

169 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

United Illuminating Company

Docket No. ER19-1359-001

ORDER DENYING REHEARING

(Issued December 30, 2019)

1. On May 14, 2019, the Commission granted in part, and denied in part, a request for transmission rate incentives filed by United Illuminating Company (United Illuminating), pursuant to sections 205 and 219 of the Federal Power Act (FPA),¹ Part 35 of the Commission's regulations,² Order No. 679,³ and the 2012 Transmission Incentives Policy Statement,⁴ to upgrade its Pequonnock Substation Project (Pequonnock Project) (Application).⁵ The Commission approved United Illuminating's request for 100 percent recovery of prudently incurred costs in the event the Pequonnock Project is abandoned, in whole or in part, for reasons outside of United Illuminating's control (Abandoned Plant Incentive), and inclusion of 100 percent Construction Work in Progress in rate base

¹ 16 U.S.C. §§ 824d, 824s (2018).

² 18 C.F.R. pt. 35 (2019).

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ *Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

⁵ *United Illuminating Co.*, 167 FERC ¶ 61,126 (2019) (May 2019 Order).

(CWIP Incentive), but denied its request for a 50 basis point return on equity (ROE) incentive adder for risks and challenges in developing and constructing the Pequonnock Project (ROE Incentive Adder).

2. On June 13, 2019, United Illuminating sought rehearing of the Commission's denial of its requested ROE Incentive Adder. We deny the rehearing request, as discussed below.

I. Background

3. United Illuminating⁶ is a Participating Transmission Owner in ISO New England Inc. (ISO-NE) and its transmission infrastructure includes both high-voltage transmission lines and local transmission and distribution service.⁷ Since 2011, United Illuminating's existing Pequonnock substation in Bridgeport, Connecticut has incurred substantial damage from coastal flooding associated with rising sea levels and increasingly violent storms.⁸ After flooding during Tropical Storm Irene in 2011 and Hurricane Sandy in 2012, United Illuminating conducted a study that indicated that the Pequonnock Substation and four other United Illuminating coastal substations were at risk of destruction from a 100 year flood event, the risk of which is greater than 40 percent in the next 50 years.⁹ According to United Illuminating, such an event could result in a significant and sustained adverse impact to ISO-NE's bulk electric system.

4. To address this risk, United Illuminating explained that the proposed Pequonnock Project will be located 750 feet further inland and at an elevation ten feet higher than the existing substation on land owned by PSEG Power Connecticut.¹⁰ The project will consist of the rebuild of the existing Pequonnock station and will include: (1) a new 115-kV/13.8-kV gas insulated substation; (2) the relocation and installation of five existing 115-kV overhead transmission lines including 17 new galvanized steel monopole structures (10 single circuit, two double circuit, and five "walk down" structures); and (3) the relocation and installation of two 115-kV underground high-pressure gas filled cables and one underground cross-linked polyethylene cable, each ranging in length from

⁶ United Illuminating is a wholly-owned subsidiary of UIL Holdings Corporation and a wholly-owned indirect subsidiary of Avangrid, Inc. (Avangrid). United Illuminating March 15, 2019 Filing, Transmittal at 3 (United Illuminating Filing).

⁷ May 2019 Order, 167 FERC ¶ 61,126 at P 3.

⁸ *Id.* P 6.

⁹ United Illuminating Filing at 16.

¹⁰ *Id.* at 4.

about 500 feet to 730 feet.¹¹ United Illuminating also plans to implement smart grid technology by replacing copper cables with network communications fiber to monitor critical protection signals¹² which, it says, meets the International Electrotechnical Commission's 61850 standard (61850 Technology).¹³

5. United Illuminating received from the Connecticut Siting Council a Certificate of Environmental Compatibility and Public Need for the Pequonnock Project on the condition that United Illuminating increased the project elevation by an additional two feet. The Connecticut Siting Council found that the project was needed because it would improve reliability to customers in Bridgeport and the Greater New England Power Grid by mitigating coastal flood risks and asset condition issues.¹⁴

6. In its March 15, 2019 Application, United Illuminating requested approval of the Abandoned Plant and CWIP Incentives to help address the financial and land acquisition risks associated with the Pequonnock Project. In addition, United Illuminating requested approval of the ROE Incentive Adder based on the risks and challenges associated with implementing the 61850 Technology and the project's resilient design, claiming that these satisfy the four showings in the 2012 Policy Statement.¹⁵

7. Several parties objected to United Illuminating's request for the ROE Incentive Adder. Public Citizen argued that the requested ROE Incentive Adder was unjust and unreasonable because the risks and challenges associated with the project can be addressed through the application of the CWIP and Abandoned Plant Incentives.¹⁶ State Parties¹⁷ argued that United Illuminating failed to establish that the 61850 Technology is

¹¹ *Id.*

¹² *Id.* at 21-22.

¹³ May 2019 Order, 167 FERC ¶ 61,126 at P 28.

¹⁴ *Id.* P 7 (citing United Illuminating Filing at 5).

¹⁵ United Illuminating Filing at 2, 32, 37.

¹⁶ May 2019 Order, 167 FERC ¶ 61,126 at P 52.

¹⁷ State Parties consist of: Connecticut Department of Energy and Environmental Protection; Connecticut Office of Consumer Counsel; Connecticut Public Utilities Regulatory Authority; Massachusetts Attorney General Maura Healey; and William Tong, Attorney General for the State of Connecticut.

either new or sufficiently innovative to warrant the ROE Incentive Adder, pointing out that United Illuminating: (1) admitted that its utility affiliates, Central Maine Power Company and Rochester Gas and Electric Corporation, already adopted this technology, and (2) in filings to the Connecticut Public Utilities Regulatory Authority, considered the technology to be in the “Mature Deployment” category.¹⁸

8. In the May 2019 Order, the Commission granted United Illuminating’s request for the CWIP Incentive and Abandoned Plant Incentive but denied the request for a 50 basis point ROE Incentive Adder.

II. Discussion

A. The Commission Properly Applied the 2012 Policy Statement

1. The Commission Did Not Treat United Illuminating’s Request as a Stand-Alone Advanced Technology Adder

9. On rehearing, United Illuminating alleges that the Commission failed to properly apply the 2012 Policy Statement when assessing its requested 50 basis point ROE Incentive Adder. United Illuminating asserts that, in the May 2019 Order, the Commission applied a “sufficiently novel or innovative” standard previously applied to stand-alone advanced technology adders,¹⁹ notwithstanding that such adders were rejected in the 2012 Policy Statement.²⁰ United Illuminating argues that, under the 2012 Policy Statement, the deployment of advanced technology is part of the overall nexus analysis when an ROE incentive adder is sought and that analysis does not require that the technology be novel or innovative.²¹

10. We disagree. In Order No. 679, the Commission established the “nexus test,” which requires applicants to demonstrate a connection between the incentive requested and the proposed investment, and that the incentive(s) requested address the risks and

¹⁸ May 2019 Order, 167 FERC ¶ 61,126 at P 57 (citing State Parties April 5, 2019 Protest at 17).

¹⁹ Rehearing Request at 26 (citing *NSTAR Elec. Co.*, 127 FERC ¶ 61,052 (2009)).

²⁰ *Id.* at 19, 27-28.

²¹ *Id.* at 29.

challenges that a project faces.²² In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”²³

11. In the 2012 Policy Statement, the Commission reframed the nexus test and eliminated the stand-alone ROE incentive adder for the use of advanced technology. The Commission indicated that it would consider the deployment of advanced technology as part of the overall nexus test when an incentive ROE is sought.²⁴ The Commission explained that it expects an applicant seeking an ROE incentive adder based on a project’s risks and challenges to make four showings to justify the need for the project:

- (1) the proposed project faces risks and challenges that are not either already accounted for in the applicant’s base ROE or addressed through risk-reducing incentives;
- (2) the applicant is taking appropriate steps and using appropriate mechanisms to minimize its risk during project development;
- (3) alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum; and
- (4) the applicant will commit to limiting the application of the ROE incentive to a cost estimate.²⁵

12. The Commission further provided three categories of transmission projects that might satisfy the first showing. These include transmission projects that would:

- (1) relieve chronic or severe congestion that has had demonstrated cost impacts to consumers;

²² Order No. 679, 116 FERC ¶ 61,057 at P 76.

²³ Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

²⁴ 2012 Policy Statement, 141 FERC ¶ 61,129 at P 23.

²⁵ *Id.* PP 20, 24-30.

(2) unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets;

(3) apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.²⁶

13. The Commission did not, as United Illuminating alleges, treat United Illuminating's request as a stand-alone advanced technology incentive adder. Consistent with the overall nexus test in the 2012 Policy Statement, in the May 2019 Order, the Commission denied the ROE Incentive Adder because United Illuminating failed to demonstrate that the risks and challenges associated with the project's resilient design and use of the 61850 Technology were not already accounted for in United Illuminating's base ROE or otherwise addressed through risk-reducing incentives.²⁷

14. In analyzing the 61850 Technology, the Commission agreed with State Parties that the use of this technology is not sufficiently novel or innovative to qualify for the ROE Incentive Adder under the first showing.²⁸ The 61850 Technology substation communication architecture is based on fiber optics, which is not a new technology, and, by United Illuminating's own admission, has been deployed by two of United Illuminating's affiliates.²⁹ The Commission has denied requests for incentive adders if those technologies have been deployed elsewhere.³⁰ Accordingly, the Commission determined that the use of the 61850 Technology did not present a special risk or challenge that could not be accounted for in the base ROE or the risk-reducing incentives.³¹

²⁶ 2012 Policy Statement, 141 FERC ¶ 61,129 at P 21.

²⁷ May 2019 Order, 167 FERC ¶ 61,126 at PP 62-64.

²⁸ *Id.* P 63.

²⁹ *Id.*

³⁰ *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 88 (2016) (explaining that a transmission technology is not new or innovative when other transmission lines have already been constructed in the United States using that technology).

³¹ May 2019 Order, 167 FERC ¶ 61,126 at P 63.

15. United Illuminating next argues that the Commission failed to follow the *RITELine* standard of review when assessing the risks and challenges associated with deploying the 61850 Technology.³² According to United Illuminating, in *RITELine*, the Commission denied a request for a separate advanced technology adder because the applicant's use of advanced technology was not sufficiently novel or innovative, but nonetheless determined that this use supported granting an ROE adder for the project's risks and challenges.³³ United Illuminating argues that, because the Commission adopted the *RITELine* standard in the 2012 Policy Statement, *RITELine* supports its request for an ROE Incentive Adder.³⁴

16. We disagree. In *RITELine*, the applicants had requested a separate advanced technology adder for the use of a six-conductor bundle in conjunction with trapezoidal stranded conductors, a combination that had not been previously deployed for the proposed project's size.³⁵ The Commission denied the request for an advanced technology adder because the proposed technologies had been in use, were well documented, and the applicants had failed to show how the use of the two technologies was sufficiently novel or innovative to warrant a separate advanced technology adder.³⁶ However, the Commission did find that the use of all of the proposed advanced transmission technologies, including the six-conductor bundle with trapezoidal stranding, in conjunction with the other risks and challenges associated with investing in the project, supported the applicant's separate request for an ROE incentive adder.³⁷

17. In the subsequent 2012 Policy Statement, the Commission eliminated the separate advanced technology adder, but, as it had in *RITELine*, indicated that it would consider transmission projects that apply advanced technologies as part of the overall nexus test. Unlike *RITELine*, the Commission clarified in the 2012 Policy Statement that new technologies that facilitate more efficient and reliable usage and operation of existing or new facilities may be eligible for an ROE incentive adder.³⁸ As discussed above, the Commission applied this standard in this proceeding and found that United Illuminating

³² Rehearing Request at 29 (*RITELine Illinois, LLC*, 137 FERC ¶ 61,039 (2011)).

³³ *Id.* at 30.

³⁴ *Id.* at 32.

³⁵ *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 at P 11.

³⁶ *Id.* P 61.

³⁷ *Id.*

³⁸ 2012 Policy Statement, 141 FERC ¶ 61,129 at P 21.

failed to show that the 61850 Technology was new or presented other risks or challenges that would merit an ROE incentive adder.

2. United Illuminating Failed to Make the First Showing Under the 2012 Policy Statement

18. United Illuminating contends that the Commission failed to indicate whether United Illuminating met the four showings to justify its request for an ROE Incentive Adder based on the project's risks and challenges.³⁹ United Illuminating claims that the Commission only determined that the project was not one of the project types listed in the 2012 Policy Statement, even though the list of project types is not exhaustive.⁴⁰

19. We disagree. The Commission appropriately reviewed United Illuminating's request related to its 61850 Technology under the 2012 Policy Statement's new technology criteria because United Illuminating had claimed that the project would be the first instance in which it installs and implements the technology.⁴¹ As discussed in the May 2019 Order the 61850 Technology is not a new technology.⁴² As for United Illuminating's claims that its resilient design is eligible for an ROE incentive adder, the Commission in the May 2019 Order explained that the project's conventional design does not evince risks and challenges not already accounted for in United Illuminating's base ROE, while risks associated with construction costs and the project site would be addressed through the risk-reducing CWIP and Abandoned Plant Incentives.⁴³

20. United Illuminating also argues that the 2012 Policy Statement supports its position that reliability-driven projects may be considered for an incentive ROE based on a project's risks and challenges.⁴⁴ United Illuminating asserts that the Connecticut Siting Council's approval supports its claims that the project will have a hardened resilient design and should have received the requested adder.⁴⁵

³⁹ Rehearing Request at 33.

⁴⁰ *Id.* at 24-25.

⁴¹ United Illuminating Filing at 27, 29.

⁴² May 2019 Order, 167 FERC ¶ 61,126 at P 63.

⁴³ *Id.* PP 36, 41, 64.

⁴⁴ Rehearing Request at 35 (citing 2012 Policy Statement, 141 FERC ¶ 61,129 at P 22).

⁴⁵ *Id.* at 35.

21. The 2012 Policy Statement acknowledged that reliability-driven projects may be considered for an incentive ROE based on a project's risks and challenges, "but only if they present specific risks and challenges not otherwise mitigated by available risk-reducing incentives."⁴⁶ As discussed, United Illuminating failed to show that the Pequonnock Project otherwise faces risks and challenges that are not already accounted for in its base ROE or in the risk-reducing incentives.⁴⁷

B. The Commission Fully Addressed United Illuminating's Arguments

22. United Illuminating claims that the Commission failed to address United Illuminating's Application and Answer⁴⁸ in their entirety.⁴⁹ United Illuminating alleges that the Commission ignored risks and challenges associated with the project's use of the 61850 Technology, environmental and liability risks, and a nearby Resilient Bridgeport coastal flood wall defense system.⁵⁰

1. The 61850 Technology

23. United Illuminating argues that the Commission failed to recognize that the 61850 Technology is a new technology for its system and therefore is an advanced technology for purposes of the nexus test.⁵¹ Although two of United Illuminating's affiliates have already deployed versions of the same technology, United Illuminating claims that integrating the 61850 Technology into the Pequonnock Project presents a different set of challenges, and therefore risks. United Illuminating argues that it previously had little contact with those affiliates and that their facilities are not located on the Connecticut Valley Electric Exchange (CONVEX) transmission system, which United Illuminating asserts is "vastly different from the local operations of transmission systems that are

⁴⁶ 2012 Policy Statement, 141 FERC ¶ 61,129 at P 22.

⁴⁷ May 2019 Order, 167 FERC ¶ 61,126 at P 62.

⁴⁸ United Illuminating April 19, 2019 Answer (Answer).

⁴⁹ Rehearing Request at 38. United Illuminating also restates its justification under the second, third, and fourth showings of the 2012 Policy Statement. *Id.* at 46-47. Because we affirm the Commission's decision in the May 2019 Order to deny United Illuminating's request under the first showing, we reject those claims.

⁵⁰ *Id.* at 38-47.

⁵¹ *Id.* at 39-41.

particular and applicable” to those affiliates.⁵² United Illuminating also states that experienced technicians will need to work with United Illuminating’s employees and contractors on the safe and effective integration of the technology into its system, and that these risks and challenges are not sufficiently mitigated by its base ROE or addressed through risk-reducing incentives.⁵³

24. We disagree. United Illuminating has not shown how the 61850 Technology is a new technology. As noted in the May 2019 Order, the 61850 Technology is based on the use of fiber optic communication technology, which is not new.⁵⁴ Moreover, beyond asserting that integrating this technology with the CONVEX and ISO-NE transmission systems will present “unique issues that [United Illuminating] will need to investigate and navigate,” United Illuminating has failed to justify the adder by showing how its deployment is substantially riskier or more challenging than its affiliates’.⁵⁵ As discussed in the May 2019 Order, the Commission determined that United Illuminating’s affiliates’ successful implementation of this technology undermines United Illuminating’s claim that deploying this technology is unproven and presents risks that are not shared by others in the industry,⁵⁶ particularly when United Illuminating will have access to its affiliates’ experience and will use experienced technicians to deploy the technology.⁵⁷

2. The Project’s Resilient Design

25. United Illuminating next claims that the Commission erred by characterizing the Pequonnock Project’s design as “conventional,”⁵⁸ when the Connecticut Siting Council determined that the project provides coastal resiliency based on its resilient design.⁵⁹ United Illuminating acknowledges that the materials that will be used during construction

⁵² *Id.* at 40-41.

⁵³ *Id.*

⁵⁴ May 2019 Order, 167 FERC ¶ 61,126 at P 63.

⁵⁵ Rehearing Request at 40-41.

⁵⁶ *See* May 2019 Order, 167 FERC ¶ 61,126 at P 63.

⁵⁷ *See* United Illuminating Filing at 22-23; Rehearing Request at 40-41.

⁵⁸ Rehearing Request at 35-36.

⁵⁹ *Id.* at 41, 43.

are conventional but claims that the project design is unique to the United States.⁶⁰ For example, the project will: (1) be elevated 19 feet, which is 10 feet higher than the substation's current elevation and exceeds the Federal Emergency Management Agency's base flood elevation by five feet; (2) face challenges associated with construction, including grading, on a very small project site in a congested metropolitan area; (3) require elevated platforms; and (4) improve reliability during extreme weather events through the use of its gas insulated substation enclosure.⁶¹ United Illuminating contends that such measures, in particular the project's grading and high platforms, will require more frequent inspection and maintenance, and therefore costs, throughout the life of the project.⁶²

26. In the May 2019 Order, the Commission commended United Illuminating for designing the Pequonnock Project with resilience in mind, but explained that the design did not present sufficient risks and challenges to warrant an ROE Incentive Adder.⁶³ Although the project's design characteristics may present new construction and operational challenges and risks for United Illuminating, those will be addressed through United Illuminating's base ROE and risk-reducing incentives.⁶⁴ For example, the CWIP Incentive will allow United Illuminating to include all prudently-incurred construction costs in its rate base to help United Illuminating finance construction of its project.⁶⁵ The Abandoned Plant Incentive will protect United Illuminating and its shareholders by allowing United Illuminating to recover all prudently incurred costs in the event the project must be abandoned due to the risks associated with the project site.⁶⁶ As for United Illuminating's claims that the project's grading and high platforms will result in more frequent inspections and maintenance costs compared to a typical substation, such costs alone are not a basis upon which to grant an incentive ROE.

⁶⁰ *Id.* at 37.

⁶¹ *Id.* at 36, 37, 42-43.

⁶² *Id.* at 43.

⁶³ May 2019 Order, 167 FERC ¶ 61,126 at P 64.

⁶⁴ *Id.* P 62.

⁶⁵ *Id.* PP 32, 36.

⁶⁶ *Id.* PP 39, 41.

27. On rehearing, United Illuminating now also claims that its gas insulated substation technology's building enclosure improves reliability to such an extent that it should be eligible for its incentive adder.⁶⁷ We note that, although United Illuminating explained that it chose the gas insulated substation design because the alternative would require a larger area than could be accommodated at proposed site,⁶⁸ United Illuminating never claimed that the gas insulated substation's enclosure improves reliability in its Application or Answer.

28. The Commission has long held that it will reject new arguments on rehearing that could have been made originally but were not.⁶⁹ Because other parties are precluded pursuant to Rule 713(d)(1) of the Commission's Rules of Practice and Procedure⁷⁰ from filing answers to requests for rehearing, allowing United Illuminating to introduce a new justification for its request at the rehearing stage raises concerns of fairness and due process.⁷¹

29. Nonetheless, we find that United Illuminating has not shown how the gas insulated substation design merits an ROE Incentive Adder. The use of a gas insulated substation is not a new technology nor does United Illuminating identify any risks and challenges associated with the enclosure to justify an incentive under the 2012 Policy Statement. Furthermore, based on United Illuminating's description of the gas insulated substation in

⁶⁷ Rehearing Request at 37.

⁶⁸ United Illuminating Filing at Exhibit 2, 4.

⁶⁹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,203, at P 12 (2016); *Hudson Transmission Partners, LLC v. N.Y. Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,024, at P 31 (2008).

⁷⁰ 18 C.F.R. § 385.713(d)(1) (2019).

⁷¹ See, e.g., *Tex. E. Transmission, LP*, 141 FERC ¶ 61,043, at 19 (2012) ("such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision") (citing *Westar Energy, Inc.*, 134 FERC ¶ 61,176 (2011)), *appeal dismissed sub nom. NO Gas Pipeline v. FERC*, 756 F.3d 764 (D.C. Cir. 2014)); *Algonquin Gas Transmission, LLC*, 154 FERC ¶ 61,048, at P 16 (2016) (explaining that new arguments on rehearing raise concerns of fairness and due process).

the Rehearing Request,⁷² we find that United Illuminating fails to demonstrate how the claimed additional reliability or resilience benefits of this design are either related to United Illuminating's request for an ROE Incentive Adder, or are not otherwise accounted for in United Illuminating's base ROE and risk-reducing incentives.

3. The Resilient Bridgeport Project

30. United Illuminating next claims that the Commission failed to consider the ongoing risks and challenges to the project associated with a nearby coastal flood wall defense system project known as the Resilient Bridgeport Project.⁷³ The Resilient Bridgeport Project is a flood wall that may be built on United Illuminating's project site and its proximity may cause damage to the Pequonnock Substation if the wall is breached, may cause electric shock due to grounding effects, or may uncover environmental contaminants that require remediation.⁷⁴

31. In the May 2019 Order, the Commission granted the Abandoned Plant Incentive in part due to United Illuminating's concerns with the Resilient Bridgeport Project, including the possible delay to development and construction and risks to the project's state environmental approvals, which will protect United Illuminating and its shareholders if the project must be abandoned.⁷⁵

32. As to United Illuminating's remaining concerns related to the Resilient Bridgeport Project—such as the potential for electric shock or site damage resulting from a breached flood wall—United Illuminating has failed to show how such attenuated risks warrant an ROE Incentive Adder. United Illuminating did not discuss whether those risks can be mitigated through commercially available property and liability insurance, nor did United Illuminating explain how the requested ROE Incentive Adder relates to, or mitigates, those risks.

⁷² Rehearing Request at 2, 16, 37.

⁷³ *Id.* at 44.

⁷⁴ *Id.* at 45.

⁷⁵ May 2019 Order, 167 FERC ¶ 61,126 at PP 39, 41. *See also San Diego Gas & Elec. Co.*, 151 FERC ¶ 61,011, at P 32 (2015) (denying a requested ROE Incentive because project challenges related to siting and permitting will be addressed by the Abandoned Plant Incentive).

4. The Relocation of High-Pressure Gas-Filled Cables

33. United Illuminating argues that the Commission failed to address whether its requested ROE Incentive Adder should be granted based on the relocation of high-pressure gas-filled cables along the Bridgeport Harbor coast.⁷⁶ United Illuminating explains that construction will require extensive dewatering and will require United Illuminating to retain specialized services.⁷⁷

34. Although United Illuminating stated in its Answer that it may face delay and cost overruns associated with modifying its gas-filled cables,⁷⁸ United Illuminating did not otherwise justify its requested ROE Incentive Adder based on construction risks and challenges associated with these cables. As discussed above, the Commission rejects new arguments on rehearing that could have been made originally but were not.⁷⁹ We note, however, that United Illuminating acknowledges that it would need to procure and retain specialized services to splice and extend the gas-filled cables, and that United Illuminating may incur significant cost overruns.⁸⁰ United Illuminating has not explained what relationship either of these assertions bears to its request for an ROE Incentive Adder. Generally, if United Illuminating incurred additional costs, those costs would be recoverable in its rates. Moreover, United Illuminating presumably would account for the risks associated with this work in negotiating with its contractor. If United Illuminating paid a contractor a higher price to complete this risky task, that does not itself merit a higher return on those costs. Finally, we note that the Abandoned Plant Incentive would protect United Illuminating and shareholders in the event the project would need to be abandoned.⁸¹

⁷⁶ Rehearing Request at 45.

⁷⁷ *Id.*

⁷⁸ Answer at 19 (United Illuminating “will also need to make modifications to portions of two fifty-year-old high-pressure gas filled cables that extend across Bridgeport Harbor’s sea floor. If the design modifications to either of these aged cable systems result in unexpected difficulties or damage during construction, it could cause UI to encounter project delay and cost overruns”).

⁷⁹ *See supra* P 28.

⁸⁰ Rehearing Request at 45-46.

⁸¹ May 19 Order, 167 FERC ¶ 61,126 at PP 41, 64.

C. The Commission Appropriately Denied the ROE Incentive Adder

35. United Illuminating argues that the CWIP and Abandoned Plant Incentives do not completely mitigate the need for an ROE Incentive Adder.⁸² United Illuminating claims that the Commission is required to assess “in its judgment, the level of remaining risk” that is not already accounted for in the base ROE or other risk reducing incentives.⁸³ United Illuminating claims that, consistent with *PJM Interconnection, L.L.C.*⁸⁴ and *Pioneer Transmission, LLC*,⁸⁵ the Commission should have granted an incentive of at least 25 basis points.⁸⁶

36. We disagree. In the May 2019 Order, and as affirmed here, the Commission denied United Illuminating’s request for the 50 basis point ROE Incentive Adder because United Illuminating failed to meet the 2012 Policy Statement’s first expected showing. Neither *PJM Interconnection, L.L.C.* nor *Pioneer Transmission, LLC* is directly applicable as both preceded the 2012 Policy Statement. Moreover, although in both cases the Commission found that the CWIP and Abandoned Plant Incentives reduced the risks of the project, in each case the Commission determined that an ROE incentive was warranted when looking at the total package of incentives awarded.⁸⁷ Unlike those cases, United Illuminating’s request for a reduced incentive is not warranted where, as here, we continue to find that the base ROE and CWIP and Abandoned Plant Incentives sufficiently address the risk of the project, and no ROE Incentive Adder is justified.

⁸² Rehearing Request at 49.

⁸³ *Id.* at 48.

⁸⁴ 137 FERC ¶ 61,253, at PP 60-62 (2011).

⁸⁵ 130 FERC ¶ 61,044, at P 53 (2010).

⁸⁶ Rehearing Request at 48-49.

⁸⁷ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,253 at PP 60-62 (determining that the applicant’s requested ROE Incentive Adder was proper but reducing the request from 100 basis points to 25 basis points in light of CWIP and Abandoned Plant Incentives); *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044 at P 53 (explaining that the Commission, after determining that an ROE incentive was justified, examined to what extent the CWIP and Abandoned Plant Incentives reduced the project’s overall risk).

D. The Commission Properly Denied United Illuminating's Request Pursuant to Section 205 of the FPA

37. United Illuminating argues that the Commission acted arbitrarily and capriciously by denying United Illuminating's request for the ROE Incentive Adder pursuant to section 205 of the FPA.⁸⁸ United Illuminating argues that the Commission's reliance on *Western Area Power Administration*,⁸⁹ where the Commission denied incentive adders under section 205, is arbitrary because those cases predate the Commission's authority and subsequent policies under section 219 of the FPA. United Illuminating asks the Commission to clarify that ROE incentive adders may be granted under section 205 and grant United Illuminating's request.⁹⁰

38. The Commission appropriately denied United Illuminating's request. In the May 2019 Order, the Commission explained that "incentives granted under Order No. 679 can also be granted under the Commission's section 205 authority under certain circumstances, such as to promote important public policy goals."⁹¹ The Commission found that United Illuminating's request was distinguishable from *Western Area Power Administration*⁹² and *ISO New England Inc.*⁹³ because there were no such important public policy concerns justifying United Illuminating's requested ROE Incentive Adders.⁹⁴ On rehearing, United Illuminating has not identified any such policy rationale warranting the ROE Incentive Adder here.

⁸⁸ Rehearing Request at 50.

⁸⁹ 99 FERC ¶ 61,306 (2002).

⁹⁰ Rehearing Request at 51.

⁹¹ May 2019 Order, 167 FERC ¶ 61,126 at P 65.

⁹² 99 FERC ¶ 61,306.

⁹³ 106 FERC ¶ 61,280.

⁹⁴ May 2019 Order, 167 FERC ¶ 61,126 at P 69 (citing *Western Area Power Administration*, 99 FERC ¶ 61,306 (accepting incentive adder for the addition of transmission capacity in response to constraints related to the Western Energy Crisis); *ISO New England Inc.*, 106 FERC ¶ 61,280 (explaining that the incentive adders were related to the formation of a regional transmission organization for New England)). See also, *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180, at P 10 (2014) (granting a

The Commission orders:

United Illuminating's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

regulatory asset incentive under section 205 of the FPA because it “furthers the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process”).