141 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation | Docket No. EL12-20-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 9, 2012)

1. On December 30, 2011, PPL Electric Utilities Corporation (PPL) filed a petition for declaratory order, under Rule 207 of the Commission's Rules of Practice and Procedure,[1] section 219 of the Federal Power Act (FPA),[2] and Order No. 679.[3] In the petition, PPL seeks approval of certain transmission rate incentives in connection with the Northeast/Pocono Reliability Project (NPR Project or Project). We conditionally grant in part, and deny in part, PPL's request for incentives, as discussed below.

I. Background

2. PPL is a public utility company organized under the laws of the Commonwealth of Pennsylvania. PPL is a wholly owned subsidiary of PPL Corporation. PPL is a transmission owner and a load serving entity in PJM Interconnection, L.L.C. (PJM). PPL is a signatory to the PJM Consolidated Transmission Owners Agreement and the Reliability Assurance Agreement. PPL presently serves approximately 1.4 million customers located in 29 counties in eastern and central Pennsylvania. PPL's transmission and distribution lines span approximately 40,000 circuit miles and cover a service territory of approximately 10,000 square miles.

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[1] 18 C.F.R. § 385.207 (2012).

[2] 16 U.S.C. § 824s (2006).

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

II. Application

A. Description of the NPR Project

3. PPL states that the NPR Project will involve the construction of a 230 kV transmission line, with associated 230-138/69 kV substations, to connect to the existing 69 kV and 230 kV transmission system in the Northeast/Pocono region. Specifically, PPL states that the NPR Project will include building 58 miles of new 230 kV transmission line, adding a second 230 kV conductor onto the Lackawanna-Hopatcong 500 kV towers for 8.4 miles, building a new 230-138/69 kV West Pocono substation, building a new 230-138/69 kV North Pocono substation, building a new 230-138/69 kV Paupack substation, installing a new 230 kV circuit breaker at the Jenkins 230-138/69 kV substation, and making several enhancements to the existing 69 kV transmission system.

4. PPL states that the NPR Project will resolve nine reliability violations on the 69 kV and 138 kV transmission system in the Pocono Mountains area in northeast Pennsylvania. PPL states that the NPR Project will serve as a backbone for the northeast section of its 69 kV transmission system. PPL expects that the NPR Project will cost $182 million and states that it plans to place the new substations and transmission line in service as portions are completed starting in 2014 and running until November 2017. PPL states that the preferred route was selected in December 2011 and will need to be submitted to the Pennsylvania Public Utility Commission (Pennsylvania Commission) for approval.

5. PPL explains that the NPR Project, as originally conceived, differed somewhat from its current form; some of its components were proposed and accepted in earlier iterations of the PJM RTEP.[4] However, PPL states, the earlier iterations did not resolve all of the reliability violations identified by PPL's analysis and would have required further future development. PPL states that, upon reconsideration, it proposed to build a solution to resolve all of the identified reliability violations, and these earlier component submissions were subsumed by the NPR Project. According to PPL, on December 6, 2011, the PJM Board approved the final components of the NPR Project for inclusion in the RTEP as a baseline reliability project. PPL states that PJM has indicated

[4] PPL December 30, 2011 Petition at 12 (citing PJM Interconnection, L.L.C., Docket No. ER12-445-000 (filed Nov. 18, 2011); PJM Interconnection, L.L.C., Docket No. ER11-2140-000 (filed Nov. 17, 2010)).

that the RTEP numbers will be consolidated under one baseline RTEP number in its next RTEP update.[5]

B. Requested Incentives

6. PPL requests, pursuant to FPA section 219 and Order No. 679, that the Commission authorize a 100 basis point incentive adder to PPL's base Return on Equity (ROE) and 100 percent prudently incurred Construction-Work-in-Progress (CWIP) in rate base. PPL states that the requested package of transmission rate incentives is tailored to the specific risks and challenges that PPL faces in financing and constructing the NPR Project.

III. Notice of Filings and Responsive Pleadings

7. Notice of PPL's filing was published in the *Federal Register*, 77 Fed. Reg. 2972 (2012), with protests and interventions due on or before January 30, 2012. The Pennsylvania Commission filed a notice of intervention on January 12, 2012 and a protest on January 30, 2012. Also on January 30, 2012, American Municipal Power, Inc. (American Municipal) filed a motion to intervene and comments and the Pennsylvania Office of Consumer Advocate, the Maryland Office of People's Counsel, the New Jersey Division of Rate Counsel and the Delaware Division of Public Advocate (collectively, Joint Consumer Advocates) filed a motion to intervene and protest. Motions to intervene were filed by Exelon Corporation, Public Service Electric and Gas Company, and Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company and Atlantic City Electric Company.

8. On February 10, 2012, PPL filed a motion for leave to answer and answer to the comments and protests.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[6] the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[5] The components of the NPR Project are designated in Schedule 12 of the PJM Open Access Transmission Tariff as b1524, b1524.1, b1524.2, b1525, b1525.1, and b1525.2. *See* PJM's Intra-PJM Tariffs, Schedule 12 - Appendix.

[6] 18 C.F.R. § 385.214 (2012).

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[7] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PPL's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Section 219 Requirement

11. In the Energy Policy Act of 2005,[8] Congress added section 219 to the FPA, directing the Commission to establish rules providing incentives to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, setting forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, such as the incentives requested here by PPL.

12. 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]

13. 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.[11] Order No. 679 establishes 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) the transmission project has received construction approval from an appropriate state commission or state siting authority.[12] Order No. 679-A clarifies the

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[7] *Id*. § 385.213(a)(2).

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

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

[10] *Id.* P 8 (citing 16 U.S.C. §§ 824d, 824e (2006)).

[11] 18 C.F.R. § 35.35(i) (2012).

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

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]

a. Proposal

14. PPL asserts that the NPR Project satisfies the Order No. 679 rebuttable presumption criteria because the NPR Project was approved in the PJM RTEP. PPL states that the NPR Project was approved as a baseline reliability upgrade. PPL notes that inclusion of projects in the PJM RTEP as baseline projects "means that PJM made a determination that the projects are regional in nature and mitigate congestion or ensure PJM's ability to continue to serve load reliably."[14]

b. Comments and Protests

15. The Pennsylvania Commission contends that the NPR Project is not entitled to the rebuttable presumption. The Pennsylvania Commission does not dispute that PJM accepted the NPR Project into the RTEP process, but argues that PPL fails to demonstrate that PJM considered whether the project will ensure reliability or reduce the cost of delivered power by reducing congestion. The Pennsylvania Commission states that the supporting documentation cited by PPL does not include any examination or conclusion by PJM that the NPR Project will improve reliability or reduce congestion.

c. Answer

16. PPL argues that, since the Commission has already found that PJM makes a determination that baseline projects will either ensure reliability or reduce the cost of delivered power by reducing congestion,[15] the NPR Project is entitled to the rebuttable presumption. PPL argues that the Pennsylvania Commission's contention is a collateral attack on previous Commission's orders that should be rejected.

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

[14] PPL December 30, 2011 Application at 14 (citing *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 41 (2007), *reh'g denied*, 122 FERC ¶ 61,034 (2008) (*Baltimore Gas & Elec.*)).

[15] PPL February 10, 2012 Answer at 3-4 (citing *Duquesne Light Co.*, 118 FERC ¶ 61,087, at PP 64-66 (2007) (*Duquesne*); *Baltimore Gas & Elec.*, 120 FERC ¶ 61,084 at P 41).

d. Commission Determination

17. We find that the NPR Project satisfies the above-noted requirements of section 219. The NPR Project was vetted and approved as part of the PJM RTEP as a baseline reliability project. This classification means that PJM made a determination that the NPR Project mitigates congestion or ensures PJM's ability to continue to serve load reliably.[16] In this regard, the Commission has held that the PJM RTEP constitutes "a fair and open regional planning process" for purposes of the rebuttable presumption provided in Order No. 679.[17]

2. Order No. 679 Nexus Requirement

18. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant for a transmission rate incentive must demonstrate that there is a nexus between the incentive sought and the investment being made. In evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between the incentives, and how any requested incentives address the risks and challenges faced by the project.[18] In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[19] The nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

19. As part of this evaluation, the Commission has found the question of whether a project is "routine" to be particularly probative.[20] 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

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[16] *Pub. Serv. Elec. & Gas Co.*, 137 FERC ¶ 61,253, at P 19 (2011).

[17] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

[18] 18 C.F.R. § 35.35(d) (2012); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

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

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

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).[21] 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."[22]

20. 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.[23] 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.[24]

a. Proposal

21. PPL asserts that the scope, effects, and risks and challenges of the NPR Project demonstrate that the NPR Project is not routine.

i. Scope

22. PPL states that the NPR Project is a large-scale project involving 58 circuit miles of new 230 kV transmission circuits which will span five counties and traverse the vacation and resort areas of the Pocono Mountains in northeast Pennsylvania. PPL states that the NPR Project will involve the construction of a 230 kV transmission line, with associated 230-138/69 kV substations, to connect to the existing 69 kV and 230 kV transmission system in the Northeast/Pocono region. PPL states that the NPR Project will cost approximately $182 million, which represents an increase of approximately 24 percent of PPL's net transmission plant in service as of December 31, 2010.

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[21] *Id.* PP 52-55.

[22] *Id.* P 54.

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

[24] *Id.*

ii. Effects

23. PPL states that the NPR Project will substantially increase the reliability of PPL's transmission system and have region-wide benefits. PPL states that the NPR Project will resolve nine reliability violations in an area that covers approximately one-sixth of PPL's service territory. PPL states that the reliability violations were identified in a study of its transmission system pursuant to the planning guidelines set forth in PPL's Reliability Principles and Practices (Reliability P&P).[25] PPL states that load in northeastern Pennsylvania and the Pocono Mountains continues to grow and contends that, without the NPR Project, reliability violations would become more severe over time.[26]

iii. Risks and Challenges

24. PPL states that the NPR Project presents extensive regulatory risks and challenges to PPL. PPL states that the NPR Project will require a substantial number of permits and regulatory approvals. PPL also states that the location of the NPR Project will considerably increase the difficulty of obtaining the necessary approvals and permits; PPL states that the NPR Project will cross or pass near resort areas, state game lands and forests, and wetlands in northeastern Pennsylvania. PPL notes that it will require

[25] PPL states that, in concert with the PJM RTEP process, PPL undertakes an annual independent analysis of its transmission system, which is under the functional control of PJM. PPL provides the results of its independent studies to PJM for consideration and inclusion in the PJM RTEP. PPL states that the planning guidelines set forth in its Reliability P&P are consistent with and a complement to the PJM and North American Electric Reliability Corporation reliability criteria. PPL states that, pursuant to the Reliability P&P, PPL conducts long-range fifteen-year studies every five years to analyze the integrity of the transmission system in each region of its transmission service territory.

[26] PPL states that due to the configuration of this portion of PPL's system and the topography of the region, the area currently relies on a series of 69 kV transmission lines that stretch up to forty miles in length and are no longer adequate to provide reliable service under accepted reliability standards. PPL explains that customers in the area are more vulnerable to transmission outages because of the long line lengths. During winter peak loading conditions, the long lines make it more difficult for PPL to restore power after an outage because of the resulting low voltage at the local distribution substations. PPL December 30, 2011 Petition at 18.

approvals from both federal and state agencies,[27] including siting approval from the Pennsylvania Commission. PPL argues that, as the approval processes are not coordinated, the required approvals could result in delay of the NPR Project, including because of conflicting conditions placed on approval.

25. PPL states that the NPR Project presents extensive siting risks and challenges to PPL. PPL notes that the final route of the NPR Project is yet to be determined at the Pennsylvania Commission. PPL states that, in some areas, existing rights-of-way will not be available or the rights-of-way that are available will be insufficient to accommodate the 230 kV transmission line and will thus need to be expanded. PPL states that regardless of whether PPL uses existing or new rights-of-way, the NPR Project will cross areas designated for environmental protection, such as fresh water fisheries, scenic rivers and wetlands, state-owned and conserved lands, such as the Lackawanna State Forest, and habitat for threatened and endangered animals and plants. PPL further states that the Pocono Mountains are a popular destination for vacationers and tourists.

26. PPL states that the NPR Project poses construction environment challenges because siting and constructing the transmission line in the Pocono Mountains will be challenging due to the steep topography, numerous lakes and wetlands, and several species of threatened and endangered animals and plants that are found there. Regarding construction technique challenges, PPL states that much of the area where the NPR Project is to be constructed is inaccessible, and, as there are limited access roads and construction staging areas, PPL may need to use helicopters or other specialized equipment suited to working in rocky, mountainous terrain and wet areas. PPL states that these specialized construction techniques will significantly increase the cost of the NPR Project and could increase the time to complete the NPR Project. In addition, PPL notes that the NPR Project will both intersect and be constructed in close proximity to a gas pipeline right-of-way and a gas pipeline compressor station. Finally, PPL argues that the NPR Project poses various construction management challenges beyond the physical and logistical difficulties of constructing the line because, due to regulatory delays, PPL

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[27] PPL states that the NPR Project may require federal regulatory approvals from the United States Army Corps of Engineers, the United States Fish and Wildlife Service, and the Federal Aviation Administration. PPL states that the NPR Project may also require Pennsylvania State approvals from: (1) the Pennsylvania Department of Environmental Projection; (2) the Pennsylvania Fish and Boat Commission; (3) the Pennsylvania Historical and Museum Commission; (4) County Conservation Districts; and (5) the Pennsylvania Department of Conservation and Natural Resources. PPL December 30, 2011 Petition at 19.

is now scheduled to construct the Susquehanna-Roseland Line[28] during the same time period as the NPR Project. PPL states that the accelerated construction schedule and competing demands of the Susquehanna-Roseland Line for labor, materials, and other resources will further complicate the NPR Project's construction schedule.

27. PPL states that the NPR Project presents extensive financial risks and challenges. PPL contends that the NPR Project will constitute a major, non-routine investment. PPL states that its net transmission plant in service as of December 31, 2011 totaled $753 million. The NPR Project has an estimated total cost of $182 million, constituting an increase of approximately 24 percent in PPL's net transmission plant in service. PPL states that during its peak construction period, PPL expects to spend $6 million per month to construct the NPR Project. PPL argues that the substantial cost of the NPR Project, coupled with its long lead time, will increase PPL's debt levels and put a strain on PPL's finances. PPL states that, at the same time, it plans to invest $500 million on its portion of the Susquehanna-Roseland Line and $700 million on an initiative to rebuild and replace existing facilities on its transmission system. PPL states that within the next five years it will be tripling its net transmission plant in service. PPL states that the consequent financial burden is virtually unprecedented for PPL.[29] PPL notes that Fitch, a credit rating agency, has indicated that "going forward, PPL's credit metrics will be pressured by the costs associated with a large capital expenditure program… The higher capital expenditures are primarily to replace an aging infrastructure and to enhance the transmission network."

28. PPL states that it intends to use a combination of internal and external sources to fund the NPR Project, both of which present considerable challenges. PPL states that to the extent it turns to internal sources to fund the NPR Project, it will face additional pressures. According to PPL, all large capital projects must compete for internal funds and such large transmission projects with sizeable risks that tie up huge amounts of capital for a substantial period of time will need a greater return on investment compared to short-term projects that face less risks.

b. <u>Protests</u>

29. Protestors argue that the NPR Project is not entitled to incentive rates because PPL has failed to demonstrate a nexus between the incentives sought for the project and the investment made. Protestors argue that the NPR Project is routine for purposes of the nexus requirement.

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[28] *See PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, *order on reh'g*, 124 FERC ¶ 61,229 (2008) (*PPL Electric Utilities Corp.*).

[29] PPL December 30, 2011 Petition, Ex. D at 6.

30. The Pennsylvania Commission argues that PPL has not supplied any evidence, other than generalized assertions, that the scope, effect, or level of risks and challenges associated with the NPR Project qualifies it for incentive rate treatment. The Pennsylvania Commission states that the Susquehanna-Roseland Line is more like the type of project for which the Commission intended to grant incentive rates.

31. The Pennsylvania Commission contends that the scope of the NPR Project serves a relatively small region of Pennsylvania and involves the construction of only 58 miles of 230 kV transmission line with associated substations and facilities. Regarding the effects of the NPR Project, the Pennsylvania Commission states that the primary purpose for granting incentive rate treatment is the relief of critical regional transmission constraints; the Pennsylvania Commission states that the NPR Project has not been identified by PJM as relieving any critical regional transmission constraints and, given its size and voltage, cannot be an essential part of resolving regional grid issues.

32. The Pennsylvania Commission argues that the risks associated with the NPR Project are not out of the ordinary for this type of routine transmission upgrade. The Pennsylvania Commission states that the required regulatory approvals are no more rigorous than average for a transmission project of this type. The Pennsylvania Commission also argues, given that the Commonwealth of Pennsylvania, like most of the mid-Atlantic region, has many mountains, streams, geologically unique features and environmentally sensitive areas, that PPL fails to provide sufficient detail about the unique challenges, environmental or construction-related, that it will encounter with the NPR Project. Instead, the Pennsylvania Commission states, PPL relies on generalized assertions or speculation of possible difficulties. As to financial challenges associated with the NPR Project, the Pennsylvania Commission notes that the NPR Project will constitute 12.6 percent of PPL's net transmission plant in service in 2017. The Pennsylvania Commission also states that it disagrees with PPL that it will be financially burdensome to construct the Susquehanna-Roseland Line at the same time as the NPR Project because PPL has already sought and received incentive rate treatment for the Susquehanna-Roseland Line.

33. Joint Consumer Advocates state that a new 230 kV line with necessary supporting infrastructure, entirely within PPL's own service territory, is the type of infrastructure upgrade that should be expected of PPL in the ordinary course of its business affairs. The Joint Consumer Advocates note that PPL has operated in its service territory of the Pocono Mountains for decades, so it has experience constructing transmission projects such as the NPR Project.

34. The Joint Consumer Advocates state that the NPR Project presents routine regulatory risks because it is not a multi-jurisdictional project and the list of required permits is brief in comparison to other projects in which the Joint Consumer Advocates have been involved. The Joint Consumer Advocates also state that the required federal

approvals are an ordinary and routine requirement for almost any transmission project, of any length, that a public utility would seek to construct. Regarding siting risks of the NPR Project that are particular to the Pocono Mountains, the Joint Consumer Advocates state that PPL has recent, detailed and broad experience with these issues as a result of its many prior transmission line projects in the same area.[30] Regarding construction challenges associated with management issues, the Joint Consumer Advocates argue that the Commission should not rely on speculation as to the construction of the Susquehanna-Roseland Line as a basis for determination of incentive ratemaking treatment for the NPR Project.

35. As to the financial challenges associated with the projected cost of the NPR Project, the Joint Consumer Advocates argue that PPL does not provide support for the authorization of incentive ratemaking treatment. The Joint Consumer Advocates state that, when PPL seeks to raise the necessary capital for the NPR Project, potential investors and financial institutions will be evaluating the financial metrics of PPL as a utility that owns substantial distribution and general assets along with its current transmission assets. As such, the Joint Consumer Advocates state that the effect of the dollar cost of the NPR Project should not be considered solely based on PPL's existing net transmission plant, but rather on PPL's net utility plant.[31] The Joint Consumer Advocates state that the projected investment in the NPR Project would add just slightly over five percent to PPL's net utility plant. The Joint Consumer Advocates also argue that, as PPL has received a package of incentives for the Susquehanna-Roseland Line, the potential for the Susquehanna-Roseland Line to be built at or around the same time frame should have no bearing on the Commission's decision in the current matter.

c. <u>Answer</u>

36. In its answer, PPL notes that the Commission has approved incentive rate treatment for projects at 230 kV and for those located within a single state or service territory. PPL states that, at $182 million, the cost of the NPR Project exceeds: (i) the cost of projects typically constructed by PPL in its service territory; (ii) the total cost of all 2010 RTEP projects to be constructed by PPL; and (iii) as shown by the Pennsylvania Commission, the cost of any single Pennsylvania project included in the 2010 PJM

[30] Joint Consumer Advocates January 30, 2012 Protest at 10 (citing PPL December 30, 2011 Petition at 21 n.69).

[31] The Joint Consumer Advocates state that PPL's net utility plant consists of distribution and transmission facilities, and that as of December 31, 2010, was approximately $3.5 billion dollars. Joint Consumer Advocates January 30, 2012 Protest at 8-9.

RTEP.[32] PPL also argues that protestors do not provide any evidence to refute the evidence provided by PPL regarding the unique risks and challenges that PPL will face in constructing the NPR Project. PPL states that these unique risks and challenges, including those related to local opposition and construction in mountainous and environmentally-sensitive terrain with limited access roads, distinguish the construction of the NPR Project from construction for a typical project in PPL's service territory.

d. Commission Determination

37. We find that the NPR Project is not routine for purposes of our nexus test primarily because, given the scope of investment required, it will present financial risks and challenges to PPL. The scope of investment required for the NPR Project and the record in this proceeding demonstrate that the $182 million cost of constructing the NPR Project is not routine with regards to those projects included in the PJM RTEP to be undertaken both by PPL[33] and in Pennsylvania.[34] Moreover, this investment is concurrent with plans to invest $1.2 billion in new and upgraded transmission infrastructure. Because these investments will effectively triple PPL's net transmission plant in service over the next five years and based on the evidence herein, we find that these investments will strain PPL's finances. For these reasons, we disagree with protestors' argument that the NPR Project is routine.

3. Specific Incentives and Total Package of Incentives

a. Construction Work in Progress

i. Proposal

38. PPL requests inclusion of 100 percent of CWIP in rate base for the NPR Project. PPL states that the NPR Project involves a lead time of approximately five years before

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[32] PPL February 10, 2012 Answer at 5-6 (citing Pennsylvania Commission January 30, 2012 Protest at 7).

[33] *See supra* at P 27. In addition, as stated by PPL, the 2010 PJM RTEP identified five projects with costs exceeding $5 million to be constructed in PPL's transmission zone for a combined total cost of $122 million. PPL February 10, 2012 Answer at 5-6 (citations omitted).

[34] As stated by the Pennsylvania Commission, of the thirteen projects in Pennsylvania approved in the 2010 PJM RTEP, none exceeded $35 million in cost, with some costing less than $10 million. Pennsylvania Commission January 30, 2012 Protest at 7 (citations omitted).

the in-service date for the complete project when PPL can begin to recover the costs of construction. PPL contends that potential investors may be deterred by the inability to generate a return on their investment for that period. PPL notes that Fitch has recently issued a report noting that PPL's credit metrics "will be pressured" by the costs of a large capital expenditure program and that expenditures "are expected to rise substantially over the next four years (2012-2015)… primarily to replace an aging infrastructure and to enhance the transmission network."[35] PPL contends that the expenditures during this period will now include outlays for both the NPR Project and the Susquehanna-Roseland Line as well as its aging infrastructure project. PPL notes that according to Fitch, PPL's ability to recover its invested capital and expenditures in a timely manner through its transmission formula rate helps offset risks caused by these expected investments. PPL argues that any delay in recovery for large projects, such as the NPR Project, could upset this dynamic and as a result, PPL's financial metrics will weaken.

39. Therefore, PPL argues that traditional recovery of construction costs through Allowance for Funds Used During Construction (AFUDC) may contribute substantial risks that could be reduced by the ability to include 100 percent CWIP in rate base. PPL states that this incentive would also help the NPR Project stay on schedule, which is particularly important given the accelerated pace of construction. PPL states that CWIP will provide a more immediate recovery of costs that will assist in allowing PPL to finance two large transmission projects during the same time period while maintaining and upgrading the existing transmission system. PPL urges that allowing it to include 100 percent CWIP in rate base will allow a more prompt return on investments, because it will allow the recovery of financing costs (both debt and equity). PPL states that this incentive provides even greater value if the NPR Project is delayed due to siting or permitting issues or the need to address local concerns that arise as a result of opposition to building the proposed project in the Pocono Mountains. According to PPL, this will improve cash flow and PPL's coverage ratios, and enhance its credit quality and debt ratings.

40. PPL states that in a future section 205 filing to implement a stand-alone balancing accounting mechanism to recover the CWIP revenue requirements, PPL Electric will provide a detailed explanation of its accounting methods and procedures to implement the stand-alone balancing account, comply with 18 C.F.R. §§ 35.13(h)(38) and 35.25, and maintain comparability of financial information.

[35] PPL December 30, 2011 Petition at 37.

ii. Comments and Protests

41. While protestors assert that the NPR Project is routine and does not warrant any incentives, protestors do not oppose the CWIP incentive if the Commission finds that the NPR Project is not routine.

iii. Commission Determination

42. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently incurred transmission-related CWIP costs in rate base.[36] 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.[37]

43. We find that PPL has shown a nexus between the proposed CWIP incentive and its investment in the NPR Project. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP in rate base for the NPR Project would help mitigate the negative impact on PPL's credit metrics and ability to attract financing on reasonable terms. PPL has demonstrated that its capital budget may be strained as it builds the NPR Project while expanding and constructing needed improvements to its existing transmission infrastructure. Without CWIP recovery, PPL 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.[38] The Commission also finds that allowing PPL 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.[39] By allowing CWIP in rate base, the rate impact of the NPR Project can be

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

[37] *Id*. P 115.

[38] *E.g.*, PPL December 30, 2011 Petition at 35-38.

[39] *See, e.g., Pub. Serv. Elec. & Gas Co.*, 129 FERC ¶ 61,300, at P 44 (2009); *PPL Elec. Utils. Corp*., 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229 at P 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).

spread over the entire construction period and will help consumers avoid a return on and of capitalized AFUDC.[40]

44. Under Order No. 679 and the Commission's regulations,[41] an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base. Thus, our acceptance of PPL's request to include 100 percent of CWIP in rate base is conditioned upon PPL providing in a future section 205 filing a detailed explanation of its accounting methods and procedures to implement the stand-alone balancing account and comply with 18 C.F.R. § 35.25.

b. <u>Return on Equity Adder and Total Package of Incentives</u>

i. <u>Proposal</u>

45. PPL requests a 100 basis point ROE adder for investment in the NPR Project. PPL asserts that there is a nexus between the ROE incentive requested and PPL's investment in the NPR Project. PPL states that the length, scope, and nature of the NPR Project present significant financial, construction, and regulatory risks and challenges that can and should be offset by a higher ROE. Specifically, PPL states the Project is estimated to cost nearly $182 million, which represents a major investment and one that is far greater than PPL's routine transmission projects. PPL states that during its peak construction period, PPL expects to spend $6 million per month to construct the NPR Project. Moreover, according to PPL, the regulatory delay for the Susquehanna-Roseland Line and its aging infrastructure replacement initiative create additional challenges because all three projects will be competing for scarce financial resources. PPL states that within the next five years it will be tripling its net transmission plant in service, and that the consequent financial burden is virtually unprecedented for PPL.[42] PPL states that these large investments will reduce cash flow, increase PPL's debt levels, affect PPL's financial metrics, and could increase the cost of capital.

46. Moreover, PPL states that the topography and environmentally-sensitive nature of the Pocono Mountains creates extensive risks and challenges and could substantially delay the NPR Project. PPL notes that the Project is expected to traverse a resort area, which according to PPL, will likely lead to sizeable local opposition. PPL also states that

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

[41] 18 C.F.R. § 35.25 (2012).

[42] PPL December 30, 2011 Petition, Ex. D at 6.

authorization of a 100 basis point ROE adder for the NPR Project in conjunction with the CWIP incentive is consistent with Commission precedent.[43]

47. PPL states that it has carefully selected the requested incentives and has tailored the incentives to address the specific risks and challenges associated with the NPR Project. PPL further states that it is not requesting every incentive available. Rather, PPL states that it only seeks two of the possible transmission incentives identified in Order No. 679, and is not at this time seeking abandonment, a hypothetical capital structure, deferred cost recovery, or accelerated depreciation.

48. PPL states that each incentive requested is targeted at mitigating a particular risk or challenge of the Project. Specifically, PPL states that the 100 basis point incentive adder to ROE is targeted at encouraging investment in a large regional transmission project that entails numerous construction, siting, regulatory and financial risks by offering a return for investors commensurate with those risks. PPL states that inclusion of 100 percent of CWIP in rate base is targeted at mitigating the risk to PPL Electric's cash flows and lessening rate shock to consumers. PPL contends that approval of the requested CWIP in rate base would not warrant an adjustment to the 100 basis point incentive ROE adder requested, stating that the CWIP incentive does not fully offset the negative impact the NPR Project will have on PPL's credit metrics.

ii. Comments and Protests

49. Protestors argue that, if the Commission finds that the NPR Project is not routine, the Commission should not award the requested incentive ROE in addition to the CWIP incentive. According to the Pennsylvania Commission, authorizing PPL to recover prudently incurred CWIP will enable PPL to borrow construction funds at more favorable rates. This will, in turn, provide PPL with increased ability to earn or exceed its authorized return on equity. The Pennsylvania Commission argues that it would be excessive to award an ROE incentive on top of the benefit that CWIP furnishes, and would likely doubly compensate PPL for the risks of the project as presented in its petition. Also, the Pennsylvania Commission contends that formula rate treatment for the NPR Project, along with the CWIP incentive, will remove most, if not all, of the financial risks of the project.

50. Joint Consumer Advocates argue that any risks or challenges faced by the NPR Project are not the type of special risks or challenges that justify a 100 basis point ROE adder, noting that PPL's base ROE of 11.18 percent is already at a high level. Joint Consumer Advocates state that as a matter of sound public policy, the authorization of

[43] PPL December 30, 2011 Petition at 34 (citing *Baltimore Gas & Elec.*, 120 FERC ¶ 61,084 at PP 8-9; *Duquesne*, 118 FERC ¶ 61,087 at P 4).

CWIP in rate base is a sufficient and reasonable risk-reducing incentive for the Project if any such incentives are authorized.

iii. Answer

51. PPL argues that the Commission has rejected the argument raised by protestors in multiple proceedings.[44] PPL argues that the CWIP incentive alone will not be enough because of the challenges of the NPR Project and the significant investment that PPL must make in the NPR Project and its transmission system over the next five years. PPL avers that both CWIP and the requested 100 basis point ROE adder will be vital to PPL's efforts to attract necessary capital and investment in the NPR Project. PPL also argues that the fact that PPL received transmission rate incentives for the Susquehanna-Roseland Line does not address the risks posed by the NPR Project or the risks caused by having to finance and construct both projects at the same time.

iv. Commission Determination

52. In Order No. 679, the Commission stated that it will allow, when justified, an incentive-based ROE.[45] 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."[46]

53. In addition, the Commission clarified in Order No. 679-A 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. Order No. 679-A also 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.

54. Although we find PPL's project to be non-routine, for the reasons discussed above, we find that PPL has not identified risks and challenges of the NPR Project sufficient to support its request for an ROE adder. In this respect, we note that the CWIP incentive that the Commission is granting herein reduces the financial risks and challenges that PPL cites as support for a 100 basis point incentive ROE adder. Further, the NPR Project is being constructed entirely within PPL's service territory, an area that PPL has operated in for decades. Moreover, the NPR Project will be constructed in

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[44] PPL February 10, 2012 Answer at 7-8 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 66 (2006); *S. Cal. Edison*, 121 FERC ¶ 61,168 (2007) (*SoCal Edison*)).

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

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

a single state, with one public utility commission having siting authority, and the NPR Project does not require coordination with another public utility besides PJM. Also, the NPR Project involves the construction of 58 miles of new lines at 230 kV, and PPL has not demonstrated that the scope of the NPR Project, such as its length or voltage level, presents risks or challenges that warrant an incentive ROE adder.

55. In some previous cases where an applicant has sought multiple incentives, the Commission has reduced the applicant's requested ROE incentive based on the facts and circumstances of those cases.[47] 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, we find that PPL's requested ROE adder is not just and reasonable. As described above, we are not persuaded that the regulatory, siting, and construction risks and challenges faced by PPL in developing the NPR Project warrant an ROE adder. Also as described above, the risks and challenges that we find make the NPR Project non-routine are sufficiently mitigated with our approval for PPL to collect 100 percent of CWIP in rate base. As such, we find that the total package of incentives, as modified, is tailored to address the demonstrable risks and challenges faced by PPL in developing the NPR Project.

4. Other Matters

a. Comments and Protests

56. American Municipal makes two comments, both conditioned on a finding from the Commission granting an incentive ROE adder to PPL for the NPR Project. First, American Municipal requests that the Commission clarify that the incentive ROE apply only to PPL's investment in the NPR Project, not to the entirety of its outstanding common equity. Second, American Municipal argues that if the NPR Project later is cancelled, then PPL, rather than ratepayers, must bear the loss because the incentive ROE will have compensated PPL for the risk of that loss. In the same way, the Joint Consumer Advocates submit that any additional filings in the future that seek to alter or add additional incentives for the NPR Project should cause any existing incentive authorizations to be subject to further process and scrutiny.

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[47] *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144; *RITELine Ill., 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; *SoCal Edison*, 121 FERC ¶ 61,168 at P 143; *cf. Duquesne*, 118 FERC ¶ 61,087 at P 57; *but see Pepco Holdings*, 125 FERC ¶ 61,130, at P 78 n.96 (2008).

b. Answer

57. PPL states that AMP's argument regarding eligibility for recovery of abandoned plant should be rejected. PPL states that, as it has not sought such approval in this proceeding, it would be improper to address the issue in this proceeding and preclude PPL from seeking recovery of abandoned plant in a future filing if the circumstances warrant permitting such recovery.

c. Commission Determination

58. First, since the order does not grant an incentive ROE, we need not address its applicability. Second, we will not at this time determine PPL's eligibility for recovery of prudently incurred costs associated with abandonment of the NPR Project. We will also not determine at this time whether a future filing from PPL will necessarily cause the existing incentive authorization for the collection of CWIP in rate base to be subject to further process and scrutiny. These arguments from American Municipal and the Joint Consumer Advocates are premature; such concerns may be raised in a future proceeding.

The Commission orders:

PPL's Petition is granted in part, and denied in part, 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)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PPL Electric Utilities Corporation Docket No. EL12-20-000

(Issued October 9, 2012)

MOELLER, Commissioner, *dissenting in part*:

The Commission "strives to provide regulatory certainty through consistent approaches and actions."[1] However, the Commission has strayed from this guiding principle with respect to its lack of consistency in awarding transmission incentive ROE adders. For the first time, the Commission today chooses not to award any incentive adder notwithstanding its determination that the proposed transmission project is not routine. With little regard for established policy and precedent, this decision hurries down a path of providing less regulatory certainty for those who wish to invest in, and develop needed transmission infrastructure.[2]

Without a full explanation of the decision to eliminate the requested ROE adder in view of not having done so in prior orders, the Commission has inadvertently signaled yet another shift in the manner by which it will award transmission incentives.[3] Such a

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[1] Guiding Principle of the Federal Energy Regulatory Commission.

[2] *See PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 137 FERC ¶ 61,253 (2011) (Moeller, Comm'r, dissenting); *see also RITELine Illinois, L.L.C.*, 137 FERC ¶ 61,039 (2011) (Moeller, Comm'r, dissenting).

[3] By my count, in the nearly 100 incentive applications that the Commission has processed since 2006, this is the first instance where an applicant with a project found to be not routine has also had its request for an ROE adder denied in its entirety. In prior cases where other risk-reducing incentives (such as CWIP or Abandoned Plant) were awarded, the Commission found that such non-ROE incentives could justify reducing, but not completely remove the need for an ROE adder. *See, e.g., 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 [the applicant'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

(continued…)

hopscotch approach does not constitute reasoned decision making. Instead, this approach only serves to increase regulatory uncertainty and may result in a reduction of needed investment in our nation's transmission infrastructure.

The application before us likely represents the type of project that Congress envisioned when it amended the Federal Power Act to promote capital investment in transmission infrastructure. According to the applicant, PPL, the proposed 58-mile 230 kV project, which is to include new substations and other enhancements would resolve nine reliability violations identified by PJM in the 2011 Regional Transmission Expansion Plan.[4] The applicant also explains how its Northeast/Pocono Reliability Project presents extensive regulatory and permitting risks, and both physical and financial challenges.[5]

The Commission, in turn, acknowledges the financial risks and challenges presented by the Project, finding that the Project "will strain PPL's finances", and primarily because of the scope of investment required, properly determines that this Project is not routine for the purposes of our nexus test. Having met the threshold to qualify for any incentive treatment, the Commission then grants PPL's request to include 100 percent of prudently incurred transmission-related CWIP in rate base, a decision which I support because it will provide financial stability to PPL. However, I depart with the majority concerning its response to the applicant's request for a 100 basis point ROE adder

The majority, despite finding the Project to be not routine, concludes that providing any ROE adder to the applicant "is not just and reasonable". The majority finds that the applicant did not identify risk and challenges sufficient to support its request for an ROE adder, and that the CWIP incentive will suffice to address the aforementioned financial risks. I disagree. Contrary to the majority's finding, I contend the applicant has adequately described various risks and challenges that it would encounter, including certain environmental and topographical challenges that were not addressed – to the same extent that any prior applicant for incentives has ever done so. Accordingly, PPL should

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ROE incentive that reflected, in its judgment, the level of remaining risk.").

[4] PJM 2011 Regional Transmission Expansion Plan, Book 5, p. 248-249. Located at: http://www.pjm.com/documents/reports/~/media/documents/reports/2011-rtep/2011-rtep-book-5.ashx.

[5] At an estimated cost of $182 million, PPL states that the Project would increase its net transmission plant-in-service by approximately 24%, thus greatly increasing its financial risk. Applicant's transmittal letter at 17.

have received at least some amount of its requested ROE adder in recognition of the special risks and challenges that its Project will face.[6]

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Philip D. Moeller
Commissioner

[6] *See PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,253, at P 60-62 (2011) (finding that project proposed by Public Service Electric and Gas Company (PSE&G) presented risks and challenges distinct from those addressed by a formula rate, and that PSE&G established the nexus required to support a 25 basis point incentive ROE for that project in spite of the risk reduction from other incentives granted by the Commission).