

116 FERC ¶ 61,059
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

American Electric Power Service Corporation

Docket No. EL06-50-000

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER
AND DENYING MOTION TO DEFER CONSIDERATION

(Issued July 20, 2006)

1. In this order, the Commission addresses a petition for a declaratory order filed by American Electric Power Service Corporation (AEP), on behalf of its subsidiary, AEP Transmission Company LLC (AEP Transco),¹ on January 31, 2006, as supplemented on February 1, 2006, requesting that the Commission approve its proposed incentive rates for a new 765 kilovolt (kV) transmission line that AEP Transco is proposing to build (proposed Project). The Commission also addresses a motion filed by Indicated PJM Transmission Owners (Indicated Owners)² to defer consideration of the AEP petition³ until the proposed Project is included in PJM's Regional Transmission Expansion Plan

¹ AEP Transco is formed solely for the financing and ownership of the project. AEP Transco intends to become a party to the Consolidated Transmission Owners Agreement and transfer functional control of the facilities to PJM Interconnection, L.L.C. (PJM).

² For purposes of their filing, Indicated Owners include: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (all doing business as Allegheny Power and direct subsidiaries of Allegheny Energy, Inc. (collectively, Allegheny)) and Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company (certain of the subsidiaries of Pepco Holdings, Inc. (PHI)).

³ Indicated Owners also request that the Commission defer consideration of Allegheny's petition for a declaratory order for incentive rate treatment filed by Allegheny in Docket No. EL06-54-000 for its proposed 500 kV transmission project. An order in that proceeding is being issued contemporaneously with this order. *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006).

(RTEP).⁴ The proposed incentive rates sought by AEP are: (1) a return on equity (ROE) that is set at the high end of the zone of reasonableness or, alternatively, a 200 basis point adder above the ROE established pursuant to the Commission's conventional methodology; (2) the option to recover the cost of capital associated with construction work in progress (CWIP) on a timely basis; and (3) the option to expense and recover on a current basis the costs that AEP Transco incurs during the pre-construction/pre-operating period. AEP also seeks accounting authority for the deferral for future recovery of these pre-construction/pre-operating costs not yet being recovered plus related carrying costs. AEP also seeks to reserve the right to request additional incentive rate treatments authorized by a final rule resulting from the rulemaking on Promoting Transmission Investment through Pricing Reform in Docket No. RM06-4-000.

2. The Commission has exercised its existing authority under section 205 of the Federal Power Act (FPA),⁵ on a case-by-case basis, to encourage investment in infrastructure through the application of incentive pricing. We find that Federal Power Act section 219 (section 219), which was established by section 1241 of the Energy Policy Act of 2005 (EPAct 2005),⁶ is a directive to the Commission to use its existing authority to allow incentive-based rates and, further, provides some of the parameters of the incentives to be allowed in the particular rulemaking ordered under section 219. Congress determined that there is a need for rate incentives to encourage investment in transmission infrastructure and directed the Commission to establish incentive-based rate treatments for transmission projects that will help ensure the reliability of the bulk power transmission system in the United States or reduce the cost of delivered power to customers by reducing transmission congestion. Pursuant to Congress' directive, the Commission issued a notice of proposed rulemaking on November 18, 2005.⁷ A final rule is being issued contemporaneously with this order.⁸

⁴ Under the RTEP process, PJM coordinates the planning of facilities with regional impact on system operations and, where warranted, allocates the costs of those facilities to the PJM zones that benefit from those facilities.

⁵ 16 U.S.C. § 824d (2000).

⁶ Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961-62 (2005) (to be codified at section 219 of the FPA, 16 U.S.C. § 824s).

⁷ *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 70 Fed. Reg. 71,409 (November 29, 2005), FERC Stats. & Regs. ¶ 32,593 (2005) (Proposed Rule).

⁸ *Promoting Transmission Investment through Pricing Reform*, 116 FERC ¶ 61,057 (2006) (Final Rule). Although AEP's Project does not have to comply with the
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3. We grant the petition for declaratory order approving the incentive rates proposed by AEP for the proposed Project pursuant to our existing authority under FPA section 205, and consistent with Congress' direction in new FPA section 219, on condition that the Project is included as part of the PJM RTEP. We also find that AEP has shown a nexus between each of its proposed incentive rates and the proposed Project, thus establishing that the particular proposed incentive rates are appropriate for the particular investments being made.

4. In its petition, AEP states that if it is unable to obtain inclusion of the proposed Project in the RTEP, then the proposed Project will not be built and the requested incentives will not be used.⁹ Accordingly, we will deny the Indicated Owners' motion to defer consideration of AEP's petition subject to the outcome of PJM's RTEP. Nonetheless, our approval of AEP's proposed rate incentives is predicated on the proposed Project being included in the RTEP because AEP relies on the RTEP process for resolving issues regarding the reliability and congestion-related effects of the proposed Project, any potential alternative/complementary projects, the proper voltage, potential impact on third-party systems, rights of incumbent transmission owners, and other infrastructure improvements or additions that may be needed to support the proposed Project. AEP chose independently to rely on the RTEP to demonstrate the policy benefits of the proposed Project and to address concerns raised by intervenors regarding the costs and benefits of the Project, and we accept the use of RTEP for this purpose.¹⁰

5. Finally, our approval of the rate incentives is subject to AEP making a subsequent filing with the Commission pursuant to section 205 of the FPA. In addition to furthering the Commission's goal to encourage the development of transmission infrastructure through incentive rate treatment, our approval of AEP's proposed incentives is also

Commission's Final Rule, which will not become effective until 60 days after publication in the Federal Register, the Commission herein has reviewed AEP's proposed incentives for general consistency with the Final Rule and Congress' direction in section 219.

⁹ AEP's answer in response to various interventions and protests at 7.

¹⁰ Although the Final Rule establishes a rebuttable presumption that a project is eligible for incentives when it results from a fair and open regional planning process, the Final Rule will not become effective until 60 days after publication in the Federal Register and we do not rely on the rebuttable presumption in granting the instant declaratory order. *See* Final Rule at P 34, 57-58. As noted above, we are granting the declaratory order pursuant to our existing authority under section 205, and consistent with Congress' direction in section 219.

intended to allow AEP Transco to move forward with financing and preliminary matters and does not constitute final Commission review of jurisdictional rates, terms, and conditions associated with the proposed Project.

I. Background

6. The proposed Project consists of a new 765 kV transmission line and associated facilities that would be approximately 550 miles long and extend from west to east across PJM, from West Virginia to New Jersey. AEP estimates that the proposed Project will cost \$3 billion and take eight years to complete, including the time required to obtain the necessary regulatory approvals. AEP states that contemporaneously with this filing, it submitted a request to PJM for the proposed Project's inclusion in PJM's RTEP. We note that recently, to meet long-term needs, PJM directed additional studies and evaluation of 10 significant transmission line proposals totaling \$10 billion of potential new investment, including the high-voltage transmission line projects proposed by AEP Transco, Allegheny, and Pepco Holdings Inc.¹¹ AEP states that it also submitted a request to the U.S. Department of Energy (DOE or Secretary of Energy) to include the corridor through which the proposed Project will run, on the DOE's list of "National Interest Electric Transmission Corridors" pursuant to section 216 of the FPA.¹² AEP states that the benefits of the proposed Project will be enormous and multi-faceted; by improving the integration of the eastern and western parts of PJM, AEP asserts that the proposed Project will provide a high degree of transparency to allow for increased competition among the suppliers of generation, bring lower-cost power from the Midwest into the eastern portions of PJM, reduce volatility in energy prices along the Baltimore-Washington Corridor, increase reliability, and provide a platform to encourage the siting of generators that are more fuel-diverse, have newer technology, and are environmentally-friendly. AEP claims that the proposed Project will increase transfer capability between the eastern and western parts of PJM by 5,000 megawatts (MW). AEP states that it estimates a 280 MW reduction in transmission line losses,¹³ which will result in energy savings of \$30 million and additional avoided (nominal) cost savings from capital investment in a combined cycle plant of \$175 million.

¹¹ Press Release, PJM Interconnection, L.L.C., PJM Authorizes Construction of \$1.3 Billion in Transmission Upgrades (June 23, 2006), *available at* <http://www.pjm.com/contributions/news-releases/2006/20060623-rtep-june-2006.pdf>.

¹² EPCA 2005, § 1221, 119 Stat. 594, 946 (to be codified at section 216 of the FPA, 16 U.S.C. § 824p).

¹³ This estimation uses peak loading conditions.

7. AEP indicates that it will submit a rate filing under section 205 to determine the zone of reasonableness for the ROE, and for authorization to recover the proposed Project's costs in its rates under the PJM Open Access Transmission Tariff (OATT)¹⁴ after the proposed Project has been accepted for inclusion in the RTEP. While AEP's petition does not request any specific rate design for cost recovery, AEP suggests that it will seek a potential formula rate. AEP anticipates that a significant portion of the costs will be allocated system-wide to reflect system-wide benefits of the proposed Project.

8. AEP states that it filed its petition in accordance with the Commission's Proposed Rule. It requests that, until the Final Rule has been issued, the Commission deem the petition to have been made under existing Commission regulations in 18 C.F.R section 35.34 but subject to consideration under the new section 35.35, when it is made effective.¹⁵ AEP states that the proposed rate incentives are eligible under either set of regulations.

9. AEP states that entities such as AEP Transco that are proposing to take on significant risks and costs to get major transmission facilities approved and constructed, should be permitted to file for advance approval of incentive rate treatments at the onset of the project development process, so they can have reasonable certainty they will achieve the rate incentives the Proposed Rule offers. AEP states that this regulatory certainty is critical in the early stage of the project development process, when decisions to invest substantial amounts of capital and effort are made.

II. Notice of the Filing, Responsive Pleadings, and Motion to Defer Consideration

10. Notice of AEP's filing was published in the *Federal Register*, 71 Fed. Reg. 6458 (2006), with interventions, comments, and protests due on or before March 1, 2006. A notice to intervene, motions to intervene, or motions for late intervention were filed by the entities listed in Attachment A to this order.¹⁶

¹⁴ AEP states that under Schedule 6, section 1.7(c) of the OATT, PJM will be required to collect from transmission customers the costs incurred to compensate AEP Transco in accordance with its Commission-approved rates, including incentives.

¹⁵ The Commission's current regulation related to requests for innovative rate treatments for transmission is set forth in 18 C.F.R. § 35.34(e) (2005). The Final Rule replaces this section with a new section, 18 C.F.R. § 35.35. AEP states that it will supplement this filing if necessary to make it conform to any relevant changes in the Final Rule.

¹⁶ Abbreviations for those entities are listed in Attachment A as well.

11. AEP filed an answer in response to the various interventions and protests (AEP Answer). Dominion and FirstEnergy, jointly, and Allegheny filed answers to AEP's answer. AEP filed an answer to Dominion, FirstEnergy, and Allegheny's answers.

12. In its motion to defer consideration, Indicated Owners ask that the Commission defer consideration of both AEP's and Allegheny's petitions until PJM approves an RTEP that includes all or any portion of either or both proposed projects or modified versions thereof, for the following reasons: (1) there will be more detailed information about the final plans for expansion (including upgrades), the proposed cost allocation among users of the PJM transmission grid, and other matters pertinent to the petitions for incentive rate treatments, after RTEP is complete; (2) RTEP may result in modifications to, or rejection of, the proposed projects; and (3) affected parties will be able to provide more informed comments on the petitions once the RTEP process is complete.

13. PPL Parties, ODEC and PJM filed in support of Indicated Owners' motion to defer consideration. The PPL Parties agree that the facts relevant to considering the pending declaratory order petitions will be clearer after the PJM RTEP process is complete. ODEC supports the motion to defer consideration, conditioned on a more collaborative RTEP process, as well as the additional opportunity to comment on the petitions at the conclusion of the RTEP process, as they may be modified. PJM supports the request to defer ruling on issues that arise under PJM's OATT and Operating Agreement, as Commission interpretation of these documents would be premature¹⁷ because these issues may become moot due to potential discussions among the parties or decisions made by PJM about the proposed projects. However, PJM does point out that there will be no need for the Commission to interpret Schedule 6 in order to grant a declaratory order granting the incentive rates if the proposed projects are constructed.

14. AEP filed an answer opposing the motion to defer consideration of its petition,¹⁸ stating that it has no intention of bypassing the RTEP process. AEP notes that its petition relates solely to incentive rates and that the issues of costs and planning to be addressed in the RTEP process have no bearing on the incentive rate issues before the Commission. AEP argues that it is simply asking the Commission to send a strong and prompt signal

¹⁷ Specifically, PJM states that it would be premature for the Commission to interpret Schedule 6 of the PJM Operating Agreement (Regional Transmission Expansion Planning Protocol) (Schedule 6) (as explained below, some intervenors have taken various positions on the meaning of certain provisions of Schedule 6 in this proceeding).

¹⁸ AEP takes no position on the motion to defer consideration of the Allegheny filing.

that, as AEP Transco goes forward and spends its capital on its proposed Project, the Commission intends to support AEP Transco's efforts through incentive rates. AEP states that since the RTEP process and these proceedings deal with separate matters, it is unclear how the Commission would have the benefit of more informed comments on the incentive rate proposal after the RTEP process is completed. AEP also argues that the Commission has a strong basis for believing that the proposed Project is in the public interest and should be completed as promptly as possible.

15. On May 26, 2006, Allegheny filed a motion requesting that the Commission find the motion to defer consideration moot as to the Allegheny petition and to take prompt action on its petition.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the Ohio Commission's, Delaware Municipal's, Williams', and Allegheny Electric Cooperative's untimely motions to intervene, given their interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits answers to protests or answers to answers unless otherwise ordered by the decisional authority. We will accept the answers because they provided information that assisted us in our decision-making process.

B. Authority to Address the Petition

18. The Commission has exercised its existing authority under section 205, on a case-by-case basis, to encourage investment in infrastructure through the application of incentive pricing.¹⁹ We find that section 219 is a directive to the Commission to use its

¹⁹ See, e.g., *Western Area Power Administration*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002) (*Western Area Power Administration*), *aff'd sub nom. Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004); *Michigan Electric Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003); *American Transmission Company, L.L.C.*, 105 FERC ¶ 61,388 (2003) (*ATC I*), *order approving settlement*, 107 FERC ¶ 61,117 (2004) (*ATC II*); *ITC Holdings Corp.*, 102 FERC ¶ 61,182, *reh'g denied*, 104 FERC ¶ 61,033 (2003); *Trans-Bay Cable LLC*, 112 FERC ¶ 61,095 (2005), *order granting clarification*, 114 FERC ¶ 61,104 (2006) (*Trans-Bay*);

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existing authority to allow incentive-based rates and, further, provides some of the parameters of the incentives to be allowed in the particular rulemaking ordered under section 219. In section 219, in recognition of the need for rate incentives to promote capital investment in the enlargement, improvement, maintenance, and operation of facilities for the transmission of electric energy in interstate commerce, Congress granted the Commission explicit authority to establish, by rule, such incentive-based rate treatments for the purpose of ensuring reliability or reducing the cost of delivered power by reducing congestion. The Commission initiated a rulemaking and is issuing a final rule contemporaneously with this order in Docket No. RM06-4-000, as discussed above.

19. Here, in granting AEP's petition for a declaratory order, we are taking action pursuant to our existing authority under section 205 and consistent with the provisions of section 219 and, generally, the regulations that we are implementing pursuant to section 219. Moreover, our decision is consistent with Commission precedent encouraging investment in infrastructure through the application of incentive pricing.²⁰

20. Enactment of section 219 and the changed characteristics of the industry lead us to consider alternative ratemaking approaches, based on the urgent need for substantial transmission investment. We find that the proposed Project is the type of transmission investment project contemplated by Congress when it directed the Commission to

Policy Statement on Matters Related to Bulk Power System Reliability, 107 FERC ¶ 61,052 (*Bulk Power System Reliability Policy Statement*), clarified by, 108 FERC ¶ 61,288 (2004), supplemented by, 110 FERC ¶ 61,096 (2005); *ISO New England*, 106 FERC ¶ 61,280 (*ISO-NE*), order on reh'g, 109 FERC ¶ 61,147 (2004); *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

The Commission's actions to encourage investment in infrastructure through the application of incentive pricing have been upheld by the courts. *See, e.g., Maine Pub. Utils. Comm'n v. FERC*, No. 05-1001, 2006 U.S. App. LEXIS 16445 (D.C. Cir. June 30, 2006) (affirming the Commission's decision to permit a 50 basis point incentive adder for regional service as part of its approval for a Regional Transmission Organization (RTO) in New England); *Public Utilities Commission of the State of California v. FERC*, 367 F.3d at 929 (affirming the Commission's decision to permit incentive rates for the Path 15 upgrade).

²⁰ *Id.*

develop rules for transmission rate incentives. We agree that the rate incentives proposed by AEP will play an important role in raising the large amounts of capital necessary for projects of this magnitude and geographic scope. We also find that AEP's proposed incentives will offer significant benefits to consumers by encouraging investment that can improve reliability or reduce congestion costs. The fact that the proposed Project will be tied to the regional planning efforts will help to ensure that these customer benefits are achieved and will otherwise help to streamline investment efforts, reduce redundancies, and ensure equitable cost allocation.

21. Finally, AEP's petition seeks rate incentives that are consistent with the Commission's findings in the Final Rule. We also find that AEP has shown, consistent with the Final Rule, a nexus between each of its proposed incentive rates and its proposed Project, thus establishing that the proposed incentive rates are appropriate for the investment being made. Consistent with Commission precedent and the Final Rule, this order confirms that AEP Transco is eligible for the requested incentives provided the proposed Project is included in RTEP. We do not address the justness and reasonableness of AEP Transco's specific rates here; we reserve such a determination for a section 205 filing, which AEP has stated it will make in the future.²¹

C. General Issues

1. Standard of Review and Sufficiency of Evidence

a. Comments and Protests

22. Several parties, including Chambersburg, PSEG, Steel Dynamics, NC Electric, and FirstEnergy, argue that the Commission must act on the petition pursuant to existing Commission policies and ratemaking principles governing incentive rate treatment.²² These parties generally argue that an applicant must demonstrate that its proposed

²¹ Final Rule at 77-78.

²² FirstEnergy and Joint Consumer Advocates specifically argue that AEP's petition fails to satisfy the requirements of section 35.34(e) of the Commission's regulations, which requires applicants seeking incentive transmission rates to provide: (1) a detailed explanation of how proposed rate treatment would help achieve the goals of Regional Transmission Organizations; (2) a cost benefit analysis, including rate impacts; and (3) an explanation as why the proposed rate treatment is appropriate for the Regional Transmission Organization.

incentive rates are just and reasonable, with a showing that the proposed rates are the lowest reasonable rates for the benefits provided. Accordingly, these parties argue for various combinations of the following factors to be shown for the Commission to approve any proposed incentive rates: (1) that other measures will not suffice; (2) that the applicant supported its proposal with a cost-benefit analysis; (3) that the proposed incentive rates are narrowly tailored so that the goal sought to be promoted is obtainable at the lowest sufficient cost; and (4) that the incentives are proportional to risks they are intended to counterbalance. Other parties, including PJM Industrial Customer, FirstEnergy, Steel Dynamics, Constellation, and Ormet, generally argue that AEP did not provide enough information regarding the proposed Project and why the proposed incentives are justified, including costs and benefits. PSEG asserts that if the preliminary relief the Commission may grant here will be binding on the Commission in the later rate proceeding, then the Commission should determine that the proposed incentives satisfy the standards of section 205.

23. Other parties argue for different standards of proof to be met before the proposed incentive rates can be accepted. PJM Industrial Customer states that the Commission should approve the proposed incentives only if it finds that they are adequate to meet AEP Transco's business and investment needs, while safeguarding customers against rates higher than necessary to meet such needs. Dominion Resources argues that the Commission should grant approval only if it determines that the proposed Project is in the public interest. PSEG states that the Commission must apply a higher standard in order for a public utility to receive incentive rates.

24. A few parties argue that the Commission should not consider or approve AEP's proposed incentives in a petition for a declaratory order. NC Electric and Ormet argue that the Commission should only consider the ROE incentive in the context of a rate case rather than in a declaratory order because the holding will involve factual determinations and the development of an evidentiary record. PHI, Municipalities, Joint Consumer Advocates, and AEP TDUs claim that the Commission should set this proceeding for an evidentiary hearing. AEP TDUs further argue that the Commission should not "resolve" the petition on the basis of general policy, especially as it does not know what capital structure AEP Transco will apply for rate purposes and thus cannot know the actual costs to consumers of the enhanced ROE. AEP answers that the declaratory order procedure was specifically referenced in the Proposed Rule as a vehicle for parties to obtain Commission rulings regarding their proposed incentives, and it states that it will ultimately make a filing pursuant to section 205.

b. Commission Determination

25. As discussed above, our review of AEP's petition is pursuant to the Commission's authority under section 205 and the obligation given to the Commission under section

219 to establish incentive-based rate treatments for transmission infrastructure investment, and such review is consistent with the intent of EPAct 2005.

26. Our review is also consistent with the Final Rule, which requires a demonstration that the investment will ensure reliability or reduce the cost of delivered power by reducing transmission congestion. As discussed above, we accept AEP's use of the RTEP to demonstrate that the investment will ensure reliability or reduce the cost of delivered power by reducing transmission congestion. However, this does not mean that the regional planning process must be complete before an application for incentives is filed; rather, applicants may file petitions for declaratory orders seeking approval of their incentives prior to approval by their various regional planning processes.²³ Our approach ensures that applicants can receive an early determination regarding the appropriate incentives for a particular project, thereby providing the regulatory certainty that is important in supporting large new investments.

27. We emphasize that we are not determining the justness and reasonableness of AEP Transco's overall rates at this stage. As discussed further below, our approval is declaratory in nature; we are approving AEP's proposed incentives as satisfying the requirements of section 219 and our Final Rule, as well as existing precedent, to provide the regulatory certainty necessary for AEP Transco to proceed with the proposed Project's financing and construction. Our decision therefore is confined to the particular incentives being approved in the instant proceeding and does not constitute approval of any particular rate; AEP must demonstrate the justness and reasonableness of AEP Transco's overall rates in a later section 205 filing, among other things.

28. We find that it is appropriate for the Commission to consider AEP's proposed incentive rates in a petition for a declaratory order. Any person who seeks a binding Commission determination concerning a proposed transaction, practice, situation, or other matter may file a petition for a declaratory order under Rule 207 of the Commission's regulations.²⁴ Moreover, AEP's petition is consistent with the procedure proposed in the Proposed Rule and adopted in the Final Rule. As we have noted, our approval here is limited to certain incentives and does not constitute final approval of any particular rate. As discussed further below, we find that AEP's proposed incentives are conditionally justified given our existing authority under section 205, our obligation under section 219, and existing precedent. Accordingly, we find that it is not necessary to set this proceeding for hearing at this time.

²³ See Final Rule P 58, 76.

²⁴ 18 C.F.R. § 385.207 (2005).

2. Prematurity

a. Comments and Protests

29. Several parties, including FirstEnergy, PSEG, Ormet, and Joint Consumer Advocates, argue that AEP's petition is premature because it was filed before the Final Rule was issued. Other parties, such as AMP-Ohio and Indiana Consumer Counselor, request that the Commission either defer action on the petition or ensure that it comports with the Final Rule. Ormet states that the Commission should not begin review of the petition until the Final Rule is issued and until parties that would be affected by the proposed Project would have the opportunity to comment, in light of the Final Rule.

30. AEP answers that the Commission is under no obligation to defer action until the Final Rule has been issued because the Commission has authority to act on proposals for incentive rate treatment under section 205, each of the proposed incentives have been approved previously by the Commission in other proceedings, and because the public interest will be served by prompt action in this proceeding.

b. Commission Determination

31. We find intervenors' requests for deferred Commission action to be moot, since we are acting on AEP's petition consistent with the Final Rule, which is being issued contemporaneously with this order. Under the Final Rule, transmission investment made after August 8, 2005 may be eligible for incentive rate treatment.²⁵ In response to Ormet's argument that the Commission should defer action until parties have an additional opportunity to comment in light of the Final Rule, we believe that interested parties have already been afforded an opportunity to present their views about AEP's proposed incentives here and about incentives generally in the Final Rule proceeding.

D. AEP's Proposed Rate Incentives

1. Proposed ROE Rate Incentive

32. AEP requests that the ROE be set at the high end of the zone of reasonableness or, alternatively, that the Commission approve a 200 basis point adder above the ROE established pursuant to the Commission's conventional methodology for setting the ROE, determined in a future proceeding. AEP also requests that the Commission affirm that it will evaluate the proposed ROE through the discounted cash flow (DCF) method, as well as other methods that may become available for determining the cost of equity.

²⁵ Final Rule at P 34.

a. Comments and Protests

33. Several parties, including APPA, ODEC, Steel Dynamics, Chambersburg, and Public Power NJ, argue that AEP did not show that the proposed rate incentives are necessary to attract new capital for the proposed Project to be constructed. Chambersburg contends that AEP Transco is not a risky venture since it has the support and resources of its parent corporation to attract capital. APPA argues that AEP has made no factual showing that the high rates of return will attract the necessary capital. AEP TDUs argue that the key to strengthening PJM's backbone is region-wide cost allocation of transmission, not extra profits. Public Power NJ asserts that the appropriate incentives, if any, should be designed to encourage expedited construction of the proposed Project at the most reasonable and lowest cost and that the Commission should reward AEP for solving problems related to siting, "not in my back yard" concerns, and local governmental approvals.

34. Other intervenors argue that the Commission cannot opine where within an unknown range the ROE will fall before cost information is developed. NC Electric argues that incentive rates, or bonuses above cost-based rates, are reasonable only if they are supported by a cost-benefit analysis and if chosen projects are the least-cost solutions available. ODEC states that, in contravention of the Proposed Rule, the applicant did not explain "how the proposed ROE was derived and why it is appropriate to encourage new investment."²⁶ In addition, ODEC argues that AEP has failed to justify its request to depart from the DCF method. Similarly, AEP TDUs assert that even if the Commission prematurely approved AEP's request for an ROE at the high end of the zone of reasonableness, such an approval would not determine an actual ROE. AEP TDUs acknowledge that while AEP states in its petition that the Commission has the discretion to set the ROE anywhere within the zone of reasonableness, precedent requires the Commission to provide a reasoned explanation for relying on non-cost factors when determining the ROE.

35. Chambersburg, AMP-Ohio and Joint Consumer Advocates argue that the proposed ROE incentives are not just and reasonable. AMP-Ohio suggests that establishing an ROE at the upper range of the zone of reasonableness is by definition unreasonable. AMP-Ohio states that if circumstances show that a return at the middle, or the bottom, of the range, is sufficient to attract capital, considering risks and other incentives (e.g., incentives requested by AEP) then no higher return is needed or lawful. Joint Consumer Advocates also state that the requested ROE options favor the investor to the detriment of the consumer and violate the Commission's long-standing ROE rate doctrine, which according to the Joint Consumer Advocates, maintains that setting ROE numbers at

²⁶ Proposed Rule, FERC Stats. and Regs. ¶ 32,593 at P 22.

unreasonably high levels favors the investor to the detriment of the consumer and could violate the just and reasonable rate doctrine.²⁷

36. Joint Consumer Advocates and PPL Parties also state that in *Trans-Bay*, cited by AEP, the entity was a new and independent entity that was assuming substantial risk, and parties had provided a list of benefits, including enhanced reliability and more efficient dispatch. In addition, PPL Parties state that in *Trans-Bay*, the independent reliability coordinator (California Independent System Operator Corporation) had identified a need for the transmission line being built as a long-term solution to solve reliability concerns found in the San Francisco peninsula area, prior to Trans-Bay Cable LLC's request for incentive transmission treatment. PPL Parties state that PJM has not identified the reliability need in the case of the proposed Project. In addition, Joint Consumer Advocates and PPL Parties point out that in *Western Area Power Administration*, the Western Area Power Administration actively sought bids to relieve congestion in an area previously identified by the Secretary of Energy, as a bottleneck that needed correction, outlined by this Commission as a uniquely critical path, with transmission limitations that have had serious impacts on the ability to move power over the system. PPL Parties state that in contrast, PJM has received no such request from the U.S. President or the Secretary of Energy to construct facilities in the PJM footprint.

37. Steel Dynamics argues that if the Commission approves an enhanced ROE, it should reject or limit other requested incentives. Steel Dynamics argues that inclusion of 100 percent CWIP in the rate-base and expensing pre-certification costs would shift risk to ratepayers. As such, Steel Dynamics argues that there should be no need for a risk premium for investors in the form of an enhanced ROE. Steel Dynamics asserts that this is consistent with recent Commission policy in *ATC I* and *Trans-Bay*.

38. Public Power NJ states that AEP's primary motivation for the proposed Project is to gain access for its generation assets to more profitable eastern PJM markets, and it argues that any rate incentives awarded must be offset against future gains on AEP's sales of generation made possible by the proposed Project's construction, as AEP already has a reasonable expectation of substantial return on the investment. AEP TDUs agree that there are already substantial profit incentives for AEP to proceed with transmission construction and that extra profits taxed through transmission rates would be inappropriate.

²⁷ *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679, 693 (1923); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968); *Atlantic Refining Co. v. Public Service Comm'n of New York*, 360 U.S. 378, 388 (1959).

b. AEP's Answer

39. AEP responds that the Commission has broad discretion to set the ROE anywhere within the zone of reasonableness, not only the middle ground. Further, it states that Congressional intent supports Commission approval of this incentive. In response to Public Power NJ's argument, AEP states that there is no basis in Commission policy or precedent to direct AEP's rate incentives to be offset against future gains by AEP's generation. AEP states that the Commission does not set transmission rates based on profit margins earned on capacity and energy sales but that the Commission treats wholesale power and transmission as two separate functions.

c. Commission Determination

40. We approve AEP's proposed incentive for AEP Transco's ROE to be set at the high end of the zone of reasonableness, with the zone of reasonableness to be determined in a future proceeding.

41. Our finding in this proceeding today has foundation both in our precedent of providing incentives for infrastructure investment pursuant to section 205,²⁸ and in our obligation under section 219 to establish incentive based rate treatments that specifically provide an ROE that attracts new investment in transmission facilities.

42. Contrary to intervenors' arguments, we are not abandoning the fundamental underpinnings of our transmission pricing policy in this order. Our finding today on AEP Transco's ROE request adheres to the principle that transmission prices must reflect the cost of providing the service.²⁹ This increased cost to consumers is intrinsically tied to a demonstrable improvement in the quantity and quality of transmission service and reliability. Furthermore, the ROE premium in this proceeding is not unbounded. We maintain that AEP's ROE must be within the "zone of reasonableness." The courts have repeatedly affirmed our authority to set any rate which is within the "zone of reasonableness," which we are strictly adhering to in this case.³⁰ Therefore, we grant AEP's request, and our action on this ROE is based upon the historical precedent of permitting a higher ROE for the purposes of encouraging investment in transmission

²⁸ See *Bulk Power System Reliability Policy Statement* at P 28; *ISO-NE*, 106 FERC ¶ 61,280 at P 245-46; Order No. 2000, FERC Stats. & Regs. ¶ 31,092 at 31,171-72.

²⁹ See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591; *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679.

³⁰ *Permian Basin Area Rate Cases*, 390 U.S. at 797.

infrastructure pursuant to section 205, and further sustained through our obligation under section 219 to establish incentive-based rate treatments for transmission infrastructure investment.

43. Our approval of AEP's proposed incentives is also consistent with the Final Rule. The Final Rule permits an incentive-based ROE to all public utilities (*i.e.*, traditional public utilities and transcos) that build new transmission facilities that benefit consumers by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.³¹ The certain measures and options established by the Final Rule for evaluating an incentive-based ROE include: (1) any incentive-based ROE must fall within the range of reasonableness established by the Commission for the particular entity requesting the ROE for its investment in new transmission facilities;³² (2) while the incentive-based ROE will continue to fall within the traditional zone of reasonableness it will be adjusted upward and will be higher than would otherwise have been granted absent the incentive;³³ (3) no specific ROE adders are established;³⁴ (4) the Commission will determine the level of the incentive-based ROE on a case-by-case basis when an application for an incentive-based ROE is filed with the Commission;³⁵ (5) to receive an incentive-based ROE, a public utility must support the ROE request by demonstrating how the new facilities will improve regional reliability or reduce transmission congestion.³⁶

44. We also find that AEP has shown, consistent with the Final Rule, a nexus between the proposed ROE incentive and its planned investment. The proposed Project is not the ordinary transmission investment but rather presents special risks that merit an ROE at the high end of the zone of reasonableness. The length, scope, and multi-state nature of this proposed Project will present substantial risks and challenges in siting and obtaining the required permits. In *Maine Pub. Utils. Comm'n v. FERC*, the court observed that an ROE calculation may be based on a range of reasonable returns that takes into account "a number of factors that may be both cost-related and policy-related, including [but not

³¹ Final Rule at P 91-93.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at P 93.

³⁶ *Id.*

limited to] business risk factors” and that “courts have recognized that there is a zone of reasonable ROEs and have held [the Commission] to an end-result test.”³⁷ Thus, in addition to the risk associated with this project, the proposed Project also will require an enormous investment (estimated by AEP to be \$3 billion) and thereby presents financing challenges not faced by the ordinary transmission investment. Further, unlike the ordinary transmission project, AEP is under no state obligation to construct the line. We think it is important to recognize that instead of investing capital in another venture, AEP has voluntarily chosen to invest a large amount of capital to build backbone high voltage transmission facilities that are valuable because this Project will increase reliability and/or reduce the cost of delivered power to customers by reducing transmission congestion. This, coupled with the size of the proposed Project – an estimated 5,000 MW of increase in transfer capability – and the time for completion – eight years – all support the need for an ROE incentive set at the high end of the zone of reasonableness. Under these circumstances, we believe that an incentive-based ROE is appropriate to encourage this new investment and is fully consistent with the Final Rule, as well as Congressional intent in enacting section 219.

45. We are not, however, determining any particular ROE in this docket. Rather, we agree that AEP must propose and support a particular ROE in its section 205 filing, consistent with the Final Rule.³⁸

46. Moreover, with regard to the issue of a cost-benefit analysis raised by NC Electric, we find that AEP is not required to perform a cost-benefit analysis. We note that EPAct 2005 has determined the need for transmission rate incentives, and therefore cost-benefit studies are not needed, consistent with our finding in the Final Rule.³⁹

47. Contrary to Steel Dynamics’ arguments, the incentives requested herein are not mutually exclusive. This finding is consistent with precedent that has upheld use of multiple incentives⁴⁰ and the Final Rule.⁴¹

³⁷ No. 05-1001, 2006 U.S. App. LEXIS 16445, at *31-32 (D.C. Cir. June 30, 2006) (citations omitted).

³⁸ Final Rule at P 20, 34, 77.

³⁹ *Id.* at P 65.

⁴⁰ *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004), *order on reh’g*, 111 FERC ¶ 61,266 (2005) (*Boston Edison*).

⁴¹ Final Rule at P 55.

48. In response to Public Power NJ's request that AEP's proposed rate incentives be offset against future gains by AEP's generation, we agree with AEP that this request is not consistent with Commission policy. In Order No. 888,⁴² the Commission required public utilities to "functionally unbundle" their wholesale generation and transmission services by stating separate rates for each service in a single tariff and offering transmission service under that tariff on an open-access, non-discriminatory basis. Therefore, any revenues associated with generation service are to remain separate and distinct from transmission service revenues.

49. Our conditioned approval of AEP's proposed incentives, requiring that AEP's proposal be approved under PJM's RTEP plan, addresses Joint Consumer Advocates' and PPL Parties' concerns that an independent reliability coordinator determine a reliability need for this transmission line in order for AEP Transco to receive any ROE incentives. PJM's RTEP process will evaluate such concerns. Region-wide cost allocation issues will also be addressed in the RTEP stakeholder process and in AEP Transco's section 205 filing.

50. Since we are granting AEP's request that its ROE be set at the high end of the zone of reasonableness, we need not address its alternative request for a 200 basis point adder, but we note that the Final Rule states that the Commission will not create specific ROE adders.⁴³

2. Proposed CWIP Rate Incentive

51. AEP asks that the Commission permit AEP Transco, at its option, to collect 100 percent of the cost of capital on the CWIP on a timely basis, in order to improve the cash flow during the lengthy construction process of the proposed Project. AEP states that the recovery of a return on CWIP should be adjusted frequently to allow for timely recovery without regulatory lag. Correspondingly, AEP suggests a formula rate or a tracker

⁴² See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴³ Final Rule at P 93.

mechanism with a carrying cost on under/over-recovered amounts that would ensure a timely recovery.

a. Comments and Protests

52. Some parties, including ODEC, Chambersburg and FirstEnergy, state that there could be some justification for approving CWIP recovery, however, more information is required before the Commission can consider AEP's request. ODEC asserts that the Commission should impose reporting requirements as a condition of allowing CWIP recovery so that the Commission and other parties would be able to monitor the progress of the proposed Project. ODEC states that any authorization for recovery of CWIP should be subject to the condition that if the proposed Project is cancelled or abandoned due to factors within AEP Transco's control, it will have to refund the CWIP and expensed amounts to customers. If the proposed Project is cancelled or abandoned due to factors beyond AEP Transco's control, recovery should only be permitted in accordance with the criteria set forth in the TDU Systems' comments in Docket No. RM06-4-000. Chambersburg states that it does not object to the CWIP rate incentive, provided that AEP demonstrates the regional need for the proposed Project. In addition, Chambersburg argues that CWIP recovery should be limited to prudently incurred costs approved through the RTEP process.

53. Joint Consumer Advocates state that AEP's request for CWIP rate treatment violates the used and useful doctrine and, in addition, violates the existing CWIP doctrine, which requires evidentiary showings that a reliability problem exists, that the proposed Project is the most economical means to resolve the problem, that staff and intervenors have had the chance to review the prudence of the construction costs, along with alternative proposals to address the reliability problem, and that there is some certainty that the proposed Project will be completed.

b. AEP's Answer

54. In its answer, AEP states that for such a large scale project, timely recovery of construction capital costs (and preconstruction/pre-operating costs) is essential for financing and development of the proposed Project. AEP states that without this recovery, AEP Transco's finances would be strained and it would have a negative effect on AEP Transco's ability to raise capital, at minimum, increasing the cost to finance the proposed Project. AEP points out that the Proposed Rule stated that "allowing the public utilities to include up to 100 percent of prudently incurred transmission-related CWIP in rate base and permitting them to expense prudently incurred pre-commercial costs will further the goals of new section 219 by relieving the pressures on utility cash flows associated with their transmission investment programs and providing upfront regulatory

certainty.”⁴⁴ Further, AEP states that rates to consumers are lowered in the future as recovery of CWIP reduces the expense of allowance for funds used during construction. AEP commits to complying with any applicable Commission requirements, including those that the Commission may require in the Proposed Rule, and cites *Northeast Utilities Service Company*,⁴⁵ in which the Commission conditioned CWIP approval on the submission of an annual report regarding the amounts of CWIP and the current status of the proposed Project and estimated in-service dates.

c. Commission Determination

55. We will accept AEP’s proposal to include 100 percent CWIP in rate base, conditioned upon AEP fulfilling the Commission’s requirements for CWIP inclusion for these transmission facilities under the Commission’s regulations that are consistent with the Final Rule,⁴⁶ in AEP Transco’s future section 205 filing.⁴⁷

56. We are acting pursuant to our existing statutory authority under section 205 and the obligation given to the Commission under section 219 to establish incentive-based rate treatments for transmission infrastructure investment. In addition, we find that permitting this incentive will further the goals of section 219 by providing up-front regulatory certainty, rate stability and improving the cash flow of applicants, thereby, easing the pressures on their finances caused by transmission development programs.⁴⁸ We recognize that our decision here goes beyond the status quo of allowing inclusion of 50 percent of prudently-incurred CWIP in the rate base. We do so to encourage or create an incentive to develop transmission infrastructure, in furtherance of our Congressional mandate.

⁴⁴ Proposed Rule, FERC Stats. and Regs. ¶ 32,593 at P 27.

⁴⁵ 114 FERC ¶ 61,089 (2006) (*Northeast Utilities*).

⁴⁶ For example, see Final Rule at P 36, recommending timing metrics that indicate progress.

⁴⁷ See *Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 Fed. Reg. 24,323 (June 1, 1983), FERC Stats. & Regs. ¶ 30,455, *order on reh’g*, Order No. 298-B, 48 Fed. Reg. 55,281 (Dec. 12, 1983), FERC Stats. & Regs. ¶ 30,524 (1983). See also *Boston Edison Co.*, 109 FERC ¶ 61,300; *ATC I*, 105 FERC ¶ 61,388; *Northeast Utilities*, 114 FERC ¶ 61,089.

⁴⁸ Final Rule at P 105.

57. Moreover, this finding is consistent with our determination in the Final Rule, allowing public utilities the option to include 100 percent of prudently incurred transmission-related CWIP in rate base.⁴⁹

58. We find that the parties' argument that CWIP treatment violates the used and useful doctrine is not supported by Commission and court precedent. As we found in Order No. 298, there are "widely-recognized exceptions and departures from this [used and useful] rule, particularly when there are countervailing public interest considerations."⁵⁰ The Commission also emphasized the importance of economic equities when we found that:

[I]n light of lengthening construction cycles, relatively high inflation, and the proportional significance of capital financing costs in relation to overall project costs, this Commission- as well as many state regulatory authorities- have reexamined the basis for the inclusion of CWIP from rate base and have often disregarded the 'used and useful' concept when the reliability of future service is in doubt... it must be reemphasized that the 'used and useful' concept, if administered inflexibly and without regard to other equitable and policy considerations may fail the interests of both the electric utility industry and its ratepayers.⁵¹

⁴⁹ *Id.*

⁵⁰ In support of this proposition, Order No. 298 cites:

See Tennessee Gas Pipeline Co. v. FERC, 606 F.2d 1094, 1109 (D.C. Cir. 1979). *NEPCO Municipal Rate Committee v. FERC*, 668 F.2d 1327 (D.C. Cir. 1981). Departures from the "used and useful" principle are, in some cases, routine practice. For example, land held for future use has been regularly included in the rate base upon which the utility earns its return. Moreover, the use of a future test period allows inclusion in rate base of plant which will be in service during the test period but which may not be operable on the effective date of the new rates. Somewhat akin, are purchase gas adjustment clauses and fuel adjustment clauses which charge a projected cost to Customers for service rendered.

⁵¹ Order No. 298, FERC Stats. & Regs. ¶ 30,455 at 30,507.

59. Further, we had found in Order No. 298, that:

Without any CWIP in rate base, a new plant has no direct effect on consumer prices until it begins to provide service. Then, when it does come on line, consumer's rates must be increased to give the company a cash return on both the direct cost of the plant and the capitalized [Allowance for Funds Used During Construction (AFUDC)] as well as a return of capital through depreciation. If the plant is large relative to the existing rate base, the result can be a rate increase that is both large and sudden, producing a so-called 'rate shock'. In contrast, with all CWIP in rate base, the impact of new plant is spread over the entire construction period, and the rates when the plant begins to provide service are lower because they do not include a return on and of capitalized AFUDC.⁵²

60. Our finding here and in the Final Rule uphold our long-standing position, that because of the integrated nature of the transmission grid, all transmission improvements can be characterized as an attempt "to assure that an already used and useful plant could continue to remain used and useful."⁵³ Thus, the departure from the "used and useful" doctrine to stimulate transmission investment for grid reliability is appropriate and ultimately serves to sustain existing "used and useful" facilities.

61. We also find that AEP has shown, consistent with the Final Rule, a nexus between the proposed CWIP incentive and its planned investment. AEP argues that the availability of a current cash flow through CWIP will help it to raise equity and debt capital from investors who would otherwise be discouraged by protracted delays in the recovery of expenses. It states that current recovery of capital costs during construction provides the available cash flow to support corporate credit quality. AEP states that, otherwise, these costs will have to be capitalized as AFUDC, which will provide no cash flow to fund the activities and will result in a higher level of costs that must be recovered through rates implemented at the in-service date. Under these circumstances, in light of the magnitude of this proposed Project, we find that authorization to recover 100 percent

⁵² *Id.* at 30,499.

⁵³ See *Yankee Atomic Electric Company*, 67 FERC ¶ 61,318, *reh'g denied*, 68 FERC ¶ 61,364 (1994). While CWIP treatment for generation facilities was permitted in this particular case, it is equally applicable in the instant proceeding because of the integrated nature of the transmission grid and the need for investment to maintain grid reliability.

of prudently-incurred transmission-related CWIP prior to the in-service date of the proposed Project is appropriate to encourage this new investment and is consistent with the Final Rule, as well as Congressional intent in enacting section 219.

62. Any additional reporting which may be required beyond the Commission's regulations and the Final Rule requirements will be considered at the time AEP Transco makes AEP Transco's future section 205 filing, and based upon the level of data provided therein. Accordingly, the Commission requirements are sufficient to encourage expedited construction, least-cost approaches, and expedited local siting approvals.⁵⁴

63. AEP may seek waiver of the prior notice requirement pursuant to section 35.11 of the Commission's regulations⁵⁵ when AEP submits AEP Transco's section 205 filing, consistent with this order's approval of the proposed CWIP rate incentive.

3. Option to Expense Pre-Construction/Pre-Operating Costs Rate Incentive and Accounting Approval to Defer and Collect Pre-Construction/Pre-Operating Costs

64. AEP seeks authorization to expense and recover on a current basis the costs that AEP Transco incurs during the pre-construction/pre-operating period, such as those pre-certification costs it incurs to educate the public about the proposed Project and to obtain the regulatory and related approvals for the proposed Project.⁵⁶ AEP states that it is currently incurring pre-certification costs that it is not able to currently recover. Since AEP Transco does not yet have a rate base with which to expense and recover these pre-certification costs, it seeks accounting treatment to defer pre-construction/pre-operating

⁵⁴ See 18 C.F.R. § 35.13(h)(38) (2005) (requiring a 10 year assessment of costs and an analysis and explanation for why the program adopted is prudent and consistent with a least-cost energy supply program); 18 C.F.R. § 35.25 (2005) (requiring applicants to provide the necessary information that pertains to CWIP-induced price squeeze). AEP must demonstrate that it is in compliance with these regulations in its section 205 filing. Our requirement in this proceeding that the AEP Project be included in the PJM RTEP will also help ensure that local siting approvals are achieved.

⁵⁵ 18 C.F.R. § 35.11 (2005).

⁵⁶ AEP states that recoverable pre-construction/pre-operating costs should include the cost of obtaining siting approvals, the cost of participation in PJM's RTEP process, the cost of this proceeding before the Commission, costs related to project and transmission company formation, start-up costs, organization costs, and planning and project costs.

costs, and a related carrying charge during the deferral period to reflect the time value of money. AEP proposes to make a future section 205 filing to amortize these deferred costs to expense and recover the costs through a formula rate, to be fully collected before the proposed Project becomes operational.⁵⁷ AEP proposes to reflect this temporary deferral of costs in FERC Account 183, Survey and Investigation Costs and in FERC Account 182.3, Other Regulatory Assets.⁵⁸ AEP suggests that in a future section 205 filing, it will propose to recover all requested incentives through a formula rate or a tracker mechanism with a carrying cost on under/over-recovered amounts, to ensure a timely recovery.

a. Comments and Protests

65. ODEC suggests that AEP needs to justify the costs it proposes to include as pre-construction/pre-operating. NC Electric maintains that for a cost to qualify as a regulatory asset, AEP must make a showing that: (1) the costs at issue are unrecoverable in existing rates; and (2) that it is probable that such costs will be determined to be recoverable in future rates. They request that the Commission deny the requested accounting treatment, without prejudice, until AEP makes these showings. ODEC and Chambersburg are concerned that AEP may be proposing to expense costs associated with long-lived assets. In comments filed in Docket No. RM06-4-000, ODEC and other parties argued that the Commission should not allow utilities to expense costs associated with transmission facilities⁵⁹ as such facilities have long service lives compared to the shorter term amortization periods for expensed items. Chambersburg states that the Commission must be cognizant of the intergenerational equity issues inherent in the rate treatment AEP seeks, as expensing long-lived assets allows future consumers to escape cost responsibility for the facilities they use, to the detriment of current ratepayers. Chambersburg also argues that the Commission should limit pre-construction/pre-operating costs to be expensed to planning, siting, and environmental costs. ODEC and Chambersburg also argue that the Commission should require AEP to propose a method of tracking cost recovery of those capital assets that are being expensed to ensure that these costs are not later capitalized in subsequent section 205 filings.

⁵⁷ AEP's Petition at 17.

⁵⁸ 18 C.F.R. Part 101 (2005); Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (FERC Accounts).

⁵⁹ These include land, towers, transformers, lines, substations, etc.

66. ODEC and FirstEnergy argue that AEP fails to propose a mechanism that would allow for the proposed Project's development costs to be refunded to customers in the event the proposed Project is not constructed or significant benefits are received by entities outside of PJM.

b. AEP's Answer

67. In its answer, AEP avers that its request is consistent with the Commission's Proposed Rule as well as precedent. AEP cites *ATC I and II*, in which the Commission approved the use of both CWIP in rate base and expensing of pre-construction/pre-operating costs for new transmission investment.

68. AEP states that any dispute on tracking methods to ensure that AEP Transco does not attempt to capitalize costs that have already been expensed, can be addressed in AEP Transco's subsequent section 205 filing.

69. AEP states that for a cost to qualify for regulatory asset treatment, and therefore satisfy the Commission's criteria for deferred accounting, there must be a showing both that (i) the costs at issue are unrecoverable in existing rates, and (ii) it is probable that such costs will be determined to be recoverable in future rates. AEP points out that the costs that AEP is seeking to recover are *not* recoverable in existing rates, since AEP Transco will construct and own the proposed Project, AEP Transco currently has no customers, and these costs are not recoverable in the rates of any of AEP's operating utility subsidiaries. AEP clarifies that it intends this proposed Project to be a region-wide interstate project undertaken by a new transmission company, not merely a local transmission project by one of its subsidiaries in order to meet native load service obligations.

70. In addition, AEP states that it is "probable" that costs associated with the proposed Project will be determined to be recoverable in future rates if the proposed Project is included in the PJM RTEP. AEP explains that PJM has an obligation under the PJM Operating Agreement to include the costs of transmission in the transmission rates under the PJM OATT, and thereby provide AEP Transco with the revenues to cover its revenue requirement as filed, which includes the amortization of defined costs.⁶⁰ AEP states that, therefore, its proposal meets the criteria for deferred accounting under the Commission's regulations and authorization granted in other cases.⁶¹

⁶⁰ AEP cites PJM OATT Schedule 6, section 1.5.6(g).

⁶¹ AEP cites, for example, *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 at 61,424-25, *reh'g denied*, 98 FERC ¶ 61,368 (2002), *appeal dismissed sub nom. Transmission Agency of Northern California et. al. v. FERC*, No. 05-1400, 2006 U.S. App. LEXIS (continued...)

c. Commission Determination

71. We will approve AEP's request to expense pre-construction/pre-operating costs only, conditioned upon AEP sufficiently fulfilling the Commission requirements as discussed below, consistent with the Final Rule.⁶²

72. We base our approval on our authority pursuant to section 205 and our obligation under section 219 to approve rate incentives that encourage investment in transmission, as well as existing precedent. We note that the Commission has previously permitted companies to expense prudently-incurred pre-construction/pre-operating costs.⁶³ In addition, we find that this incentive will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby easing the pressures on their finances caused by transmission development programs.

73. We find that AEP has shown, consistent with the Final Rule, a nexus between the proposal to recover prudently-incurred pre-construction/pre-operating costs prior to the in-service date and AEP Transco's planned investment. AEP states that the expensing and current recovery of the pre-construction/pre-operating costs will prevent any adverse effect on AEP Transco's earnings and compensate AEP Transco for delays in recovery. Expensing and current recovery of pre-construction/pre-operating costs will also facilitate raising equity and debt capital from investors who would otherwise be discouraged by protracted delays in the recovery of expenses. Under these circumstances, we believe that authorization to expense and recover on a current basis all prudently-incurred pre-construction/pre-operating costs is appropriate to encourage this new investment and is fully consistent with the Final Rule, as well as Congressional intent in enacting section 219.

74. Moreover, our finding is consistent with the Final Rule, which continues our precedent, permitting companies to expense prudently-incurred pre-construction/pre-operating costs, contingent upon the company proposing project milestones, achievement of benchmarks and metrics proposed, and filing of annual informational reports.⁶⁴ In the

6177 (D.C. Cir. March 13, 2006) (unpublished opinion) (*Trans-Elect*) and *ATC II*, 107 FERC ¶ 61,117 at P 15, 17.

⁶² Final Rule at P 115-19.

⁶³ See, e.g., *Trans-Elect*, 98 FERC ¶ 61,142 at 61,424-25; *ATC I*, 105 FERC ¶ 61,388; *ATC II*, 107 FERC ¶ 61,117 at P 15, 17.

⁶⁴ Final Rule at P 367-75.

Final Rule, we find that permitting companies to expense, rather than capitalize, pre-construction/pre-operating costs associated with new transmission investment, relieves the pressures on utility cash flow associated with transmission investment programs.⁶⁵

75. AEP's proposal seeks recovery of pre-construction/pre-operating costs prior to facilities being put into service. This proposal differs from the traditional approach of not allowing recovery until after facilities have been put into service. This proposal results in a recovery in AEP Transco's rates in a time period different than the costs are ordinarily charged to expense under the general requirements of the Commission's Uniform System of Accounts.

76. Traditionally, under the general requirements of the Uniform System of Accounts, the return on these costs is capitalized as a cost of the construction of the project and depreciated over the service life of the asset. The return on these costs is often accumulated in FERC Account 183, Preliminary Survey and Investigation Charges, before being transferred to FERC Account 107, Construction Work in Progress.

77. However, AEP proposes to deviate from these general requirements of the Uniform System of Accounts through its proposal to defer, and then charge to expense during the construction period, all pre-construction/pre-operating costs incurred on this proposed Project, rather than capitalizing these costs as a component of construction and depreciating them over the service life of the asset.

78. Where companies have proposed to recover a return on CWIP or pre-construction/pre-operating costs prior to the operations date, we have required specific accounting treatment to recognize the economic effects of this type of rate plan, and to maintain the comparability of financial information between entities. We will require AEP to conform to this accounting direction.⁶⁶ Specifically, AEP is directed to debit through FERC Account 407.3, Regulatory Debits, and credit through FERC Account 254, Other Regulatory Liabilities, in accordance with the objectives of those accounts. Amounts recorded in FERC Account 254 related to return on the proposed Project must be deducted from the rate base by AEP.

79. ODEC and Chambersburg are concerned that there is a potential that AEP Transco may expense capital costs associated with long-lived assets such as land, towers, and transformers. They request that the Commission require AEP to propose a method of

⁶⁵ *Id.* at P 115, 117.

⁶⁶ As outlined in *ATC I*, 105 FERC ¶ 61,388 at P 39. *See also Boston Edison*, 109 FERC ¶ 61,300.

tracking cost recovery of these prudently-incurred capital assets to ensure that these costs are not capitalized in later section 205 filings, as well as provide a line item description of the costs that will be included under these accounts.

80. We have previously imposed a reporting requirement or sought a detailed explanation to satisfy accounting concerns,⁶⁷ and we shall do so here. In AEP's section 205 filing, AEP is directed to provide a comprehensive list of the pre-construction/pre-operating costs to be included in these accounts, in order to determine whether the costs are legitimate pre-construction/pre-operating costs. AEP must also propose a method of tracking all of the prudently-incurred pre-construction/pre-operating costs that are expensed, to ensure that these items are not capitalized in subsequent section 205 filings. In addition, AEP will be required to comply with the Final Rule reporting requirements on pre-construction/pre-operating costs, where we stated that "we will allow, on a generic basis, the same types of costs that we approved in [ATC II]."⁶⁸

81. FirstEnergy and ODEC's argument that customers who are improperly charged rates prior to in-service dates have no refund protection, is more properly addressed when AEP files AEP Transco's future section 205 rate case in which it will provide more detail, and the rates and cost allocation will be determined. If AEP Transco seeks full recovery of abandoned facilities, such recovery will be addressed in AEP Transco's future section 205 filing, which will be subject to the Final Rule.

82. NC Electric and Chambersburg's assertion that AEP has not made sufficient demonstration that these pre-construction/pre-certification costs should be accrued as a regulatory asset under the Uniform System of Accounts ignores the Commission's explicit direction in Order No. 552.⁶⁹ The Commission defined the term "probable" as "that which can reasonably be expected or believed on the basis of available evidence or logic but is *neither certain nor proved* [emphasis added]."⁷⁰ On the basis of the evidence

⁶⁷ See *Boston Edison*, 109 FERC ¶ 61,300 at P 33; *Northeast Utilities*, 114 FERC ¶ 61,089 at P 23.

⁶⁸ See Final Rule at P 122.

⁶⁹ *Revisions to Uniform System of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, Order No. 552, 58 Fed. Reg. 17,982 (April 17, 1993), FERC Stats. and Regs., Regulations Preambles 1991-1996 ¶ 30,967 (1993).

⁷⁰ Order No. 552, FERC Stats. and Regs., Regulations Preambles 1991-1996 ¶ 30,967 at 30,826 (citing Webster's New World Dictionary of the American Language, 2d college ed. (New York: Simon and Schuster, 1982) at 1132). Order No. 552 provides
(continued...)

before us, including our action in this instant proceeding and the Final Rule, it can be reasonably expected that recovery is probable in future rates. It is also apparent that costs established are not recoverable in existing rates, because there are no existing rates for AEP Transco. Therefore, we find that AEP Transco's accrual of pre-construction/pre-operating expenses incurred is appropriate.

83. AEP may seek waiver of the prior notice requirement pursuant to section 35.11 of the Commission's regulations⁷¹ when AEP submits its section 205 filing, consistent with this order's approval of the AEP's proposal to expense pre-construction/pre-operating costs.

D. Miscellaneous Issues

1. RTEP

a. Comments and Protests

84. Some commenters, including AEP TDUs, ODEC, and PHI, agree with AEP that a new west-to-east 765 kV line could have significant benefits for the PJM region taken as a whole, and therefore should receive expeditious consideration in the PJM RTEP process. Others, such as Exelon, Dominion Resources, FirstEnergy, Joint Consumer Advocates, Constellation, NC Electric, Ormet, and PSEG, argue that the petition is premature because it is subject to the outcome of PJM's RTEP process and request that the Commission defer action until the RTEP process is complete. They claim that until the RTEP process is complete, the Commission will not be able to make an informed decision because details regarding the proposed Project's need, design, scope, costs and benefits and cost allocation are unknown. FirstEnergy and Ormet, in addition, argue that no studies have been performed to determine the proposed Project's impact on the reliability of more local transmission systems. PHI and PPL Parties conclude that the affected parties, who will be required to modify their facilities in order to support this new extra-high voltage transmission line, are entitled to comparable non-discriminatory rate treatment. PPL Parties, PSEG and Indiana Consumer Counselor also contend that any action taken by the Commission should not hinder or prejudice the independent RTEP process.

that this is the meaning referred to in FASB Concepts Statement No. 6, *Elements of Financial Statements*, ¶ 25 n.18 and ¶ 35 n.21 (1985) (superseding FASB Concepts Statement No. 3), *in Accounting Statements-Original Pronouncements* (1991).

⁷¹ 18 C.F.R. § 35.11 (2005).

85. Many intervenors argue that, given the size, scale, estimated cost and lead time of the proposed Project, equal or superior alternatives should be considered. PPL Parties state that the filing of the Allegheny proposal for incentive rate treatment for its new 500 kV transmission proposed project emphasizes the need for coordinated review of all possible alternatives before the Commission acts. According to APPA, by having more load serving entities involved in the proposed Project, the financial outlay of each individual participant is reduced, thus minimizing each participant's financial risk. AMP-Ohio argues that the Commission should encourage greater participation of public power entities in the expansion of the transmission network through shared ownership of grid facilities. This, according to AMP-Ohio, could be accomplished by limiting rate incentives to those transmission owners that offer such participation.

86. With regard to participation by other transmission owners, AEP TDUs, Allegheny, Dominion and FirstEnergy also stress that since the proposed Project is intended to be a utility (non-merchant) project, subject to traditional rate of return regulation; incumbent PJM transmission owners should have preeminent rights to construct transmission projects that are located in their respective zones. Specifically, Allegheny argues that any intent of AEP to construct, own, or finance enhancements that may be located in the Allegheny zone would violate the requirements of Schedule 6, and that if PJM includes the proposed Project in its RTEP, PJM must designate Allegheny to construct, own, or finance the portion located in the Allegheny zone. In subsequent answers, AEP, Allegheny, Dominion, and FirstEnergy disagree about the interpretation of and application of Schedule 6.

87. Ormet states that since it is located in a very economically depressed area, as a result of the proposed Project, it will be substantially harmed by a significant rise in the price of electricity available. It states that the Commission should ensure that Ormet and similarly-situated AEP Zone customers be held harmless by the beneficiaries of the proposed Project. AEP answers that having chosen to buy its power on the market, Ormet is subject to market prices, including the possibility that these prices might become higher as a result of the elimination of transmission constraints.

88. Exelon and ODEC express their concern that PJM's RTEP process is not adequate to fully vet and evaluate a project of this scope. They argue that the Commission, working with PJM, should formalize the standards for evaluating projects of this size and scope through an expedited, coordinated, open, and collaborative process to identify needs and optimally plan facilities. AEP answers that intervenors have not provided a reason why the proposed Project cannot be evaluated within PJM's RTEP process.

89. In its answer, AEP provides assurance that the proposed Project will be subject to the comprehensive RTEP, and will not go forward in absence of RTEP approval. AEP answers that much of the protesters' concerns will be resolved through the RTEP process, such as need, design, scope, costs, cost allocation, potential impact on third party

systems, other additions needed to support the proposed Project, system limitations, and stakeholder input.

90. AEP submits that there will be ample opportunity to address participation in the proposed Project by third parties, including public power entities, and it is open to exploring joint participation in the proposed Project. AEP states that while discussions on joint ownership are pending, questions as to ultimate ownership should not affect AEP's right to seek incentives for the proposed Project in this proceeding.

b. Commission Determination

91. As indicated above, we deny the motion to defer consideration of this petition and therefore find that it is not premature to conditionally grant AEP's petition. Because the incentives requested by AEP are already conditioned upon the proposed Project's inclusion in RTEP, we see no reason to delay action in this proceeding. Accordingly, our decision to grant the petition for declaratory order, allowing AEP Transco to proceed with the development of the proposed Project, is consistent with the Final Rule. However, our conditioned approval of the proposed incentives will not stand, if AEP's proposal changes materially from the facts on which we are granting its declaratory order. AEP may seek another declaratory order or wait to seek approval of the change in the subsequent section 205 filing. At that time, interested parties may challenge the changes in the section 205 proceeding.⁷²

92. As a regional planning effort, RTEP determines the best way to integrate projects to provide for the operational, economic and reliability requirements of the grid, and does so according to Schedule 6 of the PJM Operating Agreement.⁷³ RTEP integrates many bulk power system factors including, but not limited to transmission owner-identified project proposals, long-term firm transmission service requests, generation interconnection requests, generation retirements, load-serving entity capacity plans, distributed generation, demand response, as well as transmission enhancements to alleviate persistent congestion and proposed merchant transmission projects. Although historically RTEP looked only five years ahead, PJM extended this planning horizon for up to fifteen years, which, we believe, will allow PJM to more accurately assess the value of new bulk power transmission lines, such as AEP Transco's proposed 765 kV line discussed here. Therefore, it is the RTEP process, and not the current proceeding, that is

⁷² Final Rule at P 78.

⁷³ See Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., Third Revised Rate Schedule No. 24, Schedule 6 at Fifth Revised Sheet No. 182, *et seq.*

the proper venue for addressing the reliability and congestion-related effects of the proposed Project, any potential alternative/complementary projects, such as new generation and other transmission investments, the proper voltage, potential impact on third-party systems, rights of incumbent transmission owners, other infrastructure improvements or additions that may be needed to support the proposed Project. Once PJM files its RTEP and the applicable cost allocations with the Commission, we will make a determination regarding their justness and reasonableness.⁷⁴

93. Further, we find that many of the arguments raised by intervenors, including encouraging greater participation by public power entities and load-serving entities, the rights of incumbent PJM transmission owners to construct projects located in their zones, the request for hold harmless protection, and the petition for a separate process outside of RTEP to consider projects of this size, are outside of the scope of this proceeding. The issue before the Commission in the instant proceeding only goes to whether to approve AEP's petition for a declaratory order on proposed rate incentives for a proposed project transmission investment. Matters pertaining to cost allocation, rate design, and PJM's RTEP process are not appropriately before the Commission in this petition. Further, we note that the Final Rule encourages public power participation in the planning and building of new transmission infrastructure.⁷⁵ Consistent with the Final Rule, we look favorably upon applications by joint public and investor-owned consortia.

94. In response to PHI and PPL Parties' concerns that the affected parties, which will be required to modify their facilities in order to support this new extra-high voltage transmission line, are entitled to comparable non-discriminatory rate treatment, we find that affected parties are free to file requests for incentive rates and provide their justification at the time of filing. The Commission will make its determination on a case-by-case basis.

⁷⁴ We have previously accepted the currently-effective transmission expansion planning process as just and reasonable in other proceedings, through our acceptance of PJM's regional planning responsibilities as an RTO, filed with the Commission through various sections of PJM's OATT and Schedule 6 of PJM's Operating Agreement. *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,124, *order on reh'g*, 105 FERC ¶ 61,123 (2003), *order on reh'g*, 109 FERC ¶ 61,067 (2004), *order on reh'g*, 110 FERC ¶ 61,377 (2005). We note that the Commission recently proposed that existing regional planning processes will be expected to meet or exceed the transmission planning principles. *Preventing Undue Discrimination and Preference in Transmission Service*, Notice of Proposed Rulemaking, 71 Fed. Reg. 32,636 (June 6, 2006), FERC Stats. & Regs. ¶ 32,603 at P 210-14 (2006).

⁷⁵ Final Rule at P 357.

2. Transco status

a. Comments and Protests

95. Some parties, including NC Electric and Chambersburg, argue that it is unclear whether AEP is seeking incentives for being a Transco in addition to seeking incentives for new transmission investment. Steel Dynamics asserts that the Commission should require that AEP Transco seek approval as a Transco before the Commission makes a determination on AEP's incentives requests. Several parties, including ODEC, PSEG, Steel Dynamics, and NC Electric argue that AEP did not provide enough information about AEP Transco to determine whether it qualifies for the incentives for being a Transco. APPA protests AEP's petition to the extent that it intends to receive a higher ROE through the Transco.

96. AEP answers that it is not seeking incentives applicable to independent Transcos, but those incentives that are available to affiliates of public utilities pursuant to the Proposed Rule.

b. Commission Determination

97. We accept AEP's clarification that it is not seeking incentives related to being an independent Transco but only those incentives that are available to all jurisdictional public utilities. Accordingly, it is not necessary for AEP Transco to seek approval as a Transco before the Commission can make a determination on AEP's proposed rate incentives.

3. National Environmental Policy Act of 1969

a. Comments and Protests

98. PSEG states that a project of this size, scale and scope will have both regional and local environmental impacts and, though siting reviews may consider the environmental impact of the proposed Project, it is appropriate to consider the potential adverse effects as part of the overall project consideration. PSEG argues that ignoring potential impacts would be imprudent and inconsistent with the National Environmental Policy Act of 1969 (NEPA).⁷⁶ AEP answers that the Commission has determined that it has no obligation to prepare an Environmental Assessment or Environmental Impact Statement in connection with its review of rate proposals.

b. Commission Determination

⁷⁶ 42 U.S.C. § 4321 *et seq.* (2000).

99. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁷⁷ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁷⁸ The actions proposed here fall within categorical exclusion in the Commission's regulations for electric rate filings submitted by public utilities, and the establishment of just and reasonable rates.⁷⁹ Therefore, an environmental assessment is unnecessary and has not been prepared for this order.

4. Piecemeal Acceptance of Incentives

a. Comments and Protests

100. AEP states that it reserves its right to seek additional incentives ultimately allowed in the Final Rule. ODEC and Chambersburg assert that AEP Transco might ultimately seek additional incentives. ODEC argues that without a full analysis of AEP Transco's rate and cost recovery proposals (including all incentives), the Commission cannot conclude that granting the requested incentives would result in just and reasonable rates. Thus, ODEC asserts that the Commission should require AEP to provide more information regarding what incentives it intends to seek and/or believes it may be entitled to seek in the future. Chambersburg argues that there is no way for the Commission to determine whether the total package of incentives is just and reasonable and narrowly tailored to achieve the desired goal.

b. Commission Determination

101. We find that ODEC's and Chambersburg's concerns are outside the scope of this proceeding and will be better addressed at the time that AEP submits a filing seeking additional incentives. In any such future proceeding, parties will have an opportunity to intervene and raise their concerns at that time. Consistent with the Final Rule, the

Commission will determine whether the overall incentive package is just and reasonable

⁷⁷ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 Fed. Reg. 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preamble 1986-1990 ¶ 30,783 (1987).

⁷⁸ 18 C.F.R § 380.4 (2005).

⁷⁹ 18 C.F.R § 380.4(a)(15) (2005).

prior to granting additional incentives.⁸⁰

The Commission orders:

(A) AEP's petition for a declaratory order is hereby granted, conditioned upon AEP fulfilling the necessary requirements, as discussed in the body of this order.

(B) Indicated Owners' motion to defer consideration of AEP's petition is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸⁰ Final Rule at P 2, 21, 59.

Attachment A

Interventions

Pennsylvania Public Utility Commission
Consolidated Edison Energy, Inc.
The Dayton Power and Light Company
Cinergy Services, Inc. on behalf of its affiliates: The Cincinnati Gas & Electric Company,
PSI Energy, Inc., and The Union Light, Heat and Power Company.
New Jersey Large Energy Users Coalition
Duke Energy Corporation
Lancaster County Planning Commission on behalf of the County of Lancaster,
Pennsylvania
PJM Interconnection, L.L.C.
H-P Energy Resources LLC
National Grid USA
Indiana and Michigan Municipal Distributors Association
Midwest Stand-Alone Transmission Companies; American Transmission Company LLC,
International Transmission Company, and Michigan Electric Transmission
Company, LLC.
Delaware Municipal Electric Corporation, Inc. (Delaware Municipal) (filed out-of-time)
Public Utilities Commission of Ohio (Ohio Commission) (filed out-of-time)
Williams Power Company, Inc. (Williams) (filed out-of-time)
Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative) (filed out-of-time)

Comments/Protests

Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC,
Baltimore Gas and Electric Company, and Constellation NewEnergy, Inc.
(collectively, Constellation).
Dominion Resources Services, Inc. (Dominion Resources) on behalf of its affiliates:
Armstrong Energy Limited Partnership, LLLP, Dominion Energy Marketing, Inc.,
Dominion Retail, Inc., Dresden Energy, LLC, Elwood Energy LLC, Fairless
Energy, LLC, Kincaid Generation, L.L.C., Pleasants Energy, LLC, State Line
Energy, L.L.C., and Virginia Electric and Power Company, d/b/a Dominion
Virginia Power.
Blue Ridge Power Agency and Indiana Municipal Power Agency (collectively, AEP
TDUs).
FirstEnergy Service Company (FirstEnergy) on behalf of its affiliates: Jersey Central
Power & Light Company, Metropolitan Edison Company, and Pennsylvania
Electric Company
Indiana Office of Utility Consumer Counselor (Indiana Consumer Counselor)
Public Power Association of New Jersey (Public Power NJ)

PJM Industrial Customer Coalition (PJM Industrial Customer)

Exelon Corporation (Exelon)

PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, and Lower Mount Bethel Energy, LLC (collectively, PPL Parties).

The Pennsylvania Office of Consumer Advocate, the Maryland Office of People's Counsel, the Office of Ohio Consumer's Counsel, the New Jersey Division of Ratepayer Advocate, and the D.C. Office of People's Counsel (collectively, the Joint Consumer Advocates).

American Public Power Association (APPA)

Old Dominion Electric Cooperative (ODEC)

Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (collectively, PHI).

Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, and PSEG Power LLC (collectively, PSEG)

Monongahela Power Company, The Potomac Edison Company; and West Penn Power Company (collectively, Allegheny)

Ormet Primary Aluminum Corporation (Ormet)

North Carolina Electric Membership Corporation (NC Electric)

Steel Dynamics, Inc. (Steel Dynamics)

American Municipal Power-Ohio, Inc. (AMP-Ohio)

Borough of Chambersburg, Pennsylvania (Chambersburg)

The City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland and Front Royal, Virginia (collectively Municipalities).