142 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.,
Potomac Electric Power Company, and
Delmarva Power and Light Company

Docket No. ER13-607-000

ORDER ON ABANDONMENT COST RECOVERY FILING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 28, 2013)

1. On December 21, 2012, pursuant to section 205 of the Federal Power Act (FPA),[1] Part 35 of the Commission's regulations,[2] and the Commission's October 31, 2008 order in Docket No. ER08-1423-000 granting transmission incentives,[3] PJM Interconnection, L.L.C. (PJM) filed with the Commission, on behalf of Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva) (collectively, PHI Companies), proposed tariff revisions to its Open Access Transmission Tariff (OATT). The proposed tariff revisions seek to recover, in the PHI Companies' formula rates, prudently incurred costs associated with the abandonment of the Mid-Atlantic Power Pathway (MAPP) Project. In this order, we find that the MAPP Project was abandoned for reasons beyond the PHI Companies' control and, therefore, we accept in part and deny in part the PHI Companies' request to recover the prudently incurred abandonment costs for the MAPP Project. We accept and suspend the proposed tariff revisions to

[1] 16 U.S.C. § 824d (2006).

[2] 18 C.F.R. Part 25 (2012).

[3] *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130 (2008) (*MAPP Incentives Order*).

recover the prudently incurred abandonment costs for the MAPP Project in the PHI Companies' formula rates, to become effective March 1, 2013, subject to refund, hearing and settlement judge procedures. However, we reject the proposed tariff revisions and require the PHI Companies to remove the return on equity (ROE) incentive adders of 50 basis points for regional transmission organization participation (RTO adder) and 150 basis points for project specific risks and challenges during the amortization period of the abandonment costs. A compliance filing is due 30 days from the date of this order.

I. Background

2. According to the PHI Companies, the MAPP Project was included in PJM's regional transmission expansion plan (RTEP) in 2007 for the purpose of resolving numerous overloads and bringing congestion relief and reliability benefits to the Baltimore-Washington area. The PHI Companies state that the proposed MAPP Project was to consist of a 500 kV, 230-mile transmission line that began in Virginia, crossed southern Maryland, included a submarine crossing of the Chesapeake Bay, traversed the Delmarva Peninsula, and ended in southern New Jersey. The PHI Companies further state that the MAPP Project was estimated to cost over $1.0 billion and was originally expected to be in service in 2013.[4]

3. On August 18, 2008, the PHI Companies submitted revised tariff sheets to the Commission pursuant to sections 205 and 219 of the FPA and Order No. 679[5] to implement transmission rate incentives for the MAPP Project effective November 1, 2008. On October 31, 2008, the Commission issued the *MAPP Incentives Order* granting several of the requested incentives. The Commission granted an overall ROE of 12.80 percent which included 150 basis points as an incentive for the risks and challenges the MAPP Project faced. In granting this incentive, the Commission recognized that PHI already had an adjusted ROE of 11.30 percent after applying the Commission-approved 50 basis point ROE adder for RTO participation to the 10.80 percent base ROE that was agreed upon as part of a Settlement Agreement.[6] In addition, the Commission granted

[4] Transmittal at 6.

[5] *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 (cross-referenced at 119 FERC ¶ 61,062), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[6] *Id.* P 80. The base ROE was established through an uncontested settlement, *Baltimore Gas and Electric Company*, 115 FERC ¶ 61,066 (2006). The Commission

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recovery of 100 percent of Construction Work In Progress (CWIP), and recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment was a result of factors beyond the PHI Companies' control.

4. The PHI Companies state that on August 18, 2011, PJM informed them that the PJM Board of Managers (PJM Board) had decided to hold the MAPP Project in abeyance, yet retain it in the 2011 RTEP with a 2019-2021 in-service date. PJM explained that its study results indicated "the potential for criteria violations and the need for MAPP in the 2019-2021 period" but that "uncertainties remain that could accelerate this timing."[7] The PHI Companies state that PJM thus directed them to continue development activities that would "allow the MAPP project to be quickly re-started should these planning activities demonstrate the need to do so."[8] PJM cautioned that "this action does not constitute a directive by PJM to PHI to cancel or abandon the MAPP Project. Rather, it is recognition of the uncertainties underlying the timing of the need for the project."[9] The PHI Companies explain that, on August 24, 2012, the PJM Board decided to terminate the MAPP Project and remove it from the PJM RTEP.

II. <u>The PHI Companies' Filing</u>

5. The PHI Companies seek to recover $87,550,503 of what they claim are prudently-incurred abandonment costs associated with the MAPP Project.[10] The PHI Companies assert that they prudently incurred $101.2 million in MAPP Project costs, but only seek recovery of approximately $87.5 million because of accounting for $2.8 million in mitigation of materials and associated overhead, $10.9 million in completed Burches Hill substation upgrades now in service, and the cost of final close-out of contracts and invoices for services predating cancellation. The PHI Companies divided the $87.5 million into five categories: (1) $21.2 million for regulatory approvals and environmental permitting; (2) $38.1 million for property related costs, including land and

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granted the RTO adder in *Pepco Holdings, Inc.*, 121 FERC ¶ 61,169, at P 15 (2007) (RTO Adder Order).

[7] Transmittal at 8-9.

[8] *Id.* at 9.

[9] *Id.* at 9.

[10] Of the $87.5 million, approximately $50 million is attributable to Pepco and $37.5 million is attributable to Delmarva. Ex. PHI-300 at n.1.

rights-of-way acquisition; (3) $11.4 million for engineering and design; (4) $7.3 million for materials and construction; and (5) $9.6 million for management and administration.[11]

6. The PHI Companies assert that the MAPP Project was abandoned for reasons beyond their control and that they prudently incurred the costs associated with the Project. The PHI Companies state that as the MAPP Project's in-service date was pushed from 2013, to 2014, and then to 2015 over the course of several years, PJM consistently instructed them not to delay, but rather to continue their efforts necessary to construct the Project. Further, the PHI Companies state that PJM staff reviewed results of analyses showing reliability drivers no longer exist for the MAPP Project throughout the 15-year planning cycle. After considering PJM staff's recommendation resulting from additional reliability analyses and communications received from PJM stakeholders, on August 24, 2012, the PJM Board terminated the MAPP Project and removed it from the PJM RTEP.[12]

7. The PHI Companies propose to amortize the MAPP Project abandonment costs over a five-year period.[13] The PHI Companies explain that a five-year amortization period is reasonable because: (1) it would result in lower carrying costs charged to ratepayers than otherwise would result from a longer amortization period; (2) the determination of the PHI Companies' annual revenue requirement under the PHI formula rates would be minimally affected; and (3) it would give the PHI Companies sufficient time to sell or transfer MAPP Project-related property and materials and credit the proceeds of any such sale or transfer as a reduction to the MAPP abandonment costs regulatory asset.[14] Moreover, by amortizing the costs over five years, the PHI Companies explain that the zonal network rate average would increase by only 0.73 percent.[15]

8. The PHI Companies claim that the lawful ROE to use for the return on the unamortized balance of the MAPP abandonment costs is the 12.8 percent approved for the Project. The PHI Companies also claim that the *MAPP Incentives Order* explained

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[11] Transmittal at 8.

[12] *Id.* at 9.

[13] *Id.* at 11.

[14] Ex. PHI-400 at 7.

[15] *Id.* at 8.

that the MAPP Project incentives were not mutually exclusive but, instead, were a total package.[16] Moreover, the PHI Companies state that the ROE was approved for the development and construction phase through CWIP, during the operating life through inclusion in ratebase, with no distinction articulated by the Commission for the amortization period of abandoned plant regulatory assets. Therefore, the PHI Companies argue, any modification of the authorized ROE would deviate from the *MAPP Incentives Order* and would frustrate the reasonable and settled investor expectations that the authorized return would apply to return of and on investment in the Project. The PHI Companies state that using a different return than the authorized incentive would "create uncertainty about whether an approved incentive could be collected on costs that are unavoidable (but prudently incurred)."[17] Accordingly, the doctrine of *res judicata* applies to the issue of the applicable ROE for the MAPP Project, since the issue was fully litigated and decided on the merits in the *MAPP Incentives Order*, and no new circumstances or evidence justifies its re-litigation.[18]

9. The PHI Companies note that they are aware of the recent *PATH Abandonment Order*,[19] in which the Commission found that PATH's 50 basis point RTO-participation adder should not continue because the applicants in that case would not be taking steps to turn over operational control of their facilities to PJM and would have no future physical facilities. The PHI Companies contend that the Commission's finding in that order should not apply to the instant filing for two reasons. First, in contrast to PATH, the PHI Companies have turned over operational control of all their other facilities to PJM. Moreover, the Commission already has approved the ROE applicable to the MAPP Project. Second, the PHI Companies assert that the Commission's statement in the *PATH Abandonment Order* indicating that ROE adders are not appropriate in abandonment filings should be construed as applying on a prospective basis only, since the Commission already approved such adders in the *MAPP Incentives Order*. That is, if the

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[16] Transmittal at 11 (citing *MAPP Incentives Order*, 125 FERC ¶ 61,130 at PP 75-79).

[17] *Id.* at 11-12 (citing *New England Conference of Public Utilities Commissioners, Inc. v. Bangor Hydro-Electric Co., et al.*, 124 FERC ¶ 61,291, at P 47, *order on reh'g*, 135 FERC ¶ 61,140 (2011)).

[18] *Id.* at 12 (citing *Entergy Services, Inc.*, 127 FERC ¶ 61,226, at P 10 (2009); *Trans Bay Cable, LLC*, 132 FERC ¶ 61,083, at P 20 (2010)).

[19] *PJM Interconnection, LLC and Potomac-Appalachian Transmission Highline, L.L.C.*, 141 FERC ¶ 61,177, at P 71 (2012) (*PATH Abandonment Order*).

determination in PATH is now the Commission's policy for RTO participation adders, it must apply only to transmission incentive orders after the date of the *PATH Abandonment Order*.[20]

10. The PHI Companies request that the Commission accept its proposal effective March 1, 2013. The PHI Companies also request waiver of sections 35.13(d)(1)-(2) and 35.13(d)(5) of the Commission's regulations, which require certain financial statements. The PHI Companies note that detailed statements of their cost of service are unnecessary because the proposed abandonment cost recovery reflects cost inputs to the PHI formula rates that are derived from the PHI Companies' respective FERC Form No. 1s, and detailed support regarding these inputs and the proposed revisions to the PHI formula rates are set forth in this filing.

III. Notice, Interventions, and Responsive Pleadings

11. Public notice of the PHI Companies' filing was published in the *Federal Register*, 78 Fed. Reg. 31,482 (2013), with interventions and comments due on or before January 11, 2013. Notices of intervention or timely motions to intervene were filed by Maryland Public Service Commission (Maryland Commission), Maryland Office of People's Counsel, Delaware Public Service Commission (Delaware Commission), Exelon Corporation, Dominion Resources Services, Inc., First Energy Transmission Owners,[21] PJM Interconnection, L.L.C., Office of the People's Counsel DC, Public Service Electric and Gas Company, Delaware Municipal Electric Corporation, PPANJ, New Jersey Division of Rate Counsel, American Municipal Power, Inc., North Carolina Electric Membership Corporation, Illinois Commerce Commission, and Dominion Electric Cooperative. A timely intervention as a Supplement to Maryland Office of People's Counsel's intervention was filed. Timely motions to intervene and protest were filed by Delaware Commission; jointly by Maryland Commission and Delaware Commission; New Jersey Board of Public Utilities; and Joint Consumer Advocates.[22] A

[20] Transmittal at 12-13.

[21] First Energy Transmission Owners comprise the following: Jersey Central Power & Light Co.; Metropolitan Edison Co.; Pennsylvania Electric Co.; Monongahela Power Co.; The Potomac Edison Co.; West Penn Power Co.; American Transmission Systems, Inc.; and Trans-Allegheny Interstate Line Co.

[22] Joint Consumer Advocates comprise the following: Pennsylvania Office of Consumer Advocate; Maryland Office of People's Counsel; New Jersey Division of Rate Counsel; Consumer Advocate Division, Public Service Commission of W. Virginia;

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timely protest and request for partial summary disposition, discussed below, was filed jointly by American Municipal Power, Inc., Delaware Municipal Electric Corporation, Inc., Old Dominion Electric Cooperative, and Public Power Association of New Jersey (collectively, Joint Protestors). On January 25, 2013, PHI Companies filed an answer to Joint Protestors' request for partial summary disposition and motion for leave to answer and answer protests. On February 5, 2013, Joint Protestors submitted a motion for leave to answer and answer the PHI Companies' answer. On February 12, 2013, the PHI Companies' submitted a motion for leave to answer and answer to the Joint Protestors' February 5, 2013 submission.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[23] the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[24] prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by the PHI Companies and Joint Protestors because they have provided information that assisted us in our decision-making process.

B. Commission Determination

13. We find that the PHI Companies are eligible to recover their prudently incurred costs associated with the abandonment of the MAPP Project as discussed below. We find that during the development of the MAPP Project circumstances arose that resulted in the PHI Companies' abandonment of the project and that those circumstances were beyond the PHI Companies' control. PJM originally included the MAPP Project in its 2007 RTEP in order to address certain reliability needs. PJM subsequently removed the MAPP Project from the 2012 RTEP after revising its load forecast. PJM's removal of the MAPP Project from the RTEP led to the ultimate abandonment of the project. As discussed below, we conclude that the PHI Companies have demonstrated that they qualify to recover 100 percent of the abandonment costs for the MAPP Project that were

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Delaware Division of the Public Advocate; and Virginia Office of Attorney General, Division of Consumer Counsel.

[23] 18 C.F.R. § 385.214 (2012).

[24] 18 C.F.R. § 385.213(a)(2) (2012).

prudently incurred on or after November 1, 2008. In addition, we find that the PHI Companies are entitled to recover 50 percent of the abandonment costs for the MAPP Project that were prudently incurred prior to November 1, 2008.

1. Matters Set for Hearing

a. Reasonableness of the Rates

i. Protests

14. Delaware Commission contends that the PHI Companies' filing contains no demonstration of prudence.[25] The Delaware and Maryland Commissions request that the Commission suspend the PHI Companies' filing and set this matter for evidentiary hearing, as genuine issues of material fact likely exist regarding the prudency of the PHI Companies' abandonment costs that will require discovery and further development.[26]

15. Joint Consumer Advocates contest the prudence of any high level of spending on the MAPP Project subsequent to 2009. Specifically, while the MAPP Project was not terminated from PJM's RTEP until 2012, Joint Consumer Advocates argue that the PHI Companies must have been aware of the decreasing need for the project evidenced by the delayed in-service date provided for in PJM's 2009, 2010, and 2011 RTEPs. Therefore, Joint Consumer Advocates contend that more conservative spending may have been appropriate and prudent. Joint Consumer Advocates state that if the Commission grants a full evidentiary hearing, they would be able to serve pre-trial discovery to ascertain at what point in time and to what level the PHI Companies' management was aware of the pending project suspension and if the PHI Companies acted prudently in light thereof.[27]

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[25] Delaware Commission Protest at 2-3 arguing that out of the 572 page filing, only four pages of one exhibit is provided with a cost element summary providing some level of cost detail. It also provides another example noting that Ex. PHI-204 in PHI Companies' filing, which lists MAPP Project contractors, describes almost 75 entities as "landowner" without information regarding the characteristics of the land (such as size, location, cost) that would provide any basis to determine the prudency of any payments to these entities.

[26] *Id.* at 2; Maryland Commission and Delaware Commission joint Protest at 2.

[27] Joint Consumer Advocates Protest at 15-16.

16. Joint Consumer Advocates also argue that at least a portion of the costs relating to preparing, filing, and prosecuting siting cases (CPCN cases) were not prudently incurred and that it is unjust and unreasonable for ratepayers to be charged the costs and fees of CPCN case filings that were unnecessary in light of the nearly three years of procedural false starts of the MAPP Project.[28]

17. Moreover, Joint Consumer Advocates argue that PHI Companies' request to recover $38.1 million in property related costs is troubling and potentially inappropriate. Specifically, Joint Consumer Advocates state that there is no check over the PHI Companies to ensure that MAPP Project-related property is sold or transferred at a fair market price. Therefore, Joint Consumer Advocates request an evidentiary hearing, at which the parties consider the reasonableness of such transfers or sales, including whether future transfers or sales of real property should be reported in periodic reports that indentify the parties, date, and price of each transaction.[29]

ii. <u>Answers</u>

18. In their answer, the PHI Companies state that the only two issues that protesters may raise in the instant proceeding are: (1) whether the cancellation of the MAPP Project was beyond the PHI Companies' control, and (2) whether the MAPP Project abandonment costs were prudently incurred. The PHI Companies argue that they are making a limited request under FPA section 205 to begin recovering the MAPP Project abandonment costs under jurisdictional rates.

19. The PHI Companies also argue that the protests lack the evidentiary support necessary to sustain a prudency challenge, but rather merely articulate generalized grievances with the nature of the PJM regional transmission expansion process, delays in state permit proceedings relating to that process, and are otherwise based on generic observations, conjecture, speculation or hindsight. Moreover, prudency challenges based on such generalized assertions, they argue, are insufficient to meet the burden of proof to overcome the presumption of prudence and establish a hearing.[30]

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[28] *Id.* at 16.

[29] *Id.* at 18-19.

[30] PHI Companies Answer at 22-23 (citing *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 51, *order on reh'g*, Opinion No. 505-A, 139 FERC ¶ 61,103 (2012); *New England Power Co.*, 31 FERC ¶ 61,047, at P 61,083 (1985), *aff'd, sub nom., Violet v. FERC*, 80 F.2d 280 (1st Cir. 1986)).

20. The PHI Companies note that they have already committed to mitigate MAPP Project abandonment costs and to use any gains or recoveries resulting from such mitigation to decrease the unamortized balance of the MAPP abandonment costs regulatory asset. Moreover, the PHI Companies contend that they are subject to the Commission's rules on cross-subsidization between affiliates, so any concerns on the part of Joint Protestors with respect to such issues are unfounded.[31]

iii. Commission Determination

21. We find that the PHI Companies are eligible to recover their prudently incurred costs associated with the abandonment of the MAPP Project, and thus we grant their request to recover those costs. We find that during the development of the MAPP Project circumstances arose that resulted in the abandonment of the MAPP Project, and that those circumstances were beyond the PHI Companies' control. However, as discussed below, the specific amount of abandonment costs that PHI Companies proposes to recover as prudently-incurred costs raises issue of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

22. Our preliminary analysis indicates that the PHI Companies' request to recover abandonment costs associated with the MAPP Project has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the PHI Companies' proposed revised tariff sheets, filed to recover prudently incurred abandonment costs for the MAPP Project, nominally suspend it to become effective March 1, 2013, subject to refund, and set the PHI Companies' proposed abandonment recovery for hearing and settlement judge proceedings.

b. Amortization Period and Property Disposition

i. Protests

23. Joint Consumer Advocates object to a summary approval of the PHI Companies' proposed five-year amortization period. Specifically, Joint Consumer Advocates argue that the PHI Companies' proposal will cost ratepayers over $109.0 million, which includes $21.5 million simply in carrying costs for a project that will never exist. Moreover, Joint Consumer Advocates argue that the filing lacks any evidence of how the PHI Companies determined that five years was sufficient time for the liquidation of land,

[31] PHI Companies Answer at 21.

and that calculation of losses/gains in the short term must be weighed against the amount of carrying charges that consumers will pay.[32]

24. Joint Protestors state that, consistent with the *PATH Abandonment Order*, the Commission should condition the recovery of abandonment costs associated with property interests and materials upon the PHI Companies expeditiously working to dispose of such property, as well as any items of equipment, at cost or market values, by transfer or sale prior to the end of the amortization period. Further, Joint Protestors state that the Commission should specify that gains and recoveries of the costs of such dispositions must be used to decrease unamortized abandoned plant costs.[33]

ii. Answers

25. In their answer, the PHI Companies state that the standard for just and reasonable rates is not whether the proposed rate could be more just or more reasonable if some other design were used, but rather whether the end result of the proposed rate is just and reasonable and not unduly discriminatory or preferential. Therefore, the PHI Companies argue that the proposed five-year amortization period strikes a reasonable balance, in that it would avoid "rate shock" for transmission customers but would not extend the amortization period as though the MAPP Project were completed. The PHI Companies note that no hearing is required to calculate the effect of different amortization periods.[34]

iii. Commission Determination

26. We will set the proposed five-year amortization period for recovery of the MAPP Project's abandonment costs for hearing and settlement judge procedures. The proposed five-year amortization period has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

27. We note that the PHI Companies have not completed the sale and transfers of land and other assets. As part of the hearing and settlement proceedings, we therefore direct parties to consider the reasonableness of such transfers and sales, including whether future transfers and sales of real property should be reported in periodic reports that

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[32] Joint Consumer Advocates Protest at 19-20.

[33] Joint Protestors Protest at 14 (citing *PATH Abandonment Order*, 141 FERC ¶ 61,177 at P 69).

[34] PHI Companies Answer at 24.

identify the parties, date and price of each transaction.[35] Parties in the hearing and settlement proceedings may also consider whether the formula rate should be modified to include such information, which would allow review of the asset sales and transfers under the formula rate annual update process. Further, because the final abandoned cost of real property is unknown at this stage; the inclusion of abandoned cost associated with real property is conditioned on the PHI Companies expeditiously working to dispose of the property at cost or market values, by transfer or sale prior to the end of the five year amortization period. Gains and recoveries of the costs of real property must be used to decrease unamortized abandoned plant costs, as the PHI Companies have committed to do.

2. Matters Resolved Summarily

a. Return on Equity Adders

i. Protests

28. Joint Protestors argue that the proposal to include 200 basis points worth of adders on top of the applicable base ROE is inconsistent with the FPA and clear Commission precedent. In particular, the Commission has found that ROE adders awarded to a project under Order No. 679 do not survive cancellation of the project for purposes of determining any return on abandoned plant costs.[36] Additionally, Joint Protestors argue that with the removal of the MAPP Project from the RTEP and its resultant abandonment by the PHI Companies, there is no longer any possibility that the Project will benefit consumers in any fashion, let alone ensuring reliability or reducing the cost of delivered power. Therefore, Joint Protestors argue that the Commission should deny outright the PHI Companies' proposal to include ROE incentive adders on the unamortized balance of abandoned plant.

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[35] For example, Order No. 707 places price restrictions on affiliate transactions for all power and non-power goods and services transactions between franchised public utilities with captive customers and provides that such sales should be made at the higher of cost or market. *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 73 FR 11,013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264 (2008); *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980) (Where the Commission disallowed abandonment costs associated with self-dealing).

[36] Joint Protestors Protest at 5 (citing *Public Service Electric and Gas Co.*, 129 FERC ¶ 61,300 (2009), *dismissed at*, 137 FERC ¶ 61,010 (2011)).

29. Moreover, Joint Protestors and Joint Consumer Advocates both state that the Commission should require the PHI Companies to remove the proposed 50 basis point adder associated with RTO participation from any MAPP Project abandoned plant cost recovery, consistent with its finding in the *PATH Abandonment Order*. Joint Protestors note that the Commission summarily rejected PATH's proposal to reflect a 50 basis point ROE adder for RTO participation in calculating the return on abandoned plant, finding that "the facility at issue in an abandoned plant cost recovery situation will not be transferred to the RTO's control, and therefore the benefits from that project's inclusion in an RTO will not materialize."[37] Joint Consumer Advocates also note that the recent abandonment of the MAPP Project qualifies as a new circumstance which precludes the application of *res judicata*, as the PHI Companies suggest in their filing.[38]

30. Delaware PSC also contests the PHI Companies' request to collect the 50 basis point RTO participation adder. Delaware PSC argues that while operational authority of all other transmission facilities have been turned over to PJM, this does not change the fact that abandoned facilities cannot be turned over to PJM for operational authority and, therefore, there is no justification for the RTO adder. Delaware PSC states that it appreciates the value and benefit of financial certainty from orders, decisions, and other actions issued by the Commission affecting the entities it regulates. However, Delaware PSC states that the cost of achieving the benefit of financial certainty should not come at the cost of forever binding the Commission from consideration of subsequent issues or limiting the Commission's ability to impose financial discipline and regulatory balance to previously issued determinations. Therefore, in this instance, where there are no benefits to customers, the cost should be subject to the Commission's financial discipline.[39]

31. Joint Protestors do not oppose application of a reasonable return, including a risk-appropriate base ROE, to the unamortized balance of MAPP Project abandoned plant costs shown to be eligible for recovery. Joint Protestors note that they take no position at this time as to whether 10.80 percent represents an appropriate base ROE to be used in calculating an overall return to be applied to the unamortized balance of recoverable MAPP abandonment costs. Joint Protestors request, however, that the Commission specify that, to the extent that the base ROE included in each of the PHI Companies'

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[37] Joint Protestors Protest at 7 (citing *PATH Abandonment Order*, 141 FERC ¶ 61,177 at P 71).

[38] Joint Consumer Advocates Protest at 21 (citing *PATH Abandonment Order*, 141 FERC ¶ 61,177 at PP 70-72).

[39] Delaware PSC Protest at 4-6.

formula rates is modified in the future, such modification should also apply to the calculation of the overall return applicable to any unamortized MAPP abandoned plant balance.[40] However, Joint Protestors argue that there is simply no basis for allowing 200 basis points in incentive adders over and above a base ROE for abandoned MAPP Project plant.

ii. Answers

32. In their answer, the PHI Companies argue that to the extent the Commission does not reject Joint Protestors' motion as beyond this proceeding's scope, it should nevertheless deny the relief sought because it seeks to unwind a package of incentives that was not intended nor expected to be unwound. The PHI Companies contest that Joint Protestors' motion is a collateral attack on the *MAPP Incentives Order* and Order No. 679.[41]

33. The PHI Companies state that the applicable base ROE for the MAPP Project is 11.3 percent, per the Settlement Agreement, discussed above.[42] The PHI Companies contend that this ROE does not include any adders. The PHI Companies also contend that they received a 50 basis point RTO participation adder in Docket No. ER08-10 for facilities not already approved to receive the 11.3 percent ROE under the Settlement Agreement, thereby bringing the ROE for all PHI transmission projects to 11.3 percent.[43] Moreover, the PHI Companies state that an RTO-participation adder was not specifically requested by the PHI Companies through the MAPP incentives application. Therefore, the PHI Companies argue that since a separate, stand-alone RTO-participation adder was neither proposed nor approved specifically for the MAPP Project, Joint Protestors' request to remove a specific RTO-participation adder from the PHI Companies' base ROE is inapplicable to the MAPP Project.[44]

34. The PHI Companies state that under Order No. 679, the return on and of investment inherent in abandonment costs amortization necessarily contemplates recovery of the capital cost, which includes incentive ROE approved for the cancelled

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[40] Joint Protestors Protest at 10 & n.44.

[41] PHI Companies Answer at 6-7.

[42] *Id.* at 7 (citing *Baltimore Gas and Electric Co.*, 115 FERC ¶ 61,066 (2006)).

[43] *Id.* at n.17.

[44] *Id.* at 7-8.

project.[45] Therefore, the PHI Companies state, the return on capital costs has been determined as 12.8 percent for the MAPP Project.

35. The PHI Companies differentiate this proceeding with the *PATH Abandonment Order* in several ways: (1) the nature and origins of the ROE approved for the PATH project was completely different than for the MAPP incentive (that is, PATH requested and received an RTO adder by the Commission and MAPP did not); (2) PATH's abandonment filing reflects that PATH sponsors' unilateral and voluntary decision not to include the 150 basis point transmission incentive adder; and (3) the *PATH Abandonment Order* was issued after the *MAPP Incentives Order* and, thus, it cannot be applied in a way that alters the Commission's findings and determinations in the *MAPP Incentives Order* and upon which the PHI Companies have relied.[46]

36. The PHI Companies next contend that failure to apply the overall approved ROE for the MAPP Project would undermine settled expectations and create investment uncertainties that thwart FPA section 219 goals. For instance, the PHI Companies argue that Order No. 679 makes clear that the abandonment incentive and the ROE incentive can, and often do, work together as part of a package of incentives intended to attract capital to a project.[47]

37. Joint Protestors contend, in their answer to the PHI Companies' answer, that neither the *MAPP Incentives Order* nor Order No. 679 provided any explicit or implicit assurance that the PHI Companies would be entitled to an incentive ROE on MAPP abandoned plant costs, and, accordingly, excluding the ROE adders here would not amount to a new policy or upset any reasonable investor expectations. Joint Protestors note that Order No. 679 made clear that a separate filing under FPA section 205 is required to implement the abandonment incentive. Moreover, a company seeking to

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[45] *Id.* at 10 (citing *Policy Statement regarding Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012)).

[46] *Id.* at 12-13 (citing *Florida Gas Transmission Co. v. FERC*, 876 F.2d 42, 44 (5th Cir. 1989) and *Mobile Exploration and Producing North America, Inc. v. FERC*, 881 F.2d 193,199 (5th Cir. 1989)).

[47] *Id.* at 13 (citing *RITELine Illinois, LLC and RITELine Indiana, LLC*, 137 FERC ¶ 61,039, at P 100 (2011)).

recover abandoned plant costs "must also propose in its section 205 filing a just and reasonable rate to recover these costs."[48]

38. Joint Protestors also argue that the applicable formula rate tariffs for Pepco and Delmarva separately identify the various components of the 12.8 percent ROE, including the specific adders. Specifically, Joint Protestors point out that Note J to each formula rate states:

> "Per FERC order in Docket No. ER08-10, the ROE is 11.30%, which includes a 50 basis-point RTO membership adder as authorized by FERC to become effective on December 1, 200[7]. Per FERC orders in Docket Nos. ER08-686 and ER08-1423, the ROE for specific projects identified or to be identified in Attachment 7 is 12.80%, which includes a 150 basis-point transmission incentive ROE [adder] as authorized by FERC to become effective June 1, 2008 and November 1, 2008 respectively."[49]

Therefore, the Joint Protestors argue that the Commission should reject the PHI Companies' assertion that these clearly-defined ROE adders are not capable of extraction for purposes of ruling on Joint Protestors' summary disposition motion.[50]

iii. Commission Determination

39. We find that the PHI Companies should be able to earn a fair return on their unamortized investment in developing the MAPP Project, i.e., the amount of prudently incurred MAPP Project abandonment costs as determined in the hearing or settlement judge procedures established in this order, and such return is their base return which currently is 10.80 percent. We find that the continuation of the additional 200 basis points of incentives, on top of the base ROE, on an abandoned project is not appropriate. Once a project has been canceled, none of the incentives granted other than the ability to recover prudently incurred abandonment costs continues to apply,[51] as explained below.

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[48] Joint Protestors Answer at 3-4 (citing *Midwest Independent Transmission System Operator, Inc.*, 141 FERC ¶ 61,274, at P 31 (2012)).

[49] Joint Protestors Answer at 7-8 and n.28.

[50] Joint Protestors Answer at 8.

[51] *See, e.g., Public Service Electric and Gas Co.*, 137 FERC ¶ 61,010 at P 26.

(a) <u>50 Basis Point Adder for RTO Participation</u>

40. Regarding the PHI companies' proposal with respect to the 50 basis point ROE adder for RTO participation, the Commission clarified its Order on Rehearing of Order No. 679-A that this particular incentive may be applied to jurisdictional facilities that have turned over operational control to an RTO/ISO:

> FirstEnergy is correct that a public utility member of an RTO is eligible for the Transmission Organization incentive rate treatment as to all of its jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization.[52]

41. In these circumstances, because of the termination of the MAPP project, MAPP will not take any steps in the future to turn over operational control of its facilities to PJM, as there will be no future facilities. We therefore find that the 50 basis point adder for RTO participation is not appropriate for recovery in an abandonment application. This finding is appropriate in the context of abandonment even though the Commission has found that the RTO participation incentive is unrelated to any particular project but instead is intended as an incentive for joining and remaining in an RTO. This is because even though the public utility project developer has joined an RTO, the facility at issue in an abandoned plant cost recovery situation will not be transferred to the RTO's control, and therefore the benefits from that project's inclusion in an RTO will not materialize.

42. This outcome is consistent with the *PATH Abandonment Order*, where the Commission clarified that continued recovery of a 50 basis point adder for RTO participation is not appropriate for recovery in an abandonment application.[53] We are not persuaded by the PHI Companies' attempts to distinguish this case from the *PATH Abandonment Order*. First, the PHI Companies seek to distinguish the *PATH Abandonment Order* by contending that PATH requested and received an RTO adder in its incentive order and MAPP did not. We do not find this to be a significant distinction. While the PHI Companies may have been granted the RTO adder in a different proceeding, the *MAPP Incentives Order* included the RTO adder in determining the reasonableness of the overall ROE for the MAPP Project.[54] Second, the PHI Companies

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[52] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

[53] *PATH Abandonment Order*, 141 FERC ¶ 61,177 at PP 70-72.

[54] Although the PHI Companies argue that the applicable base ROE for the MAPP Project is 11.3 percent, the Settlement Agreement provides that the base ROE is 10.80 percent. Section 3.3 of the Settlement Agreement states, "any ROE Adder(s) will be added to the 10.80% Base ROE set forth in Section 3.1(a) hereof and not the 11.30%

(continued…)

argue that PATH's abandonment filing reflects the PATH sponsors' unilateral and voluntary decision not to include the 150 basis point transmission incentive adder. We find that distinction is insufficient to overcome the considerations discussed above that lead us to conclude that continued recovery of the 50 basis point adder for RTO participation is not appropriate in an abandonment application. Finally, we disagree with the PHI Companies that the *PATH Abandonment Order* alters the Commission's findings and determinations in the *MAPP Incentives Order*. We agree with Joint Protestors that neither the *MAPP Incentives Order* nor Order No. 679 held that the PHI Companies would be entitled to an incentive ROE for RTO participation on MAPP abandoned plant costs. To the extent that the Commission addressed this issue in the Order No. 679 rulemaking, the above-noted statement from Order No. 679-A is consistent with this outcome.

43. Consequently we require the PHI Companies to remove the ROE incentive adder of 50 basis points for RTO participation. A compliance filing is due 30 days from the date of this order.

(b) <u>150 Basis Point Incentive Adder</u>

44. In the *MAPP Incentives Order*, the Commission granted the 150 basis point incentive adder for the MAPP Project based on notable financial, technology-related, regulatory, environmental, and construction risks faced by the PHI Companies in bringing the MAPP Project into service.[55] However, we find that the 150 basis point incentive adder granted to the PHI Companies for the risks and challenges in bringing the MAPP Project into service is no longer warranted. While granting a ROE incentive adder is intended to facilitate investment in the project and encourage the construction of transmission facilities, the Commission did not intend for this incentive to apply once the project is abandoned. In the context of PHI Companies' separate proposal for authorization for abandoned plant recovery, the ROE utilized is part of an overall rate of return that is applied to the unamortized plant balance during the amortization period and is intended to provide PHI Companies with a reasonable carrying charge to reflect the time value of money until the investment is fully recovered. We find that providing not only the ability to recover 100 percent of prudently-incurred costs on and after the

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Base ROE set forth in Section 3.1(b) hereof." Section 3.1(a) clarifies that the 10.80 percent ROE applies "to all transmission facilities placed in-service." Accordingly, the *MAPP Incentives Order* used a base ROE of 10.80 percent plus a 50 basis point ROE adder for RTO participation. *MAPP Incentives Order*, 125 FERC ¶ 61,130 at P 80.

[55] *MAPP Incentives Order*, 125 FERC ¶ 61,130 at PP 34-46 and P 57.

effective date of the *MAPP Incentives Order* but also the ability to recover a reasonable return on those abandonment costs, provides a reasonable balance between providing sufficient protection for investors and ratepayers who will not be receiving the benefits of facilities that are no longer used and useful.

45. The Commission thus rejects the PHI Companies request to use a ROE of 12.8 percent to amortize the MAPP Project's abandonment costs. The PHI Companies are directed to use their base ROE which is currently 10.80 percent on the unamortized portion of the MAPP Project. The PHI Companies are also directed to have PJM file revised tariff sheets removing the ROE adders that were applicable to the MAPP Project within 30 days of the date of this order.

b. Costs Incurred Prior to November 1, 2008

i. Protests

46. Joint Protestors note that the PHI Companies' filing indicates that the MAPP abandoned plant costs for which they seek 100 percent recovery includes $32.4 million of costs incurred between October 17, 2007 and December 31, 2009. Joint Protestors also note that in its recent order on abandoned plant recovery involving PSEG's Branchburg Project, the Commission indicated that a company is only entitled to recover 50 percent of abandoned plant costs incurred prior to the effective date of an order granting the project 100 percent abandoned plant recovery under Order No. 679.[56] Prior to the effective date of the abandonment incentive under Order No. 679, the Commission explained, expenditures are subject to the Commission's abandoned plant cost recovery policy under Opinion No. 295.[57] Therefore, Joint Protestors argue that the Commission should summarily find that the PHI Companies are entitled to recover no more than 50 percent of MAPP Project abandoned plant costs and liabilities incurred prior to November 1, 2008.

47. Moreover, Joint Protestors argue that even if there was some basis to apply the ROE incentives to the unamortized plant balance of MAPP Project costs incurred after November 1, 2008, there is no justification for applying the ROE incentives to MAPP Project abandonment costs incurred before November 1, 2008 because the MAPP Project ROE adders did not become effective until that date. Therefore, Joint Protestors state that the Commission should direct the PHI Companies to make a compliance filing clearly

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[56] Joint Protestors Protest at 12-13 (citing *PJM Interconnection, L.L.C. and Public Service Electric and Gas Co.*, 140 FERC ¶ 61,197, at PP 24 & 26 (2012) (*PSEG II*)).

[57] *Id.*

specifying the MAPP Project costs and liabilities incurred prior to November 1, 2008 that they are seeking to recover as abandoned plant costs.[58]

ii. Answers

48. In their answer, the PHI Companies argue that the Joint Protestors' argument is based on outdated precedent that has no application in this proceeding. Specifically, the PHI Companies state that transmission projects granted the abandonment incentives under Order No. 679 benefit from the policy adopted in the case of *Southern California Edison Co.*,[59] which provides for 100 percent recovery on a project basis, and in so doing, permits 100 percent recovery of costs incurred. Therefore, the PHI Companies state that, based on this policy, the *MAPP Incentives Order* approved the abandonment incentive as to 100 percent of all prudently-incurred MAPP Project costs, without limitation as to when such costs were incurred.[60] Moreover, the PHI Companies contend that because the abandonment incentive was granted for the MAPP Project under Order No. 679, Opinion No. 295 (upon which Joint Protestors' base their position) has no force or effect and the policy of *Southern California Edison* applies.

49. The PHI Companies dispute Joint Protestors reliance on *Public Service Electric and Gas Co.*[61] Specifically, the PHI Companies argue that the issue of whether the applicants were eligible to recover 100 percent of such costs was not presented and, therefore, was not addressed by the Commission, either directly or by necessary inference. Therefore, the PHI Companies contend that the *PSEG II* decision is not relevant to their proposed recovery.[62]

50. For the above reasons the PHI Companies argue that, the Joint Protestors' position must be rejected because, if accepted, it would result in less than 100 percent recovery of

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[58] *Id.* at 13-14.

[59] PHI Companies Answer at 17 (citing *Southern California Edison Co.*, 112 FERC ¶ 61,014, at PP 58-61 (2005)).

[60] *Id.* at 17.

[61] *Id.* at 18 (citing *PSEG II*, 140 FERC ¶ 61,197).

[62] *Id.* at 19.

all prudently incurred MAPP Project costs, which is contrary to the *MAPP Incentives Order* and inconsistent with Order No. 679.[63]

51. Joint Protestors reiterate, in their answer to the PHI Companies' answer, that the *PSEG II* decision supports a summary ruling that the PHI Companies may only recover 50 percent of MAPP abandoned plant costs incurred before November 1, 2008. Joint Protestors contend that both in the *PSEG II* case and this case, the abandonment incentive was granted as of a specific effective date, and, accordingly, it is appropriate to limit application of the 100 percent abandonment plant recovery incentive to costs incurred after such effective date. Joint Protestors further contend that this approach is consistent with the forward-looking nature of an incentive rate treatment.[64]

iii. Commission Determination

52. As discussed below, we conclude that the PHI Companies have demonstrated that they qualify to recover 100 percent of the abandonment costs for the MAPP Project that were prudently incurred on or after November 1, 2008. Prior to November 1, 2008, however, the PHI Companies are entitled to recover 50 percent of the prudently-incurred project costs.

53. In the *MAPP Incentives Order*, the Commission granted the PHI Companies' request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment was a result of factors beyond the PHI Companies' control, effective November 1, 2008.[65] Since that order was effective November 1, 2008, we cannot rely on it to grant recovery of prudently-incurred costs associated with abandonment prior to that date. Prior to November 1, 2008, we must rely on the Commission's pre-Order No. 679 policy, which generally limited recovery to 50 percent.

54. Our policy, pursuant to Opinion No. 295, dictates that the PHI Companies are eligible to recover 50 percent of MAPP Project related costs incurred prior to the *MAPP Incentives Order* effective date, provided those costs are found to be prudently incurred.[66] While the Commission did occasionally grant recovery in excess of 50 percent prior to

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[63] *Id.* at 21.

[64] Joint Protestors Answer at 9-11.

[65] *MAPP Incentives Order*, 125 FERC ¶ 61,130 at P 59 and ordering para. (A).

[66] *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016 (1988).

Order No. 679, both Order No. 679[67] and *Southern California Edison Co.*[68] made clear that such recovery would be atypical. *Southern California Edison Co.* was requesting upfront certainty through a petition for a declaratory order in the event that abandonment occurred. Here, the PHI Companies are requesting retroactive recovery of abandonment costs which were incurred before the effective date of the *MAPP Incentives Order*. We find the timing of the request requires us to deny recovery of retroactive abandonment costs, greater than 50 percent, pursuant to Opinion No. 295.

55. Accordingly, we require the PHI Companies to submit a compliance filing within 30 days which reflects the Commission's determination to allow 100 percent recovery of the abandonment costs for the MAPP Project that were prudently incurred on or after November 1, 2008 and 50 percent recovery of the prudent project costs incurred prior to November 1, 2008.

c. Requested Waivers

i. Protests

56. Joint Consumer Advocates argue that the Commission should deny the PHI Companies' requested waivers of sections 35.13(d)(1)-(2) and 35.13(d)(5) of the Commission's regulations. Joint Consumer Advocates argue that this information is critical for the Commission to make a determination of whether the abandonment costs were indeed prudently-incurred. Moreover, Joint Consumer Advocates state that denying the request for waiver would be consistent with the *PATH Abandonment Order* where the Commission required "PATH to provide full Period I and Period II data, and … to file cost support, including testimony, exhibits, and workpapers supporting its application."[69]

ii. Answers

57. In their answer, the PHI Companies argue that part 35 requirements are designed for traditional full cost-of-service stated rate case filings by utilities with depreciable production and/or transmission-related assets in rate base that are used and useful in providing jurisdictional transmission or wholesale requirements service. The PHI Companies contest that the current proceeding does not raise these issues because the

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[67] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 156 and n.105.

[68] 112 FERC ¶ 61,014 at PP 57, 60-61.

[69] Joint Consumer Advocates Protest at 23 (citing *PATH Abandonment Order*, 141 FERC ¶ 61,177 at P 62).

principle issue here is with respect to whether the costs they seek to recover were prudently incurred. Therefore, the PHI Companies strongly encourage the Commission to grant the limited waiver.[70]

58. The PHI Companies request that, if the Commission declines to grant the request for waiver, they be able to provide any information as part of any settlement proceedings the Commission might order in this proceeding, rather than requiring the submission of full period I and period II test period data as part of a compliance filing. The PHI Companies state that this will assist them in providing information that will be most useful to intervenors and will avoid creating unnecessary and potentially confusing presentations that would produce little to no discernible clarity or benefit. Additionally, the PHI Companies state that they would be amenable to providing information showing additional detail regarding the impact of the MAPP Project abandonment costs on transmission rates in PJM. Moreover, the PHI Companies state that they would be amenable to a process similar to that provided for in connection with their annual informational filings as part of the recovery process approved in the *MAPP Incentives Order*. Finally, the PHI Companies explain that they would be amenable to providing a more detailed breakdown of the total abandonment costs by work order and cost element, as well as greater detail concerning contractor costs, as recommended by Joint Consumer Advocates.[71]

iii. Commission Determination

59. We will deny the PHI Companies' requested waiver of section 35.13 and require the filing of full Period I and Period II data along with cost support, including testimony, exhibits, and workpapers supporting its application as part of the case-in-chief in the settlement and hearing proceedings discussed herein within 30 days of the date of this order. Any questions regarding support for the rate can be pursued in the course of the hearing. We note that the PHI Companies indicated they would provide additional supporting information, as discussed above.

C. Suspension, Hearing, and Settlement Judge Procedures

60. As discussed above, the abandoned plant costs that the PHI Companies propose to recover and the proposed amortization period raise issues of material fact that cannot be resolved based upon the record before us. Such issues are more appropriately addressed in the hearing and settlement judge procedures ordered below.

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[70] PHI Companies Answer at 24-25.

[71] *Id.* at 25-26.

61. As discussed above, our preliminary analysis indicates that the PHI Companies' request to recover approximately $87.5 million of abandonment costs has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that this request is separate from the PHI Companies' demonstration that the factors leading to their abandonment of the MAPP Project were beyond their control and that they, therefore, qualify to recover the associated prudently-incurred abandoned plant costs. Accordingly, we will accept the PHI Companies' filing associated with the MAPP Project, nominally suspend it to be effective March 1, 2013, subject to refund, and set the specific amount of abandoned plant costs that the PHI Companies may recover for hearing and settlement judge proceedings.

62. While we are setting this matter for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[72] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[73]

63. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to the presiding judge.

The Commission orders:

(A) The PHI Companies' request to recover abandoned project costs because the abandonment was beyond their control is granted based on the specific circumstances presented in this case, as discussed in the body of this order.

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[72] 18 C.F.R. § 385.603 (2012).

[73] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within 5 days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(B) The PHI Companies are hereby directed to make a compliance filing within 30 days of the date of this order, as discussed above.

(C) Subject to the compliance filing identified above, the proposed tariff revisions are hereby accepted, suspended for a nominal period, effective March 1, 2013, subject to refund and subject to the outcome of the hearing and settlement judge procedures established herein, as discussed in the body of this order.

(D) Within 30 days of the date of this order, the PHI Companies shall file its case-in-chief, consisting of complete cost of service statements, as specified in section 35.13 of the regulations, together with testimony and complete work papers relevant to the abandonment costs.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the prudence of the abandoned plant costs the PHI Companies will include in their formula rates and the justness and reasonableness of the resulting rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D), (E), and (F) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within 5 days of the date of this order.

(G) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in this

proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.