

125 FERC ¶ 61,248  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Tallgrass Transmission, LLC

Docket No. ER09-35-000

Prairie Wind Transmission, LLC

Docket No. ER09-36-000

ORDER CONSOLIDATING PROCEEDINGS,  
GRANTING RATE INCENTIVES,  
CONDITIONALLY ACCEPTING TARIFF REVISIONS AND  
ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued December 2, 2008)

1. On October 3, 2008, Tallgrass Transmission, LLC (Tallgrass) and Prairie Wind Transmission, LLC (Prairie Wind) filed *pro forma* tariff sheets for the Southwest Power Pool, Inc. (SPP) open access transmission tariff under sections 205 and 219 of the Federal Power Act.<sup>1</sup> The proposed tariff sheets set forth formula rates and formula implementation protocols to recover the costs of certain high voltage transmission projects Tallgrass and Prairie Wind plan to build in the SPP region. Additionally, Tallgrass and Prairie Wind request rate incentives for their investments in the proposed projects.<sup>2</sup> In this order, we consolidate the proceedings, conditionally accept the proposed tariff sheets for filing and establish hearing and settlement judge procedures. We also grant Tallgrass and Prairie Wind's request for transmission rate incentives, effective on the dates requested.

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

## **I. Background**

### **A. Description of the Companies**

2. Tallgrass is a limited liability company owned 50 percent by OGE Transmission, LLC, and 50 percent by Electric Transmission America. OGE Transmission, LLC is a wholly-owned subsidiary of OGE Energy Corp. Electric Transmission America is a joint venture between AEP Transmission Holding Company, LLC, a wholly-owned subsidiary of American Electric Power Company, Inc. and MEHC America Transco, LLC, a wholly-owned subsidiary of MidAmerican Energy Holdings Company.

3. Prairie Wind is a limited liability company owned 50 percent by Westar Energy, Inc. and 50 percent by Electric Transmission America.

### **B. Description of the Proposed Projects**

4. Tallgrass proposes to construct, at an estimated cost of approximately \$500 million, a 765 kV transmission project in Oklahoma that is comprised of two segments. The first segment will run from a new 765 kV substation near Woodward, Oklahoma to a new 765 kV substation on the Oklahoma – Texas border. The second segment will run from the new 765 kV substation near Woodward, Oklahoma to the Oklahoma – Kansas border and interconnect with Prairie Wind’s project.<sup>3</sup>

5. Prairie Wind proposes to construct, at an estimated cost of approximately \$600 million, a 765 kV transmission project in Kansas. The Prairie Wind project consists of approximately 230 line miles of 765 kV transmission facilities, configured in a “Y” shape. The top half of the “Y” formation will extend from a substation near Wichita, Kansas in a southwesterly direction to a new substation near Medicine Lodge, Kansas and then west-northwest to a substation near Spearville, Kansas. The bottom half of the “Y” formation will extend south-southwest from the substation at Medicine Lodge, Kansas to the Oklahoma – Kansas border to interconnect with the Tallgrass project.<sup>4</sup>

6. Tallgrass and Prairie Wind state that the projects are intended to facilitate the transfer of significant levels of wind generation to load and reduce transmission losses, eliminate existing and expected congestion, and improve reliability. The applicants argue that as enablers of wind generation, the projects will make wind generation benefits

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<sup>3</sup> Tallgrass October 3, 2008 Transmittal Letter at 10-11.

<sup>4</sup> See Ex. TGT-100 at 6 showing the location of the Tallgrass and Prairie Wind projects.

available as identified by the Department of Energy.<sup>5</sup> These include environmental and economic benefits, such as reducing the demand for fossil fuels and water, improving air quality, increasing generation resource diversity and creating jobs and new income sources for rural residents.<sup>6</sup>

7. Tallgrass and Prairie Wind state that the projects are consistent with SPP's vision of a high voltage grid to "overlay" the existing SPP transmission grid. SPP has commissioned studies to evaluate the effect of intensifying wind development activity in portions of SPP and to examine potential routes for the first 765 kV projects to be included in the high voltage grid overlay.<sup>7</sup> The applicants state that their projects are almost identical to facilities included in the two recommended scenarios in the SPP study. Moreover, the study recommends sequencing of construction of the high voltage overlay that begins in the western portion of the system and expands eastward. The construction of the planned high voltage overlay is broken down into three "packages" with the first package further broken down into three steps. The applicants' projects are reflected in package one - step one of the construction sequence. The study shows that this construction sequencing is best because wind development is already occurring in the western portion of the system, there is a lack of transmission from west to east to deliver this energy, and western portions have been authorized for proceeding with development to deliver the wind generation to load centers.

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<sup>5</sup> Tallgrass October 3, 2008 Transmittal Letter at 14, n.13 *citing* 20% Wind Energy by 2030 at 13 (June 2008), *available at* [http://www.eere.energy.gov/windandhydro/windpoweringamerica/pdfs/20\\_percent\\_wind\\_2.pdf](http://www.eere.energy.gov/windandhydro/windpoweringamerica/pdfs/20_percent_wind_2.pdf).

<sup>6</sup> Tallgrass October 3, 2008 Transmittal Letter at 14-15.

<sup>7</sup> In January 2007, SPP commissioned a study to (1) perform a strategic assessment regarding the long-term reliability and capacity needs through the use of a 345 kV, 500 kV, and 765 kV or higher voltage transmission system to overlay the existing transmission system within the SPP footprint; (2) assess SPP's potential integration with neighboring systems to address future transmission needs required by SPP; and (3) ensure an efficient and optimal transmission system to address long-term future transmission needs. Quanta Technology, LLC performed the study and its initial report was published June 21, 2007. Quanta Technology, LLC completed an updated study on March 3, 2008, which evaluated the effect of increased wind development on the SPP system, developed and compared four overlay designs, and developed a construction sequence for the high voltage overlay. The updated study was included in Tallgrass and Prairie Winds' filings as Ex. Nos. TGT-102 and PWT-101, respectively.

8. Tallgrass and Prairie Wind commissioned their own study to analyze the potential benefits of the initial phase of the SPP high voltage overlay, of which the proposed projects are a portion.<sup>8</sup> The study evaluated constructing two high voltage transmission loops in Kansas, Oklahoma and northern Texas. The study shows that the two loops could enable the interconnection of at least 14,000 MW of cost-effective wind power, permitting SPP to wheel 20 percent of its power from renewable energy sources by 2016. The two loops, of which the applicants' projects would be a portion, could create \$628-728 million in annual net power supply benefits for the region, which includes \$100 million in annual savings through reductions in energy losses by using 765 kV transmission technology.

9. Tallgrass and Prairie Wind state that while their study does not analyze the benefits of their projects standing alone, it provides a strong basis for finding that the projects satisfy the eligibility requirements for rate incentives under section 219 of the Federal Power Act. They assert that their projects are the foundation of the two loops and must be built so that other developers will step forward to build the rest of the high voltage grid overlay. Tallgrass and Prairie Wind argue that the Commission's support of their projects would be an important signal to other project developers to move forward.

10. The applicants note that the two projects are not yet part of the SPP transmission expansion plan.<sup>9</sup> The projects have not yet been approved by SPP, state commissions or siting authorities, and the applicants state that the projects will not move forward without inclusion in SPP's transmission expansion plan and the acquisition of necessary regulatory approvals.<sup>10</sup>

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<sup>8</sup> Applicants commissioned CRA International to prepare an analysis of the potential benefits of constructing two 765 kV transmission loops in Kansas, Oklahoma, and Texas, including the Tallgrass and Prairie Wind projects, as an initial phase of establishing the SPP high voltage overlay. While the two loop project in the CRA International study is not identical to package one of the study performed by Quanta Technology LLC, the two loops are in the western portion of the SPP system and both contain the Tallgrass and Prairie Wind projects.

<sup>9</sup> Tallgrass October 3, 2008 Transmittal Letter at 3.

<sup>10</sup> *Id.*

### **C. Technology Statement**

11. Order No. 679 requires an applicant to provide a technology statement that describes any advanced technology a proposed project will use. Tallgrass and Prairie Wind explain that their projects will be the first construction of 765 kV transmission lines in the SPP footprint.<sup>11</sup> In addition, the applicants state that they will use the following advanced technologies in their proposals: (1) advanced conductor design; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; (6) independent phase operation; and (7) switchable shunt reactors.

### **D. Rate Proposals**

12. Tallgrass and Prairie Wind make identical rate proposals. They request approval of a formula rate with formula rate implementation protocols to recover their projected costs under the SPP tariff, subject to true-up. They state that SPP has not yet approved and filed with the Commission a cost allocation proposal for the high voltage overlay system and the applicants' formula rates cannot realistically go into effect until the SPP tariff provides a mechanism for the recovery of the costs included in the formula rate. Tallgrass and Prairie Wind state that the fact that the SPP tariff does not yet have such a mechanism is also the reason for their request for a regulatory asset, described more fully below.

13. Tallgrass and Prairie Wind request four rate incentives for their investments in the proposed projects.

#### **1. Return on Equity**

14. Tallgrass and Prairie Wind request an incentive return on equity of 13.3 percent, which includes incentive adders for participation in a regional transmission organization, new technology, and investing in substantial new transmission facilities that will reduce the cost of electricity and promote the public interest by providing for the interconnection and delivery of renewable generation in SPP. Tallgrass and Prairie Wind state that the proposed 13.3 percent return on equity is 240 basis points below the high end of the zone of reasonableness.

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<sup>11</sup> *Id.* at 22.

## 2. Construction Work In Progress

15. Tallgrass and Prairie Wind request the inclusion of 100 percent of construction work in progress in rate base during the development and construction period of the project after the formula rate becomes effective.

## 3. Abandoned Plant Incentive

16. Tallgrass and Prairie Wind also request the abandoned plant incentive that would allow them to recover the prudently-incurred investment costs in the projects in the event that the project must be abandoned for reasons outside of their control. The applicants state that the projects do not qualify for the rebuttable presumption under the guidelines of Order No. 679 because the projects have not been approved by a regional planning committee, state commission or siting authority and found to ensure reliability or reduce the cost of delivered power. Thus, applicants request approval of the abandoned plant incentive under section 205 without having to establish the rebuttable presumption under Order No. 679.

## 4. Pre-Commercial Costs

17. The applicants seek permission to establish a regulatory asset that includes all expenses not included in CWIP that have been incurred to date as well as expenses incurred going forward until the formula rate becomes effective and authorization to recover the regulatory asset with interest over five years.<sup>12</sup> The applicants seek to accrue carrying charges on the regulatory asset balance at its cost of capital from the time the Commission acceptance of the regulatory asset to the time it is fully amortized. After the formula rate becomes effect, the applicants will expense the pre-commercial costs and pass them through the formula rate. Similar to the abandoned plant incentive, the applicants request the pre-commercial cost incentive without having to establish the rebuttable presumption under Order No. 679.

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<sup>12</sup> Tallgrass and Prairie Wind argue that the Commission has explained that a regulatory asset rate proposal will be reviewed under Order No. 679 because it “achieves the same outcome as the Order No. 679 incentive for pre-commercial costs because such costs will be fully amortized (expensed) and recovered during the construction of the [p]roject.” Tallgrass October 3, 2008 Transmittal Letter at 5 n.4, *citing Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 9 n.8 (2008).

### **E. Effective Date**

18. Tallgrass and Prairie Wind request an effective date of 61 days after filing for the abandoned plant incentive and the regulatory asset incentive. The applicants request a deferred effective date for the formula rate, incentive return on equity and construction work in progress because SPP has not filed a cost allocation plan and the formula rate as well as the return on equity and construction work in progress can not take effect until then. The applicants also request any waivers necessary to allow the filings to take effect as requested. The applicants state that the Commission has approved deferred effective dates in prior cases.<sup>13</sup> Moreover, the applicants state that they will inform the Commission of the date when the effectiveness of the formula rate, incentive return on equity and construction work in progress can begin.

### **F. Waivers**

19. The applicants request waivers of section 35.13 of the Commission's regulations including waiver of the full Period I - Period II data requirements and waiver of the requirements in section 35.13(a)(2)(iv) to determine if and the extent to which a proposed change constitutes a rate increase based on Period I – Period II rates and billing determinants.<sup>14</sup> Additionally, the applicants request waiver of any other regulation necessary to allow the filing to take effect as proposed.

## **II. Notices and Responsive Pleadings**

20. Notice of Tallgrass' filing in Docket No. ER09-35-000 was published in the *Federal Register*, 73 Fed. Reg. 61,105 (2008), with interventions and comments due on or before October 24, 2008.

21. Timely motions to intervene and notices of intervention were filed in Docket No. ER09-35-000 by the Kansas Corporation Commission (Kansas Commission), Empire District Electric Company, Western Farmers Electric Cooperative, Inc., and SPP. In addition, timely comments and protests were filed by Missouri Joint Municipal Electric Utility Commission (MJMEUC) and jointly by East Texas Cooperatives, Inc., Northeast

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<sup>13</sup> Applicants cite *Southern California Edison Co.*, 106 FERC ¶ 61,183, at P 46 (2004); *Western Kentucky Energy Corp.*, 83 FERC ¶ 61,336, at 62,362 (1998); and *West Texas Wind Energy Partners, L.L.C.*, 83 FERC ¶ 61,078, at 61,382 (1998).

<sup>14</sup> Applicants cite *Public Service Electric and Gas Co.*, 124 FERC ¶ 61,303, at P 23-24 (2008); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008); and *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 92-94 (2007).

Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., (collectively, Texas Cooperatives). Late motions to intervene and protest were filed by ITC Great Plains, LLC (ITC Great Plains) and jointly by Arkansas Electric Cooperative Corporation and Golden Spread Electric Cooperative Inc., (the latter two, collectively, Cooperatives).

22. Notice of Prairie Wind's filing in Docket No. ER09-36-000 was published in the *Federal Register*, 73 Fed. Reg. 61,105 (2008), with interventions and comments due on or before October 24, 2008.

23. Timely motions to intervene and notices of intervention were filed in Docket No. ER09-36-000 by Tallgrass, Empire District Electric Company, Western Farmers Electric Cooperative, Inc., and SPP. A notice of intervention and protest was filed by the Kansas Commission. In addition, timely motions to intervene and protest were filed by MJMEUC, Texas Cooperatives and Cooperatives. ITC Great Plains, Sunflower Electric Power Corporation, and Mid-Kansas Electric Company, LLC (collectively, Joint Parties) filed a timely joint motion to intervene and protest.

24. On November 10, 2008, Tallgrass filed an answer to protests in Docket No. ER09-35-000 and Prairie Wind filed an answer to protests in Docket No. ER09-36-000.

### **III. Discussion**

#### **A. Procedural Matters**

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>15</sup> the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of this proceeding, the absence of any undue prejudice or delay, and their interest in this proceeding, we grant the untimely, unopposed motions to intervene.

26. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>16</sup> prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept the applicants' answers because they have provided information that assisted us in our decision-making process.

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<sup>15</sup> 18 C.F.R. § 385.214 (2008).

<sup>16</sup> *Id.* § 385.213(a)(2).



27. Certain protesting parties request the Commission to consolidate the proceedings and the request is not opposed by the applicants. The Commission's practice is to consolidate proceedings where the issues are closely intertwined with each other.<sup>17</sup> The factual situation is virtually the same in the two proceedings. Thus, we will consolidate Docket Nos. ER09-35-000 and ER09-36-000 for purposes of hearing and decision.

## **B. Incentive Request**

### **1. Section 219 Demonstration**

28. In the Energy Policy Act of 2005,<sup>18</sup> Congress addressed incentive-based rate treatments for new transmission construction.<sup>19</sup> Specifically, section 1241 of the Energy Policy Act of 2005 contains a new section 219 to the Federal Power Act 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 under section 219, including the incentives that Tallgrass and Prairie Wind request here.

29. Order No. 679 provided that a public utility may file a petition for declaratory order, or a request under section 205 of the Federal Power Act to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of 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.<sup>20</sup> Order No. 679 also established a rebuttable presumption that a project satisfies the 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.<sup>21</sup> Order No. 679-A clarifies the operation of this rebuttable presumption by stating that the authorities and/or processes on which it is based (i.e., a regional planning process, a state

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<sup>17</sup> *Missouri River Energy Services*, 124 FERC ¶ 61,309, at P 39 (2008).

<sup>18</sup> 16 U.S.C. § 824.

<sup>19</sup> *Id.* § 824s.

<sup>20</sup> *See* 18 C.F.R. § 35.35(i) (2008).

<sup>21</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 57-58 (2006).

commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.<sup>22</sup> The Commission also recognized that an applicant may wish to file a request for incentive-rate treatment for a project that is undergoing consideration in a regional planning process. The Commission stated that it would make any resulting incentive-rate treatment contingent on the project's being approved under the regional planning process.<sup>23</sup>

## 2. Comments and Protests

30. The parties protesting the filing argue that the filing is premature for several reasons and request dismissal of the filing without prejudice.

31. Protesters state that SPP has not developed a cost allocation methodology for projects like those that Tallgrass and Prairie Wind propose. MJMEUC argues that, contrary to the assertions by the applicants, SPP is not close to determining a cost allocation approach for postage stamp pricing of the high voltage overlay because no such cost allocation proposal has begun to make its way through the SPP stakeholder process. MJMEUC states that the consideration of the applicants' proposal should be undertaken only after those cost allocation issues are resolved at SPP. MJMEUC states that, by deferring consideration of Tallgrass and Prairie Wind incentive proposals until the SPP stakeholder process has produced a consensus on cost allocation, the Commission will be sending a strong message that "the drive for incentives will not be permitted to undermine the stakeholder and regional planning processes the Commission has found to be necessary and valuable."<sup>24</sup> The Texas Cooperatives state that without SPP's cost allocation methodology for such projects, customers cannot determine their cost responsibility and see if it exceeds the benefits that they will receive. Cooperatives note that Prairie Wind has admitted that good budget estimates do not yet exist.

32. Additionally, protesting parties argue that acceptance of the applicants' filings may undermine the SPP regional planning process. Cooperatives argue that the Commission should decline to rule on the application at this time and require the applicants to submit their proposal to the SPP regional planning process. Cooperatives contend that the projects could benefit from the stakeholder process because the

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<sup>22</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 49 (2006).

<sup>23</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 58 n.39 (2006).

<sup>24</sup> MJMEUC Protest at 9.

applicants are not even sure if certain technologies will be feasible for use in the projects.<sup>25</sup> Cooperatives acknowledge that the Commission in Order No. 679 declined to limit eligibility for incentives to projects that have been through the regional planning process, but Cooperatives note that such determination was before the Commission emphasized the need for regional planning in Order No. 890. The Kansas Commission concurs adding the filing is premature because Prairie Wind is not a current member of SPP. The Kansas Commission adds that the SPP high voltage overlay could change significantly in the regional planning process requiring changes to the Prairie Wind project. Joint Parties request the Commission to dismiss Prairie Wind's filing<sup>26</sup> because ITC Great Plains' competing project has progressed further than Prairie Wind's project and is already reflected in SPP's transmission expansion plan.<sup>27</sup>

33. Protesting parties note that the applicants have not yet met the regulatory requirements to operate as transmission owners of the proposed projects. The Kansas Commission states that the filing is premature because the project has not received the necessary state siting approvals. Joint Parties argue that the Commission's acceptance of the filing may give an unfair advantage to Tallgrass and Prairie Wind before the Kansas Commission when ITC Great Plains has already been issued a certificate of convenience and authority.<sup>28</sup> Joint Parties state that Prairie Wind has not addressed the

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<sup>25</sup> Cooperatives Protest at 10 n.23, *citing* Ex. No. PWT-200 at 21:5-9, 24:20-25:6 and 28:20-29:22.

<sup>26</sup> ITC Great Plains, which is also seeking to build transmission facilities in Oklahoma, states that due to the inter-relatedness of the two proposals, the Tallgrass proposal should also be dismissed for the same reasons as the Prairie Wind proposal.

<sup>27</sup> According to the Joint Parties, ITC Great Plains's project is being considered in SPP's initial balanced portfolio of economic projects eligible for regional cost allocation. The project forms a "V" shape composed of three segments located in the service territories of Mid-Kansas Electric Company, LLC, Westar Energy, Inc., and Sunflower Electric Cooperative, Inc. Joint Parties further state that in Kansas, the incumbent utility has the right of first refusal to build transmission facilities. Mid-Kansas Electric Company, LLC and Sunflower Electric Cooperative, Inc. have already signed agreements with ITC Great Plains to allow them to build the segment of the project located in their service territories. Joint Parties also state that Westar Energy Inc., a partial owner of Prairie Wind, has not allowed ITC Great Plains to build the segment of the project located in Westar Energy, Inc.'s service territory. See Joint Parties Protest at 10-14.

<sup>28</sup> ITC Great Plains also notes that it has been authorized by the Oklahoma Commission to operate as a transmission-only utility. ITC Great Plains Protest at 1.

rights of the other two transmission owners necessary for Prairie Wind's project, and has not been authorized to own or build transmission facilities in Kansas.<sup>29</sup>

34. MJMEUC states that without the necessary state regulatory approvals or approval by SPP for inclusion in the regional transmission expansion plan, the Tallgrass and Prairie Wind's proposed projects are not entitled to the rebuttable presumption for incentives. Without the rebuttable presumption, many of the protesters argue that the applicants have not yet adequately supported the proposals with sufficient studies. Cooperatives and MJMEUC state that while the applicants have provided a study demonstrating that the two loop project, consisting of the applicants' projects as well as other potential projects, will provide benefits, there is no study demonstrating the benefits of the applicants' projects alone.<sup>30</sup> Cooperatives fault the applicants for filing the proposals in their preliminary stages when good engineering estimates or budgeted figures do not yet exist. MJMEUC, Cooperatives and the Kansas Commission argue that it is inappropriate to grant incentives unless the applicants could demonstrate that the same reliability benefit could not be obtained in a more cost-effective manner because in this case, SPP may absorb some of the costs in the regional planning process. The Kansas Commission states that Prairie Wind attempts to justify the benefits of its project by including economic predictions of the theoretical value of reductions in emissions based on rules that are not yet in effect. Texas Cooperatives allege that the projects may exceed the region's needs and could prove to be excessive in light of the number of generation projects actually constructed. MJMEUC states that given the premature nature of the filing, the Commission should only grant the regulatory asset and abandoned facility incentives.<sup>31</sup>

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<sup>29</sup> Additionally, Joint Parties support their request for dismissal of the Prairie Wind filing by stating that this case is different from Commission precedent. Joint Parties contend that *Pacific Gas & Electric Company*, 123 FERC ¶ 61,067 (2008) is different because there was no competing proposal accepted by the state commission already included in the regional transmission expansion plan, and Pacific Gas & Electric Company sought the approval for incentives via the declaratory order process. Similarly, Joint Parties argue that *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007) is inapposite because the company was merely requesting abandoned plant and construction work in progress incentives as well as adjustments to its formula rate.

<sup>30</sup> The Texas Cooperatives state that there has been no independent evaluation of whether these projects will relieve congestion and improve reliability within the region to benefit all of the region or just the applicants' investors.

<sup>31</sup> MJMEUC Protest at 5 citing *Pacific Gas & Electric Company*, 123 FERC

35. If the Commission does not reject the applicants' filings, the Kansas Commission requests the Commission to suspend the effective date to the maximum extent possible and set the filing for hearing.

### 3. Applicants' Answers

36. Tallgrass and Prairie Wind state that it was not their intention to sidestep the SPP regional transmission expansion planning process or any required regulatory approvals through the instant filing. Rather, Tallgrass and Prairie Wind state that most of the requested incentives will become moot unless the projects are included in the SPP regional transmission plan and that they will participate fully in the regional planning process. Tallgrass and Prairie Wind state that they would not object to a Commission order conditioning the return on equity and construction work in progress incentives on inclusion of the projects in the SPP regional plan. They also observe that the Commission has routinely dismissed arguments that regulatory approvals must be obtained before incentive rate filings.<sup>32</sup>

37. Tallgrass and Prairie Wind state that Order No. 679 allows for early filings. They contend that the Commission has held that a regional determination of how the costs of a project would be allocated was not a prerequisite to granting incentives.<sup>33</sup> Moreover, they note that Commission has allowed deferred effective dates for formula rates.<sup>34</sup>

38. The applicants urge the Commission to disregard ITC Great Plains' effort to advance its own interests in this proceeding. The applicants state that it is not appropriate for the Commission to determine in this proceeding which of these two competing transmission projects should be constructed.

39. Tallgrass and Prairie Wind state that SPP will perform a cost benefit analysis as part of its planning efforts, and Commission rules do not require them to do so. With respect to the argument that the facilities may exceed the region's needs, and Tallgrass and Prairie Wind respond that the Commission only grants incentives for planned, not

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¶ 61,067 (2008).

<sup>32</sup> *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 36 (2008) and *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 53 (2007).

<sup>33</sup> *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 19, 24 and 60 (2008).

<sup>34</sup> *Allegheny Generating Co.*, 29 FERC ¶ 61,177 (1984).

completed projects. They contend that SPP's queue for wind generation demonstrates significant interest in their projects.

#### **4. Commission Determination**

40. The applicants do not qualify for the rebuttable presumption for incentives because the projects have not been approved as part of SPP's transmission expansion plan nor have the applicants received siting approval from a state commission that evaluated the project in terms of the section 219 requirements. The Commission will, however, evaluate a project's eligibility for incentives if the applicants can demonstrate that the projects meet section 219 requirements. Our review of the record indicates that Tallgrass and Prairie Wind have demonstrated that the projects meet the section 219 requirements.

41. Rather than construct isolated projects, the applicants have chosen to pursue projects that have been recommended through independent assessments of the long-term needs of the entire SPP region. SPP has taken a very forward-looking approach to assess the regional needs of its system with its study of the high voltage overlay. In addition, the applicants' investors commissioned their own study of the two loop project, the initial core of the high voltage overlay, to identify the economic benefits associated with the part of the overlay that realistically could be achieved by the middle of the next decade. Both studies consider comprehensive plans for transmission expansion within SPP, including but not limited to applicants' projects, to achieve objectives that are considered to be priorities by stakeholders and the states. The studies both found substantial power production cost savings due in substantial part to increased transfer capability that would reduce congestion and allow transportation of low-cost wind energy to displace higher cost energy from fossil fuel sources. The plans considered in those studies reflect a reasonable forecast at this time of an expanded SPP transmission system that can be expected to be in place after applicants' projects are to be placed into service. These studies provide a reasonable basis to conclude that applicants' projects will reduce congestion by facilitating integration and delivery of low-cost wind energy in the SPP region.<sup>35</sup> Considering SPP's holistic and forward-looking approach to regional planning, a study that evaluated solely the facilities at issue here, without considering other expansions that can reasonably be expected, may not be a realistic representation of the SPP transmission system when applicants' projects are in service. After all, the applicants' projects are in package 1 – step 1 of the recommended construction

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<sup>35</sup> Additionally, we find that with SPP's proposed high voltage overlay, lower voltage facilities will be relieved of their congestion resulting in a reduction in the cost of delivered power.

sequencing in the study; thus, the high voltage overlay will begin with facilities, such as these. Accordingly, the applicants meet section 219 requirements.

42. As for the issue of whether the projects are the best solution or whether competing projects are entitled to incentives, we reiterate that it is the Commission's policy to review each request for incentives on its own merits and on a case-by-case basis.<sup>36</sup> The only projects before the Commission are those proposed by Tallgrass and Prairie Wind. Thus, we are reviewing only whether these specific projects meet the requirements for incentives under Commission policy.

43. Further, whether these projects qualify for incentives does not depend on whether SPP has completed its cost allocation methodology because cost allocation is not a prerequisite for eligibility for incentives under section 219 or Order No. 679.<sup>37</sup> Similarly, the Commission has found that requests for incentives pursuant to section 219 and Order No. 679 does not risk prejudging siting procedures at state commissions.<sup>38</sup> Moreover, we disagree with protesters that our action here will undermine the SPP stakeholder process. SPP has an open and transparent planning process in which it evaluates costs and benefits. Nothing here changes SPP's process or the manner in which SPP evaluates projects. We note that the Commission has previously determined that a cost-benefit analysis is not required under section 219 or Order No. 679.<sup>39</sup> While SPP may conduct such an examination, we will not require it here.

### **C. Nexus with Total Package of Incentives**

44. 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 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

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<sup>36</sup> *Pacific Gas & Electric Company*, 123 FERC ¶ 61,067 (2008) and *Central Maine Power Company*, 125 FERC ¶ 61,079 (2008).

<sup>37</sup> *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 19, 24 and 60 (2008).

<sup>38</sup> *Id.* P 36; *Central Maine Power Company*, 125 FERC ¶ 61,079, at P 39 and *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 41 (2008).

<sup>39</sup> Order No. 679-A, at P 35-40 and *Southern California Edison Co.*, 123 FERC ¶ 61,293, at P 15 (2008).

address the demonstrable risks or challenges faced by the applicant.”<sup>40</sup> 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 *Baltimore Gas and Electric Company*,<sup>41</sup> the Commission provided guidance on the factors that it will consider when determining whether a project is routine. The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on the: (1) scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, and effect on region); (2) effect of the project (e.g., improving reliability or reducing congestion costs); and (3) 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, and other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for the purposes of the nexus test, shown that the project faces risk and challenges that merit incentive rate treatment.<sup>42</sup>

### **1. Comments and Protests**

45. MJMEUC and Cooperatives state that the Tallgrass and Prairie Wind projects are not routine, but they question the amount of risk involved in developing them. MJMEUC contests the applicants’ assertions that they will face financial challenges. MJMEUC suggests that the applicants would not have the alleged financial challenges if their parent companies served as guarantors. Additionally, Cooperatives contend that Tallgrass and Prairie Wind overstate the risk of the project by suggesting that cost overruns (which are a normal part of business) and the use of 765 kV transmission lines as a technological innovation are risks involved in the project.

46. In the event the Commission does not dismiss the filing as premature, the protesting parties raise concerns about the requested incentives. The Kansas Commission recommends rejection of the 50 basis point adder for participation in a regional transmission organization because it is inappropriate for an SPP member to form a limited liability company for the primary purpose of receiving economic incentives to join SPP. Cooperatives argues that the Commission should grant the advance technology

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<sup>40</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>41</sup> *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 52-55 (2007).

<sup>42</sup> *Id.* P 54.



adder for truly new technology instead of granting it for existing technology applied elsewhere in the country like the proposed 765 kV transmission facilities.

47. MJMEUC states that the request for a total of 250 basis points of return on equity incentive adders on each project is excessive because the applicants are using their corporate structure to justify a higher return on equity when their parent companies could have backed the projects and produced lower borrowing costs. MJMEUC also states that if the applicants are suggesting that their parent companies would withhold equity investments unless the requested incentive return on equity is approved, then the Commission should explore reasonable alternatives (e.g., allow others like MJMEUC to provide the needed equity capital and share in the returns). MJMEUC also argues that the applicants are less risky than they argue, because their single asset is guaranteed a stream of revenues that will cover their debt service and operating costs. Cooperatives state that the Commission should reduce the applicants' return on equity by 25 to 50 basis points to the extent that the Commission grants their requests for construction work in progress and abandoned plant incentives to reflect lower risk.<sup>43</sup> The Kansas Commission adds that the return on equity incentives are excessive because there are competing proposals to build the facilities; therefore, no incentive is necessary to encourage the construction of the project.<sup>44</sup>

48. Cooperatives argue that Commission precedent precludes the applicants from recovering abandoned plant costs from customers when they have never actually provided any service to those customers.<sup>45</sup> The Kansas Commission argues that because Prairie Wind has not followed the necessary procedures of the SPP regional transmission planning process, it is inappropriate for Prairie Wind to seek to have its abandonment risks mitigated. Additionally, Cooperatives state that if the Commission grants

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<sup>43</sup> Cooperatives cite Order No. 679-A, at P 6; *Southern California Edison Co.*, 121 FERC ¶ 61,168, at P 143 (2007); *reh'g denied*, 123 FERC ¶ 61,293 (2008); *Duquesne Light Co.*, 118 FERC ¶61,087, at P 57 (2007); and *PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, at P 39 (2008).

<sup>44</sup> The Kansas Commission states that it is not reasonable to grant authorization to recover 100 percent of construction work in progress into the rate base during the development and construction period for the Prairie Wind project because other entities are seeking to build essentially the same transmission facilities.

<sup>45</sup> Cooperatives cite *AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337 (2003), *reh'g denied*, 110 FERC ¶ 61,032 (2005), *aff'd sub nom. Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006).

abandoned plant, then the Commission should not allow the applicants to earn an incentive return on any abandoned plant because abandoned plant does not ensure reliability or reduce the cost of power.

49. Cooperatives state that further details are necessary to prevent double recovery of costs incurred by the applicants' owners that will later be reimbursed by the applicants. Cooperatives state that if the applicants' owners recover the costs related to the applicants through their existing formula rates and later create a regulatory asset and recover those same costs later, customers will pay for the same costs twice. Cooperatives also state that the applicants need to provide better differentiation between construction costs that should be capitalized and those that should be expensed.

## 2. Applicants' Answers

50. In their answers, Tallgrass and Prairie Wind respond that according to Commission precedent, construction of transmission facilities designed to provide access to remote, location-constrained renewable resources is not routine.<sup>46</sup> They add that the proposed projects will use advances over the existing 765 kV technology, including advanced conductors. The applicants state that in Order No. 679, the Commission stated that it favors Transcos because they, among other things, avoid a competition for capital. Thus, the applicants' corporate structure is a plus rather than a negative as alleged by the protesters. The applicants state that they are less risky because of having only one asset; instead, they are more risky because the resulting revenue stream could be interrupted and they don't benefit from a diversity of revenue streams. With respect to the request to lower the total requested incentive package, the applicants state that the Commission granted 175 basis points to Southern California Edison Company (with construction work in progress and abandoned plant) and Southern California Edison Company did not use 765 kV technology. Thus, the applicants argue that their total package of requested incentives is reasonable and supported by earlier Commission decisions.

51. The applicants challenge as inapposite the Commission precedent cited by protesters to support the position that abandoned plant cannot be collected if abandonment occurs prior to going into service because the applicants would have had no customers to charge. Tallgrass and Prairie Wind argue that that Commission precedent cited by protesters applies to station power and is therefore inapplicable. They note the Commission has already provided the abandoned plant incentive to other Transcos.<sup>47</sup>

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<sup>46</sup> *PacifiCorp*, 125 FERC ¶ 61,076, at P 75 (2008).

<sup>47</sup> *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008).

Additionally, Tallgrass and Prairie Wind state that the Commission has previously refused to make inclusion in a regional plan a precondition to the granting of abandoned plant incentives.<sup>48</sup>

52. Tallgrass and Prairie Wind state that they target a permanent capital structure of 50 percent debt and 50 percent equity. However, during the construction phase, they want to use a hypothetical capital structure because the actual infusions of capital and debt will vary during the construction phase. The applicants state that after the construction period, they will file with the Commission to use their actual capital structures.

### **3. Commission Determination**

53. We find that Tallgrass and Prairie Wind have sufficiently demonstrated a nexus between the proposed projects and the requested incentives. They have demonstrated that their projects are not routine (which even protesting parties do not contest), based on the project's scope, effects, and risks and challenges.

54. The proposed 765 kV projects are exceptional in both size and purpose and will facilitate the interconnection and transport of at least 5800 MW of the approximately 40,000 MW new renewable power currently in SPP's queue with the potential for the interconnection of additional renewable power that is currently constrained by the limitations of the transmission system. Additionally, as the first application of 765 kV transmission facilities in SPP, the applicants expect the projects to improve the reliability of the bulk transmission grid in these geographic regions while causing fewer losses and requiring substantially less land for equivalent capacity. The applicants claim that access to the new renewable resources will help reduce the cost of delivering power to customers because additional transmission capacity will allow the markets access to more generation and will avoid or reduce congestion on the underlying system. The projects are also expected to create well-paying jobs, provide local rural landowners with a new source of income, reduce greenhouse gas emissions and reduce cumulative water use in the electric sector. The applicants state that approval of the incentives for the initial phase of the SPP high voltage overlay will encourage other transmission owners to begin work on completing the remaining portions of the SPP high voltage overlay.

55. In *Baltimore Gas and Electric Company*, we found that the challenges or risks faced by a project can include: siting, long lead times, regulatory risks, unusual financing

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<sup>48</sup> *Pacific Gas & Electric Co.*, 123 FERC ¶ 61,067, at P 5 (2008).

challenges and other similar impediments.<sup>49</sup> Incentives help to counter these risks and thereby send the correct message to transmission owners and the investors who supply the capital to build transmission. The applicants have demonstrated similar challenges and risks here. We also agree that the incentives will address financial, technology-related, regulatory, and construction risks.

56. As stated above, the project will entail regulatory risk associated with obtaining the necessary approvals from two state commissions as well as inclusion and approval in the SPP transmission expansion plan, important factors for consideration. This project also presents a significant capital investment for the applicants totaling approximately \$1.1 billion.

57. Because only the filings of Tallgrass and Prairie Wind are before us here, we disagree that we should reject incentives as requested because of competing projects. The Commission's policy is to review each request for incentives on its own merits.<sup>50</sup> Thus, we are reviewing the requests before us to determine whether the projects meet the requirements for incentives under Commission policy. The appropriate forum to address whether one or more competing transmission projects should be built is through the regional planning process and appropriate state siting process.

**a. Requested Return on Equity Incentives**

58. Given the size, scope, benefits, and risks of the projects as described above, we will grant the 150 basis point adder for each of the projects. We reject the arguments raised by MJMEUC that the Commission should explore alternatives to the granting of incentives (e.g., allowing others to finance the construction and receive the returns). There is nothing in Order No. 679 that precludes entities from such arrangements. In addition, we will grant up to 50 basis points of incentive return on equity for participation in SPP effective upon the date that Tallgrass and Prairie Wind become members of SPP and the projects are placed under SPP's operational control.<sup>51</sup> The Commission's decision to grant the applicants an incentive ROE for participation in SPP is consistent with the stated purpose of section 219 of the Federal Power Act. The incentive applies to

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<sup>49</sup> *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 48 (2007).

<sup>50</sup> *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168, at P 46 (2007) and *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 41 (2008).

<sup>51</sup> *See, e.g., San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*).

all utilities joining the transmission organization and is intended to encourage the applicants' continued involvement in SPP.<sup>52</sup> We are not persuaded by the Kansas Commission that the primary purpose of the applicants' corporate structure is to enable the applicants to receive economic incentives to join SPP. The applicants' investors (or at least those located within SPP) are members of SPP, have already received 50 basis points for participation in a regional transmission organization and thus would qualify for the incentive for these projects if the assets were included in their rate base.

59. The Commission denies without prejudice the request for a separate advanced technology incentive adder for the deployment of 765 kV facilities. Extra-high voltage transmission facilities have many well documented benefits that are worthy of consideration in the overall nexus analysis, including significantly reduced line losses and land use requirements as compared with lower voltage facilities of equivalent transfer capacity. However, the 765 kV technologies and techniques proposed by the applicants have been in use for many years, and, therefore, do not appear to also warrant a separate advanced technology adder. The Commission also denies without prejudice the requested 50 basis point advanced transmission technology adder for use of: (1) advanced conductor design; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; (6) independent phase operation; and (7) switchable shunt reactors. In several instances, the applicants simply state that these technologies align with the types of technology enumerated in section 1223. For example, applicants argue that switchable shunt reactors align with the "modular equipment" listing under section 1223. However, while switchable shunt reactors can be modular and provide substantial benefits worthy of consideration in the overall nexus analysis, switchable shunt reactors with power electronic-equipped circuit breakers like those proposed here are common on the bulk power system and do not appear worthy of a separate advanced technology adder. Similarly, the concept of phase and shield wire transposition to remove unbalance between the phases has been in existence for decades and is a common practice to address this issue. To the extent that the nature of this project requires a more significant application of this technique than is commonly seen, the associated challenges can be incorporated into the overall nexus analysis, but the technique does not, in and of itself, appear to justify a separate advanced technology adder.

60. The applicants also provide very brief discussions of their plans for: (1) enhanced wide area monitoring and control; and (2) subjecting all data received from their remote station equipment diagnostics and security systems to an automated real-time analysis by

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<sup>52</sup> *Id.* P 26 (finding that there are considerable benefits associated with a utility's membership in a regional transmission organization).

“experience-based algorithms designed to identify unusual trends in equipment condition” and provide early warning indications for operations and maintenance decisions.<sup>53</sup> These plans could conceivably represent an advanced technology consistent with the smart grid concept described in Title XIII of the Energy Independence and Security Act of 2007,<sup>54</sup> but applicants have failed to provide any discussion of the concerns that are relevant to that concept.<sup>55</sup>

61. We disagree with the protesters who suggest the Commission should lower the return on equity incentive adders because of our decisions on construction work in progress and abandoned plant costs. If the Commission were to have a generic rule that requires a reduction in the return on equity incentive whenever other incentives that mitigate risk, such as construction work in progress, are granted, then companies, anticipating such a reduction, would simply request a higher return on equity incentive to compensate for the reduction. We look at each case on an individual basis. Here, Tallgrass and Prairie Wind have proposed a return on equity substantially below the top of the range of reasonableness. Given the size, scope and cost of the projects, Tallgrass and Prairie Wind face risks and challenges that warrant the full 150 basis points of project-related return on equity incentive (and 50 basis points for participation in a regional transmission organization), as requested, without any reduction due to the granting of construction work in progress and abandonment incentive. We are not persuaded by the parties’ protests that the 150 basis point incentive is unreasonable in these circumstances.<sup>56</sup>

**b. Requested non-ROE incentives**

62. We find that it is appropriate to grant the applicants’ request to recover prudently incurred abandonment costs. As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.<sup>57</sup> Such is the case here. We expect that the

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<sup>53</sup> *Id.* P 27-28.

<sup>54</sup> Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492 (2007).

<sup>55</sup> *See, Pepco Holdings, Inc.* 125 FERC ¶ 61,130, at P 15-16 (2008).

<sup>56</sup> *Id.* P 75 (2008).

<sup>57</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 163.

recovery of these costs will help the applicants finance the projects. Accordingly, we will grant the applicants' request for recovery of 100 percent of prudently incurred costs if the projects are abandoned for reasons beyond the applicants' control. Tallgrass and Prairie Wind state that they will make an additional section 205 filing before recovering abandoned plant costs.<sup>58</sup> In that proceeding Tallgrass and Prairie Wind must demonstrate that such abandoned plant costs are just and reasonable.

63. Likewise, we will grant the applicants' request to recover prudently incurred pre-commercial costs as a regulatory asset. The recovery of such costs will provide Tallgrass and Prairie Wind with up-front regulatory certainty, increase cash flow, and facilitate financing on good terms. Additionally, the Commission has found under similar circumstances that this incentive can reduce interest expense, improve coverage ratios, and assist in the construction of the facility.<sup>59</sup> Because SPP does not yet have a cost allocation methodology for facilities such as these, the regulatory asset treatment assures the applicants and potential lenders will have the opportunity to recover such costs. Given the size of the projects and their construction lead time, this incentive will be significant as the applicants move forward with the projects.

64. While this order provides the applicants with the ability to recover pre-commercial costs as a regulatory asset, the applicants will have to make a compliance filing when the formula rate becomes effective to demonstrate that the pre-commercial costs are just and reasonable. The applicants also will have to establish that the costs included in the regulatory asset were not previously recovered as part of the applicants' formula rates as alleged by Cooperatives.<sup>60</sup> Stakeholders will be able to challenge these costs at that time.

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<sup>58</sup> See, e.g., Ex. No. PWT-600, at 13 and Ex. No. TGT – 500, at 13.

<sup>59</sup> *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, P 52 (2008).

<sup>60</sup> With respect to the Cooperatives' concern about a double recovery of pre-commercial costs, we encourage the parties during the settlement procedures ordered below to establish appropriate measures to prevent such double recovery. Preventing double recovery from occurring with these measures would be a more productive use of resources than examining the costs on an after-the-fact basis to determine if a double recovery occurred. Additionally, with respect to the Cooperatives' explanation that a clearer differentiation of capitalized versus expensed operation and maintenance costs is needed, that issue may also be addressed by the parties in the hearing and settlement judge procedures discussed below.

65. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related construction work in progress in rate base.<sup>61</sup> Order No. 679 noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.<sup>62</sup> We find that the applicants have shown a nexus between the proposed construction work in progress incentive and their investment in the projects.

66. Consistent with Order No. 679, we find that authorizing 100 percent of construction work in progress treatment for the projects will provide regulatory certainty, improved cash flow, rate stability and lower borrowing costs.<sup>63</sup> The applicants have also committed to employ appropriate accounting controls in place to prevent charging customers for both capitalized allowance for funds used during construction and construction work in progress for the projects, as discussed further herein.<sup>64</sup>

67. We also find that allowing the applicants to recover 100 percent of construction work in progress in the rate base for these projects will result in better rate stability for customers.<sup>65</sup> As we have explained in prior orders,<sup>66</sup> we find that, without construction work in progress in rate base, a new project has no direct effect on consumer prices until it begins being used to provide service. The projects are estimated to cost \$1.1 billion and have a lead time of several years. If the Commission does not permit the applicants to recover construction work in progress in rate base, all of the projects' borrowing costs will be accrued over several years, and then capitalized after the projects go into service,

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<sup>61</sup> Order No. 679, P 29 and 117.

<sup>62</sup> *Id.* P 115.

<sup>63</sup> Ex. Nos. TGT-300, at 19 and PWT-300, at 20.

<sup>64</sup> Ex. Nos. TGT-300, at 31 and PWT-600, at 17.

<sup>65</sup> Tallgrass' and Prairie Wind's *pro forma* tariff sheets explain the accounting procedures they will use to ensure they do not recover allowance for funds used during construction on amounts included in construction work in progress. Additionally, the tariff sheets provide for an annual reporting of each incentive project for which it is recovering construction work in progress.

<sup>66</sup> See, e.g., *American Electric Power Co.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).



along with a return of the investment cost through depreciation. Such a process will increase consumers' bills more significantly than if the Commission were to allow construction work in progress to be included in rate base.

**c. Incentives not Formally Requested**

68. Applicants request use of a hypothetical capital structure. The Commission, in both Order No. 679-A and prior orders acknowledged that use of hypothetical capital structures "can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances."<sup>67</sup> The Commission finds that use of a proposed hypothetical capital structure is appropriate here. During construction, the applicants' capital structure will be fluid, with financing available through the issuance of stock or borrowing. Without use of this hypothetical capital structure, Tallgrass and Prairie Wind would need to track the constantly changing capital structure. This can be complicated and result in unpredictable cash flows whereas the requested 50 percent debt and 50 percent equity hypothetical capital structure will provide certainty and improve the chances for more favorable terms from lenders.

69. We direct the applicants to adopt a capital structure based upon actual financing when the projects are complete, as the applicants state that they will do.<sup>68</sup> The approach of using the company's FERC Form No. 1 data is consistent with Commission precedent for transmission owners with this type of formula rate, and will closely follow applicants' actual capital structure.

**D. Section 205 Demonstrations**

**1. Range of Reasonableness**

**a. Comments and Protests**

70. Both MJMEUC and Cooperatives assert that the proposed base return on equity of 10.8 percent for both projects is excessive because Tallgrass and Prairie Wind have made errors in their discounted cash flow analysis. For example, MJMEUC and Cooperatives contend that the discounted cash flow model should eliminate both the low and high implied cost of equity value for the proxy group, rather than the low alone. MJMEUC and Cooperatives state that including companies with high return on equity values and growth rates such as Exelon Corporation, PPL Corporation, and DPL, Inc. in the proxy

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<sup>67</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93.

<sup>68</sup> Tallgrass Answer at 22; Prairie Wind Answer at 30.

group distorts the cost of equity estimate. The Kansas Commission states that Prairie Wind's zone of reasonableness of 8.1 percent to 15.7 percent as excessive and requests that the Commission deny Prairie Wind's request for an incentive return on equity of 13.3 percent. MJMEUC and Cooperatives request the Commission set the return on equity for hearing.

**b. Applicants' Answers**

71. The applicants state that there is no clear precedent requiring that an entire company be removed from a discounted cash flow analysis if either the low-end or high-end is an outlier. They further state that exclusion of one outlier for a company should not result in exclusion of the entire company because the low-end and high-end values are attempting to measure the same thing. Thus, if one of them is illogical, that does not require the other to be excluded too.

72. The applicants state that there is no demonstrable link between the risk perceptions of investors and a single projected financial statistic. Moreover, they argue that there is no basis in economics or Commission precedent to exclude proxy companies based on the relative magnitude of projected earned rates of return. The applicants state if the growth rate calculation is important for the inclusion in the proxy group, then the analysis should consider the overall growth rate result, not the individual components. The applicants argue that following the protesters' suggestion could result in eliminating a company with a discounted cash flow result of 10 percent from the proxy group because a single component in the growth rate calculation was unsustainable.

**c. Commission Determination**

73. We find the applicants' proposed base return on equity of 10.8 percent is reasonable. Accordingly, we exclude the return on equity and zone of reasonableness issues from the hearing ordered below.

74. As the Commission explained in our recent determinations in a proceeding involving *Atlantic Path 15*,<sup>69</sup> and *Southern California*,<sup>70</sup> as well as the Commission's orders in *Bangor Hydro* and *Midwest ISO*, the appropriate proxy group for use in calculating return on equity using the discounted cash flow method is comprised of

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<sup>69</sup> *Atlantic Path 15, LLC*, 122 FERC ¶ 61,135 (2008) (*Atlantic Path 15*).

<sup>70</sup> *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007).

companies from the region in which the utility is located.<sup>71</sup> We find that being located in the same geographic and economic region is a relevant factor to consider in determining whether companies face similar risks. Once the appropriate proxy group is identified, it should be screened to ensure that only companies with comparable risks are included.

75. As we stated in our recent order in *Atlantic Path 15*,<sup>72</sup> the use of an established proxy group, such as a SPP-Midwest ISO-PJM proxy group here, allows for an up-front determination of the appropriate ROE for entities seeking general rate changes and incentive rates. The Commission has previously found that the SPP-Midwest ISO-PJM region is a reasonable proxy group for utilities in SPP requesting incentive rates.<sup>73</sup> We also find that this approach will provide a significant measure of regulatory certainty in the determination of the appropriate return on equity and will improve the Commission's ability to decide cases quickly for entities seeking financing of necessary infrastructure. We believe this approach will simplify rate proceedings and reduce litigation costs, while still producing reasonable return on equity allowances. Finally, this approach is consistent with our precedent in this area, particularly our orders in *Bangor Hydro* and *Midwest ISO*.

76. Tallgrass and Prairie Wind, who filed identical analyses, applied many of the criteria the Commission requires for a regional proxy group in the development of its twenty-four company proxy group. For example, the applicants excluded those companies that did not pay dividends or for which there was no Institutional Brokers Estimate System<sup>74</sup> or Value Line information.<sup>75</sup> However, we find that applicants have not sufficiently screened the proxy group. Therefore, the Commission, applied additional

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<sup>71</sup> See *Bangor Hydro*, 117 FERC ¶ 61,129 (2006); *Midwest Independent System Operator*, 100 FERC ¶ 61,292 (2002) (*Midwest ISO*).

<sup>72</sup> *Atlantic Path 15*, 122 FERC ¶ 61,135, at P 23 (2008).

<sup>73</sup> *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008).

<sup>74</sup> Institutional Brokers Estimate System growth rates are compiled and published by Thompson Financial, an arm of Thompson Reuters, which also publishes consensus securities analyst growth rates under the First Call brand.

<sup>75</sup> The applicants also excluded Constellation because it was involved in a merger and, consistent with the Commission's findings in *Bangor Hydro*, UGI Corporation was also excluded.

screens to the applicants' twenty-four company proxy group to ensure the proxy group is composed of companies of comparable risk to applicants.<sup>76</sup>

77. For example, the Commission excluded companies that are not classified by Value Line, S&P and Institutional Brokers Estimate System as electric utilities. Further, the applicants note that their proxy group has an average corporate credit rating of BBB which compares with a corporate credit rating for Prairie Wind's investors (i.e., BBB- for Westar, BBB for AEP and A- for MidAmerican) and a corporate credit rating for Tallgrass' investors (i.e., BBB for AEP, BBB+ OG&E and A- for MidAmerican). The applicants also compare the average Value Line safety rank and Value Line Financial Strength ranking to the three investors of each applicant.<sup>77</sup> However, the applicants do not exclude any companies from the twenty-four company proxy group based on these comparisons of the corporate credit rating and Value Line's safety ranking and financial strength. Thus, the applicants' proxy group does not sufficiently screen for risk because it includes various companies in its proxy group whose corporate credit ratings are not comparable. Given the applicants' corporate credit ratings for each project and consistent with Commission precedent,<sup>78</sup> the Commission used companies within a corporate credit rating band of one below to one above the applicants' investors.<sup>79</sup> The Commission did not screen using the Value Line safety rank and financial strength ratings because one of the applicants' investors, MidAmerican, does not have any ratings to compare. Additionally, the Commission excluded companies involved in merger activity or companies that are considered primarily gas companies. Moreover, because the applicants did not sufficiently screen its proxy group for unsustainable growth rates, the Commission applied a screen for sustainable growth rates and removed such companies.<sup>80</sup> We rejected the protesters' request to exclude companies from the proxy

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<sup>76</sup> The Commission used in its discounted cash flow analysis six months of market data ending October, 2008, as available.

<sup>77</sup> MidAmerican is a wholly-owned subsidiary of Berkshire Hathaway Inc. Because Value Line risk indicators apply to publicly traded common stock, the applicants referenced published values for Berkshire Hathaway Inc.

<sup>78</sup> *Southern California Edison Co.*, 92 FERC ¶ 61,070, at 61,264 (2000) (advocating the use of a proxy group of companies with comparable bond ratings) (Opinion No. 445).

<sup>79</sup> For both projects, the Commission screened the proxy group for companies with corporate credit ratings of BBB- to A. See *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 101-102 (2008).

group based on a component of their growth rates. The protesters have not cited to any Commission precedent that requires such an outcome. Finally, the Commission excluded those companies whose low side implied cost of equity was approximately the cost of debt.<sup>81</sup>

78. Based on this analysis, we establish a zone of reasonable returns for Prairie Wind and Tallgrass of 7.9 percent to 16.9 percent, with a base median return on equity of 10.8 percent, based on a discounted cash flow analysis of this revised proxy group.<sup>82</sup>

## 2. Accounting Issues

### a. Accounting for Construction Work In Progress

79. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized allowance for funds used during construction and corresponding amounts of construction work in progress in rate base.<sup>83</sup> To satisfy this requirement, Tallgrass and Prairie Wind state that they will use the SAP plant accounting system and PowerPlant System, respectively, to maintain their accounting records for construction work in progress electric plant assets both during construction and after their projects are placed in service.<sup>84</sup> Tallgrass and Prairie Wind indicate that the accounting systems include the capability to identify specific work orders that should not be included in the calculation and capitalization of allowance for funds used during construction. Moreover, they state

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<sup>80</sup> *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 101-102 (2008).

<sup>81</sup> See Opinion No. 445, 92 FERC ¶ 61,070, at 61,266; *Bangor Hydro*, 117 FERC ¶ 61,129, at P 53-60 (2006).

<sup>82</sup> The Commission's proxy group includes: ALLETE, Alliant Energy, Ameren Corporation, AEP, Consolidated Edison, Dominion Resources, DPL, Inc., First Energy Corporation, Great Plains Energy Inc., Integrys Energy Group, Otter Tail Corp., PEPCO Holdings Inc., Public Service Enterprises Group, Westar Energy, Inc., Wisconsin Energy Company, and Xcel Energy, Inc.

<sup>83</sup> 18 C.F.R. § 35.25 (2008) (recovery of construction work in progress in rate base).

<sup>84</sup> Ex. Nos. TGT-300, at 31-32 and PWT-400, at 13-14.

that the work orders related to construction that are granted incentive rate treatment will be identified in the SAP and PowerPlant systems and no allowance for funds used during construction will be calculated on their balances. Tallgrass and Prairie Wind indicate that this procedure will ensure that construction work in progress in the formula rate filing will not include allowance for funds used during construction and will prevent a double-recovery of construction work in progress and capitalized allowance for funds used during construction on the same rate base items. The Commission finds that the proposed procedures in Exhibit Nos. TGT-300 and PWT-400 of their respective filings demonstrate that they have accounting procedures and internal controls in place to prevent recovery of allowance for funds used during construction to the extent they are allowed to include construction work in progress in rate base.

80. Public utilities that receive a current return on construction work in progress through rate base recover this cost in a different period than it would ordinarily be charged to expense under the general requirements of the Commission's Uniform System of Accounts (USofA). To promote comparability of financial information between entities, the Commission has required a specific accounting treatment or the use of footnote disclosures to recognize the economic effects of having construction work in progress in rate base.<sup>85</sup> Tallgrass and Prairie Wind request authorization to use footnote disclosures consistent with disclosures previously authorized by the Commission in the *American Transmission Company* order.<sup>86</sup> The Commission will authorize the applicants to provide footnote disclosures in the notes to the financial statements of their annual FERC Forms No. 1 and their quarterly FERC Forms No. 3-Q that: (1) fully explain the impact of the transmission rate incentives they receive insofar as the incentives provide for a deviation from the general requirements of the USofA; (2) include details of amounts not capitalized because of the transmission rate incentives for the current year, the previous two years, and the sum of all years; and (3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amounts not capitalized because of the transmission rate incentives.

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<sup>85</sup> See, e.g., *American Transmission Company LLC*, 105 FERC ¶ 61,388 (2003), *order on reh'g*, 107 FERC ¶ 61,117 (2004); *Trans-Allegheny Interstate Line Company*,

119 FERC ¶ 61,219, *order on reh'g*, 121 FERC ¶ 61,009 (2007); and *Southern California Edison Company*, 122 FERC ¶ 61,187 (2008).

<sup>86</sup> *Id.*

b. **Accounting for Treatment of Pre-Construction Period Costs**

81. Tallgrass and Prairie Wind request authorization to establish a regulatory asset in Account 182.3, Other Regulatory Assets, to record all Project expenses that are not capitalized and included in construction work in progress prior to the date the formula rate becomes effective. They also request authorization to amortize the regulatory asset over a five-year period from the effective date of the formula rate. Tallgrass and Prairie Wind indicate that the costs are pre-construction period costs.<sup>87</sup> They explain that these costs are currently expensed because they do not have an assurance of recovery of the costs in rates. The applicants state that upon issuance of an order authorizing recovery of costs that are not capitalized and included in construction work in progress, all costs that have been incurred will be removed from expense and recorded on their books as a regulatory asset for future recovery. In addition, the applicants state that costs they incur up to the date that the formula rate becomes effective, and costs incurred by their parents on their behalf up to the date the formula rate becomes effective and which are subsequently invoiced to them, will be added to the regulatory asset.

82. Recognition of these costs as a regulatory asset would only be appropriate if the amounts would otherwise be chargeable to expense in the period incurred, the costs are not recoverable in current rates, and they conclude based upon all relevant information, that recovery in rates in a different period is probable.<sup>88</sup> Because the Commission is granting the regulatory asset incentive treatment for pre-commercial costs, we find that recovery is probable and it is appropriate to record the costs in Account 182.3 as incurred.

83. Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in

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<sup>87</sup> They identify some included costs as attorney and consultant fees, third-party costs, entity formation costs, administrative expenditures, taxes (other than income taxes), travel costs and other general expenditures related to the corporate structure, management of the business and overall planning.

<sup>88</sup> The term “probable” as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clear Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,967 (1993).

rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

**c. Accounting for Income Taxes**

84. Tallgrass and Prairie Wind are limited liability companies and are not subject to federal taxation. Instead the tax obligations incurred through their operations are reported on the tax returns of their corporate parents.<sup>89</sup> For ratemaking purposes, the Commission treats pass-through entities as though they are corporations and allows them to receive an income tax allowance for the tax liability ultimately paid by their parents. They state that they will maintain their books of account based on the USofA as though they were corporations,<sup>90</sup> including the income tax accounting requirements of the USofA.<sup>91</sup> Their income tax accounting proposal is consistent with Commission policy and is approved.<sup>92</sup>

**3. Formula Rate**

85. The applicants state that their formula rate is just and reasonable and is based on other formulas accepted by the Commission.

**a. Comments and Protest**

86. Without a cost allocation methodology approved by SPP, parties protesting the filing argue that the Commission should dismiss without prejudice the formula rates and formula rate protocols proposed by the applicants. Protesting parties also contend that the formula rates and formula rate protocols are premature because the applicants have no

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<sup>89</sup> Ex. Nos. TGT-300 at 22 PWT-400 at 3.

<sup>90</sup> Tallgrass Answer at 26 and Prairie Wind Answer at 34.

<sup>91</sup> *General Instructions No. 18, Comprehensive Interperiod Income Tax Allocation; and Text to Account 190, Accumulated Deferred Income Taxes, Account 236, Taxes Accrued, Account 281, Accumulated Deferred Income Taxes-Accelerated Amortization Property, Account 282, Accumulated Deferred Income Taxes-Other Property, and Account 283, Accumulated Deferred Income Taxes-Other*, 18 C.F.R. Part 101 (2008).

<sup>92</sup> *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008).



history and have not filed a FERC Form No. 1. Moreover, MJMEUC and the Joint Parties argue it would be a waste of resources for the Commission and the parties to resolve the issues regarding the formula rate proposals if the projects ultimately are not in SPP's expansion plan. Cooperatives state that, given Prairie Wind's admission that good budget estimates do not yet exist, a hearing can not occur at this time and dismissal of the filing as premature would be appropriate.

87. MJMEUC states that if the Commission considers the proposed formula rates and related protocols at this time, the Commission should suspend them for a nominal period, subject to refunds, set them for hearing and hold the hearing in abeyance to allow settlement judge procedures an opportunity to resolve the issues. The protesting parties raise several concerns about the formula rate including, but are not limited to, the following: (1) the weighted cost of debt included in the applicants' proposed formula rate is higher than the projected cost of debt during the construction period; (2) the proposed income tax-related calculations for a pass through tax entity are unsupported; (3) whether Operation and Maintenance expenses should be capitalized and depreciated; (4) payments in lieu of taxes should be excluded from the formula or set to zero; and (5) the proposed depreciation rates may be outdated by the time the facility is placed in service.

88. Issues that have been raised by protesting parties regarding the formula rate protocols concern the following: (1) limited rights to review and challenge the inputs to the projected rates; (2) inadequate time after the release of the annual update to review the proposal prior to the customer meeting; (3) the calculation of refunds on the true-up; (4) the apparent shifting of burden to the customer regarding the prudence of any expenditure, and (5) allowing the applicants to make "sole issue" filings to amend the formula rate.

#### **b. Applicants' Answers**

89. Tallgrass and Prairie Wind state that their formula rate and related formula protocols are just and reasonable. The applicants reply that: (1) the method to calculate the long term debt is reasonable because it was accepted by the Commission in a settlement; (2) if the state income tax calculation depends on the manner of cost recovery, it will have to be changed; (3) the delineation between expensed costs and capitalized costs will follow the USofA, but if protesters have any concerns they can raise them with the applicants at the time of the annual review process; (4) payments in lieu of taxes should not be set to zero; and (5) the depreciation rates may be outdated when the projects are placed in service and, if so, the applicants will update their depreciation rates as any other utility would do.

90. Likewise, Tallgrass and Prairie Wind also state that their formula protocols are reasonable. The applicants reply that: (1) their challenge provisions are not intended to

limit or add to the customer's rights under the Federal Power Act; (2) the time period is sufficient when considered in context of the other ways for customers to get information from the applicants; (3) the Commission found similar refund provisions acceptable and the acceleration of refunds is fully explained; (4) other parties have the burden of proof only for the changes to the formula itself not the inputs to the formula; and (5) changing one of the four stated formula inputs should not open up the rest of the formula for review.

**c. Commission Determination**

91. Tallgrass and Prairie Wind's formula rates and rate protocols raise issues of material fact that cannot be resolved based on record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the applicants' proposals have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the applicants' proposals for filing, suspend for a nominal period, subject to refund and set it for hearing. At the hearing, the applicants will be required to demonstrate the justness and reasonableness of their proposal except to the extent the Commission has made summary findings herein.

92. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>93</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.<sup>94</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

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<sup>93</sup> 18 C.F.R. § 385.603 (2008).

<sup>94</sup> If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

93. Nonetheless, we find that we can narrow the scope of the hearing by making certain summary findings involving certain formula components. First, we accept the proposed rate incentives, as discussed above, and those incentives are not set for hearing; however, the formula calculations that reflect those incentives may still be addressed in the hearing. Generally, when the formula rate includes a placeholder for an incentive that requires a future section 205 filing, the Commission requires the placeholder to have zero in the amount column.<sup>95</sup> Second, we will also accept the applicants' hypothetical capital structure, consistent with Commission precedent, as explained above. Third, having summarily determined the return on equity of 12.8 percent (reflecting a base return on equity of 10.8 percent, 50 basis points for participation in a regional transmission organization and 150 basis points for project-related incentives) and the range of reasonableness, as discussed above, those issues are not included in the hearing and settlement procedures.<sup>96</sup>

#### **E. Requested Effective Date and Waivers**

94. Cooperatives state that the three cases that Tallgrass and Prairie Wind cite in support of a deferred effective date for part of their proposal are inapposite because none of the cases involved Order No. 679 incentives. Moreover, Cooperatives assert that none of the cases addressed the Commission's determination in those orders that a declaratory order is the proper vehicle for adjudicating rate incentives in the absence of a hearing to determine whether the costs of a project are reasonable. Cooperatives conclude that these cases are distinguishable on other grounds and do not support a deferred effective date requested by Tallgrass and Prairie Wind.<sup>97</sup>

95. The applicants request a deferred effective date for the formula rate and protocols and an effective date 61 days after filing for the abandoned plant and regulatory asset incentives. Because the formula rate will likely become effective more than 120 days after filing, we grant a waiver of the Commission's regulations to permit a deferred effective date. We direct the applicants to inform the Commission of the effective date when it becomes known. Similarly, we grant the applicants' requests for waiver of

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<sup>95</sup> See, e.g., *American Electric Power Service Corporation*, 120 FERC ¶ 61,025, at P 35-37 (2007).

<sup>96</sup> Additionally, we grant the requested waivers from section 35.13 of the Commission's regulations.

<sup>97</sup> Cooperatives Protest at 11-12.

section 35.13 requirements, consistent with our prior approval of formula rates.<sup>98</sup>

The Commission orders:

(A) The Commission denies without prejudice Tallgrass' and Prairie Wind's requests for a separate advanced technology adder;

(B) The tariff sheets are accepted for filing subject to additional filings as set forth herein;

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act (FPA),<sup>99</sup> particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues outlined in paragraph 91 of this order in Docket Nos. ER09-35-000 and ER09-36-000. Furthermore, Docket Nos. ER09-35-000 and ER09-36-000 are hereby consolidated for purposes of hearing and decision. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) – (F) below;

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a Settlement Judge in this proceeding within fifteen (15) days of the date of this order. Such Settlement Judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the Settlement Judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order;

(E) Within thirty (30) days of the date of this order, the Settlement Judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case

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<sup>98</sup> *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238, at P 94 (2007) and *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008).

<sup>99</sup> 16 U.S.C. § 824e (2000).

to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the Settlement Judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement; and

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Kelly concurring in part and dissenting in part with a separate statement attached.  
Commissioner Wellinghoff concurring with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tallgrass Transmission, LLC

Docket No. ER09-35-000

Prairie Wind Transmission, LLC

Docket No. ER09-36-000

(Issued December 2, 2008)

KELLY, Commissioner, *concurring in part and dissenting in part*:

This order addresses requests for transmission rate incentives filed by Tallgrass Transmission, LLC (Tallgrass) and Prairie Wind Transmission, LLC (Prairie Wind). Tallgrass and Prairie Wind request four rate incentives for their investments in the proposed projects: 1) an incentive return on equity of 13.3%, which includes a variety of incentive adders; 2) inclusion of 100% of construction work in progress (CWIP) in rate base during the development and construction period of the project; 3) recovery of 100% of prudently incurred costs if projects are abandoned for reasons beyond the control of Applicants; and 4) permission to recover prudently incurred pre-commercial costs as a regulatory asset.

I applied the project-based criteria that I have relied upon in previous transmission incentives proceedings in order to determine whether the Tallgrass and Prairie Wind projects warrant incentive rate treatment.<sup>100</sup> Based on those criteria, I conclude that they do. I dissent in part on the limited issue of whether it is appropriate, within the context of a Commission order, to find the applicants' proposed base return on equity of 10.8% is reasonable.

The Tallgrass and Prairie Wind projects merit incentive rate treatment. First, the Tallgrass and Prairie Wind projects represent the initial steps in the much larger Southwest Power Pool (SPP) Extra High Voltage Overlay (EHV Overlay) initiative, which has been studied since 2006. I have previously supported incentive rate treatment for projects that establish backbone transmission infrastructure and continue to do so here.<sup>101</sup> As the initial steps these are foundation transmission projects, upon which subsequent SPP EHV Overlay projects will be based. The most recent EHV Overlay

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<sup>100</sup> See *American Electric Power Service Corporation*, 118 FERC ¶ 61,041 (2007).

<sup>101</sup> See *PacifiCorp*, 125 FERC ¶ 61,076 (2008).

study concluded that the overlay should be constructed using 765 kV technology and recommended routes for the first of such projects. The routes of the Tallgrass and Prairie Wind projects are virtually identical to those recommended and any other differences appear minimal. I further base my decision on the combination of the costs of the Tallgrass and Prairie Wind projects (estimated to be \$500 million and \$600-800 million respectively) as well as the fact that they are being constructed by two joint-ventures with neither an existing customer base nor existing rate bases. Finally, it does not appear as though either joint-venture is required to construct these projects as configured. While the Prairie Wind project will contribute to meeting load growth, it also provides significant benefits and is devoted to a larger effort—creation of the EHV Overlay. Tallgrass is being constructed to interconnect substantial quantities of wind power rather than to satisfy a traditional service obligation.

Inclusion of 100% of CWIP costs in rate base and the request to recover prudently incurred pre-commercial costs as a regulatory asset are appropriate given the large costs of the Tallgrass and Prairie Wind projects and the estimated in-services dates of 2013. Granting abandoned plant is appropriate as both projects face challenges in obtaining state or local siting approvals. First, while Electric Transmission America (ETA)<sup>102</sup> is partnering with transmission companies within their home territories, neither AEP nor MEHC operate within these areas as a matter of normal operations. The Prairie Wind project would be the first 765 kV transmission line in Kansas and certification of stand-alone transmission companies is a relatively new process in Kansas. In fact, the Kansas Corporation Commission has recently requested that its staff and interested parties propose procedures for 765 kV applications and to suggest a schedule for resolving those issues.<sup>103</sup> With regard to Tallgrass, the Oklahoma Corporation Commission is only now in the process of determining whether new rules should be promulgated to address the specific conduct and operational criteria that would apply to transmission-only companies.

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<sup>102</sup> ETA is a joint venture between AEP Transmission Holding Company, LLC, a wholly-owned subsidiary of American Electric Power Company, Inc. (AEP), and MEHC America Transco, LLC, a wholly-owned subsidiary of MidAmerican Energy Holdings Company (MEHC).

<sup>103</sup> Prairie Wind LLC October 3, 2008 Request for Acceptance of a Formula Rate and Rate Incentives, Docket No. ER09-36-000, Exh. No. PWT-100, at 23.

While I do not support a finding that the applicants' base returns on equity of 10.8% are reasonable in the absence of evidentiary hearings, I find that it is appropriate to grant incentive adders totaling 150 basis points, in addition to the 50 basis points sought for RTO membership.<sup>104</sup> Order No. 679-A states "the most compelling case for incentive ROEs are new projects that present special risks or challenges, not routine investments made in the ordinary course."<sup>105</sup> The Tallgrass and Prairie Wind projects meet this standard. The Tallgrass and Prairie Wind projects, as the first of three steps within the first of three EHV Overlay construction packages, serve as the foundation projects for that overlay. As applicants note, "Tallgrass and Prairie Wind will have to be successful if proponents are going to be willing to step forward and construct the rest of the EHV Overlay."<sup>106</sup> As foundation projects, Tallgrass and Prairie Wind will offer benefits to future developers of EHV transmission as they will likely face fewer engineering and system reliability obstacles. Moreover, installation of the eventual EHV Overlay will offer significant economic and reliability benefits to the SPP region.

The Tallgrass and Prairie Wind projects also create public interest benefits that, on balance, contribute to the appropriateness of an ROE adder of 150 basis points. Use of the 765 kV technology will produce benefits for the underlying lower voltage systems, by taking power off of the underlying transmission system, relieving congestion, eliminating reliability and performance issues, and reducing losses. Furthermore, the most recent overlay study recommends that construction begin in the western portion of the SPP system, which has already seen wind development. The projects, themselves, allow for interconnecting 5,800 MW of wind generation and will help to deliver wind energy to the load centers of Oklahoma City, Wichita, Kansas City, Little Rock and other areas. The Tallgrass and Prairie Wind projects, along with subsequent EHV Overlay transmission, will help to interconnect at least 14,000 MW of new renewable generation. Finally, the applicants' joint venture structures bring together parties with specialized experiences and skills that will allow for an optimization of efforts and resources and may allow for project completion sooner and at a lower cost than would otherwise be possible.

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<sup>104</sup> I agree with the decision to make an adder for RTO participation effective upon the date that Tallgrass and Prairie Wind become members of SPP and the projects are placed under SPP's operational control.

<sup>105</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 60 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>106</sup> Tallgrass Transmission, LLC October 3, 2008 Request for Acceptance of a Formula Rate and Rate Incentives, Docket No. ER09-35-000, transmittal letter at 19.



For these reasons, I concur in part and dissent in part.

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Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Tallgrass Transmission, LLC

Docket No. ER09-35-000

Prairie Wind Transmission, LLC

Docket No. ER09-36-000

(Issued December 2, 2008)

WELLINGHOFF, Commissioner, concurring:

In today's order, the Commission approves 150 basis point incentive ROE adders for Tallgrass and Prairie Wind in connection with the 765 kV transmission projects that they plan to build in the SPP region. I agree with that decision. I write separately to highlight important characteristics of the Tallgrass and Prairie Wind projects that I believe warrant these significant incentive ROE adders.

I agree that the Tallgrass and Prairie Wind projects satisfy the nexus requirement that is an essential component of Order No. 679. To that end, it is noteworthy that the projects are, as described in today's order, the first application of 765 kV transmission facilities in SPP and are "exceptional in both size and purpose and will facilitate the interconnection and transport of at least 5,800 MW of the approximately 40,000 MW of new renewable power currently in SPP's queue."<sup>107</sup> It is also noteworthy that today's order accounts for technology-related risks in evaluating the incentives requests.<sup>108</sup>

With respect to increasing the availability of renewable energy resources, Tallgrass and Prairie Wind state that such access will help reduce the cost of delivering power to customers and will also reduce greenhouse gas emissions and cumulative water use in the electric sector.<sup>109</sup> I agree with the finding in today's order that construction of transmission facilities designed to provide access to renewable energy resources is not routine.<sup>110</sup> I have stated previously that amid heightened concerns about climate change and dependence on foreign oil, it is essential that our country take steps to accelerate the integration of clean, reliable renewable energy resources into our energy portfolio.<sup>111</sup> In

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<sup>107</sup> *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 54 (2008).

<sup>108</sup> *Id.* P 55.

<sup>109</sup> *Id.* P 6, 54.

<sup>110</sup> *Id.* P 53-54.

<sup>111</sup> *See, e.g., Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (concurrence of Commissioner Wellinghoff at 2); *PacifiCorp*, 125 FERC ¶ 61,076 (2008)

(continued . . .)

light of the broad and substantial benefits associated with increasing the availability of renewable energy resources, I continue to believe that it is appropriate for the Commission to provide investment incentives in this area. I note that in granting such incentives, it remains important for the Commission to promote the use of intelligent and efficient technologies that optimize operation of the facilities at issue. Such use of advanced technologies will benefit all users of the grid and ultimate consumers.

Consistent with that goal, I believe that consideration of advanced technologies and their associated risks and challenges is an appropriate component of the nexus analysis that the Commission conducts in evaluating applications for incentives under Order No. 679. The Commission has undertaken such consideration in several recent orders,<sup>112</sup> and today's order similarly reflects such consideration. The Commission finds that the incentives granted to Tallgrass and Prairie Wind will address technology-related risks, as well as financial, regulatory, and construction risks.<sup>113</sup> Today's order also appropriately recognizes that benefits and challenges associated with technologies highlighted in Tallgrass's and Prairie Wind's Order No. 679 technology statements – including extra-high voltage transmission facilities and switchable shunt reactors, among others – are worthy of consideration in the overall nexus analysis.<sup>114</sup>

In addition, the Commission provides guidance on how applicants for incentives can strengthen their Order No. 679 technology statements. For example, today's order states that Tallgrass and Prairie Wind provided “very brief discussions” of their plans that “could conceivably represent an advanced technology consistent with the smart grid concept described in Title XIII of the Energy Independence and Security Act of 2007.”<sup>115</sup> However, in contrast to a recent incentives application submitted by Pepco Holdings, Inc., today's order further states that Tallgrass and Prairie Wind “failed to provide any discussion of the concerns that are relevant to that concept.”<sup>116</sup>

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(concurrence of Commissioner Wellinghoff at 2).

<sup>112</sup> See *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259 at P 42-57 (2008); *PacifiCorp*, 125 FERC ¶ 61,076 at P 43, 51 (2008); *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130 at P 57, 76-77 (2008).

<sup>113</sup> *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 55 (2008).

<sup>114</sup> *Id.* P 59. I commend Tallgrass and Prairie Wind for their commitments to make their projects “model[s] of advanced technology to improve reliability and project efficiency that the Commission intended with Order No. 679.” See Direct Testimony of Lisa M. Barton, Exh. Nos. TGT-200 at 38-39, PWT-200 at 38-39.

<sup>115</sup> *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 at P 60 (2008).

<sup>116</sup> *Id.* (citing *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130 at P 15-16 (2008)).

I agree that it is noteworthy that the Congress, in the Energy Independence and Security Act of 2007, highlighted the importance of developing a smart grid. I encourage applicants to provide adequate detail on whether and how the investments for which they seek incentives promote the development of a smart grid, as well as on risks, challenges, and benefits associated with such development. This information will allow the Commission to consider such factors in our nexus analysis.

For these reasons, I concur with today's order.

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Jon Wellinghoff  
Commissioner