

137 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Otter Tail Power Company

Docket No. ER12-342-000

ORDER ON TRANSMISSION RATE INCENTIVES

(Issued December 30, 2011)

1. On November 2, 2011, Otter Tail Power Company (Otter Tail) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Order No. 679,² a request for incentive rate treatment for two transmission projects, the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project (collectively, Projects), that Otter Tail plans to construct under the Midwest Independent Transmission System Operator, Inc. (MISO) Transmission Expansion Plan (MTEP). Specifically, Otter Tail seeks approval to include (1) recovery of 100 percent of prudently incurred Construction Work in Progress (CWIP Recovery) in rate base; and (2) recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the control of Otter Tail (Abandoned Plant Recovery). In this order, we grant Otter Tail’s request for transmission rate incentives with respect to the Projects, as discussed below.

I. Background

2. Otter Tail is a Minnesota corporation that provides electricity to 423 communities with an average population of 300 in western Minnesota, northeastern South Dakota, and the eastern two-thirds of North Dakota. Otter Tail owns and operates approximately

¹ 16 U.S.C. § 824d (2006).

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

5,300 miles of transmission facilities and owns approximately 800 megawatts (MW) of generation capacity in the three states. Otter Tail is a transmission-owning member of MISO, and it has transferred all of its transmission rated at 100 kV and greater to the functional control of MISO.³

3. Through its open and transparent, stakeholder-driven MTEP process, MISO annually identifies transmission projects required to address system needs and produces an annual MTEP report. For its 2011 MTEP Report,⁴ MISO has identified a portfolio of 17 Multi Value Projects (MVPs) (MVP Portfolio) costing a total of \$5.2 billion, which MISO has deemed necessary for a number of interrelated reasons such as increasing market efficiency by reducing congestion and fuel costs, delivering low-cost generation, reducing generation reserves, reducing transmission losses, deferring future transmission investment, maintaining reliability, and incorporating public policy requirements. As described in the 2011 MTEP Report, in aggregate all of the MISO proposed MVPs will allow for the reliable integration and delivery of approximately 41 million MWh of wind energy to meet renewable energy mandates and goals and resolve a significant number of reliability issues throughout the MISO region. MISO included both of the Projects in its 2011 MTEP Report.

II. Description of the Filing

A. The Projects

4. In the filing, Otter Tail explains that, among the proposed MVP Portfolio, the Projects stand out as a key link in the regional package of major transmission projects and are essential to realization of the benefits delivered by that portfolio. Notably, Otter Tail states, they are the only projects among the MVP Portfolio that directly access the resource-rich areas of North Dakota and South Dakota. Without these two vital links, Otter Tail claims, the MVP Portfolio could not achieve its objective of strengthening the MISO region's ability to move power from the areas of high wind power potential in North and South Dakota – on the western edge of MISO – to points east.⁵

³ See *Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001); see also *Otter Tail Power Co.*, 98 FERC ¶ 62,218 (2002).

⁴ *MISO Transmission Expansion Plan 2011* (Sept. 22, 2011), available at <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP11/MTEP11%20Draft%20Report.pdf> (2011 MTEP Report).

⁵ Otter Tail Filing, Ex. OTP-2 (Rogelstad Test.) at 12-13.

5. Otter Tail states that it expects to invest between \$240 and \$280 million in the Projects, which will roughly double Otter Tail's forecasted 2012 net transmission plant in service.⁶ Otter Tail further states that completing the Projects will require it to make much greater annual capital expenditures than it has in the past. As described in the testimony of Mr. Rogelstad, Otter Tail is currently projected to spend an average of over \$47 million in each of the five peak years of investment in the Projects (i.e., 2015 through 2019), which is about ten times greater than Otter Tail's average annual capital expenditures for routine transmission expansion projects of \$4.8 million over the previous ten years.⁷

6. The Projects are:

- The **Big Stone South – Brookings Project**, which will consist of a 65-mile, 345 kV transmission line extending from a connection near Big Stone, South Dakota to the Brookings County Substation near White, South Dakota, and a two mile 230 kV single circuit transmission line connecting to a related substation near Big Stone, South Dakota. The 65-mile, 345 kV transmission line is proposed to be constructed in a double circuit compatible configuration by using structures capable of supporting a second circuit in the future.
- The **Ellendale – Big Stone South Project**, which will consist of a 145- to 175-mile, 345 kV transmission line between the Ellendale Substation near Ellendale, North Dakota and the Big Stone South Substation near Big Stone, South Dakota.

7. Otter Tail states that in the MTEP process, MISO determined that the Big Stone South – Brookings Project is required for reliability and support of renewable resources in the region. Otter Tail estimates that it may facilitate the integration of more than 800 MW of new renewable generation to the MISO system. The Big Stone South – Brookings Project, Otter Tail explains, will increase the ability to transfer more power out of North Dakota and South Dakota, which have historically had more generation than load and more potential generation that has been limited by the lack of transmission.⁸

8. Otter Tail expects that the Big Stone South – Brookings Project will be jointly constructed and owned, with an estimated cost of the entire project between \$210 and

⁶ *Id.* at 22.

⁷ *Id.* at 21.

⁸ *Id.*, Transmittal Letter at 9-10.

\$230 million. Otter Tail states that, while ownership agreements are not finalized, it intends to invest in and own a 50 percent share of the project. Otter Tail expects to invest between \$125 and \$140 million, which represents between 82 percent and 91 percent of Otter Tail's 2012 net transmission plant. The projected in-service date of the Big Stone South – Brookings Project is 2017.⁹

9. Otter Tail states that the primary benefits identified by MISO for the Ellendale – Big Stone South Project include maintaining reliability, the ability to interconnect more generation, reduced congestion, and fuel savings. Specifically, Otter Tail explains that MISO has determined that the Ellendale – Big Stone South Project will have reliability benefits that include the mitigation of multiple transmission constraints on the transmission system. In addition, Otter Tail states that this project will be geographically located in an area that has been shown to need local transmission support.¹⁰

10. According to Otter Tail, the Ellendale – Big Stone South Project is located in one of the best wind generation resource areas in the country, and will increase the ability of the transmission system to add more generation in the area. Otter Tail estimates that the Ellendale – Big Stone South Project will facilitate the integration of more than 500 MW of new renewable generation to the MISO system, and will increase the ability to transfer more power out of North Dakota to points east within MISO.¹¹

11. Otter Tail states that, while ownership agreements are not finalized, it anticipates that the Ellendale – Big Stone South Project will be jointly constructed and owned, with an estimated total cost between \$290 and \$340 million. Otter Tail states that it intends to own and invest in a 50 percent share of the project and expects to invest between \$145 and \$170 million in it, which represents 95 to 111 percent of Otter Tail's 2012 projected net transmission plant. The projected in-service date of the Ellendale – Big Stone South Project is 2019.¹²

⁹ *Id.* at 10.

¹⁰ *Id.* at 11.

¹¹ Otter Tail Filing, Transmittal Letter at 11; *id.*, Ex. OTP-2 (Rogelstad Test.) at 13-14.

¹² *Id.*, Transmittal Letter at 12.

B. Request for Incentives

12. Otter Tail requests approval for two incentive-based rate treatments pursuant to sections 205 and 219 of the FPA and Order No. 679. First, Otter Tail seeks CWIP Recovery during the development and construction period for the Projects. Otter Tail states that 100 percent CWIP Recovery will reduce stresses on cash flows for Otter Tail and relieve downward pressure on Otter Tail's credit ratings.¹³

13. Second, Otter Tail requests approval for Abandoned Plant Recovery in the event that any of the Projects must be abandoned for reasons outside of its control. Otter Tail states that granting this incentive is appropriate because, due to the risks associated with the Projects, Otter Tail needs certainty that it will have the opportunity to seek recovery of abandonment costs to make the Projects readily financeable.¹⁴

14. Otter Tail states that the Commission previously granted the company certain incentive rates for three projects that Otter Tail is constructing as part of the CapX2020 Transmission Capacity Expansion Initiative.¹⁵ In that earlier proceeding, Otter Tail adopted revisions to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)¹⁶ to implement the CWIP and Abandoned Plant Recovery incentives authorized by the Commission. Specifically, Otter Tail's Attachment O-OTP to the MISO Tariff contain a line in the rate base section labeled "CWIP for Certificate of Need Projects" for CWIP Recovery. The Attachment O-OTP also contains a line in the rate base section labeled "Unamortized Balance of Abandoned Plant" and a line in the transmission depreciation expense labeled "Abandoned Plant Amortization." Otter Tail proposes to utilize these existing mechanisms to implement the incentives sought in this filing.

15. Order No. 679 requires an applicant seeking transmission incentives to provide a technology statement describing advanced technology considered for use in the subject projects. In light of that requirement, Otter Tail has provided a technology statement describing the advanced technologies that it plans to use in the Projects.¹⁷ Otter Tail states that the Projects will utilize: microprocessor-based protective relays;

¹³ *Id.* at 24-25.

¹⁴ *Id.* at 27.

¹⁵ *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009).

¹⁶ MISO, FERC Electric Tariff, Fourth Revised Volume No. 1.

¹⁷ *See* Otter Tail Filing, Ex. OTP-2 (Rogelstad Test.) at 24-25.

synchrophasor technology, digital fault recorders; Programmable Logic Controller based control and annunciation for substations; tubular steel structures; fiber-optic based communication; and advanced conductor designs.¹⁸

III. Notice of Filing and Responsive Pleadings

16. Notice of Otter Tail's filing was published in the *Federal Register*, 76 Fed. Reg. 70,435 (2011), with interventions and comments due on or before November 23, 2011. Timely motions to intervene were filed by Wisconsin Electric Power Company; MidAmerican Energy Company; American Municipal Power, Inc.; Xcel Energy Services, Inc., on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation; and MISO Transmission Owners.¹⁹ The Organization of MISO States (OMS) filed a timely motion to intervene and comments. Illinois Commerce Commission filed a notice of intervention. Indiana Utility Regulatory Commission (Indiana Commission) filed a notice of intervention and protest. On December 6, 2011, MISO Transmission Owners filed a motion for leave to answer and answer to the comments and protests. On December 8, 2011, Otter Tail filed an answer to the comments and protests.

¹⁸ *Id.*

¹⁹ MISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; 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; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; 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; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Southern Illinois Power Cooperative; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO Transmission Owners' and Otter Tail's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Requests to Suspend Commission Action

a. Comments

18. OMS requests that the Commission suspend this filing pending the outcome of Docket No. RM11-26-000, in which the Commission published a Notice of Inquiry seeking stakeholder comments on the scope and implementation of its transmission incentive regulations and policies. OMS argues that the Commission should avoid making substantive decisions on transmission incentives applications while it is reviewing its policies on transmission incentives because those incentives may become anachronistic in light of new Commission policies and granting such incentives would not encourage the development of transmission infrastructure in the most cost-effective manner. In the alternative, OMS recommends that the Commission reject the filing without prejudice to refiling upon completion of the Notice of Inquiry proceeding.²⁰ Additionally, the Indiana Commission requests that the Commission stay this proceeding until it has reconsidered its policies on transmission rate incentives in the Notice of Inquiry.²¹

b. Answers

19. In their answers, MISO Transmission Owners and Otter Tail state that the Commission should deny the requests to reject or defer action on the filing pending the

²⁰ OMS Comments at 2.

²¹ Indiana Commission Protest at 3.

outcome of the Notice of Inquiry. They explain that doing so would cause regulatory uncertainty during a time when the Commission is encouraging the construction of transmission. MISO Transmission Owners and Otter Tail point out that in the Notice of Inquiry, the Commission did not indicate any intention to forestall action on requests for approval of transmission rate incentives. Further, MISO Transmission Owners and Otter Tail note that in other instances, the Commission has declined to delay ruling on a section 205 filing pending action on a proposed rulemaking.²² Additionally, MISO Transmission Owners argue that section 205(d) of the FPA obligates the Commission to act on this section 205 filing within 60 days of filing and, thus, the Commission should reject the proposals to delay action beyond the statutory period.²³

c. Commission Determination

20. We deny the requests to stay this proceeding or reject the instant filing without prejudice pending the outcome of the Notice of Inquiry on transmission incentives. The Commission expressly stated in the Notice of Inquiry that “[d]uring the pendency of this proceeding, the Commission will continue to evaluate incentive requests under Order No. 679 on a case-by-case basis.”²⁴ Therefore, we reject OMS’ and Indiana Commission’s request to reject or defer a substantive ruling in this proceeding on the basis of the Commission’s issuance of the Notice of Inquiry.

²² MISO Transmission Owners Answer at 3-5; Otter Tail Answer at 4-7.

²³ MISO Transmission Owners Answer at 4 (citing 16 U.S.C. § 824d(d); *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074, at P 187 (2011)).

²⁴ *Promoting Transmission Investment Through Pricing Reform*, Notice of Inquiry, 76 Fed. Reg. 30,869 (May 27, 2011), FERC Stats. & Regs. ¶ 35,572, at P 13, n.18 (2011). See also, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074, at P 187 (2011) (“If the Commission refrained from acting on proposals merely to avoid potential conflicts with potential future rulemakings, it would be hampered in its ability to complete its work that is required by the FPA.”); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207, at P 49 (2010) (declining to grant a request to defer action on a section 205 filing until issuance of a final rule because the Commission does not have the authority under section 205 to defer action on a filing beyond the statutory deadline).

2. Formula Rate Protocols

a. Comments

21. Indiana Commission requests that the Commission require Otter Tail to revise its existing formula rate protocols. Because Otter Tail's existing formula rate protocols permit only Otter Tail's customers to receive information regarding the status of the Projects, the prudence of the costs being incurred, and the resulting annual true-up, Indiana Commission states that the Commission should require Otter Tail to revise its protocols to allow other interested parties, such as state utility commissions, who are not customers of Otter Tail to receive the same information as Otter Tail's customers.²⁵

b. Answer

22. Otter Tail responds that the Commission should reject Indiana Commission's request because Otter Tail's protocols are not at issue in this proceeding. Otter Tail explains that it did not propose any changes to its Commission-approved formula rate protocols. Otter Tail also claims that Indiana Commission does not provide any support for or offer an argument on why Otter Tail's existing protocols are no longer just and reasonable. Finally, Otter Tail states that that much of the information that Indiana Commission seeks is already publicly available.

c. Commission Determination

23. Otter Tail is not proposing in this filing any changes to its formula rate protocols which the Commission previously accepted.²⁶ For this reason, we find that Indiana Commission's request is beyond the scope of this proceeding. Moreover, we note that Indiana Commission's filing challenges MISO's existing Attachment O formula rate protocols and, therefore, is more appropriately characterized as a complaint on that broader issue than as a protest on the issue presented by Otter Tail in this proceeding. The Commission discourages the combination of complaints with other types of filings, including protests.²⁷ Accordingly, we will reject Indiana Commission's protest

²⁵ Indiana Commission Protest at 2-3.

²⁶ *Otter Tail Power Co.*, 129 FERC ¶ 61,287.

²⁷ See *Entergy Servs., Inc.*, 104 FERC ¶ 61, 084, at P 13 (2003); *Yankee Atomic Elect. Co.*, 60 FERC ¶ 61,316, at 62,096 n.19 (1992); *Midwest Energy Co.*, 55 FERC ¶ 61,464, at 62,533 (1991).

pertaining to this issue, without prejudice. Indiana Commission is of course free to file a separate complaint on this issue pursuant to section 206 of the FPA.

3. Section 219 Requirement

24. In the Energy Policy Act of 2005,²⁸ Congress added section 219 to the FPA and directed the Commission to establish rules providing incentives to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, setting forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Otter Tail.

25. Pursuant to Order No. 679, an applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”²⁹ Also, as part of this demonstration, “section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.”³⁰

26. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219.³¹ Order No. 679 establishes a process for an applicant to follow to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if: (1) the 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) the transmission project has received construction approval from an appropriate state commission or state siting authority.³² Order No. 679-A clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting

²⁸ Pub. L. No. 109-58, § 1241 119 Stat. 594 (2005).

²⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

³⁰ *Id.* P 8 (citing 16 U.S.C. §§ 824d, 824e (2006)).

³¹ 18 C.F.R. § 35.35(i) (2011).

³² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.³³

a. Proposal

27. Otter Tail contends that it meets the rebuttable presumption under Order No. 679.

28. Otter Tail states that it has developed its transmission expansion plans in cooperation with MISO and that the Projects have been assessed by MISO as MVPs through the MTEP process. Otter Tail states that potential MVPs are identified in the MTEP process as projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple transmission zones. Further, Otter Tail states that the MVP analysis included a robust transmission study including power flow analysis, short circuit, voltage stability, production cost, transient stability and economic analysis.³⁴

29. The MTEP process identifies both short- and long-term projects and classifies projects into three general categories; Appendix A, Appendix B, and Appendix C. In order to be included in Appendix A, a project must be approved by the MISO Board of Directors and must be determined to be the preferred solution to an identified reliability, policy or other need, or to achieve an indentified cost savings or provide other benefits. Once a project is approved by the MISO Board of Directors, the MISO transmission owner(s) responsible for the project must commence development of the project.

30. Otter Tail states that the Projects have been thoroughly reviewed by MISO and vetted through MISO's regional transmission planning process and that Otter Tail expects the MISO Board of Directors to approve the Projects under Criterion 1 of the MVP Criteria³⁵ as part the MISO MVP Portfolio during the December 2011 meeting. Otter

³³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

³⁴ Otter Tail notes that, because MVPs are evaluated on a portfolio basis, most of MISO's analysis supporting development of the 17 MVPs identified benefits on an aggregate basis.

³⁵ Under the MISO tariff, for a project to be designated as an MVP, among other things, it must satisfy one of three functional criteria. To satisfy Criterion 1, "[an MVP] must be developed through the [MTEP] process for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the

(continued...)

Tail further states that, once the MISO Board of Directors approves the Projects as part of the MTEP process, the approval constitutes a finding by MISO that the Projects enhance reliability, reduce congestion and provide other policy benefits, such as facilitating the integration of new renewable resources. Therefore, Otter Tail maintains that approval of the Projects through the MTEP process satisfies the requirements for the rebuttable presumption established in Order No. 679.

b. Commission Determination

31. As stated above, Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or one that has received construction approval from the appropriate state authority, if the process considers whether a project ensures reliability or reduces the cost of delivered power by reducing congestion.³⁶ In this case, the Projects have received approval through the MTEP process. The MISO Board of Directors approved the Projects under Criterion 1 on December 8, 2011, and placed them into Appendix A of the MTEP.³⁷ The Commission has previously found that projects approved under Criterion 1 are entitled to the rebuttable presumption established in Order No. 679.³⁸ Therefore, we find that both of the Projects are entitled to the rebuttable presumption to meet the section 219 requirement.

4. The Nexus Requirement

32. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant for a transmission rate incentive must demonstrate that there is a nexus between the incentive sought and the investment being made. In evaluating whether an applicant has satisfied

minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.” MISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 3451A.

³⁶ 18 C.F.R. § 35.35(i) (2011).

³⁷ See *MISO Approves 215 New Transmission Projects*, available at <https://www.midwestiso.org/AboutUs/MediaCenter/PressReleases/Pages/MISOBoardApproves215NewTransmissionProjects.aspx>.

³⁸ *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 31 (2011).

the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between the incentives, and how any requested incentives address the risks and challenges faced by the project.³⁹ In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that incentives requested are “tailored to address the demonstrable risks or challenges faced by the applicant.”⁴⁰ The nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

33. As part of this evaluation, the Commission has found the question of whether a project is “routine” to be particularly probative.⁴¹ In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).⁴² Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.”⁴³

34. More recently, the Commission stated that an applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project.⁴⁴ The Commission has also stated that if the applicant is unable to satisfy that

³⁹ 18 C.F.R. § 35.35(d) (2011); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

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

⁴¹ *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 48 (2007) (*BG&E*).

⁴² *Id.* P 52-55.

⁴³ *Id.* P 54.

⁴⁴ See *PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at 45 (2010) (citing *PacifiCorp*, 125 FERC ¶ 61,076 (2008)).

criterion, then the applicant may still file a single application for incentives, but the Commission will consider each individual project separately in applying the nexus test and determining whether each project is routine or non-routine.⁴⁵

a. Proposal

35. Otter Tail asserts that the incentives requested in connection with the Projects satisfy the nexus test established in Order No. 679 because the Projects are non-routine and the incentives are tailored to address the risks and challenges of the Projects. Otter Tail maintains that given their scope and effects, and the challenges and risks Otter Tail faces in developing them, the Projects are not routine. With respect to scope, Otter Tail states that it expects to invest between \$125 and \$140 million on the Big Stone South – Brookings Project, which represents 82 to 91 percent of Otter Tail’s 2012 projected net transmission plant. Otter Tail expects to invest between \$145 and \$170 million on the Ellendale – Big Stone South Project, which represents 95 to 111 percent of Otter Tail’s 2012 projected net transmission plant. Otter Tail further states that during the periods of greatest sustained investment in the Projects, it will require an average expenditure of over \$47 million per year over the five years from 2015 through 2019, which is about ten times greater over the five years of maximum sustained activity than Otter Tail’s historic annual capital expenditure budgets.⁴⁶

36. With respect to the effects of the Projects, Otter Tail states that the Big – Stone South Brookings Project is expected to mitigate three transmission constraints for four North American Electric Reliability Corporation (NERC) Category B contingencies and 14 NERC Category C contingencies. Otter Tail expects that the project will also add more than 800 MW of new renewable generation to the transmission system. Otter Tail expects the Ellendale – Big Stone South Project to mitigate eight transmission constraints for 20 different NERC Category B contingencies and 23 NERC Category C contingencies. According to Otter Tail, the Ellendale – Big Stone South Project will add more than 500 MW of new renewable generation to the transmission system.⁴⁷

37. Otter Tail also identifies risks and challenges associated with both Projects, including multiple layers of regulatory review (including potential siting through tribal

⁴⁵ *Id.*; see also *Okla. Gas & Elec. Co.*, 133 FERC ¶ 61,274 (2010); *Ameren Servs. Co.*, 135 FERC ¶ 61,142 (2011).

⁴⁶ Otter Tail Filing, Transmittal Letter at 17.

⁴⁷ *Id.* at 19, 21-23.

land and wildlife areas), interdependency on other MVPs in the 2011 MVP Portfolio, the need to work with multiple investors, and the use of advanced technologies.⁴⁸

b. Commission Determination

38. Otter Tail has presented the Projects as two distinct projects, and we will review them as such. Based on our review of Otter Tail's filing, we find that Otter Tail has demonstrated that the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project individually meet the nexus test, as discussed below.

39. Otter Tail has demonstrated that the scope and effect of the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project are significant, which contributes to our determination that each project is non-routine. As noted above, each Project is large in scope compared to Otter Tail's current transmission plant in-service. With respect to risks and challenges, the Ellendale – Big Stone South Project will require multiple state siting and permitting processes. Moreover, Otter Tail's investment in each Project is significant and would challenge Otter Tail's ability to maintain adequate cash flows to prevent degradation of its credit metrics and ratings, which is critical to maintaining the availability of reasonably priced capital, as discussed further below regarding the CWIP Recovery incentive.

40. For purposes of the nexus test, we also take note of the effects of each of the Projects. Both of the Projects are expected to mitigate NERC contingencies, improve reliability, and integrate new renewable generation. A primary reason that Otter Tail is constructing the Projects is to increase transmission capacity in order to meet state renewable energy standards and tap the strong potential for wind generation in North Dakota and South Dakota. This effect of the Projects is consistent with the Commission's recognition in Order No. 679 of the importance of encouraging "investors to take the risks associated with constructing large new transmission projects that can integrate new generation and otherwise reduce congestion and increase reliability."⁴⁹

41. Accordingly, we will grant the incentives discussed herein for the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project. As discussed below, we find that the requested incentives are tailored to the demonstrable risks and challenges associated with the Projects.

⁴⁸ *Id.* at 20-21.

⁴⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 25.

5. Construction Work in Progress

a. Proposal

42. Otter Tail seeks inclusion of 100 percent of CWIP in rate base for the Projects. Otter Tail states that including 100 percent of CWIP in rate base will provide the up-front regulatory certainty and cash flow needed to support such a substantial investment in new transmission facilities. Otter Tail further contends that including 100 percent of CWIP in rate base will reduce stresses on cash flows during the next several years. Otter Tail explains that, from 2012 to 2019, Otter Tail would be able to recover \$116.2 million on the Projects if CWIP Recovery is authorized. In contrast, Otter Tail would only recover \$38 million of the costs from the Projects during that same time period under the current capitalized allowance for funds used during construction (AFUDC) recovery mechanism.⁵⁰

43. Otter Tail also explains that CWIP Recovery would relieve downward pressure on Otter Tail's credit ratings that could be caused by the Projects, as cash flow is an important consideration in developing a company's credit rating. Any downgrade in Otter Tail's credit rating would increase borrowing costs, which would be reflected in higher rates for customers. Finally, Otter Tail states that CWIP Recovery should help Otter Tail meet its financial goals that might otherwise be threatened by the Projects. Those goals include maintaining financial integrity by improving corporate credit ratings and senior unsecured debt ratings, and continuing to provide reasonably priced electric service to its customers.⁵¹

44. Otter Tail states that it has satisfied the requirements of sections 35.25 (e) and (f) of the Commission's regulations.⁵² Otter Tail explains that it will identify transmission construction projects eligible to be included in transmission rate base and expenditures associated with those projects, and will not accrue any AFUDC on such projects. Otter Tail explains that each transmission construction project is designated with a unique project number within its construction accounting system. Additionally, if the Commission authorizes 100 percent CWIP in rate base for the Projects, Otter Tail explains that those projects eligible for inclusion in rate base will be flagged in its construction accounting systems as ineligible for AFUDC, and expenditures incurred during the construction phase for those projects will not accrue AFUDC. Additionally,

⁵⁰ Otter Tail Filing, Ex. OTP-6 (Allen Test.) at 9.

⁵¹ *Id.*, Transmittal Letter at 24-25.

⁵² 18 C.F.R. §§ 35.25 (e)-(f) (2011).

Otter Tail explains its internal controls and procedures to ensure the proper tracking and accounting for transmission construction projects eligible to be included in transmission rate base, including its compliance with the provisions of the Sarbanes-Oxley Act.⁵³

45. Otter Tail states that it has attached a Statement Business Manual in support of its CWIP Recovery request as required under section 35.13(h)(38) of the Commission's regulations.⁵⁴ Otter Tail requests waiver of the requirements in sections 18 C.F.R. §§ 35.25(c)(4) and (g), related to the anti-competitive impacts of CWIP Recovery, because those regulations appear to address the concerns regarding the potential anti-competitive effects of including generation-related CWIP in rates. Otter Tail states that the anti-competitive concerns are less significant with respect to the inclusion of transmission related CWIP in rates. Further, Otter Tail states that it has supplied extensive information regarding its request for CWIP Recovery. Otter Tail also states that authorizing CWIP Recovery for the Projects will increase parity between retail and wholesale rates because state legislatures in Otter Tail's region have authorized retail rider recovery, including the inclusion of CWIP Recovery, for projects like the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project.⁵⁵

46. Finally, Otter Tail proposes to annually file the FERC-730 form, Report of Transmission Investment Activity, with the Commission in order to satisfy the annual filing requirement for CWIP Recovery applicants. Otter Tail states that the annual FERC-730 form requires it to provide information regarding transmission investment costs and project construction status, including estimated completion dates.⁵⁶ Further, as part of the annual customer notification and information procedures, Otter Tail will develop and post Open Access Same-Time Information System work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP Recovery amounts to be included in its estimates for each year.⁵⁷

⁵³ Otter Tail Filing, Transmittal Letter at 31; *id.*, Ex. OTP-11 (Legge Test.).

⁵⁴ 18 C.F.R. § 35.13(h)(38) (2011); Applicants Filing, Ex. MEC-2.1.

⁵⁵ Otter Tail Filing, Transmittal Letter at 31-32.

⁵⁶ 18 C.F.R. §§ 35.35(h)(1)-(2) (2011).

⁵⁷ Otter Tail Filing, Transmittal Letter at 32.

b. Commission Determination

47. We will grant Otter Tail's request for CWIP Recovery for the Projects. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.⁵⁸ The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.⁵⁹

48. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.⁶⁰ We find that Otter Tail has shown a nexus between the proposed CWIP incentive and its investment in the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project. Otter Tail estimates that the Big Stone South Project will cost Otter Tail between \$125 and \$140 million and will not go into service until 2017. Otter Tail also expects that the Ellendale – Big Stone South Project will cost Otter Tail between \$145 and \$170 million and will not go into service until 2019. The cost and timing for completing these Projects will put pressure on Otter Tail's finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense as Otter Tail moves forward with the Projects. Considering the relative size of Otter Tail's investment in the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project, as compared to its current transmission rate base, we find that authorization of the CWIP incentive is appropriate to assist in the construction of new transmission facilities.

49. We will grant Otter Tail's request for waiver of section 35.13 of the Commission's regulations. Otter Tail has provided extensive information regarding its request for CWIP Recovery, which we find sufficient to grant waiver in this case.

50. We find that the proposed accounting procedures Otter Tail filed in Exhibit No. OTP-11 sufficiently demonstrate that it has appropriate accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent that Otter Tail is allowed to include CWIP in rate base. Otter Tail has also committed to making, in its annual form FERC-730 report, the annual filing required by the Commission for

⁵⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁵⁹ *Id.* P 115.

⁶⁰ *Id.* P 117.

applicants seeking CWIP Recovery.⁶¹ The Commission has previously found that filing a FERC-730 form satisfies the Commission's requirement for an annual filing for CWIP Recovery through a rate formula.⁶² Accordingly, we find that the Projects are eligible to receive the incentive for 100 percent of prudently incurred CWIP in rate base, and we will accept Otter Tail's proposed accounting procedures and proposal to file an annual report.

6. Abandoned Plant Recovery

a. Proposal

51. Otter Tail requests an abandoned plant incentive so that it will have the opportunity to recover prudently incurred costs if either of the Projects is abandoned due to forces outside of Otter Tail's control. Otter Tail states that the Abandoned Plant Recovery incentive is appropriate here because of the Projects' long lead times and the multiple permitting risks they will face. Otter Tail further states that, in addition to the two state commissions' jurisdictions that may be implicated, a portion of the Projects will likely be routed through tribal land, introducing another permitting process. Otter Tail notes that it is constructing the Projects to meet expected generation, without existing interconnection and transmission agreements. Otter Tail also contends that there is no guarantee that the factors underlying the Projects, such as new renewable development, demand growth and congestion relief, will not change due to public policy shifts and thereby render the Projects unnecessary. Further, Otter Tail states that the Projects are intended to be constructed jointly with neighboring utilities. It is possible that Otter Tail's partners may change or revise their plans, which could have an impact on Otter Tail's ability to construct the Projects. Otter Tail also notes that the Projects are dependent on other MVPs from the 2011 MTEP that need to be constructed prior to the Projects. Finally, Otter Tail states that MISO has substantial authority over transmission planning in the region, and there is a risk that MISO could revise or cancel one or both of the Projects.⁶³

⁶¹ Otter Tail Filing, Transmittal Letter at 32.

⁶² *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007); *see also Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 (2007).

⁶³ Otter Tail Filing, Transmittal Letter at 25-27.

b. Commission Determination

52. We grant the requested incentive for Otter Tail to have the opportunity to recover its prudently incurred costs for the Projects, if either or both of those projects are abandoned for reasons beyond Otter Tail's control. In Order No. 679, the Commission found that the abandonment incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.⁶⁴ We find that Otter Tail has demonstrated, consistent with Order No. 679, a nexus between the recovery of 100 percent of prudently incurred abandonment costs and its planned investment in the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project.

53. We find that this incentive will be an effective means to encourage the Big Stone South – Brookings Project's and the Ellendale – Big Stone South Project's completion. Otter Tail has demonstrated that factors outside of its control could prevent the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project from being completed. For example, based on information provided in its petition, Otter Tail faces risks in the permitting process, because it needs to secure various approvals from federal, state, tribal, and/or local municipal bodies.⁶⁵ These factors introduce a significant element of risk. Granting this abandoned plant incentive will help ameliorate this risk by providing Otter Tail with some degree of certainty as it moves forward.

54. However, we note that, if the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project are cancelled before they are completed, Otter Tail is required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs, as Otter Tail commits to doing in the filing.⁶⁶ Otter Tail must also propose in its section 205 filing a just and reasonable rate to recover these costs. Order No. 679 specifically requires that any utility granted this incentive that then seeks to recover abandoned plant costs must submit such a section 205 filing.⁶⁷

⁶⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163-166.

⁶⁵ Otter Tail Filing, Transmittal Letter at 26-27.

⁶⁶ *Id.* at 27.

⁶⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

c. **Nexus with Total Package of Incentives**

55. We find that there is a nexus between the incentives requested and the investment and find that Otter Tail has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by Otter Tail in investing in the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project.⁶⁸ As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.⁶⁹

56. Our finding is based upon our interpretation of section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of section 219, and that there is a nexus between the incentives being proposed and the investment being made.

57. Here, we find that the total package of incentives requested by Otter Tail is tailored to the risks that it faces in investing in the Big Stone South – Brookings Project and the Ellendale – Big Stone South Project. As discussed above, Otter Tail has demonstrated that each of the requested incentives will reduce the risks that Otter Tail faces and will remove potential obstacles to the construction of the Projects.

⁶⁸ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

⁶⁹ See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55; see, e.g., *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 60, 122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 55 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 39, 42, 46 (2008) (approving ROE at the upper end of the zone of reasonableness, 100 percent CWIP, and 100 percent abandoned plant recovery).

The Commission orders:

Otter Tail's requests for the CWIP Recovery and Abandoned Plant Recovery incentives are hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Norris is concurring in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Otter Tail Power Company

Docket No. ER12-342-000

(Issued December 30, 2011)

NORRIS, Commissioner, *concurring in part*:

With increasing investments in transmission nationwide and more utilities using formula rates to recover their costs in transmission investments, the integrity in how these formula rates are calculated is critically important. It is from this perspective that I consider arguments from the Indiana Commission that Otter Tail's rate protocols do not enable interested parties, including state commissions, to receive information regarding the status of the projects, the prudence of the costs being incurred, and the resulting annual true-up.

While I agree with the majority's decision that the protest from the Indiana Commission raises issues more broadly with the MISO tariff that are more appropriately considered in a separate complaint, I believe the Indiana Commission's concerns may have merit. I therefore believe that the Commission should consider whether future action is warranted to address such concerns with the rate protocols in MISO's tariff.

For this reason, I concur in part with today's order.

John R. Norris, Commissioner