

152 FERC ¶ 61,193  
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.

ATX Southwest, LLC

Docket No. ER15-1809-000

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

(Issued September 11, 2015)

1. In this order, we conditionally accept ATX Southwest, LLC's (ATX Southwest) proposed formula rate template and implementation protocols to recover costs associated with transmission projects that it intends to own and develop as part of Southwest Power Pool, Inc.'s (SPP) Order No. 1000 competitive solicitation process.<sup>1</sup> We accept the formula rates to be effective once filed with the Commission to become part of SPP's Open Access Transmission Tariff (Tariff), consistent with the effective date established in that future proceeding, subject to a further compliance filing to be made within 30 days of the date of this order. We accept ATX Southwest's proposed base return on equity (ROE) for filing, suspend it for a nominal period, to be effective July 27, 2015, subject to refund, and set it for hearing and settlement judge procedures. We also grant ATX Southwest's request for authorization to defer as a regulatory asset its prudently incurred costs, including pre-commercial and formation costs, effective July 27, 2015, as requested. We conditionally accept ATX Southwest's request to use a hypothetical capital structure consisting of 44 percent debt and 56 percent equity, subject to a compliance filing to be made within 30 days of the date of this order. We deny ATX Southwest's request for authorization to recover prudently incurred costs related to transmission facilities abandoned for reasons beyond its control and its request for

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

authorization to include 100 percent of construction work in progress (CWIP) in rate base during development and construction. We also deny ATX Southwest's request to include 50 percent of CWIP in rate base for all transmission projects that it is awarded through SPP's Order No. 1000 competitive solicitation process. Finally, we conditionally accept ATX Southwest's request that other yet-to-be-formed affiliates be authorized to utilize the same formula rate template and implementation protocols and the same requested incentives.

## **I. Background**

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

3. ATX Southwest states that it is wholly owned by Ameren Transmission Company, an intermediate holding company owned by Ameren Corporation. ATX Southwest states that it is a special purpose entity formed solely for the purpose of engineering, designing, permitting, constructing, and owning transmission projects within the SPP footprint. ATX Southwest states that it will become a Transmission Owner under the SPP

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<sup>2</sup> *Id.* P 336.

<sup>3</sup> Generally, Competitive Upgrades are integrated transmission plan or high priority upgrades operated at or above 100kV that are not rebuilds of existing transmission facilities. *See generally* SPP, Open Access Transmission Tariff Sixth Revised Volume No. 1, Att. Y §§ I.1, II (2.0.0).

Membership Agreement and the SPP Tariff, and it will transfer operational control of any transmission projects built to SPP.

## II. ATX Southwest Filing

4. On May 28, 2015, ATX Southwest submitted for filing under section 205 of the Federal Power Act (FPA) a proposed transmission formula rate to recover costs associated with transmission projects that it intends to own and develop as part of the SPP Order No. 1000 competitive solicitation process.<sup>4</sup> ATX Southwest explains that the formula rate consists of two parts: (1) a forward-looking cost of service template, subject to true-up, that underlies the annual transmission revenue requirement determination (formula rate template); and (2) formula rate implementation protocols (protocols) (together, Formula Rate).<sup>5</sup> ATX Southwest states that it is seeking approval of the Formula Rate in advance of bidding on SPP-awarded competitive transmission projects, and that costs would not flow through the Formula Rate until such time as the Formula Rate is formally added to the SPP Tariff, or the Commission otherwise approves cost recovery.

5. ATX Southwest seeks approval for the following: (1) the use of a hypothetical capital structure made up of 44 percent debt and 56 percent equity until ATX Southwest places \$250 million of plant in service; (2) depreciation rates based on those of affiliate Ameren Illinois Company (Ameren Illinois); (3) a base ROE of 10.9 percent, with a 50 basis point regional transmission organization (RTO) participation adder, for a total ROE of 11.4 percent; (4) an “up to” rate to allow ATX Southwest to offer a discount on a project-specific revenue requirement to reflect the result of any agreement between ATX Southwest and SPP; (5) a debt cost of 3.29 percent until such time as ATX Southwest issues debt; and (6) stated rate inputs for Post-employment Benefits Other than Pensions (PBOP) in ATX Southwest’s formula, which are derived from the PBOP rates covering its affiliates.<sup>6</sup>

6. In addition, ATX Southwest seeks approval for the following rate incentives, pursuant to section 219 of the FPA: (1) 100 percent of CWIP in rate base for a narrow subset of large transmission projects meeting certain pre-defined criteria; and (2) ability

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<sup>4</sup> 16 U.S.C. § 824d (2012).

<sup>5</sup> ATX Southwest notes that its proposed Formula Rate is modeled after the proposal accepted by the Commission for Xcel Energy Southwest Transmission Company, LLC (XEST) in Docket No. ER14-2751-000 and XEST’s compliance filing in Docket No. ER14-2751-001. Transmittal at 7.

<sup>6</sup> *Id.* at 1-2.

to recover prudently incurred investments in the case any SPP-approved project awarded to ATX Southwest is abandoned for reasons outside ATX Southwest's control.<sup>7</sup> Furthermore, ATX Southwest seeks approval for the following rate incentives, pursuant to section 205 of the FPA: (1) establishment of a regulatory asset to account for prudently incurred pre-commercial expenses for later recovery; (2) ability to recover 50 percent of CWIP in rate base for all Competitive Upgrades to which the 100 percent CWIP incentive does not apply; (3) approval to adopt the same rate filed herein for other subsidiaries or affiliates that it or its parent may form to develop projects in the SPP footprint to participate in the SPP competitive solicitation process, including the ability to transfer the ROE and any awarded incentives; and (4) affirmation of the abandonment incentive as a policy-based incentive under section 205, if the Commission finds that it cannot award that incentive under section 219.<sup>8</sup>

7. ATX Southwest argues that the 100 percent CWIP incentive and abandonment incentive should be awarded upon request to transmission developers before projects are identified when the universe of projects to which the incentives would apply is limited to a narrow subset of projects emerging from Order No. 1000-compliant, RTO-approved competitive solicitation processes. ATX Southwest notes that the section 219/Order No. 679 "nexus" test was developed before Order No. 1000.<sup>9</sup> ATX Southwest contends that proliferation of RTO-based competitive solicitations provides the Commission both the occasion to revisit its policy, and a framework under which to ensure that incentives are appropriately awarded in certain circumstances before projects are awarded. ATX Southwest argues that the requested section 219 incentives are appropriate, even before specific projects are identified because the nexus test is satisfied in this case.

8. ATX Southwest requests an effective date of July 27, 2015. ATX Southwest states that this effective date will provide it with upfront certainty as to its rate structure to permit it to better participate in SPP's competitive solicitation processes in 2015. ATX requests waiver of the requirement to submit detailed cost-of-service schedules because ATX Southwest's Formula Rate Template and Formula Rate Protocols demonstrate that ATX Southwest's rates will be based on actual costs incurred during the relevant time

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<sup>7</sup> 16 U.S.C. § 824s (2012).

<sup>8</sup> Transmittal at 2-3.

<sup>9</sup> *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).

period as reflected in FERC Form No. 1 filings.<sup>10</sup> ATX Southwest also requests a limited partial waiver of the Commission's eTariff filing requirements. ATX Southwest states that, when it is awarded a transmission project and qualifies as a Transmission Owner under the SPP Tariff, ATX Southwest will ask SPP to incorporate the ATX Southwest Formula Rate into the SPP Tariff, which will include an eTariff filing containing ATX Southwest's Formula Rate.<sup>11</sup>

### **III. Notice of Filing and Responsive Pleadings**

9. Notice of ATX Southwest's filing was published in the *Federal Register*, 80 Fed. Reg. 32,108 (2015), with interventions and protests due on or before June 18, 2015. A timely motion to intervene was filed by South Central MCN, LLC. The Missouri Public Service Commission (Missouri Commission) filed a notice of intervention and protest. On July 6, 2015, ATX Southwest submitted an answer to the Missouri Commission's protest.

### **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 (2014), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept ATX Southwest's answer because it has provided information that assisted us in our decision-making process.

#### **B. Requests for Incentives**

11. In the Energy Policy Act of 2005,<sup>12</sup> Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote

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<sup>10</sup> Transmittal at 33-34 (citing *DATC Midwest Holdings LLC*, 139 FERC ¶ 61,224, at PP 97-98 (2012); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008); *Okla. Gas & Elec. Co.*, 122 FERC ¶ 61,071, at P 41 (2008); *RITELine II. LLC*, 137 FERC ¶ 61,039, at P 134 (2011)).

<sup>11</sup> *Id.* at 3, 34.

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

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,<sup>13</sup> including the incentives requested here by ATX Southwest.

12. Pursuant to section 219, an applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”<sup>14</sup> Also, as part of this demonstration, “section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.”<sup>15</sup>

13. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.<sup>16</sup> 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.”<sup>17</sup> Additionally, in November 2012, the Commission issued a transmission incentives policy statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.<sup>18</sup>

14. ATX Southwest submitted its request for the regulatory asset, hypothetical capital structure, and 50 percent CWIP pursuant to section 205, and its request for the abandoned plant and 100 percent CWIP incentives under Order No. 679. However, ATX Southwest asserts that the Commission could also authorize the abandoned plant rate treatment

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<sup>13</sup> 16 U.S.C. § 824s (2012).

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

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

<sup>16</sup> *Id.* P 48.

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

<sup>18</sup> *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

under section 205 because the requested incentives are just and reasonable and will promote the Commission's pro-competitive policies.<sup>19</sup>

15. ATX Southwest states that, although the Commission has recently denied incentive treatment for applicants without specific projects and that could not meet the nexus test under Order No. 679, ATX Southwest believes that there are ample policy and legal grounds upon which the Commission can justify a shift in policy at this time.<sup>20</sup> ATX Southwest states that, if the universe of projects for which the incentives are requested is narrowly defined, as is the case here, then the Commission can be assured that ATX Southwest would only apply the incentives to projects with sufficient merit to warrant those incentives.<sup>21</sup> ATX Southwest argues that the nexus test conceived by Order No. 679 pre-dates the competitive solicitations implemented by many RTOs in the wake of Order No. 1000, which provides a framework under which to ensure that incentives are appropriately awarded.<sup>22</sup> ATX Southwest states that it is only seeking to apply the 100 percent CWIP incentive to projects that are: (1) included in the SPP Transmission Expansion Plan and approved by the SPP board of directors as a Competitive Upgrade; (2) estimated to cost \$100 million or more; and (3) estimated to have a construction time of five years or more.<sup>23</sup> ATX Southwest does not seek to limit its requested abandoned plant incentive by the cost and lead-time criteria that it proposes to limit the application of the 100 percent CWIP incentive, and, instead, seeks this abandoned plant incentive for all Competitive Upgrades that ATX Southwest is awarded.<sup>24</sup>

16. ATX Southwest argues that, taken together, these criteria are specific enough to ensure that the projects to which the 100 percent CWIP rate treatment would apply would

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<sup>19</sup> Transmittal at 29-30.

<sup>20</sup> See *Transource Kan., LLC*, 151 FERC ¶ 61,010 (2015) (*Transource Kansas*); *Transource Wis., LLC*, 149 FERC ¶ 61,180 (2014) (*Transource Wisconsin*).

<sup>21</sup> Transmittal at 19.

<sup>22</sup> *Id.* at 19-20.

<sup>23</sup> *Id.* at 20-21.

<sup>24</sup> *Id.* at 22. Alternatively, if the Commission determines that it cannot grant the abandoned plant rate treatment under Order No. 679 and section 219, ATX Southwest requests that the Commission authorize the requested incentive under section 205. *Id.* at 28.

all be projects of the same general size, scope, and risk for which the Commission has historically granted section 219 incentives on a project-specific basis.<sup>25</sup>

17. As discussed below, ATX Southwest cannot meet the requirements for incentive rates under Order No. 679 and the Commission's regulations because it has not identified specific projects for which it is seeking incentives. Order No. 679 requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project. To obtain section 219 incentive rate treatment, section 35.35(d) of the Commission's regulations requires an applicant to file a petition for declaratory order or make a section 205 filing that satisfies the requirements of section 219, i.e., the applicant must demonstrate that the transmission facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.<sup>26</sup> Further, under the Order No. 679 nexus test, the applicant must show that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project.<sup>27</sup> Without identifying a specific project, these requirements cannot be met.

18. The Commission previously has held that incentives granted under Order No. 679 can also be granted under the Commission's section 205 authority under certain circumstances, such as to promote important public policy goals.<sup>28</sup> The Commission has exercised its section 205 authority to grant certain incentives to nonincumbent transmission developers competing in the Order No. 1000 competitive solicitation process, just as ATX Southwest seeks to do here.<sup>29</sup> Consistent with the Commission's determinations in *XEST*, *XETD*, *Transource Wisconsin*, and *Transource Kansas*, we find that granting the regulatory asset incentive and hypothetical capital structure in this instance furthers the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process. However, as the Commission held in *Transource Wisconsin* and *Transource Kansas*, the abandoned plant and 100 percent CWIP

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<sup>25</sup> *Id.* at 21.

<sup>26</sup> 18 C.F.R. § 35.35(d) (2014).

<sup>27</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29.

<sup>28</sup> See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008); *So. Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010).

<sup>29</sup> See *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 Wisconsin*, 149 FERC ¶ 61,180; *Transource Kansas*, 151 FERC ¶ 61,010.

incentives do not serve this public policy goal because both incumbent and nonincumbent transmission developers are similarly situated with respect to obtaining these incentives in the Order No. 1000 competitive solicitation processes.<sup>30</sup>

19. Furthermore, regarding ATX Southwest's belief that there are ample policy and legal grounds upon which the Commission can justify a shift in policy regarding requests for certain incentives without a specific project, the Commission finds that ATX Southwest does not make a compelling case to consider such a policy shift at this time. The current Order No. 679 nexus test framework continues to ensure that any awarded incentives match the risks and challenges a developer may face and that all incentives awarded are just and reasonable.

**1. Request for Authorization to Establish Regulatory Asset**

**a. Proposal**

20. ATX Southwest requests authorization to establish a regulatory asset in which to book pre-commercial costs incurred up to the date that charges are assessed to SPP customers under the Formula Rate.<sup>31</sup> ATX Southwest states that the regulatory asset would include all prudently incurred costs prior to ATX Southwest's Formula Rate taking effect but that are not capitalized. ATX Southwest states that it will begin to accrue such costs before it expects to begin recovery under the SPP Tariff.

21. ATX Southwest states that the regulatory asset incentive is necessary so that it can recover early pre-commercial and formation costs it prudently incurs as a nonincumbent transmission developer wishing to bid on regional transmission projects in SPP's competitive solicitation process.<sup>32</sup> ATX Southwest contends that the regulatory asset incentive will lower a new transmission company's unrecovered costs, therefore lowering some of the risk to a new transmission company, and furthers the Commission's policy

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<sup>30</sup> *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 16; *Transource Kansas*, 151 FERC ¶ 61,010 at P 15.

<sup>31</sup> ATX Southwest states that these costs could include, for example, attorney fees, consultant fees, administrative expenses, entity formation costs, travel expenses, and costs to support regional activities that have been or will be undertaken with respect to ATX Southwest's participation in SPP's transmission planning and solicitation processes. Transmittal at 14.

<sup>32</sup> *Id.* at 15.

goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process.<sup>33</sup>

22. ATX Southwest states that it will follow the Commission's accounting guidance for the regulatory asset contained in *MidAmerican Central California Transco*<sup>34</sup> and begin accruing carrying charges as of the effective date of the rate.<sup>35</sup>

**b. Commission Determination**

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

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<sup>33</sup> *Id.* at 14.

<sup>34</sup> *MidAm. Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at PP 32-35 (2014).

<sup>35</sup> Transmittal at 14-15.

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

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

transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, ATX Southwest may only apply the regulatory asset incentive approved in this proceeding to transmission projects that are developed through SPP's Order No. 1000 competitive solicitation processes.

24. We also grant ATX Southwest's request to amortize the regulatory asset over five years and to accrue monthly carrying charges, compounded semi-annually. We accept ATX Southwest's proposed effective date of July 27, 2015 to allow it to establish the regulatory asset, and begin accruing carrying charges.

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

## **2. Request for Authorization to Use Hypothetical Capital Structure**

### **a. Proposal**

26. ATX Southwest proposes the use of a hypothetical capital structure consisting of 44 percent debt and 56 percent equity until it places \$250 million of plant in service. ATX Southwest states that this hypothetical capital structure will result in lower debt costs for the company that, in turn, will help the company in receiving and maintaining an investment grade credit rating profile, which ATX states will further the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners.<sup>38</sup> ATX Southwest states that a threshold of \$250 million ensures that ATX has a stabilized capital structure and asset portfolio before adopting the actual capital structure for ratemaking purposes, which ATX Southwest will continue to target to the same level.<sup>39</sup> ATX Southwest adds that the

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<sup>38</sup> Transmittal at 11.

<sup>39</sup> *Id.* at 12.

Commission has approved the use of a similar hypothetical capital structure for several other transmission-only entities.<sup>40</sup>

**b. Protest**

27. The Missouri Commission states that, while it does not oppose the initial use of the hypothetical structure that ATX Southwest has requested, the Commission should require ATX Southwest to true-up the hypothetical capital structure with the actual capital structure in a timely manner, once the Formula Rate is implemented.<sup>41</sup>

**c. Answer**

28. ATX Southwest states the Commission should reject the Missouri Commission's protest. ATX Southwest argues that this true-up requirement would defeat its efforts to operate under a hypothetical capital structure until it has a stabilized capital structure and asset portfolio.<sup>42</sup> ATX Southwest argues that it is unaware of any instance in which the Commission has required a new transmission company to true-up its hypothetical capital structure as soon as the formula rate is implemented. ATX Southwest states that this would severely limit the benefits of any hypothetical capital structure and would also conflict with Commission precedent.<sup>43</sup>

**d. Commission Determination**

29. We grant ATX Southwest's request to use a hypothetical capital structure consisting of 44 percent debt and 56 percent equity, subject to ATX Southwest making a compliance filing within 30 days of the date of this order committing to adopt its actual capital structure once any project awarded to ATX Southwest by SPP goes into service.

30. As the Commission held in *XEST* and *XETD*, nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently

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<sup>40</sup> *Id.* (citing *Morongo Transmission LLC*, 148 FERC ¶ 61,139 (2014); *W. Area Power Admin.*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331(2002), *aff'd sub nom. Pub. Utils. Comm'n of the State of Cal. v. FERC*, 367 F.3d 925 (D.C. Cir. 2004); *Mich. Elec. Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003); *XEST*, 149 FERC ¶ 61,182 at P 22; *Transource Wisconsin*, 149 FERC ¶ 61,180).

<sup>41</sup> Missouri Commission Protest at 12.

<sup>42</sup> ATX Southwest Answer at 10-11.

<sup>43</sup> *Id.* at 11.

have in place but that remain undetermined for nonincumbent transmission developers.<sup>44</sup> We grant this request under section 205 because we find that granting the requested hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.<sup>45</sup> In this instance, allowing the nonincumbent transmission developer to utilize the requested hypothetical capital structure would facilitate the nonincumbent transmission developer's participation in the Order No. 1000 competitive solicitation process. Because the requested hypothetical capital structure is intended solely for participation in Order No. 1000 competitive solicitation processes, ATX Southwest may only apply the hypothetical capital structure incentive approved in this proceeding to transmission projects that are developed through SPP's Order No. 1000 competitive solicitation processes.

31. Further, allowing ATX Southwest to maintain a hypothetical capital structure until it acquires \$250 million in rate base, as it has requested, would grant ATX Southwest an undue competitive advantage if the first project that ATX Southwest pursues is under the requested cap. As ATX Southwest acknowledged, this could result in a scenario where ATX Southwest has one or more projects fully in service, while still using a hypothetical capital structure.<sup>46</sup> ATX has not sufficiently demonstrated that it will not have a stabilized capital structure for ratemaking purposes once any project goes into service. Therefore, we direct ATX Southwest to make a compliance filing, within 30 days of the date of this order, committing to using its actual capital structure once any project awarded by SPP goes into service.

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

#### a. Proposal

32. ATX Southwest requests authorization to recover prudently incurred costs in the event that a Competitive Upgrade it is awarded through the SPP competitive solicitation process must be abandoned for reasons outside ATX Southwest's control. ATX Southwest explains that, without the incentive, the financial community will reflect

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<sup>44</sup> *XEST*, 149 FERC ¶ 61,182 at P 22; *XETD*, 149 FERC ¶ 61,181 at P 13.

<sup>45</sup> *See, e.g.*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 87.

<sup>46</sup> Exhibit No. ATX-SW-400, Direct Testimony of Ryan J. Martin at 5.

the risk of abandonment into the cost of capital that is ultimately recovered from ratepayers.<sup>47</sup>

33. ATX Southwest states that the Competitive Upgrades that it expects to compete for and develop face a number of risks that could lead to abandonment. ATX Southwest asserts that, in particular, for large scale Competitive Upgrades, there will be a number of environmental, regulatory, siting, and right-of-way acquisition risks that could lead to the eventual abandonment of the project.<sup>48</sup> In addition, ATX Southwest contends that there is a potential for challenges to SPP's developer selection process or decisions and a potential risk that an assigned project could be later removed from the regional transmission expansion plan.<sup>49</sup>

34. ATX Southwest states that the abandonment incentive is also appropriate because it is not duplicative of the 100 percent CWIP incentive and that the two are often granted in tandem.<sup>50</sup> ATX Southwest claims that the 100 percent CWIP incentive does not account for risks that are beyond ATX Southwest's control.

35. ATX Southwest states that, in the case the Commission does not grant the abandonment incentive under section 219, ATX Southwest requests that the Commission grant the same as a policy-based incentive under section 205.<sup>51</sup> ATX Southwest avers that the Commission has a well-established policy of granting pre-approved abandonment cost recovery under section 205, and that it would further the Commission's policies to encourage the construction of transmission facilities and position nonincumbents to effectively compete.<sup>52</sup>

**b. Protest**

36. The Missouri Commission states that ATX Southwest's request for the abandonment incentive is premature on the grounds that ATX Southwest has not been awarded any SPP projects and is incapable of satisfying the nexus test.<sup>53</sup> Therefore, the

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<sup>47</sup> Transmittal at 27.

<sup>48</sup> Exhibit No. ATX-SW-300, Direct Testimony of Shawn E. Schukar at 14-15.

<sup>49</sup> Transmittal at 27.

<sup>50</sup> *Id.* at 28.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 29-30.

<sup>53</sup> Missouri Commission Protest at 3.

Missouri Commission states that the Commission should reject ATX Southwest's request for the abandonment incentive.

**c. Commission Determination**

37. We deny ATX Southwest's request to recover all prudently incurred costs in the event a Competitive Upgrade awarded through the SPP competitive solicitation process must be abandoned for reasons outside its reasonable control.<sup>54</sup>

38. We find that, because ATX Southwest has not identified a transmission project and not described the specific risks and challenges that the abandoned plant incentive would address, it has not met the nexus test under Order No. 679. ATX Southwest cannot provide details about the scope or size or identify specific federal and state siting hurdles associated with a particular transmission project. These metrics are necessary to satisfy the nexus test under Order No. 679. As such, we deny ATX Southwest's request for the abandoned plant incentive under section 219 as premature. ATX Southwest may resubmit a request for the abandoned plant incentive once it identifies a specific transmission project and is able to demonstrate that the project meets the requirements of Order No. 679.

39. We also deny ATX Southwest's request for the abandoned plant incentive under section 205. Unlike the regulatory asset incentive and the hypothetical capital structure incentive, incumbent transmission owners do not already have the advantage of the abandoned plant incentive, but must, like nonincumbent transmission developers, request it after a specific project is identified. As such, granting the abandoned plant incentive to nonincumbent transmission developers at this point is not necessary to further the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process. Furthermore, we do not agree that granting the abandonment incentive is necessary to support active participation in the regional planning process because all potential participants face the same level of uncertainty in their bid placements.

**4. Request for Authorization to Include 100 Percent of CWIP in Rate Base**

**a. Proposal**

40. ATX Southwest requests authorization to include 100 percent of CWIP in rate base during the development and construction phase for projects that meet a certain set of

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<sup>54</sup> *Transource Kansas*, 151 FERC ¶ 61,010 at PP 33-35.

criteria.<sup>55</sup> ATX Southwest argues that, taken together, these criteria are specific enough to ensure that the projects to which the 100 percent CWIP rate treatment would apply would all be projects of the same general size, scope, and risk for which the Commission has historically granted section 219 incentives on a project-specific basis.<sup>56</sup> Further, ATX Southwest argues that any project that fits these criteria will have gone through SPP's Commission-approved planning process and, as such, any construction costs used for Competitive Upgrades awarded to ATX Southwest will be consistent with a least-cost program.<sup>57</sup>

41. ATX Southwest states that, by avoiding the capitalization of the cost of capital through the Allowance for Funds Used During Construction, inclusion of CWIP in rate base reduces the overall financing costs borne by ratepayers.<sup>58</sup> In addition, ATX Southwest claims that inclusion of CWIP in rate base will benefit consumers by providing for a more gradual rate increase associated with project costs.<sup>59</sup> ATX Southwest argues that the benefits of early cash flow provided by the inclusion of CWIP in rate base apply even when a developer has no plant in service.<sup>60</sup>

**b. Protest**

42. The Missouri Commission states that ATX Southwest's request for the 100 percent CWIP incentive is premature on the grounds that ATX Southwest has not been awarded any SPP projects and is incapable of satisfying the nexus test.<sup>61</sup> The Missouri Commission argues that this incentive would give ATX Southwest an advantage over incumbents by enabling nonincumbent transmission owners to obtain financial advantages in deciding whether to bid on and move forward with investments in transmission projects identified through SPP's Order No. 1000 competitive solicitation process. Therefore, the Missouri Commission contends that the Commission should reject ATX Southwest's request for the 100 percent CWIP incentive.

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<sup>55</sup> Transmittal at 21, 24-25.

<sup>56</sup> *Id.* at 21.

<sup>57</sup> *Id.* at 22.

<sup>58</sup> Exhibit No. ATX-SW-400, Direct Testimony of Ryan J. Martin at 8-9.

<sup>59</sup> *Id.* at 9.

<sup>60</sup> *Id.* at 13.

<sup>61</sup> Missouri Commission Protest at 7.

c. Answer

43. ATX Southwest states that it recognizes that the Commission has recently rejected transmission incentives before a specific project was identified, and that its request for the abandonment incentive represents a departure from Commission precedent. However, ATX Southwest argues that it has made an extensive showing for why rewarding it the abandonment incentive and 100 percent CWIP incentive at this stage is just and reasonable and in the best interest of all parties.<sup>62</sup>

44. ATX Southwest states that, unlike other utilities that have made similar requests, ATX Southwest has narrowly tailored the universe of projects to which the incentives would apply to ensure the nexus test would be satisfied.<sup>63</sup> Furthermore, ATX Southwest argues that the project-specific nature of the nexus test, as described by the Missouri Commission, is currently overly restrictive in the Order No.1000-compliant transmission planning process environment. ATX Southwest claims that upfront certainty regarding incentives will lead to better-informed bids from developers and more cost-effective solutions for customers.

45. ATX Southwest states that, if the Commission denies the requests for incentives then, going forward, a developer will either have to wait until after being awarded a project to request incentives or apply for project-specific incentives before bidding.<sup>64</sup> ATX Southwest avers that both options will harm customers.

46. ATX Southwest disagrees with the Missouri Commission that the Commission could not alter the project-specific application of the nexus test in this proceeding. ATX Southwest states that it was only advocating for a change in the application of the existing policy in a manner that is not inconsistent with the policy articulated in Order No. 679 and the Commission would be free to modify its application for this proceeding.<sup>65</sup>

47. Finally, ATX Southwest argues that nothing in its application would prohibit any other entity from requesting similar section 219 incentives from the Commission and,

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<sup>62</sup> ATX Southwest Answer at 4.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.* at 5-6.

therefore, granting ATX Southwest the requested incentives would not result in an unlevel playing field compared to incumbents within SPP.<sup>66</sup>

**d. Commission Determination**

48. We deny ATX Southwest's request for authorization to include 100 percent of CWIP in rate base at this time.<sup>67</sup> We find that, because ATX Southwest has not identified a transmission project and has not described the details of its financial situation that CWIP would alleviate, it has not met the nexus test under Order No. 679. ATX Southwest did not provide details regarding its financial pressures, delayed cash flow, relative size of its investment, or any adverse impacts to short-term liquidity; instead, ATX Southwest provides only general statements that the 100 percent CWIP incentive will improve cash flow during construction and provide greater regulatory certainty. ATX Southwest also states that the cash flow stability will help it attract capital and secure and maintain an investment grade credit rating, although it makes no showing of the size of the effect on cash flow that CWIP would elicit.<sup>68</sup> As such, we deny ATX Southwest's request for the 100 percent CWIP incentive under section 219 as premature. ATX Southwest may resubmit a request for the CWIP incentive once it identifies a specific transmission project and is able to demonstrate that the project meets the requirements of Order No. 679.

**C. Base ROE and RTO Participation ROE Adder**

**1. Proposal**

49. ATX Southwest requests a base ROE of 10.9 percent. ATX Southwest states that it calculated this ROE according to the standards adopted by the Commission in Opinion No. 531.<sup>69</sup> Specifically, ATX Southwest's ROE witness, Mr. Strunk, applied the two-step discounted cash flow (DCF) method, which he states is based on recent guidance in Opinion No. 531, and other supporting analyses routinely relied upon by the Commission to establish a just and reasonable ROE, including the risk premium, capital asset pricing model, and expected earnings analyses. ATX Southwest's DCF method establishes a

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<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Transource Kansas*, 151 FERC ¶ 61,010 at PP 38-39.

<sup>68</sup> Transmittal at 36.

<sup>69</sup> *Id.* at 8-9 (citing *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014)); Exhibit No. ATX-SW-200, Direct Testimony of Kurt Strunk at 3.

zone of reasonableness of 6.3 percent to 13.47 percent.<sup>70</sup> ATX Southwest states that Mr. Strunk calculates the midpoints of the upper half of the zone of reasonableness established by the proxy group company returns to be 10.12 and 11.68 percent using I/B/E/S and Value Line growth forecasts, respectively, and his 10.9 percent base ROE recommendation falls half way between these two results. ATX Southwest argues that the proposed 10.9 percent base ROE is justified given the continued anomalous capital market conditions. ATX Southwest also contends that its risk profile justifies the placement of the base ROE in the upper end of the zone of reasonableness.

50. ATX Southwest also requests a 50 basis point adder to its base ROE for RTO participation, which would result in a total ROE of 11.4 percent. It notes that the RTO participation adder has been a foundation of the Commission's market and transmission policy since RTOs were conceived.<sup>71</sup> ATX Southwest states that the Commission has recently recognized that the RTO participation adder continues to provide an important incentive for newly established transmission developers to participate in an RTO,<sup>72</sup> and that the Commission has determined that the "basis for the incentive is a recognition of the benefits that flow from membership in such organizations, and the fact that continuing membership is generally voluntary."<sup>73</sup> ATX Southwest explains that it will become a member of SPP, transfer functional control of transmission facilities it develops to SPP once they are constructed, and will recover the costs of its transmission assets from SPP customers through the inclusion of the ATX Southwest Formula Rate in the SPP Tariff.<sup>74</sup>

## 2. Protest

51. The Missouri Commission states that the Commission should reject ATX Southwest's request for an RTO participation adder because it is premature, as ATX Southwest has not yet joined SPP. The Missouri Commission argues that, in the event that the Commission decides to grant the request for a 50 basis point adder to ROE,

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<sup>70</sup> Exhibit No. ATX-SW-200, Direct Testimony of Kurt Strunk at 22.

<sup>71</sup> Transmittal at 9 (citing *Regional Transmission Organizations*, Notice of Proposed Rulemaking, 64 Fed. Reg. 31,390, at 31,391-96 (June 10, 1999), FERC Stats. & Regs. ¶ 32,541 (1999); 16 U.S.C. § 824s(c) (2012)).

<sup>72</sup> *Id.* at 10 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004, at P 42 (2015)).

<sup>73</sup> *Id.* (quoting Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 331).

<sup>74</sup> *Id.* at 3.

the Commission should condition and defer the effectiveness of that grant until such time as ATX Southwest turns operational control over any transmission facilities to SPP.

52. The Missouri Commission contends that ATX Southwest has not demonstrated that its proposed base ROE is just and reasonable, and that the Commission should set the Formula Rate for hearing. The Missouri Commission avers that ATX Southwest's proposed base ROE is not based on proper application of Commission policy, but rather on a modification of the policy designed to provide an unwarranted upward bias to the calculated result. Specifically, the Missouri Commission alleges that ATX Southwest witness Mr. Strunk arbitrarily modifies the DCF methodology used to calculate ROE for a single transmission owner to arrive at a higher base ROE, i.e., he uses the midpoint of the upper half of the range of reasonableness.<sup>75</sup> The Missouri Commission states that this departs from Commission policy, and that the Commission has long used the median of the range of reasonableness when calculating the ROE for a single transmission owner. The Missouri Commission contends that the anomalous capital market conditions that led to Opinion No. 531, upon which Mr. Strunk relies, are not present today.<sup>76</sup> The Missouri Commission avers that, if the Commission does not reject Mr. Strunk's application of the DCF method outright, it should set that issue for evidentiary hearing because ATX Southwest's filing raises genuine issues of material fact regarding the appropriate ROE to be awarded.

### 3. Answer

53. ATX Southwest disputes the Missouri Commission's argument that the Commission should reject ATX Southwest's RTO adder request.<sup>77</sup> ATX Southwest notes that the Commission has recently rejected requests to eliminate the continued application of the 50 basis point adder for RTO participation,<sup>78</sup> and has also awarded the

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<sup>75</sup> Missouri Commission Protest at 10 (citing Exhibit No. ATX-SW-200, Direct Testimony of Kurt Strunk at 37-41).

<sup>76</sup> *Id.* at 11 (quoting *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,183, at P 77 (2014) (“[T]he use of the midpoint in the upper half of the zone of reasonableness ‘was specific to return on equity for transmission owners in [ISO New England, Inc.], based on the unique circumstances in that proceeding (such as the capital market conditions during a particular period.’”)).

<sup>77</sup> ATX Southwest Answer at 7 (citing Missouri Commission Protest at 9).

<sup>78</sup> *Id.* (citing *Pacific Gas & Elec. Co.*, 144 FERC ¶ 61,227, at P 20 (2013)).

RTO adder to newly developed transmission companies in similar circumstances to ATX Southwest.<sup>79</sup>

54. ATX Southwest also disagrees with the Missouri Commission contention that ATX Southwest improperly departed from the Commission's DCF methodology to arrive at a base ROE. Specifically, ATX Southwest contends that the Missouri Commission's positions that the median of the range, rather than the midpoint should be used to calculate the ROE for a single transmission owner,<sup>80</sup> and that the use of the midpoint of the upper half of the zone of reasonableness is unjustified as anomalous capital market conditions<sup>81</sup> no longer prevail, are flawed.

55. First, ATX Southwest argues that the rationale provided by the Commission in Opinion No. 531 for establishing the base ROE using a new measure of central tendency continues to be applicable today, whether applied to a group of transmission owners or to a single transmission owner. ATX Southwest states that the essence of the Commission's findings in Opinion No. 531 is that, in the context of anomalous capital market conditions, the Commission's standard tools for establishing the ROE fail to produce returns that meet the capital attraction standard.

56. Second, ATX Southwest contends that the Missouri Commission does not support its claim that capital market conditions have normalized. ATX Southwest notes that the Missouri Commission failed to address the Federal Reserve's monetary stimulus as the source of the anomalous capital market conditions that caused the Commission to depart from its standard DCF practices in Opinion No. 531.<sup>82</sup> ATX Southwest avers that the key question is whether the Federal Reserve's monetary stimulus continues to affect pricing in capital markets. ATX Southwest argues that Mr. Strunk's testimony presents evidence to establish that the Federal Reserve's actions are still suppressing interest rates and affecting pricing in the capital markets.<sup>83</sup> ATX Southwest also states that the Federal Reserve has clarified more recently that it is maintaining its existing policy of reinvesting principal payments from its holdings of agency debt and agency mortgage-backed securities and of rolling over maturing Treasury securities at auction. ATX Southwest claims that the Missouri Commission's reliance on testimony in Docket No. EL14-12-

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<sup>79</sup> *Id.* at 8 (citing *XEST*, 149 FERC ¶ 61,182 at P 64).

<sup>80</sup> *Id.* (citing Missouri Commission Protest at 10).

<sup>81</sup> *Id.* (citing Opinion No. 531, 147 FERC ¶ 61,234).

<sup>82</sup> *Id.* at 9 (citing Missouri Commission Protest at 11).

<sup>83</sup> *Id.* (citing Exhibit No. ATX-SW-200, Direct Testimony of Kurt Strunk at 8-12).

000 that refers to the current capital markets as the “new normal”<sup>84</sup> is premised on the erroneous assumption that the low interest rate environment will persist indefinitely. Furthermore, ATX Southwest claims that recent evidence suggests that two interest rate hikes may occur before the end of the year,<sup>85</sup> and the Federal Reserve has recently noted its proposed approach to removing accommodation policies.<sup>86</sup> ATX Southwest concludes that these are all clear signals that these unusual conditions are not expected to continue forever and that the current capital markets are not the new normal.

#### 4. Commission Determination

57. Our preliminary analysis indicates that ATX Southwest’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 ATX Southwest’s proposed ROE for filing, suspend it for a nominal period, to be effective July 27, 2015, subject to refund, and set it for hearing and settlement judge procedures.

58. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.<sup>87</sup> 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.

59. Finally, consistent with previous Commission orders, we grant ATX Southwest’s request for a 50 basis point incentive ROE adder for its participation in SPP, subject to

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<sup>84</sup> *Id.* (citing Missouri Commission Protest at 11).

<sup>85</sup> *Id.* (citing *Fed’s Powell says two rate hikes possible this year*, Reuters, June 23, 2015).

<sup>86</sup> *Id.* at 10 (citing Press Release, The Federal Reserve (June 17, 2015)).

<sup>87</sup> 18 C.F.R. § 385.603 (2014).

the zone of reasonableness established pursuant to the hearing and settlement judge procedures established herein.<sup>88</sup>

## **D. Accounting Treatment**

### **1. Proposal**

60. ATX Southwest states that its financial books and records will reflect the assets, liabilities, equity, and results of operations for ATX Southwest.<sup>89</sup> ATX Southwest further states that its books will be recorded in accounts prescribed by the Commission's Uniform System of Accounts.

61. ATX Southwest asserts that all services provided to ATX Southwest by its affiliated companies will be priced at cost. ATX Southwest avers that it will incur costs consisting primarily of billings from third parties pursuant to contracts entered into by ATX Southwest, and direct and allocated costs from its affiliates, including Ameren Services Company (Ameren Services). ATX Southwest also provides that it does not expect to initially have any employees so all of its services will be provided by its affiliates on an at-cost basis through various service agreements with these affiliates.<sup>90</sup> ATX Southwest claims that any allocated costs will be comprised of its allocated share of Ameren Services expenses that benefit all of its affiliates, and will be allocated pursuant to Ameren Services' cost-allocating procedures. Additionally, ATX Southwest states that, to the extent there are sales of non-power goods and services among affiliates, ATX Southwest will adhere to the Commission's pricing standards under section 35.44(b)(1) of the Commission's regulations.<sup>91</sup>

### **2. Protest**

62. The Missouri Commission states that ATX Southwest's proposal that services provided to ATX Southwest by its affiliates be priced at cost conflicts with the Missouri Commission's Affiliate Transaction Rules.<sup>92</sup> The Missouri Commission states that its

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<sup>88</sup> See, e.g., *MidAm. Cent. Cal. Transco*, 147 FERC ¶ 61,179 at P 45; *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 75 (2012); *XEST*, 149 FERC ¶ 61,182 at P 64; *Transource Kansas*, 151 FERC ¶ 61,010 at P 46.

<sup>89</sup> Transmittal at 31.

<sup>90</sup> Exhibit No. ATX-SW-500, Direct Testimony of Greg M. Gudeman at 22.

<sup>91</sup> 18 C.F.R. § 35.44(b)(1) (2014).

<sup>92</sup> Missouri Commission Protest at 12.

affiliate transaction rules state that sales to affiliates from a Missouri-regulated local distribution company (LDC) be priced at the higher of cost or market. The Missouri Commission states that this rule is designed to avoid giving an affiliate an advantage over non-affiliates. The Missouri Commission further states that if Ameren Missouri, an LDC affiliate, sells goods or services to ATX Southwest, the revenues included in Ameren Missouri's revenue requirement are not required to match the costs recorded by ATX Southwest in its wholesale Formula Rate. The Missouri Commission states that ATX Southwest should not be able to circumvent the affiliate transaction rules by an order in this case. As such, the Missouri Commission requests that the Commission clarify in any order in this proceeding that it is not determining issues properly before the Missouri Commission, such as the proper level of transmission rates charged by Missouri Commission jurisdictional utilities to Missouri ratepayers.

### 3. Answer

63. ATX Southwest asserts that the Missouri Commission's concerns regarding the conflict between ATX Southwest's proposal and the Missouri Commission's affiliate transaction rules are outside the scope of this proceeding. ATX Southwest states that the Ameren entity subject to the Missouri Commission's jurisdiction, Ameren Missouri, is not a party to this proceeding. Moreover, ATX Southwest asserts that nothing relating to ATX Southwest's proposed formula rate alters any jurisdiction that the Missouri Commission may have to regulate Ameren Missouri's incurrence of costs under existing or future affiliate agreements. As such, ATX Southwest requests that the Missouri Commission's concerns be dismissed as not germane to this proceeding.

### 4. Commission Determination

64. ATX Southwest's filing does not describe the details of the allocation factors and how they are calculated, nor does it provide the service agreements upon which the costs will be based.<sup>93</sup> To the extent that costs may be allocated or directly billed from ATX Southwest's parent company or any of its affiliates, we direct ATX Southwest to further explain and provide the methodology for the allocation of those costs in a compliance filing to be made within 30 days of the date of this order.<sup>94</sup> We direct

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<sup>93</sup> See *supra* note 90.

<sup>94</sup> See *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 151 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at PP 39-42, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) (describing Commission's authority to require the filing of cost-allocation agreements).

ATX Southwest to provide additional information that more specifically describes how inter-affiliate costs are allocated. In addition, to the extent that there are sales of non-power goods and services among affiliates, we remind ATX Southwest of its obligations under section 35.44(b)(1) of the Commission's Regulations.<sup>95</sup> Furthermore, as requested by the Missouri Commission, we clarify that this order does not determine issues properly before the Missouri Commission.

## **E. Depreciation Rates**

### **1. Proposal**

65. ATX Southwest proposes to use the same depreciation rates accepted by the Commission for use by its affiliate, Ameren Illinois, which were based on a depreciation study underlying depreciation rates the Commission approved for use in a settlement.<sup>96</sup> ATX Southwest states that the depreciation rates were calculated based on electric plant and the accumulated provision for depreciation balances, the straight line method of depreciation, the average service life procedure, and the average remaining life basis.<sup>97</sup> ATX Southwest contends that, since it has not yet constructed any facilities and there is no historical data upon which to base its depreciation rates, it is appropriate to use the service lives and net salvage percentages supported by the Ameren Illinois depreciation study.<sup>98</sup> Furthermore, ATX Southwest asserts that any Competitive Upgrades that it develops will be operated in a manner similar to the manner in which Ameren Illinois operates its facilities and will also be located in an adjacent RTO region.

### **2. Commission Determination**

66. We accept ATX Southwest's proposed depreciation rates. We recognize that, because ATX Southwest's transmission facilities have yet to be identified, there is no historical data to support a depreciation study. In the past, the Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission start-up, and we do so here.<sup>99</sup> We find that, as Ameren Illinois is an

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<sup>95</sup> 18 C.F.R. § 35.44(b)(1) (2014).

<sup>96</sup> *See Ameren Ill. Co.*, 145 FERC ¶ 61,181 (2013).

<sup>97</sup> Exhibit No. ATX-SW-500, Direct Testimony of Greg M. Gudeman at 25.

<sup>98</sup> ATX Southwest states that consistent with Commission policy, the depreciation rates will not be changed outside of a section 205 filing. Transmittal at 11.

<sup>99</sup> *See XEST*, 149 FERC ¶ 61,182 at P 124.

affiliate company with transmission facilities similar to those ATX Southwest intends to own near the SPP footprint, Ameren Illinois's depreciation rates are an appropriate proxy for ATX Southwest to adopt in determining its proposed depreciation rates.

**F. Inclusion of 50 Percent CWIP in Rate Base Pursuant to Section 35.25**

**1. Proposal**

67. ATX Southwest requests, pursuant to section 35.25 of the Commission's regulations, authority to include 50 percent of CWIP in rate base for all SPP-approved Competitive Upgrades that ATX Southwest may develop to which the 100 percent CWIP incentive does not apply.<sup>100</sup> ATX Southwest states that, under section 35.25, it can recover up to 50 percent of CWIP in rate base for non-pollution control or fuel conversion assets, provided it can demonstrate that the construction work is "prudent and consistent with a least-cost energy supply program." ATX Southwest asserts that the instant request would apply only for construction work performed on Competitive Upgrades for which it receives a notice to construct by SPP and therefore will have been vetted by SPP's Commission-approved planning process. ATX Southwest argues that requirements for Competitive Upgrades in SPP's transmission expansion plan assure that the associated construction work performed by ATX Southwest will be consistent with a least-cost energy supply program. Lastly, ATX Southwest argues that the proposed accounting procedures for including CWIP will ensure that the company will not double recover investment costs through allowance for funds used during construction and CWIP in rate base.

**2. Protest**

68. The Missouri Commission states that the Commission should deny ATX Southwest's request for 50 percent CWIP for Competitive Upgrades. The Missouri Commission argues that this request is contrary to Commission precedent because ATX Southwest does not identify specific projects or specific time lines. The Missouri Commission further states that under section 35.25, the Commission has denied other requests for 50 percent CWIP that did not identify specific projects, reasoning that "[t]he

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<sup>100</sup> Transmittal at 15 (citing 18 C.F.R. § 35.25 (c)(3)); *see also Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455, *order on reh'g*, Order No. 298-A, 48 Fed. Reg. 46,012 (Oct. 11, 1983), FERC Stats. & Regs., ¶ 30,500, *order on reh'g*, Order No. 298-B, FERC Stats. & Regs. ¶ 30,524 (1983).

Commission cannot determine if such future projects will meet the appropriate standards the Commission has required for CWIP Treatment.”<sup>101</sup>

### 3. Answer

69. ATX Southwest asserts that the Commission should reject the Missouri Commission’s argument against ATX Southwest’s request for 50 percent CWIP incentive. ATX Southwest reiterates that section 35.25 of the Commission’s regulations generally allows for any public utility to include up to 50 percent of CWIP in rate base, so long as the associated construction is prudent and consistent with a least-cost energy program.<sup>102</sup> ATX Southwest further reiterates that requirements for Competitive Upgrades in SPP’s transmission expansion plan assure that the associated construction work performed by ATX Southwest will be consistent with a least-cost energy supply program. As such, ATX Southwest requests that the Commission grant ATX Southwest’s 50 Percent CWIP incentive request and reject the Missouri Commission’s argument.

### 4. Commission Determination

70. We deny ATX Southwest’s request for 50 percent CWIP for all Competitive Upgrades. We agree with the Missouri Commission that this request is contrary to Commission precedent. In Order No. 298, the Commission outlined several conditions for the inclusion of CWIP in rate base. The Commission stated that Commission staff and intervenors must be able to review and judge the prudence of construction and related costs as those costs are incurred and claimed in rate base, rather than at a later point in time when a project is completed or abandoned and a potentially unwise investment has already been made.<sup>103</sup> Therefore, to facilitate review of the prudence of CWIP costs in rate cases, the Commission adopted filing requirements under section 35.13 of the Commission’s regulations to require a general statement of the utility’s program for providing reliable and economic power, *i.e.*, a least-cost supply program.<sup>104</sup>

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<sup>101</sup> Missouri Commission Protest at 8-9 (citing *Commonwealth Edison Co.*, 122 FERC ¶ 61,037, at P 54 (2008)).

<sup>102</sup> ATX Southwest Answer at 6 (citing 18 C.F.R. § 35.13(h)(38)).

<sup>103</sup> See Order No. 298, FERC Stats. & Regs. ¶ 30,455 at 24,342.

<sup>104</sup> *Id.* All applicants seeking authorization to include CWIP in rate base, including those seeking 100 percent CWIP under Order No. 679, must comply with this requirement. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 118-121; 18 C.F.R. § 35.35(c) (2014).

71. The Commission held in *Transource Kansas* that “the nature of Order No. 298’s requirements for CWIP inclusion makes providing . . . [the information required under section 35.25] for an indefinite period of time for unspecified construction projects difficult, if not impossible.”<sup>105</sup> ATX Southwest’s request involves unspecified future projects with unspecified time lines. Given the unknown nature of these projects, ATX Southwest cannot make an accurate representation that its investments would be consistent with a least-cost supply program, as required under section 35.25, in order to allow evaluation of the prudence of the plan to construct the facilities for which authorization is requested to include CWIP in rate base. The fact that such projects will have been vetted by SPP does not change the fact that the projects are unknown at this time. As such, we deny ATX Southwest’s request for 50 percent CWIP under section 35.25, without prejudice to ATX Southwest or any of its affiliates requesting CWIP when a project is identified.

## **G. Formula Rate**

### **1. Proposal**

72. ATX Southwest requests approval of its formula rate template, which will be used to determine revenue requirements for SPP transmission facilities, including Competitive Upgrades.<sup>106</sup> The formula rate template is a forward-looking formula, whereby ATX Southwest forecasts the values that will populate the formula rate template for each calendar year, and later determines a true-up of the forecasted values after the actual data become available in the FERC Form No. 1. ATX Southwest states that the Formula Rate is modeled after the formula rate in XEST’s January 15, 2015 compliance filing in Docket No. ER14-2751-001.<sup>107</sup> ATX Southwest asserts that its proposed formula rate template will take into account adjustments to its revenue requirement on a project-by-project basis to incorporate any discount offered by ATX Southwest in the competitive bid process.<sup>108</sup>

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<sup>105</sup> *Transource Kansas*, 151 FERC ¶ 61,010 at P 53.

<sup>106</sup> ATX Southwest states that it will not collect charges from customers under the formula rate until SPP has made a later filing to incorporate the ATX Southwest Formula Rate into the SPP Tariff, and no costs will be charged to customers until after those SPP tariff sheets are accepted by the Commission. Exhibit No. ATX-SW-100, Direct Testimony of Alan C. Heintz at 5.

<sup>107</sup> Transmittal at 7.

<sup>108</sup> Exhibit No. ATX-SW-100, Direct Testimony of Alan C. Heintz at 16.

73. ATX Southwest also requests approval of its protocols, which govern the specific procedures for notice, requests for information, and review and challenge procedures to the annual true-up. ATX Southwest claims that its protocols are based on the Commission's most recent guidance in the Midcontinent Independent System Operator, Inc.'s (MISO) formula rate protocol proceeding,<sup>109</sup> as modified for application in SPP,<sup>110</sup> and incorporate the Commission's directives discussed in more recent orders regarding similar formula rate protocols based on MISO's tariff Attachment O.<sup>111</sup>

## 2. Protest

74. The Missouri Commission states that ATX Southwest's Formula Rate raises issues and that its review of the Formula Rate is hindered by the limited period for review in advance of the deadline for filing protests.<sup>112</sup> The Missouri Commission states that it reserves the right to raise additional issues not identified in its protest during any investigation, hearing and settlement procedures scheduled, and that the Commission should suspend ATX Southwest's filing for the maximum five-month suspension period, given the significant rate impacts resulting from this filing.

## 3. Answer

75. ATX Southwest argues that the Missouri Commission's request for a five-month suspension is unnecessary and unwarranted and should be rejected.<sup>113</sup> ATX Southwest states that, since it has yet to populate the Formula Rate, there is no basis to deem any proposed rates unjust and unreasonable and substantially excessive. ATX Southwest states that the Commission is fully equipped to analyze and rule on the filing and that a five-month suspension would be a waste of Commission resources.

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<sup>109</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014); *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

<sup>110</sup> Transmittal at 17.

<sup>111</sup> See, e.g., *XEST*, 149 FERC ¶ 61,182 at PP 93-118; *XETD*, 149 FERC ¶ 61,181 at PP 34-53.

<sup>112</sup> Missouri Commission Protest at 13.

<sup>113</sup> ATX Southwest Answer at 12.

#### **4. Commission Determination**

76. We conditionally accept ATX Southwest's proposed formula rate template, subject to a compliance filing to be made within 30 days of the date of this order to address the matters discussed below. While the formula rate template generally conforms to other Commission-accepted formula rate templates, there are variances that ATX Southwest has not explained, as well as errors that ATX Southwest must correct. We, therefore, order ATX Southwest to modify its formula rate template and protocols and to provide further explanation, as described below.

##### **a. Formula Rate Template Corrections**

77. Attachment H, Page 2, Line 26a should include the phrase "(enter negative)" after "Unfunded Reserves." We direct ATX Southwest to make this change.

78. We note that Attachment H, Page 5, Note Q describes ATX Southwest's proposed capital structure. We direct ATX Southwest to revise Note Q to be consistent with the Commission's determination in this order regarding its proposed capital structure.

79. Attachment 1, Note J should include, "ATX Southwest will include, as part of its Annual Update: (i) an explanation of the basis for any Discount; (ii) a calculation of the Discount; and (iii) any documentation needed to support the calculation of the Discount. The amount in Column 13 above equals the amount by which the annual revenue requirement is reduced from the ceiling rate (see line 15 col. (13))." Additionally, Attachment 1, Line 10, Column 1 should read "Annual Allocation Factor for Revenue Credits." We direct ATX Southwest to make these changes.

80. Attachment 3, Column E should reference Line 2. We direct ATX Southwest to make this change.

81. Attachment 4, Column H, Lines 16-26, Accumulated Deferred Investment Tax Credits are covered with a black box. The notes indicate that this account is calculated using 13 monthly balances and, thus, should not be covered. Furthermore, consistent with this calculation methodology, Attachment H, Page 2, Line 26 should not include Note X. We direct ATX Southwest to make these changes.

82. The heading of Attachment 4, Page 2, Column F, as well as the purpose of that column, is unclear, as is the phrase "exclude the portion of any balance offset by a balance sheet account" in Attachment 4, Note G. We direct ATX Southwest to explain the purpose of Column F and the quoted phrase in Note G, and how it will ensure that capital contributions from customers are appropriately deducted from rate base before they are used to fund liabilities. We also direct ATX Southwest to revise the heading of Column F to make clear the inputs and/or calculations to be placed in that column, and to clarify Note G consistent with its explanation of the purpose of the quoted phrase.

83. Furthermore, the notes used throughout Attachment 5 do not contain references to Attachment H, as they should. Lastly, Note A should read “Long Term debt balance will reflect the 13-month average of the balances, of which the 1st and 13th are found on page 112 lines 18.c to 21.c in the FERC Form No. 1, the cost is calculated by dividing line 42 by the Long Term Debt balance in line 48.” We direct ATX Southwest to make these changes.

84. Attachment 7, Line 4 does not include a source from FERC Form No. 1. We direct ATX Southwest to provide additional clarification or to make appropriate changes.

**b. Formula Rate Protocols**

85. We reject ATX Southwest’s proposed Section IV.J, which attempts to define the scope of various types of future section 205 filings and is inappropriate to include in the formula rate protocols. The scope of any future section 205 filings will be addressed when such filings are made. We direct ATX Southwest to revise this section accordingly.

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

**1. Proposal**

86. ATX Southwest explains that there will be various state laws that would require ATX Southwest to form a state-specific affiliate based on where the proposed Competitive Upgrade is located within the SPP footprint. ATX Southwest further explains that forming a state-specific affiliate may simplify the competitive solicitation process and reduce the regulatory complexity that would otherwise apply to a multi-state utility. As such, ATX Southwest requests approval to replicate, without re-litigating, the approved Formula Rate (including all of its components), as well as any authorized rate treatments and rate incentives for any affiliates in SPP. ATX Southwest states that such authorization will only apply to state-specific utilities affiliated with ATX Southwest that assume, at least in part, the obligation to build and/or develop Competitive Upgrades that have been awarded to the utility through SPP’s transmission planning process. ATX Southwest asserts that this proposal is consistent with the approach accepted by the Commission in *Transource Kansas*.<sup>114</sup>

**2. Commission Determination**

87. We conditionally grant ATX Southwest’s request for use of the proposed Formula Rate by the yet-to-be-formed ATX Southwest affiliates. Granting this request is

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<sup>114</sup> Transmittal at 34 (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 82).

consistent with the existing process in MISO, whereby transmission owners may adopt the pro forma templates found in Attachments O, CC, GG, and MM of the MISO tariff.

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

89. We will also allow the ATX Southwest affiliates to use the regulatory asset incentive and rate treatment that we are granting for ATX Southwest, as well as the hypothetical capital structure conditioned upon the changes, directed above. Since the rationale for granting these incentives to the ATX Southwest affiliates would be identical to the rationale adopted in this proceeding, and since the Commission has fully considered the incentives issue in this proceeding, these issues need not be re-litigated through further section 205 or section 219 filings.

The Commission orders:

(A) ATX Southwest's request for a hypothetical capital structure is hereby granted, subject to a compliance filing to be made within 30 days of the date of this order, as discussed in the body of this order.

(B) ATX Southwest's request to defer as a regulatory asset all of its prudently incurred costs that are not capitalized, is hereby granted, as discussed in the body of this order.

(C) ATX Southwest's request for authorization to recover prudently incurred costs of abandoned transmission facilities, its request to include 100 percent of CWIP in rate base for Competitive Upgrades that are estimated to cost \$100 million or more and have a construction time of five years or more, and its request for authorization to include 50 percent of CWIP in rate base for all Competitive Upgrades to which the 100 percent CWIP incentive does not apply are hereby denied, as discussed in the body of this order.

(D) ATX Southwest's proposed formula rate template and protocols are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days

of the date of this order, as discussed in the body of this order. ATX Southwest's proposed formula rate template and protocols will take effect once filed with the Commission to become part of SPP's Tariff, consistent with the effective date established in that future proceeding.

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

(F) ATX Southwest's proposed ROE is hereby accepted for filing and suspended for a nominal period, to be effective July 27, 2015, subject to refund, as discussed in the body of this order. ATX Southwest's proposed ROE adder for RTO participation is approved, as discussed in the body of this order.

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

(H) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(I) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(J) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE,

Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.