

Incentives: Encouraging Transmission Investment in Today's Economy

Fifteenth Annual FERC Briefing
Conducting Public Utility Business in Uncertain Times
Bruder, Gentile & Marcoux, L.L.P.
March 5, 2009



Linda S. Kizuka
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006
Telephone: 202/296-1500
Facsimile: 202/296-0627
E-Mail: lskizuka@brudergentile.com

Why are Incentives Critical Today?

- Maintain and increase investment in uncertain economic times
- Connect renewable energy resources to the grid
- Modernize the transmission system



Available Incentives

- ROE incentives for investment risks and challenges and RTO participation
- 100% CWIP
- Recovery of abandoned plant costs
- Recovery of pre-commercial expenses
- Hypothetical capital structure
- Accelerated depreciation
- Deferred cost recovery
- Advanced technology incentives
- Additional incentives available for Transcos

How Do You Get Them?

- Section 205 filing or Petition for Declaratory Order
- Getting in the door – Section 219
 - Improve reliability or decrease congestion costs
 - Rebuttable presumptions
- Total package tailored to address demonstrable risks and challenges
 - Nexus between incentive and investment
- Resulting ROE is just and reasonable

Nexus Test – Is the Project Routine?

- Scope of the project
- Effect of the project
- Challenges or risks faced by the project

“By definition, projects that are not routine under [the nexus] analysis . . . face inherent risks and challenges and/or provide benefits that are worthy of incentives.” *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 54 (2007).

Advanced Technology Incentives

- EPAAct 2005: Technology must increase the capacity, efficiency, or reliability of an existing or new transmission facility
 - List of 18 advanced technologies
- Recent development: Technology incentives require:
 - Unusual characteristics; or
 - Risks, challenges, and benefits associated with the technology

Past Incentive Orders

- *Baltimore Gas & Elec. Co.*, 121 FERC ¶ 61,167, at PP 27-33 (November 16, 2007)
 - Granted 100 basis point ROE adders for: (1) a \$0.3 million project to transform an existing radial line into a double circuit by adding a new radial line and to add a third parallel circuit; and (2) a \$26.9 million project consisting of five smaller projects to redesign/rebuild a switching station, build a GIS station, parallel existing cables between two stations, and install new 115 kV cable between stations
- *Virginia Electric and Power Company*, 124 FERC ¶ 61,207, at PP 89, 100 (August 29, 2008)
 - Granted , *inter alia*, 125 basis point ROE adders for a \$25 million project to reconfigure and upgrade a substation, and for a \$6 million project to install two line breakers and two tie breakers at a substation

Past Incentive Orders continued

- *The United Illuminating Company*, 119 FERC ¶ 61,182, at PP 71-78 (May 22, 2007).
 - Granted 50 basis point ROE advanced technologies adder for costs associated w/ underground XLPE cable
 - Rationale: Mitigates congestion and enhances grid reliability by increasing the capacity, efficiency or reliability of an existing or new transmission facility
 - Congressional directive applies regardless of whether technologies otherwise create demonstrable risks and challenges

Recent Trends

- Projects connecting renewable energy sources to the grid
- Projects involving multiple utilities and crossing multiple jurisdictions
- Applicants seeking incentive approval at very early stages in the planning process



Incentive Policy: A Moving Target?

- PJM RTEP Baseline Projects
 - **July 2007**: PJM RTEP “baseline” projects by definition are regional and thus not routine for purposes of nexus test
 - **January 2008**: Incentives granted on rehearing because project is PJM RTEP baseline project and thus not routine under *BG&E*
 - **September 2008**: PJM’s scrutiny of baseline projects is “significant in [FERC’s] analysis”, but not all baseline projects automatically qualify for incentives

Incentive Policy: A Moving Target? continued

- Commissioner Moeller's Dissent in *Commonwealth Edison Company*, 125 FERC ¶ 61,250 (December 4, 2008):
 - "It appears that the majority is adopting a new test so that they will now approve incentives only for the highest-voltage transmission lines, and only when those transmission lines use new rights-of-way, traverse multiple jurisdictions, and use advanced technology."

Incentive Policy: A Moving Target? continued

- *Commonwealth Edison Company*, 125 FERC ¶ 61,250, at PP 36-37, 41-44 (December 4, 2008).
 - Denied 150 basis point ROE adders for 22 PJM RTEP baseline projects because no risks or challenges warrant incentives, and the projects are activities undertaken in the ordinary course of business
 - Denied 50 basis point ROE advanced technologies adder for use of Static VAR Compensators because no risks, challenges or benefits of the projects warrant incentive treatment, and projects have a limited scope because they will result in little or no increase in dynamic reactive support

Incentive Policy: A Moving Target? continued

- *NSTAR Electric Company*, 125 FERC ¶ 61,313, at PP 22-23, 25, 68 (December 18, 2008)
 - Denied ROE adders, despite significant reliability, economic, and environmental benefits, for a \$43.5 million project to enhance an existing substation by interconnecting a third 345 KV transmission line and installing a new autotransformer, and for a \$30.6 million project to install a Static VAR Compensation System because no risks or challenges warrant incentives and the projects are activities that should be undertaken in the ordinary course of business
 - Denied 50 basis point ROE advanced technologies adder for: (1) a Static VAR Compensator for lack of unusual characteristics, risks, challenges, or benefits associated with the technology; (2) 345 kV XLPE underground cable because application of the technology is limited; and (3) fiber optics because they have been used for many years and may not be, in and of themselves, worthy of incentives

Transmission Incentives and the Obama Administration



“One of . . . the most important infrastructure projects that we need is a whole new electricity grid.” - President Obama, October 30, 2008

“At a time of such great challenge for America, no single issue is as fundamental to our future as energy.” – President Obama, January 26, 2009

“The American Recovery and Reinvestment Plan . . . will lay down 3,000 miles of transmission lines to deliver this energy to every corner of our country.” - President Obama, January 26, 2009

American Recovery and Reinvestment Act of 2009

- \$4.5 billion for electricity delivery and energy reliability activities to modernize the electric grid
- \$3.25 billion in loans each to Bonneville Power Administration and Western Area Power Administration for transmission investment
- Expands EAct 2005 Loan Guarantee Program to allow guarantees for electric power transmission systems
- Requires the 2009 National Electric Transmission Congestion Study to include analyses of transmission constraints affecting potential sources of renewable energy, reasons for failure to develop adequate transmission capacity, and recommendations for achieving such capacity
- \$2.3 billion in tax credits for investment in manufacturing facilities for the production of electric grids to support the transmission of intermittent sources of renewable energy and smart grid technologies