

137 FERC ¶ 61,010
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Service Electric and Gas Company

Docket No. ER10-159-001

ORDER ADDRESSING STATUS OF PROJECT
AND DISMISSING AS MOOT THE REQUEST FOR REHEARING

(Issued October 4, 2011)

1. This order addresses the New Jersey Department of Public Advocate, Division of Rate Counsel's (NJ Rate Counsel) request for rehearing of the Commission's order issued in this proceeding on December 30, 2009, which was filed prior to the removal of the original Branchburg-Roseland-Hudson 500 kV line (Branchburg Project) from the PJM Interconnection, L.L.C. (PJM) regional transmission expansion plan (RTEP) and the substitution of another project.¹ The December 30 Order granted PSE&G a package of incentives, pursuant to Order No. 679,² for the construction of the 50-70 mile original Branchburg Project. The incentives included: (1) a 125 basis-point return on equity (ROE) adder for the Branchburg Project (representing a 25-point reduction from PSE&G's requested 150 basis-point adder); (2) recovery of 100 percent of construction work in progress (CWIP) in rate base; and (3) authorization to recover all prudently-incurred costs if the Branchburg Project is abandoned or canceled for reasons beyond PSE&G's control. The Commission also granted PSE&G's requested authority to assign its rate incentive authorizations to an affiliate.

2. For the reasons discussed below, we find that the incentives granted to the original Branchburg Project in the December 30 Order pursuant to Order No. 679 are not

¹ *Public Service Electric and Gas Company*, 129 FERC ¶ 61,300 (2009) (December 30 Order).

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

transferable to the substitute project. Similarly, under the circumstances presented here, we find that the only still-effective incentive granted in the December 30 Order is the opportunity for PSE&G to seek recovery of prudently-incurred abandonment costs in a separate section 205 filing. Based on the above findings, we find the NJ Rate Counsel's request for rehearing of the December 30 Order is moot.

I. Background

3. On July 7, 2008, PSE&G filed revised tariff sheets to the PJM Open Access Transmission Tariff (OATT) requesting authorization to substitute formula rates for its stated rates. On September 30, 2008, the Commission approved the requested formula rate to be effective October 8, 2008. The approved formula rate incorporates a base ROE of 11.18 percent plus 50 basis points for continued membership in PJM, for a total ROE of 11.68 percent.³

4. On October 30, 2009, pursuant to sections 205 and 219 of the Federal Power Act (FPA)⁴ and Order No. 679, PSE&G submitted revised tariff sheets to PJM's OATT requesting transmission incentives for the Branchburg Project. The original Branchburg Project was a 500 kV PJM RTEP-approved backbone transmission line that would traverse 50-70 miles of heavily-populated and environmentally-sensitive areas in New Jersey.⁵ PSE&G estimated that the Branchburg Project would cost \$1.1 billion and be in-service by the summer of 2013.⁶ PSE&G requested the following incentives: (1) a 150 basis-point ROE adder to PSE&G's existing ROE of 11.68 percent, which would result in an overall ROE of 13.18 percent; (2) recovery of 100 percent of CWIP in rate base; and (3) authorization to recover all prudently-incurred costs if the Branchburg Project were abandoned or canceled for reasons beyond PSE&G's control. PSE&G also sought authority to assign its rate incentive authorizations to an affiliate, if PSE&G so chooses.

5. In the December 30 Order, the Commission found that the original Branchburg Project qualified for Order No. 679's rebuttable presumption⁷ by virtue of it being

³ *Public Service Electric and Gas Company*, 124 FERC ¶ 61,303 (2008).

⁴ 16 U.S.C. §§ 824d, 824s (2006).

⁵ December 30 Order, 129 FERC ¶ 61,300 at P 4.

⁶ *Id.*

⁷ Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks an

(continued...)

included in the 2008 PJM RTEP, a regional planning process that the Commission has found to be fair and open for purposes of satisfying Order No. 679.⁸ The Commission also found that, as demonstrated by being a RTEP baseline project, the Branchburg Project would be regional in nature and would mitigate congestion or ensure PJM's ability to continue to serve load reliably.⁹ The Commission further found that the Branchburg Project was designed to address more than 20 thermal and reactive reliability criteria violations in northern New Jersey that were anticipated to take place between 2013 and 2023 and would provide significant region-wide benefits, including import capability and improved reliability in New Jersey, New York and Pennsylvania.¹⁰

6. The Commission found the scope of the original Branchburg Project to be significant, with an estimated cost of approximately \$1.1 billion and requiring an average annual investment more than four times PSE&G's historical average annual transmission investment.¹¹ The Commission also found the effects of the project to be beneficial, eliminating reliability violations in New Jersey and addressing reliability issues caused by increasing loads, retirement of generation, and transmission capacity limitations.¹² Further, the Commission found the financial and regulatory risks of the project to be significant, increasing PSE&G's debt and requiring approval to traverse waterways, wetlands and densely populated areas.¹³ Nevertheless, because PSE&G's overall risk

incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. 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.

⁸ See *Baltimore Gas & Electric Co.*, 127 FERC ¶ 61,201, at P 24 (2009) (*BG&E/MAPP Order*).

⁹ December 30 Order, 129 FERC ¶ 61,300 at P 22.

¹⁰ *Id.* P 22.

¹¹ *Id.* P 32.

¹² *Id.* P 33.

¹³ *Id.* P 34.

would be reduced by granting the CWIP and abandonment incentives, the Commission granted a 125 basis-point ROE adder rather than the requested 150 basis-point adder.¹⁴

II. Rehearing Request

7. On January 28, 2010, the NJ Rate Counsel filed a request for rehearing of the December 30 Order. The NJ Rate Counsel argues that if the Branchburg Project receives the abandonment incentive, then an ROE adder for the project is not necessary. The NJ Rate Counsel also argues that the Commission failed to consider other available and more targeted ratemaking treatments in determining the appropriate ROE and thereby acted arbitrarily and contrary to its own regulation, policy and prior incentive pricing orders. Specifically, the NJ Rate Counsel contends that the December 30 Order failed to examine: (1) the total package of incentives sought by the applicant; (2) the inter-relationship between the incentives; (3) how the requested incentives address the risks and challenges faced by the project, as required by Order No. 679-A; and (4) whether and to what degree the transmission owners' generation affiliates benefit from the project. The NJ Rate Counsel asserts that, while Order No. 679 recognizes that formula rates are an incentive to transmission investment,¹⁵ the Commission failed to discuss the interplay between PSE&G's formula rate and the other incentives awarded to PSE&G, and, more pointedly, why the 125-basis point ROE adder was necessary given PSE&G's formula rate and abandonment and CWIP incentives. The NJ Rate Counsel recognizes that granting the entire package of incentives will attract more investors for PSE&G, but the NJ Rate Counsel claims that the Commission has never before articulated "investor satisfaction" alone as a basis for awarding ROE adders.¹⁶

8. The NJ Rate Counsel further argues that this case raises material issues concerning the actual risks and challenges posed by the original Branchburg Project which are most appropriately resolved at a trial-type evidentiary hearing. These issues, according to the NJ Rate Counsel, include whether the Branchburg Project would indeed pass through a wildlife refuge, the extent to which existing rights-of-way would be used, and whether advanced technology would actually be utilized. The NJ Rate Counsel further asserts that the proxy group cash flow model and the economic benefits of the original Branchburg Project should be assessed at hearing.

¹⁴ *Id.* P 36.

¹⁵ NJ Rate Counsel Rehearing Request at 5 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 383).

¹⁶ *Id.*

9. Finally, the NJ Rate Counsel maintains that the Commission should adopt standards to guide its determination as to whether a project is routine and whether there is a sufficient nexus between the project and each incentive granted.¹⁷ The NJ Rate Counsel argues that a standardized method of review is necessary to add consistency to transmission incentive awards, ensure incentive rate orders are supported by reasoned analysis based upon the record, and disclose how a project was rated for each factor and specify which factors persuaded the Commission to award a particular incentive ROE. The NJ Rate Counsel further asserts that, in applying the nexus test, the Commission should consider the public benefits of a project in its calculation of the appropriate incentive treatment, as well as the private benefits of a project that will inure to the transmission owner's generation affiliates. The NJ Rate Counsel contends that, without a standardized approach to granting incentives, transmission owners have been encouraged to seek more incentives than appropriate since they compete for funding with other transmission owners that have been awarded generous incentive treatment.

10. On February 8, 2010, PSE&G filed an answer to NJ Rate Counsel's rehearing request. NJ Rate Counsel filed a response on February 19, 2010, and PSE&G filed another answer on February 23, 2010.

III. Supplemental Information on Branchburg Project

11. On November 9, 2010, PSE&G submitted a letter (November 9 Letter) in Docket No. ER10-159-000 informing the Commission that, on October 13, 2010, PJM announced that the original Branchburg Project had been eliminated from the PJM RTEP and that PJM had proposed another project.¹⁸ The substitute project, which PSE&G describes as a "reconfiguration" of the original Branchburg Project, will: (1) consist of 75 miles of 230 kV transmission lines and related upgrades to existing facilities; (2) convert existing 138 kV circuits between Roseland and Hudson County, New Jersey into 230 kV operation; (3) expand the existing Bergen 230 kV substation; and (4) reconfigure the Athenia 230 kV substation. The substitute project will include the construction of two 230 kV underground cables, one between Bergen and Athenia, New Jersey, and the other between Hudson County and South Waterfront, New Jersey. According to the November 9 Letter, the estimated cost of the substitute project is \$700 million and the estimated in-service date is June 2015.

¹⁷ *Id.* at 6-7 (citing *American Electric Power Corp.*, 118 FERC ¶ 61,041 (2007) (Commissioner Kelly's dissent)).

¹⁸ PSE&G November 9 Letter at 1.

12. On November 23, 2010, the New Jersey Board of Public Utilities (New Jersey Commission) filed a protest. It contends that the transmission incentive rates approved by the Commission for the original Branchburg Project cannot be transferred to the substitute project outlined in PSE&G's November 9 Letter.

13. On November 24, 2010, the NJ Rate Counsel filed a motion for summary dismissal of PSE&G's request for incentive rate treatment. Contending that the transmission incentive rates approved by the Commission for the Branchburg Project cannot be transferred to the substitute project, the NJ Rate Counsel requests that the proceeding be terminated.

14. On December 6, 2010, PSE&G filed an answer to the New Jersey Commission's protest and the NJ Rate Counsel motion for summary dismissal. PSE&G contends that Commission precedent on reconfigured projects does not obligate PSE&G to seek new approval of the incentives rate treatment granted to the original Branchburg Project.¹⁹ Further, PSE&G maintains that the appropriate procedure for objecting to incentives approved by the Commission in an FPA section 205 filing is to make an FPA section 206 complaint.

15. On December 17, 2010, the NJ Rate Counsel filed a response to PSE&G's December 6, 2010 Answer. It contends that the substitute project bears no resemblance to the Branchburg Project and thus PSE&G bears the section 205 burden to request incentives for the substitute project.

16. On January 3, 2011, PSE&G filed an answer to the NJ Rate Counsel's December 17, 2010 Answer. PSE&G contends that the Commission should deny the motion for summary dismissal and confirm that where incentive rate provisions have been submitted and accepted for filing under section 205 of the FPA, the only permissible challenge to such incentives is through a complaint filed pursuant to section 206 of the FPA.

17. On January 14, 2011, the NJ Rate Counsel filed an answer to PSE&G's January 3, 2011 Answer. The NJ Rate Counsel notes that the substitute project does not constitute a determination by the Commission that an applicant for rate incentives has met its burden to demonstrate that there is a sufficient nexus between the incentive sought and the specific investment being made.

¹⁹ See *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 21 (2009) (*Pioneer*).

IV. Procedural Matters

18. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011), prohibits an answer to a request for rehearing. Accordingly, we will reject PSE&G's February 8, 2010 and also the NJ Rate Counsel's February 19, 2010 and PSE&G's February 23, 2010 Answers. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the NJ Rate Counsel's December 17, 2010 Answer, PSE&G's January 3, 2011 Answer and the NJ Rate Counsel's January 14, 2011 Answer.

19. We accept PSE&G's November 9 Letter. Also, Rule 213(a)(2) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept PSE&G's December 6, 2010 Answer to New Jersey Commission's November 23, 2010 Protest because it has provided information that has assisted us in our decision-making process.

20. We deny the NJ Rate Counsel's November 24, 2010 Motion for Summary Dismissal as the issues raised in the motion are addressed below in the discussion on the project status.

V. Substantive Matters

A. Status of the Branchburg Project

21. Prior to addressing the request on rehearing, the Commission will address the status of the original Branchburg Project. As previously noted, PSE&G advised the Commission via its November 9 Letter that the original Branchburg Project has been removed from PJM's RTEP, and that a substitute project had been proposed. PSE&G contends that the incentives granted in the December 30 Order are equally applicable to that substitute project. The NJ Rate Counsel, however, filed an answer to that letter challenging whether the incentives granted to the original Branchburg Project should now be applied to the substitute project. As discussed below, based on the filings, we conclude that, for PSE&G to be entitled to incentives for the substitute project, it must submit a new request for incentives.

22. In the November 9 Letter, PSE&G states,

Under the reconfiguration, the connection between Branchburg, New Jersey and Roseland, New Jersey has been eliminated, the Project will consist entirely of 230 kV circuits, and additional underground cables have been proposed in northeastern New Jersey. As reconfigured, the Project will consist of seventy-five miles of 230 kV transmission lines and

related upgrades to existing facilities. The Project will convert existing 138 kV circuits between Roseland and Hudson County, New Jersey into 230 kV operation, expand the existing Bergen 230 kV substation, and reconfigure the Athenia 230 kV underground cables. The first underground cable will be constructed between Hudson County, New Jersey and South Waterfront, New Jersey. The estimated cost of the reconfigured Project announced by PJM is \$700 million.^[20]

23. We note that the PJM 2010 RTEP²¹ characterizes the changed circumstances of the original Branchburg Project as follows,

First approved for RTEP inclusion in 2008, the Branchburg-Roseland-Hudson (B-R-H) 500 kV transmission line solved a number of violations identified that year. However, while 2010 baseline analysis continued to identify criteria violations, these violations were fewer and less severe than previously identified. As a result, a 230 kV alternative solution has been approved by the PJM Board to *replace* the B-R-H 500 kV transmission line in PJM's RTEP. (Emphasis added.)

24. Based on the November 9 Letter as well as PJM's description of the substitute project as a "replacement" for the Branchburg Project, we conclude that what PSE&G describes as a "reconfiguration" constitutes a significant modification from the original Branchburg Project which we considered in the December 30 Order. This project has: (1) changed from a 500 kV project to a 230 kV project; (2) will convert existing 138 kV circuits between Roseland and Hudson County, New Jersey into 230 kV operation; (3) will expand the existing Bergen 230 kV substation; (4) will reconfigure the Athenia 230 kV substation; and (5) will include the construction of two 230 kV underground cables. The estimated cost of the substitute project is \$700 million, compared to the cost of the original Branchburg Project of \$1.1 billion. In addition, PJM has "removed" the

²⁰ November 9 Letter at 1-2.

²¹ See PJM 2010 Regional Transmission Expansion Plan (February 28, 2011) at <http://pjm.com/documents/reports/~media/documents/reports/2010-rtep/2010-section7.ashx> at 161 ; see also Transmission Expansion Advisory Committee presentation (September 8, 2010) at <http://www.pjm.com/~media/committees-groups/committees/teac/20100908/20100908-reliability-analysis-update.ashx> at 161.

original Branchburg Project from the RTEP and “replaced” it with the aforementioned substitute project. Thus, the project which was described in PSE&G’s October 30, 2009 Filing, and which we addressed in our December 30 Order, has ceased to exist.²²

25. While *Pioneer* concluded that, to the extent an entity believes that a project has been modified in a manner that renders the basis for the transmission incentives granted to be invalid, that entity may file a complaint under section 206 of the FPA,²³ we see no reason, given the filings already made, to require a formal section 206 filing by the NJ Rate Counsel. The pleadings here are sufficient for us to make the determination that the Branchburg Project no longer exists and that, for incentives to be granted to the substitute project, given the significant differences between them, a new application for incentives is necessary. Specifically, in addition to satisfying the eligibility requirement of section 219 of the Federal Power Act, under Order No. 679 an applicant for incentives must demonstrate that there is a nexus between the incentive sought and the investment being made. The nexus test is fact-specific and requires the Commission to review each application for incentives on a case-by-case basis.²⁴ Consequently, given the significant differences between the original Branchburg Project and the substitute project, if PSE&G seeks recovery of transmission rate incentives pursuant to Order No. 679 for the substitute project, it must submit a new filing that demonstrates a nexus between the redesigned project and the requested incentives and that satisfies the other requirements of Order No. 679.²⁵ The “total package of incentives should be tailored to address the demonstrable risks or challenges”²⁶ of the specific proposed project. The incentives granted in the December 30 Order were fashioned to address the original Branchburg Project. We cannot assume that, given the significant differences between the original Branchburg Project and the substitute project, we would necessarily reach the same

²² *Central Maine Power Company and Maine Public Service Company*, 129 FERC ¶ 61,153, at P 15 (2009) (*Central Maine*).

²³ *Pioneer*, 130 FERC ¶ 61,044 at P 21.

²⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 24; *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 47, *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *order denying reh’g*, 122 FERC ¶ 61,034, *order denying rehearing*, 123 FERC ¶ 61,262 (2008).

²⁵ *Central Maine*, 129 FERC ¶ 61,153 at P 16.

²⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062, at P 21 (2007).

result; any incentives for the substitute project would have to be “tailored” to the demonstrable risks or challenges associated with that project.

26. This finding that the incentives granted to PSE&G in the December 30 Order are not transferable to the substitute project does not resolve whether any of those incentives remain applicable to the Branchburg Project. On that issue, we find that except for the opportunity to recover prudently-incurred abandonment costs of the Branchburg Project, which would require a separate section 205 filing,²⁷ the transmission rate incentives granted in the December 30 Order are no longer applicable because the original Branchburg Project has ceased to exist. We note that the original Branchburg Project is not being held in abeyance but, rather, as discussed above, has been replaced by a substitute project. Further, based on PSE&G’s October 15, 2010 Annual Update, we note that there are no CWIP costs for the Branchburg Project being collected through PSE&G’s forward-looking formula rates.²⁸

B. Rehearing Request

27. As noted above, the NJ Rate Counsel does not object to the incentive granted in the December 30 Order with respect to the opportunity to recover prudently incurred abandonment costs. Rather, the NJ Rate Counsel’s objections presented in its request for rehearing relate to the incentive ROE adder granted in the December 30 Order and the relationship between that incentive and other incentives and PSE&G’s formula rate. Based on the above finding that the abandonment incentive is the only incentive applicable to the original Branchburg Project, we find the NJ Rate Counsel’s request for rehearing of the December 30 Order is moot.

²⁷ See *Central Maine*, 129 FERC ¶ 61,153 at P 20 (“[T]he Maine Companies may submit a section 205 filing seeking to recover prudently incurred, abandonment-related costs associated with the Project.”).

²⁸ See PSE&G 2011 Formula Rate Annual Update, Attachment 6-A (Project Specific Estimate and Reconciliation Worksheet – December 31, 2011), in Docket No. ER09-1257-000.

The Commission orders:

The NJ Rate Counsel's request for rehearing is hereby dismissed as moot, as discussed in the body of the order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.