

161 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, and Robert F. Powelson.

NextEra Energy Transmission
Midwest, LLC

Docket Nos. ER16-2717-000
ER16-2717-001

ORDER ON TRANSMISSION FORMULA RATE PROPOSAL AND INCENTIVES

(Issued November 3, 2017)

1. On September 30, 2016, NextEra Energy Transmission Midwest, LLC (NEET Midwest), pursuant to section 205 of the Federal Power Act (FPA),¹ Part 35 of the Commission's regulations,² and Order No. 679,³ submitted (i) a NEET Midwest formula rate template (Template) and implementation protocols (Protocols) (together, Formula Rate) to determine and recover the costs of NEET Midwest's investment in transmission facilities located in the Midcontinent Independent System Operator, Inc. (MISO) region; and (ii) a request for certain incentive rate treatments. On February 16, 2017, pursuant to the authority delegated by the Commission's February 3, 2017 Order Delegating

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2017).

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (July 31, 2006), FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), FERC Stats & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007); *see also Promoting Transmission Investment through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (2012 Policy Statement).

Further Authority to Staff in Absence of Quorum,⁴ MISO's proposed Tariff revisions were accepted for filing, suspended for a nominal period, to become effective November 30, 2016, as requested, subject to refund and further Commission order.⁵

2. As discussed below, in this further order, we accept NEET Midwest's filing effective November 30, 2016, subject to condition. We accept the Formula Rate, subject to a compliance filing, to be effective once the Template and Protocols are filed with the Commission to become part of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), consistent with the effective date established in that future proceeding.⁶ We grant NEET Midwest's request to use the MISO regional base rate of return on equity (ROE) and for a 50 basis point ROE adder for Regional Transmission Organization/Independent System Operator participation (RTO/ISO Participation Adder), subject to the resulting ROE being within the zone of reasonableness established for the MISO transmission owners in the complaint proceeding in Docket Nos. EL14-12 and EL15-45. We grant NEET Midwest's request for authorization to establish a regulatory asset account for its prudently incurred pre-commercial and formation costs for later recovery, with carrying charges accruing beginning on November 30, 2016, as requested, and its request to use a hypothetical capital structure of 60 percent equity and 40 percent debt, to remain in effect until the first transmission project is placed in service.

⁴ *Agency Operations in the Absence of a Quorum*, 158 FERC ¶ 61,135 (2017).

⁵ *NextEra Energy Transmission Midwest, LLC*, Docket Nos. ER16-2717-000 and ER16-2717-001 (Feb. 16, 2017) (delegated letter order).

⁶ NEET Midwest filed tariff provisions proposing a November 30, 2016 effective date. Because these provisions will not become effective until NEET Midwest has become a member of MISO, we will reset the effective date in eTariff to an indeterminate effective date. See Office of the Secretary, Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings, at 10 (November 14, 2016) (establishing 12/31/9998 as the date for filings with indeterminate effective dates). We further require NEET Midwest to make an eTariff filing to cancel the tariff accepted in this proceeding when its filing to become part of MISO's Tariff becomes effective.

I. Background

3. In Order No. 1000,⁷ 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.⁸ In addition, the Commission required public utility transmission providers to revise their 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;⁹ (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection;¹⁰ 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.¹¹ 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. 1000.¹² In response to the requirements of Order No. 1000, MISO has established Order No. 1000 transmission planning processes, under which qualified

⁷ *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 (2012), *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).

⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 313.

⁹ *Id.* PP 225, 323.

¹⁰ *Id.* PP 325-326.

¹¹ *Id.* P 328, *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 452.

¹² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

developers can bid to develop transmission projects that have been selected in MISO's regional transmission plan for purposes of cost allocation.¹³

4. NEET Midwest states that it was formed to develop, construct, finance, own, operate, and maintain high-voltage electric transmission facilities in the MISO region. NEET Midwest expects to become a transmission-owning member of MISO as soon as the MISO Tariff and governing documents permit.¹⁴ NEET Midwest states that it has been pre-qualified as a Qualified Transmission Developer for the purpose of the MISO competitive developer selection process.¹⁵

5. NEET Midwest states that its ultimate parent is NextEra Energy, Inc. (NextEra). NEET Midwest states that it is a wholly owned direct subsidiary of NextEra Energy Transmission, LLC (NEET Transmission), which was formed in 2007 to apply NextEra Energy, Inc.'s (NextEra) experience and resources in developing, owning, and operating transmission facilities to transmission projects across the United States and Canada. NEET Midwest states that NEET Transmission is an indirect wholly owned subsidiary of NextEra Energy Capital Holdings, LLC (NEECH), which provides funding for the NextEra operating subsidiaries other than Florida Power & Light Company and its subsidiaries. NEECH is a wholly owned direct subsidiary of NextEra.

II. Overview of NEET Midwest Filing

6. NEET Midwest states that the Formula Rate includes a cost of service Template and Protocols that have been modeled after formula rate templates and protocols recently accepted by the Commission.¹⁶ NEET Midwest states that the Formula Rate will be used by NEET Midwest to determine its annual transmission revenue requirements (ATRR) to be received under the MISO Tariff, and is designated to be incorporated into the Tariff as NEET Midwest's Attachments O, GG and MM of the Tariff.¹⁷ NEET Midwest states

¹³ See *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶ 61,215 (2013), *order on reh'g*, 147 FERC ¶ 61,127 (2014), *reh'g denied*, 150 FERC ¶ 61,037 (2015), *pet. for review denied sub nom. MISO Transmission Owners v. FERC*, 819 F.3d 329 (7th Cir. 2016), *reh'g denied*, June 16, 2016, *pet. for cert. filed*, *Ameren Services Co. v. FERC*, No. 16-531 (Oct. 14, 2016).

¹⁴ NEET Midwest September 30 Filing at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ *Id.*

that to calculate the ATRR, NEET Midwest will project the values that will populate the Template for each calendar year (Rate Year), and calculate a true-up of the projected values after the actual data becomes available on the FERC Form No. 1, the year after the Rate Year.¹⁸

7. NEET Midwest states that the Template provides for recovery of a return on rate base, taxes other than income taxes, depreciation and amortization expense, operation and maintenance (O&M) expense, and administrative and general (A&G) expense, less any revenue credits. NEET Midwest states that the Template also includes stated values for Post-Employment Benefits other than Pensions (PBOP), consistent with Commission policy requiring certain components of a formula rate to be stated components.¹⁹

8. NEET Midwest states that the tax obligations incurred through NEET Midwest's operations will be passed through to and reported on the tax returns of its corporate parent. Accordingly, NEET Midwest states that for ratemaking purposes, the proposed Template provides for an income tax allowance consistent with the income tax liability of its corporate parent. It states that this is consistent with Commission practice.²⁰

9. NEET Midwest seeks approval of its stated depreciation rates for transmission and general plant. NEET Midwest states that as a new entity with no assets yet in service, NEET Midwest lacks the operating history upon which to base a depreciation study. Therefore, NEET Midwest seeks to adopt the depreciation rates of its Texas affiliate, Lone Star Transmission, LLC (Lone Star). NEET Midwest argues that once it places its projects in service, it will be similar to Lone Star in that it is expected to own exclusively new facilities.²¹

10. NEET Midwest requests a base return on equity (ROE) of 10.32 percent and the use of a 50 basis point ROE RTO/ISO Participation Adder. NEET Midwest states that it will become a transmission-owning member of MISO at the earliest date possible

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ *Id.* (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 110 (2009), *reh'g denied*, 135 FERC ¶ 61,141 (2011) (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 151 (2008), *order on reh'g*, 133 FERC ¶ 61,152 (2010) (*PATH*)).

²¹ *Id.* at 6-7.

permitted under the MISO Tariff and governing documents, and will transfer operational control of each transmission project to MISO once the project is placed in service.²²

11. NEET Midwest states that the proposed Template provides a means to reflect competitive bid concessions offered for a transmission project, which would reduce the annual transmission revenue requirement in the Formula Rate. NEET Midwest also describes the Protocols, and states that they are transparent and consistent with the Commission's latest guidance on protocols for forward-looking formula rates.²³

12. NEET Midwest filed its proposed Formula Rate in NEET Midwest's eTariff database. NEET Midwest requests an effective date of November 30, 2016 and states that when it is awarded or assigned a MISO competitive project for the first time, a filing will be made to incorporate the Formula Rate into Attachment O of the Tariff. NEET Midwest recognizes that no costs will flow through the Template until a filing incorporating the Template in the MISO Tariff is approved.²⁴

13. NEET Midwest requests that the Commission approve two incentive rate treatments for transmission projects developed by NEET Midwest through MISO's Order No. 1000 transmission planning processes. First, NEET Midwest requests a regulatory asset accounting that would allow deferral of all prudently incurred, pre-commercial costs not capitalized and authorization to accrue carrying charges, including expenses incurred prior to the filing of the application and prior to the time costs first flow through FERC Account 182.3 to customers. Once the filing incorporating the Template in the MISO Tariff is approved, NEET Midwest will amortize the regulatory asset to expense in rates over five years for cost recovery purposes (Regulatory Asset Incentive). Second, NEET Midwest requests use of a Hypothetical Capital Structure of 60 percent equity and 40 percent debt until NEET Midwest's first project achieves commercial operation (Hypothetical Capital Structure Incentive).²⁵ NEET Midwest states that the Commission should authorize the Regulatory Asset Incentive and the Hypothetical Capital Structure Incentive because they are just and reasonable, will provide benefits to ratepayers, and will promote the Commission's pro-competitive policies.²⁶ NEET Midwest argues that its request for the Regulatory Asset Incentive

²² *Id.* at 3-4, 7.

²³ *Id.* at 9-11.

²⁴ *Id.* at 11.

²⁵ *Id.* at 3-4, 12-16.

²⁶ *Id.* at 12.

will help level the playing field with incumbent transmission owners in developing new projects.²⁷ Furthermore, NEET Midwest argues that the Hypothetical Capital Structure Incentive will offset risks and improve NEET Midwest's access to capital.²⁸

14. On November 29, 2016, Commission staff issued a deficiency letter advising NEET Midwest that its September 30, 2016 filing was deficient and requiring additional information in order to evaluate its Formula Rate filing.²⁹ On December 21, 2016, NEET Midwest filed a response to the Deficiency Letter.

III. Notice of Filing and Responsive Pleadings

15. Notice of NEET Midwest's September 30, 2016 Filing was published in the *Federal Register*, 81 Fed. Reg. 69,519 (2016), with interventions and protests due on or before October 21, 2016. Timely interventions were filed by MISO and Midcontinent MCN LLC.

16. Notice of NEET Midwest's December 21, 2016 response to the Deficiency Letter was published in the *Federal Register*, 81 Fed. Reg. 95,578 (2016), with interventions and protests due on or before January 11, 2017. None was filed.

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make MISO and Midcontinent MCN LLC parties to this proceeding.³⁰

²⁷ *Id.*

²⁸ *Id.* at 14.

²⁹ *NextEra Energy Transmission Midwest, LLC*, Deficiency Letter, Docket No. ER16-2717-000, at 2 (Nov. 29, 2016) (Deficiency Letter).

³⁰ *NextEra Energy Transmission Midwest, LLC*, Docket Nos. ER16-2717-000 and ER16-2717-001 (Feb. 16, 2017) (delegated letter order).

B. Substantive Matters**1. Requests for Incentives**

18. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.³¹ 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 NEET Midwest.³²

19. 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.”³³ 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, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential.”³⁴

20. 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.³⁵ 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.”³⁶ 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. 679.³⁷

³¹ Pub. L. No. 109-58, §§ 1261, 1241, 119 Stat. 594 (2005).

³² 16 U.S.C. § 824s (2012).

³³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

³⁴ *Id.* P 8 (citing 16 U.S.C. §§ 824(d)-(e)).

³⁵ *Id.* P 48.

³⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

³⁷ *See* 2012 Policy Statement, 141 FERC ¶ 61,129 (2012).

21. NEET Midwest requests the Regulatory Asset Incentive and the Hypothetical Capital Structure Incentive under section 205 of the FPA. The Commission previously has held that the regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the projects, a demonstration that cannot be met when, as here, the requesting entity has not identified specific projects.³⁸ However, incentives available 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.³⁹ The Commission has exercised its section 205 authority to grant certain incentives to nonincumbent transmission developers competing in Order No. 1000 transmission planning processes, just as NEET Midwest seeks to do here.⁴⁰ Consistent with the Commission's determinations *South Central MCN*,⁴¹ we find that granting the requested Hypothetical Capital Structure Incentive and Regulatory Asset Incentive in this instance furthers the policy goal of facilitating the participation of nonincumbent transmission developers in Order No. 1000 transmission planning processes, thereby encouraging competition,⁴² as described below.

³⁸ *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180, at P 15 (2014), *order on reh'g and compliance*, 154 FERC ¶ 61,010 (2016) (*Transource Wisconsin*).

³⁹ *See Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008); *So. Cal. Edison Co.*, 133 FERC ¶ 61,107, *order on reh'g*, 133 FERC ¶ 61,255 (2010).

⁴⁰ *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, LLC*, 151 FERC ¶ 61,010 (2015) (*Transource Kansas*); *South Central MCN LLC*, 153 FERC ¶ 61,099 (2015) (*South Central MCN*).

⁴¹ *South Central MCN*, 153 FERC ¶ 61,099 at PP 24, 37.

⁴² *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.”).

a. **Request for Regulatory Asset Incentive**

i. **Proposal**

22. NEET Midwest requests authorization to recover all prudently incurred pre-commercial costs not capitalized prior to its Formula Rate taking effect.⁴³ NEET Midwest states that these costs could include, for example, formation costs and costs to support planning and bid development activities, including engineering and consultant fees, legal fees, administrative expenses, travel expenses, and development surveys.⁴⁴ NEET Midwest requests authorization to establish a regulatory asset that will include all such expenses, including expenses incurred prior to the filing of this application and expenses incurred prior to the time such costs first flow through to customers.⁴⁵

23. NEET Midwest requests authorization to amortize the regulatory asset over five years beginning in the first year that costs are charged to customers under the Formula Rate. Also, NEET Midwest requests permission to accrue monthly carrying charges, compounded semi-annually, on the regulatory asset balance beginning on the effective date of the Commission's approval of this incentive until the regulatory asset is included in rate base. According to its proposal, once such costs can be recovered through NEET Midwest's Formula Rate under the MISO Tariff as a current expense, it will discontinue the practice of booking charges to the regulatory asset and instead will record such charges as O&M or A&G expenses to be recovered through the Formula Rate as they are incurred.⁴⁶

24. NEET Midwest states that the ability to recover pre-commercial costs, and the ability to book such costs into a regulatory asset prior to NEET Midwest's costs being recovered as current expenses, will provide up-front regulatory certainty, improve cash flow during construction, improve coverage ratios used by agencies to determine credit quality, and reduce interest expense. In addition, NEET Midwest contends that granting

⁴³ NEET Midwest September 30 Filing at 12.

⁴⁴ *Id.*

⁴⁵ *Id.* The Template provides that "[r]ecovery of a [r]egulatory [a]sset...is subject to FERC approval before the amortization of the [r]egulatory [a]sset can be included in rates." *Id.*, Appendix A, Attachment 4 at 2, Note E.

⁴⁶ *Id.* at 13.

its request for the Regulatory Asset Incentive will help level the playing field with incumbents in developing new projects.⁴⁷

ii. **Commission Determination**

25. We find that it is appropriate to grant NEET Midwest's request for the Regulatory Asset Incentive under section 205 of the FPA. 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.⁴⁸ We find that NEET Midwest's request for the Regulatory Asset Incentive under section 205 of the FPA furthers the Commission's policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 transmission planning processes, thereby encouraging competition.⁴⁹ Nonincumbent transmission developers wishing to bid on regional transmission projects in MISO's competitive solicitation process must incur early pre-commercial and formation costs, but because they do not have a 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. Consistent with the Commission's policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 transmission planning processes, thereby encouraging competition, NEET Midwest may only apply the Regulatory Asset Incentive approved in this proceeding to transmission projects that are developed through MISO's Order No. 1000 transmission planning processes. We also grant NEET Midwest's request to amortize the regulatory asset and to accrue monthly carrying charges using its weighted cost of capital, compounded semi-annually over five years for cost recovery purposes, effective November 30, 2016.

26. While we will allow NEET Midwest to record its prudently incurred costs as a regulatory asset, NEET Midwest 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, NEET Midwest must establish that the costs included in the

⁴⁷ *Id.* at 14.

⁴⁸ 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 at P 18; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 16; *Transource Kansas*, 151 FERC ¶ 61,010 at P 19; *Kanstar Transmission, LLC*, 152 FERC ¶ 61,209, at P 22 (2015), *order on reh'g*, 155 FERC ¶ 61,167 (2016) (*Kanstar*).

⁴⁹ See, e.g., *South Central MCN*, 153 FERC ¶ 61,099 at P 24 & n.39 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).

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 NEET Midwest is issued a notice to construct by MISO, rendering it eligible to recover costs through the MISO Tariff, it is unclear whether NEET Midwest will have any customers from which to recover its regulatory asset.

b. Request for Hypothetical Capital Structure Incentive

i. Proposal

27. NEET Midwest requests authority to use a hypothetical capital structure of 60 percent equity and 40 percent debt until its first project is placed in service.⁵⁰ NEET Midwest states that use of a hypothetical capital structure until NEET Midwest's first project is placed into service is appropriate to offset risks and to improve NEET Midwest's access to capital. NEET Midwest states that it intends to operate with capital infusions from its parent company, at least at first. According to NEET Midwest, as construction of the first project progresses, NEET Midwest will require additional capital contributions. NEET Midwest states that the precise debt-to-equity ratio thus will fluctuate as new debt and equity is invested.⁵¹

28. NEET Midwest states that the Commission has found that: (1) use of a stable debt-to-equity ratio for ratemaking purposes during construction provides certainty and improves access to capital;⁵² (2) use of a hypothetical capital structure during construction will result in lower debt costs for the company, while also permitting it to vary its financing vehicles to the needs of the construction process, including such issues as timing of expenditures, regulatory developments, and changes in financial market conditions;⁵³ and (3) the hypothetical capital structure approach during construction is a pragmatic approach to address fluctuating capital structure at the outset of a project's development.⁵⁴ NEET Midwest further states that granting the requested Hypothetical

⁵⁰ NEET Midwest September 30 Filing at 14.

⁵¹ *Id.*

⁵² *Id.* at 15 (citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 68 (2008), *reh'g denied*, 150 FERC ¶ 61,224, at PP 46-52 (2015)).

⁵³ *Id.* (citing *PATH*, 122 FERC ¶ 61,188 at P 55, *order on reh'g*, 133 FERC ¶ 61,152 (2010)).

⁵⁴ *Id.* (citing *PATH*, 122 FERC ¶ 61,188 at P 55).

Capital Structure Incentive will help level the playing field with incumbents in competing for new transmission projects.⁵⁵

29. NEET Midwest states that its requested Hypothetical Capital Structure Incentive would be in use only until NEET Midwest's first project enters into service. At that time, NEET Midwest will begin to use its actual capital structure.⁵⁶ In support of its requested equity/debt ratio, NEET Midwest states that the Commission has approved the use of a hypothetical capital structure of 60 percent equity and 40 percent debt for other new entrant transmission developers.⁵⁷

ii. Commission Determination

30. We grant NEET Midwest's request to use a hypothetical capital structure consisting of up to 60 percent equity and 40 percent debt prior to its first transmission project going into service. As the Commission held in *XEST* and *XETD*, and as noted by NEET Midwest, nonincumbent transmission developers have a particular need for the Hypothetical Capital Structure Incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.⁵⁸ We grant this request because we find that granting the requested Hypothetical Capital Structure Incentive furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 transmission planning processes, thereby encouraging competition.⁵⁹ Because the requested Hypothetical Capital Structure Incentive is intended solely for participation in Order No. 1000 transmission planning processes, NEET Midwest may only apply the Hypothetical Capital Structure Incentive approved in this proceeding to transmission projects that are developed through MISO's Order No. 1000 transmission planning processes.

⁵⁵ *Id.* at 15.

⁵⁶ The Template (*id.*, Appendix A at 5, Note EE), provides that once the first project is in service, it will use the actual capital structure.

⁵⁷ NEET Midwest September 30 Filing at 15 (citing, e.g., *Midwest Power Transmission Arkansas, LLC*, 152 FERC ¶ 61,210, at P 20 (2015)).

⁵⁸ *XEST*, 149 FERC ¶ 61,182 at P 22; *XETD*, 149 FERC ¶ 61,181 at P 13.

⁵⁹ *See, e.g., ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 30 (2015) (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).

2. Base ROE and RTO/ISO Participation Adder Incentive

a. Proposal

31. NEET Midwest states that it will join MISO and turn over functional control of its transmission facilities to MISO. NEET Midwest states that it therefore seeks authorization to use a base ROE of 10.32 percent in the Formula Rate, which has been approved by the Commission as the generally applicable base ROE for MISO transmission owners and for entities that will become MISO Transmission Owners.⁶⁰

32. NEET Midwest states that MISO's base ROE remains the subject of the pending complaint concerning the MISO transmission owners' base ROE in Docket No. EL15-45-000, although the 15-month refund effective period in that docket expired on May 11, 2016.⁶¹ NEET Midwest states that it will make a filing in compliance with the order on initial decision in that docket, if necessary, to prospectively modify the stated ROE consistent with the outcome of that pending complaint proceeding.⁶²

33. NEET Midwest also requests authorization to apply a 50 basis point RTO/ISO Participation Adder. NEET Midwest states that in Docket No. EL14-12-000, the Commission determined that the appropriate base ROE for the MISO transmission owners was 10.32 percent and determined that that zone of reasonableness was 7.23 percent to 11.35 percent. NEET Midwest states that application of the 50 basis point RTO/ISO Participation Adder would result in a total ROE of 10.82 percent.⁶³

b. Commission Determination

34. We grant NEET Midwest's request to use the MISO regional base ROE, subject to the outcome of the complaint proceedings in Docket Nos. EL14-12 and EL15-45. Transmission-owning members of MISO are currently authorized to use a 10.32 percent ROE for calculating their annual transmission revenue requirement. If NEET Midwest becomes a transmission-owning member of MISO, it will also be entitled to receive the

⁶⁰ NEET Midwest September 30 Filing at 7.

⁶¹ *Arkansas Electric Cooperative Corporation, et al. v. ALLETE, Inc.*, 151 FERC ¶ 61,219 (2015).

⁶² NEET Midwest September 30 Filing at 7.

⁶³ *Id.* at 8-9 (*Association of Businesses Advocating Tariff Equity Coalition of MISO Transmission Customers*, Opinion No. 551, 156 FERC ¶ 61,234, at PP 9, 65 (2016)).

then-current ROE that the Commission has approved for MISO transmission owners, as long as it remains a transmission-owning member of MISO.

35. Consistent with previous Commission orders,⁶⁴ we grant NEET Midwest's request for a 50 basis point RTO/ISO Participation Adder for its participation in MISO, subject to the resulting ROE being within the zone of reasonableness, as determined in the ongoing MISO ROE proceedings in Docket Nos. EL14-12 and EL15-45.⁶⁵ Our approval of this incentive is conditioned on NEET Midwest's commitment to become a member of MISO and to transfer operational control of the transmission projects to MISO once the transmission projects have been placed in service.⁶⁶

3. Depreciation Rates

a. Proposal

36. NEET Midwest states that its proposed Template includes stated depreciation rates for transmission and general plant. NEET Midwest explains that because it is a new entity with no assets yet in service, it lacks an operating history upon which to base a depreciation study. NEET Midwest asserts that the Commission has found that it is appropriate to use the depreciation rates of an affiliate as a proxy for the new entity to adopt in determining its proposed depreciation rates.⁶⁷ NEET Midwest proposes to adopt the depreciation rates of its Texas affiliate, Lone Star.⁶⁸ NEET Midwest states that Lone Star is a transmission service provider in the Electric Reliability Council of Texas, Inc. (ERCOT) and Lone Star was awarded its first transmission project in ERCOT and the

⁶⁴ See, e.g., *MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64.

⁶⁵ See *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,166 (2015).

⁶⁶ 18 C.F.R. § 35.34 (2017).

⁶⁷ NEET Midwest September 30 Filing at 6 & n.17 (citing, e.g., *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009, at P 103 (2016) (*NEET West*)).

⁶⁸ *Id.* at 6; Exhibit No. NMW-200, Direct Testimony of Alan C. Heintz at 15 (Heintz Test.). See *id.*, Appendix C, Exhibit No. NMW-203, which includes the testimony and depreciation study for Lone Star in PUCT Docket No. 42469, and Exhibit No. NMW-204, which includes the PUCT order approving a stipulation and settlement that included Lone Star's proposed depreciation rates, as presented in the testimony and depreciation study.

Public Utility Commission of Texas (PUC) Competitive Renewable Energy Zone process. NEET Midwest therefore asserts that once it places a new transmission project in service, it will be similar to Lone Star, because it is expected to own exclusively new transmission facilities, rather than a mix of old and new transmission facilities like other transmission-owning entities in the NextEra corporate family. NEET Midwest therefore maintains that it is appropriate to use Lone Star's depreciation rates as a proxy for its depreciation rates.

37. NEET Midwest commits to file revised depreciation rates reflecting the depreciation of its actual facilities within five years after NEET Midwest places an asset in service.⁶⁹

b. Commission Determination

38. We accept NEET Midwest's proposed depreciation rates. We recognize that, because NEET Midwest'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.⁷⁰ Because NEET Midwest does not currently have transmission assets, there is no historical data to support a depreciation study. We find that Lone Star's depreciation rates would be an appropriate proxy for NEET Midwest to adopt in determining its proposed depreciation rates.

39. We accept NEET Midwest's commitment to file revised depreciation rates reflecting the depreciation of its actual facilities within five years after NEET Midwest places an asset in service.

4. Formula Rate

a. Proposal

40. NEET Midwest states that its proposed formula rate is forward-looking, and is similar to formula rates the Commission has recently accepted for other competitive transmission developers.⁷¹ To calculate the ATRR, NEET Midwest will project the

⁶⁹ NEET Midwest September 30 Filing, Heintz Test.at 15.

⁷⁰ See *XEST*, 149 FERC ¶ 61,182 at P 124.

⁷¹ NEET Midwest September 30 Filing at 5 (citing *Transource West Virginia, LLC*, 152 FERC ¶ 61,180 (2015); *Transource Kansas*, 151 FERC ¶ 61,010; *Kanstar*, 152 FERC ¶ 61,209; *XEST*, 149 FERC ¶ 61,182; *XETD*, 149 FERC ¶ 61,181; *Transource Wisconsin*, 149 FERC ¶ 61,180).

values that will populate the Template for each Rate Year, and calculate a true-up of the projected values after the actual data becomes available on the FERC Form No. 1 the year after the Rate Year. Any difference between the projected ATRR and actual ATRR for the previous Rate Year will be reflected in an appropriate adjustment to the following year's ATRR.⁷²

41. NEET Midwest's proposed Template contains three parts. The first subpart is the Attachment O formula that determines NEET Midwest's ATRR using data from the FERC Form No. 1. The second subpart is Attachment GG, which calculates project-specific network upgrade charges for Market Efficiency Projects by allocating costs from the Attachment O template. Network upgrade charges are collected by MISO through Schedule 26 charges, and the Schedule 26 revenues received by NEET Midwest are credited against its Attachment O ATRR. The third subpart is Attachment MM, which allocates Attachment O costs to Multi-Value Projects (MVPs) developed by NEET Midwest to determine transmission project specific MVP charges. NEET Midwest states that MVP charges will be collected by MISO under Schedule 26-A, and the Schedule 26-A revenues received by NEET Midwest will be credited against the Attachment O ATRR. NEET Midwest states that, if it develops only Market Efficiency Projects and MVPs, the proposed formula rate is designed such that NEET Midwest's Schedule 26 and 26-A revenues would comprise the entirety of its Attachment O ATRR.⁷³

42. NEET Midwest also states that the proposed Template provides for the recovery of a return on rate base, taxes, depreciation and amortization expense, O&M expense, A&G expense, less any revenue credits.⁷⁴ NEET Midwest also states that the proposed Template includes stated values for PBOP expense, depreciation rates and ROE. According to NEET Midwest, these values may only be changed pursuant to a filing pursuant to section 205 of the FPA of the FPA.⁷⁵

43. NEET Midwest states that the proposed Protocols are transparent, are consistent with the Commission's latest guidance on protocols for forward-looking formula rates, and will provide NEET Midwest's customers with sufficient information and procedural safeguards to facilitate the annual review of the inputs to the template. NEET Midwest states that its proposed Protocols are consistent with the Protocols submitted by MISO

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 5-6; Heintz Test. at 9, 13-14.

⁷⁵ *Id.*

and MISO transmission owners which were accepted by the Commission in 2015 in Docket No. ER13-2379-004, as well as additional more recent Commission guidance.⁷⁶ NEET Midwest's proposed Protocols govern the specific procedures for notice, requests for information, and review and challenges related to NEET Midwest's annual true-up and projected net revenue requirement.⁷⁷

b. Deficiency Response

44. In response to Commission staff's Deficiency Letter, NEET Midwest submitted an Excel spreadsheet and template, additional information concerning interest rates, unfunded reserves, PBOPs, the methodologies for computing the regulatory asset carrying charge, and several corrections made to items in the Template.

45. Regarding the unfunded reserves, NEET Midwest states that it followed the Commission's precedent in *Transource Wisconsin* by establishing a mechanism to reduce rate base for any cost-free form of financial capital from customers.⁷⁸ NEET Midwest proposes to add a footnote to its Template to clarify what amounts are included in unfunded reserves and that NEET Midwest will not establish any reserves in accounts 228.1 through 228.4 without prior authorization.⁷⁹

46. Regarding PBOPs, NEET Midwest proposes to eliminate the recovery of any PBOP expense because its originally proposed stated value would result in very small amounts of PBOPs collected through the Template and the administrative requirements of maintaining an external trust account would be significant in comparison. NEET Midwest states that if it seeks to recover a non-zero PBOP value in its Template in the future, it will make a limited section 205 filing, supported by an actuarial study to establish the amount of PBOP recovery.⁸⁰

47. Regarding interest rates, NEET Midwest states that it will recover a return on rate base that reflects its actual cost of debt once it has a debt facility in place, whether that financing is construction financing or the issuance of long-term debt. NEET Midwest

⁷⁶ *Id.* at 10.

⁷⁷ *Id.*

⁷⁸ NEET Midwest Deficiency Response at 5 (citing *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 43).

⁷⁹ *Id.* at 5-6.

⁸⁰ *Id.* at 6-7.

states that, prior to a transmission project award, NEET Midwest does not anticipate having a debt facility in place. If it is awarded a project, NEET Midwest states that it may finance the transmission project with construction financing if the project requires significant capital or when in service if the project requires less capital to construct. Regarding the true-up of debt, NEET Midwest states that it “would true-up its cost of debt if it had an actual debt facility in place, meaning that if a rate period utilized an estimated cost of debt and during that period an actual debt facility was put in place, Attachment 5 of the Template would reflect the use of the actual debt facility for the months it was in place and the actual revenue requirement for that rate period—and resulting true-up adjustment—would reflect the actual cost of debt.”⁸¹

c. Commission Determination

48. We accept NEET Midwest’s proposed Formula Rate, subject to condition, to be effective once the Template and Protocols are filed with the Commission to become part of MISO’s Tariff, consistent with the effective date established in that future proceeding, and subject to a compliance filing to be made within 30 days of the date of this order that addresses the matters discussed herein.⁸² While the Template generally conforms to other Commission-accepted formula rate templates, there are variances that NEET Midwest has not explained, as well as errors that NEET Midwest must correct. Additionally, we find that NEET Midwest’s Protocols meet the standards set forth in Commission precedent;⁸³ however, certain items in the Protocols are unjust and unreasonable and must be removed. We therefore direct NEET Midwest to modify its Template and Protocols and to provide further explanation, as described below.

⁸¹ *Id.* at 4.

⁸² The United States Court of Appeals for the District of Columbia Circuit has held that, in certain circumstances, the Commission has “authority to propose modifications to a utility’s [FPA section 205] proposal *if the utility consents to the modifications.*” *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108, 114-15 (D.C. Cir. 2017).

⁸³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh’g*, 146 FERC ¶ 61,209, *order on compliance*, 146 FERC ¶ 61,212 (2014), *order on compliance*, 150 FERC ¶ 61,025 (2015); *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016).

i. Formula Rate Template Corrections

49. Attachment 4, Note C of NEET Midwest's Template states that an annual report is filed pursuant to section 7 of the Protocols. This sentence should state that the annual report is filed pursuant to section 6. We direct NEET Midwest to make this change.

50. Attachment O, Note EE states that prior to obtaining long-term debt, the cost of debt will be LIBOR plus 1.5 percent; once NEET Midwest obtains long-term debt, it will use its actual cost of long-term debt as determined in Attachment 5. In its response to the Deficiency Letter, NEET Midwest clarifies that it will recover a return on rate base that reflects its actual cost of debt as calculated in Attachment 5 once it has a debt facility in place, whether that financing is construction financing or the issuance of long-term debt. However, we find that NEET Midwest's proposal, as clarified in its response to the Deficiency Letter, to calculate its cost of debt using Attachment 5 once it has *any* debt facility in place, whether that financing is construction financing or the issuance of long-term debt, may not result in an accurate reflection of NEET Midwest's debt costs in its formula rate. Specifically, it is unclear whether Attachment 5 will accurately reflect the components of NEET Midwest's cost of debt during any period that NEET Midwest utilizes construction financing prior to issuing long-term debt. Attachment 5 references line items in the FERC Form No. 1 to calculate interest expense⁸⁴ associated with long-term debt and balance of long-term debt⁸⁵ that may not reflect the interest expense and balance of debt associated with construction financing, since it is typical to utilize

⁸⁴ Interest on Long-Term Debt (Account 427), Amortization of Debt Discount and Expense (Account 428), Amortization of Loss on Required Debt (Account 428.1), Amortization of Premium on Debt-Credit (Account 429), Amortization of Gain on Required Debt-Credit (Account 429.1), Interest on Debt to Assoc. Companies (Account 430).

⁸⁵ Bonds (Account 221), Reacquired Bonds (Account 222), Advances from Associated Companies (Account 223), Other Long-Term Debt (Account 224).

short-term debt for construction financing.⁸⁶ Accordingly, we direct NEET Midwest, in a compliance filing to be made within 30 days of the date of this order, to either demonstrate that the determination of the cost of debt in Attachment 5 in the Template, and the FERC Form No. 1 references used therein, will accurately reflect its actual cost of debt during any periods of construction financing, or, alternatively, revise the Template to provide for the determination of the cost of debt in the return on rate base reflecting its actual cost of debt during any period that NEET Midwest utilizes construction financing prior to issuing long-term debt.

51. Also, NEET Midwest erroneously filed Attachment MM twice in eTariff in its deficiency letter response instead of Attachments GG and MM. Accordingly, we direct NEET Midwest to file its Attachment GG with all revisions described in its deficiency letter response.

ii. Formula Rate Protocols Corrections

52. We reject NEET Midwest's proposed section IV.K, which attempts to define the scope of various section 205 filings. The Commission has found that provisions in formula rate protocols that attempt to define the scope of future section 205 filings are inappropriate.⁸⁷ In *ATX Southwest*, the Commission rejected such a provision, stating

⁸⁶ The Commission has previously accepted certain formula rate provisions to determine the actual cost of construction financing used prior to issuance of long-term debt. *See, e.g., Kanstar*, 152 FERC ¶ 61,209 at P 28; *Midwest Power Transmission Arkansas, LLC*, 152 FERC ¶ 61,210 (2015); *South Central MCN*, 153 FERC ¶ 61,099. *See also* 18 C.F.R. Part 101, Electric Plant Instruction No. 3(a)(17) (2017). The Commission's Electric (Gas) Plant Instruction no. 3(a)(17) provides a formula for computing rates used to capitalize allowances for funds used during construction (AFUDC), which attributes short-term debt first toward such construction financing, and then other sources of capital secondarily to the extent that CWIP balances exceed the balance of short term debt.

⁸⁷ *ATX Southwest, LLC*, 152 FERC ¶ 61,193 at P 85. The provision rejected in *ATX Southwest*, similar to the provision in NEET Midwest's protocols, stated, in part, that ATX Southwest may, "at its discretion and at a time of its choosing, make a limited filing pursuant to Section 205 to modify stated values in the Formula Rate . . .," and that the sole issue of that proceeding would be whether the proposed change is just and reasonable.

that the scope of any future section 205 FPA filing will be addressed when such a filing is made. We direct NEET Midwest to revise this section accordingly.

The Commission orders:

(A) NEET Midwest's request for a Regulatory Asset Incentive is hereby granted effective November 30, 2016, as discussed in the body of this order.

(B) NEET Midwest's request for a Hypothetical Capital Structure Incentive is hereby granted effective November 30, 2016, as discussed in the body of this order.

(C) NEET Midwest's proposed Formula Rate is hereby accepted for filing, subject to condition, and 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. NEET Midwest's proposed Formula Rate will take effect once filed with the Commission to become part of MISO's Tariff, consistent with the effective date established in that future proceeding.

(D) NEET Midwest's request to use the ROE approved for MISO transmission owners is hereby granted, effective November 30, 2016, subject to the outcome of the pending proceedings in Docket Nos. EL14-12-000 and EL15-45-000, as discussed in the body of this order. NEET Midwest's proposed RTO/ISO Participation Adder is hereby granted subject to the conditions above, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.