

126 FERC ¶ 61,043
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.

The United Illuminating Company

Docket No. ER07-653-001

ORDER DENYING REHEARING

(Issued January 16, 2009)

1. On May 22, 2007, the Commission issued an order¹ accepting in part and rejecting in part revised tariff sheets filed by The United Illuminating Company (United Illuminating) to incorporate into its approved formula rate costs associated with two transmission rate incentives pursuant to Order No. 679² in connection with a transmission line construction project located from Middletown to Norwalk, Connecticut (Project). The Connecticut Department of Public Utility Control (CT DPUC), the Maine Public Utilities Commission (Maine Commission) and Public Intervenors³ seek rehearing of the Commission's May 22 Order. For the reasons discussed below, we deny the requests for rehearing.

I. Background

2. The underlying Project is a joint undertaking between United Illuminating and The Connecticut Light & Power Company to build a new 345-kV transmission line from Middletown to Norwalk, Connecticut and to rebuild and modify portions of the existing 115-kV transmission system. In its initial filing, United Illuminating stated that the Project includes a 69-mile transmission line consisting of three segments, with approximately 24 miles of the 69-mile line built underground. United Illuminating also

¹ *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007) (May 22 Order).

² *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, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

³ The Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, and Richard Blumenthal, Attorney General of the State of Connecticut.

stated that the Project includes construction of related switching stations and substations that will use several advanced technologies, including underground 345-kV cross-linked polyethylene cable (XLPE). United Illuminating stated that the total cost of the Project is estimated to be \$1.3 billion. United Illuminating will own 20 percent of the Project, with its share of the costs totaling between \$230 and \$260 million, which will be more than triple its current net transmission plant. United Illuminating stated that the Project is intended to help reduce dependence on reliability must run contracts, the costs of running uneconomic generation, and congestion costs, by providing additional import capability in the southwest Connecticut region.⁴

3. In the May 22 Order, the Commission accepted, pursuant to Federal Power Act (FPA) sections 205⁵ and 219⁶ a revised tariff sheet⁷ to incorporate into United Illuminating's approved formula rate costs associated with two transmission rate incentives under Order No. 679. Specifically, the Commission granted a 50 basis point return on equity (ROE) incentive adder for the use of advanced transmission technologies only for the costs associated with, and electrically necessary to support, the underground XLPE cable portion of the Project. Additionally, the Commission granted United Illuminating's request for recovery of 100 percent Construction Work in Progress (CWIP) in rate base for the entire Project. The Commission noted that the two incentives achieved different purposes, and thus the application of the ROE incentive to the advanced technologies portion of the Project did not preclude the application of the CWIP incentive to the Project as a whole.⁸ The Commission found that some of the technologies that United Illuminating planned to use for the Project are advanced and will increase the capacity, efficiency or reliability of the new transmission facilities. The Commission stated that the ROE incentive is intended to encourage such technologies in

⁴ May 22 Order, 119 FERC ¶ 61,182 at P 4 (citing *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,120, at P 19, *order on reh'g*, 110 FERC ¶ 61,441, *reh'g denied*, 113 FERC ¶ 61,210 (2005); *Devon Power, LLC*, 109 FERC ¶ 61,154, at P 65 (2004), *order on reh'g*, 110 FERC ¶ 61,313, *order on reh'g*, 110 FERC ¶ 61,315 (2005)).

⁵ 16 U.S.C. § 824d (2006).

⁶ 16 U.S.C. § 824s (2006).

⁷ Revised Sheet No. 3441 to ISO New England Inc.'s FERC Electric Tariff No. 3 (Schedule 21-UI).

⁸ May 22 Order, 119 FERC ¶ 61,182 at P 54.

accordance with section 219 and Order No. 679.⁹ In contrast, the CWIP incentive will alleviate cash flow deficiencies in order to assist in the financing of the entire Project.¹⁰

II. Requests for rehearing

4. CT DPUC and the Public Intervenors (collectively, Parties) filed requests for rehearing on June 21, 2007. The Maine Commission filed a request for rehearing on June 22, 2007. United Illuminating and the Maine Commission filed answers.

III. Discussion

A. Procedural Matters

5. The Maine Commission's June 22, 2007 request for rehearing is denied as untimely. The deadline to file requests for rehearing of the May 22 Order was June 21, 2007. We cannot extend the rehearing deadline because it is statutory under FPA section 313(a), 16 U.S.C. 8251(a) (2006).¹¹ However, we note that the issues raised by the Maine Commission are also raised by CT DPUC, and they are addressed below. In addition, Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2008), prohibits answers to requests for rehearing. Accordingly, we reject United Illuminating's and the Maine Commission's answers.

B. Discussion

1. 100 Percent CWIP Not Justified

a. Request for Rehearing

6. CT DPUC argues that the Commission has exaggerated United Illuminating's financial distress. It argues that in Moody's credit rating downgrade of United Illuminating, Moody's reported a stable rating outlook for United Illuminating that reflected its relatively low-risk transmission profile. CT DPUC also notes that United Illuminating has not demonstrated any difficulty in obtaining credit and that United Illuminating entered into a revolving credit agreement for \$175 million on December 22, 2006, and reduced its Net Long Term Debt from \$420.5 million to \$346.5 million during

⁹ *Id.* P 78.

¹⁰ *Id.* P 61.

¹¹ *E.g.*, *California Independent System Operator Corp.*, 119 FERC ¶ 61,076, at P 336 (2007); *Eastern Hydroelectric Corp.*, 117 FERC 61,304, at P 5 (2006).

2006.¹² CT DPUC argues that these facts are inconsistent with any perceived expectation of a downgrade or an increase in the cost of debt to complete the Project. CT DPUC argues that the Commission has not shown that United Illuminating faces demonstrable risks that justify a CWIP incentive.¹³ Further, CT DPUC states that no facts support the Commission's assertion that United Illuminating's "financial strain, weakened earnings, and weakened asset protection" jeopardize its ability to complete the Project.¹⁴

7. Further, CT DPUC argues that the Commission erred in comparing United Illuminating's estimated construction costs and transmission plant in service with industry averages from 1985 through 2005, a 20-year span when investment was deficient. CT DPUC contends that the Commission erred by using United Illuminating's CWIP at the very end of the Project, as a percentage of transmission plant in service. CT DPUC argues that using United Illuminating's CWIP at any other point before 2009 yields a CWIP that is closer to even the deficient industry-wide levels over the past 20 years.¹⁵

b. Commission Determination

8. We reject arguments that the Commission should not have approved recovery of 100 percent CWIP in rate base. United Illuminating demonstrated in its FPA section 205 filing that the Project represents a large investment for the company, relative to its size and historical transmission investment. The inclusion of 100 percent CWIP in rate base for United Illuminating will further the goals of section 219 by providing up-front regulatory certainty and rate stability. The current cash flow provided by this incentive will ease the pressures on United Illuminating's finances caused by the construction of the Project. It will enhance cash flow, reduce interest expense, and improve coverage ratios used by rating agencies to determine credit quality by replacing non-cash allowance for funds used during construction (AFUDC) with cash earnings. Without this incentive, United Illuminating could experience deterioration in its credit quality that could lead to higher rates and commitment fees, in addition to increasing its borrowing costs under any new long-term borrowing arrangements.

9. In addition, CWIP will result in better rate stability for customers. As we have explained before, when certain large scale transmission projects come on line there is a

¹² CT DPUC's Request for Rehearing at 12 (citing United Illuminating's May 18, 2007 FERC Form No. 1 at 123.8-123.9).

¹³ *Id.* at 15.

¹⁴ *Id.* at 16 (citing May 22 Order, 119 FERC ¶ 61,182 at P 71).

¹⁵ *Id.* at 14.

risk that consumers may experience “rate shock” if CWIP is not permitted in rate base.¹⁶ By allowing CWIP for the Project, the rate impact of the Project can be spread over the entire construction period and will help consumers avoid a return on and of capitalized AFUDC.¹⁷

10. CT DPUC’s arguments that the Commission exaggerated United Illuminating’s financial distress misses the point that the key issue is not whether United Illuminating’s financial position is distressed, but rather whether the CWIP rate incentive will help assure that the Project will be financed on favorable terms and completed in a timely manner.¹⁸ Also, in its FPA section 205 filing, United Illuminating included an analysis of how increasing its CWIP percentage from the previously-approved 50 percent to 100 percent will improve its cash flow during construction of the Project.¹⁹

11. We also reject CT DPUC’s argument that the Commission exaggerated the magnitude of United Illuminating’s anticipated expenses by comparing the Project costs to those when United Illuminating, like most utilities, neglected its transmission investments. Section 219 of the FPA and, in turn, Order No. 679, were intended to address the problem of industry-wide underinvestment in transmission by encouraging new transmission investment. Thus, it should not seem unusual that the applicant’s estimated new investment in transmission may be compared to costs during a period of less investment in transmission. It is not an exaggeration to note how much the utility is spending in relation to its current transmission investment. That is a factual matter. Further, Order No. 679 did not adopt a policy of analysis of how much each public utility ought to have spent and when it ought to have done so. While it may be true that if United Illuminating had invested in transmission earlier its current investment costs might be lower, there is nothing in Order No. 679, Order No. 679-A, or subsequent Commission precedent that requires an applicant for incentives to show that it proposed necessary investment at the earliest time of a potential problem. Further, as noted above, the Commission looked at the size of the Project relative to United Illuminating’s size.

¹⁶ *E.g., American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh’g*, 118 FERC ¶ 61,041, at P 27 (2007).

¹⁷ *Id.*

¹⁸ May 22 Order, 119 FERC ¶ 61,182 at P 63.

¹⁹ Exh. No. UI-10 at 6-8; Exh. No. UI-11.7.

2. Acceptance of the Advanced Transmission Technology Incentive

a. Request for Rehearing

12. Parties argue that the Commission should have rejected United Illuminating's request for an advanced technologies incentive or should have conducted an evidentiary hearing to determine whether the use of XLPE cables constitutes the use of "advanced technologies." For example, CT DPUC argues that the Commission did not explain how it defined "advanced" technologies, what analysis it used to assess the XLPE cable technology, or what facts it relied on to conclude that XLPE cable was an advanced technology.

b. Commission Determination

13. We disagree that the Commission should have instituted an evidentiary hearing to determine whether XLPE cable is an advanced transmission technology. There was sufficient record evidence for us to rule on United Illuminating's request for a 50 basis point ROE adder in the instant case. As we explained in the May 22 Order, more than 24 of the Project's 69 miles will employ underground XLPE cable.²⁰ XLPE technology has not been widely used within the United States at voltage levels such as 345 kV for lengths over 1,000 meters.

14. In addition, the innovative use of XLPE cable will improve the reliability of this project over alternative technologies. In reviewing requests for separate adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve efficiency.²¹ The use of XLPE cable will reduce line capacitance, which in turn will improve system reliability by reducing the likelihood of temporary over-voltages.²² Sufficient evidence supporting this was in the record before the Commission. Accordingly, the request for rehearing on this issue is denied.

²⁰ May 22 Order, 119 FERC ¶ 61,182 at P 73.

²¹ See, e.g., *NSTAR Elec. Co.*, 125 FERC ¶ 61,313, at P 73-77 (2008). The Commission has also explained how its consideration of requests for such separate advanced technology adders relates to its consideration of issues related to advanced technologies as part of the overall nexus analysis required by Order No. 679. See, e.g., *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 54-55, 59-60 (2008).

²² March 23, 2007 United Illuminating Filing, Docket No. ER07-653-000.

3. **Limit the Advanced Transmission Technology Adder to Only the Incremental Costs of the XLPE Cable**

a. **Requests for Rehearing**

15. CT DPUC argues that in the event the Commission rejects its request for rehearing related to the 50 basis point adder for XLPE cable, the Commission should at a minimum limit the application of the adder to only the incremental costs of XLPE cable over the conventional high-pressure fluid filled (HPFF) cable. It argues that there is no basis to reward United Illuminating with a higher ROE for those costs than it would have incurred even if it had not used advanced technologies. CT DPUC explains that United Illuminating would not have been entitled to a 50 basis point adder if it had used HPFF cable because that was the customary design for this application. It adds that United Illuminating's costs for activities like digging or tunneling the trench to bury the cable should not be subject to an ROE adder, and that there is no basis for applying an ROE adder to the same work that will be necessary simply because the cable to be installed represents "advanced" transmission technology.

b. **Commission Determination**

16. We reject arguments that the adder should be limited to the incremental costs of XLPE cable over the more conventional HPFF. First, we note that this issue is being raised for the first time on rehearing. Although we generally view such tactics with disfavor because it disrupts to the administrative process and creates a moving target for parties seeking a final administrative decision,²³ we nevertheless find no merit in this argument. CT DPUC's assumption that underground HPFF cable would not have been eligible to receive incentive ratemaking treatment is merely speculative. Moreover, Order No. 679 does not establish a policy of basing incentive ratemaking decisions on theoretical costs of alternative technologies. Order No. 679 also stated that the Commission did not intend to routinely set incentives cases for hearing or require cost-benefit analyses, in part because such steps could create uncertainty among prospective investors in transmission infrastructure and frustrate the goals of section 219 of the FPA.²⁴

17. Also, we reject CT DPUC's argument that the costs associated with undergrounding should not be eligible for incentives. CT DPUC argues that United Illuminating should not be allowed the 50 point adder because it would incur the same costs for activities such as digging and tunneling even if it had not used advanced

²³ *Baltimore Gas & Electric Co.*, 91 FERC ¶ 61,270, at 61,922 (2000).

²⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65, 79.

technologies. However, in this case, these activities are inseparable from the advanced technologies being used. As discussed above, United Illuminating will employ underground cable for the maximum distance that is technically feasible; thus, it is the combination of using XLPE cable with the case-specific use of such cable at high voltages at great distances that warrants the extra incentive and makes it distinct from the other incentives that United Illuminating was granted.²⁵ The underground XLPE cable technology meets the standards set forth in Order No. 679 for eligibility for an advanced transmission technology incentive. Accordingly, the request for rehearing on this issue is denied.

4. Failure To Satisfy Nexus Test/Duplicative Incentives

a. Request for Rehearing

18. Parties argue that the Commission acted arbitrarily and capriciously when it approved recovery of 100 percent of CWIP in rate base in order to assist in financing of the entire project without considering or analyzing the effect of its prior approval of ROE incentives that were also intended to assist United Illuminating in obtaining favorable financing terms. Parties further argue that the Commission acted arbitrarily and capriciously when it awarded United Illuminating a 50 basis point adder to its ROE for costs associated with, and electrically necessary to support, the underground XLPE cable portion of the project without considering whether such incentives are necessary in light of the previously approved 100 basis point adders applicable to the project.

19. Parties argue that the Commission erred in concluding that the “nexus” standard set forth in Order Nos. 679 and 679-A had been met with respect to the total package of incentives. Parties contend that where the result is a combination of an ROE adder based on a fact-specific determination that the Project at issue employs advanced technologies with previous, generic determinations that any new transmission construction, including construction employing advanced technologies would receive a 100 basis point ROE adder along with a related 50 basis point adder, the nexus standard has not been met.

20. Public Intervenors argue that the May 22 Order fails to explain why the additional adder is justified given United Illuminating’s statements in support of the adder authorized in Opinion No. 489, in which it noted that “an adder of 100 basis points is significant enough to have an impact on utilities considering investments in new

²⁵ In addition, the underground portion of the upgrade and United Illuminating’s innovative use of the 345kV XLPE underground cable facilitated acceptance of the Project in highly concentrated urban and suburban portions of the route, helped avoid substantial, costly, and time-consuming condemnations, and reduced the time and costs associated with both installation and maintenance of the transmission facilities. *Id.*

transmission.”²⁶ They add that the Commission found in Opinion No. 489 that an across-the-board ROE adder would be sufficient to trigger the needed investment response, based in part on representations made by transmission owners.²⁷

21. CT DPUC argues that the Commission had previously found that an incentive targeted to advanced technologies would be “unworkable and unnecessary” and “could lead to arbitrary results and could provide perverse incentives as it relates to the proposals and selection of new transmission projects.”²⁸

22. Public Intervenors argue that the fact that the ROE for United Illuminating will be capped in the upper end of the zone of reasonableness does not preclude any party from scrutinizing the 50 basis point adder, nor does the ROE falling in this range necessarily mean the incentive adder is reasonable. Public Intervenors contend that the Commission made clear in Order No. 679-A that it would not routinely grant ROEs in the upper-end of the zone of reasonableness.²⁹

b. Commission Determination

23. As required by Order No. 679-A, we must “examine the total package of incentives, the inter-relationship between any incentives and how any requested incentives address the risks and challenges faced by the project.”³⁰ Parties argue that we have not sufficiently considered the inter-relationship between the CWIP incentive requested, the advanced technology incentive and the ROE incentive granted previously in Opinion No. 489. We disagree. 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 of challenges faced by the applicant.”³¹ In the May 22 Order, we found that United Illuminating has shown, *inter alia*, that its Project faces unique challenges relating to cash flow, possible

²⁶ Public Intervenors June 21, 2007 Request for Rehearing at 11 (citing New England Transmission Owners June 27, 2005 Brief on Exceptions at 4, Docket No. ER04-157-004).

²⁷ *Id.* at 12.

²⁸ CT DPUC June 21, 2007 Request for Rehearing at 19 (citing Opinion No. 489, 117 FERC ¶ 61,129, at P 124 (2006)).

²⁹ Public Intervenors June 21, 2007 Request for Rehearing at 22.

³⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

³¹ *Id.* P 40.

deterioration of its credit quality, potential increased borrowing costs, the need to assume significant new short- and long-term debt and regulatory uncertainties. In fact, we found that United Illuminating has demonstrated that its project faces risks and challenges that are above and beyond those we relied upon in Opinion No. 489.³²

24. In examining the total package of incentives, the Commission found that United Illuminating should be granted both the Opinion No. 489 ROE incentive and the 100 percent CWIP recovery requested in the instant proceeding.³³ The Commission explained that the ROE incentive and the CWIP incentive were not mutually exclusive, as they address two different problems.³⁴ Further, the Commission also stated that when it assessed the total package of incentives that it examined the advanced technology incentive independent of the CWIP incentive and the enhanced ROE for risks and challenges associated with the Project. The Commission found that United Illuminating had shown that its total package of incentives had met the Commission's nexus test.³⁵

25. In addition, we are not persuaded by Public Intervenors' argument that United Illuminating has already been granted an advanced transmission technology ROE adder through the previously-granted 100 basis point adder. Public Intervenors point to statements made by the Commission in Opinion No. 489 that an across-the-board adder

³² May 22 Order, 119 FERC ¶ 61,182 at P 69.

³³ *Id.* P 69, 78.

³⁴ In *Commonwealth Edison Co.*, 124 FERC ¶ 61,231, at P 29 (2008), the Commission held:

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

³⁵ May 22 Order, 119 FERC ¶ 61,182 at P 78.

would be sufficient to trigger needed investment. However, in Order No. 679, we found that “[t]o the extent that applicants believe additional incentives for their advanced transmission technology applications are needed, they can make a case for advanced transmission incentives in their individual proceedings and the Commission will make a case-by-case determination.”³⁶

26. Parties reiterate arguments raised in earlier protests that United Illuminating had made statements in prior proceedings that additional incentives are unnecessary or harmful. However, in the May 22 Order, we rejected the argument that the principle of judicial estoppel prevented United Illuminating from requesting an ROE incentive for advanced transmission technology in this proceeding. In so doing, the May 22 Order explained that Opinion No. 489 did not grant ROE incentives based on advanced transmission technology. The May 22 Order further explained that the ROE adder for the use of advanced transmission technologies is distinct from the ROE adders approved in Opinion No. 489 (i.e., for new transmission and RTO participation).³⁷ Parties make no new arguments that warrant changing that determination.

27. With respect to Public Intervenor’s argument that the fact that the 50 basis point ROE that will be capped at the top of the zone of reasonable returns established in Opinion No. 489 does not immunize the 50 basis point adder from scrutiny, we note that in Order No. 679 we stated that when an application for an incentive-based ROE is filed with the Commission, we would determine the appropriate ROE level on a case-by-case basis. We also observed that such action, which involves scrutiny on a case-by-case basis, is consistent with the Commission’s long-standing approach that has been found to be just and reasonable.³⁸ Consistent with this authority, the Commission found that United Illuminating adequately supported its request for the rate incentives granted in the May 22 Order, and that United Illuminating’s ROE would not exceed the top end of the zone of reasonableness established by the Commission.

5. Obligation to Build

a. Requests for Rehearing

28. Parties argue that United Illuminating should not be granted an additional 50 basis point ROE adder for advanced technologies because it already possessed a contractual commitment to build the Project irrespective of the adder. Public Intervenor’s note that

³⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 299.

³⁷ May 22 Order, 119 FERC ¶ 61,182 at P 80-91.

³⁸ See, e.g., Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 93.

Order No. 679-A states that a “prior contractual commitment or statute may have a bearing on our nexus evaluation of individual applications.”³⁹ They add that the Commission has previously emphasized the appropriateness of providing incentives to companies that undertake voluntarily to invest in new transmission.⁴⁰

29. CT DPUC argues that United Illuminating is receiving “incentives” for actions which United Illuminating originally objected to, and which it has been irrevocably committed to build, since at least April 2005, thus providing transmission customers no value for their increased ROE payments. It argues that the Commission has not explained, what, if anything, United Illuminating could do differently at this stage than to proceed with its fully approved and committed XLPE cable design and installation. Public Intervenor argue that the Commission has rejected incentive requests in circumstances in which the requisite regulatory approvals have already been obtained, citing *Commonwealth Edison Co.*⁴¹ Public Intervenor argue that siting issues have been resolved and that the second phase of the Project is already underway.

b. Commission Determination

30. We reject Public Intervenor’s assertion that United Illuminating should not receive the advanced transmission technology adder because United Illuminating is under a contractual obligation to build all transmission projects determined to be needed by ISO New England. Under Order No. 679-A, the Commission explicitly stated that an obligation to build does not preclude eligibility for incentives.⁴² Public Intervenor’s narrow interpretation of Order No. 679 would deny the Commission the authority to grant an ROE incentive under many circumstances – an authority that Congress expressly granted the Commission in FPA section 219.

31. CT DPUC argues that the incentives granted in the May 22 Order are an inappropriate “reward” for decisions that United Illuminating has already made. We reject this argument. The Commission does not deny incentives solely because certain construction decisions were made prior to the filing of an application for incentives. In

³⁹ Public Intervenor June 21, 2007 Request for Rehearing at 16 (citing Order No. 679-A at P 122.)

⁴⁰ *Id.* at 17 (citing *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 53 (2007) and *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 44 (2006)).

⁴¹ *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 63 (2007) (*Commonwealth Edison*).

⁴² Order No. 679-A, FERC Stats. & Regs ¶ 31,236 at P 122.

other cases, we have granted transmission incentives for projects that were completely planned, approved by a state siting authority or regional planning process, and under construction.⁴³ Indeed, under Order No. 679-A, an applicant is entitled to a rebuttable presumption that its project satisfies section 219 of the FPA if the project has been approved by the relevant state siting board or by a regional planning process.⁴⁴ This suggests that the Commission contemplated that parties would seek incentives after planning and equipment decisions have been made.

32. While the Commission has declined to grant incentive treatment when an applicant sought incentives after the project was in service or when the project was in final testing,⁴⁵ in this case United Illuminating requested an advanced technology incentive while the Project was still under construction. As we noted in Order No. 679, “[e]ven where a project already has been planned or announced, the granting of incentives may help in securing financing for the project or may bring the project to completion sooner than originally anticipated.”⁴⁶ We expect applicants that request incentive rate treatment to do so in a timely fashion and find that United Illuminating requested the advanced technology incentive while it was facing challenges relating to the installation of the advanced technology, i.e., during the construction phase of the Project’s development.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴³ *Pepco Holdings, Inc.*, 124 FERC 61,176 (2008); *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007).

⁴⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86,

⁴⁵ *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 31 (2008); *NSTAR Elec. Co.*, 125 FERC ¶ 61,313, at P 72 (2008).

⁴⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 35.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

The United Illuminating Company

Docket No. ER07-653-001

(Issued January 16, 2008)

KELLY, Commissioner, *dissenting in part*:

This order addresses rehearing requests filed by several parties in response to a Commission order issued on May 22, 2007.¹ In the May 22 Order, the Commission granted a 50 basis point return on equity (ROE) incentive adder for the use of advanced transmission technologies for a portion of a 345kV transmission project that connects Middletown and Norwalk, Connecticut. The Commission also granted United Illuminating's request for recovery of 100% Construction Work in Progress (CWIP) in rate base for the entire project. Opinion 489, which was issued prior to the May 22 Order, permitted United Illuminating to receive a 100 basis point ROE adder applied to all new transmission construction (including the 345kV project), and a 50 basis point ROE adder for RTO membership applied to all transmission rate base.²

I dissented in part from the May 22 Order and do so here to note that I dissent in part. Order No. 679-A requires the Commission to review a new incentive proposal in light of all other incentives in effect for the same project. I did not believe then and do not believe today that United Illuminating adequately demonstrated that the total package of incentives, particularly the combined 200 basis point of incentive ROE adders, was appropriately tailored to the demonstrable risks of the project.

For these reasons, I respectfully dissent in part.

Suedeem G. Kelly

¹ *The United Illuminating Co.*, 119 FERC ¶ 61,182 (2007) (May 22 Order).

² *Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on rehearing*, 122 FERC ¶ 61,265 (2008), *order granting clarification*, 124 FERC ¶ 61,136 (2008).

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FEDERAL ENERGY REGULATORY COMMISSION

The United Illuminating Company

Docket No. ER07-653-001

(Issued January 16, 2009)

WELLINGHOFF, Commissioner, *dissenting in part*:

I dissented in part from the May 22 Order. In that dissent, I stated that because United Illuminating was already receiving what I consider to be an unsupported incentive ROE adder under Opinion No. 489, I could not support granting the further ROE incentive that United Illuminating sought in this proceeding. In light of my continuing concern about that issue, I respectfully dissent in part from today's order.

Jon Wellinghoff
Commissioner