

121 FERC 61,167  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Baltimore Gas and Electric Company

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

ORDER GRANTING INCENTIVE PROPOSAL

(Issued November 16, 2007)

1. On July 24, 2007, the Commission issued an order<sup>1</sup> establishing a technical conference to gather additional information about Baltimore Gas and Electric Company's (BG&E's) request for transmission rate incentives on transmission owner-initiated (TOI) projects filed pursuant to Order Nos. 679 and 679-A.<sup>2</sup> This order finds that the TOI projects are non-routine and therefore qualify for a return on equity (ROE) transmission rate incentive adder.

**I. Background**

2. In January 2005, BG&E submitted a filing under section 205 of the Federal Power Act (FPA)<sup>3</sup> seeking to implement a formula rate for its wholesale transmission service. Subsequently, the Commission accepted a Settlement Agreement<sup>4</sup> that established: (1) an initial ROE of 10.80 percent for all BG&E transmission facilities placed in-service prior to January 1, 2006; (2) an 11.30 percent ROE for all BG&E transmission facilities placed in-service on or after January 1, 2006; (3) a "base" ROE of 10.80 percent onto which any

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<sup>1</sup> *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) (July 24 Order).

<sup>2</sup> *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).

<sup>3</sup> 16 U.S.C. § 824d (2000).

<sup>4</sup> *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

transmission rate incentive would be added; and (4) BG&E's right to make filings at any time to implement any transmission incentive mechanisms.<sup>5</sup>

3. On February 28, 2007, BG&E submitted for filing revised tariff sheets to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) pursuant to section 205 of the FPA to implement transmission rate incentives in accordance with Order Nos. 679 and 679-A. Specifically, BG&E requested transmission investment rate incentives consisting of: (1) a 50-basis point incentive adder to BG&E's authorized ROE for all jurisdictional facilities in recognition of its continuing membership in PJM; (2) a 100-basis point incentive adder to its authorized ROE for investment in new transmission constructed for certain baseline, TOI and future projects; and (3) inclusion of 100 percent of its construction work in progress (CWIP) in rate base.

4. In the July 24 Order, the Commission authorized a 50-basis point ROE adder for continued membership in PJM and a 100-basis point adder for two projects, Conastone and Waugh Chapel. In addition, the Commission rejected, without prejudice, BG&E's request to recover, in the formula rate, a transmission ROE incentive for 37 future projects without making a filing under section 205 or 206 of the FPA. Further, the Commission denied BG&E's proposal to include CWIP in rate base. Finally, the Commission set for technical conference the issue of whether BG&E's Northwest to Finksburg and Downtown Baltimore Cable<sup>6</sup> TOI projects satisfied the "nexus" test.<sup>7</sup> The Commission committed to issuing a subsequent order ruling on the question of whether the TOI projects satisfied the nexus test based on the record as further developed by the technical conference.

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<sup>5</sup> See §§ 3.1 through 3.3 of the Settlement Agreement.

<sup>6</sup> The Downtown Baltimore Cable project consists of five separately-identified TOI projects and which are collectively referred to as the "Downtown Cable" project.

<sup>7</sup> 18 C.F.R. § 35.35(d) (2007); Order No. 679 at P 26; *see also* Order No. 679-A at P 21 ("By this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.").

## **II. Transmission Owner Initiated Projects**

### **A. Notice of Technical Conference and Technical Conference**

5. Notice of the technical conference was published in the *Federal Register* on August 9, 2007,<sup>8</sup> with a directive that BG&E file its presentation for the conference on or before August 24, 2007. BG&E timely filed its presentation. On September 5, 2007, Commission staff convened the technical conference to gather information on whether there is a nexus between BG&E's proposed 100-basis point return on equity incentive adder and its overall investment in the Northwest to Finksburg and Downtown Cable TOI projects. BG&E made its presentation and answered questions from Commission staff and other parties. At the technical conference, BG&E was directed to file on or before September 14, 2007 a narrative of its presentation and a summary of its answers to the questions asked at the conference. Parties were given until September 28, 2007 to file comments regarding BG&E's pre-conference and post-conference filings.

### **B. BG&E's Pre-Conference Filing and Technical Conference**

6. On August 24, 2007, in Docket Nos. ER07-576-000 and 001, BG&E filed its presentation. BG&E explains that it used as its screening criteria for determining whether a project is routine or non-routine: (1) a projected date of service after June 1, 2007; and (2) recognition of the project in the PJM RTEP process. BG&E states that projects that are non-routine warrant a request for incentive rate treatment. The Conastone and Waugh Chapel projects, which are baseline projects, passed the screening criteria, as did the Northwest to Finksburg and Downtown Cable TOI projects. BG&E notes that approximately \$16.5 million worth of its projects did not satisfy its screening criteria and were excluded from its request for incentive rate treatment.

7. BG&E states that the Northwest to Finksburg TOI project, which is expected to be in service by December 1, 2008, consists of: (1) 3.4 miles of double circuit overhead 115 kV line; and (2) an additional 115 kV breaker at the Northwest substation. BG&E explains that the Northwest to Finksburg project services critical winter load, which the PJM RTEP planning process would not have identified because it is focused on summer-load patterns. BG&E also states that limited access on the 66-foot wide right-of-way adds to the project's complexity. Finally, BG&E states that the Northwest to Finksburg project design extends its fiber optic network, thereby supporting system protection and future high-capacity communication needs.

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<sup>8</sup> 72 Fed. Reg. 31,572 (2007).

8. According to BG&E, the Downtown Cable project is projected to be in service by December 1, 2008. The Downtown Cable project consists of five TOI projects: (1) redesigning and rebuilding the Westport 115 kV switching substation; (2) building a 115 kV new Gas Insulated Switching (GIS) station which will be known as the Orchard Street Station; (3) paralleling existing cables between the Westport substation and the Center substation; (4) installing new 115 kV cable between the Westport substation and the Orchard Street station; and (5) installing new 115 kV cable between the new Orchard Street station and the Center substation. BG&E identifies several advantages of its Downtown Cable project. For example, it notes that it will correct a Mid-Atlantic Area Council (MAAC) second contingency violation for outage on the Brandon Shores to Riverside towers lines. It also notes that the Downtown Cable project will replace its aging cable between the Westport to Center substations. Further, BG&E notes that under its current system configuration, the Westport circuits and transformers are not adequately isolated, which results in limited outage windows to perform maintenance on breakers and circuits. Finally, BG&E states that the regional congestion costs mitigated by the Downtown Cable project will be approximately \$1.7 million.

### **C. BG&E's Post-Conference Filing**

9. On September 14, 2007, in Docket Nos. ER07-576-000 and 001, BG&E filed a narrative explanation of its presentation and its answers to questions asked at the technical conference. BG&E explains that it defines "routine transmission projects" as projects that "cover a broad range of both transmission lines and substations"<sup>9</sup> such as reinforcing and replacing transmission structures, working on right-of-way roads, replacing old access gates, replacing worn-out static wires and conductors, removing trees posing a threat to existing transmission lines, replacing switches and breakers, and upgrading protection and control equipment. BG&E further explains that the \$16.5 million of routine projects identified in its presentation "constitute routine replacement, disconnects, retirements, and upgrades of transmission equipment, such as circuit breakers and switches."<sup>10</sup> BG&E states that these specific projects do not represent investment in new transmission but rather necessary and ordinary expenditures to preserve existing transmission. In addition, BG&E states that routine projects "by and large are undertaken in the ordinary and routine course of business in keeping with good utility management practice."<sup>11</sup>

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<sup>9</sup> BG&E's September 14 filing at 13.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

10. BG&E explains that the Northwest to Finksburg and Downtown Cable TOI projects provide system reliability benefits. BG&E states that the difference between the baseline projects (Conastone and Waugh Chapel) and the TOI projects (Northwest to Finksburg and Downtown Cable) is that the baseline projects are identified by PJM planners and engineers while the TOI projects are identified by BG&E planners and engineers. BG&E contends that from a technical perspective, there is no distinction between PJM-initiated (baseline) projects and BG&E-initiated (TOI) projects; rather, both types of projects are intended to avoid North American Electric Reliability Council (NERC) reliability violations and that the reliability and congestion mitigation benefits of the “TOI projects are every bit as consequential as any baseline project.”<sup>12</sup> In addition, BG&E states that “PJM Staff has historically relied on transmission owners through a collaborative process to identify the need for new transmission projects that will avoid NERC reliability violations that are identifiable by analyzing winter peak load requirements projections whereas PJM Staff performs the analysis of summer peak load requirement projections in order to identify new transmission projects that will avoid NERC reliability violations.”<sup>13</sup>

11. BG&E emphasizes that the specific reliability benefit of the Northwest to Finksburg project is its ability to serve winter-peak load. BG&E explains that the Northwest to Finksburg project is a major reconfiguration of BG&E’s transmission system. This project “entails taking two radial lines (one existing and one new) and transforming them into a double circuit line, plus adding a third parallel circuit.”<sup>14</sup> BG&E further explains that the winter load to be serviced by this project is critical, “as losses can be life-threatening in severe winter conditions.”<sup>15</sup> Indeed, BG&E states that because PJM has delegated the primary responsibility of studying winter load losses to individual transmission owners, it is required to notify PJM of the severity of the risk.

12. BG&E states that “the free-flowing ties and security-constrained economic dispatch utilized in the PJM OATT NITS [Network Integrated Transmission Service] constitutes a region-wide reliance on PJM to direct the transfer of power – instantaneously – throughout PJM, and even outside of PJM to other RTO [regional

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 6 (emphasis omitted).

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 7-8.

transmission organization] regions.”<sup>16</sup> In fact, BG&E contends that the “common reliance throughout the PJM footprint on Bulk Electric System transmission lines for [NITS] service under PJM’s OATT gives these facilities a regional characteristic.”<sup>17</sup>

13. In addition, BG&E states that it has conducted a detailed double contingency analysis on its 115 kV network system according to NERC reliability criteria, which shows that excessive overloads above summer emergency rating can occur during peak summer conditions for multiple double contingency outages.<sup>18</sup> BG&E states that upon the completion of the Downtown Cable project, the reinforced western portion of the downtown network will meet double contingency criteria. BG&E identifies the reliability benefits of the Downtown Cable project as: (1) serving normal and emergency conditions in downtown Baltimore, including hospitals, high-rises (including university, business and government buildings) and an aquarium; (2) providing power for 15 percent of the entire BG&E load-serving requirement including sensitive-need customers; and (3) upgrading BG&E’s infrastructure, which dates from the 1950s.

14. BG&E states that “the ability to contract for supply from generation located at substantial distances from load areas adds economic choices” and “real economic value” because the transmission grid “is now facilitating regional transactions.”<sup>19</sup> BG&E estimates that during the most recent summer peak period in southwest PJM during the summer of 2007, transmission cable limitations resulted in 56 hours of off-cost operation at an estimated cost of \$1.7 million.<sup>20</sup> PJM projects that the increased flows resulting from the Downtown Cable project should eliminate congestion such as that experienced in 2007.

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<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 8.

<sup>18</sup> *Id.* at 23-24. BG&E states that this analysis shows that the loss of circuit 110551 in combination with circuit 110505, loads circuit 110552 to 125 percent of BG&E’s summer emergency rating. BG&E’s load flow analysis further shows that the loss of circuit 110552 in combination with circuit 110506, loads circuit 110551 to 125 percent of its summer emergency rating. Finally, BG&E claims that the analysis shows that the loss of circuit 110605 in combination with 115 KV circuit 110551, loads circuit 110552 to 109 percent of its summer emergency rating.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 10 and 19.

15. BG&E states that it is employing new technology for the Downtown Cable project.<sup>21</sup> Specifically, BG&E explains that it is employing the GIS design for its new substation which reduces the real estate utilized by the substation (compared to open-air alternatives) by 95 percent. In addition, BG&E's new 115 kV cable is "being installed in duct banks along with additional ducts for fiber optics and future anticipated 115 kV cable."<sup>22</sup> BG&E explains that this is a "good long-term investment in that the fiber optic cable will facilitate advancements in technology as PJM employs its ever-expanding SmartGrid communications and demand response techniques."<sup>23</sup> Finally, BG&E explains that reconfiguring or paralleling the Westport-to-Center cable will extend the life span of those cables.<sup>24</sup> In sum, BG&E states that its advanced technologies "save space, solve zoning issues, and reduce costs."<sup>25</sup>

#### **D. Comments**

16. On September 28, 2007, the Maryland Commission and the Maryland Office of People's Counsel (People's Counsel) filed comments. On October 3, 2007, BG&E filed an answer.

17. The Maryland Commission contends that BG&E has not met its burden of demonstrating that the TOI projects are non-routine and thus they do not merit the transmission investment ROE incentive. The Maryland Commission states that BG&E ratepayers should not be required to pay for projects "which are routine transmission investments needed to ensure local reliability and to comply with basic requirements of state law."<sup>26</sup>

18. The Maryland Commission argues that BG&E views routine projects as those that "do not constitute investment in new transmission but rather constitute necessary and

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<sup>21</sup> *Id.* at 11.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* Under PJM's "SmartGrid" design, the application of digital technology is applied to the electric power infrastructure to improve dispatch.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* As noted in the July 24 Order, BG&E is not requesting an incentive under Order No. 679 for advanced technologies.

<sup>26</sup> Maryland Commission Comments at 5.

ordinary expenditure to preserve existing transmission.”<sup>27</sup> The Maryland Commission contends that BG&E’s screening test, which focuses on whether a project involves new transmission “shrinks FERC’s nexus test substantially” and “bears little resemblance to the Commission’s guidelines for demonstrating that a project passes the nexus test because it is non-routine.”<sup>28</sup> The Maryland Commission further contends that “projects involving new facilities that are needed to meet growth in demand over a reasonable planning horizon does not mean they are special enough to warrant the 100-basis point ROE adder.”<sup>29</sup> The Maryland Commission avers that “as a matter of good utility management practice, new transmission also must be constructed in the ordinary and routine course of business to meet anticipated load growth in the utility’s own service territory over a reasonable time horizon.”<sup>30</sup> Furthermore, it avers that “BG&E is required under Maryland law to engage in long-term planning.”<sup>31</sup>

19. The Maryland Commission disputes BG&E’s contention that it faces risks for its proposed TOI projects. It notes that there is little risk of stranded costs “since the load in the BG&E service territory is not likely to vanish before the investment is fully depreciated.”<sup>32</sup> In addition, it contends that the regulatory risk that the Maryland Commission would refuse to flow through federally-approved transmission rate increases is “very remote.”<sup>33</sup> Thus, the Maryland Commission argues that BG&E “should not be awarded an enhanced ROE adder for projects involving new transmission that are need[ed] just to keep the electricity flowing to retail customers in its service territory.”<sup>34</sup>

20. Contrary to BG&E’s statement that the designation of projects as “baseline” or “TOI” is irrelevant, the Maryland Commission contends that the designation is important.

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<sup>27</sup> *Id.* at 7, *citing* September 14 filing at 4.

<sup>28</sup> *Id.* at 7-9.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 10.

<sup>31</sup> *Id.*, *citing* the Public Utility Article of the *Annotated Code of Maryland*, Section 2.118(b) (1998).

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 13.

The Maryland Commission states that failure to build a PJM-approved baseline project would affect both reliability and competitive capacity and energy markets, whereas failure to build a TOI project would only affect local reliability standards. The Maryland Commission notes that at the technical conference, BG&E “indicated that supporting competition ... did not play a part in the Company’s decision to undertake the Northwest to Finksburg and Downtown Baltimore projects.”<sup>35</sup> The Maryland Commission argues that this shows that “BG&E’s planners and engineers concentrate on operational and standards-related requirements of ensuring reliable service.”<sup>36</sup> Thus, the Maryland Commission argues that BG&E’s TOI projects do not support competition and should not receive an ROE transmission incentive.

21. Finally, the Maryland Commission contends that neither the Northwest to Finksburg nor the Downtown Cable projects are sufficiently distinguishable from other routine reliability investment in its territory so as to warrant special incentive rate treatment under the Commission’s nexus test.<sup>37</sup> For example, the Maryland Commission notes that at the technical conference, BG&E stated that an outage on the 115 kV Northwest to Finksburg radial line would have no effect outside BG&E’s service territory nor would it enable PJM to alleviate the need for load shedding.<sup>38</sup> With respect to BG&E’s use of advanced technologies, the Maryland Commission notes that while the GIS technology may be new to BG&E, it is a commercially-available state-of-the-art technology. Further, the Maryland Commission argues that BG&E’s use of fiber optics for communication or demand response is prudent. In sum, the Maryland Commission avers that the TOI projects are “routine” projects required by good utility practice and BG&E’s legal obligations, and thus, do not deserve an ROE incentive.

22. People’s Counsel argues that BG&E’s process for determining which projects are routine is designed such that “only those projects that are replacements in kind” are included. Under this logic, People’s Counsel argues “any replacement or upgrade which requires even some updated plant is ‘screened in’ and considered eligible for incentives.”<sup>39</sup>

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<sup>35</sup> *Id.* at 15.

<sup>36</sup> *Id.* citing September 14 filing at 10.

<sup>37</sup> *Id.* at 18 and 25.

<sup>38</sup> *Id.* at 20.

<sup>39</sup> People’s Counsel’s Comments at 6 (emphasis omitted).

23. People's Counsel contends that BG&E exaggerates the risks faced by the Downtown Cable project. For example, People's Counsel argues that virtually none of the five TOI projects grouped under the Downtown Cable area are actually downtown, and therefore timing issues are easier to manage.<sup>40</sup> Further, People's Counsel claims that "BG&E has been tearing up streets in Baltimore City ... for nearly 200 years as a 'routine' part of its transmission and distribution business."<sup>41</sup> Moreover, People's Counsel contends that because the Northwest to Finksburg project is "winter load critical" does not make it non-routine.<sup>42</sup>

24. People's Counsel argues that BG&E has not offered any "substantial evidence that these TOI projects will utilize improved materials, sophisticated monitoring and communication equipment that allows real-time rating of existing transmission facilities or truly 'innovative' technologies."<sup>43</sup> In addition, People's Counsel states that the TOI projects are "inherently local in nature" and are required of BG&E to properly and lawfully run and maintain its business under Maryland law and Maryland Commission regulation. Because load in the mid-Atlantic region is growing and "because BG&E is required to provide proper service for residential ratepayers, regular maintenance of the system cannot be accomplished with upgrades and system expansions."<sup>44</sup> Therefore, People's Counsel contends, the TOI projects "are the definition of 'routine' maintenance and upgrades."<sup>45</sup>

#### **E. Discussion**

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.<sup>46</sup> We are not persuaded to accept BG&E's answer and therefore reject it.

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<sup>40</sup> *Id.* (emphasis omitted).

<sup>41</sup> *Id.* at 7.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 8.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 9.

<sup>46</sup> 18 C.F.R. § 385.213(a)(2) (2007).

26. In the July 24 Order, the Commission provided guidance to the parties on how to apply the “plain language of section 219, which required the Commission to adopt a rule that ‘promote[s] reliable and economically efficient transmission and generation of electricity by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy in interstate commerce.’”<sup>47</sup> The guidance consisted of four elements relating to whether a project is a non-routine investment by the utility as part of its normal business operations. First, the Commission explained that in determining if a project is not routine, we would consider all relevant factors including the scope and effect of the project and the challenges or risks faced by the project. Second, the Commission stated that applicants must provide detailed factual information about the project. Third, the Commission clarified that we would consider the total package of incentives requested. Finally, the Commission noted that even if a project is routine, an applicant may demonstrate that its project faces risks and challenges or provides sufficient benefits to warrant incentive rate treatment. We will address the first three elements; the last element is not relevant for our decision.

27. We find that the Northwest to Finksburg and Downtown Cable projects are not routine. Our findings are based on the projects’ scope, effects, challenges or risks, and the detailed factual information submitted by BG&E as discussed below.

28. The scope of a project involves factors such as size, dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, and effect on the region.<sup>48</sup> The Northwest to Finksburg project costs approximately \$0.3 million and involves a major reconfiguration of BG&E’s transmission system by: (1) transforming an existing radial line into a double circuit by adding a new radial line to the existing line; and; (2) adding a third parallel circuit. This reconfiguration is the expansion of an existing line, which will provide reliability and safety benefits. The Downtown Cable project costs approximately \$26.9 million and will enable BG&E’s downtown network to meet NERC’s double contingency reliability criteria for the PJM grid. This will alleviate situations when excessive overloads during the summer could lead to multiple double contingency violations resulting in outages. The Commission finds that the projects satisfy the scope criterion because they exceed the normal replacement of facilities and provide for the expansion of service in the Baltimore and Carroll County, Maryland areas at a higher level of reliability than currently exists. Further, the cost of the TOI projects, approximately \$27.2 million, is more than double the average cost of transmission

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<sup>47</sup> July 24 Order, 120 FERC ¶ 61,084 at P 51 (internal citations omitted).

<sup>48</sup> July 24 Order, 120 FERC ¶ 61,084 at P 52.

investment made by BG&E in each of the last five years.<sup>49</sup> Thus, the size and breadth of the dollar investment is significant.

29. The effect of a project involves factors such as improving reliability or reducing congestion costs.<sup>50</sup> The Northwest to Finksburg and Downtown Cable projects have positive benefits for peaking loads. For example, the Northwest to Finksburg project is intended to help meet winter-peaking needs. Although electric service has traditionally been geared to serving summer load, with increased competition from multiple power sources, electric power is expanding to serve winter load. Indeed, the Northwest to Finksburg line is intended to meet critical space-heating needs during the winter period that are increasing as a result of development in the area served by the Northwest to Finksburg project. Similarly, the Downtown Cable project is also intended to meet peak load. Specifically, the Downtown Cable is enhancing the PJM grid to meet double contingency criteria during the summer and correct a NERC reliability violation. Furthermore, BG&E states that the regional congestion costs mitigated by the Downtown Cable project will be approximately \$1.7 million per year based on PJM's shadow prices for 2007 constraints assuming similar conditions exist as in 2007.<sup>51</sup> This approximation of the congestion cost savings is undisputed and is expected to continue. Thus, the Downtown Cable project satisfies the effect criterion because the project will add to and improve wholesale transmission infrastructure for the benefit of the region, increase reliability and reduce congestion costs. Finally, the Northwest to Finksburg project satisfies the effect criteria by enhancing local reliability and providing for critical winter peaking load.

30. The challenges or risks faced by a project include: siting, internal competition for financing with other projects, long lead times, regulatory risks, specific financing challenges and other similar impediments.<sup>52</sup> BG&E states that the Northwest to Finksburg project has added complexity due to limited access and a narrow 66-foot right-of-way. Limited space in downtown Baltimore is an impediment to the installation of the

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<sup>49</sup> BG&E's annual transmission investment, based on Form 1 data, is \$6.84 million for 2002, \$17.6 million for 2003, \$10.2 million for 2004, \$13 million for 2005, and \$21 million for 2006, for a total five-year investment of \$68.64 million. *See* Maryland Commission Comments at 9, n.3.

<sup>50</sup> *Id.*

<sup>51</sup> *See* BG&E's September 14 filing at 10.

<sup>52</sup> July 24 Order, 120 FERC ¶ 61,084 at P 52.

new Orchard Street 115 kV switching station. To address this challenge, BG&E proposes to use GIS breakers that will eliminate the need for a larger oil circuit breaker. Further, the GIS breakers will reduce by 95 percent the amount of space required for a typical open-air 115 kV insulating switching station.<sup>53</sup> In addition, the duct work to be used in the installation of the switching station will contain duct banks that will be used in the future for fiber optic cables. The fiber optic technology will enhance SmartGrid technologies and facilitate demand response. The Commission finds that the Northwest to Finksburg and Downtown Cable projects pose challenges and risks that exceed those associated with routine projects.

31. Secondly, we stated that applicants for incentive rates “must provide detailed factual information in support of the factors they relied upon.”<sup>54</sup> Such information should further buttress the scope, effect and risk factors previously identified. BG&E provided this support, as discussed above.

32. Third, we stated that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, we will consider the total package of incentives requested and the inter-relationship between them. In the July 24 Order, we accepted the 50-basis point adder for continuing participation in an RTO and the 100-basis point ROE adder for the Conastone and Waugh Chapel baseline projects. We rejected the 100-basis point adder for 37 future RTEP projects and the inclusion of 100 percent CWIP in rate base. In this order, we are addressing BG&E’s request for 100-basis point ROE adder for six TOI projects comprising the Northwest to Finksburg project and the Downtown Cable project. Thus, we have considered BG&E’s entire package of incentives.

33. We find that BG&E has shown a nexus between the 100-basis point ROE adder and the investment being made in the proposed TOI projects for the reasons discussed above. Thus, we accept BG&E’s request for a 100-basis point ROE adder for its investment in the Northwest to Finksburg project and the Downtown Cable project for the costs applicable to the projects incurred since August 8, 2005. Accordingly, BG&E must file revised tariff sheets within 30 days of the date of this order to incorporate the 100-basis point ROE incentive for the Northwest to Finksburg and Downtown Cable TOI projects in its formula rate, effective June 1, 2007, as requested in its February 28, 2007 filing.

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<sup>53</sup> Presentation at 24.

<sup>54</sup> July 24 Order, 120 FERC ¶ 61,084 at P 53.

34. We are not persuaded by the Maryland Commission's and People's Counsel's arguments that BG&E's TOI projects are (1) routine; (2) needed to maintain service; and (3) required by Maryland State law and therefore should not receive incentive rate treatment. These TOI facilities are transmission facilities which are part of the PJM transmission system – a regional transmission organization that manages grid reliability and wholesale electricity markets in 13 states and the District of Columbia. Although BG&E is located in Maryland and its retail services are subject to Maryland State law, BG&E's transmission facilities are used in interstate commerce and subject to the Commission's authority. As such, the TOI projects conform to the intent of the Energy Policy Act of 2005,<sup>55</sup> which added a new section 219 to the FPA. As we noted in Order No. 679-A, the incentives promulgated in section 219 address the need to promote and expand investment in all transmission facilities used in interstate commerce.<sup>56</sup>

35. We find persuasive BG&E's argument that these projects are non-routine. The projects that BG&E classifies as non-routine include upgrades and new transmission facilities. We believe that investment in such transmission facilities will lead to higher levels of reliability. Further, we believe that improvements to infrastructure will further encourage competition and reduce congestion costs. We find that BG&E's investment in these TOI facilities will enlarge, improve and maintain the operation of BG&E's transmission facilities, which in turn increases the reliability of PJM's service.

The Commission orders:

BG&E must file revised tariff sheets within 30 days of the date of this order to incorporate the 100-basis point ROE incentive for the Northwest to Finksburg and

Downtown Cable TOI projects in its formula rate, effective June 1, 2007, as discussed in

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<sup>55</sup> Energy Policy Act of 2005, Pub. L.No. 109-58, 119 Stat. 594, 315 and 1283 (2005).

<sup>56</sup> Order No. 679-A, 117 FERC ¶ 61,345 at 3.

the body of this order.

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

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company

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

(Issued November 16, 2007)

KELLY, Commissioner, *dissenting*:

This order addresses Baltimore Gas and Electric Company's (BG&E's) request for transmission rate incentives on transmission owner-initiated (TOI) projects. Having reviewed the record evidence in this proceeding, I must dissent from this order's grant of a 100-basis point return on equity (ROE) incentive for the Northwest to Finksburg and Downtown Cable TOI projects. These projects do not appear to exceed "routine investments made in the ordinary course" as discussed in Order No. 679-A,<sup>1</sup> nor do they appear to present the types of unique risks or challenges that transmission incentives are meant to address.

In reviewing an applicant's evidence submitted in compliance with the nexus requirement of Order No. 679-A, which necessitates that the "incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project",<sup>2</sup> I deem it important to identify and assess, at a minimum, the following six characteristics of the transmission project: (1) the public interest benefits of the project; (2) the cost of the project in absolute terms; (3) the cost of the project in proportion to the current transmission ratebase of the applicant; (4) the difficulty of completing it due to the number of jurisdictions traversed and whether they are jurisdictions the applicant regularly deals with; (5) the difficulty of relying on normal rate recovery methods due to the length of time it will take to complete; and (6) whether the applicant would otherwise be required to build the project even without an incentive.

First and foremost in my analysis are the questions of whether the project brings broad regional benefits in the public interest and whether the applicant would otherwise be required to build these projects. My review of the record evidence in this proceeding indicates that BG&E is proposing to make no more than routine investments in its transmission system.

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<sup>1</sup> Order No. 679-A, 117 FERC ¶ 61,345 at P 60.

<sup>2</sup> *Id.* at P 21.

BG&E states that the Northwest to Finksburg project entails taking two radial lines (one existing and one new) and transforming them into a double circuit line, plus adding a third parallel circuit. The project is 3.4 miles with an estimated cost of \$3.6 million. Applicants assert and the order finds that this project involves a major reconfiguration of BG&E's transmission system. Given that BG&E is transforming two lines into a double circuit over 3.4 miles, I disagree. The risks and challenges identified—i.e. a narrow right of way and limited space in downtown Baltimore—do not strike me as being so onerous as to necessitate incentive treatment. In fact, in this regard, I would agree with the Maryland Public Service Commission's comments that this project is not sufficiently distinguishable from other routine reliability investment in the BG&E territory. I would further note that state siting approval has been obtained, which diminishes the project's regulatory risks. Finally, the order notes that the specific reliability benefit of this project is its ability to serve winter-peak load.

Among the identified reliability benefits of the Downtown Cable project are serving normal and emergency conditions in downtown Baltimore and upgrading infrastructure that dates from the 1950s, which I would expect BG&E to address in routine business operations. I also believe that while eliminating an estimated \$1.7 million in congestion costs is a beneficial result of the project, I do not believe that such an outcome would only be achieved through the granting of incentive rate treatment. BG&E states that the risks and challenges it faces in undertaking the Downtown Cable project include delays in obtaining permission, restricted hours allowed to close streets in Baltimore and the strength of the Euro relative to the U.S. Dollar. All of the above factors lead me to conclude that this transmission project is indeed a routine project.

I have noted in previous incentive proceedings that it is a bedrock principle that incentives are meant to encourage behavior that is in the public interest but that is not otherwise required. The record evidence has not persuaded me that the BG&E projects create broad regional benefits. In fact, based on many of BG&E's statements (e.g. replacing older infrastructure and serving winter load), I would imagine that these projects may be otherwise required in the near future.

The size of the investment in the Northwest to Finksburg and Downtown Cable projects (\$3.6 million and \$39 million, respectively) is not particularly large by public utility standards. My conclusion here is further supported by the size of each investment relative to BG&E's 2006 transmission rate base of approximately \$325 million (a little more than 1% and roughly 12%, respectively). Moreover, both projects are located within Maryland, meaning that BG&E will be dealing with authorities it has dealt with many times before, and are slated to be in-service by December of next year. On balance, I cannot find that these characteristics demonstrate the required nexus or support the requested incentives.

Of particular concern to me in this case is the precedent set by the Commission in granting the requested ROE incentives based on the unconvincing record evidence in this proceeding. Applicants in other incentive proceedings have sought incentive rate treatment, at least in part, based on the argument that their projects present greater costs and more risks than projects that have previously been granted incentive rates. On the basis of the majority's decision here, I believe that distinguishing between routine and non-routine in future incentives proceedings will be complicated at best.

Accordingly, I respectfully dissent from this order.

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Sudeen G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Baltimore Gas and Electric Company

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

(Issued November 16, 2007)

WELLINGHOFF, Commissioner, dissenting:

As I stated in my dissent to the underlying order,<sup>1</sup> BG&E has not made its case that an incentive ROE adder is appropriate for its TOI facilities. In particular, I pointed out that BG&E provided no information detailing the incremental benefits of its projects that warrant an ROE adder. The underlying order placed BG&E on notice that it is important to provide detailed factual information to support a request for an incentive ROE adder. I have emphasized that applicants must comply with the Commission's requirement for a Technology Statement in connection with an application for transmission incentives.<sup>2</sup>

Despite numerous opportunities, including the technical conference established in the underlying order and the associated pre-conference and post-conference filings, BG&E has not satisfied its evidentiary burden to justify an ROE adder. I also continue to believe that concerns raised by the Public Service Commission of Maryland are more compelling than BG&E's arguments in support of its requested incentives. Therefore, for the reasons set forth in my prior statement, I would deny BG&E an ROE adder.

For this reason, I respectfully dissent.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007).

<sup>2</sup> Order No. 679 at P 302 ("In as much as EAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.").