

130 FERC ¶ 61,044  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Pioneer Transmission, LLC

Docket No. ER09-75-002

ORDER GRANTING CLARIFICATION AND DENYING REHEARING

(Issued January 21, 2010)

1. In this order, we deny the requests for rehearing of the Commission's March 27 Order<sup>1</sup> authorizing transmission rate incentives pursuant to Order No. 679<sup>2</sup> for Pioneer Transmission, LLC's (Pioneer) project (Pioneer project or project), which will consist of a 765 kV transmission line in Indiana that will connect PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and will facilitate the interconnection of over 4,000 MW of new wind generation. For the reasons discussed below, we deny rehearing and grant clarification of the March 27 Order.

**I. Background**

2. On October 15, 2008, as amended on January 26, 2009, Pioneer filed tariff sheets, pursuant to sections 205 and 219 of the Federal Power Act (FPA),<sup>3</sup> to the open access transmission tariffs (tariffs) administered by PJM and Midwest ISO to establish a formula rate for transmission services rendered for the Pioneer project.

3. In the March 27 Order, the Commission: (1) established a base return on equity (ROE) of 10.54 percent; (2) approved an ROE adder of 50 basis points for membership in

---

<sup>1</sup> *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (March 27 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; 824s (2006).

a regional transmission organization (RTO), effective upon the date that Pioneer becomes a member of PJM and Midwest ISO and upon the project being placed under their operational control; (3) approved an ROE adder of 150 basis points for new transmission, which “will not go into effect unless and until the project is approved by the regional transmission planning processes of [PJM and Midwest ISO] and there is a Commission-approved cost allocation methodology in place,”<sup>4</sup> as acknowledged by Pioneer; (4) denied without prejudice an ROE adder for advanced technologies, finding that the 765 kV technologies and techniques proposed by Pioneer have been in use for many years, and do not warrant a separate advanced technology adder; (5) approved a construction work in progress (CWIP) incentive, which “will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and [Midwest ISO] and there is a Commission-approved cost allocation methodology in place,”<sup>5</sup> as acknowledged by Pioneer; (6) approved abandonment and regulatory asset incentives, to become effective December 15, 2008; and (7) established settlement and hearing procedures for certain formula rate issues.

4. Specifically, the Commission found that Pioneer does not qualify for the FPA section 219 rebuttable presumption that the project ensures reliability and/or reduces the cost of delivered power by reducing transmission congestion because the project has not been approved as part of either PJM’s or Midwest ISO’s regional transmission expansion plans, and does not qualify for the rebuttable presumption under Order No. 679 because the State of Indiana does not have a formal siting process that would evaluate the project in terms of the section 219 requirements. Although the rebuttable presumptions do not apply here, the Commission determined that Pioneer demonstrated that its project meets the section 219 criteria of ensuring reliability and/or reducing the cost of delivered power by reducing transmission congestion.<sup>6</sup> The Commission also found that the Pioneer project is not routine and that Pioneer faces significant risks and challenges in developing the project. Further, the Commission found that Pioneer sufficiently demonstrated a nexus between the considerable risks and challenges it is undertaking to develop its project and the incentives it requested.<sup>7</sup>

---

<sup>4</sup> March 27 Order, 126 FERC ¶ 61,281 at P 56.

<sup>5</sup> *Id.* P 65.

<sup>6</sup> *Id.* P 37-39.

<sup>7</sup> *Id.* P 47-50.

## II. Procedural Issues

### A. Requests for Late Intervention

5. On April 27, 2009, the ISO/RTO Council submitted a motion to intervene out-of-time<sup>8</sup> and motion for clarification.<sup>9</sup> ISO/RTO Council states that only upon review of the Commission's March 27 Order did it become aware of the potential broad reaching implications of the March 27 Order on the regional transmission expansion planning processes of all transmission providers under the Commission's jurisdiction. It argues that its participation in this proceeding will not prejudice the interests of the other parties because it accepts the record developed to date. On May 8, 2009, the ISO/RTO Council submitted a correction to its motion for clarification.

6. On April 27, 2009, the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed a motion to intervene out-of-time for the sole purpose of lodging a letter to comment on the request for rehearing filed by the Indiana Utility Regulatory Commission (Indiana Commission), and did not request that it be made a party to this proceeding.<sup>10</sup> On May 21, 2009, the Public Utilities Commission of Ohio (Ohio Commission) submitted a letter in support of the Indiana Commission's request for rehearing of the March 27 Order,<sup>11</sup> but did not request that it be made a party to this proceeding.

### B. Requests for Rehearing and Clarification

7. The Indiana Commission, the Indiana Office of Utility Consumer Counselor (Indiana Consumer Counselor), American Municipal Power-Ohio, Inc. (AMP-Ohio),

---

<sup>8</sup> PJM and Midwest ISO join the ISO/RTO Council's request for clarification, but they do not join its motion to intervene out-of-time, as they filed timely motions to intervene in this proceeding. ISO/RTO Council April 27, 2009 Motion for Clarification at n.7; March 27 Order, 126 FERC ¶ 61,281 at P 22, 23.

<sup>9</sup> ISO/RTO Council includes: Alberta Electric System Operator (AESO), California Independent System Operator (CAISO), Electric Reliability Council of Texas (ERCOT), Independent Electricity System Operator of Ontario, Inc. (IESO), ISO New England, Inc., Midwest ISO, New York Independent System Operator, Inc., PJM, Southwest Power Pool, Inc., and New Brunswick System Operator (NBSO). The AESO, ERCOT, IESO and NBSO do not join ISO/RTO Council's pleading in this proceeding.

<sup>10</sup> Pennsylvania Commission April 27, 2009 Letter at 1.

<sup>11</sup> Ohio Commission May 22, 2009 Letter at 1.

Old Dominion Electric Cooperative (ODEC), and Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (collectively, FirstEnergy Companies), and the ISO/RTO Council filed requests for rehearing and/or clarification of the March 27 Order.

8. On May 11, 2009, Pioneer filed an answer to the requests for clarification. On May 13, 2009, Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, and Wisconsin Public Power Inc. (Midwest TDUs) filed an answer to the ISO/RTO Council's request for clarification.

### C. Commission Determination

9. We deny the late motions to intervene. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention.<sup>12</sup> We find that the ISO/RTO Council and the Pennsylvania Commission have not met this higher burden and, thus, we deny their untimely motions to intervene. As discussed above, the Ohio Commission submitted a letter in support of the Indiana Commission's request for rehearing, however, the Ohio Commission does not request that it be made a party to this proceeding, and instead requests that the Commission docket its letter in this proceeding. We also reject the Ohio Commission's letter, and the ISO/RTO Council's May 8, 2009 letter correcting its request for clarification.

10. In light of this decision, we dismiss the request for clarification of the ISO/RTO Council and the comments submitted by the Pennsylvania Commission and the Ohio Commission. Because the ISO/RTO Council, the Pennsylvania Commission and the Ohio Commission are not parties to this proceeding, they lack standing to seek rehearing and/or clarification of the March 27 Order under the FPA and the Commission's regulations.<sup>13</sup> We note that parties to this proceeding have raised several broad issues concerning the impact of the March 27 Order on the regional transmission expansion planning processes of transmission providers, and we address these issues below.

---

<sup>12</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003); *H.Q. Energy Services (U.S.), Inc. v. New York Indep. Sys. Operator, Inc.*, 100 FERC ¶ 61,028, at 61,072 (2002); *North Baja Pipeline LLC*, 99 FERC ¶ 61,028, at 61,109-10 (2002); *Florida Power & Light Co.*, 99 FERC ¶ 61,318, at 62,358 (2002).

<sup>13</sup> See 16 U.S.C. § 825(a) (2006); 18 C.F.R. § 385.713(b) (2009); *Southern Co. Services, Inc.*, 92 FERC ¶ 61,167 (2000).

11. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2009), prohibits answers to requests for rehearing. Therefore, we will reject the answers of Pioneer and Midwest TDUs.

### **III. Discussion**

#### **A. Impact on the Regional Transmission Planning Processes**

##### **1. Requests for Rehearing and Clarification**

12. Parties request that the Commission clarify the impact of its findings concerning section 219 of the FPA in the March 27 Order on the findings that ISOs and RTOs are required to make on reliability and economics regarding which projects are to be included in, or excluded from, their respective regional planning processes. Parties also request clarification on whether the Commission's approval of the Pioneer project through the ISO/RTO planning process is still a condition to the Pioneer project going forward, and on whether the Commission's section 219 findings create a presumption in favor of approval of the Pioneer project in the ISO/RTO planning process.

13. The Indiana Commission, Indiana Consumer Counselor, ODEC, and FirstEnergy Companies raise concerns that the March 27 Order could be read to preempt the RTO planning processes. The Indiana Commission states that the granting of incentives prior to completion of the comprehensive regional planning process required by Order No. 890 is arbitrary and capricious in that the Commission has set up regional planning processes and encouraged state involvement, but then, by prematurely granting incentives, the Commission has undermined those same processes. Furthermore, the Indiana Commission contends that the Commission's statement in the March 27 Order that approval of Order No. 679 incentives does not prejudice the RTO or other regional planning processes is not clear, and it requests clarification regarding the overall process and the sequencing of procedures so that affected parties can present information and input at the appropriate time, and avoid unnecessary litigation.<sup>14</sup> Specifically, the Indiana Commission requests that the Commission clarify: (1) whether Pioneer may proceed with construction of its project, even if the project is not approved in the regional planning processes required under Order No. 890; (2) whether Pioneer will be eligible for rate recovery and incentives if the Pioneer project is reconfigured to make the line more optimal within the RTOs; (3) whether the Commission is prepared to conduct due diligence to ensure only prudently incurred costs are ultimately recovered; and (4) whether the Commission's approval of the Pioneer project (and other transmission projects) obviates the need for any future line to submit their plans to the comprehensive

---

<sup>14</sup> Indiana Commission April 24, 2009 Rehearing Request at 3.

regional planning processes conducted by RTOs and state commissions.<sup>15</sup> The Indiana Commission is concerned that Commission “approval of rate incentives is like putting a thumb on the scale in favor of approving the transmission project before the details of the project are known” and therefore it requests that the Commission clarify: (1) whether Commission approval of incentives for the Pioneer project equals Commission approval of the project itself; (2) whether Commission approval of incentives for the Pioneer project creates a presumption in favor of approval of the project, either by the Commission or the relevant RTOs; and (3) whether Commission approval of incentives for the Pioneer project creates a presumption in favor of any subsequent rate or tariff filing by Pioneer.<sup>16</sup>

14. Indiana Consumer Counselor joins the request for clarification and rehearing of the Indiana Commission. In addition, Indiana Consumer Counselor argues that the Commission erred in failing to adequately consider the results of granting rate incentives for the Pioneer project without vetting the project through the PJM and Midwest ISO transmission planning processes.<sup>17</sup> It asserts that the PJM and Midwest ISO stakeholder processes were available to Pioneer, but that Pioneer instead chose to begin its project with litigation by seeking rate pre-approval from the Commission. It further states that the March 27 Order “is an unfortunate departure from the patent collaborative efforts which have been made by RTO stakeholders in the Midwest.”<sup>18</sup> Indiana Consumer Counselor also asserts that the Commission should revisit approval of Pioneer’s requested rate incentives after Pioneer’s plans have been reviewed in the PJM and Midwest ISO transmission planning processes.

15. ODEC argues that the Commission erred in concluding that it was not premature to consider the rate incentives requested by Pioneer even though the project has not been vetted and approved by the PJM or Midwest ISO regional planning processes, and contends that the Commission’s determination will interfere with the planning process in contravention of the Commission’s emphasis on regional planning in Order No. 890.<sup>19</sup>

---

<sup>15</sup> *Id.* at 5-6.

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> Indiana Consumer Counselor April 24, 2009 Rehearing Request at 2-3.

<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

ODEC also argues that the Commission's refusal to defer consideration of Pioneer's proposed CWIP and ROE incentives was inconsistent with its decision in *Pacific Gas and Electric Co.*,<sup>20</sup> where, according to the ODEC, the Commission was presented with a request for CWIP and ROE incentives for a project in the early stages of development, and "deferred consideration of the CWIP and ROE incentives without prejudice to a later filing once the project had been more thoroughly analyzed."<sup>21</sup>

16. FirstEnergy Companies argue that the Commission should grant rehearing of the March 27 Order and hold that in no case will Pioneer be permitted to recover costs of its project, including incentives, from PJM or Midwest ISO customers if the project is not included in the PJM and Midwest ISO regional transmission planning processes contained in their respective tariffs.<sup>22</sup>

## 2. Commission Determination

### a. Impact on Regional Transmission Planning Processes

17. We disagree with the arguments that the impact of the March 27 Order on the regional planning processes of ISOs and RTOs was unclear and the arguments that approval of transmission rate incentives was premature because the Pioneer project has not been fully vetted or approved in the PJM or Midwest ISO regional planning processes. In the March 27 Order, the Commission stated:

We find that granting incentives as discussed in this order will not undermine the [Midwest ISO] or PJM stakeholder processes. Nothing here changes the manner in which [Midwest ISO] or PJM evaluates projects, nor do our findings regarding Pioneer's satisfaction of the requirements under section 219 prejudice the determinations of the regional transmission expansion plans of PJM or [Midwest ISO].<sup>23</sup>

In reaching this determination, the Commission recognized but disagreed with protestors' concerns that the Pioneer project is premature because it has not been approved by the

---

<sup>20</sup> 123 FERC ¶ 61,067 (2008) (*PG&E*).

<sup>21</sup> ODEC April 27, 2009 Rehearing Request at 10 (citing *PG&E*, 123 FERC ¶ 61,067 at P 40).

<sup>22</sup> FirstEnergy Companies April 27, 2009 Rehearing Request at 8-9.

<sup>23</sup> March 27 Order, 126 FERC ¶ 61,281 at P 40 (citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 43 (2008) (*Tallgrass*)).

regional transmission expansion plans of PJM and Midwest ISO.<sup>24</sup> In response to the requests of parties, we clarify that the March 27 Order does not prejudice the determinations of the Order No. 890 regional transmission planning processes.<sup>25</sup> As acknowledged by Pioneer,<sup>26</sup> the project will have to be evaluated through Commission-approved transmission planning processes. Further, the Commission has indicated that such an evaluation “is not a prerequisite to the Commission granting incentives.”<sup>27</sup> Accordingly, we clarify that our finding regarding Pioneer’s request for incentives in the March 27 Order will not change how the project is considered under PJM’s or Midwest ISO’s regional transmission planning initiatives. Thus, the integrity of PJM’s and Midwest ISO’s tariffs, including the provisions regarding their regional transmission planning processes, is preserved.

18. We also reject arguments that the Commission departed from precedent in approving the CWIP incentive and ROE adder prior to the project’s approval in the PJM and Midwest ISO regional transmission planning processes. As an initial matter, we reiterate our policy to review each request for incentives on its own merits and on a case-by-case basis.<sup>28</sup> Moreover, as explained in the March 27 Order, the Commission need not address whether Pioneer’s project meets the standards established in *PG&E* for receiving policy-based incentives outside of the guidelines established by Order No. 679 because, in the instant case, the Commission found that Pioneer demonstrated that its project meets section 219’s criteria to ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion; and that Pioneer’s project meets the nexus requirement that the Commission established in Order No. 679.<sup>29</sup> Accordingly, *PG&E* is factually inapposite because *PG&E* failed to demonstrate that its project met the statutory standard under section 219 and the requirements of Order No. 679 whereas the

---

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

<sup>25</sup> See *PacifiCorp*, 125 FERC ¶ 61,076, at P 60 (2008) (explaining that to the extent that aspects of the *PacifiCorp* project remain open, the Commission expects that *PacifiCorp* will address them as appropriate through the regional transmission planning process required by Order No. 890).

<sup>26</sup> See Pioneer October 15, 2008 Transmittal Letter at 12.

<sup>27</sup> *Green Power Express LP*, 127 FERC ¶ 61,031, at P 42 (2009) (*Green Power Express*).

<sup>28</sup> *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 46 (2007), *reh’g denied*, 123 FERC ¶ 61,293 (2008).

<sup>29</sup> March 27 Order, 126 FERC ¶ 61,281 at P 41.

Commission found that the Pioneer project met section 219's criteria and met the nexus requirement in Order No. 679.<sup>30</sup>

19. With respect to the Indiana Commission's request for clarification, we clarify that the Commission approved the rate incentives for the Pioneer project that were addressed in the March 27 Order – it did not “approve” the project itself. Neither the sponsor's authority to construct the project nor the timing of such construction is affected by the March 27 Order. The March 27 Order explained that certain incentives were effective upon either the project being placed under operational control of PJM and Midwest ISO or upon the approval of the project by the regional transmission planning processes of PJM and Midwest ISO. In fact, the March 27 Order clearly stated that: (1) approval of the ROE adder of 50 basis points for RTO membership was “*effective upon the date that Pioneer becomes a member of PJM and [Midwest ISO] and the project being placed under their operational control;*”<sup>31</sup> (2) approval of the ROE adder of 150 basis points for new transmission “*will not go into effect unless and until the project is approved by the regional transmission planning processes of [PJM and Midwest ISO] and there is a Commission-approved cost allocation methodology in place,*” as acknowledged by Pioneer;<sup>32</sup> and (3) approval of the CWIP incentive “*will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and [Midwest ISO] and there is a Commission-approved cost allocation methodology in place,*” as acknowledged by Pioneer.<sup>33</sup> As clarified below, even if Pioneer proceeds with the construction of its project, it is not guaranteed recovery of its costs. To recover its costs, Pioneer must make a section 205 filing and receive Commission approval for the recovery of such costs.

---

<sup>30</sup> The Commission has approved the CWIP and ROE incentives for other projects that have not already been approved in a regional transmission planning process, but where the applicant has demonstrated that its project meets section 219's criteria and the nexus requirement established in Order No. 679. *Green Power Express*, 127 FERC ¶ 61,031 at P 38, 42, 65, 80, 85-86, 88, 92; *Tallgrass*, 125 FERC ¶ 61,248 at P 40-41, 58, 66.

<sup>31</sup> March 27 Order, 126 FERC ¶ 61,281 at P 57 (emphasis added) (citation omitted).

<sup>32</sup> *Id.* P 56 (emphasis added) (citation omitted).

<sup>33</sup> *Id.* P 65 (emphasis added) (citation omitted).

**b. Impact on Rates of PJM and Midwest ISO**

20. Parties request clarification that Pioneer will not be permitted to recover any costs from, or charge any rates to, PJM and Midwest ISO customers if the project is not included in the PJM and Midwest ISO regional transmission planning processes. We clarify that Pioneer's ROE adder will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and Midwest ISO and there is a Commission-approved cost-allocation mechanism in place that includes projects such as the proposed Pioneer project.<sup>34</sup> Further, we clarify that the 100 percent inclusion of CWIP in rate base will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and Midwest ISO and there is a Commission-approved cost-allocation mechanism in place that includes projects such as the proposed Pioneer project.<sup>35</sup> In this proceeding, we are not making any determinations as to how or from whom Pioneer may recover its costs. Also, with respect to the Indiana Commission's request for clarification concerning whether the Commission is prepared to conduct due diligence to ensure only prudently incurred costs are ultimately recovered, as acknowledged by Pioneer, in the event the project is abandoned, the Commission will require Pioneer to make a showing in a section 205 filing that abandonment costs were prudently incurred, propose a rate and cost allocation method to recover the abandonment costs in a just and reasonable manner, and receive authorization from the Commission for the recovery of its costs.<sup>36</sup> As explained above, the findings in the March 27 Order regarding Pioneer's satisfaction of the requirements under section 219 do not prejudice the determinations of the regional transmission expansion plans of PJM and Midwest ISO, and do not prejudice any subsequent rate or tariff filing by Pioneer. In addition, nothing in the March 27 Order forecloses any parties' rights to either challenge any section 205 filing that Pioneer may submit in the future, or to challenge the reasonableness of the costs that Pioneer seeks to pass through its formula rate.

**c. Process for Redesigned Pioneer Project**

21. The Indiana Commission requests clarification as to whether Pioneer will be eligible for rate recovery and incentives if the Pioneer project is reconfigured to make the line more optimal within the RTOs, and whether the Commission's approval of the Pioneer project (and other transmission projects) obviates the need for any future line to submit their plans to the comprehensive regional planning processes conducted by RTOs

---

<sup>34</sup> *Id.* P 56.

<sup>35</sup> *Id.* P 65.

<sup>36</sup> *Id.* P 76.

and state commissions. We recognize that there may be other projects that are designed to accomplish the same goals as the Pioneer project. With respect to that issue, we clarify that our approval of incentives for the Pioneer project does not prejudice any other project, does not indicate a preference of one particular project over another, nor does it impact the tariff criteria by which PJM and/or Midwest ISO will evaluate the project(s).<sup>37</sup> We also recognize that if the Pioneer project is ultimately approved by the PJM and Midwest ISO regional transmission planning processes, there may be changes to the project. We clarify that such changes will not necessarily alter the basis upon which the Commission granted transmission incentives in the March 27 Order. To the extent that an entity believes that the Pioneer project has been modified in a manner that renders the basis for the transmission incentives granted in the March 27 Order to be invalid, that entity may file a complaint under section 206 of the FPA.<sup>38</sup> Thus, we deny as premature the requests for clarification regarding whether Pioneer will be eligible for rate recovery and incentives if the Pioneer transmission line is reconfigured during the regional transmission planning processes.

22. Some parties contend that our approval of incentives for the Pioneer project is contrary to our policy of encouraging parties to work cooperatively through the regional transmission planning processes. Our policy to continue to urge parties to work cooperatively through the existing Commission-approved regional transmission planning processes remains unchanged.<sup>39</sup> However, our findings on the specific incentives for the

---

<sup>37</sup> *Tallgrass*, 125 FERC ¶ 61,248 at P 57 (stating that the appropriate forum to address whether one or more competing transmission projects should be built is through the regional planning process and the appropriate state siting process).

<sup>38</sup> 16 U.S.C. § 824e (2006). We note that in one case where a transmission incentive project has been significantly modified since the Commission approved transmission incentives for that project, the companies organizing the project submitted a new transmission incentive request. *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 6-7, 10 (2008) (*PATH*).

<sup>39</sup> *See Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009); *see also* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 (stating that “[a]lthough [the Commission] will not require participation in regional planning processes as a precondition for obtaining incentives, as section 219 does not require such a precondition, we believe that regional planning processes can provide an efficient and comprehensive forum through which those seeking to make transmission investments can have their projects evaluated to see if they meet the requirements of section 219”).

Pioneer project are based on the Commission's evaluation of the Pioneer project as set forth in section 219 and Order No. 679. The findings in the March 27 Order do not undermine the criteria established for regional transmission planning processes, modify existing tariff procedures, or express a preference for any particular project.

**B. Abandonment and Regulatory Asset Incentives**

**1. Requests for Rehearing and Clarification**

23. ODEC argues that, in approving the abandonment and regulatory asset incentives before the Pioneer project is included in the PJM and Midwest ISO regional transmission expansion planning processes, the Commission failed to reasonably balance investor and ratepayer interests. ODEC contends that customers may end up paying for the costs of duplicative or competing projects, which would be both inefficient and costly. ODEC also contends that where there has been no determination of need for a project from either a reliability or an economic standpoint through the regional planning process, it is unreasonable to require customers to pay the project development costs if the project fails. ODEC therefore requests that the Commission grant rehearing and condition the abandonment incentive and regulatory asset incentive upon the Pioneer project being included in the PJM and Midwest ISO regional transmission planning processes.<sup>40</sup>

24. FirstEnergy Companies argue that the Commission should clarify that Pioneer's recovery of abandoned plant costs is expressly conditioned on Pioneer becoming a transmission owning member of PJM and the Midwest ISO, and on the inclusion of the project in the transmission planning processes of PJM and the Midwest ISO, or alternatively, clarify that Pioneer may not recover pursuant to its abandoned plant incentive in the absence of approval of the project in the regional transmission planning processes.<sup>41</sup> They also argue that failure to secure inclusion in the PJM and Midwest ISO regional transmission expansion planning processes should not be a factor beyond Pioneer's control entitling Pioneer to recover its abandoned plant costs, and contend that clarity is needed on this point in light of the Commission policy of reviewing applications for rate incentives on a case-by-case basis without regard to competing applications.<sup>42</sup> In addition, FirstEnergy Companies assert that project sponsors in other cases that have been granted the abandonment incentive were RTO members and their proposed projects were included in the appropriate regional transmission planning processes.<sup>43</sup> FirstEnergy

---

<sup>40</sup> ODEC April 27, 2009 Rehearing Request at 11-13.

<sup>41</sup> FirstEnergy Companies April 27, 2009 Rehearing Request at 7, 10-11.

<sup>42</sup> *Id.* at 11-16 (citing *Tallgrass*, 125 FERC ¶ 61,248 at P 42).

<sup>43</sup> *Id.* at 14 (citing *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259,  
(continued ...)

Companies further argue that the customers to whom Pioneer seeks to allocate its abandoned plant costs should be permitted to challenge all aspects of the section 205 filing that Pioneer will be required to submit to recover abandoned plant costs, and should be able to examine each of the factors Pioneer used to determine why its costs are eligible for the abandonment incentive.<sup>44</sup>

25. The Indiana Commission asks the Commission to clarify whether Pioneer may recover costs for pre-construction regulatory assets from Indiana utilities or from PJM and Midwest ISO if the project is not approved in the regional planning processes required under Order No. 890, and whether accrual of a regulatory asset, as approved by the Commission, creates a greater likelihood of approval of the project, either by the relevant RTOs or by the Commission.<sup>45</sup>

## 2. Commission Determination

26. We deny the requests for rehearing of the Commission's determination in the March 27 Order granting the abandonment and regulatory asset incentives. We disagree with ODEC's argument that the Commission failed to reasonably balance investor and ratepayer interests in granting these incentives. In addition, we deny the requests that we condition the abandonment and regulatory asset incentives on inclusion or approval of the project in the PJM and Midwest ISO regional transmission planning processes. Granting these incentives helps to lessen the amount of risk by providing up-front regulatory certainty to Pioneer, and encourages development of more transmission infrastructure, thereby fulfilling the goals of section 219. Allowing Pioneer the opportunity to recover the costs that it prudently incurs will help Pioneer finance the project and will assure potential investors that they will likely be able to recover some part of their investments if the project is abandoned.<sup>46</sup> Further, Order No. 679-A specifically contemplated that the recovery of abandoned plant costs may be needed in advance of a project being approved through the regional planning process or receiving all necessary siting approvals.<sup>47</sup> In addition, the Commission has approved abandonment and regulatory

---

at P 56, n.51 (2008); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068 (2008); *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007)).

<sup>44</sup> *Id.* at 16.

<sup>45</sup> Indiana Commission April 24, 2009 Rehearing Request at 6-7.

<sup>46</sup> *See Green Power Express*, 127 FERC ¶ 61,031 at P 50.

<sup>47</sup> *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115-116 (stating that where an applicant has satisfied the Commission's nexus requirement and has been granted authority to recover CWIP or abandoned plant costs, and subsequently the

(continued ...)

asset incentives for other transmission projects without requiring that the transmission project be included in or approved by a regional transmission planning process.<sup>48</sup> However, the Commission will require Pioneer to make a section 205 filing demonstrating the justness and reasonableness of any abandoned plant costs. Order No. 679 specifically requires every utility seeking abandonment recovery to submit such a section 205 filing.<sup>49</sup>

27. Moreover, as the Commission explained in the March 27 Order, while the abandonment incentive became effective December 15, 2008,<sup>50</sup> should the Pioneer project be cancelled before it is completed, it is unclear whether Pioneer will have any customers from which to recover its abandonment incentive. At such time, Pioneer will be required to make a showing in a section 205 filing that the abandonment costs were prudently incurred and that the proposed cost allocation methodology will result in just and reasonable rates. Thus, the abandonment incentive, and any future finding allowing Pioneer to include such costs in its authorized rates, is not a guarantee of cost recovery. We grant the FirstEnergy Companies' request for clarification that customers that are concerned about their potential exposure to Pioneer's abandoned plant costs may protest Pioneer's section 205 filing, if and when Pioneer makes such a filing.

28. With respect to the regulatory asset incentive, we note that a regulatory asset is appropriate for utility costs only if it is "probable that such items will be included in a different period(s) [than they would otherwise be expensed] for purposes of developing rates that the utility is authorized to charge for its utility services."<sup>51</sup> We clarify that approval of the regulatory asset incentive is not a Commission assurance that the costs will be recovered in future rates, but only an indication that the Commission will allow the utility's authorized rates to include the relevant costs. This is consistent with the

---

applicant's project is, for example, unable to obtain state or federal siting authority, the Commission would not require refunds for the costs already prudently-incurred by the applicant).

<sup>48</sup> *Green Power Express*, 127 FERC ¶ 61,031 at P 50-52, 59-61; *Tallgrass*, 125 FERC ¶ 61,248 at P 62-63.

<sup>49</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

<sup>50</sup> March 27 Order, 126 FERC ¶ 61,281 at P 75.

<sup>51</sup> 18 C.F.R. Part 101 (USofA), Account 182.3 (2009).

principle that the Commission's rate determinations must allow an opportunity to recover reasonable costs, but are not a guarantee of cost recovery.<sup>52</sup>

29. The Indiana Commission requests clarification as to whether Pioneer may recover costs for pre-construction regulatory assets from Indiana utilities or from PJM and Midwest ISO if the project is not approved in the regional planning processes required under Order No. 890. As explained in the March 27 Order, Pioneer must make a section 205 filing when the formula rate becomes effective, if it wishes to recover costs booked as a regulatory asset, to demonstrate that pre-construction costs are just and reasonable. Pioneer also will have to establish that the costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred, and parties will be able to challenge these costs at that time.<sup>53</sup> Thus, Pioneer may not recover any costs or rates for the pre-construction regulatory asset from Indiana utilities or from PJM and Midwest ISO customers unless it demonstrates in a section 205 filing, and the Commission finds, that such costs are just and reasonable. We also clarify that accrual of the regulatory asset as approved by the Commission does not prejudice the determinations of the regional transmission expansion plans of PJM or Midwest ISO, and does not create a greater likelihood of approval of the project either by the relevant RTOs or the Commission.

### C. Return on Equity

#### 1. Base Return on Equity

30. In the March 27 Order, the Commission granted Pioneer a base ROE of 10.54 percent. The Commission found that Pioneer's proposed 21 company proxy group, which included utilities in both PJM and Midwest ISO, was a good starting point to develop an individual proxy group that takes into account comparative risks.<sup>54</sup> The Commission also found that the Corporate Credit Rating screen that Pioneer used was consistent with Commission precedent. However, the Commission modified Pioneer's proposal to remove various companies from the proxy group on the grounds that their low-end ROEs were too low. The Commission found that Pioneer's exclusion of Duke,

---

<sup>52</sup> *Fed. Power Comm. v. Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942) (questioned on other grounds by *In Re Valuation Proceedings under Sections 303(c) & 306*, 445 F. Supp. 994 (Regional Rail Reorg. Ct. 1977)). Moreover, approval for accounting purposes is separate from approval for rate purposes and the former does not govern or constrain the latter. *Illinois Power Co.*, 87 FERC ¶ 61,028 (1999).

<sup>53</sup> March 27 Order, 126 FERC ¶ 61,281 at P 86.

<sup>54</sup> March 27 Order, 126 FERC ¶ 61,281 at P 92.

NiSource, and Otter Tail was consistent with Opinion No. 445, where the Commission found that “investors generally cannot be expected to purchase stock if debt, which has less risk than stock, yields essentially the same return.”<sup>55</sup> However, the Commission rejected Pioneer’s proposal to exclude Consolidated Edison and Vectren from the proxy group on the grounds that their low-end exclusion of ROEs were 113 and 117 basis points above the 6.9 percent average yields on public utility BBB bonds reported by Moody’s for the six-month period ending September 2008.<sup>56</sup> Finally, the Commission concluded that Pioneer’s ROE should be set at the median of the expanded proxy group.

**a. Requests for Rehearing**

31. On rehearing, AMP-Ohio and ODEC contend that the Commission should have set the ROE for hearing because issues of material fact related to the ROE were raised in the protests to Pioneer’s filing. AMP-Ohio asserts that the Commission violated the due process clause, the Administrative Procedure Act, and the FPA by failing to grant a hearing regarding Pioneer’s ROE,<sup>57</sup> and argues that it and the other intervenors were given no opportunity to challenge Pioneer’s proposed ROE (or the Commission’s adjustment) by cross-examining Pioneer witnesses or presenting testimony and evidence contesting Pioneer’s application material.<sup>58</sup> AMP-Ohio contends that intervenors were not put on notice that the Commission was considering summary disposition of the ROE issue.<sup>59</sup> AMP-Ohio also states that in the absence of a hearing record, the Commission was forced to rely on a simplistic and inappropriate shortcut for determining the base ROE: the median of a proxy group’s returns.

32. ODEC similarly asserts that the Commission’s failure to set Pioneer’s ROE for an evidentiary hearing was contrary to Commission regulations governing summary disposition of a proceeding.<sup>60</sup> AMP-Ohio contends that the Commission did not consider the “whole record” in this proceeding because, although several parties filed protests to Pioneer’s proposed ROE, the parties’ protests do not constitute evidence and do not

---

<sup>55</sup> *Id.* P 93 (citing Opinion No. 445, 92 FERC at 61,266).

<sup>56</sup> *Id.* P 93-94.

<sup>57</sup> AMP-Ohio April 27, 2009 Rehearing Request at 8.

<sup>58</sup> *Id.* at 9 (citing *Public Service Commission of Kentucky v. FERC*, 397 F.3d 1004, 1012 (D.C. Cir. 2005)).

<sup>59</sup> *Id.* at 18 (citing 18 C.F.R. § 385.217(c)(3) (2009)).

<sup>60</sup> ODEC April 27, 2009 Rehearing Request at 5, 19 (citing 18 C.F.R. § 385.217(b) (2009)).

substitute for the right to present testimony and challenge opposing witnesses through cross-examination.<sup>61</sup> AMP-Ohio and ODEC also assert that the Commission violated principles of due process by reversing its long-standing policy of granting hearings regarding just and reasonable returns, and by failing to give notice or justification for its reversal.<sup>62</sup> AMP-Ohio also argues that the Commission has guaranteed an erroneous outcome by considering only one side of the case, and it asserts that holding a hearing on the ROE issue would not have presented a significant burden to the Commission.<sup>63</sup> AMP-Ohio further contends that the failure of the Commission to establish a hearing regarding the Pioneer ROE is especially egregious given the Commission's policy, before *PATH*, of ordering hearings to address the appropriate return on transmission construction,<sup>64</sup> and it points out that the Commission ordered a hearing on the justness and reasonableness of the ROE requested by the Trans-Allegheny Interstate Line Company (TrAILCo) in Docket No. ER07-562-000.<sup>65</sup>

33. ODEC argues that in granting summary disposition of Pioneer's ROE, the Commission failed to investigate adequately the extent of differences in risk between Pioneer and the proxy companies.<sup>66</sup> ODEC contends that the discounted cash flow results for Duke and NiSource Inc. (NiSource) should have been included in the range of reasonableness, and that exclusion of Duke and NiSource was inconsistent with Commission precedent, and was unnecessary to meet the Commission's "economic logic" test.<sup>67</sup> Specifically, ODEC argues that the March 27 Order cites *Atlantic Path 15, LLC*<sup>68</sup> for the proposition that "the Commission will exclude from the proxy group companies whose low-end ROE is within about 100 basis points above the cost of debt,

---

<sup>61</sup> AMP-Ohio April 27, 2009 Rehearing Request at 10-11 (quoting *Mobil Oil Corp. v. FPC*, 483 F.2d 1238 (D.C. Cir. 1973) (*Mobil Oil*)).

<sup>62</sup> *Id.* at 15; ODEC April 27, 2009 Rehearing Request at 19.

<sup>63</sup> AMP-Ohio at 12-13 (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

<sup>64</sup> *Id.* at 16-17 (citing *PATH*, 122 FERC ¶ 61,188; *Southern California Edison*, 92 FERC ¶ 61,070 (2000)).

<sup>65</sup> *Id.* at 16 (citing *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007) (*TrAILCo*)).

<sup>66</sup> ODEC April 27, 2009 Rehearing Request at 5, 20-21 (citing *Petal Gas Storage, LLC v. FERC*, 496 F.3d 695 (D.C. Cir. 2007)).

<sup>67</sup> *Id.* at 20-21.

<sup>68</sup> 122 FERC ¶ 61,135 (2008).

taking into account the extent to which the excluded low-end ROEs are outliers from the low-end ROEs of other proxy group companies[.]” but that in *PATH*, “a case decided ten days after *Atlantic Path 15*, the Commission indicated that low-end results need only be excluded if they do not *exceed* the cost of debt.”<sup>69</sup> ODEC contends that if Duke and NiSource had been included in the proxy group, the median ROE would be reduced to approximately 10.40 percent, which the Commission should use as Pioneer’s base ROE if rehearing is not granted, as requested by ODEC.

34. AMP-Ohio contends that the Commission failed to address its argument that because Pioneer’s equity capital will be supplied only by AEP and Duke, the ROE determination for the subsidiary company should take into account the fact that these owners will be able to leverage debt costs of the parent into equity returns from the subsidiary.<sup>70</sup> ODEC argues that the Commission’s decision to establish the base ROE for Pioneer at this time is inconsistent with Commission precedent standing for the proposition that allowed capital costs are to be established based on current market conditions. It contends that the uncertainty in the capital markets weighed in favor of deferring consideration of Pioneer’s ROE in order to avoid adopting an ROE figure that is unrepresentative of Pioneer’s ongoing cost of equity capital.<sup>71</sup>

**b. Commission Determination**

35. We deny the requests for rehearing of the Commission’s determination to grant Pioneer a base ROE of 10.54 percent and reject the argument that the Commission erred by not setting the appropriate level for Pioneer’s base ROE or the range of reasonableness for the ROE for hearing. The Commission need not conduct an evidentiary hearing when there are no disputed issues of material fact, and even where there are disputed issues, the Commission need not conduct a hearing if they may be adequately resolved on the written record.<sup>72</sup> Further, “mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support them.”<sup>73</sup> As

---

<sup>69</sup> ODEC April 27, 2009 Rehearing Request at 20-21 (citing *PATH*, 122 FERC ¶ 61,188 at P 101-102) (emphasis supplied by ODEC).

<sup>70</sup> AMP-Ohio April 27, 2009 Rehearing Request at 21.

<sup>71</sup> ODEC April 27, 2009 Rehearing Request at 4, 10-11 (citing *Southern California Edison Co.*, Opinion No. 445, 92 FERC ¶ 61,070, at 61,267 (2000); *Northeast Utilities Serv. Co.*, 83 FERC ¶ 61,184, at 61,765, *reh’g denied*, 84 FERC ¶ 61,159 (1998) (*Northeast Utilities*)).

<sup>72</sup> *Moreau v. FERC*, 982 F.2d 556, at 568 (D.C. Cir. 1993) (citations omitted).

<sup>73</sup> *Cerro Wire and Cable Company v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982).

discussed further below, because AMP-Ohio and ODEC have not explained with sufficient specificity in either their protests or rehearing requests what factual issues they want to raise in a hearing,<sup>74</sup> we reject their arguments that the Commission erroneously deprived the parties of due process or of the right to present evidence and testimony and to challenge opposing witnesses through cross-examination. In addition, AMP-Ohio's reliance on *Mobil Oil* to support its due process contentions is misplaced. While that decision held that informal comments cannot create a record that satisfies the substantial evidence test and therefore interested parties must be permitted to introduce adverse evidence, the Court of Appeals for the District of Columbia Circuit subsequently held that *Mobil Oil* "is no longer good law,"<sup>75</sup> and concluded that "the 'substantial evidence' provision of the Natural Gas Act does not affect the *procedure* the Commission is required to follow...[.]"

36. In their requests for rehearing, ODEC and AMP-Ohio do not specify any factual issues that need an investigation as to why the selected companies for the proxy group may not be of comparable risk to Pioneer. They do not question the use of PJM and Midwest ISO companies as the starting point for developing the proxy group used to determine Pioneer's ROE, nor do they contest the application of the risk screens employed by Pioneer. They do not specify any factual issue they would wish to pursue at hearing in order to demonstrate that either (1) a company included in the proxy group

---

The Commission is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record. *Consumers Power Co.*, 58 FERC ¶ 61,323, at 62,045 (1992) (citing *Southern California Edison Co.*, 27 FERC 61,105, at 61,199 (1984); *Municipal Light Boards of Reading and Wakefield v. Federal Power Commission*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972); *Cerro Wire and Cable Company v. FERC*, 677 F.2d 124, 135 (D.C. Cir. 1982), *order on clarification*, 59 FERC ¶ 61, 276 (1992)).

<sup>74</sup> In its protest to Pioneer's October 15 filing, ODEC argued that Pioneer's base ROE should be set for hearing to assess Pioneer's risk profile relative to the proxy group. ODEC November 5, 2008 Protest at 15-16. AMP-Ohio did not request in its protest that Pioneer's ROE be set for hearing, but rather argued that a risk adjustment to Pioneer's proposed ROE was necessary and that the package of non-ROE incentives, if approved, would serve to reduce the risk of Pioneer below the risk level of comparable companies. AMP-Ohio November 5, 2008 Protest at 13-16.

<sup>75</sup> *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144, 1167-68 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1114 (1986) (emphasis in original). Cases under the Natural Gas Act and the FPA are typically read *in pari materia*. See *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956); *Arkansas-Louisiana Gas Company v. Hall*, 453 U.S. 571 n.7 (1981).

does not have comparable risk to Pioneer or (2) other companies not included in the proxy group are more comparable to Pioneer. Moreover, their rehearing requests include no proffer of the evidence they would present at hearing on any factual issue.

37. The only specific issue raised by ODEC is that Duke (whose low-end ROE is 35 basis points above the cost of debt) and NiSource (whose low-end ROE is 34 basis points above the cost of debt) should not have been excluded from the proxy group. ODEC does not point to any factual issues with respect to the determination to exclude Duke and NiSource, but rather makes arguments about how the undisputed facts should be interpreted and the fact that Duke's A- credit rating is higher than the BBB rating underlying the bond yield benchmark.<sup>76</sup> As explained in the March 27 Order, the Commission excludes companies with low-end ROEs that are approximately the same as the cost of debt because "investors generally cannot be expected to purchase stock if debt, which has less risk than stock, yields essentially the same return."<sup>77</sup> ODEC argues that a company should be included in the proxy group if its low-end ROE exceeds the cost of debt by any amount, no matter how slight. We disagree. If stock is more risky than debt, an investor is unlikely to purchase stock if its return is only slightly higher. The Commission has accordingly found it to be just and reasonable to exclude a company from the proxy group when its low-end ROE is only marginally above the cost of debt (i.e., bond yield).<sup>78</sup> For example, in Opinion No. 445, the Commission excluded a company whose low-end ROE was 36 basis points above the cost of debt; that is almost identical to the margin by which the low-end ROEs of Duke and NiSource exceed the cost of debt in this case.<sup>79</sup>

---

<sup>76</sup> ODEC April 27, 2009 Rehearing Request at 20-21.

<sup>77</sup> March 27 Order, 126 FERC ¶ 61,281 at P 93 (quoting Opinion No. 445, 92 FERC at 61,266). *See also Atlantic Path 15, LLC*, 122 FERC ¶ 61,135 (2008) (*Atlantic Path 15*); *Southern California Edison Co.*, 122 FERC ¶ 61,187 (2008); *Startrans IO, LLC.*, 122 FERC ¶ 61,306 (2008); *Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047 (2008) (*Golden Spread*); *Westar Energy Inc.*, 122 FERC ¶ 61,268, at P 95 (2008).

<sup>78</sup> *See Atlantic Path 15*, 122 FERC ¶ 61,135 (2008) (accepting the applicant's exclusion of companies that were 90 basis points and 91 basis points above the cost of debt); *see also Golden Spread*, 123 FERC ¶ 61,047 (accepting a proxy group which screened out one company whose low-end ROE was 14 basis points above the cost of debt).

<sup>79</sup> Opinion No. 445, 92 FERC at 61,266.

38. We find ODEC's reliance on the February 2008 suspension order in *PATH* to support its argument that Duke and NiSource should be included in the proxy group to be misplaced. In *PATH*, we noted that Opinion No. 445 did not establish a bright line test for when a company's low-end ROE would require its exclusion from the proxy group, and stated that determination would be made specific to the facts of each case.<sup>80</sup>

39. ODEC contends that the low-end ROEs of Duke and NiSource were only marginally lower than Consolidated Edison's low-end ROE, and therefore excluding Duke and NiSource, while including Consolidated Edison, was inconsistent. The Commission must draw a line as to which companies must be excluded from the proxy group somewhere; and in this case, the Commission made a reasonable determination. As illustrated below, an analysis of the percent change in each low-end ROE value to the next shows that there is a clear break in the numerical distribution between Duke and Consolidated Edison, with a 9.6 percent change. The table below shows the low-end ROE values for the proxy group. As shown, Duke's low-end ROE value is 7.3 percent, while Consolidated Edison's low-end ROE value is 8.0 percent.

#### **Derivation of Low-End ROE for Proxy Group**

<b>Excluded*</b>	<b>Value</b>	<b>% Change</b>
Otter Tail Corp.	6.0%	N/A
Moody's 6 Mo. Bond Yield Ending Sept. 2008**	6.9%	N/A
NiSource Inc.	7.2%	4.3%
Duke Energy	7.3%	1.4%
<b>Included*</b>		
Consolidated Edison	8.0%	9.6%
Vectren Corp.	8.1%	1.3%
Ameren Corp.	8.2%	1.2%
Integrus Energy Group	8.5%	3.7%
Pepco Holdings	8.6%	1.2%
Xcel Energy, Inc.	8.9%	3.5%

\* Data from Pioneer October 15, 2008 Filing at App. H, Ex. No. PNR-703.

\*\* Data from Pioneer October 15, 2008 Filing at App. H, Ex. No. PNR-700 at 49.

Because we do not find the arguments of ODEC and AMP-Ohio to be persuasive, we deny rehearing of the Commission's determination to exclude Duke and NiSource from the proxy group.

---

<sup>80</sup> *PATH*, 122 FERC ¶ 61,188 at P 101. *PATH* is currently pending on rehearing.

40. We reject AMP-Ohio's argument that the Commission erred in setting Pioneer's base ROE in the middle of the range of reasonable returns established by the proxy group, as represented by the median of the proxy company ROEs.<sup>81</sup> As discussed above, in order that the utilities in the proxy group have similar risk to Pioneer, the Commission has required that all proxy companies be utilities in PJM and the Midwest ISO with credit ratings within one notch of Pioneer's. On rehearing, AMP-Ohio has not proffered any evidence indicating that the proxy group is not appropriate, and has not raised any factual issue as to why Pioneer's risk profile is different from that of the proxy group or why any particular companies in the proxy group should be considered to have higher risk than Pioneer. Therefore, the Commission reaffirms that using the median as the base ROE is just and reasonable.

41. We also reject AMP-Ohio's argument that the March 27 Order erred insofar as it did not take into account that Pioneer's equity capital will only be provided by AEP and Duke. AMP-Ohio contends that the ROE determination for Pioneer should take into account the fact that the owners will be able to leverage debt costs of the parent into equity returns for the subsidiary. In establishing the base ROE for Pioneer, the Commission established a proxy group of publicly-traded utilities with risk profiles comparable to Pioneer, and using this proxy group, determined that, for Pioneer, a base ROE of 10.54 percent is "commensurate with returns on investments in other enterprises having corresponding risks."<sup>82</sup> As such, the base ROE established for Pioneer is specific to Pioneer and its particular corporate structure, and is not representative of other investments made individually by AEP or Duke. Thus, the other uses that AEP and Duke may have for capital investments are not relevant for setting the base ROE for Pioneer. We therefore find that the Commission did not err by not taking into account that Pioneer's equity capital will only be provided by AEP and Duke.

42. We also deny ODEC's argument that the Commission should have deferred consideration of Pioneer's ROE because of uncertainty in the capital markets. In the March 27 Order, the Commission established the base ROE using financial data for April through September 2008.<sup>83</sup> At the time of Pioneer's filing in October 2008, the latest six-month data available were for the period April through September 2008. We find that the

---

<sup>81</sup> The Commission has held that, when determining an ROE for an individual utility facing average risk, the median best represents the central tendency in a proxy group with a skewed distribution of returns. *See Golden Spread*, 123 FERC ¶ 61,047 at P 62-63 (citing *Northwest Pipeline Corp.*, 99 FERC ¶ 61,305, at 62,276 (2002)); *Virginia Electric and Power Co.*, 123 FERC ¶ 61,098, at P 66 (2008).

<sup>82</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S 591, 603 (1944).

<sup>83</sup> Pioneer October 15, 2008 Filing at App. H, Ex. No. PNR-700 at 46.

Commission's determination to establish the base ROE using financial data for April through September 2008 was reasonable because using any different six-month period other than the latest available at the time of Pioneer's filing could create a continual moving target and would make it difficult to determine the most appropriate six-month period.<sup>84</sup>

43. We reject AMP-Ohio's argument that the Commission should have set Pioneer's ROE for hearing because it ordered a hearing on the justness and reasonableness of the ROE requested by TrAILCo. As explained in Order Nos. 679 and 679-A, the Commission determines the level of the ROE on a case-by-case basis<sup>85</sup> and "will authorize a unique ROE appropriate to the facts and circumstances of each applicant."<sup>86</sup> As discussed above, the parties in this case have raised no issue of material fact requiring a hearing. The fact that the Commission has set other cases with ROE issues for hearing does not require the Commission to establish hearings in every such case, regardless of whether there is any issue of material fact requiring a hearing. The Commission's determinations in *TrAILCo* were based on the facts and circumstances of the project in that case. In the March 27 Order, the Commission based its determinations on the unique facts and circumstances of Pioneer's project, and, as discussed above, fully explained its basis for setting Pioneer's base ROE at 10.54 percent.<sup>87</sup>

---

<sup>84</sup> ODEC's reliance on Opinion No. 445 and *Northeast Utilities* to support its argument in this regard is misplaced. Opinion No. 445 and *Northeast Utilities* are distinguishable from this case in that in those cases, the Commission required the use of updated data in setting a company's ROE in light of the fact that market conditions may change significantly between the time the hearing record closes and the time the Commission issues a final decision. See Opinion No. 445, 92 FERC at 61,267; *Northeast Utilities*, 83 FERC ¶ 61,184, at 61,765. In this case, the Commission made an upfront determination on the appropriate level for Pioneer's ROE, and there was a minimal period of time between the closing of the record and the time the Commission issued a final decision.

<sup>85</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 93.

<sup>86</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 65.

<sup>87</sup> March 27 Order, 126 FERC ¶ 61,281 at P 92-95.

## 2. Overall Return on Equity and Incentive Adder

### a. Requests for Rehearing

44. AMP-Ohio contends that the Commission improperly assumed that the allowed ROE is just and reasonable because it is lower than the upper end of a range of reasonable returns for PJM and Midwest ISO transmission owners in the proxy group. ODEC similarly asserts that it is not appropriate to use the high end of the range of reasonableness as a “touchstone” for judging the reasonableness of Pioneer’s ROE,<sup>88</sup> and argues that “Order No. 679-A assumed that ROE range of reasonableness determinations would be matters for evidentiary hearings.”<sup>89</sup> AMP-Ohio contends that the Commission adjusted the proxy group and selected the median as the base ROE, with no consideration whatsoever of the unique situation of Pioneer, “then after adding the approved incentives declared its job over, because the resulting return is ‘within the zone of reasonableness.’”<sup>90</sup> AMP-Ohio further argues that the Commission has “avoided resolution of the *factual* dispute over the appropriate measure for a single company by relying solely on the fact that a given return is lower than the high end of a so-called ‘zone of reasonableness.’”<sup>91</sup> According to AMP-Ohio, the Commission’s ruling on the ROE was wrong because it incorrectly assumed that any return in a range established for a proxy group is reasonable for the subject utility. It argues that this premise is contradicted by the recent finding in *Bangor Hydro-Electric Co.*<sup>92</sup>

45. AMP-Ohio argues that the Commission did not meaningfully address its contention that the non-ROE incentives shift virtually all risks to ratepayers from the owners and equity investors in the project.<sup>93</sup> Specifically, AMP-Ohio asserts that (1) the Commission has not made the finding that the owners and investors in Pioneer face unusual risk based upon the size, cost, location, scope or nature of the planned transmission line that is not shifted from them to ratepayers by the non-ROE incentives;

---

<sup>88</sup> ODEC April 27, 2009 Rehearing Request at 16.

<sup>89</sup> *Id.* at 18 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 68-70).

<sup>90</sup> AMP-Ohio April 27, 2009 Rehearing Request at 19 (quoting March 27 Order at P 91).

<sup>91</sup> *Id.* (citing *PATH*, 122 FERC ¶ 61,188, Dissent of Commissioner Wellinghoff at 5) (emphasis supplied by AMP-Ohio).

<sup>92</sup> *Id.* at 20 (citing *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,038 (2008) (*Bangor*)).

<sup>93</sup> *Id.* at 3.

and (2) no ROE incentive can lawfully be found to be just and reasonable where the right to capitalize pre-construction costs and to recover abandonment costs fully compensates for the alleged risks and challenges resulting from the lack of a formal siting process.<sup>94</sup>

46. ODEC similarly argues that (1) the Commission did not address arguments that the total package of incentives granted to Pioneer offset the need for a higher ROE; and (2) the Commission should grant rehearing of its decision to award Pioneer a 150 basis point ROE adder for new transmission investment.<sup>95</sup> Further, ODEC asserts that the Commission did not provide a basis for why 150 basis points was the appropriate transmission investment adder in light of the total package of incentives.<sup>96</sup>

47. The Indiana Commission contends that granting an incentive adder to the ROE for regulatory risk is arbitrary and capricious and unsupported by substantial evidence, and requests that the Commission clarify whether the absence of risk due to other incentives granted by the Commission (such as CWIP, abandonment costs, and the establishment of a regulatory asset) obviates the need for as high of an ROE adder.<sup>97</sup> The Indiana Commission also requests clarification as to whether the Commission had sufficient evidence on the amount of regulatory and high-technology risk of the project vis-à-vis other projects that received transmission incentives, and notes that the Mid-Atlantic Power Pathway (MAPP) project, which was granted the same ROE adder of 150 basis points as the Pioneer project, involved more significant regulatory hurdles.<sup>98</sup> It states that while Indiana does not have state siting authority, that fact alone is not sufficient to warrant the level of ROE adder granted by the Commission, and it argues that the MAPP project ROE adder included a “high technology risk” that is not present in the Pioneer project. The Indiana Commission asserts that the ROE adder for the Pioneer project should be reduced, and seeks clarification that upon passage of legislation currently

---

<sup>94</sup> *Id.* at 5, 7-8.

<sup>95</sup> ODEC April 27, 2009 Rehearing Request at 13-17 (citing *Central Maine Power Co.*, 125 FERC ¶ 61,079, at P 88 (2008); *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007)).

<sup>96</sup> *Id.* at 16 (citing *PATH*, 122 FERC ¶ 61,188, Statement of Commissioner Kelly, concurring in part and dissenting in part).

<sup>97</sup> Indiana Commission April 24, 2009 Rehearing Request at 7, 9.

<sup>98</sup> *Id.* at 7-8 (citing *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 43 (2008)).

before the Indiana General Assembly that would grant Indiana state siting authority, the Commission will consider reducing the ROE adder.<sup>99</sup>

**b. Commission Determination**

48. We disagree with the arguments of AMP-Ohio and ODEC that the Commission improperly assumed that the ROE is just and reasonable because it is lower than the upper end of a range of reasonable returns of the proxy group. Consistent with Order No. 679, the Commission's approval of the incentive ROE here "take[s] into account a number of factors that may be both cost-related and policy-related."<sup>100</sup> Courts have recognized the pragmatic difficulties in setting an ROE,<sup>101</sup> recognizing that the rate in a particular case need only fall within a zone of reasonableness to satisfy the just and reasonable standard.<sup>102</sup>

49. Parties' assertions that our determination was simply a function of the zone of reasonableness disregard the facts of the record. The Commission set Pioneer's base ROE at the median value within the zone of reasonableness based on the Commission's own evaluation of Pioneer's proposed proxy group. Further, in the March 27 Order, the Commission did not assume that the ROE proposed by Pioneer was just and reasonable, but rather "agree[d] with protestors that Pioneer's proposed ROE of 13.5 percent is not just and reasonable"<sup>103</sup> and found that Pioneer improperly removed Consolidated Edison

---

<sup>99</sup> *Id.* at 8.

<sup>100</sup> *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 288-89 (D.C. Cir. 2006) (*Maine*).

<sup>101</sup> *Public Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201, 1206 (1987) (stating that "[a]lthough ringing of mathematical precision, the calculation of a just and reasonable rate is less a science than an art."). *See also FPC v. Conway*, 426 U.S. 271, 278 (1976) (rejecting the theory that "ratemaking is an exact science and that there is only one level at which a wholesale rate can be said to be just and reasonable....").

<sup>102</sup> *See Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1177 (D.C. Cir. 1987) (explaining that the zone of reasonableness is "bounded at one end by the investor interest against confiscation and at the other by consumer interest against exorbitant rates"); *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (1984) (finding that the Commission may approve rates that fall within a zone of reasonableness where rates are neither less than compensatory nor excessive).

<sup>103</sup> March 27 Order, 126 FERC ¶ 61,281 at P 92.

Inc. and Vectren Corporation from the proxy group.<sup>104</sup> The Commission's determination to grant Pioneer a base ROE of 10.54 percent in the March 27 Order was therefore based on the Commission's evaluation of Pioneer's proposed proxy group. Thus, the Commission did not assume that the ROE is just and reasonable because it is lower than the upper end of a range of reasonable returns for the proxy group, but rather set Pioneer's base ROE at the median value within the zone of reasonableness based on its careful evaluation of Pioneer's proposed proxy group.

50. Further, in determining that the final ROE inclusive of incentives was just and reasonable, the Commission considered the facts of the record in its entirety in approving the combination of incentives for the project. The Commission took into account "a number of factors that [are] both cost-related and policy-related."<sup>105</sup> For example, the Commission considered the large scale of the project, which spans two RTOs, and the fact that the project would require multiple federal and state siting approvals.<sup>106</sup> The Commission also considered that the project will facilitate the interconnection and transport of at least 4,000 MW of the proposed 6,000 MW<sup>107</sup> of new wind generation in Indiana that is currently in the Midwest ISO and PJM interconnection queues, without requiring substantial upgrades to the underlying lower-voltage networks.<sup>108</sup>

51. We also reject parties' assertion that the Commission did not provide a precise basis or calibration for the incentive ROE. As courts have found, the necessary calibration *is* the Commission's determination that the ROE is within the zone of reasonableness,<sup>109</sup> stating that "[t]o the extent that [parties] consider this to be a meaningless standard, they ignore the cap."<sup>110</sup> It is within the Commission's discretion to determine where to place the incentive ROE within this zone. As the Commission has stated, "assuming that every rate within the zone of reasonableness is equally just and reasonable in its application would leave no room for the Commission to exercise its

---

<sup>104</sup> *Id.* P 94.

<sup>105</sup> *Maine*, 454 F.3d at 289.

<sup>106</sup> March 27 Order, 126 FERC ¶ 61,281 at P 48-49.

<sup>107</sup> *Id.* at 23; Pioneer October 15, 2008 Filing at App. C, Ex. PNR-200 at 10-11.

<sup>108</sup> March 27 Order, 126 FERC ¶ 61,281 at P 48.

<sup>109</sup> *See Maine*, 454 F.3d at 288.

<sup>110</sup> *Id.* at 289 (citing *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1501-02 (D.C. Cir. 1984)).

judgment in determining the just and reasonable rate.”<sup>111</sup> As explained above, the Commission considered the incentive nature of this ROE, and limited its application only to the incentive transmission project. Thus, the Commission narrowly tailored the incentive ROE to apply only to the expansion project, and to no other project.

52. Further, we reject ODEC’s assertion that “Order No. 679-A assumed that ROE range of reasonableness determinations would be matters for evidentiary hearings.”<sup>112</sup> Contrary to this assertion, Order No. 679-A did not assume that the level of the ROE or the range of reasonableness determinations would be matters for evidentiary hearings, but rather, in recognizing that Commission hearing procedures for determining the ROE can create uncertainty for investors, the Commission explained that it would consider requests for up-front ROE determinations.<sup>113</sup> The Commission also stated that it “will authorize a unique ROE appropriate to the facts and circumstances of each applicant.”<sup>114</sup>

53. We deny the requests for rehearing of the Commission’s determination to approve Pioneer’s request for a 150 basis point adder for new transmission. We reject the arguments that the March 27 Order did not address arguments that the total package of incentives granted to Pioneer offset the need for a higher ROE, and that the Commission should grant rehearing of its decision to award Pioneer a 150 basis point ROE adder. We find that contrary to these assertions, the Commission specifically considered the request for an ROE incentive adder in light of its decision to authorize CWIP and abandonment. Specifically, in analyzing whether the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking a project, the Commission also examined whether some of the incentives reduce the risks of the project and, thus, the need for the incentive ROE.<sup>115</sup> As explained above and in the March 27 Order, the Commission first identified the factors that led it to conclude that an ROE

---

<sup>111</sup> *Bangor*, 122 FERC ¶ 61,038 at P 14.

<sup>112</sup> ODEC April 27, 2009 Rehearing Request at 18 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 68-70).

<sup>113</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 69-70 (clarifying that the Commission will consider requests for declaratory orders that set the ROE for a particular project); *see also* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 79 (stating “the Commission does not intend to routinely convene trial-type, evidentiary hearings to review either a comprehensive or a single-issue section 205 filing but will attempt to render a decision based on the paper submissions whenever possible”).

<sup>114</sup> *Id.* P 65.

<sup>115</sup> *Commonwealth Edison Co.*, 124 FERC ¶ 61,231, at P 26 (2008).

incentive was justified<sup>116</sup> and then examined to what extent CWIP<sup>117</sup> and abandonment<sup>118</sup> reduced the Project's overall risk. The Commission concluded, based on its expertise and close scrutiny of Pioneer's request, that while CWIP and abandonment did reduce the Project's overall risk, they did not completely mitigate the need for an ROE incentive.<sup>119</sup> Thus, the Commission authorized an ROE incentive that reflected, in its judgment,<sup>120</sup> the level of remaining risk, explaining that given the size, scope, and cost of the project, Pioneer faces risks and challenges that warrant the 150 basis points of ROE incentive for new transmission as well as the 50 basis points of ROE incentive for participation in PJM and Midwest ISO, without any reduction with respect to the Commission's determination to grant the CWIP, abandonment and regulatory asset incentives.

54. Further, an ROE adder and non-ROE incentives such as CWIP, abandonment, and regulatory asset are not mutually exclusive.<sup>121</sup> Granting the ROE incentive, together with the abandonment, CWIP, and regulatory asset incentives, will encourage greater participation from potential equity partners. Pioneer is exposed to greater risks of project failure than projects that require approval in only one RTO transmission planning process,<sup>122</sup> which results in increased risks to debt. The incentives sought by Pioneer serve different purposes, and Pioneer demonstrated that, consistent with Order No. 679-A, the total package of incentives is tailored to address the demonstrable risks or challenges faced by Pioneer.<sup>123</sup> As the Commission explained in the March 27 Order, consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects.<sup>124</sup> This is consistent with our interpretation of FPA

---

<sup>116</sup> March 27 Order, 126 FERC ¶ 61,281 at P 48, 56, 60.

<sup>117</sup> *Id.* P 65-66.

<sup>118</sup> *Id.* P 75-76.

<sup>119</sup> *Id.* P 60.

<sup>120</sup> *See Bangor*, 122 FERC ¶ 61,038 at P 14.

<sup>121</sup> *See PacifiCorp*, 125 FERC ¶ 61,076, at P 59 (2008).

<sup>122</sup> *See supra* P 59 (explaining that the magnitude of the Pioneer project, cost of the project, and the fact that Pioneer faces the difficult task of securing the project's approval in two RTOs' transmission planning processes impose significant risks on Pioneer, and will have a negative impact on its ability to raise capital for the project).

<sup>123</sup> March 27 Order, 126 FERC ¶ 61,281 at P 96-97.

<sup>124</sup> *Id.* P 96 (citing *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 60, 122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent

section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of FPA section 219 and that there is a nexus between the incentives being proposed, the investment being made, and the total package of incentives addresses the demonstrable risks or challenges faced by the applicant.

55. We recognize that in other cases where similar packages of incentives were requested, the Commission has reduced the utility's requested ROE incentive.<sup>125</sup> In those cases, the Commission examined the entirety of the project and the requested incentives and determined that the total package of incentives requested by the utilities were too high. However, those cases do not stand for the proposition that whenever a utility requests CWIP, an ROE incentive, abandonment, and a regulatory asset that the utility's ROE request is automatically reduced. Such a conclusion could have the impact of utilities requesting even larger incentives to offset a possible reduction.<sup>126</sup>

56. Further, the incentives granted in this case address different risks. A higher ROE encourages new transmission investment and investment in advanced transmission technologies because it provides a longer term higher ROE after the project comes on line and makes that transmission project more attractive as a long-term investment. The ROE incentive is designed to facilitate Pioneer's ability to raise capital, given the challenges of securing a project's approval from numerous state regulatory bodies and various transmission planning processes.<sup>127</sup> CWIP allows a company to earn a return on construction costs for the project during the construction period. It helps companies, like Pioneer, 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

---

abandoned plant recovery), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *Duquesne*, 118 FERC ¶ 61,087 at P 55, 59, 61 (granting enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery)); *see also Central Maine Power Co.*, 125 FERC ¶ 61,182, at P 100 (2008) (granting both abandonment and ROE incentives), *order granting motion to lodge and dismissing rehearing requests*, 129 FERC ¶ 61,153 (2009).

<sup>125</sup> *Cf. Duquesne*, 118 FERC ¶ 61,087 at P 57; *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 56 (2008), *reh'g denied*, 124 FERC ¶ 61,229; *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008).

<sup>126</sup> *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at n.96 (2008).

<sup>127</sup> *See Green Power Express*, 127 FERC ¶ 61,031 at P 89.

significant transmission projects, such as the Pioneer project. The abandonment incentive encourages transmission development by reducing the risk of non-recovery of prudently incurred costs associated with abandoned transmission projects if such abandonment is outside of management's control.<sup>128</sup> The regulatory asset incentive can provide up-front regulatory certainty, increase cash flow, and facilitate financing on good terms. Additionally, this incentive can reduce interest expense, improve coverage ratios, and assist in the construction of a facility.<sup>129</sup>

57. As explained in the March 27 Order, authorizing 100 percent inclusion of CWIP in rate base for the project will enhance Pioneer's cash flow, which will reduce the risk of a downgrade in its parents' debt ratings.<sup>130</sup> The determination to grant CWIP was based on evidence that Pioneer provided demonstrating that the return on CWIP will allow Pioneer to begin generating cash with which to service debt almost immediately, thereby reducing the amount of external capital Pioneer would be required to raise.<sup>131</sup> Pioneer also provided evidence to demonstrate that the abandonment incentive is needed for it to obtain financing for its project.<sup>132</sup> In addition, Pioneer demonstrated that the regulatory asset incentive is tailored to Pioneer's risks and challenges because it will provide Pioneer with added up-front regulatory certainty, and will thereby reduce interest expense, improve coverage ratios, and assist in the construction of the facility.<sup>133</sup> The record therefore demonstrates that the ROE adder, CWIP, abandonment, and regulatory asset incentives are instrumental in supporting Pioneer's financial integrity and ability to attract capital, and that Pioneer has appropriately tailored the requested incentives to the unique challenges facing the project.

58. We reject the Indiana Commission's argument that the Commission had insufficient evidence on the amount of regulatory risk of the project, and its argument that other projects, such as the MAPP project, were granted the same ROE adder of 150 basis points as the Pioneer project but involved more significant regulatory hurdles.

---

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* P 59; *Tallgrass*, 125 FERC ¶ 61,248 at P 63; *PATH*, 122 FERC ¶ 61,188 at P 52.

<sup>130</sup> March 27 Order, 126 FERC 61,281 at P 65.

<sup>131</sup> Pioneer October 15, 2008 Filing at App. E, Ex. No. PNR-400 at 6-7, 13; Pioneer October 15, 2008 Filing at App. H, Ex. No. PNR-700 at 87-88.

<sup>132</sup> Pioneer October 15, 2008 Filing at App. E, Ex. No. PNR-400 at 14.

<sup>133</sup> March 27 Order, 126 FERC ¶ 61,281 at P 83.

Consistent with Order No. 679-A, the Commission authorized a unique ROE appropriate to the facts and circumstances specific to Pioneer.<sup>134</sup> The magnitude of the Pioneer project, cost of the project, and the fact that Pioneer faces the difficult task of securing the project's approval in two RTOs' transmission planning processes impose significant risks on Pioneer, and will have a negative impact on its ability to raise capital for the project. Pioneer also faces unique risks because it is one of the first large-scale projects designed to strengthen the interconnection between two RTOs. As explained in the March 27 Order, because Indiana does not have a formal siting process, Pioneer will have to obtain rights-of-way for the 240 mile line by negotiating with individual landowners, and if such negotiations are unsuccessful, Pioneer will have to initiate eminent domain proceedings in the circuit court for each county traversed by the project, which may result in inconsistent circuit court rulings and appeals.<sup>135</sup> We deny the Indiana Commission's request for clarification that upon passage of legislation before the Indiana General Assembly that would grant Indiana state siting authority, the Commission will consider reducing the ROE granted to Pioneer in the March 27 Order. Such clarification would require the Commission to speculate as to the details of state legislation that has not yet been enacted. Further, the Indiana Commission is not precluded from making a section 206 filing to request a reduction in the ROE if it believes that the circumstances upon which the Commission based its determination to grant the ROE incentive have changed.<sup>136</sup>

The Commission orders:

The requests for rehearing of the March 27 Order are hereby denied, and the requests for clarification are hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Norris voting present.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>134</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 65.

<sup>135</sup> March 27 Order, 126 FERC 61,281 at P 49 (citing Pioneer October 15, 2008 Transmittal Letter at 28).

<sup>136</sup> To the extent that Pioneer does not propose to change the 12.54 percent ROE approved in the March 27 Order, a party challenging the level of the ROE will have the burden of proof under section 206 of the FPA.