

124 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Commonwealth Edison Company and
Commonwealth Edison Company of Indiana, Inc.

Docket No. EL07-41-002

ORDER ON REHEARING

(Issued September 8, 2008)

1. This order addresses a request for rehearing filed by the Illinois Municipal Electric Agency, the City of Naperville, Illinois, the Northern Illinois Municipal Power Agency, and the Illinois Industrial Energy Consumers (collectively, Illinois Parties). The Illinois Parties seek rehearing of the Commission's January 18, 2008 order,¹ in which we granted, in part, a request for rehearing by Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd). We will grant in part and deny in part the Illinois Parties' request for rehearing, as set forth herein.

I. Background

2. On June 5, 2007, the Commission issued an order² that, in pertinent part, denied ComEd's petition for a declaratory order for incentive rate treatment under Order No. 679³ for two transmission projects in Chicago, Illinois—the West Loop Project and the

¹ *Commonwealth Edison Co.*, 122 FERC ¶ 61,037 (2008) (Order on Rehearing).

² *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007) (June 5 Order).

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (Order No. 679), *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1,152 (January 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006) (Order No. 679-A), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Grenshaw Project.⁴ In particular, ComEd requested the following incentives under Order No. 679: (1) a 150 basis points return on equity (ROE) incentive for Phases I and II of the West Loop Project and the Grenshaw Project; (2) the ability to recover 50 percent construction work-in-progress (CWIP) in rate base for Phase II of the West Loop Project; and (3) the ability to recover 50 percent CWIP in rate base for all of its transmission projects approved in the PJM Regional Transmission Enhancement Plan (RTEP).⁵

3. In denying the petition, the Commission found that while the projects satisfied the first prong of the Commission's two-pronged test under Order No. 679 (i.e., the projects ensured reliability and/or reduced the cost of delivered power), ComEd failed to meet the second prong by showing a nexus between the incentive sought and the investment being made.⁶ The June 5 Order pointed to several factors to support this conclusion. First, it noted that under Order No. 679, "new projects" (i.e., projects that had not yet begun construction) made the most compelling case for ROE incentives.⁷ Second, the June 5 Order questioned the routine nature of the Grenshaw and West Loop Projects, especially since the cost of the projects (approximately \$393 million) was comparable to ComEd's transmission investment in previous years.⁸ Third, the June 5 Order emphasized that the projects were either completed or near completion and, thus, would not face the same financial and regulatory risks as a new project.⁹ Finally, the June 5 Order questioned whether the incentives would "encourage new investment."¹⁰

⁴ These projects were part of ComEd's major effort to expand the transmission network in Chicago, Illinois. The West Loop Project was divided into two phases: (1) Phase I involved the construction of a 138 kilovolt (kV) switchyard and was put into service in December 2006; and (2) Phase II involved the construction of a 345 kV switchyard, two new 345 kV lines, and two 138 kV lines. Phase II was scheduled to be in service by June 1, 2008. The Grenshaw Project involved the construction of a 138 kV switchyard, the reconfiguration of two 138 kV transmission lines, and the reconfiguration of two 138 kV distribution lines. It was placed into service in May 2006.

⁵ June 5 Order, 119 FERC ¶ 61,238 at P 9.

⁶ *Id.* P 51-52, 55.

⁷ *Id.* P 56.

⁸ *Id.* P 57-59.

⁹ *Id.*

¹⁰ *Id.* P 61-62.

4. On rehearing, ComEd challenged the June 5 Order arguing, among other things, that the West Loop and Grenshaw Projects satisfied the nexus test under Order No. 679. ComEd asserted that the projects were major undertakings with significant costs and risks. ComEd argued that the projects were not routine as that term has meaning in Order No. 679. It emphasized that the West Loop and Grenshaw Projects were not routine because the projects exceeded the minimum reliability standards established by the North American Electric Reliability Corporation. ComEd asserted that this greater reliability was needed because of Chicago's status as a major population center and critical financial center to the nation's economy.

5. ComEd argued that the June 5 Order erred, in large part, by relying on comparisons between ComEd's historical transmission investment and its current investment in the West Loop and Grenshaw Projects. ComEd asserted that the June 5 Order not only relied on inaccurate facts, but gave too much weight to ComEd's historical investment as a basis for determining that the projects were routine. As ComEd noted, such a comparison could be unfair to utilities that have historically invested in their transmission systems. Finally, ComEd emphasized that it faced financial risks related to the projects, including risks associated with its credit rating and the ability to attract financing for projects.

6. ComEd further argued that the June 5 Order erred by denying ComEd's request for inclusion of 50 percent CWIP in rate base for Phase II of the West Loop Project and by determining that ComEd did not demonstrate a sufficient nexus. ComEd asserted that the Commission's finding was based on stale information and failed to give sufficient weight to ComEd's financial risks for Phase II of the West Loop Project. It pointed to the testimony of its witness, Robert K. McDonald, who noted that CWIP would allow ComEd to earn an additional \$10.6 million in revenues on its pre-commercial operation constructions costs, which would provide much needed additional cash flow during the construction period remaining for the project.

7. The Order on Rehearing granted, in part, ComEd's request for rehearing by permitting a 150 basis point ROE incentive and the recovery of 50 percent of CWIP for Phase II of the West Loop Project.¹¹ In reaching this conclusion, the Commission noted the interplay between the nexus test and routine projects, saying that "when an applicant

¹¹ As part of its original petition, ComEd had requested to recover 50 percent of CWIP pursuant to Order No. 298 and an additional 50 percent of CWIP pursuant to Order No. 679—that is, ComEd wanted to recover 100 percent of CWIP in rate base. However, in the June 5 Order, the Commission only allowed ComEd to recover 50 percent of CWIP under Order No. 298. Thus, on rehearing, ComEd challenged the Commission decision denying its request for 50 percent of CWIP under Order No. 679.

has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, *shown that the project faces risks and challenges that merit an incentive*. By definition, projects that are not routine under our analysis articulated above face inherent risks and challenges and/or provide benefits that are worthy of incentives.”¹² The Order on Rehearing further emphasized the significance of being a baseline project in PJM’s regional transmission expansion plan (“RTEP”), noting that these “baseline” projects generally provide benefits to entire PJM transmission grid as a whole.¹³ Based on these facts, the Commission reversed its finding that Phase II of the West Loop Project was routine, and held that ComEd is entitled to a 150 basis point ROE incentive under Order No. 679.

8. The Commission further determined that ComEd should be allowed to recover 50 percent of CWIP under Order No. 679 for Phase II of the West Loop Project. In finding a nexus between the requested CWIP and ComEd’s risks, the Order on Rehearing focused on ComEd’s creditworthiness during the construction of the West Loop and Greshaw Projects. The Commission emphasized the volatility of ComEd’s credit ratings during the construction of these projects and how the cash infusion from CWIP during Phase II of the West Loop Project could help to enhance ComEd’s “cash flow, reduce interest expense, assist ComEd with financing, and improve ComEd’s coverage ratios used by rating agencies to determine credit quality.”¹⁴ Accordingly, the Commission granted ComEd’s request for rehearing to permit the recovery of 50 percent of CWIP for Phase II of the West Loop Project.

9. The Commission, however, denied ComEd’s request for rehearing regarding incentives for the Greshaw Project and Phase I of the West Loop Project. Since these projects were completed prior to ComEd’s request for incentives, the Commission found that these projects would not encourage the construction of new transmission projects and, thus, could not meet the nexus test under Order No. 679.¹⁵

¹² Order on Rehearing, 122 FERC ¶ 61,037 at P 27 (quoting *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 54 (2007) (emphasis added) (*BG&E*)).

¹³ *Id.* P 27 (quoting *BG&E*, 120 FERC ¶ 61,084 at P 58).

¹⁴ *Id.* P 29.

¹⁵ *Id.* P 32.

II. Requests for Rehearing

10. The Illinois Parties raise three issues on rehearing. First, the Illinois Parties assert that the Commission erroneously modified Order No. 679 through adjudication instead of rulemaking procedures. They argue that the Order on Rehearing eliminated the nexus prong under Order No. 679 and, instead, relied solely upon whether the project was approved by a regional planning organization. As the Illinois Parties stated, “[t]he fact that the ComEd West Loop was a baseline RTEP project was sufficient to meet the section 219 requirements. June 5 Order at P 52. Now, that fact also suffices to meet the nexus test to permit the requested incentive.”¹⁶ They further assert that the Commission modified Order No. 679 by failing to address “whether the *total* package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project, and that the resulting rates are just and reasonable.”¹⁷

11. Second, the Illinois Parties challenge the Commission’s determination that ComEd was entitled to a 150 basis point ROE incentive and to recover 50 percent of CWIP for Phase II of the West Loop Project. With regard to the ROE incentive, they assert that the Commission granted the incentive based solely on the West Loop Project’s status as a PJM baseline project. They further claim that the Order on Rehearing did not address the size or financial risks that justified the ROE incentive. The Illinois Parties raise similar concerns regarding the Commission’s decision to permit recovery of 50 percent of CWIP in rate base. They note that the Order on Rehearing did not discuss how “Phase II of the West Loop Project, due to be completed in June 2008, meets the definition of a long lead-time project for which the CWIP incentive is designed.”¹⁸ The Illinois Parties also question how the Order on Rehearing arrives at a different result regarding the recovery of CWIP based on the same facts presented in the June 5 Order.

12. Finally, the Illinois Parties assert that the Commission failed to review whether the total package of incentives, including the 150 basis point ROE incentive and the recovery of CWIP, was appropriate in this proceeding. They argue that the Commission acted arbitrarily and capriciously by not conducting such a review.

¹⁶ Illinois Parties Petition at 10-11.

¹⁷ *Id.* at 11 (quoting 18 C.F.R. § 35.35(d) (2008)) (emphasis in rule).

¹⁸ *Id.* at 14 (footnote omitted).

III. Discussion

13. We grant the Illinois Parties' request for rehearing, in part, to the limited extent that we acknowledge that the Order on Rehearing failed to analyze the total package of incentives under Order No. 679. However, based on our analysis below of the total package of incentives, we reach the same conclusion as the Order on Rehearing regarding the appropriateness of granting incentives and, accordingly, we deny the Illinois Parties' request for rehearing to the extent that they opposed granting the incentives.

A. Standard of Review Under Order No. 679

14. Order No. 679 sets forth a simple two-pronged test for determining whether a transmission project is eligible for incentives under section 219 of the Federal Power Act ("FPA"). First, pursuant to section 219, an applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."¹⁹ As we noted in Order No. 679-A, an applicant will be entitled to a rebuttable presumption regarding this prong if: (i) 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 (ii) a project has received construction approval from an appropriate state commission or state siting authority."²⁰

15. Second, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.²¹ In evaluating this prong, the Commission will examine the total package of incentives being sought, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the applicant in constructing the project.²² The question of

¹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 5.

²⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 58.

²¹ *Id.* P 40.

²² 18 C.F.R. § 35.35(d) (2008); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 ("[T]he incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.").

whether a project is “routine” is particularly probative to our analysis.²³ “By definition, projects that are not routine under our analysis articulated above face inherent risks and challenges and/or provide benefits that are worthy of incentives.”²⁴

16. We analyze a variety of factors in determining whether a project is routine, including: “(i) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (ii) the effect of the project (e.g., improving reliability or reducing congestion costs); and (iii) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).”²⁵

17. The Order on Rehearing did not modify the Order No. 679 standard set forth above. This is the standard that we applied in our analysis of this case and in all other cases where a party requests incentives under Order No. 679. Nothing in the Order on Rehearing changes this standard or how we apply it.

18. We also did not collapse the first prong of analysis with the second prong under Order No. 679. Rather, we simply emphasized in the Order on Rehearing, as we did in *BG&E*, that “PJM’s scrutiny of baseline project *is significant* in our analysis of whether a project has met the nexus test.”²⁶ This does not mean that all baseline projects in PJM’s RTEP will qualify automatically for incentives under Order No. 679. It also is not the only factor we will consider when analyzing a request for incentives. On the contrary, as noted above, we examine such factors as the scope of the project, its effect on the transmission system, and other challenges or risks faced by the project.²⁷ This analysis was not modified by the Order on Rehearing. Accordingly, we deny the Illinois Parties’ request for rehearing on this issue.

²³ *BG&E*, 120 FERC ¶ 61,084 at P 48.

²⁴ *Id.* P 54.

²⁵ *Id.* P 52.

²⁶ Order on Rehearing, 122 FERC ¶ 61,037 at P 27 (quoting *BG&E*, 120 FERC ¶ 61,084 at P 58) (emphasis added).

²⁷ *BG&E*, 120 FERC ¶ 61,084 at P 52.

B. Decision to Grant Incentives on Rehearing

19. We deny the Illinois Parties' request for rehearing regarding the Commission's reasoned basis for providing incentives for Phase II of the West Loop Project. As we emphasized in *BG&E*, the Commission examines a variety of factors to determine whether a project is routine and, thus, entitled to incentives under Order No. 679. These factors include the scope of the project, its effect on the transmission system, and other challenges or risks faced by the transmission company.²⁸ We emphasized that a project's status as a PJM RTEP baseline project is "significant in our analysis" of the nexus prong because such projects provide benefits to "customers in one or more transmission owner zones."²⁹

20. On rehearing, we determined that the June 5 Order failed to fully or properly analyze many of the factors set forth in the *BG&E* nexus analysis. In particular, the June 5 Order failed to consider the status of Phase II of the West Loop Project as a baseline project in PJM's 2006 RTEP. Thus, we did not consider in our original analysis how the project provided regional benefits and significantly improved reliability in the Chicago financial district. As was the case in *BG&E*, these facts were significant in our decision to grant rehearing in the Order on Rehearing.

21. We also believe that the June 5 Order failed to analyze a number of other non-financial factors in assessing the routine nature of the project. For example, the June 5 Order did not mention or discuss how the West Loop Project greatly increased reliability in the West Loop area of Chicago, which is a major population center and key financial district. The June 5 Order also did not discuss how the project exceeds the minimum requirements under NERC standards and provides critical transmission redundancy to this area.

22. Finally, we believe the June 5 Order excessively focused on certain financial aspects, including ComEd's retirement of debt, its access to capital, and its historical transmission investment. To be sure, the Commission's analysis of a company's financial risks is one of several factors that the Commission evaluates as part of our nexus inquiry, as set forth in *BG&E*. However, the lack of such financial risks, in and of

²⁸ *Id.*

²⁹ *Id.*

itself, does not require the Commission to deny incentives under Order No. 679.³⁰ As noted above, we also consider numerous other factors in determining whether a project is routine. If the Commission were to deny incentives based completely on the financial health of the applicant, we may inadvertently punish companies that have prudently maintained their credit ratings and have less difficulty obtaining favorable financing. It also could punish companies that have invested significantly in their transmission systems prior to Order No. 679. We do not believe that Order No. 679 intended to create such roadblocks for receiving incentives.

23. For these reasons, the Order on Rehearing granted ComEd's request and authorized a 150 basis point ROE incentive for Phase II of the West Loop Project. We believe that the 150 basis point adder is commensurate with the scope and effect of the Phase II of the West Loop Project and will further promote the pursuit and completion of similar transmission projects in the PJM RTEP.³¹ It also is consistent with ROE incentives provided in other cases.³² Thus, we deny the Illinois Parties' assertion that the Commission lacked a reasoned basis for granting a 150 basis point ROE incentive for Phase II of the West Loop Project.

24. We similarly reject the Illinois Parties' claims regarding our decision to grant 50 percent of CWIP for Phase II of the West Loop Project. In the Order on Rehearing, we granted ComEd's request because the June 5 Order failed to consider the volatility in ComEd's creditworthiness and how the recovery of CWIP could offset some of ComEd's financial difficulties.³³ We stated that the inclusion of CWIP in rate base "will enhance its cash flow, reduce interest expense, assist ComEd with financing, and improve ComEd's coverage ratios used by rating agencies to determine credit quality."³⁴ We

³⁰ The Commission chose not to be so bounded to a limited and arbitrary set of criteria or characteristics because doing so would limit the flexibility of the rule or improperly pre-judge which projects are acceptable for incentives. Instead, it chose to evaluate incentives applications on a case-by-case basis. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43.

³¹ Order on Rehearing, 122 FERC ¶ 61,037 at P 20-21.

³² *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*); *BG&E*, 120 FERC ¶ 61,084.

³³ Order on Rehearing, 122 FERC ¶ 61,037 at P 29.

³⁴ *Id.*

believe that there is more than sufficient evidence to support this conclusion, including the evidence regarding ComEd's volatile credit ratings and testimony submitted by its Chief Financial Officer and Treasurer, Mr. McDonald.

25. We further believe that the June 5 Order did not fully consider how CWIP could impact ComEd's broader financial health, but instead focused on how CWIP impacted ComEd's ability to attract financing solely for the West Loop and Greshaw Projects.³⁵ Such a narrow focus is contrary to Order No. 679 where we determined that CWIP may be appropriate because it provides "up-front regulatory certainty, rate stability and improved cash flow for applicants thereby easing the pressures on their finances caused by transmission development programs."³⁶ In other words, the question is how CWIP may provide certain benefits to ensure that a company's overall financial health is not impacted negatively by its transmission development program.³⁷ We believe that the recovery of CWIP for Phase II of the West Loop Project, as set forth in the Order on Rehearing, should benefit ComEd's financial health.³⁸ We find no basis for reversing this decision.

C. Total Package of Incentives

26. The Illinois Parties correctly assert that the Commission has an obligation to ensure "that the *total* package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project, and that the resulting rates are just and reasonable."³⁹ As part of this analysis, we also examine whether some of the incentives reduce the risks of the project and, thus, the need for an enhanced ROE. We will grant limited rehearing and conduct this analysis below.

³⁵ Quoting the June 5 Order, the Illinois Parties argue that the Order on Rehearing failed to demonstrate how the recovery of CWIP would "measurably assist ComEd in financing its Projects [e.g., the Greshaw and West Loop Projects], and help preserve its credit quality, for such a comparatively small project." Illinois Parties Petition at 16 (quoting June 5 Order, 119 FERC ¶ 61,238 at P 60).

³⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 11.

³⁷ Order on Rehearing, 122 FERC ¶ 61,037 at P 29.

³⁸ *Id.*

³⁹ 18 C.F.R. § 35.35(d) (2008) (emphasis in original).

27. We find that ComEd has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by ComEd.⁴⁰ As discussed above and in the Order on Rehearing, ComEd has explained why it is seeking each incentive and how each incentive relates to the investment being made.⁴¹ The Commission has, in prior cases, approved multiple rate incentives for particular projects.⁴²

28. However, we do not believe that the 150 basis point ROE incentive should be reduced by virtue of our decision to grant CWIP in rate base. While there may be some cases where the granting of CWIP may serve as a basis for reducing a ROE incentive,⁴³ we believe that the incentives in this case address two different problems.

29. A higher ROE encourages new transmission investment because it provides a longer term higher return on equity after the project comes on line, only for that new investment, and makes that transmission project more attractive as an investment. CWIP, on the other hand, allows a company to earn a return on construction costs for the project during the construction period. It helps companies, like ComEd, protect their financial health during the construction period by minimizing capital costs, reducing interest expense, increasing cash flows, and improving a company's coverage ratios, which are used by rating agencies to determine credit quality. These benefits, in turn, help companies ease financial burdens associated with funding significant transmission projects, like Phase II of the West Loop Project.

30. As stated in the Order on Rehearing, we determined the inclusion of CWIP in rate base "will enhance its cash flow, reduce interest expense, assist ComEd with financing, and improve ComEd's coverage ratios used by rating agencies to determine credit quality."⁴⁴ ComEd provided evidence to demonstrate that the additional \$10.6 million in

⁴⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

⁴¹ Order on Rehearing, 122 FERC ¶ 61,037 at P 13-24, 27-29.

⁴² See, e.g., *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); *Duquesne*, 118 FERC ¶ 61,087 at P 55 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery).

⁴³ See, e.g., *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008).

⁴⁴ Order on Rehearing, 122 FERC ¶ 61,037 at P 29.

revenues generated from the CWIP incentive would give ComEd the ability to maintain its credit rating and attract capital at reasonable prices and reduce the amount of borrowing required to complete the project.⁴⁵ The record demonstrates that both of these incentives are instrumental in supporting ComEd's financial integrity and ability to attract capital.⁴⁶

31. Finally, we believe that the incentive rates in this case, including the 150 basis point adder and the recovery of CWIP, are just and reasonable. ComEd's total ROE for Phase II of the West Loop Project is 13 percent, which falls within the zone of reasonableness.⁴⁷ We also find that the combination of incentives reflects the risks relating to the costs and time constraints of constructing Phase II of the West Loop Project.

The Commission orders:

Illinois Parties' request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting with a separate statement attached.
Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁵ *Commonwealth Edison Co.*, Docket No. EL07-41-000, Att. A at P8.

⁴⁶ *Id.*, Att. B at P 11-12, Att. C at P 18, 33-41, 44.

⁴⁷ The 13 percent ROE was agreed to as a cap in a settlement approved by the Commission in 2007. *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008). It includes an 11 percent baseline ROE, a 50 basis point adder for RTO membership, and the 150 basis point adder under Order No. 679, as approved by the Order on Rehearing.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company and
Commonwealth Edison Company of Indiana, Inc.

Docket Nos. EL07-41-002

(Issued September 8, 2008)

KELLY, Commissioner, *dissenting*:

In this order the Commission grants in part and denies in part a request for rehearing filed by several Illinois parties: the Illinois Municipal Electric Agency, the City of Naperville, Illinois, the Northern Illinois Municipal Power Agency, and the Illinois Industrial Energy Consumers. In a January 2008 Commission order,¹ itself an order on rehearing, the Commission reversed its decision to deny incentive rate treatment to Phase 2 of the West Loop Project. I dissented from the January Order. In my dissenting statement, I argued that the project in question presented no unique or excessive risks or challenges and should be undertaken in the ordinary course of ComEd's business. I further argued that the Commission, in granting the requested incentives to such a project, was poised to make incentive rates the new, normal rate recovery methodology for transmission investment and would ultimately destroy the purpose of incentives, which is to provide a special spur to bring about change that would likely not occur without them.

I dissent from today's order consistent with my decision to dissent from the January Order. I continue to believe that Phase 2 of the West Loop Project is a routine project and, as such, I do not agree with the majority's view that ComEd has shown that its total package of incentives is tailored to address the risks and challenges ComEd faces.

Accordingly, I respectfully dissent from this order.

Suedeem G. Kelly

¹ *Commonwealth Edison Co.*, 122 FERC ¶ 61,037 (2008) (January Order).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Commonwealth Edison Company and
Commonwealth Edison Company
of Indiana, Inc.

Docket No. EL07-41-002

(Issued September 8, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

I dissented in part from the January 18, 2008 order in this proceeding to present my concerns about the majority's treatment of two issues: the application of the Commission's nexus requirement to proposals for an incentive ROE adder, and the consideration of advanced technologies in evaluating such proposals. I observed that the Commission established general principles regarding both of those issues in our Order No. 679 rulemaking proceeding, and I expressed concern that the majority was misapplying those principles.

In today's order, the majority grants rehearing for the limited purpose of acknowledging that it previously failed to analyze ComEd's total package of incentives under Order No. 679. However, the majority denies rehearing with respect to the substance of the incentives, including the incentive ROE adder, granted to ComEd in the January 18, 2008 order.

I continue to disagree with the majority's conclusion that ComEd has demonstrated that an incentive ROE adder is warranted in this proceeding. For this reason, I dissent in part from today's order.

I also note that the majority now claims that the January 18, 2008 order "emphasized ... that PJM's scrutiny of baseline projects is significant in [the Commission's] analysis of whether a project has met the nexus test," but did "not mean that all baseline projects in PJM's RTEP will qualify automatically for incentives under Order No. 679." That statement cannot be reconciled with the January 18, 2008 order, in which the majority favorably cited *Baltimore Gas and Electric Company* for the specific premise that "all baseline projects in the PJM RTEP qualified as non-routine and, thus, satisfied the nexus requirement for an ROE incentive"¹ Nonetheless, as I have stated previously, I agree that

¹ January 18, 2008 Order at P 27 (citing *Baltimore Gas & Electric*, 120 FERC ¶ 61,084 at P 58 (2007)).

designation as an RTEP baseline project does not necessarily mean that a project satisfies the nexus requirement.² Therefore, I agree with the majority's current view of this issue, which appropriately revises the January 18, 2008 order.

Jon Wellinghoff
Commissioner

² See, e.g., *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008) (dissent of Commissioner Wellinghoff at 2, n.5).