

10-035-89/Rocky Mountain Power
September 8, 2010
UIEC Data Request 1.64

UIEC Data Request 1.64

Were filings made at FERC for approval of the Gateway project or any segment thereof? If so, please provide copies of the filings made at FERC together with the testimony and response and rebuttal testimony filed at FERC.

Response to UIEC Data Request 1.64

PacifiCorp has not made any filings at FERC for approval of Energy Gateway. PacifiCorp's did file a petition for at FERC July 3, 2008, requesting a declaratory order for incentive rates for Energy Gateway (Docket No. EL08-75-000). PacifiCorp will include all in-service segments of Energy Gateway in rate base (for the applicable test period) when it files its transmission rate case in 2011.

Please refer to Attachment UIEC 1.64 for a copy of the Order on the Petition for Declaratory Order, issued October 21, 2008.

125 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

PacifiCorp

Docket No. EL08-75-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 21, 2008)

1. On July 3, 2008, PacifiCorp filed a petition for declaratory order (Petition) pursuant to section 219 of the Federal Power Act (FPA)¹ and Order No. 679² seeking incentive rate treatment for its Energy Gateway Transmission Expansion Project (Project). The Project, described by PacifiCorp as eight interdependent line segments, will expand PacifiCorp's transmission network by 2,000 miles of extra-high voltage (EHV) transmission lines. PacifiCorp seeks a 250 basis point adder to its base return on equity (ROE) and recovery of prudently-incurred abandonment costs if the Project is cancelled due to factors beyond its control. For the reasons discussed below, we will grant in part, and deny in part, PacifiCorp's Petition and grant in part, and deny in part, the requested incentive rate treatment for its Project.

I. Background

2. According to PacifiCorp, the Project is one of the most ambitious electric infrastructure projects planned in the western United States in the past two decades. The Project will enlarge and expand PacifiCorp's system-wide transmission network by adding approximately 2,000 miles of new EHV transmission lines in the six-state region including California, Idaho, Oregon, Utah, Washington, and Wyoming, and deliver up to 3,000 MW of capacity from location-constrained renewable resources in Wyoming to distant load centers; its estimated cost exceeds \$6 billion. PacifiCorp claims that the Project will provide its customers with substantial economic, reliability and

¹ 16 U.S.C. § 824s (2006).

² *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).

Docket No. EL08-75-000

2

environmental benefits, including reducing transmission congestion and the future cost of delivered power throughout the six-state service territory.

3. According to PacifiCorp, the Project is a backbone transmission project providing a platform for integrating and coordinating future regional and sub-regional electric transmission projects being considered in the Pacific Northwest and the Intermountain West. Its configuration is described as a “hub and spoke” design which is characterized by PacifiCorp as major EHV transmission lines that connect areas with a strong potential for generation resource development (hubs) to an enhanced transmission system (spokes) for delivery to customers throughout the western United States. Under the Project, hubs are planned for western Wyoming, south central Wyoming, southwestern Idaho, south central Utah, and southern Oregon. From the hubs, power will be collected and moved in different directions to permit PacifiCorp to efficiently deliver power from a variety of generation sources to load. According to PacifiCorp, the additional transmission infrastructure and the “hub and spoke” design will provide flexibility, improve efficiency and enable development of clean and renewable energy resources and will ensure that PacifiCorp’s system will be capable of meeting future regional needs.³

4. PacifiCorp states that each of the eight interrelated line segments has been assigned one of four priority classifications for construction.⁴ PacifiCorp explains that most of the segments are dependent on the development of other segments and the priority levels have been established to ensure the most prudent approach to deliver completion of the Project. Four segments comprise Priority One of the Project (segments A, B, C and G). According to PacifiCorp, these segments are being built to enhance the base load service and reliability of PacifiCorp’s transmission system. PacifiCorp anticipates that these segments will be among the earliest portions of the Project to be placed into service, and it has begun the preliminary permitting and contracting work to get these segments on-line between 2010 and 2014.⁵

³ PacifiCorp Petition at 8 and 9.

⁴ According to PacifiCorp, the priority classification assigned to each segment is driven by efficiency and cost-effective development and construction of the Project; therefore, PacifiCorp clustered segments offering similar general benefits and asset in-service dates.

⁵ Segment A is a 230 kV segment which will extend approximately 56 miles between Walla Walla, Washington and Umatilla, Oregon and cost roughly \$108 million. Segment B is a double circuit 345 kV line that will be constructed in two segments. The line will run from a new substation near Downey, Idaho 135 miles south to an existing substation near Salt Lake City, Utah; the estimated cost is \$800 million. Segment C extends north from central Utah running 86 miles north to two future substations. It is a

(continued...)

Docket No. EL08-75-000

3

5. Two segments comprise Priority Two (segments D and E). PacifiCorp states that the two segments are designed to enhance the resource adequacy of the region by connecting transmission-constrained wind resources in Wyoming to westward load centers.⁶ Two segments comprise Priority Three of the Project (segments E and H). PacifiCorp states that these segments are intended to integrate its two control areas within the Project footprint, and to provide a means for transmitting renewable energy supplies.⁷ Priority Four consists of segment F which is intended to provide back-up system reliability, as well as rating support for PacifiCorp's newly enhanced system.⁸

6. The application states that three of the segments may be upsized from a single-circuit to a double-circuit system.⁹ PacifiCorp states that it is actively working with potential equity partners to determine the interest and commitment to pursue a double-circuit configuration for these segments.

double circuit line which will have one segment constructed at 500 kV and the other at 345 kV and is expected to cost \$425 million. The segment G transmission line is approximately 280 miles and will connect an existing substation in central Utah to another substation north of Las Vegas, Nevada. The lines are planned as a single circuit 345 kV line, and could be upsized to include a 500 kV line configuration. The estimated cost is \$754 million.

⁶ The two portions of segment D will consist of roughly 300 miles of new transmission line running from eastern Wyoming to western Wyoming and is estimated to cost approximately \$880 million. PacifiCorp states that the segment will consist of two single circuit 230 kV lines, and a double circuit 500 kV/230 kV line. The 230 kV segment of the line could be upsized to 500 kV. Segment E, also comprised of two sections both single-circuit 500 kV lines, will run from a planned generation resource hub near Rock Springs, Wyoming, across Idaho to a point southwest of Boise, Idaho and cost an estimated \$1.02 billion.

⁷ Segment E continues the single circuit, 500 kV, Priority Two line running to western Idaho. Segment H, single circuit 500 kV line, will run 375 miles from an existing substation in western Idaho to a Bonneville Power Administration substation in northern California. The cost is estimated at \$786 million.

⁸ Segment F which is also a single circuit, 500 kV line extends approximately 395 miles from a new substation in southeastern Wyoming to central Utah. Segment F is expected to cost \$764 million.

⁹ PacifiCorp Petition at n.9 and Cupparo Affidavit at 10-12.

Docket No. EL08-75-000

4

A. Requested Incentives

7. PacifiCorp requests a 250 basis point adder to its base ROE for the revenue requirement associated with the capital costs of its Project, not to exceed the upper end of the zone of reasonableness as determined in a future proceeding under FPA section 205. PacifiCorp asserts that the ROE adder is necessary to compensate it for the unusual and significant project risks.

8. PacifiCorp also requests authorization to recover all prudently-incurred development and construction costs if the Project is cancelled or abandoned, in whole or in part, as a result of its inability to obtain necessary approvals, or as a result of any action or inaction by a governmental authority, or regulatory agency, for any reason outside PacifiCorp's control.

9. PacifiCorp states that it qualifies for the rate incentives because of the scope and magnitude of the Project, because it is intended to respond to regional needs in Idaho, Oregon, Utah, Washington, and Wyoming, and because it will improve reliability, reduce congestion, provide transmission access for renewable resources, provide transmission for forecasted load growth and will deploy advanced transmission technologies. As the Project will directly link PacifiCorp's east and west control areas, it will minimize congestion and relieve loading along paths between Wyoming and areas west and south, and, by adding interconnections and increasing transfer capacity, the Project will reduce the need for curtailments and improve access to generation resources needed to meet system demand and reserve obligations.¹⁰

10. PacifiCorp asserts that it is entitled to a rebuttable presumption of eligibility for the requested incentives under Order No. 679 because nearly all segments of the Project (except segments A and C) were planned and approved under a Fast Track Process developed in 2007 by the planning committee of the Northern Tier Transmission Group (NTTG), prior to finalizing requirements for the NTTG's planning process required by Order No. 890.¹¹ Additionally, PacifiCorp states that NTTG's 2007 Annual Report

¹⁰ See PacifiCorp Petition, Cupparo Affidavit at 19.

¹¹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g and clarification*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008). According to PacifiCorp, the Fast Track provided a forum for stakeholder input and participation in the identification of Fast Track projects critical to relieving areas of congestion and improving reliability. See PacifiCorp Petition, Cupparo Affidavit at 15-16.

Docket No. EL08-75-000

5

identified the need for all of PacifiCorp's proposed segments (except segment A) to increase transmission capacity in order to reduce congestion and improve reliability.¹² PacifiCorp states that following the NTTG planning committee approval of the 2007 Annual Report and Fast Track recommendations, the Project (with the exception of segments A and C) was submitted for Western Electricity Coordinating Council (WECC) regional planning review.¹³

11. In the event that the Commission determines PacifiCorp is not entitled to that rebuttable presumption, PacifiCorp argues in the alternative that the benefits from constructing the Project nevertheless satisfy the eligibility criteria of Order No. 679. PacifiCorp contends that the Project, once completed, will result in increased reliability¹⁴ and a reduction in congestion. Specifically, PacifiCorp points out that the Project will: (1) establish a 500 kV backbone; (2) reduce curtailments resulting from overscheduled use; (3) provide additional access to resources and reserves; (4) increase the diversity of the available resource mix; (5) connect its two control areas (Pacific Power and Rocky Mountain Power) to better serve network load; and (6) help satisfy state renewable portfolio requirements. The Petition references numerous transmission studies identifying constrained paths and interfaces and other areas critical for relieving congestion in the region; PacifiCorp states that the Project is its response to these findings, as well as responding to the projected demands on its available capacity due to growth of its network load obligation. PacifiCorp also highlights that the Project will enable it to link remote renewable resources to load centers throughout the West.

12. At this time, PacifiCorp is not seeking to change its rates under FPA section 205, but states that it will make a subsequent section 205 rate filing in the future to implement the incentive rate treatment. PacifiCorp also explains that it will ask state regulators to include the Project's investment in retail electric rates; to the extent that the recovery of all of the transmission investment is permitted in its retail rate base, "PacifiCorp will compensate its retail customers by crediting the transmission-related revenues, inclusive of any incentives granted by the Commission, against its retail revenue requirement."¹⁵

¹² According to the Petition, the Fast Track process relied on studies previously done within the region to identify congested transmission that impedes efficient and reliable operation of the grid.

¹³ See PacifiCorp Petition, Cupparo Affidavit at 17.

¹⁴ PacifiCorp states that, by adding critical EHV infrastructure to the bulk power transmission system, the Project will provide contingency capacity throughout the system, thereby enhancing reliability within the NTTG footprint and the broader region.

¹⁵ PacifiCorp Petition at 4.

Docket No. EL08-75-000

6

PacifiCorp expects that the requested incentives will be an important consideration in obtaining state regulator support for including the reliability and future growth elements of the Project in retail rates.

B. Risks and Challenges

13. PacifiCorp states that its approach to this Project is a significant departure from past approaches to the development of major transmission projects. It notes that historically such projects were built when associated generation resources were sited; however, PacifiCorp notes that with the current uncertainty of conventional generating technology, the time required to permit and construct major transmission and the inability of many renewable resource developers to finance major transmission investments, transmission must be sited “ahead” of specific generation resources to best position utilities to meet future forecasted load growth. PacifiCorp asserts that with this approach, PacifiCorp faces greater risks for transmission investment.

14. PacifiCorp explains that it faces significant financial and regulatory risks in pursuing this Project. PacifiCorp cites the estimated \$6 billion cost, comparing that to the average \$111 million that it spent on capital expenditures annually between 2002 and 2007, and noting that the total cost is more than three times its current transmission rate base of \$1.8 billion. In addition, PacifiCorp states that, since the Project would constitute the backbone for a future 500 kV infrastructure in the Project footprint, it would be “responsible for ensuring that the underlying system . . . can withstand technical and regulatory scrutiny, including the protection of neighboring electrical systems.”¹⁶ According to PacifiCorp, this factor has made it difficult to enlist additional partners in the Project. Its financial risk is also affected by the fact that it will be siting transmission lines ahead of new generation resources, as noted above, and the fact that development costs are likely to increase over time.

15. PacifiCorp asserts that its Project faces significant regulatory risks because it must garner approval of various state and federal authorities, including six states, the Bureau of Land Management and the United States Forest Service. PacifiCorp also notes that tribal issues and federal land management are implicated in the construction and development of the Project. PacifiCorp also states that large portions of the Project are expected to traverse federally-administered lands, as well as through routes that are not situated on existing rights-of-way. PacifiCorp anticipates that proceedings will be contested and prolonged, and recognizes the risk of siting delays and potential re-routing that may increase the overall cost. This, according to PacifiCorp, equates to added authorization complexities on a scale unlike previous transmission projects for which the Commission has granted requested rate incentives.

¹⁶ PacifiCorp Petition at 31.

Docket No. EL08-75-000

7

16. Finally, PacifiCorp states that there will be uncommon technology-related risks because it contemplates investing in several advanced transmission technologies that have not been widely deployed.¹⁷ PacifiCorp believes that there is added risk because there is uncertainty as to how these technologies will perform within this Project, and it notes that these novel technologies “must be designed, constructed and tested to ensure they meet the requirements of the Project.”¹⁸

C. Technology Statement

17. PacifiCorp included an advanced technologies statement in its Petition as required by Order No. 679.¹⁹ Subject to further study and final engineering, PacifiCorp states that it intends to utilize several types of advanced technologies in connection with various segments. PacifiCorp has not, in most cases, designated the specific segments on which the advanced technologies will be used. According to PacifiCorp, the technologies meet the standard set forth in Order No. 679, and in section 1223 of the Energy Policy Act of 2005 (EPAAct 2005),²⁰ as they mitigate congestion and enhance grid reliability by increasing the capacity, efficiency and reliability of an existing or new transmission facility. PacifiCorp’s advanced technologies fall into the categories of advanced conductor technology, enhanced power device monitoring, fiber optic technologies, power electronics and other technologies.²¹

18. PacifiCorp intends to utilize Trapezoidal Conductor technology which involves the use of Aluminum Conductor Steel Supported/Trapezoidal Wire. According to PacifiCorp, this advanced conductor design will increase transmission capacity, and reduce the sag of the transmission lines as well as avoid energy losses. PacifiCorp intends to use this technology on 500 kV lines, anticipated to be used on segments C, D, E, and G.²²

¹⁷ As further discussed below, PacifiCorp plans on utilizing trapezoidal conductors, and fiber optic shield wires in addition to other innovative technologies. PacifiCorp Petition at 35.

¹⁸ *Id.*

¹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 302.

²⁰ Pub. L. No. 109-58, § 1223, 119 Stat. 594, 953 (2005).

²¹ PacifiCorp Petition at 42.

²² *Id.* at 23, Cupparo Affidavit at 24. PacifiCorp also asserts that an estimated 6,000 to 120,000 metric tons of carbon dioxide could be avoided annually, as a result of applying this technology.

Docket No. EL08-75-000

8

19. PacifiCorp states that it is planning to use Static VAR Compensators (SVCs) which are electrical devices used to automatically match impedance to regular voltage and improve both dynamic and transient network stability. PacifiCorp is evaluating the installation of SVCs on several segments of the Project in order to support the required dynamic voltage regulation and “firming up” of the system, and also improve reliability, power quality, contingency recovery, create operational benefits and help maximize the overall total transfer capability.²³

20. PacifiCorp plans to use fiber optic technology in order to shield phase conductors from direct lightning strikes, provide high-capacity, high-speed communication channels and reliably detect short circuits. PacifiCorp states that the installation of the fiber optic technology can also create additional latent capacity bandwidth, which could also provide an alternate secure communication path that could be used for national security and regional development purposes. PacifiCorp states that this technology has the potential to be used throughout the Project.²⁴

21. PacifiCorp also intends to use phase shifters to improve and/or increase stability limits of transmission lines when the maximum power transfer is reached. PacifiCorp states that phase shifters help provide operational and seasonal flexibility, and that it is pursuing targeted applications of this technology to reduce overall system losses by eliminating circulating currents, and helping to protect neighboring transmission systems.²⁵

22. In addition, PacifiCorp intends to employ Special Protection Schemes (SPS) to respond to system events and disturbance data that could potentially cause undue stress on its system as necessary to maximize grid total transfer capability, to improve long-term reliability and reduce negative impacts to the interconnected systems, as well as to benefit the interim ratings of the lines.²⁶

23. Finally, PacifiCorp states that it is evaluating the use of advanced monitors in transformers at the new substations that will provide notification when the affected equipment is near failure. This technology, while not required by reliability standards, helps protect high-cost investments and improve reliability by providing for early detection of potential issues.

²³ PacifiCorp Petition at 45.

²⁴ *Id.*

²⁵ *Id.* at 46.

²⁶ *Id.* at 47.

Docket No. EL08-75-000

9

II. Notice of Filing and Responsive Pleadings

24. Notice of PacifiCorp's filing was published in the *Federal Register*, 73 Fed. Reg. 41,064 (2008), with interventions and protests due on or before July 24, 2008. Timely motions to intervene raising no substantive issues were filed by Horizon Wind Energy LLC, Arizona Public Service Company, the Transmission Agency of Northern California, and the Utah Division of Public Utilities. Timely motions to intervene and protests were filed by the Bonneville Power Administration (Bonneville), Industrial Customers of Northwest Utilities (Industrial Customers), and the Utah Municipal Power Agency (UMPA). Utah Associated Municipal Power Systems (Utah Systems) filed a timely motion to intervene and comments. On August 6, 2008, PacifiCorp filed a motion for leave to answer and an answer. On September 5, 2008, UMPA responded to PacifiCorp's answer.

25. Bonneville claims that PacifiCorp cannot establish a rebuttable presumption, as provided under Order No. 679, by satisfying the threshold criteria for eligibility for transmission incentive treatment under FPA section 219 with a showing, in pertinent part, that a transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion. Bonneville notes that PacifiCorp claims to meet this condition by virtue of its participation in the NTTG planning process. However, Bonneville contends that the Project was announced in May of 2007, while NTTG did not start its planning process until later that year. Thus, according to Bonneville, the Project could not have originated from the NTTG planning process.

26. Protesters argue that the requested 250 basis point ROE adder is too high. Bonneville asserts that, although some ROE adder would be appropriate, PacifiCorp's requested incentive is 100 basis points higher than any previously approved by the Commission. UMPA similarly argues that PacifiCorp has failed to justify such a large adder, calling the 250 basis point incentive rate adder "unprecedented."²⁷ UMPA also alleges that the risks attributable to the Project are reduced as a result of PacifiCorp's recovery of abandoned plant costs; thus, the proposed level of ROE adder is not warranted.²⁸ Utah Systems note that, although the Project may be larger than any for which incentives were previously granted, "an incentive return on equity generates dollars based on a percentage of the total equity investment."²⁹ According to Utah

²⁷ UMPA July 24, 2008 Protest at 9.

²⁸ *Id.* at 10 ("the abandoned plant rate incentive eliminates PacifiCorp's exposure to the very risks PacifiCorp relies on to justify its extraordinary 250 basis point adder").

²⁹ Utah Systems July 24, 2008 Comments at 4.

Docket No. EL08-75-000

10

Systems, since a ROE on a large investment yields a greater number of dollars than the same ROE on a smaller investment, it is unclear why a greater percentage return is appropriate for a larger project. Bonneville and Industrial Customers contend that the large scope of the Project, which PacifiCorp relies on to justify such a large adder, was artificially created by virtue of PacifiCorp bundling a number of individual, smaller, projects together into one package.

27. As such, Bonneville and Industrial Customers argue that PacifiCorp has failed to demonstrate a nexus between the incentives sought and the investment being made. Industrial Customers contends that since PacifiCorp already planned certain transmission investments included in the Project, the ROE adder is not tailored to its actual risks and challenges. Further, it asserts that the scope and effects of the Project are not as large as PacifiCorp claims because it “is not one large transmission investment, but a series of eight separate and often unrelated transmission projects.”³⁰ Bonneville urges the Commission to analyze each of the segments individually to determine if each is related to the other segments and whether there is a nexus for each to the requested incentive rate. In particular, Industrial Customers and Bonneville claim that segment A is a local transmission project, separately planned and operationally unrelated to the other segments.³¹ They also question whether transmission that has been planned for some time for PacifiCorp to meet its load service obligations through routine investments warrants incentive rate treatment.³²

28. UMPA similarly argues that PacifiCorp should not receive incentive rate treatment for transmission investments needed to serve the needs of existing customers.³³ UMPA suggests that the system upgrades proposed by PacifiCorp are “the kinds of routine investments made in the ordinary course of expanding the system to account for load growth.”³⁴ Stating that PacifiCorp is required to maintain its system in order to serve load and respond to anticipated load growth, UMPA asserts that “current customers should not be forced to pay additional incentive rates in order to cause the transmission

³⁰ Industrial Customers July 24, 2008 Protest at 5.

³¹ *Id.* at 6; Bonneville July 24, 2008 Protest at 5.

³² Bonneville July 24, 2008 Protest at 4; Industrial Customers July 24, 2008 Protest at 7.

³³ UMPA July 24, 2008 Protest at 5-7.

³⁴ *Id.* at 6.

Docket No. EL08-75-000

11

provider to provide for the basic transmission service that the provider is obligated to provide . . .”³⁵ Bonneville and Industrial Customers make similar arguments.³⁶

29. All four protesters assert that segments A, B, and C were requirements stemming from Mid-American Energy Holding Company’s (MidAmerican) acquisition of PacifiCorp. According to Utah Systems, MidAmerican and PacifiCorp already received a construction incentive (merger approval), and further incentives now may be unnecessary. Bonneville and UMPA cite Commission precedent for rejecting a request for incentive rate treatment where a project had been ordered by the Commission in another proceeding.³⁷ As the Commission in *Westar* denied incentives when the applicant failed to offer evidence that conditions had changed since its prior commitments, UMPA asserts that PacifiCorp has also failed to provide any evidence that circumstances have changed since it committed to build segments A, B, and C as part of its merger with MidAmerican.

30. More generally, protesters claim that granting incentive rate treatment to PacifiCorp will not serve to promote new investment. Industrial Customers contend that PacifiCorp has not identified any regulatory and technology risks that other utilities would not have to face when making routine transmission investments, and that incentive rate treatment in this case would simply give PacifiCorp higher returns on investments it was already planning to make. Utah Systems state that investors may not stand to gain much from the requested incentives, because PacifiCorp plans that the additional revenues generated by the ROE will be used to reduce the transmission rates that otherwise would be paid by its retail customers. Utah Systems suggest that “the increased revenue credits to PacifiCorp’s retail jurisdictions is the price of securing state approvals,”³⁸ and is concerned that the Commission in Order No. 679 did not envision retail rate relief as a valid reason for granting incentives at the federal level.

31. UMPA also raises concerns about the proposed credit to retail customers. UMPA believes that, as a result of the crediting mechanism, only PacifiCorp’s wholesale

³⁵ *Id.*

³⁶ See Bonneville July 24, 2008 Protest at 5 (routine investment necessary to meet wind generation interconnection requests); Industrial Customers July 24, 2008 Protest at 7 (normal and routine transmission investments related to system reliability and load growth).

³⁷ Bonneville July 24, 2008 Protest at 5-6 and UMPA July 24, 2008 Protest at 7-8 (citing *Westar Energy Inc. (Westar)*, 122 FERC ¶ 61,268, at P 49-52 (2008)).

³⁸ Utah Systems July 24, 2008 Comments at 4-5.

Docket No. EL08-75-000

12

customers would pay the proposed incentive rate. UMPA suggests that PacifiCorp has requested a higher incentive rate than necessary, given that it will only be recovered on ten percent of its transmission revenue requirement,³⁹ and concludes that the retail credit is preferential and unduly discriminatory.

32. Bonneville and UMPA request that the Commission set this case for hearing to determine a just and reasonable incentive rate treatment for the various segments of the Project⁴⁰ and to properly tailor any approved incentives to encourage investment without discriminating against wholesale customers.⁴¹

33. Finally, Bonneville does not object to PacifiCorp's requested incentive for recovery of prudently incurred development and construction costs if the Project is cancelled or abandoned "as a result of any action or inaction by a governmental authority."⁴² But, Bonneville requests clarification that the clause "action or inaction by a governmental authority" does not include actions or inactions by Bonneville. Bonneville asserts that that provision should protect PacifiCorp from things such as denial of easements and regulatory approvals, but that action or inaction by Bonneville should not trigger cost recovery under that incentive.

III. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

35. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2008), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to accept PacifiCorp's answer and UMPA's response and will, therefore, reject them.

³⁹ See UMPA July 24, 2008 Protest at 11 (noting that PacifiCorp states it receives over ninety percent of its recovery on transmission investment through native load and retail ratemaking processes.)

⁴⁰ Bonneville July 24, 2008 Protest at 7.

⁴¹ UMPA July 24, 2008 Protest at 2.

⁴² Bonneville July 24, 2008 Protest at 6 (citing PacifiCorp July 3, 2008 Petition at 4).

Docket No. EL08-75-000

13

B. Section 219 Requirement

36. In EAct 2005, Congress addressed incentive-based rate treatments for new transmission construction.⁴³ Specifically, section 1241 of EAct 2005 added a new section 219 to the FPA directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments for electric transmission. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219, including the incentives requested here by Petitioners.

37. Order No. 679 provided that a public utility may file a petition for declaratory order or FPA section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of FPA section 219. 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.⁴⁴ Order No. 679 also established a rebuttable presumption that a project satisfies these threshold criteria for eligibility for transmission incentive treatment under section 219 if: (1) a transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.⁴⁵ Order No. 679-A clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.⁴⁶

38. PacifiCorp asserts that the Project meets the rebuttable presumption under Order No. 679 since, “[v]irtually all segments of the Project were planned, coordinated and approved under the auspices of the ... NTTG planning process.” However, PacifiCorp also acknowledges that the NTTG formal planning process had not been fully developed when “Fast Track” review occurred, and further that certain portions of the Project were

⁴³ See Pub L. No. 109-58, 119 Stat 594, 961 (2005).

⁴⁴ See 18 C.F.R. § 35.35(d) (2008).

⁴⁵ See *id.*; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 47.

⁴⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

Docket No. EL08-75-000

14

not subject to any regional planning process review at all.⁴⁷ Under those circumstances, we find that the Project is not eligible for the rebuttable presumption of relying on a regional planning process.

39. Nevertheless, we find that PacifiCorp has adequately demonstrated that the Project (with the exception of segment A) will ensure reliability and reduce transmission congestion, and therefore meets the requirements of FPA section 219 for incentive rate treatment. We find that segments B through H of the Project would establish for the first time a backbone of 500 kV transmission lines in PacifiCorp's Wyoming, Idaho and Utah regions.⁴⁸ This would provide PacifiCorp a platform for integrating and coordinating future regional and sub-regional electric transmission projects being considered in the Pacific Northwest and the Intermountain West, connecting existing and potential generation to loads in an efficient manner, thus reducing the cost of delivered power.⁴⁹ Also, the Petition cites the 2006 DOE National Electric Transmission Congestion Study and the 2004 Rocky Mountain Area Transmission Study in stating that the proposed Project will reduce congestion or maintain reliability in the Western Interconnection.⁵⁰ Additionally, the Project would establish a direct link between PacifiCorp's east and west control areas, providing numerous benefits including increasing transfer capability, reducing the need for curtailments, and reducing transmission congestion.⁵¹

40. With regard to segment A, which is a 230 kV segment connecting existing power substations at Walla Walla, Wallula and McNary, Washington and extending to Umatilla, Oregon, we conclude that PacifiCorp has not provided sufficient evidence to meet the requirements of FPA section 219 for incentive rate treatment and therefore, we decline to grant any incentive for this segment. In support of segment A, the Petition merely states that it "could be used to link existing and future sources of renewable resources to better benefit system power transfers."⁵² There are no congestion studies or reliability assessments in the record to support a finding that segment A will either ensure reliability or reduce the cost of delivered power by reducing congestion, as required by our regulations to qualify for incentive rates. Accordingly, PacifiCorp has met the

⁴⁷ See PacifiCorp Petition, Cupparo Affidavit at 15-16.

⁴⁸ *Id.* at 20 & n.41.

⁴⁹ *Id.* at 3, Cupparo Affidavit at 4, 7, and 19.

⁵⁰ *Id.* at 21-23, Cupparo Affidavit at 22.

⁵¹ See *id.*, Cupparo Affidavit at 39.

⁵² PacifiCorp Petition at 10. See also Cupparo Affidavit at 8-9.

requirements of FPA section 219 for segments B through H of the Project; however, we will deny incentive rate treatment for segment A of the Project, without prejudice to PacifiCorp re-filing with the required support for that portion of the Project.

C. Incentives and the Commission's Nexus Requirement

41. 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."⁵³ As part of our 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*,⁵⁴ the Commission clarified how it will evaluate projects to determine whether they are routine and the effect this evaluation has on an applicant's request for incentives. Specifically, to determine whether a project is not routine, the Commission stated that it will consider all relevant factors presented by the applicant. For example, an applicant may present 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., ensuring 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).⁵⁵

42. The Project is an enormous undertaking by PacifiCorp to construct approximately 2,000 miles of new EHV transmission lines throughout six states (including 230 kV, 345 kV and 500 kV transmission lines). The Project will provide the first backbone 500 kV "superhighway" in this part of the Western Interconnection and may facilitate the addition of future 500 kV transmission lines in the area. The Project will improve transfer capacity; for example, segment B, when combined with the other segments of the Project, will increase transfer capacity by 1,400 MW, and significantly mitigate a

⁵³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁵⁴ *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 52-55 (2007) (*BG&E*).

⁵⁵ This list provides some examples of evidence that may help inform the Commission whether a project is routine in nature, but is not intended to be exhaustive.