

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

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Commonwealth Edison Company and  
Commonwealth Edison Company of Indiana

Docket No. EL08-78-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued December 4, 2008)

1. On July 18, 2008, as supplemented on October 28, 2008, Commonwealth Edison Company, on behalf of itself and its wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd), filed a petition for declaratory order (Petition) pursuant to section 219 of the Federal Power Act<sup>1</sup> and Order No. 679<sup>2</sup>, requesting that the Commission approve its proposed incentive rate treatments for 22 transmission projects. Specifically, ComEd requests an incentive rate of return (ROE) adder of 150 basis points for each of the 22 projects, as well as an additional ROE adder of 50 basis points for two Static VAR Compensators (SVC) as a separate incentive for the use of advanced transmission technology. For the reasons discussed below, we will deny ComEd's Petition.

**I. Background**

2. ComEd is a wholly-owned subsidiary of Exelon Corporation. It maintains over 91,000 miles of transmission and distribution lines in Northern Illinois and provides delivered electric power to over 3.8 million customers, while not owning any generating facilities. On May 1, 2004, ComEd transferred operational control of its transmission facilities to PJM Interconnection, L.L.C. (PJM).

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<sup>1</sup> Energy Policy Act of 2005. Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005) (EPAct 2005), amended the FPA by adding section 219.

<sup>2</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

3. PJM is responsible for planning the enhancement and expansion of the PJM transmission system to ensure reliability. It identifies transmission system upgrades and enhancements necessary to ensure reliability through the PJM Regional Transmission Expansion Plan (RTEP). The RTEP is based on an analysis of applicable contingencies and reliability criteria, operational performance of the regional transmission system, and economic and environmental factors. The contingencies studied and the criteria used to determine reliability violations are based on PJM load and/or generator deliverability criteria, NERC planning standards and, within the ComEd zone, the Exelon transmission planning criteria.<sup>3</sup>

4. On March 1, 2007, ComEd filed to implement a transmission cost of service formula rate. The Commission found<sup>4</sup> that the proposed formula rate raised issues of material fact that could not be resolved based on the record before it and therefore established hearing and settlement judge procedures. On January 16, 2008, the Commission issued an order approving an uncontested settlement agreement filed by ComEd on October 5, 2007.<sup>5</sup> Among other things, the Settlement Agreement sets the stated ROE component of ComEd's formula rate at 11.5 percent<sup>6</sup> and, for purposes of determining future incentive ROEs under Order No. 679, caps the overall ROE at 13 percent unless and until ComEd supports a new ROE analysis and the Commission establishes a new zone of reasonableness. ComEd states that the incentive ROE adders requested in the instant proceeding are subject to the Settlement Agreement approved by the Commission.

## II. Petition

5. ComEd states that the 22 projects for which it seeks incentive ROE treatment (Projects) include SVCs, capacitor installations, transformer installations and installation of transmission line upgrades and circuit breakers. One of the projects was approved by the PJM Board of Managers as a baseline upgrade under the 2006 RTEP, eight were approved as baseline upgrades under the 2007 RTEP, and, according to supplemental information filed on October 28, 2008, the remaining 13 projects were approved in

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<sup>3</sup> ComEd Petition at III. A.

<sup>4</sup> See *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007).

<sup>5</sup> See *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008) (Order Approving Settlement Agreement).

<sup>6</sup> This 11.5 percent stated ROE component includes a 50 basis point ROE adder for participation in the PJM Regional Transmission Organization.

October 2008 as baseline upgrades under the 2008 RTEP.<sup>7</sup> ComEd expects the Projects to go into service between 2009 and 2013 at a projected total cost of nearly \$215 million.<sup>8</sup>

6. ComEd requests an incentive-based ROE adder of 150 basis points for its investment in each of the 22 projects. Additionally, ComEd requests an advanced transmission technology incentive ROE adder of 50 basis points to be applied to its investment in the two SVCs.

7. In support of its request for incentives, ComEd asserts that the Projects will help to ensure reliability on the PJM transmission system, providing voltage adequacy and supporting regional transfers. ComEd asserts that the Commission has found that PJM RTEP baseline projects satisfy both the rebuttable presumption of eligibility and the nexus requirement for an ROE incentive.<sup>9</sup>

8. As support for the requested advanced technology adder, ComEd states that the Commission has found that SVCs qualify for incentive rate treatment under Order No. 679.<sup>10</sup>

9. In the instant filing, ComEd is not submitting a new ROE but instead is making its request for incentives subject to the 13 percent ROE cap established in the Settlement Agreement.

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<sup>7</sup> According to ComEd's October 28, 2008 supplemental filing, the project which was approved in the 2006 RTEP is no longer needed, and ComEd removed it from the 2008 RTEP.

<sup>8</sup> ComEd Petition at 2-3; ComEd supplemental filing, Attachment 2, Revised Exhibit A-1.

<sup>9</sup> *Id.* at 3, citing *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 27 (2008) (*ComEd II*) and *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 54, 58 (2007), *reh'g denied*, 122 FERC ¶ 61,304 (2008) (*BG&E*).

<sup>10</sup> *Id.* at 3, citing *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 83 & n.96 (2007) (*TrAILCo*) and *United Illuminating Co.*, 119 FERC ¶ 61,182, at P 71 (2007).

## A. Description of Projects

### 1. SVCs

10. ComEd will install two 300 megavolt ampere reactive (MVAR) SVCs at the Elmhurst substation to meet dynamic reactive power requirements. It initiated, in coordination with PJM, a comprehensive study of the need for reactive power within the heavily loaded northeast portion of the ComEd zone. This study found that dynamic reactive power support is needed for at least a portion of the total reactive power need, and the study showed that installing two 300 MVAR SVCs at the Elmhurst substation would best fulfill this need. ComEd states in its supplemental filing that PJM approved the SVCs as baseline projects in the 2008 RTEP; it expects an in-service date of 2012,<sup>11</sup> with a total cost of \$76.5 million.

11. SVCs are flexible alternating current (AC) Transmission System devices that use solid-state thyristor-controlled capacitor banks to continuously monitor system voltage levels and to automatically supply reactive power to the system as needed, ComEd explains. Since SVCs automatically respond to fluctuations in system voltage, ComEd states that these devices provide significant benefits to the system operators' ability to effectively manage operation of capacitors in real time. This technology will provide voltage support and dynamic voltage recovery at times when the system is impacted by large regional and inter-regional power flows.<sup>12</sup>

12. ComEd states that without adequate sources of reactive power located close to the points at which it is consumed, voltages may decline to unacceptable levels, which can lead to system voltage collapse.<sup>13</sup> A study performed by ComEd with PJM's participation found that the most effective and least-cost solution for providing reactive power that met all of the reliability criteria was the installation of two 300 MVAR SVCs at the Elmhurst substation, along with installation of capacitor banks, as discussed below.

### 2. Capacitor Installations

13. ComEd states that the installation of capacitors is done to meet voltage adequacy or voltage stability margins. Four of the baseline projects included in the 2007 RTEP involve installation of capacitors, and seven more capacitor installation projects were

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<sup>11</sup> ComEd states that it is evaluating a possible advancement to 2010 for the in-service date.

<sup>12</sup> ComEd Petition at 4-5.

<sup>13</sup> *Id.* at 3.

approved as baseline projects in the 2008 RTEP. ComEd states that these projects will ensure that voltages will remain stable during regional transfers impacting the ComEd system and under high load levels where generation external to the ComEd service territory may be required to serve the load.<sup>14</sup> ComEd states that the use of capacitors is an economically efficient way to address steady-state voltage adequacy and stability issues.

14. ComEd also plans to install two shunt distribution capacitors, which were approved as baseline in the 2007 RTEP, at the Wilmington and Shorewood substations.

### **3. Transformer Installations**

15. The need for transformer installations is driven by the requirement to comply with NERC Planning Standards, the Exelon Transmission Planning Criteria or PJM load and/or generator deliverability criteria. ComEd states that these autotransformers are required to maintain acceptable loading during contingency scenarios at peak load.

16. Several contingencies and overloaded elements that occur under peak load conditions, as listed in the Petition,<sup>15</sup> have driven the need for the first 300 MVA 345/138 kV autotransformer installation at Plano substation in 2010. A third 300 MVA 345/138 kV autotransformer is required at Goodings Grove substation and a second 300 MVA 345/138 kV autotransformer will be needed at the Plano substation in 2011. The autotransformer at Goodings Grove substation is required to relieve loading on Goodings Grove transformer 82 for the loss of a Blue Island line breaker on 138 kV transmission line Blue Island to Crestwood during peak load conditions. The second Plano autotransformer is required during peak load conditions to relieve loading on Electric Junction 300 MVA 345/138 kV autotransformer 83 for the loss of Electric Junction 300 MVA 345/138 kV and loading on Electric Junction 300 MVA 345/138 kV autotransformer 84 for the loss of Electric Junction 300 MVA 345/138 kV autotransformer 83. The 2008 RTEP included four autotransformer installations as baseline projects.

### **4. Line Upgrades or Circuit Breaker Installations**

17. ComEd's and PJM's system analysis has determined the need for upgrading lines and installing breakers in the 2009-2013 period, ComEd states. It explains that the reconductoring of 3.2 miles on the 138 kV line between Oswego and Montgomery will upgrade the capacity of the line from 264 MVA to 449 MVA. In addition, the

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<sup>14</sup> ComEd Petition, Szymczak Affidavit at 4.

<sup>15</sup> ComEd Petition at 15.

reconductoring of 3.7 miles on the 138 kV transmission line between Pleasant Valley and Woodstock will upgrade the capacity of the line from 300 MVA to 451 MVA. ComEd will also install a 138 kV transmission line circuit breaker in the Aptakisic substation on the 138 kV transmission line between the Prospect Heights-Wheeling-Buffalo Grove-Aptakisic-Leithton-Libertyville substations. Two of the transmission line upgrades were included in the 2007 RTEP, and the 2008 RTEP included one baseline upgrade to install a circuit breaker within the ComEd zone.

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

18. Notice of ComEd's filing was published in the *Federal Register*, 73 Fed. Reg. 44,982 (2008), with interventions, protests and comments due on or before August 18, 2008. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention. Motions to intervene raising no substantive issues were filed by PJM, Dominion Resources Services, Inc., Old Dominion Electric Cooperative, the Office of the People's Counsel of the District of Columbia, and jointly by Allegheny Power and Trans-Allegheny Interstate Line Company. A motion to intervene and protest was filed jointly by the Illinois Municipal Electric Agency, the Northern Illinois Municipal Power Agency and the City of Naperville (Illinois Municipals). The Maryland Office of People's Counsel filed a motion to intervene raising substantive issues and requesting an evidentiary hearing.

19. On September 2, 2008, ComEd filed a motion for leave to answer and answer responding to the Illinois Municipals' protest. The Illinois Municipals responded on September 15, 2008. On September 24, 2008, the Illinois Commission filed a motion to file comments out of time and comments. ComEd filed an answer on October 6, 2008.

### **IV. Discussion**

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

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>16</sup> the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Illinois Commission's motion for leave to file comments out of time is granted, given the early stage of the proceeding and the absence of undue prejudice or delay.

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<sup>16</sup> 18 C.F.R. § 385.214 (2008).

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>17</sup> prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Illinois Municipals' and ComEd's answers and will, therefore, reject them.

**B. Request for Incentives**

**1. Section 219 Requirements**

22. In the Energy Policy Act of 2005 (EPAct 2005),<sup>18</sup> Congress addressed incentive-based rate treatments for new transmission construction.<sup>19</sup> Specifically, section 1241 of EPAct 2005 added a new section 219 to the FPA directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives under section 219, including the incentives requested here by ComEd.

23. Order No. 679 provided that a public utility may file a petition for declaratory order or FPA section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of FPA section 219. The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>20</sup> Order No. 679 also established a rebuttable presumption that a project satisfies the threshold criteria for eligibility for transmission incentive treatment under section 219 if: (1) a transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.<sup>21</sup> Order No. 679-A clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the

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<sup>17</sup> 18 C.F.R. § 385.213(a)(2) (2008).

<sup>18</sup> Pub. L. No. 109-58, 119 Stat. 594, section 1241.

<sup>19</sup> 16 U.S.C. § 824s (2006).

<sup>20</sup> See 18 C.F.R. § 35.35(i) (2008).

<sup>21</sup> See *id.*; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 47.

cost of delivered power by reducing congestion.<sup>22</sup> The Commission also recognized that an applicant may wish to file a request for incentive-rate treatment for a project which is undergoing consideration in a regional planning process. But the Commission stated that it would make any resulting incentive-rate treatment contingent on the project being approved under the regional planning process.<sup>23</sup>

24. The Commission finds that the Projects satisfy the requirements of section 219 as a result of the rebuttable presumption established in Order No. 679. These Projects have been vetted and approved as part of PJM's 2006, 2007 and 2008 RTEPs as baseline projects. This means that PJM made a determination that the Projects mitigate congestion or ensure PJM's ability to continue to serve load reliably. The Commission has held that the RTEP constitutes "a fair and open regional planning process," and thus qualifies for the rebuttable presumption provided in Order No. 679.<sup>24</sup> Moreover, Illinois Municipals do not claim that ComEd does not, or should not, qualify for the rebuttable presumption by virtue of the Projects' status as PJM RTEP baseline projects.

25. In any event, ComEd has provided evidence that the Projects will ensure reliability or reduce the cost of delivered power. For example, the installation of the SVCs will ensure adequate sources of reactive power close to the points at which it is consumed, which will prevent a system voltage collapse by preventing voltages from declining to unacceptable levels. SVCs have higher capacity and are faster and more reliable than mechanical switched capacitors. In addition, installation of the SVCs will save approximately 10 MW of system losses now being incurred and will not require ComEd to install any new transmission lines or obtain new rights-of-ways. The installation of capacitors will provide static reactive power and help to ensure that voltage levels remain stable during regional power transfers impacting the ComEd zone, thus ensuring reliability. The installation of autotransformers will help ensure that customers at the end of the line receive the same average voltage as those closer to the source. In addition, we agree with ComEd that line upgrades are required to expand line capacity that will allow for sufficient energy transfer in the region during high demand and prevent first contingency or multiple contingency overloads under peak load conditions, thus improving system reliability.

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<sup>22</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

<sup>23</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58, n.39.

<sup>24</sup> *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 62-68 (2007); *see also Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 41 (2007), *reh'g denied*, 122 FERC ¶ 61,204 (2008) (*BG&E*).

## 2. Nexus Requirement

26. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought for a particular project and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”<sup>25</sup> As part of our evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is “routine” to be particularly probative. In *BG&E*,<sup>26</sup> the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is not routine, the Commission will consider all relevant factors presented by the applicant. For example, an applicant may present evidence on: (i) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (ii) the effect of the project (e.g., improving reliability or reducing congestion costs); and (iii) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).

27. We find that ComEd has not met the nexus test. Although the Commission stated in *BG&E* that “[p]rojects that are identified as ‘baseline’ in the PJM RTEP process are . . . , by definition, regional projects are thus, not routine,”<sup>27</sup> the Commission more recently held that not all PJM RTEP projects will necessarily qualify for incentives. In *ComEd III*, the Commission clarified that PJM’s scrutiny of baseline projects is not the only factor that will be considered in analyzing whether a project has met the nexus test.<sup>28</sup> Thus, status as a baseline project does not automatically qualify a project for incentives. As discussed below, we find that ComEd has not demonstrated how these proposed projects present risks or challenges to warrant an incentive ROE and, therefore, ComEd does not meet the nexus test.

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<sup>25</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>26</sup> *BG&E*, 120 FERC ¶ 61,084 at P 52-55.

<sup>27</sup> *BG&E*, 120 FERC ¶ 61,084 at P 54.

<sup>28</sup> See *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 124 FERC ¶ 61,231, at P 18 (2008) (*ComEd III*).

a. Protests

28. Illinois Municipals contend that the Petition should be denied because ComEd has improperly relied on Commission findings in *BG&E* and *ComEd II* that PJM RTEP baseline projects satisfy both the rebuttable presumption of eligibility for incentives as well as the nexus requirement. Illinois Municipals repeat arguments made on rehearing of *BG&E* and *ComEd II* that the Commission cannot lawfully rely on the finding that any project included as a PJM baseline RTEP qualifies for incentive rates, without further analysis and consideration of other factors.

29. Illinois Municipals argue that ComEd has failed to provide any support for its claim that the projects for which it requests incentives pose risks and challenges. They contend that the Projects pale in comparison to projects considered in other recent cases such as *BG&E*, *Potomac-Appalachian Transmission Highline, L.L.C. (PATH)*<sup>29</sup> and *PPL Electric Utilities Corp. (PPL)*.<sup>30</sup> According to Illinois Municipals, ComEd's Projects are routine; the fact that the SVCs will be the first on the ComEd system does not, in and of itself, make these Projects non-routine. Furthermore, they state that the combined capacity of the two SVCs is still less than the capacity of the Black Oak SVC, considered by the Commission in *TrAILCo*.<sup>31</sup> Illinois Municipals also argue that, among other things, the capacitors are commonplace and three of the four autotransformers will not even be the first autotransformers installed in the same substation. They state that installation of a circuit breaker and the two line upgrades are routine as well.

30. As for financial risk, they argue that ComEd has provided no evidence that the projects pose any sort of financial hardship to the company. Given ComEd's total transmission rate base of nearly \$1.69 billion,<sup>32</sup> Illinois Municipals state that these 22 projects represent under 13 percent of ComEd's rate base, or on average less than 2.5 percent per year of construction, considering the minimum construction time of five years. The look-forward nature of ComEd's formula rate, permitting the costs of the projects to be recovered in the year they come into service, should also reduce risk, according to Illinois Municipals.

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<sup>29</sup> 122 FERC ¶ 61,188 (2008).

<sup>30</sup> 123 FERC ¶ 61,068 (2008).

<sup>31</sup> 119 FERC ¶ 61,219 (2007).

<sup>32</sup> See Illinois Municipals Protest at 13. They state that this figure is taken from ComEd's 2007 transmission rate filing in Docket No. ER07-583-000.

31. With respect to technical or permitting challenges, Illinois Municipals state that all of the projects appear to occur on or within existing ComEd substations or rights-of-way, while other projects seem to involve replacing existing equipment. Therefore, they assert that the projects do not appear to pose any technical or permitting challenges.

32. In the event that the Commission does accept the Petition, Illinois Municipals argue that the full 150 basis point incentive adder is excessive and unwarranted. They contend that there is no evidence that these projects will cause ComEd to suffer any further reduction in its credit rating or that the resulting cash infusion is necessary to offset any financial difficulties.

33. Further, Illinois Municipals state that ComEd has failed to support why the costs of the SVC projects, much less any incentive, should be permitted under its general rate tariff. As projects devoted to dynamic reactive power supply, they argue that ComEd should recover these costs under PJM Schedule 2.

34. The Maryland Office of People's Counsel claims that the costs for the SVC projects will be fully allocated on a region-wide, "postage-stamp" basis to all ratepayers throughout PJM, and thus socialized across all zones in PJM. It requests that the Commission deny ComEd's request for incentive ROE adders for any projects whose costs will be socialized in this manner, and requests an evidentiary hearing.

35. The Illinois Commission states that its comments were prompted by the Commission's issuance of *ComEd III* on September 8, 2008. According to the Illinois Commission, the Commission's holding in *ComEd III* that not all baseline projects in PJM's RTEP will automatically qualify for incentives under Order Nos. 679 and 679-A effectively changes the standard that ComEd must satisfy. The Illinois Commission asserts that ComEd did not provide the support required to meet the standard for demonstrating a nexus between the incentives sought and the projects proposed and argues that the Commission should reject the Petition. Nevertheless, it recommends that "the Commission issue its rejection without prejudice so that ComEd may attempt to cure the deficiencies in its Petition."<sup>33</sup>

**b. Commission Determination**

36. Despite their status as PJM RTEP baseline projects, ComEd has not demonstrated how these projects present risks or challenges to warrant an incentive ROE under our nexus requirement. ComEd has not presented evidence regarding the scope or effect of the projects, and focuses primarily on financing challenges; there is no evidence of technical or siting challenges, long lead times, or regulatory or political risks facing the

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<sup>33</sup> Illinois Commission Comments at 5.

projects. Thus, we agree with Illinois Municipals that ComEd has not supported incentive rate treatment.

37. The Commission finds that, based on the record, these projects are activities undertaken in the ordinary course of business in keeping with good utility management practices. In Order No. 679, we found that such activities are not the type of projects that will typically warrant incentives.<sup>34</sup> We also have clarified that an applicant seeking incentives for such projects must show that its project faces risks and challenges or provides sufficient benefits to warrant incentive rate treatment.<sup>35</sup> ComEd has not shown how its performance of these activities presents risks or challenges to warrant incentives. For example, some of ComEd's investments appear to be maintenance activities that pose no special risks or challenges.<sup>36</sup> ComEd has not demonstrated how the design, placement, installation, construction or operation of the capacitors and auto-transformers will pose risks and challenges to ComEd. Moreover, the two 138 kV line upgrades ComEd proposes are in existing rights of way, do not traverse multiple jurisdictions, and will use conventional installation methods, tools and hardware. The status of the ComEd projects as baseline projects in PJM's RTEP does not change this analysis. In *ComEd III*, the Commission stated that while PJM's scrutiny is significant in our analysis of whether a project meets the nexus test, not all baseline projects in PJM's RTEP automatically qualify for incentive rate treatment.<sup>37</sup> Rather, the Commission must examine such factors as the scope, the effect, and the risks or challenges faced by the projects. It is these factors that have not been demonstrated in ComEd's application.

38. With regard to the Illinois Municipals' argument that cost recovery for ComEd's SVCs should be provided for under PJM Schedule 2,<sup>38</sup> the Commission finds the issue to be beyond the scope of this proceeding. The appropriate place to address such a concern

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<sup>34</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 27; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 23.

<sup>35</sup> See *BG&E*, 120 FERC ¶ 61,084 at P 55.

<sup>36</sup> Maintenance activities include replacing outdated components with new components that would not result in a significant change in the expected useful life, design capacity, or function of the facility. Maintenance activities also include the repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines.

<sup>37</sup> *ComEd III*, 124 FERC ¶ 61,231 at P 18.

<sup>38</sup> Illinois Municipals Protest at 17.

would be in the section 205 filing in which ComEd seeks to recover the costs associated with the proposed system upgrades.<sup>39</sup>

39. Similarly, the issue raised by the Maryland Office of People's Counsel is beyond the scope of this proceeding. Whether the costs of the new SVC projects will, or should, be allocated to all ratepayers throughout the PJM footprint is not relevant to the issues presented in the Petition, and the facts necessary to entertain the question are not in the record of this proceeding. Issues of cost allocation are addressed through the RTEP process.

### **3. Advanced Transmission Technology 50 Basis Point ROE Adder**

#### **a. Protests**

40. Illinois Municipals state that the SVC projects do not appear to warrant any additional incentives for advanced technology. They note that the Commission did not in fact grant an advanced technology ROE adder for the SVCs in *TrAILCo*.<sup>40</sup>

#### **b. Commission Determination**

41. The Commission denies ComEd's request for a 50 basis point incentive ROE adder for the use of advanced transmission technology for its SVC projects.

42. ComEd is correct in pointing out that the Commission noted in *TrAILCo* that the Black Oak SVC project may represent the type of project eligible for incentive treatment for the use of advanced technology. In *TrAILCo*, the Commission stated that the Black Oak SVC represents three of the advanced technologies cited by Congress in section 1223 of EAct 2005.<sup>41</sup> However, the Commission has also recognized that we are required under section 1223 of EAct 2005 to "encourage, as appropriate" the deployment of such technologies, and that use of such technologies does not automatically warrant the granting of incentives.<sup>42</sup> The Commission's evaluation of risks,

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<sup>39</sup> In any event, the Commission rejects Illinois Municipals' implication that the SVCs will offer no benefits other than supplying reactive power. The SVCs will also ensure that the system has adequate transmission capacity to reliably serve load within the ComEd zone. *See* ComEd Petition at 3.

<sup>40</sup> 119 FERC ¶ 61,219 at P 83.

<sup>41</sup> *Id.*

<sup>42</sup> *The Nevada Hydro Company, Inc.*, 122 FERC ¶ 61,272 at P 84-85 (2008).

challenges, and benefits associated with the proposed use of advanced technologies must be a dynamic process that takes into account technological improvements and evolving practices in the industry.

43. Moreover, TrAILCo noted in its filing that SVC technology itself is not new.<sup>43</sup> However, the SVC employed in *TrAILCo* was one of the largest installations in the world (with a capacity of 675 MVAR), and it will be the largest unit installed in the United States to date with its unique risks and challenges. The Commission cited these characteristics as important to the SVC employed in *TrAILCo* warranting an incentive ROE adder.<sup>44</sup> Like TrAILCo, ComEd acknowledges that SVC technology is not new, but ComEd does not identify any risks, challenges or benefits of its SVC projects that warrant incentive treatment as were present in *TrAILCo*.

44. Finally, the Commission finds that ComEd's proposed SVC projects have a limited scope. ComEd's two 300 MVAR SVCs will replace the synchronous condensers at Zion rated at 825 MVAR, which have been increasingly difficult and expensive to operate and maintain.<sup>45</sup> Thus, ComEd's installation will result in little or no increase in dynamic reactive support on ComEd's or PJM's transmission systems. Accordingly, we will deny ComEd's request to grant a 50 basis point adder for the use of advanced technology for its SVC projects.

The Commission orders:

ComEd's petition for a declaratory order is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Moeller dissenting with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>43</sup> 119 FERC ¶ 61,219 at P 19.

<sup>44</sup> *Id.* at P 82, 88-89.

<sup>45</sup> ComEd Petition, Attachment A at 9.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company and  
Commonwealth Edison Company of Indiana

Docket No. EL08-78-000

(Issued December 4, 2008)

MOELLER, Commissioner, *dissenting*:

As this nation presently faces a serious financial crisis, now is not the time for this Commission to discourage investment in needed transmission infrastructure. The Congress required us to consider transmission incentives, and the Congress is again considering how to create jobs through massive investments into our nation's infrastructure. We should do all that we can to ensure that incentives are granted when appropriate.

The majority denies ComEd's request for incentives on upgrades for two 138 kV lines based on the fact that ComEd will not need to acquire new rights-of-way, the lines do not traverse multiple jurisdictions, and the project can be completed with standard technology. It appears that the majority is adopting a new test so that they will now approve incentives only for the highest-voltage transmission lines, and only when those transmission lines use new rights-of-way, traverse multiple jurisdictions, and use advanced technology. Although the Commission may use these factors in its determination of whether to grant incentives, I wish to stress that while objective criteria are instructive in analyzing proposed projects, they are not determinative. Under certain circumstances, projects at the 138 kV level should receive incentives, even if they can be built without new rights-of-way, with existing technology, and without traversing multiple jurisdictions.

More generally, the majority finds that ComEd's proposed transmission projects are "activities undertaken in the ordinary course of business" and that some of the capital projects "appear to be maintenance activities." Based on these findings, the majority determines that ComEd has not shown that the projects present the risks or challenges that warrant incentives. My review indicates that these projects are not "maintenance activities" and are almost certainly not "ordinary". In particular, retiring a synchronous condenser at Zion and replacing that resource with Static VAR Compensators at Elmhurst is not maintenance, nor is it ordinary. Similarly, it is not maintenance, nor does it appear to be ordinary to install capacitors and other equipment to ensure that power can be

delivered into the ComEd region from elsewhere under conditions of simultaneous forced outages of numerous generators during peak load.<sup>1</sup>

The cost of maintenance is generally recovered in the year that it occurs, but transmission investments are capital costs that are typically recovered over forty or fifty years. The majority provides no evidence or reasoning for its belief that transmission investments should now be considered maintenance.

The majority provides no evidence or reasoning why the installation of Static VAR Compensators is ordinary. While such technology is not brand new, it would be new on the ComEd system, and such installations are rare across the nation. Further, the majority has no evidence that ComEd already ensures that power can be delivered into the ComEd region from elsewhere under conditions of simultaneous forced outages of numerous generators during peak load. If ComEd doesn't already meet this criterion, then meeting it for the first time is not "ordinary".

Notwithstanding the majority's inability to support its position with sufficient reasoning and evidence, I believe that ComEd needed to provide us with more information, and for that reason, I do not support granting incentives to ComEd in this proceeding. An applicant must place sufficient evidence into the record that will allow us to make an informed analysis of the project, including a comparison to other projects that will not receive incentives.

In particular, ComEd should have compared these projects to its other projects, especially those projects where it is not seeking incentives. For example, ComEd recently received approval from the Illinois Commerce Commission on a \$40 million transmission project designed to increase capacity and maintain reliability in the fast-growing suburbs of Chicago.<sup>2</sup> This Commission has not received a request for incentives on that project. In addition, the arrangement between EnergySolutions, Inc. and Exelon to decommission the Zion nuclear plant has been impacted by the financial crisis.<sup>3</sup>

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<sup>1</sup> See the ComEd application in this proceeding, Attachment A at pp.13-14, PP 27-28.

<sup>2</sup> See the order of the Illinois Commerce Commission in ICC Docket No. 07-0310, *Commonwealth Edison Co.*, issued on October 8, 2008.

<sup>3</sup> *Accelerated Decommissioning Projects Delayed by Nation's Financial Crisis*, Press Release issued by EnergySolutions, Inc. on October 14, 2008.

ComEd did not provide any evidence on whether this development has impacted the need to replace the synchronous condenser at Zion.<sup>4</sup>

The Commission should not be excessively rigid at a time when significant investment is needed in transmission infrastructure for increased reliability and better access to renewable energy sources. Each transmission project is unique to the area and system for which it is proposed, and such individual circumstances should be considered when deciding whether to grant incentives.

For these reasons, I respectfully dissent.

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Philip D. Moeller  
Commissioner

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<sup>4</sup> See the ComEd application in this proceeding, Attachment A at p. 9, P 18.