. The RITELine Companies state that these factors support allowing recovery of abandonment costs without obtaining RTEP approvals.⁹⁸

⁹⁶ Ex. RIT-100 at 18.

⁹⁷ Transmittal Letter at 41 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163).

⁹⁸ Ex. RIT-100 at 20.

2. Protests

81. Both the PSEG Companies and the Illinois Commission argue that any grant of abandonment incentive must be conditioned on PJM RTEP approval. The PSEG Companies also argue that any grant of abandonment should be conditioned on a subsequent section 205 filing. The PSEG Companies argue that only those transmission projects that are approved through the RTEP are eligible for cost recovery from PJM customers through Schedule 12 of the PJM OATT.

82. The Illinois Commission argues that granting this incentive unconditionally may give the RITELine Project a relative advantage over other projects that may address the same transmission needs as the RITELine Project is intended to remedy.⁹⁹ In addition, the Illinois Commission argues that granting an abandonment incentive unconditioned by entry into the PJM RTEP may create a risk of “pancaking” abandonment costs upon ratepayers. The Illinois Commission explains that it is not uncommon for multiple transmission projects to be proposed to resolve one set of transmission needs and only the project that provides the lowest cost and most effective manner should be selected. Accordingly, the Illinois Commission states that an unconditional grant of the abandonment incentive could lead to ratepayers paying for abandonment costs for multiple projects that were intended to alleviate a single transmission need.

3. Answer

83. The RITELine Companies argues that protestors’ criticism of the RITELine Companies’ request to grant an abandonment incentive unconditioned by PJM RTEP approval is inconsistent with Commission policy.¹⁰⁰ Therefore, the RITELine Companies state that contrary to the protestors’ assertions, the Commission should not condition approval of the abandonment incentive on approval in the PJM RTEP. The RITELine Companies explain that granting the abandonment incentive unconditioned on PJM RTEP approval will not prejudice the regional RTEP process, or any later 205 filing that may address allocation issues, but will provide a level of certainty that will encourage this important transmission investment. The RITELine Companies also note

⁹⁹ Illinois Commission Comments at 8 (citing *Cent. Transmission, LLC*, 135 FERC ¶ 61,145 (2011)).

¹⁰⁰ RITELine Companies August 23, 2011 Answer at 3 (citing *Desert Sw. LLC*, 135 FERC ¶ 61,143, at P 74, n.61 (2011)); RITELine Companies September 1, 2011 Answer at 9 (citing *Desert Sw. LLC*, 135 FERC ¶ 61,143, at P 20 (2011); *Green Power Express*, 127 FERC ¶ 61,031 at P 42; *Green Energy Express*, 129 FERC ¶ 61,165 at P 13; *SoCal Edison*, 129 FERC ¶ 61,246 at P 17; *Ne. Transmission Dev. LLC*, 135 FERC ¶ 61,244, at P 69 (2011)).

that they commit to making a section 205 filing prior to recovery of any abandoned plant costs, consistent with Commission precedent.

4. Commission Determination

84. We will grant RITELine Companies' request for recovery of 100 percent of prudently incurred costs associated with abandonment of the Project, conditioned upon the Project being included in the PJM RTEP, provided that the abandonment is a result of factors beyond the control of the RITELine Companies, which must be demonstrated in a subsequent section 205 filing for recovery of abandoned plant costs.¹⁰¹ As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.¹⁰²

85. We find that the RITELine Companies have demonstrated a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment. We agree with the RITELine Companies that the Project faces substantial risks outside of the RITELine Companies' control. Approval of the abandonment incentive will both attract financing for the Project, and protect the RITELine Companies from further losses if the Project should be cancelled for reasons outside the RITELine Companies' control. This incentive, however, is conditioned on the Project being included in the PJM RTEP because, as discussed above, we find that such inclusion is necessary for the RITELine Companies to satisfy the threshold requirement of section 219.

86. We will not determine the justness and reasonableness of the RITELine Companies' abandoned plant recovery, if any, until the RITELine Companies seek such recovery in a future section 205 filing.¹⁰³ Order No. 679 specifically reserves the prudence determination for the later section 205 filing that every utility is required to make if it seeks abandoned plant recovery.¹⁰⁴ We note that, should the Project be cancelled before it is completed, it is unclear whether the RITELine Companies will have any customers from which to recover its abandonment costs. At such time, the RITELine Companies will be required to demonstrate in its section 205 filing that abandonment was beyond its control, provide for rate authorization consistent with the PJM tariff allowing

¹⁰¹ *Id.* P 165-166.

¹⁰² *Id.* P 163.

¹⁰³ *Primary Power*, 131 FERC ¶ 61,015 at P 124.

¹⁰⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-166.

for recovery of abandonment costs that were prudently-incurred, and propose a rate and cost allocation method to recover the costs in a just and reasonable manner.¹⁰⁵

H. Regulatory Asset Accounting Treatment

1. Proposal

87. Each RITELine Company seeks authorization to establish a regulatory asset in Account 182.3, Other Regulatory Assets, which they will accrue all costs that are not capitalized and included in CWIP incurred to date and up to the date that charges are assessed to customers under the formula rate. Such costs would include attorney and consultant fees, entity formation costs, administrative expenses, travel expenses, development surveys, and costs to support regional planning activities that are or have been incurred by the RITELine Companies or the Project Sponsors. The RITELine Companies also request authorization to amortize the regulatory assets over five years, beginning in the first year that costs are assessed to customers under the formula rate.

88. In addition, the RITELine Companies seek permission to accrue carrying charges on the regulatory asset balances beginning on the date that the Commission accepts the regulatory asset. The RITELine Companies will utilize the weighted average cost of capital rate to accrue carrying costs. Carrying charges will be recorded by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-Operating Income. Finally, the RITELine Companies state that once charges start flowing under the formula rate, new costs would no longer be added to the regulatory assets. Instead, such new costs would be flowed to customers as they are incurred, in accordance with the formula.

89. The RITELine Companies assert that this incentive is needed because it provides the only means by which they can recover development costs not included in CWIP that they incur before they recover costs under the formula rate. The RITELine Companies also assert that by ensuring the ability to recover these development costs, the regulatory asset incentive enhances credit quality and the ability to obtain financing on more reasonable terms. The RITELine Companies state that in *PATH*, the Commission recognized that the recovery of this incentive would enhance *PATH*'s cash flow, assist with financing, and improve coverage ratios used by rating agencies to determine credit quality.¹⁰⁶ The RITELine Companies also state that in *Green Power Express*, the Commission approved the creation of several regulatory assets that were to correspond

¹⁰⁵ See *Pioneer*, 130 FERC ¶ 61,044 at P 27; *Green Power Express*, 127 FERC ¶ 61,031 at P 52.

¹⁰⁶ 122 FERC ¶ 61,188 at P 52.

with the various phases of that project (vintage year regulatory asset).¹⁰⁷ Consistent with the rationale underlying that ruling, the RITELine Companies seek authority to create a regulatory asset for each RITELine Company.

2. Protest

90. The Illinois Commission argues that the RITELine Companies should provide greater detail on the costs contained in its proposed regulatory asset, either in this proceeding or in a future section 205 proceeding. Specifically, the Illinois Commission would like to see greater detail with regard to the projected 2011 cost data of \$1,324,414 currently posted in the regulatory asset account in the formula rate. With regard to this amount, the Illinois Commission is concerned with whether or not the RITELine Companies are seeking recovery of an appropriate share of the SMART study costs. The Illinois Commission argues that since the RITELine Companies have placed an estimate of costs in this section 205 filing, the RITELine Companies also should at this time provide the details of the review process to ensure that none of the expenses associated with the regulatory asset are unwarranted costs associated with the SMART Study.¹⁰⁸

91. The Illinois Commission also argues that any carrying costs on the regulatory asset should be at the RITELine Companies' cost of debt, rather than by the weighted average cost of capital sought by the RITELine Companies. The Illinois Commission states that allowing a carrying cost based on debt appropriately balances the interests of the developers and those of the ratepayers. However, the Illinois Commission states that if the Commission elects to allow the carrying costs to include costs associated with equity, the carrying costs should not include any incentive adders to the base ROE.¹⁰⁹

92. The PSEG Companies argue, to the extent that the Commission finds that the RITELine Companies have adequately demonstrated that they are entitled to establish a regulatory asset for development costs and to amortize such costs, the Commission must condition any recovery of such costs from PJM customers on the Project first being approved through the PJM RTEP.¹¹⁰

¹⁰⁷ 127 FERC ¶ 61,031 at P 56, 109.

¹⁰⁸ Illinois Commission Protest at 7.

¹⁰⁹ *Id.* at 7-8.

¹¹⁰ PSEG Protest at 13.

3. Answer

93. The RITELine Companies state that the Commission has previously accepted proposals to establish regulatory assets in order to book non-capital costs incurred prior to the effective date of their formula rates, together with requests to recover costs booked to the regulatory assets over a defined period when their projects are eligible for cost recovery under the applicable or RTO (or independent system operator) OATT.¹¹¹ The RITELine Companies state that the regulatory asset incentive is necessary to establish a mechanism for cost recovery, assuming cost recovery is permitted, but does not pre-judge the issue whether any RITELine Project costs are or will ultimately be eligible for cost recovery under the PJM OATT or otherwise.¹¹²

94. The RITELine Companies state that it is appropriate to accrue carrying charges at the weighted average cost of capital and the Illinois Commission comments provide no reason to require otherwise.¹¹³ The RITELine Companies state that the proposed regulatory asset was based on estimated costs incurred such as attorney and consultant fees, entity formation costs, administrative expenses, travel expenses, development surveys, and costs to support regional planning activities. The RITELine Companies argue that the Commission should dismiss the Illinois Commission's request for further information about these costs because this is not the time for the Illinois Commission to raise such issues. The RITELine Companies argue that the formula itself is the rate and, as such, the formula is the subject of this proceeding, not the inputs therein. The RITELine Companies point out that the appropriate time for the Illinois Commission to raise such questions is through the annual update process, which will provide interested parties the opportunity to submit information requests and file challenges to the costs included in the formula rate.¹¹⁴

4. Commission Determination

95. The RITELine Companies propose to record pre-construction costs not included in CWIP incurred prior to the effective date of its formula rate as a regulatory asset up to the date that charges are assessed to customers under the formula rate. We find that this

¹¹¹ RITELine Companies August 23, 2011 Answer at 6 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 84-86; *Green Power Express*, 127 FERC ¶ 61,031 at P 42).

¹¹² *Id.* at 7.

¹¹³ *Id.* at 8 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 111,117).

¹¹⁴ *Id.* at 8-9.

incentive is tailored to the RITELine Companies' risks and challenges because this incentive will provide the RITELine Companies with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and assist in the construction of the facility. Therefore, we find the RITELine Companies' recovery of pre-construction costs during the construction period to be appropriate, and grant the RITELine Companies' request to establish a regulatory asset for each company, conditioned upon the Project being included in the PJM RTEP.

96. We approve the RITELine Companies' request to accrue a carrying charge from the effective date of the regulatory assets until the regulatory assets are included in rate base.¹¹⁵ We also authorize the RITELine Companies to amortize each regulatory asset over five years, consistent with rate recovery.¹¹⁶ Once the RITELine Companies begin to recover the initial regulatory asset in rate base as part of their revenue requirement, the RITELine Companies will earn a return on the unamortized balance of the regulatory asset and, therefore, the RITELine Companies must stop accruing carrying charges on such regulatory asset.¹¹⁷

97. Pre-construction costs deferred as a regulatory asset recorded in Account 182.3 only may include amounts that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period. Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

98. If the RITELine Project is cancelled before completion, it is unclear whether the RITELine Companies will have any customers from which to recover its regulatory asset. In addition, while this order provides the RITELine Companies with the ability to record pre-construction costs as a regulatory asset, the RITELine Companies must make a section 205 filing to demonstrate that the pre-construction costs are just and reasonable. The RITELine Companies will have to establish that the costs included in the regulatory

¹¹⁵ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 84.

¹¹⁶ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 59; *Primary Power*, 131 FERC ¶ 61,015 at P 117.

¹¹⁷ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 84.

asset are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

I. Total Package of Incentives

1. Proposal

99. The RITELine Companies state that they have tailored the requested incentives to the large investment and the special risks and challenges associated with the Project. The RITELine Companies note that although the requested incentives are designed to alleviate a different risk, they were selected as a package to work together in order to ensure that the Project is completed in a timely manner. In addition, the RITELine Companies state that the package of incentives will improve the likelihood that the RITELine Companies will be able to attract capital to participate in the Project on terms beneficial to customers who ultimately will bear cost responsibility for the Project.¹¹⁸

2. Commission Determination

100. As noted above, 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 risk 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. 679,¹¹⁹ the Commission has, in prior cases, approved multiple rate incentives for particular projects.¹²⁰ This is consistent with our interpretation of section 219 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 section 219 and that there is a nexus between the incentives proposed and the investment made. We find that the total package of incentives that we are approving for the RITELine Companies is tailored to address the risks or challenges faced by the RITELine Companies.

¹¹⁸ Transmittal Letter at 47-49.

¹¹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

¹²⁰ *Atlantic Wind*, 135 FERC ¶ 61,144 at P 127 (internal citations omitted) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 55, 59, 61 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *see also Cent. Me.*, 125 FERC ¶ 61,182 at P 100 (granting both abandonment and ROE incentives).

J. Formula Rate

1. Proposal

101. The RITELine Companies propose to implement a formula rate and protocols which they state is similar to formula rates that the Commission has previously approved.¹²¹ The RITELine Companies explain that their proposed formula rate is designed to track increases and decreases in actual costs and projected capital additions. The proposed formula rate contains a true-up mechanism that is implemented at the end of each rate period that will ensure that any deviation from actual costs during the rate period is reflected in an adjustment (with interest) to the annual transmission revenue requirement in the subsequent period. In addition, the RITELine Companies state that the formula rate employs Commission-approved ratemaking methodologies and contains sufficient specificity to operate without discretion in its implementation. Therefore, the RITELine Companies state that the formula rate and protocols are just and reasonable, and will encourage the construction and timely placement into service of needed transmission infrastructure.¹²²

102. The RITELine Companies state that they will not assess charges to customers under the formula rate until either the Project is included in the RTEP or the Commission issues an order on the allocation of charges. In addition, the RITELine Companies state that upon inclusion of the facilities in the PJM RTEP, there will be an additional section 205 filing to designate the RITELine Companies' formula rate and protocols as a numbered Attachment H of the PJM OATT.¹²³

103. The RITELine Companies explain that the formula rate is designed to calculate the annual transmission revenue requirement (ATRR) by forecasting the values that will populate the formula rate by May 1, and calculate a true-up of the forecasted values when the actual data becomes available. Any difference between the forecasted ATRR and actual ATRR will be added to the following year's ATRR. The RITELine Companies

¹²¹ Ex. RIT-600 at 6 (citing *Am. Transmission Co.*, 97 FERC ¶ 61,139 (2001); *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306 (2008); *Am. Elec. Power Transmission Co.*, 135 FERC ¶ 61,066 (2011); *Tallgrass*, 132 FERC ¶ 61,114.

¹²² Transmittal Letter at 49-50 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386).

¹²³ *Id.* at 50.

explain that the true-up mechanism will ensure that neither the customers nor the transmission owners are harmed if the forecasted ATRR differs from the actual ATRR.¹²⁴

104. The RITELine Companies state that the formula rate provides for the recovery of a return on rate base (and associated taxes), taxes other than income taxes, depreciation expenses, and other operation and maintenance expenses, less revenue credits. In addition, the RITELine Companies state that for transmission and general plant balances, it uses the average of 13-monthly balances, whereas for accumulated deferred income taxes, land held for future use, materials and supplies and prepayments, it uses the average of the beginning and end-of-year balances. The RITELine Companies further state that because they are not subject to federal income taxes as a limited liability company, any tax obligations incurred through their operations will be passed through to and reported on the tax returns of their corporate parents. However, for ratemaking purposes, the RITELine Companies state that they are treated as a corporation and receive an income tax allowance. The RITELine Companies state that the proposed treatment of taxes is consistent with Commission practice.¹²⁵

105. The RITELine Companies state that the formula rate includes a stated rate for post-employment benefits other than pensions, depreciations rates, ROE, and capital structure during the construction phase of the Project. The RITELine Companies note that these values only may be changed pursuant to a section 205 or 206 filing. However, the RITELine Companies explain that they will not assess charges to customers until the Project is included in the PJM RTEP, at which time the formula rate and protocols will be resubmitted by PJM in the appropriate PJM tariff database.¹²⁶

106. The RITELine Companies' proposed protocols provide that, in May of each year, the companies will populate the rate formula template using the data contained in the FERC No. Form 1 for the prior calendar year for RITELine Illinois and RITELine Indiana, plus projected capital additions for the current year to establish the ATRR. The RITELine Companies explain that they will also calculate the difference between the prior calendar year's estimated ATRR and the actual costs reported in the FERC Form No. 1 and will reflect the difference (with interest) in the estimated ATRR that will go into effect on June 1. The RITELine Companies state that they will submit this information annually as an informational filing in this docket and also will post an excel

¹²⁴ *Id.* at 50-51.

¹²⁵ *Id.* at 51 (citing *Green Power Express LP*, 135 FERC ¶ 61,141, at P 110 (2011)).

¹²⁶ *Id.* at 51-52.

sheet of a populated formula rate on the PJM website, or, prior to the inclusion of the Project in the RTEP, on the website of the RITELine Companies.¹²⁷

107. The RITELine Companies explain that the protocols govern the specific procedures for notice, requests for information, review and challenges to the annual update. Specifically, the protocols allow interested parties 150 days to review and to submit preliminary written challenges to specific items in the formula rate. In addition, interested parties will have 120 days to serve reasonable information requests on the RITELine Companies, and the RITELine Companies will make reasonable efforts to respond to such requests within 15 business days. Further, if a preliminary challenge is made, the protocols provide that interested parties will have a 21-day period to resolve the dispute regarding the formula inputs. If the interested parties are unable to resolve the dispute, they have an additional 21 days to file a complaint with the Commission. The RITELine Companies note that parties retain their rights under sections 205 and 206 of the FPA, without regard to the formal review process. The RITELine Companies state that, consistent with Commission precedent, the proposed protocols do not limit a customer's or the Commission's rights with respect to challenges to the inputs into the formula rate in accordance with section 206 of the FPA.¹²⁸

2. Protest and Comments

108. The PSEG Companies argue that the establishment of formula rates for the RITELine Project is premature absent approval and determination of cost allocation pursuant to PJM's RTEP process. Specifically, the PSEG Companies argue that until PJM actually: (1) approves a project into the RTEP; and (2) makes a filing at FERC identifying the beneficiaries for the project, the cost allocation for a proposed RTEP project will remain unknown. In addition, the PSEG Companies note that the projects that PJM ultimately approves as part of the RTEP may not match the projects that were proposed. Therefore, the PSEG Companies note that it is questionable how formula rates for any "proposed" RTEP project could take effect prior to the completion of the RTEP process, in which cost allocation will be determined. For these reasons, the PSEG Companies argue that approval and effectiveness of any formula rate must be conditioned, at a minimum, on PJM RTEP approval. Alternatively, the PSEG Companies state that the Commission should consider dismissing such rate filings without prejudice

¹²⁷ *Id.* at 52-53.

¹²⁸ *Id.* at 53 & n.61 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 61 (2010); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 113).

for being premature until the cost allocation for the Project has been determined through the PJM RTEP process.¹²⁹

109. The Illinois Commission expresses several concerns related to the RITELine Companies' proposed formula rate review protocol, which the Illinois Commission claims could constrain the right of ratepayers to challenge formula rate inputs. First, the Illinois Commission recommends deleting "or upon receipt of an order from FERC on the allocation of the charges for the RITELine Project" from section 2.1 because the RITELine Companies have not explained the reason for including this language or its meaning. The Illinois Commission argues that, if the language is intended to apply to the recovery of abandoned plant costs, the Commission should require the RITELine Companies to make a filing under section 205 to demonstrate that any abandoned plant costs were prudently incurred and propose a just and reasonable rate and cost allocation methodology to recover those costs.¹³⁰

110. Second, the Illinois Commission requests that the Commission direct the RITELine Companies to delete "provided, however, that the initial burden to raise a substantial doubt as to the prudence of any new cost or expenditure shall be the Interested Party raising the challenge" from section 3.c.vi. The Illinois Commission argues that this language is unnecessary because section 5.c properly reflects the rights of parties under sections 205 and 206 of the FPA and section 3.c.vi does not.

111. Third, the Illinois Commission recommends that modifying the language in section 3.f to allow the review of related components in the formula rate, rather than restricting review to the single component. The Illinois Commission argues that changes made to the value of one of the stated elements in the formula rate may merit review of other elements that are related to the stated element and the proposed protocol would prohibit such review.

112. Fourth, the Illinois Commission requests that the RITELine Companies clarify what "reconciliation made under [s]ection 4" provided in section 3.g.vii is referring to. The Illinois Commission suggests that changing this language to "changes made pursuant to the Annual Review Process under [s]ection 4" would make sense.

¹²⁹ PSEG Protest at 13-14.

¹³⁰ Similar to *Green Power Express*, the Illinois Commission notes that the RITELine Companies may not have any customers from which to recover any costs that it incurs. Illinois Commission Comments at 10 (citing *Green Power Express*, 127 FERC ¶ 61,031 at P 52).

113. Fifth, the Illinois Commission requests the time period for review under section 4.a be extended from 150 days to 180 days. The Illinois Commission states that this revision would be consistent with the period of review under Commonwealth Edison's protocol specified in the PJM Tariff.¹³¹ Similarly, the Illinois Commission requests that time period for information requests under section 4.b be expanded from 125 days to 150 days, which also is consistent with Commonwealth Edison's protocol.¹³²

114. Sixth, the Illinois Commission requests that the Commission direct the RITELine Companies to add language to section 6 to make any changes to data points that happen as a result of revisions made on RITELine Companies' own initiative to FERC Form No. 1 be subject to the challenge and review process set forth in section 4. Furthermore, the Illinois Commission requests clarification to what "This reconciliation mechanism" in section 6 is referring to because section 6 does not appear to describe any "reconciliation" mechanism.

115. Finally, the Illinois Commission proposes two further revisions to the protocol to correct apparent typographical errors in sections 1 and 3.e.¹³³

3. Answer

116. The RITELine Companies state that they will agree with several changes suggested by the Illinois Commission and propose to make such changes in a compliance filing. Specifically, the RITELine Companies agree to correct the typographical errors identified in sections 1 and 3.e, extend the deadlines as requested in 4.a and 4.b, and make the change suggested in section 6.

117. With regard to the other concerns raise by the Illinois Commission, the RITELine Companies respond as follows. First, with regard to section 2.1, the RITELine Companies clarify that "or upon receipt of an order from FERC on the allocation of charges" is intended to apply to the recovery of abandoned plant costs. The RITELine Companies note that, if the Project is abandoned, they will need to make a subsequent 205 filing and the quoted language is intended to provide for the situation where the Commission provides for an allocation of the abandoned plant costs.

118. Second, with regard to section 3.c.vi and the suggested language deletion by the Illinois Commission, as stated above, the RITELine Companies argue that under Commission precedent, a utility's costs are presumed prudent and a person challenging

¹³¹ *Id.* at 11 (citing PJM, OATT, Attachment H-13B (2.0.0) § 2(a)).

¹³² *Id.* (citing PJM, OATT, Attachment H-13B (2.0.0), § 2(b)).

¹³³ Illinois Commission Comments at 10.

such costs has the burden of producing evidence that raises a serious doubt as to prudence. The RITELine Companies argue that section 3.c.vi accurately captures the Commission's standard for prudence challenges. Additionally, the RITELine Companies note that nothing in 3.c.vi alters their ultimate burden of demonstrating the justness and reasonableness of the rate resulting from the application of the formula rate. The RITELine Companies further note that section 5.c of the protocols clarifies this and provides the following: "the RITELine Companies shall bear the burden . . . of providing that they have correctly applied the terms of the Formula Rate Nothing herein is intended to alter the burdens applied by the Commission with respect to prudence challenges."

119. Third, with regard to section 3.f, the RITELine Companies state that this section is intended to provide for single-issue rate filings with respect to only those narrowly stated inputs to the formula rate. The RITELine Companies argue that this is consistent with Commission precedent and given that nothing in the protocols limits a party's rights under section 205 or 206 of the FPA, it is not necessary to implement the suggested changes.

120. Fourth, with regard to section 3.g.vii, the RITELine Companies clarify that "any changes to the data inputs made as a result of the reconciliation made under Section 4" requires the RITELine Companies to provide, as part of the Annual Update, information concerning the resolution of any preliminary challenges.

121. Fifth, with regard to section 4.b, the RITELine Companies clarify that "whether the RITELine Companies have properly calculated the Annual Update under review (including any corrections pursuant to Section 4)" allows interested parties to submit information requests concerning whether the RITELine Companies properly reflected any revisions to the formula rate inputs that were required due to the resolution of any preliminary challenges.

122. Sixth, with regard to section 6, the RITELine Companies clarify that the quoted language above refers to the incorporation of any changes made pursuant to section 6 into the next year's annual update.

4. Commission Determination

123. The RITELine Companies cannot assess charges to customers until the Project is included in the PJM RTEP and PJM includes the formula rate and protocols in its tariff. We will accept the RITELine Companies' proposal to implement a formula rate with modifications to the protocols, to become effective October 17, 2011, as requested, as discussed herein.

124. The Commission has accepted the use of formula rates by a number of utilities in the PJM region, both those utilizing prior-year FERC Form No. 1 data to calculate rates

for the upcoming year,¹³⁴ as well as those utilizing projected costs, as the RITELine Companies propose to do.¹³⁵ In each case, the fundamental process remains the same: Rates are estimated for the following year and data regarding such rates is provided to customers with sufficient time to review and challenge the rates before the Commission, if necessary, before they are implemented. Once the actual costs are known from that year's FERC Form No. 1, those costs are trued-up to the rates charged over the past year and any over-collections are returned to customers with interest. These mechanisms allow the utility to recover its costs in a timelier manner while protecting customers from inflated rates through the true-up process. The RITELine Companies' proposal is consistent with this structure, and is, therefore, accepted.¹³⁶

125. We direct the RITELine Companies to revise their formula rate protocols within 30 days in the compliance filing ordered below. First, we direct the RITELine Companies to correct the typographical errors identified by the Illinois Commission in sections 1 and 3.e. Second, we direct the RITELine Companies to extend the agreed upon deadlines in sections 4.a and 4.b. We note that the attachment contained a typographical error in section 4.a. Specifically, the attachment reads "one hundred eight [sic] (180)" versus "one hundred eighty (180)." Therefore, we direct the RITELine Companies to revise section 4.a to correct this typographical error to "one hundred eighty (180)" as part of the compliance filing ordered below. Third, we direct the RITELine Companies to make the agreed upon addition in section 6 of the protocols.

126. With regard to section 2.1, as noted above, the RITELine Companies will need to make a subsequent section 205 filing in order to recover abandonment costs. Interested parties shall have the right to comment on the prudence of such costs and the RITELine Companies' proposal to recover them.

127. With regard to section 3.c.vi, we agree with the RITELine Companies that the initial burden to raise a substantial doubt as to the prudence of any new cost or expenditure included in the annual update is upon the interested party raising the challenge. In addition, we note that section 5.c provides that the RITELine Companies bear the burden of proving that they have correctly applied the terms of the formula rate and that they followed the applicable requirements. Further, section 5.c states that nothing in the protocols is intended to alter the burdens applied by the Commission with

¹³⁴ *Baltimore Gas & Elec. Co.*, 115 FERC ¶ 61,066 (2006); *Duquesne Light Co.*, 118 FERC ¶ 61,087.

¹³⁵ *PATH*, 122 FERC ¶ 61,188.

¹³⁶ *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 11 (2008).

respect to prudence challenges. Therefore, we find that section 3.c.vi is just and reasonable.

128. With regard to section 3.f, we agree with the Illinois Commission and find that customers should be able to challenge related elements of the formula rate or protocols. Therefore, we direct the RITELine Companies to submit a compliance filing within 30 days of the date of this order to revise the formula rate protocols in section 3.f to state “shall not open review of unrelated components” consistent with the Illinois Commission’s proposal, as discussed above. In addition, we accept the RITELine Companies’ clarifications with regard to sections 3.g.vii, 4.b, and 6.

129. Finally, we direct the RITELine Companies to use the interest rate from Attachment 5 of 6.83 percent as the cost of debt versus the requested 8.39 percent and 8.33 percent for RITELine Indiana and RITELine Illinois, respectively, until debt is issued. After issuing debt, we direct the RITELine Companies to update the cost of debt in the formula rate appropriately. Therefore, we direct the RITELine Companies to submit a compliance filing within 30 days of the date of this order to reflect the calculated interest rate as the cost of debt versus the requested cost of debt for RITELine Indiana and RITELine Illinois.

K. Hypothetical Capital Structure

1. Proposal

130. The RITELine Companies propose to reflect in its formula rate a hypothetical capital structure of 45 percent debt and 55 percent equity until long-term financing is obtained and the Project begins commercial operation. The RITELine Companies state that this capital structure will not only result in a more predictable and steady cash flow stream from formula rate revenues, but it will also support the RITELine Companies’ efforts to obtain at least BBB investment grade quality. In addition, the RITELine Companies state that once long-term financing has been secured and the Project assets have been placed in-service, they will target an actual capitalization of approximately 45 percent debt and 55 percent equity, and the actual capitalization will be used in the formula rate.¹³⁷

2. Commission Determination

131. We grant the RITELine Companies’ request to use a hypothetical capital structure consisting of 45 percent debt and 55 percent equity until such time as any portion of the Project achieves commercial operation, conditioned upon the Project being included in

¹³⁷ Transmittal Letter at 58-59.

the PJM RTEP, as discussed above. Once any portion of the Project achieves commercial operation, the RITELine Companies will use their actual capital structure. The RITELine Companies have demonstrated a nexus between the requested incentive and the risks and challenges faced by the Project. Specifically, the RITELine Companies must raise significant levels of debt and equity capital to develop and construct the Project. Approval of the hypothetical capital structure will: (1) reduce the effects on rates resulting from swings in the actual capital structure due to varying cash demands during the construction phase; (2) prove a more consistent cash flow during the construction phase; and (3) contribute to receiving and maintaining an investment grade credit rating profile during the financing phase of the project, thus lowering the overall cost of capital.¹³⁸

L. Income Taxes

132. RITELine Illinois and RITELine Indiana will be pass-through entities for federal income tax purposes and will not be liable for the payment of any income taxes.¹³⁹ Although the RITELine Companies, as limited liability companies, will not be subject to federal income tax, the tax obligations incurred through their operations will be passed through to and reported on the tax returns of their corporate parents.¹⁴⁰ For ratemaking purposes, the Commission treats pass-through entities, such as the RITELine Companies, as though they are corporations and allows them to receive an income tax allowance for the tax liability ultimately paid by their parents.¹⁴¹ RITELine Illinois and RITELine Indiana state that they will maintain their books of account based on the Commission's USofA as if they were a taxable corporation,¹⁴² including the income tax accounting

¹³⁸ See, e.g., *PATH*, 122 FERC ¶ 61,188 at P 55; see also Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93 (finding that hypothetical capital structures “can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances”).

¹³⁹ See Ex. RIT-700 at 7.

¹⁴⁰ Transmittal Letter at 51.

¹⁴¹ See *Green Power Express*, 127 FERC ¶ 61,031 at P 110; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 120; *Tallgrass*, 125 FERC ¶ 61,248 at P 84.

¹⁴² See Ex. RIT-700 at 8.

requirements of the USofA.¹⁴³ Thus, we find that RITELine Illinois and RITELine Indiana's income tax accounting proposal is consistent with Commission policy.¹⁴⁴

M. Requested Waivers

133. The RITELine Companies request waiver of section 35.13 of the Commission's regulations, including waiver of the full Period I-Period II data requirements and waiver of the requirements to determine if, and to the extent to which, a proposed change constitutes a rate increase based on Period I-Period II rates and billing determinants. The RITELine Companies state that good cause exists for these waivers, as explained in its application. Additionally, the RITELine Companies request "waiver of any applicable regulations to allow the filing to take effect in the manner described."¹⁴⁵

134. We will grant the RITELine Companies' request for waiver of section 35.13 requirements, consistent with our prior approval of formula rates.¹⁴⁶

The Commission orders:

(A) The RITELine Companies' request for CWIP, abandonment, and regulatory asset incentives, and their request for an additional ROE adder for the risks and challenges of the Project, reduced to 100 basis points, and a 50 basis points ROE adder for membership in an RTO are hereby conditionally granted, as discussed in the body of this order.

(B) The RITELine Companies' request for an advanced technology adder is hereby denied, as discussed in the body of this order.

(C) The RITELine Companies' request for the use of a hypothetical capital structure is hereby granted, as discussed in the body of this order.

¹⁴³ Part 101 of the Commission's regulations sets forth the accounting requirements for income tax, including: General Instructions No. 18, and Accounts 190, 236, 281, 282, and 283. 18 C.F.R. pt. 101 (2011)

¹⁴⁴ *PATH*, 122 FERC ¶ 61,188 at P 157.

¹⁴⁵ Transmittal Letter at 68-69.

¹⁴⁶ *Commonwealth Edison Co. and Commonwealth Edison Co. of Ind., Inc.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008); *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 31 (2008).

(D) The RITELine Companies' proposed formula rate and protocols are hereby conditionally accepted for filing, subject to the compliance filing ordered below, to become effective October 17, 2011, as discussed in the body of this order.

(E) The RITELine Companies' request for waivers of section 35.13 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(F) The RITELine Companies are hereby directed to submit a compliance filing within 30 days of the date of this order that: (1) revises their formula rate to reflect the required changes to their ROE; (2) contains revisions to the protocols for the formula rate; and (3) updates the cost of debt in the formula rate, as discussed in the body of this order.

(G) The RITELine Companies are hereby directed to submit a compliance filing within 30 days of the date of approval of the Project in the PJM RTEP, informing the Commission of such approval.

By the Commission. Commissioner Spitzer is not participating.
Commissioner Moeller 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. ER11-4069-000
ER11-4070-000

(Issued October 14, 2011)

MOELLER, Commissioner, *dissenting in part*:

Now is not the time for this Commission to begin retreating from its incentive policy on needed transmission lines. Yet I question whether we are sending that message with a 50 basis-point reduction in the 150 basis-point incentive for risks and challenges. This order conditions all of its incentives on approval by the planning process established in PJM (the RTEP process). Thus, this project will not be built unless it is needed.

The recent impact of the new TrAIL power line illustrates how needed transmission can transform the competitiveness of not only the power grid, but of the nation in general. The TrAIL project, approved in the PJM planning process and entering service this year, will undoubtedly have an impact in reducing congestion costs across PJM. In fact, based on the data in PJM's report on its RTEP Plan for year 2010, it appears that the billion-dollar TrAIL power line, in conjunction with other transmission improvements across PJM, will be reducing congestion costs by about one-billion dollars in year 2013.¹ This means that power lines that will be paid for by consumers in installments over forty or more years could pay for themselves within a few years.

Philip D. Moeller
Commissioner

¹ See Section 13 of the 2010 RTEP Plan, and in particular, figure 13.2. Available on PJM's website at: <http://www.pjm.com/documents/reports/rtep-report.aspx>