126 FERC ¶ 61,281
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Pioneer Transmission, LLC — Docket Nos. ER09-75-000, ER09-75-001

ORDER ON TRANSMISSION RATE INCENTIVES AND FORMULA RATE PROPOSAL

(Issued March 27, 2009)

1. On October 15, 2008, Pioneer Transmission, LLC (Pioneer) filed tariff sheets pursuant to sections 205 and 219 of the Federal Power Act (FPA),[1] to the open access transmission tariffs administered by PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (MISO). The proposed tariff sheets establish a formula rate for transmission services rendered for the Pioneer project, which will consist of a 765 kV transmission line in Indiana that will connect PJM and MISO and facilitate the interconnection of over 4,000 MW of new wind generation. In addition, the proposed tariff sheets reflect four Order No. 679[2] transmission rate incentives for the Pioneer project: (1) a return on equity (ROE) of 13.5 percent; (2) recovery of 100 percent of its costs for construction work in progress (CWIP); (3) recovery of prudently-incurred costs if the Pioneer project is abandoned for reasons outside of Pioneer's control; and (4) permission to establish a regulatory asset for costs incurred prior to the effective date of the formula rate. For the reasons discussed below, we accept in part, and reject in part, the transmission rate incentives and formula rate proposal. We also establish settlement and hearing procedures for certain formula rate issues.

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[1] 16 U.S.C. §§ 824d; 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).

up to 120 basis points above the average utility bond yield should be excluded from the proxy group.[83] Therefore, Pioneer proposes to exclude Consolidated Edison, Duke Energy, NiSource Inc., Otter Tail, and Vectren from the proxy group. The Commission finds that the exclusion of Duke, NiSource, and Otter Tail is consistent with Opinion No. 445, where the Commission found that "investors generally cannot be expected to purchase stock if debt, which has less risk than stock, yields essentially the same return."[84]

94. However, the Commission finds that Pioneer improperly removed Consolidated Edison and Vectren Corporation from the proxy group on the ground that their low-end ROEs were 113 and 117 basis points above the 6.9 percent average yields on public utility BBB bonds reported by Moody's for the six-month period ending September 2008.[85] In Opinion No. 445 and subsequent precedent, the Commission excluded from the proxy group companies whose low-end ROEs fail to exceed the bond yield by at least some minimum number of basis points. For example, in *Atlantic Path 15*, cited by Pioneer, the Commission accepted the applicant's exclusion of companies with low-end ROEs about 90 basis points above the cost of debt.[86] Thus, the Commission will exclude from the proxy group companies whose low-end ROE is within about 100 basis points above the cost of debt, taking into account the extent to which the excluded low-end

[83] *Southern California Edison Co.*, 92 FERC ¶ 61,070, at 61,266 (2000) (Opinion No. 445); *Kern River Transmission Co.*, 117 FERC ¶ 61,077, at P 140 and n.227 (2006) (*Kern River*); *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135, at P 20 (2008) (*Atlantic Path 15*).

[84] In that case, the Commission excluded one company (PG&E) which had a low-end ROE that was 36 basis points above the average Moody's public utility bond yield, while the next lowest ROE among the proxy companies was 153 basis points above the relevant Moody's bond yield. The Commission concluded that PG&E's low-end ROE "cannot be considered reliable," and thus the Commission excluded "this single outlier." Opinion No. 445, 92 FERC ¶ 61,070 at 61,266.

[85] The Commission's proxy group consists of the following companies: ALLETE, Alliant Energy Corp., Ameren Corp., American Electric Power Co. Inc., Consolidated Edison Inc., Dominion Resources Inc., DPL Inc., Exelon Corp., FirstEnergy Corp., Integrys Energy Group Inc., Pepco Holdings Inc., Public Service Enterprise Group, Vectren Corp., Wisconsin Energy Corp., and Xcel Energy Inc.

[86] Companies that were excluded in *Atlantic Path 15* include Pinnacle West and Idacorp which had low-end ROEs of 89 and 90 basis points above the cost of debt, respectively.

ROEs are outliers from the low-end ROEs of other proxy group companies.[87] Here, not only are Consolidated Edison's and Vectren's low-end ROEs more than 100 basis points above Moody's BBB bond yield, but they also do not appear to be significant outliers from the low-end ROEs of the other companies that remain in the proxy group, unlike the low-end ROEs of the three companies we are excluding from the proxy group.[88] The Commission concludes that Pioneer has failed to show that the low-end ROEs of Consolidated Edison and Vectren are so low as to require the exclusion of those companies from the proxy group.

95. We conclude that Pioneer's base ROE should be 10.54 percent, the median of the expanded proxy group adopted in this order.[89] With the addition of the ROE adders approved in this order, Pioneer's overall ROE is 12.54 percent.

I. **Total Package of Incentives**

96. As noted above, in Order No. 679-A, the Commission clarified that its 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. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,[90] the Commission has, in prior cases, approved multiple rate incentives for particular

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[87] *Kern River* was a natural gas pipeline rate case. The Commission uses a different DCF analysis in pipeline rate cases, which only produces a single ROE for each proxy company, rather than a low-end and a high-end ROE as here. Moreover, as we explained on rehearing in *Kern River*, the two companies excluded from the *Kern River* proxy group were properly excluded because their low ROEs resulted from losses in non-pipeline activities. *Kern River Transmission Co.*, 123 FERC ¶ 61,056, at P 189 (2008).

[88] Consolidated Edison and Vectren have low-end ROEs of 8.03 percent and 8.07 percent, which are only 18 and 14 basis points below the 8.21 percent low-end ROE of Ameren, which Pioneer has appropriately included in the proxy group. By contrast, the 5.99, 7.24, and 7.25 percent ROEs of Otter Tail, NiSource and Duke (the appropriately excluded companies) are between 222 and 96 basis points below Ameren's 8.21 percent low-end ROE.

[89] *See Golden Spread Electric Cooperative, Inc. et al. v. Southwestern Public Service Co.*, Opinion No. 501, 123 FERC ¶ 61,047, at P 62-63 (2008); *VEPCO*, 123 FERC ¶ 61,098 at P 66. The inclusion of Consolidated Edison and Vectren in the proxy group reduces the median 46 basis points below that proposed by Pioneer.

[90] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.