

141 FERC ¶ 61,274
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.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER13-307-000

ORDER ON TRANSMISSION RATE INCENTIVES AND FORMULA RATE
PROPOSAL

(Issued December 31, 2012)

1. On November 2, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) and Montana-Dakota Utilities Co. (Montana-Dakota) filed a request for authorization for Montana-Dakota to recover certain transmission incentive rate treatments pursuant to sections 205 and 219 of the Federal Power Act (FPA)¹ and Order No. 679² for Montana-Dakota's investment in Ellendale – Big Stone Project.³ Montana-Dakota also requests authorization to amend Attachments O and GG of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to transition to a forward-looking formula rate and to implement the requested transmission rate incentives. As discussed below, we grant Montana-Dakota's request for transmission rate incentives and accept Montana-Dakota's revised Attachments O and GG.

¹ 16 U.S.C. §§ 824d, 824s (2006).

² *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).

³ MISO joins in the filing in its role as Tariff administrator, but takes no position on the substance of the filing.

I. Background

A. Description of Montana-Dakota

2. Montana-Dakota is a division of MDU Resources Group, Inc. (MDU Resources), a Delaware corporation headquartered in Bismarck, North Dakota. Montana-Dakota is a public utility engaged in the production, transmission, distribution, and retail sale of electricity in the States of Montana, North Dakota, South Dakota, and Wyoming. Montana-Dakota provides retail electric service to approximately 120,000 customers located in 176 communities within this four-state region. Montana-Dakota operates an integrated electric system in Montana, North Dakota, and South Dakota; its operations in Wyoming constitute a separate system. Montana-Dakota owns 555 MW of generating capacity located within the integrated system. Montana-Dakota is a transmission-owning member of MISO, and has transferred all of its transmission rated at 100 kV and greater located in Montana, North Dakota, and South Dakota to the functional control of MISO. Montana-Dakota explains that it does not evaluate requests for interconnection service or transmission service in the States of Montana, North Dakota, and South Dakota; instead, all of those services are performed by MISO in those states as transmission provider for the Montana-Dakota integrated system.

B. Description of the Project and Rate Proposals

3. Montana-Dakota states that the Ellendale – Big Stone Project is an approximately 145 to 175 mile long, 345 kV transmission line between a new Ellendale Substation near Ellendale, North Dakota and a new Big Stone South Substation near Big Stone, South Dakota. The Ellendale-Big Stone Project has been approved as a Multi-Value Project (MVP) in MISO's 2011 MISO Transmission Expansion Planning Report (2011 MTEP). Montana-Dakota states that the Ellendale – Big Stone Project will be jointly constructed and owned, with an estimated total cost of the project anticipated to be between \$300 and \$340 million, and projected in-service date of 2019. Montana-Dakota will own and invest in a 50 percent share of the project; Otter Tail Power Company (Otter Tail) will own the other 50 percent of the project. Montana-Dakota states that it expects to invest approximately \$150 to \$170 million in the Ellendale – Big Stone Project from 2012 through 2019.⁴

4. Montana-Dakota requests approval for two transmission rate incentives pursuant to sections 205 and 219 of the FPA and Order No. 679. Specifically, Montana-Dakota requests authorization for inclusion of 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base and recovery of 100 percent of prudently incurred

⁴ Montana-Dakota Transmittal Letter at 3, 9-10.

costs of transmission facilities that are abandoned for reasons beyond the control of Montana-Dakota.

5. In addition, Montana-Dakota proposes to transition to a forward-looking transmission formula rate under Attachments O and GG of the MISO Tariff to recover its transmission revenue requirements on a current (rather than historical) basis using projected (rather than historical) data, with an annual true-up mechanism. Montana-Dakota also proposes revisions to the MISO Tariff to adopt protocols governing its implementation of its forward-looking formula rate. Montana-Dakota requests an effective date of January 1, 2013.

6. Although Montana-Dakota is not seeking a stand-alone incentive return on equity adder for advanced technologies, it states that the Ellendale – Big Stone Project will include numerous technologies that qualify as advanced transmission technology as set forth in Order No. 679 and the Energy Policy Act of 2005,⁵ such as microprocessor-based protective relays, digital fault records, tubular steel structures, fiber-optic technologies, and advanced conductor designs.⁶

II. Notice of Filing and Responsive Pleadings

7. Notice of the November 2, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 67,641, with interventions and protests due on or before November 23, 2012. Consumers Energy Company (Consumers Energy) filed a timely motion to intervene.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motion to intervene filed by Consumers Energy serves to make it a party to this proceeding.

⁵ Pub. L. No. 109-58 § 1241, 119 Stat. 594 (2005) (EPAAct 2005).

⁶ Montana-Dakota Transmittal Letter at 19.

⁷ 18 C.F.R. § 385.214 (2012).

B. Substantive Matters**1. Section 219 Requirement**

9. In EPCRA 2005, 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 Montana-Dakota.

10. 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 congestion.”⁸ 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.⁹ 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.¹⁰

11. 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.¹¹ 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

⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

⁹ *Id.*

¹⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

¹¹ 18 C.F.R. § 35.35(i) (2012).

process, but may make any requested rate treatment contingent upon the project being approved under the regional planning process.¹²

12. Montana-Dakota contends that it meets the rebuttable presumption under Order No. 679. Montana-Dakota states that the Ellendale – Big Stone Project has been thoroughly reviewed by MISO and vetted through MISO’s regional transmission planning process and that the MISO Board approved the Project under Criterion 1 of the MVP Criteria¹³ as part the MISO MVP Portfolio in December 2011. Montana-Dakota maintains that approval of the Ellendale – Big Stone Project through the MTEP process satisfies the requirements for the rebuttable presumption established in Order No. 679. Montana-Dakota further states that the Commission has previously determined that the Ellendale – Big Stone Project qualifies for the two incentive treatments for Otter Tail, which is an investor in part of the Ellendale – Big Stone Project, and determined that the Ellendale – Big Stone Project qualifies for the rebuttable presumption. Therefore, Montana-Dakota maintains that approval of the Ellendale – Big Stone Project through the MTEP process satisfies the requirements for the rebuttable presumption established in Order No. 679.¹⁴

13. The Commission has previously found that projects approved under Criterion 1 are entitled to the rebuttable presumption established in Order No. 679.¹⁵ In this case, the

¹² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

¹³ Under the MISO Tariff, for a project to be designated as an MVP, among other things, it must satisfy one of three functional criteria. To satisfy Criterion 1, “[an MVP] must be developed through the [MTEP] process for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.” MISO, FERC Electric Tariff, [ATTACHMENT FF, Transmission Expansion Planning Protocol, 5.0.0](#).

¹⁴ Montana-Dakota Transmittal Letter at 12-13 (citing *Otter Tail Power Co.*, 137 FERC ¶ 61,255, at P 31 (2011)).

¹⁵ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121, at P 16 (2012) (finding that two Ameren projects qualified for the rebuttable presumption based on the MISO Board’s approval of each project under Criterion 1 as part of Appendix A of the 2011 MTEP); *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 31 (2011)

(continued...)

Ellendale – Big Stone Project has received approval through the MTEP process. The MISO Board approved the Ellendale – Big Stone Project under Criterion 1 on December 8, 2011, and placed it into Appendix A of the 2011 MTEP.¹⁶ Therefore, we find that the Ellendale – Big Stone Project is entitled to the rebuttable presumption to meet the section 219 requirement.

2. Order No. 679 Nexus Requirement

14. 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.”¹⁷

15. 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.¹⁸ 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).¹⁹ The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an

(same holding regarding two other Ameren projects).

¹⁶ See *MISO Transmission Expansion Plan 2011*, available at <https://www.midwestiso.org/Library/Repository/Study/MTEP/MTEP11/MTEP11%20Report.pdf>.

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

¹⁸ *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 48 (2007).

¹⁹ *Id.* P 52.

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.²⁰

a. Montana-Dakota's Proposal

16. Montana-Dakota argues that the Ellendale – Big Stone Project is not routine because its estimated cost for the project is between \$150 to \$170 million, representing a roughly 180 to 210 percent increase over Montana-Dakota's current transmission plant of \$81.3 million. Montana-Dakota states that it is currently projected to spend an average of approximately \$35 million in each of the four peak years of investment in the Ellendale – Big Stone Project (i.e., 2015 through 2018), or about seven times greater than Montana-Dakota's average annual capital expenditures for routine transmission expansion projects of \$5 million over the previous ten years.²¹ Montana-Dakota describes how the project's long lead-time and size could cause downward pressure on certain financial metrics and undercut its credit ratings.²²

17. Montana-Dakota also argues that because the Ellendale – Big Stone Project will be built partly by Otter Tail, Montana-Dakota will not have control in the siting, permitting, and construction of the portions of the project to be built by Otter Tail, thus increasing Montana-Dakota's risk.²³ Montana-Dakota asserts that the Commission has previously recognized the non-routine nature of projects that involve multiple entities.²⁴ Montana-Dakota adds that the project is not routine because it may be routed through tribal land and/or state or national wildlife areas, and therefore may be subject to a Federal Environmental Impact Study. Additionally, Montana-Dakota states that the project requires the approval of two states and multiple local jurisdictions.²⁵ According to

²⁰ *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 this proposal.

²¹ Montana-Dakota Transmittal Letter at 15; Ex. No. MDU-5 (Ford Test.) at 5.

²² Montana-Dakota Transmittal Letter at 18.

²³ *Id.*

²⁴ *Id.* (citing *Okla. Gas & Elec. Co.*, 135 FERC ¶ 61,038, at P 43 (2011)).

²⁵ *Id.* at 17-18; Ford Test. at 5.

Montana-Dakota, the Commission has expressly recognized that projects located in different states present special risks and challenges.²⁶ Montana-Dakota also argues that changes in public policy goals, climate legislation, economic projections as well as new generation facilities not being completed could cause the Ellendale – Big Stone Project to be abandoned. Furthermore, Montana-Dakota asserts that the Ellendale – Big Stone Project’s interdependency with other 2011 MTEP MVP projects to the east increases the risk of modification or abandonment of the project.²⁷ Montana-Dakota also argues that the Ellendale – Big Stone Project is not routine because of its use of advanced technologies.²⁸

18. Montana-Dakota further contends that the Ellendale – Big Stone Project is not routine, because, as part of the 2011 MTEP and as an MVP, the project will reduce congestion, increase reliability, and provide significant integration of renewable energy, primarily wind generation, from the Dakotas to MISO load centers to the east.²⁹ Montana-Dakota points out that the Commission has held that regional projects are “by definition” not routine.³⁰ Finally, Montana-Dakota notes that the Commission found that the Ellendale – Big Stone Project was not routine when it approved incentives for Otter Tail.³¹

²⁶ Montana-Dakota Transmittal Letter at 18 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94).

²⁷ Ford Test. at 6.

²⁸ Montana-Dakota Transmittal Letter at 18-19. According to Montana-Dakota, the Ellendale-Big Stone Project will utilize technologies such as the following: microprocessor-based protective relays; synchrophasor technology; digital fault recorders; Programmable Logic Controller based control and annunciation for substations; tubular steel structures; fiber-optic based communication; and advanced conductor designs. As noted above, the Commission's November 15, 2012 policy statement on transmission incentives, including statements therein with respect to proposed use of new or advanced technologies, does not apply to Montana-Dakota's proposal.

²⁹ *Id.* at 16-17; Murdock Test. at 7-8.

³⁰ Montana-Dakota Transmittal Letter at 16 (citing *Balt. Gas & Elec.*, 120 FERC ¶ 61,084 at P 58).

³¹ *Id.* at 14 (citing *Otter Tail*, 137 FERC ¶ 61,255 at PP 39-40).

b. Commission Determination

19. We find that Montana-Dakota's request for incentives satisfies the nexus test for the Ellendale – Big Stone Project. As Montana-Dakota explains, the Ellendale – Big Stone Project represents a large increase in transmission plant, which could potentially strain its cash flow and negatively affect financial metrics used in credit rating calculations. Specifically, the Ellendale – Big Stone Project represents a 180 to 210 percent increase over Montana-Dakota's current transmission plant. Further, as the Commission found in a proceeding granting Otter Tail's request for incentives for this project,³² we find that the Ellendale – Big Stone Project presents potential risks and challenges due to the need for multiple state siting and permitting processes.

20. For purposes of the nexus test, we also take note of the effects of the Ellendale – Big Stone Project. The Ellendale – Big Stone Project is expected to mitigate NERC contingencies, improve reliability, and integrate new renewable generation. A primary reason that Montana-Dakota is constructing the Ellendale – Big Stone Project is to increase transmission capacity in order to meet state renewable energy standards and tap the strong potential for wind generation in North and South Dakota. This 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."³³

3. Construction Work In Progress

a. Montana-Dakota's Proposal

21. Montana-Dakota seeks inclusion of 100 percent of CWIP in rate base for the Ellendale – Big Stone Project. Montana-Dakota states that the Ellendale – Big Stone Project would require a transmission expenditure of approximately \$150 million over eight years. Montana-Dakota states that this expenditure would more than double its 2011 net transmission plant in service. Montana-Dakota states that allowing 100 percent of CWIP in rate base for the Ellendale – Big Stone Project will alleviate some of the disincentives to completing the project.³⁴

³² See, e.g., *Otter Tail*, 137 FERC ¶ 61,255 at P 39.

³³ See also *Otter Tail*, 137 FERC ¶ 61,255 at P 40.

³⁴ Montana-Dakota Transmittal Letter at 20.

22. Montana-Dakota also states that 100 percent of CWIP in rate base will maintain Montana-Dakota's credit ratings and solid financial and operating statistics, which includes stable cash flow over the construction and life of the Ellendale – Big Stone Project. Montana-Dakota argues that over the first nine years of the project, it would be able to recover \$52.3 million more using CWIP than it would recover through Allowance for Funds Used During Construction (AFUDC).³⁵ Montana-Dakota states that 100 percent of CWIP in rate base for the Ellendale – Big Stone Project will also benefit its customers by mitigating sudden increases to transmission rates that would occur when the project is placed into service, otherwise known as “rate shock,” as well as by stabilizing or reducing Montana-Dakota's borrowing costs. Montana-Dakota thus states that the Commission should allow Montana-Dakota to include 100 percent of CWIP in rate base in its formula rates for the Ellendale – Big Stone Project.³⁶

23. Montana-Dakota explains that it will identify individually the Ellendale – Big Stone Project as a transmission construction project for which CWIP is eligible to be included in transmission rate base and will not accrue any AFUDC on the project. Montana-Dakota explains that each transmission construction project is designated with a unique project number within its construction accounting system, and the Ellendale – Big Stone Project will be flagged in the accounting system as ineligible for AFUDC accrual. Additionally, Montana-Dakota explains its internal controls and procedures to ensure the proper tracking and accounting for transmission construction projects eligible to be included in transmission rate base.³⁷

24. Montana-Dakota states that it has attached a Statement BM in support of its CWIP incentive request as required under section 35.13(h)(38) of the Commission's regulations.³⁸ Montana-Dakota requests waiver of the requirements in sections 18 C.F.R. §§ 35.25(c)(4) and (g), related to the anti-competitive impacts of CWIP recovery. Montana-Dakota asserts that the anti-competitive concerns are less significant with respect to the inclusion of transmission related CWIP in rates. Montana-Dakota argues that it has supplied extensive information regarding its request for CWIP in rate base and

³⁵ Montana-Dakota Transmittal Letter, Ex. No. MDU-7 (Mahowald Test.) at 5-6; Ex. No. MDU-8.

³⁶ Montana-Dakota Transmittal Letter at 20; Mahowald Test. at 5-7.

³⁷ Montana-Dakota Transmittal Letter at 32; Ex. No. MDU-11 (Senger Test.) at 3-5.

³⁸ 18 C.F.R. § 35.13(h)(38) (2012); Ex. No. MDU-4.

that it believes that this information is sufficient to satisfy the requirements in sections 35.25(c)(4) and (g).³⁹

25. Finally, Montana-Dakota 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. Montana-Dakota states that the annual FERC-730 form requires it to provide information regarding transmission investment costs and project construction status, including estimated completion dates.⁴⁰ Further, as part of the annual customer notification and information procedures, Montana-Dakota will develop and post on Open Access Same-Time Information System (OASIS) work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in its estimates for each year.⁴¹

b. Commission Determination

26. We will grant Montana-Dakota'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 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

27. 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 Montana-Dakota has shown a nexus between the proposed CWIP incentive and its investment in the Ellendale – Big Stone Project. This project is expected to cost between \$150 -170 million and is not expected to go into service until 2019.⁴⁵ The cost and timing for completing the

³⁹ Montana-Dakota Transmittal Letter at 32.

⁴⁰ 18 C.F.R. §§ 35.35(h)(1)-(2) (2012).

⁴¹ Montana-Dakota Transmittal Letter at 33.

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

⁴³ *Id.* P 115.

⁴⁴ *Id.* P 117.

⁴⁵ Ford Test. at 4-5.

Ellendale-Big Stone Project will put pressure on Montana-Dakota's finances as this project alone constitutes a significant investment over Montana-Dakota's current net transmission plant.⁴⁶ The inclusion of CWIP in rate base will provide Montana-Dakota with a steady cash flow during the construction period that will protect Montana-Dakota's financial metrics, and as a result, relieve downward pressure on its credit rating. Furthermore, the CWIP incentive will help insulate Montana-Dakota's customers from rate shock that might otherwise accompany use of AFUDC.⁴⁷

28. Further, we find that the proposed accounting procedures that Montana-Dakota filed in Exhibit No. MDU-11 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, Montana-Dakota'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. Montana-Dakota also proposes to satisfy the annual filing requirement for applicants granted the CWIP incentive through its annual filing of its FERC-730 report.⁴⁸ 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 a rate formula.⁴⁹ Accordingly, we find that the Ellendale – Big Stone Project is eligible to receive the incentive for inclusion of 100 percent of prudently incurred CWIP in rate base. We approve Montana-Dakota's proposed accounting procedures and proposal to annually file the FERC-730 form and grant its waiver requests for section 35.25 of the Commission's regulations.

⁴⁶ Montana-Dakota Transmittal Letter at 20; Ford Test. at 3-5.

⁴⁷ See, e.g., *PJM Interconnection LLC*, 135 FERC ¶ 61,229, at P 78 (2011); *Oklahoma Gas and Electric Co.*, 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).

⁴⁸ Montana-Dakota Transmittal Letter at 33.

⁴⁹ *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 56 (2012); 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).

4. Abandoned Plant Recovery

a. Montana-Dakota's Proposal

29. Montana-Dakota requests the abandoned plant recovery incentive so that it will have the opportunity to recover 100 percent of prudently incurred costs if the Ellendale – Big Stone Project is abandoned due to reasons outside of Montana-Dakota's control. Montana-Dakota states that the abandoned plant recovery incentive is appropriate here because of the project's long lead time and the multiple permitting risks it will face. Montana-Dakota further states that, in addition to the two state commissions' jurisdictions that may be implicated, a portion of the Ellendale – Big Stone Project will likely be routed through tribal land, introducing another permitting process. Montana-Dakota notes that it is constructing the project to meet expected generation, without existing interconnection and transmission agreements. Montana-Dakota also contends that there is no guarantee that the factors underlying the Ellendale – Big Stone Project, such as new renewable development, demand growth and congestion relief, will not change due to possible public policy shifts, new environmental legislation, or an economic downturn, thereby rendering the project unnecessary. Further, Montana-Dakota states that the Ellendale – Big Stone Project is intended to be constructed jointly with a neighboring utility; it is possible that Montana-Dakota's partner in the project may change or revise its plans, which could have an impact on Montana-Dakota's ability to construct its portion of the project. Montana-Dakota also notes that the Ellendale – Big Stone Project is dependent on other MVPs from the 2011 MTEP that need to be constructed prior to or concurrently with the project. Finally, Montana-Dakota states that MISO has substantial authority over transmission planning in the region, and there is a risk that the Ellendale – Big Stone Project could be cancelled or revised for reasons identified through the regional planning process.⁵⁰

b. Commission Determination

30. We will grant the requested incentive for Montana-Dakota to have the opportunity to recover its prudently incurred costs for the Ellendale – Big Stone Project, if the project is abandoned for reasons beyond Montana-Dakota'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.⁵¹ We find that Montana-Dakota has demonstrated, consistent with Order No. 679, a nexus between the

⁵⁰ Montana-Dakota Transmittal Letter at 21-23.

⁵¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 163-166.

recovery of 100 percent of prudently incurred abandonment costs and its planned investment in the Ellendale – Big Stone Project.

31. However, we note that, if the Ellendale – Big Stone Project is cancelled before it is completed, Montana-Dakota 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 Montana-Dakota commits to doing in the filing.⁵² Montana-Dakota 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.⁵³

5. Total Package of Incentives

32. Montana-Dakota asserts that the total package of incentives is tailored to the risks and challenges of the Ellendale – Big Stone Project. Specifically, Montana-Dakota argues that the requested incentives are consistent and compatible in reducing risks presented by the project and removing potential obstacles to its construction. Montana-Dakota notes that in Order No. 679, the Commission found that the CWIP and abandoned plant incentives are both designed to remove impediments to transmission construction. Furthermore, Montana-Dakota points out, the interrelated nature of these incentives allows an applicant to recover any CWIP costs via abandoned plant on any project that never becomes used and useful.⁵⁴ Lastly, Montana-Dakota argues that the Commission regularly grants applicants both of these incentives.⁵⁵

33. As noted above, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risk or challenges faced by the applicant. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679,⁵⁶ the Commission has, in prior cases, approved multiple rate incentives for particular

⁵² Montana-Dakota Transmittal Letter at 23.

⁵³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

⁵⁴ Montana-Dakota Transmittal Letter at 23 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 28-29, 117).

⁵⁵ *Id.* (citing *Otter Tail*, 137 FERC ¶ 61,255 at PP 47,52; *Ameren Servs. Co.*, 135 FERC ¶ 61,142 at P 1.)

⁵⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

projects.⁵⁷ This is consistent with our interpretation of section 219 authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of section 219 and that there is a nexus between the incentives proposed and the investment made. We find that the total package of incentives that we are approving is tailored to address the risks and challenges that Montana-Dakota faces in constructing the Ellendale-Big Stone Project.

6. Forward-Looking Formula Rate

a. Montana-Dakota's Proposal

34. Montana-Dakota proposes to revise its formula rates in Attachment O and Attachment GG to allow Montana-Dakota to use a forward-looking inputs and a true-up mechanism, whereby it will use estimates of future costs rather than historical data to derive transmission rates. Furthermore, Montana-Dakota proposes revisions to the MISO Tariff to adopt protocols governing the implementation of its forward-looking formula rate.⁵⁸ According to Montana-Dakota, the proposed changes to Attachments O and GG and formula rate protocols are substantially based on and similar to previous revisions accepted by the Commission.⁵⁹ Montana-Dakota argues that authorization of a forward-

⁵⁷ E.g., *Central Minnesota Municipal Power Agency and Midwest Municipal Transmission Group*, 134 FERC ¶ 61,115, at P 34 (2011) (finding that inclusion of 100 percent of CWIP in rate base, abandoned plant recovery, and use of a hypothetical capital structure were tailored to the unique challenges faced by the applicant).

⁵⁸ Montana-Dakota commits that, to the extent that the Commission requires MISO to modify its formula rate protocols in the proceeding in Docket No. EL12-35-000, Montana-Dakota will adopt any protocol revisions in a subsequent filing. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012) (MISO Protocols Investigation). The MISO Protocols Investigation is a Commission-initiated FPA section 206 proceeding examining whether the formula rate protocols of MISO and the MISO transmission owners are sufficiently just and reasonable.

⁵⁹ Montana-Dakota Transmittal Letter at 25-26 (citing *Otter Tail*, 129 FERC ¶ 61,287 (2009); *Am. Transmission Co.*, Docket No. ER05-1506-000 (Dec. 20, 2005) (delegated letter order); *Int'l Transmission*, 116 FERC ¶ 61,036; *Mich. Elec. Transmission*, 117 FERC ¶ 61,314; *Xcel Energy*, 121 FERC ¶ 61,284, *Xcel Energy Servs. Inc.*, Docket No. ER07-1415-001 (May 1, 2008) (delegated letter order); *S. Ind. Gas & Elec. Co.*, Docket No. ER09-180-000 (Dec. 19, 2008) (delegated letter order); *Midwest Indep. Trans. Sys. Operator, Inc.*, Docket No. ER09-108-000 (Dec. 23, 2008) (Delegated

(continued...)

looking formula rate will allow cost recovery on a current basis necessary to provide timely recovery of the large increase in transmission investment needed for the Ellendale – Big Stone Project. Montana-Dakota contends that use of historical data would result in an 18 month period in which it is unable to recover costs of this significant transmission investment, thereby potentially constraining cash flow and forcing Montana-Dakota to take on greater levels of debt. To this end, Montana-Dakota asserts that recovering costs on a current basis, coupled with CWIP, will result in lower overall costs and will improve its cash flow.⁶⁰

35. Montana-Dakota states that to effectuate the transition to a forward-looking formula rate, it will use projected costs to calculate its formula rate. To that end, Montana-Dakota states that the resulting projected rates would be updated beginning January 1 each year, rather than using historical data to update rates beginning each June 1.⁶¹ Additionally, Montana-Dakota states that it will utilize a true-up mechanism to ensure Montana-Dakota does not recover above or below actual transmission costs for a given year. Montana-Dakota also proposes to add company-specific true-up procedures to Attachment GG, which sets forth the method for calculating and collecting the charges associated with network upgrades for certain new regionally beneficial and market efficiency transmission projects that qualify for Regional Expansion Criteria and Benefits regional cost treatment. Montana-Dakota states that the proposed Attachment O and Attachment GG modifications include notification procedures such that Montana-Dakota will make cost estimates, along with supporting workpapers, available annually during customer meetings. Montana-Dakota also notes that it will post cost estimates and true-up adjustments on the MISO OASIS for any potential transmission customers.⁶² Montana-Dakota also states that in the future, it will file a true-up method pursuant to Attachment MM of the MISO Tariff, which is used to allocate the costs of MVPs.⁶³

Letter Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147 (2012)); MDU Ex. No. 12 at 6 (Valuation method), 9 (True), 10 (True int.), 12 (GG).

⁶⁰ Mahowald Test. at 8; Senger Test. at 7.

⁶¹ Montana-Dakota Transmittal Letter, Ex. No. MDU-12 (Aberle Test.) at 4.

⁶² Montana-Dakota Transmittal Letter at 28, 30-31; Aberle Test. at 11-12.

⁶³ Montana-Dakota notes that on October 31, 2012, MISO transmission owners with forward-looking formula rates filed a true-up procedure for Attachment MM under Docket No. ER13-263-000. Montana-Dakota states that it will adopt one of the approved Attachment MM true-up procedures from that case.

36. To incorporate CWIP and abandoned plant incentives into its formula rate, Montana-Dakota proposes several changes to Attachment O. Regarding the CWIP incentive, Montana-Dakota states it has added a new line to the rate base calculation. This line will include the 13-month average CWIP balance for the period.⁶⁴ With regard to the abandoned plant incentive, Montana-Dakota proposes to add a place holder and two lines to its Attachment O-MDU formula rate. Montana-Dakota states that should it receive Commission approval under a relevant section 205 filing, it will include an amount in rate base equal to the cancelled transmission plant costs less accumulated amortization expense and include in rates one year of amortization expense. Until such time, Montana-Dakota states that the place holder will maintain a value of zero.⁶⁵

37. Montana-Dakota additionally states that it must modify its calculation of common stock in Attachment O such that Account 123.1, Investments in Subsidiary Companies, is deducted rather than Account 216.1, Unappropriated Undistributed Subsidiary Earnings. Montana-Dakota notes that MDU Resources, of which Montana-Dakota is a division, only lists Montana-Dakota's debt in Form No. 1 but issues debt to non-utility subsidiaries, unrelated to Montana-Dakota, under Centennial Holdings. Montana-Dakota asserts that because Account 123.1 includes common stock earnings associated with non-utility subsidiaries of MDU Resources, the change will better reflect Montana-Dakota's capital structure.⁶⁶

38. Montana-Dakota requests an effective date of January 1, 2013 for the proposed Tariff revisions. Montana-Dakota further requests waiver of the Commission's regulations at 18 C.F.R. § 35.13(d) concerning applicable Period I and Period II data requirements. Montana-Dakota contends that waiver is appropriate here because any inputs for the formula rate are included in its annual FERC Form No. 1, and it seeks changes to the implementation of its formula rate rather than any change or increase in a stated rate.⁶⁷ Montana-Dakota further argues waiver of these provisions is consistent with Commission precedent.⁶⁸

⁶⁴ Aberle Test. at 14; Att. 6 at 6.

⁶⁵ Aberle Test. at 14-15.

⁶⁶ Montana-Dakota Transmittal Letter at 26; Senger Test. at 7.

⁶⁷ Montana-Dakota Transmittal Letter at 35-36.

⁶⁸ *Id.* (citing *Mich. Elec. Transmission Co.*, 117 FERC ¶ 61,314, at PP 33-34 (2006); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at P 56 (2005)).

b. Commission Determination

39. We accept Montana-Dakota's proposed revisions to Attachment O and Attachment GG to transition Montana-Dakota from an historical formula rate to a forward-looking formula rate. The Commission has approved nearly identical forward-looking formula rates for other transmission-owning members of MISO, such as Otter Tail.⁶⁹ A forward-looking formula rate can be a reasonable means to avoid lag in cost recovery.⁷⁰

40. We will also accept Montana-Dakota's proposal to use Account 123.1 as a deduction to Common Stock at Page 4 of the Attachment O template rather than using Account 216.1. Montana-Dakota explains that the common stock reported in its FERC Form No. 1 represents the common stock for MDU Resources in total. To more accurately represent the capital structure applicable to its investment in electric transmission facilities, Montana-Dakota will deduct from its common stock balances the amount reported in Account 123.1, which includes MDU Resources' subsidiary earnings reported in Account 216.1, plus its capital invested in subsidiaries.⁷¹ We find this adjustment more accurately reflects the capital invested in Montana-Dakota's transmission facilities by excluding from common stock the capital invested in MDU Resources' subsidiaries and subsidiary earnings reported in Account 216.1.

41. We will, however, make our acceptance of the proposed protocols subject to the outcome of the MISO Protocols Investigation. Montana-Dakota's proposed protocols are virtually identical other MISO transmission owners' accepted protocols, which are the subject of the MISO Protocol Investigation.

The Commission orders:

(A) Montana-Dakota's request for authorization for the 100 percent CWIP and abandoned plant recovery incentives for the Ellendale – Big Stone Project is hereby granted, as discussed in the body of this order.

⁶⁹ See, e.g., *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147 (2012).

⁷⁰ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 141 FERC ¶ 61,121 (2012); *MidAmerican*, 137 FERC ¶ 61,250 at P 70; *Xcel*, 121 FERC ¶ 61,284 at P 69; *Mich. Elec.*, 117 FERC ¶ 61,314, at P 17 (2006).

⁷¹ See MDU Resources' FERC Form No. 1, Page 224, Investment in Subsidiary Companies (Account 123.1).

(B) Montana-Dakota's proposed use of a forward-looking formula rate and corresponding Tariff revisions are hereby accepted for filing, to become effective on January 1, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.