

122 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Baltimore Gas and Electric Company

Docket No. ER07-576-003

ORDER DENYING REHEARING

(Issued January 17, 2008)

1. On August 15, 2007, Baltimore Gas and Electric Company (BG&E) requested rehearing of the Commission's July 24, 2007 order in this proceeding.¹ In that order, the Commission denied BG&E's request for incentive rate treatment for 37 future transmission projects filed pursuant to Order Nos. 679 and 679-A.² For the reasons discussed below, we deny BG&E's request for rehearing.

I. Background

2. In February 2007, BG&E requested rate incentives for two baseline projects, six transmission-owner-initiated (TOI) projects, and 37 future transmission projects.³ With respect to the 37 future projects, BG&E proposed that the Commission approve the

¹ *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084 (2007) (July 24 Order).

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

³ BG&E requested: (1) a 50-basis point adder to its return on equity (ROE) for all jurisdictional facilities in recognition of its continuing membership in PJM Interconnection, L.L.C. (PJM); (2) a 100-basis point ROE adder for investment in new transmission constructed for two baseline, and six TOI and 37 future projects; and (3) inclusion of 100 percent of its construction work in progress (CWIP) for all new transmission investment.

transmission rate incentives in advance and permit BG&E to revise its formula rate mechanism so that if the projects are approved through the PJM Regional Transmission Enhancement Planning (RTEP) process, the projects may receive incentive rate treatment as part of BG&E's annual formula rate update.

3. In the July 24 Order, the Commission rejected BG&E's proposal regarding the 37 future projects.⁴ The Commission explained that BG&E failed to provide fact-specific information about why each project or group of projects qualified for an ROE incentive, that BG&E did not demonstrate how the ROE incentive for future projects address demonstrable risks or challenges, and that BG&E did not provide sufficient evidence on scope, benefits or risks to show that the future projects are non-routine.⁵ Finally, the Commission noted that its rejection was without prejudice to BG&E seeking transmission rate incentives for these projects in a subsequent application that makes the requisite demonstrations regarding the projects' effect on the cost of congestion or reliability, and the appropriate nexus.

II. Request for Rehearing

4. On rehearing, BG&E contends that the July 24 Order creates a "hybrid scheme" under which BG&E's formula rates cannot be fully populated unless BG&E files individual section 205 rate cases for each new project it builds under PJM's RTEP. BG&E argues that this requirement "undermines the very basis upon which [it] filed for formula rates in the first place," and is inconsistent with the Commission's policy of fostering transmission investment by allowing utilities "flexibility going forward."⁶

5. BG&E acknowledges that Order No. 679-A requires utilities to make a case-by-case showing before the Commission will authorize an incentive for a particular project. However, BG&E contends that "[this] showing takes a different form depending on whether a regulated entity is on a stated rate methodology or a formula rate methodology," and that because BG&E is on a formula rate methodology, it can make this showing without making a section 205 filing.⁷

⁴ The Commission addressed the incentive requests for current projects in the July 24 Order and in *Baltimore Gas & Electric Co.*, 121 FERC ¶ 61,167 (2007).

⁵ July 24 Order, 120 FERC ¶ 61,084 at P 65.

⁶ BG&E Request for Rehearing at 4, 5, 6 (*citing* Order No. 679 at P 154).

⁷ BG&E Request for Rehearing at 6.

6. BGE asserts that it is not attempting to secure a blanket authorization of incentives or to avoid a rigorous review process, but merely to apply the protocols established in the Settlement Agreement accepted by the Commission that govern inclusion of cost of service adjustments in its formula rate to the incentive rate component of rates for future projects.⁸ BG&E explains that these protocols create a process for interested parties to request information about BG&E's annual formula rate update, a mechanism to resolve informal and formal challenges to BG&E's application of the formula rate, and a process for providing finality to each annual formula rate update once the review process is completed.⁹

7. In the alternative, BG&E requests that the Commission restrict any requirement that BG&E supplement its annual formula rate filings to demonstrate the nexus between the incentive sought and the investment being made to incentive rate treatment for future TOI projects. BG&E argues that since the Commission has relied on the PJM RTEP as an adequate means for adjudicating the appropriateness of incentives, the Commission should allow BG&E to submit annual updates populated with future PJM RTEP-approved baseline project costs with incentives.

8. On August 23, 2007, the Public Service Commission of Maryland (Maryland Commission) filed an answer to BG&E's rehearing request.¹⁰

III. Discussion

9. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure¹¹ prohibits answers to requests for rehearing. Accordingly, we reject the Maryland Commission's answer.

⁸ In January 2005, BG&E submitted a filing seeking to implement a formula rate for its wholesale transmission service. Subsequently, the Commission issued an order approving the uncontested Settlement Agreement that established BG&E's formula rate and protocols for adjusting the formula rate. *See Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

⁹ BG&E Request for Rehearing at 4.

¹⁰ The Maryland Commission styled its pleading as a "Conditional Request for Rehearing." However, in substance, the pleading is actually an answer to BG&E's rehearing request.

¹¹ 18 C.F.R. § 385.713(d)(1) (2007).

10. We deny BG&E's request for rehearing. While BG&E recognizes that it must make a case-by case showing before the Commission will authorize transmission rate incentives pursuant to Order No. 679, it contends that the process for making this showing depends on whether an applicant has stated or formula rates.¹² We disagree. A case-by-case showing must be made for *all* transmission incentive rate filings.¹³ Contrary to BG&E's contention, Order No. 679 does not distinguish between stated rates and formula rates.

11. The Commission's policy is that cost components of formula rates that require estimation of future expenditures or that are generally accorded separate Commission scrutiny must be filed with the Commission before the costs are passed through the formula rate.¹⁴ This is particularly true of transmission rate incentives, where the Commission has stressed the importance of establishing a nexus between the incentive being sought and the transmission project.¹⁵ Consistent with this policy, the Commission previously allowed American Electric Power Service Corp. (AEP), as part of its formula rate, to maintain placeholders with a value of zero for the recovery of future incentives,

¹² BG&E Request for Rehearing at 6.

¹³ *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 51(2007); Order No. 679-A at P 24.

¹⁴ See *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, P 54 (2007), *order on reh'g*, 121 FERC ¶ 61,009 (2007) (post-employment benefits other than pension costs cannot be passed through a formula without Commission review) (*Trans-Allegheny*); *Southwestern Electric Power Co.*, 36 FERC ¶ 61,081 at 61,202 (1986) (CWIP expenses cannot be passed through a formula rate without Commission review); *South Carolina Generating Co.*, 32 FERC ¶ 61,224 at 61,512 (1985) (extraordinary property losses cannot be passed through a formula without Commission review); *New England Power Co.*, 31 FERC ¶ 61,378 at 61,841-42 (1985) (return on equity cannot be revised automatically in a formula rate); *Electric Energy, Inc.*, 29 FERC ¶ 61,212 at 61,439 (1984) (penalties cannot be passed through a formula rate without prior Commission review); *Maine Yankee Atomic Power Co.*, 17 FERC ¶ 61,208 at 61,400 (1981) (decommissioning expenses cannot be passed through a formula rate without Commission review).

¹⁵ See July 24 Order, 120 FERC ¶ 61,084 at P 46-55. Moreover, we note that like decommissioning costs or CWIP, any error in estimates could result in intergenerational inequities because current customers could pay more or less than their fair share of transmission rate incentive costs.

but required AEP to make a separate application for authorization to recover such incentives.¹⁶

12. Moreover, although BG&E correctly observes that the Commission accords considerable weight to regional planning reliability determinations, the Commission has consistently reviewed these determinations in the context of specific transmission projects. In fact, the Commission has required modifications to incentives requested for several projects accepted through a regional planning process, requiring additional support for the total package of incentives being sought, discussion of the inter-relationship between any incentives, and explanation of how any requested incentives address the risks and challenges faced by the applicant in constructing the project.¹⁷ Section 219 of the FPA¹⁸ requires the same standard of review whether or not the project is initiated by the transmission owner or results from an independent planning process.¹⁹ Accordingly, we deny BG&E's alternative request that the Commission restrict its individual filing requirement to future TOI projects.

¹⁶ *American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at P 36 (2007) (*AEP*) (“When AEP applies for authorization to recover incentives, AEP can also apply under section 205 to replace the zero values in the placeholders with the approved amounts”); *id.* at n.33 (noting that by permitting placeholders for future incentives, the Commission was not prejudging the outcome of future requests by AEP for authorization for such incentives); *see also*, *San Diego Gas & Electric Co.*, 118 FERC ¶ 61,073, at P 23 (2007).

¹⁷ The Commission's decision to modify requests for incentives takes into account multiple factors, and not simply whether the project was part of a regional planning process. *See, e.g. Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (where the Commission reduced the requested ROE incentive by 50 basis points based upon factors other than the project's inclusion in the regional planning process); *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (where the Commission reduced the ROE incentive by 25 basis points based upon factors other than the project's inclusion in the regional planning process); and *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238 (2007) (where the Commission denied incentives based upon other factors than the projects' inclusion in a regional plan).

¹⁸ Energy Policy Act of 2005 (EPAAct), Pub L. No. 109-58, § 1241, 119 Stat 594, 961 (2005) (to be codified at 16 U.S.C. § 824s) (section 219).

¹⁹ Order No. 679 at P 49.

The Commission orders:

BG&E's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.