

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Virginia Electric and Power Company

Docket Nos. ER08-1207-000
ER08-1207-001

(Issued September 17, 2008)

Attached is a separate statement by Commissioner Kelly concurring in part and dissenting in part to an order issued on August 29, 2008, in the above-referenced proceeding. *Virginia Electric and Power Company* 124 FERC ¶ 61,207 (2008).

Kimberly D. Bose,
Secretary.

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KELLY, Commissioner, *concurring in part and dissenting in part*:

This order addresses a Virginia Electric and Power Company (VEPCO) request for transmission rate incentives applicable to eleven projects. VEPCO seeks return on equity (ROE) incentive of 150 basis points be added to its base ROE for four transmission enhancement projects and an ROE incentive of 125 basis points for seven additional projects. In this order, the majority elects to grant the full ROE adder requests to each of the projects listed in the application. For the reasons articulated below, I disagree with the majority's decision with respect to most of these projects. However, I believe that the Meadow Brook-Loudon line merits incentive rate treatment given that this project is part of a larger project, the other portion of which has previously been approved for incentive rate treatment.¹

In order to determine whether VEPCO's projects warrant incentive rate treatment, I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings² and conclude that, in almost all cases, VEPCO's projects represent no more than routine investments in transmission facilities.

I agree with the majority on the question of whether the Meadow Brook-

¹ VEPCO requests incentive rate treatment for a single project that is connected to the Mid-Atlantic Power Pathway (MAPP) project. VEPCO has not provided sufficient evidence for me to rule that its segment thereof merits incentive rate treatment. I would have supported rejecting VEPCO's proposal without prejudice until the Commission has more information. The Commission has not yet ruled on a more detailed incentives application on the MAPP project.

² See *American Electric Power Service Corporation*, 118 FERC ¶ 61,041 (2007).

Loudoun line merits incentive rate treatment, though the rationale for my decision differs from that of the majority in certain respects. First, the project produces broad public interest benefits insofar as it will serve to significantly reduce congestion costs, generation production costs, and reduce gross payments by load customers.³ The Meadow Brook-Loudoun line is projected to be in-service by May 2011 for PJM's most recent Reliability Pricing Model (RPM) Base Residual Auction, covering the June 2011-May 2012 period.⁴ Incentive rate treatment should promote timely completion of the line, which in turn will benefit ratepayers throughout PJM by providing RPM price stability for the 2011/2012 period and the smooth operation of the RPM market as a whole.

Second, the Meadow Brook-Loudoun line is one segment of the larger TrAIL Co project, a 265-mile project that spans three states - Pennsylvania, West Virginia and Virginia. The multi-state nature of the project entails significant regulatory risk that merits incentive rate treatment. The completion of the project is linked to the regulatory decisions of authorities beyond VEPCO's normal orbit—in West Virginia and Pennsylvania. I note that two Pennsylvania administrative law judges recently recommended that the Pennsylvania Public Utility Commission not authorize the construction of the TrAIL Co project in Pennsylvania.⁵ How and when development of the Meadow Brook-Loudon line will progress is open to question, given the Pennsylvania judge's recommendation. Moreover, absent incentive rate treatment, it is not clear how or if VEPCO could continue to link its line to the TrAIL Co project.

Finally, insofar as the Meadow Brook-Loudoun line produces broad public benefits and faces extraordinary risks in an of itself, my decision is consistent with my support of incentive rate treatment for the adjoining portion of the TrAIL Co project.⁶

³ See Exhibit No. DVP-9.

⁴ See 2011/2012 Key Expected Transmission Upgrades at <http://www.pjm.com/markets/rpm/downloads/20080201-2011-12-transmission-upgrades.xls>.

⁵ See <http://www.businesswire.com/portal/site/allegHENyenergy/template.MAXIMIZE/menuitem.1f5c5ce642d4eddbc55a5288e6908a0c>.

⁶ *Allegheny Energy Inc., et al.*, 116 FERC ¶ 61,058 (2006), *order on reh'g*, 118 FERC ¶ 61,042 (2007).

I support and ROE adder of 100 basis points for the Meadow Brook-Loudoun line. Order No. 679-A states “the most compelling case for incentive ROEs are new projects that present special risks or challenges, not routine investments made in the ordinary course.”⁷ I believe that the Meadow Brook-Loudoun line meets this standard. VEPCO identifies risks and challenges that the Commission explicitly referenced in Orders 679 and 679-A: uncertain time to completion and further uncertainty created by regulatory determinations outside of VEPCO’s control. While I would prefer granting the incentives tailored to these specific risks—namely, 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base and recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors beyond the control of the public utility—some incentive is warranted. An ROE adder of 100 basis points is appropriate and would appear to be consistent with a Commission-approved settlement in Docket No. ER07-562-004.

With regard to the remaining projects in VEPCO’s application, I do not believe that the investment in those projects merits incentive rate treatment. I believe that these projects, considered individually, represent routine investments in transmission facilities and there is nothing in VEPCO’s application to demonstrate that they should be considered in aggregate.

I do not believe that either the Proactive Transformer Replacement project or the Carson-Suffolk-Thrasher line warrant incentive ROE adders. Both of these projects are limited to VEPCO’s home territory and the record evidence supplied by VEPCO does not appear to indicate that the regulatory hurdles for either are extraordinary. In fact, the Virginia Consumer Counsel points out that there are no siting approvals necessary for the Transformer Replacement initiative. At roughly 10%, the cost of the Transformer Replacement project is also small relative to VEPCO’s net transmission plant in service. Moreover, these costs will be spread over nine replacements and a three year period. Further VEPCO has not demonstrated the extent to which it will reduce congestion on the PJM system. While the Carson-Suffolk-Thrasher line represents a larger investment relative to the other listed projects, the identified reasons for the line appear to be continued provision of reliable electric service and avoidance of NERC reliability standards.

The remaining projects do not merit incentive rate treatment. The estimated cost for each is below \$120 million, which is slightly more than 10% of VEPCO’s net transmission plant in service and there is nothing in the record to

⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 60 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

suggest that these projects should not be considered individually. It appears as though all of these projects will be undertaken within VEPCO's service territory and so VEPCO will not face regulatory risks beyond the course of normal business. Moreover, in building these projects, VEPCO appears to be addressing load growth or a variety of reliability concerns. As such, I do not see evidence of broad public interest benefits and therefore nothing to indicate that normal rate recovery mechanisms are insufficient to ensure these projects are completed. As noted above, Order 679-A stated that the case for ROE adders was most compelling in the case of investment beyond the ordinary course of business.

VEPCO presents evidence to show that with its requested ROE adders of 125 and 150 basis points, the resulting ROE will remain within the zone of reasonableness for the cost of its equity. VEPCO relies on its overall ROE of 11.4%, which was accepted in a Commission order issued April 29, 2008.⁸ I dissented from that order because I believed that genuine issues of material fact had been raised regarding the process of establishing that 11.4% ROE. I argued that, where issues of material fact have been raised, establishing an applicant's ROE without an evidentiary hearing is an inadequate substitute for an evidentiary hearing before an Administrative Law Judge. Therefore, I cannot support the majority's finding that the resultant ROEs for these projects are just and reasonable.

For these reasons, I respectfully concur in part and dissent in part from this order.

Suede G. Kelly

⁸ *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098 (2008).