141 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Indiana Public Service Company — Docket No. EL12-102-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 19, 2012)

1. On September 12, 2012, Northern Indiana Public Service Company (NIPSCO) filed a petition for declaratory order under Rule 207 of the Commission's Rules of Practice and Procedure,[1] section 219 of the Federal Power Act (FPA)[2] and Order No. 679.[3] In the petition, NIPSCO requests approval of certain transmission rate incentives in connection with the Reynolds to Greentown Project described below.[4] Specifically, NIPSCO requests that the Commission authorize (1) inclusion of 100 percent of prudently-incurred Construction Work in Progress (CWIP) in rate base and (2) recovery of 100 percent of prudently-incurred costs of transmission facilities that are abandoned for reasons beyond the control of NIPSCO. In this order, we grant NIPSCO's petition, as discussed below.

I. Background

2. NIPSCO is an Indiana corporation and is a subsidiary of NiSource, Inc. (NiSource). NIPSCO serves approximately 786,000 natural gas customers and over 456,000 electric customers across Northern Indiana. NIPSCO owns and operates approximately 3,300 megawatts (MW) of electric generating capacity and approximately 2,800 miles of electric transmission lines. NIPSCO is a transmission owning member of

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[1] 18 C.F.R. § 385.207 (2012).

[2] 16 U.S.C. § 824(s) (2006).

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

[4] The Reynolds to Greentown Project is also referred to herein as "the Project."

Midwest Independent Transmission System Operator, Inc. (MISO), and it has transferred functional control of its transmission system to MISO.

3. NIPSCO states that MISO annually identifies through its open and transparent, stakeholder-driven MISO Transmission Expansion Planning (MTEP) process transmission projects required to address system needs and produces an annual MTEP report. MISO included the Reynolds to Greentown Project in its 2011 MTEP Report as part of a portfolio of 17 Multi-Value Projects (MVP) (MVP Portfolio).[5] NIPSCO states that the 2011 MTEP was approved by the MISO Board of Directors on December 8, 2011.

II. The Instant Petition

A. The Project

4. NIPSCO states that the Reynolds to Greentown Project will be a single-circuit 765 kV transmission line, approximately 66 miles in length, originating at the Reynolds substation and terminating at the Greentown substation in Indiana. The Project includes substation upgrades at the Reynolds substation, including a 765 kV/345 kV transformer.

5. NIPSCO plans to construct its portion of the Reynolds to Greentown Project.[6] According to NIPSCO, MISO has determined that the Project will reduce congestion and improve reliability, including mitigating seven bulk electric system North American Electric Reliability Corporation (NERC) Category B thermal constraints, twenty one bulk electric system NERC Category C constraints and four non-bulk electric system NERC Category C constraints. NIPSCO also states that the new and upgraded facilities will allow for the integration of substantial amounts of new renewable resources located within MISO, and in particular, within the vicinity of the Reynolds substation. For

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

[6] In an order on a complaint, the Commission found that the Reynolds to Greentown Project was designated as a joint project between NIPSCO and Duke Energy Corporation. *See Pioneer Transmission, LLC v. Northern Indiana Public Service Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057 (2012), *reh'g pending*. Under an offer of settlement that is pending in Docket No. EL12-24-000, NIPSCO will develop half of the project and Pioneer Transmission, LLC the other half. *See* Pioneer Transmission, LLC v. Northern Indiana Public Service Co. and Midwest Indep. Transmission Sys. Operator, Inc., Docket No. EL12-24, Offer of Settlement (Aug. 20, 2012). This order makes no finding as to the pending offer of settlement.

example, NIPSCO states that there are significant amounts of wind resources seeking to interconnect to the NIPSCO system in the vicinity of the Reynolds to Greentown Project.

6. NIPSCO expects that the Reynolds to Greentown Project will cost $330 million and that NIPSCO's portion of the Project will cost $165 million.[7] NIPSCO estimates that the Project will be in service by the end of 2018.

B. <u>Request for Incentives</u>

7. NIPSCO requests that the Commission authorize two incentive-based rate treatments pursuant to section 219 of the FPA and Order No. 679. First, NIPSCO seeks to include CWIP in rate base during the development and construction period for the Reynolds to Greentown Project. NIPSCO states that including 100 percent of CWIP in rate base will be an important tool in managing the capital costs of the Project. NIPSCO states that CWIP in rate base will also alleviate any rate shock associated with cost recovery for the new facilities.[8]

8. Second, NIPSCO requests approval to recover 100 percent of its prudently-incurred costs associated with the Project in the event that the Project must be abandoned for reasons outside of its control. NIPSCO states that abandoned plant recovery will help mitigate the development and financing risks associated with the Project by ensuring that NIPSCO and its financing partners are not at risk for stranded investment if the Project is abandoned for reasons beyond NIPSCO's control. It states that this will reduce the risk profile for this Project for NIPSCO's financing partners, thus lowering the cost of capital.[9]

9. Order No. 679 requires an applicant seeking transmission incentives to provide a technology statement describing advanced technology considered for use in the subject projects. In light of that requirement, NIPSCO has provided a technology statement describing the advanced technologies that it plans to use in the Project.[10] NIPSCO does not seek an advanced technology incentive, but it states that it will utilize several advanced technologies, including: (1) a Phasor Measurement Unit at the Reynolds substation to enhance monitoring, analysis and control; (2) microprocessor-based system protection equipment that will include digital recorders for analysis of line faults, transient events, sequence of events and dynamic disturbances; (3) advanced conductor

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[7] Petition at 19.

[8] *Id*. at 24; Ex. 2 (Shikany Test.) at 6.

[9] Petition at 24-25; Ex. 2 (Shikany Test.) at 13.

[10] Petition at 41-42.

design to limit noise, reduce radio frequency interference, and reduce line losses; (4) fiber optic static wire technology; and (5) upgrades to cyber security at the Reynolds substation.

III. Notice of Filing and Responsive Pleadings

10. Notice of NIPSCO's petition for declaratory order was published in the *Federal Register*, 77 Fed. Reg. 58,828 (2012), with motions to intervene and protests due on or before October 12, 2012. Timely motions to intervene were filed by Indiana Municipal Power Agency and American Municipal Power, Inc. Indiana Utility Regulatory Commission (Indiana Commission) filed a notice of intervention and comments. On October 23, 2012, NIPSCO filed an answer to Indiana Commission's comments.

IV. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept NIPSCO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Section 219 Requirement

13. In the Energy Policy Act of 2005,[11] 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 NIPSCO.

14. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219, i.e., the applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission

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

congestion."[12] 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.[13] 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.[14]

15. As stated above, Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or one that has received construction approval from the appropriate state authority, if the process considers whether a project ensures reliability or reduces the cost of delivered power by reducing congestion.[15] Further, in Order No. 679, the Commission indicated that it would consider a request for incentive treatment for a project, which is still undergoing consideration in a regional planning process, but may make any requested rate treatment contingent upon the project being approved under the regional planning process.[16]

a. <u>NIPSCO's Proposal</u>

16. NIPSCO states that the Project is entitled to the rebuttable presumption that a project ensures reliability or reduces the cost of delivered power by reducing congestion because the Project was approved by the MISO Board of Directors as part of the MTEP. NIPSCO states that the MISO Board of Directors found that the Project satisfies Criterion 1 of the MVP Criteria.[17] NIPSCO also states that the Project is a regional project that

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

[13] *Id.*

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

[15] 18 C.F.R. § 35.35(i) (2012).

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

[17] Petition at 15 (noting that each project in the MVP Portfolio that includes the Reynolds to Greentown Project was justified under MVP Criterion 1). MVP Criterion 1 states the following:

(continued…)

will provide substantial economic and reliability benefits for the MISO region. According to NIPSCO, MISO has determined that the Project will reduce congestion and improve reliability. Specifically, argues NIPSCO, MISO found, among other things, that the Project will create an additional wind outlet path across Indiana, pushing power closer to the east coast, bringing less expensive wind generation into areas where the generation of power can be considerably more expensive. NIPSCO argues that MISO also found that the Project would mitigate seven bulk electric system NERC Category B thermal constraints, twenty one bulk electric system NERC Category C constraints and four non-bulk electric system NERC Category C constraints, including mitigating constraints on reliability on the 345 kV system to the north going toward Chicago and Michigan and down into southwestern Indiana.

b. <u>Commission Determination</u>

17. As stated above, Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or has received construction approval from the appropriate state authority, if the process considers whether a project ensures reliability or reduces the cost of delivered power by reducing congestion.[18] In this case, the Project has received approval as an MVP through the MTEP process. The Commission has previously found that projects approved as MVPs under Criterion 1 are entitled to the rebuttable presumption established under Order No. 679.[19] Therefore, we find that the

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> A Multi Value Project must be developed through the transmission expansion planning process to enable the transmission system to deliver energy reliably and economically in support of documented energy policy mandates or laws enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.

[18] 18 C.F.R. § 35.35(i) (2012).

[19] *See Otter Tail Power Co*., 137 FERC ¶ 61,255, at P 31 (2011) (*Otter Tail*); *MidAmerican Energy Co*., 137 FERC ¶ 61,250, at P 29 (2011) (*MidAmerican*); *Ameren Services Company*, 135 FERC ¶ 61,142, at P 31 (2011).

Reynolds to Greentown Project is entitled to the rebuttable presumption and meets the requirements of section 219 of the FPA.[20]

2. Order No. 679 Nexus Requirement

18. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate a nexus between the incentives being 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 incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[21]

19. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be probative.[22] In *Baltimore Gas & Elec. Co.*, the Commission provided guidance on the factors it will consider when determining whether a project is routine. The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (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, long lead times, regulatory and political risks, specific financing challenges, or other impediments).[23] The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.[24]

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[20] Our determinations in this order do not prejudge the outcome of the pending settlement in Docket No. EL12-24-000.

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

[22] *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 48 (2007).

[23] *Id.* P 52.

[24] *Id*. P 54. In a policy statement issued on November 15, 2012, the Commission reframed the application of its nexus test. However, the Commission stated that it will apply the new policy statement to incentive applications received after the date of issuance of the policy statement. *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129, slip op. at 2 (2012). Thus, the new policy statement does not apply to the instant petition.

a. NIPSCO's Proposal

20. NIPSCO asserts that the incentives requested in connection with the Reynolds to Greentown Project satisfy the nexus test established in Order No. 679 because the Project is non-routine and the incentives are tailored to address the risks and challenges of the Project. NIPSCO maintains that given its scope and effects, and the challenges and risks NIPSCO faces in developing it, the Project is not routine. With respect to scope, NIPSCO states that the Project's $165 million estimated cost will increase NIPSCO's net transmission plant by approximately 38 percent. NIPSCO states that, combined with NIPSCO's Reynolds to Burr to Hiple Project, for which it has previously been granted incentives, NIPSCO's net electric transmission plant will approximately double.[25]

21. With respect to the effects of the Project, NIPSCO states that the Reynolds to Greentown Project will reduce congestion and improve reliability, including mitigating seven bulk electric system NERC Category B thermal constraints, twenty one bulk electric system NERC Category C constraints and four non-bulk electric system NERC Category C constraints.[26]

22. NIPSCO also identifies risks and challenges associated with the Project. It states that the Project will have a long lead time and is not expected to be in service until 2018, and will pose significant challenges to NIPSCO's capital demands.[27] NIPSCO states that any new major transmission project along a new right-of-way, such as the Project, entails basic siting challenges. Additionally, the Project will be NIPSCO's first experience in siting a 765 kV line. NIPSCO further states that construction risks include the integration of long lead time materials into project plans and sequencing and that it is reasonable to expect a tight labor market because of competing projects. Finally, the Project will be jointly developed and it will interconnect with another MISO MVP at the Reynolds substation.[28]

b. Commission Determination

23. Based on our review of NIPSCO's filing, we find that NIPSCO has demonstrated that the Reynolds to Greentown Project meets the nexus test, as discussed below.

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[25] *Northern Indiana Public Service Company*, 140 FERC ¶ 61,035 (2012).

[26] Petition at 29; Ex. 1 (Dehring Test.) at 14.

[27] Petition at 29.

[28] Ex. 1 (Dehring Test.) at 15-16.

24. NIPSCO has demonstrated that the scope and effects of the Reynolds to Greentown Project are significant, which contributes to our determination that the Project is non-routine. NIPSCO's $165 million estimated cost for its share of the Project will increase its current net transmission plant (as of December 30, 2011) by approximately 38 percent. Moreover, the Project has a long lead time with a projected in-service date of 2018 and will pose significant challenges to NIPSCO's capital demands.

25. Regarding the effects of the Reynolds to Greentown Project, it is expected to mitigate NERC contingencies and improve reliability, as well as facilitate the integration of wind resources into NIPSCO's system in the vicinity of the Reynolds substation, near an existing area of wind resources with opportunities for additional wind development. The effect of the Project is consistent with the Commission's recognition in Order No. 679 of the importance of encouraging "investors to take the risks associated with constructing large new transmission projects that can integrate new generation and otherwise reduce congestion and increase reliability."[29]

26. As discussed below, we find that the requested incentives are tailored to the demonstrable risks and challenges associated with the Project.

3. CWIP in Rate Base

a. NIPSCO's Proposal

27. NIPSCO requests inclusion of 100 percent of CWIP in rate base for the Reynolds to Greentown Project. NIPSCO argues that including CWIP in rate base will provide financial stability for NIPSCO and insulate customers from increases in rates. NIPSCO notes that the Commission previously stated that "long lead times required to plan and construct new transmission can negatively affect cash flow and the ability of the utility to attract capital at reasonable prices."[30] To this end, NIPSCO contends that long lead times will add pressure on cash flows by greatly increasing outbound capital with no corresponding return. NIPSCO also argues that delayed cost recovery caused by a long lead time will affect its cost of capital, as determined by NIPSCO's financing partners. In addition, NIPSCO asserts that the Project's large size will require borrowing significant amounts of capital associated with high interest rates. According to NIPSCO, without cash flow provided by including CWIP in rate base, there will be an increased possibility of NIPSCO's financial metrics used by credit agencies being negatively

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[29] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 25. *See also Northern Indiana Public Service Co.*, 140 FERC ¶ 61,035 at P 28.

[30] Petition at 33 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 112).

impacted.[31] NIPSCO maintains that including CWIP in rate base will alleviate these financial pressures by providing predictable and stable levels of cash flow during the construction period.[32]

28. In addition to financial stability, NIPSCO also contends that including CWIP in rate base provides benefits for consumers. According to NIPSCO, including CWIP in rate base eliminates the compounding of carrying costs, which reduces NIPSCO's transmission rate base, and ultimately results in a lower revenue requirement paid by customers.[33] NIPSCO also asserts that including CWIP in rate base prevents sharp increases in rates, "rate shock," that would occur if NIPSCO used the alternative to CWIP, the capitalization of an allowance for funds used during construction (AFUDC).[34]

29. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure customers will not be charged for both capitalized AFUDC and corresponding amounts through inclusion of CWIP in rate base.[35] To satisfy this requirement, NIPSCO states that it will not accrue AFUDC in FERC Account 107, Construction Work in Progress, for the Reynolds to Greentown Project. NIPSCO notes that it uses the PowerPlant system to maintain its accounting records, and the system has the capability to identify specific work orders or projects that should not be included in the calculation and capitalization of AFUDC.[36] NIPSCO states that the work orders related to the Reynolds to Greentown Project will be identified in the PowerPlant system, and no AFUDC will be calculated on their balances. Furthermore, because the requested CWIP incentive would allow NIPSCO to recover costs earlier than under traditional ratemaking principles, NIPSCO requests to use footnote disclosures to

[31] *Id*. at 34-35.

[32] *Id.* at 35. NIPSCO currently holds a corporate credit rating of BBB-from S&P, a long-term issuer rating of Baa2 from Moody's, and a senior unsecured debt rating of BBB from Fitch.

[33] Ex. 2 (Shikany Test.) at 7.

[34] *Id*. at 9.

[35] 18 C.F.R. § 35.25 (2012).

[36] Ex. 2 (Shikany Test.) at 9-10.

show the impact of the incentive similar to the method approved in *Trans-Allegheny Interstate Line Company*.[37]

30. Additionally, NIPSCO has attached a Statement BM in support of its CWIP in rate base request as required under section 35.13(h)(38) of the Commission's regulations.[38] NIPSCO requests waiver of the section 35.25(c)(4) requirements related to the use of forward-looking allocation ratios and the section 35.25(g) requirements related to potential anti-competitive impacts of including CWIP in rate base.[39] NIPSCO contends that "double-whammy" and "price-squeeze" concerns are not present in the case of including CWIP for transmission upgrades in rate base, as these issues primarily relate to generation-related CWIP. Furthermore, NIPSCO asserts that because the Reynolds to Greentown Project falls entirely under the Commission's jurisdiction and this case does not involve a rate increase from existing rates, the requirements of section 35.25(g) concerning the potential for CWIP-induced price squeeze are not applicable.[40]

31. Finally, NIPSCO proposes to annually file the FERC-730 form, Report of Transmission Investment Activity, with the Commission in order to satisfy the annual filing requirement for applicants granted CWIP in rate base. NIPSCO states that the annual FERC-730 form requires it to provide information regarding transmission investment costs and project construction status, including estimated completion dates. Further, as part of the annual customer notification and information procedures in its formula rate protocols, NIPSCO will develop and post Open Access Same-Time Information System work papers that show the cost information and in-service date assumptions regarding the Reynolds to Greentown Project and CWIP recovery amounts to be included in its estimates for each year.[41]

b. Commission Determination

32. We will grant NIPSCO's request to include 100 percent of CWIP in rate base. In Order No. 679, the Commission established a policy that allows utilities to include, where

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[37] *Id.* at 11 (citing *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007)).

[38] 18 C.F.R. § 35.13(h)(38) (2012).

[39] Petition at 45-46; Statement BM at 3-4.

[40] *Id.* at 4.

[41] Petition at 46.

appropriate, 100 percent of prudently incurred, transmission-related CWIP in rate base.[42] The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[43]

33. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.[44] We find that NIPSCO has shown a nexus between the proposed CWIP incentive and its investment in the Reynolds to Greentown Project. The inclusion of CWIP in rate base will provide NIPSCO with a steady cash flow during the construction period that will protect NIPSCO's financial metrics, and as a result, relieve downward pressure on its credit rating. Furthermore, as the Commission has previously determined in prior orders, the CWIP incentive will help insulate NIPSCO's customers from "rate shock" that might otherwise accompany use of AFUDC.[45]

34. Further, we find that the proposed accounting procedures that NIPSCO filed in Exhibit No. 2 sufficiently demonstrate that it has appropriate accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent CWIP has been allowed in rate base. However, NIPSCO's accounting procedures and internal controls to prevent recovery of both capitalized AFUDC and a return on corresponding amounts of CWIP in rate base may be subject to scrutiny through Commission audit or rate review. NIPSCO also proposes to satisfy the annual filing requirement for applicants granted the CWIP incentive through its annual filing of its annual FERC-730 report.[46] The Commission has previously found that filing a FERC-730 form satisfies the Commission's requirement for an annual filing for recovery of a return on CWIP through

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

[43] *Id.* P 115.

[44] *Id.* P 117.

[45] *See, e.g.*, *PJM Interconnection LLC*, 135 FERC ¶ 61,229, at P 78 (2011); *Oklahoma Gas and Electric Company*, 133 FERC ¶ 61,274, at P 48 (2010); *PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, at PP 40-43 (2008); *American Elec. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

[46] Petition at 46-47.

a rate formula.[47] Accordingly, we find that the Reynolds to Greentown Project is eligible to receive the incentive for inclusion of 100 percent of prudently incurred CWIP in rate base. We approve NIPSCO's proposed accounting procedures, use of footnote disclosures to provide comparability of financial information, and proposal to annually file the FERC-730 form and grant its waiver requests for section 35.25 of the Commission's regulations.

4. Abandoned Plant Recovery

a. NIPSCO's Proposal

35. NIPSCO requests abandoned plant recovery in the event that the Reynolds to Greentown Project is abandoned for reasons outside of its control. NIPSCO states that granting this incentive is appropriate because it mitigates risks by ensuring that it and its financing partners are not at risk for stranded investment if the Project is abandoned for factors outside of NIPSCO's control. NIPSCO also states that granting abandoned plant recovery would make it easier and more cost effective for NIPSCO to attract the necessary financing for the Project, and thus should directly benefit ratepayers by avoiding higher than necessary capital costs. NIPSCO states that the risk associated with the Reynolds to Greentown Project includes unprecedented size and scope for NIPSCO in terms of complexities, long lead time, and capital cost.[48] NIPSCO states that consistent with the Commission's regulations, it would need to make a section 205 filing before receiving abandoned plant recovery. For this incentive, NIPSCO states that it is only seeking approval to revise its formula rate to add placeholders in Attachment O that would allow abandoned plant recovery.

b. Commission Determination

36. We grant the requested incentive for NIPSCO to have the opportunity to recover its prudently incurred costs for the Reynolds to Greentown Project if the project is abandoned for reasons beyond NIPSCO's control. In Order No. 679, the Commission found that the abandonment incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.[49] We find that NIPSCO has demonstrated, consistent with Order No. 679, a nexus between the recovery of 100

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[47] *MidAmerican*, 137 FERC ¶ 61,250 at P 56; *see also The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007); *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284, at P 68 (2007) (*Xcel*).

[48] Petition at 37-40.

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

percent of prudently incurred abandonment costs and its planned investment in the Reynolds to Greentown Project.

37. We find that this incentive will be an effective means to encourage the Project's completion. Approval of the abandonment incentive will both attract financing and protect NIPSCO from further losses if the Project is cancelled for reasons outside its control. Granting this abandoned plant incentive will help ameliorate this risk by providing NIPSCO with some degree of certainty as it moves forward.

38. We note, however, that if the Reynolds to Greentown Project is cancelled before it is completed, NIPSCO is required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs, as NIPSCO commits to doing in the filing.[50] NIPSCO must also propose in its section 205 filing a just and reasonable rate to recover these costs. Order No. 679 specifically requires that any utility granted this incentive that then seeks to recover abandoned plant costs must submit such a section 205 filing.[51]

5. Total Package of Incentives

a. NIPSCO's Proposal

39. NIPSCO states that the narrow package of incentives it requests respond directly to the risks and challenges facing NIPSCO, including the need to assure a cash flow sufficient to permit its ambitious construction program to move forward, and the need to minimize the risk that the Reynolds to Greentown Project will not go forward for reasons beyond NIPSCO's control. Thus, NIPSCO concludes that the package of incentives sought for the Reynolds to Greentown Project has been carefully tailored to address different risks facing NIPSCO as it builds the Project.

b. Comments

40. Indiana Commission filed comments stating that it does not oppose granting the CWIP and abandoned plant incentives, as they reduce risk. However, it expresses concern that the reduction in risk is not reflected in a reduction in NIPSCO's rate of return on equity (ROE). Indiana Commission notes that the ROE for MISO transmission projects is a minimum of 12.38 percent, which it argues is significantly higher than ROEs

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[50] Petition at 25.

[51] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

granted by the Commission that included significant ROE adders as incentives. It contends that the 12.38 percent ROE appears to be especially excessive given current financing rates.

41. Indiana Commission cites two Commission orders as holding that a high ROE is not appropriate if the utility is also receiving risk-reducing transmission rate incentives, such as CWIP and Abandoned Plant.[52] Indiana Commission states that it "supports the Commission's position that a lower ROE is appropriate, particularly when risk-reducing transmission rate incentives have been granted."[53] Indiana Commission argues that, even though NIPSCO has not proposed the ROE for the Reynolds to Greentown Project as part of this proceeding, the Commission should examine whether the granting of risk-reducing transmission rate incentives should be offset by a corresponding reduction in an ROE.

42. In addition, Indiana Commission, while expressing support for the construction of new transmission through the open and transparent process of RTOs such as MISO, notes that in 2011, MISO's Board of Directors approved as MVPs other transmission projects with a total estimated cost of over $5 billion. Indiana Commission encourages the Commission to closely examine such issues as elevated ROEs and the impact that high ROEs may have on the costs and rates of new transmission facilities and whether those costs and rates continue to be just and reasonable. Without such an examination, it contends that "the seemingly excessive ROE on the recently approved MVPs" could have a chilling effect on the siting and other approvals of necessary transmission facilities, as consumers object to the high ROE.[54]

43. Indiana Commission also requests that any revision to MISO's formula rate protocols that may result from the Commission's investigation in Docket No. EL12-35-

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[52] Indiana Commission Comments at 3 (citing *PPL Elec. Utils. Corp.*, 141 FERC ¶ 61,021, at P 54 (2012) (the Commission rejected the request for a 100 basis point incentive ROE adder, based on its granting of the CWIP incentive and its finding that the claimed risks and challenges of the project did not warrant an ROE adder); *PJM Interconnection, LLC*, 137 FERC ¶ 61,253, at P 61 (2011) (the Commission reduced Public Service Electric & Gas Company's requested incentive ROE adder from 100 basis points to 25 basis points in light of its granting of the CWIP and Abandoned Plant incentives and the weight of the applicant's support regarding risks and challenges of the project)).

[53] *Id*.

[54] *Id*. at 3-4.

000[55] be made applicable to the MVP projects approved in 2011, including the Reynolds to Greentown Project and substation upgrades that are the subject of NIPSCO's petition.

c. NIPSCO Answer

44. In its answer, NIPSCO responds that the ROE is not at issue here, and that the Indiana Commission has raised an issue that is outside the scope of this proceeding. It also contends that there is no record basis to adjust NIPSCO's existing ROE. Further, it argues that in order to change the ROE, a separate section 205 tariff proceeding or section 206 complaint would have to be instituted to change the formula rate template itself.

d. Commission Determination

45. We find that NIPSCO has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by NIPSCO in investing in the Reynolds to Greentown Project.[56] As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.[57]

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

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[55] *Id.* at 4 (citing *Midwest Indep. Transmission Sys, Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (order initiating investigation of formula rate protocols and establishing paper hearing)).

[56] *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at PP 21, 27.

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

47. Here, we find that the total package of incentives requested by NIPSCO is tailored to the risks that it faces in investing in the Reynolds to Greentown Project. As discussed above, NIPSCO has demonstrated that each of the requested incentives will reduce the risks that NIPSCO faces and will remove potential obstacles to the construction of the Project.

48. We deny Indiana Commission's request to reduce the ROE because it is beyond the scope of this proceeding. As NIPSCO notes, its ROE is not at issue in this proceeding, and a separate FPA section 205 proceeding or section 206 complaint would have to be instituted to change NIPSCO's formula rate template. Finally, we note that MISO's formula rate protocols are outside the scope of this proceeding since NIPSCO did not file proposed tariff sheets.[58] But, we note that MISO's transmission owners are subject to the outcome of the pending investigation in Docket No. EL12-35-000 noted above.

The Commission orders:

NIPSCO's petition is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[58] *See, e.g., Otter Tail*, 137 FERC ¶ 61,255 at P 23.