

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.

Baltimore Gas and Electric Company

Docket Nos. ER07-576-000
ER07-576-001

ORDER ACCEPTING REVISED TARIFF SHEETS
SUBJECT TO REVISION AND ESTABLISHING TECHNICAL CONFERENCE

(Issued July 24, 2007)

1. On February 28, 2007, Baltimore Gas and Electric Company (BG&E) filed revised tariff sheets to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)¹ to implement transmission rate incentives in accordance with Order Nos. 679 and 679-A.² The revised tariff sheets reflect transmission investment rate incentives for: (i) a 50-basis point incentive adder to BG&E's authorized return on equity (ROE) for all jurisdictional facilities in recognition of its continuing membership in PJM; (ii) a 100-basis point incentive adder to its authorized ROE for investment in new transmission constructed by BG&E in accordance with PJM's Regional Transmission Enhancement Planning (RTEP) process; and (iii) inclusion of 100 percent of its construction work in progress (CWIP) in rate base.

2. For the reasons discussed below, we authorize (i) a 50-basis point ROE adder for continued membership in PJM and (ii) a 100-basis point adder for two RTEP projects. In addition, we set for technical conference the issue of whether BG&E's six identified

¹ 16 U.S.C. § 824d (2000).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006) 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).

Transmission Owner Initiated (TOI) projects satisfy the “nexus” test. We will issue a subsequent order ruling on the question of whether the TOI projects satisfy the nexus test based on the record as further developed by the technical conference. Further, we reject BG&E’s request for a transmission ROE incentive for 37 future projects without prejudice. In addition, we reject BG&E’s proposal to include CWIP in rate base. We will require BG&E to file revised tariff sheets within 15 days of the date of this order.

I. Background

A. Description of BG&E

3. BG&E, a wholly owned subsidiary of Constellation Energy Group, Inc., provides electric transmission and distribution and gas distribution service to Baltimore and all or part of ten counties in central Maryland. BG&E formerly operated as an integrated electric utility; however, pursuant to state legislation, BG&E restructured its electric utility operations to separate generation and other competitive businesses from energy delivery operations. As a result, BG&E’s current operations consist of retail electricity delivery and wholesale transmission operation. BG&E’s facilities include 1,300 miles of high-voltage electric transmission lines and 23,600 miles of distribution lines.³

B. BG&E’s Formula Rate Filing

4. On January 31, 2005, in Docket No. ER05-515-000, BG&E filed revised tariff sheets to PJM’s OATT seeking to implement a formula rate for BG&E’s wholesale transmission service. In that filing, BG&E explained that the conversion to a formula rate within its rate zone would better reflect changes in its transmission revenue requirements, track increases and decreases in expenses to prevent under or over-recovery of costs, avoid the need for frequent rate adjustment filings, and harmonize the treatment of new facility costs with embedded transmission revenue requirements. On May 31, 2005, the Commission issued an order that accepted the formula rate filing with a nominal suspension period, made it effective June 1, 2005, subject to refund, and initiated a hearing.⁴

³ BG&E’s February 28, 2007 Incentive Rate Application, Exhibit No. BGE-14 at 10 (Incentive Proposal).

⁴ *Allegheny Power System Operating Co.*, 111 FERC ¶ 61,308 (2005), *order on reh’g*, 115 FERC ¶ 61,156 (2006) (*Allegheny*).

5. On March 20, 2006, BG&E and other transmission owners within PJM filed a Settlement Agreement regarding BG&E's formula rate. The Settlement Agreement established: (i) an initial ROE of 10.80 percent for all BG&E transmission facilities placed in-service prior to January 1, 2006; (ii) an 11.30 percent ROE for all BG&E transmission facilities placed in-service on or after January 1, 2006; (iii) a "base" ROE of 10.80 percent onto which any transmission rate incentive would be added; and (iv) BG&E's right to make filings at any time to implement any transmission incentive mechanisms.⁵ The Commission approved the Settlement Agreement on April 19, 2006.⁶

C. PJM's Regional Transmission Enhancement Planning Process

6. On May 26, 2006, the Commission approved an RTEP process for PJM which is contained in Schedule 6 of PJM's Operating Agreement.⁷ The RTEP process examines the three interrelated components of electric power system reliability – load, generation and transmission.⁸ The RTEP process is a region-wide planning process which provides for the construction of expansions and upgrades to PJM's transmission system in order to comply with reliability criteria and to maintain and enhance the efficiency of PJM's wholesale electricity markets. PJM annually develops an RTEP plan by following the RTEP protocol set forth in its Operating Agreement. The RTEP plan recommends transmission upgrades to address near-term needs within five years and assesses long-term needs that require a planning horizon of 15 years or more.

D. BG&E's Incentive Rate Proposal

7. On February 28, 2007, in Docket No. ER07-576-000, BG&E filed revised tariff sheets to PJM's OATT seeking Commission approval of three transmission investment rate incentives. First, BG&E seeks to include a 50-basis point incentive adder to its authorized ROE of 10.80 percent for all jurisdictional facilities in recognition of its continuing membership in PJM. Second, BG&E proposes a 100-basis point incentive adder to its 10.80 percent authorized ROE for investment in new transmission

⁵ See §§ 3.1 through 3.3 of the Settlement Agreement.

⁶ *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006) (*BG&E Order*).

⁷ *PJM Interconnection, L.L.C.*, 115 FERC ¶ 61,261 (2006), *order on reh'g*, 119 FERC ¶ 61,067 (2007).

⁸ PJM's February 27, 2007 RTEP at 5, available at <http://www2.pjm/planning/downloads/20070301-contents-and-preface.pdf> (PJM's 2006 RTEP).

constructed by BG&E pursuant to the RTEP process for (i) two baseline projects; (ii) six TOI projects;⁹ and (iii) 37 future projects. Finally, BG&E proposes to include in rate base 100 percent of its CWIP for all new transmission investment.

1. Baseline Projects

8. BG&E requests incentive rate treatment for two baseline projects¹⁰ that were approved by the PJM RTEP process. These projects involve the only 500 kV substations on the BG&E system. The first project, Conastone, will replace existing 500/230 kV transformer banks with larger capacity transformers at a cost of approximately \$42.5 million. According to BG&E, PJM determined that replacing the existing transformers with new, larger capacity transformers (three per bank) will provide additional capacity without creating additional overloads.

9. The second project, Waugh Chapel, will cost approximately \$25.9 million and will replace existing transformers with a larger capacity bank, reconfigure one of the two 500 kV switchyards, and add a new 500/230 kV transformer bank. Waugh Chapel connects the southern portion of the BG&E 230 kV system to the PJM 500 kV grid and is a major import facility for power from Calvert Cliffs Nuclear Plant.

2. Transmission Owner Initiated Projects

10. Five of BG&E's six TOI projects are referred to as the "Downtown Cable." These projects will cost approximately \$27 million and will serve the downtown Baltimore area. According to BG&E, the Downtown Cable will retire aging transmission infrastructure, resolve North American Electric Reliability Council (NERC) criteria violations, and alleviate 115 kV transmission congestion.

11. BG&E's sixth TOI project, "Northwest to Finksburg," will cost approximately \$3.5 million and will help alleviate first contingency thermal overloads and a BG&E planning standard violation on transmission facilities that supply power to Carroll

⁹ Although BG&E included the Wilkins Avenue TOI project in its Incentive Proposal, in its Supplemental Filing BG&E states that it is no longer seeking incentives for the Wilkins Avenue project.

¹⁰ Baseline projects are upgrades which directly benefit one or more Transmission Owner zones for the purposes of maintaining reliability, typically for load growth. Baseline projects include economic upgrades, *i.e.*, transmission upgrades needed to mitigate unhedgeable congestion. PJM's 2006 RTEP at 11.

County, Maryland. BG&E explains that this project involves double circuiting a 115 kV overhead transmission line between the Northwest and Finksburg substations. BG&E states that the Northwest to Finksburg project has received a Certificate of Public Convenience and Necessity for construction from the Public Service Commission of Maryland (Maryland Commission).

12. According to BG&E, there is no difference between baseline and TOI projects in terms of the standard for being included in PJM's RTEP. BG&E claims that in both cases the projects are needed to ensure that the transmission system will be able to meet NERC planning standards and applicable NERC Regional Council planning criteria or to reduce congestion.¹¹

3. Future Projects

13. BG&E requests incentive rate treatment for 37 transmission projects which will cost approximately \$183 million and that may be approved under future PJM RTEPs if PJM determines that such construction is needed for reliability or congestion-mitigation, or both. BG&E estimates that these projects will be placed in service between 2008 and 2013. BG&E is requesting authority to revise its formula rate for its future projects "to allow flexibility going forward,"¹² and to attract capital at favorable terms. BG&E requests that the 100-basis point adder and 100 percent CWIP be awarded in this proceeding so that its future projects can be given incentive rate treatment as part of the annual updates filings for its formula rates. BG&E proposes that the annual update filings be subject to the discovery and challenge processes applicable to its formula rates.

14. In the event that the Commission determines that future projects cannot rely on the rebuttable presumption of being included in the PJM RTEP, BG&E proposes to provide documentation on the PJM website during the service year of the project for which it is requesting transmission incentives that demonstrates that the future project achieves either reliability or congestion-mitigation benefits, or both.¹³

¹¹ Incentive Proposal, Exhibit No. BGE-18 at 15 (*citing* PJM Manual 14-B, Attachment G).

¹² Incentive Proposal, Exhibit No. BGE-1 at 11 (*citing* Order No. 679 at P 154).

¹³ Incentive Proposal, Exhibit No. BGE-6 at 14.

4. BG&E's Technology Statement

15. Although BG&E is not specifically requesting an incentive for innovative technologies, BG&E included an advanced technologies statement for its incentive projects as required by Order No. 679.¹⁴ BG&E proposes to install extensive fiber optic cables to provide a dedicated communication link on the Conastone and Waugh Chapel 500/230 kV substations and for relay protection on the Downtown Cable project. BG&E states extension of the BG&E fiber network will provide the communications backbone necessary to support PJM's integrated strategic plan for the "Smart Grid."¹⁵ BG&E explains that overhead transmission lines will be built and/or retrofitted with optical ground wire in place of conventional static wires.¹⁶

16. BG&E's design for the Downtown Cable project is to parallel the existing cables to operate as a single circuit and install a new higher-capacity cable, rather than replace the 115 kV pipe-type cable system with two higher-capacity cables. BG&E estimates reconfiguring these two existing cables will result in a customer savings of \$7 million. BG&E states that the parallel design also will allow for a staged investment of capital, prolong the useful life of the existing cables, and optimize the cable configuration. In addition, BG&E states that it expects to expand PJM's fiber optic communication network through remote electronic monitoring of transformer temperatures.

17. BG&E states that it has considered the implementation of modular gas-insulated switchgear (GIS) over conventional oil circuit breakers at a number of its high-voltage substations. BG&E states that it expects the GIS technology to reduce the Downtown Cable substation's footprint by 95 percent and avoid environmental concerns associated with maintaining oil-filled equipment. BG&E estimates that its deployment of GIS circuit breakers will result in a net savings of \$8 million.

¹⁴ Order No. 679 at P 302.

¹⁵ Supplemental Filing, Response to Question No. 11. *See also* PJM 2007 Strategic Report, available at <http://www.pjm.com/documents/strategic-report.html>. Under PJM's "Smart Grid" design, the application of digital technology is applied to the electric power infrastructure to create a "perfect dispatch."

¹⁶ Incentive Proposal, Exhibit No. BGE-6 at 9.

E. Notice, Interventions and Protests to BG&E's Incentive Rate Proposal

18. Notice of BG&E's February 28, 2007 filing was published in the *Federal Register*,¹⁷ with interventions and comments due on or before March 21, 2007. Motions to intervene were filed by: Allegheny Power,¹⁸ Dominion Resources Services, Inc., Exelon Corporation, Mittal Steel USA, Inc., Pepco Holdings, Inc. and certain of its jurisdictional affiliates, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company, PJM, the PJM Industrial Coalition, and PPL Electric Utilities Corporation.

19. On March 21, 2007, the Maryland Commission filed a notice of intervention and protest (March 21 Protest) and the Maryland Office of People's Counsel (People's Counsel) filed a notice of intervention and protest and request for evidentiary hearing. On March 22, 2007, Old Dominion Electric Cooperative filed a motion to intervene out of time.

20. On March 28, 2007, BG&E filed an answer (March 28 Answer) to the protests.¹⁹ On April 5, 2007, the Maryland Commission filed an answer to BG&E's March 28 Answer.

F. Deficiency Letter

21. On May 4, 2007, the Director, Division of Tariffs and Market Development – East, acting under delegated authority, issued a deficiency letter (Deficiency Letter) seeking additional information relating to BG&E's February 28, 2007 filing.

22. The Deficiency Letter directed BG&E to provide: (i) comparisons of the formula rate containing the requested incentives for the projects planned under BG&E's proposal; (ii) a revenue increase disclosure inclusive of the requested ROE adders; (iii) an explanation of the use of net and gross plant allocators for the components of the accumulated deferred income taxes; (iv) an explanation of the formula's use of end of year values for Transmission Plant in Service and CWIP; (v) a demonstration of the

¹⁷ 72 Fed. Reg. 11,021 (2007).

¹⁸ Allegheny Power is the trade name for Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company.

¹⁹ BG&E originally filed its answer on March 26, 2007. In order to correct a typographical error, BG&E refiled its answer on March 28, 2007.

reliability and economic benefits for each of BG&E's projects; (vi) a list of reliability violations for the short- and long-term planning horizon; and (vii) an explanation of the nexus between the projects and the incentives sought.

G. BG&E's Supplemental Filing

23. On May 25, 2007, BG&E submitted its response to the Deficiency Letter (Supplemental Filing). In this response, BG&E states that it is seeking to implement Demand Side Management and Advanced Metering Infrastructure initiatives that will encourage customers to install cost-effective energy-efficient equipment to reduce consumption of electricity and natural gas. BG&E claims that the projects will help BG&E manage peak demand, improve system reliability, and provide real-time two-way communication between BG&E and its customers. BG&E states that the work associated with its two baseline projects is contained within BG&E's substation properties. BG&E states that the Conastone and Northwest to Finksburg projects need state siting approval while the Waugh Chapel and Downtown Cable projects do not.²⁰

Notice, Interventions, and Protests to Supplemental Filing

24. Notice of the BG&E's Supplemental Filing was published in the *Federal Register*.²¹ By an Errata Notice issued on June 4, 2007, the date for interventions and comments was set at June 8, 2007.

25. On June 8, 2007, the Maryland Commission filed a timely protest (June 8 Protest). On June 12, 2007, BG&E filed an answer to the June 8 Protest.

II. Discussion

1. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the

²⁰ In its Supplemental Filing, BG&E attached the state siting approval for the Northwest to Finksburg project and a zoning exception from Anne Arundel County for the Waugh Chapel project. It did not include state siting approval for the Conastone project.

²¹ 72 Fed. Reg. 31,572 (2007).

entities that filed them parties to this proceeding.²² In addition, in view of the early stage of this proceeding and the absence of any undue prejudice or delay, we will accept the unopposed late-filed intervention of the Old Dominion Electric Cooperative.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest, unless otherwise ordered by the decisional authority.²³ We will accept the answers submitted by BG&E and the Maryland Commission because they have aided us in our decision-making process.

2. 50-Basis-Point ROE Incentive for Continued Membership in PJM

a. BG&E's Proposal

28. BG&E requests a 50-basis point incentive adder to its authorized ROE of 10.80 percent for all jurisdictional facilities in recognition of its continuing membership in PJM. BG&E states that the 50-basis point adder is consistent with the level of ROE incentives that the Commission has approved since the Commission first proposed the concept of ROE incentives.²⁴ Further, BG&E notes that the 50-basis point incentive falls within its proposed ROE zone of reasonableness of 7.80 percent to 15.60 percent and is below the midpoint of 11.70 percent. Finally, BG&E notes that the Settlement Agreement allows for an 11.30 percent ROE for facilities placed in service on or after January 1, 2006. Based on these factors, BG&E contends that the 50-basis point adder for continued membership in PJM is just and reasonable.

b. People's Counsel Protest

29. People's Counsel protests BG&E's request for a 50-basis point ROE adder for continued membership in PJM. People's Counsel states that BG&E did not claim an additional ROE of 50-basis points on existing assets is necessary to remain in PJM. Further, People's Counsel states that BG&E was a founding member of PJM and it is

²² 18 C.F.R. § 385.214 (2007).

²³ *Id.* § 385.213(a)(2).

²⁴ Incentive Proposal at 5-11 and Exhibit No. BGE-18 at 9-10 (*citing, e.g., Proposed Pricing Policy for Efficient Operation and Expansion of Transmission Grid*, 102 FERC ¶ 61,032 (2003); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,124 at P 74 (2003); and *ISO New England Inc.*, 106 FERC ¶ 61,280 at P 245-46 (2004) *order on reh'g*, 109 FERC ¶ 61,147 (2004), *aff'd sub nom. Me. PUC v. FERC*, 454 F.3d 278 (D.C. Cir. 2006)).

“inconceivable” that BG&E would leave PJM. People’s Counsel requests that the Commission deny BG&E’s request for an incentive ROE on transmission facilities installed prior to January 1, 2006. People’s Counsel states that, if the goal is to provide BG&E with added incentives to upgrade its transmission facilities, then it recommends rejecting the proposed increase in ROE on old transmission facilities. Additionally, People’s Counsel requests that if the Commission does not grant its request, that the Commission set the issue for hearing.²⁵

c. BG&E’s Answer

30. In its March 28 Answer, BG&E states that it would be unduly discriminatory to deny it the same RTO membership adder that the Commission has approved for other utilities merely because of the date that it joined PJM. Additionally, BG&E claims that its requested 50-basis point membership adder conforms to the level that has been approved for other PJM transmission owners.²⁶

d. Commission Determination

31. We find that BG&E’s proposal to increase its ROE by 50-basis points for continued participation in PJM is just and reasonable and not unduly discriminatory. First, as we stated in Order No. 679-A, we will authorize incentive-based rate treatment for public utilities that continue to be a member of an RTO.²⁷ Section 219 of the FPA specifically provides that the Commission shall provide for incentives to each transmitting utility that joins a Transmission Organization. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219. The best way to ensure these benefits is to provide member utilities of an RTO with incentives for joining and remaining a member. As explained in Order No. 679-A, the decision to provide incentives for participation in an RTO is a policy one, aimed at promoting particular policy objectives, unrelated to any particular project. People’s Counsel’s protest that BG&E should not be rewarded for its continued membership in PJM is a collateral attack on Order No. 679-A;²⁸ thus we deny the relief requested in its protest. We further note that the level of the requested incentive, 50-basis points, is the same as that approved for similar utilities,

²⁵ Protest at 3-5.

²⁶ March 28 Answer at 13-14.

²⁷ Order 679-A at P 86.

²⁸ Order No. 679-A at P 79.

such as Duquesne Light Company (Duquesne) and Commonwealth Edison Company (ComEd). In addition, the Settlement Agreement provides that BG&E may make filings at any time to implement incentives.

3. 100-Basis Point ROE Incentive for New Construction

a. BG&E's Proposal

32. BG&E requests 100-basis point ROE incentives for (i) two baseline projects; (ii) six TOI projects; and (iii) 37 future projects. BG&E proposes to continue using the formula rate methodology and cost of service rate principles approved in the Settlement Agreement to compute its annual Network Integrated Transmission Service revenue requirements. BG&E states that it is requesting the additional ROE incentive only for new transmission projects that PJM approves as part of the RTEP process prior to the facility being placed in service.²⁹

33. BG&E states that PJM's RTEP creates a rebuttable presumption that projects approved under the RTEP are the product of a fair and open regional planning process intended to ensure reliability and/or reduce the cost of delivered power by reducing congestion. BG&E concludes that the RTEP approval given to its projects supports its requested incentives. Accordingly, BG&E argues that the 100-basis point adder for investment in new transmission facilities should be approved as consistent with Order No. 679 and its objective of encouraging investment in needed new transmission.

b. People's Counsel Protest

34. People's Counsel argues that BG&E's proposed ROE incentive for new construction is contrary to the intent of the Settlement Agreement. Under People's Counsel's interpretation of the Settlement Agreement, the reason that BG&E receives a lower ROE on facilities placed in service prior to January 1, 2006 was to provide BG&E an incentive to replace those facilities. By eliminating the disparity in ROE between the "old" and "new" facilities, People's Counsel asserts that BG&E will have less incentive to upgrade its "old" transmission facilities. Therefore, People's Counsel objects to BG&E's request to increase the base incentive for facilities placed in service prior to January 1, 2006, but it does not oppose the ROE incentives for "new" facilities, *i.e.*, BG&E's proposed baseline and TOI projects.

²⁹ Incentive Proposal, Exhibit No. BGE-1 at 8.

c. **Maryland Commission Protests**

35. In its March 21 Protest, the Maryland Commission states that it supports incentive ROE treatment for regional projects. Therefore, the Maryland Commission does not oppose incentive rate treatment for the Conastone and Waugh Chapel baseline projects because the benefits of these reliability projects extend beyond BG&E's own service territory.

36. On the other hand, the Maryland Commission objects to incentive rate treatment for investments in infrastructure for facilities located in the service territory of the transmission owner. Further, the Maryland Commission objects to incentive rate treatment for investments in facilities that should have been made before the emergence of any reliability violations. While it notes that these projects are important, the Maryland Commission believes that BG&E's TOI and future projects are routine in nature.

37. In its June 8 Protest, the Maryland Commission reiterates its position that BG&E has an obligation to provide safe and adequate service at just and reasonable rates to retail customers located in its transmission area. The Maryland Commission states that it is only asking the Commission to conduct an analysis under an appropriate nexus test to determine whether BG&E's non-regional transmission investment qualifies for incentive treatment. The Maryland Commission notes that applying a nexus test would prevent retail customers from having to pay incentive prices just to obtain reliable service, unless the applicant actually shows that the special treatment sought is "tailored to address the demonstrable risks and challenges faced by the applicant."³⁰ Specifically, the Maryland Commission objects to awarding BG&E a 100-basis point ROE adder in connection with the Downtown Cable and the Northwest to Finksburg projects because the projects are needed (i) to resolve NERC reliability violations, (ii) to resolve BG&E planning standard violations, (iii) to retire aging infrastructure, and (iv) to alleviate congestion. The Maryland Commission indicates that BG&E denoted in its application for state siting approval of the Northwest to Finksburg project that "by the winter of 2008, the circuits that supply this area were projected to exceed their winter emergency rating with attendant potential for rolling blackouts and that since these circuits only carry radial load, the project has no impact on system stability."³¹ Since these are radial lines that

³⁰ April 5 Answer at 7.

³¹ June 8 Protest at 8 (*citing* Supplemental Filing, Attachment 1, Response to Question No. 5 at 3-4).

have little or no effect upon the bulk transmission system, the Maryland Commission questions whether they are eligible for any special rate treatment. Finally, the Maryland Commission points out that the Energy Policy Act of 2005 (EPAAct)³² did not intend to encourage investment in projects that are sorely needed to address local supply issues but provide little or no benefit to the stability or reliability of the bulk transmission system.³³

d. BG&E's Answer

38. BG&E contends the Maryland Commission position would have the effect of denying incentives for new transmission that provides reliability benefits to Maryland consumers exclusively, but allowing them when consumers outside Maryland benefit exclusively. BG&E claims that there is no Maryland state law that “requires” the construction of such facilities by BG&E. Finally, BG&E clarifies that it is not seeking a new transmission adder on routine TOI upgrades; rather, it seeks a 100-basis point adder for new transmission construction approved under PJM’s RTEP and only if PJM determines that such construction is needed for reliability or congestion-mitigation.

e. Commission Determination

1. Section 219 Requirements

39. In EPAAct, Congress added new section 219 to the FPA directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219, including the incentives requested here by BG&E.

40. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219, *i.e.*, the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.³⁴ Order No. 679 established a process for an applicant to follow to demonstrate that it meets this

³² Energy Policy Act of 2005 (EPAAct), Pub L. No. 109-58, § 1241, 119 Stat 594, 961 (2005) (to be codified at 16 U.S.C. § 824s) (section 219).

³³ June 8 Protest at 9.

³⁴ 18 C.F.R. § 35.35(i) (2007).

standard, including a rebuttable presumption that the standard is met 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.”³⁵ Order No. 679-A also clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (*i.e.*, a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.³⁶

41. We find that the Conastone and Waugh Chapel projects meet the requirements of section 219 as a result of the rebuttable presumption established in Order No. 679. Both projects were included in the PJM RTEP as baseline projects, which means that PJM made a determination that the projects are regional in nature and mitigate congestion or ensure PJM’s ability to continue to serve load reliably.

42. Contrary to BG&E’s contention that all TOI projects meet the rebuttable presumption because there is no difference between TOI and baseline projects in terms of the standard for being included in PJM’s RTEP, there are important differences between baseline and TOI projects.³⁷ As we noted in *Duquesne*, TOI upgrades are the sole right of each transmission owner to construct and are typically driven by the local transmission owner’s reliability requirements.³⁸ Unlike baseline project determinations, PJM makes no such determination that TOI upgrades mitigate congestion or ensure PJM’s ability to serve load reliably; PJM merely includes TOI upgrades in its power flow studies so that their impact can be considered when looking at PJM system conditions and baseline projects.³⁹ Thus, we find that the PJM RTEP process has made no determinations with

³⁵ Order No. 679-A at P 58.

³⁶ Order No. 679-A at P 49.

³⁷ *Duquesne* at P 64 (*citing* PJM Manual 14-C, Generation and Transmission Interconnection Facility Construction at 36, available at <http://www.pjm.com/contributions/pjm-manuals/pdf/m14c.pdf>).

³⁸ PJM’s 2006 RTEP at 12.

³⁹ *Duquesne* at P 66 (*citing* PJM’s 2005 RTEP of February 22, 2006 at 75).

respect to BG&E's TOI projects that would satisfy the Commission's section 219 standard. Accordingly, BG&E may not rely upon a rebuttable presumption for the required section 219 demonstration for the TOI projects.

43. Nevertheless, we find, based on the evidence in the record, that BG&E has satisfied the requirements of section 219 for its six TOI projects. BG&E claims that the Downtown Cable project is needed to ensure reliability for downtown Baltimore and to reduce transmission congestion. However, BG&E explains that the Downtown Cable does not have state siting approval, nor does it need it, because all of the work associated with the project is within BG&E-owned facilities or involves underground cables that do not require siting approval. BG&E explains that the Downtown Cable project is needed to address single contingency overloads during 2006 peak summer conditions.⁴⁰ BG&E provided a load flow analysis showing that loss of circuit 110606 loads circuit 10551 to 114 percent of summer emergency rating. Similarly, loss of circuit 110605 loads circuit 11052 to 102 percent of summer emergency rating. During such an outage, the remaining parallel circuit 110552 loads to 99 percent of its summer emergency rating. Should either circuit 110551 or 110552 fail while loaded to their limits, the remaining circuit will be loaded in excess of 135 percent of summer emergency rating and thus could jeopardize 500 MW of load in downtown Baltimore. The Commission finds that the Downtown Cable project is needed to ensure reliability and thus satisfies the requirements of section 219.

44. BG&E explains that the Northwest to Finksburg project is needed to address single contingency overloads during 2007 winter peak conditions and has been granted state siting authority. BG&E provided a load flow analysis showing loss of circuit 110572 loads circuit 110571 to 101 percent of winter emergency rating. Similarly the loss of circuit 110571 loads circuit 110572 to 101 percent of winter emergency rating. BG&E additionally states that the area served by these circuits are supplied by three substations, White Rock, Finksburg and Westminster via 115 kV supply. BG&E explains that its analysis shows that under conditions of coincident peak load of these three substation, circuits 110571 and 110572 will load to 108 percent of winter emergency rating for the loss of either circuit.⁴¹ The Commission finds that the Northwest to Finksburg project is needed to ensure reliability and thus satisfies the requirements of section 219.

⁴⁰ Supplemental Filing, Response to Question No. 6.

⁴¹ Supplemental Filing, Response to Question No. 5.

45. Finally, we find that BG&E's 37 future projects do not meet the section 219 criteria. BG&E has not provided any showing that these projects ensure reliability or reduce the cost of congestion. Although some of the projects may meet the criteria in the future, Order No. 679 specifically requires a case-by-case showing.⁴² A listing of projects that have not been through a regional planning process and have not received state siting approval falls short of these criteria.

2. Incentives and the Commission's Nexus Requirement

46. In addition to satisfying the section 219 requirement, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. The Commission has stated that in evaluating whether an applicant has satisfied the required nexus test, 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.⁴³ Applicants must provide sufficient explanation and support to allow the Commission to evaluate the incentives. In addition, the Commission has clarified that it retains the discretion to grant incentives that promote particular policy objectives unrelated to whether or not a project presents specific economic risks or challenges.⁴⁴

47. In Order No. 679-A, the Commission clarified that its 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 By its terms, this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.⁴⁶ As discussed herein, we find that BG&E has satisfied the Commission's nexus requirement for the baseline projects, and the Commission is scheduling a technical conference to further consider the TOI projects.

⁴² Order No. 679 at P 18; Order No. 679-A at P 24.

⁴³ 18 C.F.R. § 35.35(d) (2007); Order No. 679 at P 26. *See also* Order No. 679-A 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.")

⁴⁴ Order No. 679-A at n.37.

⁴⁵ *Id.* at P 40.

⁴⁶ *See* Order No. 679 at P 18.

48. As part of its evaluation of whether the total package of incentives requested is “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. This case presents us with the opportunity to further elaborate on how we will evaluate projects to determine whether they are routine and the effect this evaluation has on an applicant’s request for incentives.

49. In Order No. 679, we held that “not . . . every new transmission investment should receive a higher return than otherwise would be the case. For example, routine investments to meet existing reliability standards may not always . . . qualify for an incentive-based ROE.”⁴⁷ We reaffirmed this finding in Order No. 679-A, stating that “the most compelling case for incentives are new projects that present special risks or challenges, not routine investments made in the ordinary course of expanding the system to provide safe and reliable transmission service.”⁴⁸

50. In this case, we again address the question of whether particular projects are routine investments for purposes of Order Nos. 679 and 679-A, and how the answer to this question relates to our nexus test. To provide greater clarity to prospective applicants and affected customers in future cases, we first address our precedent on this issue and provide further guidance on it that will be applied in this and future cases.

51. It is important to clarify first what the Commission did, and did not, hold in Order Nos. 679 and 679-A. First, we held in Order No. 679 that routine investments “may not always qualify” for incentives.⁴⁹ However, we did not find that they would never qualify. Similarly, in Order No. 679-A, we held that projects with “special risks and challenges” present “the most compelling case” for incentives,⁵⁰ but did not hold they are the only projects that can qualify for incentives. Second, we held that routine investments “to meet existing reliability standards” may not always qualify for incentives.⁵¹ However, we did not hold that, if a project’s primary or sole purpose is to maintain reliability, it should not be eligible for incentives. Indeed, to do so would have

⁴⁷ *Id.* at P 27.

⁴⁸ Order No. 679-A at P 23.

⁴⁹ Order No. 679 at P 94.

⁵⁰ Order No. 679-A at P 23.

⁵¹ *Id.* at P 22.

been to disregard the plain language of section 219, which required the Commission to adopt a rule that “promote[s] reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce.”⁵² In articulating these principles, we left to individual cases further guidance as to how they would be applied. Based on our experience in prior cases applying Order No. 679, we provide such guidance as follows.

52. First, to determine whether or not a project is not routine, the Commission will consider all relevant factors presented by the applicant. For example, an applicant may present evidence on: (i) the scope of the project (*e.g.*, dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (ii) the effect of the project (*e.g.*, improving reliability or reducing congestion costs); and (iii) the challenges or risks faced by the project (*e.g.*, siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).⁵³

53. Second, applicants must provide detailed factual information in support of the factors they rely upon. For example, an applicant asserting that the scope of any proposed transmission expansion project is not routine should submit data distinguishing the project from other transmission projects or upgrades that are constructed in the ordinary course of maintaining a utility’s transmission system to provide safe and reliable service to its customers. An applicant also may, as in *Duquesne*, compare the total investment in a range of projects to some other aggregate measure of investment, such as total rate base or recent annual investment levels. Similarly, an applicant asserting that the effects of its project are not routine should, first, specify those effects in detail and, second, distinguish them from the effects associated with other transmission projects that are more routine in nature. This comparison can be by reference, for example, to increased transfer capability, facilitating wholesale power trades, enhancements to reliability, or some other measure, but it should be sufficiently detailed to allow the Commission to make the required determination. An applicant asserting that its project faces special risks or challenges should, first, explain those risks and challenges in detail and, second, explain how the risks and challenges compare to a project that is more

⁵² *Id.* at P 3.

⁵³ Of course, these are only examples of evidence that can help inform the Commission on the question of whether a project is routine. We are not proposing a new formulaic checklist that must be met by every applicant for every proposed incentive or project.

routine in nature. Finally, an applicant seeking an incentive may present evidence that a group of projects, when considered in the aggregate, are not routine. For example, individual components of a group of projects alone may be routine for purposes of incentives because, *e.g.*, their costs are small, or they provide a minimal impact on the system on a stand-alone basis, or, standing alone, face limited risks. However, as in *Duquesne*, individual projects, when considered in the aggregate, may not be routine for purposes of incentive treatment because they face significant risks and challenges.

54. Third, we clarify that when an applicant 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. If the Commission makes a determination that a project or projects are not routine and merit incentives, the Commission will evaluate the specific, proposed incentives and decide what incentives are appropriate for a particular project. As we stated in Order No. 679, “not every incentive will be available for every new investment.”⁵⁴ We will consider the total package of incentives requested and the inter-relationship between them.

55. Finally, if the Commission determines that a project is routine, an applicant is not necessarily foreclosed from incentives. The applicant may still be able to demonstrate that its project faces risks and challenges or provides sufficient benefits to warrant incentive rate treatment. However, because non-routine projects provide the most compelling case for incentives, we are not likely to grant incentives for example, discrete projects that replace existing equipment on a routine maintenance schedule.

3. The Nexus Requirement and BG&E’s Baseline Projects

56. We now apply Order No. 679, as clarified herein, to the facts presented here with respect to BG&E’s request for the 100-basis point ROE incentive adder for the Conastone and Waugh Chapel baseline projects.

57. We find that the scope of the Conastone and Waugh Chapel projects are not routine in nature, but rather, have a far-reaching scope and regional benefits. The Conastone baseline project enhances a major interconnection to the PJM bulk power system. Conastone is one of only two 500 kV stations on the BG&E system, and PJM analysis through the RTEP showed that overloads on the existing transformers are

⁵⁴ Order No. 679 at P 26.

expected to occur during the summer of 2009.⁵⁵ As such, PJM determined that the existing transformers should be replaced with larger capacity transformers, which will create additional capacity without creating additional overloads. This project will also upgrade the low side 230 kV ring bus configuration to the standard breaker and a half configuration, which will provide further additional import capacity and thereby reduce transmission congestion.⁵⁶ The Waugh Chapel substation connects BG&E's facilities to the PJM 500 kV grid and serves as a major import facility of power from Calvert Cliffs.⁵⁷ Currently there are three 500/230 kV three-phase transformers at Waugh Chapel. The third transformer functions as an in-service spare. PJM, through the RTEP process, determined that load exceeds the capacity of two transformers and the third transformer can no longer serve as a spare, since it is required to meet peak load at the Waugh Chapel substation. Therefore, PJM recommended that BG&E (i) replace the existing transformers with a larger capacity single-phase transformer, (ii) reconfigure the 500 kV switchyard, and (iii) add a spare 500/230 kV transformer.

58. We note that PJM's scrutiny of baseline projects is significant in our analysis of whether a project has met the nexus test. Pursuant to the PJM Operating Agreement, PJM is required to adopt a single regional plan that will maintain the reliability of the PJM grid in a manner that supports competition in the PJM region.⁵⁸ Projects that are identified as "baseline" projects in the PJM RTEP process are those that benefit customers in one or more transmission owner zones for the purpose of maintaining reliability or mitigating congestion on the PJM grid. Such projects therefore are, by definition, regional projects and thus, not routine. The Commission therefore finds that the regional benefits provided by PJM-approved baseline projects serve to make these facilities non-routine for purposes of the nexus requirement for an ROE incentive.

59. Given the scope and risks that BG&E will face when attempting to upgrade its system with the proposed baseline projects, which provide regional benefits as determined in the RTEP process, the Commission finds that BG&E has shown a nexus between the 100-basis point ROE incentive adder sought and the investment being made in the Conastone and Waugh Chapel baseline projects.

⁵⁵ Supplemental Filing, Response to Question Nos. 6 and 8.

⁵⁶ Supplemental Filing, Response to Question No. 6.

⁵⁷ Calvert Cliffs has 1,685 MW of capacity.

⁵⁸ PJM Operating Agreement, Schedule 6, section 1.4(a).

4. The Nexus Requirement and BG&E's TOI Projects

60. The Commission is unable to find, based on the record before us, that BG&E has shown a nexus between the 100-basis point ROE incentive adder and its overall investment in the six proposed TOI projects. The Commission therefore sets the requests for an ROE adder for the Downtown Cable and Northwest to Finksburg projects for technical conference, as described below. The Downtown Cable project consists of five separately identified TOI projects. BG&E explains that the Downtown Cable project is an integrated plan that will improve the reliability of the 115 kV network transmission system through downtown Baltimore. Project TOI151 will reconfigure two existing cables to act in parallel as one cable. Projects TOI369 and TOI370 will install an additional 115 kV circuit between the Westport and Center Street substations that will tie into the new 115kV Orchard Street switching station (TOI367) being constructed along this transmission route. The new Orchard Street substation will connect the existing Center Street substation with the new 115 kV circuits out of the Westport substation. Project TOI150 involves reconfiguring the Westport substation to breaker and a half configuration to meet BG&E's current substation design standards and expanding the substation to allow for the connection of additional 115 kV circuits to the new Orchard Street substation and the Wilkins Avenue substation. BG&E further explains that the Downtown Cable project reconfigures the 115 kV circuits serving downtown Baltimore and replaces aging substation equipment. The total cost of the Downtown Cable project is \$26,992,009. Projects TOI150 and TOI151 have projected in-service dates of June 1, 2007, while the other TOI projects have in-service dates of December 31, 2008.

61. Based on the record, we are unable to find that BG&E has demonstrated that the Downtown Cable project is a non-routine transmission project that merits incentive rate treatment. The project may be of limited scope in that it provides local reliability and service benefits. Further, two of the TOI projects that make up the Downtown Cable project have projected in-service dates of June 1, 2007, and have thus been completed or will be completed in the near future. Finally, the Downtown Cable project involves replacing aging substation equipment which a utility typically does during its routine business operations.

62. The Northwest to Finksburg project involves double circuiting an overhead transmission line between the Northwest and Finksburg substation. Two radial circuits tap BG&E's 230 kV system at the Northwest substation which (i) currently provide the only supply to the Finksburg and Westminster substations and (ii) are the sole source of power to most of Carroll County, Maryland. The Northwest to Finksburg TOI project will add a third circuit via a new breaker connecting to the existing 115 kV bus at the Northwest substation that will provide sufficient capacity to meet the anticipated needs

for the area for the next 20 years. The Northwest to Finksburg project has received siting approval from the Maryland Commission. The total cost of the project is \$3,471,437 and has a projected in-service date of December 31, 2008.

63. In addition, in testimony supporting state siting in Northwest to Finksburg, the Maryland Commission Staff noted that the project was not identified by PJM for reliability or economics associated with the transmission grid. Rather, Maryland Commission Staff noted that the project was identified by BG&E as necessary to support local load growth.⁵⁹ Based on the record, we are unable to find that BG&E has demonstrated that the Northwest to Finksburg project is a non-routine transmission project. The project has received state siting authority and may not face substantial regulatory uncertainty because it is located in one jurisdiction. The project provides local reliability and service benefits and does not provide or only provides minimal benefits to the PJM regional grid.

64. To gather additional information on which the Commission can make a decision on whether the TOI projects warrant an ROE incentive, we direct staff to convene a technical conference within 45 days of the date of this order and to report back to the Commission the results of the technical conference within 45 days of the conference. The Commission will issue another order based on the additional information gathered in the technical conference on whether BG&E's six TOI projects satisfy the nexus test.

5. The Nexus Requirement and BG&E's Future Projects

65. BG&E proposes to revise its formula rate mechanism contained in PJM's OATT so that 37 future projects can be given incentive rate treatment as part of its annual formula rates update filings. BG&E provided only general statements in support of its request for this generic incentive. It did not provide fact-specific reasons why each project or group of projects qualifies for an ROE incentive.⁶⁰ In addition, BG&E did not demonstrate how the future projects address demonstrable risks or challenges, or are otherwise non-routine. We find that BG&E has not provided sufficient evidence on scope, benefits or risks to show that these future projects are non-routine. We thus deny BG&E's request for a 100-basis point ROE adder for the 37 future projects without prejudice. Our decision in this case on the 37 future TOI projects does not preclude BG&E from seeking incentives for these projects in a subsequent application that makes the requisite demonstrations regarding the projects' effect on the cost of congestion or reliability, and the appropriate nexus.

⁵⁹ Supplemental Filing, Attachment 1 to Question No. 5 at 34.

⁶⁰ See *Duquesne* at P 51; Order No. 679 at P 18; Order No. 679-A at P 24.

6. Incentive for Construction Work in Progress

a. BG&E's Proposal

66. BG&E requests that the Commission approve the inclusion in rate base of 100 percent of prudently incurred CWIP on all new transmission investment, thereby reducing the borrowing costs and associated interest payments that would otherwise be borne by its ratepayers. BG&E requests that this incentive apply to all new transmission facilities, not just those for which it is seeking the 100-basis point adder.

b. Commission Determination

67. As discussed above, the Commission's policy on the 100 percent CWIP incentive is based on certain factual considerations relevant to whether a specific project qualifies for 100 percent CWIP in rate base.⁶¹ In Order No. 679-A, the Commission stated that the incentive allowing 100 percent CWIP recovery in the calculation of transmission rates is ordinarily "appropriate for large new investments or in situations . . . where denying such an incentive would adversely affect the utility's ratings."⁶² Accordingly, to determine whether a particular project qualifies for 100 percent CWIP in rate base the Commission considers a range of factors which include whether a transmission project will create cash flow difficulties as a result of long lead times and will have an adverse impact on credit ratings. As explained below, BG&E has not shown that these circumstances are present with respect to its baseline and TOI projects. Therefore, we conclude that BG&E has not shown the nexus between its baseline and TOI projects and the CWIP incentive and we thus reject BG&E's request for 100 percent CWIP for its baseline, TOI projects and 37 future projects.

68. For the baseline and TOI projects, BG&E states that it expects the projects to be completed by the end of 2008. Also, to justify its need for the CWIP incentive, BG&E states that it expects to significantly expand and enhance its transmission infrastructure and it is in the best interest of all stakeholders that BG&E strengthen its quantitative

⁶¹ *Supra*, P 46-55.

⁶² Order No. 679-A at P 116. Order No. 679 further states that "[a]llowing public utilities the opportunity, in appropriate situations, to include 100 percent of CWIP . . . removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward." *Id.* at P 117.

credit quality measures.⁶³ BG&E also states that its investment program will necessarily exert pressure on the key ratios and financial measures monitored by rating agencies in determining a company's credit rating.⁶⁴ BG&E argues that increased cash flows resulting from the inclusion of CWIP in rate base will result in higher quality earnings available for debt service and will also help strengthen its credit metrics. However, these facts and statements do not align with the Commission's policy for 100 percent CWIP in rate base.

69. In Order No. 679, the Commission stated that “[g]iven the long lead time required to construct new transmission, and the associated cash flow difficulties faced by many entities wishing to invest in new transmission, the Final Rule provides that, where appropriate, the Commission will allow for the recovery of 100 percent of CWIP in rate base.”⁶⁵ Accordingly, the Commission's intention for the CWIP incentive was to provide immediate cash flow for companies who take on projects with long lead times and, as a result, face cash flow difficulties or an adverse effect on its credit rating. Here, however, BG&E's baseline and TOI projects have short lead times, as they are expected to be completed by the end of 2008. Additionally, BG&E has failed to provide a cash flow analysis demonstrating that it will face cash flow difficulties as a result of its transmission investment in the baseline and TOI projects. Neither has BG&E convinced us that the baseline and TOI projects will adversely affect its credit rating as it is unclear whether BG&E's intent for the CWIP incentive is to strengthen its credit rating or to mitigate an adverse impact on its credit rating as a result of specific transmission investments. Due to the short construction time frame and BG&E's failure to demonstrate that it faces sufficient financial risks associated with the baseline and TOI projects, we deny BG&E's request to include 100 percent of CWIP in rate base. Prior instances in which the Commission has approved the CWIP incentive involved projects with much longer lead times. Additionally, a showing was made demonstrating that the utility faced likely financial risks and without the CWIP incentive the transmission project may not go forward. These facts are not present in this filing.

70. Finally, we reject BG&E's request for a permanent 100 percent CWIP revision in its formula rate. The Commission's regulations provide CWIP only for specific projects,

⁶³ Exhibit No. BGE-20 at 9.

⁶⁴ *Id.* at 10 – 11.

⁶⁵ Order No. 679 at P 29.

not the blanket approval sought here by BG&E. Further, BG&E has not submitted the statements required by the Commission's regulations regarding the inclusion of CWIP.⁶⁶ Therefore, we deny BG&E's request to recover 100 percent CWIP in rate base.

7. Revised Tariff Sheets

71. We accept BG&E's revised tariff sheets to PJM's OATT effective June 1, 2007,⁶⁷ subject to BG&E revising the tariff sheets to (i) eliminate the 100-basis point ROE incentive for TOI projects, (ii) delete the 100-basis point ROE provision for future projects, and (iii) delete the CWIP incentives, as more fully discussed above. In order to minimize the impact on PJM's billing cycle, BG&E shall make the compliance filing within 15 days of the date of this order.

III. Request for Waivers

a. BG&E's Request

72. BG&E requests a waiver of section 35.13 of the Commission's regulations ("Filing of Changes in Rate Schedules"), as may be necessary, including: (i) waiver of the full Period I/Period II data requirements;⁶⁸ (ii) waiver of the attestation concerning Period II submissions;⁶⁹ and (iii) waiver of the requirement to determine if, and the extent to which, a proposed change constitutes a rate increase based on Period I/Period II rates and billing determinants.⁷⁰ In support of its requested waivers, BG&E states that the formulary nature of BG&E's rate and the annual update mechanism constitute good cause for the Commission to grant waiver, as previously granted in its Settlement Agreement. Additionally, in support of waiver, BG&E notes that the revenue requirements resulting

⁶⁶ See 18 C.F.R. §§ 35.13(h)(38) and 35.25 and Part 101, *Electric Plant Instructions*.

⁶⁷ First Revised Sheet Nos. 299A, 299C, 299E, 299K, 299M, 299Q, 299R, 299S, 299T, 299U under PJM Interconnection L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1.

⁶⁸ 18 C.F.R. § 35.13(d)(1) and (2) (2007).

⁶⁹ *Id.* § 35.13(d)(6) and 35.13(d)(7). BG&E incorrectly cites 18 C.F.R. § 35.13(c)(6).

⁷⁰ *Id.* § 35.13(a)(2)(iv).

from the formula will be derived using the billing determinants published annually by PJM. Finally, BG&E requests waiver of section 35.3(a) in order to permit an effective date of June 1, 2007, of the revised tariff sheets.

b. Commission Determination

73. We deny BG&E's request for waiver of filing an attestation as required in 18 C.F.R. § 35.13(d)(6) and require the attestation of a corporate officer to verify cost of service statements and supporting data made by BG&E.⁷¹ We grant the remaining requested waivers consistent with our prior approval of BG&E's formula rate.⁷² Finally, we find that good cause exists to grant BG&E's request for waiver of the 60-day prior notice requirement to permit an effective date of June 1, 2007 of the revised tariff sheets, which we accept subject to revision in accordance with our findings in this order. BG&E is directed to file revised tariff sheets within 15 days of the date of this order incorporating the Commission findings herein.

The Commission orders:

(A) BG&E's revised tariff sheets to the PJM OATT are accepted for filing effective June 1, 2007, subject to BG&E filing revised tariff sheets to PJM's OATT to (i) eliminate the 100-basis point ROE incentive for TOI projects, (ii) delete the 100-basis point ROE provision for future projects, and (iii) delete the CWIP incentives.

(B) BG&E must make a compliance filing within 15 days of the date of this order, as discussed more fully above.

(C) Staff is directed to convene a technical conference within 45 days of the date of this order and report back to the Commission the results of the technical conference. The Commission will issue another order on whether BG&E's six TOI projects satisfy the nexus test for the ROE incentive adder based on the additional information gathered in the technical conference.

⁷¹ *ComEd* at P 93.

⁷² *See BGE Order* at P 55.

(D) People's Counsel's request for hearing is denied.

(E) BG&E's request for waivers are accepted or rejected, as discussed more fully above.

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

Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company

Docket Nos. ER07-576-000
ER07-576-001

(Issued July 24, 2007)

KELLY, Commissioner, *dissenting in part*:

This order addresses a Baltimore Gas and Electric Company (BGE) rate filing of revised tariff sheets to recover certain transmission investment rate incentives under Order No. 679 in connection with several transmission projects. It also provides further guidance on the Commission's nexus requirement from Order Nos. 679 and 679-A.

While I support the decisions made in this order as to the particular incentives at issue here, I must dissent from the guidance on the Commission's nexus requirement. Essentially that guidance maintains the status quo that permits applicants in the first instance to frame the key questions that must be answered in order to justify the grant of incentives over and above a just and reasonable rate. Specifically, the question of whether a project is merely a routine upgrade necessary to maintain reliable service to existing customers, or a more proactive upgrade that brings broad ranging public interest benefits. Only in the latter case do I believe that incentives are appropriate but the guidance in this order permits the applicant broad and, in my opinion, unjustified latitude in framing the question of whether a project is "routine" or not.

I believe that both sound policy and regulatory certainty require that the Commission lay out specific goals and factors for incentive applicants to meet and I would have included such guidance in this order.

Accordingly, I respectfully dissent in part from this order.

Suede G. Kelly

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company

Docket Nos. ER07-576-000
ER07-576-001

(Issued July 24, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The Public Service Commission of Maryland (Maryland Commission) raises a number of objections to BG&E's request for ROE incentive adder. In particular, the Maryland Commission objects to an incentive rate treatment for investments that are routine, made to retire aging infrastructure, or should have been made before the emergence of any reliability violations. The Maryland Commission reasons that BG&E already has an obligation to provide safe and adequate service at just and reasonable rates. I agree.¹

In this case, the majority states that whether a project is "routine" is particularly probative in determining if an incentive ROE adder is justified. Further, the applicant is placed on notice that it is important to provide detailed factual information to support a request for an incentive ROE adder. I support a more rigorous evidentiary burden for the applicant seeking an incentive ROE adder. That said, I have a fundamental disagreement with the analytical approach that has been crafted.

For me, the starting point for considering an incentive ROE adder is the purpose of the base ROE. In setting the base ROE, the Commission balances the interests of shareholders and consumers, recognizing that the base ROE must be sufficiently high to attract capital and compensate the utility for its risks, including regulatory risk. An incentive ROE adder over the base ROE should be more narrowly targeted to transmission investments that provide incremental benefits. For example, such benefits may result from the deployment of "best available technologies" that increase operation and energy efficiency, enhance grid operations, increase productivity, and result in greater grid flexibility. Some specific types of energy efficiency or productivity

¹ See, e.g., *Bangor Hydro-Electric Co.*, Opinion No. 149 117 FERC ¶ 61,129 (2006); *American Electric Power Service Corporation* 116 FERC ¶ 61,059 (2006), *order on reh'g*, 118 FERC ¶ 61,041 (2007); and *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006), *order on reh'g*, 118 FERC ¶ 61,042 (2007).

investments may include: (1) improved materials that allow significant increases in transfer capacity using existing rights-of-way and structures; (2) equipment that allows greater control of energy flows, enabling greater use of existing facilities; (3) sophisticated monitoring and communication equipment that allows real-time rating of existing transmission facilities, facilitating greater use of existing facilities; and (4) new or innovative technologies that will increase regional transfer capacity. In addition, the Commission should ensure that there has been an open, fair, and robust consideration of all the alternatives to the specific transmission investment being proposed. That consideration should include local resource alternatives such as demand response and distributed generation, alternative line configurations such as direct current, and other advanced technologies that may effectively complement, or in some cases supplant, a proposed new transmission line.

Applying these considerations to the facts of this case, BG&E has not made its case that an incentive ROE adder is appropriate. BG&E states that the Technology Statement requires a general discussion of the technologies considered, but not a detailed discussion of all the engineering considerations and cost comparisons that would be made in deciding whether to implement a specific technology.² As a result, BG&E provided no information regarding their consideration of efficient transformers for the transformer replacements and additions associated with the projects. BG&E failed to provide any cost and benefit analysis for their rejection of the use of static VAR control. The Commission staff issued a deficiency letter seeking more information relating, in part, to BG&E's Technology Statement. I commend the Commission staff for their efforts. However, BG&E's responses were again general in nature. In any future petition for declaratory order by a utility seeking incentive rates, I expect to see a thorough and complete evaluation of the feasibility of using state-of-the-art technologies.³

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

² Prepared Direct Testimony of Kent J. Davis at 6.

³ Order No. 679 at P 302 (“In as much as EAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.”).