139 FERC ¶ 61,224
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DATC Midwest Holdings, LLC Docket No. ER12-1593-000

ORDER ON TRANSMISSION RATE INCENTIVES AND FORMULA RATE PROPOSAL AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 19, 2012)

1. On April 20, 2012, DATC Midwest Holdings, LLC (DATC) filed an application, pursuant to sections 205 and 219 of the Federal Power Act (FPA)[1] and Order No. 679,[2] for acceptance of a proposed formula rate and approval of transmission rate incentives for a portfolio of seven projects (the Projects), which DATC terms the "Midwest Portfolio."[3] For the reasons discussed below, we grant DATC's request for transmission rate incentives conditioned on the Projects' approval in the Midwest Independent Transmission System Operator, Inc. (MISO) Transmission Expansion Plan (MTEP). In addition, we authorize certain ratemaking proposals and accept and nominally suspend the proposed formula rate template, subject to refund, and establish hearing and settlement judge procedures. Further, we accept the formula rate protocols subject to the outcome of another proceeding.

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[1] 16 U.S.C. §§ 824d, 824s (2006).

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

[3] The Midwest Portfolio consists of seven projects that DATC characterizes as "phases." For purposes of this order, phases will be referred to as Projects.

I. Proposal

A. Petitioner

2. The Midwest Portfolio is being developed by DATC, which is a wholly owned subsidiary of Duke-American Transmission Company, LLC, a joint venture of Duke Energy Transmission Holding Company, LLC and American Transmission Company, LLC (American Transmission). DATC was formed as an intermediate company to hold the DATC operating companies. DATC states that it expects to form as many as seven operating companies under the DATC umbrella, largely based on state public utility law requirements and permitting and siting considerations.

B. Description of the Projects

3. The Midwest Portfolio is projected to consist of more than 1,800 circuit miles of transmission, including 1,200 circuit miles of 345 kV lines, 550 miles of 500 kV high-voltage direct-current (HVDC) lines, seven new substations and three new HVDC terminals that will stretch across five states (Iowa, Indiana, Wisconsin, Illinois, and Ohio). DATC expects that the Midwest Portfolio will cost $4 billion and be placed into service in 2021. DATC states that the Midwest Portfolio will improve the interconnection and integration of the region's wind resources.

4. The Midwest Portfolio consists of the following seven Projects:

- Project 1 is comprised of 91 miles of 345 kV lines and 15 miles of 230 kV lines located entirely within Indiana. The estimated cost is $222 million.
- Project 2 is comprised of 117 miles of 500 kV HVDC lines, 42 miles of 345 kV double circuit lines, and two HVDC terminals. Project 2 will connect to Project 1 in Indiana and end in central Illinois. The estimated cost is $831 million.
- Project 3 is comprised of 61 miles of 345 kV lines, nine miles of 345 kV double circuit lines, and two new substations, and will extend from northeastern Illinois to northern Indiana. The estimated cost is $120 million.
- Project 4, is comprised of 15 miles of 161 kV lines, 145 miles of 345 kV lines, 101 miles of 345 kV double circuit lines, 435 miles of 500 kV HVDC lines, and five new substations. It will connect to Project 2 in central Illinois and extend to a new HVDC terminal in western Iowa. The estimated cost is $2 billion.
- Project 5 is comprised of 145 miles of 345 kV double circuit lines, 36 miles of 345 kV lines, and a 765/345 kV transformer. It extends from east of Indianapolis to central Ohio. The estimated cost is $472 million.
- Project 6 is comprised of 124 miles of 345 kV double circuit lines and extends from a generating station in Wisconsin to the HVDC terminal of Project 2 in central Illinois. The estimated cost is $266 million.
- Project 7 is comprised of 60 miles of 345 kV lines and includes some buswork to

reconfigure the nearby Silver Lake substation. It is located at the Wisconsin/Illinois border. The estimated cost is $132 million.

C. Request for Incentives

5. DATC requests several transmission rate incentives pursuant to sections 205 and 219 of the FPA and Order No. 679. First, DATC seeks authorization for inclusion of 100 percent construction work in progress (CWIP) in rate base during the development and construction period for the Projects. DATC states that inclusion of 100 percent CWIP in rate base will bolster DATC's financial health; remove a disincentive to investment and support healthy credit ratings for DATC; and benefit customers by reducing the overall costs of the Projects.

6. Second, DATC requests approval to recover 100 percent of its prudently-incurred costs associated with the Projects in the event the Projects must be abandoned for reasons outside of its control. DATC states that completion of the Projects depends on the approval of dozens of different federal, state and local agencies, and the acquisition of rights-of-way pursuant to several different standards. DATC states that it will incur significant expenses before it receives the necessary certifications and acquires the necessary rights-of-way. DATC states that this incentive will help protect DATC from further losses if the Projects are cancelled for reasons beyond its control.

7. Third, DATC seeks authorization to establish a regulatory asset that will include all pre-certification and pre-commercial costs that are not capitalized and included in CWIP that are incurred in connection with the Projects before the formula rate takes effect. DATC also seeks authorization to amortize the regulatory asset with interest over five years for cost recovery purposes.

8. Fourth, DATC requests approval of a hypothetical capital structure of 55 percent equity and 45 percent debt during the planning, development and construction phase of the Projects. When the construction of the Projects is completed, DATC proposes to maintain an actual capital structure of 55 percent equity and 45 percent debt.

9. DATC seeks an effective date of June 19, 2012, for the proposed formula rate and protocols, and for the authority to create a regulatory asset, to use a hypothetical capital structure, and to seek recovery of abandonment costs. DATC also requests that the Commission grant its approval to include 100 percent of CWIP in rate base conditioned on acceptance of the project in the MTEP.

10. Finally, although DATC is not seeking a stand-alone incentive ROE adder for advanced technologies, it states that it intends to utilize several new technologies on the Projects, such as, HVDC transmission, which allows for more rapid response to system conditions, and advanced conductor design, which will reduce line losses and environmental impact, increase line capacity and will include phase transposition to

moderate voltage and current imbalances. In addition, DATC states that it is considering the use of additional advanced technologies including efficient and resilient transformers and reactors, fiber-optic shield wires, wide-area monitoring and control, and remote station equipment diagnostics and security.

D. Formula Rate Proposal

11. DATC also proposes to establish a formula rate, under which rates will be based on projected costs and then trued up to actual costs once they are known. DATC states that the proposed formula rate is designed to track increases and decreases in costs and investments and to forecast the net revenue requirement for the transmission facility each rate year and assess the resulting rate in the same rate year. DATC proposes that each operating company will construct and operate the various Projects. The DATC operating companies plan to each have its own separate Attachment O formula rate under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). DATC states that the DATC operating companies will forecast the net revenue requirement for each calendar year, and MISO will include that revenue requirement in calculating the transmission rates to be effective each rate year beginning on January 1. The proposal includes a true-up mechanism to ensure customers are not harmed if the actual net revenue requirement is less than the forecast net revenue requirement. The proposed true-up compares the actual net revenue requirement to the forecasted net revenue requirement collected during the year, and any difference will be added to or subtracted from the revenue requirement calculated two years later with interest based on section 35.19a of the Commission's regulations.[4] DATC states that the DATC operating companies will not assess charges to customers under the formula rate until the Projects are included in the MTEP or the Commission issues an order otherwise allowing such collection. DATC commits to making a compliance filing to include the DATC Attachment O formula rates to the MISO Tariff upon approval of the Projects in the MTEP.

12. DATC also proposes depreciation rates to be used in the formula rate which it states were recently approved for use by American Transmission for similar transmission facilities.[5]

13. In addition, DATC requests approval to use the return on equity (ROE) of 12.38 percent approved for MISO Transmission Owners. DATC states that it will

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[4] 18 C.F.R. § 35.19 (2011).

[5] DATC Transmittal at 52 (citing *Am. Transmission Co.*, Letter Order, Docket No. ER12-212-000 (Dec. 21, 2011)).

become a member of MISO and will turn over operation of the Projects' facilities to MISO when they become operational.

E. DATC's Studies

14. DATC state that, because it is not seeking to meet the rebuttable presumption under Order No. 679, it is seeking to satisfy the section 219 standards by presenting a factual record to support a finding that the Projects are needed to maintain reliability or reduce congestion. DATC states that it has submitted its own comprehensive economic and engineering studies that are based on powerflow and production cost studies to show that the Projects reduce congestion and improves reliability. DATC states that it analyzed the Projects as a cohesive whole.

15. DATC states that to analyze the economic effects of the Projects on market congestion in 2021, the year by which DATC expects the Projects and the Multi-Value Projects (MVPs) included in the 2011 MVP Portfolio to be in service, DATC simulated slight variations of the Projects using the Ventyx PROMOD software package. DATC explains that PROMOD is an integrated electric generation and transmission market simulation system used in MISO's transmission planning process and incorporates such details as generating unit operating characteristics and constrains, transmission constraints, generation analysis, unit commitment/operating conditions, and market system operations.

16. DATC states that it used PROMOD to perform an optimal generation commitment and dispatch recognizing both generation and transmission impacts at the bus-bar level for the 2021 simulated year. According to DATC, PROMOD forecasts hourly energy prices, unit generation, fuel consumption, bus-bar energy market prices, regional energy interchange, transmission flows and congestion prices. PROMOD features an hourly chronological dispatch algorithm that minimizes costs while simultaneously adhering to a variety of operating constraints, including generating unit characteristics, transmission limits, fuel and environmental considerations, spinning reserve requirements, and customer demand.

17. DATC explains that it started with the "Business as Usual" (BAU) base case for the 2021 market that was developed in MISO's 2011 MTEP process. According to DATC, the BAU scenario represents a status quo future scenario and assumes that the current economic downturn will continue, affecting growth in demand, energy and inflation rates.[6] DATC states that it refined the BAU base case with the assumption that all 17 MVPs that were approved by the MISO Board of Directors in December 2011

[6] DATC Transmittal at 16.

were in service. DATC further states that it updated the BAU scenario with more up-to-date planning assumptions that may not have been available at the time of the MTEP 2011 case creation. DATC states that these assumptions are reasonable to estimate the benefits of the Projects and include: (1) addition of the seven projects defined in the PJM Interconnection, L.L.C. (PJM) 2012 Regional Transmission Expansion Plan (RTEP) as Light Load reliability fixes for the Commonwealth Edison (ComEd) area;[7] (2) updates to generation and transmission topology assumptions with the most up-to-date information where available; (3) better matching of future wind zone locations with geographic assumptions; and (4) addition of 10,000 MW of wind capacity spread across five wind zones in western MISO.

18. DATC states that, based on the results of its studies, the MISO market, in 2021 alone, will benefit from the Projects by an estimated $768.2 million reduction in costs of production to serve its load. According to DATC, over a 20-year span, these benefits are approximated to be $4.7 billion and translated to a benefit-to-cost ratio of 1.38. DATC further states that although the benefits are concentrated within the MISO region, there are additional benefits to the rest of the eastern interconnection. DATC explains that the region studied by the PROMOD model, which includes most of the eastern interconnection, can expect adjusted production cost savings of $1.1 billion in 2021 and $6.5 billion over 20 years (translating to a benefits-to-cost ratio of 1.93). Further, DATC claims that its transfer capability analysis of the 2021 summer peak scenario shows that the addition of the Projects will increase regional incremental transfer capability by over 1,900 MW, allowing more renewable energy from western MISO to reach loads. In the 2021 shoulder off-peak scenario, DATC states, the incremental transfer capability increases by 945 MW.

II. <u>Notice of Filing and Responsive Pleadings</u>

19. Notice of DATC's filing was published in the *Federal Register*, 77 Fed. Reg. 25,714 (2012), with interventions and protests due on or before May 11, 2012. Illinois Commerce Commission (Illinois Commission), Organization of MISO States, and the Public Service Commission of Wisconsin submitted notices of intervention. Indiana Utility Regulatory Commission (Indiana Commission) submitted a notice of intervention and protest. Alliant Energy Corporate Services, Inc.; MidAmerican Transmission, LLC; PJM; and Wisconsin Electric Power Company filed timely motions to intervene. Exelon Corporation (Exelon) and Clean Line Energy Partners LLC (Clean Line) submitted

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[7] DATC states that the Light Load reliability fixes resolve congestion in the short term, but as west to east transfers increase, the congestion reappears. DATC Filing, Ex. DAT-300 (Dagenais Test.) at 8.

timely motions to intervene and protests. MISO Transmission Owners[8] submitted a timely motion to intervene and comments. Northern Indiana Public Service Company (NIPSCO) joined the motion to intervene and comments filed by MISO Transmission Owners and filed separate comments to the filing.

20. Integrys Energy Group, Inc.; Dairyland Power Cooperative; Dominion Resources Services, Inc.; and Old Dominion Electric Cooperative filed motions to intervene out-of-time. In addition, on May 16, 2012, PJM submitted comments out-of-time and Illinois Commission submitted a protest out-of-time.

21. On May 25, 2012, DATC submitted an answer to the comments and protests.

III. Discussion

A. Procedural Matters

22. 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), we will grant the late-filed motions to intervene of Integrys Energy Group, Inc.; Dairyland Power Cooperative; Dominion Resources Services, Inc.; and Old

[8] The MISO Transmission Owners for purposes of 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; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*, ITC Midwest LLC, Michigan Electric Transmission Company, LLC (collectively, ITC Companies); Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; 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; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc. ITC Companies do not participate in the comments addressing the proposed use of a hypothetical capital structure.

Dominion Electric Cooperative, given their interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

23. 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 DATC's answer because it has provided information that assisted us in our decision-making process.

B. Section 219 Requirement

24. In the Energy Policy Act of 2005,[9] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by DATC.

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."[10] Order No. 679 established 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) a project has received construction approval from an appropriate state commission or state siting authority.[11] 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 authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.[12]

[9] Pub. L. No. 109-58, § 1241, 119 Stat. 594.

[10] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

[11] *Id*.

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

1. Proposal

26. DATC acknowledges that it does not meet the rebuttable presumption under Order No. 679, but believes that it has provided enough evidence for the Commission to make an independent finding under section 219. DATC states that it has submitted its own comprehensive economic and engineering studies that are based on powerflow and production cost studies to show that the Projects reduce congestion and improve reliability. According to DATC, the analysis submitted in support of the filing demonstrates that the Projects, which were studied in their entirety as a portfolio, will reduce the cost of power by reducing congestion in MISO. DATC states that the Projects also have substantial reliability benefits and will enable a more reliable integration of power generated by wind. Thus, DATC argues that it has submitted sufficient evidence to support approval of the requested incentives without conditioning those incentives on approval in the MTEP.[13]

27. Alternatively, DATC argues that the Commission has authority to grant policy-based incentives under section 205 of the FPA, where projects have not met the strict standards set forth in Order No. 679.[14] DATC therefore requests that if the Commission finds that it did not meet the requirements of section 219, rather than making the application conditioned on MTEP approval, DATC requests that the Commission grant policy-based incentives under section 205 to allow the requested incentives (hypothetical capital structure, regulatory asset, and abandoned plant treatment) to become effective 60 days after date of the instant application.[15] DATC argues that it has met the requirements for section 205 policy-based incentives by demonstrating through economic and engineering studies that the Projects will provide significant benefits to the MISO region by improving performance of the grid through the increased transfer capability and by providing reliability benefits with much-needed transmission facilities.

2. Protests and Comments

28. Indiana Commission and Exelon contend that the incentives DATC has requested should not be passed on to ratepayers until MISO has approved the Projects in the MTEP.[16] Exelon also argues that, because Project 3 proposes to cut into an internal

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[13] DATC Transmittal at 28-30.

[14] *Id.* at 47 (citing *Southern California Edison Co.*, 133 FERC ¶ 61,107, at PP 47, 60 (2010) (*SoCal Edison*)).

[15] *Id.* at 47-48.

[16] Indiana Commission Protest at 3; Exelon Protest at 4.

transmission line of the ComEd system, which is under the control of PJM, and create an additional substation, which would be under MISO's control, the Commission should condition approval of the filing on the Projects being approved in PJM's RTEP.[17] Illinois Commission adds that it objects to DATC not specifically noting that portions of the Projects will be in PJM and argues that this would have a direct effect on ratepayers in PJM.[18]

29. NIPSCO requests that the Commission reaffirm that MISO and PJM are the relevant planning authorities for the region in which DATC proposed the Projects and hold that nothing contained within any orders in this docket pre-judges the outcome of any planning decisions regarding inclusion within any regional plan(s), or who, in fact, will be designated as the entity to construct any particular project.[19] PJM notes its concern that some of the proposed facilities appear to cross into or interconnect with facilities under PJM control, although the filing makes no mention of this. PJM states that the proper avenue for addressing the planning and costs of interregional facilities between PJM and the MISO is through the Joint Operating Agreement (JOA) entered into between PJM and MISO, which itself is a product of Commission directive.[20]

30. PJM also requests that the Commission direct MISO and DATC to provide more complete information, including full disclosure of all planning authorities implicated by the Projects, before issuing a decision on DATC's rates request in this proceeding. In addition, PJM requests that the Commission condition any approval of DATC's application on requiring MISO to coordinate and jointly evaluate, as required under the JOA, the potential interregional impacts of the transmission facilities that are proposed to be located in MISO and PJM.[21]

31. Illinois Commission opposes DATC's request for policy-based incentives for the Projects.[22] Illinois Commission argues that the Projects are not similar in circumstances to Southern California Edison Company's project, which received section 205 incentives, because, in granting the incentives there, the Commission cautioned that its actions were

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[17] Exelon Protest at 4-5.

[18] Illinois Commission Protest at 6.

[19] NIPSCO Comments at 2.

[20] PJM Comments at 3-4.

[21] *Id.* at 4-5.

[22] Illinois Commission Protest at 19-20.

limited to unique circumstances, such as a finite period for project funding and the projects' contribution towards meeting the State of California's Renewable Portfolio Standards.[23]

3. Answer

32. DATC states that it has met the section 219 requirements by presenting a factual record with detailed engineering studies and affidavits that demonstrate that the Projects are needed to maintain reliability and reduce congestion. With regard to concerns related to PJM, DATC states that it intends to participate in the appropriate regional planning processes and obtain approvals for the Projects in accordance with the JOA between MISO and PJM. DATC states that the facilities it will own will be located in the MISO region and be under the operation of MISO. DATC states that it does not believe that any of the facilities in the Projects would fall under the operational control of PJM.[24]

4. Commission Determination

33. Order No. 679 requires that an applicant seeking incentive rate treatment for transmission infrastructure investment to demonstrate that the facilities for which it seeks an incentive either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[25] Order No. 679 establishes a rebuttable presumption that this standard is met if 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 if a project has received construction approval from an appropriate state commission or state siting authority.[26]

34. However, the Commission has stated that a project that does not qualify for the rebuttable presumption may nevertheless satisfy the FPA section 219 standards if the project sponsor presents a factual record supporting a finding that the project is needed to maintain reliability or reduce congestion.[27] In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals

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[23] *See SoCal Edison*, 133 FERC ¶ 61,107 at PP 63-65.

[24] DATC Answer at 3-4.

[25] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 57-58.

[26] *Id.*

[27] *Id.* P 57.

demonstrating that the FPA section 219 criteria are met.[28] The Commission also has stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.[29]

35. DATC is not entitled to a rebuttable presumption that the Projects satisfy the requirements of section 219 because the Projects have not been approved in MISO's planning process or received siting approval from the relevant state siting authorities. The Commission has previously granted requests for rate incentives for projects that have not relied on section 219's rebuttable presumption. However, in those cases, the applicants clearly demonstrated reliability or congestion concerns that the proposed project would address and supported such assertions with comprehensive and clear data, as well as internal and, in several cases, external studies.[30] By contrast, in several recent cases, applicants have neither relied on Order No. 679's rebuttable presumptions nor made a sufficient independent demonstration that the proposed projects would ensure reliability or reduce the cost of delivered power by reducing congestion.[31]

36. Here, DATC has included studies in its filing attempting to support its assertion that the Projects ensure reliability and/or reduce the cost of delivered power by reducing congestion. We have evaluated these studies and find that for purposes of supporting its request for incentives, DATC has not sufficiently demonstrated that the Projects will ensure reliability or reduce the cost of delivered power by reducing congestion.

37. DATC has not provided the Commission with the necessary support to determine whether the Projects ensure reliability or reduce the cost of delivered power by reducing

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[28] *See Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007) (*Duquesne*); *see also Green Power Express LP*, 127 FERC ¶ 61,031, at P 41 (2009) (*Green Power Express*).

[29] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 & n.39.

[30] *See, e.g.*, *Green Power Express*, 127 FERC ¶ 61,031; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (*Pioneer*); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 (2008) (*Tallgrass*).

[31] *RITELine Illinois, LLC and RITELine Indiana, LLC*, 137 FERC ¶ 61,039 (2011) (*RITELine*); *Primary Power, LLC*, 131 FERC ¶ 61,015 (2010) (*Primary Power*); *W. Grid Dev., LLC*, 130 FERC ¶ 61,056 (2010); *Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009); *Green Energy Express, LLC*, 129 FERC ¶ 61,165 (2009), *order on reh'g*, 130 FERC ¶ 61,117 (2010).

congestion. While DATC performed studies to demonstrate reduced congestion and increased reliability from the Projects, there are assumptions used in the studies that have not been fully explained by DATC and may have potentially shown the Projects to be more favorable than if they were studied under the assumptions used in the MTEP. Specifically, DATC states that it made updates to generation and transmission topology assumptions with the most recent information available. However, DATC fails to elaborate on what updates were made to the generation and transmission topology that differ from what was developed in MISO's 2011 base case model. DATC also assumes an additional 10,000 MW of wind capacity in MISO, stating that this assumption is based on one scenario that PJM is considering for the 2012 RTEP. While the scenario proposed by DATC may be considered in the PJM RTEP, we find that the substantial uncertainty that the relied-upon capacity will be built makes the scenario inadequate to support the requested incentives. Finally, DATC only provides in its testimony an analysis using the shoulder off-peak model to demonstrate how the Projects ensure reliability.[32] Although elsewhere in the filing, DATC does describe its analysis as including other scenarios, DATC has not provided them. Thus, we are unable to determine that DATC's analysis is sufficient to demonstrate the potential problems that may be encountered under other scenarios, such as shoulder peak, summer peak, and summer off-peak conditions, which are typically considered when evaluating the system to ensure that reliability of the system would be maintained and new overloaded areas are not created as a result of the Projects or assumptions.

38. The insufficiency of the above-noted studies does not require rejection of DATC's request for incentives. Rather, the Commission has previously found that the MTEP is an open and transparent regional transmission planning process that evaluates projects for reliability and/or congestion effects.[33] Therefore, we will approve incentives for the Projects, as discussed herein, conditioned upon the Projects being included in the MTEP.[34] We direct DATC to submit a compliance filing within 30 days of the approval

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[32] DATC Filing, Ex. DAT-203 (Snead Test.).

[33] *See, e.g., Otter Tail Power Co.*, 137 FERC ¶ 61,253, at P 3 (2011); *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 52 (2010), *order on reh'g*, 137 FERC ¶ 61,074 (2011); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164, at P 30 (2008).

[34] The Commission is not conditioning incentives on PJM RTEP approval because DATC has not indicated that PJM RTEP approval is necessary for any of its proposed projects. To the extent that in the course of pursuing approval of the Projects under the MTEP, it is determined that any of the Projects require coordination with PJM in accordance with the JOA between MISO and PJM, the incentives we grant in this

(continued…)

of any of the Projects in the MTEP, notifying the Commission of any such approval. DATC must provide in this compliance filing evidence that the planning process included a finding that the Projects will ensure reliability or reduce the cost of delivered power by reducing congestion, consistent with Order No. 679-A.[35]

39. We affirm, as requested by NIPSCO, that nothing contained within this order prejudges the outcome of any regional transmission planning process decisions regarding any particular project. We also note DATC's statement, in response to protestors' concerns that portions of the Projects may interconnect with or cross into PJM facilities, that it only intends to own facilities that will be located in the MISO region under the operation of MISO. Further, DATC states that it intends to participate in the appropriate regional planning processes and obtain approvals for the Projects in accordance with the JOA between MISO and PJM.

40. The Commission has made clear that when it considers requests for policy-based incentives under section 205, it will review each request for incentives on its own merits and on a case-by-case basis. In previous cases where we have granted such requests, we have emphasized that our decision was based on the unique circumstances presented by the case.[36] We agree with Illinois Commission that those cases are properly distinguished from DATC's request. Also, DATC has not provided a sufficient basis for the Commission to grant policy-based incentives under section 205. Thus, we will not grant DATC's request for alternative approval of policy-based incentives.

C. Order No. 679 Nexus Requirement

41. In addition to satisfying the section 219 requirement of ensuring reliability and/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 being 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 address the demonstrable risks or challenges faced by the applicant."[37] The Commission

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proceeding would still apply. However, we note that, if DATC chooses to pursue approval of any of the Projects under the PJM RTEP, as opposed to the MTEP, our approval of incentives in this proceeding would not apply to such project.

[35] *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49; *see also* *Central Maine Power Company (Central Maine)*, 125 FERC ¶ 61,182, at P 57 (2008).

[36] *SoCal Edison*, 133 FERC ¶ 61,107 at P 63.

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

noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

42. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.[38] 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).[39] 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."[40]

43. 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.[41] The Commission has also stated that if the applicant is unable to satisfy that 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.[42]

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

[39] *Id.* PP 52-55.

[40] *Id.* P 54.

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

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

1. Proposal

44. DATC asserts that the incentives requested in connection with the Projects satisfy the nexus test established in Order No. 679 because they are non-routine and the incentives are tailored to address the risks and challenges of the Projects. DATC maintains that the Projects should be considered as a single project for the purposes of incentive rate treatment, based on the characteristics and combined purpose of the Projects. According to DATC, the Projects were studied and designed as a comprehensive solution to regional congestion and reliability problems in the Midwest region. DATC explains that the economic analysis presented in the filing demonstrates that the Projects work together to achieve the dramatic results in congestion relief.

45. DATC argues that each Project complements the other Projects and, in some cases, is wholly dependent on the completion of other Projects. DATC states that even though certain of the Projects may be lower in cost and smaller in terms of transmission miles, the crucial point is that all of the Projects were designed together to realize the substantial benefits that will be achieved by the Projects as a whole. DATC argues that the inability to complete any of the seven Projects will affect the results to be achieved by completion of the whole. However, DATC also states that if the Commission determines that the Projects should be viewed as distinct projects, DATC can demonstrate that each Project satisfies the nexus requirement.[43]

46. DATC states that the scope of the Projects, as a $4 billion investment comprised of more than 1,800 circuit miles, seven new substations, and three new HVDC terminals that covers five states, makes if far from routine. DATC also points out that as a transmission-only start-up company, it will face significant risks and challenges as it plans, develops, and constructs the Projects. DATC must obtain financing and multiple regulatory approvals, as well as acquire the necessary rights-of-way.

2. Protests

47. According to Illinois Commission, DATC has not adequately established that the Projects comprise a single collective project. Illinois Commission argues that, for example, Project 5, which does not appear to be located in MISO, appears designed to move electricity from MISO to PJM. Illinois Commission also argues that DATC has failed to provide enough support for the Commission to approve incentives for the projects individually.[44]

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[43] DATC Transmittal at 26-28.

[44] Illinois Commission Protest at 8-11.

3. Answer

48. DATC states that the Projects are not a set of unrelated projects and that each project was designed and planned with the other six projects in mind. DATC also states that the broader, regional benefits will only be realized if all the projects are allowed to work together. DATC argues that these regional benefits are compelling enough to treat the Projects as a single project.[45]

4. Commission Determination

49. We find that DATC has not provided sufficient evidence to demonstrate that the characteristics and combined purpose of the Projects support considering them as a single project for purposes of incentive rate treatment. For this reason, we find that the Projects must be evaluated on a project-by-project basis. Accordingly, while DATC may submit its request for incentives for all seven of the Projects in one application, it must provide sufficient information demonstrating how each Project satisfies the nexus requirement. Based on the information provided by DATC in the filing, we find that DATC has satisfied the nexus test for each of the proposed Projects. Specifically, we find that the Projects are not routine based on their scope, effects, and risks and challenges, as discussed below.

50. DATC has demonstrated that the scope and effect of the Projects are significant, making each project non-routine. We reach this conclusion based on the totality of the following considerations. With the exception of Project 1, each of these Projects will cross state lines. As proposed, the estimated costs of these Projects range from $120 million to $2 billion. Project 4, the largest of the Projects, consists of 435 miles of 500 kV HVDC, 101 miles of 345 kV double circuit, 145 miles of 345 kV, and 15 miles of 161 kV transmission lines.

Accordingly, we will grant the incentives discussed herein for each of the Projects.

D. Construction Work in Progress

1. Proposal

51. DATC seeks inclusion of 100 percent of CWIP in DATC's rate base for the Projects. DATC states that including 100 percent of CWIP in rate base will benefit DATC and support the successful completion of the Projects in three fundamentally important ways: it will bolster DATC's financial health; it will remove a disincentive to

[45] DATC Answer at 4-5

investment and support healthy credit ratings for DATC; and it will benefit customers by reducing the overall costs of the Projects. DATC further states that if it can earn a current return on all of its CWIP during the development and construction phase, this cash flow will alleviate some of the financial pressure DATC will encounter during the construction of the Projects. DATC also argues that the improved credit ratings that result from the inclusion of CWIP in rate base will lower rates by reducing the credit spreads and fees that banks would require to provide financing.[46]

52. 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 (AFUDC) and corresponding amounts of CWIP in rate base.[47] To satisfy this requirement, DATC explains that it has developed procedures to ensure that it does not double recover with both AFUDC and return on CWIP in rate base. DATC describes that it will not accrue AFUDC in Account 107, Construction Work in Progress, for its Projects. DATC states that it will use the PowerPlant accounting system to maintain its accounting records for CWIP electric plant assets during construction and after the Projects are placed into service. DATC explains that the PowerPlant system includes the capability to identify specific projects that should not be included in the calculation and capitalization of AFUDC.[48] DATC requests to use footnote disclosures recognize the economic effects of having CWIP in rate base.[49]

53. Finally, DATC proposes to satisfy the annual filing requirement for applicants granted 100 percent of CWIP in rate base through its annual filing of the FERC-730 form, Report of Transmission Investment Activity, with the Commission.[50] DATC states that the annual FERC-730 form requires it to provide information on transmission investment costs and project construction status, including estimated completion dates.[51]

[46] DATC Transmittal at 39-41.

[47] 18 C.F.R. § 35.25 (2011).

[48] DATC Filing, Ex. DAT-600 (Pate Test.) at 7-8.

[49] DATC Transmittal at 56.

[50] *Id.*

[51] *Id.*

2. Protests

54. Illinois Commission argues that the CWIP incentive request should be rejected unless the Midwest Portfolio is approved by the regional transmission planning process and there is a Commission-approved cost-allocation methodology in place. Illinois Commission also states that in the event the Projects are approved by all applicable regional transmission planning processes, it still objects to CWIP being granted until DATC qualifies as a transmission owner under both MISO and PJM.[52]

3. Commission Determination

55. We will grant DATC's request to include 100 percent of CWIP in rate base for the Projects, conditioned upon their approval in the MTEP, as discussed above. 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.[53] The Commission stated that this rate incentive treatment will further improve the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressure on an applicant's finances caused by investing in transmission projects.[54]

56. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.[55] We find that DATC has shown a nexus between the proposed CWIP incentive and its investment in the Projects. These projects are each expected to cost between $120 million and $2 billion, and are not expected to go into service until 2021. The cost and timing for completing these projects will put pressure on DATC's finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense as DATC proceeds with the Projects.

57. We also note that DATC cannot recover any CWIP-related costs for any of the Projects until DATC's proposed formula rate has been included under MISO's Tariff. We further note that, as discussed above, we are not conditioning the incentives on

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[52] Illinois Commission Protest at 7-8.

[53] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 29, 117.

[54] *Id*. P 115.

[55] *Id*. P 117.

approval under PJM's RTEP. Thus, we deny Illinois Commission's request to require DATC to become a transmission owner under both MISO and PJM.

58. Further, we find that the proposed accounting procedures that DATC filed in Exhibit DAT-600 sufficiently demonstrate that it has appropriate accounting procedures and internal controls to prevent recovery of AFUDC to the extent CWIP has been allowed in rate base. DATC has also committed to making, in its annual form FERC-730 report, the annual filing required by the Commission for applicants seeking CWIP Recovery.[56] 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.[57] Accordingly, we find that each of the Projects is eligible to receive the incentive for 100 percent of prudently incurred CWIP in rate base, conditioned on its approval in the MTEP. We approve DATC's proposed accounting procedures, use of footnote disclosures to provide comparability of financial information, and proposal to annually file the FERC-730 form.

E. Abandoned Plant Recovery

1. Proposal

59. DATC requests that it be permitted to recover 100 percent of prudently incurred costs, including pre-commercial expenses and construction costs, if the Projects, or a component thereof, are abandoned due to an event beyond its control. DATC notes that this treatment will be instrumental in convincing potential investors to proceed with financing during the essential project development phase.[58] In support, DATC cites Order No. 679, where the Commission held that recovery of abandoned plant costs is an "effective means to encourage transmission development by reducing the risk of non-recovery of costs."[59] DATC requests that the Commission grant authority to seek recovery of abandoned plant without conditioning its acceptance on approval of the Midwest Portfolio in MTEP.

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[56] DATC Transmittal at 56.

[57] *MidAmerican Energy Co.*, 137 FERC ¶ 61,250 (2011); *see also The United Illuminating Co*., 119 FERC ¶ 61,182, at P 92 (2007); *Xcel Energy Servs., Inc*., 121 FERC ¶ 61,284 (2007).

[58] Ex. DAT-400 at 17-18.

[59] DATC Transmittal at 42 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163).

2. Protests

60. Several protestors express concern over the possible impact of granting the abandoned plant recovery without conditioning it on MTEP approval. Clean Line requests that the Commission define the circumstances under which an independent transmission provider is allowed to recover development costs. Clean Line states that because the Projects have not completed the MTEP process, if the Commission granted recovery of these costs, it would have a significant effect on policy for all future projects.[60] MISO Transmission Owners and NIPSCO express their concern that ratepayers could end up paying for a facility twice if DATC is granted abandoned plant recovery. They explain that MISO is currently considering a competitive bidding model for selecting projects – in which case, ratepayers could conceivably end up paying for the project that is constructed and placed into service by the entity chosen through competitive bidding, and paying abandoned plant costs if DATC is not chosen. Therefore, they request that the Commission clarify eligibility for cost recovery in the case of projects not yet approved by regional transmission planning processes.[61]

61. Illinois Commission argues that the Commission should reject DATC's request for abandoned plant recovery or else condition the granting of the abandonment incentive upon having the Midwest Portfolio accepted into MISO's and PJM's regional transmission plans. Illinois Commission claims that without approval through regional transmission planning processes, granting abandoned plant recovery would expose ratepayers to the risk of paying the abandonment costs of unnecessary multiple projects.[62]

3. Answer

62. DATC states that the concern that ratepayers would be subject to paying for projects twice is unfounded. As DATC explains, MISO has not submitted its proposed Order No. 1000 compliance filing, so it is unclear if a competitive bidding process would apply to the Projects. If this were the case, the competitive bidding process would still have to be approved by the Commission. Lastly, DATC states that it is only requesting the ability to apply for recovery of abandoned plant costs. Any recovery of costs would

[60] Clean Line Protest at 3-4.

[61] MISO Transmission Owners Comments at 7; NIPSCO Comments at 4-5.

[62] Illinois Commission Protest at 11.

have to be approved by the Commission, giving all parties adequate opportunity to raise concerns.[63]

4. **Commission Determination**

63. We grant the requested incentive for DATC to have the opportunity to recover 100 percent of its prudently incurred costs for the Projects, if any of those projects are abandoned for reasons beyond DATC's control, conditioned upon the Projects' approval in the MTEP. 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 DATC has demonstrated a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment in the Projects. We agree with DATC that these projects face substantial risks outside of DATC's control. Approval of the abandonment incentive will both attract financing for the Projects, and protect DATC from further losses if any of them should be cancelled for reasons outside DATC's control. This incentive, however, is conditioned on the Projects being included in the MTEP because, as discussed above, we find that such inclusion is necessary for DATC to satisfy the threshold requirement of section 219.

64. We will not determine the justness and reasonableness of DATC's abandoned plant recovery, if any, until DATC seeks such recovery in a future section 205 filing.[65] Order No. 679 specifically reserves the prudence determination for the later section 205 filing that every utility is required to make if it seeks abandoned plant recovery.[66] We note that, should any of the Projects be cancelled before completion, it is unclear whether DATC will have any customers from which to recover its abandonment costs. At such time, DATC will be required to demonstrate in its section 205 filing that abandonment was beyond its control, provide for rate authorization consistent with the MISO Tariff allowing for recovery of abandonment costs that were prudently-incurred, and propose a rate and cost allocation method to recover the costs in a just and reasonable manner.[67]

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[63] DATC Answer at 5-6.

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

[65] *Primary Power*, 131 FERC ¶ 61,015 at P 124.

[66] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

[67] *See Pioneer*, 130 FERC ¶ 61,044 at P 27; *Green Power Express*, 127 FERC ¶ 61,031 at P 52.

Thus, in response to arguments raised by protestors, we find that concerns about potential exposure to additional costs as a result of the abandoned plant incentive are more appropriately raised if and when DATC makes a section 205 filing for such recovery. Arguments about whether it was prudent for DATC to incur specific costs, whether DATC can recover costs for a project that is being built by another entity, or whether DATC can recover costs before it has any customers, can be raised at that time.

F. Regulatory Asset Accounting Treatment

1. Proposal

65. DATC requests authorization to establish a regulatory asset, in Account 182.3, Other Regulatory Assets, to include pre-certification and pre-commercial expenses related to the Projects, that are not capitalized and not in CWIP. DATC also requests to amortize the regulatory asset over five years. DATC states that this incentive will provide upfront regulatory certainty and will allow DATC to recover costs incurred in the development of the Projects before the formula rate takes effect.[68]

66. DATC states that the costs it will include in the regulatory asset are essential to the successful planning, permitting, and development of the Projects. Without such an incentive, DATC argues that investors could be reluctant to provide financing at the early stages of developing the Projects and will improve the financial strength and credit quality of DATC.[69] DATC states that the regulatory asset will include, but not be limited to, legal and consulting costs. DATC proposes that once the rate begins to be charged to customers, ongoing expenses will be recovered under the formula rather than being booked to the regulatory asset. DATC proposes to accrue carrying charges on the balance of the regulatory asset until fully amortized at the weighted cost of capital calculated in the formula. DATC states that the carrying charges will allow DATC to recover the time value associated with the expenditures. DATC states that the regulatory asset will be amortized to Account 566, Miscellaneous Transmission Expenses, consistent with Commission precedent. DATC estimates the total balance of the regulatory asset to be approximately $1 million by December 31, 2012, consisting of mostly regulatory expenses.[70]

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[68] DATC Transmittal at 44.

[69] *Id.*; Ex. DAT-400 (Hofbauer Test.) at 19.

[70] DATC Filing, Ex. DAT-500 (Heintz Test.) at 11, 16.

67. DATC states that the Commission has accepted the regulatory asset rate treatment in other cases involving start-up transmission companies.[71] DATC requests that it be authorized to accrue development costs to a regulatory asset beginning on the proposed effective date, June 19, 2012.[72] DATC also requests that the Commission grant the regulatory asset rate treatment without conditioning its acceptance on approval of the Projects in MTEP.

2. <u>Protest</u>

68. Illinois Commission contends that the costs DATC includes in the regulatory asset may consist of attorney and consultant fees, entity formation costs, administrative expenditures, taxes other than income taxes, travel costs, other expenses related to corporate structure, and costs related to technical studies.[73] It contends that this list is extensive, particularly in light of DATC's statement that DATC or its operating companies will not have any employees. Citing DATC's statement that all necessary services to DATC will be provided to DATC through intercompany service agreements with American Transmission and Duke Energy Corporation, Illinois Commission expresses concern about the proposal to assess a carrying charge on such costs.[74]

69. Thus, Illinois Commission argues that the Commission should deny DATC's request for a regulatory asset or condition it upon satisfying one of the rebuttable presumptions of Order Nos. 679 and 679-A.[75]

3. <u>Commission Determination</u>

70. DATC proposes to record pre-certification and pre-commercial costs not included in CWIP incurred before the effective date of its formula rate as a regulatory asset up to the date that charges are assessed to customers under the formula rate. We find that this incentive is tailored to the risks and challenges posed by the Projects, as discussed above, because this incentive will provide DATC with added up-front regulatory certainty and

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[71] DATC Transmittal at 44-45 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008) (*PATH*); *RITELine*, 137 FERC ¶ 61,039 at 95).

[72] DATC Filing, Ex. DAT-400 (Hofbauer Test.) at 11.

[73] Illinois Commission Protest at 12 (citing DATC Filing, Ex. DAT-600 at 12).

[74] *Id*. at 12-13.

[75] *Id.*

can reduce interest expense, improve coverage ratios, and assist in the construction of the Projects. Therefore, we find DATC's recovery of pre-certification and pre-commercial costs to be appropriate, and grant DATCs' request to establish a regulatory asset for the Projects, conditioned upon the Projects being included in the MISO MTEP. We find that conditioning approval upon inclusion in the MTEP satisfies Illinois Commission's concerns.

71. We also approve DATCs' request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in rate base. We authorize DATC to amortize the regulatory asset over five years, consistent with rate recovery. DATC must record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Nonoperating Income.[76] Further, we authorize DATC to amortize the regulatory asset and related carrying charges associated with the Projects by debiting Account 566 and crediting Account 182.3, consistent with Commission precedent.[77] Once DATC begins to include the initial regulatory asset in rate base as part of its revenue requirement, it will earn a return on the unamortized balance of the regulatory asset and, therefore, DATC must stop accruing carrying charges on such regulatory asset.[78] However, we find unclear how DATC proposes to compound carrying charges and accrue the balance to the regulatory asset account. Therefore, consistent with our decision with respect to Central Minnesota Municipal Power Agency, we will require DATC to restrict the compounding of interest to no more frequently than semi-annually.[79]

72. However, we acknowledge that if any of the Projects are cancelled before completion, it is unclear whether DATC will have any customers from which to recover its regulatory asset. Also, while this order provides DATC with the ability to record

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[76] *See Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2*-A, Order No. 552, FERC Stats. and Regs., Regulations Preambles January 1991- June 1996 ¶ 30,967, at 30,825 (requiring that deferred returns and/or carrying charges accrued on regulatory assets be credited to Account 421, Miscellaneous Nonoperating Income).

[77] *See PATH*, 122 FERC ¶ 61,188 at P 154.

[78] *See, e.g., Green Power Express*, 127 FERC ¶ 61,031 at PP 59-60; *Pioneer*, 126 FERC ¶ 61,281 at PP 84, 117; *RITELine*, 137 FERC ¶ 61,039 at P 96.

[79] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,021, at P 23 (2012).

pre-construction costs as a regulatory asset, DATC must make a section 205 filing to demonstrate that the pre-construction costs are just and reasonable. DATC will have to establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

G. Hypothetical Capital Structure

1. Proposal

73. DATC seeks Commission approval to use a hypothetical capital structure of 45 percent debt and 55 percent equity during the construction of the Projects. When the construction of the Projects is completed, DATC proposes to "maintain an actual capital structure" of 45 percent debt and 55 percent equity.[80] DATC argues that during the development and construction phases of the Projects, DATC's actual capital structure could be volatile and subject to significant variances caused by require borrowings, equity infusions and unpredictable cash flow, resulting in difficulty attracting financing at a reasonable cost. DATC states that the proposed hypothetical capital structure is comparable to that of utilities of investment grade quality.[81] DATC requests that the Commission grant the proposed hypothetical capital structure without conditioning its acceptance on approval of the Projects in MTEP.

2. Protests

74. MISO Transmission Owners argue that DATC should provide additional information, arguing that DATC failed to provide a justification for the structure of its hypothetical capital structure and to note whether it considered alternate structures. MISO Transmission Owners also argue that DATC failed to justify its proposal to use the hypothetical capital structure once its Projects achieve commercial operations, instead of using DATC's actual capital structure.[82]

3. Answer

75. DATC states that the proposed capital structure is consistent with Commission orders on applications filed by companies similar to DATC facing similar development

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[80] DATC Transmittal at 44.

[81] DATC Filing, Ex. DAT-400 (Hofbauer Test.) at 18-19.

[82] MISO Transmission Owners Comments at 5.

risks. DATC clarifies that the hypothetical capital structure will be 55 percent equity and 45 percent debt will be during the construction period. After the Projects are placed in service, DATC states that it will only use its actual capital structure, which DATC intends to maintain at the same 55 percent equity and 45 percent debt ratio.[83]

4. <u>Commission Determination</u>

76. We grant DATC's request to use a hypothetical capital structure consisting of 45 percent debt and 55 percent equity for the Projects, until such time as they achieve commercial operation, conditioned upon these projects being included in the MTEP. Once a Project achieves commercial operation, DATC will use its actual capital structure. DATC has demonstrated a nexus between the requested incentive and the risks and challenges faced by each of the Projects. Specifically, DATC must raise significant levels of debt and equity capital to develop and construct these projects. Approval of the hypothetical capital structure will: (1) reduce the effects on rates resulting from swings in the actual capital structure due to varying cash demands during the construction phase; (2) provide a more consistent cash flow during the construction phase; and (3) contribute to receiving and maintaining an investment grade credit rating profile during the financing phase of the project, thus lowering the overall cost of capital.[84] We also find that the proposed hypothetical capital structure consisting of 45 percent debt and 55 percent equity is consistent with that granted to the RITELine Companies,[85] and we will therefore reject MISO Transmission Owners' assertion that DATC did not justify the proposed capital structure.

77. We also find that DATC's clarification that DATC will "use its actual capital structure once the [Projects'] assets are placed in service"[86] adequately addresses MISO Transmission Owners' concern. We find that the proposed formula rate filed by DATC

[83] DATC Answer at 8.

[84] *See, e.g.*, *PATH*, 122 FERC ¶ 61,188 at P 55; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93 (finding that hypothetical capital structures "can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances").

[85] *RITELine*, 137 FERC ¶ 61,039 at P 131.

[86] DATC Answer at 8.

states that the "capital structure will be 55 percent equity and 45 percent debt during the construction period."[87]

H. Total Package of Incentives

1. Proposal

78. DATC states that it has tailored the requested incentives to the large investment and the special risks and challenges associated with the Projects. DATC notes that although the requested incentives are designed to alleviate a different risk, they were selected as a package to work together in order to ensure that the Midwest Portfolio is completed in a timely manner. In addition, DATC states that the package of incentives will improve the likelihood that DATC will be able to attract capital to participate in the Projects on terms beneficial to customers who ultimately will bear cost responsibility for it.[88]

2. Commission Determination

79. As noted above, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risk or challenges faced by the applicant. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,[89] the Commission has, in prior cases, approved multiple rate incentives for particular projects.[90] This is consistent with our interpretation of section 219 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

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[87] DATC Filing, Attachment A at 5.

[88] DATC Transmittal at 45-46.

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

[90] *Atlantic Wind Operations A, LLC, et al.*, 135 FERC ¶ 61,144, at P 127 (2011) (internal citations omitted) (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery), *order on reh'g*, 118 FERC ¶ 61,042 (2007); *Duquesne*, 118 FERC ¶ 61,087 at PP 55, 59, 61 (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *see also Central Maine*, 125 FERC ¶ 61,182 at P 100 (granting both abandonment and ROE incentives).

proposed and the investment made. We find that the total package of incentives that we are approving for DATC is tailored to address the risks and challenges faced by DATC, in constructing the Projects.

I. Additional Ratemaking Proposals

1. Use of 12.38 Percent Return on Equity

a. Proposal

80. DATC requests authorization to use an ROE of 12.38 percent. DATC states that it is not requesting any ROE adder incentives. It states that it seeks the same 12.38 percent ROE that is available to all transmission-owning members of MISO.

b. Protests

81. Indiana Commission states that DATC has requested an ROE higher than those recently approved by the Commission for other independent transmission companies. Additionally, Indiana Commission states that DATC's request for CWIP and recovery of abandoned plant costs should be reflected by a lower ROE, considering that these incentives already reduce the risk of the project.[91] Illinois Commission adds that the Commission should reject DATC's proposed ROE because although the requested ROE is currently in place for other MISO transmission owners, it would not apply to DATC because portions of the projects are also in PJM. Illinois Commission also argues that the ROE is unreasonable because it is higher than that granted for similar projects. Thus, Illinois Commission argues that the Commission should find DATC's ROE request deficient and order DATC to file a study supporting its ROE request.[92]

c. Answer

82. DATC states that it plans to become a MISO transmission owning member and as such should be granted the 12.38 percent ROE the Commission approved for other MISO transmission owners. Any facilities that interconnect with facilities owned by members of PJM should be subject to the ROE for those entities if MISO and PJM determine those entities own the transmission facilities.[93]

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[91] Indiana Commission Protest at 2-3.

[92] Illinois Commission Protest at 14-15.

[93] DATC Answer at 7.

d. Commission Determination

83. Transmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement. Accordingly, if DATC becomes a transmission-owning member of MISO, it will also be entitled to receive the then-current ROE that the Commission has approved for MISO transmission owners, as long as it remains a member of MISO. The Commission has approved a single base ROE for transmission-owning members of MISO,[94] and protestors have not demonstrated why DATC should not also be entitled to the same treatment if it becomes transmission-owning member of Midwest ISO. We note that we have previously allowed that subsidiaries of Ameren Transmission Company who become members of MISO will be entitled to receive the Commission-approved ROE for MISO transmission owners, even though, at the time they were seeking incentives, they were not yet members.[95] We therefore reject Illinois Commission's request that the Commission find this aspect of DATC's filing deficient.

2. Formula Rate

a. Proposal

84. DATC proposes to implement a formula rate which it states is similar to formula rates the Commission has previously approved. [96] DATC proposes to use a formula rate based on projected test year costs with a true-up mechanism to reflect actual costs.

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[94] *Midwest Indep. Trans. Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd in part*, *Pub. Serv. Co. of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005), *order on remand*, 111 FERC ¶ 61,355 (2005). *See also, e.g., Michigan Electric Trans. Co. and Midwest Indep. Trans. Sys. Operator, Inc.*, 113 FERC ¶ 61,343, at P 15 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006) (granting request to adopt the same 12.38 percent ROE used by the other Midwest ISO transmission owners).

[95] *Ameren*, 135 FERC ¶ 61,142 at P 94.

[96] DATC Filing at 51 (citing *Am. Transmission Co.*, 97 FERC ¶ 61,139 (2001); *Boston Edison Co.*, 91 FERC ¶ 61,198 (2000); *Northeast Utils. Serv. Co.*, 105 FERC ¶ 61,089 (2003); *San Diego Gas & Elec. Co.*, 103 FERC ¶ 61,115 (2003); *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306 (2008); *Tallgrass Transmission, LLC and Prairie Wind Transmission, LLC*, 132 FERC ¶ 61,114 (2010); *Am. Elec. Power Transmission Co.*, 135 FERC ¶ 61,066 (2011); and *RITELine*, 137 FERC ¶ 61,039).

According to DATC, the formula rate will serve as the basis for calculating the annual transmission revenue requirement of the DATC operating companies. Although the DATC operating companies will all use the same formula rate proposed in this filing, each individual operating company will have its own separate Attachment O formula rate under MISO's Tariff. DATC further explains that if approved, the formula rates will provide the DATC operating companies with a steady and predictable cash flow to support its operation and investments, as well as its credit ratings. DATC states that, upon approval of the Projects in the MTEP, it will make a compliance filing to include the DATC Attachment O formula rates in MISO's Tariff.

85. DATC states that the proposed formula rate has two components: 1) the formula rate template itself and with worksheets, and 2) the set of implementation protocols which govern how the formula will be updated each year and how any changes to the annual rate restatement will be implemented.[97] According to DATC, the protocols are consistent with those approved by the Commission for American Transmission. DATC notes that the project revenue requirement worksheet in the proposed formula rate template will replace the need for Attachments CC, GG, and MM to the MISO Tariff, for each of the DATC operating companies.[98]

86. DATC also proposes depreciation rates to be used in the formula rate templates which it states were recently approved for use by American Transmission for similar transmission facilities.

b. Protest and Comments

87. Organization of MISO States and Indiana Commission recommend that DATC adopt the protocols used by both the Pioneer and the Green Power Express transmission projects, including providing that interested parties, including state commissions, receive information regarding the status of the projects, the prudency of the costs being incurred, and the resulting annual true-up. They also request that the protocols provide for a dispute resolution process regarding these issues that does not entail litigation at the Commission, except as a last resort.[99] Illinois Commission argues that DATC's proposed protocols are not just and reasonable, and in some respects, are not clear. Illinois Commission argues that there is nothing in DATC's filing or testimony that explains how the protocols will work, how they are similar to or different from the protocols of other

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[97] DATC Filing, Ex. DAT-500 (Heintz Test.) at 7.

[98] *Id.* at 15.

[99] Organization of MISO States Comments at 2; Indiana Commission Protest at 3.

similar companies with forward-looking formula rates and whether the protocols will protect customers from unreasonable or imprudent costs.[100]

88. MISO Transmission Owners request that DATC clarify its filing in several areas. First, MISO Transmission Owners request that DATC explain how it proposes to recover CWIP under its rate formula template prior to having transmission plant in service and should also explain the meaning and purpose of the "DA" allocator and why it is set to 1 in its rate formula template.[101] MISO Transmission Owners state that, in reference to the ROE, Attachment 2 in the filing utilizes an ROE of 13.38 percent that includes a 100 basis point incentive return, which is inconsistent with DATC's claim that it was not seeking any ROE adders. MISO Transmission Owners request that DATC clarify this inconsistency.[102]

89. Lastly, MISO Transmission Owners request that DATC clarify several notes in the rate formula template. MISO Transmission Owners state that the proposed formula rate template appears to contain multiple, conflicting references to Note P. MISO Transmission Owners also state that the proposed formula rate template references "Tax Affect of Permanent Differences," without explaining the reference, nor does it appear in the generic MISO Attachment O utilizing FERC Form No. 1 data.[103]

c. **Answer**

90. DATC states that its proposed formula rate template is consistent with other formula rate templates accepted by the Commission. The allocator "DA" in the CWIP line entry and elsewhere refers to "Direct Assignment" and is set to 1 to indicate 100 percent of the amount approved by the Commission will be included in the line entry. DATC explains that the Attachment 2 Worksheet included in the formula is a worksheet whose purpose is to calculate the baseline fixed charge rate per 100 basis points increment in ROE and is not indicative of any DATC incentive request. DATC requests the Commission require a compliance filing so that DATC can remove incorrect references to Note P. To address the concerns related to the Tax Affect of Permanent Differences, DATC proposes to add the following clarifying footnote: "The Tax Affect of Permanent Differences captures the differences in the income taxes due under the

[100] Illinois Commission Protest at 15-19.

[101] MISO Transmission Owners Comments at 4.

[102] *Id.* at 6.

[103] *Id.* at 7-8.

Federal and State calculations and the income taxes calculated in Attachment O that are not the result of a timing difference."[104] Lastly, DATC requests that protocol issues be made subject to the outcome of the Commission's pending section 206 investigation of the protocols of MISO and the MISO transmission owners for efficiency's sake.[105]

d. <u>Commission Determination</u>

91. DATC's proposed formula rate template raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing procedures ordered below.

92. We will, however, make our acceptance of DATC's proposed protocols, subject to the outcome of the MISO Protocols Investigation, as requested. The MISO Protocols Investigation is a Commission-initiated section 206 proceeding examining whether the formula rate protocols of MISO and the MISO transmission owners are sufficiently just and reasonable.[106] DATC's proposed protocols are virtually identical to the protocols of other MISO transmission owners' accepted protocols and conform to MISO's Attachment O *pro forma* formula rate protocols. Thus, we find it is premature for the Commission to address any changes to those protocols before the resolution of the section 206 investigation.

93. Our preliminary analysis of the proposed formula rate template indicates that DATC's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept DATC's proposed formula rate template for filing, suspend it for a nominal period, make it effective June 19, 2012, subject to refund, and set it for hearing and settlement judge procedures.

94. While we are setting these matters 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.[107] If the parties desire, they may,

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[104] DATC Answer at 9-10.

[105] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (MISO Protocols Investigation).

[106] *See id*.

[107] 18 C.F.R. § 385.603 (2011).

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.[108] 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.

95. In addition, we accept DATC's proposed depreciation rates and use of the ROE approved for use by MISO and MISO transmission owners.

96. The Commission sets the formula rate, with the exception of the proposed protocols, proposed depreciation rates, and use of the ROE approved for use by MISO and the MISO transmission owners, for hearing and settlement judge proceedings.

J. <u>Requested Waivers</u>

97. DATC requests waiver of section 35.13 of the Commission's regulations, including waiver of the full Period I and Period II data requirements. DATC states that detailed statements of an applicant's cost of service are not needed where the proposed rates are formulary and will be based on actual costs as reflected in FERC Form No. 1 filings. Additionally, DATC requests "any additional waivers of any applicable requirements to allow the filing to take effect as described in this filing."[109]

98. We will grant DATC's request for waiver of section 35.13 requirements, consistent with our prior approval of formula rates.[110]

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[108] 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 (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).

[109] DATC Transmittal at 59.

[110] *Commonwealth Edison Co. and Commonwealth Edison Co. of Ind., Inc.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008); *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 31 (2008); and *RITELine* 137 FERC ¶ 61,039.

The Commission orders:

(A) DATC's request for CWIP, abandoned plant recovery, and regulatory asset incentives is hereby conditionally granted, as discussed in the body of this order.

(B) DATC's request for the use of a hypothetical capital structure is hereby conditionally granted, as discussed in the body of this order.

(C) DATC's request to use the ROE approved for MISO transmission owners is hereby granted, as discussed in the body of this order.

(D) DATC's proposed formula rate, with the exception of the proposed protocols, proposed depreciation rates, and use of the ROE approved for use by MISO and the MISO transmission owners, is hereby accepted for filing and suspended for a nominal period, to become effective June 19, 2012, as requested, subject to refund, as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning DATC's proposed formula rate. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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 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 within five (5) days of the date of this order.

(G) Within thirty (30) days of the appointment of the settlement judge, 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 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.

(H) 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 these proceedings 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.

(I) DATC's request for waivers of section 35.13 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(J) DATC is hereby directed to submit a compliance filing within thirty (30) days of the date of approval of any of the Projects in the MTEP, informing the Commission of such approval, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.