

166 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mid-Atlantic Interstate Transmission, LLC
West Penn Power Company

Docket No. ER19-297-000

ORDER ON TRANSMISSION RATE INCENTIVE

(Issued January 30, 2019)

1. On November 6, 2018, FirstEnergy Service Company, on behalf of its affiliates, Mid-Atlantic Interstate Transmission, LLC (MAIT) and West Penn Power Company (West Penn) (collectively, Applicants), submitted a filing (Filing) pursuant to sections 205 and 219 of the Federal Power Act (FPA),¹ Part 35 of the Commission's regulations,² and Order No. 679,³ seeking a transmission rate incentive for transmission upgrades (Generator Deactivation Project) that address certain reliability violations resulting from generator deactivations, as described more fully below. Specifically, Applicants seek authorization to recover prudently-incurred abandonment costs if the Generator Deactivation Project is abandoned or cancelled for reasons beyond their control (Abandonment Incentive). Applicants also request that the Commission confirm that they are 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

2. In the Energy Policy Act of 2005, Congress added FPA section 219, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital

¹ 16 U.S.C. §§ 824d and 824s (2012).

² 18 C.F.R. pt. 35 (2018).

³ *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).

investment in electric transmission infrastructure.⁴ The Commission subsequently issued Order No. 679, establishing the processes by which a public utility may seek transmission rate incentives pursuant to section 219.⁵ 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. 679.⁶

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.”⁷ 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.⁸

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.⁹

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.”¹⁰

⁴ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

⁶ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

⁸ *Id.*

⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

¹⁰ *Id.* P 27.

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.¹¹ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.¹²

6. In the Transmission Incentives Policy Statement, the Commission reaffirmed that among the financial and regulatory risk-reducing transmission incentives available pursuant to Order No. 679 were the Abandonment and CWIP Incentives.¹³ The Commission explained that when considering the award of abandonment recovery, “in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk.”¹⁴

II. Applicants’ Filing

A. The Generator Deactivation Project

7. On March 28, 2018, FirstEnergy Solutions Corp. and FirstEnergy Nuclear Operating Company, owners of the Beaver Valley Power Station, Davis-Besse Nuclear Power Station, and Perry Nuclear Power Plant notified PJM Interconnection, L.L.C. (PJM) of their intent to deactivate about 4,000 MW of nuclear generation by October 31, 2021. As a result of this planned deactivation, PJM identified approximately 140 reliability criteria violations. PJM approved several new transmission upgrades for inclusion in its Regional Transmission Expansion Plan (RTEP) that it determined were needed to address reliability criteria violations.¹⁵ The new baseline upgrades will cost approximately \$182.5 million, consist of approximately 47.53 miles of reconductoring existing and new transmission lines and replacement of existing 138/500kV transformers

¹¹ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27).

¹² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43.

¹³ Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 11.

¹⁴ *Id.* P 14.

¹⁵ Transmittal at 1-2, 5-6.

and substation components, with an expected in-service date of June 1, 2021, spanning three transmission owner zones in Ohio and Pennsylvania.¹⁶

8. PJM designated the Applicants as the entities responsible for constructing certain of those transmission upgrades, which comprise the Generator Deactivation Project. PJM also designated another PJM transmission owner (i.e., Duquesne Light Company (Duquesne)) as responsible for constructing the remaining of those transmission upgrades, which are not subject to this application.¹⁷

9. Applicants state that the Generator Deactivation Project is designed to reinforce the transmission system to resolve reliability violations, including generator deliverability violations. In particular, certain portions of the Generator Deactivation Project are required to meet NERC Reliability Standard TPL-001-4 (establishing transmission system planning requirements within the planning horizon to develop a bulk electric system that will operate reliably over a broad spectrum of system conditions and following a wide range of system contingencies).¹⁸

10. Applicants state that the Generator Deactivation Project is estimated to cost \$144.4 million and will include three transformer replacements, construction of a new substation and transmission lines, and reconductoring of existing transmission lines and terminal equipment enhancements.¹⁹ The Generator Deactivation Project has a projected in-service date of June 1, 2021.

¹⁶ See, e.g., Filing, Attachment C (“Transmission Expansion Advisory Committee Recommendations to the PJM Board, July 2018”) at 14-17, listing all of the PJM transmission upgrades and transmission owners responsible for each upgrade.

¹⁷ Transmittal at 1-2. In Docket No. ER19-303-000, Duquesne filed a separate request for transmission incentives for its designated transmission upgrades approved in the RTEP to address reliability violations resulting from the generator deactivations. *Duquesne Light Company*, 166 FERC ¶ 61,074 (2019).

¹⁸ *Id.* at 2-3, 5-6.

¹⁹ Applicants are requesting the Abandonment Incentive for the following transmission upgrades: b3005, b3006, b3007.1, b3007.2, b3008, b3009, b3010, b3011.1, b3011.2, b3011.3, b3011.4, b3011.5, b3012.1, b3013, b3014, b3015.6, b3016, b3017.1, b3017.2, b3017.3, b3024. *Id.* at 3, 4; Filing, Attachment C at 14-17.

B. Request for Incentive Rate Treatment

11. Applicants seek pre-approval for recovery of 100 percent of abandonment costs in the event that the Generator Deactivation Project, in full or in part, 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 they are eligible to seek the recovery of 50 percent of all such abandonment costs that are prudently incurred prior to the date of the issuance of this order.²⁰

12. In support of their request, Applicants assert that the Generator Deactivation Project satisfies the Commission's rebuttable presumption that it will either improve reliability or reduce congestion because it was approved by PJM in its RTEP as a baseline upgrade, which demonstrates that the Generator Deactivation Project was subjected to the "fair and open regional planning process" contemplated by Order No. 679.²¹

13. In demonstrating that they meet the nexus test, Applicants state that they face several risks in developing and constructing the Generator Deactivation Project that are beyond their control, including the risk that PJM may cancel the project due to changed system needs, and project completion risks arising from other transmission owners having development and construction responsibility for different project segments.²² Applicants add that the Generator Deactivation Project, as a project tied to generator deactivation, is at a heightened risk of cancellation because it is subject to an annual reevaluation by PJM if the generators withdraw their deactivation notices— up until the requested deactivation date— which in this case for most of the generators, is also the day before the required in-service date for the Generator Deactivation Project.

14. Applicants also assert that, even if these generators stay in-service, additional retirements may affect the required upgrades. Applicants state that, on August 29, 2018, PJM received deactivation notices for a total of 4,018.3 MW and these deactivations could require additional significant upgrades or could change the scope of the upgrades already approved as part of the Generator Deactivation Project.²³ Applicants note that

²⁰ Transmittal at 5.

²¹ *Id.* at 8 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 31 (2008)).

²² *Id.* at 8-9.

²³ *Id.* at 3, 8-9, n.12 (citing "Withdrawn Generators" tab at: <https://www.pjm.com/planning/services-requests/gendeactivations.aspx>).

the reliability analysis for these additional deactivations has not yet been completed, and for these reasons, the Generator Deactivation Project is subject to an unusual number of risks given the number of changes in-flux to the system.²⁴

15. In response to the Transmission Incentives Policy Statement guidance that “factors like various federal and state siting approvals introduce a significant element of risk” for the Abandonment Incentive,²⁵ Applicants state that the Generator Deactivation Project has significant permitting risks. They provide as examples that they must obtain: (1) landowner cooperation to acquire land and easements in Pennsylvania; and (2) multiple permits and authorizations from Federal, State, and local resource agencies such as the Pennsylvania Department of Natural Resources, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and County Conservation Districts, among others.²⁶ Applicants explain that some of these approvals can take 4 months (for a state “Letter of Notification” to 18 months (for a state siting approval).²⁷ Applicants argue that their need to obtain permits from multiple municipal and state authorities heightens the permitting risks that Applicants face.

16. Finally, Applicants note that the purpose of FPA section 219 is to benefit consumers by promoting transmission capital investments that “result in reliable and economically efficient transmission and generation.” Applicants cite to FPA section 215 in noting that, as part of this larger framework, Congress directed the Commission to take steps to address the reliability of the bulk power system as well as to remedy the adverse effects of transmission congestion. Applicants state that their portion of the Generator Deactivation Project is consistent with this larger statutory framework in promoting reliability.²⁸ As such, Applicants state that their requested incentives are narrowly tailored to address the specific and significant risks facing the Generator Deactivation Project.

III. Notice of Filing and Responsive Pleadings

17. Notice of Applicants’ filing was published in the *Federal Register*, 83 Fed. Reg. 56,314 (2018), with interventions and protests due on or before November 27,

²⁴ *Id.* at 8-9.

²⁵ *Id.* at 4, n.20 (citing Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 14).

²⁶ *Id.* at 9.

²⁷ *Id.*

²⁸ Transmittal at 9, n.34 (citing 16 U.S.C. § 824o (2012)).

2018. Pennsylvania Public Utility Commission submitted a notice of intervention. American Municipal Power, Inc., Exelon Corporation, and Duquesne filed timely motions to intervene. No protests or adverse comments were filed.

IV. Discussion

A. Procedural Matters

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

B. Substantive Matters

19. As discussed below, we grant Applicants' request to recover 100 percent of their prudently-incurred abandonment costs if the Generator Deactivation Project 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 seek recovery of 50 percent of the prudently-incurred project costs expended prior to the date of the issuance of this order, as discussed below.

20. 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.²⁹ Here, the Generator Deactivation Project was approved for inclusion in the PJM RTEP as a baseline upgrade, as demonstrated by the August 9, 2018 construction notices that PJM issued to Applicants.³⁰ Accordingly, we find that the Generator Deactivation Project is entitled to the rebuttable presumption as established under Order No. 679.

21. 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"³¹ We find that there is a nexus between the incentive Applicants seek and the investment being made. Applicants demonstrated that

²⁹ See *Pub. Serv. Elec. and Gas Co.*, 129 FERC ¶ 61,300, at P 22 (2009) (finding that a baseline upgrade included in the PJM RTEP satisfies the rebuttable presumption).

³⁰ Filing, Attachments A and B.

³¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

the Generator Deactivation Project faces substantial risks and challenges because it will cross several jurisdictions; involve significant costs; require multiple layers of governmental approvals; and will require coordination among multiple transmission owners. Further, we agree that the Generator Deactivation Project has a heightened risk of cancellation because it is subject to an annual reevaluation by PJM if the generators withdraw their deactivation notices up until the day before the required in-service date for the Generator Deactivation Project. 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 risk of non-recovery of costs.³² Accordingly, we find that the Generator Deactivation Project as a whole presents risks and challenges that satisfy the Order No. 679 nexus test.

22. We note that our authorizations in this order leave unaddressed any prudence issues as they may arise in the event that Applicants seek to recover any abandonment costs attributable to the Generator Deactivation Project. Order No. 679 reserves these prudence determinations for a separate filing to be made pursuant to FPA section 205,³³ if and when Applicants seek to recover any abandoned plant costs that they may incur.³⁴ At that time, Applicants must demonstrate that the abandonment or cancellation of the Generator Deactivation Project was beyond their control, provide for rate authorization allowing for recovery of their prudently-incurred abandonment costs, and propose a rate and amortization period to recover their costs in a just and reasonable manner.³⁵ Finally,

³² 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).

³³ 16 U.S.C. § 824d (2012).

³⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 166.

³⁵ For example, in a future section 205 filing establishing the justness and reasonableness of the abandoned plant losses in rates, the applicant would provide: (1) the closing out of transactions, with revenues reducing the abandoned plant amount; (2) the appropriate valuation of abandoned plant (whether original cost, book cost, or other value consistent with Commission regulations in 18 C.F.R. pt. 101 (2018)); (3) that ratepayers receive income tax credit associated with the write off of the worthless asset for associated income taxes that ratepayers paid before abandonment, as well as the plan for the change in timing differences on taxes under 18 C.F.R. 35.24 (2018) for the abandoned plant; (4) that affiliate transactions are consistent with Commission regulations on affiliate behavior; and (5) that nonutility assets are properly recorded and not included in utility rates. *See, e.g., Potomac-Appalachian Transmission Highline, LLC*, Opinion No. 554, 158 FERC ¶ 61,050 (2017).

as a result of the Commission approving this rate incentive, Applicants must submit FERC-730 reports annually.³⁶

23. We also confirm that Applicants are eligible to seek recovery of 50 percent of their portion of prudently-incurred abandonment costs, net of the closing out of the transaction and sale of associated assets, for the Generator Deactivation Project expended prior to the date of issuance of this order. However, such recovery is subject to a future filing pursuant to FPA section 205³⁷ establishing the justness and reasonableness of including said portion in rates.³⁸

The Commission orders:

Applicants' request for abandoned plant recovery for the Generator Deactivation Project is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁶ FERC-730 annual reports must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h) (2018). These reports contain actual, projected and incremental transmission investment information. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 358, 367.

³⁷ 16 U.S.C. § 824d (2012).

³⁸ 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, *order on reh'g*, 43 FERC ¶ 61,285 (1988).