137 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.
Public Service Electric and Gas Company

Docket No. ER12-296-000

ORDER ON REQUEST FOR INCENTIVE RATE TREATMENT

(Issued December 30, 2011)

1. On October 31, 2011, PJM Interconnection, L.L.C. (PJM) filed, on behalf of Public Service Electric and Gas Company (PSE&G), revised tariff provisions to PJM's open-access transmission tariff (OATT) to implement incentive rate treatment, pursuant to sections 205 and 219 of the Federal Power Act (FPA)[1] and Order No. 679,[2] for the Northeast Grid Reliability Project (NGR Project or Project). PSE&G requests that the revised tariff provisions become effective January 1, 2012. We grant in part, and deny in part, PSE&G's request for incentives, as discussed below.

I. **Background**

2. PSE&G, a wholly owned subsidiary of Public Service Enterprise Group Incorporated, is a regulated gas and electric transmission and delivery company with a Commission-approved formula rate.[3] PSE&G is a transmission-owning member of PJM, a regional transmission organization (RTO). PJM administers a regional OATT that governs transmission service over the facilities of each of the PJM transmission owners, including PSE&G.

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[1] 16 U.S.C. §§ 824d, 824s (2006).

[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).

[3] *Pub. Serv. Elec. and Gas Co.*, 124 FERC ¶ 61,303 (2008).

3. PSE&G states that the NGR Project had its genesis in the Branchburg-Roseland-Hudson Project (BRH Project). PSE&G states that PJM approved the BRH Project in its 2008 Regional Transmission Expansion Plan (RTEP) to address reliability criteria violations in northern New Jersey. On December 30, 2009, the Commission granted PSE&G's request for incentives in connection with the BRH Project.[4]

4. PSE&G states that in PJM's 2010 baseline analysis, PJM continued to identify reliability criteria violations in northern New Jersey. PSE&G notes that PJM stated in the 2010 RTEP that the identified violations were fewer and less severe than in previous RTEP analyses. Therefore, PSE&G states, as part of the 2010 RTEP, PJM developed and substituted an alternative to the BRH Project, i.e., the NGR Project.

5. On October 4, 2011, in an order on rehearing of the BRH Incentives Order, the Commission found that the incentives granted to PSE&G for the BRH Project were no longer applicable, except for the abandonment incentive, and that the previously granted incentives were not transferrable to the substitute project, i.e., the NGR Project.[5]

II. Application

A. Description of the Project

6. PSE&G states that, as part of the 2010 PJM RTEP, PJM developed the NGR Project as an alternative to the BRH Project to resolve identified reliability violations in the constrained PSE&G North zone.[6] According to PSE&G, in the 2010 RTEP, PJM laid

[4] *Pub. Serv. Elec. and Gas Co.*, 129 FERC ¶ 61,300 (2009). The Commission granted PSE&G's request for 100 percent Construction Work in Progress (CWIP) in rate base, authorization to recover all prudently-incurred costs if the BRH Project is abandoned or cancelled for reasons beyond PSE&G's control, and a return on equity (ROE) adder of 125 basis points. The Commission also granted PSE&G's requested authority to assign its rate incentive authorizations to an affiliate. (BRH Incentives Order).

[5] *Pub. Serv. Elec. and Gas Co.*, 137 FERC ¶ 61,010, at P 21 (2011) ("We conclude that, for PSE&G to be entitled to incentives for the substitute project, it must submit a new request for incentives.").

[6] PSE&G October 31, 2011 Application at 16.

out the basic elements of the NGR Project as Baseline Upgrade b1304 as a coherent effort to resolve a specific set of constraints in the PSE&G North Constrained Zone.[7]

7. PSE&G states that, in total, the NGR Project will involve the construction of approximately 25 miles of 230 kV overhead circuits and 15 to 18 miles of 230 kV underground circuits. PSE&G expects that the NGR Project will cost $895 million and states that the Project is scheduled to be fully operational by June 2015. PSE&G states that the NGR Project involves the conversion of four 138 kV overhead circuits to 230 kV, the reconfiguration of the Athenia 230 kV station to a double breaker-double bus design, the expansion of the Roseland and Saddle Brook 230 kV stations using gas insulated switchgear (GIS) equipment, the construction of two new breaker-and-a-half bays and replacement of two transformers at the Hudson 230 kV station, the rebuild and upgrade of the Bergen 230 kV station to breaker-and-a-half using GIS, construction of a new 230 kV underground circuit between the Hudson and South Waterfront stations, and the construction of a new 230 kV underground circuit between the Athenia and Bergen stations connecting through the Saddle Brook station.

B. Requested Incentives

8. PSE&G requests that the Commission approve the following rates and incentives pursuant to FPA section 219 and Order No. 679, and its general rate authority pursuant to FPA section 205: a 100 basis point ROE incentive adder, recovery of 100 percent of CWIP in rate base, and authorization to recover 100 percent of all prudently-incurred development and construction costs if the NGR Project is canceled, in whole or in part, for reasons beyond PSE&G's control (abandonment incentive). In addition, PSE&G requests authority to assign the incentives granted in this docket to an affiliate, if construction and/or ownership of the NGR Project is assigned to such affiliate. PSE&G states that the requested package of transmission rate incentives is tailored to the specific risks and challenges that PSE&G faces in financing and constructing the NGR Project.

III. Notice of Filing and Responsive Pleadings

9. Notice of the filings was published in the *Federal Register*, 76 Fed. Reg. 69252 (2011), with protests and interventions due on or before November 21, 2011.

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[7] PSE&G October 31, 2011 Application at 16 (citing PSE&G October 31, 2011 Application, Ex. PEG-1). PSE&G explains that increases to the scope of the NGR Project based on further review of the design parameters were approved by the PJM Board of Managers on October 19, 2011. *Id.* (citing Ex. PEG-1 at 16-17).

10. On November 21, 2011, the New Jersey Board of Public Utilities (NJBPU) filed a notice of intervention, a protest, and a request for an evidentiary hearing. Also on November 21, 2011, the New Jersey Division of Rate Counsel, the Pennsylvania Office of Consumer Advocate, the Maryland Office of People's Counsel, and the Delaware Division of the Public Advocate (collectively Joint Consumer Advocates) individually and collectively filed motions to intervene, protest, and request for an evidentiary hearing. On December 6, 2011, PSE&G filed an answer to the protests. On December 14, 2011, Joint Consumer Advocates filed an answer to PSE&G's December 6, 2011 answer. Motions to intervene were filed by Old Dominion Electric Cooperative, RITELine Companies, American Municipal Power Inc., PJM Interconnection, LLC, Exelon Corporation, Rockland Electric Company, and the Public Power Association of New Jersey.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. 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 a protest unless otherwise ordered by the decisional authority. We will accept the answers from PSE&G and Joint Consumer Advocates because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

13. We accept the tariff revisions, to become effective January 1, 2012, subject to the condition that PSE&G file revised tariff provisions within 30 days to reflect the ROE incentive granted herein as discussed in the body of this order. We grant in part, and deny in part, PSE&G's request for incentives, as discussed below.

14. In the Energy Policy Act of 2005,[8] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek

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

transmission rate incentives pursuant to section 219, including the incentives requested here by PSE&G.

1. <u>Section 219 Requirement</u>

15. Pursuant to Order No. 679, an applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[9] Also, as part of this demonstration, "section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential."[10]

16. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[11] Order No. 679 established a process for an applicant to follow to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.[12] Order No. 679-A clarifies 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.[13]

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

[10] *Id.* P 8 (citing 16 U.S.C. §§ 824(d)-(e)).

[11] 18 C.F.R. § 35.35(i) (2011).

[12] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

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

a. Proposal

17. PSE&G asserts that the NGR Project satisfies the Order No. 679 rebuttable presumption criteria because the NGR Project was approved in the PJM RTEP process as a baseline upgrade. PSE&G notes that in the PJM RTEP process, PJM specifically considers whether a particular project either ensures reliability or reduces congestion.[14] PSE&G states that, in identifying the NGR Project, PJM identified ten reliability criteria violations and listed the proposed construction and upgrades as elements of the NGR Project in order to resolve all reliability criteria violations out through PJM's 15-year planning horizon.

b. Protests

18. No party protests PSE&G's assertion that the NGR Project satisfies the Order No. 679 rebuttable presumption criteria.

c. Commission Determination

19. We determine that the NGR Project is entitled to the rebuttable presumption established in Order No. 679. The NGR Project was vetted and approved as part of PJM's 2010 RTEP as a baseline upgrade, wherein PJM made a determination that the NGR Project ensures PJM's ability to continue to serve load reliably.[15] The Commission has held that the PJM RTEP constitutes "a fair and open regional planning process" for the purposes of the rebuttable presumption provided in Order No. 679.[16]

2. Order No. 679 Nexus Requirement

20. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing 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

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[14] PSE&G October 31, 2011 Application at 15.

[15] PSE&G October 31, 2011 Application Ex. PEG-1E.

[16] *See, e.g.*, *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 62-66 (2007); *see also Baltimore Gas & Elec.*, 120 FERC ¶ 61,084, at P 41 (2007), *reh'g denied*, 122 FERC ¶ 61,034 (2008) (*BG&E*).

address the demonstrable risks or challenges faced by the applicant."[17] The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

21. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.[18] In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present 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, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).[19] Additionally, the Commission clarified that "when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive."[20]

22. More recently, the Commission stated that an applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project.[21] The Commission has also stated that if the applicant is unable to satisfy that criterion, then the applicant may still file a single application for incentives, but the Commission will consider each individual project separately in applying the nexus test and determining whether each project is routine or non-routine.[22]

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[17] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

[18] *Baltimore Gas & Elec.*, 120 FERC ¶ 61,084 at P 48.

[19] *Id.* P 52-55.

[20] *Id.* P 54.

[21] *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at 45 (2010) (citing *PacifiCorp*, 125 FERC ¶ 61,076 (2008)).

[22] *Id.*

a. **Proposal**

23. PSE&G asserts that the scope, effects, and risks and challenges of the NGR Project demonstrate that the NGR Project is not routine.

i. **Scope**

24. PSE&G states that the $895 million NGR Project is a large-scale transmission project that traverses highly-developed residential and industrial areas, several large water bodies, and environmentally-sensitive lands, including the New Jersey Meadowlands District. PSE&G explains that the NGR Project involves approximately 40 circuit miles of 230 kV overhead and underground transmission circuits, upgrades to about twelve substations, and the replacement of over 100 towers.[23] PSE&G states that completion of the NGR Project by June 2015 constitutes an aggressive construction schedule.

ii. **Effects**

25. PSE&G asserts that the NGR Project will relieve expected overloads on the existing PJM system and will improve transmission capabilities in PJM, particularly in the constrained northern PSE&G zone. According to the 2010 PJM RTEP, the elements of the NGR Project "resolve all reliability criteria violations out through PJM's 15-year planning horizon" for northern New Jersey.[24] PSE&G states that the Project will reduce transmission congestion costs by approximately $2.4 million annually in the PSE&G zone, as well as potentially reduce capacity payments for customers.[25] PSE&G states that the NGR Project will enhance the benefits of prior-approved and complementary large-scale transmission projects in the region. For example, PSE&G states that the NGR Project will enable the Susquehanna-Roseland Project to reach the PSE&G North constrained area, increasing the power transfer capability of the Susquehanna-Roseland Project.

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[23] PSE&G October 31, 2011 Application at 20-21.

[24] PSE&G October 31, 2011 Application, Ex. PEG-1E at 12. PJM also states that "[g]iven the alternative solution's effectiveness at resolving all criteria violations, PJM recommended and the PJM Board approved removal of the [BRH Project] from the RTEP." *Id*.

[25] PSE&G October 31, 2011 Application, Ex. PEG-1 at 17-22.

26. In its Advanced Technology Statement,[26] PSE&G states that the NGR Project will incorporate and deploy advanced technologies, including types of advanced technologies deemed "advanced transmission technologies" under section 1223 of the Energy Policy Act of 2005.[27] PSE&G states that the advanced technologies to be used for the NGR Project include those that are consistent with inter-operability encouraged by the Department of Energy and the GridWise Architecture Council. PSE&G states that the combined effect of the advanced technologies to be used will enable the NGR Project to be operated as a smart grid, which will give PJM additional control over power flows and increased power stability and quality.

27. PSE&G asserts that, since the NGR Project was included as a Baseline Upgrade in the 2010 PJM RTEP, the NGR Project has regional benefits and is thus not routine.[28]

iii. Risks and Challenges

28. PSE&G asserts that the NGR Project is not routine because of its financial impacts and associated risks and challenges. PSE&G states that the NGR Project is a substantial investment, representing 64 percent of PSE&G's net transmission plant as of December 31, 2010, and is much larger than PSE&G's other transmission projects.[29] PSE&G states that financing the NGR Project has the potential to impact PSE&G's credit metrics, particularly because the NGR Project's funding requirements, combined with those of PSE&G's other large RTEP projects, will dramatically increase PSE&G's debt levels.[30]

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[26] PSE&G October 31, 2011 Application, Ex. PEG-1Q.

[27] Energy Policy Act of 2005, Pub. L. No. 109-58, § 1261 *et seq.*, 119 Stat. 594 (2005).

[28] PSE&G October 31, 2011 Application at 19 (citing *Baltimore Gas & Elec.*, 120 FERC ¶ 61,084 at P 58).

[29] PSE&G clarifies that fourteen ongoing RTEP projects not receiving incentives have average and median costs of $47 million and $23 million, respectively. PSE&G October 31, 2011 Application at 21.

[30] According to PSE&G, about 88 percent of the Project's total costs will be expended over 29 months from 2013 through mid-2015, and over 98 percent of the total costs will be spent over 41 months. During the period of peak construction activity from 2012 through mid-2015, cash commitments by PSE&G are expected to average approximately $21.4 million per month. Further, the annual average capital spending for the NGR Project of $257 million between 2012 and mid-2015 is 1.4 times more than the Company's average annual transmission spending level of $175 million over the last

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PSE&G states that meeting the financial requirements of its combined planned transmission projects, while maintaining adequate cash flows and favorable coverage ratios and other financial metrics, will be a significant challenge. PSE&G asserts that its planned transmission investments over the next few years are a continuing concern for the financial rating agencies, and that authorization of the requested incentives would send a strong message of commitment and support to financial rating agencies and investors. PSE&G argues that reports from financial rating agencies support a nexus between the NGR Project and the requested incentives.[31]

29. PSE&G asserts that the NGR Project will involve several construction challenges associated with the construction of overhead lines, significant station upgrades, and the installation of between 15 to 18 miles of 230 kV underground circuits. PSE&G states that the NGR Project is located in flood-sensitive, densely populated or environmentally challenging locations, such as the Meadowlands District. PSE&G further states that the construction challenges also include coordinating outages with PJM's requirements and planning for contingencies across the PSE&G system.[32] Finally, PSE&G states that there

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five years (excluding expenditures for the Susquehanna- Roseland line). When added to PSE&G's expenditures for Susquehanna-Roseland and other large transmission projects that have received incentives, PSE&G's annual transmission expenditures will be approximately 3.9 to 7.3 times its normal average annual capital spend. Finally, PSE&G states that its transmission expenditure plans total approximately $2.9 billion during the period 2011 through 2013, and when non-transmission utility investment is also taken into account, PSE&G expects to spend approximately $5.2 billion during the 2011-2013 period, increasing its investment in gross property, plant and equipment by about 37 percent. PSE&G October 31, 2011 Application at 21-22.

[31] PSE&G October 31, 2011 Application at 23-25 (stating "Moody's most recent credit opinion for PSE&G dated May 6, 2011 [stated that]: 'We consider certain aspects of FERC's regulation of the transmission business to be positive for PSE&G's credit. These include FERC's approval of fully forecasted formula rates which provide for annual true-ups for differences between forecasted and actual transmission revenue and costs. It also includes FERC's approval of premium ROEs and the inclusion of construction work in progress in rate base for certain new transmission projects such as the Susquehanna-Roseland project.' . . . Standard & Poors stated that: 'formula rate treatment, incentive rate treatment, recovery of construction-work-in-progress costs in rate base, and abandonment recovery, [are] credit supportive.'").

[32] PSE&G notes that, in contrast to the NGR Project, PJM expressly recognized that the 500 kV BRH Project "did not require upgrades to existing underground circuits, a

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are significant procurement challenges that pose risks to the timely completion of the NGR Project, such as extensive material and equipment requirements requiring lead-times of up to one year and advance capital commitments.[33]

30. PSE&G asserts that the NGR Project faces substantial regulatory, permitting, and siting risks and challenges. According to PSE&G, such risks and challenges include obtaining site plan and variance approvals from twelve individual municipalities,[34] obtaining New Jersey Department of Environmental Protection Freshwater Wetlands permits and Flood Hazard Area permits, United States Army Corps of Engineers waterway crossings permits, New Jersey Meadowlands Commission approvals, and being subject to numerous other review proceedings.[35] PSE&G contends that a failure to obtain a necessary approval from any one of the numerous federal, state and local agencies involved with the NGR Project could have major negative consequences for the entire project, including substantial delay or cancellation after substantial funds have been spent.

31. PSE&G asserts that the NGR Project faces a heightened risk of cancellation due to regulatory risks, such as regulatory refusal to issue necessary approvals, delay in regulatory processes, or cancellation through the PJM RTEP.[36] PSE&G contends that this risk is compounded because the scope of the NGR Project necessitates approval by multiple jurisdictions. Additionally, PSE&G states that the NGR Project's long lead time further compounds the risk of cancellation and creates a significant risk that the NGR Project's cost could increase for reasons beyond PSE&G's control. Given this risk, PSE&G argues that to attract the capital that is needed on reasonable terms, PSE&G needs assurance that it will be entitled to full recovery of all abandonment costs.

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significant disruption to system operations." PSE&G October 31, 2011 Application, Ex. PEG-1 at 12.

[33] PSE&G October 31, 2011 Application at 27.

[34] PSE&G states that as an alternative to individual municipal approvals, it is also possible to seek approval from the NJBPU. PSE&G states that the process to obtain this approval involves a quasi-judicial proceeding with full intervention by interested parties, extensive discovery, evidentiary hearings, and briefings, and this process typically takes 12-18 months, though it can take longer where there is significant public input. PSE&G October 31, 2011 Application at 28-29.

[35] PSE&G October 31, 2011 Application, Exs. PEG-10 and PEG-1P.

[36] PSE&G October 31, 2011 Application at 33.

b. <u>Protests</u>

32. Protestors argue that the NGR Project is routine and that PSE&G fails to narrowly tailor the requested incentives to the specific risks and challenges of the NGR Project. Protestors contend that the NGR Project is indistinguishable from other routine transmission projects constructed in the ordinary course of a utility's obligation to provide safe and reliable service. Generally, the NJBPU contends that PSE&G fails to demonstrate that the NGR Project is not routine on the basis of location, difficulty in attaining expertise and materials, regulatory uncertainty, and hurdles to obtaining necessary construction permits. Joint Consumer Advocates assert that the technical, financial, and regulatory attributes of the NGR Project do not qualify the NGR Project as non-routine.

33. Protestors argue that PSE&G provides no actual indication of how applying for permits associated with the NGR Project presents a unique burden. Protestors note that the NGR Project will mostly be constructed on existing rights-of-way. Joint Consumer Advocates assert that the permitting challenges presented by the NGR Project are routine for all construction of high voltage transmission facilities. The NJBPU asserts that the challenges PSE&G faces in obtaining the necessary permits to develop these rights-of-way are insignificant compared with the challenges associated with projects that the Commission previously found to be non-routine.[37] The NJBPU also states that the regulatory environment in New Jersey is stable and that PSE&G should not be rewarded for choosing to participate in a more complex siting process (i.e., with twelve different municipalities) when a more streamlined process (i.e., with the NJBPU) is available.

34. Protestors assert that the technical and construction attributes of the NGR Project do not, in the aggregate, qualify the NGR Project as non-routine or differ materially from other projects for which incentive treatment was denied.[38] Joint Consumer Advocates point out that the technologies that will be utilized in the NGR Project are 230 kV and

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[37] NJBPU November 21, 2011 Protest at 8-9 (citing *RITELine Illinois LLC*, 137 FERC ¶ 61,039, at P 17 (2011); *Central Me. Power Co.*, 125 FERC ¶ 61,079, at P 21-22 (2008)).

[38] NJBPU November 21, 2011 Protest at 12 (citing *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011).

state that these technologies are, by and large, incorporated in all new transmission facilities. Also, protestors state that the regional benefits of the NGR Project are routine.[39]

35. Protestors state that the scope of the NGR Project is routine. Joint Consumer Advocates concede that the NGR Project is not routine in that its scope is relatively larger than the other projects included in PJM's baseline recommendations, but argues that this is not one of the factors used to consider "routineness."[40] The NJBPU points out that the NGR Project spans a relatively small area and is contained entirely within PSE&G's exclusive territory.[41] The NJBPU asserts that the environmental concerns posited by PSE&G are speculative and, regardless, constitute a natural consequence of siting any transmission asset. The NJBPU contends that PSE&G cannot justify the need for the requested incentives by suggesting it is required to site a transmission line through a historically urban service territory, and such routine maintenance in congested urban areas does not justify the requested incentives.[42] The NJBPU also contends that PSE&G attempts to inflate the alleged risk of the NGR Project by arguing both that a major challenge of the NGR Project is its ambitious timeline while the NGR Project faces risks due to a long lead time.

36. Joint Consumer Advocates contend that incentives are not a necessary condition for PSE&G to construct the NGR Project, because PSE&G, as a signatory to the Consolidated Transmission Owners Agreement, has an obligation to construct any project in its zone emanating from the PJM RTEP. Given that obligation, Joint Consumer Advocates assert, no further incentives are needed to encourage PSE&G to undertake the NGR Project.

37. Joint Consumer Advocates contend that many of the financial challenges and risks of the NGR Project will be mitigated by the cash flow implications of PSE&G's formula

[39] NJBPU November 21, 2011 Protest at 8 (citing *NSTAR Elec. Co.*, 125 FERC ¶ 61,313, at P 55 (2008)).

[40] Joint Consumer Advocates November 21, 2011 Protest at P 29.

[41] The NJBPU notes that the NGR Project is to be sited in a region that has been part of PSE&G's service territory for over one hundred years. NJBPU November 21, 2011 Protest at 12.

[42] NJBPU November 21, 2011 Protest at 12 (citing *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc.*, 125 FERC ¶ 61,250, at n.36 (2008)).

rate and annual true-up.[43] The NJBPU asserts that prior incentivized transmission projects are already risk-insulated by a combination of incentives and that PSE&G's remaining investment remains largely risk-neutral due to the currently approved rate structure. Joint Consumer Advocates also assert that neither PSE&G, nor the credit rating agencies' reports that PSE&G references, demonstrate that the requested incentives are necessary to maintain PSE&G's creditworthiness.[44]

c. <u>Answer</u>

38. In its answer, PSE&G reiterates that the NGR Project is not routine. Regarding scope, PSE&G notes that the NGR Project is orders of magnitude greater than the average non-incentivized PSE&G RTEP project.[45] PSE&G contests protestors' assertions that the NGR Project faces reduced risk because it involves rebuilding existing facilities or routine maintenance.[46] PSE&G also contests the NJBPU's suggestion that the NGR Project does not warrant incentives because it does not span multiple states and hundreds of miles.[47]

39. PSE&G also states that the protestors are incorrect in asserting that the NGR Project faces routine permitting challenges[48] and "speculative" environmental challenges.[49]

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[43] Joint Consumer Advocates November 21, 2011 Protest at P 41.

[44] Joint Consumer Advocates November 21, 2011 Protest at P 43.

[45] PSE&G December 6, 2011 Answer at 3-4 (citing PSE&G October 31, 2011 Application, Exs. PEG-1 at 4 and PEG-1A).

[46] PSE&G December 6, 2011 Answer at 5-6 (citing *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 34-35, 84 (2011); *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana, Inc.*, 125 FERC ¶ 61,250, at n.36 (2008).

[47] PSE&G December 6, 2011 Answer at 6-7 (citing *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011); *S. Cal. Edison Co.*, 134 FERC ¶ 61,200 (2011); and *S. Cal. Edison Co.*, 134 FERC ¶ 61,181 (2011)).

[48] PSE&G December 6, 2011 Answer at 7-9.

[49] PSE&G December 6, 2011 Answer at 7 (citing *Pub. Serv. Elec. and Gas Co.*, 129 FERC ¶ 61,300, at P 31, 34 (2009)).

40. PSE&G asserts that NJBPU's protest is in error regarding the cost of the congestion benefits that are expected to occur as a result of the NGR Project.[50] PSE&G states that the primary driver of the NGR Project is to resolve reliability criteria violations, and that congestion cost reductions are one of the beneficial impacts of the NGR Project in addition to reliability. PSE&G also states that the capacity savings to be derived from the NGR Project are not "speculative." PSE&G states that the NJBPU seeks to impose a cost/benefit analysis on the Commission's incentive ratemaking practice that does not exist.

41. PSE&G asserts that there is no support in Order No. 679 or Commission precedent for NJBPU's suggestion that the existence of other incentivized projects, or PSE&G's formula rate, undermine the case for incentives for the NGR Project which satisfies all relevant requirements.[51] PSE&G notes that the NGR Project is significantly more expensive than projects for which the Commission has recently approved incentives.[52]

42. Finally, PSE&G argues that Joint Consumer Advocates' argument pursuant to the PJM Consolidated Transmission Owners Agreement should be rejected because the Commission has previously rejected this argument.[53]

d. <u>Commission Determination</u>

43. We find that the NGR Project is not routine based on its scope, effects, and risks and challenges. As identified by multiple parties in this proceeding,[54] the scope of the NGR Project is substantial – according to PSE&G, the level of investment represents

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[50] PSE&G December 6, 2011 Answer at 10-11 (citing NJBPU November 21, 2011 Protest at 14-16).

[51] PSE&G December 6, 2011 Answer at 12.

[52] *Id.* (citing *Okla. Gas and Elec. Co*., 135 FERC ¶ 61,038, at P 51 (2011); Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 112).

[53] PSE&G December 6, 2011 Answer at 9 (citing *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 85).

[54] Joint Consumer Advocates November 21, 2011 Protest at P 29; PSE&G October 31, 2011 Application at 20-21.

64 percent of PSE&G's 2010 level of transmission plant in service. The NGR Project is 40 miles long, with approximately 15 miles of underground circuits.[55]

44. The combined purpose of the elements of the NGR Project is, according to the 2010 PJM RTEP, to address in Northern New Jersey at least ten reliability criteria violations and to "resolve all reliability criteria violations out through PJM's 15-year planning horizon."[56] The NGR Project may reduce capacity costs and, based on uncontroverted evidence in the record,[57] will reduce transmission congestion costs by about $2.4 million per year.

45. The NGR Project also presents significant risks and challenges that we find relevant to our application of the nexus test. For example, PSE&G expects to spend up to $257 million a year for the NGR Project, a substantial increase in PSE&G's annual transmission investment. This investment is concurrent with other significant transmission and capital investments being made by PSE&G as detailed above. In these circumstances, the NGR Project presents PSE&G with the risk of a credit rating downgrade resulting in increased capital costs and increased rates for consumers.

46. We also find that the NGR Project presents significant siting, construction, regulatory, and environmental risks and challenges. For example, the NGR Project requires many permits and approvals at the federal, state, regional, and local levels, including from the United States Army Corps of Engineers, United States Coast Guard, Federal Aviation Administration, the New Jersey Department of Environmental Protection, and either the New Jersey Board of Public Utilities or twelve different municipalities.[58] These approvals are required, in part, because the NGR Project will be built adjacent to and across navigable waterways and through both densely populated urban areas and environmentally-sensitive areas.

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[55] The average line length for PSE&G's in-service underground lines is about four miles. The NGR Project will consist of between fifteen to eighteen miles of new underground transmission lines. Additionally, the total line length for PSE&G's in-service underground lines is about 150 miles. The NGR Project is twelve percent of that number. This information was sourced from the Ventyx, an ABB Company, Velocity Suite database in November 2011.

[56] PSE&G October 31, 2011 Application, Ex. PEG-1E.

[57] PSE&G October 31, 2011 Application, Ex. PEG-1M; NJBPU November 21, 2011 Protest at 14-15.

[58] PSE&G October 31, 2011 Application, Exs. PEG-10 and PEG-1P.

47. We are not persuaded by protestors' arguments regarding the scope of the NGR Project. The fact that the NGR Project is located within PSE&G's service territory does not necessarily make the NGR Project routine.[59] In response to the NJBPU's assertion that the environmental concerns posited by PSE&G are either speculative or routine, we find, as stated above, that the permitting uncertainties regarding environmental risks and challenges are substantial and contribute to regulatory risk.[60] We also find that the NGR Project does not constitute routine maintenance,[61] in light of its scope, effects, and the risks and challenges discussed herein. In addition, we are not persuaded by the NJBPU's argument regarding PSE&G's assertion that the NGR Project has an aggressive construction schedule yet faces risks related to a long lead time; the NGR Project faces risks and challenges such as extensive material and equipment requirements requiring lead-times of up to one year and advance capital commitments.[62]

48. With regard to protests that the NGR Project does not present non-routine permitting or regulatory risks and challenges, we find these protests to be unsupported. PSE&G's filing details those risks and challenges of the NGR Project associated with many of the necessary permits,[63] and such risks and challenges may be relevant to application of the nexus test.[64]

49. With regard to NJBPU's comparisons of the NGR Project to other projects that the Commission has found to be non-routine, we reiterate that in evaluating whether a project is routine or non-routine, the Commission examines requests for incentives on a case-by-

[59] *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 62-75 (2011).

[60] *Pub. Serv. Elec. and Gas Co.*, 129 FERC ¶ 61,300, at P 34 (2009).

[61] *Commonwealth Edison Co. and Commonwealth Edison Co. of Ind., Inc.*, 125 FERC ¶ 61,250, at n.36 (2008).

[62] PSE&G October 31, 2011 Application at 27.

[63] PSE&G October 31, 2011 Application, Exs. PEG-10 and PEG-1P.

[64] *See PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 66 (2011) ("We reject NJBPU's argument that the West Orange Project is routine because the project upgrades an existing line and because a portion of the project has already been completed. There is nothing inherent about line upgrades making them less worthy of incentives than a new project. Upgrades may face many of the same financial risks while still having the same effects and scope as new construction.").

case basis and accounts for the circumstances faced by and the experience of each applicant.[65] As discussed earlier, based on the facts presented here, we find that the NGR Project is non-routine based on its scope, effects, and risks and challenges.

50. We reject Joint Consumer Advocates' argument that PSE&G is ineligible for incentives for the NGR Project because it is contractually committed to PJM to build the NGR Project. As we stated recently stated,[66] the Commission rejected in *Northeast Utilities Service Company* the assertion that projects in ISO-NE's Regional System Plan are ineligible for incentives merely because the transmission owner may have a contractual obligation to build them. The Commission found that this argument was a narrow interpretation of Order No. 679 and that accepting it would deny the Commission the ability to exercise the authority it was expressly granted under section 219.[67] These findings are equally applicable here to Joint Consumer Advocates' argument.

51. Finally, we reject the protests from Joint Consumer Advocates[68] and the NJBPU[69] regarding financial risks and challenges. As we held above, the record in this proceeding indicates that the NGR Project presents financial risks and challenges of the type that can strain credit metrics.[70] We find that the anticipated cost of the NGR Project and the projected annual expenditures are not routine when compared to PSE&G's transmission rate base and annual transmission plant expenditures.

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[65] We note that the Commission recently made findings on incentive rate treatment regarding five Baseline Upgrade projects assigned to PSE&G as part of the PJM RTEP. *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 62-75 (2011).

[66] *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 85 (citing *Ne. Utils. Serv. Co*., 124 FERC ¶ 61,044, at P 89 (2008)).

[67] *Id*.

[68] Joint Consumer Advocates November 21, 2011 Protest at P 41, 43.

[69] NJBPU November 21, 2011 Protest at 22-23.

[70] *E.g.*, PSE&G October 31, 2011 Application at 21-25; PSE&G October 31, 2011 Application, Ex. PEG-2 at 28-30.

3. Specific Incentives and Total Package of Incentives

a. Return on Equity Adder

i. Proposal

52. PSE&G requests a 100 basis point ROE adder for investment in the NGR Project. PSE&G asserts that there is a nexus between the ROE incentive requested and PSE&G's investment in the NGR Project. PSE&G states that the length, scope, and nature of the NGR Project present significant financial, construction, and regulatory challenges that can and should be offset by a higher ROE. Specifically, PSE&G states that, unlike ordinary transmission investments, the large amount of investment required to complete the NGR Project presents financing challenges, and a higher ROE is necessary to encourage investment in the NGR Project, especially in light of the current uncertain economic conditions. PSE&G notes that the NGR Project involves the replacement of numerous towers, the upgrade of approximately 25 miles of overhead lines from 138 kV to 230 kV, and the installation of 15 to 18 miles of 230 kV underground circuits. PSE&G further notes that construction of the NGR Project must occur throughout a densely populated region and is expected to resolve numerous reliability issues and improve transmission capabilities in PJM.

53. PSE&G states that, in evaluating whether the requested ROE incentive adder is within a range of reasonableness, PSE&G calculated a range of reasonableness using a Discounted Cash Flow (DCF) analysis that is consistent with Commission precedent.[71] PSE&G states that the DCF analysis resulted in a zone of reasonableness with a range between 6.90 percent and 14.12 percent and a median of 9.44 percent. PSE&G notes that in its most recent decision concerning PSE&G's return on common equity, the Commission established for PSE&G a baseline ROE of 11.18 percent plus 50 basis points (bps) for RTO membership.[72] PSE&G states that the requested incentive ROE adder of 100 bps, combined with PSE&G's baseline ROE, results in a ROE of 12.68 percent. PSE&G notes that this total requested ROE is within the range of reasonableness determined by its DCF analysis. PSE&G contends that an ROE above the midpoint of the range of reasonableness is consistent with the special risks and challenges presented by the NGR Project.

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[71] PSE&G October 31, 2011 Application at 41-42.

[72] *Pub. Serv. Elec. and Gas Co.*, 124 FERC ¶ 61,303 (2008).

ii. Protests

54. Protestors argue that PSE&G does not face risks and challenges that merit an enhanced ROE for the NGR Project. Regarding financial risks and challenges, the NJBPU asserts that PSE&G is well insulated from such risk due in large part to its formula rate structure, and that construction of the NGR Project does not expose PSE&G to any undue or unforeseen risk warranting an increased rate of return. The NJBPU maintains that PSE&G has failed to indicate which of the requested incentives are necessary to support PSE&G's credit and under what circumstances, noting that the credit metrics that PSE&G references merely endorse the general principle that favorable regulatory treatment can have a beneficial effect on credit.

55. The NJBPU also contends that PSE&G cannot justify the need for an ROE adder with the assertion of internal competition for investment funds. The NJBPU notes that, as of 2010, PSE&G earns a state-mandated ROE of 10.30 percent for in-state distribution services. In addition, the NJBPU notes that without the requested ROE adder, the NGR Project will return 11.68 percent. Therefore, the NJBPU contends, PSE&G's transmission investment regularly attracts a high rate of return and that the Commission's currently approved rate structure is more than sufficient to attract internal investment dollars.

56. The NJBPU argues that the Commission should deny PSE&G's requested ROE adder because ratepayers would over-pay for the congestion-cost benefit resulting from the NGR Project. The NJBPU asserts that PSE&G's estimated annual cost to customers of approximately $3.5 million for the incentives[73] exceeds PSE&G's estimated annual load payment savings of approximately $2.4 million for congestion cost relief.[74] Additionally, the NJBPU states that the alleged reductions in payments for generation capacity in the PSE&G northern zone have a significant margin of error and are speculative.

57. Joint Consumer Advocates note that, in addition to the 100 basis point ROE adder, PSE&G has requested 100 percent CWIP and abandonment and asserts that these incentives, if granted, will mitigate many of the risks and challenges associated with the NGR Project. Joint Consumer Advocates also point out that PSE&G has both a formula rate and true-up mechanism. Thus, Joint Consumer Advocates contend that it would be

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[73] NJBPU Protest at 15 (citing PSE&G October 31, 2011 Application, Ex. PEG-2 at P 26).

[74] *Id.* at 14 (referencing PSE&G's PROMOD analysis).

unreasonable to award an enhanced ROE in addition to the CWIP and abandonment incentives.

iii. Answer

58. PSE&G asserts that there is a nexus between the requested 100 basis point ROE adder and the NGR Project based on its length, scope, and nature. PSE&G reiterates significant financial challenges.[75] PSE&G argues that the incentive ROE it seeks is consistent with the adders authorized by the Commission in comparable circumstances.[76] PSE&G also asserts that the formula rate addresses different issues than does an enhanced ROE.

iv. Commission Determination

59. In Order No. 679, the Commission stated that it will allow, when justified, an incentive-based ROE.[77] 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."[78]

60. We will grant a 25 basis point incentive ROE adder to PSE&G for the NGR Project. We find that the NGR Project presents financial and credit risks and challenges that warrant this incentive. Importantly, PSE&G will face these risks and challenges concurrent with significant additional transmission and capital investment, much of it

[75] PSE&G December 6, 2011 Answer at 13-14 (citing PSE&G October 31, 2011 Application, PEG-2 at 17).

[76] *Id.* at 14 (citing PSE&G October 31, 2011 Application, Exhibit No. PEG-2 at 17, which notes that the Commission approved a 125 basis point adder for PSE&G's expected $1,088 million investment in the BRH Project in *Public Service Electric and Gas Co.*, 129 FERC ¶ 61,300; that the Commission approved a 150 basis point adder for PSE&G's expected investment in the MAPP project in *Public Service Electric and Gas Co.*, 126 FERC ¶ 61,219; and that the Commission approved a 125 basis point adder for PSE&G's expected $750 million investment in the Susquehanna-Roseland project in *PPL Electric Utilities Corp. and Public Service Electric and Gas Co.*, 123 FERC ¶ 61,068 (2008)).

[77] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91.

[78] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60.

likewise directed by the PJM RTEP.[79] In addition, given the scope of the NGR Project, PSE&G faces permitting and construction challenges, such as the replacement of over one hundred towers and underground construction in densely-populated areas. As such, we find a nexus between those risks and an enhanced ROE.

61. However, in consideration of the scope, effects and risks and challenges of the NGR Project and the total package of incentives granted in this order, we are reducing PSE&G's requested 100 basis point adder to 25 basis points.[80] We find that granting 25 basis points is just and reasonable in light of the other incentives that the Commission is granting to PSE&G as discussed below; the CWIP in rate base and abandonment incentives reduce certain financial and regulatory risks that PSE&G cites as support for a 100 basis point incentive ROE adder.

62. The Commission does not agree with the protests that no incentive ROE adder is warranted in these circumstances. The NGR Project presents risks and challenges that are distinct from those addressed by a formula rate. While the annual true-ups that PSE&G makes pursuant to its formula rate address issues regarding the timing of cost recovery for PSE&G generally, an enhanced ROE will both attract investment to and mitigate adverse credit metrics impacts from the NGR Project specifically. Regarding Joint Consumer Advocates' contention on risk reduction based on the total package of incentives, as also discussed elsewhere in this order, we find that PSE&G has established a nexus between an enhanced ROE and the NGR Project in spite of the risk reduction from the CWIP and abandonment incentives.

63. We reject NJBPU's protest regarding the nexus between an enhanced ROE for the NGR Project and competition for internal funds. The NJBPU notes a differential in

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[79] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91 ("We expect that an incentive ROE will make transmission projects more attractive, and therefore more likely, when transmission projects must compete for capital in vertically integrated utilities as well as in transmission and delivery utilities.").

[80] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 65. *See Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, at P 53 (2010) ("[T]he Commission first identified the factors that led it to conclude that an ROE incentive was justified and then examined to what extent CWIP and abandonment reduced the Project's overall risk. The Commission concluded, based on its expertise and close scrutiny of Pioneer's request, that while CWIP and abandonment did reduce the Project's overall risk, they did not completely mitigate the need for an ROE incentive. Thus, the Commission authorized an ROE incentive that reflected, in its judgment, the level of remaining risk…").

ROEs for different investment and then asserts that transmission investment should therefore consistently out-compete most internal investment alternatives.[81] This argument does not address the risks and challenges that the NGR Project presents to PSE&G, including the NGR Project's concurrence with significant amounts of other transmission investment by PSE&G. For the same reason and as stated above, we reject NJBPU's protest regarding the reports from financial rating agencies included in PSE&G's application.

64. Finally, we reject the NJBPU's argument regarding the costs and benefits of the NGR Project. We do not require applicants for incentive based rate treatments to provide cost-benefit analyses.[82]

b. Construction Work in Progress

i. Proposal

65. PSE&G requests inclusion of 100 percent of CWIP in rate base for the NGR Project. PSE&G states that the NGR Project involves both a substantial capital investment of $895 million and a long construction lead-time. PSE&G asserts that the CWIP incentive is thus essential to support PSE&G's financial metrics and to ensure adequate cash flow. PSE&G notes that, without CWIP, it would have to raise additional cash to pay the financing costs for the capital expenditures of the NGR Project during construction. PSE&G asserts that having 100 percent CWIP in rate base would help mitigate the NGR Project's negative impact on PSE&G's credit metrics and improve its ability to attract financing on reasonable terms.[83]

66. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized allowance for funds used during construction (AFUDC) and corresponding amounts of CWIP in rate base.[84] To satisfy this requirement, PSE&G explains its procedures to ensure that no AFUDC will be recorded on project costs where CWIP is included in rate base. Specifically, PSE&G explains that during the construction period, it will use the Project Systems Module of SAP. PSE&G states it will also use a unique

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[81] NJBPU November 21, 2011 Protest at 21.

[82] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65.

[83] PSE&G October 31, 2011 Application at 36.

[84] 18 C.F.R. § 35.25 (2011).

work breakdown structure (WBS) element, a SAP tool to monitor actual and budgeted costs, for project identification and work order numbers to accumulate construction costs for the NGR Project in accordance with Electric Plant Instruction No. 3, Components of Construction Costs, and PSE&G's capitalization policy. PSE&G explains that the WBS element includes an interest profile control indicator that allows it to ensure that only qualifying projects calculate AFUDC. PSG&E asserts that a "NO CALC" interest profile control indicator will be assigned to all unique WBS elements created for the NGR Project and, with that indicator, the system will not calculate AFUDC on the NGR Project costs. Finally, PSE&G states that it performs monthly reviews of AFUDC charges ensuring that only eligible projects receive AFUDC, consistent with Sarbanes-Oxley 404 (controls FA017 and FA047).

ii. Protests

67. The NJBPU asserts that PSE&G fails to establish a nexus between the specific risks of the NGR Project and the need for 100 percent CWIP. The NJBPU maintains that PSE&G's justification for 100 percent CWIP conflates the specific risks of the NGR Project with PSE&G's overall spending on all planned transmission assets. The NJBPU asserts that granting 100 percent CWIP for the NGR Project would skew the balance in favor of investors at the expense of ratepayers.

iii. Answer

68. As also noted above, PSE&G asserts that there is no support in Order No. 679 or Commission precedent for NJBPU's suggestion that the existence of other incentivized projects, or PSE&G's formula rate, undermine the case for incentives for the NGR Project which satisfies all relevant requirements.[85] PSE&G also states that the NJBPU's argument reflects a fundamental misunderstanding of the CWIP incentive because the incentive affects only the timing of cost recovery, not which costs may be recovered.[86] Thus, PSE&G asserts that the NJBPU's arguments are a collateral attack on Order No. 679.

iv. Commission Determination

69. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently incurred transmission-related CWIP

[85] PSE&G December 6, 2011 Answer at 12.

[86] PSE&G December 6, 2011 Answer at 13.

costs in rate base.[87] We noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.[88]

70. We find that PSE&G has shown a nexus between the proposed CWIP incentive and its investment in the NGR Project. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP in rate base for the NGR Project would help mitigate the negative impact on PSE&G's credit metrics and ability to attract financing on reasonable terms. PSE&G has demonstrated that its capital budget may be strained as it builds the NGR Project while conducting needed improvements to its existing transmission infrastructure. Without CWIP recovery, PSE&G appears likely to experience negative cash flows, with a converse increase in interest expenses from debt and a potential negative impact to its credit rating.[89] The Commission also finds that allowing PSE&G to recover 100 percent of CWIP in its rate base will result in better rate stability for customers. As explained in prior orders, when certain large-scale transmission projects come on line, there is a risk that consumers may experience "rate shock" if CWIP is not permitted in rate base.[90] By allowing CWIP in rate base, the rate impact of the NGR Project can be spread over the entire construction period and will help consumers avoid a return on and of capitalized AFUDC.[91] Thus, we will grant PSE&G's request to include 100 percent of CWIP in rate base.

71. The Commission rejects the NJBPU's argument that PSE&G has failed to establish a nexus between the NGR Project and the CWIP incentive. Order No. 679 states that CWIP will "provid[e] up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by

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[87] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

[88] *Id*. P 115.

[89] *E.g.*, PSE&G October 31, 2011 Application, Ex. PEG-2 at 28-30.

[90] *See, e.g.*, *Pub. Serv. Elec. & Gas Co.*, 129 FERC ¶ 61,300, at P 44 (2011); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229 at 43; *Am. Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

[91] *See, e.g.*, *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229 at 43.

transmission development programs."[92] For the reasons discussed above, we find that granting the CWIP incentive is appropriate for the NGR Project. We disagree that PSE&G has conflated the risks of the NGR Project with PSE&G's overall spending on all planned transmission assets. As we stated above, we find that the NGR Project poses special financial risks to PSE&G, including its concurrence with PSE&G's significant overall spending plans.

72. The Commission finds that the proposed accounting procedures in Exhibit No. PEG-2 of PSE&G's filing sufficiently demonstrate that it has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent it is allowed to include CWIP in rate base.

c. Abandoned Plant Recovery

i. Proposal

73. PSE&G requests approval for the recovery of 100 percent of prudently incurred costs associated with the NGR Project in the event the Project is abandoned for reasons outside of PSE&G's control.[93] For example, PSE&G notes such risks associated with the necessary approvals from multiple jurisdictions and with the PJM RTEP. PSE&G states that authorizing the abandoned plant incentive will mitigate the impact of the NGR Project's unique risks and provide the financial community some assurance of a reasonable opportunity to recover their investment and earn a reasonable return on the investment if the Project is abandoned. PSE&G states, additionally, assurance of cost recovery if the NGR Project is abandoned will help the Project compete for scarce internal funds. PSE&G asserts that the abandoned plant incentive will help attract financing for the NGR Project, which is critical transmission infrastructure needed to maintain reliability in the region.

ii. Protests

74. The NJBPU contends that PSE&G does not adequately demonstrate a nexus between the need for the abandoned plant incentive and the specific risks of the NGR Project. The NJBPU maintains that PSE&G's justification for the abandonment incentive conflates the specific risks of the NGR Project with PSE&G's overall spending on all planned transmission assets. The NJBPU states that the Commission has historically sought to balance the needs of ratepayers and consumers when electing to award a

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[92] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at 115.

[93] PSE&G October 31, 2011 Application at 37.

company the ability to recover abandonment costs; the NJBPU asserts that granting the abandonment incentive to PSE&G for the NGR Project would skew the balance in favor of investors.

iii. Answer

75. As also noted above, PSE&G asserts that there is no support in Order No. 679 or Commission precedent for NJBPU's suggestion that the existence of other incentivized projects, or PSE&G's formula rate, undermine the case for incentives for the NGR Project which satisfies all relevant requirements.[94] PSE&G also states that the NJBPU's argument reflects a fundamental misunderstanding of the abandonment incentive because the Commission must make a separate determination that the costs are prudent and reasonable. Thus, PSE&G asserts that the NJBPU's arguments are a collateral attack on Order No. 679.

iv. Commission Determination

76. In Order No. 679, the Commission found that abandonment cost recovery is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[95]

77. We find that PSE&G has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. For example, in addition to other risks and challenges presented by its scope and size, the NGR Project requires approvals from municipalities within New Jersey, state siting approvals, and various federal approvals. These factors introduce a significant element of risk; authorizing abandonment cost recovery will help ameliorate this risk by helping to attract financing to the NGR Project and protecting PSE&G from further losses if the NGR Project should be cancelled for reasons outside its control.

78. Thus, we will grant PSE&G's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the NGR Project, provided that the abandonment is a result of factors beyond PSE&G's control. Consistent with Order No. 679 and precedent,[96] PSE&G must make a subsequent section 205 filings for

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[94] PSE&G December 6, 2011 Answer at 12.

[95] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

[96] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163, 165-66; *see also Alleghany Energy, Inc., et al.*, 116 FERC ¶ 61,058, at P 122 (2006).

recovery of abandoned plant costs; the Commission would consider claims concerning the prudency of any abandonment costs at that time.[97]

79. For the reasons discussed above, we reject the protest from the NJBPU. We disagree that PSE&G has conflated the risks of the NGR Project with PSE&G's overall spending on all planned transmission assets. As we stated above, we find that the NGR Project poses special financial risks to PSE&G, including its concurrence with PSE&G's significant overall spending plans.

d. Assignment of Incentives to Affiliates

i. Proposal

80. PSE&G requests authority to assign these incentive rate treatments to an affiliate, if construction and/or ownership of the NGR Project is assigned to an affiliate in the future.[98] PSE&G states that it has not presently made any decision to do so.

ii. Protests

81. The NJBPU and Joint Consumer Advocates argue that PSE&G failed to justify the need to transfer the requested incentives to a currently unidentified affiliate. The NJBPU argues that the NGR Project is a small scale, routine project and that there is no justification to grant permission to transfer incentives to an affiliate at this time. Additionally, Joint Consumer Advocates assert that any new affiliate should be required to demonstrate before the Commission why it deserves incentive rate treatment based on the merits of its own application.

iii. Answer

82. PSE&G asserts that protestors provide no basis for the Commission to depart from its past practice.[99]

iv. Commission Determination

83. Consistent with precedent,[100] the Commission grants PSE&G's request for authority to assign the above-granted incentives to an affiliate, subject to the following

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[97] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-166.

[98] PSE&G October 31, 2011 Application at 35.

[99] PSE&G December 6, 2011 Answer at 16 (internal citations omitted).

clarification. If PSE&G elects to assign its incentives to an affiliate, that affiliate will be required to make a filing under section 205 of the FPA to incorporate into its rates any such incentives. As such, we reject the protests.

e. Total Package of Incentives

i. Proposal

84. PSE&G states that it has carefully selected the requested incentives and has tailored the incentives to address the specific risks and challenges associated with of the NGR Project.

85. PSE&G contends that approval of the requested CWIP in rate base and abandonment incentives would not warrant an adjustment to the 100 basis point incentive ROE adder requested. PSE&G states that the CWIP and abandoned plant cost recovery incentives address different risks than the ROE adder addresses. For example, PSE&G asserts that the CWIP incentive does not fully offset the negative impact the NGR Project will have on PSE&G's credit metrics. PSE&G claims that the CWIP incentive helps support PSE&G's cash flow relative to AFUDC accounting. Additionally, PSE&G states that the abandoned plant incentive mitigates risk if the NGR Project is abandoned for reasons outside of PSE&G's control, which is not specifically addressed through the ROE or CWIP incentive.

ii. Protests

86. Joint Consumer Advocates protest that PSE&G requests an extraordinary incentive package that, if granted and added to its existing 11.68 percent ROE, would exceed a fair return and result in unjust and unreasonable rates. Joint Consumer Advocates assert that the presence of other risk-mitigating features of PSE&G's proposed transmission investment, namely the requested 100 percent CWIP and abandonment incentives, indicate that PSE&G should not be granted an enhanced ROE and could even reasonably support lowering the base ROE.[101]

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[100] *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229, at P 81; *Public Service Elec. & Gas Co.,* 126 FERC ¶ 61,219, at P 70 (2009); *PPL Elec. Utils. Corp.,* 123 FERC ¶ 61,068, at P 51-52 (2008), *reh'g denied*, 124 FERC ¶ 61,229.

[101] Joint Consumer Advocates November 21, 2011 Protest at 15.

iii. Commission Determination

87. As noted above, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risk or challenges faced by the applicant. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,[102] the Commission has, in prior cases, approved multiple rate incentives for particular projects.[103] This is consistent with our interpretation of section 219 authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of section 219 and that there is a nexus between the incentives proposed and the investment made. At the same time, 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.

88. We recognize that in other cases where similar packages of incentives were requested, the Commission has reduced the utility's requested ROE incentive, based on the facts and circumstances of those cases.[104] In those cases, the Commission examined the entirety of the project and the requested incentives and determined that the total package of incentives requested by the utilities was not just and reasonable. Likewise, for the reasons discussed above, we find that PSE&G's requested 100 basis point adder is not just and reasonable and that a 25 basis point incentive ROE adder is instead appropriate in these circumstances. PSE&G has demonstrated significant risks and

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[102] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

[103] *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 127 (2011) (internal citations omitted) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 55, 59, 61 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *see also Cent. Me.*, 125 FERC ¶ 61,182 at P 100 (granting both abandonment and ROE incentives).

[104] *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144 (2011); *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 (2011); *Primary Power*, 131 FERC ¶ 61,015, at P 134 (2010); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229; *S. Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008); *Cf. Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 57; *but see Pepco Holdings*, 125 FERC ¶ 61,130, at n.96 (2008).

challenges presented by the NGR Project. We find that the total package of incentives, as modified, is tailored to address the demonstrable risks and challenges faced by PSE&G in developing the NGR Project.

4. General Protests

a. Protests

89. The NJBPU asserts that it is inappropriate for the Commission to consider PSE&G's request for incentives before the Commission addresses the issues raised by the responses submitted in the Commission's Notice of Inquiry on the scope and implementation of the Commission's transmission incentives regulations and policies.[105] The NJBPU states that the outcome of the decision in the Notice of Inquiry may alter how rate incentives should be applied to the instant incentive filing.

90. The NJBPU and Joint Consumer Advocates request the Commission set PSE&G's request for incentive rate treatment for evidentiary hearings, stating that the issues raise involve genuine issues of material fact that can only be resolved through evidentiary hearings on the matter.[106]

b. Answer

91. In its answer, PSE&G states that the NJBPU's argument regarding the Commission's Notice of Inquiry should be rejected out of hand. PSE&G notes that it must proceed with the NGR Project now to address PJM-identified reliability concerns and to meet the specified June 1, 2015 in-service date.

92. PSE&G further states that protestors have not identified any disputed material facts in their pleadings, and accordingly there is no need for an evidentiary hearing. PSE&G concludes that this request should thus be rejected.

c. Commission Determination

93. The Commission denies the NJBPU's argument regarding the Commission's Notice of Inquiry. As we stated in that proceeding, "During the pendency of this

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[105] *See Promoting Transmission Investment Through Pricing Reform*, Notice of Inquiry, 76 Fed. Reg. 30,869 (May 27, 2011), FERC Stats. & Regs. ¶ 35,572 (2011).

[106] Joint Consumer Advocates November 21, 2011 Protest at P 44; NJBPU November 21, 2011 Protest at 24.

proceeding, the Commission will continue to evaluate incentive requests under Order No. 679 on a case-by-case basis."[107]

94. The Commission also denies the Protestors' request to set this matter for evidentiary hearing. The Commission sets matters for a trial-type evidentiary hearing to resolve material issues of fact. In this case, we find that the facts are undisputed and the issue is whether under these facts, PSE&G's incentive requsets are warranted. Based on the record, we are able to determine that the NGR Project satisfies the requirements of Order No. 679 and find no basis for further hearing procedures.

The Commission orders:

PSE&G's proposed tariff revisions related to its incentive proposal are hereby accepted for filing, to become effective January 1, 2012, subject to the condition that PSE&G file revised tariff provisions within 30 days to reflect the ROE incentive granted herein as discussed in the body of this order.

By the Commission. Commissioner Moeller is dissenting in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[107] *Promoting Transmission Investment Through Pricing Reform*, Notice of Inquiry, 76 Fed. Reg. 30,869 (May 27, 2011), FERC Stats. & Regs. ¶ 35,572, at n.18 (2011).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PJM Interconnection, L.L.C. and Public Service Electric and Gas Company — Docket No. ER12-296-000

(Issued December 30, 2011)

MOELLER, Commissioner, *dissenting in part*:

This Commission may again be retreating from its incentive policy on needed transmission lines.[1] The public would be better served if the Commission pursued shifts in its incentive policy prospectively through its Notice of Inquiry, instead of on a case-by-case basis.[2]

The Northeast Grid Reliability Project (NGR Project) faces numerous risks and challenges to its completion and will provide many customer benefits including resolving reliability violations and providing significant savings on congestion and capacity costs. Although this order finds that the NGR Project demonstrated the nexus between the investment made and the incentives sought, it reduces the requested return on equity incentive adder by seventy-five basis points, without sufficient explanation. This decision thus increases regulatory uncertainty, which can reduce investments in the transmission infrastructure that is needed in this nation.

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Philip D. Moeller
Commissioner

[1] *See RITELine Illinois, L.L.C.*, 137 FERC ¶ 61,039 (2011) (*Moeller Dissenting*).

[2] *Promoting Transmission Investment Through Pricing Reform*, 135 FERC ¶ 61,146 (2011) (*Moeller Concurring*).