152 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, LLC
Transource West Virginia, LLC

Docket No. ER15-2114-000

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

(Issued September 4, 2015)

1. On July 7, 2015, pursuant to section 205 of the Federal Power Act (FPA)[1] and Part 35 of the Commission's regulations,[2] PJM Interconnection, LLC (PJM) filed, on behalf of Transource West Virginia, LLC (Transource West Virginia), Transource West Virginia's proposed formula rate template (hereafter, formula rate) and implementation protocols (hereafter, protocols) to recover the costs of Transource West Virginia's investment in transmission facilities located in the PJM region. Transource West Virginia also requests several transmission rate incentives under Order No. 679[3] for its investment in the competitive components of the Thorofare Creek–Goff Run–Powell Mountain 138 kV project (Thorofare Project), which is the first

[1] 16 U.S.C. §824d (2012).

[2] 18 C.F.R. pt. 35 (2015).

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

competitively-solicited project awarded through PJM's Regional Transmission Expansion Plan (RTEP) process.[4]

2. As discussed below, we conditionally accept Transource West Virginia's proposed formula rate and protocols, subject to certain modifications as directed below. We also accept Transource West Virginia's proposed base return on equity (ROE) for filing, suspend it for a nominal period, to be effective September 5, 2015, subject to refund, and set it for hearing and settlement judge procedures. Finally, we grant Transource West Virginia's proposed transmission rate incentives, as discussed more fully below.

I. Background

A. Description of Transource West Virginia

3. Transource West Virginia states that it is a wholly-owned subsidiary of Transource Energy, LLC (Transource Energy), which is a transmission-focused joint venture of American Electric Power Company, Inc. (AEP) and Great Plains Energy Incorporated, and is organized under the laws of the State of Delaware. Transource West Virginia states it was formed to construct, finance, own, operate, and maintain new projects located in West Virginia that are subject to competitive developer selection under the RTEP process outlined in Schedule 6 of the PJM Operating Agreement. Transource West Virginia states that it will execute the PJM Consolidated Transmission Owners Agreement,[5] and all transmission facilities constructed by Transource West Virginia will be transferred to the functional control of PJM.

B. Description of Thorofare Project

4. Transource West Virginia explains that the Thorofare Project, a $59.5 million project, represents the first project awarded to a developer on the basis of a competitive proposal through PJM's RTEP Process. Transource West Virginia states that the Thorofare Project, which is expected to be in-service by June 1, 2019, consists of: 1) a new 138 kV transmission substation near Rutledge, West Virginia; 2) a new 138 kV tap substation near Monongahela Power Company's Power Mountain – Goff Run Transmission Line; and 3) 15 miles of new 138 kV transmission lines from Appalachian

---

[4] *See* PJM Interconnection, L.L.C., Intra-PJM Tariffs, Operating Agreement, Schedule 6, § 1.5.8 (6.2.0).

[5] *See* PJM Interconnection, L.L.C., Rate Schedules, Consolidated Transmission Owners Agreement – PJM Rate Schedule No. 42 (1.0.0).

Power Company's existing Thorofare Creek substation to the new 138 kV substation near the Powell Mountain – Goff Run line.

5. Transource West Virginia states that the Thorofare Project was proposed by AEP, on behalf of its affiliates Transource Energy and Transource West Virginia, during a competitive window initiated by PJM to identify solutions to reliability concerns in the area northeast of Charleston, West Virginia expected to arise in 2019. Transource West Virginia states that, after considering several solution alternatives, the PJM Transmission Expansion Advisory Committee recommended the inclusion of the Thorofare Project in RTEP, and AEP received notification of designation of construction responsibility for the Project on March 17, 2015. Transource West Virginia states that Transource Energy executed a Designated Entity Agreement[6] with PJM on June 16, 2015, memorializing the parties' rights and obligations with respect to the development of the Thorofare Project.

II. Transource West Virginia's filing

A. Formula Rate Template and Protocols

6. Transource West Virginia states that the proposed formula rate and protocols, which will be included as new Attachments H-26 and H-26A of the PJM Tariff, will be used to determine the annual revenue requirement for Transource West Virginia.

7. Transource West Virginia states that the formula rate is forward-looking, and is similar to formula rates the Commission has recently accepted for other competitive transmission developers.[7] Further, Transource West Virginia states that the formula rate is consistent with Commission-approved ratemaking methodologies and contains sufficient specificity to operate without discretion in its implementation. Transource West Virginia requests that the Commission accept the filing, effective September 5, 2015.

---

[6] Transource West Virginia states that a DEA defines the terms, duties, accountabilities, and obligations of each party, and documents project scope, planning criteria, development schedules, project milestones, and other pertinent terms and conditions of project development. Exhibit No. TWV-100; Direct Testimony of Rajagopalan Sundararajan at 11-12.

[7] Transmittal at 5 (citing *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180 (2014); *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014) (XEST); *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014); *Transource Kansas, LLC*, 151 FERC ¶ 61,010 (2015)).

B. Incentive Rate Treatments

8. Transource West Virginia seeks approval of the following incentive rate treatments with respect to the Thorofare Project: 1) establishing a regulatory asset to recover all prudently-incurred pre-commercial costs and amortize the regulatory asset with interest over five years for cost recovery purposes (Regulatory Asset); 2) use of a 60 percent equity and 40 percent debt hypothetical capital structure until the Thorofare Project is placed into service by Transource West Virginia (hypothetical capital structure); 3) recovery of 100 percent of prudently-incurred costs in the event the Thorofare Project must be abandoned for reasons beyond Transource West Virginia's control; and 4) inclusion of 100 percent of construction work in progress (CWIP) in rate base during the development and construction of the Thorofare Project (CWIP). Further, Transource West Virginia requests authorization of a 50 basis point ROE adder in recognition that it has committed to turn over functional control of any transmission assets it develops and owns to PJM.

III. Notice of Filing and Responsive Pleadings

9. Notice of Transource West Virginia's filing was published in the *Federal Register*, 80 Fed. Reg. 40,055 (2015), with interventions and protests due on or before July 28, 2015. Old Dominion Electric Cooperative and Midcontinent MCN LLC filed timely motions to intervene.

IV. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make Old Dominion Electric Cooperative and Midcontinent MCN LLC parties to this proceeding.

B. Substantive Matters

1. Formula Rate

a. Formula Rate Template and Protocols

i. Proposal

11. Transource West Virginia states that the formula rate has two parts: 1) a cost of service template that underlies the Annual Transmission Revenue Requirement (revenue requirement) determination; and 2) the protocols. Transource West Virginia states that

its proposal formula rate provides for greater certainty for cost recovery of the capital expenditures used to improve PJM's transmission infrastructure.[8]

12. Transource West Virginia explains that, to calculate the revenue requirement, it will forecast the values needed to populate the formula rate template for each calendar year (Rate Year), and later, determine a true-up of the forecasted values after the actual data become available on the FERC Form No. 1 the year after the Rate Year. Transource West Virginia further explains that any difference between the forecasted revenue requirement and actual revenue requirement for a Rate Year determined based on FERC Form No. 1 data will be reflected in an appropriate true-up adjustment to the following year's revenue requirement.

13. Transource West Virginia states that the formula rate provides for the recovery of a return on rate base, taxes other than income taxes, depreciation expense, and other operation and maintenance (O&M) expenses, less any revenue credits. Transource West Virginia states that for transmission and general plant balances, the formula rate uses the average of 13 monthly balances, whereas for accumulated deferred income taxes, land held for future use, materials and supplies, and prepayments, the formula rate uses the average of the beginning and end of year balances.

14. Transource West Virginia states that the tax obligations incurred through its operations will be passed through to and reported on the tax returns of its corporate parents. Accordingly, Transource West Virginia states that for ratemaking purposes, it will be treated as a corporation and will receive an income tax allowance. Transource West Virginia states that this is consistent with Commission practice.[9]

15. Transource West Virginia also requests approval of its protocols, which govern the procedures regarding the implemented formula rate, how to request information, and the review and challenge procedures to the annual update. Transource West Virginia claims that its protocols are similar to the implementation protocols filed on compliance by Transource Kansas.[10] Additionally, Transource West Virginia claims that the protocols are transparent and will provide its customers with procedural safeguards and sufficient information to facilitate the annual review of the inputs to the formula rate. Transource

---

[8] Exhibit No. TWV-400; Direct Testimony of James F. Martin at 5.

[9] Transmittal at 7 (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 110 (2009), *reh'g & clarification denied*, 135 FERC ¶ 61,141 (2011)).

[10] Transource Kansas, LLC May 4, 2015 Compliance filing in Docket No. ER15-958-002.

West Virginia also states that the protocols are consistent with the Commission's latest guidance in the Midcontinent Independent System Operator, Inc. (MISO) formula rate protocol proceedings.[11]

ii. <u>Commission Determination</u>

16. We conditionally accept Transource West Virginia's proposed formula rate template and protocols, subject to a compliance filing to be made within 30 days of the date of this order to address the matters identified below. While the formula rate template generally conforms to other Commission-accepted formula rate templates, there are certain variances that Transource West Virginia has not explained, as well as certain errors and discrepancies that Transource West Virginia must correct. The Commission's policy with respect to formula rates is that the template should include all calculations, work papers, and the details necessary to allow customers, for instance, to verify and replicate calculations made in formula rate.[12] Moreover, while Transource West Virginia argues that its proposed protocols are fully consistent with the Commission's requirements described in *Empire*,[13] and are also consistent with the Commission Staff's July 17, 2014 Guidance on Formula Rate Updates,[14] we find that the protocols do not adhere to the standards required by the Commission in *Empire*, which were determined

---

[11] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 8 (2012), *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, MISO Compliance Order, 146 FERC ¶ 61,212, *order on compliance, Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

[12] *See,* e.g.*, Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 54 (2010). In that order, the Commission found that "[w]here a utility includes line item numbers but does not record the formula used in calculating the rate, or where the utility does not show how the rate is derived from the FERC Accounts, or where the accounting transparency in the formula rate is lacking due to projections of data or other factors, a company has the potential to exercise discretion in calculating the rate." Similarly, and as explained throughout this order, we require Transource West Virginia to update its formula rate template with the necessary clarification and transparency.

[13] Transmittal at 9 (citing *Empire Dist. Elec. Co.*, 148 FERC ¶ 61,030, at P 6 (2014), *order on compliance filing*, 150 FERC ¶ 61,200 (2015)).

[14] Exhibit No. TWV-400; Direct Testimony of James F. Martin at 15.

based on the MISO formula rate protocol proceedings.[15] Accordingly, we order Transource West Virginia to modify its formula rate template and protocols, as directed, and provide further explanation, as described below.

(a) **Formula Rate Template Corrections**

17. We note that Transource West Virginia's formula rate template contains numerous incomplete references to FERC Form 1. Specifically, there are two types of errors that we found in the proposed formula rate template: (1) Page 3 of Attachment H-26, Line 6, Column 2 references the FERC Form 1 at "350.xx.h." While we recognize this reference may be incomplete because this is a new formula rate template, we direct Transource West Virginia to correct this reference and fill in other placeholders, as appropriate; and (2) Page 3 of Attachment H-26, Line 12, Column 1 references "Misc. Transmission Expense (less amort. of regulatory asset)," while Column 2 does not contain a FERC Form 1 reference to that line item. Accordingly, we direct Transource West Virginia to provide references to any unreferenced line item or provide the correct reference to any items that may be incorrectly referenced.

(b) **Formula Rate Protocols**

18. We note that Transource West Virginia's protocols are inconsistent with the MISO formula rate proceedings mentioned above and we, therefore, direct Transource West Virginia to modify its protocols to clarify that: (1) informational filings must be made following the time period allowed for parties to review the updates and for transmission owners to respond to information and document requests, and must include any corrections or adjustments made during that period;[16] (2) notice is provided within 10 days of posting the annual update-true-up and that notice of the annual meeting is provided no less than seven days prior to such meeting;[17] (3) remote access to annual update meetings must be provided in order to ease burdens (e.g. travel costs) to ensure all interested parties have opportunity to participate;[18] (4) the transmission owner cannot

---

[15] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127, at P 8 (2012), *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013) (MISO Investigation Order), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, MISO Compliance Order, 146 FERC ¶ 61,212, *order on compliance, Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

[16] MISO Investigation Order, 143 FERC ¶ 61,149 at P 92.

[17] MISO Compliance Order, 146 FERC ¶ 61,212 at P 59.

[18] *Black Hills Power, Inc.*, 150 FERC ¶ 61,198, at P 30 (2015).

claim that responses to information and document requests pursuant to the protocols are subject to any settlement or confidentiality provision;[19] (5) in response to an informal challenge, the challenge procedures must require transmission owners and the RTO, where applicable, to appoint a senior representative to work with the interested party (or its representatives) toward a resolution of the dispute;[20] (6) formal challenges are filed pursuant to the proposed protocols, rather than rule 206, and detail specifically the filing requirements that an interested party must satisfy in submitting a formal challenge to the Commission;[21] and (7) formal challenges should be filed in the informational filing dockets.[22]

b. Base ROE

i. Proposal

19. Transource West Virginia requests a base ROE of 10.5 percent. Transource West Virginia states that it calculated this ROE according to the standards adopted by the Commission in Opinion No. 531.[23] Specifically, Transource West Virginia's ROE witness, Mr. McKenzie, applied the two-step discounted cash flow (DCF) method, while also evaluating the cost of equity using the risk premium, capital asset pricing model, and expected earnings analyses. Transource West Virginia's DCF method establishes a zone of reasonableness of 7.14 percent to 12.30 percent. Transource West Virginia maintains that, evaluating a point estimate ROE from within the top end of the zone of the DCF range, as the Commission found in Opinion No. 531, is justified given the continued anomalous capital market conditions. According to Transource West Virginia, a 10.5 percent ROE is consistent with the results of the risk premium, capital asset pricing model, and expected earnings analyses.[24] Transource West Virginia also argues that a 10.5 percent base ROE is consistent with the need for financial support as it seeks to

---

[19] MISO Compliance Order, 146 FERC ¶ 61,212 at P 68.

[20] MISO Investigation Order, 143 FERC ¶ 61,149 at P 119.

[21] MISO Compliance Order, 146 FERC ¶ 61,212 at P 112.

[22] *Id*. P 113.

[23] Exhibit No. TWV-300, Direct Testimony of Adrien M. McKenzie at 2 (citing *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.,* Opinion No. 531, 147 FERC ¶ 61,234 (2014)).

[24] Exhibit No. TWV-300, Direct Testimony of Adrien M. McKenzie at 7-8.

establish an investment grade credit standing while committing the capital investment necessary to undertake important enhancements to the transmission infrastructure within PJM.[25]

ii. **Commission Determination**

20. Our preliminary analysis indicates that Transource West Virginia's proposed base ROE has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept Transource West Virginia's proposed ROE for filing, suspend it for a nominal period, to be effective September 5, 2015, subject to refund, and set it for hearing and settlement judge procedures.

21. 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 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.[26] 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. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

c. **Depreciation Rates**

i. **Proposal**

22. Transource West Virginia states that the depreciation rates used in the formula rate were determined using the depreciation study prepared by AEP and filed with the Public Service Commission of West Virginia by Transource West Virginia's affiliate Appalachian Power Company. Transource West Virginia claims that Appalachian Power Company's proposed depreciation rates for transmission and general plant, based on the depreciation study, were accepted by the Public Service Commission of West Virginia by an order dated May 26, 2015.

---

[25] Exhibit No. TWV-300, Direct Testimony of Adrien M. McKenzie at 25.

[26] 18 C.F.R. § 385.603 (2015).

23. Transource West Virginia states that because no Transource West Virginia facilities have been constructed, it is appropriate to use the service lives and net salvage percentages supported by the depreciation study to determine depreciation rates for the Thorofare Project. Transource West Virginia further states that there is no historical data to support an analysis of service life and net salvage characteristics specific to the Thorofare Project that it will ultimately construct. Therefore, Transource West Virginia claims it is necessary to base the initial service life and net salvage estimates on sources other than project-specific historical data.

ii. Commission Determination

24. Our preliminary analysis indicates that Transource West Virginia's proposed depreciation rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept Transource West Virginia's proposed depreciation rates for filing, suspend them for a nominal period, to be effective September 5, 2015, subject to refund, and set them for hearing and settlement judge procedures.

25. 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 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.[27] 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. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

---

[27] 18 C.F.R. § 385.603 (2015).

2. Incentive Rate Treatments

a. Total Package of Incentives

i. Background

26. In the Energy Policy Act of 2005,[28] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure. 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 Transource West Virginia. Additionally, in November 2012, the Commission issued a Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[29]

27. 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."[30] 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 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.[31] Order No. 679-A clarified the operation of this rebuttable presumption by noting that the authorities 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.[32]

---

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

[29] 2012 Incentives Policy Statement, *supra* note 3.

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

[31] *Id*.

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

28. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[33] 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.[34] 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 where appropriate.[35] 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.[36]

ii. <u>Proposal</u>

29. Transource West Virginia claims that it will face considerable challenges when developing the Thorofare Project. With respect to the scope of the project, West Virginia states that the Thorofare Project is the first transmission facility that it will place into service, has an expected in-service date of June 2019, and will cost an estimated $59.5 million. Transource West Virginia states that, without the requested incentive rate treatments, its ability to maintain adequate cash flows will be limited, which could ultimately lead to lower credit ratings and higher costs of financing.[37] With respect to the

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

[34] 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40).

[35] *See, e.g.*, *Central Minnesota Mun. Power Agency*, 134 FERC ¶ 61,115, at P 34 (2011) (finding that inclusion of 100 percent of construction work in progress in rate base, abandoned plant recovery, and use of a hypothetical capital structure were tailored to the unique challenges faced by the applicant).

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

[37] Transmittal at 12, Exhibit No. TWV-200, Direct Testimony of Matthew D. Vermilion at 7-8, 13.

financial challenges that Transource West Virginia will face with developing the Thorofare Project, Transource West Virginia claims that, in order to meet PJM-directed construction schedules, it will need to expend significant funds for the engineering, procurement, right-of-way acquisition, permitting, and overall development of the project. Transource West Virginia argues that the requested incentive treatments will significantly enhance Transource West Virginia's overall financial strength such that it can obtain a viable credit rating that is essential to cost-effectively financing new transmission development. Transource West Virginia also claims that it faces several regulatory and site control challenges from both federal and state agencies and will also have to work with landowners to acquire the necessary land and easements to construct the 15 mile route of the new 138 kV line.[38] Lastly, with respect to risks related to competitive process, Transource West Virginia states that the Thorofare Project is the first project awarded to a competitive developer in PJM.[39]

30. Transource West Virginia argues that—given the risks and challenges of the project, as outlined above—it has narrowly tailored the package of incentive rate treatments to meet the specific risks and challenges of the Thorofare Project. Transource West Virginia contends that—collectively—the Regulatory Asset incentive, Hypothetical Capital Structure Incentive, Abandonment Incentive, and the CWIP incentive each individually address the risks and challenges inherent in the development of the Thorofare Project and each is warranted in mitigating those risks. Transource West Virginia claims that these requests for incentive rate treatments are consistent with the direction of the Commission's 2012 Incentives Policy Statement.[40]

31. Transource West Virginia claims that, where a transmission project is the product of a fair and open regional planning process, the Commission has adopted a rebuttable presumption that such project will ensure reliability or reduce the costs of delivered

---

[38] Transmittal at 13-14.

[39] Transource West Virginia also points out that the Designated Entity Agreement entered into between PJM and Transource West Virginia is an untested contract and imposes binding obligations not generally encountered by incumbent utilities.

[40] Transource West Virginia notes that its requests for the Abandoned Plant, CWIP and regulatory asset incentives under Order No. 679. However, Transource West Virginia asserts that the Commission could also authorize the requested rate treatments under section 205 because the requested incentives are just and reasonable and will promote the Commission's transmission investment policies.

power by reducing congestion, so long as the regional planning process "considered whether the project ensures reliability or reduces congestion."[41] Transource +

32. West Virginia argues that the Thorofare Project qualifies for this rebuttable presumption because the Thorofare Project was selected under PJM's planning process to address reliability issues.[42] Further, Transource West Virginia claims that the Commission has previously held that a project approved by the PJM transmission planning process satisfies the rebuttable presumption established in Order No. 679.[43]

iii. <u>Commission Determination</u>

33. We find that the total package of incentives sought by Transource West Virginia is tailored to address the risks and challenges that Transource West Virginia faces in undertaking the Thorofare Project. 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 risks or challenges faced by the applicant.[44] 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.[45] Here, Transource West Virginia has made the appropriate showing. The Commission also 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 where appropriate. 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 is appropriate.[46] We find that Transource

---

[41] *Id*. at 11 (citing Order No. 679-A at PP 5, 49-50).

[42] *Id*.

[43] *Id*. (citing to *Pub. Serv. Elec. & Gas Co.*, 137 FERC ¶ 61,253, at P 19 (2011).

[44] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40; 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

[45] 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40).

[46] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55. *See also Midcontinent Indep. Sys. Operator, Inc. and WPPI Energy*, 151 FERC ¶ 61,246 at P 35.

West Virginia has demonstrated the incentives package—as a whole—addresses the risks and challenges faced by Transource West Virginia in undertaking the Thorofare Project.

34. We also find that the Thorofare Project is entitled to the rebuttable presumption established in Order No. 679. The Thorofare Project represents the first competitively-solicited project awarded to a developer through the PJM RTEP process. The Commission has previously held that the PJM RTEP process constitutes "a fair and open regional planning process" for the purposes of the rebuttable presumption provided in Order No. 679.[47] Consistent with holding, we find here that the Thorofare Project—a project vetted in PJM's regional planning process—is entitled to the rebuttable presumption. We next address each of Transource West Virginia's requested incentives below.

b. Regulatory Asset

i. Proposal

35. Transource West Virginia seeks authorization to recover all prudently incurred pre-commercial costs that are not capitalized and included in CWIP. Transource West Virginia also requests authorization to establish a regulatory asset in which to book pre-commercial costs incurred up to the date on which charges are first assessed to PJM customers under the formula rate. Transource West Virginia states that it will begin to accrue such costs before it begins recovering those costs through its formula rate. Transource West Virginia states that this incentive is necessary so that it can record and recover, in an appropriate manner, the necessary startup, planning, bid development, and project development costs that were not capitalized as CWIP, but were incurred before such prudently incurred expenses could be recovered under the formula rate. Further, Transource West Virginia states that the Commission has recognized that this incentive will help enhance a project developer's credit quality, which in turn lowers its borrowing costs.[48]

36. Transource West Virginia seeks authorization to amortize the regulatory asset over five years, beginning in the first year that costs are assessed to PJM customers under the formula rate. Additionally, Transource West Virginia seeks permission to accrue

[47] *See, e.g.*, *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 62-66 (2007); *see also Baltimore Gas & Elec.*, 120 FERC ¶ 61,084, at P 41 (2007), *reh'g denied*, 122 FERC ¶ 61,034 (2008) (*BG&E*).

[48] *Id*. at 14 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008), *order on reh'g*, 133 FERC ¶ 61,152 (2010).

monthly carrying charges, compounded semi-annually, on the regulatory asset's balance beginning on the date the Commission authorizes the creation of the regulatory asset until the regulatory asset is included in rate base.[49] Transource West Virginia claims that, when the formula rate is incorporated into the PJM Tariff and current expenses can be recovered through that formula rate, it will discontinue the practice of booking expenses to the regulatory asset and instead will recover those expenses through the formula rate as they are incurred. Further, Transource West Virginia states that any pre-commercial costs that are incurred after the formula rate is included in the PJM Tariff and that are not capitalized and included in CWIP will be recovered as a current expense through the formula rate.

ii. Commission Determination

37. We grant Transource West Virginia's request to recover all prudently-incurred pre-commercial costs that are not capitalized and included in CWIP, and to establish a regulatory asset in which to book pre-commercial costs incurred up to the date that charges are assessed to PJM customers under the formula rate. We agree with Transource West Virginia that this incentive will allow it to record and recover, in an appropriate manner, the necessary startup, planning, bid development, and project development costs that were not capitalized as CWIP, but were incurred before such prudently incurred expenses could be recovered under the formula rate as current expenses. In Order No. 679, the Commission allowed project developers to defer, and then amortize (expense), pre-commercial operations costs that were not capitalized, including the types of preliminary survey and investigation costs recordable in, for example, Account 183, Preliminary Survey and Investigation Charges. Here, Transource West Virginia proposes to establish a regulatory asset and amortize the permitting, consulting, and legal costs related to the Thorofare Project. We authorize Transource West Virginia to record a regulatory asset for such pre-commercial, prudently-incurred costs. We find that this incentive appropriately addresses the risks and challenges of the Thorofare Project, because this incentive will provide Transource West Virginia with the up-front regulatory certainty it needs, reduce interest expenses, and, ultimately, assist in the construction of the project. Therefore, we find Transource West Virginia's proposed recovery of such costs is appropriate, and we grant its request to establish a regulatory asset for the pre-commercial costs.

38. We also grant Transource West Virginia's request to amortize the regulatory asset over five years and to accrue monthly carrying charges, compounded semi-annually. We

---

[49] *Id*. at 15 (citing *RITELine Illinois, LLC*, 137 FERC ¶ 61,039, at P 96 (2011), *reh'g denied*, 149 FERC ¶ 61,238 (2014); (*Green Power Express*, 127 FERC ¶ 61,031 at P 60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 84 (2009)).

accept Transource West Virginia's proposed effective date of September 5, 2014, to allow it to establish the regulatory asset, and begin accruing carrying charges. Finally, while this order provides Transource West Virginia with the ability to record pre-construction costs as a regulatory asset, Transource West Virginia must make a section 205 filing to demonstrate that the pre-construction costs are just and reasonable. Transource West Virginia will have to establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred. These costs will be subject to challenge at that time.

c. Hypothetical Capital Structure

i. Proposal

39. Transource West Virginia seeks the use of a hypothetical capital structure consisting of 40 percent debt and 60 percent equity until the Thorofare Project achieves commercial operation. Transource West Virginia notes that it will use the hypothetical capital structure prior to the Thorofare Project goes into service.[50] After the Thorofare Project goes into service, Transource West Virginia states that it will use its actual capital structure.[51] Transource West Virginia contends that, as a nonincumbent transmission developer with no existing assets, Transource West Virginia's actual capitalization will fluctuate during the development and construction period prior to the time when long term debt is issued. Transource West Virginia states that the use of a hypothetical capital structure will allow it to utilize a consistent and predictable cost of capital when determining its carrying cost for the regulatory asset, as well as its return on CWIP, unamortized regulatory asset balance or Allowance for Funds Used During Construction (AFUDC) carrying costs during the period prior to the time the Thorofare Project is placed into service. Further, Transource West Virginia states that the 60 percent equity content will help promote a strong BBB rating and will provide Transource West Virginia with sufficient access to capital at reasonable rates.[52] In turn, Transource West Virginia contends that achieving a BBB/Baa2 investment grade rating will save transmission customers approximately $81,000 annually compared with the expected financing costs associated with a minimal investment grade credit rating and even more compared to sub-investment grade credit ratings.[53] Finally, Transource West Virginia

---

[50] Exhibit No. TWV-200; Direct Testimony of Matthew D. Vermilion at 12.

[51] *Id.*

[52] *Id.* at 13.

[53] *Id.*

states that the Commission has approved the use of a hypothetical capital structure of 40 percent debt and 60 percent equity for its affiliates, Transource Missouri and Transource Kansas, and for other transmission developers.[54]

ii. Commission Determination

40. We grant the requested incentive for Transource West Virginia to use a hypothetical capital structure of 40 percent debt and 60 percent equity until the Thorofare Project achieves commercial operation.[55] Further, we find that the requested hypothetical capital structure will aid Transource West Virginia in raising capital during the construction phase of the Thorofare Project, and will assist Transource West Virginia in maintaining low debt costs while its actual debt-to-equity ratio varies. Finally, the requested hypothetical capital structure will bolster Transource West Virginia's financial metrics, help ensure a strong credit rating that will reduce financing costs, and enable the construction of the Thorofare Project.

d. Abandonment

i. Proposal

41. Transource West Virginia requests authorization to recover 100 percent of prudently incurred costs, including costs incurred before Commission action on this request, in the event the Thorofare Project must be abandoned for reasons outside the reasonable control of Transource West Virginia. Transource West Virginia states that the abandonment incentive helps to address risks in undertaking the Thorofare Project, by eliminating the risk that lenders and shareholders may have to bear the costs incurred on transmission projects that are cancelled for reasons outside the developer's control.

42. Transource West Virginia claims that the Thorofare Project faces a number of risks that could lead to eventual abandonment such as environmental, regulatory, and

---

[54] Transmittal at 16 (citing *Transource Missouri, LLC,* 141 FERC ¶ 61,075, at P 66 (2012); *Transource Kansas, LLC*, 151 FERC ¶ 61,010 (2015); *Green Power Express LP*, 127 FERC ¶ 61,031 at P 72; *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 141 (2010), *order on reh'g*, 140 FERC ¶ 61,052 (2012); *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 121 (2011)).

[55] See, e.g., *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014) (*XEST*); *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014) (*XETD*); *Transource Kansas, LLC*, 151 FERC ¶ 61,010 (2015) (*Transource Kansas*); *Transource Wisconsin, LLC,* 149 FERC ¶ 61,180 (2014) (*Transource Wisconsin*).

land rights acquisition risks. Transource West Virginia states that there is also the possibility that a determination is made by PJM that the Thorofare Project is no longer needed or should be delayed for any number of reasons.[56] Transource West Virginia states that PJM also has the right under the Designated Entity Agreement to cancel the Thorofare Project or reassign it to another developer if Transource West Virginia misses project milestones, even where delays are caused by factors outside its control.

ii. Commission Determination

43. We grant Transource West Virginia's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Thorofare Project provided that the abandonment is a result of factors beyond Transource West Virginia's control, which must be demonstrated in a subsequent FPA section 205 filing for recovery of abandoned transmission facilities costs.[57] As we have explained in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[58] In addition, as Transource West Virginia has demonstrated, we find that approval of the abandonment incentive will both attract financing for the Thorofare Project and protect Transource West Virginia from further losses if the Project is cancelled for reasons outside Transource West Virginia's control.

44. As indicated above, we will not determine the justness and reasonableness of Transource West Virginia's recovery of costs for abandoned electric transmission facilities, if any, until Transource West Virginia seeks such recovery in a future FPA section 205 filing.[59] Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.[60]

---

[56] Transmittal at 16 (citing *PJM Interconnection, LLC & Potomac-Appalachian Transmission Highline, L.L.C.*, 141 FERC ¶ 61,177 (2012)).

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

[58] *Id*. P 163.

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

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

e. CWIP

i. Proposal

45. Transource West Virginia seeks authorization to include 100 percent of CWIP in rate base during the development and construction phase of the Thorofare Project. Transource West Virginia states inclusion of CWIP in rate base reduces the overall financing costs borne by ratepayers. In addition, Transource West Virginia states that the Commission has acknowledged that inclusion of CWIP in rate base will benefit consumers by mitigating the possibility that consumers will experience “rate shock” when projects come into service.[61]

46. Transource West Virginia states that the Commission’s regulations require that any utility that includes CWIP in rate base must discontinue the capitalization of AFUDC in rate base with respect to future projects.[62] Transource West Virginia claims that in order to satisfy these requirements, it will not accrue AFUDC in FERC Account 107, CWIP, for the Thorofare Project during any period when Transource West Virginia is earning a current return on CWIP using the CWIP Incentive.[63]

47. Transource West Virginia states that the CWIP incentive will improve cash flow during construction and provide greater regulatory certainty, both of which are instrumental in supporting financial integrity and attracting capital.[64] Transource West Virginia also states that cash flow stability resulting from the CWIP incentive would help it secure and maintain a BBB credit rating, which will help it secure financing on reasonable terms.[65] Additionally, Transource West Virginia states that to the extent necessary, it seeks waiver of the Commission’s CWIP filing requirements, which are set forth in 18 C.F.R. sections 35.13(h)(38) and 35.25.[66]

---

[61] Transmittal at 17 (citing *Oklahoma Gas & Elec. Co.*, 133 FERC ¶ 61,274, at P 48 (2010)).

[62] Exhibit No. TWV-500; Direct Testimony of Rhoderick C. Griffin at 7-8.

[63] Exhibit No. TWV-500; Direct Testimony of Rhoderick C. Griffin at 8.

[64] Transmittal at 17.

[65] *Id*. at 17.

[66] *Id*. at 21.

ii. Commission Determination

48. We grant Transource West Virginia's request to include 100 percent of CWIP in rate base for the Thorofare Project. 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.[67] As affirmed in the Transmission Incentives Policy Statement, the CWIP incentive serves as a useful tool to ease the financial pressures associated with transmission development by providing up-front regulatory certainty, rate stability, and improved cash flow, which in turn can result in higher credit ratings and lower capital costs.[68] We find that allowing Transource West Virginia to include 100 percent of CWIP in rate base will further the goals of FPA section 219 as it "removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward."[69]

49. Further, we find that Transource West Virginia has demonstrated that it has appropriate accounting procedures and internal controls in place to prevent recovery of AFUDC on CWIP costs that are also included in the rate base. Transource West Virginia states that it will not accrue AFUDC in FERC Account 107, Construction Work in Progress, for the Thorofare Project and any future project for which the Commission grants the CWIP incentive. We accept Transource West Virginia's proposed accounting procedures and use of footnote disclosures to provide comparability of financial information.[70] We note that Commission policy requires Transource West Virginia to also have sufficient accounting controls and procedures to ensure that unpaid accruals properly recorded in the work orders are excluded from transmission rate base.[71]

50. A public utility may accrue AFUDC on eligible construction expenditures properly recorded in Account 107, Construction Work in Progress, or include such amounts in rate base when authorized by the Commission. This practice compensates a

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

[68] *Transmission Incentives Policy Statement*, 141 FERC ¶ 61,129 at P 12.

[69] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 117.

[70] *See Transource Missouri*, 141 FERC ¶ 61,075 at P 52; *American Transmission Co.*, 107 FERC ¶ 61,117, at PP 16-17 (2004).

[71] *PJM Intrconnection, L.L.C. and Commonwealth Edison Co.*147 FERC ¶ 61,157 (2014); *PJM Intrconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 147 FERC ¶ 61,142 (2014).

public utility for its out-of-pocket construction costs. However, it would be inappropriate to accrue AFUDC or include in rate base and earn a return on amounts charged to Account 107 that have not been paid. Additionally, we note that Transource West Virginia's accounting controls and procedures may be subject to scrutiny through Commission audit or rate review.

51. Further, as a result of the Commission approving rate incentives, Transource West Virginia must also submit FERC-730 reports annually.[72]

f. <u>RTO Participation Incentive</u>

i. <u>Proposal</u>

52. Transource West Virginia also requests a 50 basis point adder to its base ROE for RTO participation. It notes that, in Order No. 679, the Commission stated that it will approve the RTO participation adder "for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization." Transource West Virginia explains that it will become a member of PJM, transfer functional control of transmission facilities it develops to PJM once they are constructed, and will recover the costs of its transmission assets from PJM customers through the inclusion of the Transource West Virginia formula rate in the PJM Tariff.

ii. <u>Commission Determination</u>

53. We grant Transource West Virginia's request for a 50 basis point adder to its base ROE for its participation in PJM, consistent with previous Commission orders,[73] subject to the resulting, total ROE—i.e., the base ROE plus the ROE incentive adder—being capped by the zone of reasonableness determined at hearing.[74] We note that our approval

---

[72] FERC-730 annual reports must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h) (2015). These reports contain actual, projected and incremental transmission investment information. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 358, 367.

[73] *See, e.g.*, *Transource Kansas*, 151 FERC ¶ 61,010 at P 46; *MidAmerican Cent. California Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64.

[74] *See, e.g.*, *Coakley*, *Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, at P 164 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165, at P 139 (2015).

of this incentive is based on Transource West Virginia's commitment to become a member of PJM and transfer operational control of the Project to PJM once the Thorofare Project has been placed in service.

The Commission orders:

(A) Transource West Virginia's proposed formula rate template and protocols are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days of the date of this order, effective September 5, 2015, as requested, as discussed in the body of this order.

(B) Transource West Virginia's proposed ROE and depreciation rates are hereby accepted for filing and suspended for a nominal period, to be effective September 5, 2015, subject to refund, as discussed in the body of this order.

(C) Transource West Virginia's requested rate incentive treatment package for the Thorofare Project is hereby granted, as discussed in the body of this order.

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

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) 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.

(G) 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)

Kimberly D. Bose,
Secretary.