

126 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pioneer Transmission, LLC

Docket Nos. ER09-75-000
ER09-75-001

ORDER ON TRANSMISSION RATE INCENTIVES
AND FORMULA RATE PROPOSAL

(Issued March 27, 2009)

1. On October 15, 2008, Pioneer Transmission, LLC (Pioneer) filed tariff sheets pursuant to sections 205 and 219 of the Federal Power Act (FPA),¹ to the open access transmission tariffs administered by PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (MISO). The proposed tariff sheets establish a formula rate for transmission services rendered for the Pioneer project, which will consist of a 765 kV transmission line in Indiana that will connect PJM and MISO and facilitate the interconnection of over 4,000 MW of new wind generation. In addition, the proposed tariff sheets reflect four Order No. 679² transmission rate incentives for the Pioneer project: (1) a return on equity (ROE) of 13.5 percent; (2) recovery of 100 percent of its costs for construction work in progress (CWIP); (3) recovery of prudently-incurred costs if the Pioneer project is abandoned for reasons outside of Pioneer's control; and (4) permission to establish a regulatory asset for costs incurred prior to the effective date of the formula rate. For the reasons discussed below, we accept in part, and reject in part, the transmission rate incentives and formula rate proposal. We also establish settlement and hearing procedures for certain formula rate issues.

¹ 16 U.S.C. §§ 824d; 824s (2006).

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

I. Proposal

2. The Pioneer project is a 240 mile 765 kV transmission line and related facilities that will interconnect southwestern Indiana with central and northern Indiana. The project will run between two existing substations in Indiana, the Rockport Station in the south (in PJM) and the Greentown Station in the north (in MISO). The 765 kV transmission line will traverse through central Indiana, which is experiencing substantial development of wind-powered generation.³ The project is expected to have a capacity of over 4,000 MW, an estimated cost of \$1.0 billion, and an expected in service date of 2014-2015.⁴

3. Pioneer, a limited liability company, is a joint venture between subsidiaries of American Electric Power Company, Inc. (AEP) and Duke Energy Corporation (Duke). Although Pioneer will have no employees of its own, it will have access to the utility expertise of its parent companies, including American Electric Power Service Corporation, which has experience in developing high-voltage transmission facilities in the same regions as the proposed Pioneer project. Pioneer states that it will receive services from its affiliates under cost-based contracts,⁵ and will be capitalized through a combination of equity contributions from AEP and Duke and through debt obtained by Pioneer itself.

4. Pioneer states that the project is in its early phases of development and has not been approved by the regional transmission expansion plan procedures of either PJM or MISO. Further, Pioneer states that, as of the filing date, neither PJM nor MISO has filed a proposal to allocate the cost of economic cross-border projects between one another.⁶ Pioneer states that once its project is included in both the regional transmission expansion

³ Pioneer states that the project will facilitate the interconnection and transmission of at least 4,000 MW of the proposed 6,000 MW of new wind generation in Indiana that is currently in the MISO and PJM interconnection queues. *See* Pioneer October 15, 2008 Transmittal Letter at 23-24; Ex. PNR-200 at 11.

⁴ Pioneer October 15, 2008 Transmittal Letter at 10.

⁵ *Id.* at 60 (citing *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264 (2008)).

⁶ On January 28, 2009, in Docket Nos. ER05-6-108, *et al.*, PJM and MISO submitted a filing that includes revisions to their Joint Operating Agreement on the allocation of economic cross-border projects between one another. The proposal is pending before the Commission.

plans of PJM and MISO and the Commission has accepted a cross-border cost allocation methodology, Pioneer will become a member of the two RTOs.

5. Pioneer requests an effective date of December 15, 2008, for the abandonment incentive and the regulatory asset incentive. For the formula rates and the other incentives, Pioneer requests that the effective date be deferred until PJM and MISO have included mechanisms in their tariffs for allocating the cost of cross-border projects between one another.

A. Request for Incentives

6. Pioneer requests four transmission rate incentives pursuant to Order No. 679. First, Pioneer requests an ROE of 13.5 percent, which has a base ROE of 11.0 percent plus ROE adders of: (1) 50 basis points for RTO membership; (2) 50 basis points for the use of advanced transmission technology; and (3) 150 basis points for investment in new transmission. Pioneer states that its ROE proposal is based on a traditional discounted cash flow analysis, which results in a zone of reasonableness of 8.2 percent to 15.2 percent and a median of 11.0 percent.⁷ Pioneer contends that an ROE of 13.5 percent is needed to help attract capital investment for the project.

7. Second, Pioneer seeks authorization for 100 percent CWIP in rate base during the development and construction period of the project. Pioneer states that it faces financial challenges as a start-up company, and 100 percent CWIP recovery will alleviate further downward pressures on its financial condition by ensuring adequate cash flow.⁸

8. Third, Pioneer requests approval to recover 100 percent of its prudently-incurred costs associated with the Pioneer project in the event the project must be abandoned for reasons outside of its control. Pioneer states that because PJM or MISO may not approve the project in their regional transmission expansion plans, Pioneer might fail to obtain regulatory approvals or the necessary rights-of-way.

9. Fourth, Pioneer seeks authorization to establish a regulatory asset consisting of all project expenses that are not capitalized and included in CWIP prior to the date the formula rate becomes effective. Pioneer also requests authorization to amortize the regulatory asset over five years from the effective date of the formula rate, which should correspond closely with the period during which the Pioneer project is constructed. In addition, Pioneer seeks permission to accrue carrying charges on the regulatory asset

⁷ Pioneer October 15, 2008 Transmittal Letter at 44-45.

⁸ *Id.* at 33.

balance at its cost of capital from the date that the Commission accepts the regulatory asset until the date the regulatory asset is fully amortized.

10. Pioneer states that its project will improve reliability, facilitate the interconnection of new generation that would otherwise require substantial upgrades to the existing lower-voltage networks, eliminate existing and anticipated congestion on the transmission system, reduce losses, and permit the interconnection of substantial quantities of wind generation.⁹ Pioneer cites the following risks regarding the projects: (1) the project is non-routine because it will cost approximately \$1 billion and will connect two RTOs; (2) Pioneer is a start-up company with no business history, no credit rating, no debt repayment history, and no guarantees from its members; (3) the State of Indiana does not have a formal siting process; and (4) the implementation of new transmission technologies requires specialized knowledge that is not always readily available within the industry.¹⁰

11. Pioneer states that each of the requested incentives is designed to alleviate a different risk. It further explains that the requested incentives were selected as a package of incentives to work together to ensure that the project is completed in a timely manner.

B. Formula Rate Proposal

12. Pioneer proposes to establish formula rates to recover the costs associated with the project. Because the project will be located in two RTOs, Pioneer proposes to include the tariff sheets containing the formula rate in the tariffs of both PJM and MISO. The formula rate consists of an annual transmission revenue requirement, a formulaic spreadsheet, and protocols. Pioneer states that its proposed formula rate provides for the recovery of: (1) a return on rate base and associated taxes; (2) taxes other than income taxes; (3) depreciation expense; and (4) operations and maintenance expenses, less revenue credits. Pioneer requests that the effective date for the tariff sheets containing the formula rate be deferred until the tariffs of PJM and MISO have mechanisms for allocating the cost of cross-border projects between each other.

C. Technology Statement

13. Pioneer states that it is entitled to an ROE incentive of at least 50 basis points because it is employing new advanced transmission technologies that are among those described in section 1223 of the Energy Policy Act of 2005 (EPAAct 2005).¹¹ Pioneer

⁹ Pioneer October 15, 2008 Transmittal Letter at 12.

¹⁰ *Id.* at 26-29.

¹¹ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, 953 (2005).

asserts that it will use a number of advanced transmission technologies to enhance the performance of the Pioneer project, which include: (1) advanced conductor design; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; (6) independent phase operation; and (7) switchable shunt reactors. Pioneer states that it considered other advanced technologies for the project, but determined that they were not appropriate.¹²

14. According to Pioneer, use of a six-conductor, as opposed to a four-conductor, bundle limits noise and offers an added benefit of reduced levels of radio interference, and offers approximately 40 percent lower line losses than other alternatives. Pioneer explains that it is committed to using an advanced compact aluminum conductor design for the project, and is also considering the feasibility of a more advanced core design conductor.

15. Pioneer explains that due to the long transmission distances and high loading levels anticipated in the project, system imbalance needs to be addressed in the design and construction of the project. Therefore, Pioneer plans to transpose phases on the new line, which Pioneer asserts will moderate system imbalance, enhance reliability of the line protection and reduce line losses. Pioneer states that additional line loss reduction also will be achieved by transposing the shield wires of the new 765 kV line.

16. Pioneer states that shield wires with fiber-optic cores will be used to enable the novel application of differential line protection that reliably detects short circuits. According to Pioneer, fiber-optic shield wires will provide high-capacity, high-speed communication channels allowing system dispatchers to switch facilities remotely and reliably for voltage control and to maintain reliable grid operation and security, as well as aid engineering and maintenance staff in performing diagnostics of the remotely-located equipment.

17. For wide-area monitoring and control, Pioneer states that phasor measurement units will be installed to communicate real-time data via the optical channels on the transmission line and thereby provide enhanced system state intelligence. Further, with respect to remote station equipment diagnostics and security, Pioneer states that the equipment's physical status and health will be monitored remotely on a continuous basis. Pioneer asserts that because the equipment is highly specialized, special remote sensors, detectors, and/or audio/video devices – linked via optical channels to computers/databases – will be installed to obtain the necessary equipment diagnostics and ensure the physical security of the equipment. Pioneer also explains that incoming data will be analyzed using experience-based algorithms designed to identify unusual trends in

¹² Pioneer October 15, 2008 Transmittal Letter at 59.

equipment condition, providing early warning indications and information for operations and maintenance decisions.

18. For independent phase operation, Pioneer argues that opening only the faulted phase with a technique known as single-phase operation can improve system reliability. Thus, according to Pioneer, use of enhanced single-phase operation and the fact that 765 kV equipment components are built as single-phase units allows Pioneer to achieve more reliable independent phase operation to improve line reliability substantially. In addition, Pioneer explains that a further enhancement of single-phase operation includes a concept that is presently being explored as part of AEP's technology alliance with ABB Inc. Pioneer states that following a permanent single phase to ground fault, the two unfaulted phases would remain in service long enough to allow for reliable dispatch of the system before the affected circuit must be fully removed from service for repair. According to Pioneer, if this concept proves to be feasible, it will be employed on the project's 765 kV line, effectively achieving the contingency performance comparable to two circuits strung on common towers.

19. Pioneer states that advanced circuit breakers with power electronics have been successfully applied on a limited basis in the AEP 765 kV system to disconnect reactors without de-energizing the line. It explains that similar circuit breakers will be used as part of the Pioneer project to permit de-energization of these reactors automatically or by remote control without taking the line out of service. Pioneer states that this also will enhance operating flexibility and enable single-phase operation implementation.

D. Study on Reliability and Congestion Benefits

20. On January 26, 2009, in response to the Commission staff's deficiency letter, Pioneer filed a study explaining how the project will ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion. Pioneer's analyses demonstrate the benefits of the project through the use of various load flow models that illustrate system conditions under the assumed base cases and that show how those conditions change with the Pioneer project in service. Pioneer states that the analyses use MISO base cases and are consistent with the methodologies that PJM and MISO typically use to review projects of this type.

21. According to Pioneer, its study demonstrates that the project will permit the interconnection of numerous wind projects proposed in Indiana and will alleviate reliability issues by unloading the existing underlying 230 kV and 345 kV transmission infrastructure, thereby improving overall system reliability under contingency conditions. It explains that the analyses in the study indicate that the project will lower energy costs as a result of reducing transmission losses and congestion. To support this conclusion, Pioneer states that under the 2018 base case scenario, the project will reduce losses by approximately 80 MW–100 MW. Pioneer states that using conservative net present value assumptions, the project results in estimated energy savings of \$320 to \$430 million as a

result of loss reductions.¹³ Pioneer states that it has not calculated the precise level of congestion savings because projected generator pricing data available to PJM and MISO are not available to AEP or Duke. Therefore, to demonstrate the potential congestion savings, the study analyzes a range of possible outcomes from as little as a ten percent reduction in congestion costs up to a 75 percent reduction, and estimates that the project will result in an annual reduction in congestion costs of as much as \$20 to \$150 million.

II. Notice of Filings and Responsive Pleadings

22. Notice of Pioneer's October 15 filing in Docket No. ER09-75-000 was published in the *Federal Register*, 73 Fed. Reg. 63,465 (2008), with interventions and comments due on or before November 5, 2008. Timely motions to intervene were filed by: Baltimore Gas & Electric Company; Constellation Energy Commodities Group Inc., Constellation NewEnergy, Inc., and Constellation Power Source Generation, Inc.; Consumers Energy Company; Dominion Resources Services, Inc.; Exelon Corporation; Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company; Midwest ISO Transmission Owners;¹⁴ MISO; Office of the Ohio Consumers' Counsel; Pepco Holdings, Inc.; PPL Electric Utilities Corp.; Public Service Commission of Maryland; Public Service Electric and Gas Company; Rockland Electric Company; Wabash Valley Power Association, Inc.; and Wisconsin Electric

¹³ Pioneer January 26, 2009 Transmittal Letter at 7.

¹⁴ The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, American Transmission Company LLC; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Great River Energy; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; and Wolverine Power Supply Cooperative, Inc.

Power Company. Late motions to intervene were filed by Allegheny Power, Dayton Power and Light Company and the Organization of MISO States.¹⁵

23. Timely motions to intervene or notices of intervention and comments were filed by: Indiana Office of Utility Consumer Counselor (Indiana Consumer Counselor); Indiana Utility Regulatory Commission (Indiana Commission); Northern Indiana Public Service Company (Northern Indiana PSC); and PJM. Comments were filed by the PJM Transmission Owners Group (PJM Transmission Owners).¹⁶

24. In addition, timely motions to intervene and protests were filed by: American Municipal Power – Ohio, Inc. (AMP-Ohio); Coalition of Midwest Transmission Customers and PJM Industrial Customer Coalition (Industrial Coalitions); Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier); Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and Wisconsin Public Power Inc. (Midwest TDUs); and Old Dominion Electric Cooperative (ODEC).

25. On November 20, 2008, Pioneer filed an answer to the comments and protests.

26. On December 11, 2008, the Commission staff issued a deficiency letter requesting studies on how the project would ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion. On January 26, 2009, Pioneer submitted a report in response to the deficiency letter.

27. Notice of Pioneer's January 26, 2009 report in Docket No. ER09-75-001 was published in the *Federal Register*, 74 Fed. Reg. 6406 (2009), with interventions and comments due on or before February 13, 2009. LS Power Associates, L.P. filed a timely motion to intervene. The Indiana Commission and PJM Transmission Owners filed

¹⁵ The Organization of MISO States is a non-profit, self-governing organization of representatives from each state with regulatory jurisdiction over entities participating in the MISO.

¹⁶ Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (FirstEnergy Companies); Pepco Holdings, Inc. and its affiliates Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company; PPL Electric Utilities Corporation; Baltimore Gas and Electric Company; Rockland Electric Company; Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power; Exelon Corporation on behalf of its operating company affiliates Commonwealth Edison Company (and its wholly-owned subsidiary, Commonwealth Edison Company of Indiana, Inc.) and PECO Energy Company; and Public Service Electric and Gas Company.

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 285.214, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.214(d) (2008), the Commission will grant the late-filed motions to intervene of Allegheny Power, Dayton Power and Light Company, and the Organization of MISO States given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We are not persuaded to accept Pioneer's answers and will, therefore, reject them.

B. Section 219 Requirements

30. In the EPAct 2005,¹⁷ Congress added 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 sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Pioneer.

31. 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."¹⁸ Also, as part of this demonstration, "section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential."¹⁹

¹⁷ Pub. L. No. 109-58, 119 Stat. 594, § 1241.

¹⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

¹⁹ *Id.* P 8 (citing 16 U.S.C. §§ 824(d) and 824(e)).

32. 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.²⁰ Order No. 679 established a process for an applicant to follow to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) 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 (2) a project has received construction approval from an appropriate state commission or state siting authority.²¹ Order No. 679-A 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.²²

1. Proposal

33. Pioneer states that it is eligible for incentives under section 219. It states that incentives are appropriate because the Pioneer project will: (1) provide significant benefits associated with the use of 765 kV transmission; (2) increase reliability by tying together load centers in central and northern Indiana with generation centers in the southwestern part of the state; (3) reduce costs associated with line losses by \$320-\$430 million; (4) increase capacity savings by \$60-70 million; and (5) provide enhanced access to wind generation. Pioneer argues that the Pioneer project should be eligible for the abandonment and regulatory asset incentives without relying on its inclusion in the PJM and MISO regional transmission expansion plans. However, Pioneer notes that absent such inclusion, the Pioneer project will not realistically be able to move forward. Finally, Pioneer notes that it meets the standards established in *PG&E* for receiving policy-based incentives outside of the guidelines established by Order No. 679.²³

²⁰ 18 C.F.R. § 35.35(i) (2008).

²¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

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

²³ Pioneer October 15, 2008 Transmittal Letter at 24-25 (citing *Pacific Gas and Electric Co.*, 123 FERC ¶ 61,067 (2008) (*PG&E*)).

2. Protests and Comments

34. Protestors contend that because the project has not been submitted to or approved by a regional transmission expansion planning process, Pioneer has not met the rebuttable presumption set forth in FPA section 219. They further argue that the Pioneer project is premature and that the Commission should decline to act on the project pending further development of the PJM and MISO stakeholder processes. Alternatively, they request that Commission approval of the incentives be conditioned upon the Pioneer project being formally included in a regional transmission planning process.

35. AMP-Ohio disputes Pioneer's contention that the Commission's findings in *PG&E* apply in this case because the PG&E project is of a much larger magnitude. AMP-Ohio notes that the PG&E project is a \$3.2 billion, 1,000-mile long international project whereas the Pioneer project is a \$1 billion, 240 mile long project totally within the state of Indiana.²⁴ AMP-Ohio therefore requests that the Commission deny Pioneer's requested incentives.

36. Midwest TDUs and PJM note that PJM's regional transmission expansion planning process is an open, transparent and independent process. PJM is concerned that a Commission finding on the reliability or economic benefits of the Pioneer project could undermine or prejudice the outcome of the PJM regional transmission expansion process. To prevent the need to litigate or dispute the benefits of the Pioneer project in more than one forum and to balance the need for prompt consideration of incentive proposals against prejudging the results of the stakeholder process, PJM requests that the Commission clarify the sequencing of events for the approval process for incentives.

3. Commission Determination

37. Our policy is to review each request for transmission incentives on its own merits and on a case-by-case basis.²⁵ Pioneer does not qualify for the rebuttable presumption under FPA section 219 because the Pioneer project has not been approved as part of either PJM's or MISO's regional transmission expansion plans. Further, Pioneer does not qualify for the rebuttable presumption under Order No. 679 because the State of Indiana does not have a formal siting process that would evaluate the project in terms of the section 219 requirements. The Commission will, however, evaluate a project's eligibility for incentives if the applicant can demonstrate that the project meets section 219 requirements of ensuring reliability and/or reducing the cost of delivered power by

²⁴ AMP-Ohio Protest at 6-7 (citing *PG&E*, 123 FERC ¶ 61,067).

²⁵ *PG&E*, 123 FERC ¶ 61,067 (2008); *Central Maine Power Co.*, 125 FERC ¶ 61,079 (2008).

reducing congestion. Our review of the record indicates that Pioneer has demonstrated that the Pioneer project meets these section 219 requirements.

38. In response to staff's deficiency letter, Pioneer submitted a study based on MISO's projected summer peak conditions for 2018 in the region of the proposed project. Pioneer's study includes the results of a powerflow and contingency analysis that shows the potential system benefits of the project, including reliability and congestion benefits, and facilitating the interconnection of wind energy in Indiana. Based on our analysis of Pioneer's study, we find that the Pioneer project satisfies section 219's criteria of ensuring reliability and/or reducing the cost of delivered power by reducing transmission congestion. As noted in Pioneer's filing,²⁶ the Department of Energy has identified Indiana as a conditional congestion area. Pioneer's study provides a reasonable basis to conclude that the Pioneer project: (1) will reduce congestion in the future by facilitating integration and delivery of low-cost wind energy in Indiana; and (2) will ensure reliability by enhancing the voltage profile and reducing thermal loadings on many lower voltage facilities²⁷ by as much as 20 percent for some facilities.²⁸

39. In addition, we find that with regard to the impact on wind generation, the Pioneer project, as configured in the study, will allow for the integration of approximately 4,000 MW of wind thereby accelerating the integration of clean, reliable renewable energy resources. Our analysis shows that with the addition of wind generation to the base case, the existence of the project will mitigate overloads of certain transmission facilities that are expected to occur during both normal and single contingency conditions.

40. We recognize but disagree with protestors' concerns that the project is premature because it has not been approved by the regional transmission expansion plans of PJM and MISO. We find that granting incentives as discussed in this order will not undermine the MISO or PJM stakeholder processes. Nothing here changes the manner in which MISO or PJM evaluates projects, nor do our findings regarding Pioneer's satisfaction of

²⁶ Ex. PNR-300 at 10-11.

²⁷ Pioneer January 26, 2009 Transmittal Letter at 5-6.

²⁸ Although we make a finding here that the project will ensure reliability, we note that Pioneer's study itself shows that even with the addition of the Pioneer project, some overloads exist under certain contingencies, which must be addressed by MISO and PJM once the Pioneer project is integrated into their regional transmission planning processes.

the requirements under section 219 prejudice the determinations of the regional transmission expansion plans of PJM or MISO.²⁹

41. With respect to AMP-Ohio's argument that the Commission's findings in *PG&E* do not apply in this case, we find that we need not address whether Pioneer's project meets the standards established in *PG&E* for receiving policy-based incentives outside of the guidelines established by Order No. 679. As explained above, based on our review of the record in this case, we find that Pioneer has demonstrated that its project meets section 219's criteria regarding the enhancement of reliability and/or the reduction of the cost of delivered power by reducing transmission congestion. Further, as discussed below, we find that Pioneer's project meets the nexus requirement that the Commission established in Order No. 679. For these reasons, we need not evaluate whether Pioneer should be granted policy-based incentives outside of the guidelines established by Order No. 679.

C. The Nexus Requirement

42. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."³⁰ The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

43. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.³¹ In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g.,

²⁹ See *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 43 (2008) (*Tallgrass*).

³⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

³¹ *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084, at P 48 (2007) (*BG&E*), order granting incentive proposal, 121 FERC ¶ 61,167 (2007), *reh'g denied*, 122 FERC ¶ 61,034 (2008), *reh'g denied*, 123 FERC ¶ 61,262 (2008).

improving reliability or reducing congestion costs); and (3) 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).³² Additionally, the Commission clarified 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.”³³

1. Proposal

44. Pioneer states that there is a nexus between its requested incentives (an ROE of 13.5 percent, and incentives for CWIP, abandonment and regulatory assets) and the risks and challenges it faces in developing the Pioneer project. Specifically, Pioneer states the project will produce numerous benefits, such as: (1) improving reliability; (2) facilitating the interconnection of new generation that would otherwise require substantial upgrades to the existing lower-voltage networks; (3) eliminating existing and anticipated congestion on the transmission system; (4) reducing transmission losses; and (5) permitting the interconnection of substantial quantities of wind generation. Pioneer states that the project is non-routine. It further states its estimated cost is \$1 billion and it will be the first time that 765 kV facilities will be constructed across the boundary of two RTOs. Finally, Pioneer states that the Pioneer project faces financial risk and routing and need challenges.

2. Protests and Comments

45. AMP-Ohio and Hoosier contend that the Pioneer project has not satisfied the nexus test and therefore does not qualify for Order No. 679 incentives. For example, AMP-Ohio states that there is nothing exceptional about either the size of a 240 mile, \$1 billion transmission project to be built by two utilities with a combined 55,000 miles of transmission lines where these companies expect to invest more than \$30 billion of capital in the next few years. AMP-Ohio further states that Pioneer’s attempt to obtain a panoply of incentives at this very early stage is based largely on allegations that the project is so risky that these incentives are necessary to move it forward. AMP-Ohio contends that the allegations of risks are undermined by the failure of AEP and Duke to offer participation in the project to others, such as municipal entities with lower financing costs, to retain an excessive return for themselves. AMP-Ohio further contends that AEP and Duke have no intention of raising equity capital in the market but instead are willing to assume all of the alleged “risks” themselves. Finally, AMP-Ohio argues that the

³² *Id.* P 52-55.

³³ *Id.* P 54.

project will shift both the risks and the costs of responding to risk to ratepayers, while providing all compensation rewards to AEP and Duke.

46. Hoosier states that Pioneer exaggerates the riskiness of investment in the Pioneer project. Hoosier asserts that what Pioneer cites as project-specific risks are risks common to the entire electric industry. Further, Hoosier asserts that the formula rate provides significant protection from escalating costs. In addition, Hoosier disagrees with Pioneer's contention that the absence of a formal siting process in Indiana may expose Pioneer to expensive litigation regarding the routing of the project, especially because Pioneer has presented no examples of such litigation or any estimate of what expenses it may face.

3. Commission Determination

47. We find that Pioneer has sufficiently demonstrated a nexus between the considerable risks and challenges it is undertaking to develop and construct this project and the incentives it has requested.

48. We find that the Pioneer project is not routine based on the project's scope, effects, and risks and challenges. The scope of the project is significant. First, the 240 mile 765 kV transmission line will cost approximately \$1 billion, one of the highest-cost transmission projects in the region.³⁴ Second, the project will connect two RTOs using 765 kV facilities. Third, the project will facilitate the interconnection and transport of at least 4,000 MW of the proposed 6,000 MW³⁵ of new wind generation in Indiana that is currently in the MISO and PJM interconnection queues, without requiring substantial upgrades to the underlying lower-voltage networks. Specifically, the project will assist in unloading lower-voltage facilities through the enhanced carrying capability of the 765 kV facilities coupled with the addition of strategically-located "collector"³⁶ stations. Further, we agree with Pioneer that adding the Pioneer project to the transmission network may allow more economic interconnections for currently proposed generation projects, and may incent additional wind projects to locate in the area to take advantage of the ease of interconnection.³⁷

³⁴ Pioneer October 15, 2008 Transmittal Letter at 27.

³⁵ *Id.* at 23; Ex. PNR-200 at 10.

³⁶ A "collector" station is a strategically located transmission substation that will provide an easy connection for wind projects. *Id.* at 11.

³⁷ Pioneer October 15, 2008 Transmittal Letter at 23-24; Ex. PNR-200 at 11.

49. We find that Pioneer faces significant risks and challenges in developing the project. For example, because Indiana does not have a formal siting process, Pioneer will have to obtain rights-of-way for the 240 mile line by negotiating with individual landowners.³⁸ If such negotiations are unsuccessful, Pioneer will have to initiate eminent domain proceedings in the circuit court for each county traversed by the project that may result in inconsistent circuit court rulings and appeals.

50. Since we have found that the project is non-routine and eligible for incentives, we discuss below Pioneer's request for specific incentives.

D. ROE Adders

1. Proposal

51. Pioneer requests the following ROE adders: (1) 50 basis points for participation in a regional transmission organization; (2) 50 basis points for the use of advanced technologies; and (3) 150 basis points for investment in new transmission facilities.³⁹ Pioneer requests that the ROE adders, when added to its base ROE, produce an ROE of 13.5 percent.

2. Protests and Comments

52. AMP-Ohio contends that Pioneer has not justified approval of any incentive at this time. AMP-Ohio further argues that any claim that the use of 765 kV technology for the project is "exceptional" is belied by Pioneer's contention that AEP already operates more than 2,100 miles of 765 kV transmission, which, according to Pioneer, is more than any other utility in the country.

53. The Industrial Coalitions argue that customers should not have to pay for "lone wolf" transmission projects and incentive projects that have not been approved as part of an RTO's regional planning process.

54. AMP-Ohio contends that Pioneer has not adequately supported an additional 150 basis point incentive and a 50 basis point incentive for RTO participation. Hoosier argues that Pioneer has failed to justify incentive adders for RTO participation, the use of

³⁸ *Id.* at 28.

³⁹ In its transmittal letter, Pioneer requests 150 basis points for new transmission based on the use of the median for establishing its base ROE. However, in its testimony, Pioneer requests 170 basis points for new transmission based on the use of the midpoint for establishing its base ROE. *See* Pioneer October 15, 2008 Transmittal Letter at 45; Ex. PNR-400 at 10.

advanced technologies and investment in new transmission facilities. Midwest TDUs argue that the Commission should consider, at most, only two of the requested incentives: creation of a regulatory asset for development costs and abandoned plant cost recovery. They also argue that Pioneer's requested ROE incentives are excessive and exceed the ROE adders granted in recent cases.

55. The Midwest TDUs contend that the Commission should not decide whether Pioneer merits an RTO participation adder until after Pioneer has actually joined an RTO. They also contend that Pioneer should not accrue CWIP for membership in an RTO before Pioneer becomes a member of an RTO. Further, Midwest TDUs state that Pioneer will be able to demand concessions from the RTOs as a price for joining them and that, because Pioneer is not currently a member of PJM or MISO, it will be able to play PJM off against MISO over which RTO will control specific portion of Pioneer's facility. Finally, Midwest TDUs state that Pioneer does not need inducement to join an RTO because Pioneer is owned by entities that are already receiving explicit or implicit inducements for their RTO participation. Midwest TDUs argue that this indicates there is no nexus that would justify an RTO participation bonus for Pioneer.

3. Commission Determination

56. We will approve Pioneer's request for a 150 basis point adder for new transmission, but, as acknowledged by Pioneer, the ROE adder will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and MISO and there is a Commission-approved cost-allocation methodology in place.⁴⁰ Pioneer has shown a nexus between the 150 basis points for new transmission adder and the size, scope, benefits, and risks and challenges of the Pioneer project. For example, Pioneer faces the difficult task of securing the project's approval in two RTOs' transmission planning processes and obtaining rights-of-way through several counties without the benefit of a state siting process. The 150 basis point adder will help Pioneer attract capital investment that will make it more likely that the project will be constructed.⁴¹

57. In addition, we will grant a 50 basis points adder for Pioneer's participation in PJM and MISO, effective upon the date that Pioneer becomes a member of PJM and MISO and the project being placed under their operational control.⁴² The Commission's decision to grant the applicant an incentive ROE for participation in PJM and MISO is

⁴⁰ Pioneer October 15, 2008 Transmittal Letter at 12.

⁴¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 91.

⁴² See, e.g., *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007).

consistent with the stated purpose of section 219. The incentive applies to all utilities joining an RTO and is intended to promote membership in RTOs.⁴³

58. We deny without prejudice the request for a separate 50 basis point advanced transmission technology adder for the deployment of 765 kV facilities and use of the following technologies: (1) advanced conductor design; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; (6) independent phase operation; and (7) switchable shunt reactors. Extra-high voltage transmission facilities have many well-documented benefits that are worthy of consideration in the overall nexus analysis, including significantly reduced line losses and land use requirements as compared with lower voltage facilities of equivalent transfer capacity. However, the 765 kV technologies and techniques proposed by Pioneer have been in use for many years, and do not warrant a separate advanced technology adder.⁴⁴ In several instances, Pioneer simply states that the proposed technologies align with the types of technology enumerated in EPart 2005 section 1223. For example, Pioneer argues that switchable shunt reactors align with the “modular equipment” listing under EPart 2005 section 1223. However, while switchable shunt reactors can be modular and provide substantial benefits worthy of consideration in the overall nexus analysis, switchable shunt reactors with power electronic-equipped circuit breakers like those proposed here are common on the bulk power system and do not qualify for a separate advanced technology adder. Similarly, the concept of phase and shield wire transposition to remove imbalance between the phases has been in existence for decades and is a common practice to address this issue. If a project requires a more significant application of this technique than is commonly seen, the associated challenges could be incorporated into the overall nexus analysis, but the technique does not, in and of itself, appear to justify a separate advanced technology adder.

59. Pioneer also provides brief discussions of its plans for: (1) enhanced wide area monitoring and control; (2) subjecting all data received from their remote station equipment diagnostics and security systems to an automated real-time analysis by “experience-based algorithms designed to identify unusual trends in equipment condition” and provide early warning indications for operations and maintenance decisions; and (3) applying phasor measurement units as part of the project to communicate real-time data over fiber optics to provide enhanced state intelligence.⁴⁵

⁴³ *Id.* P 26 (finding that there are considerable benefits associated with a utility’s membership in a RTO); *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

⁴⁴ *Tallgrass*, 125 FERC ¶ 61,248 at P 59.

⁴⁵ Ex. PNR-300 at 28-29.

These plans could conceivably represent an advanced technology consistent with the smart grid concept described in Title XIII of the Energy Independence and Security Act of 2007,⁴⁶ but Pioneer has failed to provide any discussion of the concerns that are relevant to that concept,⁴⁷ or how these plans will improve the project's performance over existing technologies. Thus, we deny without prejudice Pioneer's requested ROE incentive for the use of the advanced transmission technologies.

60. We disagree with the protesters who suggest the Commission should lower the ROE incentive adders if the Commission grants CWIP and abandonment incentives. If the Commission were to have a generic rule that requires a reduction in an ROE incentive adder whenever other incentives that mitigate risk, such as CWIP, are granted, then companies, anticipating such a reduction, would simply request a higher return on equity incentive to compensate for the reduction. We consider each case on an individual basis. As discussed further below, Pioneer's overall ROE including the incentives granted here is substantially below the top of the range of reasonableness. Given the size, scope and cost of the project, Pioneer faces risks and challenges that warrant the 150 basis points of ROE incentive for new transmission as well as the 50 basis point ROE adder for participation in PJM and MISO, without any reduction with respect to our determination below to grant the CWIP and abandonment incentives. We are not persuaded by the parties' protests that the 150 basis point new transmission incentive is unreasonable in these circumstances.⁴⁸

E. Incentive for Inclusion of 100 Percent of CWIP in Rate Base

1. Proposal

61. Pioneer requests 100 percent inclusion of CWIP costs in rate base. Pioneer states that the project is a major transmission project costing over \$1 billion that will require large capital expenditures during the construction period. Pioneer states that 100 percent inclusion of CWIP in rate base will alleviate downward pressures on its cash flow. It further states that without adequate cash flow, the cost of borrowing capital to finance construction can increase, which will ultimately increase the cost of the project for consumers.

⁴⁶ Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (2007).

⁴⁷ See, *Pepco Holdings, Inc.* 125 FERC ¶ 61,130, at P 15-16 (2008).

⁴⁸ *Id.* P 75; *Tallgrass*, 125 FERC ¶ 61,248 at P 61.

62. Pioneer also contends that earning a return on CWIP would significantly improve cash flow stability and would quickly produce credit ratings of investment grade. In addition, a return on CWIP will allow Pioneer to begin generating cash with which to service debt, thereby reducing the amount of external capital Pioneer would be required to raise.

2. Protests and Comments

63. ODEC, Hoosier, and Midwest TDUs request that the Commission reject Pioneer's CWIP incentive as premature, without prejudice to Pioneer re-filing its proposal if and when the project is approved for inclusion in the PJM and MISO regional transmission expansion plans. Additionally, ODEC requests that if the Commission does not defer consideration of Pioneer's CWIP incentive, it should condition approval of the incentive upon inclusion of the project in the regional transmission expansion plans. If Pioneer's proposal is not deferred, Hoosier requests that the issue of CWIP be set for hearing.

3. Commission Determination

64. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP costs in rate base.⁴⁹ We noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants thereby reducing the pressures on their finances caused by investing in transmission projects.⁵⁰ We find that Pioneer has shown a nexus between the proposed CWIP incentive and its investment in the Pioneer project.

65. Consistent with Order No. 679, we find that authorizing 100 percent inclusion of CWIP in rate base for the project will enhance Pioneer's cash flow, which will reduce the risk of a downgrade in its parents' debt ratings. Considering the relative size of Pioneer's \$1 billion investment, we find that authorization of the CWIP incentive is appropriate. However, as acknowledged by Pioneer, the 100 percent inclusion of CWIP in rate base will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and MISO and there is a Commission-approved cost-allocation methodology in place.⁵¹

⁴⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁵⁰ *Id.* P 115.

⁵¹ Pioneer October 15, 2008 Transmittal Letter at 12.

66. We reject the protestors' requests that the incentive: (1) be rejected as premature, or (2) be set for hearing. We find that allowing Pioneer to include 100 percent of CWIP in its rate base will result in better rate stability for customers. As we have explained in prior orders,⁵² when certain large-scale transmission projects come on line, there is a risk that consumers may experience rate shock if CWIP is not permitted in rate base. By allowing CWIP in rate base, the rate impact of the project can be spread over the entire construction period and will help consumers avoid a return on the capitalized allowance for funds used during construction (AFUDC).⁵³

67. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base.⁵⁴ To satisfy this requirement, Pioneer states that it will use the PowerPlant System to maintain its accounting records for CWIP electric plant assets both during construction and after its projects are placed in service.⁵⁵ Pioneer indicates that the PowerPlant System includes the capability to identify specific work orders that should not be included in the calculation and capitalization of AFUDC. Moreover, it states that the work orders related to construction that are granted incentive rate treatment will be identified in the PowerPlant system and no AFUDC will be calculated on their balances. Pioneer indicates that this procedure will ensure that CWIP in the formula rate filing will not include AFUDC and will prevent a double-recovery of CWIP and capitalized AFUDC on the same rate base items. We find that the proposed procedures in Exhibit Nos. PNR-500 and PNR-501 demonstrate that Pioneer has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent Pioneer is allowed to include CWIP in rate base.

68. Public utilities that receive a current return on CWIP through rate base recover this cost in a different period than it would ordinarily be charged to expense under the general requirements of the Commission's Uniform System of Accounts (USofA). To promote comparability of financial information between entities, the Commission has required a specific accounting treatment or the use of footnote disclosures to recognize

⁵² See, e.g., *AEP*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

⁵³ *Id.*

⁵⁴ 18 C.F.R. § 35.25 (2008) (recovery of CWIP in rate base).

⁵⁵ See Ex. PNR-500 at 13; Ex. PNR-501.

the economic effects of having CWIP in rate base.⁵⁶ Pioneer requests authorization to use footnote disclosures consistent with disclosures previously authorized by the Commission.⁵⁷ We will authorize Pioneer to provide footnote disclosures in the notes to the financial statements of its annual FERC Form No. 1 and its quarterly FERC Form No. 3-Q that: (1) fully explain the impact of the CWIP in rate base; (2) include details of AFUDC not capitalized because of the CWIP in rate base for the current year, the previous two years, and the sum of all years; and (3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amount of AFUDC not capitalized because of the inclusion of CWIP in rate base.

F. Abandonment Incentive

1. Proposal

69. Pioneer requests the right to file to recover 100 percent of prudently incurred costs if the project, or any component thereof, were to be abandoned for any reasons outside of its control. Pioneer states that the reasons for possible abandonment of the project include: (1) failure to have the project included in either PJM's or MISO's regional transmission expansion plans; (2) failure to obtain regulatory approvals; and (3) failure to obtain the rights-of-way necessary to route the project. Pioneer notes that issues such as the exercise of eminent domain or a cross-RTO cost allocation methodology may expose it to protracted litigation. Therefore, Pioneer states that allowing the abandonment incentive will reassure the financial community by providing a source of funds to pay lenders in the event the project is cancelled for reasons beyond Pioneer's control. Finally, Pioneer states that if it files to recover abandonment costs, it will make a filing at the Commission with a proposal to allocate the costs between PJM and MISO.⁵⁸

⁵⁶ See, e.g., *American Transmission Company LLC*, 105 FERC ¶ 61,388 (2003), *order on reh'g*, 107 FERC ¶ 61,117 (2004); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007) (*TrailCo*), *order on reh'g*, 121 FERC ¶ 61,009 (2007); *Southern California Edison Company*, 122 FERC ¶ 61,187 (2008), *order on compliance filing*, 125 FERC ¶ 61,337 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (*PATH*); *Tallgrass*, 125 FERC ¶ 61,248.

⁵⁷ *Id.*

⁵⁸ Pioneer October 15, 2008 Transmittal Letter at 35 fn.33.

2. Protests and Comments

70. Midwest TDUs state the Commission should consider, at most, only two of the requested incentives: creation of regulatory asset for development and abandoned-plant cost recovery. Midwest TDUs argue that Pioneer's abandoned plant recovery must be limited to costs prudently incurred, must be triggered only by events beyond its control, and if triggered, Pioneer's rates including such cancelled plant costs must be shown to be just and reasonable in a subsequent section 205 filing for recovery of abandoned plant. Further, Midwest TDUs, PJM Transmission Owners, and ODEC state that the Commission should make the abandonment and regulatory asset incentives conditional upon the Pioneer project being included in the PJM's and MISO's regional transmission planning processes. PJM Transmission Owners argue that if the Pioneer project is not approved through the regional planning process, it will not be eligible for recovery under schedule 12 of PJM's tariff.

71. AMP-Ohio argues that any risk that the Pioneer project will not be approved in the two RTO regional planning processes will be shifted to ratepayers if they are required to pay formula rates, abandonment costs, CWIP in rate base and for all non-CWIP, pre-formula rate expenses. AMP-Ohio therefore requests the Commission withhold approval of one or more of the non-ROE incentives.

72. Hoosier requests if the Commission grants Pioneer the abandonment incentive, it should not permit Pioneer to recover a return on the abandoned plant investment which includes any incentives. Hoosier states the Commission must consider from whom the costs of abandoned plant would be recovered. Hoosier asserts that if the project is abandoned before it enters service, for any reason, Pioneer will not actually have provided any service. Further, Hoosier protests that Pioneer has not explained in its filing why it believes it would be entitled to levy charges to entities it had never served.

73. PJM Transmission Owners request that the Commission condition Pioneer's request for recovery of abandonment costs on the approval of the project pursuant to schedule 6 of the PJM's Operating Agreement prior to any abandonment costs being authorized for recovery under schedule 12 of the PJM tariff. PJM Transmission Owners request that the Commission must condition approval of Pioneer's request for recovery of abandonment costs on the requirement that Pioneer submit a future section 205 filing seeking Commission acceptance of specific abandonment cost recovery. They also request that the Commission require that, in the section 205 filing, Pioneer demonstrate that the incurrence of the abandonment costs and the proposed method for allocating and recovering the costs are just and reasonable.

74. Midwest TDUs request that the Commission find that Pioneer would not be eligible for abandonment plant recovery for the Pioneer project if MISO and/or PJM fails to incorporate the project into its regional transmission expansion plan, and/or if cross-border cost allocation issues cannot be resolved in a satisfactory and timely manner.

3. Commission Determination

75. We find that Pioneer has demonstrated a nexus between the risks of the project and the need to recover prudently incurred costs associated with abandonment of the project. As we have emphasized in other proceedings, an abandonment incentive is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁵⁹ Accordingly, we will grant Pioneer's request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is a result of factors beyond Pioneer's control. This incentive is effective December 15, 2008, as requested.

76. We note that, should the project be cancelled before it is completed, it is unclear whether Pioneer will have any customers from which to recover its abandonment incentive. At such time, Pioneer will be required to make a showing in a section 205 filing that the abandonment costs were prudently incurred and it must propose a rate and cost allocation method to recover the costs in a just and reasonable manner. Order No. 679 specifically requires every utility seeking abandonment recovery to submit such a section 205 filing.⁶⁰

G. Regulatory Asset Incentive

1. Proposal

77. Pioneer requests permission to establish a regulatory asset that will include expenses not included in CWIP that are incurred in connection with the Pioneer project prior to the date that the formula rates are made effective under PJM's and MISO's tariffs, plus authorization to amortize the regulatory asset with interest over five years for cost recovery purposes.⁶¹ Pioneer also seeks permission to accrue carrying charges on the regulatory asset balance at its cost of capital. Pioneer states that in *PATH*, the Commission explained that such a rate proposal will be reviewed under Order No. 679 because it "achieves the same outcome as the Order No. 679 incentive for pre-commercial costs because such costs will be fully amortized (expensed) and recovered during the construction of the project."⁶²

⁵⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

⁶⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

⁶¹ Pioneer October 15, 2008 Transmittal Letter at 4.

⁶² *Id.* (citing *PATH*, 122 FERC ¶ 61,188 at P 9 n.8).

78. Pioneer asserts that the regulatory asset incentive is needed because it provides the only means by which Pioneer can recover development costs it incurs before the formula rate is made effective.⁶³ Pioneer also claims that in *PATH*, the Commission recognized that the recovery of this incentive would enhance *PATH*'s cash flow, assist with financing, and improve coverage ratios used by rating agencies to determine credit quality.⁶⁴

79. Pioneer states that in *PG&E*, the Commission recognized that it has authority to grant policy-based incentives outside of Order No. 679, as such incentives involve matters of rate design and policy judgments that go to the core of the Commission's regulatory responsibilities.⁶⁵ Pioneer argues that the abandonment and regulatory asset incentives were granted to *PG&E* in connection with a transmission project of significant scope, impact, and complexity to provide an incentive for the developers to invest significant sums of money to assess whether the project would ensure reliability and/or reduce congestion.⁶⁶ Specifically, Pioneer argues that *PG&E* involved a project designed to transmit as much as 3,000 MW of new renewable power over 1,000 miles from British Columbia, Canada, through the Pacific Northwest, and into northern California.⁶⁷ Pioneer states the project will be able to deliver in excess of 4,000 MW, improve reliability in Indiana by strengthening the grid and unloading lower-voltage networks, provide substantial energy savings resulting from reduced losses and congestion costs, and provide a lower-cost interconnection alternative for the nearly 6,000 MW of proposed wind generation in Indiana. Pioneer claims that it meets the standard established in *PG&E* for the abandonment and regulatory asset incentives.⁶⁸

2. Protests and Comments

80. Midwest TDUs request that approval of the regulatory asset incentive be limited to prudently incurred costs. Further, Midwest TDUs contend that Pioneer must bear the burden of establishing that the costs were prudently incurred and will result in just and reasonable rates.

⁶³ Ex. PNR-400 at 15.

⁶⁴ Pioneer October 15, 2008 Transmittal Letter at 36 (citing *PATH*, 122 FERC ¶ 61,188 at P 52).

⁶⁵ *Id.* at 24-25 (citing *PG&E*, 123 FERC ¶ 61,067 at P 33).

⁶⁶ *Id.*

⁶⁷ *Id.* (citing *PG&E*, 123 FERC ¶ 61,067 at P 34).

⁶⁸ Pioneer October 15, 2008 Transmittal Letter at 25.

81. ODEC and the PJM Transmission Owners request that the Commission make the regulatory asset incentive conditional upon the project being included in the regional transmission expansion plans of PJM and MISO.

82. Hoosier requests that the costs of initiation and implementation of the project, including all costs to place it in commercial operation, should be treated as capitalized costs. To the extent that the costs cannot be capitalized, Hoosier argues that Pioneer should identify the specific expenses that are purportedly recoverable on a current basis under the formula.

3. Commission Determination

83. Pioneer proposes to record pre-construction costs not included in CWIP incurred prior to the effective date of its formula rate as a regulatory asset and to amortize and recover the regulatory asset during the construction period. We find that this incentive is tailored to Pioneer's risks and challenges because this incentive will provide Pioneer with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and assist in the construction of the facility. Therefore, we find Pioneer's recovery of pre-construction costs during the construction period to be appropriate, and grant Pioneer's request to establish a regulatory asset, to be effective December 15, 2008.

84. Pioneer also seeks permission to accrue carrying charges on the regulatory asset balance at its cost of capital from the date that the Commission accepts the regulatory asset until the date the regulatory asset is fully amortized. We authorize Pioneer to accrue a carrying charge on the regulatory asset from the date of this order until the regulatory asset is included in rate base. Once the regulatory asset is included in rate base, Pioneer will be able to earn a return on the unamortized balance, therefore, it must stop accruing carrying charges on the regulatory asset in rate base.

85. Pre-construction costs deferred as a regulatory asset must be recorded in Account 182.3, Other Regulatory Assets, and may only include amounts that would otherwise be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.⁶⁹ Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the

⁶⁹ The term "probable" as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,967 (1993).

costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

86. As explained above for the abandonment incentive, if the Pioneer project is cancelled before completion, it is unclear whether Pioneer will have any customers from which to recover its regulatory asset. Thus, while this order provides Pioneer with the ability to record pre-construction costs as a regulatory asset, Pioneer must make a section 205 filing when the formula rate becomes effective to demonstrate that the pre-construction costs are just and reasonable. Pioneer also will have to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

H. Return on Equity

1. Proposal

87. Pioneer requests an overall ROE of 13.5 percent. Pioneer argues that an overall ROE of 13.5 percent will eliminate any dispute as to whether the midpoint or median is the appropriate starting point to which Order No. 679 incentives will be added.⁷⁰ Specifically, Pioneer proposes a base ROE of 11.00 percent, the median of its proposed zone of reasonableness of 8.2 percent to 15.2 percent.⁷¹ Pioneer states that a base ROE of 11.0 percent plus a 50 basis point adder for RTO participation, a 150 basis points for new transmission, and a 50 basis point advanced technology adder, for an overall ROE of 13.5 percent, keeps the overall ROE within its proposed zone of reasonableness.⁷² Pioneer contends that its requested ROE of 13.5 percent will be 170 basis points below the high end of the zone of reasonableness for the cost of its equity, if the median (instead of the midpoint) is used as the base ROE.⁷³

88. To arrive at its proposed base ROE, Pioneer applied a discounted cash flow analysis to a proxy group of transmission-owning utilities, which it states is consistent

⁷⁰ Pioneer October 15, 2008 Transmittal Letter at 46.

⁷¹ If the midpoint were to be used as the base ROE, Pioneer states that the base ROE would be 11.7 percent.

⁷² Pioneer October 15, 2008 Transmittal Letter at 44-45.

⁷³ *Id.* at 46.

with Commission methodology.⁷⁴ Pioneer states that, consistent with the approach approved in *Westar*,⁷⁵ it used a starting sample of 21 transmission-owning members of PJM and MISO with publicly traded stock.⁷⁶ In addition, Pioneer states that it evaluated its RTO proxy group through several risk measures, including Standard and Poor's (S&P) corporate credit rating.⁷⁷ Because AEP's S&P credit rating is BBB and Duke's credit rating is A-, Pioneer excluded any companies with credit ratings more than one rating notch below BBB.

89. Pioneer states that it estimated its cost of equity in accordance with the guidance provided by the Commission in *Bangor Hydro*, *PATH*, and *VEPCO*.⁷⁸ Pioneer further states that it excluded from its proxy group: (1) companies that do not pay common dividends; (2) companies for which no Value Line data or IBES growth rate was currently available; (3) companies that have recently been involved in merger and acquisition activity; and (4) UGI Corporation. Pioneer states that the implementation of the above criteria resulted in its 21 company proxy group.⁷⁹ Pioneer's final results excluded five companies in the proxy group because they had a low-end cost of equity

⁷⁴ *Id.* at 44 (citing *Bangor Hydro-Elec. Co.*, 109 FERC ¶ 61,147, at P 3 (2004), Opinion No. 489, 117 FERC ¶ 61,129, at P 53-59 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008), *order granting clarification*, 124 FERC ¶ 61,136 (2008) (*Bangor Hydro*); *PATH*, 122 FERC ¶ 61,188 at P 95; *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098, at P 60 (2008) (*VEPCO*)).

⁷⁵ Ex. PNR-700 at 31 (citing *Westar Energy, Inc.*, 122 FERC ¶ 61,268, at P 94 (2008)).

⁷⁶ Pioneer's proposed proxy group includes: Allegheny Energy Inc., ALLETE Inc., Alliant Energy Corp., Ameren Corp., American Electric Power Co. Inc., Consolidated Edison Inc., Dominion Resources Inc., DPL Inc., Duke Energy Corp., Exelon Corp., FirstEnergy Corp., Integrys Energy Group Inc., MDU Resources Group Inc., NiSource Inc., Otter Tail Corp., Pepco Holdings Inc., PPL Corp., Public Service Enterprise Group Inc., Vectren Corp., Wisconsin Energy Corp. and Xcel Energy Inc. See Ex. PNR-702.

⁷⁷ Ex. PNR-700 at 31.

⁷⁸ Pioneer October 15, 2008 Transmittal Letter at 44.

⁷⁹ Ex. PNR-700 at 30.

less than 120 basis points above Moody's monthly yields on BBB bonds averaging 6.9 percent over the six-month period ending September 2008.⁸⁰

2. Protests

90. Midwest TDUs, AMP-Ohio, Hoosier, and ODEC contend that Pioneer's request for an incentive ROE of 13.5 percent is: (1) premature and recommend that the Commission defer action on the project until after it is included in the regional transmission planning process for PJM and MISO; (2) overstated and request that the Commission limit Pioneer's overall ROE to no more than 12.88 percent; and/or (3) should be set for hearing. Protestors also contend that Pioneer's requested ROE raises issues of material fact, including the selection of utilities to be included in the proxy group, the exclusion of low-end DCF results, and whether the midpoint or median should be used for the base ROE.

3. Commission Determination

91. The Commission grants Pioneer an overall ROE of 12.54 percent, which consists of a base return of 10.54 percent and ROE adders of 50 basis points for RTO participation and 150 basis points for investment in new transmission. The Commission finds that an ROE of 12.54 percent falls within the zone of reasonableness of 8.03 percent to 15.23 percent.

92. The Commission agrees with protestors that Pioneer's proposed ROE of 13.5 percent is not just and reasonable. However, the Commission finds that Pioneer's 21 company proxy group, which includes utilities in both PJM and MISO, is a good starting point to develop an individual proxy group that takes into account comparative risks.⁸¹ Protestors have not contested the use of PJM and MISO companies as the starting point for the analysis nor have they contested the application of the risk screens employed by Pioneer. The Commission also finds that the Corporate Credit Rating screen that Pioneer used is consistent with Commission precedent.⁸²

93. Here, Pioneer relies on *Southern California Edison Co.*, *Kern River Transmission Co.*, and *Atlantic Path 15, LLC* to argue that companies whose low-end cost of equity is

⁸⁰ Ex. PNR-700 at 49-50.

⁸¹ *VEPCO*, 123 FERC ¶ 61,098 at P 60.

⁸² *PATH*, 122 FERC ¶ 61,188 at P 95. While Pioneer has proposed Value Line's Safety Rank and Financial Strength Rating, the Commission finds the use of the Corporate Credit Rating to be sufficient.

up to 120 basis points above the average utility bond yield should be excluded from the proxy group.⁸³ Therefore, Pioneer proposes to exclude Consolidated Edison, Duke Energy, NiSource Inc., Otter Tail, and Vectren from the proxy group. The Commission finds that the exclusion of Duke, NiSource, and Otter Tail is consistent with Opinion No. 445, where the Commission found that “investors generally cannot be expected to purchase stock if debt, which has less risk than stock, yields essentially the same return.”⁸⁴

94. However, the Commission finds that Pioneer improperly removed Consolidated Edison and Vectren Corporation from the proxy group on the ground that their low-end ROEs were 113 and 117 basis points above the 6.9 percent average yields on public utility BBB bonds reported by Moody’s for the six-month period ending September 2008.⁸⁵ In Opinion No. 445 and subsequent precedent, the Commission excluded from the proxy group companies whose low-end ROEs fail to exceed the bond yield by at least some minimum number of basis points. For example, in *Atlantic Path 15*, cited by Pioneer, the Commission accepted the applicant’s exclusion of companies with low-end ROEs about 90 basis points above the cost of debt.⁸⁶ Thus, the Commission will exclude from the proxy group companies whose low-end ROE is within about 100 basis points above the cost of debt, taking into account the extent to which the excluded low-end

⁸³ *Southern California Edison Co.*, 92 FERC ¶ 61,070, at 61,266 (2000) (Opinion No. 445); *Kern River Transmission Co.*, 117 FERC ¶ 61,077, at P 140 and n.227 (2006) (*Kern River*); *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135, at P 20 (2008) (*Atlantic Path 15*).

⁸⁴ In that case, the Commission excluded one company (PG&E) which had a low-end ROE that was 36 basis points above the average Moody’s public utility bond yield, while the next lowest ROE among the proxy companies was 153 basis points above the relevant Moody’s bond yield. The Commission concluded that PG&E’s low-end ROE “cannot be considered reliable,” and thus the Commission excluded “this single outlier.” Opinion No. 445, 92 FERC ¶ 61,070 at 61,266.

⁸⁵ The Commission’s proxy group consists of the following companies: ALLETE, Alliant Energy Corp., Ameren Corp., American Electric Power Co. Inc., Consolidated Edison Inc., Dominion Resources Inc., DPL Inc., Exelon Corp., FirstEnergy Corp., Integrys Energy Group Inc., Pepco Holdings Inc., Public Service Enterprise Group, Vectren Corp., Wisconsin Energy Corp., and Xcel Energy Inc.

⁸⁶ Companies that were excluded in *Atlantic Path 15* include Pinnacle West and Idacorp which had low-end ROEs of 89 and 90 basis points above the cost of debt, respectively.

ROEs are outliers from the low-end ROEs of other proxy group companies.⁸⁷ Here, not only are Consolidated Edison's and Vectren's low-end ROEs more than 100 basis points above Moody's BBB bond yield, but they also do not appear to be significant outliers from the low-end ROEs of the other companies that remain in the proxy group, unlike the low-end ROEs of the three companies we are excluding from the proxy group.⁸⁸ The Commission concludes that Pioneer has failed to show that the low-end ROEs of Consolidated Edison and Vectren are so low as to require the exclusion of those companies from the proxy group.

95. We conclude that Pioneer's base ROE should be 10.54 percent, the median of the expanded proxy group adopted in this order.⁸⁹ With the addition of the ROE adders approved in this order, Pioneer's overall ROE is 12.54 percent.

I. Total Package of Incentives

96. As noted above, 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. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,⁹⁰ the Commission has, in prior cases, approved multiple rate incentives for particular

⁸⁷ *Kern River* was a natural gas pipeline rate case. The Commission uses a different DCF analysis in pipeline rate cases, which only produces a single ROE for each proxy company, rather than a low-end and a high-end ROE as here. Moreover, as we explained on rehearing in *Kern River*, the two companies excluded from the *Kern River* proxy group were properly excluded because their low ROEs resulted from losses in non-pipeline activities. *Kern River Transmission Co.*, 123 FERC ¶ 61,056, at P 189 (2008).

⁸⁸ Consolidated Edison and Vectren have low-end ROEs of 8.03 percent and 8.07 percent, which are only 18 and 14 basis points below the 8.21 percent low-end ROE of Ameren, which Pioneer has appropriately included in the proxy group. By contrast, the 5.99, 7.24, and 7.25 percent ROEs of Otter Tail, NiSource and Duke (the appropriately excluded companies) are between 222 and 96 basis points below Ameren's 8.21 percent low-end ROE.

⁸⁹ See *Golden Spread Electric Cooperative, Inc. et al. v. Southwestern Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047, at P 62-63 (2008); *VEPCO*, 123 FERC ¶ 61,098 at P 66. The inclusion of Consolidated Edison and Vectren in the proxy group reduces the median 46 basis points below that proposed by Pioneer.

⁹⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

projects.⁹¹ This is consistent with our interpretation of FPA section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of section 219 and that there is a nexus between the incentives proposed and the investment made.

97. We find the total package of incentives that we are approving for Pioneer is tailored to address the risks or challenges faced by Pioneer. The 150 basis point ROE adder for new transmission, together with the 50 basis point adder for RTO membership, will facilitate Pioneer's ability to raise capital, given the challenges of securing the project's approval in two RTOs' transmission planning processes and obtaining rights-of-way through several counties without the benefit of a state siting process. The CWIP and regulatory asset incentives will provide Pioneer with up-front regulatory certainty, rate stability, and improved cash flow, thereby easing the pressures on its finances caused by transmission development programs. The abandonment incentive will encourage transmission development by reducing the risk of non-recovery of prudently incurred costs associated with abandoned transmission projects if such abandonment is outside of management's control.

J. Formula Rate

1. Proposal

98. Pioneer proposes to include as attachments to the tariffs of PJM (Attachment H-20) and MISO (Attachment O) its formula rate. Pioneer states that as a future PJM and MISO transmission owner, it has the exclusive right to submit the instant filing and establish an annual transmission revenue requirement (ATRR) for the Pioneer project. Pioneer states that it is tendering the formula rate for inclusion in the PJM and MISO tariffs to be effective upon the Commission's acceptance of an inter-RTO cost allocation methodology applicable to the project.

99. Pioneer explains that there are three parts of the formula rate – the ATRR, the formulaic spreadsheet, and the associated protocols. Pioneer states that for most inputs, it will populate the spreadsheet with forecasted values and then true-up the ATRR when actual data become available. Pioneer states that the true-up amount will include interest

⁹¹ 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), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 55, 59, 61 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery).

computed in accordance with section 35.19a of the Commission's regulations.⁹² Any difference between the forecasted ATRR and the actual ATRR will be reflected as a line item in the following year's ATRR. For certain inputs, such as ROE, capital structure during the construction period, and post-retirement benefits other than pension benefits, Pioneer has "stated" values that will require a FPA section 205 filing to change.

100. Pioneer states that for transmission and general plant balances, it uses the average of 13-monthly balances, whereas for accumulated deferred income taxes, land held for future use, and materials, supplies and prepayments, it uses the average of the beginning and end-of-year balances. Pioneer further states that because it is not subject to federal income taxes as a limited liability company, any tax obligations incurred through its operations will be passed through to AEP and Duke. However, for ratemaking purposes, Pioneer states that it is treated as a corporation and receives an income tax allowance. Pioneer states that its proposed treatment of taxes is consistent with Commission practice.⁹³

101. In addition to filing revised tariff sheets that include the non-populated formula template and protocols, Pioneer submitted spreadsheets showing its projected ATRRs for 2009 and 2010. Pioneer explains that if the tariff sheets become effective on any day other than January 1, the ATRR will be pro-rated so that it will correspond to the partial calendar year. Thereafter, the ATRR will correspond to calendar years.

102. Pioneer's proposed protocols provide that Pioneer post on the PJM and MISO websites its projected ATRR no later than October 15 for the following calendar or rate year. The protocols state that the posting should include sufficient detail to identify the components of the ATRR. Except for the first year, the true-up adjustment, with interest, will be included in the ATRR. The ATRR will then be allocated between PJM and MISO. Pioneer notes that the cross-border allocation methodology will be determined in a separate filing.

103. The protocols also provide for an annual update based on actual costs. On or before June 1 of the year subsequent to the rate year, Pioneer will file an annual update as an informational filing at the Commission and post the same information on the PJM and MISO websites. According to the protocols, the costs reflected in the annual update will be based upon Pioneer's FERC Form No. 1 data for the most recent calendar year or contain supporting documentation. Under the protocols, customers, regulatory agencies and consumer advocates have up to 150 days to serve "reasonable" information requests on Pioneer and Pioneer shall make a good-faith effort to respond to such requests within

⁹² 18 C.F.R. § 35.19a (2008).

⁹³ Pioneer October 15, 2008 Transmittal Letter at 41.

15 business days. Parties may raise challenges to the annual update pursuant to the procedures set forth in the protocols or as a complaint under FPA section 206.

104. Pioneer states that the effective date for the formula rate must be deferred because the project has not yet been included in either PJM's or MISO's regional transmission expansion plans and because there currently is no mechanism under the PJM or MISO tariffs to allocate the costs of projects with cross-border economic and reliability components. Further, Pioneer argues that once the project is included in the regional transmission expansion plans and the Commission establishes an effective date for a cross-border RTO cost allocation mechanism for the project's costs, the formula rate can be made effective and Pioneer can begin recovering its revenue requirement on an ongoing basis under its proposed formula rate. However, Pioneer states that if PJM and MISO do not establish a cross-border cost-allocation methodology, Pioneer may submit its own cost-allocation methodology in a FPA section 206 filing.⁹⁴

2. Protests and Comments

105. Protestors contend that the Commission should dismiss, without prejudice, Pioneer's proposed formula rates and related protocols because there is no cost allocation methodology between PJM and MISO for cross-border facilities. Protestors contend that Pioneer's proposed formula rates and formula rate protocols are premature because Pioneer has no history and has not filed a FERC Form No. 1. Moreover, ODEC argues that it would be administratively inefficient and a waste of resources for the Commission to convene a hearing on proposed formula rates for a project that has not been accepted by either PJM or MISO.

106. AMP-Ohio states that Pioneer's proposed protocols are deficient and must be modified because they are unreasonably restrictive on the information requests that interested parties may submit concerning the Annual Update. ODEC argues that Pioneer's proposed protocols raise numerous issues that should be explored at hearing, including the data that Pioneer would provide in its Annual Update and the scope of matters that may be subject to review and challenge. Hoosier states that Pioneer's formula rate and protocols provide no opportunity for review or challenge and unjustifiably limit a party's right to obtain information. Further, Hoosier states, it is unclear whether the proposed method for applying interest on any over- or under-recovery of its actual net revenue requirement is consistent with the Commission's regulations. Midwest TDUs request that the Commission reject the time limits on challenges included in the proposed protocols and should require Pioneer to provide more time to allow customers to review the Annual Update materials.

⁹⁴ Pioneer October 15, 2008 Transmittal Letter at 36-37; n.35.

107. AMP-Ohio also states that the proposed protocols' treatment of material accounting changes is confusing and appears to be too restrictive. AMP-Ohio argues that section 5.a of the proposed protocols would unreasonably preclude a party from making a formal challenge concerning any issue that the party had not raised in a preliminary challenge. AMP-Ohio states that the Commission has previously disallowed such a preliminary challenge prerequisite. Hoosier and Midwest TDUs similarly argue that the provision in the proposed protocols that bars a party's ability to challenge a material accounting change for an annual update unless that party filed a preliminary challenge for that annual update improperly limits a party's rights of review and challenge and is contrary to Commission precedent.

108. AMP-Ohio also argues that section 4.e of the proposed protocols imposes a burden of proof for changes to the formula rate that is more demanding than the burden of proof under section 206 of the FPA. Hoosier notes that there are several provisions in the proposed protocols that appear to attempt to shift the burden of proof from Pioneer to the party challenging the Annual Update.

3. Commission Determination

109. Pioneer's formula rates and rate protocols for PJM and MISO raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. These issues include, but are not limited to: (1) inadequate time after the release of the Annual Update to review the proposal prior to a customer meeting; (2) the calculation of refunds on the true-up; (3) Pioneer's right to make "sole issue" filings to amend the formula rate; (4) the effect of the cross-border cost allocation between PJM and MISO on Pioneer's ATRR; (5) various components of the formula, including, but are not limited to, Net Salvage, Depreciation Rate and post employment benefits other than pensions (PBOPs); and (6) the allocation of various expenses between AEP and Duke. We also find that we can narrow the scope of the hearing because we make summary findings on (1) the base ROE of 10.54 percent; (2) ROE adders totaling 200 basis points; (3) incentives for CWIP, abandonment, and regulatory assets; (4) parties' rights to make formal challenges to Pioneer's rates; (5) the burden of proof for changes to the formula rate; (6) capital structure; and (7) income taxes. These issues are not set for hearing and settlement judge procedures.

110. Our preliminary analysis indicates that Pioneer's proposals have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept Pioneer's formula rates and rate protocols for PJM and MISO for filing, suspend them for a nominal period, subject to refund, and set them for hearing and settlement judge procedures. At the hearing, Pioneer will be required to demonstrate the justness and reasonableness of its proposal except to the extent we have made summary findings herein.

111. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹⁵ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.⁹⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

112. We agree with AMP-Ohio and Hoosier that sections 4.d and 5.a of Pioneer's proposed protocols would unreasonably preclude a party from making a formal challenge concerning any issue that the party had not raised in a preliminary challenge. The Commission has previously disallowed such a preliminary challenge prerequisite.⁹⁷ As the Commission explained in *VEPCO*, *PSE&G* and *AEP*,⁹⁸ the courts have recognized that FPA section 206 permits customers to challenge formula rates.⁹⁹ The Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors

⁹⁵ 18 C.F.R. § 385.603 (2008).

⁹⁶ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

⁹⁷ *VEPCO*, 123 FERC ¶ 61,098 at P 46.

⁹⁸ *Id.*; *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 15-16 (2008) (*PSE&G*); *American Elec. Power Service Corp.*, 124 FERC ¶ 61,306, at P 32 (2008).

⁹⁹ *Public Utilities Commission of California v. FERC*, 254 F.3d 250, 258 (D.C. Cir. 2001) ("Because relief can be sought pursuant to section 206 in the event a pass through of ... costs results in unjust and unreasonable rates, the Commission's acceptance of the ISO's formula rate without additional section 205 filings does not leave the [state public utilities commission] or ratepayers without any statutory recourse.").

in the inputs to or implementation of the formula.¹⁰⁰ Indeed, customers may not uncover errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.¹⁰¹

113. The Commission has explained that it does not object to a utility's efforts to resolve matters with its customers before resorting to a section 206 complaint. However, that process may not impact the rights of any party that has standing to bring a complaint.¹⁰² Because we are concerned that that the tariff language in Pioneer's proposed protocols limits parties' and the Commission's rights to initiate a section 206 proceeding, Pioneer must revise its tariff to remove the provisions in sections 4.d and 5.a that prohibit parties from raising in a section 206 complaint any issues that were not raised in a preliminary challenge. Accordingly, we will require Pioneer to make a compliance filing within 30 days of the date of this order to revise the protocols so that they do not limit a customer's or the Commission's rights with respect to challenges to the inputs into the formula rate.

114. We also agree with the argument of AMP-Ohio that Pioneer may not impose a burden of proof for changes to the formula rate that is more demanding than the burden of proof under section 206 of the FPA. Accordingly, we will require Pioneer to make a compliance filing within 30 days of the date of this order to revise section 4.e of the protocols to remove the phrase "and consistent with the original intent of the Formula Rate and the procedures in these Protocols." Because we have determined that Pioneer must revise the protocols so that they do not limit a customer's or the Commission's

¹⁰⁰ *North Carolina Electric Membership Corp. v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) (rejecting the utility's efforts to limit the period of review to the prior 12 months by stating "[w]hile prompt identification of disputes is certainly a reasonable goal to strive for, the Commission cannot allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not complain in as prompt a manner as the company believes the customer should have."). The Commission has held repeatedly that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. See *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28, *order on reh'g*, 113 FERC ¶ 61,214 (2005), *reh'g denied*, 119 FERC ¶ 61,109 (2007); *Quest Energy, L.L.C. v. Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

¹⁰¹ See, e.g., *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992) (allowing review of potentially imprudent costs charged to customers in prior-year formula rates).

¹⁰² See *VEPCO*, 123 FERC ¶ 61,098 at P 45.

rights with respect to challenges to the inputs into the formula rate and so that they do not impose a burden of proof for changes to the formula rate that is more demanding than the burden of proof under section 206 of the FPA, these issues are not included in the hearing and settlement procedures.

K. Capital Structure

1. Proposal

115. Pioneer proposes to reflect in its formula rate a hypothetical capital structure of 50 percent debt and 50 percent equity. Pioneer states that this capital structure is appropriate during both the construction period and after the project is placed into service.¹⁰³ Pioneer further states that this capital structure will allow it to achieve an investment grade rating and therefore more easily access capital markets. In addition, Pioneer argues that if the Commission were to grant Pioneer authority to begin recovering costs during the pre-commercial period, it would have a higher likelihood of obtaining financing on reasonable terms and achieve its targeted capital structure.

116. Pioneer argues that its proposed hypothetical capital structure will facilitate servicing of the borrowings by Pioneer during the construction period by producing: (1) cash flows consistent with its final capital structure; (2) cash flow stability; and (3) enhanced ability to obtain the best financing terms. It states that it anticipates that financing for the project will come from AEP and Duke, as well as from loans from a syndicate of lenders. Pioneer states that once the Pioneer project is complete, it will likely seek to refinance the credit facility and term loan with traditional long-term debt (i.e., bonds or debentures) in the capital markets.

2. Protests and Comments

117. Protestors state that Pioneer's initial 50/50 debt/equity capital structure is unsupported due to the lack of detailed information showing expected capital additions. Hoosier states that the calculation of long-term debt after the construction phase is not clear. Hoosier also argues that Pioneer should identify the specific expenses that purportedly are recoverable on a current basis under the formula rate and the types of costs that will be capitalized during the development and construction phase.¹⁰⁴ Protestors therefore request that the appropriate capital structure be set for hearing.

¹⁰³ Pioneer October 15, 2008 Transmittal Letter at P 47.

¹⁰⁴ *Id.* at 20.

3. Commission Determination

118. As stated in Order No. 679, the use of hypothetical capital structures “can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances.”¹⁰⁵ The Commission found, however, that adoption of such a hypothetical capital structure would require a demonstration of the required nexus between the need for a hypothetical capital structure and the proposed investment project.¹⁰⁶ We find that Pioneer has shown a nexus between its proposed hypothetical capital structure and its ability to borrow funds during the pre-commercial period for the project. Pioneer anticipates that it will be able to achieve an investment grade rating that will allow it easier access to capital markets.

119. Protestors note that Pioneer did not provide detailed information showing expected capital additions. However, during the construction period, Pioneer’s capital structure is likely to fluctuate. Because Pioneer’s proposed capital structure will permit it to vary its financing vehicles to accommodate the needs of the construction process, we find that the use of the proposed hypothetical capital structure during the construction period is a pragmatic approach to this issue.¹⁰⁷ However, we find that Pioneer did not provide a sufficient nexus for the use of a hypothetical capital structure once the project is completed. Therefore, upon completion of the project, we direct Pioneer to adopt a capital structure based upon its actual financing presented in its Form No. 1.¹⁰⁸

L. Income Taxes

120. Pioneer is a limited liability company and is not subject to federal taxation. Instead, the tax obligations incurred through its operations are reported on the tax returns of its corporate parents, AEP and Duke.¹⁰⁹ For ratemaking purposes, the Commission treats pass-through entities such as Pioneer as though they are corporations and allows them to receive an income tax allowance for the tax liability ultimately paid by their parents. Pioneer states that it will maintain its books of account based on the USofA as

¹⁰⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93.

¹⁰⁶ *Id.*

¹⁰⁷ *TrailCo*, 119 FERC ¶ 61,219 at P 74-76.

¹⁰⁸ *See PATH*, 122 FERC ¶ 61,188 at P 56 (directing PATH to adopt a capital structure based upon its actual financing presented in its Form No. 1).

¹⁰⁹ Ex. PNR-500 at 3-6.

though it was a corporation,¹¹⁰ including the income tax accounting requirements of the USofA.¹¹¹ Pioneer's income tax accounting proposal is consistent with Commission policy and is approved.¹¹²

M. Allocation of Costs Between PJM and MISO

1. Proposal

121. As noted earlier, Pioneer requests that the effectiveness of its proposed formula rate be deferred until an appropriate Commission-approved cost allocation mechanism for the recovery of the cross-border PJM/MISO costs is in effect. Further, Pioneer notes that realistically, the formula rate cannot go into effect until the project has been approved by the regional transmission planning processes of PJM and MISO. Although Pioneer is not proposing a cost allocation methodology at this time, it has included a "placeholder" in its formulaic spreadsheet for such an allocation.¹¹³ Pioneer states that it proposes to adopt the cross-border cost recovery methodology proposed by PJM and MISO on January 28, 2009 in Docket No. ER05-6-108. However, if such a methodology is not approved, Pioneer states that it may submit a section 206 filing proposing an allocation mechanism for the Pioneer project.¹¹⁴

2. Protests and Comments

122. Protestors contend that the Commission should not approve the formula rate until a cost allocation methodology between PJM and MISO has been approved. They recommend that the formula rate proposal: (1) be dismissed without prejudice to re-filing once PJM and MISO have determined whether to include Pioneer's project in their regional expansion plans; (2) be deferred until the PJM/MISO cross-border allocation

¹¹⁰ *Id.*

¹¹¹ General Instructions No. 18, Comprehensive Interperiod Income Tax Allocation; and Text to Account 190, Accumulated Deferred Income Taxes, Account 236, Taxes Accrued, Account 281, Accumulated Deferred Income Taxes-Accelerated Amortization Property, Account 282, Accumulated Deferred Income Taxes-Other Property, and Account 283, Accumulated Deferred Income Taxes-Other, 18 C.F.R. Part 101 (2008).

¹¹² *PATH*, 122 FERC ¶ 61,188 at P 157.

¹¹³ See Pioneer October 15, 2008 Filing at Appendix A, Attachment H-20 to PJM's tariff at lines B and C.

¹¹⁴ Pioneer October 15, 2008 Transmittal Letter at n.35.

filing is made; or (3) be made subject to the outcome of the cost allocation proceedings in Docket No. ER05-6-108.

123. The PJM Transmission Owners explain that recovery under schedule 12 of the PJM tariff¹¹⁵ is clearly and unambiguously limited to recovery of transmission projects that have been approved through the PJM regional transmission expansion planning process or as cross-border projects. They argue that because the Pioneer project has not yet been approved by either the PJM regional transmission planning process or as a cross-border project, the project is not yet eligible for recovery under schedule 12 of the PJM tariff. The PJM Transmission Owners further note the Commission may not pre-authorize recovery of any costs associated with the Pioneer project from customers pursuant to schedule 12 of the PJM tariff without conditioning any such recovery on the project first being approved through the regional planning processes. Further, the PJM Transmission Owners state that schedule 6 of the PJM tariff provides that PJM must designate, for purposes of cost recovery, the customers that will be subject to a Transmission Enhancement Charge for each enhancement or expansion.¹¹⁶

3. Commission Determination

124. We agree with protestors that approval of the formula rate should be tied to the final outcome of a cross-border cost-allocation methodology established between PJM and MISO. Thus, as acknowledged by Pioneer, its proposed formula rates (which have been set for hearing for the resolution of other issues) may not become effective until: (1) the Pioneer project has been approved by the regional transmission planning processes of PJM and MISO; and (2) an appropriate Commission-approved cost allocation mechanism for the recovery of the cross-border PJM/MISO costs is in effect.¹¹⁷

N. Request for Waivers

125. Pioneer requests waivers of section 35.13 of the Commission's regulations, including waiver of the full Period I-Period II data requirements and waiver of the requirements to determine if, and the extent to which, a proposed change constitutes a

¹¹⁵ Schedule 12 of the PJM tariff sets forth the assignment of cost responsibility for transmission system enhancements and expansions pursuant to the regional transmission expansion planning process. PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, Schedule 12.

¹¹⁶ PJM Operating Agreement, Schedule 6 §§ 1.4(c), 1.5.6(g), 1.6(a) and 1.8.

¹¹⁷ Pioneer October 15, 2008 Transmittal Letter at 12.

rate increase based on Period I-Period II rates and billing determinants. Pioneer states that good cause exists for these waivers, as explained in its application. Additionally, Pioneer requests “waiver of any applicable regulations to allow the filing to take effect in the manner described.” While no parties commented on Pioneer’s request for waivers, some parties raised related concerns that Pioneer is not yet a member of an RTO and is not yet considered a transmission owner by either PJM or MISO.

126. We will grant Pioneer’s requests for waiver of section 35.13 requirements, consistent with our prior approval of formula rates.¹¹⁸ Nonetheless, to the extent that parties at the hearing procedures ordered herein can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information. With respect to the concerns raised by parties that Pioneer is not yet a member of an RTO and is not yet considered a transmission owner by either PJM or MISO, we reiterate that, as acknowledged by Pioneer, the proposed formula rate may not become effective until (1) the project has been approved by the regional transmission planning processes of PJM and MISO; and (2) an appropriate Commission-approved cost allocation mechanism for the recovery of the cross-border PJM/MISO costs is in effect.

The Commission orders:

(A) Pioneer’s proposed tariff sheets to the tariffs of PJM and MISO are hereby accepted for filing, suspended, set for hearing, and subject to the compliance filing, as discussed more fully above.

(B) Pioneer’s request for CWIP, abandonment, and regulatory asset incentives, and its request for a 150 basis point ROE adder for new transmission and a 50 basis points ROE adder for membership in an RTO are hereby granted, as discussed more fully above.

(C) Pioneer’s request for an advanced technology adder is hereby denied without prejudice, as more discussed more fully above.

(D) Pioneer is hereby ordered to make a compliance filing within 30 days of the date of this order that (1) reflects the appropriate ROE, and (2) contains revisions to the protocols for the formula rate, as discussed more fully above.

¹¹⁸ *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh’g*, 122 FERC ¶ 61,037, *order on reh’g*, 124 FERC ¶ 61,231 (2008); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008).

(E) Pioneer's request for waivers of section 35.13 of the Commission's regulations is hereby granted, as more discussed more fully above.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act (FPA),¹¹⁹ particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues outlined above in Docket Nos. ER09-75-000 and ER09-75-001. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) – (I) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a Settlement Judge in this proceeding within fifteen (15) days of the date of this order. Such Settlement Judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the Settlement Judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(H) Within thirty (30) days of the date of this order, the Settlement Judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the Settlement Judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

¹¹⁹ 16 U.S.C. § 824e (2008).

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Kelly dissenting in part with a separate statement to be issued at a later date.

(S E A L)

Kimberly D. Bose,
Secretary.