

131 FERC ¶ 61,015  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Primary Power, LLC

Docket Nos. ER10-253-000  
EL10-14-000

ORDER ON PETITION FOR DECLARATORY ORDER AND RELATED  
DETERMINATIONS

(Issued April 13, 2010)

1. On November 10, 2009, Primary Power, LLC (Primary Power) filed a petition for declaratory order (Petition) pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.<sup>1</sup> Primary Power requests approval of certain transmission rate incentives, including a stated return on equity (ROE), and related determinations for its proposed Grid Plus Transmission System (Grid Plus) under the Federal Power Act (FPA) sections 205 and 219<sup>2</sup> and Order No. 679.<sup>3</sup> Through the Petition, Primary Power seeks assurances that it is eligible to propose and be designated to build a project under the PJM Interconnection, L.L.C. (PJM) Regional Transmission Expansion Plan (RTEP), and will thereby be eligible for cost-based rates. To implement such assurances, Primary Power includes certain revisions to the PJM *pro forma* interconnection service agreement (ISA)

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<sup>1</sup> 18 C.F.R. § 385.207 (2009). Primary Power states that it submits its filing pursuant to sections 205 and 219 of the FPA but styled its pleading as a Petition for Declaratory Order and requests declaratory findings by the Commission. Such petitions are governed by Rule 207.

<sup>2</sup> 16 U.S.C. §§ 824d, 825s (2006).

<sup>3</sup> *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

and requests the Commission's acceptance or approval for these revisions applicable to Grid Plus.

2. In response to Primary Power's Petition, we find that the PJM open access transmission tariff (Tariff)<sup>4</sup> does not preclude PJM from designating Primary Power, an entity other than an incumbent transmission owner, as the entity to build Grid Plus if this project is included in the RTEP as a baseline reliability project or economic project. We further find that the PJM Tariff does not prevent Primary Power from seeking cost-based rate recovery if its project is included in the RTEP and satisfies the same reliability and/or economic requirements set forth for other transmission owner cost-based projects in the PJM Tariff.

3. In this order, the Commission grants in part and denies in part Primary Power's Petition. The Commission also rejects Primary Power's proposed revisions to the ISA without prejudice to a future filing of an ISA with PJM.

## **I. Background**

### **A. Description of Primary Power**

4. Primary Power is a privately owned limited liability company, formed to develop, finance, construct, and own, and maintain Grid Plus. Primary Power is a joint venture between Tangibl LLC, an engineering, design, and construction services company, and Trans-Elect Development Co., LLC, an independent transmission company. EIF Management, LLC, a private equity fund manager focused on U.S. electric power, is to provide construction funding and assume partial passive ownership after construction, subject to Commission approval.

### **B. Description of Grid Plus**

5. Grid Plus is comprised of four 500 MVar (500+/100-) Static Var Compensators (SVC) with a combined cost of \$200 million.<sup>5</sup> According to Primary Power, Grid Plus is based on the concept of physically "discrete" transmission projects. Primary Power distinguishes discrete projects from linear projects such as aerial transmission lines that

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<sup>4</sup> PJM Interconnection, LLC, FERC Electric Tariff, Sixth Rev. Vol. No. 1 (Tariff).

<sup>5</sup> Specifically, the SVC facilities consist of 500+ MVar capacitive, and 100- or more inductive, depending on location. Two SVCs are planned for Jacks Mountain in Mifflin County, Pennsylvania (Jacks Mountain SVCs), one SVC is planned for the Juniata substation in Perry County, Pennsylvania (Juniata SVC), and one SVC is planned on the Meadowbrook 500 kV line in Hardy County, West Virginia (Meadowbrook SVC).

form the backbone of the bulk power system. Primary Power explains that discrete projects use far less land, cost less and may be located near key system nodes by using advanced power electronics, while still providing optimal system benefits. Primary Power states that, at 2,000 MVars, the Grid Plus SVCs will be the largest integrated array of SVCs to be simultaneously deployed in PJM, and possibly the country.

6. Once construction of Grid Plus is complete, Primary Power intends to turn operational control of Grid Plus over to PJM and become a Participating Transmission Owner in PJM. Primary Power estimates that it will take two years to complete the project, after receipt of approval to proceed. Primary Power intends to begin construction on the first SVC in early 2010, to be operational in 2012.

**C. Request for Rate Incentives and Related Determinations**

7. Primary Power requests that the Commission issue a declaratory order finding that: (1) if PJM includes Grid Plus in the PJM RTEP, PJM will designate Primary Power as the entity to construct, own, and finance Grid Plus; and (2) if so designated, Primary Power will be authorized to receive cost-based rate treatment for Grid Plus.<sup>6</sup> In furtherance of these findings, Primary Power asks the Commission to accept as just and reasonable non-conforming terms to be incorporated into PJM's ISA for Grid Plus.

8. Primary Power requests approval of the following incentive-based rate treatments under Order No. 679, contingent on Grid Plus' approval through the PJM RTEP:

- i. Approval of a regulatory asset for start-up and development costs to accrue carrying charges (i.e., an overall rate of return). Primary Power proposes to expense and amortize the regulatory asset over 5 years in rates, as each SVC facility enters service. Primary Power requests the approval to accrue carrying charges on these costs 61 days from the date of its filing until the time that the regulatory asset is fully amortized.<sup>7</sup>
- ii. Recovery of prudently-incurred costs in the event any of the SVCs are abandoned for reasons beyond Primary Power's control.<sup>8</sup>

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<sup>6</sup> See Primary Power Petition at 72-73.

<sup>7</sup> *Id.* at 34-36.

<sup>8</sup> *Id.* at 37-39.

- iii. Hypothetical capital structure of 40 percent debt and 60 percent equity ratio until the first facility's commercial operation date; thereafter Primary Power will apply its actual capital structure.
- iv. A stated ROE of 12.75 percent, with the eligibility to add in future rate cases: (1) a 50 basis points ROE incentive adder for RTO participation, (2) 100 basis points ROE adder for transco status, and (3) 150 basis points ROE adder for new transmission investment, for a combined total of 300 basis points.

9. Primary Power states that the requested incentives meet the standards in Order No. 679 and Commission precedent. In addition, they assert that the Grid Plus facilities meet the requirements of FPA section 219 to (1) ensure reliability or reduce the costs of delivered power by reducing congestion; and (2) meet the "nexus" test, and are tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project. If the requested incentives are granted, Primary Power will incorporate them into a future rate filing under section 205 of the FPA to recover its costs and also commits to making a section 205 filing to recover any abandoned plant costs.

10. Primary Power states that Grid Plus is eligible for incentives under FPA section 219 and Order No. 679, citing Grid Plus' reliability, operational, economic, and environmental benefits. Specifically, Primary Power states that Grid Plus will increase the transfer capability, reduce congestion, increase system stability both on and off-peak, and accomplish this with a limited physical presence on the land.<sup>9</sup> In addition, Primary Power cites economic benefits, claiming \$45 million to \$485 million in ratepayer cost reductions.<sup>10</sup> Nevertheless, Primary Power conditions its incentives request on PJM making the necessary determination to include Grid Plus in the RTEP, thereby creating a rebuttable presumption that the Grid Plus facilities meet the requirement of FPA section 219 that the project ensure reliability or reduce congestion.<sup>11</sup>

11. Primary Power includes a technology statement in its Petition explaining that while SVCs are proven technologies the 2,000 MVars of SVC represented by Grid Plus will be the largest single integrated array of SVCs to be deployed at once in the history of PJM, and possibly the country. Primary Power describes its facilities as an innovative

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<sup>9</sup> *Id.* at 24-28 (citing Mark Brozina Testimony, Exh. GPL-1 at 6-11).

<sup>10</sup> *Id.* at 28-30 (citing Paul McCoy and Mohammad Shahidepour testimony, Exh. GPL-3 and GPL-7).

<sup>11</sup> *Id.* at 31; *see also* Primary Power's Dec. 28, 2009 Answer at 20 (clarifying that it conditions its rate incentive requests, including abandoned plant recovery, on inclusion in the PJM RTEP).

use of existing technologies. In addition to the scope of the project, Primary Power emphasizes that the strategically located array of SVCs will employ both wide area two-way fiber optic communications technologies, as well as microprocessor-based protection and control functions. Primary Power designed the Grid Plus facilities to feature “open architecture” to be utilized in a wide area monitoring and control system to promote growth of its system.<sup>12</sup> Primary Power suggests that these features will facilitate expansion and upgrades to benefit ratepayers.

12. Primary Power provides Global Energy Market Solutions (GEMS) study to demonstrate west-to-east congestion reduction and lower locational marginal prices (LMPs) from Grid Plus.<sup>13</sup> Primary Power acknowledges that PJM will determine whether Grid Plus meets the requirements to be included in the RTEP. Primary Power states that the dynamic nature of PJM’s RTEP process allows PJM to make modifications in response to changes in transmission projects. Specifically, Primary Power asserts that Grid Plus will enhance reliability if large baseline transmission projects are delayed with a potential savings of \$485 million per year.<sup>14</sup> Primary Power provides PJM’s feasibility study which finds that, while the Jacks Mountain facility was not required to meet reliability voltage requirements, PJM did not reject the possibility of a future need.<sup>15</sup> Primary Power asserts that Grid Plus does more than meet reliability requirements for voltage, but is in fact a “smart grid” technology, and not a “switched capacitor bank.”<sup>16</sup>

13. Primary Power states that PJM and the PJM transmission owners are reviewing Grid Plus pursuant to a July 30, 2008 merchant transmission interconnection request. Primary Power explains that it chose such review because there is no clear place in the PJM process to include independent transmission projects such as Grid Plus and

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<sup>12</sup> Primary Power Petition at 72.

<sup>13</sup> *Id.*, Exh. GPL-9.

<sup>14</sup> *Id.*, Exh. GPL-3 at 11 (discussing the Potomac-Appalachian Transmission Highline, L.L.C. (PATH) and Mid-Atlantic Power Pathway (MAPP) projects).

<sup>15</sup> Primary Power provides PJM’s Transmission Interconnection Feasibility Study Report, which states, “The U2-86 [Jacks Mountain] SVCs are not needed on the PJM system to support reliability voltage requirements... This is based on current studies and is not intended to indicate that future need for additional reactive support, beyond that which is planned for the Jacks Mountain RTEP project, is not seen at this time.” Exh. GPL-11 at 5.

<sup>16</sup> Primary Power Petition at 71.

characterizes other paths as not suitable.<sup>17</sup> Primary Power reports that the resulting interconnection studies show that the Grid Plus project requires no system upgrades and will have no adverse effect on the PJM system.

14. Primary Power states that, following the study phase, the next step is to execute and file an ISA. However, Primary Power states the *pro forma* merchant transmission ISA requires “fundamental modification” to permit Primary Power to develop the project and proposes certain ISA revisions to document Primary Power’s proposed declarations that are addressed below.

#### **D. Requested Effective Dates**

15. Primary Power requests an effective date of 61 days from after the date of its filing for the regulatory asset treatment (and the stated ROE of 12.75 percent for the purposes of calculating carrying charges accrued in the regulatory asset account), the abandonment incentive, and an Allowance for Funds Used During Construction (AFUDC) methodology that uses the stated ROE of 12.75 percent. Primary Power requests a deferred effective date for the ROE incentive basis point adders and ISA revisions, until Primary Power makes a subsequent filing pursuant to FPA section 205 to recover its costs after the Grid Plus facilities are approved through the PJM RTEP and the facilities go into operation.

#### **E. Deficiency Letter and Response**

16. On January 7, 2010, the Director, Division of Electric Power Regulation – East, acting under delegated authority, issued a deficiency letter (Deficiency Letter) seeking additional information relating to Primary Power’s Petition. The Deficiency Letter directed Primary Power to provide: (i) workpapers, schedules, and detailed explanations supporting the calculations of Primary Power’s proposed ROE; (ii) what category of upgrade Grid Plus was being submitted under the RTEP and the support for that category; (iii) an explanation of why Primary Power did not exercise its rights as a Transco under Attachment U of the PJM Tariff; (iv) whether Primary Power entered into negotiations with incumbent transmission owners in the zones in which Grid Plus will be located; (v) the basis or service under which Grid Plus is seeking cost-based rates; (vi) how the Jacks Mountain and Meadowbrook facilities ensure reliability or reduce congestion; and (vii) whether Grid Plus will be funded through stimulus awards associated with Smart Grid technology.

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<sup>17</sup> *Id.* at 22; *see also* Primary Power Dec. 28, 3009 Answer at 3; Primary Power, Feb. 12, 2010 response to deficiency letter at 4 (Deficiency Response).

17. On February 12, 2010, Primary Power submitted its Deficiency Response.

## **II. Notice of Filing and Responsive Pleadings**

18. Notice of Primary Power's Petition was published in the *Federal Register*, 74 FR 61146 (2009), with interventions, comments, and protests due on December 1, 2009. Several parties filed motions to intervene and notice of intervention to the petition.<sup>18</sup>

19. On November 30, 2009, the Commission granted an extension of time to file comments with interventions and protests due on or before December 11, 2009. On December 11, 2009, AMP, LS Power, the Maryland Commission, and PJM filed comments and, in addition, ODEC, PJM Power Providers, and PJM Transmission Owners<sup>19</sup> filed protests in response to the Petition. On December 17, 2009, PJM filed a clarification to its December 11, 2009 Comments (Clarification). On December 28, 2009, Primary Power filed an answer to the comments and protests, to which the PJM Transmission Owners filed a January 6, 2010 answer.

20. Notice of Primary Power's Deficiency Response was published in the *Federal Register*, 75 FR 9199, with interventions and comments due on or before March 5, 2010.

21. PJM, PJM Power Providers, PJM Transmission Owners, and PPL each filed a response to Primary Power's Deficiency Response on March 5, 2010. On March 17, 2010, Primary Power filed an answer to these responses.

## **III. Discussion**

### **A. Procedural Matters**

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), answers to protests and answers are prohibited unless otherwise ordered by the decisional authority. We accept Primary Power's December 28, 2009 and

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<sup>18</sup> See Appendix A for a list of interventions and abbreviated party names used in this order.

<sup>19</sup> The PJM Transmission Owners consist of Allegheny, AEP, BGE, Duquesne, Exelon, the FirstEnergy Companies, ODEC, PHI Companies, PPL, PSEG, and VEPCO. These entities intervened separately but filed a protest and subsequent filings as a group.

March 17, 2010 answers and PJM Transmission Owners' January 6, 2010 answer because they have provided information that assisted us in the decision-making process.

**B. RTEP Procedures and Cost-of-Service Rate Recovery**

**1. Primary Power Proposal**

23. As discussed, Primary Power seeks assurances that, if PJM includes Grid Plus in the RTEP, Primary Power will be designated to build Grid Plus and that Primary Power will be eligible for cost-of-service rates under Schedule 12 of the PJM Tariff. Specifically, Primary Power asks the Commission to find that, if PJM includes Grid Plus in the RTEP, PJM must designate Primary Power to build it.<sup>20</sup> In order to raise sufficient capital to finance Grid Plus, Primary Power states that it must demonstrate that it can recover its costs. Primary Power acknowledges that it must be included in the RTEP and that PJM will make the determination whether to do so under the PJM Operating Agreement, Schedule 6. Primary Power asserts that it seeks the same rate recovery as other entities that are designated to construct, own, and finance required transmission enhancements.<sup>21</sup>

24. Primary Power states that to date it has spent five years and hundreds of thousands of dollars to develop Grid Plus, and it would be unfair and discourage innovation if PJM designates another entity to build Grid Plus. Primary Power states that it does not seek changes to the PJM Tariff or Operating Agreement, but that a clear Commission declaration designating Primary Power to build its proposal would relieve the PJM process of uncertainty. Primary Power relies on section 1.5.6(f) of Schedule 6 in the PJM Operating Agreement as permitting PJM to designate other entities such as Primary Power to construct, own, and finance transmission projects:

For each enhancement or expansion that is included in the recommended plan, the plan shall consider [] and *designate one or more Transmission Owners or other entities to construct, own, and unless otherwise provided, finance* the recommended transmission enhancement or expansion.<sup>22</sup>

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<sup>20</sup> See Primary Power Petition at 72-74.

<sup>21</sup> *Id.* at 74 (citing PJM Operating Agreement, Third Rev. Rate Schedule FERC No. 24, Schedule 6, section 1.7; PJM Tariff, Schedule 12, sections 12(c) and (d)).

<sup>22</sup> *Id.* at 76 (citing PJM Operating Agreement, Schedule 6, section 1.5.6(f) (emphasis added by Primary Power)).

25. Primary Power asserts that it is the appropriate entity to build Grid Plus, because it created and developed the concept, invested funds and has identified the need for a unified approach to the technology employed. Furthermore, Primary Power cites benefits due to its status as a transco, having no other interests than improving reliability and congestion management, and cites the unique qualifications of its owners in developing innovative new transmission facilities.

26. Primary Power states that the requested assurances are needed due to concern that section 1.5.6(f) of the PJM Operating Agreement may be considered vague and interpreted to authorize PJM to designate another entity to construct Grid Plus, due to Primary Power's status as a new developer in PJM.<sup>23</sup> Primary Power points out that other facilities in the RTEP, principally linear backbone transmission lines, are turned over to PJM control for open access service and receive cost-of-service recovery under the PJM Tariff, Schedule 12. Primary Power conditions its request on PJM reviewing the project and making a determination that Grid Plus will deliver the anticipated economic and reliability benefits necessary to be included in the RTEP.<sup>24</sup> Primary Power will accept all of the duties and responsibilities that come with owning transmission facilities and execute the PJM Transmission Owners Agreement (TOA).

27. Primary Power asserts that the financial rights afforded to merchant transmission projects through the interconnection process are not appropriate for Grid Plus, because they were designed for linear facilities. Primary Power states that these financial rights are not applicable to Grid Plus, which will be turned over to PJM and used to provide open access service. Primary Power further distinguishes its project from typical merchant transmission interconnection requests because Grid Plus is an array of SVCs, and therefore the transmission injection and withdrawal rights typically available to such

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<sup>23</sup> Primary Power Petition at 79. Section 1.5.6(f) states:

For each enhancement or expansion that is included in the recommended plan, the plan shall . . . designate one or more Transmission Owners or other entities to construct, own and, unless otherwise provided, finance the recommended transmission enhancement or expansion. To the extent that one or more Transmission Owners are designated to construct, own, or finance a recommended transmission enhancement or expansion, the recommended plan shall designate the Transmission Owner that owns the transmission facilities located in the Zone where the particular enhancement or expansion is to be located.

<sup>24</sup> Primary Power Deficiency Response at 10.

projects do not apply. Grid Plus states that the remaining financial rights provided in the ISA would not sufficiently compensate Primary Power for its investment.<sup>25</sup>

28. Primary Power commits to file its cost-of-service rates under FPA section 205, subject to review and approval to ensure that they are lawful under the FPA and Commission regulations. Primary Power states that the requested declaration by the Commission will facilitate and clarify the transition of Grid Plus from the PJM interconnection process to the PJM RTEP process.

29. Primary Power anticipates that cost-allocation for the Grid Plus facilities should be done in accordance with the existing PJM process for required RTEP transmission enhancements. Primary Power maintains that the PJM Operating Agreement requires RTEP transmission enhancements be paid by market participants according to the PJM Tariff and Schedule 12, which establishes cost-of-service rates as the methodology for determining revenue requirements and “transmission enhancement charges.”<sup>26</sup> Primary Power also notes that the PJM Operating Agreement, Schedule 6, section 1.5.6(g) enables PJM to assign cost responsibility to the market participants in one or more zones “through charges established pursuant to Schedule 12 of the Tariff” taking into account the need for and benefits expected from the enhancement or expansion.

30. Primary Power notes that each RTEP cost allocation is subject to Commission review as it is incorporated into the Schedule 12 appendix listing required transmission enhancements, responsible customers, and associated transmission revenue requirements. Primary Power notes that this RTEP cost assignment methodology was developed by PJM and approved by the Commission in Docket No. ER06-456-000.<sup>27</sup> Primary Power states that the costs of facilities operating below 500 kV are allocated among beneficiaries using PJM’s distribution factor or “DFAX” methodology. According to Primary Power, the costs of facilities operating at or above 500 kV are allocated on a PJM-wide basis, using a postage stamp methodology. Primary Power notes that the Grid Plus facilities interconnect to 500 kV facilities.

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<sup>25</sup> Primary Power Petition at 82-83.

<sup>26</sup> PJM Tariff, Schedule 12, section 12(c) (Determination of Transmission Enhancement Charges); *see also* PJM Operating Agreement, Schedule 6, section 1.5.6(g).

<sup>27</sup> Primary Power Petition at 91 (citing *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,112 (2008); *PJM Interconnection, L.L.C.*, Docket No. ER06-456-015, *et al.* (Oct. 15, 2008) (unpublished delegated letter order)).

### **Revised ISA Terms**

31. Primary Power has unilaterally filed and asked the Commission to approve, to the extent necessary, revised and non-conforming revisions to the PJM merchant transmission ISA.<sup>28</sup> Primary Power acknowledges that non-conforming ISAs are generally filed by PJM, and states that, if approved, the non-standard provisions “will have already been accepted by the Commission and would not require further review.”<sup>29</sup> In the alternative, Primary Power requests that the Commission itself declare that the Grid Plus facilities will be assigned to Primary Power and receive cost-of-service rate recovery under Schedule 12 if Grid Plus is included in the PJM RTEP. Primary Power notes that, upon RTEP approval, its rates remain subject to full cost-of-service review under FPA section 205.

32. The revised ISA terms replace the financial rights and injection and withdrawal rights terms and state that, upon Commission order approving incentives for the Grid Plus facilities, the Grid Plus facilities will be eligible for inclusion in the PJM RTEP, Primary Power will be designated to build if Grid Plus is included in the RTEP, and Grid Plus will be eligible for cost-of-service rate recovery. The revised terms also require PJM to make a determination on Grid Plus within 90 days of a Commission order on the Petition.<sup>30</sup>

## **2. Comments and Protests**

33. Several parties request that the Commission reject Primary Power’s filing. PJM, ODEC, and the PJM Transmission Owners request that the Commission reject as violating existing Commission-approved terms and conditions of the PJM Operating Agreement, Primary Power’s requests to: (1) designate Primary Power to construct, own, and finance Grid Plus; (2) grant Primary Power cost-based rates inclusive of incentives; and (3) approve or accept unilaterally filed non-conforming ISA terms that are inconsistent with PJM’s review process.

34. PJM states that, until now, it has not had to choose who should be designated to construct, own, or finance a recommended transmission enhancement and that Grid Plus could supplant existing rights, if the Commission directs PJM to designate Primary Power to build it. According to PJM the PJM Operating Agreement, Schedule 6, section 1.5.6(f) states that:

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<sup>28</sup> Primary Power Petition at 6, 10, 72-73.

<sup>29</sup> *Id.* at 89.

<sup>30</sup> The proposed ISA revisions are provided in the Petition, Exh. GPL-19.

...To the extent that one or more Transmission Owners are designated to construct, own, or finance a recommended transmission enhancement or expansion, the recommended plan shall designate the Transmission Owner that owns the transmission facilities located in the Zone where the particular enhancement or expansion is to be located.

35. PJM states that the exception to this provision applies to Merchant Transmission Facilities identified in the RTEP.

36. PJM Transmission Owners state that PJM also has wide latitude to modify proposals in the regional planning process and object to Primary Power's request that the Commission force PJM to either approve or disapprove of Primary Power's proposal as a whole.<sup>31</sup> PJM describes its RTEP review procedures and states that it must take into account all other system PJM needs and proposals, not just Grid Plus. For example, PJM must ensure that the RTEP (i) avoids unnecessary duplication, (ii) avoids imposition of unreasonable costs, (iii) factors in transmission owners' legal and contractual rights and obligations, (iv) considers alternatives, and (v) is developed in an open forum.<sup>32</sup> PJM Power Providers state that granting Primary Power's request would disrupt the existing merchant transmission process, which has approved more than \$15.1 billion in transmission additions and upgrades over the last 10 years, would exclude stakeholder involvement, and prejudice the expectations and rights of merchant transmission developers who are proceeding according to the PJM interconnection procedures. PJM identifies two baseline projects that would be affected<sup>33</sup> and states that, though some existing rights may be protected by estimating values owed to a higher queued project such as HP Energy Resources' capacitor bank (U2-028), such determinations become much more complex for multiple competing requests, as with Meadowbrook. PJM argues that the Commission should not allow this project to undermine or usurp the

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<sup>31</sup> PJM Transmission Owners Protest at 8-10.

<sup>32</sup> PJM Comments at 7 (citing PJM Operating Agreement, Schedule 6, sections 1.4(d), 1.5.2, 1.5.5(c), and 1.5.6(a)).

<sup>33</sup> PJM Comments at 10; PJM Dec. 17, 2009 Clarification at 1 (discussing specifically: (1) Jacks Mountain SVCs (queue no. U2-086) overlap with 1,000 MVar capacitor banks; and (2) Meadowbrook SVC (U2-088) overlap with an Allegheny baseline project (project no. b0559), a 500 MVar capacitor bank at Meadowbrook to be in-service in 2012, and HP Energy's proposed 200 MVar capacitor bank at Meadowbrook (U2-028), a merchant transmission project to be in-service in October 2009). *See also PJM Interconnection LLC*, 124 FERC ¶ 61,158 (2008), *reh'g denied*, 126 FERC ¶ 61,030 (2009).

Commission-approved interconnection procedures (PJM Tariff, Parts IV and VI) and RTEP process (PJM Operating Agreement, Schedule 6).

37. PJM states that Primary Power’s proposal is “blatantly inconsistent with the existing Commission-approved RTEP” and will require “significant modifications to the Commission-approved interconnection and regional planning protocols.” PJM also requests that the Commission use the record in *Transmission Planning Processes Under Order No. 890*, Docket No. AD09-8-000 to provide Commission direction. PJM notes that it proposed that specific reforms be developed in that proceeding, and asserts that the appropriateness and breadth of a “right of first refusal” are also being considered there. PJM requests further guidance from the Commission if the Commission wishes to expand or make significant policy-based modifications to the filed rates or filed RTEP process.<sup>34</sup> In particular, PJM seeks guidance on how to handle existing interconnection queue projects and competing RTEP projects, claiming that the existing RTEP process does not provide a means by which PJM can prioritize and/or choose among competing projects.<sup>35</sup>

38. PJM, the PJM Transmission Owners, and ODEC object to Primary Power’s proposed 90-day review as inconsistent with existing RTEP procedures. PJM defends the timeliness of its RTEP review process noting that, two of the three Grid Plus SVCs have already completed System Impact Study Reports, with presentation of an ISA for review and execution pending. PJM would then include the project in its RTEP and back off any baseline projects that are no longer required as a result of these merchant projects.<sup>36</sup>

39. PJM Power Providers and ODEC argue that PJM *is able* to assign the project to the most appropriate entity to build it<sup>37</sup> but object to the suggestion that a Commission determination may supplant PJM’s decision to designate a party to build the project. Such a decision would be driven, in part, by which party could build and maintain it in the most efficient and cost-effective manner based on the determined need for the upgrade.

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<sup>34</sup> PJM Comments at 4-5 (citing PJM’s filing of Michael Kormos testimony in AD09-4-000 and other prior testimony).

<sup>35</sup> *Id.* at 11.

<sup>36</sup> *Id.* at 8.

<sup>37</sup> *See, e.g.*, PJM Power Providers Protest at 3. *See also* PJM Transmission Owners Protest at 13-14 (noting that all transmission owner RTEP proposals must be reviewed through the RTEP).

40. ODEC and PJM Transmission Owners characterize the Petition as an attempt to circumvent the filed Tariff and address issues that are better handled through the stakeholder process or under a FPA section 206 filing,<sup>38</sup> to demonstrate that PJM's existing rates or terms and conditions are unreasonable or unduly discriminatory.

41. Parties cite the PJM Tariff, section 1.18E definition of Merchant Transmission Facility, which states "Merchant Transmission Facilities shall not include . . . any transmission facilities that are included in the rate base of a public utility and on which a regulated return is earned" as precluding Grid Plus from earning a regulated ROE.

42. PJM and ODEC also assert that cost-based rate recovery is not available to Merchant Transmission Facilities under either section 1.5.6(e) of Schedule 6 of the PJM Operating Agreement or under the merchant transmission interconnection procedures. PJM Transmission Owners cite to *PJM Interconnection, L.L.C.*<sup>39</sup> to support the position that third party developers, other than merchant transmission developers, cannot secure a preferential right to build their projects in PJM. The order states:

[W]e will require PJM to add language...that explicitly states that any party may propose a new project - whether a transmission owner, or a third party seeking to build a merchant transmission plant - and that the party proposing the project will be responsible for its costs of the project.

43. PJM Transmission Owners describe the merchant transmission interconnection requirements as less stringent than the RTEP review process. Specifically, a merchant transmission proposal need only demonstrate that it will not harm the PJM's transmission system – a demonstration that does not thereby justify RTEP approval.

44. LS Power claims that merchant transmission owners are competitively disadvantaged because incumbent Transmission Owners receive cost-based recovery because they have tariffs on file with the Commission, while merchant transmission owners do not qualify for development cost recovery and related incentive rate treatment. LS Power urges the Commission to address such disparate treatment.

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<sup>38</sup> PJM Transmission Owners Protest at 2; ODEC Protest at 9. Specifically, the Parties object to Primary Power's requests for cost-based recovery on a merchant transmission project, Commission designation of ownership and construction rights separate from the RTEP process, the 90-day expedited review period for PJM approval, and the changes to the ISA.

<sup>39</sup> PJM Transmission Owners Protest at 10 (citing *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345, at P 26 (2002)).

45. AMP urges the Commission to reject Primary Power's application, without prejudice, until such time as Grid Plus has been approved by PJM. AMP explains that if the Commission were to approve Primary Power's application before any assessment of need for Grid Plus is done, other project developers may craft similar competing proposals. AMP states that PJM identified this risk of competing duplicative projects in Docket No. AD09-8-000:

[T]wo competing projects would, under today's paradigm, both receive incentive rates and both be eligible for rate base treatment leading to the potential for duplicative and costly infrastructure or a later "second guessing" of the prudence of a particular project which ultimately is deemed unneeded. Moreover, duplicative projects can complicate the state siting process and lead to a state rejecting both projects in separate proceedings as the need argument for one might obviate the siting justification for the other.<sup>40</sup>

### **3. Primary Power December 28, 2009 Answer**

46. Primary Power opposes parties' request that its proposal be considered in the context of an ongoing rulemaking. Primary Power cites a prior case where the Commission granted the applicant's requested relief without waiting for a more general resolution.<sup>41</sup>

47. Primary Power asserts that no FPA section 206 filing is needed because it is not proposing changes to the PJM Tariff, the *pro forma* ISA, or the PJM Operating Agreement. Rather, Primary Power is proposing to use the existing channels and procedures already codified in PJM's Operating Agreement, including section 1.5.6(f) of Schedule 6 allowing PJM to designate "other entities" such as Primary Power to construct, own, and finance transmission projects.

48. Primary Power responds to challenges based on Grid Plus' status as a merchant project, clarifying that Grid Plus is not a merchant facility. Primary Power states that its Petition makes clear that Grid Plus cannot be financed except on a cost-of-service basis and asks to work with the RTO and the Transmission Expansion Advisory Committee to

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<sup>40</sup> AMP Protest at 6-8 (citing PJM Supplemental Initial Comments, Docket No. AD09-8-000, at 10 n. 18 (Nov. 23, 2009)).

<sup>41</sup> Primary Power Dec. 28, 2009 Answer at 8, 12-13 (citing *Neptune Regional Transmission System, LLC*, 110 FERC ¶ 61,098, at P 29 (2005)).

achieve prompt and equitable results to this end.<sup>42</sup> Primary Power found that the only practical path available for Grid Plus (owned by a non-incumbent) is the merchant review process.<sup>43</sup>

49. Primary Power argues that it is not seeking special treatment or trying to circumnavigate the RTEP process. Rather, Primary Power has filed an application for merchant transmission interconnection and received queue positions, taking its appropriate place in line, but has always promoted Grid Plus as an RTEP project. Primary Power states that it seeks only to be treated the same as any other transmission owner in PJM that is proposing an economic project for inclusion into the RTEP.<sup>44</sup>

50. Primary Power cites two recent Commission orders as approving non-incumbent Transmission Owners' projects for rate incentive treatment in PJM, subject to the inclusion of those non-incumbent Transmission Owners' projects in the PJM RTEP. Specifically, Primary Power cites Green Power Express (Green Power) and Pioneer Transmission, LLC (Pioneer), also noting that the Commission approved various incentives in those orders.<sup>45</sup>

51. Primary Power asserts that nothing prohibits entities who do not already own transmission facilities from seeking cost-based rates and asserts that such a proposal would be unduly discriminatory. Additionally, Primary Power points out that the concept of cost-based rate incentives in Order No. 679 is founded on the use of cost-based rates for new transmission facilities by transcos and others.

52. In response to PJM's assertion that Primary Power's request for a PJM determination in 90 days would result in queue disruption, Primary Power asserts that PJM studies have clearly shown that Grid Plus will require no network upgrades to accommodate the four projects and the fact that no new network upgrades are required means that there will be no queue disruption. Primary Power answers that the one example PJM raised, U2-028, will not be impacted because this project is already completed.<sup>46</sup> Primary Power is willing to revise its request for review within 90 days and

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<sup>42</sup> Primary Power Dec. 28, 2009 Answer at 3.

<sup>43</sup> Primary Power Petition, Brozina testimony at 20; Deficiency Response at 4.

<sup>44</sup> Primary Power Dec. 28, 2009 Answer at 8-9.

<sup>45</sup> Primary Power Deficiency Response at 22-24 (citing *Green Power Express LP*, 127 FERC ¶ 61,031 (2009); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009), *clarification granted and reh'g denied*, 130 FERC ¶ 61,044 (2010)).

<sup>46</sup> Primary Power Dec. 28, 2009 Answer at 19-20.

instead request the Commission to direct PJM to file a status report after 90 days providing evaluation results and a date for completing the evaluation.<sup>47</sup>

#### **4. Primary Power's Deficiency Response**

53. In response to the Deficiency Letter, Primary Power explains the pros and cons of submitting its project into the planning process as a “baseline,” “transmission owner initiated” or market solution project. Primary Power affirms that the PJM Operating Agreement does indeed allow it to submit its project into the planning process as an alternative baseline project. However, according to Primary Power, PJM’s historical and current practice is that only incumbent transmission owners can be designated to own, construct, or finance projects approved by the RTEP.<sup>48</sup> Primary Power characterizes such a practice as inconsistent with the PJM Operating Agreement provision that requires PJM to designate “Transmission Owners or other entities” - not exclusively Transmission Owners.

54. Primary Power indicates that it did not seek transmission-owner initiated project or a supplemental project status because such projects are not required for system reliability, operational performance, or economic reasons, are not subject to approval by the PJM Board.<sup>49</sup> Primary Power concludes that such projects may not meet the conditions for incentive treatment. Primary Power cites Schedule 6, section 1.6(a) of the Operating Agreement, which states that Supplemental Projects “are not eligible for cost allocation pursuant to Schedule 12 of the PJM Tariff,” as preventing Primary Power from receiving the necessary guaranteed cost recovery.

55. Primary Power also indicates that it did not seek to qualify as a market solution under section 216 of the PJM Tariff, indicating that section 216 is ambiguous. Primary Power concedes that projects starting in the interconnection queue can be converted to an RTEP project on the basis of system benefits. However, Primary Power is concerned that ambiguities in the Tariff, particularly those regarding Primary Power’s eligibility for construction, ownership and financing designation, prevent Primary Power from applying as a market solution.

56. Primary Power responds to the deficiency letter inquiry whether it has sought to become a transco under Attachment U of the PJM Tariff by noting that it has not because

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<sup>47</sup> *Id.* at 13-14.

<sup>48</sup> Primary Power Deficiency Response at 5-6, 20-24; *see also* PJM March 5, 2010 response to Deficiency Response at 2.

<sup>49</sup> Primary Power Deficiency Response at 6-7.

doing so would not address whether, if Grid Plus is included in the PJM RTEP, Primary Power will be designated to construct, own and finance Grid Plus.<sup>50</sup>

57. In response to the Commission's request to explain how Grid Plus ensures reliability or reduces congestion, Primary Power maintains that Grid Plus provides steady state voltage support unlike mechanically-switched capacity banks which only provide capacity reactive support, often useful during peak periods of operation.<sup>51</sup>

58. Primary Power clarifies that it proposes Grid Plus as an economic upgrade under the RTEP instead of as a reliability upgrade. Primary Power believes that were PJM to conduct its RTEP analysis, PJM may determine that there are needs for dynamic reactive power devices like Grid Plus in the PJM system. Alternatively, Primary Power argues that PJM can displace current reliability projects that do not provide the level of dynamic reliability and economic benefits provided by Grid Plus. Primary Power states that PJM has recently recognized the need for new dynamic Vars on the PJM system.<sup>52</sup> Primary Power confirms that PJM would make the ultimate determination whether Grid Plus will deliver the anticipated economic and reliability benefits needed for the RTEP.<sup>53</sup>

## **5. Comments on Deficiency Response**

59. In their responses to Primary Power's Deficiency Response, Parties generally renew their earlier concerns and request that the Commission deny the Petition. The PJM Transmission Owners state that Primary Power's Deficiency Response makes it absolutely clear that the Petition would require the Commission to change PJM's Commission-approved rates schedules under FPA section 206. In particular, PJM Transmission Owners and the PJM Power Providers state that Primary Power identifies several PJM Tariff provisions under which it could pursue its proposed project, yet at the same time it argues that these provisions does not suit its needs and must be modified.

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<sup>50</sup> Specifically, Primary Power believes that Attachment U applies only to applicants who already own transmission facilities, or can demonstrate future ownership of transmission facilities. Primary Power Deficiency Response at 17 (citing PJM Tariff, Attachment U, section 1(1.3)).

<sup>51</sup> Primary Power Deficiency Response at 26-28.

<sup>52</sup> *Id.* at 10 (citing PJM Reactive Power Focus Group, Power Factor Requirements and Deficiency Charges (Oct. 15, 2009)).

<sup>53</sup> *Id.* at 10 (citing Primary Power Petition at 3).

60. The PJM Transmission Owners cite to two cases in arguing that a declaratory request does not exempt Primary Power from meeting its FPA section 206 burden.<sup>54</sup>

61. PJM states that Primary Power raises valid issues, but cautions that there are a host of basic issues of policy that have not been and still need to be raised and answered to determine whether Primary Power's unprecedented proposal should be achievable. PJM states that the PJM Tariff does not offer the necessary and fundamental direction needed for PJM to workably implement Primary Power's unprecedented request if it is granted by the Commission.

## 6. Commission Determination

62. As set forth below, we will grant in part and deny in part Primary Power's Petition requesting a declaratory order. We find that the PJM Tariff permits, but does not require, PJM to designate Primary Power, an entity other than an incumbent transmission owner, as the entity to build Grid Plus if this project is included in the RTEP as a baseline reliability project or economic project. PJM must designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others. We further find that the PJM Tariff does not prevent Primary Power from seeking cost-based rate recovery if its project is included in the RTEP and satisfies the same reliability and/or economic requirements set forth for other transmission owner cost-based projects in the PJM RTEP and Tariff.

63. Sections 1.5.7(c)(iii) and 1.5.6(f) of the PJM Operating Agreement permit PJM to designate an entity other than an incumbent transmission owner to build a project. In particular, section 1.5.7(c)(iii) of the RTEP allows PJM to designate the construction of economic enhancements to the entity promoting the expansion (emphasis added):

The Office of the Interconnection shall evaluate whether including any additional economic-based enhancements or expansions in the Regional Transmission Expansion Plan or modifications of existing Regional Transmission Expansion Plan reliability-based enhancements or expansions would relieve an economic constraint. In addition, **any market**

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<sup>54</sup> PJM Transmission Owners response to Deficiency Response at 9 (citing *American Electric Service Corp.*, 90 FERC ¶ 61,040, at 61,913 (2000), as denying a petition for declaratory order that sought changes to the pro forma tariff service terms, and *Bonneville Power Administration*, 110 FERC ¶ 61,001, at P 39 (2005), as denying a petition for declaratory order to find an unexecuted service agreement just and reasonable, when the service was inconsistent with the tariff and the relevant tariff provisions were not followed).

**participant at any time may submit to the Office of the Interconnection a proposal to construct an additional economic-based enhancement or expansion to relieve an economic constraint. . . .** Upon consideration of the advice of the Transmission Expansion Advisory Committee, the PJM Board shall consider any new economic-based enhancements and expansions for inclusion in the Regional Transmission Plan and for those enhancements and expansions it approves, the PJM Board shall designate (a) **the entity or entities that will be responsible for constructing and owning or financing the additional economic-based enhancements and expansions**, (b) the estimated costs of such enhancements and expansions, and (c) the market participants that will bear responsibility for the costs of the additional economic-based enhancements and expansions pursuant to section 1.5.6(g) of this Schedule 6.<sup>55</sup>

64. Likewise, section 1.5.6(f) permits PJM to designate not just transmission owners, but “transmission owners or other entities” to construct projects. Section 1.5.6(f) states:

...For each enhancement or expansion that is included in the recommended plan, the plan shall . . . designate one or more Transmission Owners **or other entities** to construct, own and, unless otherwise provided, finance the recommended transmission enhancement or expansion. To the extent that one or more Transmission Owners are designated to construct, own, or finance a recommended transmission enhancement or expansion, the recommended plan shall designate the Transmission Owner that owns the transmission facilities located in the Zone where the particular enhancement or expansion is to be located [emphasis added].

The Commission interprets the language “or other entities” to permit PJM to designate a non-incumbent developer of transmission facilities to construct, own and finance a project if it is included in the RTEP as a recommended transmission enhancement or expansion.

65. With regard to the latter part of section 1.5.6(f), cited by PJM and the PJM Transmission Owners as establishing a right of first refusal, that section applies by its

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<sup>55</sup> Section 1.5.6(g) provides terms for designating cost responsibility for projects in the recommended plan.

own terms “to the extent that one or more Transmission Owners are designated.” The “to the extent” clause does not provide for reassignment of projects proposed by “other entities” to transmission owners.<sup>56</sup> PJM should administer this tariff provision in a not unduly discriminatory manner; in this regard it should handle the study of Primary Power’s application no differently than that of any other application proposing to build a project, be it an existing transmission owner or an “other entity,” and would need to adequately justify its action if it denied the sponsor of the project the right to construct that project and receive the economic benefit of its project.<sup>57</sup>

66. As discussed above, the PJM Tariff allows Primary Power, an entity other than an incumbent transmission owner, to be designated as the entity to build Grid Plus if this project is included in the RTEP as a baseline reliability project or economic project. Given PJM and Primary Power’s concerns about the clarity of PJM’s Tariff, to the extent that PJM believes that additional tariff language would be helpful in processing such filings, it may make a filing under FPA section 205 to clarify its tariff.

67. Primary Power’s Petition seeks assurances that it is eligible for cost-of-service rates under Schedule 12 of the PJM Tariff for Grid Plus. Primary Power commits to becoming a PJM transmission owner if Grid Plus is included in the RTEP. However, Grid Plus is currently in the PJM interconnection queue as a merchant transmission facility. Primary Power explains that it does not want to proceed as a merchant project, because its investors need the regulatory certainty of the Commission’s designation of cost-based rates for the Grid Plus facilities in order to continue investing development capital.

68. Under the current terms of the PJM Tariff, as a merchant transmission project, Primary Power is not eligible for cost-based rates. In order for Primary Power to receive cost-based rates for Grid Plus, Grid Plus must be approved by PJM as a baseline reliability project or as an economic project. For instance, because a merchant project is responsible for covering its own costs, the PJM study process for merchant projects

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<sup>56</sup> PJM and the PJM Transmission Owners have not offered a justification for why PJM is precluded from assigning a project to “other entities,” particularly since such an interpretation will reduce the incentive for parties to propose innovative transmission solutions.

<sup>57</sup> We note that Primary Power states that it has obtained (or will obtain) the rights-of-way or other property rights to build its transmission facilities. *See PJM Interconnection LLC*, 102 FERC ¶ 61,277, at P 21 (2003) (noting that merchant transmission developers have no right to build on transmission facilities owned by others and also noting that the PJM tariff provisions were not intended to preempt state siting procedures).

focuses primarily on the interconnection costs imposed by the project. However, cost-based projects must satisfy more stringent conditions designed to ensure that these projects are necessary investments to ensure reliability and that, for economic projects, the benefits of the project exceed the costs.

69. Based on the current status of Grid Plus as a merchant project, we reject, as premature, Primary Power's requested effective date for cost-based rate treatments. Furthermore, cost-based rates for Grid Plus and their associated accounting treatments are conditioned on PJM's study and approval of Grid Plus as a baseline project. As part of the RTEP process, PJM will allocate cost responsibility for the cost-based rate treatments of Grid Plus.<sup>58</sup>

70. If Grid Plus is included in the RTEP as an economic project, it would be eligible to seek cost-based rate recovery as would any other transmission owner providing jurisdictional service under Schedule 12.<sup>59</sup> PJM's Tariff contains no prohibition on a non-incumbent party becoming a transmission owner to receive cost-based rates. Given PJM and Primary Power's concerns about the lack of explicit tariff authority, we reiterate that, to the extent that PJM believes that additional tariff language would be helpful in processing such filings, it may make a filing under FPA section 205 to clarify its tariff.

71. PJM claims that there are two competing projects in its queue and states that if Primary Power is designated, it requests guidance on how to prioritize these projects. As stated above, we are not requiring PJM to designate Primary Power. Because we are not designating Primary Power to build the project, the Commission considers PJM's concern to be moot. PJM must evaluate Primary Power's proposal in the same manner as any proposed cost-based project in the RTEP process, and should use its procedures for evaluating competing projects.<sup>60</sup>

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<sup>58</sup> PJM Operating Agreement, Schedule 6, and PJM Manual 14B at 34-36 found at <http://www.pjm.com/~media/documents/manuals/m14b.ashx> .

<sup>59</sup> See Primary Power Dec. 28, 2009 Answer at 20.

<sup>60</sup> See *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218, at P 37 (2006). Should such evaluation result in bumping a prior cost-based project, the bumped project is eligible for 100 percent of prudently-incurred abandonment costs. *Id.* P 53. With respect to PJM's assertion that it lacks a means to choose between projects, we note that we previously dismissed an objection that the PJM Operating Agreement contains no test for determining which project to choose, citing the PJM Operating Agreement market and cost-benefit analyses that ensure the benefits of a proposed project exceed the costs before it can be included as part of the RTEP. *PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,051, at P 41-42, 63-80 (2008).

72. We disagree with the PJM Transmission Owners' concern that the Commission's statements in *PJM Interconnection, L.L.C.*,<sup>61</sup> were intended to preclude third party developers from recovering cost-based rates on their projects. In that order, the Commission was dealing only with a requirement that the PJM Tariff make provision for merchant transmission projects. The Commission did not preclude third parties from seeking cost-based recovery for transmission projects when those projects satisfy the requirements established to ensure that the projects are prudent and used and useful. Nor did the Commission indicate that cost-based rates would be reserved exclusively only for those companies that had been receiving such rate treatment at the time PJM was granted RTO status. Furthermore, we see no inconsistency with the finding in the earlier order that merchant transmission owners as well as incumbent transmission owners may submit projects for inclusion in the RTEP and bear the costs for those projects. Under the FPA, non-incumbent transmission owner proposals that are approved through the RTEP process must be treated in a not unduly discriminatory basis, as compared to proposals from incumbent transmission owners.

73. Primary Power has submitted non-conforming revised terms to the PJM ISA and asks the Commission to accept the revised terms. We reject the revised ISA terms submitted by Primary Power without prejudice to a future proceeding to review proposed terms for interconnecting the Grid Plus facilities to the PJM system. The PJM Tariff section 212.4 establishes the procedures for executing and filing the PJM ISA. Section 212.4 states that, upon PJM's tender of an ISA, a potential interconnection customer may sign and return the ISA, or may request that the ISA be filed unexecuted. This process does not include provision for a potential customer to unilaterally file non-conforming terms for the Commission's acceptance. Also, since Primary Power does not seek to energize the first of its facilities until 2012, it should have ample time to negotiate interconnection terms for Grid Plus.

### **C. FPA Section 219 and Order No. 679 Incentives**

#### **1. FPA Section 219 Requirements**

74. Primary Power requests rate incentives under section 219 of the FPA and Order No. 679. Specifically, Primary Power seeks (i) deferred recovery of pre-commercial expenses, (ii) abandoned plant recovery due to forces outside its control, (iii) approval of ROE adders for new transmission investment, transmission organization participation, and transco formation, and (iv) a stated ROE of 12.75 percent.

75. In Order No. 679, the Commission stated that an applicant for transmission rate incentives must demonstrate that the facilities for which it seeks incentives satisfy the

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<sup>61</sup> *PJM Interconnection, L.L.C.*, 101 FERC ¶ 61,345, at P 26 (2002).

requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.<sup>62</sup> The Commission established a rebuttable presumption that a project is eligible for incentives under FPA section 219 if it: (1) 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) has received construction approval from an appropriate state commission or state siting authority.<sup>63</sup> The Commission also 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.<sup>64</sup>

**a. Proposal**

76. Primary Power argues that Grid Plus is eligible for incentives under FPA section 219 and Order No. 679. In general, Primary Power asserts that Grid Plus will ensure reliability and reduce the price of delivered power by reducing congestion. Primary Power states it has prepared several studies and reports that demonstrate the Grid Plus satisfies the criteria for obtaining rate incentives. For example, Primary Power provided an economic analysis and PJM's Feasibility Studies for the three project sites.<sup>65</sup> In its Deficiency Response, Primary Power provided additional data and work papers supporting its discounted cash flow analysis.

77. Primary Power's specific requests for incentives are described above in paragraph 8. Primary Power conditions its request for incentives on a PJM RTEP finding that "Grid Plus will deliver the anticipated economic and reliability benefits necessary to be included in the RTEP."<sup>66</sup>

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<sup>62</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

<sup>63</sup> *Id.* In Order No. 679-A, the Commission clarified 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. Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

<sup>64</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 n.39.

<sup>65</sup> See Primary Power, Ex. GPL-9 for the GEMS study and Ex. GPL-11 through GPL-14 for the feasibility studies.

<sup>66</sup> As discussed below, Primary Power affirms in its December 28, 2009 Answer, that it is willing to condition the award of incentives - including the abandonment

(continued...)

**b. Comments and Protests**

78. PJM Transmission Owners request that, in light of prior holdings, the Commission not pre-judge the outcome of any regional planning process. PJM Transmission Owners argue that Primary Power has not demonstrated that the alleged cost savings will be the result of reduced congestion resulting from Grid Plus. Additionally, PJM Transmission Owners point out that the application only makes a few broad claims regarding reliability, and Primary Power's own application shows that 2 of the 4 projects are not needed for reliability purposes.

79. PJM Transmission Owners and ODEC argue that the requested incentives would normally only be allowed if the project had passed through the RTEP process. Furthermore, the Commission should not assign these incentives as the RTEP process can result in the construction and ownership of the project being assigned to a company who is not Primary Power. Both PJM Transmission Owners and ODEC point to the recent *Green Energy Express* Order (129 FERC ¶ 61,165) in which the Commission refuses to prejudge the outcome of any regional planning process. PJM Transmission Owners and ODEC state that the Commission should not interfere in the RTEP Process by pre-assigning these incentives.

80. ODEC states that providing regulatory asset and abandonment protection prior to the inclusion in RTEP would shift the risk from Primary Power to ratepayers without assurance that the project is worthwhile. ODEC concludes that shifting the project development risk to customers at this juncture would also fail to properly balance investor and ratepayer interests as required under Order No. 679.<sup>67</sup>

81. ODEC argues that the Commission should defer consideration of Primary Power's proposed ROE until the project has been more thoroughly analyzed.<sup>68</sup> According to ODEC, in *Pacific Gas*, the Commission refused to rule on the ROE until the Applicant demonstrated that it met the statutory standard under FPA section 219 and the requirements of Order No. 679.

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incentive - upon Grid Plus being included in the RTEP, consistent with the Commission's recent decision in *Green Energy Express*, 129 FERC ¶ 61,165 (2009).

<sup>67</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

<sup>68</sup> ODEC Protest at 14 (citing *Pacific Gas and Electric Company*, 123 FERC ¶ 61,067, at P 40 (2008) (*Pacific Gas*)).

82. Additionally, ODEC points out that Primary Power proposes to use the stated ROE “in its initial rate case,”<sup>69</sup> but such single-issue ratemaking is at odds with the Commission’s usual ratemaking approach, which considers a utility’s entire rate components on a synchronized basis.<sup>70</sup> ODEC worries that by not deferring, the current market problems will result in the Commission locking in an ROE that is not representative of Primary Power’s ongoing cost of equity capital.

83. PJM Power Providers contest Primary Power’s demonstration of reliability benefits and note that the current system is in compliance with the North American Electric Reliability Corporation’s planning standards and reactive power requirements.<sup>71</sup> They also state that Grid Plus duplicates reactive power provided by other PJM resources. PJM Power Providers contest Primary Power’s argument that its integrated array of SVCs is unique, because there are thousands of MVar of dynamic reactive and tens of thousands of MVar of static reactive power in PJM. Further, PJM Power Providers question how Primary Power would be operating the SVCs as an “integrated array,” if PJM was operating the facilities.

84. Parties also question the level of economic benefit from Grid Plus.<sup>72</sup> PJM Power Providers state that Primary Power does not account for major backbone transmission projects such as the MAPP Project and Primary Power uses overstated natural gas prices for 2012. Finally, PJM Power Providers claim that Primary Power does not deduct an estimated annual \$40 million in levelized fixed costs for running the SVCs from their alleged benefit.

**c. Answers**

85. Primary Power answers that because upfront certainty is imperative for the success of Grid Plus, the Commission need not wait for RTO approval and can approve Grid Plus

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<sup>69</sup> See Primary Power Petition, Ex. GPL-1 at 18.

<sup>70</sup> ODEC Protest at 14-15.

<sup>71</sup> PJM Power Providers Protest at 4-5 (citing PJM’s 2008 Baseline Assessment (Feb. 27, 2009) and Transmission Interconnection Feasibility Study Report).

<sup>72</sup> Maryland Commission Comments at 12; PJM Power Providers Protest at 5-6.

in the same manner it approved *Pioneer Transmission, LLC*, *Green Power Express L.P.*, and *Xcel Energy Services*.<sup>73</sup>

86. Responding to parties' assertions that the Grid Plus SVCs are not needed or capacitors are less expensive alternatives to SVCs, Primary Power states that in February 2009, the PJM Planning Committee issued a report indicating that PJM may have difficulty meeting its reactive power requirements.<sup>74</sup> Primary Power states that it meets certain PJM objectives for reactive power announced by a focus group, which observed Grid Plus' benefits and noted the following:

The group recommends that, if at all possible, reactive deficiency be replaced by spinning Vars. If shown infeasible or cost prohibited (*sic*), the group suggests that the compromised approach is to *replace the deficiency with dynamic Vars (e.g., from Static Var Compensators (SVCs) or similar resources)*. [*] Static Vars from shunt capacitors are discouraged or, in most instances, should be disallowed.*<sup>75</sup>

87. Primary Power asserts that no party challenged: (1) the technical merits of the dynamic SVC reactive power devices used in Grid Plus; (2) Primary Power's experience or technical qualifications to construct the Grid Plus project; (3) Primary Power's Discounted Cash Flow Analysis or that a 12.75 percent ROE is just and reasonable; or (4) that cost-of-service recovery is the appropriate mechanism if Grid Plus is included in the RTEP.<sup>76</sup>

88. Primary Power states that no party argued that the benefits of Grid Plus were *less than* \$45 million to \$485 million annually. In response to PJM Power Providers' questioning of the natural gas price assumptions used in Primary Power's analysis,

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<sup>73</sup> Primary Power Dec. 28, 2009 Answer at 14-15 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009); *Green Power Express L.P.*, 127 FERC ¶ 61,031 (2009); *Xcel Energy Services*, 121 FERC ¶ 61,284 (2007)).

<sup>74</sup> *Id.* at 23 (citing a presentation by David Egan, *Interconnection Reactive Power Upgrades*, PJM Planning Committee Meeting (Feb. 20, 2009)).

<sup>75</sup> *Id.* (citing PJM Power Factor Requirements and Deficiency Charges by Reactive Power Focus Group (Oct. 15, 2009) (emphasis added)).

<sup>76</sup> *Id.* at 5-6.

Primary Power argues that PJM Power Providers acknowledge that these are the same natural gas prices PJM uses in its economic analysis.<sup>77</sup>

89. In response to commenters' requests that the Commission condition its incentives approval on Grid Plus' inclusion into the PJM RTEP, Primary Power reiterates that it will only build the Grid Plus facilities if they are included in the PJM RTEP and it is willing to accept such approval as a condition to the rate incentives.<sup>78</sup>

**d. Comments on Deficiency Response**

90. The PJM Power Providers and the PJM Transmission Owners argue that Primary Power admits that Grid Plus does not meet a reliability need:

At the present time, Primary Power intends to propose Grid Plus as an economic upgrade under the RTEP, rather than a reliability upgrade... To date, Primary Power is not aware that PJM has identified any specific reliability violations to be corrected by the construction of the project facilities.<sup>79</sup>

91. In its response to the Deficiency Response, PJM Power Providers state that Grid Plus would not qualify as an economic project either. PJM Power Providers state that Primary Power's data shows that Grid Plus fails PJM's economic benefit-cost test (requiring a benefit of 1.25 times the cost), using PJM's projected natural gas price in 2012 of \$8.01/MMBtu. PJM Power Providers argue that Primary Power's data shows a projected annual benefit of roughly \$12.9 million, which is clearly not 1.25 times the project's annual cost of \$39.6 million. PJM Power Providers states that not only is the benefit-cost test not met, but in fact, the project is a net negative impact. For these reasons, and the reasons outlined in its earlier pleadings, the PJM Power Providers request that the Commission reject the Petition.

**e. Commission Determination**

92. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks an

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<sup>77</sup> *Id.* at 6-7 (citing PJM Power Providers Protest at 6).

<sup>78</sup> *Id.* at 20.

<sup>79</sup> *See* PJM Power Providers response to Deficiency Response at 3; PJM Transmission Owners response to Deficiency Response at 7 (citing Primary Power's Deficiency Response at 9).

incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>80</sup> 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 a project has received construction approval from an appropriate state commission or state siting authority.<sup>81</sup> In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which the transmission project 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.<sup>82</sup> 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.<sup>83</sup> In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals demonstrating that the FPA section 219 criteria are met.<sup>84</sup>

93. Primary Power is not entitled to a rebuttable presumption that Grid Plus satisfies the requirements of FPA section 219, since it has not been approved in the PJM planning process or received construction approval from the relevant state authorities. Primary Power has included economic and feasibility studies to demonstrate the economic and reliability benefits of Grid Plus. However, protesters have raised concerns with respect to this evidence. In light of Primary Power's statement that its rate incentive requests are conditioned on inclusion in the PJM RTEP<sup>85</sup> and because the PJM planning process may adequately consider the reliability and congestion-relieving impacts of Grid Plus, the Commission will approve certain incentives requested by Primary Power conditioned on PJM including Grid Plus in the RTEP as a baseline reliability or economic project.

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<sup>80</sup> 18 C.F.R. § 35.35(i) (2009).

<sup>81</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 58.

<sup>82</sup> *Id.* P 49.

<sup>83</sup> *Id.* P 57.

<sup>84</sup> *See Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007); *see also Green Power Express*, 127 FERC ¶ 61,031 at P 41.

<sup>85</sup> Primary Power Petition at 31; Primary Power Dec. 28, 2009 Answer at 20.

94. We direct Primary Power to submit a filing within 30 days of the approval or disapproval of Grid Plus in the PJM RTEP. If Grid Plus is approved in the PJM RTEP, Primary Power must provide in its filing evidence not only of such approval, but also that the planning process included a finding that Grid Plus will ensure reliability or reduce the cost of delivered power by mitigating congestion, consistent with Order No. 679-A.<sup>86</sup>

## 2. Nexus Test

### a. Proposal

95. Primary Power presents evidence on the Grid Plus' scope, effect, and risks and challenges. Primary Power states that the scope of Grid Plus is unprecedented, and that the 2,000 MVars of SVCs represented by Grid Plus will be the largest integrated array of SVCs to be deployed at once in the history of PJM, and possibly the country.

96. On the effect of Grid Plus, Primary Power asserts that Grid Plus will provide reliability benefits, through congestion relief and voltage support, and permit increased power transfers from PJM-west side renewable resources by as much as several hundred MW per Grid Plus facility.

97. Primary Power explains that Grid Plus presents significant risks and challenges. Primary Power states that Grid Plus is a multi-state project being built in three transmission owner footprints (Allegheny Power, FirstEnergy, and PPL Utilities).<sup>87</sup> Primary Power explains that there is significant regulatory risk associated with the project because it must compete against transmission companies that have established supportive corporate structures and existing relationships to facilitate the permitting process with state entities.<sup>88</sup> Primary Power states that this project presents extraordinary financial risk because it is a start-up company with no rate base, and the incentives are needed to attract equity investors. Primary Power explains that it is under no obligation to construct the project, and that Grid Plus is being undertaken at the election of investors.<sup>89</sup> Primary Power states that this type of project is not addressed under traditional ratemaking methodologies, thereby exemplifying that this project is non-routine and is not undertaken during the ordinary course of business.

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<sup>86</sup> See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49. See also *Green Energy Express LLC*, 129 FERC ¶ 61,165, at P 30 (directing further filing).

<sup>87</sup> Primary Power Petition at 23.

<sup>88</sup> *Id.* at 52-53.

<sup>89</sup> *Id.* at 51.

98. Primary Power explains that there are risks associated with Grid Plus's innovative deployment of proven technologies, that also reflects certain Smart Grid concepts.<sup>90</sup> Primary Power explains that the novel implementation of technologies in this case requires specialized knowledge that is not readily available, implementing cyber-security and electromagnetic pulse (EMP) protection in a configuration that is without precedent.<sup>91</sup>

**b. Commission Determination**

99. The Commission finds that Grid Plus is a non-routine project and conditionally grants in part, and denies in part, Primary Power's request for incentives, as discussed more fully below. As discussed above, the approved incentives are conditioned on PJM including Grid Plus in the RTEP as a baseline reliability or economic project.

100. In addition to satisfying the FPA section 219 requirement that a project ensure reliability or reduce 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."<sup>92</sup>

101. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. The Commission has previously provided guidance on the factors that it will consider when determining whether a project is routine.<sup>93</sup> The Commission stated that it will consider all relevant factors presented by the applicant, including 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., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive

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<sup>90</sup> *Id.* at 5, 18-21, and Exh. GPL-1.

<sup>91</sup> *Id.* at 53.

<sup>92</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>93</sup> *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh'g*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.<sup>94</sup>

102. With four 500 MVar SVCs and a combined cost of \$200 million, the collective 2,000 MVars of SVC capacity from Grid Plus will be the largest single integrated array of SVCs to be deployed at once in the history of PJM, and possibly the country. Furthermore, each individual SVC is comparable in size to the Black Oak SVC,<sup>95</sup> with the addition of advanced technologies not implemented for the Black Oak project. For instance, the strategically located array of SVCs will employ wide-area fiber optic communications technologies and microprocessor-based protection and control functions in order to enable optimal coordination of the operation of these SVCs for the benefit of the overall transmission system. This type of coordinated operation makes use of advanced sensor, communication and control infrastructure which will be consistent with any smart grid architecture that may arise in the PJM region.

103. Primary Power reports that its project relies on discrete, modular technology, which may be located near key system nodes by using advanced power electronics to provide optimal system benefits. Primary Power also reports that it designed the Grid Plus facilities to feature “open architecture” to be utilized in a wide area monitoring and control system to promote growth of its system, which may facilitate expansion and upgrades to benefit ratepayers. As described, Grid Plus will use a Flexible AC Transmission System device to optimize transmission line configurations by increasing west-to-east transmission capacity on PJM’s systems, making continuous use of control systems to maintain system voltage stability. The Commission finds that these features represent an innovative use of technologies.

104. We find that Primary Power has made a case for incentives because Grid Plus presents special risks or challenges and, thus, is not a routine investment made in the ordinary course of business.<sup>96</sup> We find that the scope of Grid Plus is significant, spanning several states and several other transmission owner zones. We also find that the risks and challenges presented by Grid Plus merit incentives. The multistate nature of Grid Plus results in a higher regulatory risk than projects requiring approval from only one regulatory body. Primary Power is under no obligation to construct Grid Plus. Rather, Grid Plus is undertaken at the election of investors. Further, this integrated array of SVCs among several transmission owner zones and undertaken by a Primary Power as a third party developer is not addressed through traditional ratemaking. We agree that

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<sup>94</sup> *Id.* P 54.

<sup>95</sup> *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007).

<sup>96</sup> *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27, 60.

Grid Plus is non-routine in terms of the significant regulatory and technological risks, location, the need for siting and rights-of-way, the multi state nature of the project, the start-up nature of Primary Power, the third-party status of Primary Power, and the innovative use of existing technologies.

105. Consistent with Order No. 679, the declaratory finding here rules only on whether Primary Power's proposal qualifies for incentive-based treatment and the incentives Primary Power may adopt. Therefore, Primary Power must seek to put the rates into effect through a separate FPA section 205 filing demonstrating that "the rates in which the applicant seeks to recover any incentives are just and reasonable and not unduly discriminatory."<sup>97</sup>

106. If the Grid Plus proposal changes from the facts on which the declaratory order was issued, Primary Power may seek another declaratory order or wait to seek approval of the changes in the subsequent section 205 filing.

107. In addition, the Commission will consider below the specific incentives requested by Primary Power and, as necessary, address whether there is a nexus between the incentives sought and the investment being made and whether the total package of incentives is tailored to address the risks and challenges faced by the Project.

**c. Deferred Recovery of Pre-Commercial Expenses**

**i. Proposal**

108. Primary Power states that Order No. 679 permits transmission project applicants to seek deferred cost recovery through the creation of a regulatory asset, noting that the Commission has found that this incentive provides projects with upfront regulatory certainty and facilitates financing on favorable terms. Primary Power argues that the incentive is appropriate because Grid Plus' pre-commercial, start-up, and development costs that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are of the type for which future recovery is probable.

109. Specifically, Primary Power seeks deferred cost recovery through a regulatory asset that will include all prudently incurred start-up and development costs incurred to date, as well as all pre-commercial costs going forward. Primary Power plans to amortize these costs over a five-year term. According to Primary Power, the regulatory asset will include costs associated with initial studies prepared for or required by PJM, efforts to establish the rate incentives sought in the Petition, obtaining necessary approvals from PJM and relevant governmental authorities, and education and outreach to interested

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<sup>97</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

parties on Grid Plus' merits. Primary Power states that these costs may include (but are not limited to) attorney and consultant fees, entity formation costs, administrative expenditures, taxes (other than income taxes), travel costs, other expenses related to corporate structure, and costs related to technical studies (including those required by regulatory entities and regional planning processes). Finally, Primary Power states that the Commission has approved deferred recovery of similar costs, with the caveat that the justness and reasonableness of these costs must be demonstrated when the applicant seeks to implement recovery through a FPA section 205 filing.<sup>98</sup> In establishing the nexus between the incentive sought and the investment made, Primary Power states that deferred cost recovery through a regulatory asset will assist with financing, enhance cash flow, and will provide "the only means by which Primary Power can recover development costs it incurs before [a] formula rate is made effective."<sup>99</sup>

110. Primary Power requests authorization to establish the regulatory asset in Account 182.3, Other Regulatory Assets. Primary Power claims that recognition of these costs as regulatory assets is appropriate as they would: (1) otherwise be chargeable to expenses in the period incurred, but (2) are not recoverable in current rates, yet (3) are costs for which future recovery is probable.<sup>100</sup>

111. Primary Power also seeks permission to accrue carrying charges on the regulatory asset balance at its cost of capital including the incentive ROE requested in the instant proceeding.<sup>101</sup> Primary Power proposes to amortize the regulatory asset over five years, beginning on January 1 of the year immediately following the year that the first Grid Plus facility goes into service.<sup>102</sup> Primary Power proposes to record carrying charges on the regulatory asset by debiting Account 182.3, and crediting Account 431, Other Interest Expense, and Account 407.4, Regulatory Credits, respectively, with the amounts related to the debt and equity components of its cost of capital.

## **ii. Comments and Protests**

112. ODEC requests the Commission make clear that Primary Power must make an FPA section 205 filing to demonstrate that the pre-commercial costs were prudently-

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<sup>98</sup> 16 U.S.C. § 825d (2006).

<sup>99</sup> Primary Power Petition at 35.

<sup>100</sup> *Id.* at 36.

<sup>101</sup> *Id.* at 9.

<sup>102</sup> *Id.* at 35.

incurred and are just and reasonable. Further, ODEC asks that Primary Power be required to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred.<sup>103</sup>

113. ODEC points out that if Grid Plus is not included in RTEP as a required transmission enhancement, Primary Power will not have any customers from which to collect its costs under Schedule 12 of the Tariff.<sup>104</sup>

**iii. Answers**

114. In response to ODEC's protest on regulatory asset treatment, Primary Power asserts that its commitment to make a future section FPA 205 filing to demonstrate the justness and reasonableness of these costs consistent with precedent, should resolve ODEC's concerns.<sup>105</sup>

**iv. Commission Determination**

115. The Commission grants Primary Power's request for authorization to establish the regulatory asset, conditioned upon Grid Plus being approved in PJM's RTEP, as discussed above. Granting this incentive will allow Primary Power to defer recovery of pre-construction costs, as well as start-up and development costs, and recover them later. The Commission finds the incentive is tailored to Primary Power's risks and challenges because this incentive will provide it with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of Grid Plus on reasonable terms. Granting this incentive encourages development of more transmission infrastructure, thereby fulfilling the goals of FPA section 219.<sup>106</sup> At the same time, it recognizes that Primary Power should not begin recovering these costs until such time that it demonstrates that Grid Plus will ensure reliability or reduce the price of delivered power by reducing congestion and is included in the PJM RTEP as a baseline reliability or economic project.

116. If Grid Plus is cancelled before completion, this order conditionally provides Primary Plus with the ability to record pre-construction costs as a regulatory asset.

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<sup>103</sup> See *Green Energy Express*, 129 FERC ¶ 61,165 at P 42; *Green Power Express LP*, 127 FERC ¶ 61,031, at P 61 (2009); *Pioneer*, 126 FERC ¶ 61,281 at P 86.

<sup>104</sup> ODEC Protest at 12-13.

<sup>105</sup> Primary Power Dec. 28, 2009 Answer at 28.

<sup>106</sup> See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 61.

Primary Plus must make a FPA section 205 filing when the formula rate becomes effective to demonstrate that the pre-construction costs are just and reasonable. Primary Plus will also have to establish that the costs included in the regulatory 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.

117. Primary Power is authorized to defer its pre-commercial costs as a regulatory asset in Account 182.3 and amortize the regulatory asset, consistent with rate recovery. Primary Power may also accrue carrying charges on the regulatory asset. However, carrying charges on regulatory assets are properly recorded by debiting Account 182.3 and crediting Account No. 421, Miscellaneous Nonoperating Income.<sup>107</sup> Therefore, Primary Power must adjust its accounting for carrying charges accordingly.

**d. Abandonment**

**i. Proposal**

118. Primary Power seeks a rate incentive that would allow it to recover prudently-incurred costs if Grid Plus is abandoned due to forces outside of its control. Primary Power points out that Order No. 679 permits abandonment in cases where the “the abandonment is outside the control of management,” as the incentive is an “effective means to encourage transmission development by reducing the risks of non-recovery of costs.”<sup>108</sup> Primary Power goes on to argue that this incentive is particularly appropriate where a transmission project may be cancelled by an RTO to which the applicant belongs.<sup>109</sup> Primary Power states that Grid Plus is not a routine proposal and that they undertook the development effort without an assurance of rate recovery. Furthermore, Primary Power asserts that under the PJM planning process, even after approval, the project could be cancelled by subsequent revisions to the RTEP authorized by the board.

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<sup>107</sup> *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, Order No. 552, 58 Fed. Reg. 17,982 (April 7, 1993), FERC Stats. & Regs. ¶ 30,967 (1993).

<sup>108</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163 (granting 100 percent recovery of abandoned plant costs here would be consistent with Commission precedent). *See, e.g., PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, *reh’g denied*. 124 FERC ¶ 61,229 (2008); *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007), *reh’g denied*, 123 FERC ¶ 61,293 (2008); *Tallgrass Transmission LLC*, 125 FERC ¶ 61,248 (2008); *Pioneer*, 126 FERC ¶ 61,281; *Green Power Express*, 127 FERC ¶ 61,031 (2009).

<sup>109</sup> *See PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, at P 47 (2008).

Thus, Primary Power contends that Grid Plus faces considerable commercial and regulatory risk outside of its control. Primary Power concludes that approval of the abandonment incentive will reassure the financial community by providing a source of funds to pay back lenders in the event that Grid Plus is cancelled for reasons beyond Primary Power's control.

**ii. Comments and Protests**

119. ODEC and the Maryland Commission state that the Commission should only allow Primary Power to receive abandonment incentives if the project passes through a regional planning process. ODEC recognizes that there are several cases where the Commission approved the abandonment incentive for projects that were not approved by the regional planning process, but were found to meet the FPA section 219 prerequisites. ODEC wishes the Commission to review this approach. While ODEC acknowledges that allowing cost recovery for cancelled projects not approved under a regional planning process likely results in more proposed transmission projects, it does not necessarily result in efficient transmission investment. ODEC worries that allowing the abandonment incentive prior to Grid Plus being approved by the RTEP process allows Primary Power to mitigate most of its investment risk. Such an approach, ODEC states, encourages project planning on a "piecemeal" basis compared to the Commission's historic emphasis on open and collaborative regional planning.<sup>110</sup>

120. Also, ODEC expresses concern that allowing both the abandonment incentive and the regulatory asset incentive prior to Grid Plus being included in the RTEP process would shift the risks of the project to ratepayers without assurance from the regional planning process.

**iii. Answers**

121. Primary Power answers that the RTEP process is very dynamic, thus an approved project can later be cancelled as part of the RTEP process. Primary Power argues that this risk is entirely outside their control. Under Commission precedent, Primary Power states that abandonment incentives have been approved when project cancellations were outside the power of the applicant. Primary Power states that it is willing to condition its

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<sup>110</sup> ODEC Protest at 10-11 (citing Order No. 890 at P 524: *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

incentives on Grid Plus' acceptance in the RTEP, and the abandonment incentive is no different.

iv. **Commission Determination**

122. The Commission grants the requested incentive, conditioned upon Grid Plus being approved in PJM's RTEP, as discussed above. In Order No. 679, the Commission found that the abandoned cost recovery incentive is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.<sup>111</sup> The Commission finds that Primary Power has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. Thus, the Commission will grant Primary Power's request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is a result of factors beyond Primary Power's control, which must be demonstrated in any subsequent FPA section 205 filing for recovery of abandoned plant.<sup>112</sup>

123. Previously, the Commission has found in Order No. 679 and *Tallgrass Transmission LLC* that the abandonment incentive encourages transmission development by reducing the risks of non-recovery of costs. The Commission agrees with Primary Power that, even after initial RTEP approval, Grid Plus faces a variety of risks outside of Primary Power's control. These risks, both commercial and regulatory, are not insubstantial. Furthermore, Primary Power has already incurred development costs in the design of this project. Approval of the abandonment incentive will both attract financing to this project, and protect Primary Power from further losses if the project should be cancelled for reasons outside their control. However, in light of Primary Power's statement and our earlier discussion, we will grant the abandonment incentive conditioned on PJM including Grid Plus in RTEP as a baseline reliability or economic project.

124. Finally, the Commission will not at this time determine the justness and reasonableness of Primary Power's abandoned plant recovery, if any, until Primary Power seeks such recovery in a FPA section 205 filing. Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.<sup>113</sup>

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<sup>111</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

<sup>112</sup> *Id.* P 165-66.

<sup>113</sup> *Id.* P 165-66.

e. **ROE Adders**

i. **Proposal**

125. Primary Power explains that if Grid Plus' development moves forward, it will become a Participating Transmission Owner under PJM's Tariff and will turn over operational control of Grid Plus to PJM. Primary Power states that it would therefore be eligible for a 50 basis point ROE adder for participating in a transmission organization, in accordance with FPA section 219 and Order No. 679.

126. Primary Power notes that Order No. 679 indicates that the Commission will provide incentive rate treatment for transco formation.<sup>114</sup> Primary Power states that the Commission has frequently provided an incentive for transco formation in the form of a 100 basis point ROE adder. Primary Power explains that it is a stand-alone transmission company that will sell transmission service at wholesale, with no generation assets, no franchised service territory, and no retail customers. Primary Power also points out that its sole business is the development, financing, and construction of Grid Plus (and possibly future related transmission projects). Because its business structure is consistent with the Commission's definition of a transco, Primary Power asserts that it is eligible for a 100 basis point ROE adder.

127. Primary Power seeks an additional 150 basis point new transmission adder to its ROE to reflect the overall siting, permitting, regulatory, technical, and financing risks associated with Grid Plus.

128. Primary Power requests a 50 basis point adder for transmission organization participation, 100 basis point adder for transco formation, and 150 basis points for new transmission investment for a total of 300 basis points. However, Primary Power does not seek to apply the adders at this time. Instead, Primary Power states that it will seek to apply the adders to establish future returns, so long as the sum of the adders plus the baseline equity does not exceed the upper end of the zone of reasonableness.<sup>115</sup> In this proceeding, Primary Power requests that the Commission approve as just and reasonable, a stated ROE of 12.75 percent, and that Primary Power qualifies for the additional 300 basis point adders.<sup>116</sup> Primary Power states that this ROE is between 200 and 500 basis

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<sup>114</sup> In Order No. 679, the Commission defined a transco as a stand-alone transmission company that has been approved by the Commission and that sells transmission service at wholesale and/or on an unbundled retail basis. *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 201.

<sup>115</sup> Primary Power, Brozina testimony, Exh. GPL-1 at 19.

<sup>116</sup> Primary Power Petition at 41-42.

points less than the ROE justified by the discounted cash flow analysis and the ROE incentive rate adders for Grid Plus.<sup>117</sup>

**ii. Comments and Protests**

129. The Maryland Commission objects to Primary Power's proposal, stating that the addition of 300 basis points in ROE adders to the requested 12.75 percent ROE would result in a 15.75 percent ROE that substantially exceeds any reasonable incentive needed to build SVCs in PJM. Other parties raised general objections, such as claiming that Primary Power's proposal is premature or advocating a condition that Grid Plus be included in the PJM RTEP. Maryland Commission also raises specific objections to the requested incentives.

**iii. Commission Determination**

130. As stated above, the Commission is conditionally granting in part and denying in part Primary Power's requested incentives for Grid Plus. As discussed above, the approved incentives are conditioned on PJM including Grid Plus in the RTEP as a baseline reliability or economic project. Primary Power proposes a stated ROE of 12.75 percent to become effective 61-days after the date of the filing to accrue AFUDC and carrying charges on the regulatory asset. In Order No. 679-A, the Commission stated that it would consider granting an up-front ROE if the applicant demonstrates that such a determination is important for its investment decision.<sup>118</sup> Primary Power has failed to make such a demonstration. In addition, at this stage an upfront ROE is not necessary given that Primary Power is a merchant developer that does not have ratepayers to collect the rates from. Further, PJM has not determined whether Grid Plus should be included in the RTEP as a baseline reliability or economic project, and therefore we find that it does not serve administrative efficiency to set an up-front ROE now.<sup>119</sup> Therefore, the Commission declines Primary Power's request for an up-front ROE.

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<sup>117</sup> *Id.* at 63.

<sup>118</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 70. *See also New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 45 (2008).

<sup>119</sup> When Primary Power submits its FPA section 205 filing to establish its rates, including its proposed return on equity, it must use the Commission's established Discounted Cash Flow methodology similar to our recent direction in *Virginia Electric and Power Company*, 124 FERC ¶ 61,207 (2008). Primary Power should employ single-step Discounted Cash Flow analysis and justify all other assumptions and adjustments.

131. Primary Power has stated that it intends to turn over operational control of Grid Plus to PJM, and that it will become a Participating Transmission Owner. In Order No. 679-A, the Commission stated that we would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Transmission Organizations.<sup>120</sup> Therefore, provided that Grid Plus is included in the RTEP as discussed above, Primary Power takes all the necessary steps to turn over operational control of Grid Plus to PJM, and becomes a Participating Transmission Owner, the Commission grants Primary Power's requested 50 basis point adder for RTO participation.

132. Primary Power is correct that we have encouraged the formation of transcos, finding that their unique combination of a for-profit business model and a sole focus on developing transmission assets would help remedy the need for transmission investment. In this case, we find that Primary Power, as a stand-alone entity, the sole purpose of which is to develop Grid Plus, is a transco. Accordingly, the Commission grants the 100 basis point ROE incentive adder provided for transco formation in other rate incentive proceedings,<sup>121</sup> conditioned on PJM including Grid Plus in the RTEP, as discussed above.

133. Finally, with respect to Primary Power's request for an incentive ROE adder to reflect the overall siting, permitting, regulatory, technical, and financing risks associated with Grid Plus, the Commission finds that Primary Power has demonstrated that there is a nexus between such an adder and the investment made for several reasons discussed below. However, the Commission will reduce Primary Power's requested 150 basis point adder to 50 basis points, in consideration of the total package of incentives, as also discussed below.

134. In Order No. 679-A, the Commission found that the most compelling case for incentive ROEs are "new projects that present special risks or challenges, and not routine investments made in the ordinary course."<sup>122</sup> The Commission has previously found that technology-related risks are among the types of risks that may be relevant to such analysis, even where an applicant either has not sought or has not made a sufficient demonstration to receive a separate advanced technology incentive ROE adder.<sup>123</sup>

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<sup>120</sup> 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.

<sup>121</sup> *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at P 86; *International Transmission Co.*, 126 FERC ¶ 61,223 at P 93 (2009) (*ITC*).

<sup>122</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60.

<sup>123</sup> *See, e.g., PacifiCorp*, 125 FERC ¶ 61,076 at P 43, 51 (2008); *Tallgrass*

Similarly, although Primary Power does not seek a separate advanced technology incentive ROE adder, the Commission finds that the use of such technologies demonstrates the non-routine nature of Grid Plus and is additional support for granting a project-specific incentive.

135. Primary Power acknowledges that the proposed SVCs are proven technologies. Nevertheless, we find that Primary Power's use of such technologies in Grid Plus would use those existing technologies in an innovative fashion. Because the individual size of Grid Plus is similar to the Black Oak SVC, this finding is consistent with the Commission's determination in *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007) (*TrAILCo*). In addition, certain technologies used in Grid Plus, and the manner in which Grid Plus will be deployed, represent uses of advanced technologies not implemented in *TrAILCo*.

136. For example, the strategically located array of SVCs will employ wide-area fiber optic communications technologies, and microprocessor-based protection and control functions in order to enable optimal coordination of the operation of these SVCs for the benefit of the overall transmission system. This type of coordinated operation that makes use of advanced sensor, communication and control infrastructure should ultimately be consistent with any smart grid architecture that may arise in the PJM region.<sup>124</sup> In this regard, the Grid Plus facilities are designed to have an "open architecture," and adhere to relevant cybersecurity standards.

137. Grid Plus also represents optimized transmission line configurations by increasing west-to-east transmission capacity on PJM's systems. Grid Plus' combined implementation of a Flexible AC Transmission System device, permitting a continuous use of control systems to maintain system voltage stability using static devices (capacitors and inductors), wide-area fiber optic communications technology for regional control of the SVCs, modular equipment where possible to allow for common spare components to be compatible in all four SVC installations, and solid-state thyristor control devices in conjunction with microprocessor-based control systems, represent an innovative use of technologies.<sup>125</sup>

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*Transmission, LLC*, 125 FERC ¶ 61,248 at P 54-55, 59 (2008).

<sup>124</sup> It should be noted that Primary Power did not apply for incentives under the Smart Grid Policy Statement.

<sup>125</sup> We also note that Grid Plus reflects several of the technologies that are identified in section 1223 of EPLA 2005, which requires the Commission to "encourage, as appropriate" the deployment of advanced transmission technologies. The Commission has previously stated that the directive of section 1223 calls for the Commission to

(continued...)

138. The Commission agrees that these circumstances present special financial risks for Primary Power. The Commission finds that a project ROE incentive will assist Primary Power in managing the risks outlined above, and that these SVCs entail significant technological risks that are not attendant to routine transmission projects. Accordingly, in recognition of these circumstances as part of the bundle of siting, permitting, technical and financing risks and challenges faced by Grid Plus and in consideration of the proposed technologies, the Commission grants a 50 basis point ROE adder based on the non-routine nature of Grid Plus, conditioned on Grid Plus being approved in PJM's RTEP as discussed above. Incentive-based ROEs, like other incentives offered under Order No. 679, are to be filed with the Commission for approval in a section 205 filing before the rates reflecting such incentives can be charged.<sup>126</sup> Accordingly, our determination here is subject to Primary Power's overall ROE being within the zone of reasonable returns, to be determined when it makes its future FPA section 205 filing.

139. The Commission's holding addresses the Maryland Commission's general objection to Primary Power's request for 300 basis points in ROE adders and a stated 12.75 percent ROE. Other parties' general objections, such as claiming that Primary Power's proposal is premature or requiring Grid Plus to be included in the PJM RTEP, have also been addressed elsewhere. The Maryland Commission's specific objections to the requested incentives are addressed in turn in the discussion of those proposals.

**f. Hypothetical Capital Structure**

**i. Primary Power's Proposal**

140. Finally, Primary Power requests authorization to use a hypothetical capital structure of 40 percent debt and 60 percent equity during the development and construction of Grid Plus. Primary Power explains that a nexus exists between the hypothetical capital structure and Grid Plus because the actual capital structure will fluctuate considerably during construction due to the timing of borrowings and new equity infusions, and Primary Power will need this capital structure in order to manage risks associated with financing the project.

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exercise discretion in identifying where and how it is appropriate to incentivize technologies that satisfy the standard set forth in that section. The Commission has also explained that "[i]n fulfilling that responsibility, the Commission recognized in Order No. 679 that advanced technologies will continually evolve." *NSTAR Elec. Co.*, 127 FERC ¶ 61,052 at P 27 (2009).

<sup>126</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

**ii. Commission Determination**

141. If Grid Plus is included in the PJM RTEP as a baseline reliability or economic project as discussed above, the Commission authorizes Primary Power use of a hypothetical capital structure of 40 percent debt and 60 percent equity until such time that Grid Plus is placed in service.

142. The Commission concludes that Primary Power has demonstrated a nexus between the requested incentive and the risks and challenges faced by Grid Plus. Specifically, Primary Power is a stand-alone start-up company that lacks an actual capital structure, and will receive no revenues beyond those received from the operation of Grid Plus. Given the estimated cost of Grid Plus, Primary Power will need to raise significant levels of new debt and equity capital. This hypothetical capital structure of 40 percent debt and 60 percent equity is consistent with the capital structure granted for similar stand-alone start-up companies.<sup>127</sup> Approval of the hypothetical capital structure will allow Primary Power flexibility in financing Grid Plus and allow for prevailing market and regulatory conditions, which should lower the overall cost of capital.<sup>128</sup>

**g. Total Package of Incentives**

143. The Commission has stated that in evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between any incentives, and how any requested incentives address the demonstrable risks and challenges faced by the applicant in constructing the project.<sup>129</sup>

**i. Proposal**

144. Primary Power states that the package of incentives requested is tailored to address the specific risks of Grid Plus, explaining that it has no other assets or business that could

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<sup>127</sup> *Green Power Express*, 127 FERC ¶ 61,031 (2009).

<sup>128</sup> *See, e.g., Potomac-Appalachian Transmission Highline*, 122 FERC ¶ 61,188, at P 55 (2008). *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”).

<sup>129</sup> 18 C.F.R. § 35.35(d); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 (“[T]he incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.”).

support debt financing, and therefore the package of incentives, including the requested stated ROE of 12.75 percent plus the ROE incentive adders totaling 300 basis points, are needed to address the risks and challenges faced by Primary Power and assist Primary Power in raising capital for the development of Grid Plus. Primary Power states that the regulatory asset treatment is necessary to ensure that development expenses are recovered and not simply lost and unrecoverable because Primary Power does not currently have a rate base. Primary Power argues that the abandonment incentive addresses the risk that the project might be cancelled for circumstances outside Primary Power's control. Primary Power states that it needs the hypothetical capital structure incentive in order to establish stability, certainty, predictability, for raising capital during the period prior to the commercial operation of Grid Plus. Primary Power states that because the hypothetical capital structure reflects a targeted capital structure, its role is to provide simplicity and transparency for investors during the pre-commercial phase of the project.

**ii. Protests**

145. The Maryland Commission does not oppose the 100 basis point ROE for Transco status or the 50 basis point ROE for RTO participation. However, the Maryland Commission states that Primary Power has not demonstrated a sufficient nexus for the combined 300 basis point ROE adders on top of a base ROE of 12.75 percent for an unprecedented 15.75 percent overall ROE, in consideration of the total package of incentives. Similarly, the Maryland Commission states that the abandonment incentive is not justified, particularly in combination with an overall ROE of 15.75 percent. The Maryland Commission does not support the recovery of abandonment costs, but if the Commission grants the incentive, the Maryland Commission states that there is less reason to award additional incentive ROE adders. The Maryland Commission requests an evidentiary hearing to determine what additional incentive rate treatment is warranted for this project, beyond the 100 basis point transco adder and the 50 basis-point RTO participation adder.

146. The Maryland Commission states that Grid Plus does not face substantial risks and challenges because (1) it is a routine project; (2) the total investment is small at \$200 million; (3) no rights of way are required; (4) the lead times are short; (5) the SVCs do not require extensive permits from multiple jurisdictions; (6) Primary Power has already acquired control of the property required for the proposed facilities; (7) there does not appear to be any significant new, risky, or untested technology involved in Grid Plus; and (8) as a transco, Primary Power does not face the competition for internal funding that has been cited in other cases as a risk.<sup>130</sup>

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<sup>130</sup> Maryland Commission Comments at 2-12.

147. Additionally, the Maryland Commission states that Primary Power should address the possibility of obtaining Smart Grid funding from the Department of Energy, how such funding affects the costs and risks associated with Smart Grid investments, and how such funding will be reflected in Primary Power's cost-of-service formula rates.

148. The Maryland Commission requests that the Commission set the incentive package for settlement and hearing proceedings to thoroughly examine the incentive package proposed by Primary Power for Grid Plus. The Maryland Commission notes that the Commission should carefully analyze Grid Plus under the nexus test to ensure that Primary Power is entitled to the package of incentives sought. Overall, the Maryland Commission contends that Primary Power has not provided a sufficient basis to support a reasoned determination that the 150 basis point incentive ROE adder for Grid Plus is appropriate because of difficulties involved in the construction, technologies used, or regional benefits. The Maryland Commission asserts that Primary Power's special risks as a stand-alone transmission company are addressed by the transco adder and the Commission should either direct an evidentiary hearing or establish settlement judge procedures.

### **iii. Answers**

149. In response to the Maryland Public Service Commission's challenges that Grid Plus is a routine project and there is no nexus for several of the incentives, Primary Power reiterates the scope, effects, risks and challenges it articulated in its application. Primary Power reiterates that the Commission should grant its request without hearing for the stated ROE of 12.75 percent, with a 300 basis point incentive ROE adder to be available at a later date, should Primary Power file another rate case in the future.<sup>131</sup>

150. Primary Power answers that the RTEP process is very dynamic, thus an approved project can later be cancelled as part of the RTEP process. Primary Power argues that this risk is entirely outside their control. Under Commission precedent, Primary Power states that abandonment incentives have been approved when project cancellations were outside the power of the applicant. As stated elsewhere, Primary Power is willing to condition its incentives on Grid Plus' acceptance to the RTEP process, and the abandonment incentive is no different.

### **iv. Commission Determination**

151. As stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This test is fact-specific and requires the Commission to review each application on a case-by-case basis.

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<sup>131</sup> Primary Power Dec. 28, 2009 Answer at 27-28.

Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.<sup>132</sup>

152. Order No. 679-A provides that if some of the incentives in the total package reduce the risk of the project, that fact will be taken into account in any request for an enhanced ROE. Given that Grid Plus makes use of several advanced technologies, Grid Plus faces significant financial risk and regulatory challenges, and Primary Power's status as an independent developer of transmission, the Commission grants 100 basis points for Transco formation, 50 basis points for participating in a RTO, and 50 basis points as a ROE incentive adder for Grid Plus, (totaling 200 basis points). The overall ROE will be bound by the upper end of the zone of reasonableness to be determined when Primary Power makes its future FPA section 205 filing and conditioned on Grid Plus' approval in the RTEP as discussed above. The ROE adders will facilitate Primary Power's ability to raise capital. The abandonment incentive will encourage transmission development by reducing the risks of non-recovery of prudently-incurred costs associated with abandoned transmission projects if such abandonment is outside management's control. The regulatory asset incentive will allow for deferred recovery of the pre-commercial expenses and provide Primary Power with up front regulatory certainty, rate stability, and improved cash flow, thereby easing pressures on its finances caused by transmission development activities.

153. The Commission finds that the total package of incentives as modified and as conditioned, is tailored to address the demonstrable risks and challenges faced by Primary Power in developing Grid Plus. Primary Power has convinced us that it faces significant risks and challenges in developing and constructing Grid Plus.

154. As discussed and conditioned above, the Commission authorizes incentives for Primary Power's proposed project under section 219 of the FPA and Order No. 679. Our decision therefore is confined to the particular incentives being approved in the instant proceeding and does not constitute approval of any particular rate.

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<sup>132</sup> See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 89 (finding that 100 percent CWIP, deferred recovery of pre-construction costs, abandonment recovery, and ROE incentives were tailored to the unique challenges faced by the project); *ITC*, 126 FERC ¶ 61,223 at P 61 (finding that applicant demonstrated a sufficient nexus between the risks of the project and the requested incentives, which included abandoned plant recovery, 100 percent of CWIP, deferred recovery of pre-construction costs, and ROE incentives).

155. Finally, the justness and reasonableness of any such rate will be determined through a future FPA section 205 proceeding.<sup>133</sup> The Commission finds that an evidentiary hearing is not warranted to determine the level of the ROE adders in light of the other non-ROE incentives granted to Primary Power,<sup>134</sup> because there are no material facts in dispute that cannot be resolved on the basis of written submissions in the record.<sup>135</sup> Further, “mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support them.”<sup>136</sup> The Maryland Commission’s comments do not raise issues of material fact that warrant setting any issue for hearing.

The Commission orders:

(A) Primary Power’s Petition for Declaratory Order is granted in part and denied in part, as discussed in the body of this order.

(B) Primary Power’s non-conforming ISA provisions are rejected.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>133</sup> See, e.g., *American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 26-28 (2006).

<sup>134</sup> This determination is without prejudice to any future challenges on an appropriate base ROE (exclusive of incentive adders) or zone of reasonableness to be determined in Primary Power’s future section 205 filing.

<sup>135</sup> *Consumers Power Co.*, 58 FERC ¶ 61,323, at 62,045, *order on clarification*, 59 FERC ¶ 61,276 (1992), *citing Southern California Edison Co.*, 27 FERC ¶ 61,105, at 61,199 (1984); *Municipal Light Boards of Reading and Wakefield v. Federal Power Commission*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972); *Cerro Wire and Cable Company v. FERC*, 677 F.2d 124, 135 (D.C. Cir. 1982).

<sup>136</sup> *Cerro Wire*, 677 F.2d at 129.

Allegheny Power, Trans-Allegheny Interstate Line Co. (TRAIL) (collectively, Allegheny)+\*

American Electric Power Service Corp. on behalf of certain affiliated operating companies, Appalachian Power Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co. and Wheeling Power Co. (AEP)+

American Municipal Power, Inc. (AMP)\*

Baltimore Gas and Electric Co. (BGE)+

Constellation Energy Commodities Group, Inc.; Constellation Power Source Generation, Inc.; and Constellation NewEnergy, Inc. (Constellation)

Duquesne Light Co. (Duquesne)+

Exelon Corp. (Exelon)+

FirstEnergy Companies: Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.+

H-P Energy Resources LLC (HP Energy)

LS Power Transmission, LLC (LS Power)\*

NextEra Energy Generators: FPL Energy Marcus Hook, L.P.; North Jersey Energy Associates, L.P.; Doswell Limited Partnership; Backbone Mountain Windpower LLC; Mill Run Windpower LLC; Somerset Windpower LLC; Meyersdale Windpower LLC; Waymart Wind Farm, LP; and Pennsylvania Windfarms, Inc.

NRG Companies: NRG Power Marketing LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, and Vienna Power LLC

Old Dominion Electric Coop. (ODEC)+\*

PHI Companies: Pepco Holdings, Inc. and Potomac Electric Power Co., Delmarva Power & Light Co., and Atlantic City Electric Co.+

PJM Interconnection, L.L.C. (PJM)\*

PJM Power Providers Group (PJM Power Providers)\*

PJM Transmission Owner Group (PJM Transmission Owners)\*+

PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; and Lower Mount Bethel Energy, LLC (PPL)+\*

Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, and PSEG Power LLC (PSEG)+

Public Service Commission of Maryland (Maryland Commission)\*

Virginia Electric and Power Co. (VEPCO)+

\* Intervenors submitting comments or protests.

+ These intervenors participated in the PJM Transmission Owners protest. PPL and ODEC filed separate pleadings on their own behalf.