

116 FERC ¶ 61,058  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Energy, Inc.,  
Monongahela Power Company,  
The Potomac Edison Company, and  
West Penn Power Company

Docket No. EL06-54-000

ORDER 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 declaratory order filed by Allegheny Energy, Inc. and its subsidiaries, Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power<sup>1</sup> (collectively, Allegheny or Petitioners), on February 28, 2006, requesting that the Commission approve its proposed incentive rates for a new 500 kilovolt (kV) transmission line (Project) that Allegheny proposes to construct across the APS Zone of PJM. The Commission also addresses a motion filed by the Indicated PJM Transmission

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<sup>1</sup> The Allegheny Power companies are public utilities that deliver and supply electric energy at retail in parts of Maryland, Pennsylvania, Virginia, and West Virginia. They own an extensive network of transmission facilities, rated at 500 kV, subject to the functional control of PJM Interconnection, L.L.C. (PJM), and located in the Allegheny Power transmission zone (APS Zone). The Allegheny Power companies are owned and controlled by, and are direct subsidiaries of, Allegheny Energy, Inc., a holding company under the Public Utility Holding Company Act of 2005. Allegheny Energy, Inc. also owns Allegheny Energy Supply Company, LLC that is engaged in the business of marketing and trading energy related products and commodities in the PJM markets.

Owners (Indicated Owners)<sup>2</sup> to defer consideration of the petition<sup>3</sup> until the proposed Project is included in PJM's Regional Transmission Expansion Plan (RTEP).<sup>4</sup> The proposed incentive rates sought by Allegheny are: (1) that the return on equity (ROE) be set at the high end of the zone of reasonableness or, in the alternative, the Commission approve a 200 basis point adder; (2) that the Commission permit Allegheny to recover construction work in progress (CWIP) prior to the in-service date of the proposed Project; (3) that the Commission offer Allegheny the option to expense and recover on a current basis the costs that the companies incur during the pre-construction/pre-operating period;<sup>5</sup> and (4) that the Commission allow Allegheny to recover all development and construction costs if the proposed Project is abandoned as a result of factors beyond its control. Allegheny also seeks certain accounting authority for the deferral for future recovery of such costs not yet being recovered plus related carrying costs. Allegheny also seeks to reserve the right to request additional incentive rate treatments either authorized by a final rule resulting from the rulemaking on Promoting Transmission Investment through Pricing Reform in Docket No. RM06-4-000 or that may be approved by future Commission orders.

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<sup>2</sup> For the purposes of their filing, the Indicated Owners include: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (three of the four Petitioners), and Potomac Electric Power Company, Atlantic City Electric Company, and Delmarva Power & Light Company (subsidiaries of Pepco Holdings, Inc.).

<sup>3</sup> The Indicated Owners also request that the Commission defer consideration of the petition for declaratory order for incentive rate treatment filed by American Electric Power Service Corporation (AEP) in Docket No. EL06-50-000 for its proposed 765 kV transmission project. An order in that proceeding is being issued contemporaneously with this order. *American Electric Power Service Corporation*, 116 FERC ¶ 61,059 (2006).

<sup>4</sup> 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. *See infra* note 13.

<sup>5</sup> In the Final Rule, these costs are defined as "pre-commercial" costs, and therefore, this term is referenced as such in this proceeding, consistent with the Final Rule. *Promoting Transmission Investment through Pricing Reform*, 116 FERC ¶ 61,057, at P 105, 115, and 122 (2006) (Final Rule).

2. The Commission has exercised its existing authority under section 205 of the Federal Power Act (FPA),<sup>6</sup> on a case-by-case basis, to encourage investment in infrastructure through the application of incentive pricing. We find that FPA section 219, which was established by section 1241 of the Energy Policy Act of 2005 (EPAct 2005),<sup>7</sup> 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.<sup>8</sup> A final rule is being issued contemporaneously with this order.<sup>9</sup>

3. We grant the petition for declaratory order approving the incentive rates proposed by Allegheny for the proposed Project pursuant to our existing authority under FPA section 205, and consistent with Congress' direction in new FPA section 219. We also find that Allegheny 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. A modified version of Allegheny's proposed Project has been approved through the PJM RTEP process. Accordingly, we will deny the Indicated Owners' motion to defer consideration of Allegheny's petition subject to the outcome of PJM's RTEP. Our

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<sup>6</sup> 16 U.S.C. § 824d (2000).

<sup>7</sup> 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).

<sup>8</sup> *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 70 Fed. Reg. 71,409 (Nov. 29, 2005), FERC Stats. & Regs. ¶ 32,593 (2005) (NOPR).

<sup>9</sup> *See supra* note 5. Although Allegheny's proposed Project does not have to comply with the Commission's Final Rule, which will not become effective until 60 days after publication in the Federal Register, the Commission herein has reviewed Allegheny's proposed incentives for general consistency with the Final Rule and Congress' direction in section 219.

approval of Allegheny's proposed rate incentives is predicated on the fact that the proposed Project was included in the RTEP because Allegheny 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. Allegheny 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.<sup>10</sup>

5. Finally, our approval of the rate incentives is subject to Allegheny 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 Allegheny's proposed incentives is also intended to allow Allegheny 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. On February 28, 2006, Allegheny filed a petition for declaratory order seeking assurances as to specific incentive rate treatments for a new 500 kV transmission line that Allegheny is proposing to construct or cause to be constructed within the APS Zone of PJM. Allegheny proposed to connect Allegheny Power's existing Wylie Ridge Substation in West Virginia to the proposed Kemptown Substation to be constructed in Frederick County, Maryland. The proposed Project would have required construction of approximately 330 miles of new 500 kV transmission lines. Allegheny asserts that the proposed Project would increase the west-to-east total transfer capability by 3800 MW

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<sup>10</sup> 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.

over base case levels.<sup>11</sup> The petition states that the proposed Project will be constructed by one or more of the three Allegheny Power companies, a subsidiary of one or more of the Allegheny Power companies, or a subsidiary of Allegheny Energy, Inc.<sup>12</sup>

7. Allegheny Power submitted to PJM a request to include the proposed Project in the PJM RTEP process as a potential solution to anticipated reliability criteria violations in PJM's 15-year plan.<sup>13</sup> As a result of RTEP review, released by PJM in June, the revised project includes construction of approximately 240 miles of 500 kV transmission lines within Allegheny's service territory. Specifically, the plan calls for construction of a new 500 kV line extending from southwestern Pennsylvania to West Virginia to northern Virginia. The project has a targeted completion date of 2011. Preliminary cost estimates for Allegheny's portion of the project and other upgrades are approximately \$820 million.

8. In response to the United States Department of Energy's (DOE) recent Notice of Inquiry regarding Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors (NIETCs),<sup>14</sup> Allegheny notes that it intends to propose the route of the proposed Project to the DOE for early designation as a NIETC.

9. Allegheny maintains that its requested incentives are consistent with the policy proposed in the NOPR. Allegheny also maintains that its requested incentives are identical to those incentives sought by AEP for its subsidiary, AEP Transmission Company LLC in Docket No. EL06-50-000, with one additional incentive contemplated by the NOPR. The proposed incentive rate treatments are discussed in greater detail below.

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<sup>11</sup> Allegheny states that this calculation is based on load flow analyses employing PJM's 2010 Summer RTEP (50/50) load flow model. Petition at 8 and Attachment A at 3.

<sup>12</sup> Petitioners indicate that the entity(ies) that construct, own, and operate the proposed Project will be referred to as the Project Owner.

<sup>13</sup> We note that PJM has approved a modified version of Allegheny's proposal. 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>.

<sup>14</sup> 71 Fed. Reg. 5,660 (Feb. 2, 2006).

## **II. Notice of Filing and Responsive Pleadings**

10. Notice of the Allegheny's filing was published in the *Federal Register*, 71 Fed. Reg. 13,589-90 (2006), with interventions, comments, and protests due on or before March 29, 2006. Notices of intervention, motions to intervene, motions for late intervention, comments and protests were filed by the entities listed in Attachment A to this order.<sup>15</sup>

11. On April 13, 2006, Allegheny filed an answer to comments and protests.

12. On April 7, 2006, the Indicated Owners filed a joint motion to defer consideration of the petition (as well as AEP's petition in Docket No. EL06-50-000) until PJM has completed its review of the proposed Project in the RTEP process. The PPL Parties, Old Dominion, and PJM filed timely answers in support of the April 13 motion to defer. AEP filed an answer opposing the motion to defer.

13. In its motion to defer consideration, the 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.

14. The PPL Parties, Old Dominion and PJM filed in support of the 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. Old Dominion 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 Tariff and Operating Agreement, as Commission interpretation of these documents would

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<sup>15</sup> Abbreviations for those entities are listed in Attachment A as well.

be premature<sup>16</sup> because these issues may become moot due to potential discussions among the parties or decisions made by PJM about the projects. However, PJM does point out that there will be no need for the Commission to interpret Schedule 6 of the Operating Agreement (Regional Transmission Expansion Planning Protocol) in order to grant a declaratory order granting the incentive rates if the projects are constructed.

15. AEP filed an answer, in this docket as well as Docket No. EL06-50-000, opposing the motion to defer consideration of the AEP petition,<sup>17</sup> stating that it has no intention of bypassing the RTEP process.

16. On May 26, 2006, Allegheny filed a motion requesting the Commission find the motion to defer consideration moot as to the Allegheny petition and to take prompt action on its petition. Allegheny notes that the PJM Board has approved a modified version of the Allegheny project.<sup>18</sup> On July 11, 2006, the Dominion Companies filed an answer supporting Allegheny's May 26, 2006 motion. The Dominion Companies urge the Commission to ensure that approved incentives are available to any PJM Transmission Owner for any RTEP project, upon application to the Commission, provided that cost allocation process maintains the "beneficiary pays" approach.

### **III. Discussion**

#### **A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the motions for late intervention of the CEG Companies, National Grid, and Williams, given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

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<sup>16</sup> 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).

<sup>17</sup> In its answer to the motion to defer, AEP takes no position on the motion to defer the Allegheny filing.

<sup>18</sup> See *supra* note 13.

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

**B. Authority to Address the Petition**

19. 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.<sup>19</sup> We find that section 219 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.

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<sup>19</sup> 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. Pub. Utils. Comm'n 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), *order approving settlement*, 107 FERC ¶ 61,117 (2004) (*American Transmission Company 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) (*Trans Bay*), *order granting clarification*, 114 FERC ¶ 61,104 (2006). See also *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 Inc.*, 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. Pub. Util. Dist. 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); *Pub. Utils. Comm'n 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. 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.

21. Here, in granting Allegheny'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 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.<sup>20</sup>

22. 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 develop rules for transmission rate incentives. We agree that the rate incentives proposed by Allegheny 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 Allegheny'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.

23. Finally, Allegheny's petition seeks rate incentives that are consistent with the Commission's findings in the Final Rule. We also find that Allegheny 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 Allegheny is eligible for the requested incentives. We do not address the justness and reasonableness of Allegheny's specific rates here; we reserve such a determination for a section 205 filing, which Allegheny has stated it will make in the future.<sup>21</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Final Rule at P 77-78.

**C. General Issues****1. Standard of Review and Sufficiency of Evidence****a. Comments and Protests**

24. Numerous protestors<sup>22</sup> argue that the Commission must act on the petition pursuant to existing Commission policies and ratemaking principles governing incentive rate treatment. Several of these protestors argue that Allegheny fails to establish an adequate record under the Commission's current regulations for incentive rates to justify the requested incentives. These protestors note, among other things, Allegheny's failure to: include an economic analysis, discuss rate impacts in the petition, demonstrate the proposed incentive rate treatment is the lowest-cost means of funding the proposed Project, demonstrate that the proposed Project will relieve congestion, and address deficiencies in Allegheny's modeling methodology. These protestors argue that absent this information, the Commission cannot determine that the proposal meets the just and reasonable standard of FPA sections 205 and 206, or even the requirement in new section 219(a) that the proposed Project will actually reduce the cost of delivered power.

25. Several protestors<sup>23</sup> specifically argue that Allegheny fails to demonstrate that the proposed rate incentives are needed to attract investors, as required by existing Commission policies and ratemaking principles governing incentive rate treatment. Protestors such as AECEI, Blue Ridge, and the Joint Consumer Advocates maintain that, if the petition is considered at all, the outstanding questions of fact should be resolved through full evidentiary hearings, rather than unsubstantiated arguments of general policy.

26. The PSEG Companies argue that the petition is not clear on whether the requested preliminary relief would be binding on the Commission in the later rate proceeding. The PSEG Companies maintain that if the Commission does not have the right to reconsider the incentive treatment when it knows more about the proposed Project or after the proposed Project is modified through the RTEP process, the Commission would have to

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<sup>22</sup> Such protestors include: AECEI, APPA, Blue Ridge, the CEG Companies, Chambersburg, DEMEC, FirstEnergy, the Joint Consumer Advocates, the Maryland Municipalities, Old Dominion, PJMICC, the PHI Companies, the PPL Parties, and the PSEG Companies.

<sup>23</sup> Such protestors include: AECEI, APPA, AMP-Ohio, Chambersburg, DEMEC, FirstEnergy, the Maryland Municipalities, Old Dominion, and PJMICC.

determine now that the proposed incentives meet the standards of FPA section 205 and any and all requirements for approval of incentive rates. Accordingly, the PSEG Companies request the Commission implement the higher standard that the Petitioners demonstrate that the incentive “is in fact needed, and is no more than is needed for the [stated] purpose.”<sup>24</sup>

27. The Maryland Municipalities also argue that the Commission should follow the guidance the Federal Trade Commission (FTC) provided to the DOE on the Designation of National Interest Electric Transmission Bottlenecks. These comments indicate that incentives should only be allowed: (a) when the benefits of alleviating congestion exceed the costs of the incentives and the Commission determines the incentives will create the necessary investment; and (b) when sensitivity analyses are conducted on the application of incentives to ensure that only robust transmission investment initiatives, not those that are highly susceptible to changes in market conditions, receive the incentives. The Maryland Municipalities argue that the stated impediments to transmission investments should be shown to be truly impeding investment prior to the award of incentives. The Maryland Municipalities note that the FTC advised DOE that rate incentives “could distort efficient investments rather than steer them toward the socially optimal level.”<sup>25</sup>

28. H-P maintains that there is a “potential for incentive rate treatments to encourage anti-competitive behavior by a transmission owner vis-à-vis merchant generation and merchant transmission” and ask the Commission ensure that rate incentives for transmission owner projects “not adversely affect the access of merchants to the transmission grid on fair and non-discriminatory terms.”<sup>26</sup>

**b. Allegheny Answer**

29. In its answer, Allegheny maintains that it properly supported the request for rate incentives consistent with currently applicable standards and refutes protestors’

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<sup>24</sup> PSEG Companies Protest at 16 (citing *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1503 (D.C. Cir. 1984) and *City of Charlottesville v. FERC*, 589 F.2d 954, 950 (D.C. Cir. 1981)).

<sup>25</sup> Maryland Municipalities Protest at 10 (citing Comments of the Federal Trade Commission on Department of Energy Notice of Inquiry on Designation of National Interest Electric Transmission Bottlenecks at 5-6 (Sept. 20, 2004) available at <http://www.ftc.gov/os/2004/09/040924nietbcomment.pdf>).

<sup>26</sup> H-P Comments at 3.

interpretation of relevant precedent. Allegheny notes that the *City of Detroit*<sup>27</sup> proceeding, cited by Chambersburg, provides that “the Commission cannot go [further] without additional authority from Congress,” and that Congress has provided that additional authority in the directives of EAct 2005. Allegheny further notes the Maryland Municipalities’ “unsupported requirement of a cost/benefit analysis” and *New England Power Company*<sup>28</sup> ignores the fact that Congress has directed the Commission to develop incentives by rule, not by individual ratemaking cases. Allegheny also distinguishes the precedent cited by the Joint Consumer Advocates. Allegheny maintains that its petition demonstrates that the risk in these circumstances “is far from the typical utility-regulated rate model” based on its analysis of the size of the proposed Project relative to Allegheny’s other planned capital expenditures and past cash flow.<sup>29</sup> Allegheny further notes that the precedent cited by protestors all pre-date the passage of EAct 2005.

30. Allegheny notes that the proposed Project has not been designed to benefit their generation, but rather “to increase transfer capability through the AP[S] Zone from generation sources to the west of the AP[S] Zone that are not controlled by the Allegheny Companies to loads east of the AP[S] Zone that are not served by the Allegheny Companies.”<sup>30</sup>

31. In its answer to protests regarding a showing of need, Allegheny maintains that the petition includes sufficient evidence regarding the effect of large capital projects on capital costs and shows that the proposed Project is a substantial financial commitment for Allegheny. Allegheny notes the petition lays out Commission precedent “accepting the fact that large capital projects adversely affect the costs of capital for regulated companies if specific rate incentives are not made available” and that the cash flow analysis demonstrates that the proposed Project requires “a commitment of resources that is a significant multiple of the Allegheny Companies’ other planned capital expenditure projects and their historical cash flow.”<sup>31</sup>

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<sup>27</sup> *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955) (*City of Detroit*).

<sup>28</sup> Allegheny Answer at 8 (citing *New England Power Company*, 45 FERC ¶ 61,354, at 62,131 (1988)).

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 9-10.

<sup>31</sup> *Id.* at 4.

32. In response to requests for a hearing, Allegheny argues that it has submitted sufficient support for the requested rate incentives without a need for an evidentiary hearing. Allegheny also notes that protestors' concerns about factual findings that must be made before the grant of the requested incentives will be considered through the RTEP process by PJM, and that Allegheny has moved to defer consideration of the petition until the RTEP process is complete.

33. In its answer to the Maryland Municipalities' arguments regarding the FTC proposal to the DOE, Allegheny notes that "it is clear that the RTEP process will guarantee that a close review of costs and benefits will proceed the inclusion of the . . . Project within the 2006 RTEP."<sup>32</sup>

34. In its answer to H-P's discrimination concerns, Allegheny asserts that the Commission should dismiss H-P's allegations that the proposed Project will have a potentially adverse effect on merchant transmission as wholly unsupported.

**c. Commission Determination**

35. As discussed above, our review of Allegheny'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 EPAAct 2005.

36. 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 Allegheny'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 completed 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.<sup>33</sup> 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.

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<sup>32</sup> *Id.* at 8.

<sup>33</sup> *See* Final Rule at P 58, 76.

37. We emphasize that we are not determining the justness and reasonableness of Allegheny's overall rates at this stage. As discussed further below, our approval is declaratory in nature; we are approving Allegheny'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 Allegheny 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; Allegheny must demonstrate the justness and reasonableness of its overall rates in a later section 205 filing, among other things.

38. We find that it is appropriate for the Commission to consider Allegheny'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.<sup>34</sup> Moreover, Allegheny's petition is consistent with the procedure proposed in the NOPR 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 Allegheny's proposed incentives are 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.

39. Finally, we agree with Allegheny that H-P's concerns regarding the discriminatory effect on merchant transmission are unsupported and speculative. After the justness and reasonableness of the proposed rate incentives is determined under the appropriate section 205 proceeding, an entity that believes that rate incentives for transmission owner projects adversely affect the access of merchants, or any other market participant, to the transmission grid, can raise such allegations in a complaint pursuant to section 206 of the FPA.

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<sup>34</sup> 18 C.F.R. § 385.207 (2005).

## 2. Prematurity

### a. Comments and Protests

40. Protestors<sup>35</sup> argue that the petition is premature because Allegheny assumes it can request and is entitled to the forms of incentive ratemaking treatment identified in the NOPR and notes that the Commission has yet to resolve the significant issues raised regarding the proposals set forth in the NOPR. These protestors note that it would be improper for the Commission to approve any incentives that might be inconsistent with the Final Rule. These protestors assert that, to the extent the Commission is interested in providing guidance to the industry on transmission rate incentives prior to this process running its course, such guidance should be provided in the Final Rule, rather than this proceeding.

41. Protestors such as the Joint Consumer Advocates and the PHI Companies argue that the petition is premature because Allegheny assumes the existence of a national transmission corridor in this area, but such presumption is premature because the DOE has yet to establish NIETCs. These protestors argue that the NIETC proceeding may affect the siting and timing of construction of the proposed Project.

### b. Allegheny Answer

42. In response to these comments and protests, Allegheny notes that its petition supports each request for a rate incentive by citation to existing precedent, as well as reference to the NOPR.

### c. Commission Determination

43. We find intervenors' requests for deferred Commission action to be moot, since we are acting on Allegheny's petition consistent with the Final Rule, which is being issued contemporaneously with this order. The Final Rule represents a willingness to consider greater flexibility and timing with respect to rate recovery for needed transmission infrastructure. Under the Final Rule, transmission investment made after August 8, 2005 may be eligible for incentive rate treatment.<sup>36</sup>

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<sup>35</sup> Such protestors include: AECI, AMP-Ohio, Blue Ridge, Chambersburg, FirstEnergy, the Joint Consumer Advocates, Old Dominion, PJMICC, and the PSEG Companies.

<sup>36</sup> Final Rule at P 34.

44. We disagree with the Joint Consumer Advocates and the PHI Companies that Allegheny's petition assumes the existence of a national transmission corridor in this area. Nowhere in the petition does Allegheny state that NIETCs have been designated in the PJM control area. Rather, Allegheny states that it intends to propose the route of the project to the DOE for early designation as a NIETC in response to the recent Notice of Inquiry.

**D. Allegheny's Proposed Rate Incentives**

**1. Proposed ROE Rate Incentive**

45. Allegheny asks the Commission to declare that the ROE for the proposed Project's capital costs shall be set at the high end of the zone of reasonableness, which will be determined in a subsequent section 205 filing by or on behalf of the Project Owner to establish a rate for the proposed Project. Alternatively, Allegheny requests that the Commission approve a 200 basis point adder above the ROE established in future Schedule 12 (Transmission Enhancement Charges) submissions for the proposed Project, which it asserts is similar to authority granted in prior situations approved by the Commission.<sup>37</sup>

46. Allegheny maintains that an enhanced ROE will enable it to increase its equity through new stock issuances or by employing other financial instruments that will provide investors greater earnings through an enhanced ROE. Allegheny asserts that its proposal for an enhanced ROE draws from the proposal in the NOPR.

**a. Comments and Protests**

47. Old Dominion argues that the petition fails to demonstrate that the proposed ROE incentives are needed and are necessary to attract equity investment in the proposed Project.<sup>38</sup>

48. Chambersburg, the Joint Consumer Advocates and Old Dominion assert that Allegheny fails to demonstrate that a ROE based on its cost of capital would not fairly compensate it for the risks associated with the proposed Project. Old Dominion submits

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<sup>37</sup> See Petition at 18-19 (citing *Western Area Power Administration*, 99 FERC at 62,280; *Sierra Pacific Resources Operating Companies*, 105 FERC ¶ 61,178, at P 15 (2003), *order on reh'g*, 106 FERC ¶ 61,096 (2004) (*Sierra Pacific*); *Trans Bay*, 112 FERC ¶ 61,095 at P 23).

<sup>38</sup> Old Dominion Protest at 10.

that, based on the lack of justification, the ROE rate incentive proposal would be deficient even if evaluated under the regulations proposed in the NOPR. Chambersburg maintains that, “[u]nder established ratemaking principles, the Commission cannot raise rates to implement a policy goal without determining ‘that the increase is in fact needed.’”<sup>39</sup> Chambersburg argues that the established discounted cash flow (DCF) methodology will establish a ROE to match investors’ expectations.

49. AMP-Ohio, APPA, Chambersburg, and Old Dominion argue that it is unclear whether an increased ROE, especially in conjunction with the other incentives, is necessary to attract capital to build the proposed Project. APPA, FirstEnergy, Chambersburg, and Old Dominion note that the Commission should carefully evaluate Allegheny’s request for a high ROE to see if it is merited in light of its simultaneous requests for CWIP in rate base, current expensing of pre-commercial costs and recovery of costs of development in the case of abandonment.

50. The Joint Consumer Advocates argue that the petition fails to meet the standards articulated by Order No. 2000 for innovative rate treatments.<sup>40</sup> The Joint Consumer Advocates state that the petition fails to demonstrate how it achieves efficient use of and investment in the RTO’s transmission system or what reliability benefits will be provided to ratepayers, and fails to include a review reliability impacts.

51. The Joint Consumer Advocates and Old Dominion note that the precedent cited by Allegheny is distinguishable. These protestors maintain that *Trans Bay* involved a new and independent start-up assuming significant risk; *Western Area Power Administration* involved a situation where federal authorities specifically sought the proposed transmission to be built and the incentives were linked to specific activities that addressed market conditions in order to benefit consumers; and *Sierra Pacific* permitted incentives pursuant to the narrow criteria previously established by the Commission – circumstances that are not present under the instant petition.

52. Blue Ridge argues that the “key to strengthening PJM’s backbone is region-wide cost allocation, not extra profits,”<sup>41</sup> and objects to an ROE higher than a traditional rate of return. Blue Ridge assumes that Allegheny does not intend to seek to have Load-

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<sup>39</sup> Chambersburg Protest at 10 (citing *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955)).

<sup>40</sup> Joint Consumer Advocates Protest at 15-16 (citing Order No. 2000 at P 31,171).

<sup>41</sup> Blue Ridge Protest at 4.

Serving Entities (LSEs) in the APS Zone bear more than their regional load-ratio share of the proposed Project's costs and endorses that result. Blue Ridge asserts the main pricing issue is who will pay for the cost-based portion of the proposed Project's revenue requirement.

53. Blue Ridge notes that PJM has authority to direct transmission construction by its transmission owners. Given this "obligation to build," Blue Ridge maintains that it is unclear why Allegheny should be rewarded for doing that which PJM can mandate. Moreover, Blue Ridge argues that Allegheny already has substantial profit incentives for this construction based on their generation market position as exporters seeking to deliver coal-based energy to PJM's eastern markets.

54. AMP-Ohio argues that Commission precedent establishes "that a utility's true cost of capital lies somewhere within the bounds of a 'range of reasonableness,' not ... any point in that range is reasonable. ... Unless the regulator decides that the high point of the range is that reasonable point ... , establishment of a return on equity at that high point is by definition unreasonable, and therefore unlawful."<sup>42</sup>

55. Similarly, Old Dominion and Blue Ridge maintain that even when adjusting the ROE within the zone of reasonableness, the Commission must make a reasoned decision when deciding the appropriate ROE. Old Dominion maintains that "absent some reasoned basis for adjusting the ROE to some point within the range other than where the Commission ordinarily would set an electric utility return, it would be equally reasonable to set the ROE at the *bottom* of the range."<sup>43</sup> Blue Ridge asserts that what the "high end of the zone of reasonableness" would turn out to be is presently unknown and there is no legitimate basis for the Commission to not consider future cost analyses. Blue Ridge also maintains that this request would not necessarily provide Allegheny with any greater assurances, given that the range itself has not been determined, but would merely shift litigation focus "away from the well-understood question of how to infer the cost of capital, and towards novel experiments in broadening the 'zone' of uncertainty."<sup>44</sup>

56. As to the alternative proposal for the 200 basis point adder, AMP-Ohio maintains that proper determination of the cost of capital for the proposed Project will take into

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<sup>42</sup> AMP-Ohio Protest at 7-8.

<sup>43</sup> Old Dominion Protest at 12 (emphasis in the original).

<sup>44</sup> Blue Ridge Protest at 17.

account the balance of risks and rewards and therefore, additional adders are inappropriate.

57. Several protestors<sup>45</sup> express concern about the number of rate incentives sought by the Petitioners, arguing that Allegheny might not be entitled to all four of the proposed rate incentives at once. Chambersburg and Old Dominion note that the settlement approved in *American Transmission Company II*,<sup>46</sup> American Transmission Company, LLC agreed to forgo ROE adders in exchange for incentive CWIP treatment which had the effect of reducing the company's risk.

58. Similarly, FirstEnergy argues that because Allegheny proposes to recover costs of development as they incur and recover costs of development in the case of abandonment, Allegheny is not incurring or assuming any risk in developing the proposed Project. FirstEnergy argues that this is competition with the request for an incentive ROE.

**b. Allegheny Answer**

59. In its answer, Allegheny argues that, contrary to protestors' contentions, the Commission standard DCF analysis does not provide all the ROE necessary to encourage transmission expansion. Allegheny notes that this is recognized in Commission precedent and Congressional directives mandated by section 219 and assert that protestors' comments are a collateral attack on the Congressional directives set forth in EPAct 2005.

**c. Commission Determination**

60. We approve Allegheny's proposed incentive for its 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.

61. Our finding in this proceeding today has foundation both in our precedent of providing incentives for infrastructure investment pursuant to section 205,<sup>47</sup> 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.

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<sup>45</sup> Such protestors include: APPA, Chambersburg, and Old Dominion.

<sup>46</sup> *American Transmission Company II*, 107 FERC ¶ 61,117 at P 5.

<sup>47</sup> See *Bulk Power System Reliability Policy Statement*, 107 FERC ¶ 61,052, at P 28; *ISO-NE*, 106 FERC ¶ 61,280 at P 245-46; Order No. 2000 at 31,171-72.

62. Contrary to intervenors' arguments, we are not abandoning the fundamental underpinnings of our transmission pricing policy in this order. Our finding today on Allegheny's ROE request adheres to the principle that transmission prices must reflect the cost of providing the service.<sup>48</sup> 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 Allegheny'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.<sup>49</sup> Therefore, we grant Allegheny'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 infrastructure pursuant to section 205, and further sustained through our obligation under section 219 to establish incentive-based rate treatments for transmission infrastructure investment.

63. Our approval of Allegheny's petition 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.<sup>50</sup> The certain measures and options established by the Final Rule for evaluating 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;<sup>51</sup> (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;<sup>52</sup> (3) no specific ROE adders are established;<sup>53</sup> (4) the Commission

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<sup>48</sup> See, e.g., *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923).

<sup>49</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 797 (1968).

<sup>50</sup> Final Rule at P 91-93.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

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;<sup>54</sup> (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 and/or reduce transmission congestion.<sup>55</sup>

64. We also find that Allegheny 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 the proposed Project will present substantial risks and challenges in siting and obtaining the required permits. In *Maine Public Utilities Commission 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 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.”<sup>56</sup> Thus, in addition to the risk associated with this project, the proposed Project also will require an enormous investment, and thereby presents financing challenges not faced by the ordinary transmission investment. Allegheny argues that the proposed Project will require an investment of approximately \$1.4 billion, which is nearly a multiple of three times Allegheny’s current net transmission plant in service. Further, unlike the ordinary transmission project, Allegheny is under no state obligation to construct the line. We think it is important to recognize that instead of investing capital in another venture, Allegheny has voluntarily chosen to invest a large amount of capital to build backbone high voltage transmission facilities that are valuable because this proposed 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 – 3,800 MW of increase in transfer capability – and the time for completion – seven years – all support the need for an ROE incentive set at the high end of the zone of reasonableness. Allegheny also argues that this incentive will assist it in obtaining financing for its capital expenditures, maintaining the corporate credit quality and reducing the amount of capitalized investment that must be recovered following the in-service date of the project. Under these circumstances, we believe that an incentive-based ROE is appropriate to

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<sup>54</sup> *Id.* P 93.

<sup>55</sup> *Id.*

<sup>56</sup> No. 05-1001, 2006 U.S. App. LEXIS 16445, at \*31-32 (D.C. Cir. June 30, 2006) (internal citations omitted).

encourage this new investment and is fully consistent with the Final Rule, as well as the Congressional intent in enacting section 219.

65. We are not, however, determining any particular ROE in this docket. Rather, we agree that Allegheny must propose and support a particular ROE in its section 205 filing.<sup>57</sup> We also point out that in the Final Rule, we decided to not consider alternatives to the DCF analysis.<sup>58</sup> Allegheny will have to demonstrate the derivation of the ROE, using the DCF analysis, consistent with the Final Rule in its section 205 filing.

66. Contrary to intervenors' arguments, the incentives requested herein are not mutually exclusive. This finding is consistent with court precedent that has upheld use of multiple incentives<sup>59</sup> and the Final Rule.<sup>60</sup>

67. Also, contrary to Blue Ridge's suggestion that Allegheny can subsidize its transmission investments through generation revenues, Order No. 888<sup>61</sup> 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.

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<sup>57</sup> *Id.* P 20, 34, 77.

<sup>58</sup> *Id.*

<sup>59</sup> *Boston Edison Co.*, 109 FERC ¶ 61,300 (2004) (*Boston Edison*), *order on reh'g*, 111 FERC ¶ 61,266 (2005).

<sup>60</sup> Final Rule at P 55.

<sup>61</sup> *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).

68. Our approval of Allegheny's proposed incentives here is subsequent to approval under PJM's RTEP process, and therefore, Joint Consumer Advocates' concerns regarding determination of a reliability need for this transmission line in order for Allegheny to receive any ROE incentives is moot. Blue Ridge's concerns regarding region-wide cost allocation issues will also be addressed in the further PJM stakeholder process, and will be further addressed in Allegheny's section 205 filing.

69. Since we are granting Allegheny'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.<sup>62</sup>

## **2. Proposed CWIP Rate Incentive**

70. Allegheny seeks authorization to recover 100 percent of prudently incurred transmission-related CWIP prior to the in-service date of the proposed Project. Allegheny maintains that the availability of current cash flow through CWIP will also facilitate raising equity and debt capital from investors who would otherwise be discouraged by protracted delays in the recovery of such expenses. The petition notes that cash flow provided by CWIP can be committed to the land acquisition and construction tasks, and that in the absence of such incentives, these costs will have to be capitalized as Allowance for Funds Used During Construction (AFUDC), which will provide no cash flow through rates implemented at the in-service date. Allegheny asserts that this request is similar to authority granted in prior situations approved by the Commission.<sup>63</sup>

### **a. Comments and Protests**

71. Chambersburg does not object to the CWIP rate treatment, subject to certain conditions. Chambersburg argues that CWIP recovery should be limited to prudently incurred costs approved through the RTEP process. Similarly, Old Dominion argues that the CWIP recovery proposal could be appropriate if the proposed Project was approved as part of the RTEP process. Old Dominion argues, however, that the Commission should impose reasonable reporting requirements as a condition of allowing CWIP recovery so that the Commission and other parties would be able to monitor the progress

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<sup>62</sup> Final Rule at P 93.

<sup>63</sup> See Petition at 19-21 (citing, *inter alia*, *American Transmission Company II*, 107 FERC ¶ 61,117 at P 3, 5, 10, 17).

of the proposed Project. Blue Ridge argues that it is more supportive of the request for CWIP versus Allegheny's request for a higher ROE.

72. In contrast, the Joint Consumer Advocates argue that the extraordinary rate treatment sought for CWIP has no basis in existing Commission regulations and violates the used and useful doctrine. The Joint Consumer Advocates note that, under traditional ratemaking principles, utilities do not recover CWIP in rate base since the associated projects are not "used and useful" in service to the public. They further note that an exception for CWIP exists such that 50 percent of CWIP may be included in rate base, providing the utility had made certain evidentiary showing regarding reliability.

73. Similarly, PJMICC argues that Allegheny's CWIP incentive should be denied. PJMICC maintains that the Petitioners are asking the Commission to hold that authorization to recover capital costs through CWIP "creates the probability of future recovery that is the premise of a regulatory asset."<sup>64</sup> PJMICC asserts that the determination with respect to the justness and reasonableness of costs can only be made at the time that a party makes a section 205 filing to recover such costs in their rates. .

**b. Commission Determination**

74. We will accept Allegheny's proposal to include 100 percent CWIP in rate base, conditioned upon Allegheny fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities under the Commission's regulations that are consistent with the Final Rule,<sup>65</sup> in its future section 205 filing.<sup>66</sup>

75. 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

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<sup>64</sup> PJMICC Protest at 12 (citing Petition at 23).

<sup>65</sup> For example, see Final Rule at P 36, recommending timing metrics that indicate progress.

<sup>66</sup> 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 (1983), *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*, 109 FERC ¶ 61,300; *American Transmission Company II*, 107 FERC ¶ 61,117; *Northeast Utilities Service Company*, 114 FERC ¶ 61,089 (2006) (*Northeast Utilities*).

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.<sup>67</sup> 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.

76. 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.<sup>68</sup>

77. We find that protestors' 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."<sup>69</sup> The Commission also emphasized the importance of economic equities when we found that:

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<sup>67</sup> Final Rule at P 105.

<sup>68</sup> *Id.*

<sup>69</sup> 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.

In 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.<sup>70</sup>

78. 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 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.<sup>71</sup>

79. 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.”<sup>72</sup> Thus, the departure from the “used and useful”

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<sup>70</sup> *Id.* at 30,507.

<sup>71</sup> *Id.* at 30,499 (internal citation omitted).

<sup>72</sup> *Yankee Atomic Electric Company*, 67 FERC ¶ 61,318, at 62,115, *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

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doctrine to stimulate transmission investment for grid reliability is appropriate and ultimately serves to sustain existing “used and useful” facilities.

80. Any additional reporting which may be required beyond the Commission’s regulations and the Final Rule requirements will be considered at the time Allegheny makes its 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.<sup>73</sup>

81. We also find that Allegheny has shown, consistent with the Final Rule, a nexus between the proposed CWIP incentive and its planned investment. Allegheny 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. Allegheny also argues that the cash flow provided by CWIP can be committed to the land acquisition and construction tasks. It 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 the proposed Project, we find that authorization to recover 100 percent 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 fully consistent with the Final Rule, as well as the Congressional intent in enacting section 219.

82. Allegheny may seek waiver of the prior notice requirement pursuant to section 35.11 of the Commission’s regulations<sup>74</sup> when Allegheny submits its section 205 filing, consistent with this order’s approval of the proposed CWIP rate incentive.

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integrated nature of the transmission grid and the need for investment to maintain grid reliability.

<sup>73</sup> 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). Allegheny must demonstrate that it is in compliance with these regulations in its section 205 filing.

<sup>74</sup> 18 C.F.R. § 35.11 (2005).

3. **Option to Expense Pre-Commercial Costs Rate Incentive and Accounting Approval to Defer and Collect Pre-Commercial Expenses**

83. Allegheny seeks authorization to expense and recover on a current basis all prudently incurred planning, regulatory, and related approval costs incurred during the pre-commercial period, rather than having to capitalize such costs as investment in plant. Allegheny maintains that current recovery of capital costs during construction provides cash flow to support debt service and corporate credit quality and addresses any perceived need by investors to levy a discount on booked revenues based on concerns about the recoverability of AFUDC.

84. Allegheny maintains that the availability of current cash flow through the expensing and current recovery of pre-commercial development and permitting costs will also facilitate raising equity and debt capital from investors who would otherwise be discouraged by protracted delays in the recovery of such expenses. Allegheny proposes that the Project Owner start collecting incurred expenses at the time the Commission accepts for filing the Project Owner's Schedule 12 submission. According to the petition, "[t]hese previously incurred costs will be recovered over the projected period for right-of-way acquisition and construction. As additional planning and permitting expenses are incurred subsequent to the Schedule 12 filing but prior to the in-service, these costs would be recovered on a current basis as a Schedule 12 expense from those Market Participants allocated cost responsibility for the Project by PJM."<sup>75</sup>

85. Allegheny argues that the Commission's authorization for the Project Owner to defer current expensing of pre-commercial expenses that the proposed Project will incur prior to the acceptance of a section 205 rate schedule providing for current recovery of pre-commercial expenses, including carrying costs, supports the Commission's providing accounting authority to recognize the deferral and probably future recovery of pre-commercial expenses. Allegheny asserts that this request is similar to authority granted in prior situations approved by the Commission.<sup>76</sup>

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<sup>75</sup> Petition at 21.

<sup>76</sup> *Id.* at 23-24 (citing *Trans-Elect, Inc.*, 98 FERC ¶ 61,142, at 61,424-25 (*Trans-Elect*), *reh'g denied*, 98 FERC ¶ 61,368 (2002), *appeal dismissed*, *Transmission Agency of Northern California v. FERC*, No. 05-1400 (D.C. Cir., Mar. 13, 2006) (unpublished) and *American Transmission Company II*, 107 FERC ¶ 61,117 at P 15, 17).

86. Allegheny also requests authorization for certain accounting and ratemaking authority in order to account for and collect development expenses prior to commercial operation of the proposed Project. Specifically, Allegheny requests that the Commission provide authority to the Project Owner to book amounts that would otherwise be recorded in Uniform System of Accounts (USofA) Account 183, Preliminary Survey and Investigation Charges, to USofA Account 182.3, Other Regulatory Assets. They also request specific authorization to allow the Project Owner to amortize the booked amounts for collection over a defined period, which will be the time between when the Schedule 12 rate is accepted and authorized for collection and the time when the proposed Project is projected to go in service. Allegheny further requests pre-authorization for the Project Owner to recover pre-commercial expenses through its Schedule 12 rate on a current basis, once the Schedule 12 rate is accepted and made effective, during the period until the proposed Project is placed in service, rather than capitalizing such expenses. Allegheny asserts that this request is similar to authority granted in prior situations approved by the Commission.

**a. Comments and Protests**

87. Several protestors<sup>77</sup> argue that the rate treatment for expensing pre-commercial costs has not been shown to be just and reasonable, and should be modified and/or denied.

88. The Joint Consumer Advocates argue that the extraordinary rate treatment sought for pre-commercial costs has no basis in existing Commission regulations and violates the used and useful doctrine. The Joint Consumer Advocates maintain that asking ratepayers to start paying now for a project that will not be in service for at least seven years, and whose cost and completion is uncertain unfairly shifts all project risks to ratepayers.

89. AMP-Ohio asserts that Allegheny's request for the contemporaneous recovery of the capital cost of construction and the expensing of pre-commercial costs should be rejected because Petitioners have failed to present the basis for its alleged risk. AMP-Ohio maintains that, given that "ratepayers will fund the project until it is operational, after which [Allegheny's] owners will be permitted to recoup their costs and profits from users of the line, the proposed Project is less risky than other transmission investment.

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<sup>77</sup> Such protestors include: AMP-Ohio, Blue Ridge, Chambersburg, FirstEnergy, the Joint Consumer Advocates, Old Dominion, and PJMICC.

90. FirstEnergy also argues that the petition fails to propose a mechanism by which project development costs would be refunded to PJM customers in the event the proposed Project is not constructed or significant benefits are received by entities outside of PJM.

91. PJMICC maintains that if the Commission does not summarily reject Allegheny's request, the Commission should, at a minimum, direct that Petitioners may only recover prudently incurred pre-commercial costs and that approval of the Petitioners' request does not constitute a determination on whether the costs have been prudently incurred. PJMICC maintains that such determination should be made in the context of a separate contested proceeding. PJMICC also argues that the proposed rate incentive substantially reduces Allegheny's immediate risk exposure, and in light of that lower risk, a lower rate of return may be warranted.

92. Chambersburg believes that as a condition precedent to this incentive rate treatment, Allegheny should demonstrate that the costs were prudently incurred as part of a plan approved by the RTEP process. Chambersburg argues that there are "inter-generational equity issues inherent" in this proposed rate incentive, noting that "[e]xpensing long-lived assets allows future consumers to escape cost responsibility for the facilities they use to the detriment of current ratepayers."<sup>78</sup> Chambersburg argues that only prudently incurred investment costs should be allowed to be expensed. Chambersburg argues that if formula rates are in effect, the Commission "must be careful to avoid a one-year amortization of substantial transmission investment costs" arguing that "any expensed capital costs should be appropriately amortized over a reasonable period of years to minimize the rate impact on transmission customers and to dilute the inequity of requiring today's customers to fully fund costs associated with assets that will provide service for decades to come."<sup>79</sup>

93. Chambersburg also argues that if the Commission approves the Petitioners' expensing proposal, it should require the Project Owner "to develop a method to track cost recovery of those capital assets that are being expensed to ensure that these costs are not later capitalized in subsequent rate filing. The Commission should limit the pre-commercial costs to be expensed to planning, siting and environmental costs. In no event should the Commission allow Allegheny Energy to expense costs associated with transmission facilities such as land, towers, transformers, lines, substations, etc. Expensing such costs would raise serious inter-generational equity concerns since these

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<sup>78</sup> Chambersburg Protest at 12.

<sup>79</sup> *Id.* at 13.

types of facilities have extremely long service lives as compared to the shorter term amortization period for expensed items.”<sup>80</sup>

94. Similarly, Old Dominion argues that while it may be appropriate to expense certain pre-commercial costs, Allegheny fails to explain, let alone justify, the breadth of the types of costs it proposes to include as pre-commercial expenses. Old Dominion maintains that expensed capital costs should be appropriately amortized over a reasonable period of years to minimize rate impact on customers and address inter-generational inequities. Old Dominion asks the Commission to impose reasonable reporting requirements as a condition of allowing pre-commercial expenses so that the Commission and other parties are able to monitor the progress of the proposed Project and require Allegheny to propose a method to track cost recovery of those capital assets that are being expensed and to provide additional information as to how it would propose to calculate any carrying charge on cost items it is presently expensing but has not yet recovered.

95. Blue Ridge argues that, consistent with Schedule 12 of the PJM OATT and the Commission’s “harmonization” rulings in Docket Nos. ER04-156 and EL05-513,<sup>81</sup> the Commission should make clear that allowing for current recovery does not amount to a ruling that existing rates are not already taking into consideration such current recovery, and that any current recovery associated with new expenses or investment will be credited against existing stated unit rates.

96. In regard to Allegheny’s request for authorization for certain accounting and ratemaking authority in order to account for and collect development expenses prior to commercial operation of the proposed Project, Chambersburg and PJMICC argue that, Allegheny fails to meet the Commission’s standard for such treatment. Chambersburg argues that to qualify as a regulatory asset, there must be a showing “that the costs at issue are both unrecoverable in existing rates and that it is probable that such costs will be recoverable in future rates.”<sup>82</sup> Chambersburg asserts that because Allegheny fails to make this showing (and fail to discuss the issue with any specificity in the petition) the Commission should deny the request, without prejudice, until Allegheny provides

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<sup>80</sup> *Id.*

<sup>81</sup> See *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308 (2005), *order on reh’g*, 115 FERC ¶ 61,156 (2006).

<sup>82</sup> Chambersburg Protest at 14-15 (citing *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,205, at P 22 (2003)).

sufficient information upon which the Commission can make a determination. PJMICC asserts that the Petitioners fail to demonstrate that recovery of such costs in future rates is probable. PJMICC also argues that a Commission determination with respect to the probability of recovery infringes upon the retail ratemaking authority of State Commissions. PJMICC also argues that *Trans-Elect* does not support Petitioners' request for deferral and future collection of pre-commercial expenses because: (i) that case involved the transfer of jurisdictional facilities to facilitate the creation of an independent stand-alone transmission company (while the instant petition does not); (ii) the instant petition seeks operational costs whereas *Trans-Elect* involved depreciation and return on investment expense, (iii) the proposal in *Trans-Elect* was filed pursuant to section 205 and based on Commission regulations for RTOs unlike the instant petition, (iv) regulatory assets were not an issue in *Trans-Elect* as they are here; and (v) *Trans-Elect* was approved based on the specific facts in that case, and the instant petition is easily distinguishable on its facts.

**b. Allegheny Answer**

97. In its answer, Allegheny argues that it has submitted information to support the requested accounting treatment. Allegheny maintains that Chambersburg's position that future recovery is not probable is illogical because "[a]ll the relief requested relates to construction work in progress, which under standard Commission accounting must be capitalized and recovered after the in-service date of the facility. ... If the Commission grants the requested relief, the basis for the future recovery will have been established."<sup>83</sup>

98. Allegheny maintains that "the relevant Commission precedent requires that the entity incurring the expense must make the determination that recovery is probable" and that it "will base that determination on any relief granted pursuant to Commission approval of the [p]etition." Allegheny states that "[a]ll the [p]etition seeks is authorization to use the accounting entries as requested, which will be used *only with respect to what the Commission has approved for rate recovery*."<sup>84</sup>

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<sup>83</sup> Allegheny Answer at 12.

<sup>84</sup> *Id.* at 13 (emphasis in the original).

c. **Commission Determination**

99. We will approve Allegheny's request to expense pre-commercial costs, conditioned upon Allegheny sufficiently fulfilling the Commission requirements as discussed below, consistent with the Final Rule.<sup>85</sup>

100. 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-commercial costs.<sup>86</sup> 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.

101. Moreover, our finding is consistent with the Final Rule, which continues our precedent, permitting companies to expense prudently-incurred pre-commercial costs, contingent upon the company proposing project milestones and metrics, achievement of benchmarks for those proposals, and filing of annual informational reports.<sup>87</sup> In the Final Rule, we find that permitting companies to expense, rather than capitalize, pre-commercial costs associated with new transmission investment, relieves the pressures on utility cash flow associated with transmission investment programs.<sup>88</sup>

102. Allegheny's requested treatment of pre-commercial costs results in a deferred carrying charge during the deferral period, which will be capitalized to expense through a formula rate and fully collected before the proposed Project becomes operational (recovery at the time the Project is approved for construction).<sup>89</sup> Allegheny proposes to reflect this deferral of costs in Account 182.3, Other Regulatory Assets.

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<sup>85</sup> Final Rule at P 115-19 (CWIP and pre-commercial costs).

<sup>86</sup> See, e.g., *Trans-Elect*, 98 FERC ¶ 61,142 at 61,424-25; *American Transmission Company II*, 107 FERC ¶ 61,117 at P 15, 17.

<sup>87</sup> Final Rule at P 367-75.

<sup>88</sup> *Id.* P 115, 117.

<sup>89</sup> Petition at 21.

103. Allegheny's proposal seeks recovery of pre-commercial 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 Allegheny's rates in a time period different than the costs are ordinarily charged to expense under the general requirements of the Commission's USofA.

104. Traditionally, under the general requirements of the USofA, the return on these costs is capitalized as a cost of the construction of the proposed 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.

105. However, Allegheny proposes to deviate from these general requirements of the USofA through its proposal to defer, and then charge to expense during the construction period, all pre-commercial costs incurred on this project, rather than capitalizing these costs as a component of construction and depreciating them over the service life of the asset.

106. Where companies have proposed to recover 100 percent of prudently incurred transmission-related CWIP prior to the in-service date and pre-commercial 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 Allegheny to conform to this accounting direction.<sup>90</sup> Specifically, Allegheny 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 Allegheny.

107. Old Dominion and Chambersburg are concerned that there is a potential that Allegheny may expense capital costs associated with long-lived assets such as land, towers, and transformers. They, along with PJMICC, request that the Commission require Allegheny to propose a method of 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.

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<sup>90</sup> As outlined in *American Transmission Company II*, 107 FERC ¶ 61,117 at P 39; see also *Boston Edison*, 109 FERC ¶ 61,300 at P 33.

108. We have previously imposed a reporting requirement or sought a detailed explanation to satisfy accounting concerns,<sup>91</sup> and we shall do so here. In Allegheny's section 205 filing, Allegheny is directed to provide a comprehensive list of the pre-commercial costs to be included in these accounts, in order to determine whether the costs are legitimate pre-commercial costs. Allegheny must also propose a method of tracking all of the prudently-incurred pre-commercial costs that are expensed, to ensure that these items are not capitalized in subsequent section 205 filings. In addition, Allegheny will be required to comply with the Final Rule reporting requirements on pre-commercial costs, where we stated that "we will allow, on a generic basis, the same types of costs that we approved in [*American Transmission Company II*]."<sup>92</sup>

109. AMP-Ohio's argument to reject Allegheny's request for the contemporaneous recovery of the capital cost of construction and the expensing of pre-commercial costs is an argument that was addressed in the Final Rule. There we noted that an applicant may request any combination of the incentives listed in the Final Rule demonstrating that its request for such incentives satisfies section 219 and the requirements of the Final Rule.<sup>93</sup> Further, we note that even though a modified version of Allegheny's proposal was approved through the RTEP process, Allegheny will still be required to make a 205 filing to justify its cost recovery.

110. FirstEnergy's argument that customers who are improperly charged rates prior to in-service dates have no refund protection, is more properly addressed when Allegheny files its future section 205 rate case in which it will provide more detail, and the rates and cost allocation will be determined.

111. PJMICC and Chambersburg's assertion that Allegheny has not made sufficient demonstration that these pre-certification costs should be accrued as a regulatory asset under the USofA ignores the Commission's explicit direction in Order No. 552.<sup>94</sup> The

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<sup>91</sup> See *Boston Edison*, 109 FERC ¶ 61,300 at P 33, 36; *Northeast Utilities*, 114 FERC ¶ 61,089 at P 19, 23.

<sup>92</sup> Final Rule at P 122.

<sup>93</sup> *Id.* P 55.

<sup>94</sup> *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 (Apr. 7, 1993), FERC Stats. and Regs. Regulations Preambles 1991-1996 ¶ 30,967 (1993).

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*.”<sup>95</sup> On the basis of the evidence 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. In contrast to Blue Ridge’s position, it is also apparent that costs established are not recoverable in existing rates, because there are no existing rates for Allegheny. Therefore, we find that Allegheny’s accrual of pre-commercial expenses incurred is appropriate.

112. We also find that Allegheny has shown, consistent with the Final Rule, a nexus between the proposal to recover prudently-incurred pre-commercial costs prior to in-service date and Allegheny’s planned investment. In light of the substantial planning and permitting expenses (and corresponding long lead-times) that Allegheny will incur prior to construction, the normal process for capitalizing these expenses for inclusion as part of utility plant, to be recovered upon service commencement, imposes a serious obstacle to financing its project. Allegheny states that the expensing and current recovery of pre-commercial costs will also facilitate raising equity and debt capital from investors who would otherwise be discouraged by protracted delays in the recovery of expenses. It states that “[c]urrent recovery of capital costs during construction provides the available cash flow to support the credit quality of debt.”<sup>96</sup> Under these circumstances, we believe that authorization to expense and recover on a current basis all prudently-incurred pre-commercial expenses is appropriate to encourage this new investment and is fully consistent with the Final Rule, as well as the Congressional intent in enacting section 219.

113. Allegheny may seek waiver of the prior notice requirement pursuant to section 35.11 of the Commission’s regulations<sup>97</sup> when Allegheny submits its section 205 filing, consistent with this order’s approval of the Allegheny’s proposal to expense pre-commercial costs.

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<sup>95</sup> Order No. 552 at ¶ 30,826 and n.87 (citing Webster’s New World Dictionary of the American Language, 2d college ed. (New York: Simon and Schuster, 1982) at 1132) (emphasis added). Order No. 552 provides 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).

<sup>96</sup> Petition at 16.

<sup>97</sup> 18 C.F.R. § 35.11 (2005).

#### 4. Proposed Recovery of Expenses in the Event of Abandonment Rate Incentive

114. Allegheny seeks authorization to recover all prudently incurred development and construction costs if the proposed Project is abandoned as a result of factors beyond the control of Allegheny or the Project Owner. Allegheny maintains that “[i]t is not rational for a regulated entity to commit substantial pre-permitting and pre-commercial funds in what will be a regulated enterprise if, for reasons beyond the sponsor’s control, the project cannot be completed.”<sup>98</sup> Allegheny asserts that this request is similar to authority granted in prior situations approved by the Commission.<sup>99</sup>

##### a. Comments and Protests

115. Several protestors<sup>100</sup> argue that the rate treatment for the recovery in the case of abandonment has not been shown to be just and reasonable, and should be modified and/or denied. For example, the Joint Consumer Advocates argue that the extraordinary rate treatment sought for authorization to recover all costs if the proposed Project is abandoned has no basis in existing Commission regulations and violates the used and useful doctrine. The Joint Consumer Advocates note that Allegheny relies primarily on the NOPR as justification for this requested incentive.

116. The Joint Consumer Advocates and PJMICC also note that Allegheny’s reliance on *Southern California Edison* is misplaced. The Joint Consumer Advocates argue that *Southern California Edison* establishes the general rule that shareholders and ratepayers equally share the costs of abandoned projects. The two exceptions to this general rule—(1) when utility management has no choice as to its involvement in a particular project, and (2) the utility’s shareholders do not receive any share of the profits of such a project—are not applicable here. PJMICC maintains that in *Southern California Edison*, the state regulatory commissions ordered the utility to build the transmission facilities at issue. PJMICC also asserts that in *Southern California Edison* the utility proposing the construction of facilities did not make the decision to develop or abandon the projects,

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<sup>98</sup> Petition at 22.

<sup>99</sup> *Id.* at 23 (citing *Southern California Edison Company*, 112 FERC ¶ 61,014, at P 58 (*Southern California Edison I*), *reh’g denied*, 113 FERC ¶ 61,143 (2005) (*Southern California Edison II*)).

<sup>100</sup> Such protestors include: Chambersburg, the Joint Consumer Advocates, the Maryland Municipalities, Old Dominion, PJMICC, and the PSEG Companies.

unlike in this case. Moreover, PJMICC notes, in *Southern California Edison*, the constructing utility's shareholders did not share earnings associated with the generation resources to be connected with the proposed transmission facilities, which is unlikely here.

117. The Maryland Municipalities and Chambersburg argue that Allegheny has not demonstrated that they should be permitted to depart from the 50/50 sharing of abandoned plant costs between ratepayers and investors. The Maryland Municipalities argue this is an unjust shift in risk and negates the Commission's intent in Order 295-A, which ensured that investors and shareholders made "efficient production and consumption decisions" in the development of plant.<sup>101</sup> Chambersburg notes that "[p]ublic utilities have traditionally borne the risk of abandoned project costs because their investors are compensated for such risks through equity returns."<sup>102</sup> Chambersburg argues that allowing full recovery of a plant that is not used and useful shifts the risk of abandonment entirely to transmission customers who have no control over construction decisions, and unlike investors in public utilities, not compensated for such risks.

118. Old Dominion finds this requested incentive acceptable, subject to conditions. Old Dominion argues that recovery of abandoned plant costs should only be permitted if Allegheny demonstrates that it will otherwise suffer cash flow problems. Old Dominion also argues that such abandoned plant cost recovery should be accompanied by a reduction in the utility's allowed ROE to reflect the lower risk to investors. Old Dominion asks the Commission to clarify that Allegheny is not entitled to recover, as abandoned plant costs, the pre-commercial expenses unless the proposed Project is accepted into the RTEP. Old Dominion also asks the Commission to condition this incentive to establish that if the proposed Project is cancelled or abandoned due to factors within the control of Allegheny, it will have to refund CWIP and expensed amounts to customers.

119. The PSEG Companies agree with Petitioners that, to the extent the proposed Project is approved through the RTEP process and then cancelled or abandoned as a result of factors outside of the control of Allegheny, the companies should be entitled to such recovery, however, the PSEG Companies maintain that such a declaration is not necessary or appropriate prior to the review through the RTEP process.

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<sup>101</sup> Maryland Municipalities Protest at 12 (citing *New England Power Company*, Opinion No. 295-A, 43 FERC ¶ 61,285, at 61,780 (1988)).

<sup>102</sup> Chambersburg Protest at 14.

**b. Allegheny Answer**

120. In its answer, Allegheny argues that it has adequately demonstrated the need for 100 percent recovery of prudently incurred costs should abandonment be required for reasons beyond their control. Allegheny notes that PJM controls any decision regarding the possible cancellation of the proposed Project.

121. Allegheny contends that, contrary to the arguments of protestors, it meets the conditions set forth in *Southern California Edison*. Allegheny maintains that the Commission should consider that the proposed Project represents a far greater commitment of utility resources than did the project in *Southern California Edison* and that they “reasonably need the rate incentive of abandonment protection to engage in such a major project.”<sup>103</sup> Allegheny also contends that the proposed Project is comparable to the situation in *Southern California Edison*. Allegheny states that while there the California project was ordered by the state public service commission, here, the proposed Project “responds to the entity responsible for transmission planning, *i.e.*, PJM, and is subject to approval, adjustment, or rejection by that same body.”<sup>104</sup>

**c. Commission Determination**

122. As noted in the Final Rule, the Commission will allow for recovery through transmission rates of 100 percent of prudently-incurred costs associated with abandoned transmission projects, if such abandonment is outside the control of management.<sup>105</sup> We find that this incentive will be an effective means to encourage transmission development by reducing the risk of non-recovery and will satisfy the requirements of EAct 2005. Thus, in the instant filing we will grant Allegheny’s request for recovery of 100 percent of prudently-incurred costs associated with abandoned transmission projects, provided that the abandonment is a result of factors beyond the control of Allegheny or the Project Owner, which must be demonstrated in a subsequent section 205 filing.

123. In arguing against an abandoned rate incentive, protestors highlight that Opinion No. 295 sought to balance the interests of ratepayers and investors (acknowledging both the “used and useful” standard for ratepayers and “recovery of prudent investment” for investors) by allowing for 50 percent of the prudently incurred costs of a cancelled generating plant to be amortized over the likely life of the plant and 50 percent of the

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<sup>103</sup> Allegheny Answer at 11-12.

<sup>104</sup> *Id.* at 12.

<sup>105</sup> Final Rule at P 163.

prudently incurred costs to be written off as a loss.<sup>106</sup> This abandoned plant policy was later extended to include transmission projects.<sup>107</sup>

124. However, we disagree with protesters who state that this request has no basis in existing Commission regulations, as the Commission has acknowledged that Opinion No. 295 may not have anticipated all applicable circumstances concerning abandonment.<sup>108</sup> Subsequent to the issuance of Opinion No. 295, the Commission found that full recovery of the costs associated with an abandoned transmission project may be appropriate, and will be addressed on a case-specific basis.<sup>109</sup> Further, as noted in the Final Rule, the Commission recently allowed Southern California Edison Company to recover all prudently-incurred costs related to certain proposed transmission facilities if those facilities were later cancelled or abandoned, noting that management did not control the decision to develop or cancel the wind farm generation project and that the company's shareholders did not share in the earnings associated with the generation project.<sup>110</sup> While the circumstances of *Southern California Edison* are not identical to those of the instant request, our decision here is consistent with the Final Rule's intent (as mandated by Congress in EAct 2005) to encourage transmission investment by reducing the risk associated with non-recovery.

125. The PSEG Companies and Old Dominion argue that the recovery of 100 percent of prudently-incurred costs associated with abandoned transmission projects is not necessary or appropriate prior to review under the RTEP process. As noted above, this issue is moot because the PJM has already approved a modified version of Allegheny's proposed Project through the RTEP process.

126. As noted in the Final Rule, providing for recovery of prudently-incurred costs associated with abandoned transmission projects reduces overall investor risk, creating concerns of "over-recovery" when also paired with a high return on equity. As such, the Commission cautioned in the Final Rule that any public utility seeking this incentive may

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<sup>106</sup> *New England Power Company*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,068 at 61,081-83, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

<sup>107</sup> *Public Service Company of New Mexico*, 75 FERC ¶ 61,266, at 61,859 (1996), *order approving settlement*, 87 FERC ¶ 61,040 (1999).

<sup>108</sup> *San Diego Gas & Electric Company*, 98 FERC ¶ 61,332, at 62,048, *reh'g denied*, 100 FERC ¶ 61,073 (2002).

<sup>109</sup> *Id.*

<sup>110</sup> *Southern California Edison I*, 112 FERC ¶ 61,014 at P 58-61; *Southern California Edison II*, 113 FERC ¶ 61,143 at P 9-15.

need to re-evaluate its ROE to reflect the lower risk associated with guaranteed recovery of abandoned facilities.<sup>111</sup> The Commission noted that any such reduction in ROE will be determined on a case-by-case basis. We find that Allegheny has demonstrated that, notwithstanding the lower risk from allowing abandoned plant recovery, the Commission should allow both abandoned plant recovery and a higher ROE in this circumstance.

127. We also find that Allegheny has shown, consistent with the Final Rule, a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment. For example, Allegheny notes that the RTEP process allows PJM to cancel a project that has been accepted in the RTEP should PJM conclude that the conditions that originally supported the construction of the expansion have changed (*i.e.*, the RTEP is revised); this introduces an element of risk that is not faced by a utility proposing to build transmission outside of an RTO planning context. Under these circumstances, we believe that authorization to expense and recover all prudently-incurred development and construction costs in the case of abandonment is appropriate to encourage this new investment and is fully consistent with the Final Rule, as well as Congressional intent in enacting section 219.

#### **E. RTEP**

128. As described in the petition, Allegheny has requested that PJM incorporate the proposed Project into the RTEP. The RTEP process is the planning and cost allocation process by which PJM evaluates proposed expansions to the PJM-controlled transmission network that will have regional benefits. The RTEP process was established by Schedule 6 of the PJM Operating Agreement and Schedule 12 of the PJM Tariff. Petitioners maintain that, pursuant to the RTEP process, PJM will determine the need for a transmission enhancement or expansions, and if so, how costs of a transmission enhancement expansion should be allocated among Market Participants within PJM. Accordingly, Allegheny maintains that the petition is limited to the question of, if the proposed Project is approved under the RTEP process, whether the Project Owner will be pre-authorized to include within its costs, to be recovered under Schedule 12 of the PJM Tariff, the requested specific rate incentives.

129. Allegheny notes that a declaratory order by the Commission providing the requested relief sought by this petition will not affect AEP's proposed project, and that the RTEP process will sort out if either or both proposals should be included in the RTEP.

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<sup>111</sup> Final Rule at P 167.

## 1. Comments and Protests, and Allegheny Answer

130. Some commenters filed comments supporting the timing of the petition in relation to the RTEP process. For example, AEP argues that although PJM will make an independent determination under the RTEP process, the Commission should promptly determine that the requested rate incentives are appropriate to signal that the Commission intends to promote transmission expansion.

131. However, many protesters<sup>112</sup> maintain that petition is premature because it is subject to the outcome of PJM's RTEP process. Accordingly, these protestors maintain that the petition should be rejected, or at least withdrawn, until these issues can be identified and analyzed under the RTEP process. The protestors argue that Allegheny has not yet established, *inter alia*: that the proposed Project is needed in the PJM or regulatory arena; that the proposed Project is needed for reliability; that the proposed Project is needed to support competition; that it is the most reliable option; that the proposed Project is the least-cost option for meeting stated objectives; that there is a plan in place for responsible cost management; who will benefit from the proposed Project; who will be charged for the requested incentives; the proposed Project's impact on the reliability of more local transmission systems including whether any upgrades to those local systems are necessary; what are the benefits to other transmission customers (versus benefits to Allegheny's own generating facilities); who pays for the proposed Project; and what transmission rights they receive in return. Protestors also express concern that the allocation of costs will not be determined until after the conclusion of the RTEP process. Protestors note that the cost burden of the proposed Project could fall exclusively on transmission customers in the APS Zone, and therefore, the Commission should not assume that the costs of the line will be spread throughout the region. Protestors such as the Dominion Companies, FirstEnergy, and the PPL Parties also argue that Allegheny has failed to demonstrate why the proposed incentives are needed at this time, that is, prior to the conclusion of the RTEP process. These protestors maintain that the RTEP process will add clarity to the proposal.

132. Protestors such as AECI argue that because the petition requests that the proposed rate incentives are “intended to apply both to the proposal as submitted to the PJM *and to any modification* thereof that may result from the RTEP process’ . . . the Commission is being asked to award massive incentives for a Project which cannot now be described

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<sup>112</sup> Such protestors include: AECI, AMP-Ohio, the CEG Companies, Chambersburg, the Dominion Companies, FirstEnergy, the Joint Consumer Advocates, the Maryland Municipalities, the PHI Companies, PJMICC, the PPL Parties, and the PSEG Companies.

with any degree of accuracy and which may never be approved under the existing PJM Procedures.”<sup>113</sup> Similarly, the CEG Companies also argue that the PJM will be able to identify any costs to local transmission owners relating to the construction of necessary enhancements to support the system and will be able to provide information regarding how best to allocate costs among customers.

133. Allegheny did not respond to these arguments in its Answer because of its motion to defer.

134. Protestors, including the CEG Companies, PJMICC, the PSEG Companies, and the PPL Parties, argue that the Commission, with PJM’s guidance, must ensure that the RTEP process will fully consider the relative costs and benefits of multiple proposed projects, and confirm that the RTEP process will be the forum for determining the least-cost solution among these proposed transmission projects as well as competing generation and demand response proposals.

135. The PPL Parties and the PSEG Companies maintain that pre-authorization of incentive rates for a particular project may have a chilling effect on other alternatives, because of the perception that the Commission has made certain determinations regarding the proposed Project. The PSEG Companies argue that granting relief in this and the AEP petitions would sanction the process by which transmission owners would seek Commission pre-approval for rate incentives prior to the RTEP process, a trend that would result in wasted time and resources.

136. Old Dominion argues that the petition highlights the need for a new logical and reasonable regional rate design that would allow the Commission “to resolve promptly and satisfactorily the contentious issues of rate design and cost allocation within PJM and the broader region.”<sup>114</sup> Old Dominion also argues that “PJM’s traditional approach of unilaterally evaluating individual TO-proposed solutions to identified reliability-based violations clearly is not adequate to fully vet and evaluate a project of this scope”<sup>115</sup> and maintains a coordinated, open and collaborative planning process is needed.

137. Exelon maintains while Allegheny needs the certainty regarding its rate incentives in order to undertake this huge capital investment, all stakeholders need the issues of cost allocation established upfront. Specifically, Exelon argues that before any cost recovery

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<sup>113</sup> AECI Comments at 5 (emphasis in the original).

<sup>114</sup> Old Dominion Protest at 17.

<sup>115</sup> *Id.* at 18-19.

mechanism goes into effect, either the Commission or PJM should perform a comprehensive cost-benefit analysis of the proposed Project with the involvement of stakeholders, including state commissions. Exelon states that the analysis should include an economic analysis of benefits that incorporates key sensitivities. Exelon asserts that such analysis should form the economic basis for determining what zones will benefit from the proposed Project and thus who would be responsible for paying for it.

138. Blue Ridge argues that the cost of the instant proceeding, and of any other proceeding to the extent they are specifically directed to recovering extra profits, should be the responsibility of the shareholders of Allegheny.

139. PJMICC also argues that PJM's current market design and approach to transmission planning are not functioning, or at least not functioning as efficiently, as originally anticipated.

140. Protestors also argue that no studies have been performed to determine the proposed Project's impact on the reliability of more local transmission systems. For example, FirstEnergy and the PHI Companies maintain that it is not possible to know how the proposed Project will impact other transmission systems until studies are performed as part of the RTEP evaluation process. FirstEnergy argues that studies addressing the need for the proposed Project, its impact on reliability, its compatibility with the PJM backbone system, its effect on congestion cost, and its impact on the continued operation of generation in the PJM East and neighboring systems have not been performed. FirstEnergy notes that other proposed transmission projects might be in competition with the proposed Project. The PHI Companies also argue that the petition must be "analyzed on its merits, together with all other necessary and related changes to the grid."<sup>116</sup> The PHI Companies and PPL Parties argue that the proposed Project may cause additional system concerns that must be evaluated against any potential benefits the proposed Project may provide, and maintain that the RTEP process is best situated to provide this evaluation. The PSEG Companies also assert that an environmental impact analysis of the proposed Project is needed in addition to an analysis of the financial impacts.

141. In its answer, Allegheny maintains that the requested evaluations will be done as part of the RTEP process, under which PJM will have the opportunity to request such information as it requires.

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<sup>116</sup> PHI Companies Protest at 6 (emphasis removed).

142. While supportive of transmission construction that is economically justified, the CEG Companies argue that any construction should be part of a comprehensive plan for transmission expansion. The CEG Companies argue that deference to the RTEP process prior to Commission ruling on the petition will avoid a piecemeal approach to transmission planning.

143. AMP-Ohio notes that the petition includes a “catch-all” by which Allegheny has reserved the right to request any additional incentive rate treatments authorized by the Final Rule or that may be approved by future Commission orders, and this request allows the Petitioners to receive the best of both worlds.

144. Several protestors<sup>117</sup> criticize the petition for its failure to mention the possible joint ownership of the proposed Project by public power entities. These protestors maintain that no rate incentives should be approved to reflect risk in the absence of a commitment by the transmission owner to share, and thereby reduce, that risk by permitting joint ownership of the facilities by public power entities. These protestors cite various benefits of increased public power involvement in transmission investment and ownership including, *inter alia*: the provision of capital to fund its portion of an enhancement with tax-exempt debt; having public power and rural electric cooperative participants would underscore support for the project and would have the additional benefit of accessing their generally higher credit ratings; direct involvement of public power with investor-owner utilities in the decision-making process for network expansion; and minimization of disputes and expand the base of support where the siting of new transmission facilities is contested. These protestors note that the financial risk associated with the Project could be alleviated by joint ownership.

145. Several protestors, including AMP-Ohio, APPA, and Blue Ridge, argue that proposed Project ownership should be open to not only public power, but to existing transmission owners and other investors as well. These protestors maintain that having a larger group of LSEs supporting the proposed Project would minimize each participant’s associated financial risk as well as assist in siting and permitting. These protestors ask the Commission to recommend and/or require that Allegheny seeks participation by additional load-serving entities if they intend to seek rate incentives, as well as designation as a NIETC under new FPA section 216(a). For example, Blue Ridge maintains that the Commission should make clear that the potentially inclusive ownership provisions of Schedule 6 of the PJM Operating Agreement should continue to apply, and any financially and legally qualified entity that wishes to invest in the line should have

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<sup>117</sup> Such protestors include: AECI, AMP-Ohio, APPA, Blue Ridge, Chambersburg, and the Maryland Municipalities.

the opportunity to do so. Moreover, Blue Ridge asserts that alternative owners and financiers must be allowed to bid to supply the 500 kV line capital for less than the indeterminate but high price that Allegheny is seeking. Blue Ridge further argues that awarding Allegheny financing exclusivity for the proposed Project would also forfeit the important opportunity to bring new industry sectors into the PJM transmission ownership mix, particularly consumer-owned power which may have access to lower-cost capital than Allegheny. Blue Ridge asserts this is consistent with the consortium approach suggested by PJM as to AEP's proposed transmission line and new FPA section 219(b)(1) encouraging public power ownership. Blue Ridge maintains that the same opportunity should be afforded to private investors, including non-generating firms.

146. In its answer, Allegheny argues that conditioning rate incentives on a solicitation of interest by public power entities is neither necessary nor advisable. Allegheny argues that the requirement is unnecessary because public power entities are afforded this opportunity through the RTEP process, asserting that the RTEP process is open to consideration of alternative proposals. Allegheny also argues that requiring a formal solicitation of public power participants would create an additional procedural hurdle that would likely delay construction.

## **2. Commission Determination**

147. We note at the outset that the PJM Board of Directors has approved a modified version of Allegheny's proposed project as part of the RTEP process, so many of the concerns of protestors are moot. Moreover, as indicated above, we deny the motion to defer consideration of this petition and therefore, find it is not premature to grant Allegheny's petition.

148. We see no reason to delay action in this proceeding. Accordingly, our decision to grant the petition for declaratory order, allowing Allegheny to proceed with the development of the proposed Project, is consistent with the Final Rule.

149. However, our approval of the proposed incentives will not stand if Allegheny's proposal materially changes from the facts on which we are granting its declaratory order. Allegheny may seek another declaratory order or wait to seek approval of the change in the subsequent section 205 proceeding. At that time, interested parties may challenge the changes in the section 205 proceeding.<sup>118</sup>

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<sup>118</sup> Final Rule at P 78.

150. 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.<sup>119</sup> 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 has 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 Allegheny's proposed 500 kV line discussed here. Therefore, it is the RTEP process, and not the current proceeding, that is 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.<sup>120</sup>

151. Further, we find that many of the arguments raised by intervenors, including encouraging greater participation by public power entities and LSEs, 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

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<sup>119</sup> 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.*

<sup>120</sup> 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).

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 Allegheny's petition for 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.<sup>121</sup> Consistent with the Final Rule, we look favorably upon applications by joint public and investor-owned consortia.

152. Finally, protestors' concerns regarding the "piecemeal" acceptance of incentives are outside the scope of this proceeding and will be better addressed at the time that Allegheny 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 prior to granting additional incentives.

153. In response to protestors' 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.

The Commission orders:

(A) Allegheny's petition for a declaratory order is hereby granted as discussed in the body of this order.

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

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>121</sup> Final Rule at P 357.

**Attachment A**

**Interventions**

American Transmission Company LLC, International Transmission Company d/b/a ITCTransmission, and Michigan Electric Transmission Company, LLC (collectively, the Midwest Stand-Alone Transmission Companies)  
Cinergy Services, Inc., on behalf of its franchised utility affiliates, The Cincinnati Gas & Electric Company, PSI Energy, Inc., and The Union Light, Heat and Power Company  
Coral Power, L.L.C.  
The Dayton Power and Light Company  
The Indiana and Michigan Municipal Distributors Association and its members: the Town of Avilla, Indiana, the City of Bluffton, Indiana, the City of Garrett, Indiana, the City of Gas City, Indiana, the City of Mishawka, Indiana, the Town of New Carlisle, Indiana, the City of Niles, Michigan, the Village of Paw Paw, Michigan, the City of South Haven, Michigan, the City of Sturgis, Michigan, and the Town of Warren, Indiana  
Pennsylvania Public Utility Commission  
PJM Interconnection, L.L.C. (PJM)  
National Grid USA (National Grid)  
Williams Power Company, Inc. (Williams)

**Comments and Protests**

Allegheny Electric Cooperative, Inc. (AECI)  
American Electric Power Service Corporation (AEP)  
American Municipal Power-Ohio, Inc. on behalf of itself and its members (AMP-Ohio)  
American Public Power Association (APPA)  
Blue Ridge Power Agency (Blue Ridge)  
The Borough of Chambersburg, Pennsylvania (Chambersburg)  
The City and Towns of Hagerstown, Thurmont, and Williamsport, Maryland (Maryland Municipalities)  
Constellation Energy Commodities Group, Inc., Constellation Generation Group, LLC, Baltimore Gas and Electric Company, and Constellation NewEnergy, Inc. (collectively, the CEG Companies)  
Delaware Municipal Electric Corporation, Inc. (DEMEC)  
Dominion Resources Services, Inc. on behalf of certain of its jurisdictional affiliates located or operating within PJM: 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 (collectively, the Dominion Companies)  
Exelon Corporation (Exelon)  
FirstEnergy Service Company, on behalf of its public utility affiliates Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (FirstEnergy)  
H-P Energy Resources LLC (H-P)  
Old Dominion Electric Cooperative (Old Dominion)  
The Pennsylvania Office of Consumer Advocate, the Maryland Office of People's Counsel, the Office of the Ohio Consumers' Counsel, and the D.C. Office Of People's Counsel (collectively, the Joint Consumer Advocates)  
Pepco Holdings, Inc. and its affiliates Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company (collectively, the PHI Companies)  
The PJM Industrial Customer Coalition (PJMICC)  
PPL Electric Utilities Corp, PPL EnergyPlus, LLC, PPL Bruner 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, the PPL Parties)  
Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC, and PSEG Power LLC (collectively, the PSEG Companies).