

135 FERC ¶ 61,144
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Atlantic Grid Operations A LLC
Atlantic Grid Operations B LLC
Atlantic Grid Operations C LLC
Atlantic Grid Operations D LLC
Atlantic Grid Operations E LLC

Docket No. EL11-13-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 19, 2011)

1. On December 20, 2010, Atlantic Grid Operations A LLC, Atlantic Grid Operations B LLC, Atlantic Grid Operations C LLC, Atlantic Grid Operations D LLC, and Atlantic Grid Operations E LLC (collectively, AWC Companies) filed a petition for declaratory order (Petition).¹ AWC Companies request approval of incentive rate treatment and approval of a return on equity for their investments in the Atlantic Wind Connection project (Project). As discussed below, the Commission will grant in part, and deny in part, AWC Companies' Petition.

I. Description of Petitioners

2. AWC Companies are indirectly owned by Google Inc., Good Energies, and Marubeni Corporation (collectively, the Atlantic Wind Equity Sponsors). AWC Companies state that each of AWC Companies will own one of the five phases of the

¹ AWC Companies state that they submit their filing pursuant to sections 205 and 219 of the Federal Power Act (FPA), but style their filing as a petition for declaratory order and request declaratory findings by the Commission. Section 35.7 of the Commission's regulations requires that all section 205 electronic filings be made through the eTariff system. AWC Companies did not file properly under section 35.7, and therefore its section 205 filing is rejected. 18 C.F.R. § 35.7 (2010).

Project for tax purposes and financing flexibility, but that the Project will function as a single, integrated system under the control of PJM Interconnection, LLC (PJM).

3. AWC Companies state that they have entered into a Development Services Agreement (DSA) with Atlantic Grid Development, LLC, the principals of which have been developing the Project for the past two and a half years and will be responsible for developing the Project on behalf of AWC Companies.² AWC Companies state that, under the DSA, Atlantic Grid Development, LLC will provide a full range of services, including, but not limited to, design and engineering, obtaining necessary permits and regulatory approvals, and financing and construction management for each phase of the Project, subject to the oversight of AWC Companies.

4. AWC Companies state that they do not and will not own or operate any transmission projects or electric assets other than the Project. AWC Companies state that, in particular, they will not develop or own offshore wind farms, but will provide open, non-discriminatory access to offshore wind energy projects. AWC Companies intend to both become independent transmission company (Transco)³ members of and turn over operational control of the Project to PJM.

II. Petition

A. Description of the Project

5. AWC Companies describe the Project as the first offshore transmission highway system in the United States. AWC Companies state that the Project will include four 320 kV direct current cables (two circuits of 1,000 MW each) that will run parallel to the Mid-Atlantic coast approximately 20 miles offshore for 250 miles, interconnecting with

² AWC Companies state that the Atlantic Wind Equity Sponsors may, in their full discretion, provide Atlantic Grid Investment Company, Inc. (AGI) the opportunity to acquire up to a 10 percent interest in AWC Companies. AWC Companies state that AGI was formed by the principals of Atlantic Grid Development, LLC to hold an interest in AWC Companies, subject to similar terms and conditions applicable to the other Atlantic Wind Equity Sponsors.

³ For purposes of transmission investment incentives, a Transco is a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility. *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 201 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

the existing land-based transmission system in New Jersey, Delaware, Maryland, and Virginia. AWC Companies state that, when finished, the Project will include a total of 12 offshore platform-based converter stations (converting alternating current (AC) from wind generators to direct current (DC) for transmission) and eight onshore DC to AC terminals at seven different locations. AWC Companies state that both the offshore converter stations and the onshore terminals will make use of modularized Voltage Sourced Converters (VSC) which convert power between AC and DC and which provide the ability to flow power in different directions. AWC Companies describe the Project's multi-terminal design as allowing system operators to control the power flow to various terrestrial load centers based upon need. AWC Companies state that the Project will be capable of both interconnecting up to 6,000 MW of offshore wind power and transmitting up to 2,000 MW of power and capacity between its terrestrial terminals.

6. AWC Companies expect that the Project will cost at least \$5 billion and that the Project could be fully operational by 2020, with the first of five phases potentially in service by 2016. AWC Companies state that the construction of the first phase of the Project between Indian River, Delaware and southern New Jersey is planned to begin in 2013, with completion and commencement of commercial service in 2016, and the second phase of the Project is planned to be operational in 2017. AWC Companies state that they plan to seek inclusion of the Project in the PJM Regional Transmission Expansion Plan (RTEP).

B. Requested Incentives

7. AWC Companies request that the Commission approve the following rates and incentives pursuant to FPA section 219⁴ and Order No. 679,⁵ and its general rate authority pursuant to FPA section 205⁶: return on equity (ROE) adders totaling 300 basis points, an incentive-based ROE of 13.58 percent (inclusive of the 300 basis point ROE adders), regulatory asset accounting treatment, 100 percent of Construction Work in Progress (CWIP), abandoned plant recovery, a hypothetical capital structure based on 60 percent equity and 40 percent debt, and approval for the use of a formula rate structure.

⁴ 16 U.S.C. § 824s (2006).

⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222.

⁶ 16 U.S.C. § 824d (2006).

1. Return on Equity Adders

8. AWC Companies request four ROE adders for a total of 300 basis points. First, AWC Companies request a 50 basis point adder based on Regional Transmission Organization (RTO) participation. AWC Companies reiterate that they expect to place the Project under the operational control of PJM. AWC Companies assert that the Commission's long-standing policy has recognized that 50 basis points is an appropriate adder for a utility joining an RTO.⁷

9. Second, AWC Companies request a 50 basis point adder for Transco status. AWC Companies assert that the Commission has indicated that 50 basis points is an appropriate adder for Transcos.⁸

10. Third, AWC Companies request a 50 basis point adder for the use of advanced technologies. AWC Companies assert that this adder is consistent with other advanced technology adders that the Commission has approved.⁹ AWC Companies contend that the Project's multi-terminal VSC configuration will be the first of its kind in the world and entails significant technical challenges. Specifically, AWC Companies argue that operating a multi-terminal high-voltage direct current (HVDC) system requires simultaneous control of and balance between the numerous nodes in order to maintain voltage, coordinate the withdrawal of power, rapidly detect and clear faults, and rapidly redistribute power needs after a fault, all while accounting for delays in both communication and hardware response. Furthermore, AWC Companies assert that because this will be the first-ever multi-terminal VSC system, new control functions still need to be developed to achieve an operational multi-terminal design. AWC Companies also state that the use of ± 320 kV XLPE-insulated HVDC cable will not only be the highest rated undersea XLPE cable in service, but will exceed any such existing cable rating by at least 50 percent in both voltage and power.

⁷ Petition at 73 (citing 16 U.S.C. § 824s; *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (*PATH*) (granting 50-basis points for joining an RTO); *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168 (2007) (granting 50 basis points for joining an ISO)).

⁸ *Id.* at 75 (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 86 (2009) (*Green Power Express*); *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 132 (2010) (*Primary Power*)).

⁹ *Id.* at 73 (citing *Western Grid Development, LLC*, 130 FERC ¶ 61,056, at P 97 (2010) (*Western Grid*); *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007); *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044 (2008)).

11. Finally, AWC Companies request a 150 basis point adder based on the relative complexity and special risks and challenges of the Project. AWC Companies assert that the Project is unprecedented and presents numerous financial, regulatory, and technical challenges. AWC Companies state that they will construct the Project using cutting-edge technology that will provide significant benefits to PJM customers. AWC Companies further argue that a 150 basis point adder for complexity of the Project is consistent with Commission precedent.¹⁰

2. Incentive Return on Equity

12. AWC Companies request an up-front incentive-based ROE of 13.58 percent, inclusive of the 300 basis point adders noted above.

13. AWC Companies state that they calculated a range of reasonableness, consistent with Commission precedent, using a Discounted Cash Flow (DCF) analysis of a comparable, nation-wide group of electric utilities.¹¹ AWC Companies state that their DCF analysis results in a zone of reasonableness with a range between 6.97 percent and 14.58 percent, a median of 9.82 percent, and a midpoint of 10.77 percent. However, AWC Companies acknowledge that they did not rely on either the median or the midpoint of the DCF analysis to determine the incentive ROE, but instead chose an incentive ROE which is 100 basis points below the upper end of the nationwide sample's range of reasonableness of 14.58 percent. AWC Companies support this proposed incentive ROE by arguing that their demonstration is consistent with *Atlantic Path 15* and *Startrans IO*, in which the applicants demonstrated that their proposed ROE fell in the upper end of their respective zones of reasonableness.¹² AWC Companies also attempt to

¹⁰ *Id.* at 74 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 56 (2009) (*Pioneer*); *Tallgrass Transmission*, 125 FERC ¶ 61,248, at P 58 (2008) (*Tallgrass*)).

¹¹ AWC Companies' proposed national proxy group includes: Allele Inc.; Alliant Energy Corp.; American Electric Power Co. Inc.; Avista Corp.; CenterPoint Energy Inc.; CH Energy Group Inc.; Cleco Corp.; CMS Energy Corp.; Consolidated Energy, Inc.; Dominion Resources, Inc.; DTE Energy Co.; Duke Energy Corp.; Empire District Electric Co.; Great Plains Energy Inc.; IDACORP Inc.; Integrys Energy Group Inc.; MGE Energy Inc.; NextEra Energy, Inc.; OGE Energy Corp.; PG&E Corp.; Pinnacle West Capital Corp.; Portland General Electric Co.; Progress Energy Inc.; SCANA Corp.; Sempra Energy; Southern Co.; TECO Energy, Inc.; Vectren Corp.; Westar Energy Inc.; Wisconsin Energy Corp.; and Xcel Energy Inc.

¹² Petition at 72 (citing *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135 (2008), *order on reh'g*, 133 FERC ¶ 61,153 (2010) (*Atlantic Path 15*); *Startrans IO, LLC*, 122 FERC ¶ 61,306 (2008), *order on reh'g*, 133 FERC ¶ 61,154 (2010) (*Startrans IO*)).

justify the 13.58 percent incentive ROE by stating that they conducted an analysis of the base-level ROE formula rates granted by the Commission for member companies in PJM. AWC Companies state that this range has a median of 11.0 percent and that adding 300 basis points to a base ROE of 11.0 percent generates an incentive ROE that is still within the nationwide sample's range of reasonableness.

14. AWC Companies state that they will enter the commercial debt market as new, stand-alone entities seeking to obtain financing for the Project with no other assets or business to support such financing. AWC Companies state that the requested incentive ROE will support AWC Companies' efforts to construct needed transmission infrastructure in a cost effective and timely manner and facilitate AWC Companies' ability to raise capital on reasonable terms. AWC Companies state that they are requesting that the Commission provide an up-front ROE determination so as to provide the necessary regulatory certainty needed to secure financing for the Project.

3. Regulatory Asset Accounting Treatment

15. AWC Companies seek authorization to establish an initial regulatory asset consisting of all Project expenses that are not capitalized and included in CWIP prior to the date their rate structure becomes effective. AWC Companies state that the regulatory asset would include such expenses as attorney and consultant fees, entity formation costs, administrative expenditures, taxes (other than income taxes), travel costs, and costs incurred to obtain permits, approvals, and licenses needed to proceed to construction (collectively, pre-construction costs). AWC Companies also seek authorization to amortize the regulatory asset, including carrying costs, over five years for cost recovery purposes, beginning when the Project is included in the PJM RTEP. AWC Companies seek permission to accrue carrying charges on the initial regulatory asset balance utilizing the proposed hypothetical capital structure and incentive ROE from the date that the Commission accepts the regulatory asset until the date the regulatory asset is fully amortized.¹³ AWC Companies state that once any portion of the Project facilities is placed into service, carrying charges would be accrued at a rate equivalent to the weighted average cost of capital of AWC Companies, adjusted annually based on the actual weighted average cost of capital calculated in AWC Companies' formula rate template for that year.¹⁴ AWC Companies seek acceptance of the right to establish the regulatory asset within 61 days from the date of their Petition.

¹³ *Id.* at 59.

¹⁴ AWC Companies seek permission to use the Allowance for Funds Used During Construction (AFUDC) rate for accrual purposes until the regulatory asset is included in rate base. Petition at 12 (*citing* *PATH*, 122 FERC ¶ 61,188 at P 9 n.8; *Green Power Express*, 127 FERC ¶ 61,031 at P 60).

16. After the initial regulatory asset begins to be amortized, the AWC Companies state that they will incur additional pre-construction costs associated with engineering studies and development. AWC Companies propose to create a new vintage year of regulatory assets each year to include these pre-construction costs until all development activities are complete. AWC Companies state that each vintage year's regulatory asset would be separately maintained and identified such that carrying charges will accrue monthly and will first be included in rate base at the beginning of the immediately following year. AWC Companies propose to amortize each vintage year regulatory asset over five years for cost recovery purposes. AWC Companies also request approval to accrue carrying charges on any items properly includable in the revenue requirement, such as CWIP and the regulatory asset, until they have a mechanism to charge their revenue requirement under the formula rates to be filed with the Commission. AWC Companies state that the Commission has previously allowed transmission entities to accrue carrying charges until the amounts are included in rate base.¹⁵

17. AWC Companies assert that the regulatory asset incentive is needed to address the Project's risks and challenges, particularly given the substantial investments needed to be made during the development stage of the Project. AWC Companies contend that allowance of a regulatory asset provides investors with assurance that the project costs incurred prior to the Project being in service can be recovered. AWC Companies state that the regulatory certainty created by the regulatory asset is likely to improve the access to capital and lower the cost of debt, which is beneficial to AWC Companies and their customers because the regulatory asset would reduce interest expense, improve coverage ratios, and facilitate the financing of the Project on good terms. AWC Companies state that recognition of these costs as a regulatory asset is appropriate because the costs would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are ones for which future recovery is probable.

4. Construction Work in Progress

18. AWC Companies request inclusion of 100 percent of CWIP in rate base for the Project. AWC Companies state that the Project is a major transmission project costing over \$5 billion that requires large capital expenditures during the construction period. AWC Companies assert that the CWIP incentive is essential to support AWC Companies' credit ratios and will help to ensure adequate cash flow. AWC Companies state that earning a return on 100 percent of CWIP during construction would enhance the probability that AWC Companies would quickly obtain investment grade credit ratings and would allow AWC Companies to begin generating cash with which to service debt, reducing the required amount of external capital that AWC Companies would be required

¹⁵ Petition at 61 n. 218 (citing *Green Power Express*, 127 FERC ¶ 61,031 at P 59-61, 107-109).

to raise. In addition, AWC Companies state that the CWIP incentive can avoid the “rate shock” that can occur when large-scale transmission projects come on-line.

5. Abandoned Plant Recovery

19. AWC Companies request approval for the recovery of 100 percent of prudently incurred costs associated with the Project in the event the Project is abandoned for reasons outside of AWC Companies’ control including, but not limited to, failure to: (1) have the Project included in the PJM RTEP; (2) obtain regulatory approvals; or (3) obtain the rights-of-way necessary to route the Project. AWC Companies request an effective date of 61 days from the date of filing for the abandoned plant recovery incentive.

20. AWC Companies assert that the Project faces numerous financial, regulatory, and technical uncertainties, and that the abandoned plant incentive would reduce uncertainty for investors. AWC Companies note that the Project has yet to be approved in the PJM RTEP or obtain the necessary federal and state permits to construct the Project. In addition, AWC Companies state that there is the risk that delays in the development of the offshore wind industry due to market and regulatory changes will affect the development of the Project. AWC Companies contend that authorizing the abandoned plant incentive will protect AWC Companies from losing prudently-incurred investments and will enhance access to capital at reasonable terms.

6. Hypothetical Capital Structure

21. AWC Companies request permission, until such time as any phase of the Project is placed into service, to use a hypothetical capital structure based on 60 percent equity and 40 percent debt. Thereafter, AWC Companies propose to use their actual capital structure, provided that the equity ratio does not exceed 60 percent of the capital structure. AWC Companies state that their actual capital structure is expected to fluctuate during the development and construction phases of the Project, and that use of a hypothetical structure will provide AWC Companies with regulatory certainty, support their efforts to obtain investment grade credit ratings, and smooth out the wide swings in the actual debt to equity ratio that can result from the cash demands of the construction process.

C. Formula Rate

22. AWC Companies request that the Commission approve the use of a formula rate structure under which AWC Companies will ultimately recover their revenue requirement for the Project through the PJM Open Access Transmission Tariff (PJM Tariff). AWC Companies state that they are not seeking approval of a specific formula at this time, only a Commission ruling that a forward-looking formula rate structure with a true-up mechanism may be used by AWC Companies to recover the Project’s revenue

requirement. AWC Companies state that they expect to make a filing under FPA section 205 in the late spring or summer of 2011 requesting approval for the actual formula to be implemented.

D. Eligibility for Incentives

23. AWC Companies acknowledge that, in order to receive incentives under Order No. 679, an applicant must show that its project is eligible for incentives under FPA section 219 by showing that the Project either ensures reliability or reduces the cost of delivered power by reducing transmission congestion. AWC Companies further acknowledge that an applicant must also demonstrate that there is a nexus between the incentive sought and the investment being made and that the total package of incentives requested is tailored to address the demonstrable risks and challenges that the applicant faces in undertaking the Project. Finally, as acknowledged by AWC Companies, the resulting rates must be just and reasonable.

1. Section 219 Requirement

24. AWC Companies state that the Project has not yet been included in the PJM RTEP, and thus is not entitled to the rebuttable presumption established under Order No. 679. AWC Companies note that the Commission has previously found that ruling on a request for incentives pursuant to Order No. 679 does not prejudice the findings of a particular transmission planning process. AWC Companies state that they are submitting the Petition now because the Project is consistent with: (1) regional transmission planning goals; (2) the Commission's Notice of Proposed Rulemaking regarding Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities;¹⁶ and (3) state and national planning and policy objectives related to offshore wind energy and economic development. AWC Companies also state that, although they plan to seek inclusion of the Project in the PJM RTEP, they request that the Commission find that the Project is eligible for incentives based on the factual record in AWC Companies' Petition.

25. AWC Companies contend that the testimony from the Brattle Group included in the Petition demonstrates that the Project reduces the cost of congestion. AWC Companies explain that the Brattle Group analyzed the economic benefits of the Project based on a simulation using Ventyx's PROMOD model that started with a 2016 PJM Base Case, which included forecasted load growth and planned additions to transmission and generation but did not include unplanned renewable generation to meet growing

¹⁶ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, 75 FR 37884 (Jun. 30, 2010), FERC Stats. & Regs. ¶ 32,660 (2010) (Transmission Planning NOPR).

Renewable Portfolio Standards (RPS) or renewable energy goals. AWC Companies state that the Brattle Group study built on the 2016 PJM Base Case by simulating the addition of the Project and related offshore wind generation and compared this with an alternative scenario in which wind plants are interconnected to shore only via individual radial lines. AWC Companies state that the Brattle Group also conducted a sensitivity analysis of the Project without wind generation.

26. AWC Companies assert that the results of the Brattle Group's analysis demonstrate that the Project will reduce congestion whether or not there is offshore wind generation build-out, and that integration of wind generation using the Project produces greater benefits, including congestion benefits, than interconnection of wind generation using a radial approach. AWC Companies also note that in addition to transmitting the capacity of offshore wind, the Project will be able to transmit up to 2,000 MW of capacity between its terrestrial terminals from unconstrained southern Virginia northward into the constrained Eastern Mid-Atlantic Area Council (EMAAC) region of PJM.

27. AWC Companies assert that independent assessments of the Project by the Brattle Group and Teshmont Consultants LP demonstrate that the Project will not raise reliability concerns and instead will create significant reliability and operational benefits. AWC Companies state that some AC system overloads would occur but their relief would require only minor AC system upgrades. AWC Companies contend that the Project would provide increased path flow capability, operational flexibility, asynchronous operation and black-start capability, reduced system losses, and fast load restoration. Finally, AWC Companies assert that the Brattle Group analysis concludes that the Project would likely reduce the long-term need for costly enhancements to the existing onshore transmission system, and that the Project provides more reliable delivery of offshore wind power than individual radial connections by being able to redirect power away from landing points with reliability-related transmission constraints.

2. Order No. 679 Nexus Requirement

28. AWC Companies acknowledge that the Order No. 679 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. AWC Companies further acknowledge that in evaluating whether the requested incentives satisfy this standard, the Commission considers whether: (1) the project is routine; and (2) whether the package of incentives requested is designed to overcome specific risks and challenges that the applicant faces. AWC Companies assert that the scope, effects, risks, and challenges of the Project demonstrate that the Project is not routine, and that the incentives requested are tailored to the specific risks and challenges of the Project.

a. Scope

29. AWC Companies state that nowhere else has an offshore backbone transmission system been proposed to connect a large quantity of offshore wind turbine capacity while also improving transmission weaknesses in a National Interest Electric Transmission Corridor (NIETC). AWC Companies expect that the Project will allow for the interconnection of wind farms located in wind energy areas identified by the U.S. Department of the Interior and state offshore wind task forces as preferred for wind farm development. AWC Companies state that the Project is groundbreaking in numerous dimensions, including that it is expected to cost \$5 billion, span from southern Virginia to northern New Jersey, use cutting-edge technology to connect 6,000 MW of location constrained renewable resources to multiple points on the terrestrial grid, and test new regulatory and planning mechanisms.

b. Effects

30. AWC Companies assert that the Project provides population centers in the Mid-Atlantic region with efficient access to substantial amounts of offshore wind power. AWC Companies further assert that the Project supports federal and state environmental and renewable energy policy objectives, including RPS targets, and enhances the competitive regional electric market by increasing supply options. AWC Companies state that the benefits of the Project include: (1) reducing existing and anticipated congestion in a NIETC by allowing for flows that are not possible under the current grid configuration; (2) improving reliability by strengthening the entire eastern portion of the PJM grid with a controllable HVDC line; (3) facilitating the interconnection of new offshore wind generation that would otherwise place additional stress on the terrestrial grid; and (4) providing significant economic, public policy, and environmental benefits.

31. AWC Companies contend that the Project advances policy goals better than a project-by-project tie line approach. AWC Companies argue that the Project creates a one-stop process for landing-point selection, state environmental siting, and PJM transmission planning, and requires fewer landing points. AWC Companies also estimate that the Project's benefits are \$9-15 billion more than the benefits from interconnecting, with radial interconnections, the same amount of offshore wind turbine capacity development.¹⁷

¹⁷ AWC Companies explain that the \$9-15 billion of quantified benefits includes the avoided costs of radial high-voltage alternating current (HVAC) transmission links to shore, general scale-related economic benefits in turbine manufacturing and other equipment, congestion-relief benefits, and capacity market benefits. Petition at 43.

32. AWC Companies state that the Project will facilitate the integration of offshore wind power into the PJM grid on the timetable necessary to meet state RPS standards and other state and federal renewable energy goals. AWC Companies also state that the Project will reduce emissions of carbon dioxide, provide national security benefits, and promote an offshore wind industry of sufficient scale to create more clean energy jobs and greatly reduce the cost of offshore wind energy.

c. Risks and Challenges

33. AWC Companies state that the Project faces significant financial risk. AWC Companies state that investment, especially with cash, in a long-lived, inflexible asset like the Project is extraordinarily risky, and that these risks could result in an increase in the cost of debt for AWC Companies.

34. AWC Companies state that the Project faces regulatory risks. AWC Companies contend that the Project needs approval at the federal level,¹⁸ as well as various authorizations from Virginia, Maryland, Delaware, and New Jersey. AWC Companies contend that the number of regulatory authorities having jurisdiction over the project increases the risk that the Project may not be approved, may be approved with substantial delay, or may be approved subject to restrictive conditions, and conclude that the long lead time to secure the regulatory approvals adds risk for which investors will expect compensation.

35. AWC Companies further state that the Project faces the risk of not being included in the PJM RTEP because the PJM RTEP process does not specifically provide for the inclusion of transmission facilities designed to accomplish public policy goals, including the integration of offshore wind.

36. Finally, AWC Companies state that the Project presents technological risks. AWC Companies note that no construction of a multilateral HVDC system of the Project's magnitude has been done before and thus such construction requires specialized knowledge, especially with regards to the advanced technologies used in the Project.

¹⁸ AWC Companies state that federal authorizations will be required from, among others, Department of the Interior, U.S. Army Corps of Engineers, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, U.S. Environmental Protection Agency, U.S. Department of Homeland Security, U.S. Coast Guard, and U.S. Customs and Border Protection. *See McCoy Testimony, Exhibit No. AWC-100 to Petition, at 16.*

d. Total Package of Incentives

37. AWC Companies state that they have carefully selected the requested incentives to address the unique risks and challenges presented by the Project, and that each incentive is designed to address a particular risk. AWC Companies believe that the package of incentives will enable them to attract capital on reasonable terms.

E. Technology Statement

38. AWC Companies' technology statement consists of testimony by the Director of Operations, High Voltage Systems, at Siemens Energy, Inc., and related exhibits. AWC Companies state that the Project makes use of several advanced technologies listed in section 1223(a) of EPCRA 2005,¹⁹ including: (1) underground cables; (2) advanced conductor technology; (3) modular equipment; (4) high voltage DC technology; (5) enhanced power device monitoring; (6) direct system state sensors; and (7) fiber optic technologies. Specifically, AWC Companies state that the proposed control technology and VSCs will permit, for the first time, the operation of a multi-terminal VSC-based DC network with more than one injection point and one withdrawal point, all operating simultaneously and in balance. In addition, AWC Companies state that the ± 320 kV XLPE-insulated HVDC cable will be the highest rated undersea XLPE cable in service and will exceed any existing cable rating by at least 50 percent in both voltage and power.

III. Notice of Filing and Responsive Pleadings

39. Notice of the filings was published in the *Federal Register*, 76 Fed. Reg. 1,153 (2011), with protests and interventions due on or before January 19, 2011. On January 6, 2011, the Indicated PJM Transmission Owners²⁰ filed a motion for extension

¹⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1223, 119 Stat. 594 (2005) (EPCRA 2005).

²⁰ The Indicated PJM Transmission Owners are: American Electric Power; Baltimore Gas and Electric Company; Metropolitan Edison Company; The Dayton Power and Light Company; Duquesne Light Company; Metropolitan Edison Company, Pennsylvania Electric Company and Jersey Central Power & Light Company, collectively doing business as First Energy; Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power, and Trans-Allegheny Interstate Line Company; Old Dominion Electric Cooperative; Pepco Holdings, Inc., and its affiliates, Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric

(continued...)

of time to file motions to intervene, comments, and protests and for a shortened answer period. On January 10, 2011, the Indicated PJM Transmission Owners filed a modification of their request for an extension of time. On January 11, 2011, the Commission issued a notice of an extension of time for filing motions to intervene, comments, and protests to and including January 31, 2011.

40. Numerous parties filed timely notices of intervention, motions to intervene, or motions to intervene with comments and/or protests. In addition, two parties filed untimely motions to intervene. A full listing of those parties is set forth in Appendix A.

41. On February 15, 2011, AWC Companies filed an answer to the protests. On March 2, 2011, Consumer Advocates filed an answer to AWC Companies' answer. On March 7, 2011, AWC Companies filed an answer to Consumer Advocates' answer.²¹ On March 18, 2011, Joint Protestors filed an answer to AWC Companies' answer.

IV. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²² the timely, unopposed interventions serve to make the entities that filed them parties to this proceeding. We will grant the motion of American Electric Power Service Corporation and the combined motion of American Public Power Association and National Rural Electric Cooperative Association to intervene out-of-time given their interests in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²³ prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority. We will accept AWC Companies', Consumer Advocates', and Joint Protestors' answers because they have provided information that assisted us in our decision-making process.

Company; UGI Utilities, Inc., and Virginia Electric and Power Company, doing business as Dominion Virginia Power.

²¹ In its answer, AWC Companies argue that Consumer Advocates' answer does not raise any new facts or evidence and should be rejected.

²² 18 C.F.R. § 385.214 (2010).

²³ 18 C.F.R. § 385.213(a)(2) (2010).

B. Substantive Matters

44. We will grant in part, and deny in part, the Petition, as discussed below.

45. In 2005, Congress added section 219 of the FPA, directing the Commission to establish, by rule, incentive-based rate treatments for the transmission of electric energy in interstate commerce by public utilities.²⁴ The Commission subsequently issued Order No. 679, which sets forth the criteria by which a public utility may obtain transmission rate incentives pursuant to section 219.

46. Order No. 679 interpreted section 219 to require that an applicant seeking incentive rate treatment for transmission infrastructure investments demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.²⁵ The Commission also found in Order No. 679 that an applicant must demonstrate a nexus between the incentives being sought and the investment being made.²⁶ Therefore, an applicant must satisfy both the section 219 requirement and the nexus test to receive incentives.

1. Section 219 Requirement

a. Protest

47. Protestors generally argue that AWC Companies' request for incentives is premature and should be rejected because sponsors have not yet submitted the Project to PJM for inclusion in the RTEP and that the Petition prejudices this planning process. JCA argues that the Petition is also premature because it is unclear from the filing whether AWC Companies currently have either public utility or Transco status. Protestors argue that if PJM evaluates the Project and determines that the Project is not the best way to satisfy a demonstrated regional need, the sponsors can collect the money they have already spent on the Project and leave ratepayers to bear the costs.

48. If the Commission decides to grant any of the incentives, protestors urge the Commission to grant the incentives conditioned on the Project's inclusion in the PJM RTEP. Consumer Advocates state that the Commission should make clear that no incentive payment by ratepayers will be due unless and until the Project is approved through a regional planning process.

²⁴ 16 U.S.C. § 824s.

²⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²⁶ *Id.* P 48.

49. Protestors assert that the Project is too speculative in nature to provide the Commission with sufficient information upon which to grant incentives under section 219. Protestors contend that AWC Companies have not provided any reliable basis to conclude that 6,000 MW of offshore wind generation will materialize and need the Project to interconnect with the onshore transmission grid. Protestors also argue that AWC Companies' claims regarding benefits of the Project with no wind do not support granting incentives because AWC Companies' testimony indicates that it is highly unlikely that the Project would be constructed without the development of offshore wind generation. PJM Owners argue that none of the alleged reliability benefits of the Project involve the resolution of existing reliability problems that PJM has identified. In addition, protestors argue that the analyses are flawed because of: (1) incomplete data; (2) the comparison to radial wind development makes unsupported assumptions; and (3) mechanisms to hedge the impact of system congestion are not considered. PJM Owners also note that in the absence of AC system upgrades, the ability of any offshore wind generation to deliver its output to the PJM grid may be limited. Finally, Joint Protestors argue that the Petition is deficient because it does not provide a meaningful substitute for the benefits of using a regional transmission planning process for meeting the section 219 requirements and because it does not demonstrate that the Project is the better solution compared to other projects.

50. PJM Owners also request that the Commission reject AWC Companies' application as inconsistent with the PJM Tariff because the PJM Tariff provides that all costs of transmission additions needed to interconnect new generation to the grid are allocated to the interconnecting generators, not to transmission customers serving load in PJM. PJM Owners claim that AWC Companies' testimony and website make it clear that the Project would not be built but for the opportunity to connect to offshore wind generation, and therefore AWC Companies may only seek to collect approved incentives from generators that choose to use the Project to interconnect to the PJM transmission system. If the Commission approves any of the requested rate incentives, PJM Owners assert that the Commission should confirm that such approval does not authorize AWC Companies to charge such incentives to PJM transmission customers in a manner inconsistent with the cost responsibility and allocation rules in the PJM Tariff. Further, PJM Owners argue that if AWC Companies abandon the Project for any reason, the costs of pursuing the Project cannot be collected from transmission customers. Similarly, PSEG Companies assert that Schedule 12 of the PJM Tariff sets forth the assignment of cost responsibility for RTEP projects and is the only rate design mechanism in PJM that would enable recovery of transmission costs from a broad set of regional customers. Therefore, PSEG Companies claim that recovery of any costs of the Project from PJM customers must necessarily be conditioned on first having the Project approved in the PJM RTEP.

51. Some commenters express support for the Project because they assert that the Project will spur development to promote renewable energy, reduce permitting and

planning barriers to offshore wind development, assist states in achieving their policy goals, and relieve congestion. Deepwater Wind Holdings, LLC notes that it does not oppose the Project, but states that some of the claimed benefits of the Project are not attributable to the Project in isolation, but rather will result generally from the future construction of offshore wind generation.

b. Answer

52. AWC Companies argue in their answer that the Petition is not premature because the Commission has not mandated that a proposed project be approved in a regional transmission plan before its sponsor may file for transmission rate incentives. AWC Companies contend that a finding on the Petition will not prejudice the PJM RTEP process.

53. AWC Companies also respond that the Project is not too speculative to meet the section 219 requirement. AWC Companies argue that state and federal requirements and other initiatives to develop offshore wind, when viewed in conjunction with the actions of offshore wind developers, indicate that there will be a substantial amount of offshore wind developed along the Mid-Atlantic Coast in the coming years. Furthermore, AWC Companies state that there is already in PJM's interconnection queue 2,300 MW of offshore wind capacity proposed to be sited off the coast of the eastern PJM States. AWC Companies also argue that the reliability and congestion relief benefits of the Project must be analyzed in the context of the Project's ability to bring offshore wind capacity to the grid, as the Commission did in prior cases.²⁷

54. Finally, AWC Companies argue that protestors' concerns regarding cost allocation issues are irrelevant to this proceeding and do not represent a barrier to granting incentives at this time. AWC Companies state that, in rejecting similar claims made in other incentive rate proceedings, the Commission has made clear that resolution of cost allocation issues is not a prerequisite for transmission rate incentives under section 219.²⁸ Finally, AWC Companies assert that granting incentives will not prejudice the appropriate cost allocation for the Project under the PJM Tariff.

²⁷ AWC Companies Feb. 15, 2011 Answer at 21 (citing *Green Power Express*, 127 FERC ¶ 61,031 at P 38-41; *Pioneer*, 126 FERC ¶ 61,281 at P 37-39; and *Tallgrass*, 125 FERC ¶ 61,248 at P 41).

²⁸ *Id.* at 10 (citing *Tallgrass*, 125 FERC ¶ 61,248 at P 43; *Central Maine Power Co.*, 125 FERC ¶ 61,182, at P 41-42 (2008) (*Central Maine*); *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 19, 24, 60 (2008) (*NYRI*)).

55. In their answer, Joint Protestors reiterate that AWC Companies have failed to demonstrate that the wind generation justifying the Project will materialize, and assert that AWC Companies have not identified a single offshore wind generation project that has committed to use the Project in order to reach the onshore transmission grid. Joint Protestors state that several of the offshore wind generation projects to which AWC Companies point for support are in the initial planning stages, have been delayed, or are planned to interconnect to the transmission grid through means other than the Project. Joint Protestors also assert that the Commission should reject the Petition because AWC Companies have not actually committed to the sort of regional planning determination of need and benefits for the Project that the Commission prefers and have not offered a sufficient substitute for such an analysis.

c. **Commission Determination**

56. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.²⁹ Order No. 679 establishes a rebuttable presumption that this standard is met if the 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 if a project has received construction approval from an appropriate state commission or state siting authority.³⁰ However, the Commission has stated that a project that does not qualify for the rebuttable presumption may nevertheless satisfy the FPA section 219 standards if the project sponsor presents a factual record supporting a finding that the project is needed to maintain reliability or reduce congestion.³¹ In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals demonstrating that the FPA section 219 criteria are met.³² The Commission has also stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.³³

²⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

³⁰ *Id.*

³¹ *Id.* P 57.

³² See *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007); see also *Green Power Express*, 127 FERC ¶ 61,031 at P 41.

³³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

57. AWC Companies are not entitled to a rebuttable presumption that the Project satisfies the requirements of section 219, since the Project has not been approved in PJM's planning process or received construction approval from the relevant state authorities. However, AWC Companies have included studies in their filing attempting to support their assertion that the Project ensures reliability and reduces congestion. We have evaluated these studies and find that AWC Companies have not demonstrated that the Project will ensure reliability or reduce the price of delivered power by reducing congestion.

58. The Commission has previously granted requests for rate incentives for projects that have not relied on section 219's rebuttable presumptions. However, in those cases, the applicants clearly demonstrated reliability or congestion concerns that the proposed project would address and supported such assertions with comprehensive and clear data, as well as internal and, in several cases, external studies. For example, in *Green Power Express*,³⁴ the Commission found the project met the section 219 requirement based on the studies the applicant submitted that showed the impact of the proposed transmission project on the existing network, including an engineering affidavit, and that demonstrated the project's ability to relieve congestion on Department of Energy-identified congested paths. In addition, the applicant in that proceeding submitted an outside study that confirmed the applicant's own results. In *Pioneer*,³⁵ we found that the applicant had provided sufficient information to demonstrate the project's reliability and congestion benefits, such as comprehensive power flow analyses that the Commission could use to verify the applicant's contention that its project ensured reliability or reduced the cost of delivered power by reducing congestion. Finally, in *Tallgrass*,³⁶ we concluded that the applicant had satisfied the section 219 requirement based on both the data presented in the filing and as a result of the project's similarity to other transmission projects studied by the Southwest Power Pool, the relevant regional transmission organization.

59. By contrast, in several recent cases, applicants have neither relied on Order No. 679's rebuttable presumptions nor made a sufficient independent demonstration that the proposed projects would ensure reliability or reduce the price of delivered power by reducing congestion. In *Primary Power*,³⁷ the Commission noted concerns regarding the economic and feasibility studies provided by the applicants and approved certain of the incentives requested by the applicant conditioned on PJM including the project in the

³⁴ 127 FERC ¶ 61,031 at P 41.

³⁵ 126 FERC ¶ 61,281 at P 37.

³⁶ 125 FERC ¶ 61,248 at P 42.

³⁷ 131 FERC ¶ 61,015 at P 92-94.

RTEP as a baseline reliability or economic project, stating that the PJM planning process may adequately consider the reliability and congestion-relieving impacts of the proposed projects. In *Western Grid*,³⁸ *SoCal Edison*,³⁹ and *Green Energy Express*,⁴⁰ the Commission also conditionally granted certain of the incentives requested by each applicant contingent on approval of each project in the California Independent System Operator Corp. (CAISO) transmission planning process, stating that the CAISO transmission planning process may adequately consider the reliability and congestion-relieving impacts of the proposed projects. In *Western Grid*, the Commission found that the affidavits and supporting exhibits submitted by the applicant did not provide substantive analysis of reduced congestion or costs and did not identify reliability issues that the project was supposed to address. In *SoCal Edison*, the Commission found that the system impact studies provided by the applicant were not sufficiently comprehensive to satisfy the requirements of section 219. In *Green Energy Express*, the Commission found that the economic and feasibility studies supplied by the applicant contained minimal details and could not support a determination that the project ensured reliability or reduced the price of delivered power by reducing congestion.

60. Here, AWC Companies have not provided the Commission with the necessary support to determine whether the Project ensures reliability or reduces the price of delivered power by reducing congestion. The congestion study submitted by AWC Companies is significantly less comprehensive than the above-noted studies that the Commission found sufficient to satisfy the section 219 requirement. The congestion study relies heavily on the future interconnection of large quantities of offshore wind generation in concluding that the Project will reduce congestion. However, while there may be substantial development of offshore wind generation along the Mid-Atlantic coast in the future as AWC Companies suggest, AWC Companies do not adequately support their contention that wind generation will be built that will connect to the Project. AWC Companies' description of existing wind generation in the PJM queue and their description of federal, regional, state, and local programs that promote renewable generation do not constitute sufficient support since AWC Companies have not demonstrated that any wind generation will interconnect to the Project. In addition, the congestion study does not provide sufficient support for AWC Companies' assertion that the Project will provide congestion benefits in the absence of interconnected offshore

³⁸ 130 FERC ¶ 61,056 at P 67-71.

³⁹ *Southern California Edison Co.*, 129 FERC ¶ 61,246, at P 27-28 (2009) (*SoCal Edison*).

⁴⁰ *Green Energy Express, LLC*, 129 FERC ¶ 61,165 at P 27-28, *order on reh'g*, 130 FERC ¶ 61,117 (2010) (*Green Energy Express*).

wind generation. For example, the congestion study only refers to two lines where congestion benefits might be felt if the Project were built absent wind generation and includes no evidence in support of such findings, such as power flow data including pre-project and post-project congestion on these lines.

61. The reliability study submitted by AWC Companies is also significantly less comprehensive than the above-noted studies that the Commission found sufficient to satisfy the FPA section 219 requirement. As with AWC Companies' congestion study, AWC Companies' reliability study relies heavily on the existence of wind generation interconnecting to the Project and provides little support to show that the Project ensures reliability absent wind generation. Also, whereas previously submitted reliability studies have provided comprehensive power flow analyses including stability studies and short-circuit studies, the study provided by AWC Companies only contains a list of thermal overloads and a loss analysis. Finally, while AWC Companies note certain reliability concerns raised by the Project that will need to be addressed, AWC Companies do not specify how they will resolve those issues.

62. However, because the PJM RTEP may adequately consider the reliability and congestion-relieving impacts of the Project, we will approve incentives as discussed herein conditioned upon the Project being included in the PJM RTEP. We therefore direct AWC Companies to submit a filing within 30 days of the approval of the Project in the PJM RTEP. AWC Companies must provide in its filing evidence that the planning process included a finding that the Project will ensure reliability or reduce the cost of delivered power by mitigating congestion, consistent with Order No. 679-A.⁴¹

63. AWC Companies argue that the reliability and congestion benefits of the Project should be analyzed in the context of the Project's ability to bring offshore wind capacity to the grid, as the Commission did in *Green Power Express*, *Pioneer*, and *Tallgrass*. However, the cases cited by AWC Companies are distinguishable from the instant case because, in those cases, significant amounts of wind generation that would connect to the projects had either already been built or had been active in the relevant RTO generator interconnection queue. Moreover, the applicants in those cases submitted additional data that confirmed the stated benefits. Here, AWC Companies fail to demonstrate that any wind generation will be built that will interconnect to the Project. Because the limited testimony submitted by AWC Companies does not support AWC Companies' proposition that such wind generation will be built that will connect to the Project, we find that it is not appropriate to rely on AWC Companies' claims of congestion and reliability benefits associated with wind generation.

⁴¹ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49. See also *Central Maine*, 125 FERC ¶ 61,182 at P 57 (directing further filing).

64. We disagree with protestors that the Petition is premature because the Project has not been included in the PJM RTEP or that a finding on the Petition will prejudice the PJM planning process. The Commission has repeatedly found that evaluation of a project through a Commission-approved transmission planning process is not a prerequisite to granting incentives.⁴² Furthermore, the Commission has found that “ruling on a request for incentives pursuant to Order No. 679 does not prejudice the findings of a particular transmission planning process or the siting procedures at state commissions.”⁴³

65. PJM Owners argue that AWC Companies’ Petition is inconsistent with the planning and cost responsibility requirements of the PJM Tariff. Consistent with precedent, we find that issues related to cost allocation for the Project are not at issue in this proceeding.⁴⁴

66. We also find that, given AWC Companies’ intention to pursue inclusion of the Project in the PJM RTEP and because inclusion in the PJM RTEP may allow AWC Companies to demonstrate that the Project meets the requirements of section 219, we need not address AWC Companies’ alternative request for approval of policy-based incentives pursuant to FPA section 205.

2. Specific Incentives and Total Package of Incentives

67. In addition to satisfying the FPA section 219 requirement that a project ensure reliability or reduce the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought 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.”⁴⁵

⁴² *Green Power Express*, 127 FERC ¶ 61,031 at P 42; *Tallgrass*, 125 FERC ¶ 61,248 at P 43; and *Central Maine*, 125 FERC ¶ 61,182 at P 42.

⁴³ *Green Power Express*, 127 FERC ¶ 61,031 at P 42 (citing *Pioneer*, 126 FERC ¶ 61,281 at P 40; and *Tallgrass*, 125 FERC ¶ 61,248 at P 43).

⁴⁴ See *Central Maine*, 125 FERC ¶ 61,182 at P 55; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 131-132 (“The primary purpose of the declaratory order proceeding is to determine if the proposed incentives meet the requirements of section 219, and therefore cost allocation and rate design issues will not be considered.”).

⁴⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

68. As part of the 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. The Commission has previously provided guidance on the factors that it will consider when determining whether a project is routine.⁴⁶ The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.⁴⁷

69. Based on the evidence, we find that AWC Companies have demonstrated that the Project is not routine. For example, the Project will be constructed underwater, extend along the Mid-Atlantic coast for 250 miles, and interconnect with the existing land-based transmission system in four states. The Project will also cost an estimated \$5 billion, involve the use of multiple advanced technologies, and require various regulatory approvals.

70. The nexus between each requested incentive and the particular risks and challenges AWC Companies face in connection with the Project are discussed below.

a. Return On Equity Adders

i. Protest

71. JCA argues that if the Commission approves AWC Companies’ proposed abandoned plant recovery and formula rate treatment, this negates the need for the 150 basis points adder for risk and 50 basis points adder for advanced technologies, and that there is no demonstrated need for the Commission to grant other basis point adders. JCA also states that AWC Companies request a Transco adder despite the fact that the AWC Equity Sponsors own generation.

⁴⁶ *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh’g*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

⁴⁷ *Id.* P 54.

72. Consumer Advocates argue that: (1) the 50 basis point adder for RTO participation should not take effect until the subject facilities are placed under RTO control; (2) the 50 basis point adder for advanced transmission technology should not be awarded unless that technology works; (3) the Commission should rethink its precedent granting the 50 basis point adder for Transco status in the context of AWC Companies' facts; and (4) the 150 basis point adder for risk is not necessary or appropriate because AWC Companies' investment risk will be accounted for through a properly-performed DCF analysis, but, in any case, should be performance-based and not be awarded unless the Project is completed and brought into service. Consumer Advocates also argue that any incentive ROE adder should be structured such that the rate base to which the incentive applies is tied to the projected cost basis on which the project receives planning approval. That is, the adder should apply to the lesser of actual cost or the cost as projected within the PJM regional planning process. Any prudently-incurred cost over-run above that level should enter rate base, but should only receive a cost-based return, not an incentive-heightened return.

ii. Answer

73. AWC Companies respond to protestors' argument that the ROE adders should be performance-based by arguing this would not provide the investment community the necessary incentive to develop the Project. AWC Companies state that the Transco adder is appropriate because AWC Companies themselves do not own or operate any transmission projects or electric assets other than the Project and will become Transco members of PJM.

74. Consumer Advocates reiterate in their answer that any ROE incentive adder should be performance-based, taking effect when the investment to which it applies enters service.

iii. Commission Determination

75. We will grant the requested 50 basis point RTO adder, provided that: (1) the Project is included in the PJM RTEP as discussed above; (2) AWC Companies takes all the necessary steps to turn over operational control of the Project to PJM; and (3) AWC Companies become Participating Transmission Owners. AWC Companies state that they intend to turn over operational control of the Project to PJM. In Order No. 679-A, the Commission stated that it would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Transmission Organizations.⁴⁸

⁴⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. *See also Green Power Express*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

76. We will grant the requested 50 basis point adder for Transco status, conditioned upon the Project being included in the PJM RTEP, as discussed above. In the past, the Commission has encouraged the formation of Transcos, finding that their unique combination of a for-profit business model and a sole focus on developing transmission assets helps remedy the need for transmission investment. To that end, the Commission has granted an incentive ROE adder to recognize an applicant's Transco status.⁴⁹ In this case, we find that AWC Companies qualify as Transcos, as they are stand-alone entities whose sole purpose is to develop the Project. Consistent with that finding, we will grant the requested 50 basis point adder for Transco formation.

77. We will grant the requested 50 basis point adder for use of advanced technologies, conditioned upon the Project being included in the PJM RTEP, as discussed above. “[I]n reviewing requests for separate incentive ROE adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve efficiency.”⁵⁰ AWC Companies have sufficiently shown that their project makes use of multiple advanced technologies, two of which are first-of-a-kind deployments. In particular, while there exist two other multi-terminal HVDC projects, a multi-terminal topology has never been executed using VSC technology and no multi-terminal project been commissioned in the past two decades. In addition, the Project cables are capable of transmitting much more power than other recent XLPE insulated HVDC undersea cables. We do not find it necessary, as Consumer Advocates suggest, to condition this incentive on a showing of the functionality of the technologies, particularly given that the advanced technologies adder is intended to incentivize innovative technologies.

78. We will grant a 100 basis point adder for the risks and relative complexity of the Project, conditioned upon the Project being included in the PJM RTEP, as discussed above. We agree with AWC Companies that the Project is unprecedented, as it would be the first offshore backbone transmission project to be constructed. Indeed, the Project faces numerous special risks and challenges, including that the Project will be constructed underwater, extend along the Mid-Atlantic coast for 250 miles, interconnect with the existing land-based transmission system in four different states, require multiple regulatory approvals, and cost an estimated \$5 billion. We find that AWC Companies have shown a nexus between such an adder and the size, scope, benefits, and risks and challenges of the Project. However, we are reducing AWC Companies' requested 150

⁴⁹ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 86; *International Transmission Co.*, 126 FERC ¶ 61,223, at P 93 (2009).

⁵⁰ *The United Illuminating Co.*, 126 FERC ¶ 61,043, at P 14 (2009).

basis point adder to 100 basis points in consideration of the total package of incentives conditionally granted in this order. We find that granting 100 basis points is just and reasonable in light of the other incentives that the Commission is conditionally granting the AWC Companies, some of which reduce certain financial and regulatory risks that AWC Companies cite as support for a 150 basis point incentive ROE adder.⁵¹

79. Moreover, we will not, in this proceeding, limit the costs to which the incentive ROE adders conditionally granted here apply, as Consumer Advocates suggest. The Commission has an established procedure for ensuring that only prudently incurred costs are recovered under FPA section 205.

80. We also disagree with protestors that any ROE incentive adder should be performance-based and take effect only upon the Project entering service. Our conditional granting of each of the ROE incentive adders is consistent with precedent and is appropriately designed to encourage development of transmission infrastructure, thereby fulfilling the goals of section 219.

b. Incentive Return on Equity

i. Protest

81. Protestors urge the Commission to reject the requested incentive-based ROE of 13.58 percent, which they argue is premature,⁵² not reasonable, and not calculated using the methodology set by Commission precedent.

82. Protestors raise issues regarding AWC Companies' support for its requested ROE, including AWC Companies' DCF analysis. Consumer Advocates contend that the base ROE should be reduced to 9.44 percent based upon their own adjustments to the proxy group to add back certain companies with low-end ROE values as well as eliminating other companies (e.g., utilities that do not own Commission-regulated transmission assets). Consumer Advocates also contend that AWC Companies improperly rely on prior orders in which the Commission granted ROEs of 13.5 percent to justify its proposed incentive ROE and improperly relied on DCF results for one company, ITC Holdings Corporation (ITC Holdings). Consumer Advocates also contend that Transcos face lower operating risks when compared to vertically-integrated firms. Protestors also

⁵¹ For example, the 60/40 hypothetical capital structure that the Commission conditionally grants AWC Companies in this order reduces financial risk by stabilizing cash flows across the development and construction phases of the Project.

⁵² PSEG Protest at 6-8.

contend that AWC Companies improperly rely on the base-level ROE formula rates approved by the Commission for member companies of PJM.

83. AMP argues that if the Commission grants abandoned plant recovery or other favorable rate treatments, it cannot also grant an ROE that is inflated by the basis point adders also requested by AWC Companies because those favorable rate treatments greatly mitigate business or financial risks.

ii. Answer

84. AWC Companies reiterate in their answer that an up-front incentive ROE of 13.58 percent is reasonable given the unique set of risks and challenges presented by the Project. AWC Companies argue that the Commission has previously approved ROEs that were significantly less than 100 basis points below the upper end of the zone of reasonableness.

85. AWC Companies assert that protestors' focus on the median ROE is misplaced and that finding a proper median and then adding the incentive adders is not required to justify the recommended ROE. AWC Companies reiterate that the Commission found an ROE of 13.5 percent to be reasonable in two recent cases and argue that the risks of the Project are at least equal to and likely greater than the risks of the projects in those cases.⁵³ AWC Companies assert that it is not improper to rely in part on the DCF results for ITC Holdings as a benchmark in determining the recommended ROE for the Project because ITC Holdings is comparable to AWC Companies. AWC Companies further argue that they are justified to assess the lower overall risk of the nationwide proxy group because the proxy group is primarily composed of vertically-integrated distribution, generation and transmission firms that have established customers, whereas AWC Companies have no native customers or business history at all. AWC Companies also reiterate that they are justified in relying on the range of reasonableness for the base-level ROE included in formula rates approved by the Commission for members of PJM to determine an estimate of the base ROE for the Project, instead of using the median ROE from the DCF analysis based on the nationwide sample, because PJM companies represent the closest competitors to AWC Companies for external investment. AWC Companies also assert that concerns that the PJM ROEs reflect past financial market conditions are misplaced. Finally, AWC Companies contend that Consumer Advocates' argument that certain companies should be excluded from the nationwide sample is irrelevant because exclusion would not affect the range of reasonableness.

⁵³ AWC Companies Feb. 15, 2011 Answer at 29 (*citing Atlantic Path 15*, 122 FERC ¶ 61,135 (2008), *order on reh'g*, 133 FERC ¶ 61,153 (2010); *Startrans IO*, 122 FERC ¶ 61,306 (2008), *order on reh'g*, 133 FERC ¶ 61,154 (2010)).

86. AWC Companies respond to protestors' claims that the Commission should lower the ROE incentive in light of other incentives granted to AWC Companies by arguing that the Commission has stated that there is no automatic reduction to an ROE where other incentives are requested and that the Commission will examine the size, scope, and cost of the projects to determine the appropriate incentives.⁵⁴

87. In their answer, Consumer Advocates state that the Commission should separately identify any incentive component of the approved ROE. Consumer Advocates reiterate that the base ROE should be 9.44 percent.

iii. Commission Determination

88. AWC Companies conducted a DCF analysis using a proxy group of a comparable, nation-wide group of electric utilities. AWC Companies state that this analysis results in a zone of reasonableness with a range between 6.97 percent and 14.58 percent, a median of 9.82 percent, and a midpoint of 10.77 percent. We find AWC Companies' proxy group to be reasonable. Specifically, we find that the 31 companies identified by AWC Companies in their DCF analysis are appropriate for developing a proxy group that reflects comparable risks. Moreover, we find that the screens used by AWC Companies in developing their proxy group are appropriate.⁵⁵ However, we agree with Consumer Advocates that it is important to establish a base ROE, and we find that AWC Companies did not properly calculate the median of the zone of reasonableness, as discussed below.

89. We will grant AWC Companies an up-front incentive ROE based on AWC Companies' DCF analysis. The Commission has stated that it "retains discretion to make up-front ROE determinations if the record before it is sufficient to make such a summary finding," and that "federal courts have held that a formal trial-type hearing is unnecessary where there are no material facts in dispute."⁵⁶ In this case, we find that there are no

⁵⁴ *Id.* at 27 (citing *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 78 n.96 (2008) (*Pepco Holdings*); *Tallgrass*, 125 FERC ¶ 61,248 at P 61).

⁵⁵ While geographic proximity may be a relevant factor in identifying companies with comparable risks, it is not the sole basis for inclusion of companies in a proxy group. We also find that using a corporate credit rating screen of all investment grade companies is appropriate when the applicant has no credit rating of its own. We further find that the AWC Companies' screens for significant recent, current, or forecasted merger activity are appropriate and that no company whose operations are primarily related to natural gas transmission or distribution is included in the proxy group.

⁵⁶ *Atlantic Path 15*, 133 FERC ¶ 61,153 at P 22 (citing *Pioneer*, 130 FERC ¶ 61,044).

material facts in dispute. The Commission has also stated that it will consider requests for declaratory orders that provide appropriate support for a proposed up-front ROE, including by submitting a DCF analysis, and that an applicant will have to meet the nexus requirement, such as by showing that an up-front ROE determination is important for its investment decision.⁵⁷ We find that AWC Companies have demonstrated that granting an up-front ROE is important for their investment decision.

90. As noted above, we find that AWC Companies did not calculate the median of the zone of reasonableness in a manner consistent with Commission precedent. The Commission has stated that the median is calculated by first averaging the low end ROE and high end ROE results for each member of the proxy group, and then sorting those averages from lowest value to highest value, and selecting the central value in the sequence.⁵⁸ Where there is an even number of results, the median is the average of the two central numbers. Instead, AWC Companies calculate the median as the average of the two central numbers in the range, sorted from the lowest value to the highest value, that includes the low end ROE result and the high end ROE result for each member of the proxy group. We find that the correct median value based upon AWC Companies' proxy group and DCF data is 10.09 percent.⁵⁹

91. Therefore, we find it appropriate to grant AWC Companies an up-front incentive ROE composed of a base ROE of 10.09 percent, which is the corrected median value of AWC Companies' DCF analysis, and the 250 basis point adders described above, conditioned upon the Project being included in the PJM RTEP, as discussed above. The Commission has found that the median of the DCF analysis is appropriate for establishing the base ROE.⁶⁰ This base ROE combined with the granted incentive adders produces an up-front incentive ROE, at 12.59 percent, that falls within the zone of reasonableness.

⁵⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 70.

⁵⁸ *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at n.95 (2010) (*PATH II*). See also *Southern California Edison Co.*, 131 FERC ¶ 61,020 (2010) (*SoCal Edison II*); *Exelon Generation Co., LLC*, 132 FERC ¶ 61,219 at n.26 (2010) (finding that the median was not calculated consistent with Commission precedent).

⁵⁹ The median ROE value of 10.09 percent is the average of Xcel Energy, Inc.'s high ROE value of 11.03 percent and low ROE value of 9.14 percent.

⁶⁰ *PATH II*, 133 FERC ¶ 61,152 at P 65 (citing *Midwest Indep. Transmission System Operator, Inc.*, 106 FERC ¶ 61,302, at P 8-15 (2004); *Pioneer*, 130 FERC ¶ 61,044; *SoCal Edison II*, 131 FERC ¶ 61,020 at P 84-93).

92. We find that the requested up-front incentive ROE of 13.58 percent is not reasonable for several reasons. AWC Companies acknowledge that they did not rely upon either the median or the midpoint of their DCF analysis to determine their requested incentive ROE. Instead, AWC Companies rely upon various alternative methodologies in their attempt to justify an incentive ROE at a level of 100 basis points below the top of the zone of reasonableness. We reject these methodologies, as discussed below.

93. We reject AWC Companies' reliance upon the recent rehearing orders for *Atlantic Path 15* and *Startrans IO* as justification for an incentive ROE in the upper end of the zone of reasonableness at or above 13.5 percent. In two recent orders, including one issued on the same day as the rehearing orders for *Atlantic Path 15* and *Startrans IO*, the Commission required applicants that requested an overall ROE that included an ROE incentive to establish a base ROE to which incentive ROE adders could be added.⁶¹ Consistent with those orders, the Commission here applies the same requirement to the AWC Companies. Although the Commission did not impose this requirement in the rehearing orders for *Atlantic Path 15* and *Startrans IO*, those orders are distinguishable from the instant case because of their procedural standing; the absence of a base ROE was not raised in the requests for rehearing that the Commission addressed in those orders, and, therefore, the Commission declined to reach that issue.

94. We reject AWC Companies' unsupported reliance upon the range of base-level ROE formula rates approved by the Commission for PJM member companies. AWC Companies do not operate in a region where the Commission has granted a uniform ROE for all the RTO/ISO transmission owners, and therefore we find that AWC Companies must justify their base ROE using their own current, utility-specific DCF analysis.

95. We also reject Consumer Advocates' contention that the base ROE should be reduced to 9.44 percent based upon their adjustments to the proxy group. Consumer Advocates state that when AWC Companies eliminated ten firms from their original sample of 41 companies, eight had DCF results that were deemed to be too low, while only two were eliminated because the DCF results were too high. The Commission finds that a company should be eliminated from the final proxy group if its low-end cost of equity is about 100 basis points above the cost of debt.⁶² Thus, the Commission will exclude from the proxy group those companies whose low-end ROE is about 100 basis points above the cost of debt, taking into account the extent to which the excluded low-

⁶¹ *SoCal Edison II*, 131 FERC ¶ 61,020 at P 16; *PATH II*, 133 FERC ¶ 61,152 at P 55-67.

⁶² Moody's monthly yields on A and BBB utility bonds average 5.22 percent and 5.80 percent, respectively, over the six-month period ending October 2010.

end ROEs are outliers from the low-end ROEs of other proxy group companies.⁶³ We find that AWC Companies correctly excluded all eight of the companies with low-end ROEs and reject Consumer Advocates' protest to include four⁶⁴ of them in the proxy group. All four of the companies are rated BBB and have low-end ROEs less than 100 basis points above Moody's BBB yield. The lowest low-end ROE that AWC Companies include for Great Plains Energy Inc. is 117 basis points above the Moody's BBB yield and has a spread of 50 basis points above Entergy Corp., which has the highest spread (67 basis points) of the four companies that Consumer Advocates propose for inclusion. The Commission finds that there is a "natural break" between Entergy Corp. and Great Plains Energy Inc. and that AWC Companies appropriately screen for low-end ROE outliers.

96. Furthermore, we reject Consumer Advocates' contention that AWC Companies should have excluded from their proxy group three companies⁶⁵ based on the assertion that they are not "electric transmission-owning companies in the U.S." and to exclude "any company whose operations are primarily related to natural gas transmission or distribution." All three of these companies are classified as electric companies by independent investor services such as *Value Line* and Standard & Poor's and therefore we find it reasonable to consider these companies as electric companies and to include them in the proxy group. Finally, we find that AWC Companies correctly eliminated ITC Holdings from their national proxy group, and therefore we do not rely on DCF results for ITC Holdings in analyzing AWC Companies' proposal. We find that ITC Holdings' high-end growth rate of 14.75 percent is unsustainable over time and does not meet the test of economic logic.⁶⁶ As noted below regarding the total package of incentives, we disagree with protestors who suggest that the Commission should lower incentives regarding the ROE based on our decisions for other incentives.

97. We disagree with PSEG that determination of an ROE is premature absent PJM RTEP approval. As discussed above, we are conditioning the granting of the incentive on the Project being included in the PJM RTEP. In addition, cases cited by PSEG are distinguished from this case because here we find that AWC Companies have

⁶³ *Pioneer*, 126 FERC ¶ 61,281 at P 94.

⁶⁴ Consumer Advocates propose the inclusion of these four companies with the following low-end ROEs: Black Hills Corp., 6.12 percent; Constellation Energy Group, Inc., 6.18 percent; Edison International, 6.27 percent; and Entergy Corp., 6.47 percent.

⁶⁵ Consumer Advocates propose excluding these three companies from the proxy group: CenterPoint Energy Inc., CMS Energy Corp., and DTE Energy Co.

⁶⁶ See *Bangor Hydro-Elec. Co.*, 109 FERC ¶ 61,147, at P 205 (2004).

demonstrated that granting an up-front ROE is important for their investment decision. In light of the issues discussed by AWC Companies, we agree that granting an up-front ROE will provide important certainty to the marketplace that will facilitate the development of the Project.

c. Regulatory Asset Accounting Treatment

i. Protest

98. Protestors argue that the Commission should deny AWC Companies' request to establish a regulatory asset as premature and unreasonable. If the Commission grants the regulatory asset incentive, PJM Owners urge the Commission to condition the granting of the incentive on approval of the Project in the PJM RTEP. Protestors contend that, otherwise, the regulatory asset incentive would shift to ratepayers the risk and costs of a speculative project and would undermine the protections built into the PJM RTEP protocol that protect ratepayers from unnecessary, duplicative, or inefficient transmission construction.

99. Consumer Advocates contend that the Commission should clarify that no charges should flow through to ratepayers until construction begins on the Project. Consumer Advocates assert that the ROE applied to the regulatory asset until the date of commercial operation should be limited to the base ROE (i.e., the ROE adders should not be reflected prior to commercial operation). Consumer Advocates also argue that the regulatory asset accounting should maintain distinct sub-accounts for principal and interest.

ii. Answer

100. AWC Companies respond to protestors' arguments regarding the regulatory asset incentive by arguing that the Commission has rejected such claims in other proceedings and found that transmission developers need the opportunity to recover development costs to proceed with the next phase of development. AWC Companies also argue that by approving the regulatory asset, the Commission is not approving or guaranteeing cost recovery to AWC Companies because AWC Companies are required to make a future filing under section 205 demonstrating that the costs included in the regulatory asset are prudent and reasonable. AWC Companies also argue that their request to amortize the regulatory asset over five years once the Project has been included in the PJM RTEP is consistent with the Commission's prior decisions.⁶⁷

⁶⁷ AWC Companies Feb. 15, 2011 Answer at 35 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 115; *Pioneer*, 126 FERC ¶ 61,281 at P 77-86).

iii. Commission Determination

101. The Commission grants AWC Companies' request for the right to establish the initial regulatory asset, as modified below and conditioned upon the Project being approved in the PJM RTEP. We also authorize AWC Companies to establish subsequent vintage year regulatory assets, as modified below.⁶⁸ This action will allow AWC Companies to defer pre-construction costs and recover them at a later time to the extent that AWC Companies have customers to which to assess those costs. We find that the incentive is tailored to AWC Companies' risks and challenges because this incentive will provide AWC Companies with added up-front regulatory certainty and assist in reducing interest expense, improving coverage ratios, and facilitating the financing of the Project on good terms. Granting this incentive encourages development of more transmission infrastructure, thereby fulfilling the goals of section 219. At the same time, we recognize that AWC Companies should not begin recovering these costs until such time that they demonstrate that the Project will ensure reliability or reduce the price of delivered power by reducing congestion and is included in the PJM RTEP.

102. The Commission recognized in Order No. 679 that in some cases, periodic assessments may be appropriate to measure how well a project is progressing.⁶⁹ Given the unique circumstances associated with the Project, including but not limited to the cost, complexity and long lead time associated with completing the Project, the Commission will authorize AWC Companies to establish an initial and subsequent vintage year regulatory assets only for pre-commercial costs incurred through the earlier of May 19, 2016 or the date the first phase of the Project goes into service.⁷⁰ To the extent that AWC Companies seek to record additional pre-commercial costs incurred beyond 2016 as a regulatory asset and ultimately propose to recover these costs, AWC Companies must request such authorization at that time.

103. We also approve AWC Companies' request to accrue a carrying charge on the initial and vintage year regulatory assets from the effective date of the regulatory assets until the regulatory assets are included in rate base.⁷¹ AWC Companies may also accrue

⁶⁸ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 59.

⁶⁹ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 36.

⁷⁰ AWC Companies state that the first phase of the Project between Indian River, Delaware and southern New Jersey is planned to begin in 2013 and be completed in 2016. See *infra* P 6; Petition at 24.

⁷¹ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 60; *Pioneer*, 126 FERC ¶ 61,281 at P 84.

carrying charges on items properly includable in their revenue requirement, like CWIP, until there is an approved cost allocation methodology for the Project.⁷² We also authorize AWC Companies to amortize each regulatory asset over five years, consistent with rate recovery.⁷³ Once AWC Companies begin to recover the initial regulatory asset (or any vintage year regulatory asset) in rate base as part of their revenue requirement, AWC Companies will earn a return on the unamortized balance of the regulatory asset and, therefore, AWC Companies must stop accruing carrying charges on such regulatory asset.⁷⁴

104. Pre-construction costs deferred as a regulatory asset must be recorded in Account 182.3, Other Regulatory Assets, and may only include amounts that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.⁷⁵ Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance. Carrying charges on regulatory assets are properly recorded by debiting Account 182.3 and crediting Account No. 421, Miscellaneous Nonoperating Income.

105. It is unclear whether AWC Companies will have any customers from which to recover the costs in a regulatory asset. Thus, while we provide AWC Companies with the ability to create the initial regulatory asset to record Project-specific start-up, development and pre-construction costs, AWC Companies cannot start recovering any regulatory asset until they have made their FPA section 205 filing to establish just and

⁷² To the extent that AWC Companies accrue carrying charges on CWIP balances because there is not an approved cost allocation methodology for the Project, AWC Companies cannot also accrue AFUDC on those same CWIP balances.

⁷³ See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031 at P 59; *Primary Power*, 131 FERC ¶ 61,015 at P 117.

⁷⁴ See, e.g., *Green Power Express*, 127 FERC ¶ 61,031 at P 60; *Pioneer*, 126 FERC ¶ 61,281 at P 84.

⁷⁵ The term "probable" as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems 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*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,967 (1993).

reasonable rates. If the initial regulatory asset includes carrying charges on items that would have otherwise been included in AWC Companies' revenue requirement during a period before their rate took effect, AWC Companies must demonstrate in the section 205 filing that the items on which they accrued such carrying charges were properly includable in the revenue requirement. Parties will be able to challenge these costs at that time. In addition, AWC Companies must demonstrate that each vintage year regulatory asset does not include costs that could otherwise be recovered in current rates. We clarify that our conditional approval of the regulatory asset incentive in this order is not a Commission assurance that the costs will be recovered in future rates, but only an indication that the Commission may allow the utility's authorized rates to include the relevant costs.⁷⁶

106. We deny Consumer Advocates' request to condition recovery of the incentives such that none of AWC Companies' costs are reimbursed through PJM rates before construction begins and such that no above-cost incentives are flowed through PJM rates or accrued for later collection until the Project enters service. As noted above and as consistent with precedent, we find that it is appropriate for AWC Companies to begin amortization of the regulatory asset consistent with rate recovery. AWC Companies must make a demonstration in a FPA section 205 filing that their proposed treatment regarding the regulatory asset incentive is just and reasonable. Parties will thus have an opportunity to comment on such recovery, including any appropriate carrying charges on that recovery, in the corresponding proceeding.

107. In response to Consumer Advocates' request that the Commission require AWC Companies to maintain separate sub-accounts for principal and interest on the regulatory asset, we note that the Commission's Uniform System of Accounts already requires public utilities to maintain detailed books and records for any item included in its accounts and would require AWC Companies to maintain records to readily identify amounts of principal and interest included in any regulatory asset.⁷⁷

⁷⁶ Moreover, approval for accounting purposes is separate from approval for rate purposes and the former does not govern or constrain the latter. *Illinois Power Co.*, 87 FERC ¶ 61,028 (1999).

⁷⁷ See General Instruction No. 2, Records. 18 C.F.R. Part 101 (2010).

d. CWIP

i. Protest

108. Consumer Advocates argue that the ROE applied to any allowed CWIP, from the time it enters rate base until the date of commercial operation, should be limited to the base ROE.

ii. Commission Determination

109. We will grant AWC Companies' request to include 100 percent of CWIP in rate base, with a deferred effective date, conditioned upon the Project being approved in the PJM RTEP, as discussed above. AWC Companies must, as they acknowledge, request authorization in a future FPA section 205 filing to begin charging rates based on a revenue requirement that includes CWIP to the extent that AWC Companies have customers to which to assess those costs. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.⁷⁸ The Commission noted in Order No. 679 that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.⁷⁹

110. We find that AWC Companies have shown a nexus between the proposed CWIP incentive and its investment in the Project. Due to the significant investment and long lead time presented by the Project, it is appropriate to grant this incentive to AWC Companies. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP in rate base for the Project will facilitate AWC Companies receiving an investment grade credit rating sooner, improve cash flow, and lower borrowing costs. In addition, the Commission finds that allowing CWIP to be included in rate base can result in better rate stability for customers. Finally, we do not find it necessary to limit the ROE applied to the CWIP incentive to the base ROE because we find it appropriate to allow AWC companies to accrue carrying charges on CWIP balances not included in rate base in a similar manner as they would accrue an allowance for funds used during construction (AFUDC). Further, upon seeking to include CWIP in rate base, AWC Companies are required to demonstrate the justness and reasonableness of such a proposal in a FPA section 205 filing, and we find that proceeding to be the appropriate proceeding in which to address such issues.

⁷⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁷⁹ *Id.* P 115.

111. To receive the CWIP incentive, the Commission requires that an applicant propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base. Thus, consistent with AWC Companies' commitments,⁸⁰ they must demonstrate in a future FPA section 205 filing that they have in place accounting procedures to ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base.⁸¹

e. Abandoned Plant Recovery

i. Protest

112. Protestors argue that the Commission should deny AWC Companies' request to recover abandonment costs as premature. Protestors assert that, since the rationale for the Project relies on considerable speculation as to the need for and the potential benefits of the Project, AWC Companies should not be given license to shift risk to ratepayers. Protestors also note that granting the abandonment incentive could adversely affect offshore wind generation developers that choose to rely on the Project. If the Commission grants the abandonment incentive, protestors urge the Commission to condition the granting of the incentive on approval of the Project in the PJM RTEP. Protestors request that the Commission condition approval of abandoned plant recovery on the requirement that AWC Companies submit a future section 205 filing seeking Commission acceptance of specific abandoned plant recovery and demonstrating that the incurrence of the abandonment costs and the proposed method for allocating and recovering the costs are just and reasonable.

113. If the Commission grants the request for advance authorization to recover abandoned plant costs, AMP urges the Commission to clarify that only prudent expenditures may be recovered and sponsors bear the burden of demonstrating prudence and will otherwise shoulder the loss.

114. Consumer Advocates argue that in the event of abandonment, the interest component of the project development costs regulatory asset should be written off. Consumer Advocates urge the Commission to make clear that the maximum post-abandonment collection for which AWC Companies may file is 100 percent of prudently incurred costs, and that costs means the principal, out-of-pocket amount spent on the Project. Consumer Advocates continue that the Commission should clarify that if post-abandonment collection for interest on booked costs is considered, the interest should break out and be limited to the base ROE, thus excluding any amount that results from

⁸⁰ Petition at 65.

⁸¹ *Accounting Procedures*, 18 C.F.R. § 35.25(f) (2011).

the ROE adders. Consumer Advocates also urge the Commission to qualify that in order to recover abandoned plant costs, AWC Companies would have to receive approval through a future section 205 filing. They further request that the Commission acknowledge that the recovery of prudent expenditures on abandoned plant may be lower than what AWC Companies request.

ii. Answer

115. AWC Companies respond to protestors' concerns regarding the abandonment incentive by acknowledging that if they are forced to abandon the Project for reasons outside of their control, they will need to make a filing under section 205 to recover their costs, demonstrate that the costs were prudent, and propose a rate and cost allocation method. AWC Companies state that the Commission has made clear that parties concerned about their potential exposure to abandoned plant costs will have the opportunity to comment on any proposal to recover such costs upon the required section 205 filing. Finally, AWC Companies state that arguments about whether it was prudent for AWC Companies to incur specific costs can be raised at that time.

iii. Commission Determination

116. We grant the abandoned plant recovery incentive, conditioned upon the Project being included in the PJM RTEP, as discussed above. In Order No. 679, the Commission found that the abandoned cost recovery incentive is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁸² We find that AWC Companies have demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. Thus, we will grant AWC Companies' request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is a result of factors beyond AWC Companies' control.

117. We agree with AWC Companies that, even after future potential PJM RTEP approval, the Project faces a variety of commercial and regulatory risks outside of AWC Companies' control. Approval of the abandonment incentive will aid in attracting financing to this project, protecting AWC Companies from further losses if the project should be cancelled for reasons outside their control, and encouraging transmission development. However, in light of AWC Companies' statement and our earlier discussion, we will grant the abandonment incentive conditioned on PJM including the Project in RTEP.

⁸² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

118. Finally, we will not at this time determine the justness and reasonableness of AWC Companies' abandoned plant recovery, if any, until AWC Companies seek such recovery in a FPA section 205 filing. Before AWC Companies can recover any abandoned plant costs, AWC Companies are required to demonstrate that the costs were prudently incurred. Further, it is unclear whether AWC Companies will have any customers from which to recover the costs incurred. In a future FPA section 205 filing seeking recovery of abandoned costs, AWC Companies must also propose a just and reasonable rate and cost allocation method to recover these costs. Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.⁸³ Thus, protestors that are concerned about potential exposure to a proposal from AWC Companies regarding abandoned plant costs, including any appropriate carrying charges, will have an opportunity to comment on such proposal if and when AWC Companies make the required section 205 filing.

f. Hypothetical Capital Structure

i. Protest

119. JCA urges the Commission to reject the requested hypothetical capital structure because it is unjustified, especially in light of the requested ROE of 13.58 percent. JCA further argues that AWC Companies have not provided support for why a 50/50 hypothetical capital structure would not suffice.

ii. Answer

120. AWC Companies respond that their requested hypothetical capital structure is appropriate. AWC Companies state that the requested hypothetical capital structure is consistent with Commission precedent involving companies facing similar risks, is necessary for AWC Companies to achieve and maintain credit ratings and access to capital markets, and is consistent with the capital structure that AWC Companies intend to maintain after the Project is operational.

iii. Commission Determination

121. We grant AWC Companies request to use a hypothetical capital structure consisting of 60 percent equity and 40 percent debt until such time as any portion of the Project achieves commercial operation, conditioned upon the Project being included in the PJM RTEP, as discussed above. Once any portion of the Project achieves commercial operation, AWC Companies will use their actual capital structure, so long as

⁸³ *Id.* P 165-166.

the equity ratio does not exceed 60 percent of the capital structure. AWC Companies have demonstrated a nexus between the requested incentive and the risks and challenges faced by the Project. Specifically, AWC Companies must raise significant levels of debt and equity capital to develop and construct the Project. Approval of the hypothetical capital structure will: (1) reduce effects on rates resulting from swings in the actual capital structure due to varying cash demands during the construction phase; (2) provide a more consistent cash flow during the construction phase; and (3) contribute to receiving and maintaining an investment grade credit rating profile during the financing phase of the project, thus lowering the overall cost of capital.⁸⁴

122. We disagree with protestors' claim that AWC Companies have failed to justify their request. The Commission stated in Order No. 679-A that it would evaluate each proposal on a case-by-case basis and would not prescribe specific criteria or set target debt-to-equity ratios for evaluating hypothetical capital structures.⁸⁵ AWC Companies have shown that the requested 60/40 hypothetical capital structure will enable AWC Companies to achieve and maintain credit ratings and access to capital markets. Furthermore, the proposal is consistent with Commission precedent in other incentive rate proceedings.⁸⁶

g. Total Package of Incentives

i. Protest

123. Protestors argue generally that the package of incentives is not justified.

ii. Answer

124. AWC Companies reiterate that the Petition demonstrates that they face a multitude of significant regulatory, financial, and technical risks in developing the Project that justify the requested incentives. AWC Companies also contend that, in prior cases, the Commission has approved similar packages of rate incentives for proposed projects facing less risk than the Project.

⁸⁴ See, e.g., *PATH*, 122 FERC ¶ 61,188 at P 55. See also Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93 (finding that hypothetical capital structures “can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances”).

⁸⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 91.

⁸⁶ See *Green Power Express*, 127 FERC ¶ 61,031 at P 72-76; *Primary Power*, 131 FERC ¶ 61,015 at P 141-142.

iii. Commission Determination

125. As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

126. We find that the total package of incentives, as modified and as conditioned, is tailored to address the demonstrable risks and challenges faced by AWC Companies in developing the Project. AWC Companies have demonstrated that they face significant risks and challenges in developing and constructing the Project. Therefore, we find that they are eligible for the incentives that we are granting herein.

127. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects.⁸⁷ ROE incentives and non-ROE incentives, such as CWIP and abandonment, are not mutually exclusive. This is consistent with our interpretation of FPA section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of FPA section 219 and that there is a nexus between the incentives being proposed, the investment being made, and the total package of incentives addresses the demonstrable risks or challenges faced by the applicant.

128. We recognize that in other cases where similar packages of incentives were requested, the Commission has reduced the utility's requested ROE incentive, based on the facts and circumstances of those cases.⁸⁸ In those cases, the Commission examined the entirety of the project and the requested incentives and determined that the total package of incentives requested by the utilities was not just and reasonable. Likewise, for the reasons discussed above, we find that the 150 basis point adder is not just and reasonable in light of the total package of incentives that the Commission is conditionally granting AWC Companies, some of which reduce certain financial and regulatory risks

⁸⁷ *Pioneer*, 126 FERC ¶ 61,281 at P 96 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 60, 122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *Duquesne*, 118 FERC ¶ 61,087 at P 55, 59, 61 (granting enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery)); *see also Central Maine*, 125 FERC ¶ 61,182 at P 100 (granting both abandonment and ROE incentives).

⁸⁸ *Cf. Duquesne*, 118 FERC ¶ 61,087 at P 57; *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229; *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008). *But see Pepco Holdings*, 125 FERC ¶ 61,130 at n.96.

that AWC Companies cite as support for a 150 basis point incentive ROE adder. Therefore, rather than their requested 300 basis points, we grant AWC Companies 250 basis points in incentive ROE adders.

3. Formula Rate

a. Protest

129. Protestors urge the Commission to reject AWC Companies' request for pre-approval of formula rates. Joint Protestors argue that pre-approval of formula rates is inconsistent with the process established in Order No. 679, and that the Commission cannot approve the use of formula rates because AWC Companies have not provided the Commission with any basis to conclude that such formula rates are just and reasonable under section 205.

b. Answer

130. AWC Companies respond to protestors' arguments regarding their request for approval of their use of a formula rate by arguing that the Commission has the authority to approve the request at this time, and the request is like any other request for incentive rate treatment in a declaratory order. AWC Companies reiterate that approval of the use of a formula rate at this point will send the appropriate signal to investors, providing them with certainty as to what AWC Companies' rate structure will look like and that there will be no under-recovery of costs.

131. In their answer, Joint Protestors argue that the AWC Companies cannot reasonably request formula rate approval as part of their incentive package because they have not provided sufficient information for the Commission to rule on any formula rate proposal at this time.

c. Commission Determination

132. In Order No. 679-A, the Commission clarified that that an independent transmission company could apply for multiple incentives, including for a formula rate.⁸⁹ The Commission has granted this incentive to applicants that have demonstrated, through tariff sheets, that their proposed formula rate is just and reasonable.⁹⁰ In this case, AWC

⁸⁹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n.108.

⁹⁰ See, e.g., *PATH II*, 133 FERC ¶ 61,152 at P 3 ("On December 28, 2007, PATH filed proposed tariff sheets with the Commission, pursuant to section 205 of the Federal Power Act, to be included in PJM Interconnection, L.L.C.'s Open Access Transmission

Companies request approval for the use of a cost of service formula rate structure without tariff sheets or any demonstration that the formula rate will be just and reasonable. Accordingly, we deny AWC Companies' request for approval for the use of a formula rate at this time but note that AWC Companies may make a filing under section 205 in the future to request approval of a specific formula rate.

4. Requests for Evidentiary Hearing

a. Protest

133. If the Commission determines that the merits of the Petition are ripe for consideration, JCA requests that the Commission establish evidentiary hearing and settlement judge proceedings for all issues relating to the proposed formula rate structure, capital structure, and ROE, as they present issues of disputed material fact. Maryland PSC asserts that the Commission should establish evidentiary hearing or settlement judge proceedings for all of the requested incentives.

b. Answer

134. AWC Companies assert that the Commission should not set issues in this proceeding for an evidentiary hearing because the protestors have failed to show that there are material facts in dispute that cannot be resolved on the basis of the record.

c. Commission Determination

135. We find that protestors have not demonstrated that there are material facts in dispute that cannot be resolved on the basis of the record. We therefore decline to establish hearing or settlement judge procedures regarding any of the requested incentives.

Tariff. The tariff sheets sought to implement a transmission cost of service formula rate and incentive rate authorizations for the Project.”).

The Commission orders:

AWC Companies' Petition is granted in part, and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

List of Intervenors

Allegheny Power
American Electric Power Service Corporation*
American Municipal Power, Inc.++ (AMP)
American Public Power Association and National Rural Electric Cooperative Association* ++ (collectively, the Associations)
Apex Offshore Wind, LLC+
Baltimore Gas and Electric Company
Borough of Chambersburg, Pennsylvania
Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.
Deepwater Wind Holdings, LLC+
Delaware Public Service Commission
Designated PJM Transmission Owners ++ (PJM Owners -- Allegheny Electric Cooperative, Inc.; Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power; Baltimore Gas and Electric Company; Duquesne Light Company; FirstEnergy Service Company, on behalf of its affiliates, Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; Pepco Holdings, Inc., and its affiliates, Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic Electric Company; PPL Electric Utilities Corporation; PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, PPL University Park, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC (collectively, the PPL PJM Companies); and Virginia Electric and Power Company, doing business as Dominion Virginia Power)
Dominion Resources Services, Inc.
Duke Energy Corporation
Duquesne Light Company
Exelon Corporation
FirstEnergy Service Company
Fisherman's Energy+⁹¹
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Joint Consumer Advocates++ (JCA -- the Maryland Office of People's Counsel,

⁹¹ Fisherman's Energy filed an errata to its motion to intervene and comment on January 31, 2011.

Pennsylvania Office of Consumer Advocate, and Office of the Ohio Consumers' Counsel)
Maryland Energy Administration+
Maryland Office of People's Counsel
Maryland Public Service Commission++ (Maryland PSC)
New Jersey Board of Public Utilities
New Jersey Division of Rate Counsel and Office of the People's Counsel for the District of Columbia++ (collectively, Consumer Advocates)
NextEra Energy Generators
North Carolina Electric Membership Corporation
North Carolina Agencies (North Carolina Utilities Commission and Public Staff of the North Carolina Utilities Commission)
Oceana+
Office of the Ohio Consumers' Counsel
Old Dominion Electric Cooperative+
Old Dominion Electric Cooperative, PJM Industrial Consumer Coalition, North Carolina Electric Membership Corporation, Borough of Chambersburg, Pennsylvania, and Southern Maryland Electric Cooperative, Inc.++ (Joint Protestors)
Organization of PJM States, Inc.
Pennsylvania Office of Consumer Advocate
Pennsylvania Public Utility Commission
Pepco Holdings, Inc.
PJM Industrial Customer Coalition
PJM Interconnection, LLC
PPL PJM Companies (PPL Electric Utilities Corporation; PPL EnergyPlus, LLC; PPL Brunner Island, LLC; PPL Holtwood, LLC; PPL Martins Creek, LLC; PPL Montour, LLC; PPL Susquehanna, LLC; PPL University Park, LLC; Lower Mount Bethel Energy, LLC; PPL New Jersey Solar, LLC; PPL New Jersey Biogas, LLC; and PPL Renewable Energy, LLC.)
PSEG Companies++
Public Utilities Commission of Ohio
Rockland Electric Company
Southern Maryland Electric Cooperative, Inc.
US Senate Chris Coons+
Virginia Alternative & Renewable Energy Association+
Virginia State Corporation Commission

* Intervened out-of-time

+ Comment filed

++ Protest filed