

152 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Kanstar Transmission, LLC

Docket No. ER15-2237-000

ORDER ON TRANSMISSION FORMULA RATE PROPOSAL AND INCENTIVES,
ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued September 17, 2015)

1. In this order, we conditionally accept Kanstar Transmission, LLC's (Kanstar) proposed transmission formula rate template (template) and formula rate protocols (protocols) (together, Formula Rate) to establish a mechanism under which it would recover its costs associated with transmission projects that it intends to own and develop as part of Southwest Power Pool, Inc.'s (SPP) Order No. 1000 competitive transmission owner selection process.¹ We accept the Formula Rate, to be effective once the template and protocols are filed with the Commission to become part of SPP's Open Access Transmission Tariff (Tariff), consistent with the effective date established in that future proceeding, subject to a further compliance filing.
2. In addition, we accept Kanstar's proposed base return on equity (ROE) for filing, suspend it for a nominal period, to be effective September 21, 2015, subject to refund, and set it for hearing and settlement judge procedures. We grant Kanstar's proposed 50 basis point adder for participation in a regional transmission organization (RTO), subject to the resulting ROE being within the zone of reasonableness established for

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

Kanstar. We grant, under section 205 of the Federal Power Act (FPA),² Kanstar's request for authorization to defer as a regulatory asset all of its prudently incurred pre-commercial and formation costs for later recovery, effective September 21, 2015, as requested, and grant Kanstar's request to use a hypothetical capital structure of up to 60 percent equity and 40 percent debt, to remain in effect until the first transmission project it has been awarded through the SPP transmission owner selection process is placed in service. We deny Kanstar's request to recover 100 percent of prudently incurred costs associated with its proposed North Liberal-Walkemeyer 115 kV Competitive Upgrade (Walkemeyer Project) if Kanstar is selected to develop this project through the SPP competitive bidding process and that project is later discontinued (Abandoned Plant Recovery). Finally, we accept Kanstar's request that its existing three affiliates and other yet-to-be-formed affiliates within SPP be authorized to utilize the same Formula Rate and requested incentives.³

I. Background

3. In Order No. 1000, the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. The Commission noted that, although not mandatory, public utility transmission providers in a transmission planning region could use, for example, a competitive bidding process as one method to comply with the requirements of Order No. 1000.⁴ In response to the requirements of Order No. 1000, SPP established a process under which qualified transmission developers can bid to

² 16 U.S.C. § 824d (2012).

³ Kanstar states that it currently has three state-specific affiliates within SPP: Midwest Power Transmission Texas, LLC; Midwest Power Transmission Kansas, LLC; and Midwest Power Transmission Oklahoma, LLC. Transmittal at n.3.

⁴ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

develop transmission projects that have been designated in SPP's regional transmission plan for competitive bidding (Competitive Upgrades).⁵

4. Kanstar states that it and its three affiliates (identified in n.3, *supra*) are readying themselves to be active participants in the new competitive Transmission Owner Selection Process within SPP. Kanstar describes itself as a wholly owned subsidiary of MPT Heartland Development, LLC (Midwest Power Heartland), which is a transmission-focused venture between subsidiaries of the Berkshire Hathaway Energy Company (BHE) and Westar Energy, Inc. (Westar).⁶

II. Kanstar Filing

5. On July 22, 2015, Kanstar made the instant filing under section 205 of the FPA and Part 35 of the Commission's regulations for approval of the proposed Formula Rate. Kanstar also seeks approval for various rate incentives under Order No. 679⁷ and/or under section 205. In addition Kanstar seeks the same Formula Rate and incentives for its three existing affiliates, as well as for affiliates that may be created in the future.⁸ Specifically, Kanstar requests that the Commission allow it to utilize, at its discretion, the following rate incentives for any Competitive Upgrades which Kanstar, or any other Midwest Power SPP Entity, is awarded: (1) recovery of all prudently incurred pre-commercial costs, and establishment of a regulatory asset that will include all expenses that are incurred prior to the rate year in which the Midwest Power SPP Entity's costs are first flowed through to customers under the SPP Tariff, including authorization to amortize the regulatory asset with interest over five years for cost recovery purposes;

⁵ Generally, Competitive Upgrades are integrated transmission plan or high priority upgrades operated at or above 100kV that are not rebuilds of existing transmission facilities. *See generally* SPP, Open Access Transmission Tariff Sixth Revised Volume No. 1, Att. Y §§ I.1, II (2.0.0).

⁶ Transmittal at 3.

⁷ *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).

⁸ We will refer to any existing or future transmission companies in SPP created by Midwest Power Heartland as "Midwest Power SPP Entities."

and (2) approval to use a hypothetical capital structure of 60 percent equity and 40 percent debt until the first Competitive Upgrade awarded is placed into service.⁹

6. Kanstar also requests Commission authorization for itself and each Midwest Power SPP Entity to employ a 50 basis point ROE adder to the base ROE in recognition that every Midwest Power SPP Entity will have committed to turn over functional control of any transmission assets it develops and owns to SPP.¹⁰

7. Kanstar additionally explains that it intends to enter a bid to develop the Walkemeyer Project and, in the event that its bid is accepted and it proceeds to incur costs to develop this project based on acceptance of its bid by SPP, and if the project is later abandoned for reasons outside of Kanstar's control, it requests Abandoned Plant Recovery.¹¹

III. Notice of Filing and Responsive Pleadings

8. Notice of Kanstar's filing was published in the *Federal Register*, 80 Fed. Reg. 45,209 (2015), with interventions and protests due on or before August 12, 2015. The Missouri Public Service Commission (Missouri Commission) filed a notice of intervention and protest. The Kansas Corporation Commission (Kansas Commission) filed a notice of intervention and protest. South Central MCN, LLC filed a timely motion to intervene. On August 18, 2015, Kansas Electric Power Cooperative (Kansas Cooperative) filed a motion to intervene out of time. On August 27, 2015, Kanstar filed an answer.

⁹ Transmittal at 2. We note that at one place in its transmittal letter, Kanstar states that it proposes to use the hypothetical capital structure "until the first Competitive Upgrade awarded to Kanstar or [a Midwest Power SPP Entity] is placed into service." *Id.* This sentence could be read as meaning that, when the first Midwest Power SPP Entity places a project into service, it would terminate the hypothetical capital structure for all affiliates. As this would be inconsistent with all other descriptions in the filing, we assume that Kanstar's request is to utilize the hypothetical capital structure until Kanstar places its first Competitive Upgrade into service, independent of what the other Midwest Power SPP Entities have done. Similarly, we assume that the request is for other Midwest Power SPP Entities to use the same requested hypothetical capital structure until that Midwest Power SPP Entity places a project in service.

¹⁰ *Id.*

¹¹ *Id.* at 3.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and the timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we will grant Kansas Cooperative's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Kanstar's answer because it provides information that assisted us in our decision-making process.

B. Requests for Incentives

10. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.¹² 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 Kanstar.¹³

11. Pursuant to section 219, 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."¹⁴ 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, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential."¹⁵

12. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an

¹² Pub. L. No. 109-58, §§ 1261, 1241, 119 Stat. 594 (2005).

¹³ 16 U.S.C. § 824s (2012).

¹⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

¹⁵ *Id.* P 8 (citing 16 U.S.C. §§ 824(d)-(e)).

applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.¹⁶ 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.”¹⁷ Additionally, in November 2012, the Commission issued a transmission incentives policy statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.¹⁸

13. Kanstar submitted its request for rate incentives under Order No. 679, arguing that its request is consistent with Commission precedent.¹⁹ However, Kanstar asserts, alternatively, that even if the Commission views the rate incentives requested here as inapplicable under Order No. 679, it should, nonetheless, authorize recovery of the rate incentives under section 205 because granting these incentives would result in rates that are just and reasonable.²⁰

14. Kanstar states that, under Order No. 679, a public utility that wishes to utilize rate incentives must first demonstrate the proposed project will either promote reliability or reduce the cost of delivered power by reducing transmission congestion.²¹ Kanstar asserts that, in Order No. 679, the Commission established a rebuttable presumption that this requirement 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, or (2) the transmission project has received construction approval from an appropriate state commission or state siting authority.²² Kanstar argues that it and the

¹⁶ *Id.* P 48.

¹⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

¹⁸ *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement).

¹⁹ Transmittal at 4 & n.8 (citing *Transource Kansas, LLC*, 151 FERC ¶ 61,010 (2015) (*Transource Kansas*), *Transource Wisconsin, LLC (Transource Wisconsin)*, 149 FERC ¶ 61,180 (2014), *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014) (XEST)) and at 6-7.

²⁰ Transmittal at 9 & 35.

²¹ *Id.* at 27 & n.72 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 37).

²² *Id.* at 27 & n.73 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49).

other Midwest Power SPP Entities qualify for the rebuttable presumption under Order No. 679 because they are seeking incentives for future Competitive Upgrades.²³ Kanstar clarifies that it will only be bidding on, and, thus, the incentive rate treatments sought in this filing will apply only to, Competitive Upgrades identified through SPP's competitive solicitation program or through High Priority Studies.²⁴

15. Kanstar also acknowledges that, in addition to the rebuttable presumption under Order No. 679, it must show each incentive requested is "rationally tailored to the risks and challenges faced in constructing new transmission" and must "demonstrate that there is a nexus between the incentive sought and the investment being made."²⁵ It also cites the Commission's 2012 Incentives Policy Statement, where the Commission stated that applicants must "demonstrate how the total package of incentives requested is tailored to address demonstrable risks and challenges."²⁶ Kanstar argues that its requested incentives are rationally tailored to address the risks faced by Kanstar and its affiliates.²⁷

16. Alternatively, Kanstar argues that, even if the Commission finds that Kanstar and its affiliates do not qualify for incentives under Order No. 679, they nonetheless should be granted these incentives because they meet the just and reasonable rates standard under section 205.²⁸

17. The Commission previously has held that the regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the projects, a demonstration that cannot be met when, as here, the requesting entity has not identified specific projects.²⁹ However, incentives available under Order No. 679 can also be granted under the Commission's section 205

²³ *Id.* at 27.

²⁴ *Id.*

²⁵ *Id.* at 28 & n.74 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26).

²⁶ *Id.* at 28 & n.75 (citing 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10).

²⁷ *Id.* at 28.

²⁸ *Id.* at 35-36.

²⁹ *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 15.

authority under certain circumstances, such as to promote important public policy goals.³⁰ The Commission has exercised its section 205 authority to grant certain incentives to nonincumbent transmission developers competing in the Order No. 1000 competitive solicitation process, just as Kanstar seeks to do here.³¹ Consistent with the Commission's determinations in *XEST*, *XETD*, *Transource Wisconsin*, and *Transource Kansas*, we find that granting the requested hypothetical capital structure and regulatory asset in this instance furthers the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process.

18. As discussed in greater detail below, we deny Kanstar's request for the Abandoned Plant Recovery incentive for the Walkemeyer Project.

1. Request for Authorization to Establish Regulatory Asset

a. Proposal

19. Kanstar requests authorization to establish a regulatory asset in which to book all prudently incurred pre-commercial costs that are not capitalized prior to Kanstar's Formula Rate taking effect.³² Kanstar states that the regulatory asset will include all such costs that are incurred prior to the rate year in which costs are first flowed through to customers pursuant to Kanstar's Formula Rate under the SPP Tariff.

20. Kanstar states that the regulatory asset incentive is necessary because it currently does not have transmission rates in effect under the SPP Tariff, and thus has no mechanism under which it can recover the pre-commercial costs it incurs during the development of Competitive Upgrades.³³ Kanstar contends that the regulatory asset incentive will aid consumers by lowering the cost of debt, and it will aid Kanstar by

³⁰ See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008); *So. Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010).

³¹ See *XEST*, 149 FERC ¶ 61,182; *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014) (*XETD*); *Transource Wisconsin*, 149 FERC ¶ 61,180; *Transource Kansas*, 151 FERC ¶ 61,010.

³² Kanstar states that these costs could include, for example, engineering expenses, attorney and consultant fees, administrative expenses, travel expenses, development surveys, and costs to support planning and bid development activities. Transmittal at 30.

³³ *Id.*

allowing it to compete on an equal footing with incumbent transmission developers, thereby furthering the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process.³⁴ Kanstar states that, once it is awarded a Competitive Upgrade and incorporates its Formula Rate into the SPP Tariff, it will discontinue booking expenses to the regulatory asset and will instead simply recover those expenses through the use of the Formula Rate.

21. Kanstar states that, in *Transource Kansas*, the Commission approved the use of such a regulatory asset incentive for a similar nonincumbent transmission developer within SPP.³⁵

b. Commission Determination

22. We find that it is appropriate to grant Kanstar's request for the regulatory asset incentive under section 205. The Commission has held that this incentive can be granted under the Commission's section 205 authority if the incentive furthers a public policy goal, including the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 competitive solicitation processes.³⁶ Consistent with the Commission's decisions in *XEST*, *XETD*, *Transource Wisconsin*, and *Transource Kansas*, we find that Kanstar's request for the regulatory asset incentive under section 205 furthers the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 competitive solicitation processes, thereby encouraging competition.³⁷ Nonincumbent transmission developers wishing to bid on regional transmission projects in SPP's competitive solicitation process must incur early pre-commercial and formation costs, but because they do not have plant in service and/or rates in effect, they do not have a mechanism to recover these costs as they are incurred,

³⁴ *Id.* at 31.

³⁵ *Id.* at 30.

³⁶ See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 at P 33; *So. Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 62; *XEST*, 149 FERC ¶ 61,182 at P 33; *XETD*, 149 FERC ¶ 61,181; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 16; *Transource Kansas*, 151 FERC ¶ 61,010 at P 19.

³⁷ See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 87 (“[T]he Commission seeks to make it possible for nonincumbent transmission developers to compete in the proposal of more efficient or cost-effective transmission solutions.”).

as do incumbent transmission owners whose transmission planning-related costs are expensed to transmission operations and maintenance accounts that are typically included in transmission formula rates. We note that the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, Kanstar may only apply the regulatory asset incentive approved in this proceeding to transmission projects that are developed through SPP's Order No. 1000 competitive solicitation processes. We also grant Kanstar's request to amortize the regulatory asset and to accrue monthly carrying charges, compounded semi-annually over five years for cost recovery purposes, effective September 21, 2015.

23. However, while we will allow Kanstar to record its prudently incurred costs as a regulatory asset, Kanstar must make a section 205 filing to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes them in rates. In that filing, Kanstar must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein, and entities will be able to challenge the reasonableness of costs at that time. Until Kanstar is issued a notice to construct by SPP, rendering it eligible to recover costs through the SPP Tariff, it is unclear whether Kanstar will have any customers from which to recover its regulatory asset.

2. Request for Authorization to Use Hypothetical Capital Structure

a. Proposal

24. Kanstar proposes the use of a hypothetical capital structure consisting of up to 60 percent equity and 40 percent debt until the first Competitive Upgrade awarded to Kanstar is placed into service.³⁸ Kanstar states that it may seek different hypothetical capital structures on a project-by-project basis, but at no point will it utilize a hypothetical capital structure whose equity exceeds 60 percent.³⁹ Kanstar notes that, in *XEST*, the Commission found that “[n]onincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.”⁴⁰ Kanstar

³⁸ Transmittal at 2.

³⁹ *Id.* at 31.

⁴⁰ *Id.* at 31-32 (quoting *XEST*, 149 FERC ¶ 61,182 at P 22 (2014)).

argues that the Commission should grant the requested hypothetical capital structure because the reasoning accepted by the Commission in *XEST* also applies to Kanstar's request.

25. Kanstar asserts that, absent use of the requested hypothetical capital structure, its actual capital structure would fluctuate during the construction phase due to timing, frequency, and amount of new borrowings and equity infusions. Kanstar states that use of the requested hypothetical capital structure will provide a level of predictability as to cash flows and recovery that will support its efforts to obtain at least a BBB rating from Standard & Poor's and a Baa2 rating from Moody's. Kanstar argues that this will help it raise capital at more reasonable costs, which will translate into lower rates for customers.⁴¹

b. Protest

26. The Kansas Commission states that, although it does not necessarily object to Kanstar's proposal to use a hypothetical capital structure for pre-commercial costs, it has several concerns with Kanstar's proposal. First, the Kansas Commission challenges Kanstar's assertion that Kanstar's actual capital structure will fluctuate significantly during the construction phase. The Kansas Commission argues that the only reason this fluctuation will occur is that Kanstar's owners decided to create a wholly owned subsidiary with no existing assets and that the business decisions of Kanstar's owners should not result in increased rates to ratepayers. Second, the Kansas Commission contends that Kanstar's actual capital structure likely will exceed the hypothetical capital structure submitted in the competitive bidding process after a project is in service, thus undermining Kanstar's claims that the incentive will provide rate certainty. The Kansas Commission further argues that this change in capital structure also threatens to undermine the bidding process. Finally, the Kansas Commission asserts that Kanstar's proposal appears to contemplate project-specific capital structures, which raises a number of questions that can only be resolved through additional process.⁴²

c. Answer

27. Kanstar contends that the Kansas Commission's arguments ignore the structure of the requested hypothetical capital structure incentive and Commission precedent. Kanstar notes that the Commission approved a hypothetical capital structure of 60 percent equity and 40 percent debt in *Transource Kansas* while finding that the

⁴¹ Ex. KST-200; Direct Testimony of Tony Somma at 13-15.

⁴² Kansas Commission Protest at 13-15.

requested incentive furthered the policy goals of Order No. 1000.⁴³ Kanstar argues that, therefore, the Commission should also approve Kanstar's request for the same hypothetical capital structure. Kanstar also argues that the Kansas Commission's arguments are misplaced given that its capital structure will not vacillate from hypothetical to actual, back to hypothetical; rather, Kanstar states, it will utilize the hypothetical capital structure submitted in its awarded bid only until such time that its project is placed into service. Kanstar also argues that SPP and all relevant parties would have full knowledge that Kanstar's actual capital structure differed from its hypothetical capital structure when evaluating Kanstar's bid. Kanstar argues that, if its actual capital structure exceeds the hypothetical capital structure included in Kanstar's bid, rate payers will have benefited because Kanstar would have applied a lower-equity capital structure during the construction phase.⁴⁴

d. Commission Determination

28. We grant Kanstar's request to use a hypothetical capital structure consisting of up to 60 percent equity and 40 percent debt prior to its first transmission project going into service. As the Commission held in *XEST* and *XETD*, and as noted by Kanstar, nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.⁴⁵ We grant this request under section 205 because we find that granting the requested hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.⁴⁶ In this instance, allowing the nonincumbent transmission developer to utilize the requested hypothetical capital structure would facilitate the nonincumbent transmission developer's participation in the Order No. 1000 competitive solicitation process. Because the requested hypothetical capital structure is intended solely for participation in Order No. 1000 competitive solicitation processes, Kanstar may only apply the hypothetical capital structure incentive approved in this proceeding to transmission projects that are developed through SPP's Order No. 1000 competitive solicitation processes.

⁴³ Kanstar Answer at 20 (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 25).

⁴⁴ *Id.* at 20-21.

⁴⁵ *XEST*, 149 FERC ¶ 61,182 at P 22; *XETD*, 149 FERC ¶ 61,181 at P 13.

⁴⁶ *See, e.g.*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 87.

29. We disagree with the Kansas Commission's arguments regarding fluctuation of the actual capital structure. We note that the Commission has not previously required any particular corporate structure. Furthermore, as noted above, the Commission has previously found that the creation of additional nonincumbent transmission developers encourages competition. The Commission also held in *XEST* that "a hypothetical capital structure will provide XEST the formula inputs needed to determine the rate for allowance for funds used during construction (AFUDC), which will improve the predictability of XEST's AFUDC accrual and its overall project costs."⁴⁷

30. We also disagree with the Kansas Commission that further explanation of Kanstar's proposal to modify the hypothetical capital structure on a project-specific basis is required. As discussed further below, the value and form of any concessions will be reflected in a project sponsor agreement between Kanstar and SPP that will be filed with the Commission.

3. Request for Authorization to Recover Costs of Abandoned Transmission Facilities

a. Proposal

31. Kanstar states that it is requesting the Abandoned Plant Recovery incentive if it is awarded the Walkemeyer Project. Kanstar states that the Walkemeyer Project is an SPP Competitive Upgrade that SPP determined was the best solution to mitigate the time-sensitive overload and voltage needs around the Kismet area in Southwest Kansas. Kanstar adds that the Walkemeyer Project is a new 23-mile 115 kV line from the Walkemeyer substation to the North Liberal substation. Kanstar states that, unlike the other requested rate incentives, the Abandoned Plant Recovery incentive would apply only to Kanstar and will not be replicated for future, yet-to-be known projects by any Kanstar affiliate or for other Kanstar projects; however, Kanstar states it reserves the right to request such an incentive for future projects as they arise.⁴⁸

32. Kanstar argues that there is a nexus between the Abandoned Plant Recovery incentive and the risks Kanstar will face in developing the Walkemeyer Project. Kanstar states that the primary risk it will face is that SPP might discontinue the project at any time through no fault of Kanstar. Kanstar offers, as an example, that SPP could decide, after awarding the project to Kanstar, that the time-sensitive overload and voltage needs that prompted the Walkemeyer Project would actually be better solved by changing

⁴⁷ *XEST*, 149 FERC ¶ 61,182 at P 23.

⁴⁸ Transmittal at 10.

operating manuals or some other method.⁴⁹ Kanstar contends that experience has shown that Abandoned Plant Recovery has been instrumental in convincing lenders to fund projects.⁵⁰ Kanstar also argues that allowance of Abandoned Plant Recovery will support the investment of equity capital to begin permitting work, including environmental studies, contracting labor and materials, and acquiring rights-of-way for the Walkemeyer Project.

b. Commission Determination

33. We reject Kanstar's request for an opportunity to recover 100 percent of its prudently incurred costs for the Walkemeyer Project if it is abandoned for reasons beyond Kanstar's control. As mentioned above, an applicant must demonstrate that the specific incentives requested under Order No. 679 are "tailored to address the demonstrable risks or challenges faced by the applicant."⁵¹ In the 2012 Incentives Policy Statement, the Commission stated that "in addition to the challenges presented by the scope and size of a project, factors like various federal and state siting approvals introduce a significant element of risk."⁵² Additionally, previous applicants to whom the Commission has awarded the Abandoned Plant Recovery incentive have demonstrated risks and challenges specific to a particular project, including minority ownership,⁵³ and rights-of-way acquisition.⁵⁴ Kanstar states that the primary risk it faces is that SPP may decide to discontinue the Walkemeyer Project.⁵⁵ However, this type of risk is faced by every entity developing a transmission facility in SPP and we find that Kanstar has not identified risks and challenges specific to the Walkemeyer Project that the Abandoned Plant Recovery incentive is suited to address.

⁴⁹ *Id.* at 38.

⁵⁰ Ex. KST-100; Direct Testimony of John P. Olsen at 18.

⁵¹ *See supra* n.16.

⁵² 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 14.

⁵³ *Midcontinent Indep. Sys. Operator, Inc. and WPPI Energy*, 151 FERC ¶ 61,246, at P 24 (2015).

⁵⁴ *MidAm. Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 40 (2014).

⁵⁵ Transmittal at 38.

34. Although we are rejecting Kanstar's request, our finding is without prejudice to Kanstar later submitting a request for the Abandoned Plant Recovery incentive for the Walkemeyer Project or a different specific transmission project which better demonstrates that that project meets the requirements of Order No. 679. Additionally, because we are accepting Kanstar's requested hypothetical capital structure and regulatory asset incentives under section 205 and rejecting the Abandoned Plant Recovery incentive, we need not evaluate Kanstar's total package of incentives at this time.

C. Base ROE and ROE Adder for RTO Participation

1. Proposal

35. Kanstar requests a base ROE of 10.5 percent. Kanstar states that it calculated this ROE according to the standards adopted by the Commission in Opinion No. 531.⁵⁶ Specifically, Kanstar's ROE witness, Mr. McKenzie, applied the two-step discounted cash flow (DCF) method, which he states is based on recent guidance in Opinion No. 531, and other supporting analyses routinely relied upon by the Commission to establish a just and reasonable ROE, including the risk premium, capital asset pricing model, and expected earnings analyses. Kanstar states that its DCF method establishes a zone of reasonableness of 7.15 percent to 12.31 percent when using growth estimates from I/B/E/S, and a zone of reasonableness of 6.12 percent to 12.27 percent when using growth rates from Value line.⁵⁷ Kanstar states that Mr. McKenzie calculates the midpoints of the upper half of the zone of reasonableness established by the proxy group company returns to be 10.46 and 10.56 percent using I/B/E/S and Value Line growth forecasts, respectively, and his 10.5 percent base ROE recommendation falls between these two results. Kanstar argues that the proposed 10.5 percent base ROE is justified given the continued anomalous capital market conditions. Kanstar contends that its risk profile justifies the placement of the base ROE in the upper end of the zone of reasonableness. Kanstar further contends that the proposed 10.5 percent base ROE is supported by the company-specific risk that Kanstar faces as a new transmission-only company established to develop projects that emerge from SPP's competitive processes. Kanstar avers that its proposed ROE is consistent with the Commission's policy objective

⁵⁶ *Id.* at 22 (citing *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (*Coakley*)); Exhibit No. KST-400, Direct Testimony of Adrien McKenzie at 2.

⁵⁷ Exhibit No. KST-400, Direct Testimony of Adrien McKenzie at 9.

of creating a level playing field between incumbent and nonincumbent transmission developers.⁵⁸

36. Kanstar also requests a 50 basis point adder to its base ROE for RTO participation, which would result in a total ROE of 11 percent. Kanstar explains that it will transfer functional control of the transmission facilities that it develops to SPP once they are constructed, and will recover the associated costs from SPP customers through the inclusion of the Formula Rate in the SPP Tariff.⁵⁹ Kanstar states that the Commission has recently approved the RTO participation adder for nonincumbent transmission developers who had not yet been awarded any competitive projects, in *XEST* and *Transource Kansas*.⁶⁰

2. Protest

37. The Missouri Commission contends that there are material issues of fact raised by Kanstar's Formula Rate that should be addressed through hearing and settlement judge procedures. The Missouri Commission argues that Kanstar's proposed base ROE is not based on a proper application of Commission policy, but rather on a modification of that policy that prejudices an upwards result.⁶¹ The Missouri Commission states that the midpoint of the range of reasonableness should only be used to determine an ROE that should be applied to all of the transmission owners in an RTO. With respect to individual transmission owners, the Missouri Commission states that Commission policy is to use the median of the range of reasonableness. The Missouri Commission states that Kanstar's witness, Adrien M. McKenzie, has not provided workpapers supporting his testimony and argues that parties should have the opportunity to request those workpapers to review his application of the DCF methodology. The Missouri Commission and the Kansas Commission argue that the DCF methodology used by Kanstar departs from Commission policy by selecting the midpoint in the upper half of that range, relying on Opinion No. 531. The Missouri Commission argues that in Opinion No. 531, the Commission selected an ROE that was the midpoint of the upper half of the range of reasonableness based on anomalous economic conditions; however, the Missouri Commission avers that those conditions are not present today and do not

⁵⁸ *Id.* at 24 (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 19).

⁵⁹ Transmittal at 34.

⁶⁰ *Id.* at 35.

⁶¹ Missouri Commission Protest at 4.

warrant a deviation from Commission policy.⁶² The Missouri Commission notes that the Commission recently rejected the approach taken in Opinion No. 531 in a recent ruling, as well.⁶³ The Kansas Commission additionally states that, to support an upward adjustment to the measure of central tendency, an applicant must make a “very persuasive demonstration” of the existence of “highly unusual circumstances indicating anomalously high or low risk factors,” and argues that the market data provided by Kanstar does not support a finding that “anomalous” market conditions warrant such an adjustment.⁶⁴

38. The Missouri Commission disagrees with Kanstar’s argument that an upward trend in interest rates supports the continued use of the midpoint of the upper half of the range of reasonableness because the current market prices for stocks and bonds already factor in investors’ expectations. Consequently, it argues any additional upward adjustment for projected interest rate increases would be duplicative. The Missouri Commission rejects Kanstar’s reliance on the generalized risk that new transmission entities face as support for setting the ROE for Kanstar above the median of the range of reasonableness. The Missouri Commission states that those risks are addressed in Order No. 679 through incentives that may increase a transmission provider’s applicable ROE well above the base ROE. Therefore, the Missouri Commission argues, the Commission should suspend Kanstar’s filing for the maximum five-month statutory period and set Kanstar’s application of the DCF methodology for hearing in order to determine the appropriate ROE.

39. The Kansas Commission contends that Kanstar’s requested ROE is excessive and has not been shown to be just and reasonable. The Kansas Commission requests that the Commission apply the underlying rationale in *Transource Kansas*, where the Commission found that the proposed base ROE “has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.”⁶⁵ The Kansas Commission contends that a single utility like Kanstar should use the median of the zone of reasonableness as an appropriate measure of central tendency, not the midpoint, as calculated by Kanstar witness Mr. McKenzie, because the

⁶² *Id.* at 5.

⁶³ *Id.* (citing *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,183 at P 77 (2014)).

⁶⁴ Kansas Commission Protest at 10 (quoting *Portland Natural Gas Transmission Sys.*, Opinion No. 510-A, 142 FERC ¶ 61,198, at P 241 (2013), *order on request for reh’g and refund report*, Opinion No. 510-B, 150 FERC ¶ 61,106 (2015)).

⁶⁵ *Id.* at 8 (citing *Transource Kansas, LLC*, 151 FERC ¶ 61,010 at P 44).

midpoint is usually reserved for a diverse group of utilities.⁶⁶ The Kansas Commission argues that accepting Kanstar's two-step DCF analysis at face value demonstrates the unjustness and unreasonableness of the proposed 10.5 percent base ROE.

40. The Kansas Commission rejects Kanstar's assertion that its proposed base ROE is supported by Kanstar's investment risk because ratepayers should not bear the burden of the business decisions of Kanstar's owners.⁶⁷ The Kansas Commission argues that the Commission should reject Kanstar's argument that incentives are needed to place Kanstar on a level playing field with incumbent competitors because the Commission's DCF methodology develops a base ROE based on a comparison of the subject utility to the ROEs for the proxy group of comparable utilities. The Kansas Commission requests that, if the Commission does not summarily reject Kanstar's proposed ROE, the Commission should set it for hearing because material issues of fact are present.⁶⁸

3. Answer

41. Kanstar contends in its answer that the objections raised by the Missouri and Kansas Commissions to Kanstar's rate filing do not raise issues of material fact that warrant a hearing. Kanstar summarizes the protests of the Missouri and Kansas Commissions as raising three main arguments and offers rebuttals to each of these arguments.⁶⁹

42. First, as to the contention that Kanstar is seeking an excessive base ROE, Kanstar argues that its base ROE recommendation is just and reasonable and meets the capital attraction standards established in both the *Hope* and *Bluefield* cases.⁷⁰ Kanstar states that its two-step DCF analysis is entirely consistent with the Commission's most recent guidelines for establishing a utility's base ROE, as enunciated in Opinion No. 531. Kanstar states that it applied a two-step DCF analysis to a national proxy group of comparable risk utilities utilizing estimated earnings per share growth forecasts from both IBES and from the Value Line Investment Survey. Kanstar further states that

⁶⁶ *Id.* at 9.

⁶⁷ *Id.* at 12.

⁶⁸ *Id.*

⁶⁹ Kanstar Answer at 6.

⁷⁰ *Id.* at 7 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope*); *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923) (*Bluefield*)).

instead of adopting the median from the results of its aforementioned analyses, it also evaluated the current state of the capital market conditions, adhering to the Commission's precedent in *Coakley*.⁷¹

43. Kanstar states that in its market evaluation, it concluded that current capital market conditions continue to reflect the Federal Reserve's unprecedented monetary policy actions in the aftermath of the Great Recession and are not representative of what investors expect in the future. Subsequently, Kanstar contends that it looked for alternative methodologies such as a risk premium analysis, CAPM analysis, and expected earning analysis in order to further evaluate the DCF results. Kanstar contends that the application of such analyses demonstrated that the Commission's two-step DCF method is far below investors' required return. In addition, Kanstar states that it also evaluated a number of other models not referenced in Opinion No. 531 to further support its ultimate recommendation of 10.5 percent.⁷²

44. Kanstar contends that it conducted an exhaustive and complete analysis fully in line with Commission precedent and policy; and after careful examination of all relevant factors, Kanstar states that it selected an ROE from the DCF zone of reasonableness that was the best estimate for Kanstar's cost of equity and a figure that would meet the *Hope* and *Bluefield* standards. As such, Kanstar states that its ROE recommendation of 10.5 percent is just and reasonable, and should be accepted in this proceeding.⁷³

45. Kanstar next argues that none of the reasons advanced by the Missouri and Kansas Commissions support their contentions that the Commission should institute hearing procedures in this proceeding. In this regard, Kanstar argues that the fact that Kanstar's witness did not recommend the median DCF result as the ROE does not show that a hearing is warranted as there are times when another result is more accurate. Kanstar argues that the ROE should be determined based on an investigation of market conditions and not on a mechanical application. Kanstar also asserts that its witness began his analysis using the median result and then made adjustments.⁷⁴

46. Kanstar further argues that the PJM case cited by the Missouri Commission is irrelevant because it did not involve a DCF analysis. Kanstar also defends its witness's only using bond yields since 1968, arguing that this matches what was done in Order No. 531. It likewise contends that his use of alternative analyses is consistent with the

⁷¹ *Id.* at 7-8.

⁷² *Id.* at 8-10.

⁷³ *Id.* at 10.

⁷⁴ *Id.* at 10-12.

Commission's findings in Order No. 531. Finally, Kanstar argues that there was no need for it to provide the Missouri Commission with its witness's workpapers as the information he provided was adequate and additional information could have been requested.⁷⁵

47. Turning to the arguments by the Kansas Commission, Kanstar argues that its witness exercised good judgment in concluding that higher interest rates are forthcoming, based on anomalous conditions in the current market that he does not believe will be sustained. Kanstar next argues that the Kansas Commission's reliance on Opinion No. 510-A is misplaced because it did not focus on the issue of whether DCF results should be adjusted based on anomalous conditions.⁷⁶

48. Kanstar challenges the argument that a five-month suspension period should be imposed in this case, arguing that its rates constitute initial rates and that, in any event, such a suspension period was rejected in *Transource Kansas*.⁷⁷ Further, Kanstar objects to the Missouri or Kansas Commission raising any additional issues at hearing. In this regard, Kanstar argues that they have had adequate time to review Kanstar's filing and, if they have not yet identified additional issues, they should be precluded from raising such issues later. Kanstar argues that this restriction on new issues was followed in *Transource Kansas*.⁷⁸

4. Commission Determination

49. Our preliminary analysis indicates that Kanstar's proposed base ROE has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept Kanstar's proposed ROE for filing, suspend it for a nominal period, to be effective September 21, 2015, subject to refund, and set it for hearing and settlement judge procedures.

50. 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.⁷⁹ If the parties desire, they may,

⁷⁵ *Id.* at 12-14.

⁷⁶ *Id.* at 14-15.

⁷⁷ *Id.* at 16.

⁷⁸ *Id.* at 16-17.

⁷⁹ 18 C.F.R. § 385.603 (2015).

by mutual agreement, request a specific judge as the Settlement Judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the 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 commencement of a hearing by assigning the case to a presiding judge.

51. Finally, consistent with previous Commission orders, we grant Kanstar's request for a 50 basis point incentive ROE adder for its participation in SPP, subject to the zone of reasonableness established pursuant to the hearing and settlement judge procedures established herein.⁸⁰

D. Accounting Treatment

1. Proposal

52. Kanstar states that the tax obligations incurred through Kanstar's operations will be passed through to and reported on the tax returns of its corporate parents. Therefore, Kanstar states that, for ratemaking purposes, Kanstar will be treated as a corporation and will receive an income tax allowance. Kanstar argues that this treatment is fully consistent with Commission policy⁸¹ and was accepted by the Commission in *Transource Kansas*.⁸² Kanstar adds that because it is a pass-through entity, it will not record income taxes on its books.⁸³ Kanstar argues that, because Transource Kansas is a similar entity to Kanstar, the Commission's ruling should apply to Kanstar as well.⁸⁴

53. Kanstar states that its expenses related to developing competitive projects in SPP will either be directly incurred by Kanstar or incurred by Kanstar through services

⁸⁰ See, e.g., *MidAm. Cent. Cal. Transco*, 147 FERC ¶ 61,179 at P 45; *Transource Missouri*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64; *Transource Kansas*, 151 FERC ¶ 61,010 at P 46.

⁸¹ Transmittal at 21 (citing *Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139, at P 32 (2005)).

⁸² *Id.* (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 59).

⁸³ Ex. KST-500; Direct Testimony of Kevin Kongs at 8.

⁸⁴ *Id.*

provided to it by Westar and BHE or its affiliates. Kanstar states that the direct expenses are expected to consist primarily of third-party (non-affiliate) contracts for technical services, while expenses charged to Kanstar from affiliated companies are expected to consist primarily of cash management and treasury services, risk management services, tax and accounting services, budgeting and forecasting services, legal services, engineering, design, and project management for construction of the facilities. Kanstar states that costs for services provided by affiliate companies will also fall into two categories: (1) costs for services which are requested by, and whose costs are charged only to, Kanstar for services provided directly by affiliate employees or by third parties; and (2) allocated costs for shared services whose costs that are billed to multiple affiliates.⁸⁵

54. Kanstar states that the methodology for assignment and allocation of costs by BHE affiliates is described in the policy memorandum entitled “Affiliate Transactions within the BHE Group” (BHE Affiliate Memorandum), which is attached to the application. Kanstar states that BHE affiliates will directly assign costs that are 100 percent attributable to Kanstar whenever possible, but, in instances where costs are attributable to more than one BHE affiliate, costs will be allocated using a formula consisting of “an equal weighting of each affiliate’s labor and assets expressed as a percentage of the whole.”⁸⁶ Kanstar states that affiliate transactions within the BHE group will be assigned and allocated based on BHE’s Intercompany Administrative Services Agreement (Intercompany Agreement), which is also attached to the application, and that BHE will adhere to the methodologies specified therein. Kanstar states that the methodology for assignment and allocation of costs from Westar affiliates is described in the Westar Cost Allocation Manual, which is attached to the application. Kanstar states that costs will be allocated to Kanstar based on employees’ time entered into an Activity Tracking System and accumulated on a monthly basis equal to the billable employee hours multiplied by the employee’s labor rate plus applicable labor loadings for pension and benefits, payroll taxes and non-productive labor. Kanstar further explains that a separate administrative and general charge is added to the base payroll and payroll related loading amounts to recover supervisory costs of employees working on Kanstar. Kanstar states that the final component of costs allocated to Kanstar will be a facilities charge, which is a per hour charge which is applied to the hours employees charge Kanstar on a monthly basis. Kanstar states that this charge represents costs for items such as building operations and maintenance, building depreciation, lease expense, ad valorem taxes, computer equipment, and depreciation and amortization for accounting systems. Kanstar states that

⁸⁵ Ex. KST-500; Direct Testimony of Kevin Kongs at 7-10.

⁸⁶ *Id.* at 10-11.

this methodology will be used by all affiliated Westar subsidiaries.⁸⁷ Kanstar notes that this methodology has been utilized by Westar to bill costs of its employees who work on Prairie Wind Transmission, LLC since December 2008. Kanstar notes that Westar outlined this process for the Commission in its May 2, 2011 compliance filing for the Prairie Wind Project, which was accepted by the Commission.⁸⁸

2. Commission Determination

55. To the extent that costs are allocated or directly-billed from Kanstar's parent company or any of its affiliates, we direct Kanstar to further explain and provide the methodology for the allocation of those costs in a compliance filing to be made within 30 days of the date of this order.⁸⁹ The cost allocation manuals submitted by Kanstar do not adequately describe the transactions among Kanstar and all of its affiliates and how costs will be allocated for specific types of transactions. For instance, the BHE Affiliate Memorandum states that direct charges consist of costs that are directly assignable to a specific affiliate, but does not specify the types of services or costs that are directly assignable or how it will be determined whether a service or cost is directly assignable. The BHE Allocation Memorandum also states that an allocation methodology will be applied to costs incurred for the benefit of all BHE subsidiaries or a group of subsidiaries, in order to charge these costs to the benefitting affiliates, and includes among "[e]xamples of these allocation methodologies" the composite labor and asset allocator described in Kanstar's testimony. However, the BHE Allocation Memorandum does not specify how an allocation methodology will be selected from among these or other allocation methodologies for particular transactions, or provide detailed formulas for calculating the allocation methodologies. Further, the BHE Allocation Memorandum provides for the recovery of capital costs of assets utilized in providing inter-affiliate services, but does not specify a return, or how such return will be determined. Nor does the BHE Affiliate Memorandum specify how overhead costs are allocated and billed, if at all, for direct or allocated services. The Westar Cost Allocation Manual simply provides

⁸⁷ *Id.* at 11-12.

⁸⁸ *Id.* at 12 (citing *Prairie Wind Transmission, LLC*, Docket No. ER09-36-002 (Mar. 2, 2012) (delegated letter order)).

⁸⁹ See *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 151 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at PP 39-42, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) (describing Commission's authority to require the filing of cost-allocation agreements).

that amounts billed will be based on employees' billable hours, multiplied by the employee's pay rate, plus applicable loadings for benefits and other labor-related costs, and overheads. However the manual does not specify the types of services that will be provided, and how costs will be assigned to particular affiliates for particular services, or allocated among affiliates for services that are provided to multiple affiliates. Nor does it provide detailed formulas for determining and allocating overhead costs.

E. Depreciation Rates

1. Proposal

56. Kanstar proposes to use depreciation rates based on a depreciation study that was conducted by one of its parent companies, Westar, using Westar's electric utility plant, and accepted by the Commission for use in a settlement.⁹⁰ Kanstar states that Westar survivor curves were used to calculate the average service life for each account. Kanstar states that this average service life, along with the net salvage percentages, were used to calculate the annual depreciation accrual rates.⁹¹ Kanstar argues that it is appropriate to use the service lives and net salvage percentages from the depreciation study because there are no Kanstar assets in service that would provide the necessary historical data. Kanstar asserts that Competitive Upgrades awarded by SPP will be similar to existing Westar transmission facilities, will be operated similarly, and will be located in a similar area.⁹²

2. Commission Determination

57. We accept Kanstar's proposed depreciation rates. We recognize that, because Kanstar's transmission facilities have yet to be identified, there is no historical data to support a depreciation study. In the past, the Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission start-up, and we do so here.⁹³ We find that, as Westar is an affiliate company with transmission facilities similar to those Kanstar intends to own in the SPP footprint, Westar's depreciation rates are an appropriate proxy for Kanstar to adopt in determining its proposed depreciation rates.

⁹⁰ See *Westar Energy, Inc.*, 117 FERC ¶ 61,172 (2006).

⁹¹ Transmittal at 22.

⁹² Ex. KST-500; Direct Testimony of Kevin Kongs at 5-7.

⁹³ See *XEST*, 149 FERC ¶ 61,182 at P 124.

F. Formula Rate

1. Proposal

58. Kanstar requests approval of its formula rate template, which will be used to determine revenue requirements for its SPP transmission facilities, including Competitive Upgrades.⁹⁴ The formula rate template is a forward-looking formula, whereby Kanstar forecasts the values that will populate the formula rate template for each calendar year, and later determines a true-up of the forecasted values after the actual data become available in the FERC Form No. 1. Kanstar states that the formula rate template is very similar to the formula rate template in *Transource Kansas*, which was recently approved by the Commission in Docket No. ER15-958-000.⁹⁵ Kanstar asserts that its proposed formula rate template is flexible enough to incorporate competitive annual transmission revenue requirement adjustments on a project-by-project basis. Kanstar offers as an example that it may offer concessions that lower the ROE below the value approved by the Commission or, as mentioned above, it may adjust its hypothetical capital structure. Kanstar anticipates that the value and form of any concessions included in a bid accepted by SPP will be reflected in a project sponsor agreement between Kanstar and SPP would be filed with the Commission.⁹⁶

59. Kanstar also requests approval of its protocols, which govern the specific procedures for notice, requests for information, and review and challenge procedures to the annual true-up. Kanstar claims that its protocols are based on those most recently filed by Westar in Docket Nos. ER14-2852-000 and EL14-77-000, and are consistent

⁹⁴ Kanstar states it will not collect charges from customers under the Formula Rate until after Kanstar is awarded a project in the SPP Transmission Owner Selection Process. At that time, SPP will make an additional filing to incorporate the Kanstar formula rate into its OATT as a *pro forma* formula rate which any of the Midwest Power SPP Entities may utilize in the future. No costs will flow through the formula rate until the requisite filing to include the Formula Rate in the SPP OATT is accepted. Ex. KST-300; Direct Testimony of John Wolfram at 8-9.

⁹⁵ Transmittal at 19-21.

⁹⁶ *Id.* at 24-25.

with the Commission's findings in Midcontinent Independent System Operator, Inc.'s (MISO) formula rate protocol proceeding.⁹⁷

2. Protest

61. The Kansas Commission states that it supports proposals such as Kanstar's to allow ratepayers to benefit from lower rates that result from competitive transmission solicitation processes and that it recognizes the Commission has accepted "bid concession" proposals similar to that of Kanstar.⁹⁸ However, the Kansas Commission contends that Commission guidance is needed to reduce the risk of increased costs to consumers, to reduce negative impacts on the competitive bidding process, and to ensure that lower rates will actually result from the proposal. The Kansas Commission specifically requests that the Commission address issues including, but not limited to, whether: (1) competitive bid concessions apply for the life of the asset; (2) transmission owners with discounted revenue requirements are restricted from transferring assets to affiliates or other transmission owners that do not have rate structures that permit discounts; and (3) transmission owners that agree to discounted returns on equity bear the risk that the discounted return on equity may fall below the lower end of the zone of reasonableness.⁹⁹

62. The Kansas Commission contends that Kanstar's protocols are based on the protocols approved for or recently filed by six different entities¹⁰⁰ and fail to describe with specificity each element of the other entities' protocols that Kanstar adopted or decided not to adopt.¹⁰¹ The Kansas Commission states that it is concerned that the "sum of the parts" approach adopted in Kanstar's protocols may not necessarily be just and reasonable. Therefore, the Kansas Commission requests that the Commission set the

⁹⁷ Ex. KST-300; Direct Testimony of John Wolfram at 20. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

⁹⁸ Kansas Commission Protest at 7.

⁹⁹ *Id.* at 7-8.

¹⁰⁰ The six entities are: (1) Transource Kansas, LLC (Transource Kansas); (2) Westar; (3) MISO; (4) Xcel Energy Southwest Transmission Company, LLC; (5) Prairie Wind Transmission, LLC, and (6) Transource Missouri, LLC.

¹⁰¹ Kansas Commission Protest at 15-16.

protocols for hearing and settlement judge procedures because of the presence of material issues of fact.

3. Answer

63. Kanstar argues that the Kansas Commission's concerns surrounding competitive bid concessions are premature because the precise parameters of the concessions are unknown at this point. Kanstar argues that the proper time to voice concerns over any concessions is when a Midwest Power SPP Entity submits a bid with concessions. Kanstar notes that the Commission allowed Transource Kansas the right to utilize competitive bid concessions and that an investigation into Kanstar's application would place Kanstar at a disadvantage to other transmission developers competing to develop Competitive Upgrades within SPP.¹⁰² Kanstar argues that, were its bid selected, there should be a strong presumption that the bid's components are just and reasonable since it was selected from a highly competitive process.¹⁰³

64. Regarding the Kansas Commission's concerns that Kanstar failed to provide specificity regarding the elements of other entities' protocols that Kanstar adopted, Kanstar contends that this argument should be rejected as there is no single set of protocols the Commission considers just and reasonable; rather, the Commission has espoused certain policies and minimum requirements that formula rate protocols must meet. Kanstar states that it incorporated the most recent Commission policies and guidance when formulating its protocols. Kanstar states that the Kansas Commission has not identified a single provision of Kanstar's protocols the Kansas Commission contends is unjust and unreasonable. Kanstar argues that, as a result, there is no basis for the Commission to institute a hearing, regardless of whether Kanstar identified a specific case for each provision in the protocols.¹⁰⁴

4. Commission Determination

65. We conditionally accept Kanstar's proposed Formula Rate, subject to a compliance filing to be made within 30 days of the date of this order to address the matters discussed below. While the formula rate template generally conforms to other Commission-accepted formula rate templates, there are variances that Kanstar has not

¹⁰² Kanstar answer at 19 (citing *Transource Kansas*, 151 FERC ¶ 61,010 at PP 54, 59).

¹⁰³ *Id.*

¹⁰⁴ Kanstar Answer at 21-22.

explained, as well as errors that Kanstar must correct. Regarding Kanstar's formula rate protocols, one provision does not meet the standards of the MISO formula rate protocol proceeding. We, therefore, direct Kanstar to modify its formula rate template and protocols and to provide further explanation, as described below.

66. We disagree with the Kansas Commission's assertion that further guidance is necessary to ensure lower rates will result from the proposal. As noted in Kanstar's proposal and answer, the value and form of any concessions will be reflected in a project sponsor agreement between Kanstar and SPP that will be filed with the Commission. Regarding transfers of assets, we find the Kansas Commission's concern beyond the scope of this proceeding. If any entity, Midwest Power SPP Entity or other transmission owner, seeks to acquire an asset of a Midwest Power SPP Entity, the Commission will evaluate such a transaction at that time.

67. We also disagree with the Kansas Commission's assertion that Kanstar's protocols are based on the protocols of six other entities. Kanstar specifically states that they "are based on those recently filed by Westar in Docket Nos. ER14-2852-000 and EL14-77-000, and they are consistent with the findings of the Commission in its review of the formula rate protocols of [] MISO."¹⁰⁵ However, as noted by Kanstar in its answer, regardless of the number of entities' protocols that provided the basis for Kanstar's protocols, when evaluating whether certain protocols are just and reasonable, the Commission has previously directed transmission owners using a formula rate to conform their formula rate template and formula rate protocols to the standards of the MISO formula rate protocols proceeding, or show cause why they should not be required to do so.¹⁰⁶ With the exception noted below, Kanstar's protocols conform to the standards set in the MISO formula rate protocols proceeding.

a. Formula Rate Template Corrections

68. Because Accumulated Depreciation and Amortization in rate base should not include asset retirement obligations, Attachment H, Page 2, Line 7 should reference Note U. We direct Kanstar to make this change. Additionally, the Common portion of Accumulated Depreciation and Amortization is not assigned a line number in the formula rate template. We direct Kanstar to assign a line number and adjust its formula rate template accordingly.

¹⁰⁵ KST-300; Direct Testimony of John Wolfram at 20.

¹⁰⁶ See *Westar Energy Inc.*, 148 FERC ¶ 61,033, at P 15 (2014).

69. The FERC Form No. 1 reference for Attachment H, Page 4, Lines 14 and 15, Column 2 should be 201.3.d and 201.3.e. We direct Kanstar to make this change.
70. Attachment H, Page 4, Lines 20-22 utilize inputs from Attachment 5 Page 2 to calculate return; however, Kanstar does not reference Attachment 5. We direct Kanstar to create a reference to Attachment 5 for this calculation.
71. Attachment 1, Page 1, Line 2, Column 2, contains an incomplete reference to Note B. Additionally, Page 1, Line 6, Column 1 contains a typographical error in the spelling of “Depreciation.” We direct Kanstar to complete the aforementioned reference and correct the typographical error.
72. Attachment 2, Line 1 references Attachment H, Line 37, Column 5, but does not contain a page number. We direct Kanstar to add the appropriate page number to the reference.
73. The FERC Form No. 1 reference for Attachment 4, Page 1, Column E should be 214.x.d. We direct Kanstar to make this change.
74. Attachment 5, Page 1, the columns that include Depreciation Expense – Transmission and General & Intangible should refer to Note U in Attachment H to ensure that asset retirement obligations are properly excluded from these amounts.
75. Attachment 7, Post-Retirement Benefits other than Pension (PBOPs) contains some items that are not clearly supported. Specifically, it is not clear from the submitted actuarial reports how Kanstar derived for BHE its total PBOP expenses on line 2 or its labor dollars on Line 5. We direct Kanstar to provide additional clarification and support to address these issues. Furthermore, we remind Kanstar that all amounts collected for PBOPs must be deposited into an irrevocable external trust fund, pursuant to Commission policy.¹⁰⁷
76. Attachment 8 contains the methodology to determine the cost of debt and contains a 175 basis point spread over the LIBOR rate. Kanstar states that it bases this spread on the spread currently charged to Transource Missouri. Kanstar states that it will update the spread using the best available information. To the extent that Kanstar continues to utilize Attachment 8, we direct Kanstar, in its annual informational filing, to provide supporting documentation for the credit spread in Attachment 8. Furthermore,

¹⁰⁷ See *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330, at 62,200 (1992).

Attachment 8, Note 4 should reference Line 11-21. We direct Kanstar to make this change.

77. Attachment 9 purports to contain a “hypothetical example of final true-up of interest rates and interest calculations for the construction loan;” however, Kanstar has not populated any of the inputs in the example. We direct Kanstar to provide inputs to Attachment 9.

b. Formula Rate Protocols

78. Section I.4 of Kanstar’s protocols provides that “[o]n or before September 30th, Kanstar shall provide its Annual Projection to SPP and cause such information to be posted on SPP’s website and O[pen] A[ccess] S[ame-time] I[nformation] S[ystem].” Section I.11 of Kanstar’s protocols provides that “Kanstar shall hold an open meeting among Interested Parties ([Annual Projected Rate Meeting]) after the Annual Projection Publication Date but no sooner than seven [] days from the Publication Date and no later than September 30th.” We find these provisions to be in conflict because Kanstar could not provide the Annual Projection to SPP, for example, between September 24th and September 30th and also hold an open meeting no sooner than seven days from the Publication Date but no later than September 30th. Accordingly, we direct Kanstar to revise its protocols to remove such conflict, to ensure it provides an adequate period of time for interested parties to review its Annual Projection prior to the Annual Projected Rate Meeting.

G. Request for Authorization to Replicate the Formula Rate and Incentive Rate Treatments

1. Proposal

79. Kanstar requests that each Midwest Power SPP Entity be authorized to replicate and adopt the Formula Rate without the need for each specific entity to make a section 205 filing. Kanstar explains that, under its proposal, Midwest Power Heartland will create state-specific Midwest Power SPP Entities for each state in which it elects to build Competitive Upgrades. Kanstar argues that such an approach is the most efficient way to address various state legal and regulatory requirements. Kanstar asserts that this proposal is consistent with the approach accepted by the Commission in *Transource Kansas*.¹⁰⁸

¹⁰⁸ Transmittal at 26 (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 81).

2. Protest

80. The Kansas Commission states that in its request for rehearing of *Transource Kansas*, it contended that requests for yet-to-be-formed entities to be allowed to replicate the proposed formula rate without any substantive filing would obviate the obligations in the FPA and the Commission's conforming regulations.¹⁰⁹ The Kansas Commission states that this argument applies to Kanstar's proposal. The Kansas Commission further asserts that granting this request would allow Midwest Power SPP Entities to use the same capital structure and ROE for each affiliate, which may not be appropriate or supported by substantial evidence due to the differences in state specific regulations and statutes that each affiliate may face. The Kansas Commission argues that granting this request would shift the burden of proof with regard to those opposing the rates in contravention of the structure of the FPA.¹¹⁰

81. Furthermore, the Kansas Commission avers that Kanstar has not reconciled its claim that it needs state-specific affiliates with the fact that it appears there are already two affiliates in Kansas, *i.e.*, Kanstar and Midwest Power Transmission Kansas, LLC. Thus, the Kansas Commission states that it has questions about the structure of, and purpose and basis for, the state-specific affiliate proposal and argues that the proposal should be explored through discovery.¹¹¹

3. Answer

82. Kanstar argues that the Kansas Commission's claim that replication of the Formula Rate would violate the FPA and conforming Commission regulations ignores Commission precedent. Kanstar argues that the Commission dismissed the same concerns in *Transource Kansas* and should dismiss them here as well.¹¹² Kanstar states that, similar to the MISO process, it is submitting only a *pro forma* formula rate template to be replicated and that each Midwest Power SPP Entity's revenue requirement will necessarily be different from one another. Kanstar also contends that the fact that its affiliate, Midwest Power Transmission Kansas, LLC, also operates in Kansas in no way

¹⁰⁹ Kansas Commission Protest at 4-5.

¹¹⁰ *Id.* at 6.

¹¹¹ *Id.*

¹¹² Kanstar Answer at 17-18 (quoting *Transource Kansas*, 151 FERC ¶ 61,010 at P 81).

undermines Kanstar's application or the application of the rulings in *Transource Wisconsin* or *Transource Kansas*.¹¹³

4. Commission Determination

83. We grant Kanstar's request for use of the proposed Formula Rate by other Midwest Power SPP Entities. Granting this request is consistent with the existing process in MISO, whereby transmission owners may adopt the *pro forma* templates found in Attachments O, CC, GG, and MM of the MISO tariff.

84. Our determination here is also consistent with our determination in *Transource Kansas*, where the Commission stated that there was no reason to open a new proceeding to re-litigate the justness and reasonableness of a formula rate that is identical to the one being accepted in *Transource Kansas*'s filing. Consequently, we disagree with the Kansas Commission's argument that replication of the Formula Rate would be in contravention with the FPA. As discussed above, if and when SPP awards a Competitive Upgrade to Kanstar through the Order No. 1000 competitive solicitation process, Kanstar and SPP will make a joint section 205 filing to incorporate the Formula Rate into the SPP Tariff. In that filing, Kanstar should label the formula rate template and protocols as the *pro forma* formula rate template and protocols for use by any Midwest Power SPP Entity, which will obviate the need to make additional section 205 filings. However, we clarify that the Midwest Power SPP Entities will each be subject to the ROE that is determined through the hearing and settlement judge procedures that have been ordered herein for Kanstar.

85. We will also allow the Midwest Power SPP Entities to use the regulatory asset incentive and rate treatment that we are granting for Kanstar, as well as the hypothetical capital structure requested by Kanstar. Since the rationale for granting these incentives to the Midwest Power SPP Entities would be identical to the rationale adopted in this proceeding, and since the Commission has fully considered the incentives issue in this proceeding, these issues need not be re-litigated through further section 205 or section 219 filings.

86. We also disagree with the Kansas Commission that further explanation of the structure, purpose, and basis of additional Midwest Power SPP Entities is required. The Commission's regulations do not limit the number of subsidiaries a parent company may create. Furthermore, the Kansas Commission has not offered any support which might demonstrate that the creation of multiple Midwest Power SPP Entities within the same state or in general might violate Commission regulations or that further discovery is

¹¹³ *Id.* at 18.

necessary. The Kansas Commission merely states that it “has questions” regarding Kanstar’s proposal.¹¹⁴

H. Timing of the Instant Filing

1. Protest

87. The Kansas Commission contends that Kanstar has not demonstrated why its requested effective date of September 21, 2015 is appropriate. The Kansas Commission states that Kanstar controls the timing of its filing, and that Kanstar knew more than a year before it submitted this filing that it intended to participate in SPP’s competitive solicitation process.¹¹⁵ The Kansas Commission contends that the Commission’s review of the justness and reasonableness of Kanstar’s proposed rate should not be curtailed because Kanstar failed to submit the filing with enough lead time. Furthermore, the Kansas Commission states that the bids for the Walkemeyer Project are not due until November 2, 2015, and Kanstar has not demonstrated why approval by September 21, 2015 is necessary to meet the November 2, 2015 deadline.¹¹⁶ As such, the Kansas Commission requests that the Commission not be compelled to approve the proposal on the timeline Kanstar requests.

2. Answer

88. Kanstar argues that, because the requested effective date is 61 days following the instant filing, the requested date is fully consistent with section 205(d) and not a self-imposed timing constraint. Kanstar asserts that the requested effective date is entirely consistent with *Transource Wisconsin* and *Transource Kansas*.¹¹⁷

3. Commission Determination

89. Kanstar proposes an effective date for its Formula Rate of September 21, 2015, which is 61 days after the date on which it made the filing. It adds that “no cost will flow through the Formula Rate until the requisite filing to include the Formula rate in the SPP

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 16.

¹¹⁶ *Id.* at 17.

¹¹⁷ Kanstar Answer at 22.

tariff is accepted.”¹¹⁸ Under section 205(d) and the Commission’s regulations at 18 C.F.R § 35.3, public utilities are required to file proposed rate schedules and tariffs not less than sixty, nor more than 180 days prior to the date on which service is to commence or the date when a rate revision is proposed to take effect, unless the Commission waives the prior notice requirement for good cause shown.

90. With respect to the arguments by Kansas Commission that Kanstar should have made its filing earlier, the timing of the filing did not affect our determinations. Kanstar’s filing is not seeking to begin providing service under its proposed Formula Rate beginning on September 21, 2015. Instead, it is requesting that its formula rate template and protocols be accepted for filing, effective on that date. At the current time, Kanstar is only seeking approval of the rate recovery mechanism it proposes and it is not seeking to implement the proposed rates or commence service on September 21, 2015. In fact, as referenced above, Kanstar has committed that no cost will flow through the Formula Rate until the requisite filing to include the Formula rate in the SPP tariff is accepted.

The Commission orders:

(A) Kanstar’s request for authorization to defer as a regulatory asset all of its prudently incurred pre-commercial and formation costs that are not capitalized, is hereby granted effective September 21, 2015, as discussed in the body of this order.

(B) Kanstar’s request for a hypothetical capital structure is hereby granted, as discussed in the body of this order.

(C) Kanstar’s request to recover 100 percent of prudently incurred costs if it is awarded the Walkemeyer Project and the project is then abandoned for any reasons outside of Kanstar’s control is hereby denied, as discussed in the body of this order.

(D) Kanstar’s proposed formula rate template and protocols are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days of the date of this order, as discussed in the body of this order. Kanstar’s proposed formula rate template and protocols will take effect once filed with the Commission to become part of SPP’s Tariff, consistent with the effective date established in that future proceeding.

¹¹⁸ Transmittal at 40-41.

(E) Kanstar's request that other state-specific affiliates be authorized to replicate its Formula Rate and utilize the same incentives awarded to Kanstar is hereby granted, as discussed in the body of this order.

(F) Kanstar's proposed ROE is hereby accepted for filing and suspended for a nominal period, to be effective September 21, 2015, subject to refund and subject to the hearing procedures ordered below. Kanstar's proposed ROE adder for RTO participation is approved, as discussed in the body of this order.

(G) 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 FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the Kanstar's proposed base ROE. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (H) and (I) below.

(H) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), 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.

(I) 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.

(J) 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 Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.