165 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

The Potomac Edison Company
Mid-Atlantic Interstate Transmission, LLC

Docket No. ER18-2510-000

ORDER ON TRANSMISSION RATE INCENTIVE

(Issued November 27, 2018)

1. On September 28, 2018, FirstEnergy Services Company, on behalf of its affiliates, The Potomac Edison Company (Potomac Edison) and Mid-Atlantic Interstate Transmission, LLC (MAIT) (collectively, Applicants), submitted a filing (Filing), pursuant to section 219 of the Federal Power Act (FPA),[1] and Order No. 679,[2] seeking a transmission rate incentive for their portions of a transmission project (Project 9A), as described more fully below. Specifically, Applicants seek authorization to recover prudently-incurred abandonment costs if Project 9A is abandoned or cancelled for reasons beyond their control (Abandonment Incentive). Applicants also request that the Commission confirm that it is eligible to seek recovery of 50 percent of prudently-incurred project costs expended prior to a Commission order granting the Abandonment Incentive. As discussed below, we grant Applicants' requests.

I. Background

A. Incentive Rate Recovery

2. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.[3] The Commission subsequently issued Order No. 679, establishing the processes by which a public utility may seek

[1] 16 U.S.C. § 824s (2012).

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

[3] Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

transmission rate incentives pursuant to section 219.[4] Additionally, in November 2012, the Commission issued a Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[5]

3. Order No. 679 requires an applicant to show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[6] Order No. 679 established a process for an applicant 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 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.[7]

4. Order No. 679-A clarified the operation of this rebuttable presumption by noting that the authorities or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.[8]

5. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to 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."[9] Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.[10] The

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[4] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

[5] *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

[6] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

[7] *Id.*

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

[9] *Id.* P 27.

[10] Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27).

Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

B. Project 9A

6. On August 2, 2016, PJM Interconnection, L.L.C. (PJM) approved Project 9A in its Regional Transmission Expansion Plan (RTEP) as a market efficiency baseline project[11] to alleviate congestion across the Pennsylvania and Maryland border.[12] Project 9A consists of upgrades to existing substations, two new substations, two new transmission lines, and improvements to existing lines. Project 9A has a projected in-service date of June 1, 2020. PJM has designated portions of Project 9A to be constructed by Transource Pennsylvania, LLC and Transource Maryland, LLC (collectively, Transource), Baltimore Gas and Electric (BGE), PECO Energy Company (PECO), Potomac Edison, and MAIT.[13]

7. PJM designated construction responsibility for most of Project 9A to Transource, pursuant to a Designated Entity Agreement between PJM and Transource.[14] To address its project risks, Transource sought several incentive rate treatments, including, *inter alia*, recovery of 100 percent of prudently-incurred costs in the event that all or part of its Project must be abandoned for reasons outside its control.[15] Likewise, BGE and PECO sought the Abandonment Incentive, to address risks associated with Project 9A as well as recovery of 50 percent of the prudently-incurred project costs expended prior to a Commission order granting the Abandonment Incentive.[16]

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[11] *See PJM Interconnection, L.L.C.*, Intra-PJM Tariffs, OA Schedule 6 Sec 1.5, OA Schedule 6 Sec 1.5 Procedure for Development of the Regi, 16.0.0.

[12] Filing at 3. On September 13, 2016, the Commission accepted Project 9A's cost responsibility assignments in *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,152 (2016).

[13] Filing at 3.

[14] *See PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,021 (2017) (accepting executed designated entity agreement for filing subject to suspension for a nominal period and refund); *PJM Interconnection, L.L.C.* 165 FERC ¶ 61,072 (2018) (conditionally accepting compliance filing).

[15] *See PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,089, at P 50 (2017) (Transource Incentive Rate Order) (approving Transource's proposed transmission formula rates and request for incentive rate treatment for Project 9A).

[16] *See Baltimore Gas and Elec. Co.*, 163 FERC ¶ 61,188 (2018) (BGE Order) (approving BGE's and PECO's request for incentive rate treatment for Project 9A).

8. Applicants state that PJM has assigned construction responsibility to MAIT for the following elements of Project 9A in its service territory (i.e., in the Penelec and Metropolitan Edison Zones):[17] (1) Upgrade b2743.2, tie in of the new Rice Substation to Conemaugh-Hunterstown; (2) Upgrade b2743.3, an upgrade of the terminal equipment on the Conemaugh end of the Conemaugh-Hunterstown 500 kV circuit;[18] (3) Upgrade 2743.4, an upgrade of the terminal equipment on the Hunterstown end of the Conemaugh-Hunterstown 500 kV circuit; and (4) Upgrade 2752.4, consisting of an upgrade to the terminal equipment and required relay communication at the TMI end of the TMI-Beach Bottom 500 kV circuit.[19] According to Applicants, PJM has assigned construction responsibility to Potomac Edison for the following portions of Project 9A in the Allegheny Power Systems or APS Zone:[20] (1) Upgrade b2743.6, a reconfiguring of the Ringgold 230 kV substation to a double bus double breaker scheme; (2) Upgrade b2743.6.1, replacement of the two Ringgold 230/138 kV transformers; (3) Upgrade b2743.7, consisting of a rebuild/reconductor of the Ringgold-Catoctin 138 kV circuit and an upgrade of the terminal equipment on both ends; and (4) Upgrade b274.8, replacement of Ringgold 138 kV breakers “138 BUS” and “RCM0” with 40 kA breakers.[21]

9. With respect to Project 9A costs, Applicants state that MAIT’s Project 9A expenditures, as estimated by PJM, will total $6.42 million, including $4.2 million to tie in the new Rice substation to the Conemaugh-Hunterstown transmission line, $220,000 to upgrade terminal equipment at both ends of the Conemaugh-Hunterstown 500 kV circuit, and $2 million to upgrade terminal equipment and required relay communication at the

[17] The transmission facilities owned by Metropolitan Edison Company (MetEd) and Pennsylvania Electric Company (Penelec) were acquired in 2017 by MAIT, a stand-alone transmission company and FirstEnergy affiliate; however the names of the affected PJM Zones remain unchanged. For this reason, the PJM construction designation may reference Penelec or MetEd.

[18] Filing at 3-4, and Attachment D (PJM Construction Designation Letter to Penelec).

[19] Filing at 3-4, and Attachment C (PJM Construction Designation Letter to Metropolitan Edison).

[20] The Allegheny Power Systems or APS Zone is comprised of FirstEnergy affiliates Monongahela Power Company, Potomac Edison, and West Penn Power Company.

[21] Filing at 3-4, and Attachments A and B (PJM Construction Designation Letters to Allegheny Power).

TMI end of the TMI-Beach Bottom 500 kV circuit.[22] Applicants note that Potomac Edison's Project 9A expenditures, as estimated by PJM, will total $62.06 million, including $7.87 million to reconfigure the Ringgold 230 kV substation to a double bus double breaker scheme, $6.26 million to replace the two Ringgold 230/138 kV transformers, $47.22 million to rebuild/reconductor the Ringgold-Catoctin 138 kV circuit and upgrade the terminal equipment on both ends, and $710,000 to replace the Ringgold 138 kV breakers "138 BUS" and "RCM0" with 40 kA breakers.[23]

10. Applicants state that after PJM assigned construction responsibility for elements of Project 9A, they began to incur costs by taking actions to obtain approval for, and undertake construction and operation of, the assigned elements of Project 9A.[24]

C. Request for Incentive Rate Treatment

11. Applicants explain that they are filing their request for the Abandonment Incentive separate from the other companies designated to construct other segments of Project 9A because those companies have already filed and obtained the Abandonment Incentive.[25]

12. Here, Applicants seek the same Project 9A Abandonment Incentive that the Commission previously approved for Transource, BGE, and PECO. Specifically, Applicants seek to recover 100 percent of their prudently incurred costs, including plant costs, real estate procurement costs (including any losses incurred on the future sale of real estate), pre-commercial development costs, and all related costs, in the event that Project 9A is abandoned or cancelled for reasons beyond their control. Applicants request that these authorizations be made effective for all such costs incurred on or after the date of this order. In addition, Applicants request that the Commission confirm that it is eligible to seek the recovery of 50 percent of all such costs that are prudently incurred prior to the date of the issuance of this order.[26] Applicants state that these are the same

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[22] Filing at 3-4, and Attachment C (PJM Construction Designation Letter to Metropolitan Edison).

[23] Filing at 3-4, and Attachments A and B (PJM Construction Designation Letters to Allegheny Power).

[24] Filing at 4.

[25] Filing at 2 (quoting *Pub. Serv. Elec. and Gas Co.*, 126 FERC ¶ 61,219, at P 55 (2009) ("a prospective owner retains the option to file a separate request for a transmission rate incentive for its segment of a transmission project that involves multiple owners")).

[26] Filing at 1.

incentive rate authorizations granted by the Commission to the transmission owners responsible for constructing the other elements of Project 9A.[27]

13. In support of their request, Applicants assert that Project 9A satisfies the Commission's rebuttable presumption that it will improve reliability and reduce congestion because it was approved by PJM via its RTEP process, as a baseline project.[28] Applicants state that the Commission has found Project 9A entitled to the rebuttable presumption as established under Order No. 679.[29] Applicants request that the Commission affirm this finding here.[30] Applicants further assert that, in the Commission's two previous orders granting the Abandonment Incentive for Project 9A, the Commission found that the nexus requirement – a showing that there is a nexus between the incentive rate treatment being sought and the investment being made – is met by Project 9A.[31] Applicants argue that the Commission should make the same finding by granting their request here.[32] Additionally, Applicants state that, in the prior orders examining incentive requests for Project 9A, the Commission recognized that the project raises extensive, far-reaching, and extraordinary regulatory and siting risks given the extensive state and local regulatory approvals that are necessary.[33]

14. Applicants state that they face several risks in developing and constructing Project 9A that are beyond their control, including permitting risks in two jurisdictions (Pennsylvania and Maryland), the risk that PJM may cancel the project due to changed

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[27] Filing at 1-2 (citing Transource Incentive Rate Order, 158 FERC ¶ 61,089; BGE Order, 163 FERC ¶ 61,188).

[28] Filing at 5 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 29 (2008) (Potomac-Appalachian)).

[29] Filing at 6 (quoting BGE Order, 163 FERC ¶ 61,188 at P 19 ("we find that Project 9A is entitled to the rebuttable presumption as established under Order No. 679.")).

[30] Filing at 6.

[31] Filing at 6 (quoting BGE Order, 163 FERC ¶ 61,188 at P 19 ("We also find that there is a nexus between the incentive they seek and the investment being made"); Transource Incentive Rate Order, 158 FERC ¶ 61,089 at P 50 ("We find that Transource has demonstrated a nexus between the Project risk and the need for the Abandoned Plant Incentive")).

[32] Filing at 6.

[33] Filing at 6 (*e.g.*, BGE Order, 163 FERC ¶ 61,188 at P 19; Transource Incentive Rate Order, 158 FERC ¶ 61,089 at P 50).

system needs, and project completion risks arising from other transmission owners having development and construction responsibility for different project segments. [34] Applicants add that Project 9A, as a market efficiency project, is at a heightened risk of cancellation because it is subject to an annual reevaluation by PJM under an economic benefit/cost requirement. To illustrate this risk, Applicants state that, in its last re-evaluation, PJM found that, based on the originally estimated costs, the Benefit to Cost ratio for the entire project dropped from 2.48 to 1.42, just above the minimum 1.25 threshold.[35] Applicants further add that they are required to meet PJM-specified project milestones unless they receive a cancellation notification by PJM.

15. Applicants argue that Project 9A in its entirety faces significant permitting risks, including segments to be constructed by Applicants. Applicants provide as examples that (1) Transource must obtain landowner cooperation to acquire land and easements to cross approximately 300 parcels in Pennsylvania; and (2) Transource faces local opposition to its plans to construct two new 230 kV lines in portions of Harford and Washington Counties, Maryland,[36] as well as other segments. Applicants argue that this local opposition coupled with the need for Applicants and the companies responsible for the other elements to obtain permits from multiple municipal and state authorities heightens the permitting risk that Applicants face.

II. Notice of Filing and Responsive Pleadings

16. Notice of Applicant's filing was published in the *Federal Register*, 83 Fed. Reg. 50,357 (2018), with interventions and protests due on or before October 19, 2018. A notice of intervention was filed by the Pennsylvania Public Utility Commission, and timely-filed motions to intervene were submitted by American Municipal Power, Inc. and PPL Electric Utilities Corporation. No protests or adverse comments were filed.

III. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[34] Filing at 2.

[35] Filing at 7 (citing PJM's Market Efficiency Update at 5 (Sept. 13, 2018), located at: https://www.pjm.com/-/media/committeesgroups/committees/teac/20180913/20180913-ap-south-9a-project-reevaluation-sept-2018.ashx).

[36] Filing, Attachment E (Communications to PJM regarding Project 9A).

B. **Substantive Matters**

18. As discussed below, we grant Applicants' request to recover 100 percent of their prudently incurred abandonment costs if Project 9A is abandoned or cancelled for reasons beyond Applicants' control. This incentive is effective as of the date of this order, as requested. In addition, we find that Applicants are entitled to request recovery of 50 percent of the prudently-incurred project costs expended prior to the date of the issuance of this order, as discussed below.

19. The Commission has found that transmission projects approved as baseline upgrades and included in PJM's RTEP are entitled to the rebuttable presumption, as established under Order No. 679, and that the relevant facilities will either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[37] Here, Project 9A received approval as a baseline project through the RTEP process, as demonstrated by the August 8, 2016 construction notices that PJM issued to Applicants.[38] Accordingly, we find that Project 9A is entitled to the rebuttable presumption as established under Order No. 679.

20. Turning to the next step of the Commission's analysis, as explained above, the Commission's nexus test requires that an applicant demonstrate a nexus between the incentive sought and the investment made. The applicant must also show that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant …." We also find that there is a nexus between the incentive they seek and the investment being made. Applicants demonstrated that Project 9A faces substantial risks and challenges because it will cross several jurisdictions, require multiple layers of governmental approvals, is an interdependent part of a single integrated project for the purposes of evaluating a request for the Abandonment Incentive, and that the larger project was found to face substantial risks and challenges.[39] In Order No. 679, the Commission found that a 100 percent pre-granted abandonment authority is an effective means of encouraging transmission development by reducing the

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[37] *See Pub. Serv. Elec. and Gas Co.*, 129 FERC ¶ 61,300, at P 22 (2009) (finding that a baseline project included in the PJM RTEP satisfies the rebuttable presumption).

[38] Filing, Attachments C and D.

[39] *See* BGE Order, 163 FERC ¶ 61,188 (approving BGE's and PECO's request for incentive rate treatment for Project 9A); *see also* Transource Incentive Rate Order, 158 FERC ¶ 61,089 (approving Transource's proposed transmission formula rates and request for incentive rate treatment for Project 9A).

risk of non-recovery of costs.[40] Accordingly, we find that Project 9A as a whole presents risks and challenges that satisfy the Order No. 679 nexus test.

21. Finally, we note that our authorizations in this order leave unaddressed any prudence issues as they may arise in the event Applicants seek to recover any abandonment costs attributable to Project 9A. Order No. 679 reserves these prudence determinations for a separate filing to be made pursuant to FPA section 205,[41] if and when Applicants seek to recover any abandoned plant costs they may incur.[42] At that time, Applicants will be required to demonstrate that the abandonment or cancellation of Project 9A was beyond their control, provide for rate authorization allowing for recovery of their prudently incurred abandonment costs, and propose a rate and cost allocation method to recover their costs in a just and reasonable manner. Consistent with Commission precedent, Applicants may also seek to recover net losses they incur on future land sales to a non-affiliate, once that sale has been made or can be estimated with reasonable accuracy.[43]

22. We hereby grant Applicants' request for 50 percent abandoned plant recovery for their components of Project 9A costs expended prior to the date of issuance of this order, subject to a future filing pursuant to FPA section 205[44] establishing the justness and reasonableness of the abandoned plant cost recovery.[45]

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[40] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163; *see also, e.g., Midcontinent Indep. Sys. Operator, Inc. and ALLETE, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon DCR, LLC* 152 FERC ¶ 61,017 at P 41 (2015).

[41] 16 U.S.C. § 824d (2018).

[42] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 166.

[43] *Potomac-Appalachian Transmission Highline, LLC*, Opinion No. 554, 158 FERC ¶ 61,050, at P 185 (2017).

[44] 16 U.S.C. § 824d (2012).

[45] The Commission's policy with respect to recovery of 50 percent of cancelled plant costs is not a transmission rate incentive under Order No. 679. *See New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, *on reh'g*, 43 FERC ¶ 61,285 (1988).

The Commission orders:

Applicants' request for abandoned plant recovery for their elements of Project 9A is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.