

147 FERC ¶ 61,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Transco Central California Transco, LLC Docket No. ER14-1661-000

ORDER ON TRANSMISSION RATE INCENTIVES AND TRANSMISSION OWNER
TARIFF

(Issued June 3, 2014)

1. On April 4, 2014, MidAmerican Central California Transco, LLC (MidAmerican Transco) filed a request to recover certain transmission rate incentives pursuant to sections 205 and 219 of the Federal Power Act¹ (FPA) and Order No. 679² for its investment in the 230 kV Central Valley Transmission Upgrade Project in Central California (Project). MidAmerican Transco also filed an initial transmission owner tariff (TO Tariff), which includes a proposed formula rate designed to calculate MidAmerican Transco's annual transmission revenue requirement for inclusion in the California Independent System Operator Corporation's (CAISO) transmission access charge (TAC). As discussed below, this order grants MidAmerican Transco's request for certain transmission rate incentives, accepts MidAmerican Transco's TO Tariff for filing, suspends it for a nominal period to be effective June 5, 2014, and establishes hearing and settlement judge procedures.

¹ 16 U.S.C. §§ 824d, 824s (2012).

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). The Commission provided additional guidance regarding the application of its transmission incentive policies in *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Incentives Policy Statement).

I. Background

2. MidAmerican Transco is a wholly owned subsidiary of MidAmerican Transmission, LLC, which is a wholly owned subsidiary of MidAmerican Energy Holdings Company. MidAmerican Transco states that it was formed to construct, finance, own, operate, and maintain new high-voltage electric transmission facilities as a participating transmission owning-member of CAISO.

3. The Project consists of an overhead 68-mile, 230 kV double circuit transmission line connecting Pacific Gas and Electric Company's (PG&E) Gates Substation and Gregg Substation. According to MidAmerican Transco, the Project will use towers designed for a double circuit, but will initially operate as a single circuit, consistent with CAISO's 2012-2013 Transmission Plan.³

4. MidAmerican Transco explains that the Project was identified in CAISO's 2012-2013 Transmission Plan as a reliability project.⁴ In addition, MidAmerican Transco states that CAISO determined that the Project would generate policy and economic benefits and would, therefore, be eligible for competitive solicitation.

5. MidAmerican Transco states that PG&E and MidAmerican Transmission, LLC submitted a competitive bid to construct, own, and operate the Project under CAISO's transmission planning process and, subsequently, were selected by CAISO to develop the Project. MidAmerican Transco explains that it owns 50 percent of the Project and PG&E owns the remaining 50 percent as tenants in common. Once the Project enters service, MidAmerican Transco states that 25 percent of the Project's transfer capability will be leased to Citizens Energy Corporation (Citizens) under a 30-year lease arrangement, with PG&E and MidAmerican Transco each holding 37.5 percent of the Project's transfer capability.⁵ MidAmerican Transco states that the total Project costs are estimated to be \$157 million, not including contingencies and inflation.⁶

³ MidAmerican Transco April 4, 2014 Filing (MidAmerican Transco Filing) at 2, n.5.

⁴ See CAISO's 2012-2013 Transmission Plan at 372, available at: <https://www.caiso.com/Documents/BoardApproved2012-2013TransmissionPlan.pdf>.

⁵ MidAmerican Transco Filing at 2, n.8.

⁶ *Id.* at 2.

6. MidAmerican Transco requests certain transmission rate incentives for the Project: (1) recovery of pre-commercial costs that are not capitalized and included in construction work in progress (CWIP) and authorization to establish a regulatory asset to include all such expenses (Regulatory Asset Incentive), (2) a hypothetical capital structure of 52 percent equity and 48 percent debt (Hypothetical Capital Structure Incentive), (3) recovery of prudently incurred costs in the event that the Project must be abandoned for reasons outside MidAmerican Transco's control (Abandonment Incentive), and (4) a 50 basis point return on equity (ROE) adder for participation in a regional transmission organization (RTO), i.e., CAISO (RTO Participation Adder).

7. In addition to the requested rate incentives, MidAmerican Transco also filed an initial TO Tariff, which includes a template for a cost-of-service formula rate and implementation protocols. MidAmerican Transco requests that the Commission grant its request for transmission rate incentives effective as of the date the Commission issues an order on the instant filing and accept its proposed TO Tariff to be effective June 3, 2014.

II. Notice of Filing and Responsive Pleadings

8. Notice of the MidAmerican Transco Filing was published in the *Federal Register*, 79 Fed. Reg. 21,195 (2014), with interventions or protests due on or before April 25, 2014. Timely motions to intervene were filed by the Modesto Irrigation District; Trans Bay Cable, LLC; the Transmission Agency of Northern California; the City of Santa Clara, California; PG&E; and Citizens. M-S-R Public Power Agency (M-S-R) filed a timely motion to intervene and protest. Transource Energy, LLC (Transource), Southern California Edison Company (SoCal Edison), the California Department of Water Resources State Water Project (SWP), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) filed motions to intervene out-of-time and the California Public Utilities Commission (CPUC) filed a late-filed motion to intervene and protest. MidAmerican Transco filed a motion for leave to answer and answer to the protests filed by M-S-R and the CPUC.

A. Protests

9. M-S-R and CPUC argue that MidAmerican Transco's claims of financial uncertainty—i.e., that it is a start-up company with no financial history or source of regular cash flow—are disingenuous. M-S-R and CPUC contend that MidAmerican Transco's parent company, MidAmerican Energy Holdings Company, has reported \$70 billion in assets and that the Commission should consider MidAmerican Transco's corporate structure in evaluating its request for incentive rate treatment. Absent this evaluation, M-S-R warns that any entity could obtain incentive rate treatment by simply

forming a subsidiary corporation.⁷ Similarly, CPUC argues that ratepayers should not bear additional financial risk because of MidAmerican Transco's chosen financial structure.⁸

10. M-S-R and CPUC state that CAISO's 2012-2013 Transmission Plan reflects an estimated cost of the Project between \$115 million and \$145 million, which MidAmerican Transco's \$157 million estimate already exceeds. M-S-R and CPUC argue that, in order to ensure that excessive expenditures are not charged to customers, the Commission should limit the application of incentives to the estimate of the Project's costs considered in CAISO's 2012-2013 Transmission Plan.⁹ CPUC adds that the financial, regulatory, and competitive challenges MidAmerican Transco faces are typical for new transmission investments and that the size and cost of MidAmerican Transco's project are lower than those of other California transmission lines for which the Commission has authorized incentive rates.¹⁰ Further, CPUC notes there is no evidence to show that there are risks associated with CAISO's competitive solicitation process for selecting transmission project sponsors that warrant rate incentives.¹¹

11. M-S-R and CPUC each contend that MidAmerican Transco's proposed ROE is overstated and calculated in a manner that is inconsistent with Commission policy. M-S-R and CPUC respectively argue that MidAmerican Transco's proposed methodology is inconsistent with Commission precedent, which requires that utilities use the median of the discounted cash flow (DCF) analysis.¹² M-S-R requests that the Commission direct MidAmerican Transco to submit a compliance filing revising its base ROE to reflect the median of the DCF analysis, and request that the Commission set the DCF analysis for hearing.¹³

⁷ M-S-R April 25, 2014 Protest at 6-8 (M-S-R Protest).

⁸ CPUC May 7, 2014 Protest at 4-5 (CPUC Protest).

⁹ M-S-R Protest at 8, CPUC Protest at 6-7.

¹⁰ CPUC Protest at 4.

¹¹ *Id.* at 5.

¹² M-S-R Protest at 9-14, CPUC Protest at 6.

¹³ M-S-R Protest at 14.

12. M-S-R also disputes MidAmerican Transco's proposal to use the depreciation rate established during PG&E's latest rate proceeding. M-S-R argues that the PG&E settlement was not precedential and "would not be the basis for any decision with regard to the burden of proof in any litigation with regard to such matter."¹⁴

13. M-S-R requests that the Commission direct MidAmerican Transco to revise two aspects of its formula rate protocols that it asserts contradict Commission precedent.¹⁵ Specifically, M-S-R argues that MidAmerican Transco's proposed formula rate protocols involve requirements that could be read to limit a party's ability to raise issues that had not previously been raised informally in formal challenges under Rule 206 of the Commission's Rules of Practice and Procedure. M-S-R also argues that MidAmerican Transco inappropriately incorporates references to Rule 206 in describing the availability of formal challenges under its formula rate protocols.¹⁶

14. CPUC states that while it does not necessarily oppose MidAmerican Transco's implementation of a formula rate, the formula rate proposal in this instance requires additional scrutiny and discovery and should be set for hearing.¹⁷

B. MidAmerican Transco's Answer

15. MidAmerican Transco argues that, contrary to M-S-R and CPUC's assertions, it has identified specific financial, developmental, regulatory, and competitive process risks that support its requested package of transmission rate incentives. MidAmerican Transco argues that Commission precedent dictates that the Commission analyze its request for transmission rate incentives as a start-up company, rather than considering the financial resources of its corporate parent.¹⁸ MidAmerican Transco contends that it is appropriate to consider its status as a start-up company because potential creditors will evaluate MidAmerican Transco on the basis of its own creditworthiness without regard to the

¹⁴ *Id.* at 14-15 (citing PG&E TO-14 Settlement at Article III, Section 3.1, as accepted in *Pacific Gas & Elec. Co.*, 146 FERC ¶ 61,034 (2014)).

¹⁵ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212, at PP 108, 111-112 (2014) (*MISO*)).

¹⁶ M-S-R Protest at 15-17.

¹⁷ CPUC Protest at 7.

¹⁸ MidAmerican Transco May 12, 2014 Answer (MidAmerican Transco Answer) at 4, n.13 (citing *Potomac Appalachian Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 39 (2008) (*PATH*)).

creditworthiness of its corporate parent. In response to CPUC's claim that the Commission typically approves incentive rate requests for projects smaller in cost and size than the Project, MidAmerican Transco states that the Commission recently approved similar incentives for a project with an estimated cost of \$64.8 million.¹⁹

16. MidAmerican Transco also argues that the Commission should not limit incentives to the bid costs submitted in the CAISO competitive process or the cost estimate in CAISO's 2012-2013 Transmission Plan. MidAmerican Transco states that CAISO's competitive solicitation process does not require bidders to submit financially binding cost estimates. Instead, MidAmerican Transco states that the estimate reflected in CAISO's 2012-2013 Transmission Plan for the Project was predicated on the cost estimate included in MidAmerican Transco's bid and was not intended to serve as a cost cap.²⁰

17. MidAmerican Transco argues that it has adequately supported its requested ROE and requests that the Commission set any issues regarding its proposed ROE for hearing. MidAmerican Transco also argues that its proposal to adopt PG&E's depreciation rates is appropriate because, since the project is not built, MidAmerican Transco lacks the historical data needed to support an analysis of service life and net salvage characteristics for its Project and because PG&E operates similar facilities in the same area. MidAmerican Transco also notes that the Commission previously approved an arrangement in which a new transmission developer's depreciation rates mirrored those of a corporate parent.²¹

18. Finally, MidAmerican Transco states that its proposed formula rate protocols will permit issues not raised in an informal challenge to nevertheless be raised in a formal challenge, so long as the customer submitted an informal challenge to MidAmerican Transco with respect to one or more issues. MidAmerican Transco states that it does not object to eliminating the reference in its protocols to Rule 206 of the Commission's Rules of Practice and Procedure, consistent with the *MISO* decision,²² in a subsequent compliance filing if the Commission so directs.

¹⁹ MidAmerican Transco Answer at 3 (citing *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at P 4 (2012)).

²⁰ *Id.* at 5.

²¹ *Id.* at 7 (citing *RITELine Illinois, LLC*, 137 FERC ¶ 61,039 (2011)).

²² *See supra* n.18.

III. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the late-filed motions to intervene of Transource, SoCal Edison, Six Cities, SWP, and CPUC given their respective interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.²³

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MidAmerican Transco's answer because it provided information that assisted us in our decision-making process.

B. Substantive Matters

21. 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 transmission infrastructure.²⁴ 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 MidAmerican Transco. Additionally, on November 15, 2012, the Commission issued the 2012 Incentives Policy Statement, which provides additional guidance regarding the evaluation of applications for transmission rate incentives under section 219 and Order No. 679.

1. Section 219 Requirement

22. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a 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

²³ MidAmerican Transco's answer indicates that it does not object to CPUC's late-filed intervention and protest.

²⁴ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

congestion.”²⁵ Order No. 679 established the process for an applicant 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.²⁶ 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.²⁷

a. Proposal

23. MidAmerican Transco asserts that the Project meets the rebuttable presumption under Order No. 679-A because the Project was selected under a transmission planning process that has been approved by the Commission²⁸ and comprehensively identifies upgrades necessary to meet California’s policy goals and grid reliability.²⁹ MidAmerican Transco states that CAISO determined that the Project would provide significant reliability benefits, such as addressing potential overload and voltage collapse conditions in the Greater Fresno area of the PG&E system.

b. Commission Determination

24. The Commission has previously determined that projects found by a regional planning process to ensure reliability are entitled to the rebuttable presumption established in Order No. 679.³⁰ Here, the Project was selected under an open and non-

²⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²⁶ *Id.*

²⁷ *Id.* P 49. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236.

²⁸ MidAmerican Transco Filing at 5, n.12 (citing *Cal. Indep. Sys. Operator, Inc.*, 133 FERC ¶ 61,224 (2010); *see also Cal. Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,057 (2013); *see also Cal. Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,198 (2014)).

²⁹ *Id.* at 8, n.26 (citing CAISO’s 2012-2013 Transmission Plan at 7).

³⁰ *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

(continued...)

discriminatory regional transmission planning process, and identified in CAISO's 2012-2013 Transmission Plan as necessary to address reliability concerns in the Greater Fresno area.³¹ Therefore, we find that, because the Project is necessary to ensure grid reliability and was selected under a Commission-approved regional transmission planning process, the Project meets the rebuttable presumption and satisfies the above-noted requirements of section 219.

2. Nexus Test and Total Package of Incentives

25. An applicant for a transmission rate incentive must demonstrate a nexus between the incentives being sought and the investment being made. 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 risks or challenges faced by the applicant.³² Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. The Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test. This is consistent with Order No. 679 and 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.³³

a. Proposal

26. MidAmerican Transco argues that, consistent with Order Nos. 679 and 679-A, the Project satisfies the Commission's nexus test for incentive-based rate treatment because each of its requested incentives addresses demonstrable risks associated with developing the Project. For example, MidAmerican Transco states that it faces financial risks in developing the Project because it is a start-up transmission company with no business history, no established credit rating, no debt repayment history, no earning history, and

Appendix A of the 2011 MTEP Report); *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 31 (2011) (making the same finding regarding two other Ameren projects).

³¹ *See supra* n.28.

³² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

³³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

no significant financial guarantees from its corporate parent. By granting its request for the Regulatory Asset Incentive, MidAmerican Transco explains that it will benefit from an enhanced credit rating that will lower its borrowing costs, improve its cash flow during construction, and facilitate its ability to obtain financing. Similarly, MidAmerican Transco argues that its request for the Hypothetical Capital Structure Incentive will improve its ability to obtain capital at a reasonable cost, lowering the Project's debt costs that will ultimately be borne by CAISO's customers.

27. MidAmerican Transco explains that the Abandonment Incentive is appropriate because the Project also faces certain regulatory risks, such as obtaining the regulatory approvals and rights-of-ways necessary to begin construction on the Project. MidAmerican Transco also asserts that the Abandonment Incentive is necessary to eliminate the risk that its lenders will have to bear the Project's costs if it is cancelled for reasons outside of MidAmerican Transco's control.

28. In light of its request for these transmission rate incentives, MidAmerican Transco states that it has not requested any ROE-based incentives other than the 50 basis point adder, which it states is appropriate given its commitment to join and transfer operational control of the Project to CAISO. MidAmerican Transco asserts that its requested package of incentives will reduce the Project's risks and, therefore, render other ROE-based incentives beyond the 50 basis point adder unnecessary, consistent with the guidance provided in the 2012 Incentives Policy Statement.

b. Commission Determination

29. We find that MidAmerican Transco has satisfied the requirements of the nexus test, as required by Order Nos. 679 and 679-A and clarified in the 2012 Incentives Policy Statement.³⁴ The total package of incentives that MidAmerican Transco requests appropriately addresses the risks and challenges specific to the Project, such as the need for low borrowing costs, easy access to capital, and protection against regulatory risks during the development process. We find that the total package of incentives addresses risks associated with establishing creditworthiness, minimizing the risk associated with possible cancellation of the Project due to circumstances outside MidAmerican Transco's control, and the potential volatility in capital structure as the Project progresses. Also, the RTO Participation Adder incentive acts to encourage MidAmerican Transco to join and remain a member of CAISO. This total package of incentives is tailored to the specific risks associated with MidAmerican Transco's development of the Project, will tend to minimize costs to be passed through to CAISO's customers, and avoids the

³⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

necessity of potential additional ROE adders to appropriately incent transmission development. Therefore, we find that the total package of incentives is tailored to address those specific risks and challenges, consistent with Order Nos. 679 and 679-A and as clarified in the 2012 Incentives Policy Statement. As discussed below, we grant the request for proposed rate incentives, effective on the date of issuance of this order.

3. Regulatory Asset Incentive

a. Proposal

30. MidAmerican Transco requests that the Commission allow it to recover all pre-commercial costs that are not capitalized and included in CWIP, including costs incurred prior to submitting the instant filing, through a regulatory asset.³⁵ Once MidAmerican Transco begins recovering its costs through CAISO's TAC pursuant to the formula rate proposed in the instant filing, MidAmerican Transco explains that it will discontinue the practice of booking charges to the regulatory asset and begin to amortize the regulatory asset over five years. MidAmerican Transco states that, at that time, it will begin recovering those expenses through the formula rate, as they are incurred. MidAmerican Transco also requests the Commission's authorization to accrue monthly carrying charges on the regulatory asset balances beginning on the effective date of a Commission order approving its request for the regulatory asset incentive, until the regulatory asset is included in rate base.³⁶

31. MidAmerican Transco states that it faces financial risks in developing the Project because it is a start-up transmission company with no business history, no established credit rating, no debt repayment history, no earning history, and no significant financial guarantees from its corporate parent. By granting its request to establish a regulatory asset to recover all prudently incurred pre-commercial costs, MidAmerican Transco explains that it will benefit from an enhanced credit rating that will reduce its interest expenses, improve its cash flow during construction, and facilitate its ability to obtain financing. MidAmerican Transco asserts that the Commission has recognized that the

³⁵ These costs could include attorney and consultant fees, administrative expenses, travel expenses, development surveys, and costs to support planning activities that are or have been incurred by MidAmerican related to the project, including appropriate costs incurred prior to MidAmerican Transco's submission of the instant filing. MidAmerican Transco Filing at 13.

³⁶ MidAmerican Transco Filing at 14.

Regulatory Asset Incentive will help enhance a project developer's credit quality, thereby lowering its borrowing costs.³⁷

b. Commission Determination

32. We will grant MidAmerican Transco's request to establish a regulatory asset for the recovery of all prudently incurred pre-commercial costs that are not capitalized and included in CWIP before the effective date of its formula rate as a regulatory asset up to the date that charges are assessed to CAISO customers through the CAISO TAC under the formula rate. We find that this incentive is tailored to the risks and challenges posed by the Project, as discussed above, because this incentive will provide MidAmerican Transco with added up-front regulatory certainty and reduce interest expense, improve coverage ratios, and assist in the construction of the Project.

33. We also approve MidAmerican Transco's request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in rate base. We accept MidAmerican Transco's proposal to amortize the regulatory asset over five years, consistent with rate recovery. MidAmerican Transco must record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Nonoperating Income.³⁸ Further, we authorize MidAmerican Transco to amortize the regulatory asset and related carrying charges associated with the Projects by debiting Account 566 and crediting Account 182.3, consistent with Commission precedent.³⁹ Once MidAmerican Transco begins to include the initial regulatory asset in rate base as

³⁷ *Id.* at 13 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008) (*PATH*), *order on reh'g*, 133 FERC ¶ 61,152 (2010)).

³⁸ *See Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. and Regs., Regulations Preambles January 1991- June 1996 ¶ 30,967, at 30,825 (requiring that deferred returns and/or carrying charges accrued on regulatory assets be credited to Account 421, Miscellaneous Nonoperating Income).

³⁹ *See PATH*, 122 FERC ¶ 61,188 at P 154.

part of its revenue requirement, it will earn a return on the unamortized balance of the regulatory asset and, therefore, MidAmerican Transco must stop accruing carrying charges on such regulatory asset.⁴⁰

34. We note that MidAmerican Transco proposes to accrue monthly carrying charges on the regulatory asset balance, including the balance of deferred carrying charges.⁴¹ This proposal has the effect of compounding interest on a monthly basis, which the Commission has previously found to be excessive.⁴² Consistent with Commission precedent, the appropriate carrying charge should not result in a higher amount of interest than is allowed for construction expenditures that accrue an allowance for funds used during construction (AFUDC). The Commission's requirements for AFUDC restrict the compounding of interest to no more frequent than semi-annual. Therefore, we will require MidAmerican Transco to restrict the compounding of interest to no more frequently than semi-annually when accruing carrying charges.

35. While this order provides MidAmerican Transco with the ability to record pre-commercial costs as a regulatory asset, MidAmerican Transco must make a section 205 filing to demonstrate that the pre-construction costs are just and reasonable. In that filing, MidAmerican Transco must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred, and parties will be able to challenge these costs at that time.

4. Hypothetical Capital Structure Incentive

a. Proposal

36. MidAmerican Transco proposes a hypothetical capital structure of 48 percent debt and 52 percent equity, which it states aligns closely with PG&E's capital structure.⁴³ MidAmerican Transco states it will use its actual capitalization in its proposed formula rate once the Project enters commercial operation. MidAmerican Transco asserts that its

⁴⁰ See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031 at PP 59-60 (2009); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at PP 84, 117 (2009); *RITELine*, 137 FERC ¶ 61,039 at P 96.

⁴¹ MidAmerican Transco Filing, Appendix G at 6.

⁴² See *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 71 (2012) (requiring DATC to restrict the compounding of interest to no more frequently than semi-annually).

⁴³ MidAmerican Transco Filing at 14.

request for the hypothetical capital structure incentive is reasonable and appropriate to reduce the risk associated with raising capital during the construction period, during which its actual capital structure may vary. MidAmerican Transco further states that it will operate with capital infusions from its parent company initially, but that as construction of the Project progresses, MidAmerican Transco will require significant borrowings and additional capital infusions. As a result, according to MidAmerican Transco, the precise debt-to-equity ratio will vary over time.⁴⁴

37. MidAmerican Transco argues that the use of a stable debt-to-equity ratio for ratemaking purposes during construction will provide certainty to lenders and improve its access to capital at a reasonable cost. MidAmerican Transco also asserts that the Commission has found that use of a hypothetical capital structure will result in lower debt costs and permit the borrowing company to vary its financing vehicles according to its construction needs and other financial and regulatory conditions.⁴⁵ In addition, MidAmerican Transco states that the Commission has approved hypothetical capital structures with an equity component greater than the 52 percent equity requested,⁴⁶ and further notes that the Commission has previously approved a hypothetical capital structure for an entity without an existing capital structure that is designed to align with the capital structure of a project partner.⁴⁷

b. Commission Determination

38. We find that MidAmerican Transco has made a sufficient showing that the requested hypothetical capital structure is tailored to address the risks of its investment in the Project. We find that MidAmerican Transco has demonstrated that a hypothetical capital structure will address the risks and challenges related to raising capital during the construction phase of the Project. We also find that a hypothetical capital structure will assist MidAmerican Transco in maintaining low debt costs while its actual debt-to-equity ratio varies. Accordingly, we will grant MidAmerican Transco's request to use of a hypothetical capital structure of 52 percent equity and 48 percent debt until the Project enters commercial operation.

⁴⁴ *Id.* at 15.

⁴⁵ *Id.* (citing *PATH*, 122 FERC ¶ 61,188 at P 55).

⁴⁶ *Id.* (citing *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at P 66 (2012) (additional citations omitted)).

⁴⁷ *Id.* (citing *Citizens Energy Corp.*, 129 FERC ¶ 61,242, at P 22 (2009)).

5. Abandonment Incentive

a. Proposal

39. MidAmerican Transco requests the ability to recover prudently incurred costs in the event the Project must be abandoned for reasons outside the reasonable control of MidAmerican Transco. MidAmerican Transco asserts that the Abandonment Incentive is appropriate to eliminate the risks that lenders and shareholders may have to bear costs incurred on transmission projects that are cancelled for reasons beyond the developers control and that such risks are potential disincentives to undertaking the Project. MidAmerican Transco adds that the Commission has found the abandonment costs incentive to be effective in encouraging transmission development by reducing the risk of non-recoverable costs.⁴⁸

40. MidAmerican Transco asserts that the Project faces a number of risks that could lead to abandonment, such as environmental, regulatory, siting, and rights-of-way acquisition risks. In addition, MidAmerican Transco argues that, because the Project is one of the first projects approved by CAISO in connection with CAISO's competitive solicitation process, there is the potential for challenges to CAISO's selection of MidAmerican Transco and PG&E as the project sponsors.⁴⁹

b. Commission Determination

41. We will grant MidAmerican Transco's request to recover prudently incurred costs in the event that the Project is abandoned for reasons beyond MidAmerican Transco's control, subject to MidAmerican Transco filing under section 205 of the FPA for recovery of abandonment costs. 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.⁵⁰ In particular, we find persuasive MidAmerican Transco's argument that this incentive addresses financial risks and challenges that MidAmerican Transco could face with its lenders by assuring cost recovery for prudently incurred costs in the event of an abandonment that is beyond MidAmerican Transco's control.

42. We note, however, that if the Project is cancelled before it is completed, MidAmerican Transco would be required to make a filing under section 205 of the FPA

⁴⁸ *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163).

⁴⁹ *Id.* at 16.

⁵⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 163-166.

to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs. MidAmerican Transco must also propose in its section 205 filing a just and reasonable rate to recover such 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

6. RTO Participation Adder

a. Proposal

43. MidAmerican Transco requests a 50 basis point adder to its base ROE its participation in CAISO, consistent with the Commission's determination in Order No. 679.⁵² MidAmerican Transco states that it will become a member of CAISO as soon as permitted under the CAISO Tariff, transfer operational control of the Project to CAISO once the Project is placed into service, and recover its annual transmission revenue requirement through the CAISO TAC pursuant to the CAISO Tariff.

44. MidAmerican Transco argues that the 50 basis point RTO adder provides an incentive for newly established transmission developers to participate in RTOs and recognizes the benefits that flow from membership in RTO organizations. MidAmerican Transco also argues that affording new transmission developers ROE enhancements similar to those granted to existing transmission providers is important to encourage the creation of transmission-focused entities through competitive solicitation processes.

b. Commission Determination

45. We will grant MidAmerican Transco's request for a 50 basis point adder to its base ROE for its participation in CAISO, consistent with the Commission's approval of this incentive for other participating transmission owners in CAISO.⁵³ We note that our approval of this incentive is based on MidAmerican Transco's commitment to become a member of CAISO, transfer functional control of the Project to CAISO once the Project enters service, and recover the Project's costs through the CAISO TAC.⁵⁴

⁵¹ *Id.* P 166.

⁵² MidAmerican Transco Filing at 16 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86).

⁵³ *Pacific Gas and Electric Co.*, 144 FERC ¶ 61,227 (2013).

⁵⁴ MidAmerican Transco Filing at 16.

7. Issues Raised by Intervenors

46. We agree that the Commission may evaluate MidAmerican Transco's request for transmission rate incentives as a request made by a new transmission developer rather than considering the financial resources of MidAmerican Transco's corporate parent. This is consistent with Commission precedent in *PATH*. Thus, we will not alter our decision to grant MidAmerican Transco's requested package of transmission rate incentives based on MidAmerican Transco's corporate parent structure, as requested by M-S-R and CPUC.

47. We also disagree with CPUC that the size and scope of the Project warrants rejection of MidAmerican Transco's request for transmission rate incentives. Our decision to award incentives is based on MidAmerican Transco qualifying for the rebuttable presumption and satisfying the nexus test, as discussed above.

48. Similarly, we reject requests to impose a cap on the dollar amount of costs that are eligible for the transmission rate incentives in this proceeding. All costs included and recovered in rates are subject to prudence considerations and this order only approves transmission rate incentives that apply to prudently incurred costs. Parties will have the opportunity to raise issues concerning the prudence of these costs in subsequent proceedings under MidAmerican Transco's TO Tariff, and we find those subsequent proceedings to be the appropriate place for the determination of costs to be recovered.

8. Citizens Energy Lease Payment

a. Proposal

49. MidAmerican Transco states that it, along with PG&E, will lease a combined total of 25 percent of the Project's transmission capacity through a Transmission Capacity Lease Agreement to Citizens for a period of 30 years. MidAmerican Transco explains that it will retain title to its share of the Project facilities and that the transfer capability of the facilities will revert to MidAmerican Transco upon the expiration of the lease term. MidAmerican Transco expects the lease payment to be prepaid in a lump sum at the closing of the transaction after Citizens exercises the option and will be allocated over the lease term. MidAmerican Transco states that the lease payment will be the proportionate share, i.e. the 25 percent of capacity that Citizens will lease, of actual costs incurred by MidAmerican Transco and PG&E to develop, design, permit, engineer, and construct the Project.⁵⁵

⁵⁵ *Id.* at 26.

50. MidAmerican Transco proposes to record the lease payment in Account 253, Other Deferred Credits, and to amortize the amount to Account 412, Revenues from Electric Plant Leased to Others, over the life of the lease. Also, MidAmerican Transco proposes to record a proportionate share of the Project's original cost that is leased to Citizens in Account 104, Electric Plant Leased to Others, and to depreciate this amount to Account 413, Expenses of Electric Plant Leased to Others, over the 30-year lease term. MidAmerican Transco represents that this accounting will exclude the original cost of the leased property from its transmission plant accounts and rate base under its formula rate. MidAmerican Transco also states that its accounting will transparently ensure that CAISO's transmission customers will not be exposed to any risk that MidAmerican Transco would seek to recover the capital cost attributable to the initial capital investment in the Project already recovered through Citizens' cost-of-service revenue requirement. Finally, MidAmerican Transco explains that it will record operation and maintenance costs and administrative and general costs associated with the leased portion of the Project in Account 413, and any compensation received from Citizens in Account 412, neither of which are included in its formula rate.

b. Commission Determination

51. MidAmerican Transco's accounting for the lease prepayment and the costs of the Project leased to Citizens is consistent with the Commission's Uniform System of Accounts and precedent.⁵⁶ Accordingly, MidAmerican Transco must follow this accounting and implement sufficient internal controls and procedures to ensure all costs and revenues associated with the portion of the Project leased to Citizens are recorded in the appropriate accounts and excluded from transmission formula rates.

9. MidAmerican Transco's Proposed TO Tariff

a. Proposal

52. In addition to the requested rate incentives, MidAmerican Transco also filed an initial TO Tariff, which includes a proposed cost-of-service formula rate template and proposed implementation protocols. In the TO Tariff, MidAmerican Transco proposes a base ROE of 10.8 percent, based on the average of the median results of three methods for calculating ROE: (1) the DCF analysis, (2) the utility risk premium approach, and (3) the Empirical Capital Asset Pricing Model.⁵⁷ MidAmerican Transco proposes

⁵⁶ 18 C.F.R. pt. 101 (2013). *See San Diego Gas & Electric Company*, 129 FERC ¶ 61,233 (2009).

⁵⁷ MidAmerican Transco Filing at 23.

depreciation rates based on those approved for use in PG&E's transmission revenue requirement.⁵⁸ MidAmerican Transco argues that it is appropriate to use PG&E's depreciation rates because it will be a tenant in common with PG&E and has no historical data of its own to support an analysis of service life and net salvage characteristics.

53. In the formula rate, MidAmerican Transco proposes to forecast its net revenue requirement for each calendar year, which will be assessed to CAISO's customers on January 1 of the succeeding year. MidAmerican Transco states that it will begin recovering pre-commercial costs through the CAISO TAC prior to the Project entering service pursuant to the CAISO Tariff. The proposed formula rate includes a true-up mechanism to ensure customers are not harmed in the event that the actual net revenue requirement is less than the billed net revenue requirement. MidAmerican Transco asserts that the proposed formula rate will provide for collection of a rate that represents its costs in the current period and greater certainty for cost recovery of capital expenditures while ensuring that customers pay only the actual cost-of-service over the life of the Project. MidAmerican Transco argues that the proposed formula rate is reasonable because it is consistent with the tariffs of other participating transmission owners, albeit modified to reflect MidAmerican Transco's unique circumstances.

54. MidAmerican Transco requests that the Commission accept the TO Tariff effective June 3, 2014.

b. Commission Determination

55. Other than the issues summarily resolved above, we find that MidAmerican Transco's proposed TO Tariff raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

56. Our preliminary analysis indicates that MidAmerican Transco's proposed TO Tariff, including, but not limited to, MidAmerican Transco's proposed ROE, depreciation rates, and formula rate protocols, has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept it for filing, suspend it for a nominal period, make it effective June 5, 2014, subject to refund, and set it for hearing and settlement judge procedures. We note that any determinations reached in the hearing concerning MidAmerican Transco's proposed formula rate protocols should remain consistent with guidelines set forth by the Commission in *MISO*.

⁵⁸ *Id.* at 21 (citing *Pacific Gas and Elec. Co.*, 146 FERC ¶ 61,034 (2014)).

57. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the 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.⁵⁹ If the parties desire, they may, 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.⁶⁰ The settlement judge shall report to the Chief Judge and the Commission within thirty 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.

The Commission orders:

(A) MidAmerican Transco's request for the Regulatory Asset Incentive, Hypothetical Capital Structure Incentive, Abandonment Incentive, and 50 basis point ROE adder for RTO participation for the Project is hereby granted, as discussed in the body of this order.

(B) MidAmerican Transco's proposed TO Tariff is hereby accepted for filing and suspended for a nominal period, to become effective on June 5, 2014, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER14-1661-000 concerning the justness and

⁵⁹ 18 C.F.R. § 385.603 (2013).

⁶⁰ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

reasonableness of MidAmerican Transco's proposed TO Tariff, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D), (E), and (F) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), 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.

(E) 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.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.