

126 FERC 61,286
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Trans-Allegheny Interstate Line Company

Docket No. ER09-590-000

ORDER DENYING REQUEST FOR INCENTIVE RATE TREATMENT

(Issued March 30, 2009)

1. On January 29, 2009, Trans-Allegheny Interstate Line Company (TrAILCo) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ a request for authorization to implement a 12.7 percent incentive return on equity (ROE) for the replacement of autotransformers and the upgrade of associated equipment at American Electric Power's (AEP) Kammer Substation (Kammer Project). For the reasons discussed below, we deny TrAILCo's request for an incentive ROE.

I. Background

2. TrAILCo, an indirect subsidiary of Allegheny Energy, Inc. (Allegheny Energy), was organized to construct, own, and operate certain transmission facilities approved for construction under the provisions of the PJM Interconnection, L.L.C. (PJM) Operating Agreement, including the TrAIL Project and the Black Oak static VAR compensator (Black Oak SVC). TrAILCo is a Transmission Owner within the meaning of the PJM Consolidated Transmission Owners Agreement. In the January 29 filing (TrAILCo Filing), TrAILCo explains that it has the exclusive right to submit the request for an incentive ROE and to collect through PJM its charges for transmission service for the Kammer Project facilities.

3. PJM designated the Kammer Project as a baseline project in PJM's Regional Transmission Expansion Plan (RTEP) and assigned responsibility for the Kammer Project to Allegheny Power; Allegheny Power subsequently designated responsibility for the Kammer Project to TrAILCo.

¹ 16 U.S.C. § 824d (2006).

4. The Commission previously granted an incentive ROE of 12.7 percent for the TrAIL Project and the Black Oak SVC.² TrAILCo seeks the same incentive ROE for the Kammer Project.

II. Request for Incentive ROE and Project Description

5. According to TrAILCo, the autotransformers at the Kammer Substation are necessary for the reliability of the PJM transmission system and to reduce congestion in west-to-east power transfers. In its filing, TrAILCo explains that the existing autotransformers at the Kammer Substation are nearing the end of their useful life and are projected to be overloaded in 2012. The existing transformers were installed in 1970. TrAILCo explains that the “B” phase transformer failed in Spring 2007 and was replaced with the spare transformer. Thus, currently there is no other transformer available if another transformer should fail. TrAILCo also states that replacing the existing autotransformer bank with a new bank will increase reliability and reduce congestion by creating additional capacity. TrAILCo states that since 2005, the PJM transmission system has experienced over 3,300 hours of congestion with the Kammer autotransformer banks as the limiting element, resulting in approximately \$220 million in congestion charges during that period.³

6. TrAILCo states that the existing 765/500 kilovolt (kV) 500 megavolt ampere (MVA) autotransformers will be replaced with three single-phase 765/500 kV 750 MVA autotransformers, a single phase spare 765/500 kV 750 MVA autotransformer, and associated equipment. TrAILCo has contracted with AEP to remove the existing autotransformers, install the new autotransformer bank and perform other work necessary to accommodate the new autotransformer bank. The Kammer Project is projected to be completed by November 1, 2009, and TrAILCo expects to invest approximately \$54 million.

² See *Allegheny Energy, Inc., et al.*, 116 FERC ¶ 61,058 (2006), *order on reh'g*, 118 FERC ¶ 61,042 (2007) (declaratory order granting an incentive ROE to the TrAIL Project); *Trans-Allegheny Interstate Line Company*, 119 FERC ¶ 61,219 (2007) (conditionally granting request to apply the previously granted incentive ROE to TrAILCo's formula rate, subject to the outcome of a hearing, and conditionally granting an incentive ROE for the Black Oak SVC, subject to the outcome of the same hearing). In a settlement filed on March 14, 2008 in Docket No. ER07-562-000, an incentive ROE of 12.7 percent was established for the TrAIL Project and the Black Oak SVC. The settlement also established a base ROE of 11.2 percent, plus a 50 basis point adder for continuing membership in PJM, for a total base ROE of 11.7 percent for all non-incentive transmission facilities. See *Trans-Allegheny Interstate Line Company*, 124 FERC ¶ 61,075 (2008) (order approving uncontested settlement).

³ TrAILCo Filing at 8.

7. TrAILCo states that the new transformers will include state-of-the-art monitoring equipment that will permit TrAILCo to (a) recognize developing problems before they result in severe failures, (b) switch from preventative maintenance to condition-based maintenance (thereby reducing the amount of time the Kammer Substation is out of service for maintenance), and (c) improve operation by providing a real-time prediction of overload capability. TrAILCo also claims that the new transformers will be built with improved material and will incorporate significant design changes that will make them more robust than the original transformers.

III. Notice of Filing and Responsive Pleadings

8. Notice of TrAILCo's filing was published in the *Federal Register*, 74 Fed. Reg. 7,414 (2009), with interventions, protests and comments due on or before February 19, 2009. Dominion Resources Services, Inc., Exelon Corporation and the Public Service Commission of Maryland (Maryland Commission) filed timely motions to intervene. The Maryland Commission subsequently filed a protest of the TrAILCo Filing one day out of time. Old Dominion Electric Cooperative (Old Dominion) filed a motion to intervene one day out of time. American Municipal Power-Ohio, Inc. (AMP-Ohio) filed a timely motion for leave to intervene and protest. The Maryland Office of People's Counsel (Maryland People's Counsel) filed a timely motion to intervene, protest and request for hearing. On March 6, 2009, TrAILCo filed a motion for leave to answer and answer. On March 24, 2009, Maryland People's Counsel filed an answer in opposition to TrAILCo's answer or, alternatively, for leave to reply to TrAILCo's answer.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of the proceeding and the absence of undue prejudice or delay, we will grant Old Dominion's motion to intervene out-of-time and accept the Maryland Commission's late-filed protest.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁵ prohibits an answer to a protest or an answer to an answer, unless otherwise ordered by the decisional authority. We are not persuaded to accept TrAILCo's answer or Maryland People's Counsel answer and will therefore reject TrAILCo's and Maryland People's Counsels motions for leave to answer and answers.

⁴ 18 C.F.R. § 385.214 (2008).

⁵ *Id.* § 385.213(a)(2) (2008).

B. Request for Incentives**1. Section 219 Requirement to Ensure Reliability or Reduce Congestion**

11. In the Energy Policy Act of 2005 (EPAAct 2005),⁶ Congress authorized incentive-based rate treatment for new transmission construction. Specifically, section 1241 of EPAAct 2005 added a new section to the FPA, section 219,⁷ directing the Commission to establish by rule incentive-based (including performance-based) rate treatment for electric transmission. Order No. 679,⁸ the Commission's final rule, sets forth the processes by which a public utility can seek transmission rate incentives under FPA section 219, including the incentives requested by TrAILCo.

12. Order No. 679 provides that a public utility may file a petition for declaratory order or an FPA section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of FPA section 219. Applicants must demonstrate that the facilities for which they seek incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.⁹ Order No. 679 also establishes a rebuttable presumption that a project satisfies the threshold criteria for eligibility for transmission incentive treatment under FPA section 219 if: (1) a transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.¹⁰ Order No. 679-A clarified operation of the rebuttable presumption by noting that the authorities and/or processes on which it is based (e.g. 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.¹¹

⁶ Pub. L. No. 109-58, 119 Stat. 594, section 1241.

⁷ 16 U.S.C. § 824s (2006).

⁸ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁹ 18 C.F.R. § 35.35(i) (2008).

¹⁰ *Id.* See also Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 47.

¹¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

a. Proposal

13. TrAILCo states that the Kammer Project meets the rebuttable presumption under Order No. 679 based on the project being approved by the PJM Board of Managers and its inclusion in the PJM RTEP as a baseline project.

b. Protests

14. Protestors do not dispute that the Kammer Project meets the rebuttable presumption under Order No. 679.

c. Commission Determination

15. The Commission finds that the Kammer Project satisfies the requirements of FPA section 219 to ensure reliability or reduce congestion as a result of meeting the rebuttable presumption established in Order No. 679. The Kammer Project has been vetted and approved as part of PJM's RTEP as a baseline project, and this designation means that PJM made a determination that the Kammer Project mitigates congestion or ensures PJM's ability to continue to serve load reliably. The Commission has held that the PJM RTEP constitutes "a fair and open regional planning process," and thus qualifies for the rebuttable presumption provided in Order No. 679.¹²

2. Nexus Requirement

16. In addition to satisfying the FPA section 219 requirement that a project ensure reliability or reduce the cost of delivered power by reducing congestion, applicants must demonstrate that there is a nexus between the incentive sought for a particular project and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."¹³ As part of our evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission clarified how it would evaluate projects to determine whether they are routine.¹⁴ Specifically, to determine whether a project is routine, the Commission will

¹² *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 62-68 (2007); *see also Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 41 (2007), *reh'g denied*, 122 FERC ¶ 61,204 (2008) (*BG&E*).

¹³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

¹⁴ *BG&E*, 120 FERC ¶ 61,084 at P 52-55.

consider all relevant factors presented by the applicant. For example, an applicant may present evidence on: (i) the scope of the project (e.g. dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (ii) the effect of the project (e.g. improving reliability or reducing congestion costs); and (iii) the challenges or risks faced by the project (e.g. siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).

a. Proposal

17. TrAILCo states that the Kammer Project meets the test for a non-routine transmission addition and qualifies for an incentive. According to TrAILCo, it will be responsible for purchasing and contracting with a third party for the installation of three state-of-the-art single phase 765/500 kV 750 MVA autotransformers, a single phase spare and associated equipment. Replacing the autotransformers will also require “major upgrades” to the Kammer Substation, including relocating double circuit 138 kV lines and a 500 kV line, extending the Kammer Substation fence, installing additional fill to expand the substation yard, and expanding the oil containment.¹⁵ TrAILCo cites the non-routine nature of these improvements to the Kammer Substation as support for an incentive.

18. TrAILCo also notes the large scope of the Kammer Project and explains that the Project will have a regional impact and improve reliability of cross-system transfers. TrAILCo states that the Kammer Substation has been a significant limiting factor on the PJM system and will be overloaded in 2012. By creating additional capacity without creating additional overloads, the Kammer Project will increase reliability and reduce congestion on west-to-east power transfers, thus benefiting the PJM region as a whole. TrAILCo underscores the state-of-the-art monitoring equipment involved and the use of higher grade materials and improved design. According to TrAILCo, these changes will allow the plant to move from preventive maintenance to condition-based maintenance and will reduce unplanned outages.

19. TrAILCo argues that the Commission should also consider the additional financial risk the Kammer Project poses given the other large investments undertaken by its parent company, Allegheny Energy, such as the TrAIL Project and the Potomac Appalachian Transmission Highline (PATH) Project. Since the Kammer Project is “logically related” to other projects which PJM has assigned to TrAILCo, TrAILCo contends that the Kammer Project meets the nexus requirement because, collectively, these projects are RTEP approved and are necessary to ensure continued reliability of the PJM transmission

¹⁵ TrAILCo Filing at n.37.

system.¹⁶ According to TrAILCo, the Kammer Project will add to the substantial financial burden it already carries as a result of the cumulative impact of the transmission projects it has undertaken, and the Commission should take this fact into account when evaluating the risks and challenges posed by the Kammer Project. TrAILCo states that Allegheny Power's willingness to maintain its commitment to transmission expansion should not be used as a reason to deny transmission incentives to later projects of smaller financial cost – if anything, the additional \$54 million investment for the Kammer Project supports a finding that the nexus finding previously made in the TrAIL Line and PATH proceedings should apply to the Kammer Project. TrAILCo argues that the large amount of Allegheny Power's investments in transmission supports an incentive ROE, especially in view of Allegheny Power's transmission investment prior to its recent commitments.¹⁷ TrAILCo believes that the Commission's actions would be "counterproductive" if it were to deny an incentive ROE to a company that is making a large cumulative transmission investment merely because the project for which it requests an incentive ROE is not as large as projects for which the Commission has improved incentive ROEs.

20. Finally, TrAILCo notes that it has not sought an incentive ROE or other rate incentives for every project designated by Allegheny Power to TrAILCo. TrAILCo contends that it has responsibly heeded the Commission's directive that routine projects, even when assigned in the RTEP process, do not require rate incentives. TrAILCo also notes that the Kammer Project involves multiple parties.

b. Protests

21. The Maryland People's Counsel argues that the requested incentive ROE is not just and reasonable. The Maryland People's Counsel contends that not one of the risks and challenges of the TrAIL Project is present with respect to the Kammer Project, which the Maryland People's Counsel describes as routine. The Maryland People's Counsel notes that the Kammer Project will not entail multi-jurisdictional proceedings, will not need to acquire additional rights-of-way, and will be finished within a year's time. The Maryland People's Counsel contends that the Kammer Project involves far fewer environmental regulatory issues than the TrAIL Project.

22. The Maryland People's Counsel also challenges the lack of an explanation for PJM's assignment of the Kammer Project to Allegheny Power instead of AEP, and Allegheny Power's subsequent assignment of the Project to TrAILCo. The Maryland People's Counsel questions why TrAILCo was assigned the Kammer Project by Allegheny Power since, as TrAILCo itself notes, TrAILCo already carries large financial

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 10.

transmission commitments. The Maryland People's Counsel claims that if Ohio Power (AEP's subsidiary) had retained the legal and financial responsibility for the Project, the ROE would be 11.7 percent or lower. The Maryland People's Counsel also notes that had Allegheny Power assigned the Kammer Project to Monongahela Power Company (one of Allegheny Power's transmission and distribution subsidiaries) instead of TrAILCo, the ROE would be 10.5 percent. The Maryland People's Counsel concludes that TrAILCo appears to be gaming the transmission incentive system. Finally, the Maryland People's Counsel contends that the Kammer Substation is not a part of, or directly connected to, any part of the TrAIL Line, and therefore the Kammer Project should not receive incentive treatment. The Maryland People's Counsel requests a hearing if the Commission does not deny the requested incentive ROE.

23. AMP-Ohio states that the Kammer Project "appears to be little more than a routine replacement and upgrade of a transformer bank"¹⁸ and that TrAILCo has failed to demonstrate that there are unusual financial and construction risks involved in replacing transformers that are "approaching the end of their useful life."¹⁹ AMP-Ohio argues that TrAILCo's request for a technology-based incentive is refuted by its statement that it will be using "state-of-the-art" technology, i.e. technology that is current instead of outdated, as opposed to "pushing the technology envelope."²⁰ AMP-Ohio asks the Commission to reject TrAILCo's proposed 12.7 percent incentive ROE.

24. The Maryland Commission claims that TrAILCo has not demonstrated that the requested incentive rate is appropriate and will result in just and reasonable rates. The Maryland Commission raises three issues regarding the Kammer Project. First, the Maryland Commission questions how far along the Kammer Project was prior to the Commission issuing its transmission incentive rate policy, given the long lead times required for projects like the Kammer Project. Second, the Maryland Commission states that it presumes that the project will require the scheduling of line outages in PJM, but the TrAILCo Filing does not include an installation schedule for the Kammer Project or describe how that schedule might impact use of the PJM transmission system. Third, the Maryland Commission contends that TrAILCo has not provided sufficient information regarding the autotransformers to determine how technologically advanced they actually are. The Maryland Commission claims that an evidentiary hearing is necessary to determine whether the Kammer Project qualifies for an incentive rate.

¹⁸ AMP-Ohio Protest at 1.

¹⁹ *Id.* at 4 (quoting TrAILCo Filing at 8).

²⁰ *Id.* at 5.

c. **Commission Determination**

25. TrAILCo has not demonstrated that the Kammer Project warrants an incentive ROE under our nexus requirement. As discussed below, we find that TrAILCo has not demonstrated how the scope, effect and risks or challenges of the Kammer Project warrant an incentive ROE and, therefore, TrAILCo does not meet the nexus test.

26. The Commission has not prescribed a rigid set of criteria that projects must meet in order to satisfy the nexus test. Rather, the Commission evaluates on a case-by-case basis the scope, effects, and risks/challenges of projects before the Commission seeking incentive treatment. Nevertheless, in its filing, TrAILCo contends that the addition of the investment costs for the Kammer Project to the investment costs that TrAILCo and its parent company already bear “underscores the continued applicability of the nexus finding.”²¹ Citing its collective investment in transmission expansion, including the TrAIL and Black Oak SVC Projects, TrAILCo requests that the Commission grant for the Kammer Project the same 12.7 percent incentive ROE that was granted for both the TrAIL and Black Oak SVC Projects.

27. TrAILCo’s attempt to support the Kammer Project by tying it to the TrAIL and Black Oak SVC Projects is unpersuasive. First, the Commission notes that since the nexus finding is made on a case-by-case basis, there is no “continued applicability” of the nexus finding. Second, TrAILCo is essentially claiming that the Kammer Project is entitled to the same incentive ROE as the incentive ROE that the Commission granted for the TrAIL Project, a 210-mile, 500 kV transmission line traversing multiple states and requiring the acquisition of necessary rights-of-way.²² The Kammer Project is not comparable to the TrAIL Project in terms of scope, effects, risks and challenges. Similarly, the Kammer Project does not compare in terms of scope, effects, risks and challenges to TrAILCo’s Black Oak SVC, the largest SVC in the United States and one of the largest in the world.

28. While TrAILCo will purchase and own four single-phase 765/500 kV 750MVA autotransformers, including one spare, and associated equipment, the Kammer Project involves only the Kammer Substation, is estimated to cost \$54 million and has an estimated completion date of November 1, 2009. In contrast, the TrAIL Project is much more costly and has a much longer lead time; it was estimated to cost \$820 million and had an estimated completion date of June 2011, five years after its approval in PJM’s

²¹ TrAILCo Filing at 10.

²² TrAILCo notes that of the 11 projects assigned to it, the Kammer Project is only the third project for which it has sought a rate incentive. The other two projects are the TrAIL and Black Oak SVC Projects. *Id.* at 11.

RTEP. Further, the TrAIL Project presented significant risks: it was a 210-mile, 500 kV line that required TrAILCo to design the specific facilities needed to provide the transmission service, obtain siting approval, acquire the necessary rights-of-way and engage construction firms to translate the design into specific construction projects ready for integrated operation as part of the PJM grid within a five-year period. The Kammer Project, however, is confined to one substation, involves replacing three autotransformers (and adding one spare) and has a significantly smaller budget of \$54 million. The Kammer Project does not encompass the same significant scope and risks as other projects that have received the 12.7 percent incentive ROE. The Commission is not persuaded by TrAILCo's attempt to tie the Kammer Project to those projects for which the 12.7 percent incentive ROE has been granted.

29. In Order No. 679, the Commission also found that higher returns may be appropriate for certain projects, such as “where the risks...exceed the normal risks undertaken by a utility.”²³ Under the facts of this case, TrAILCo has not shown how the Kammer Project presents either any unusual characteristics or risks, challenges, or benefits that warrant incentive treatment. TrAILCo has not demonstrated how the design, placement, installation, construction or operation of the Kammer Project will pose risks and challenges to TrAILCo. As we affirmed in Order No. 679-A, “the most compelling case for incentives are new projects that present special risks or challenges, not routine investments made in the ordinary course of expanding the system to provide safe and reliable transmission service.”²⁴

30. The Commission is also not persuaded by the argument that we should consider the “cumulative burden” of all of the transmission expansion projects being undertaken by TrAILCo in evaluating TrAILCo's request for an incentive ROE for the Kammer Project.²⁵ The Commission agrees with TrAILCo that “transmission incentives are designed to encourage needed expansion and upgrading of the nation's transmission system.”²⁶ Nevertheless, the fact that TrAILCo has invested in and received incentives for other significant transmission projects does not mean that all future projects undertaken by TrAILCo – regardless of their individual risks and challenges – also warrant incentive treatment. As noted above, the Commission evaluates transmission incentives requests on a case-by-case basis.

²³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 27.

²⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 23.

²⁵ TrAILCo Filing at 10.

²⁶ *Id.*

31. With respect to the Kammer Project's designation as a baseline project in the PJM RTEP, the Commission has held that not all PJM RTEP Projects will necessarily qualify for incentives.²⁷ For example, in *ComEd III*, the Commission stated that PJM's scrutiny of baseline projects, while significant, is not the only factor that will be considered in analyzing whether a project has met the nexus test.²⁸ Rather, the Commission must examine such factors as the scope, effect, and risks or challenges faced by the project.²⁹ The Commission reaffirmed this approach in *ComEd*.³⁰

32. For all the reasons described above, we find that the Kammer Project fails the nexus test, and we therefore deny TrAILCo's request for an incentive ROE.

33. In view of the rejection of the requested 12.7 percent incentive ROE, the Kammer Project is subject to an 11.7 percent ROE, which reflects the base ROE established in the settlement proceedings (11.2 percent) plus a 50 basis point adder for PJM participation.

34. We will dismiss the arguments concerning the assignment of responsibility for the Kammer Project by PJM to Allegheny Power (as opposed to AEP) as a collateral attack on a prior Commission order. On November 25, 2008, PJM filed in Docket No. ER06-456-018 corrections to its November 14, 2008 filing, which designated the cost allocation and construction responsibilities for several projects, including the Kammer Project. PJM noted in the November 25 filing that it incorrectly assigned AEP the construction responsibilities for the Kammer Project in the November 14 filing and that it intended to assign the project to Allegheny Power instead. PJM therefore proposed reassigning the Kammer Project to Allegheny Power. No parties in that docket protested this change, and the Commission accepted the change in an order issued January 28, 2009.³¹

35. Regarding the appropriateness of Allegheny Power assigning the Project to TrAILCo as opposed to its subsidiary Monongahela Power Company, we dismiss this objection. Under PJM's Operating Agreement and Transmission Owners Agreement,

²⁷ See *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 124 FERC ¶ 61,231 (2008) (*ComEd III*). See also *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 125 FERC ¶ 61,250 (2008) (*ComEd*).

²⁸ *ComEd III*, 124 FERC ¶ 61,231 at P 18.

²⁹ *Id.*

³⁰ *ComEd*, 125 FERC ¶ 61,250 at P 27.

³¹ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,069 (2009) (order accepting cost responsibility assignments).

once a transmission owner is assigned responsibility for constructing, owning, and/or financing a facility via the PJM RTEP, PJM does not prescribe with whom the transmission owner must enter into a contract in order to fulfill its obligation to build.³²

The Commission orders:

TrAILCo's request for incentive rate treatment for the Kammer Project is hereby denied, as discussed in the body of this order.

By the Commission

(S E A L)

Kimberly D. Bose,
Secretary.

³² "Transmission Owners designated as the appropriate entities to construct, own and/or finance enhancements or expansions specified in the Regional Transmission Expansion Plan shall construct, own and/or finance such facilities *or enter into appropriate contracts to fulfill such obligations....*" PJM Operating Agreement, Schedule 6, § 1.7 (a) (emphasis added).