

135 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Transmission, LLC

Docket No. EL11-21-000

ORDER ON PETITION FOR DECLARATORY ORDER AND RELATED
DETERMINATIONS

(Issued May 19, 2011)

1. On February 8, 2011, Central Transmission, LLC (Central Transmission) filed a petition for a declaratory order (Petition) pursuant to section 219 of the Federal Power Act (FPA),¹ Rule 207 of the Commission's Rules of Practice and Procedure,² and Order No. 679³ seeking approval of certain transmission rate incentives in connection with the proposed transmission project (Valley Project) that Central Transmission proposes to construct in Illinois.

2. As discussed herein, the Commission grants and denies, in part, Central Transmission's application. The Commission grants the request for transmission rate incentives including: (i) recovery of pre-commercial costs through a regulatory asset, (ii) recovery of abandonment costs, (iii) a 50 basis point return on equity (ROE) adder for Regional Transmission Organization (RTO) participation, and (iv) a 30-year depreciable life. The Commission grants Central Transmission's incentive rate requests contingent on PJM Interconnection, L.L.C. (PJM) including the Valley Project as an economic enhancement in the Regional Transmission Expansion Plan (RTEP) through its regional planning process. However, the Commission rejects Central Transmission's request for authorization to use a forward-looking formula rate subject to a true-up, without

¹ 16 U.S.C. § 824s (2006); Energy Policy Act of 2005, Pub. L. No. 109-58, 1241, 119 Stat. 594, 961-62 (2005) (EPAAct 2005).

² 18 C.F.R. § 385.207 (2011).

³ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

prejudice to Central Transmission providing additional justification for such a rate in a subsequent proceeding.

I. Background

A. Description of Central Transmission

3. Central Transmission is a non-incumbent transmission developer whose business is to develop, own, and operate high-voltage transmission facilities in the Midwest. Central Transmission is a member of the LS Power Group, which has been involved in the development, construction, or operation of 20,000 MW of generation in the United States.⁴ LS Power Group affiliates are engaged in transmission development and have planned over 1,000 miles of transmission to help deliver renewable resources, reduce constraints, or increase reliability. Among other projects, LS Power Group affiliates are building a portion of the Texas renewable transmission projects known as “CREZ” and building a 500 kV transmission line in Nevada.⁵

B. Description of the Valley Project

4. Central Transmission estimates that the proposed Valley Project will consist of approximately 30 miles to 50 miles of new, single circuit 345 kV transmission line and

⁴ The LS Power Group consists of LS Power Development, LLC, a Delaware limited liability company owned by private individuals and associated entities and the primary operating company for the group; LS Power Associates, L.P.; and their affiliates and controlled subsidiaries. *See* LS Power Marketing, LLC, Updated Market Power Analysis, Docket No. ER96-1947-029 (Jul. 30, 2010).

⁵ *See* press releases issued by LS Power on its website, such as “Department of Energy, [et al.] Celebrate The One Nevada Transmission Line” dated October 19, 2010; “NV Energy and Great Basin Transmission Finalize Agreement for the One Nevada Transmission Line” dated August 20, 2010; “LS Power Announces New Transmission Project to Facilitate Renewable Energy Development in Illinois and Indiana” dated December 17, 2009; “LS Power Announces Memorandum of Understanding with Western Area Power Administration for the Southwest Intertie Project” dated July 16, 2009; “LS Power Purchases Wyoming-Colorado Intertie” dated April 28, 2009; “Great Basin Transmission Announces Second Open Season for the Southwest Intertie Project” dated April 15, 2009; “Public Utility Commission Selects Cross Texas Transmission as part of CREZ Transmission Plan” dated March 30, 2009; and “LS Power Postpones Construction of White Pine Energy Station Focuses on Completing Transmission Line for Renewables” dated March 5, 2009.

associated equipment at an estimated cost of \$60 million to \$125 million.⁶ Central Transmission anticipates that the Valley Project will meet the PJM Benefit/Cost Ratio test for economic enhancements under the 2010 RTEP protocol,⁷ resolve ten-year auction revenue rights (ARR) infeasibility issues in the Commonwealth Edison (ComEd) area, and reduce costs for customers. The project has a targeted in-service date of 2015.

5. Since September 23, 2010, Central Transmission has developed three variations of the Valley Project, in consultation with PJM.⁸ According to Central Transmission, other variations in the configuration of the Valley Project may be developed by Central Transmission and PJM in an effort to optimize the project's benefits. Central Transmission states in its Petition that the requested incentives are intended to apply to these variations, and that it is not aware of any potential changes to the Valley Project at this time.⁹

6. On December 8, 2010, PJM's Transmission Expansion Advisory Committee concluded that the Byron-Pleasant Valley line was the optimal variation. Specifically, PJM stated that the Byron-Pleasant Valley line reduces congestion in ComEd and has the highest Benefit/Cost Ratio of the proposed configurations without creating additional congestion. PJM estimates the Byron-Pleasant Valley line will have a cumulative present

⁶ Central Transmission Petition at 11; *see also* the Petition, Attachment 4 at 6, providing PJM's December 8, 2010, Transmission Expansion Advisory Committee Meeting, 2010 Market Efficiency Analysis Results Update (December TEAC Presentation).

⁷ *See* PJM Operating Agreement, Schedule 6, Regional Transmission Expansion Planning Protocol. PJM uses a Benefit/Cost Ratio to determine whether an economic enhancement or expansion will be included in the RTEP process. To be included, a project's benefit/cost ratio must meet a threshold of at least 1.25 to one. Economic expansions (also referred to as market efficiency expansions) are those that will reduce the costs of meeting load but are not needed to meet load reliably.

⁸ The three variations are: 1) a 345 kV line from Byron substation to Cherry Valley substation to Pleasant Valley substation, 2) a 345 kV line from Cherry Valley substation to Pleasant Valley substation, and 3) a 345 kV line from Byron substation to Pleasant Valley substation (Byron-Pleasant Valley line). Each variation is an economic-based enhancement that reduces congestion in the ComEd area.

⁹ Central Transmission Petition at 8-9 n.19.

value of energy market benefits of \$353.8 million and an estimated cumulative present value of revenue requirements of \$174.9 million,¹⁰ resulting in a Benefit/Cost Ratio of 2.02.

7. Central Transmission reports that the Valley Project will resolve ten-year stage 1A ARR infeasibility issues in the ComEd service area. According to Central Transmission, while ARR infeasibility does not indicate a reliability concern, it is an indication that additional transmission is needed to provide congestion relief to ARR holders. The stage 1A ARRs are assigned to load serving entities for generation resources that historically served load up to base load needs (rather than peak load).

C. Technology Statement

8. Central Transmission provides an advanced technology statement in its Petition explaining that it anticipates deploying several advanced transmission technology elements. Central Transmission notes that the project will incorporate smart grid advancements, including fiber-optic technologies via optic cables in the shield wire; microprocessor-based protective relays; microprocessor-based supervisory control and data acquisition (SCADA) equipment for real-time monitoring and control; digital fault recorders and application of IEC 61850 substation communication standards to wide area substation-to-substation communications.¹¹ Central Transmission states that the proposed deployment of microprocessor-based relays and digital fault recorders will automatically assist reliability and operations with minimum intervention by the transmission operator. These technologies will perform self-diagnostic activities and report corrective action. Central Transmission states that these features reduce the potential for damage to other facilities and provide critical information on system disturbances.¹²

9. Central Transmission states that these technologies meet Order No. 679 and EPA Act 2005 standards because they will increase the capacity, efficiency, or reliability of the

¹⁰ December TEAC Presentation, slides 14 and 16. PJM used an estimated cost of \$105 million to calculate the present value of revenue requirements in the Benefit/Cost Ratio calculation.

¹¹ Central Transmission Petition at 25 (citing International Electrotechnical Commission (IEC) standards).

¹² Central Transmission explained that it also considered employing other advanced technologies including high-temperature low-sag conductors and underground cables; however, it does not anticipate using them at this time. Central Transmission Petition at 27.

Valley Project and the interconnected transmission system.¹³ Although the Valley Project will use advanced technology, Central Transmission does not seek any additional rate incentive for such use.

D. Requested Effective Date

10. Central Transmission requests the Commission issue an order within sixty days of the filing of its Petition, and requests an effective date of April 8, 2011. Relevant to this proceeding, Central Transmission indicates its intent to become a transmission owner in PJM by executing the Transmission Owners Agreement and turn over operational control of the Valley Project to PJM. Central Transmission indicates that it anticipates that PJM will designate it to be responsible for constructing and owning the Valley Project in the spring of 2011.

II. Notice of Filing and Responsive Pleadings

11. Notice of Central Transmission's petition was published in the *Federal Register*, 76 Fed. Reg. 10,360 (2011), with interventions, comments, and protests due March 10, 2011. American Electric Power Service Corp. (AEP); Dominion Resources Services, Inc.; Exelon Corp.; and Invenergy Wind Development LLC and Invenergy Thermal Development LLC filed interventions. AEP included comments and Exelon included comments and a limited protest. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention with comments. Old Dominion Electric Cooperative (ODEC) filed a motion to intervene out of time. Central Transmission filed an answer in response to the comments and protest.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notice of intervention and the timely, unopposed interventions serve to make the entities that filed them parties to this proceeding.¹⁴ We grant ODEC's motion to intervene out of

¹³ Central Transmission provides a caveat to the effect that, as a market efficiency project, the additional cost of using advanced technology must be balanced with the benefits. Central Transmission also states that actual use of advanced technologies is dependent on final engineering, cost assessments and scope of work coordination between Central Transmission and the owner of substations to which the Valley Project will interconnect.

¹⁴ 18 C.F.R. § 385.214 (2011).

time, given its interests in the proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority.¹⁵ We will accept Central Transmission's answer because it has aided us in our decision-making.

B. Rate Incentive Requests

14. Central Transmission requests rate incentives under section 219 of the FPA and Order No. 679. Specifically, Central Transmission seeks (1) deferred recovery of pre-commercial costs through the creation of a regulatory asset, (2) full recovery of prudently-incurred costs if the Valley Project is abandoned after inclusion in the PJM RTEP for reasons beyond Central Transmission's control, (3) a ROE adder of 50 basis points for participating in a RTO, contingent on Central Transmission's ROE being within the zone of reasonableness with the RTO adder included, and (4) a 30-year depreciable life for the Valley Project when Central Transmission submits its FPA section 205 filing seeking cost recovery. In addition, Central Transmission seeks a declaration that it is appropriate to recover its costs through a forward-looking formula rate subject to a true-up under the PJM tariff.

1. Section 219 Requirements

15. In the Energy Policy Act of 2005, Congress added section 219 to the FPA,¹⁶ directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Central Transmission.¹⁷ In Order No. 679, the Commission interpreted section 219 to require that an applicant seeking incentive rate treatment for transmission infrastructure investments demonstrate that the facilities for which it seeks an incentive

¹⁵ 18 C.F.R. § 385.213(a)(2).

¹⁶ Pub. L. No. 109-58, 119 Stat. 594, § 1241.

¹⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062.

either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.¹⁸

16. Order No. 679 establishes a rebuttable presumption that the section 219 requirement is met if a transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission, or a project has received construction approval from an appropriate state commission or state siting authority.¹⁹ In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which the transmission project is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.²⁰ The Commission also stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.²¹

17. However, as acknowledged by Central Transmission, its request for incentive rates is contingent upon PJM approving the Valley Project in PJM's RTEP. Central Transmission, therefore does not request the Commission to evaluate the need for, or the relative merits of the Valley Project. Central Transmission states that the proposed rate incentives and treatments will be subject to the Valley Project's approval in the RTEP. Central Transmission asserts that if PJM approves the Valley Project for inclusion in the RTEP as an economic enhancement, the project will meet Order No. 679's rebuttable presumption and qualify for rate incentives since the project will result from a fair and open regional planning process.²²

a. Comments

18. The Illinois Commission argues that Central Transmission's Petition is premature because the Valley Project has not been included in the PJM RTEP and therefore does not qualify for the Order No. 679 rebuttable presumption. The Illinois Commission

¹⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

¹⁹ *Id.* P 58; 18 C.F.R. § 35.35(i) (2010).

²⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

²¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 n.39.

²² *Id.* at P 57-58; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

claims that, until the RTEP process is complete, the Commission will not be able to make an informed decision that will apply to any project variation and asserts that it is impossible to determine whether a particular transmission rate incentive or package of incentives is appropriate in the absence of a more specific proposal.

19. Exelon requests that the Commission affirm that any approved incentives should neither influence PJM's evaluation of the Valley Project nor indicate an endorsement. Exelon notes that PJM is developing procedures to analyze alternative proposals through its RTEP process, in light of the Commission's holding in *Primary Power, LLC*.²³ Further, should the Commission grant Central Transmission's request for declaratory order on incentives, Exelon asserts that the Commission cannot give any advantage to the Valley Project over competing or alternative projects, such as Commonwealth Edison Company's Byron-Charter Grove-Wayne 345 kV line, which has been in development since 2009.²⁴

20. Exelon raises concerns about the stability of Central Transmission's analysis of the costs of the project and the benefits to the transmission grid. Exelon highlights the preliminary nature of the benefit analysis for the Valley Project, based on potential modifications to the network and the results of ongoing studies. Exelon notes that PJM has directed an independent benefit analysis of the project and notes that the independent analysis has differed from the developer's estimates on other projects in PJM. Exelon indicates that if Central Transmission uses alternate materials, such as the high-temperature, low-sag conductor that it is considering, the additional costs must be considered.

21. Exelon questions the validity of the congestion analysis provided to demonstrate the benefits of the Valley Project. In particular, Exelon questions assumptions concerning the need for new generation reserves and whether those reserves would be met with new construction or "scaling up" existing generation or proposed generation to

²³ 131 FERC ¶ 61,015 (2010) (*Primary Power*).

²⁴ Exelon at 11 (citing *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,660, at P 95 (2010) (Transmission Planning NOPR)). The Transmission Planning NOPR at P 95 describes a Commission proposal to require that if a proposed project is not included in a regional transmission plan and if the project's sponsor resubmits that proposed project in a future transmission planning cycle, that sponsor would have the right to develop that project under the foregoing rules even if one or more substantially similar projects are proposed by others in the future transmission planning cycle.

meet expected reserve requirements.²⁵ Exelon faults Central Transmission's analysis for failing to model transmission upgrades that typically accompany new generation. Exelon asserts that it is unrealistic to assume that no transmission upgrades will result from the generation in the interconnection queue. In addition, Exelon faults PJM's market efficiency analysis for failing to consider proposed merchant transmission projects.

22. Exelon notes changes in the PJM market assumptions from those in the analysis that Central Transmission relies on. Thus, Exelon argues that the PJM review process must be allowed to proceed without interference. According to Exelon, after the Petition was filed, PJM revised downward the reserve requirement assumptions that are related to the analysis. Exelon notes that the Petition cites a market efficiency analysis calling for 3,300 MW of new generation in 2016; 8,000 in 2019; and 17,000 in 2024. However, the revised analysis forecasts that only 900 MW of new generation is needed by 2020, and only 9,000 MW is needed by 2025.

23. AEP notes that PJM may revise its expansion review process to address additional drivers, including light load analysis. As a result, AEP anticipates that projects that qualify as economic under the existing procedures could be identified as needed for reliability under the new criteria.²⁶

b. Answer

24. Central Transmission agrees with Exelon that Commission approval of the requested rate incentives and treatments should not influence or prejudge the outcome of PJM's RTEP review. Central Transmission contests Illinois Commission's assertion that its request is premature based on Commission precedent. Central Transmission argues that Order No. 679 provides that an applicant may request incentive rate treatments for a project that is not yet complete and is under review in a regional planning process.²⁷

²⁵ Exelon at 9.

²⁶ AEP does not otherwise comment on the merits of the proposal.

²⁷ Central Transmission Answer at 6 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 n.39; *Green Energy Express, LLC*, 129 FERC ¶ 61,165 (2009) (*Green Energy*); and *Central Maine Power Co.*, 125 FERC ¶ 61,079 (2008) (*Central Maine*) (as implementing Order No. 679 by authorizing incentives conditioned on projects being approved in a regional planning process)).

c. **Commission Determination**

25. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.²⁸ Order No. 679 establishes a rebuttable presumption that this standard is met if the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission, or if a project has received construction approval from an appropriate state commission or state siting authority.²⁹ The Commission has also stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.³⁰

26. The Commission finds that Central Transmission is not entitled to a rebuttable presumption for the Valley Project since it has not been approved in the PJM planning process or received construction approval from the relevant state authorities. Even so, consistent with Commission precedent, we will approve, as discussed below, certain incentives requested by Central Transmission contingent on PJM including the Valley Project's in the RTEP as an economic enhancement.³¹ We find that PJM's approval would provide sufficient assurance that each of the three variations of the project will provide economic benefits to the PJM system.

27. We disagree with parties that claim the Petition is premature because the Project has not been included in the PJM RTEP or that a finding on the Petition will prejudice the PJM planning process. As we have stated previously, evaluation of a project through a Commission-approved regional planning process is not a prerequisite to granting incentives.³² Furthermore, the Commission has found that "ruling on a request for incentives pursuant to Order No. 679 does not prejudice the findings of a particular

²⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

²⁹ *Id.*

³⁰ *Id.* P 58 n.39.

³¹ *Primary Power*, 131 FERC ¶ 61,015 at P 93.

³² *Green Power Express*, 127 FERC ¶ 61,031, at P 42 (2009) (*Green Power*); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 43 (2008) (*Tallgrass*); and *Central Maine Power Co.*, 125 FERC ¶ 61,182, at P 42 (2008).

transmission planning process or the siting procedures at state commissions.”³³ Thus, we agree with Exelon and Central Transmission that our approval of incentives should not influence PJM’s RTEP analysis of this or any other project.³⁴

28. In its future section 205 filing to implement its incentive-based requests, Central Transmission must provide evidence of PJM’s RTEP approval.³⁵ As a result of the Commission approving rate incentives, Central Transmission must submit FERC-730 reports annually.³⁶

29. Central Transmission requests an effective date for the approved rate incentives of April 8, 2010. While we grant the approved rate incentives as of the date of this order, subject to RTEP approval, such approval does not constitute an effective date for ratemaking purposes under section 205 of the FPA. Central Transmission may begin applying the approvals in its accounting, as may be discussed more fully in the determinations below.³⁷

2. Incentives and the Commission’s Nexus Test

a. Central Transmission’s Nexus Argument

30. Central Transmission asserts that the Valley Project demonstrates a nexus between the incentives sought and the investment being made. Central Transmission states that the scope of the Valley Project is significant, because the project will consist of 30 to 50

³³ *Green Power*, 127 FERC ¶ 61,031 at P 42 (citing *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 40 (2009), *order on reh’g and clarification*, 130 FERC ¶ 61,044 (2010) (*Pioneer*); and *Tallgrass*, 125 FERC ¶ 61,248 at P 43).

³⁴ Because Central Transmission concurs with the commenters on this issue, we do not reach the remaining arguments raised in the pleadings.

³⁵ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49. See also *Green Energy*, 129 FERC ¶ 61,165 at P 30 (directing further filing).

³⁶ FERC-730 annual reports must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h). These reports contain actual, projected and incremental transmission investment information. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 367-76.

³⁷ Granting approval for accounting purposes is separate from approval for rate purposes and the former does not govern or constrain the latter. *Pioneer*, 130 FERC ¶ 61,044 at P 28; *Illinois Power Co.*, 87 FERC ¶ 61,028 (1999).

miles of new transmission line costing from \$60 to \$125 million, depending on which project variant PJM approves. Central Transmission argues that the Valley Project is not routine, because it would be the first time PJM approves a major transmission line as an economic enhancement.³⁸ Central Transmission asserts that the Valley Project is predicted to produce broad, regional congestion relief benefits. Specifically, PJM's currently preferred variant produces an estimated cumulative present value of energy market benefits of \$353.8 million and an estimated cumulative present value of revenue requirements of \$174.9 million.³⁹ Central Transmission points out that this results in a Benefit/Cost Ratio of 2.02 to 1 which is significantly higher than the 1.25 to 1 threshold required by the PJM tariff to qualify as an economic enhancement.

31. Central Transmission concludes that the nexus between the incentives requested and the benefits to consumers is demonstrated by the congestion benefits alone. Even so, Central Transmission also notes that the Valley Project will resolve ten-year stage 1A ARR infeasibility issues in the ComEd area.

32. Central Transmission asserts that the Valley Project faces substantial risks and challenges. Central Transmission asserts that the Valley Project will be the first major transmission line approved as an economic enhancement in PJM, and the costs and benefits of constructing the project will be subject to annual review under the PJM Operating Agreement.⁴⁰ According to Central Transmission, changes in system conditions, such as changes in load forecasts and fuel prices, could affect the Valley Project's eligibility as an economic enhancement, resulting in significant financial risks if PJM removes the project from a future RTEP due to changes outside of Central Transmission's control. Central Transmission states that the financial risks could number in the millions or even the tens of millions of dollars, depending on when removal occurs.⁴¹ Central Transmission references a 500 kV Branchburg – Hudson line which was removed from the RTEP in October 2010, two years after its original inclusion.

³⁸ Central Transmission Petition at 12 (noting distinguishing factors for PJM's market efficiency project b1153, Conemaugh-Seward 230kV and Conemaugh 500/230kV transformer that has an estimated cost of \$21 million).

³⁹ *Id.* (citing cost support).

⁴⁰ *Id.* at 13 (citing PJM Operating Agreement, Schedule 6, RTEP protocol § 1.5.7(f)).

⁴¹ *Id.* at 14 (noting that risk declines over time while cumulative expenses increase).

33. Central Transmission points out that it will be the first unaffiliated new-entrant transmission developer in PJM and that PJM transmission owners have opposed new entrants in other proceedings. Central Transmission states that it faces additional hurdles and scrutiny associated with applying to be a new public utility in Illinois and obtaining recovery of its costs under the PJM tariff – hurdles that are not faced by incumbent transmission owners.

34. Central Transmission lists several additional permitting and regulatory approvals including a certificate of public convenience and necessity (CPN) from the Illinois Commission, and other approvals from federal and state agencies.⁴² Central Transmission anticipates that the Illinois CPN process may represent a case of first impression, as the Illinois statute was recently amended.

35. According to Central Transmission, these risks are magnified when viewed together. Central Transmission states that it is creating a new transmission utility with oversight and approvals required from the Commission, PJM and the Illinois Commission and other entities. Central Transmission argues that it will lack revenue to cover development costs until the Valley Project is in service, and that as an economic enhancement the project will be reevaluated annually by PJM. According to Central Transmission, the risks described necessitate the limited and tailored rate incentives requested.

b. Comments

36. Illinois Commission asserts that, until a project is included in RTEP, the nexus test cannot be conclusively met and that Central Transmission has not provided any information that would allow the Commission to establish a nexus in the absence of being placed into PJM's RTEP.

c. Commission Determination

37. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate a nexus between the incentives being sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an

⁴² *Id.* at 15 and Attachment 6 (identifying significant reviews, including the United States Fish and Wildlife Service and Army Corps of Engineers; the Illinois Environmental Protection Agency, Department of Agriculture Historic Preservation Agency and Department of Transportation; as well as local and county approvals).

applicant demonstrates that the incentives requested are “tailored to address the demonstrable risks or challenges faced by the applicant.”⁴³

38. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is “routine” to be particularly probative. In *Baltimore Gas & Elec. Co.*, the Commission provided guidance on the factors it will consider when determining whether a project is routine.⁴⁴ The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, or other impediments). The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.⁴⁵

39. Central Transmission has demonstrated that the Valley Project is non-routine, based on its scope, effects, risks, and challenges. The Valley Project, as currently designed, is projected to reduce congestion and eliminate ten-year stage 1A ARR infeasibility issues in the ComEd area, and it is expected to meet PJM’s benefit/cost requirements for economic enhancements.

40. We find that the Valley Project faces significant risks including those posed by potentially being the first transmission line approved as an economic enhancement through PJM’s RTEP process. As an economic enhancement project, the Valley Project faces risks beyond its control even after being accepted by the RTEP process, including changing load forecasts and fuel prices, which could reduce the project’s Benefit/Cost Ratio resulting in its removal from a subsequent RTEP. As Central Transmission argued, if this were to happen late in the development process, this cancellation could result in significant financial losses. We find that Central Transmission faces additional risk as an economic project to be built in PJM being one of the first economic projects to be considered.

⁴³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁴⁴ *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *order denying reh’g*, 123 FERC ¶ 61,262 (2008).

⁴⁵ *Id.* P 54.

41. Central Transmission also faces a number of risks at the federal, state, and local level. These include the difficulties of creating a new public utility because it faces oversight and approvals from this Commission, PJM, the Illinois Commission, and other entities. The Valley Project will also face a variety of permitting and regulatory approvals including a CPN from the Illinois Commission.

42. Central Transmission states that it and PJM may continue to develop variations in the configuration of the Valley Project to optimize the project's benefits and suggests that it intends the requested authorizations to apply to future variations in the Valley Project.⁴⁶ We reiterate that it is the Commission's policy to review each request for incentives on its own merits and on a case-by-case basis.⁴⁷ Although the Commission does not extend a pre-approved authorization for any future project without a specific showing justifying the incentive on a project-by-project basis,⁴⁸ our policies also recognize that there may be changes to a project as it is evaluated through the relevant regional transmission planning and state regulatory processes. In *Pioneer*, we held that such changes will not necessarily alter the basis upon which the Commission granted transmission incentives.⁴⁹ If the Valley Project is modified in a manner that renders invalid the basis for granting the transmission incentives in this order, Central Transmission should seek another declaratory order or seek approval of changes in the subsequent section 205 filing.⁵⁰ Likewise, to the extent it is believed that the Valley Project is modified in a manner that renders invalid the basis for the transmission incentives that we authorize in this order, an entity or the Commission may raise its

⁴⁶ Central Transmission Petition at 8-9 n.19 (stating that Central Transmission is not aware of any potential changes at this time).

⁴⁷ *Pacific Gas & Electric Company*, 123 FERC ¶ 61,067 (2008); *Central Maine*, 125 FERC ¶ 61,079.

⁴⁸ *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,265, at P 51 (2008).

⁴⁹ *Pioneer*, 130 FERC ¶ 61,044 at P 21 (clarifying that project changes developed in a regional transmission planning processes will not necessarily alter the basis for granting incentives).

⁵⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 78 ("If an applicant obtains a declaratory order and the proposal changes from the facts on which the declaratory order was issued, the applicant may seek another declaratory order or wait to seek approval of the changes in the subsequent section 205 filing. In that event, interested parties may challenge the changes in the section 205 proceeding.").

concerns when Central Transmission makes its section 205 filing to establish its rate under the PJM tariff, or in a section 206 proceeding.⁵¹

43. Consistent with Order No. 679, the declaratory finding here rules only on whether Central Transmission's proposal qualifies for incentive-based treatment and the incentives Central Transmission may adopt. Therefore, Central Transmission must seek to put the rates into effect through a separate FPA section 205 filing demonstrating that "the rates in which the applicant seeks to recover any incentives are just and reasonable and not unduly discriminatory."⁵²

44. In addition, the Commission will consider below the specific incentives requested by Central Transmission and, as necessary, address whether there is a nexus between the incentives sought and the investment being made and whether the total package of incentives is tailored to address the risks and challenges faced by the Valley Project.

3. Rate Incentive Requests

a. Deferred Recovery of Pre-Commercial Expenses

45. Central Transmission states that Order No. 679 and FPA section 35.35(d)(i)(viii) support its request for deferred cost recovery of all prudently incurred start-up and development costs, from the project's inception through commercial operation, through the creation of a regulatory asset. Central Transmission indicates that its regulatory asset will include all prudently incurred costs for the relevant time period, including initial feasibility study costs, engineering, consultant and attorney fees, and regulatory approval costs. Central Transmission states that it will begin to book costs to the regulatory asset on the date of the Commission's declaratory order and proposes to accrue carrying charges on the regulatory asset until such time as it is included in rate base at which time the asset will be amortized over five years.⁵³ Central Transmission proposes to calculate carrying charges based on its debt costs and the ROE that is ultimately approved by the Commission. Central Transmission states that the deferred cost recovery is contingent on PJM approving the Valley Project in the RTEP and the Commission approving rates for the Valley Project.

⁵¹ 16 U.S.C. § 824e (2006).

⁵² See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

⁵³ Central Transmission Petition at 16-17 (citing *Green Energy*, 129 FERC ¶ 61,165 at P 40).

46. Central Transmission asserts that its request addresses the unique circumstances of its development of the Valley Project. Central Transmission notes that as a non-incumbent it has no transmission tariff, and thus it cannot currently recover its development costs. Central Transmission states this incentive will provide regulatory certainty, facilitate financing and provide additional assurance to lenders and investors that any prudently incurred costs will be recovered.⁵⁴

47. Central Transmission states that the Commission has approved this incentive in similar circumstances and asserts that the Commission should do so in this instance.⁵⁵ Central Transmission commits to making a section 205 filing for recovery of specific costs under the regulatory asset, consistent with Commission precedent.

i. Comments

48. Consistent with its position discussed above, Illinois Commission asserts that until a project is placed into the RTEP, the nexus standard cannot be prudently determined. Further, only expenses incurred after a nexus has been established should be eligible for recovery. Therefore, Illinois Commission states that ratepayers should bear no risk for expenses incurred by the developer, until a project has been placed into the RTEP. Illinois Commission notes that although Central Transmission requests that its regulatory asset be contingent upon RTEP approval, Central Transmission requests permission to book expenses to the account upon issuance of a declaratory order and seeks to include expenses from the inception of the project.

49. Illinois Commission asserts that the Commission should be more cautious in granting incentives for economic projects due to market variability. Therefore, Illinois Commission objects to including in the regulatory asset pre-commercial expenses that may stem from the need to assess multiple project configurations.

50. Illinois Commission objects to Central Transmission's proposal to establish a five-year amortization period for the regulatory asset with carrying charges, stating that it places an undue burden on ratepayers. Instead, the Illinois Commission argues for one of two previously-approved approaches if the Commission ultimately grants Central Transmission's regulatory asset proposal: (a) permit amortization over a five-year period,

⁵⁴ *Id.* at 17.

⁵⁵ Citing *Green Energy*, 129 FERC ¶ 61,165 at P 41; *Green Power*, 127 FERC ¶ 61,031 at P 59.

but disallow carrying charges,⁵⁶ or (b) require Central Transmission to amortize over a ten-year period with carrying charges.⁵⁷

51. Illinois Commission proposes that Central Transmission calculate any carrying charges based on its cost of debt only, and not based on total return. Illinois Commission states that the Commission needs to balance the risks of abandonment or delay, which Central Transmission itself identifies, to developers and ratepayers in its pre-commercial cost recovery policy. Illinois Commission notes that if the project is placed into RTEP and delayed, carrying charges will continue to accrue and increase the cost of the project to load. Under this scenario, the Illinois Commission notes that the cost to load increases, while any benefits to load are reduced due to the delay of placing the project in-service and that reducing the carrying charge is one way that the burden on load can be minimized.

52. Exelon states that it does not take an opinion on the requested incentives, but requests that the Commission clarify that recovery of pre-commercial costs through a regulatory asset is limited to start-up and development costs that are related to the Valley Project, including approving only a pro-rata share of costs that are attributable to multiple projects.⁵⁸

ii. Answer

53. In response to the Illinois Commission, the Central Transmission asserts that it should be allowed deferred recovery of all prudently incurred pre-commercial expenses, including costs associated with considering potential configurations. According to Central Transmission, the Commission has never placed developers at risk for costs incurred during the planning process and doing so would appear to place independent developers at a disadvantage, because incumbent transmission owners have historically recovered all planning costs for selected and rejected projects alike. Central Transmission claims that the five-year amortization will reduce carrying costs and result in significant savings to consumers, compared to ten years.

⁵⁶ Illinois Commission at 8 (citing *Green Energy*, 129 FERC ¶ 61,165, as approving five-year amortization without carrying charges).

⁵⁷ *Id.* (citing *Green Power*, 127 FERC ¶ 61,031, as approving ten-year amortization with carrying charges).

⁵⁸ Exelon at 12 (noting that Central Transmission's exhibits include presentations that were developed for multiple projects).

54. Central Transmission addresses Exelon's concern that only pre-commercial expenses related to the Valley Project may be recovered through the regulatory asset, and affirms that its Petition relates only to the Valley Project's pre-commercial expenses. Central Transmission also affirms that its section 205 filing for pre-commercial expenses will include a demonstration that all such expenses relate only to the Valley Project.

iii. Commission Determination

55. The Commission grants Central Transmission's request for authorization to establish the regulatory asset, as of the date of this order, conditioned upon the Valley Project being approved in PJM's RTEP as an economic project. Granting this incentive will allow Central Transmission to defer recovery of prudently incurred pre-commercial costs from the project's inception. The Commission finds the incentive is tailored to Central Transmission's risks and challenges because this incentive will provide it with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of Valley Project on reasonable terms.

56. While we conditionally grant Central Transmission's request for authorization to establish the regulatory asset to defer pre-commercial expenses from inception until the regulatory asset is included in rate base, Central Transmission cannot recover the costs deferred as a regulatory asset until it has made its FPA section 205 filing to establish just and reasonable rates. Parties will be able to challenge these costs at that time. Central Transmission will also 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. We clarify that our conditional approval of the regulatory asset incentive in this order is not a Commission assurance that the costs will be recovered in future rates, but only an indication that the Commission may allow the utility's authorized rates to include the relevant costs.⁵⁹

57. We authorize Central Transmission to amortize the regulatory asset over five years, consistent with rate recovery⁶⁰ and conditioned on Central Transmission making the appropriate demonstration that PJM approved the Valley Project for inclusion in the RTEP. We disagree with the Illinois Commission's contention that the five-year amortization period may create an undue burden on ratepayers. The Commission has

⁵⁹ See *Pioneer*, 130 FERC ¶ 61,044 at P 28 (citing *Illinois Power Co.*, 87 FERC ¶ 61,028).

⁶⁰ See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 59; *Primary Power*, 131 FERC ¶ 61,015 at P 117.

approved five-year amortization periods in similar circumstances.⁶¹ In light of this precedent finding a five-year amortization period was just and reasonable in other cases, Illinois Commission has failed to demonstrate why the five-year amortization period in this project would be more burdensome for this project compared to other projects of equivalent or larger size.

58. Central Transmission requests approval to accrue carrying charges on the regulatory asset based on Central Transmission's actual cost of debt and the overall ROE that the Commission ultimately approves for the Project. Consistent with its proposal, we approve Central Transmission's request to accrue a carrying charge on the regulatory asset from the date of this order until the regulatory asset is included in rate base. The Commission has previously approved use of a carrying charge based on debt costs and ROE.⁶² Central Transmission is directed to record the carrying charges on the regulatory asset by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-operating Income, consistent with the Commission's accounting requirements.⁶³ Once Central Transmission begins to recover the regulatory asset in rate base as part of its revenue requirement, it will earn a return on the unamortized balance of the regulatory asset and, therefore, must stop accruing carrying charges at that time.⁶⁴

59. As for Illinois Commission's position that the costs be limited to those incurred after approval in RTEP, the Commission's policy is that a regulatory asset may be established to recover costs based on a demonstration that the costs at issue are both unrecoverable in existing rates and that it is probable that such costs will be recoverable in future rates.⁶⁵ Thus, RTEP approval in itself does not determine which costs may be

⁶¹ See, e.g., *Primary Power*, 131 FERC ¶ 61,015 at P 115 (approving amortization of pre-commercial costs over five years); *Green Energy*, 129 FERC ¶ 61,165 at P 41; *Tallgrass*, 125 FERC ¶ 61,248 at P 63.

⁶² See, e.g., *Primary Power*, 131 FERC ¶ 61,015 at P 111, 117 (approving five-year amortization period and carrying charges based on cost of capital, including ROE).

⁶³ *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, Order No. 552, 58 FR 17982 (April 7, 1993), FERC Stats. & Regs. ¶ 30,967, at 30,825 (1993).

⁶⁴ See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 60; *Pioneer*, 126 FERC ¶ 61,281 at P 84.

⁶⁵ *Midwest Independent Transmission System Operator*, 104 FERC ¶ 61,012, at P 29 (2003) (citing the Commission's Uniform System of Accounts, 18 C.F.R. Part 101, Account No. 182.3).

included in the regulatory asset, and Central Transmission may include historic costs in its regulatory asset beginning as of the date of this order and including costs incurred prior to RTEP approval, subject to making the appropriate demonstration.

b. 30-year Depreciable Life for Rate Recovery

i. Central Transmission's Proposal

60. Central Transmission requests permission to use a 30-year depreciable life for rate recovery of its Valley Project. Central Transmission defends its request to use a depreciable life that is less than the estimated useful life of the project, noting that it is not requesting the 15-year accelerated depreciation permitted by Order No. 679. Central Transmission chooses the 30-year depreciable life to align depreciation cash flow with the cash flow needed to amortize its debt. According to Central Transmission, it plans to finance the project on a non-recourse basis, and 30 years is the maximum term available.

61. Central Transmission asserts that the requested depreciable life will ensure that debt can be retired without the use of equity funds. Central Transmission claims that, because the Valley Project is its only asset, failure to align the depreciation schedule with the debt amortization schedule will affect the project more than a project that is part of a larger rate base. Central Transmission cites the risk that meeting debt obligations will consume funds that could otherwise be used to return capital to equity investors, and asserts that such use will raise the cost of equity and may create a disincentive for equity investment. According to Central Transmission, the 30-year depreciable life will ensure that cost incurrence and revenue recovery are properly synchronized. Also, Central Transmission also notes that, should longer term financing become available, the interest rate on a 30-year loan would be lower than the longer term financing.

ii. Commission Determination

62. The Commission finds that the 30-year depreciable life requested by Central Transmission is reasonable, conditioned upon the Valley Project being approved in PJM's RTEP as an economic project. We find that Central Transmission's proposed approach is reasonable in the context of rate recovery for a single asset and will ensure a constant revenue stream.⁶⁶ Specifically, Central Transmission has demonstrated the need to synchronize the cost incurrence and its revenue recovery in order to ensure a cash flow

⁶⁶ The Commission has approved capital cost recovery periods that were less than the physical life of the facilities. *See, e.g., Citizens Energy Corp.*, 129 FERC ¶ 61,242, at P 23 (2009) (approving 30-year levelized fixed rate of recovery of capital requirements); *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008) (finding a 15-year accelerated-depreciation schedule to be appropriate).

to cover the principal payments of its debt. We also agree with Central Transmission's statement that in the current market, the financing of the Project over 30 years is an acceptable cost alternative and will result in significant savings for consumers through lower financing costs. We note that no party has protested the requested incentive to use a 30-year depreciable life for cost recovery of the Valley Project.

63. For accounting purposes, Central Transmission is required to depreciate its Valley Project over its economic service life in a systematic and rational manner and separately recognize as a regulatory liability in Account 254, Other Regulatory Liabilities, any difference between depreciation expense recognized for accounting purposes and depreciation expense included in the development of rates. This accounting treatment is consistent with requirements of the Commission's Uniform System of Accounts,⁶⁷ Order No. 552,⁶⁸ and Order No. 679.⁶⁹

c. Recovery of Abandoned Project Cost

i. Central Transmission's Proposal

64. Central Transmission requests that it be permitted to recover 100 percent of prudently incurred costs, including pre-commercial expenses and construction costs, if the Valley Project is abandoned due to an event beyond of its control, after approval in the RTEP as an economic project. Central Transmission notes that it bears all risk of failure to meet the economic thresholds to be designated as a market efficiency project or be found to resolve the ten-year stage 1A ARR infeasibility issues. Central Transmission asserts that if PJM approves and designates it to develop the project, it is appropriate to shift the risk to the expected beneficiaries of the line.

65. Central Transmission cites Order No. 679 for the holding that recovery of abandoned plant costs is an "effective means to encourage transmission development by reducing the risks of non-recovery of costs."⁷⁰ Central Transmission asserts that it faces substantial abandonment risk because it must obtain multiple regulatory approvals, described above, and because RTEP economic enhancements face the risk of cancellation or modification if market fundamentals change.⁷¹ Thus, Central Transmission states that

⁶⁷ 18 C.F.R. Part 101.

⁶⁸ Order No. 552, FERC Stats. & Regs. ¶ 30,967.

⁶⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 153.

⁷⁰ *Id.* P 163.

⁷¹ *See* Central Transmission Petition at 13, 18.

the Valley Project faces the risk of PJM re-evaluating the Valley Project and removing it from the RTEP due to unforeseen changes, even if it acquires the required permits and approvals.

66. Central Transmission asserts that it would be difficult to commit its investors' equity and its resources to the Valley Project, even after designation by PJM, without assurance of recovery of project costs in the event of cancellation for reasons beyond its control. Central Transmission requests that the Commission permit it to recover 100 percent of prudently incurred costs if the Valley Project must be abandoned due to forces outside of Central Transmission's control, after PJM has designated it to build the project.⁷² Central Transmission commits to making a section 205 filing prior to recovery of any abandoned plant costs, consistent with Commission precedent.⁷³

ii. Comments

67. Illinois Commission believes that the request for approval of abandonment costs is premature, because Central Transmission is seeking incentive rates for an economic project, which faces an increased risk of abandonment compared to a reliability project.⁷⁴ Illinois Commission asserts that the abandonment cost incentive shifts risk to ratepayers, who may be in no better position to bear it than the developer.

68. According to the Illinois Commission, there are only two limits on Central Transmission's ability to recover costs in the event of abandonment, an after the event prudence review and a determination that abandonment occurred due to events outside of Central Transmission's control. Illinois Commission notes that there is no discussion in the Petition as to what costs will be deemed prudent and what events will be considered out of Central Transmission's control.

69. According to the Illinois Commission, deferring the establishment of limits on the abandonment incentive until a subsequent section 205 filing exposes an excessive amount of risk on ratepayers. Illinois Commission acknowledges that the Commission's practice is to approve abandonment in prior incentive rate requests, but states that without additional clarity it would not be just and reasonable to approve abandoned cost recovery.

⁷² Central Transmission Petition at 19 (citing *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007), *reh'g denied*, 123 FERC ¶ 61,293 (2008); *Tallgrass*, 125 FERC ¶ 61,248).

⁷³ See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

⁷⁴ Illinois Commission at 9.

70. Illinois Commission cites several rate issues related to determining abandonment costs, such as credit for resale proceeds and prudence of obtaining insurance. Based on these concerns, Illinois Commission requests that the Commission not grant Central Transmission's request for abandonment at least until there is a better definition of the type of costs that are deemed prudently incurred or what events are judged outside of Central Transmission's control.

iii. Answer

71. Central Transmission responds to Illinois Commission and indicates that any discussion of the circumstances surrounding abandonment is speculative. Central Transmission asserts that the Commission's policy is to evaluate requests for recovery of abandonment costs on a case-by-case basis at the time of abandonment.

iv. Commission Determination

72. The Commission grants the requested incentive, conditioned upon the Valley Project being approved in PJM's RTEP as an economic project. As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁷⁵ The Commission finds that Central Transmission has demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. The Commission agrees with Central Transmission that, even after initial RTEP approval, the Valley Project faces risks outside of its control. These risks, both commercial and regulatory, are not insubstantial. Furthermore, Central Transmission has already incurred development costs in the design of this project. Approval of the abandonment incentive will both attract financing to this project, and protect Central Transmission from further losses if the project should be cancelled for reasons outside its control. Thus, the Commission will grant Central Transmission's request for recovery of 100 percent of prudently incurred costs associated with the Valley Project in the event of abandonment, provided that the abandonment is a result of factors beyond Central Transmission's control, which must be demonstrated in any subsequent FPA section 205 filing for recovery of abandoned plant.⁷⁶

73. The Commission will not determine the justness and reasonableness of Central Transmission's abandoned plant recovery, if any, until Central Transmission seeks such recovery in a FPA section 205 filing.⁷⁷ Order No. 679 specifically reserves the prudence

⁷⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

⁷⁶ *Id.* P 165-66.

⁷⁷ *Primary Power*, 131 FERC ¶ 61,015 at P 124.

determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.⁷⁸ We note that, should the project be cancelled before it is completed, it is unclear whether Central Transmission will have any customers from which to recover its abandonment costs. At such time, Central Transmission will be required to demonstrate in its section 205 filing that abandonment was beyond its control, provide for rate authorization consistent with the PJM tariff allowing for recovery of abandonment costs that were prudently incurred, and propose a rate and cost allocation method to recover the costs in a just and reasonable manner.⁷⁹

74. We deny the Illinois Commission's requests to either put additional limits on the requested abandonment incentive or deny the incentive without a better definition of what costs are considered prudently incurred. The Commission has regularly granted the abandonment incentive in other cases, conditioned upon approval of the project in the regional planning process, without additional limits. As indicated, the Commission's policy is not to prejudge the prudence of costs prior to a section 205 filing to review those costs.

d. RTO Participation Adder

i. Central Transmission's Proposal

75. Central Transmission requests a 50-basis point incentive rate adder to its ROE upon becoming a PJM member.⁸⁰ Central Transmission intends to become a PJM transmission owner under the Transmission Owners Agreement and will turn over operational control of the Valley Project to PJM. Central Transmission agrees as a policy matter that transmission companies should actively participate in the transmission planning process and indicates that it takes its RTO participation responsibilities seriously. Central Transmission notes that the LS Power Group has been actively participating in the PJM Transmission Expansion Advisory Committee discussions for almost two years.

76. According to Central Transmission, the Valley Project will be the first major transmission line project approved by PJM as an economic enhancement or to resolve stage 1A ARR infeasibility issues. In addition, Central Transmission asserts that it will

⁷⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 165-66.

⁷⁹ See *Pioneer*, 130 FERC ¶ 61,044 at P 27; *Green Power*, 127 FERC ¶ 61,031 at P 52.

⁸⁰ Central Transmission requests no other ROE adders and affirms that its request is contingent on the resulting ROE being within the zone of reasonableness.

be the first non-incumbent owner of a transmission line in PJM operating at cost of service rates. Central Transmission claims that the project will provide substantial benefits to consumers that would not be possible without Central Transmission joining the RTO structure.

77. In light of its development risks and competition for capital and resources from other projects, including other RTO transmission projects, Central Transmission notes that it is not seeking other ROE adders, such as for being an independent transmission company, or Transco, or a project specific adder, stating that the RTO-membership adder will assist it in attracting equity for the Valley Project.

ii. Commission Determination

78. Central Transmission has stated that it intends to turn over operational control of the Valley Project to PJM, and that it will become a Participating Transmission Owner. In Order No. 679, the Commission stated that we would authorize incentive-based rate treatment for public utilities that are or will continue to be members of Regional Transmission Organizations.⁸¹ Therefore, provided that the Valley Project is included in the RTEP as discussed above and Central Transmission takes all the necessary steps to turn over operational control of the Valley Project to PJM and becomes a Participating Transmission Owner, the Commission grants Central Transmission's requested 50 basis point adder for RTO participation. We note that no party has protested the requested incentive for a 50 basis point ROE incentive adder for RTO participation for the Valley Project.

79. Incentive-based ROEs, like other incentives offered under Order No. 679, are to be filed with the Commission for approval in a section 205 filing before the rates reflecting such incentives can be charged.⁸² Accordingly, our determination here is subject to Central Transmission's overall ROE being within the zone of reasonableness, to be determined when it makes its future FPA section 205 filing.

⁸¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. *See also Green Power*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

⁸² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77-79.

e. **Total Package of Incentives**

i. **Central Transmission's Proposal**

80. Throughout its petition, Central Transmission stresses that it has declined to seek other incentives that are available and that its individual requests are tailored to meet the risks faced by the project. Central Transmission states that it has tailored its request to the minimum package of incentives needed given the risks and challenges faced by the Valley Project, consistent with ensuring just and reasonable rates.⁸³

ii. **Commission Determination**

81. The Commission has stated that in evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between any incentives, and how any requested incentives address the demonstrable risks and challenges faced by the applicant in constructing the project.⁸⁴ This test is fact-specific and requires the Commission to review each application on a case-by-case basis.

82. The Commission finds that the total package of incentives and the inter-relationship of the requested incentives is tailored to address the demonstrable risks and challenges faced by Central Transmission, as a non-incumbent utility, in developing the Valley Project as an economic enhancement for inclusion in the PJM RTEP. The regulatory asset incentive will allow for deferred recovery of the pre-commercial expenses and provide Central Transmission with up-front regulatory certainty, rate stability, and improved cash flow, thereby easing pressures on its finances caused by transmission development activities. Furthermore, approval of recovery of pre-commercial expense, including carrying charges, will provide regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the project on reasonable terms. Likewise, the 30-year depreciable life will facilitate financing and is tailored to available credit terms. The abandonment incentive will encourage transmission development by reducing the risks of non-recovery of prudently incurred costs associated with abandoned transmission projects if such abandonment is outside the developer's control. Finally, the 50-basis point RTO participation adder is an appropriate means to encourage parties to join and participate in an RTO and will

⁸³ Central Transmission Petition at 22.

⁸⁴ 18 C.F.R. § 35.35(d); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 (“the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project”).

facilitate Central Transmission's ability to raise capital. The overall ROE will be bound by the upper end of the zone of reasonableness to be determined when Central Transmission makes its future FPA section 205 filing and is conditioned on the Valley Project's approval in the RTEP as discussed above.

4. Cost and Formula Rate Issues

83. In addition to its requests for rate incentives, Central Transmission requests authorization to recover its costs through a forward-looking formula rate that will track its costs on an estimated basis, rather than historic costs. Central Transmission proposes to rely on cost and load projections, subject to an annual true-up with interest using FERC Form No. 1 data. Central Transmission states that it will file its rate, which will feature comprehensive rate update protocols used in existing PJM transmission rates.⁸⁵ Central Transmission explains that, because the Valley Project will constitute all of its rate base, it and its equity investors are subject to greater risk of "regulatory lag," due to a mismatch in costs and rates. According to Central Transmission, reducing this lag will improve its financial position, reduce risk and lower the cost of financing.

84. Central Transmission cites Commission orders as approving forward-looking formula rates, subject to true up, as a reasonable method to avoid a lag in cost recovery, while protecting consumers by ensuring that they pay actual costs, and requests that the Commission authorize its use of a forward-looking formula rate.⁸⁶

i. Comments

85. Exelon objects to Central Transmission's request for approval to use a forward-looking formula rate, because the rate has not been filed for review.

ii. Commission Determination

86. As discussed above, the Commission authorizes incentives for Central Transmission's proposed project under section 219 of the FPA and Order No. 679. Our decision in this declaratory order is confined to the particular incentives being approved in the instant proceeding and does not constitute approval of any particular rate.

⁸⁵ According to Central Transmission, these protocols address implementation issues, such as timing of rate updates, cost support, posting on the PJM website, submittal of an informational filing and contact information.

⁸⁶ Central Transmission Petition at 23 (citing *Michigan Electric Transmission Co., LLC*, 117 FERC ¶ 61,314, at P 17 (2006); *International Transmission Company*, 116 FERC ¶ 61,036, at P 19 (2006)).

87. In Order 679-A, the Commission clarified that an independent transmission company could apply for multiple incentives, including for a formula rate.⁸⁷ The Commission has granted this incentive to applicants that have demonstrated, through tariff provisions, that their proposed formula rate is just and reasonable.⁸⁸ In this case, Central Transmission requests approval for the use of a cost of service formula rate structure without tariff provisions or any demonstration that the formula rate will be just and reasonable. Accordingly, we deny Central Transmission's request for approval for the use of a formula rate at this time but note that Central Transmission may make a filing under section 205 in the future to request approval of a specific formula rate. The justness and reasonableness of any such rate will be determined through a future FPA section 205 proceeding.⁸⁹

The Commission orders:

Central Transmission's Petition is granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸⁷ Order 679-A, FERC Stats. & Regs. ¶ 31,236 at P 71 n.108.

⁸⁸ See, e.g., *Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 3 (2010) ("On December 28, 2007, PATH filed proposed tariff sheets with the Commission, pursuant to section 205 of the Federal Power Act, to be included in PJM Interconnection, L.L.C.'s Open Access Transmission Tariff. The tariff sheets sought to implement a transmission cost of service formula rate and incentive rate authorizations for the Project.").

⁸⁹ See, e.g., *American Electric Power Service Corp.*, 116 FERC ¶ 61,059, at P 26-28 (2006).