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(i) Boeing Alert Service Bulletin 737–53A1166, Revision 2, dated May 25, 2006.

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(i) Boeing Alert Service Bulletin 737–53A1166, dated June 30, 1994, including Addendum, approved for IBR August 18, 1995 (60 FR 36981, July 19, 1995).

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Issued in Renton, Washington, on October 16, 2012.

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[FR Doc. 2012–27636 Filed 11–20–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 2 and 35

[Docket No. RM11–26–000]

#### Promoting Transmission Investment Through Pricing Reform

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Policy statement.

**SUMMARY:** The Commission issues this policy statement to provide guidance regarding its evaluation of applications for electric transmission incentives under section 219 of the Federal Power Act. In the six years since the Commission implemented section 219 by issuing Order No. 679, the

Commission has acted on numerous applications for transmission incentives. The Commission has now determined it would be beneficial to provide additional guidance and clarity with respect to certain aspects of its transmission incentives policies under section 219 of the Federal Power Act and Order No. 679. In particular, the Commission: reframes its nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive return on equity (ROE) based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. The Commission finds that the additional guidance provided through this policy statement is necessary to encourage transmission infrastructure investment while maintaining just and reasonable rates, consistent with section 219 of the Federal Power Act. The Commission will apply this policy statement on a prospective basis to incentive applications received after the date of its issuance.

**DATES:** Effective November 15, 2012.

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*Before Commissioners:* Jon Wellingshoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

#### Policy Statement

(Issued November 15, 2012)

1. The Commission issues this policy statement to provide guidance regarding its evaluation of applications for electric transmission incentives under section 219 of the Federal Power Act (FPA).<sup>1</sup> In the six years since the Commission implemented section 219 by issuing Order No. 679,<sup>2</sup> the Commission has acted on numerous applications for transmission incentives. The

<sup>1</sup> 16 U.S.C. 824s (2006).

<sup>2</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 FR 43294 (Jul. 31, 2006), FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679–A, 72 FR 1152 (Jan. 10, 2007), FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Commission has now determined it would be beneficial to provide additional guidance and clarity with respect to certain aspects of its transmission incentives policies under section 219 of the Federal Power Act and Order No. 679. In particular, the Commission: reframes the nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive return on equity (ROE) based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. The Commission finds that the additional guidance provided through this policy statement is necessary to encourage transmission infrastructure investment while maintaining just and reasonable rates, consistent with section 219 of the FPA. The Commission will apply this policy statement on a prospective basis to incentive applications received after the date of its issuance.

#### I. Background

2. Section 1241 of the Energy Policy Act of 2005 added a new section 219 to the FPA. The Commission implemented section 219 by issuing Order No. 679, which established by rule incentive-based rate treatments for investment in electric transmission infrastructure for the purpose of benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion. Since the issuance of Order No. 679, the Commission has evaluated more than 85 applications representing over \$60 billion in potential transmission investment.

3. On May 19, 2011, the Commission issued a notice of inquiry (NOI) seeking public comment regarding the scope and implementation of the Commission's incentives policies. The Commission received over 1,500 pages of comments reflecting a wide range of perspectives on the Commission's incentives policies. The Commission appreciates the robust participation by the diverse group of commenters, and has carefully considered the comments received in formulating this policy statement. The Commission's issuance of this policy statement is driven by its experience applying its incentives policies to individual incentive

applications and comments received in response to the NOI.

## II. Policy Statement

4. As noted above, the Commission through this policy statement provides additional guidance with respect to certain aspects of its incentives policies. Specifically, the Commission: reframes the nexus test to focus more directly on the requirements of Order No. 679; expects applicants to take all reasonable steps to mitigate the risks of a project, including requesting those incentives designed to reduce the risk of a project, before seeking an incentive ROE based on a project's risks and challenges; provides general guidance that may inform applications for an incentive ROE based on a project's risks and challenges; and promotes additional transparency with respect to the impacts of the Commission's incentives policies. Each of these issues and the Commission's corresponding clarifications are discussed further below.

5. We note that many aspects of the Commission's incentives policies are not addressed in this policy statement. For example, in Order No. 679, the Commission stated that applicants could seek incentives thereunder regardless of their ownership structure,<sup>3</sup> and that the Commission would evaluate incentive applications on a case-by-case basis.<sup>4</sup> The Commission also established rebuttable presumptions to assist in determining whether proposed facilities satisfy the statutory threshold of section 219.<sup>5</sup> In Order No. 679 and subsequent cases applying incentives policies, the Commission has addressed the granting of incentive ROEs that are not based on the risks and challenges of a project, such as incentive ROEs for RTO membership or Transco formation. With respect to aspects of the Commission's incentives policies not addressed in this policy statement, we decline to provide additional guidance at this time.

### A. Application of the Nexus Test

6. Order No. 679 established the "nexus test," which requires applicants to demonstrate a connection between the incentive(s) requested under Order No. 679 and the proposed investment, and that the incentive(s) requested address the risks and challenges that a

project faces. In Order No. 679, the Commission stated that each incentive:

"\* \* \* will be rationally tailored to the risks and challenges faced in constructing new transmission. Not every incentive will be available for every new investment.

Rather, each applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. Our reforms therefore continue to meet the just and reasonable standard by achieving the proper balance between consumer and investor interests on the facts of a particular case and considering the fact that our traditional policies have not adequately encouraged the construction of new transmission."<sup>6</sup>

7. The Commission refined the nexus test in Order No. 679-A, finding that, in applying the nexus test, the Commission should look at whether the total package of incentives is rationally tailored to the risks and challenges of constructing new transmission.<sup>7</sup> The Commission stated that this approach would protect consumers by recognizing that requested incentives that reduce risk might obviate the need for an incentive ROE based on a project's risks and challenges, or otherwise justify a lower incentive ROE based on a project's risks and challenges.

8. Subsequent to Order No. 679 and Order No. 679-A, the Commission further refined its application of the nexus test by clarifying that the determination of whether a project is "routine" or "non-routine" is particularly probative in evaluating whether the nexus test was satisfied. In *Baltimore Gas and Electric Company*, the Commission concluded that, once an applicant demonstrates that a project is not routine, the nexus test is satisfied and the project is deemed to face risks and challenges that merit incentive(s).<sup>8</sup>

9. The Commission recognizes that there are a wide range of views on its application of the nexus test and, in particular, the Commission's use of the routine/non-routine analysis as a proxy for the nexus test. Most commenters in the NOI are supportive of the nexus test's focus on evaluating risks and challenges to determine whether a project merits incentives. Some

commenters offer additional criteria for assessing risks and challenges, while others are more critical of the nexus test and assert that it is insufficient and requires change. With respect to the Commission's use of the routine/non-routine analysis in reviewing incentive applications since *BG&E*, some commenters support the continued use of the routine/non-routine analysis, while others seek more clarity from the Commission.

10. Based on experience to date with the application of Order No. 679, the Commission now believes it is essential to re-frame its application of the nexus test to focus more directly on the requirements adopted in Order Nos. 679 and 679-A.<sup>9</sup> The Commission will no longer rely on the routine/non-routine analysis adopted in *BG&E* as a proxy for the nexus test. While prior orders found that analysis probative, based on our experience to date applying our incentives policies and the comments received in response to the NOI, we believe it is necessary to analyze the need for each individual incentive, and the total package of incentives, instead of relying on a proxy. Consistent with Order No. 679-A, the Commission will continue to require applicants seeking incentives to demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges. Applicants "must provide sufficient explanation and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. If some of the incentives would reduce the risks of the project, that fact will be taken into account in any request for an enhanced ROE."<sup>10</sup>

### B. Risk-Reducing Incentives

11. The Commission authorizes a company's base ROE utilizing a range of reasonableness resulting from a discounted cash flow (DCF) analysis that is applied to a selected proxy group representing firms of comparable risk. The resulting base ROE authorized by the Commission is designed to account for many of the risks associated with transmission investment and to support that investment. Nonetheless, the Commission recognizes that there may be risks associated with investment in particular transmission projects that are not accounted for in the base ROE. In Order No. 679, the Commission recognized that some transmission incentives—such as recovery of 100 percent of Construction Work in

<sup>3</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 4. Section 219(b)(1) requires that the Commission establish rules for incentives, "\* \* \* regardless of the ownership of the facilities." 16 U.S.C. 824s(b)(1).

<sup>4</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 43.

<sup>5</sup> *Id.* P 58.

<sup>6</sup> *Id.* P 26.

<sup>7</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27. See also 18 CFR 35.35(d) (2006) ("Incentive-based rate treatments for transmission infrastructure investment. \* \* \* The applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion consistent with the requirements of section 219, that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project, and that resulting rates are just and reasonable.\* \* \*")

<sup>8</sup> 120 FERC ¶ 61,084, at PP 52–54 (2007) (*BG&E*).

<sup>9</sup> 18 CFR 35.35(d).

<sup>10</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

Progress (CWIP), recovery of 100 percent of pre-commercial costs as an expense or as a regulatory asset, and recovery of 100 percent of prudently incurred costs of transmission facilities that are abandoned for reasons beyond the applicant's control—reduce the financial and regulatory risks associated with transmission investment.<sup>11</sup> The Commission reaffirms in this policy statement that these risk-reducing incentives may mitigate risk not accounted for in the base ROE, and we therefore expect incentives applicants to first examine the use of risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.<sup>12</sup>

12. The CWIP and pre-commercial cost incentives both serve as useful tools to ease the financial pressures associated with transmission development by providing up-front regulatory certainty, rate stability and improved cash flow, which in turn can result in higher credit ratings and lower capital costs.<sup>13</sup> Specifically, the CWIP incentive addresses timing issues associated with the recovery of financing costs for large transmission investments and allows recovery of a return on construction costs during the construction period rather than delaying cost recovery until the plant is placed into service. The Commission has also found that allowing companies to include 100 percent of CWIP in rate base would result in greater rate stability for customers by reducing the "rate shock" when certain large-scale transmission projects come on line.<sup>14</sup>

13. Regarding 100 percent recovery of pre-commercial cost as an incentive, the Commission has permitted recipients of this incentive to expense and recover pre-commercial costs that would otherwise be capitalized in CWIP, thus providing for earlier cost recovery and improving early stage project cash flows. The Commission has also made deferred cost recovery available to applicants to address cost recovery restrictions at the state level and to

provide greater flexibility for applicants to recover costs, recognizing that deferred cost recovery is intended to " \* \* \* increase the certainty of cost recovery to encourage more transmission investment."<sup>15</sup> The Commission also recognizes the usefulness of deferred cost recovery of pre-commercial costs for applicants who do not have a formula rate in effect prior to incurring pre-commercial costs, by allowing the applicant to defer all such costs not included in CWIP as a regulatory asset until the applicant has a formula rate in effect for cost recovery.<sup>16</sup> The Commission has previously found that this incentive provides up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and assist in the construction of transmission projects.<sup>17</sup>

14. Regarding the incentive that allows for 100 percent recovery of prudently incurred costs of transmission facilities that are abandoned for reasons beyond the control of the transmission owner, the Commission has found this incentive reduces the regulatory risk of non-recovery of prudently incurred costs.<sup>18</sup> The Commission has previously stated that, in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk. Granting this incentive ameliorates such risk by providing companies with more certainty during the pre-construction and construction periods.<sup>19</sup>

15. In the NOI, numerous commenters discuss the interplay of risk-reducing incentives on the need for and appropriate level of an incentive ROE. For example, Certain State and Consumer-Owned Entities state that if a project's risks exceed the risk that is accounted for in the base ROE, incentives may be appropriate.<sup>20</sup> Other

commenters state that the Commission should strike an appropriate balance between consumer and investor interests, and that if incentives are compounded without consideration of the reduced risk effect of some of the incentives, this approach tips the risk in favor of the investor and to the detriment of the transmission customer. Numerous commenters also argue that risk-reducing incentives mitigate the need for an incentive ROE based on a project's risks and challenges to attract investment. For example, Joint Commenters<sup>21</sup> note that the biggest risks for transmission projects relate to siting and permitting delays, cash flow shortage, or abandonment concerns, but argue that, even where the level of these risks is unusually high, they can be mitigated by granting risk-reducing incentives. Joint Commenters further contend that, when incentives are appropriate, risk-reducing incentives should be the first (and often the only) incentives considered.<sup>22</sup> Other commenters point out that risk also is mitigated through the assurance of cost recovery at the state level.

16. In Order No. 679-A, the Commission stated that a project that receives risk-reducing transmission incentives, like those discussed above,

the Commonwealth of Massachusetts, Massachusetts Department of Public Utilities, Massachusetts Municipal Wholesale Electric Company, New England Conference of Public Utilities Commissioners, Attorney General for the State of New Hampshire, New Hampshire Electric Cooperative, Inc., New Hampshire Office of Consumer Advocate, New Hampshire Public Utilities Commission, Rhode Island Public Utilities Commission and Division of Public Utilities and Carriers, Attorney General for the State of Rhode Island, Vermont Department of Public Service, and Vermont Public Service Board.

<sup>21</sup> Joint Commenters include Joint Comments of American Forest & Paper Association, American Public Power Association, California Municipal Utilities Association, California Public Utilities Commission, City and County of San Francisco, Connecticut Office of Consumer Counsel, Electricity Consumers Resource Council, Indiana Utility Regulatory Commission, Maryland Office of People's Counsel, Modesto Irrigation District, Montana Public Service Commission, National Association of State Utility Consumer Advocates, New England Conference of Public Utilities Commissioners, New Hampshire Public Utilities Commission, New Jersey Board of Public Utilities, New Jersey Division of Rate Counsel, Northern California Power Agency, Office of the Nevada Attorney General, Bureau of Consumer Protection, Office of the Ohio Consumers' Counsel, Old Dominion Electric Cooperative, Organization of MISO States, Pennsylvania Office of Consumer Advocate, Public Power Council, Public Service Commission of the State of New York, Public Service Commission of Wisconsin, Sacramento Municipal Utility District, South Dakota Public Utilities Commission, State of Maine, Office of the Public Advocate, Transmission Agency of Northern California, the Vermont Department of Public Service, and the Vermont Public Service Board.

<sup>22</sup> Joint Commenters September 12, 2011 Comments at 80.

<sup>15</sup> Order No. 679, *FERC Stats. & Regs.* ¶ 31,222 at PP 175, 178.

<sup>16</sup> See, e.g., *Atlantic Grid*, 135 FERC ¶ 61,144 (2011). Like the pre-commercial cost incentive, all transmission incentives are intended to be available to all existing utilities and non-incumbent utilities.

<sup>17</sup> See, e.g., *DATC Midwest Holdings, L.L.C.*, 139 FERC ¶ 61,224 (2012).

<sup>18</sup> Order No. 679, *FERC Stats. & Regs.* ¶ 31,222 at P 163.

<sup>19</sup> See, e.g., *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011).

<sup>20</sup> Certain State and Consumer-Owned Entities September 12, 2011 Comments at 39. Certain State and Consumer-Owned Entities include Connecticut Public Utilities Regulatory Authority, Attorney General for the State of Connecticut, Connecticut Office of Consumer Counsel, Attorney General for the State of Delaware, Delaware Public Service Commission, Public Advocate of Delaware, Attorney General for the State of Illinois, Maine Public Utilities Commission, Attorney General for

<sup>11</sup> See Order No. 679, *FERC Stats. & Regs.* ¶ 31,222 at PP 115, 117, and 163.

<sup>12</sup> The Commission clarifies that placing a priority on risk-reducing incentives does not require separate applications for risk-reducing incentives and an incentive ROE based on a project's risks and challenges. Rather, in a single application an applicant could first demonstrate how risk-reducing incentives are utilized and then seek to demonstrate, as discussed further below, that remaining risks and challenges merit an incentive ROE based on the project's risks and challenges.

<sup>13</sup> See Order No. 679, *FERC Stats. & Regs.* ¶ 31,222 at PP 115, 117, and 163.

<sup>14</sup> See, e.g., *PJM Interconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 135 FERC ¶ 61,229 (2011). See also *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 43 (2008), *reh'g denied* 124 FERC ¶ 61,229.

would likely face lower risks. Therefore, that project may not warrant an incentive ROE, or may warrant a lower incentive ROE, based on the project's risks and challenges.<sup>23</sup> Based on the Commission's experience under Order No. 679, and after careful consideration of comments on the NOI as to the benefits of risk-reducing incentives, the Commission clarifies that many risks not accounted for in the base ROE can be alleviated through risk-reducing incentives such as those discussed earlier in this section. In cases where an incentive ROE based on risks and challenges is requested in combination with risk-reducing incentives, the Commission must carefully apply its total package analysis to ensure that the effect of the risk-reducing incentives is appropriately accounted for in determining whether an incentive ROE based on risks and challenges is warranted, and if warranted, what level is appropriate. For this reason, the Commission expects incentives applicants to seek to reduce the risk of transmission investment not otherwise accounted for in its base ROE by using risk-reducing incentives before seeking an incentive ROE based on a project's risks and challenges.<sup>24</sup>

### C. Incentive ROEs Based on Project Risks and Challenges

17. Some commenters in the NOI suggest that the Commission specifically identify project characteristics or risks and challenges that would merit an incentive ROE. We decline to do so. Instead, we will continue to allow applicants the flexibility necessary to demonstrate why their projects may merit an incentive ROE, and at what level, based on those project's risks and challenges, but we provide general guidance below that may inform applications for this type of transmission incentive.

#### 1. Showings and Commitments for Remaining Risks and Challenges

18. As discussed above, many of the risks not captured by traditional ratemaking policies can be addressed through risk-reducing incentives. While the record in the NOI proceeding does

<sup>23</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

<sup>24</sup> The Commission appreciates that non-incumbents seeking incentives may face challenges implementing some risk-reducing incentives because they may not have the appropriate rate structures in place under which to effectuate these transmission incentives. In such instances, the Commission anticipates subsequent section 205 filings by non-incumbent incentive applicants for cost recovery. As noted above, all transmission incentives are intended to be available to all existing utilities and non-incumbent utilities.

not show that incentive ROEs have resulted in significant rate increases for consumers,<sup>25</sup> incentive ROEs likely put more upward pressure on transmission rates than risk-reducing incentives. Therefore incentive applicants should first examine risk-reducing incentives.

19. However, a project may face certain risks and challenges that may not be addressed through either the traditional ratemaking policies or risk-reducing incentives. In such instances, an incentive ROE based on a project's risks and challenges may be appropriate.<sup>26</sup> Based on the Commission's experience under Order No. 679 and the comments received on the NOI, the Commission expects applicants seeking an incentive ROE based on a project's risks and challenges to make the following four showings as part of their application for that incentive.

#### a. Identification of Risks and Challenges

20. When applying for an incentive ROE based on the project's risks and challenges, applicants will first be expected to demonstrate that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives. To make this demonstration, the Commission suggests that applicants identify risks and challenges specific to the project for which an incentive ROE is being requested.

21. Investments in the following types of transmission projects<sup>27</sup> may face the types of risks and challenges that may warrant an incentive ROE based on the project's risks and challenges that are not either already accounted for in the applicant's base ROE or could be addressed through risk-reducing incentives:

1. Projects to relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers;
2. Projects that unlock location constrained generation resources that

<sup>25</sup> See, ITC Holdings Corp. September 12, 2011 Comments at 16: "The incentives granted to transmission projects have had generally positive, not negative, effects on consumer rates and service, especially when improved reliability, reduced congestion and access to a more diverse supply of generation, including renewable resources, are taken into account. One reason for this is that the cost of transmission incentives is small compared to the cost of energy, distribution and congestion."

<sup>26</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94.

<sup>27</sup> These investments could include both investment in new transmission facilities, as well as investment in transmission upgrades, retrofits, and projects that modernize the existing transmission grid.

previously had limited or no access to the wholesale electricity markets;

3. Projects that apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.<sup>28</sup>

22. This list is not exhaustive, but rather indicative of the types of projects that the Commission believes, based on its experience and expertise with respect to industry trends and system investment needs, may warrant an incentive ROE based on the project's risks and challenges. More generally, the Commission anticipates that applicants will seek an incentive ROE based on a project's risks and challenges for projects that provide demonstrable consumer benefits by making the transmission grid more efficient, reliable, and cost-effective. Thus, consistent with our statements in Order No. 679, we note that reliability-driven projects may be considered for an incentive ROE based on a project's risks and challenges, but only if they present specific risks and challenges not otherwise mitigated by available risk-reducing incentives.<sup>29</sup>

23. Under our current incentive policies, the Commission considers an applicant's proposed use of an advanced transmission technology both: (1) as part of the overall nexus analysis, accounting for the risks and challenges associated with utilizing such advanced technology into that overall nexus analysis;<sup>30</sup> and (2) where an applicant seeks a stand-alone incentive ROE based on its utilization of an advanced technology.<sup>31</sup> The Commission

<sup>28</sup> Examples of projects that meet this description include those that create additional incremental capacity without significant construction (e.g., through the use of dynamic line rating), that allow for more efficient balancing of variable energy resources, and/or that provide increased grid stability. In addition, the Commission is concerned that its current practice of granting incentive ROEs and risk-reducing incentives may not be effectively encouraging the deployment of new technologies or the employment of practices that provide demonstrated benefits to consumers. Accordingly, the Commission remains open to alternative incentive proposals aimed at supporting projects that achieve these ends.

<sup>29</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94.

<sup>30</sup> See *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 59 (2008) ("[t]he associated challenges can be incorporated into the overall nexus analysis, but the technology does not, in and of itself, appear to justify a separate advanced technology adder."); *RITELine Indiana & Illinois LLC*, 137 FERC ¶ 61,039 at P 62 (2011).

<sup>31</sup> See *The United Illuminating Co.*, 126 FERC ¶ 61,043, at P 14 (2009) ("In reviewing requests for separate adders for advanced technology, the Commission reviews record evidence to decide if the proposed technology warrants a separate adder because it reflects a new or innovative domestic use of the technology that will improve reliability, reduce congestion, or improve technology.") See

continues to encourage the deployment of advanced technologies that “increase the capacity, efficiency, or reliability of an existing or new transmission facility.”<sup>32</sup> However, the Commission is concerned that its current approach may contribute to confusion, including with respect to the distinct standards that the Commission applies in these two contexts. To address this concern, the Commission will no longer consider requests under Order No. 679 for a stand-alone incentive ROE based on an applicant’s utilization of an advanced technology. Instead, as noted above, the Commission will consider transmission projects that apply advanced technologies as indicative of the types of projects facing risks and challenges that may warrant an incentive ROE. As a result, we will consider deployment of advanced technologies as part of the overall nexus analysis when an incentive ROE is sought.

#### b. Minimization of Risks

24. The Commission expects an applicant that requests an incentive ROE based on a project’s risks and challenges to demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development. For example, risks may be reduced through the risk-reducing incentives described in section II.B, or through mitigating costs by implementing best practices in their project management and procurement procedures. Applicants should consider taking measures tailored to mitigate the various risks associated with their transmission projects and to identify such measures in their applications. For example, applicants may take measures to mitigate risks associated with siting and environmental impacts by pursuing joint ownership arrangements. The Commission encourages incentives applicants to participate in joint ownership arrangements and agrees with commenters to the NOI that such arrangements can be beneficial by diversifying financial risk across multiple owners and minimizing siting risks.<sup>33</sup>

also *NSTAR Elec. Co.*, 127 FERC ¶ 61,052 at P 27 (2009).

<sup>32</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 298.

<sup>33</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 354, 357; Order No. 679–A FERC Stats. & Regs. ¶ 31,236, at P 102. See also *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 61 (2008); *Xcel Energy*, 121 FERC ¶ 61,284 at P 55 (2007). Evidence regarding whether an applicant for incentives considered joint ownership arrangements may be relevant in assessing whether the applicant took appropriate steps to minimize its risks during project development.

#### c. Consideration of Alternatives

25. The Commission expects applicants for an incentive ROE based on a project’s risks and challenges to demonstrate that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum. Such a showing should help identify the demonstrable consumer benefits of the proposed project and its role in promoting a more efficient, reliable and cost-effective transmission system.<sup>34</sup>

26. The Commission appreciates that there may be timing challenges for applicants making this showing, and thus the Commission will be flexible in the approaches it allows for applicants to make this showing. In particular, this showing could be satisfied through participation in open processes that are already in existence. For example:

1. The applicant could show that its project was, or will be, considered in an Order No. 890 or Order No. 1000-compliant transmission planning process that provides the opportunity for projects to be compared against transmission or non-transmission alternatives.<sup>35</sup>

2. The applicant could show that its project was considered by a local regulatory body, such as a state utility commission, that evaluated alternatives to its proposed project (transmission or non-transmission alternatives) and determined that the proposed transmission project is preferable to the alternatives evaluated.

27. The above approaches should not be seen as exclusive, however, and the Commission will remain open to alternative methods to making this showing.<sup>36</sup>

#### d. Commitment to Cost Estimates

28. Finally, the Commission expects applicants for an incentive ROE based on a project’s risks and challenges to commit to limiting the application of the incentive ROE based on a project’s

<sup>34</sup> This showing draws on recommendations made by commenters in the NOI, who suggested that the Commission require an assessment of lower cost alternatives to any proposed transmission project as part of a filing requesting transmission incentives.

<sup>35</sup> In making this showing, the applicant need not show that its project was selected in a regional transmission plan for purposes of cost allocation. Instead, the focus would be on whether the project was or will be considered in a process where it could be compared to other projects and shown to be preferable to any alternatives that were evaluated.

<sup>36</sup> For example, projects that are required to complete an environmental impact statement (EIS) may submit the analysis on the consideration of alternatives, per the requirements of the EIS, as making such a showing.

risks and challenges to a cost estimate. For example, the Commission has approved an applicant’s proposal to limit the incentive ROE based on a project’s risks and challenges to the cost estimate utilized at the time of RTO approval.<sup>37</sup> Our intent is not to be prescriptive as to how applicants might structure this commitment; instead, the Commission is open to approaches that control transmission development costs and provide more transparency regarding how incentives will be applied to costs beyond initial estimates.<sup>38</sup>

29. The Commission recognizes the challenges of determining the appropriate cost estimate for a project. For example, most applicants seek incentives from the Commission at a relatively early stage in the project development process, often before state siting or other processes raise challenges that can impact the design and ultimate cost of a project. One option may be for applicants to commit to limiting the application of an incentive ROE based on a project’s risks and challenges to the last cost estimate relied upon to include or retain the project in a regional transmission planning process.<sup>39</sup>

30. The Southwest Power Pool Regional State Committee (SPP RSC) in its comments on the NOI identifies a definitive cost estimate that would serve as the initial threshold limit for an incentive ROE, a 10% dead-band above or below the definitive cost estimate around which changes in costs are shared equally between shareholders and customers, and a provision for addressing cost increases that are outside the control of the transmission owner.<sup>40</sup> The Commission believes that aspects of the SPP RSC proposal highlighted here may provide useful guidance to applicants when seeking incentive ROEs based on a project’s risks and challenges.

### III. Conclusion

31. As noted above, the Commission is relying on its experience and expertise with respect to industry trends and system investment needs to provide additional guidance and clarity through this policy statement. Six years after

<sup>37</sup> *RITELine Illinois & Indiana LLC*, 137 FERC ¶ 61,039, at P 5 (2011).

<sup>38</sup> Concern about the effects of allowing transmission incentives to be applied to costs over those estimated was expressed by a number of commenters in the NOI proceeding.

<sup>39</sup> If factors outside applicant’s control cause significant deviation from the cost estimate upon which the ROE incentive was initially granted, the Commission can revisit that cost estimate (e.g., a regional planner requires significant acceleration of a project construction timeline).

<sup>40</sup> SPP RSC September 12 Comments at 5, 12–13.

issuing Order No. 679, the Commission believes that it is appropriate and in the public interest to evaluate the impacts of its incentives policy and give guidance as to how the Commission will implement that incentives policy going forward. In order to further the mandate of FPA section 219 and encourage transmission investment in the future, the Commission will continue to monitor its incentives policy and may identify new policy issues, trends, and developments in transmission investment that may warrant modifications to the Commission's incentives policy. As part of this effort, the Commission will continually assess measures to further transparency in its incentives policy and the impacts of that policy on consumers.

#### IV. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

33. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

By the Commission. Commissioner Clark is not participating.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2012-28231 Filed 11-20-12; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2012-1002]

#### Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation, instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

**DATES:** This deviation is effective from 7 a.m., December 16, 2012, to 7 a.m. March 4, 2013.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2012-1002 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-1002 in the "Search" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, email [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Chicago, Central & Pacific Railroad requested a temporary deviation for the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa, to open on signal if at least 24 hours advance notice is given in order to facilitate needed

bridge maintenance and repairs. The Rock Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges must open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to facilitate the needed bridge work, the drawbridge must be kept in the closed-to-navigation position. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given from 7 a.m. December 16, 2012 until 7 a.m., March 4, 2013.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Illinois Central Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24-hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 8, 2012.

**Eric A. Washburn,**

*Bridge Administrator, Western Rivers.*

[FR Doc. 2012-28282 Filed 11-20-12; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2011-0937]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Black River, La Crosse, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Canadian Pacific Railroad Drawbridge across the Black River at Mile 1.0 near La Crosse, Wisconsin. The drawspan shall immediately open upon demand once the vessel requiring an opening establishes contact with the remote operator located in Minneapolis,