

134 FERC ¶ 61,115  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Central Minnesota Municipal Power Agency and  
Midwest Municipal Transmission Group

Docket No. EL08-32-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued February 15, 2011)

1. On December 31, 2007, as amended on January 25, 2010 and January 11, 2011, Central Minnesota Municipal Power Agency (Central Minnesota) and the Midwest Municipal Transmission Group (Midwest Municipal Group) (collectively, Petitioners) filed a petition requesting that the Commission issue a declaratory order approving three incentive rate treatments in accordance with Order Nos. 679 and 679-A for their investment in the CapX2020 Brookings project (Brookings Project).<sup>1</sup> Specifically, Petitioners seek: (1) 100 percent of prudently incurred construction work in progress (CWIP) in rate base (100 Percent CWIP Recovery); (2) 100 percent recovery of the prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the Petitioners' control (Abandoned Plant Recovery); and (3) a hypothetical capital structure of 50 percent equity and 50 percent debt,<sup>2</sup> to be applied in both the period of construction and the term of bond financing for the proposed investment in the Brookings Project pursuant to section 219 of the Federal Power Act

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<sup>1</sup>*Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>2</sup> Central Minnesota originally requested a hypothetical capital structure of 55 percent equity and 45 percent debt. However, pursuant to the amendment filed on January 11, 2011, discussed below, Central Minnesota now proposes a hypothetical capital structure of 50 percent equity and 50 percent debt.

(FPA).<sup>3</sup> The Petitioners also include an Attachment O formula rate for Central Minnesota, for illustrative purposes.

2. As discussed below, we conditionally grant Petitioners' request for the proposed incentives. However, in view of Petitioners' clarification that they include the Attachment O formula rate for Central Minnesota with their filing for illustrative purposes only, we do not address issues that have been raised in connection with the Attachment O formula rate in this order.

## **I. Background**

3. Petitioners originally filed their petition for declaratory order on December 31, 2007 (Original Petition). A number of parties filed comments on the Original Petition, and on February 8, 2008, Petitioners requested that the Commission defer action on the Original Petition so that they could work with these parties to address their concerns. Petitioners filed an amended petition for declaratory order on January 25, 2010 (Amended Petition). As discussed below, on January 11, 2011, under Rule 602 of the Commission's Rules of Practice and Procedure,<sup>4</sup> Petitioners filed a settlement agreement entered into by Central Minnesota, Great River Energy (Great River), Midwest Independent Transmission System Operator Inc. (Midwest ISO), the Midwest ISO Transmission Owners (Midwest ISO Transmission Owners),<sup>5</sup> and Xcel Energy Services Inc. (Xcel), and a separate explanatory statement (January 11 Amendment).

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<sup>3</sup> 16 U.S.C. § 824s (2006).

<sup>4</sup> 18 C.F.R. § 385.602 (2010).

<sup>5</sup> The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Incorporated; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative.

**A. Petitioners**

4. Central Minnesota is a municipal power supply agency located in south central Minnesota. Central Minnesota currently is, along with other municipal utilities, a member of Midwest Municipal Group. This is Central Minnesota's first major transmission investment,<sup>6</sup> and it will invest in and own a portion of the Brookings Project for both its member cities and certain non-member cities.<sup>7</sup> Central Minnesota is responsible for serving member city loads and it competes with area utilities such as Xcel for wholesale and retail sales.

5. Midwest Municipal Group represents a group of 77 municipal utilities in Iowa, Minnesota, and Illinois. It was formed by Central Minnesota, the Iowa Association of Municipal Utilities, and the Minnesota Municipal Utilities Association, in part to advocate for and to facilitate transmission construction. Midwest Municipal Group members serve wholesale and retail load, including loads within Midwest ISO's footprint.

6. Petitioners state that they are governmental entities that are not subject to Part II of the FPA.<sup>8</sup> The Midwest ISO has approved Central Minnesota as a Midwest ISO Transmission Owner, and Central Minnesota acts in that capacity on behalf of itself, its members, and certain members of Midwest Municipal Group.<sup>9</sup>

**B. Description of the Brookings Project**

7. Petitioners are participating in a comprehensive regional planning initiative by eleven utilities in the region known as the Transmission Capacity Expansion Initiative by the Year 2020 (CapX2020 Project). One portion of the CapX2020 Project is the Brookings Project, which consists of a 240-mile, 345 kV transmission line that runs from Brookings County, South Dakota to the Southeast Twin Cities in Minnesota, as well as a 10-mile, 230 kV line from a new Hazel Creek substation to a substation in Granite Falls, Minnesota. The original estimate of Brookings Project costs was \$598 million (in real 2007 dollars), of which Petitioners committed to invest \$13.2 million, or 2.2 percent of

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<sup>6</sup> Amended Petition at 58.

<sup>7</sup> The Central Minnesota member cities are Blue Earth, Delano, Fairfax, Glencoe, Granite Falls, Janesville, Kasson, Kenyon, Mountain Lake, Sleepy Eye, Springfield, and Windom. The non-member cities are Elk River, Willmar, Independence, Indianola, Montezuma, and Waverly. Amended Petition at 15.

<sup>8</sup> 16 U.S.C. § 824(f) (2006).

<sup>9</sup> Amended Petition at 16-17.

the total. The most recent estimate of Brookings Project costs is \$794 million (in real 2009 dollars), and while Petitioners have only committed to a 2.2 percent share of the \$598 million cost estimate, they state that they are evaluating whether to invest a proportionate amount of the revised estimate for a total of \$17.5 million. Petitioners state that they also are considering whether to increase their percentage ownership in the Brookings Project from 2.2 percent to 5 percent, which is closer to the load ratio share of their members.<sup>10</sup>

## **II. The Amended Petition**

### **A. Proposed Incentive Rates**

8. Petitioners originally requested the following three incentive-based rate treatments: (1) 100 Percent CWIP Recovery; (2) Abandoned Plant Recovery; and (3) a hypothetical capital structure of 55 percent equity and 45 percent debt.<sup>11</sup> Petitioners seek authority to use the proposed hypothetical capital structure during both the construction period of the Brookings Project and during the period of bond financing for the project.<sup>12</sup> The financing period would be up to 30 years and it could be revisited in the event of refinancing.<sup>13</sup>

### **B. January 11 Amendment**

9. In the January 11 Amendment, Xcel agrees that Central Minnesota is eligible for: (a) inclusion of 100 percent of prudently incurred CWIP solely related to the Brookings Project in rate base; (b) recovery of 100 percent of prudently incurred costs of the Brookings Project if the Brookings Project is cancelled or abandoned for reasons beyond Central Minnesota's control, subject to a future section 205 or other appropriate filing seeking inclusion of the specific abandoned plant costs in the Central Minnesota's annual transmission revenue requirement (ATRR); and (c) a hypothetical capital structure applicable to Central Minnesota's investment in the Brookings Project equal to 50 percent equity and 50 percent debt. The January 11 Amendment also states that the Midwest ISO Transmission Owners and Great River do not oppose the resolution of Central Minnesota's eligibility for Order No. 679 rate incentives and take no position on the capital structure agreed to by Central Minnesota and Xcel. Midwest ISO takes no position related to Central Minnesota's request for Order No. 679 incentive-based rate treatments, except that such incentives will be included in Central Minnesota's

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<sup>10</sup> Amended Petition, Blaine Testimony, Ex. CMM-23 at 10.

<sup>11</sup> Amended Petition at 4; January 11 Amendment at 4-5.

<sup>12</sup> *Id.* at 9, 51-54.

<sup>13</sup> *Id.* at 66.

Attachment O template and ATRR, which the parties agree will be decided in a separate section 205 proceeding.<sup>14</sup>

**C. Proposed Formula Rate**

10. Petitioners submit with the Amended Petition, Central Minnesota's proposed 2008 Midwest ISO Attachment O formula rate which would implement the three incentive-based rate treatments they seek. Petitioners request that the Commission make the proposed incentives applicable through the Midwest ISO Attachment O.<sup>15</sup> Petitioners state that they are not seeking to change the existing Commission-approved 12.38 percent return on equity (ROE) applicable to Midwest ISO transmission owners, and they are not requesting to use a forward-looking Attachment O. Petitioners state that the Brookings Project may be eligible for regional cost sharing through the Midwest ISO Attachment GG formula rate.

11. Petitioners subsequently clarified that the Attachment O they submitted was intended for "illustrative" purposes only.<sup>16</sup> They state that if they are granted the requested incentives, Central Minnesota will file the appropriate Attachment O and Attachment GG data with Midwest ISO to implement the requested incentives.<sup>17</sup>

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<sup>14</sup> International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest, LLC (ITC/METC) are not parties to the settlement agreement. But, in their comments, they do not oppose Central Minnesota's request for Order No. 679 rate incentives. Rather, they argue only that Central Minnesota's Attachment O formula rate is more appropriately addressed in a section 205 proceeding, a position which is reflected in the January 11 Amendment.

<sup>15</sup> Amended Petition at n.5, 8. Petitioners state that their incentive request applies only to investment made by Central Minnesota on behalf of its participating cities. Central Minnesota has included the annual transmission revenue requirement data and Attachment O information for existing city assets only to show the impact of the total Central Minnesota annual transmission revenue requirement on the pricing zones in which it participates.

<sup>16</sup> March 3 Answer at 4.

<sup>17</sup> *Id.* at 16. On January 19, 2011, Midwest ISO filed Central Minnesota's Attachment O formula rate under section 205, in Docket No. ER11-2700-000, which is currently pending.

### III. Notice of Filing and Responsive Pleadings

12. Notice of the Original Petition was published in the *Federal Register*, 73 Fed. Reg. 3243 (2008), with interventions and protests due on or before January 30, 2008. Missouri River Energy Services (Missouri River), Midwest ISO, FirstEnergy Service Company, and Dairyland Power Cooperative filed motions to intervene. Xcel, Midwest ISO Transmission Owners, Great River; and, jointly, ITC/METC filed motions to intervene and comments.

13. Notice of the Amended Petition was published in the *Federal Register*, 75 Fed. Reg. 6199 (2010), with interventions and protests due on or before February 16, 2010. Missouri River filed a motion to intervene. Midwest ISO, Xcel and the Midwest ISO Transmission Owners filed motions to intervene and comments, and Great River filed a motion to intervene and limited protest.<sup>18</sup> On March 3, 2010, Petitioners filed an answer (March 3 Answer), and on March 18, 2010, Midwest ISO and Xcel filed answers to the March 3 Answer. On April 2, 2010, Petitioners filed an answer to Midwest ISO and Xcel's answers.<sup>19</sup>

14. While the Amended Petition was pending before the Commission and before the issuance of a dispositive order, Central Minnesota and other parties engaged in negotiations with the assistance of the Commission's Dispute Resolution Service. Subsequently, Central Minnesota, Great River, Midwest ISO, the Midwest ISO Transmission Owners and Xcel entered into a settlement agreement, i.e., the January 11 Amendment.

15. Notice of the January 11 Amendment, as an amendment to Central Minnesota's petition for declaratory order, was published in the *Federal Register*, 76 Fed. Reg. 4103 (2011), with interventions or comments due on or before January 27, 2011.<sup>20</sup> None were filed.

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<sup>18</sup> We note that all parties filing motions to intervene in connection with the Amended Petition are already parties to this proceeding, having filed timely motions to intervene in it on or before January 30, 2008.

<sup>19</sup> On March 16, 2010, Petitioners submitted a Motion to Lodge Supplemental Authority concerning *Citizens Energy Corp.*, 129 FERC ¶ 61,242 (2009).

<sup>20</sup> The Commission considers a settlement agreement filed prior to a dispositive order as an amendment to the application. See *Wisconsin Electric Power Co.*, 125 FERC ¶ 61,158, at P 10 n.2 (2008) (treating filed "settlement agreements" that resolved intervenors' disputes regarding a tariff filing as amendments to the tariff filing; citing *Stowers Oil and Gas Co. and Northern Natural Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) (the style in which a petitioner frames a document does not dictate how the

(continued...)

#### IV. Discussion

##### A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>21</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

17. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>22</sup> prohibits an answer to a protest or an answer to an answer, unless otherwise permitted by the decisional authority. We will accept Petitioners' March 3 Answer, because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Midwest ISO and Xcel's answers to Petitioners' March 3 Answer and Petitioners' April 2, 2010 answer to their answers and will, therefore, reject them.

##### B. Substantive Matters

###### 1. Jurisdiction Over Petitioners' Request

18. Petitioners state that they cannot and do not waive their non-jurisdictional status. Nonetheless, they note that Central Minnesota has been approved as a Midwest ISO Transmission Owner. Further, in accordance with Commission and court precedent, they state that they recognize and accept that their annual transmission revenue requirement that is included in the Midwest ISO rates must be consistent with sections 205 and 206 of the FPA.

19. We agree with Petitioners that we have authority to consider and grant their request for incentive rate treatment. In Order No. 679, the Commission stated that it would, "to the extent [its] jurisdiction allows, entertain appropriate requests for incentive ratemaking for investment in new transmission projects when public power participates with jurisdictional entities as part of a proposal for incentives."<sup>23</sup> It has been firmly

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Commission must treat it)); *Long Island Lighting Co.*, 82 FERC ¶ 61,124, at 61,447 (1998); *Cajun Elec. Power Coop. v. Louisiana Power & Light Co.*, 55 FERC ¶ 61,272, at 61,868-89 (1991). *See also BHE Holdings Inc.*, 133 FERC ¶ 61,231, at P 12 (2010) (same).

<sup>21</sup> 18 C.F.R. § 385.214 (2010).

<sup>22</sup> *Id.* § 385.213(a)(2).

<sup>23</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 354. We also noted that encouraging public power participation in such projects is consistent with the goals of section 219 of the FPA by encouraging a deep pool of participants.

established that the Commission has the statutory authority to consider whether the rates of a non-jurisdictional entity are just and reasonable to the extent necessary to determine that jurisdictional rates are just and reasonable.<sup>24</sup> Central Minnesota will derive its transmission revenue requirement using Midwest ISO's Attachment O and GG formula rates, and, as a result, its revenue requirements will be subject to Commission review to ensure that rates for service provided by Midwest ISO, a public utility, are just and reasonable.<sup>25</sup>

## 2. CWIP and Abandoned Plant Incentives

### a. Petitioners' Proposal

20. Petitioners state that their request for CWIP recovery and abandoned plant incentives for the Brookings Project complies with Order No. 679 and section 219 requirements.<sup>26</sup> Further, they argue that the Commission has approved for Xcel, Great River, and Otter Tail Power (Otter Tail) incentive rates in connection with the Brookings Project, and Central Minnesota, as a co-owner of the Brookings Project, therefore should also qualify for incentive rate treatment.<sup>27</sup>

### b. Commission Determination

21. Consistent with our findings in other orders, we will grant Central Minnesota's request for CWIP Recovery and Abandoned Plant Recovery incentives.<sup>28</sup> However, as discussed in greater detail further below, we will not assess at this time whether Petitioners have properly implemented their 100 Percent CWIP Recovery in Central Minnesota's Attachment O formula rate, and we thus also will not rule on whether Petitioners' proposed accounting procedures ensure the proper recovery of CWIP in rate

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<sup>24</sup> *Transmission Agency of Northern California*, 495 F.3d 663 at 671-672 (2007) (citing *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002)).

<sup>25</sup> See also, e.g., *Great River Energy*, 130 FERC ¶ 61,001, at P 25 (2010) (*Great River*).

<sup>26</sup> *Id.* P 354.

<sup>27</sup> Amended Petition at 27-29; 30-31.

<sup>28</sup> See *Great River*, 130 FERC ¶ 61,001 at P 32-35; *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at P 30-33 (2009) (*Otter Tail*); *Xcel Energy Serv., Inc.*, 121 FERC ¶ 61,284, at P 56-63 (2007) (*Xcel*). In *Great River*, *Otter Tail* and *Xcel*, the Commission found that the respective companies' CapX2020-related projects were not routine and that the requested incentives of CWIP and abandoned plant were designed to meet a distinct set of risks associated with the projects.

base until Petitioners submit a finalized Attachment O formula rate. As required by the Commission's regulations Petitioners must include the necessary FERC-730 to satisfy the reporting requirements for CWIP recovery.<sup>29</sup> Petitioners have not committed to do so, and the Commission's approval of their proposed 100 Percent CWIP Recovery is conditioned on Petitioners committing to file a FERC-730 annually.

### **3. Hypothetical Capital Structure**

#### **a. Petitioners' Proposal**

22. Petitioners request a hypothetical capital structure of 50 percent equity and 50 percent debt during the Brookings Project construction period and during the bond financing period. Petitioners state that this hypothetical capital structure is necessary to realize the benefits of the rates and other incentives that they seek, in particular the 12.38 percent ROE, which they say would be meaningless when applied to Central Minnesota's actual capital structure, which is made up largely of debt.<sup>30</sup>

23. Petitioners state that a hypothetical capital structure is necessary to achieve a return that is comparable to surrounding Midwest ISO Transmission Owners and Petitioners' CapX2020 partners. Petitioners note that they are municipal entities and that unlike private corporations, they cannot issue equity. They therefore must finance their investment in the Brookings Project through debt issuance. Petitioners state that they have the same or greater risks as other owners, and they thus have an equal need for, and entitlement to, a meaningful return on equity.<sup>31</sup>

24. Petitioners state that without a hypothetical capital structure they would spend more than the investor-owned utility project participants to finance the exact same amount of transmission, and they would unfairly pay investor-owned utilities' revenue requirements through Midwest ISO transmission rates that reflect higher equity ratios of investor-owned utilities whereas investor-owned utility customers would be paying revenue requirements of the Petitioners that would be substantially lower, reflecting primarily debt costs and no income taxes. Petitioners state that, if the returns for Central Minnesota are mostly a return of its actual cost of debt (reflecting a small amount of equity), then Petitioners' municipal members would likely have other utilities, such as the

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<sup>29</sup> 18 C.F.R. §35.35(h) (2010)

<sup>30</sup> Amended Petition at 52. Petitioners state that Central Minnesota's actual capital structure would be overwhelmed with debt due to the nature and the size and scope of the debt financing for the Brookings Project and additional transmission and generation projects.

<sup>31</sup> *Id.* at 55-56.

investor owned utilities, do the investing because Petitioners' participation would only marginally reduce their transmission rates and their investment risks would not be recognized.<sup>32</sup>

25. Petitioners state that the proposed hypothetical capital structure is tailored to meet their needs, and failure to grant it would restrict their municipal members' incentive to participate in new transmission projects. Moreover, they state that Central Minnesota cannot support the Brookings Project with returns from other projects because the Brookings Project is its first major transmission investment. Petitioners state that their investment represents a very large cash outflow and unprecedented debt compared to Central Minnesota's existing investment.<sup>33</sup> Petitioners state that Xcel, the major investment partner in the Brookings Project, has an approximately 54 percent equity capital structure, and achieving comparable revenue streams was a major consideration in the decision by Central Minnesota and its members to join Midwest ISO and invest in the project.<sup>34</sup> Petitioners also state that they expect to continue to invest in major new projects such as the CapX2020 Corridor project and the La Crosse to Madison project with 100 percent debt.<sup>35</sup> They state that the ability to use an equity ratio comparable to Midwest ISO investor-owned utility transmission owners will encourage Petitioners to invest in new joint transmission projects, and it will encourage more public power entities to join Regional Transmission Organizations (RTOs), to build new transmission, and to participate in transmission consortiums such as CapX2020 Project.<sup>36</sup>

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<sup>32</sup> Pardikes Affidavit at 31 (explaining that this is because Central Minnesota is a very small player in its pricing zones (e.g., less than one percent of the revenue requirement in the Xcel pricing zone with or without the Brookings Project) and a very small player (currently 2.2 percent) in the Brookings Project). See also Thompson Affidavit at 10 (“[O]ne of the reasons motivating the cities to invest is that they anticipate that there will be very high, future transmission rates. [Petitioners’] participating members desire to be able to obtain at least a total aggregate level of transmission investment in the network commensurate with their transmission usage. In doing so they will further public purposes in financing their share of transmission grid investments. At the same time, they can protect their ratepayers by offsetting some of the high transmission costs by making a return on their investments in exchange for taking on the ownership risks.”)

<sup>33</sup> Amended Petition at 56-58.

<sup>34</sup> *Id.* at 59-60.

<sup>35</sup> *Id.* at 60.

<sup>36</sup> *Id.* at 66-67.

26. Petitioners submit that a hypothetical capital structure as proposed is consistent with prior Commission rulings involving municipals and cooperatives. They state that the Commission has acknowledged that no small transmission owner will participate in an RTO without proper and equitable compensation.<sup>37</sup>

27. Petitioners state that its requested ratio is justified because it reflects the equity ratios of their Brookings Project investor-owned utility partners and those of Midwest ISO Transmission Owners. Petitioners note that the average equity ratio for all investor-owned Midwest ISO Transmission Owners is 56.4 percent based on 2008 Attachment O filings. Petitioners further show that Xcel's equity ratio is 53.6 percent, according to its 2008 Attachment O, and Otter Tail's is 59.4 percent, according to its 2008 Attachment O.<sup>38</sup>

28. Petitioners state that although the Commission has in some cases required use of an actual capital structure after construction is completed, that would be impractical in their case.<sup>39</sup> They argue that since they are unable to issue equity, without a hypothetical capital structure they would never be able earn a return comparable to those of the investor-owned utilities investing in the same project once construction is complete. Petitioners state that if the bonds issued to finance the Brookings Project mature in less than 30 years, the duration of the hypothetical capital structure will be reduced to match the duration of the life of the bonds.<sup>40</sup>

**b. January 11 Amendment**

29. The January 11 Amendment provides that Central Minnesota and Xcel agree to a hypothetical capital structure applicable to Central Minnesota's investments in the Brookings Project of 50 percent equity and 50 percent debt. It further provides that Midwest ISO Transmission Owners, Great River, and Midwest ISO take no position on the capital structure agreed to by Central Minnesota and Xcel.

**c. Commission Determination**

30. The Commission stated in Order No. 679 that to receive authorization to use a hypothetical capital structure, an applicant must provide support in its application for why the hypothetical capital structure incentive is needed to promote investment

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<sup>37</sup> *Id.* at 46-47 (citing *Midwest Indep. Transmission Sys. Operator, Inc.* 106 FERC ¶ 61,219, P 30-31 (2004), *order on reh'g*, 112 FERC ¶ 61,351 (2005) (*Wolverine*)).

<sup>38</sup> *Id.* at 63-64.

<sup>39</sup> *Id.* at 61.

<sup>40</sup> *Id.* at 66.

consistent with the goals of section 219.<sup>41</sup> The Commission also stated that it would evaluate each requested incentive on a case-by-case basis and would not prescribe specific criteria or set target debt to equity ratios for evaluating hypothetical capital structures.<sup>42</sup> We find that Petitioners have demonstrated that the requested hypothetical capital structure is tailored to address the risks of their investment in the Brookings Project, and we will therefore approve it, as discussed below.

31. The Commission has permitted municipals and cooperatives to use a hypothetical capital structure for ratemaking purposes when they have relied upon non-equity financing for a project. For example, the Commission granted *Citizens*, an entity similar to Central Minnesota that relied on non-equity financing, a hypothetical capital structure for a thirty-year period. As in that case, we find that Petitioners have provided a satisfactory explanation and justification for their request, and they have demonstrated that without the hypothetical capital structure for the entire financing period, Central Minnesota would not be able to receive a meaningful return on its investment once the construction period ends. This would decrease cash flow and hamper Central Minnesota's ability to make payments on its debt. In addition, approving the hypothetical capital structure for the entire period of debt financing will benefit Central Minnesota's credit rating and allow it to receive more advantageous financing terms, which will lower its borrowing costs and decrease the total cost of its investment in the Brookings Project. Finally, allowing Central Minnesota to receive a revenue requirement for the Brookings Project that reflects the higher capital costs of the investor-owned utilities' will offset the Midwest ISO transmission rates that its members pay, which largely reflect those investor-owned utilities' higher capital costs, thereby allowing Central Minnesota and its members to effectively reduce their future transmission rates to reflect their lower capital costs to mitigate their investment risks associated with the project.

32. The Commission expects that granting the requested hypothetical capital structure here will assist Petitioners in attracting financing and will encourage Petitioners and their members to invest further in the Brookings Project or future transmission expansion projects. The requested hypothetical capital structure is reasonable in the context of rate recovery for Central Minnesota's sole transmission asset and will ensure a needed constant revenue stream for purposes of both construction and financing. It will allow Petitioners to receive returns comparable to those of investor-owned utilities that are investing in the Brookings Project and will enhance Petitioners' ability meet their debt obligations.

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<sup>41</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 123.

<sup>42</sup> *Id.* P 132.

33. Therefore, as discussed above, Petitioners have justified the use of a hypothetical capital structure for both the Brookings Project construction period and for the life of Central Minnesota's bond issuances, which is anticipated to be thirty-years.

#### **4. Total Package of Incentives**

34. As stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges that the applicant faces. This test is fact-specific and requires the Commission to review each application on a case-by-case basis. The Commission has in prior cases approved multiple rate incentives for particular projects.<sup>43</sup> Petitioners face significant risks and challenges in developing and constructing their interest in the Brookings Project, discussed above, and we find that they are eligible for the package of incentives that we are granting in this order.

#### **5. Formula Rates**

35. As noted above, Petitioners have clarified that their submission of an Attachment O formula rate template in this docket was for "illustrative" purposes only. In addition, the January 11 Amendment provides that Midwest ISO will file in a separate docket under section 205 of the FPA, on behalf of Central Minnesota, a Central Minnesota Attachment O template reflecting Central Minnesota's requested ATRR. It further provides that Midwest ISO will act as the tariff administrator and the Midwest ISO may protest the filing and/or include additional or opposing comments to Central Minnesota's proposed section 205 filing. It also provides that no intervenor in this proceeding shall be precluded from raising, contesting or defending any issues with respect to the template and/or ATRR in the section 205 proceeding. Accordingly, we need not address issues concerning Central Minnesota's Attachment O in this order. Such issues may be raised in the section 205 proceeding in Docket No. ER11-2700-000.

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<sup>43</sup> See, e.g., *id.* P 89 (finding that 100 percent CWIP, deferred recovery of pre-construction costs, abandonment recovery, and ROE incentives were tailored to the unique challenges faced by the project); *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 61 (2009) (finding that applicant demonstrated a sufficient nexus between the risks of the project and the requested incentives, which included abandoned plant recovery, 100 percent of CWIP, deferred recovery of pre-construction costs, and ROE incentives).

The Commission orders:

The Petitioners' request for a declaratory order authorizing 100 percent CWIP recovery and abandoned plant recovery and Hypothetical Capital Structure is hereby conditionally granted, as discussed in the body of this order.

By the Commission. Commissioner Norris dissenting in part with a separate statement to be issued at a later date.

( S E A L )

Kimberly D. Bose,  
Secretary.