

Federal Power Act (“FPA”)⁵ revisions to the transmission formula rates in MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”) intended to implement a 100 basis point return on equity (“ROE”) rate incentive adder for the Illinois Rivers and Mark Twain project components of the Grand Rivers Project (“Project”).⁶ ATXI argued that the proposed incentive adder is consistent with the Commission’s policies established in Order No. 679.⁷ ATXI also requested authorization to assign the requested incentive adder to any affiliated entity that undertakes the development, construction, or ownership of the Project.

OMS,⁸ Midwest TDUs,⁹ JCA,¹⁰ the Missouri Public Service Commission (“Missouri PSC”),¹¹ the Industrial Customers,¹² and the People of the State of Illinois (“Illinois AG”)¹³ filed protests on January 5, 2018. On January 22, 2018, Ameren Services Company filed ATXI’s Answer.

II. MOTION FOR LEAVE TO ANSWER

The Commission’s rules generally do not permit answers to answers, unless such answers have been authorized by the decisional authority.¹⁴ The Commission has, however, frequently exercised its discretion and waived the restrictions contained in Rule 213 when a party submits an answer that assists the Commission in its decision-making by clarifying issues or helping to

⁵ 16 U.S.C. §§ 824d and 824s.

⁶ Ameren Services Company, Filing, Docket No. ER18-463-000, at 1 (Dec. 15, 2017) (“December 15 Filing”).

⁷ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (“Order No. 679”), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006) (“Order No. 679-A”), *order on reh’g*, Order No. 679-B, 119 FERC ¶ 61,062 (2007).

⁸ OMS, Intervention and Protest, Docket No. ER18-463-000 (Jan. 5, 2018) (“OMS Protest”).

⁹ Midwest TDUs, Motion to Intervene and Protest, Docket No. ER18-463-000 (Jan. 5, 2018) (“Midwest TDUs Protest”).

¹⁰ JCA, Motion to Reject and Alternative Protest and Intervention, Docket No. ER18-463-000 (Jan. 5, 2018) (“JCA Protest”).

¹¹ Missouri PSC, Protest, Docket No. ER18-463-000 (Jan. 5, 2018) (“Missouri PSC Protest”).

¹² Industrial Customers, Protest, Docket No. ER18-463-000 (Jan. 5, 2018) (“Industrial Customers Protest”).

¹³ State of Illinois, Protest, Docket No. ER18-463-000 (Jan. 5, 2018) (“Illinois AG Protest”).

¹⁴ 18 C.F.R. § 385.213(a)(2).

develop a complete and accurate record without unduly delaying the proceeding or placing additional burdens on parties to the proceeding.¹⁵ Protestors' Answer corrects errors made in and clarifies issues raised in ATXI's Answer that have been mischaracterized or provide only partial information regarding ATXI's application and Protestors' concerns. Protestors' Answer will aid the Commission in its decision-making process by ensuring a complete and accurate record. To the extent the Commission accepts ATXI's otherwise unauthorized pleading, the Commission should also accept Protestors' Answer.

III. ANSWER

A. Evaluating the Likelihood that ATXI is Already Compensated Through the MISO Transmission Owners Group Base ROE is Not Outside the Scope of this Proceeding

ATXI incorrectly claims that Protestors' arguments regarding base ROE are outside the scope of this proceeding and are collateral attacks on prior Commission Orders.¹⁶ One of the factors that the Commission considers when determining the justness and reasonableness of project ROE adders is whether the risks claimed as justification for the adder are already accounted for in the base ROE.¹⁷ While the justness and reasonableness of the 10.32% base ROE is being litigated in other proceedings, the issue raised in this case is not whether the base ROE is just and reasonable. Rather, the issue in this case is determining the risks of the Project as a whole that the current base ROE covers and, specifically, whether the Project risks at issue here are accounted for in that base ROE. Such an issue is completely within the scope of this proceeding. Further, the Commission has not yet issued an order (on remand) addressing this issue, so there is no "final order" to subject to a "collateral attack."

¹⁵ See, e.g., *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035, at P 32 (2013); *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093, at P 27 (2013); *Iberdrola Renewables, Inc.*, 137 FERC ¶ 61,185, at P 17 (2011); and *Virginia Elec. and Power Co.*, 125 FERC ¶ 61,391, at P 26 (2008).

¹⁶ ATXI Answer at 4.

¹⁷ See, e.g., Order No. 679-A, at P 15 n19.

The Commission has explained that the base ROE is designed to account for many of the risks associated with transmission investment and to support that investment.¹⁸ These risks include financial and regulatory risks.¹⁹ ATXI sponsored testimony in Docket Nos. EL14-12²⁰ and EL15-45²¹ arguing that a base ROE above the midpoint of the DCF range was necessary to support investments in transmission projects such as MVPs and MEPs, which present “greater risk.” Opinion No. 551 relied on this testimony (among others) to set the base ROE at the upper midpoint of the DCF range (*i.e.* at 10.32%).²²

As Protestors explained, ATXI has failed to show that the risks purported to justify the incentive ROE are not accounted for in base ROE or are already mitigated.²³ Indeed, ATXI’s core claim in support of the ROE incentive is that a Missouri appellate court decision changed the process for granting the Project a certificate of public convenience, leading to potential risks involving delays and, therefore, added to the cost of obtaining the certificate of public convenience.²⁴ The potential for these risks is moot. ATXI has settled with the parties to the state proceeding and has obtained a certificate of public convenience in the matter in question.²⁵ The remaining risks ATXI describes are associated with landowner opposition and the need to obtain

¹⁸ *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, at P 11 (2012) (“2012 Policy Statement”).

¹⁹ Order No. 679-A, at P15 n19.

²⁰ MISO Transmission Owners, Motion to Dismiss and Answer, Docket No. EL14-12, Exhibit MTO-12, at 23:10-14 (Jan. 6, 2014).

²¹ MISO Transmission Owners, Prepared Answering Testimony, Docket No. EL15-45, Exhibit MTO-20 at 29:8-11 (Oct. 20, 2015).

²² *ABATE v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234, at PP 261-264 (2016) (“Opinion No. 551”).

²³ State of Illinois Protest at 4-6; OMS Protest at 5-9; Industrial Customers Protest at 10-15; Missouri PSC Protest at 3-11; Midwest TDUs Protest at 9-13; JCA Protest at 5-6.

²⁴ December 15 Filing at 18-19.

²⁵ *In the Matter of the Application of Ameren Transmission Co. of Illinois for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Maintain, and Otherwise Control and Manage a 345-kV Electric Transmission Line from Palmyra, Missouri to the Iowa Border and an Associated Substation Near Kirksville, Missouri*, Order Approving Unanimous Stipulation and Agreement, MoPSC File No. EA-2017-0345 (Jan. 10, 2018).

environmental permits and are part of the typical process for most transmission projects. In other words, there is no proof of risks beyond those regularly faced by MVP developers, which are (by ATXI's own admission in Docket Nos. EL14-12 and EL15-45) sufficiently accounted for by setting a base ROE above the midpoint of the DCF range.

ATXI further dismisses concerns regarding the rate-impact uncertainty created by ATXI's ROE adder (if it were to be granted by FERC) in the context of Commission policies on ROE caps, placement of the base ROE, and ROE adders for RTO participation.²⁶ While ATXI claims that this concern is out of the scope of this proceeding,²⁷ the fact is that ATXI is proposing an ROE that is very likely to exceed its total ROE cap.²⁸ By doing so, ATXI has opened the issue of the appropriate allocation of ROE to satisfy various Commission policies and objectives within the zone of reasonableness.

B. Requiring a New DCF Analysis is Consistent with Commission Policy

ATXI states that the Commission's incentive policy does not require filing a new DCF analysis.²⁹ Contrary to ATXI's assertion, it is clear that Commission precedent requires a current DCF analysis to establish the justness and reasonableness of the proposed ROE incentive. The Commission explained in Order No. 679 that it would continue to use the DCF analysis undertaken in "individual rate applications" for ROE determinations.³⁰ In Order No. 679-A, the Commission rejected requests to cease the utilization of the DCF analysis in evaluation of ROE

²⁶ OMS Protest at 15-17.

²⁷ ATXI Answer at 4.

²⁸ See December 15 Filing at 2 n.5. ATXI proposes to cap implementation of the ROE incentive (if granted by the Commission) at the top of the DCF zone of reasonableness, consistent with FERC precedent. However, the total ROE granted will exceed the cap, permitting ATXI to implement a higher ROE if the top of the DCF zone of reasonableness moves upward in future proceedings. By requesting that the Commission approve a total ROE that exceeds the cap, ATXI is: (1) ensuring recovery at the top of the DCF zone of reasonableness (at least for the near future), and (2) creating uncertainty as to the impact that implementation of the ROE incentive will have on ratepayers. See OMS Protest at 15-17.

²⁹ ATXI Answer at 4-8.

³⁰ Order No. 679 at P 92.

incentive applications and even referred to the “DCF analysis requirement” when describing the process for approving incentive ROEs and establishing the justness and reasonableness of the incentive.³¹ The DCF analysis must use recent data to reflect changing market conditions and ATXI’s risk profile in forming the proxy group (*i.e.*, a company-specific DCF) to reflect the risks faced by the applicant for the ROE incentive adder.

1. Commission Precedent Requires the Use of Recent Data in DCF Analyses

Protestors cited precedent making clear that the Commission’s policy is to rely on DCF analyses using *recent* data when establishing the zone of reasonableness.³² Such a policy is consistent with the Supreme Court’s determination in *Bluefield* that a rate of return may be reasonable at one point in time and later become excessively high or low by virtue of market changes.³³ ATXI states that Protestors’ authority is inapposite because all of the cases address the time period from which to draw financial data when developing a base ROE during a litigated case. ATXI attempts to draw a distinction between the cases cited by Protestors and this case based on the fact that the cited cases concern base ROE litigated proceedings. But, ATXI fails to explain why such a distinction is relevant. There is nothing in the Commission’s incentive policies or in section 219 of the FPA³⁴ that creates an exception to the Commission’s general policy of requiring use of recent data in rate of return proceedings.

ATXI further claims that the data used in the Docket No. EL14-12 proceeding is not stale because Opinion No. 551 was issued a year and one-half ago (*i.e.* September 28, 2016).³⁵ First, the date the Commission issued Opinion No. 551 is not the same as the date of the underlying

³¹ Order No. 679-A at PP 63-64.

³² OMS Protest at 13-15; Missouri PSC Protest at 17; Midwest TDUs Protest at 4-8; JCA Protest at 7-8.

³³ *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679 (1923) (“Bluefield”).

³⁴ 16 U.S.C. § 824s.

³⁵ ATXI Answer at 6.

data used in the case. The data period used in the DCF analysis adopted by Opinion No. 551 is January 1, 2015 through June 30, 2015.³⁶ This data is between two and one-half and three years old. Further, the data used in the DCF analysis recommended in the Initial Decision in the Docket No. EL15-45 complaint proceeding is from July 1, 2015 through December 31, 2015.³⁷ This data is over two years old. Second, the Commission has found that market conditions can change in a few months when accepting complaint proceedings based on a new DCF analysis.³⁸ The same reasoning applies here. ATXI fails to explain why it is appropriate for the Commission to depart from its precedent and rely on data that is over two years old in the context of determining the justness and reasonableness of an incentive adder.

Finally, ATXI argues that Protestors' interpretation of precedent would put the Commission in an "endless loop" of refreshing data to account for any change during the pendency of ROE litigation. According to ATXI, even if it had submitted a DCF analysis and that analysis were litigated, the data would be stale by OMS's definition.³⁹ These arguments lack support and logic. If ATXI submits a DCF analysis using recent data in this case and the Commission adopts such a DCF analysis (or another DCF analysis using recent data), the zone of reasonableness resulting from such DCF analysis will set the cap and be the basis for supporting the Commission's determination as to the justness and reasonableness of the proposed incentive.

³⁶ Opinion No. 551 at 9 (adopting the DCF analysis in *ABATE v. Midcontinent Indep. Sys. Operator, Inc.*, Corrected Initial Decision, at Appendix A (Dec. 29, 2015)).

³⁷ *Arkansas Elec. Coop. Corp. v. ALLETE, Inc.*, 155 FERC ¶ 63,030, at P 9 (2016) (initial decision).

³⁸ See, e.g., *Belmont Mun. Light Dep't v. Central Maine Power Co.*, 156 FERC ¶ 61,198, at P 39 (2016), *reh'g denied*, 162 FERC ¶ 61,035 (2018); *Arkansas Elec. Coop. v. ALLETE, Inc.*, 156 FERC ¶ 61,061, at P 33 (2016); *Delaware Div. of the Pub. Advocate v. Baltimore Gas*, 150 FERC ¶ 61,081, at P 19 (2015); *Massachusetts v. Bangor Hydro-Elec. Co.*, 149 FERC ¶ 61,156, at PP 27-28 (2014); *Environment Northeast v. Bangor Hydro-Elec. Co.*, 147 FERC ¶ 61,235, at P 27 (2014); and *Consumer Advocate v. Allegheny*, 67 FERC ¶ 61,288, at p. 62,000 (1994).

³⁹ ATXI Answer at 7.

Simply put, there is no “endless loop.” Even if the results of ATXI’s DCF analysis were litigated, there would be a final order in this case adopting a DCF analysis and closing the loop.

2. A Company-Specific DCF is Needed to Account for ATXI’s Low Risk in Evaluating Its Proposed ROE Adder

ATXI argues that by advocating for a company-specific DCF, Protestors are attempting to re-litigate the MISO-wide base ROE on a company-by-company basis.⁴⁰ This statement is incorrect and reflects misunderstanding of both Protestors’ argument and Commission precedent. Requiring a company-specific DCF analysis to determine the applicable cap for incentive adders is not inconsistent with Commission orders regarding region-wide base ROEs. First, Protestors did not claim that a company-specific DCF analysis should be required in MISO-wide base ROE proceedings. Protestors simply explained that a company-specific DCF is needed to appropriately establish the cap applicable to ATXI’s ROE incentives based on ATXI’s specific risk profile. There is no logic in using the risk profile of all MISO TOs (to determine the formation of the DCF proxy group) when assessing the justness and reasonableness of ATXI’s proposed ROE project incentive. The risks assessed in ROE incentive proceedings are not risks broadly applicable to transmission investments (like in base ROE proceedings). The case-by-case approach used in incentive proceedings requires looking at the specific risks faced by the applicant that result from its investment in a particular project. Here, ATXI’s credit rating is more than one notch above the bottom of the comparable risk bands used in the MISO-wide base ROE proceedings. Second, requiring a company-specific DCF analysis to determine ATXI’s total cap for incentive adders does not impact the base ROE. Rather, it impacts the ability of ATXI to collect ROE adders. In sum, there is no inconsistency between the base ROE cases ATXI cites and the need to use a company-specific DCF analysis in ROE incentive proceedings.

⁴⁰ ATXI Answer at 8.

What would be inconsistent would be use of “proxies” that have much riskier credit ratings to evaluate the appropriate incentive return for ATXI, given its low-risk and high-rating.⁴¹

3. ATXI’s Other Arguments in Opposition to the Need for a DCF Analysis are Unsupported

ATXI further argues that requiring a DCF analysis would create needless work, regulatory uncertainty, and discourage utilities from seeking incentives.⁴² None of these assertions are supported by record evidence, and they are belied by the many transmission owners that have submitted DCF analyses in support of their ROE incentive requests.⁴³ In fact, contrary to ATXI’s claims, submitting a DCF analysis using current data and reflecting ATXI’s risk profile would provide regulatory certainty as to the ROE incentives and cap that appropriately apply to ATXI, rather than linking these to the outcome of ongoing base ROE litigation. Such certainty should provide encouragement for utilities seeking ROE incentives. ATXI provides no explanation as to why utilities would be discouraged by having to justify their applicable cap for incentive adders. If the utility’s risk profile justifies the need for an ROE adder in current market conditions, the cap established by the utility’s DCF analysis would appropriately reflect those facts. The only utilities that will be discouraged from seeking incentives will be utilities that cannot demonstrate need. These utilities should not be encouraged to seek incentives, but that would be the effect of ATXI’s proposal.

C. ATXI Misunderstands the Commission’s Nexus Test

ATXI argues that it satisfies the Commission’s nexus test. ATXI dismisses Protestors’ concerns regarding its failure to show that there is any connection between (i) the ROE incentive

⁴¹ A recent ATXI bond issuance received an A2 rating from Moody’s, while the bond rating selected for the proxy group in the Opinion No. 551 proceeding was Baa. *See* OMS Protest at 10-11; Industrial Customers Protest at 15, Exhibit CMTC/IIEC-1, at 9; and JCA Protest at 6.

⁴² ATXI Answer at 7.

⁴³ Midwest TDUs Protest at 5-6.

requested, and (ii) net benefits to consumers or the specific risks purportedly justifying the incentive.⁴⁴

With respect to the connection between the ROE incentive and benefits to consumers, ATXI claims that Protestors are creating a “false legal standard.”⁴⁵ Such a claim ignores that section 219(a) of the FPA states that transmission incentives should “[benefit] consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.” But, not all transmission projects providing reliability or reducing congestion are eligible for transmission rate incentives, as ATXI seems to argue.⁴⁶ In Order No. 679, the Commission made clear that the purpose of the Commission’s incentive rules is “to benefit customers by providing real incentives to encourage new infrastructure, not simply [increase] rates in a manner that has no correlation to encouraging new investment.”⁴⁷ ATXI has failed to show that the proposed incentive will encourage further transmission investment, thereby benefiting consumers, particularly when the Project is almost complete and the risks surrounding the eminent domain proceedings in one state along the project route have been resolved. Instead, ATXI focuses its nexus justification on the fact that the Project has net benefits that allegedly exceed the cost associated with the Project,⁴⁸ including congestion relief and unlocking constrained generation.

The burden of proof regarding the Project’s benefits does not fall upon the Protestors. ATXI attempts to evade addressing the overarching limitations on the Commission’s ability to award incentive adders. ATXI must demonstrate proportionality between benefits and the costs

⁴⁴ ATXI Answer at 9-11.

⁴⁵ *Id.*

⁴⁶ ATXI Answer at 12 (claiming that the Commission allows applicants to make a showing on *project* risk justifying an ROE adder based on congestion relief, unlocking constrained generation, and the use of advanced technology).

⁴⁷ Order No. 679 at P 6.

⁴⁸ ATXI Answer at 9-10.

of incentives.⁴⁹ Simply showing that the Project provides some benefits to customers is not the applicable legal test here. The relevant test requires demonstrating that a connection exists between the incentive requested and how the incentive will encourage further transmission investment (as opposed to “simply increasing rates” to benefit ATXI’s shareholders). Further, there must be symmetry between the cost of the adder borne by the customer and the value the customer receives in the form of real incentives toward tangible incremental investments in transmission assets by ATXI.⁵⁰ As Protestors explained in their pleadings, ATXI has not made such a showing.

With respect to the connection between the incentive requested and the allegedly uncompensated risks purportedly justifying the ROE incentive, ATXI claims that it has satisfied the nexus test because: (1) the risks and challenges faced by the Project are not already accounted for through existing risk-reducing incentives or in ATXI’s current base ROE; (2) appropriate steps have been taken and mechanisms used to minimize risk during project development; (3) alternatives were considered in the MISO transmission planning process; and (4) ATXI has committed to limiting the application of the ROE incentive to a cost estimate.⁵¹ These claims show a misunderstanding of the nexus test requirements and of other factors that the Commission considers in incentive proceedings.

The Commission “reframed” the nexus test in the 2012 Policy Statement to depart from the “routine versus non-routine proxy” and now requires an explicit showing that the total package of incentives requested is tailored to address demonstrable risks and challenges.⁵² The Commission explained that applicants for ROE incentives “must provide sufficient explanation

⁴⁹ *City of Detroit v. FPC*, 230 F.2d 810, 817 (D.C. Cir. 1955).

⁵⁰ *Pub. Serv. Comm’n. v. FERC*, 589 F.2d 542, 552-53 (D.C. Cir. 1978).

⁵¹ ATXI Answer at 11.

⁵² 2012 Policy Statement at P 10.

and support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.”⁵³ ATXI has not done so here. Instead, ATXI states that it satisfied the Commission’s nexus test, as formulated in Order No. 679-A, by showing that the risks the Project faces are not accounted for in base ROE or in risk-mitigating incentives.⁵⁴ As explained in this answer and in Protestors’ prior pleadings, ATXI has not shown that the risks the Project faces are not reflected in base ROE or mitigated by the risk-mitigating incentives already granted by the Commission. In fact, ATXI relies on regulatory risks that are now moot,⁵⁵ “reputational” risks that are not eligible for a transmission rate incentive,⁵⁶ the risk that costs incurred will later be deemed imprudent (and therefore not eligible for a transmission rate incentive),⁵⁷ and other routing and permitting risks that are common in regional transmission investments of magnitude similar to the Project. Moreover, ATXI does not explain how these purported risks would be mitigated if the Commission awards an incentive ROE adder.

ATXI further claims that it has met the nexus test, as “reframed” in the 2012 Policy Statement, by: (1) taking appropriate steps to minimize risks during project development; (2) considering alternatives within the MISO transmission planning process; and (3) committing to limiting the application of the ROE incentive to a cost estimate.⁵⁸ These items are part of a broader risk assessment test and are addressed elsewhere in this pleading and in Protestors’ pleadings.⁵⁹ In short, ATXI has failed to satisfy the nexus test.

⁵³ *Id.*

⁵⁴ ATXI Answer at 11.

⁵⁵ OMS and Industrial Customers, Motion for Leave to Supplement and Supplement, Docket No. ER18-463-000 (Jan. 12, 2018).

⁵⁶ *See infra* Section E.

⁵⁷ *See infra* Section F.

⁵⁸ ATXI Answer at 11.

⁵⁹ OMS Protest at 5-9; Industrial Customers Protest at 16-18; Missouri PSC Protest at 4-11; JCA Protest at 6-7.

D. ATXI Misrepresents Protestors' Concern with Project Completion

ATXI argues that, in light of the Commission's ruling in the *Pepco Holdings* case,⁶⁰ Protestors' arguments related to the timing and construction progress for ATXI's Project should be disregarded by the Commission in determining whether to grant ATXI's ROE incentive.⁶¹ ATXI's reliance on *Pepco Holdings* is inapposite. The issue addressed in *Pepco Holdings* was whether a project that is partly completed is eligible for transmission incentives. The issue here is whether, in the event the Commission finds justification for granting ATXI an ROE incentive adder generally, it is just and reasonable to apply the ROE adder to the portion of the Project costs already committed and expended in completing a large part of the Project.

As Protestors explained, applying the ROE adder to the \$1.324 billion in project costs when \$1.2 billion have already been committed or expended is plainly unjust and unreasonable and contrary to the statutory purpose of transmission incentives established in section 219 of the FPA to benefit consumers by supporting new capital investments in transmission.⁶² As a general matter, incentives should be used to incentivize prospective investment, not to compensate for investment already made. Furthermore, ATXI disregards Commission policy on this issue. The Commission's policy is clear that incentive ROEs should not apply "to existing transmission rate base that has already been built."⁶³ In fact, the Commission specifically found no evidence that higher ROEs for transmission rate base that has already been built are necessary to ensure reliability, reduce congestion, or attract new investment in transmission.⁶⁴ Here, the Commission has granted a CWIP incentive to the Project, which allows ATXI to include 100 percent of

⁶⁰ *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008) ("Pepco Holdings").

⁶¹ ATXI Answer at 27.

⁶² 16 U.S.C. § 824s.

⁶³ Order No. 679-A at P 61.

⁶⁴ *Id.* at PP 61-62.

construction work in project in rate base and accelerate recovery of a return.⁶⁵ To the extent that ATXI has taken full advantage of the CWIP incentive, all investments already made in the portion of the Project already built are included in rate base. An incentive ROE should not, and cannot pursuant to FERC precedent, apply to the portion of investment used to build the project and already included in rate base.

E. There is No Merit in ATXI's Reputational Risk Argument

ATXI argues that it faces “reputational risk” associated with failure to timely complete the Project that could harm ATXI’s ability to be awarded future competitive projects in RTOs that “score” bidders based on their track record in bringing projects to fruition and with state policy makers who are depending on projects to meet renewable energy standards.⁶⁶ ATXI presents this “reputational risk” as an example of a risk associated with the Project that is not addressed by existing incentives.⁶⁷ ATXI has failed to present any rational reason why this alleged reputational risk justifies an additional incentive adder or how addressing this risk incentivizes transmission investment in general (as opposed to simply bolstering ATXI’s position in competitive transmission investment processes).

Furthermore, ATXI has not presented any evidence that this alleged risk is real. ATXI’s assertions are speculative and completely unsupported. To the extent competitive projects are awarded based on such rankings, transmission developers should be evaluated on their merits. The existence of such a system does not justify awarding ATXI the proposed adders. Doing so would merely provide ATXI with an unearned competitive advantage over developers that have

⁶⁵ See *Ameren Servs. Co.*, Order Granting Transmission Incentives, 135 FERC ¶ 61,142, at P 48 (2011) (granting CWIP recovery on rate base for the Illinois Rivers portion of the Project); *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 at P 35 (2012) (granting CWIP recovery on rate base for the Mark Twain portion of the Project).

⁶⁶ ATXI Answer at 14.

⁶⁷ *Id.* at 13-14.

not been awarded such an incentive. As a policy matter, ratepayers should not be forced to provide financial support in the name of preserving ATXI's reputation.

F. ATXI Attempts to Back Out of Its Risk of Imprudence Argument

ATXI argues that the proposed ROE incentive would not reward imprudence. ATXI argues that no party has established a *prima facie* case of imprudence of any particular cost and that the incentive requested here "is not a guarantee that investors will earn returns that equate to returns that would have been earned had there been no finding of imprudence."⁶⁸ These assertions may or may not be true, but they are unrelated to Protestors' concerns.

Protestors raised the issue of imprudence in response to ATXI's own claim that the risk of an imprudence finding is not addressed by abandonment incentives.⁶⁹ In its answer, ATXI invokes the absence of a *prima facie* case of imprudence as justification for an incentive adder that would compensate ATXI on the basis of the risk of an imprudence finding. ATXI's argument highlights the flaws in its reasoning. If there is no imprudence, then there is no risk unaddressed by risk-mitigating incentives, and the adder would be a windfall; but ATXI's own statements demonstrate ATXI's belief that it may have acted imprudently. In any event, ratepayers should not be forced to support imprudent expenditures. If there is imprudence, then ATXI does not deserve additional revenue that would effectively offset the imprudence finding because such a finding necessarily means that ATXI should bear the financial consequences of its imprudent decision-making and the adder would frustrate the intent of that imprudence finding by fully or partially nullifying it.

⁶⁸ *Id.* at 29.

⁶⁹ OMS Protest at 9.

IV. CONCLUSION

NOW WHEREFORE, for the foregoing reasons, Protestors respectfully request that the Commission: (1) accept Protestors' Answer, and (2) reject ATXI's proposed ROE incentive adder.

Respectfully submitted,

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Dated: February 6, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 6th day of February, 2018.

/s/ Emily Ray
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