

125 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Maine Power Company
and
Maine Public Service Company

Docket No. EL08-77-000

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER

(Issued November 17, 2008)

1. Central Maine Power Company (Central Maine) and Maine Public Service Company (MPS) (collectively, Petitioners) filed a petition for declaratory order requesting that the Commission authorize transmission rate incentives pursuant to Order No. 679¹ for the planned Maine Power Connection Project (Project). Specifically, Petitioners request a 150 basis point return on equity (ROE) adder and guaranteed recovery of prudently incurred costs if the Project is abandoned in whole or in part as a result of factors beyond their control (abandonment). For the reasons discussed below, we conditionally grant the petition, subject to ISO New England Inc. (ISO New England) approving the project in its Regional System Plan² as a Market Efficiency Transmission

¹ *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).

² Petitioners make an alternative request that the Commission interpret the Transmission Operating Agreement between ISO New England and participating Transmission Owners to provide that they (assuming MPS joins ISO New England) are entitled to abandonment if the Project is included in the Regional System Plan. Because we find that the Project qualifies for abandonment under Order No. 679, we decline to interpret the Transmission Operating Agreement.

Upgrade (Market Efficiency Upgrade)³ and subject to Petitioners submitting a subsequent filing explaining how designation as a Market Efficiency Upgrade satisfies the incentive eligibility requirement of section 219 of the Federal Power Act (FPA).⁴

I. Petition

A. Background

2. The northern Maine transmission system is currently connected to ISO New England only indirectly, through the New Brunswick, Canada transmission system.⁵ In March 2007, Petitioners and ISO New England initiated a study evaluating the feasibility of constructing a transmission project that would connect the MPS system to southern Maine and ISO New England, facilitate the delivery to ISO New England of approximately 800 MW of wind power from the proposed Aroostock Wind Energy Project in northern Maine, and create a new connection between northern Maine and Eastern Canada. Based on the preliminary findings of the feasibility study, Petitioners proceeded with a more detailed analysis of a possible transmission line from Limestone, Maine to a Central Maine interconnection near Detroit, Maine. The instant Project is the result of their studies.

B. Description of the Project

3. The planned Project consists of approximately 200 miles of new 345 kV transmission line with a standard cleared corridor width of 170 feet, the construction of five new substations, and upgrades to two existing substations.⁶ Petitioners expect that the Project will cross 39 Maine municipalities, utilize existing rights-of-way, require the acquisition of property rights over approximately 596 parcels of land, and affect 116

³ A Market Efficiency Upgrade is an upgrade “designed primarily to provide a net reduction in total production cost to supply the system load.” ISO New England designates an upgrade as a Market Efficiency Upgrade when “the net present value of the net reduction in total cost to supply the system load . . . exceeds the net present value of the carrying cost of the identified transmission upgrade.” ISO New England Open Access Transmission Tariff (OATT) at Attachment N, Sheet Nos. 6619-6620.

⁴ 16 U.S.C. § 824s (2006).

⁵ There is a 25 mile gap between the MPS lines in Houlton, Maine and the ISO New England lines in Haynesville, Maine. MPS is a member of the Northern Maine Independent System Administrator rather than ISO New England.

⁶ Joint Petition for Incentives at 14 (Petition).

inhabited dwellings within 300 feet of the proposed route. Petitioners estimate that the Project will cost \$625 million, with approximately \$440 million associated with the transmission line and \$185 million associated with the substations.⁷ Petitioners estimate that the Project's overall costs will be allocated 70 percent to Central Maine and 30 percent to MPS.⁸ Petitioners expect that construction will begin in June 2009 and estimate an in-service date of November 2010 for the Project's first phase and 2012 for its second and final phase.⁹ Petitioners plan to continue studying a possible extension that could create a third high-voltage line to Eastern Canada, an area with significant new wind generation and hydroelectric resources currently in the early stages of development.¹⁰

4. Petitioners state that they are seeking to include the Project in the ISO New England Regional System Plan as a Market Efficiency Upgrade, which would result in allocation of its costs across ISO New England. Petitioners explain that the Project would be the first project designated as a Market Efficiency Upgrade. Petitioners state that, pursuant to its rules, ISO New England has convened an Economic Studies Process Working Group (Working Group) to review the economic factors and modeling assumptions to be considered in evaluating proposed Market Efficiency Upgrades, determine how to prioritize and conduct economic studies under the ISO New England OATT, and evaluate the Project to determine whether it qualifies as a Market Efficiency Upgrade. Petitioners assert that the Working Group's preliminary analysis included a range of estimated energy production cost savings and encouraged Petitioners to proceed with the Project's development. Petitioners state that they retained La Capra Associates as economic consultants as part of the Working Group process, and that their report concluded that the Project will reduce wholesale market prices across regional markets (with the largest effects in Maine), lower energy costs to Maine customers by \$189 million (with \$21 million in northern Maine), generate renewable compliance savings of \$47 million (including \$3.5 million in Maine), and generate production cost savings of

⁷ *Id.*

⁸ The costs are broken down as follows: (1) development costs will be allocated 90 percent to Central Maine and 10 percent to MPS; (2) the first \$100 million in construction costs will be split evenly between Central Maine and MPS; (3) the next \$300 million of construction costs will be allocated 77 percent to Central Maine and 23 percent to MPS; and (4) the remainder of the Project costs will be allocated 70 percent to Central Maine and 30 percent to MPS.

⁹ *Id.* at 15.

¹⁰ *Id.*

\$100 million per year (based on ISO New England's Attachment N methodology of \$1 billion for the first ten years). Petitioners state that they will continue participating in the Working Group Process with the goal of including the Project in the October 2008 Regional System Plan as a Market Efficiency Upgrade.

C. Requested Incentives

1. 150 Basis Point ROE Adder

5. Petitioners request that the Commission authorize a 150 basis point ROE adder to offset the financial risks and regulatory challenges faced by the Project. Petitioners contend that their anticipated \$625 million investment in the Project represents a substantial financial commitment for companies of their size and financial resources and creates significant financial risks. For example, Petitioners note that the Project's cost will be six times the average cost of investment made by Central Maine over the last five years and 70 times the average cost of investment made by MPS over the last seven years.¹¹ Petitioners also state that the Project's cost is 1.3 times Central Maine's current transmission plant-in-service and 10 times MPS's current transmission plant-in-service. Petitioners claim that an ROE incentive will help them to obtain financing, preserve their credit quality, and encourage investment in the Project.

6. Petitioners argue that their requested ROE incentive is consistent with precedent and necessary to promote the valuable reliability and economic benefits that the Project will bring to Maine and New England.¹² Petitioners contend that the Project has a greater scope, both absolutely and in relation to their size, than the projects at issue in *BG&E*¹³ and *Duquesne*,¹⁴ where the Commission authorized ROE adders of 100 basis points. Petitioners acknowledge that in *PPL*¹⁵ the Commission authorized an ROE adder of 125 basis points rather than the requested 150 basis points, but argue that they are facing

¹¹ *Id.* at 72.

¹² *Id.* at 71.

¹³ *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) (July BG&E Order), *reh'g denied*, 122 FERC ¶ 61,034 (2008); 121 FERC ¶ 61,167 (2007) (November BG&E Order), *reh'g denied*, 123 FERC ¶ 61,262 (2008) (collectively, *BG&E*).

¹⁴ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (*Duquesne*).

¹⁵ *PPL Elec. Utils. Corp.* 123 FERC ¶ 61,068, *reh'g denied*, 124 FERC ¶ 61,229 (2008) (*PPL*).

significant risks and challenges warranting a higher adder. For example, Petitioners cite the relative value of their investment in relation to their existing transmission plants in service, the Project's size, the siting risks associated with a 200 mile transmission line traversing approximately 39 municipalities, the possibility that the Maine Public Utilities Commission (Maine Commission) may require Maine transmission owners to withdraw from ISO New England, and disruptions in the financial market.¹⁶ Petitioners also state that MPS's present equity market capitalization is under \$75 million, and that it will more than likely be doubled as MPS raises equity capital for the Project. Petitioners argue that this is a significant risk which requires the 150 basis point adder in order to attract equity investors. In addition, Petitioners claim that MPS's debt capitalization for the Project is a significant risk.¹⁷

7. Finally, Petitioners argue that if the Commission authorizes a 150 basis point ROE adder, their resulting ROEs will be just and reasonable. Petitioners state that Central Maine currently has an ROE of 11.64 percent and MPS currently has an ROE of 10.5 percent. Petitioners explain that because MPS plans to join ISO New England once the Project is placed into service, MPS's ROE will automatically increase from 10.5 percent to the standard ISO New England ROE of 11.64 percent.¹⁸ Consequently, Petitioners state that authorizing the proposed 150 basis point ROE adder will result in both utilities having an ROE of 13.14 percent.¹⁹ Petitioners assert that a final ROE of 13.14 percent is below the 13.84 percent upper end of the zone of reasonableness²⁰ authorized for New England Transmission Owners in Opinion No. 489.²¹ Petitioners also note that in Order No. 679 the Commission indicated that it would allow ROEs at the upper end of the zone of reasonableness in order to encourage utilities to build needed transmission.²²

¹⁶ Petition at 73.

¹⁷ *Id.* at 73-74.

¹⁸ *Id.* at 70.

¹⁹ *Id.* at 69.

²⁰ *Id.* at 70.

²¹ *Bangor Hydro-Electric Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh'g*, 122 FERC ¶ 61,265 (2008) (Opinion No. 489 Rehearing Order).

²² Petition at 74.

2. Abandonment

8. Petitioners request recovery of 100 percent of prudently incurred costs in the event that the Project is abandoned as a result of factors beyond their control. Petitioners state that there are numerous costs that they must incur before they can determine whether the Project is feasible from a siting, environmental, financial, and technological perspective, and that in 2008 and 2009 they expect to spend approximately \$11 million in pre-construction costs. Petitioners assert that the Project faces many risks because they are in the early stages of receiving regulatory approvals, obtaining necessary permits, negotiating for rights-of-way, and considering advanced technologies. Additionally, Petitioners state that there is a significant risk that the Project will be abandoned if it is not included in the Regional System Plan as a Market Efficiency Upgrade.²³ Petitioners also state that they face the risk that either of them will decide to exit the joint venture.

9. Petitioners argue that authorizing abandonment will allow them to hedge some of their substantial and unique risks by encouraging investment in the Project. Petitioners explain that because of the Project's multi-year lead time, investors will ascribe an incremental return requirement to their overall required rate of return as compensation for the risk that the Project could be abandoned. Petitioners argue that if the Commission provides assurances that invested capital will be protected against unforeseen risks during construction, investors' return requirements will be less due to decreased risk.²⁴

D. Eligibility for Incentives

10. Petitioners acknowledge that in order to receive incentives under Order No. 679 they must meet the eligibility requirement of section 219 by showing that the Project either ensures reliability or reduces the cost of delivered power by reducing transmission congestion. Petitioners further acknowledge that in addition to satisfying the section 219 requirement, they must also show that there is a nexus between the incentive sought and the investment being made and that the total package of incentives requested is tailored to address the demonstrable risks and challenges faced in undertaking the Project.

1. Section 219 Requirement

11. Petitioners claim that the Project is presumptively eligible for incentives under section 219. Petitioners acknowledge that the Project has not yet received final Regional System Plan approval as a Market Efficiency Upgrade or confirmation from ISO New

²³ *Id.* at 77.

²⁴ *Id.* at 77-78.

England that it will reduce congestion or ensure reliability. However, Petitioners state that the Project is being planned and will be approved through the Regional System Plan, which is a fair and open regional planning process. Petitioners state that the Commission has previously indicated that it will consider incentives for projects still undergoing a regional planning process and make any authorized incentive contingent on the project receiving final regional approval.

12. Petitioners also argue that the Project is presumptively eligible for incentives because they have submitted an application for a Certificate of Public Convenience and Necessity to the Maine Commission. Petitioners estimate that the approval process will take more than a year to complete. However, Petitioners state that in Order No. 679-A the Commission provided for the possibility that it would authorize incentives before state proceedings were completed, and that it in *Xcel*²⁵ it authorized incentives before the completion of the Certificate of Public Convenience and Necessity proceeding.

2. Order No. 679 Nexus Requirement

13. Petitioners state that the Commission has clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant, and that in evaluating whether the applicant has met this test the Commission has found the question of whether a project is “routine” to be particularly probative.²⁶ Petitioners note that in considering whether a project is routine the Commission stated that it will consider all relevant factors presented by the applicant, including the project’s scope, effect, and the challenges or risks faced by the project.²⁷

a. Scope

14. Petitioners state the Project’s size and scope are significant because it involves building approximately 200 miles of new 345 kV transmission line across 39 municipalities, constructing five new substations, and upgrading two existing substations. Petitioners estimate that the Project will cost \$625 million, \$440 million of which is attributable to the transmission line and \$185 million to the substations.²⁸ Petitioners

²⁵ *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 53 (2007) (*Xcel*).

²⁶ Petition at 56 (citing *PPL*, 123 FERC ¶ 61,068 at P 31).

²⁷ *Id.* at 56-57 (citing July BG&E Order, 120 FERC ¶ 61,084 at P 54).

²⁸ Petitioners estimate that the Project’s overall costs will be allocated 70 percent (\$441 million) to Central Maine and 30 percent (\$184 million) to MPS.

state that the Project's estimated cost is 1.3 times Central Maine's current transmission plant-in-service and 10 times MPS's current transmission plant-in-service.²⁹ Petitioners also note that the Project will be six times the average cost of investment made by Central Maine over the last five years and 70 times the average cost of investment made by MPS over the last seven years.³⁰ Finally, Petitioners note that they are voluntarily undertaking the Project.

b. Effects

15. Petitioners state the Project will provide the first direct connection between northern Maine and ISO New England, thus ending northern Maine's dependence on its interconnection with New Brunswick to reach markets in the United States. Petitioners also assert that the Project will provide the additional transfer capability to export wind generation from the Aroostock Wind Energy Project.³¹

16. Petitioners claim that the Project will benefit northern Maine because it will eliminate supply market problems by allowing load-serving entities that are interested in participating in the northern Maine market to obtain power from numerous sources within New England and Eastern Canada. Petitioners also claim that the Project will enhance system reliability by supplementing existing transmission ties with New Brunswick and by ending northern Maine's dependence on the continued operation of several wood-fired power plants; provide access to additional supply; provide generators in northern Maine with direct access to the ISO New England market; aid the northern Maine economy by permitting the development of wind generation, which will create jobs, tax revenue, and lease payments to farmers;³² and facilitate the interconnection of the Aroostock Wind Energy Project and the delivery of its wind energy to ISO New England.³³

17. Petitioners also assert that the Project will benefit the New England region because it will provide new transmission capacity to access diverse resource generation in northern New England,³⁴ reduce the level and volatility of electricity prices throughout

²⁹ *Id.* at 34, 57.

³⁰ *Id.* at 72.

³¹ *Id.* at 35.

³² Petitioners estimate that the Project alone will generate \$13.3 million per year in new property tax revenues. *Id.* at 36.

³³ *Id.* at 35-36.

³⁴ *Id.* at 36.

New England by providing access to markets for more non-gas generation, lower energy supply costs by introducing 800 MW of wind energy from the Aroostock Wind Energy Project, enhance reliability by integrating hundreds of megawatts of new, renewable supply directly into ISO New England, increase New England's fuel diversity and reduce its over-dependence on natural gas, and provide closer energy ties with eastern Canada.³⁵ Petitioners also state that the Project has the potential to provide access to 3,000 MW of hydroelectric power under development in Quebec and 5,000 - 7,000 MW of new hydroelectric and wind power under development in New Brunswick/Newfoundland and Labrador.³⁶

18. Petitioners further state that the Project will serve as a valuable complement to Central Maine's Maine Power Reliability Program Project³⁷ and advance important state and regional policy objectives regarding the use of renewable resources. Petitioners explain that because the Project will facilitate the development of at least 800 MW of wind capacity, it will help Maine meet the requirements of its renewable portfolio standard³⁸ and achieve its legislatively mandated goal of 2,000 MW of installed wind capacity by 2015 and 3,000 MW by 2020. Petitioners also state that the Project will help New England meet its Regional Greenhouse Gas Initiative objectives.³⁹

c. Risks and Challenges

i. Siting and Regulatory

19. Petitioners argue that they face difficult siting challenges because, in addition to a Certificate of Public Convenience and Necessity from the Maine Commission, they must receive siting authority and permits from multiple Maine municipalities. Petitioners explain that the Project's preferred route is expected to cross approximately 39 Maine

³⁵ *Id.* at 36-37.

³⁶ *Id.* at 4.

³⁷ This project is the subject of the proceeding in Docket No. EL08-74-000. Petitioners state that that benefits of the Project identified in ISO New England's preliminary analysis assume that the Maine Power Reliability Program Project is sufficiently in service by January 1, 2013.

³⁸ *Id.* at 38.

³⁹ *Id.* The Regional Greenhouse Gas Initiative is a cap-and-trade program for carbon dioxide emissions.

municipalities,⁴⁰ many of which must approve the Project.⁴¹ Petitioners also state that they must acquire property rights over approximately 596 parcels of land and identify and purchase land or easements for new corridors.

20. In addition to approval from the Maine Commission and Maine municipalities, Petitioners state that they must receive approval from the Maine Department of Environmental Protection, the United States Army Corps of Engineers, and the United States Fish and Wildlife Service. Petitioners state that they will file for these approvals in late 2008 or early 2009.⁴²

21. Petitioners also argue that the regional planning process presents a unique challenge because it is uncertain whether the Project will be included in the Regional System Plan as a Market Efficiency Upgrade, which would qualify it for region-wide cost allocation. Petitioners explain that the Project is the first project seeking designation as a Market Efficiency Upgrade, and that it has met with opposition from stakeholders. Petitioners state that they are currently working through the stakeholder process with ISO New England, and that ISO New England has delayed the Working Group's scheduled completion of its economic analysis of the Project in order to provide a forum for stakeholders to raise their objections and concerns.⁴³

22. Finally, Petitioners argue that the possibility that Maine will withdraw from ISO New England presents substantial and unique risks. Petitioners contend that Maine's withdrawal from ISO New England would create uncertainty about the Project's continued economic viability and the treatment of costs attributable to the Project. Petitioners claim that if Maine withdraws from ISO New England, MPS will not join ISO New England, which would affect allocation of the Project's costs.⁴⁴

ii. Construction and Engineering

23. Petitioners state that they must operate under an aggressive development and construction schedule in order to complete the Project's first phase and begin delivering

⁴⁰ *Id.* at 39.

⁴¹ Petitioners state that if they are unable to acquire every necessary local approval, they may request that the Maine Commission preempt the local siting requirements. *Id.* at 39-40.

⁴² *Id.* at 39-40.

⁴³ *Id.* at 40-41.

⁴⁴ *Id.* at 41-42.

the first 300 MW of planned wind generation from the Aroostock Wind Energy Project by November 2010. As a consequence, Petitioners state that they must place significant capital at risk to make the necessary long-term commitments before receiving final construction approval. Petitioners assert that construction of each segment of the Project must be planned carefully and in close coordination with other Maine utilities, New Brunswick, and ISO New England in order to minimize risks to the system and to customers during construction.⁴⁵ Petitioners state that to ensure reliability during construction, the commissioning of upgrades and new facilities must be carefully coordinated and timed based on system parameters such as system demand, location and availability of generation and transmission resources, equipment and line ratings, potential contingencies, and other planned system outages. Petitioners contend that physical construction constraints, such as seasonal construction requirements, permit requirements, weather, relocation of existing facilities, and the possibility that some existing facilities may overload and require upgrades, must also be factored into the analysis. Petitioners add that they must build into the schedule adequate time to coordinate construction and system outages with ISO New England, and that they must coordinate their schedule with Central Maine's concurrent construction of the Maine Power Reliability Program Project.⁴⁶

24. Petitioners argue that rapid changes in the cost of labor and raw materials make it difficult to accurately predict construction costs, which results in risk. Petitioners state that debt and equity investors will be concerned about the risk of cost overruns and cost recovery. Petitioners assert that the Project's size and multi-year time frame make it vulnerable to delay, increases in construction and material costs, and increases in other costs due to factors beyond their control. Petitioners claim that negotiating for rights-of-way could also delay the Project and increase its costs.⁴⁷ Finally, Petitioners state that they are considering the use of different advanced technologies that will present unique design and construction challenges and may lead to increased costs.⁴⁸

iii. Financial

25. Petitioners assert that the Project is a significant and non-routine transmission investment that will substantially exceed their average annual transmission investment over the last several years. Petitioners state that they intend to finance the Project's

⁴⁵ *Id.* at 42.

⁴⁶ *Id.* at 43-44.

⁴⁷ *Id.* at 44-46.

⁴⁸ *Id.* at 64.

estimated \$625 million cost at the operating company level by relying on a variety of funding sources. Petitioners state that Central Maine will finance the Project through a combination of equity and debt, first foregoing the payment of dividends to its parent company, Energy East, and then receiving contributions of equity capital from Energy East. Petitioners state that Central Maine's initial debt financing may come primarily from bank credit and a portion from short maturity securities, but that if financial conditions change it may choose to finance initial debt capital with long-term securities. Petitioners state that as the Project is brought into service any short-term debt will be refinanced with long-term debt securities, which means that the capital structure and terms of its financing are not yet finalized.⁴⁹

26. Petitioners state that MPS plans to finance the Project by raising debt and equity monies. Petitioners state that MPS is consulting with various financial advisors to raise the necessary capital.⁵⁰

27. Petitioners assert that the financial investment required to construct the Project will require substantial outlays of cash, and that the requested incentives are crucial to attracting financing on reasonable terms.⁵¹ Petitioners argue that the stress on Central Maine's financial condition will be especially acute because it will simultaneously be building the approximately \$1.4 billion Maine Power Reliability Program Project. Petitioners claim that any financial market turmoil will make it more costly and more difficult to raise capital. Petitioners also argue that the Project is risky because it is a joint venture and one of the partners may choose to abandon it for reasons beyond the other partner's control. Finally, Petitioners claim that they are devoting significant executive and management resources to the Project in lieu of other business opportunities.⁵²

iv. Environmental

28. Petitioners claim that the Project faces environmental challenges because its preferred route crosses over numerous protected natural resources, including rivers, wetlands, vernal pools, streams, and protected habitat. In order to create the least possible disruption to the environment, Petitioners state that they plan to use special construction equipment (e.g., vehicles with high floatation tires), construction mats in wetlands, or through timing (e.g., winter construction on frozen ground, which they assert

⁴⁹ *Id.* at 46-47.

⁵⁰ *Id.* at 47.

⁵¹ *Id.*

⁵² *Id.* at 48-49.

is frequently less disruptive than construction during the spring or summer). Petitioners assert that they may also have to undertake additional mitigation measures at the direction of the Maine Department of Environmental Protection and, if the Project adversely impacts the environment, pay restoration, enhancement, or other compensatory costs.⁵³

3. Total Package of Incentives

29. Petitioners argue that the total package of incentives requested will provide certainty and offset their significant financial risks. Petitioners assert that they have carefully tailored their petition to request only those incentives that will offset the demonstrable risks and challenges associated with the Project. Petitioners argue that the incentives they have requested adequately mitigate their risk and will encourage outside investment in the Project.⁵⁴ Petitioners assert that while either the 150 basis point ROE adder or abandonment will independently mitigate specific and identifiable risks, the total package of incentives will ensure that the Project is completed.⁵⁵

E. Technology Statement

30. Petitioners state that they are considering several types of advanced transmission technologies for the Project. For example, Petitioners state that they are considering a dynamic static VAR compensator, light detection and ranging to collect topographic and spatial data in lieu of traditional surveying methods, composite conductors, real-time rating technology, fiber optics for system control communications, micro-pile foundations for certain transmission structures, advanced protection and control equipment, FR3 oil filled equipment in substations, laminated wood poles, implosive splicing methodology for the conductor, and substation integration and automation.⁵⁶ Petitioners state that although they do not request advanced transmission technology incentives in this petition, they reserve the right to submit a future petition seeking an additional 50-basis point ROE adder for the use of advanced transmission technologies.⁵⁷

⁵³ *Id.* at 49.

⁵⁴ *Id.* at 79.

⁵⁵ *Id.* at 81.

⁵⁶ *Id.* at 83-84.

⁵⁷ *Id.* at 84.

II. Notice of Filing and Responsive Pleadings

31. Notice of the filing was published in the *Federal Register*,⁵⁸ with comments and interventions due on or before August 18, 2008. The Commission subsequently extended the time for filing interventions and protests to and including August 29, 2008. The Attorney General of the Commonwealth of Massachusetts, Brookfield Energy Marketing Inc., Connecticut Office of Consumer Counsel (CT OCC), Eastern Main Electric Cooperative (EMEC), Houlton Water Company (Houlton), Integrys Energy Services, Inc., Kennebunk Light and Power District (Kennebunk), Massachusetts Municipal Wholesale Electric Company (MMWEC), New England Conference of Public Utilities Commissioners, Inc. (NECPUC), the Northern Maine Independent System Administrator, Northeast Utilities Service Company,⁵⁹ NSTAR Electric Company (NSTAR), and Public Advocate of the State of Maine (Maine Public Advocate) filed timely motions to intervene. Boralex Industries Inc. filed a motion to intervene out-of-time. The Connecticut Department of Public Utility Control (CT DPUC), Maine Commission, Massachusetts Department of Public Utilities (Mass DPU), and New Hampshire Public Utilities Commission filed notices of intervention.

32. The Maine Commission and the Maine Public Advocate (Maine Protesters) filed a joint motion to hold the petition in abeyance and a joint protest. CT DPUC and CT OCC (Connecticut Protesters) filed a joint protest. The Attorney General of Massachusetts and the Mass DPU (Massachusetts) filed a joint protest.⁶⁰

33. Boralex, EMEC, Houlton, Kennebunk, MMWEC, Northern Maine Independent System Administrator, and NSTAR filed separate protests.⁶¹ Petitioners filed an answer to the Maine Protesters' motion to hold the petition in abeyance and an answer to the protests. CT DPUC, Houlton, Massachusetts, and NSTAR filed answers to the answer.

⁵⁸ 73 Fed. Reg. 44,982 (2008).

⁵⁹ The Northeast Utilities Service Company filed on behalf of: The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire.

⁶⁰ Massachusetts adopts the arguments made in the Connecticut Protesters' protest.

⁶¹ Boralex and the Northern Maine Independent System Administrator filed protests for the exclusive purpose of challenging Petitioners' description of the state of the market in northern Maine.

III. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶² the timely, unopposed motions to intervene and notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁶³ the Commission will grant Boralex's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁶⁴ prohibits an answer to a protest and/or answer unless otherwise ordered by decisional authority. We are not persuaded to accept Petitioners' answer or the answers to the answer and will therefore reject them.⁶⁵

B. Substantive Matters

1. Motion to Hold Petition in Abeyance

a. Motion

36. The Maine Protesters filed a motion requesting that the Commission hold the petition in abeyance pending the outcome of Petitioners' recently initiated Certificate of Public Convenience and Necessity proceeding before the Maine Commission.

37. The Maine Protesters argue that precedent and considerations of administrative convenience justify holding the petition in abeyance. The Maine Protesters state that the Project has not been vetted through a regional planning process and offer evidence from a July 31, 2008 letter from ISO New England showing that the Project's electrical design features are still under development and its status as a Market Efficiency Upgrade is still unresolved.⁶⁶ The Maine Protesters argue that where a project's economic studies and

⁶² 18 C.F.R. § 385.214 (2008).

⁶³ *Id.* § 385.214(d).

⁶⁴ *Id.* § 385.213(a)(2).

⁶⁵ However, because it responds to a procedural motion, we accept Petitioners' answer to the motion for abeyance. *See id.* § 385.213(a)(3).

⁶⁶ Maine Protesters' Motion and Protest at 9 (Maine Protesters).

technical design have not been vetted through any state or regional process it is prudent and efficient for the Commission to defer a decision on incentives until after the Certificate of Public Convenience and Necessity proceeding is complete. The Maine Protesters argue that this result is consistent with *BG&E*, where the Commission denied a request for incentives for 37 future projects, which had not been through a regional planning process and had not received state siting approval.⁶⁷ The Maine Protesters also cite *PG&E*,⁶⁸ where the Commission deferred consideration of a request for an ROE adder and CWIP until after the applicant completed the studies necessary to qualify its project for incentives under section 219 and Order No. 679.

38. The Maine Protesters state that the Certificate of Public Convenience and Necessity proceeding is in its initial stages, as Petitioners filed their petition on July 1, 2008,⁶⁹ and assert that the Commission should discount Petitioners' request for expedited action because it is based on construction beginning in June 2009 and construction cannot begin unless and until the Project receives a Certificate of Public Convenience and Necessity. Similarly, the Maine Protesters contend that expedited Commission action is unnecessary because Petitioners have the means to finance pre-construction costs. The Maine Protesters explain that while Petitioners have indicated that they expect to spend \$11 million in 2008 and 2009 to study the Project and receive regulatory approvals, their Certificate of Public Convenience and Necessity petition shows that as of July 1, 2008 they have spent less than \$1 million. The Maine Protesters argue that even if Petitioners spend an additional \$10 million in development costs between filing the Certificate of Public Convenience and Necessity petition and the projected start of construction in June 2009, that amount is well within Central Maine's ability to finance. The Maine Protesters argue that because MPS pays only 10 percent of development costs, which thus far amounts to less than \$100,000, it has failed to show an urgent need for immediate action on its request for abandonment. Finally, the Maine Protesters claim that the Project's development is not sufficiently advanced to present to the investment community, and thus, that Petitioners' request for quick Commission action in order to gauge investor interest is not justified.

39. Several protesters make the related argument that the petition is premature because Petitioners cannot represent that their conditions for developing the Project have been met, especially the condition that ISO New England approve the Project for region-wide

⁶⁷ The Maine Protesters add that the denial was without prejudice to a future filing showing that the projects satisfy the requirements of section 219 and Order No. 679.

⁶⁸ *Pacific Gas and Electric Co.*, 123 FERC ¶ 61,067 (2008).

⁶⁹ The Maine Protesters add that there is a pending motion to dismiss the petition as premature.

cost allocation by including it in the Regional System Plan. EMEC, Massachusetts, NSTAR and the Connecticut Protesters assert that the petition indicates that the Project will not go forward without region-wide cost allocation. NSTAR argues that the Project does not qualify for inclusion in the Regional System Plan, and that the Commission should not act on the petition unless and until existing regional cost allocation rules are changed. Finally, the Connecticut Protesters argue that the Commission should not authorize incentives for the Project without considering less costly or less risky alternatives.

b. Answer

40. Petitioners argue that the Commission should deny the motion because the Commission's evaluation of whether a transmission project deserves incentive treatment is different than the determinations that will be made in the Certificate of Public Convenience and Necessity proceeding. Petitioners state that a Commission determination will not prejudice the Certificate of Public Convenience and Necessity proceeding in any way.

c. Commission Determination

41. We deny the motion. The Commission decides petitions for incentives pursuant to section 219 and Order No. 679 under different criteria than the Maine Commission decides applications for Certificates of Public Convenience and Necessity. When faced with a request for incentives pursuant to section 219 and Order No. 679, the Commission examines whether the project reduces congestion or ensures reliability, and determines whether there is a nexus between the incentive sought and the investment being made. In contrast, when the Maine Commission evaluates an application for a Certificate of Public Convenience and Necessity it determines whether the project is needed—a different standard that permits inquiry into a broader range of issues. Given these different standards, and the different questions they raise, there is no risk that the Commission will prejudice Petitioners' pending Certificate of Public Convenience and Necessity proceeding by ruling on their petition for incentives. Similarly, because the issues relevant to the Commission's decision are different than the issues relevant to the Maine Commission's decision, there is no significant increase in administrative efficiency to be gained by holding the petition in abeyance pending the outcome of the Certificate of Public Convenience and Necessity proceeding.⁷⁰

⁷⁰ There may be some overlap between the two inquiries insofar as approval of a Certificate of Public Convenience and Necessity petition gives rise to a rebuttable presumption that a project satisfies section 219's eligibility requirement; however, approval of a Certificate of Public Convenience and Necessity petition is neither

(continued....)

42. We also reject the assertion that the Commission should hold the petition in abeyance (and the argument that the petition is premature) because the Regional System Plan process is not yet complete. This argument is fundamentally inconsistent with Order No. 679, where the Commission expressly stated that it would grant incentives on a contingent basis to projects that are still undergoing consideration in a regional planning process.⁷¹

43. Moreover, although construction cannot begin until the Maine Commission rules on the Certificate of Public Convenience and Necessity application, a Commission decision on the petition will provide Petitioners with a greater degree of certainty as they discuss their future financing needs with lenders and rating agencies. Providing this certainty is consistent with the goals of section 219, which directed the Commission to provide rate incentives that “promote reliable and economically efficient transmission . . . by promoting capital investment in the enlargement, improvement, maintenance, and operation of all facilities for the transmission of electric energy.”⁷²

44. We also disagree with the claim that the petition is premature because Petitioners cannot guarantee that they will proceed with the Project. This argument has no basis in either section 219 or Order No. 679. The existence of uncertainty about a project’s future tends only to strengthen the argument for incentives, provided that the project satisfies the requirements of section 219 and Order No. 679. Section 219 commands the Commission to affirmatively promote new transmission investment;⁷³ it would be fundamentally inconsistent with this mandate for the Commission to consider the risk that a project will not proceed as a reason to deny it incentives.⁷⁴

45. Similarly, there is no requirement in section 219 or Order No. 679 that an applicant must demonstrate that its project is the best of all possible projects, or that it has explored every conceivable alternative before deciding to proceed with a particular

necessary to satisfy the section 219 requirement nor sufficient to demonstrate that there is a nexus between the incentive sought and the investment being made.

⁷¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

⁷² 16 U.S.C. § 824s(b)(1) (2006).

⁷³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 14.

⁷⁴ We further observe that in *BG&E*, the Commission identified the challenges or risks faced by a project as critical elements to evaluate when determining whether the project satisfies Order No. 679’s requirements. July BG&E Order, 120 FERC ¶ 61,084 at P 52.

project. While these considerations might be relevant in a Certificate of Public Convenience and Necessity proceeding, regional planning process, or stakeholder process, they are not relevant to determining whether a project either ensures reliability or reduces congestion or to evaluating whether a nexus exists between the incentive and the applicant's investment.

2. Section 219 Requirement

a. Protest

46. Several protesters argue that the Commission should deny the petition because the Project fails to satisfy section 219's threshold requirement that it either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. For example, the Connecticut Protesters argue that the Project will not improve regional reliability merely because it provides a transmission link between Northern Maine and the rest of the state, and Massachusetts claims that the Project is not necessary to remedy a reliability violation or to comply with a mandatory reliability requirement. Many protesters point out that Petitioners have requested that the Project enter the Regional System Plan as a Market Efficiency Upgrade rather than as a Reliability System Upgrade.

47. Several protesters argue that the Project will not reduce the cost of delivered power by reducing congestion and will not improve competition or market efficiency in New England because it will not remedy existing export constraints out of Maine. Massachusetts argues that Petitioners have provided no evidence that the Project will reduce congestion on either of the constrained interfaces identified by the Department of Energy.⁷⁵ Massachusetts and the Connecticut Protesters also argue that the Project will not reduce energy supply costs. They contend that the benefits predicated on completion of the Aroostock Wind Energy Project are speculative and unreliable because that project is in its early stages of development, faces significant regulatory and financial hurdles, is not expected to be fully in-service until 2012, cannot change the reality that New England energy prices will continue to be primarily determined by natural gas-fired generation, and could result in large stranded costs throughout New England.

48. EMEC and NSTAR argue that Petitioners cannot show that the Project will either ensure reliability or reduce congestion because it is merely a generation tie project whose purpose is to connect 800 MW of wind energy to the grid.

49. Several protesters argue that the Project does not qualify for a rebuttable presumption that it satisfies section 219's eligibility requirement because it has not received Regional System Plan approval as a Market Efficiency Upgrade or received a

⁷⁵ These are the New Brunswick /Maine and Maine / New Hampshire corridors.

Certificate of Public Convenience and Necessity from the Maine Commission. These protesters also argue that the Commission should not authorize incentives on a contingent basis. For example, the Maine Protesters, Massachusetts, MMWEC, and the Connecticut Protesters argue that the Commission should not authorize incentives contingent on the Project receiving Regional System Plan approval because the Regional System Plan process is in its initial stages and it is uncertain whether the Project will be classified as a Market Efficiency Upgrade. These protesters also state that there is considerable disagreement among stakeholders about the meaning of the Market Efficiency Upgrade designation and whether the Project qualifies for it. Massachusetts and NSTAR, for example, argue that the Project does not qualify for designation as a Market Efficiency Upgrade and should not be included in the Regional System Plan because it is actually a generator interconnection upgrade.

50. Massachusetts further argues that it is unclear whether designation as a Market Efficiency Upgrade even satisfies section 219's eligibility requirement. Massachusetts explains that Market Efficiency Upgrades are designed primarily to provide a net reduction in total production cost to supply the system load, and that while stakeholders disagree about what this means and what models, assumptions, and factors should be considered in reviewing alleged market efficiency benefits, it is certain that the regional planning process will examine the Project's net economic benefit based on an analysis of cost savings, not based on a net reduction of the cost of delivered power by reducing congestion. Massachusetts also speculates that because Petitioners have sought inclusion in the Regional System Plan as a Market Efficiency Upgrade rather than as a Reliability System Upgrade, it is unlikely that the regional approval process will demonstrate that the Project ensures reliability.

51. Massachusetts next argues that the Project does not qualify for a rebuttable presumption because it is not the result of a regional planning process. Massachusetts explains that Petitioners initiated the Project in response to a Maine Commission study detailing retail market failure in northern Maine rather than in response to a regional needs assessment or solutions study. Massachusetts acknowledges that the Regional System Plan process does not foreclose participants from proposing projects to address regional needs that have yet to be identified, but argues that they should still be subject to a needs assessment and solutions study to determine whether they are the most economic way to address an actual need.⁷⁶ Massachusetts states that while Petitioners have requested a study to determine whether the Project qualifies as a Market Efficiency Upgrade, a needs assessment and a solutions study still have not been completed and no alternatives to the Project have been considered.

⁷⁶ Massachusetts Protest at 11 (Massachusetts).

52. Several protesters argue that the Commission should not authorize the incentives contingent on approval of a Certificate of Public Convenience and Necessity, as the Commission did in *Xcel*. For example, the Maine Protesters contend that this case is distinguishable from *Xcel* because in *Xcel* the regional planning process had already determined that there was a need for the underlying projects, no party argued that the request was premature, and the applicant did not seek an ROE adder. Massachusetts argues that the Regional System Plan process should be the decisive venue because Petitioners have indicated that the Project will not go forward unless it is approved for region-wide cost allocation. Massachusetts also claims that it is unclear whether the Maine Commission's siting review process will assess whether the Project ensures reliability or reduces congestion.

53. Similarly, EMEC and MMWEC argue that even contingent approval would be premature because the petition indicates that the Project will not go forward unless it is included in the Regional System Plan, which would allow Petitioners to spread the Project's costs throughout ISO New England.

b. Commission Determination

54. In Order No. 679, the Commission stated that an applicant for transmission incentives must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁷⁷ The Commission also established a rebuttable presumption that a project is eligible for incentives under section 219 if it: (1) 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 (2) has received construction approval from an appropriate state commission or state siting authority.⁷⁸ The Commission further stated that it would grant incentives on a contingent basis to projects that are still undergoing consideration in a regional planning process.⁷⁹ In Order No. 679-A, the Commission explained that if an applicant relies on a rebuttable presumption, the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must have actually considered whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.⁸⁰

⁷⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58.

⁷⁸ *Id.* P 57-58.

⁷⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

⁸⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

55. We note that it is not our task in this proceeding to determine whether the Project qualifies as a Market Efficiency Upgrade; that task is appropriately in the hands of ISO New England. We also reject Massachusetts's claim that the Project is not the result of a regional planning process because it was proposed independently of a needs assessment or solutions study. As Massachusetts itself recognizes, ISO New England's regional process does not foreclose participants from proposing projects that have not been identified in a needs assessment or solutions study.⁸¹

56. We find that, at this point, the Project does not qualify for either rebuttable presumption because it has neither been approved in ISO New England's Regional System Plan nor received final siting approval from the Maine Commission. However, the Project is currently undergoing consideration in the Regional System Plan process. Accordingly, we will authorize incentives contingent on ISO New England including the project in the Regional System Plan as a Market Efficiency Upgrade.

57. Several protesters, including Massachusetts, have pointed out that the Project is the first project seeking designation as a Market Efficiency Upgrade; consequently, Petitioners, ISO New England, and stakeholders are working to determine the exact contours of the Market Efficiency Upgrade process and the exact requirements that a project must meet in order to qualify as a Market Efficiency Upgrade. Consistent with Order No. 679-A, which explained that if an applicant relies on a rebuttable presumption, the authorities and/or processes on which it is based must have actually considered whether the project ensures reliability or reduces the cost of delivered power by reducing congestion,⁸² we will also make the incentives contingent on Petitioners submitting a filing, within 30 days of ISO New England approving the Project as a Market Efficiency Upgrade, explaining how designation as a Market Efficiency Upgrade resulted in ISO New England considering whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.

3. Obligation to Build

a. Protest

58. Massachusetts contends that the Project should not be eligible for incentives if it is included in the Regional System Plan as a Market Efficiency Upgrade because Central Maine has a contractual obligation under the Transmission Operating Agreement between ISO New England and participating Transmission Owners to build new transmission

⁸¹ Massachusetts at 11.

⁸² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

included in the Regional System Plan, subject to approval by the relevant state siting authorities.

b. Commission Determination

59. We reject this argument as a collateral attack on *Northeast Utilities*.⁸³ In *Northeast Utilities*, the Commission rejected the assertion that projects in ISO New England's Regional System Plan are ineligible for incentives merely because the transmission owner may have a contractual obligation to build them. The Commission found that this argument was a narrow interpretation of Order No. 679 and that accepting it would deny the Commission the ability to exercise the authority it was expressly granted under section 219.⁸⁴

4. Joint Investment

a. Protest

60. EMEC and Houlton argue that the Commission should deny the petition unless Petitioners commit to allowing them to invest in the Project. EMEC and Houlton state that in Order No. 679 the Commission strongly encouraged jurisdictional utilities to jointly invest in transmission projects with public power participants,⁸⁵ and that they have attempted to invest in the instant Project in order to mitigate its negative cost impact on their customers. Houlton acknowledges that the Commission stated in Order No. 679-A that it will not require public power participation as a condition for incentives, but claims that the Commission was specifically responding to suggestions that utilities should offer

⁸³ *Northeast Utilities Service Co.*, 124 FERC ¶ 61,044, at P 89 (2008) (*Northeast Utilities*).

⁸⁴ *Id.*

⁸⁵ EMEC and Houlton cite Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 354 (internal citations omitted):

[P]ublic power participation can play an important role in the expansion of the transmission system. We want to encourage public power participation in new transmission projects [T]he Commission will entertain appropriate requests for incentive ratemaking for investment in new transmission projects when public power participates with jurisdictional entities as part of a proposal for incentives for a particular joint project. Encouraging public power participation in such projects is consistent with the goals of section 219 by encouraging a deep pool of participants.

generic joint ownership opportunities, provide joint planning opportunities, allow co-ownership in the common “footprint” or certify that they have sought potential public power co-investors. Houlton argues that this case presents a different question because it, as a non-jurisdictional entity, is seeking to invest in a transmission project that crosses its service territory and it has been locked out by Petitioners without explanation.

b. Commission Determination

61. We reject this argument as a collateral attack on Order Nos. 679 and 679-A. While the Commission strongly encourages jurisdictional utilities to jointly invest in transmission projects with public power participants, it does not require joint investment as a condition for incentives.⁸⁶ In Order No. 679, the Commission explained that while participation by a diverse group of investors might be the best structure for an individual project, it is inappropriate to mandate that a particular joint-structure be used in all cases.⁸⁷ Moreover, in Order No. 679-A, the Commission explained that it cannot compel investment or certain types of investment, that the purpose of Order No. 679 is to provide incentives that will facilitate voluntary investments by utilities, and that its decision not to mandate an opportunity for public power participation is not unduly discriminatory.⁸⁸

62. Houlton attempts to distinguish the Commission’s statements in Order No. 679-A by claiming that the statements addressed a set of facts different than those at issue here. We reject this argument because the Commission’s statements in Order No. 679-A reinforce the general policy that the Commission enunciated in Order No. 679—that it will not require joint investment as a condition for incentives—and do not, as Houlton claims, apply only to the specific rehearing requests addressed in Order No. 679-A.

5. Resource Adequacy

a. Protest

63. The Connecticut Protesters argue that should the Commission grant the petition based on the assumption that the Aroostock Wind Energy Project is necessary to meet reliability or market efficiency needs, it will infringe on the New England states’ authority over resource adequacy determinations and exceed its authority under the FPA. The Connecticut Protesters contend that by singling out transmission related incentives to develop a particular wind project in Northern Maine, the Commission would have to

⁸⁶ *Id.* P 356; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 102.

⁸⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 356.

⁸⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 102.

conclude that the New England states have a resource adequacy problem or need for renewable energy that the Commission will fix. The Connecticut Protesters argue that the FPA reserves these determinations for the states and that to the extent that the Project relies on the Aroostock Wind Energy Project for its justification the Commission should deny the petition as beyond its jurisdiction.

b. Commission Determination

64. We find that the Connecticut Protesters' argument is not relevant to our decision in this case. As we have explained, when faced with a request for incentives pursuant to section 219 and Order No. 679, the Commission examines whether the project reduces congestion or ensures reliability, and determines whether there is a nexus between the incentive sought and the investment being made. This is the criteria that we apply here. Accordingly, the states' authority over resource adequacy is irrelevant to the Commission's authority under section 219 and Order No. 679, and the Commission's authority under section 219 and Order No. 679 in no way interferes with the states' resource adequacy authority.

6. Incentives and the Commission's Nexus Test

a. Protest

65. The Maine Protesters argue that Petitioners have not established the required nexus between the Project and the requested ROE incentive. The Maine Protesters assert that the purpose of the nexus test is to ensure that incentives are not granted when they do not materially affect investment decisions,⁸⁹ and that despite conjecture about the possible dire effects of turmoil in the credit market and possible investor concern over the amount of investment in the Project, Petitioners have not provided any evidence that the requested incentives will materially affect their investment decisions. The Maine Protesters and the Connecticut Protesters argue that what really appears to matter to Petitioners' investment decision is whether or not the Project will be included in the Regional System Plan, and obtaining incentives will not affect this determination. In fact, the Maine Protesters speculate that the added cost of an ROE adder might fuel opposition to designating the Project as a Market Efficiency Upgrade because it will result in region-wide allocation of the Project's costs.

66. The Maine Protesters and the Connecticut Protesters argue that the requested incentives are not necessary to promote investment or to ensure completion of the Project. The Maine Protesters and Connecticut Protesters claim that Petitioners'

⁸⁹ Maine Protesters at 13 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 25).

assertions about the possible effect of the Project on their cash flow and about possible hesitation by investors are purely speculative and are contradicted by evidence in the record. The Maine Protesters and the Connecticut Protesters contend that Petitioners should have no difficulty in obtaining sufficient financing to complete the Project because the petition states that they have a sufficient cash flow, reasonable balance sheet, adequate access to capital that can withstand construction costs for the Project prior to its in-service date, and strong credit ratings.⁹⁰ Thus, the Connecticut Protesters argue that the Commission should deny the petition because incentives are not necessary in this case to accomplish section 219's goals of promoting capital investment and attracting new investment in transmission projects.

67. Similarly, the Maine Protesters argue that Petitioners do not face risks associated with the duration of construction because testimony accompanying the petition indicates that Petitioners can begin to recover their investment and earn a cash return on segments of the Project while other segments are being constructed.⁹¹ They also contend that Petitioners' concern about potential increases in the cost of construction materials is speculative and common to all transmission upgrades.

68. The Maine Protesters and Connecticut Protesters assert that Petitioners have not tailored the requested incentives to the Project's specific risks and challenges; instead, they claim that Petitioners have sought to pancake incentives so that the ROE will reach the highest ROE in the defined zone of reasonableness. The Maine Protesters and the Connecticut Protesters contend that Petitioners' formula rates reduce their risk and adequately protect Petitioners. The Maine Protesters further argue that where formula rates assure timely recovery of costs, incentive treatment is neither needed nor justified.

69. The Connecticut Protesters speculate that the Project's expected costs are likely to outweigh its potential benefits. The Connecticut Protesters assert that Petitioners have failed to show that the Project will have regional reliability benefits. In fact, the Connecticut Protesters speculate that the Project might actually degrade reliability and create new operational challenges because of the intermittency of wind generation, the limited ability to deliver more natural gas to Northern Maine, and the need to back up intermittent wind generation with quick-start units. The Connecticut Protesters also claim that any potential reliability benefits will not be realized because of Maine's chronic export constraints.

70. The Connecticut Protesters further claim that Petitioners have not shown that the Project will have any market efficiency benefits that would justify the requested

⁹⁰ Maine Protesters at 16 (citing Petition at 80).

⁹¹ *Id.* at 15 (citing Dumais Affidavit at P 41).

incentives. Similarly, the Connecticut Protesters state that ISO New England has not identified any congestion problems that warrant fixing. The Connecticut Protesters state that ISO New England has just begun its Market Efficiency Upgrade review process and the Economic Study Group that it instituted has not even agreed on the process that it will use to evaluate the Project, much less reached any conclusions about its possible economic benefits. The Connecticut Protesters also argue that the key findings of the La Capra Associates study are unsupported, omit the study's essential assumptions, and do not account for high-stakes risks.

71. The Connecticut Protesters note that because the Project is only in the conceptual phase, its currently estimated cost of \$625 million is permitted to increase by as much as 200 percent (to approximately \$1.875 billion) as it advances through the Regional System Plan process. The Connecticut Protesters contend that Petitioners have already set the stage for increased costs by listing all of the challenges that the Project is likely to face, including increases in construction and labor costs, the need to negotiate for various rights-of-way, and the potential use of advanced technologies. Thus, the Connecticut Protesters argue that the Commission should presume that the Project will cost substantially more than \$625 million.

72. Additionally, the Connecticut Protesters assert that Petitioners have increased the Project's costs by unnecessarily and unjustifiably choosing to proceed on an accelerated schedule. The Connecticut Protesters recognize that the accelerated schedule is ostensibly intended to meet the proposed in-service date for the first 300 MW of the Aroostock Wind Energy Project, but they contend that it is unlikely that the Aroostock Wind Energy Project will proceed on schedule because it does not have siting approval, a permit, or an assured power purchaser. However, the Connecticut Protesters assert that even if the Aroostock Wind Energy Project is completed on schedule, the dubious benefits from 300 MW of intermittent wind generation completed before the Maine Power Reliability Program Project can arguably deliver it to a wider area do not justify the increased cost to accelerate the instant Project.

73. The Connecticut Protesters argue that Petitioners are attempting to place all of the Project's risk on transmission customers without providing any assurance of increased reliability or economic benefits. The Connecticut Protesters claim that Petitioners are so risk averse that they refuse to commit any funds until all of their preconditions are met, including regionalization of the Project's costs through the Regional System Plan and authorization of the requested incentives. The Connecticut Protesters argue that Petitioners' approach is designed to absolve Petitioners of any financial responsibility if the Project fails, and that the proposed ROE incentive is not tailored to their very minimal risks.

74. Similarly, Houlton argues that the Project's negative effects on customers in northern Maine outweigh its benefits. Houlton argues that Petitioners are seeking to include the Project in the Regional System Plan because Aroostock Wind Energy cannot

afford to pay for the Project as a generator lead line for its wind project. Houlton claims that Petitioners have failed to address the trade offs between the purported benefits of bringing wind power to ISO New England and the costs customers (especially in northern Maine) will incur in subsidizing what is actually a generator lead line. Houlton estimates that costs to its customers will increase by 84.5 percent. Houlton asserts that two of Maine's poorest counties, Aroostook and Washington counties, will end up subsidizing a for-profit wind generator to serve the Massachusetts and Connecticut markets.

b. Commission Determination

75. 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 that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁹²

76. 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 *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine. 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, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).⁹³ 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, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.⁹⁴

77. Petitioners have presented evidence on the Project's scope, effect, and risks and challenges. Based on this evidence, we find that Petitioners have adequately

⁹² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁹³ July BG&E Order, 120 FERC ¶ 61,084 at P 52-55.

⁹⁴ *Id.* P 54

demonstrated that the Project is not routine, and thus, have sufficiently demonstrated a nexus between the incentives sought and the investment being made.

78. We find that the Project's size and scope indicate that it is not a routine transmission investment. The Project's size is significant because it will involve approximately 200 miles of new transmission line, construction of five new substations, and upgrades to two existing substations. The Project also requires a major capital commitment of approximately \$625 million—70 percent (approximately \$441 million) of which will be allocated to Central Maine and 30 percent (approximately \$184 million) of which will be allocated to MPS.⁹⁵ This makes the Project one of the largest projects in Central Maine's history and the largest project in MPS's history. For example, over the last five years Central Maine has spent approximately \$17 million annually on transmission projects, while MPS has spent approximately \$657,000 annually over the last seven years. The Project is also a substantial financial commitment relative to Petitioners' total transmission plants in service. When the Project is completed, Central Maine estimates that its transmission plant in service will be 1.3 times more than its existing total transmission plant in service, while MPS's transmission plant-in-service will be approximately 10 times more than its existing total transmission plant in service.

79. We also find that the Project faces significant siting, construction, regulatory, financial, and environmental risks and challenges. For example, Petitioners will encounter siting challenges because the Project's approximately 200 mile transmission corridor is expected to cross 39 municipalities, many of which must approve the Project. Similarly, Petitioners must acquire property rights over nearly 596 parcels of land. Petitioners will also face significant challenges in mitigating the Project's environmental impact because its preferred route crosses over numerous protected natural resources, including rivers, wetlands, vernal pools, streams, and protected habitat. The Project also requires approval from the Maine Department of Environmental Protection, the United States Army Corps of Engineers, the United States Fish and Wildlife Services, and the Maine Commission. The Project faces the additional unique risks that Maine may withdraw from ISO New England and that ISO New England may not designate the Project as a Market Efficiency Upgrade.

80. The protesters do not dispute the significant size and scope of the Project, the risks and challenges it faces, or Petitioners' contention that the Project is not routine. Rather, they argue that the Project should be disqualified from receiving incentives because Petitioners are voluntarily proceeding on an accelerated time table, the Project fails a cost-benefit analysis, Petitioners are in relatively good financial health, and Petitioners have formula rates. We reject these arguments. There is nothing in Order No. 679, Order

⁹⁵ Affidavit of Paul A. Dumais at P 9; Affidavit of Michael I. Williams at P 8.

No. 679-A, or subsequent Commission precedent that requires applicants for incentives to show that they will build their projects on a specific timetable or that they lack formula rates. Similarly, Order Nos. 679 and 679-A do not require applicants to make a showing of financial weakness in order to receive incentives,⁹⁶ and in Order Nos. 679 and 679-A, the Commission rejected requests to make incentives contingent on a cost-benefit analysis.⁹⁷ What is required for incentive rate treatment is that the applicants demonstrate a nexus between the incentives being sought and the investment being made. As the Commission explained in *BG&E*, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.⁹⁸ As we have stated, Petitioners have adequately demonstrated that the Project is not routine.

7. Specific Incentives and Total Package of Incentives

a. Protest

81. The Connecticut Protesters argue that the Commission should reject Petitioners' request for an ROE adder of 150 basis points because it will raise Petitioners' respective ROEs to 13.14 percent—a return that the Connecticut Protesters allege exceeds the zone of reasonableness established for New England Transmission Owners in Opinion No. 489. The Connecticut Protesters assert that Petitioners inaccurately claim that the upper end of the zone is 13.84 percent when it is actually 13.1 percent. The Connecticut Protesters contend that in Opinion No. 489 the Commission increased the midpoint ROE by 74 basis points to account for greater yields on 10-year U.S. Treasury bonds but did nothing that would modify the zone of reasonableness or suggest that the highest reasonable ROE floats with yields on the bonds. The Maine Protesters and the Connecticut Protesters assert that this 74 basis point adder is no longer justified because of falling bond yields, and that the Commission should either revise the range of

⁹⁶ *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 145 (2007) (“[W]e disagree with the protesters’ argument that because [Southern California Edison’s] financial condition is strong, it fails to demonstrate the need for the ROE incentive due to poor cash flow or the need to attract investment. . . . While in certain circumstances the Commission may find that an applicant's financial position is relevant, Order Nos. 679 and 679-A do not require a showing of financial weakness to be entitled to incentive rate treatment.”); *reh’g denied*, 123 FERC ¶ 61,293 (2008).

⁹⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 65; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 35-40.

⁹⁸ *Id.* P 54.

reasonableness or consider the requested adder subsumed by the changed conditions and thus no longer necessary.⁹⁹

82. Similarly, the Maine Protesters, Kennebunk, and the Connecticut Protesters claim that Petitioners' existing ROEs are sufficient to attract investment and provide funds while the Project is being constructed. The Maine Protesters and Connecticut Protesters explain that Petitioners already receive a 50 basis point ROE adder for membership in a Regional Transmission Organization (RTO) in addition to the bond adder. The Maine Protesters argue that Petitioners have failed to show that Central Maine's existing ROE of up to 11.64 percent is not sufficient to address the Project's risks or that it is appropriate for MPS to add 150 basis points to its ROE, which will already increase by 114 basis points if it joins ISO New England.¹⁰⁰ The Maine Protesters note that if MPS is granted 150 basis points on top of the increases it will receive if it joins ISO New England, it will receive a total ROE increase of 264 basis points.

83. The Maine Protesters and the Connecticut Protesters argue that Petitioners have failed to demonstrate that they require an ROE adder at or near the high end of the zone of reasonableness. The Maine Protesters assert that Petitioners have not accounted for the reduction in risk provided by Petitioners' formula rate recovery or by the prospect that the Commission will authorize abandonment.

84. Additionally, the Maine Protesters claim that the requested ROE adder would impose significant and unjustified costs on ratepayers. The Maine Protesters estimate that over a 29 year period the incremental cost of the ROE incentive will be between \$115 and \$123 million. The Maine Protesters note that these cost increases would be on top of recent increases in the regional transmission rate due to major new projects, costs overruns on these projects, and the ROE and incentives authorized for the New England Transmission Owners in Opinion No. 489.

85. The Maine Protesters argue that should the Commission determine that incentives are appropriate, it should grant only Petitioners' request for abandonment. The Maine Protesters assert that abandonment coupled with the minimized risk associated with

⁹⁹ The Maine Protesters state that the Commission has determined that, even when a base ROE was established in a settlement, hearing procedures would be established to determine the utility's overall range of reasonableness and a determination of where, within that range, its base level ROE should be set. Maine Protesters at 17 (citing *Duquesne*, 118 FERC ¶ 61,087 at P 57).

¹⁰⁰ The 114 point increase in MPS's ROE is the result of the following equation: 10.50 percent (current ROE) + 0.50 percent (ISO New England ROE adder) + 0.74 percent (Bond yield adder for transmission owners in ISO New England).

formula rates should insulate Petitioners, their lenders, and their equity investors from the investment risks associated with the Project. Finally, the Maine Protesters argue that if the Commission authorizes an ROE adder it should be reduced because it is authorized up-front rather than at the end of the project.

86. The Connecticut Protesters argue that the Transmission Operating Agreement between ISO New England and participating Transmission Owners provides Petitioners with the added protection of full recovery of prudently-incurred costs if the Project is included in the Regional System Plan, and that this protection weighs against authorizing an additional ROE incentive.¹⁰¹ While the Connecticut Protesters acknowledge the Commission's statement that it will not automatically reject an ROE incentive for a project that is guaranteed abandonment, they cite Order No. 679 to show the Commission's expectation that utilities that receive abandonment are likely to face lower risk and thus may warrant a lower ROE than would otherwise be the case.¹⁰² The Connecticut Protesters assert that the protection afforded by the Transmission Operating Agreement, coupled with the existing ROEs is sufficient to warrant denying the ROE incentive.

87. The Connecticut Protesters also argue that Petitioners' request for abandonment—even if abandonment is due to one party's decision to withdraw from the project—is unreasonable because it violates the fundamental purpose of section 219, which the Connecticut Protesters state is to encourage the development of transmission projects, not to insulate transmission owners from all risks. The Connecticut Protesters assert that Petitioners may not simultaneously shift all project risks to customers yet claim they need enhanced returns to compensate for the risks that they have shed. The Connecticut Protesters contend that the Commission may either protect transmission owners from certain risks and provide a commensurate low-risk return, or require them to bear those risks and award a risk-premium return; it may not, according to the Connecticut Protesters, do both.

88. The Connecticut Protesters claim that Petitioners' attempt to recover all abandonment costs – even those incurred before Regional System Plan approval – is wholly indefensible. The Connecticut Protesters assert that the Commission has made

¹⁰¹ As we have explained, we do not interpret the Transmission Operating Agreement between ISO New England and participating Transmission Owners in this proceeding. *See supra* note 2. Thus, we read this argument as advancing the general claim that Petitioners would be adequately protected if the Commission granted abandonment as an incentive pursuant to section 219 and Order No. 679.

¹⁰² Connecticut Protesters at 17-18 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 167).

clear that such costs may be recovered only if the project is cancelled or abandoned due to factors beyond the applicants' control. The Connecticut Protesters argue that section 219 does not require New England's transmission customers to insure Petitioners' business deal, and that to the extent that they wish to protect themselves against the withdrawal of the other partner, they should include appropriate liquidated damages provisions in their joint venture agreement. Similarly, rather than award abandonment because of the possibility of third-party actions, the Connecticut Protesters argue that the Commission should require Petitioners to protect themselves by including appropriate language establishing performance benchmarks and liquidated damages in their agreements with third parties. Moreover, the Connecticut Protesters argue that any money recovered under such contracts should be credited against the funds Petitioners recover pursuant to ISO New England's OATT. The Connecticut Protesters argue that given the disproportionate risk of abandonment before any review or Regional System Plan approval, it would be unjust and unreasonable to burden customers with stranded cost obligations that will likely produce no conceivable benefits.

b. Commission Determination

i. ROE Incentive

89. We find that Petitioners have demonstrated that the Project is non-routine and that the significant risks and challenges faced by the Project warrant the granting of an ROE incentive. Petitioners face siting risks because a large part of the Project, 200 miles of new 345 kV transmission lines, will require property rights over approximately 596 parcels of land located in 39 municipalities. The Project will also affect 116 inhabited dwellings within 300 feet of the proposed route.¹⁰³ Petitioners face regulatory risks because the Project must be approved by at least two state agencies, two federal agencies, and potentially 39 municipalities. Petitioners face environmental risks because the Project's preferred route crosses sensitive environmental areas and will require Petitioners to adjust their construction process. Petitioners also face significant financial risks, given the Project's \$625 million cost. Our decision to authorize an ROE incentive is consistent with section 219's goal of encouraging transmission investment.

90. Accordingly, as discussed below, we grant a 150-basis point ROE incentive adder for the Project, to be bound by the upper end of the zone of reasonableness established in Opinion No. 489. In Opinion No. 489, the Commission determined a low-end ROE of 7.3 percent, as represented by Consolidated Edison, Inc. (Con Ed), and a high-end ROE

¹⁰³ Petitioners state that this is significant because they are unable to use eminent domain on a parcel of land within 300 feet of an inhabited dwelling. Petition at 14 and 15.

of 13.1 percent, as represented by PPL Corporation (PPL). The Commission then set the New England Transmission Owners' base-level ROE at the 10.2 percent midpoint.¹⁰⁴

91. The Opinion No. 489 Rehearing Order modified the high-end implied cost of equity and the midpoint ROE for the New England Transmission Owners.¹⁰⁵ As a result, the zone of reasonableness for the New England Transmission Owners is 7.3 percent to 13.5 percent, with a midpoint ROE of 10.4 percent, a 0.2 percent increase from Opinion No. 489.¹⁰⁶

92. The "going-forward" ROE for New England Transmission Owners is 11.64 percent, including the 50-basis point incentive for RTO participation and the 74 basis point adjustment reflecting updated bond data, applicable as of November 1, 2006 (10.4 + 0.5 + 0.74).¹⁰⁷ Petitioners' request for a 150 basis point adder results in a 13.14 percent ROE (10.4 + 0.5 + 0.74 + 1.50), which falls within the upper range of the zone of reasonableness of 7.3 percent to 13.5 percent.¹⁰⁸

93. We reject the Maine Protesters claim that a recent decline in U.S. Treasury bond yields makes the 74-basis point upwards adjustment to the current New England Transmission Owners' midpoint ROE inappropriate under current market conditions.¹⁰⁹ While it is true that the bond yields upon which the adjustment to the midpoint ROE in Opinion No. 489 was made have declined approximately 120 basis points, this is only one element that determines the midpoint and it has no impact on the zone of reasonableness. The 74 basis point bond adjustment applies only to the midpoint ROE and does not apply to either the low-end or high-end implied cost of equity.

94. We note the Commission recently performed a similar analysis based on the Opinion No. 489 methodology in *VEPCO*.¹¹⁰ In *VEPCO*, the Virginia Electric and Power Company (VEPCO) began with a similar group of fifteen northeast transmission

¹⁰⁴ Opinion No. 489 Rehearing Order, 122 FERC ¶ 61,265 at P 8.

¹⁰⁵ *Id.* at P 9-13.

¹⁰⁶ *Id.* at P 21-22.

¹⁰⁷ *Id.* at P 2-3.

¹⁰⁸ As we have stated, this presumes that MPS joins ISO New England.

¹⁰⁹ Kivela Affidavit at P 6-13.

¹¹⁰ *Virginia Electric and Power Co.*, 124 FERC ¶ 61,207 (2008) (*VEPCO*).

owners¹¹¹ for its proxy group before additional screens were applied and reduced the proxy group. Central Maine and VEPCO are both rated BBB+ by Standard & Poor's, which results in companies rated below BBB or above A- being screened out of the proxy group.¹¹² VEPCO's proxy group thus provides a reasonable comparison for determining the zone of reasonable returns for Central Maine. In *VEPCO*, the zone of reasonableness was determined to be 9.46 percent to 14.4 percent,¹¹³ so the 13.14 percent ROE granted to Central Maine falls well within this range. Therefore, the zone of reasonableness approved in *VEPCO* demonstrates that the continued use of the New England Transmission Owners' zone of reasonableness of 7.3 percent to 13.5 percent is appropriate.

ii. Abandonment

95. Petitioners request recovery of 100 percent of prudently incurred costs in the event that the Project is abandoned for reasons beyond their control. In Order No. 679, the Commission found that abandonment is an effective means to encourage transmission development by reducing the risk of non-recovery of costs and stated that it would permit applicants to request recovery of 100 percent of prudently incurred costs associated with abandoned transmission projects if such abandonment is outside of management's control.¹¹⁴ Thus, to extent that the Connecticut Protesters' attack the availability of abandonment as an incentive under section 219, their argument is a collateral attack on Order No. 679.

96. We find that Petitioners have demonstrated a nexus between the risks of the Project and the need to recover prudently incurred costs associated with abandonment of the Project. Thus, we will grant Petitioners' request for recovery of 100 percent of prudently-incurred costs associated with abandonment, provided that the abandonment is

¹¹¹ These fifteen transmission owners all belong to ISO New England, the New York Independent System Operator, Inc., or PJM Interconnection, L.L.C.

¹¹² In addition to the screening the utilities based upon their corporate credit ratings, the VEPCO proxy group also excludes: (1) utilities that are not currently paying cash dividends; (2) utilities that have announced a merger during the six-month period used to calculate the dividend yields; (3) utilities primarily operating as natural gas companies; (4) utilities that do not have both an IBES (International Brokers Estimation System) growth rate and *Value Line* data; and (5) utilities with unsustainably high growth rates.

¹¹³ *VEPCO*, 124 FERC ¶ 61,207 at P 120.

¹¹⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

a result of factors beyond Petitioners' control, which must be demonstrated in subsequent section 205 filings for recovery of abandoned plant.¹¹⁵

97. We find that this incentive will be an effective means to encourage the Project's completion. For example, the Project requires approvals from multiple municipalities within Maine, state siting authority, and various federal approvals. Moreover, the Project risks cancellation should it fail to receive approval in ISO New England's Regional System Plan and state siting authority. These factors introduce a significant element of risk; authorizing abandonment will help ameliorate this risk by providing Petitioners with some degree of certainty as it moves forward.

98. The Connecticut Protesters argue that the Petitioners should not recover abandonment in certain instances. We will not determine the justness and reasonableness of Petitioners abandoned plant recovery, if any, until Petitioners seek such recovery in a section 205 filing. Order No. 679 specifically reserves the prudence determination for the later section 205 filing which every utility is required to make if it seeks abandonment recovery.¹¹⁶ At this stage of the proceeding, we are granting this incentive, subject to Petitioners making the appropriate demonstration in future section 205 filings.

iii. Total Package of Incentives

99. As we have stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. The nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.¹¹⁷

100. We find that Petitioners have shown that the total package of incentives is tailored to address the demonstrable risks and challenges faced by the Project.¹¹⁸ As we have

¹¹⁵ *Id.* P 165-66.

¹¹⁶ *Id.* P 165-66.

¹¹⁷ *See id.* P 55; *see also, e.g., Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne*, 118 FERC ¶ 61,087 at P 55 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery), *PPL*, 123 FERC ¶ 61,068 at P 39, 42, 46 (approving ROE at the upper end of the zone of reasonableness, 100 percent CWIP, and 100 percent abandoned plant recovery).

¹¹⁸ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

explained, Petitioners face significant risks and challenges in constructing the Project; we agree with Petitioners that authorizing the ROE incentive and abandonment will encourage investors to invest in the Project despite these risks. We disagree with the protesters' claim that abandonment alone affords Petitioners adequate protection or that their current ROEs are sufficient to help them to obtain financing, preserve their credit quality, and attract investment in the Project. In our view, the Project's size and scope, and the magnitude of the risks and challenges it faces, justify both incentives.

The Commission orders:

The petition for declaratory order is hereby conditionally granted, subject to ISO New England approving the project in its Regional System Plan as a Market Efficiency Upgrade and subject to Petitioners submitting a subsequent filing within 30 days of ISO New England approving the Project as a Market Efficiency Upgrade explaining how designation as a Market Efficiency Upgrade satisfies the incentive eligibility requirement of section 219, as discussed in the body of this order.

By the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement attached.

(S E A L) Commissioner Wellinghoff dissenting in part with a separate statement attached.

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Maine Power Company
and
Maine Public Service Company

Docket No. EL08-77-000

(Issued November 17, 2008)

KELLY, Commissioner, *concurring in part and dissenting in part*:

This order addresses a petition for declaratory order filed by Central Maine Power Company (Central Maine) and Maine Public Service Company (MPS) (collectively, Petitioners). The Petitioners request that the Commission authorize transmission rate incentives for the planned Maine Power Connection Project (MPC Project). Petitioners request a 150 basis point return on equity (ROE) adder and guaranteed recovery of prudently incurred costs if the MPC Project is abandoned in whole or in part as a result of factors beyond their control (abandonment).

I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings in order to determine whether the MPC Project warrants incentive rate treatment.¹ Based on those criteria, I conclude that it does. Furthermore, I note that the MPC Project is a voluntary project that would represent a significant expansion of Central Maine's and MPS' transmission systems. However, I cannot support the full range of requested incentives. Thus, I concur in part and dissent in part from this order.

I concur with the majority's decision to grant the abandonment incentive for the MPC Project. As the order notes, Petitioners face a variety of costs before they can determine whether the MPC Project is feasible from a siting, environmental, and technological perspective.

However, I dissent from the decision to award an incentive ROE adder at this time, given that the MPC Project's status as a Market Efficiency Transmission Upgrade (METU) is an open question. Petitioners state that ISO-NE approval of a

¹ *American Electric Power Service Corporation*, 118 FERC ¶ 61,041 (2007).

significant portion of the MPC Project as an METU is “a critical factor to the ultimate viability of the MPC Project.”² Without METU status, there is a significant risk that the MPC Project will be abandoned. However, it appears that with METU status, which results in its costs being shared by all transmission customers in the New England region, Petitioners will move forward, with or without an incentive ROE adder.

At the present time, there is significant uncertainty with respect to the MPC Project’s status as an METU. There are several factors that contribute to the uncertainty: 1) Central Maine and MPS are the first parties to request such status in the ISO-NE RSP process and have “encountered significant opposition from stakeholders”³; 2) an ISO-NE stakeholder process is underway to review the process for evaluating the benefits and costs of any potential METU, not just the MPC Project; and 3) the MPC Project was not included in ISO-NE’s 2008 RSP, as Central Maine and MPS had intended. I note that Petitioners have indicated that an extension of the MPC Project could create a third high-voltage line to eastern Canada, which would provide access to new wind generation and hydroelectric resources currently in the early stages of development. ISO-NE and its stakeholders have only recently begun to engage the broader issue of METUs and so the Commission is better served in deferring the ROE question at the present time, given that the future of the MPC Project, in large part if not in full, turns on the METU determination. Furthermore, deferral on the ROE adder preserves the Commission’s ability to consider an extended project in its entirety, if and when that comes to fruition.

Accordingly, I respectfully concur in part and dissent in part from this order.

Sudeen G. Kelly

² Central Maine Power Company and Maine Public Service Company July 18, 2008 Petition for Declaratory Order, Docket No. EL08-77-000, at 5.

³ *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Maine Power Company
and
Maine Public Service Company

Docket No. EL08-77-000

(Issued November 17, 2008)

WELLINGHOFF, Commissioner, dissenting in part:

In today's order, the majority conditionally grants a 150 basis point incentive ROE adder to Central Maine and MPS in connection with the Maine Power Connection Project (MPC Project). The majority makes that approval contingent on ISO New England including the project in its Regional System Plan (RSP) as a Market Efficiency Transmission Upgrade, and on Central Maine and MPS further explaining how that designation resulted in ISO New England considering whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.

I dissent in part from today's order because I conclude that Central Maine and MPS have not adequately justified their requested 150 basis point incentive ROE adder for the MPC Project. In particular, I am concerned that although Central Maine and MPS characterize a short section of their petition as a "Technology Statement," that section includes little more than a bullet point list and a statement that the petitioners will "conclude[] their evaluation of these and other advanced transmission technologies" in the future.¹ Such cursory statements treat as a mere formality the technology statement that the Commission in Order No. 679 required of all applicants seeking incentives.² I take this opportunity to reiterate my belief that consideration of advanced technologies and their associated risks and challenges is an appropriate and important component of the nexus analysis that the Commission conducts in evaluating applications for incentives under Order No. 679. I continue to encourage future applicants for incentive ROE adders to provide adequately detailed information on this issue.

There are limited circumstances in which I have supported granting an incentive ROE adder despite an applicant's failure to provide adequate detail about its planned use of advanced technologies. For example, the Commission recently granted Central Maine a 125 basis point incentive ROE adder in connection with the Maine Power Reliability

¹ Petition at 82-84. *See also* Miller Affidavit at 23.

² Order No. 679 at P 302.

Program Project (MPRP Project).³ I dissented in part from that order because I concluded that Central Maine did not warrant that incentive ROE adder. In light of the broad and substantial benefits associated with accelerating the integration of clean and reliable renewable energy resources into our country's energy portfolio, I found it noteworthy that the MPRP Project would significantly increase the availability of renewable energy resources.⁴ I noted Central Maine's statement that the project could provide reliable access to a portion of the substantial wind and hydroelectric power that is under development in Maine, Quebec, New Brunswick, and Newfoundland and Labrador. However, I expressed concern about the inadequacy of Central Maine's technology statement. I also cautioned that even in pursuing benefits associated with accelerated integration of renewable energy resources, it remains important for the Commission to promote the use of intelligent and efficient technologies that optimize operation of the facilities at issue. Balancing those considerations, I stated that I would grant Central Maine a 75 basis point incentive ROE adder for the MPRP Project.⁵

While recognizing that the MPC Project and the MPRP Project are similar in some respects,⁶ I find their different stages of development to be noteworthy. As of October 2008, ISO New England classifies the MPRP Project as "planned".⁷ By contrast, ISO New England classifies the MPC Project in the "concept" phase,⁸ which is defined in ISO New England's tariff as covering a project that "is being considered by its proponent as a potential solution to meet a need identified by the ISO in a Needs Assessment or the RSP, but for which there is little or no analysis available to support the transmission project."⁹ Further, as noted above, the MPRP Project is already planned to access substantial renewable energy under development in Maine and nearby Canadian provinces, whereas

³ *Central Maine Power Co.*, 125 FERC ¶ 61,079 (2008).

⁴ The Commission has also found that increasing access to renewable energy resources is a relevant consideration in evaluating incentives applications. *See PacifiCorp*, 125 FERC ¶ 61,076 at P 45 (2008).

⁵ *Central Maine Power Co.*, 125 FERC ¶ 61,079 (2008) (dissent in part of Commissioner Wellinghoff at 1-2).

⁶ For example, both projects involve the construction of new 345 kV transmission lines in Maine. In addition, Central Maine and MPS highlight the proposed Aroostook Wind Energy Project in arguing that the MPC Project would have the benefit of enhancing market access for renewable energy sources. Petition at 3.

⁷ *See* ISO New England RSP Transmission Project Listing – October 2008 Update (Final), Lines 11-21, Column J, Oct. 31, 2008, available at <http://www.iso-ne.com/trans/rsp/index.html> (last visited Nov. 12, 2008).

⁸ *See id.*, Line 250, Column J.

⁹ ISO New England OATT, Attachment K, Original Sheet No. 6245.

Central Maine and MPS state only that they may consider extending the MPC Project to Eastern Canada based on additional studies.¹⁰

In light of these considerations, as well as the inadequate technology statement that Central Maine and MPS provided in this proceeding, I conclude that it is premature to grant an incentive ROE adder for the MPC Project. The Commission has previously deferred consideration of a requested ROE incentive for a project in the early stage of development.¹¹ I believe that course of action is appropriate here.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹⁰ Petition at 4.

¹¹ *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008).