

126 FERC ¶ 61,223
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

ITC Great Plains, LLC

Docket No. ER09-548-000

ORDER GRANTING IN PART AND DENYING IN PART RATE INCENTIVES,
CONDITIONALLY ACCEPTING TARIFF REVISIONS, AND
ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued March 16, 2009)

1. On January 15, 2009, ITC Great Plains, LLC (ITC Great Plains) filed tariff sheets for the Southwest Power Pool, Inc. (SPP) open access transmission tariff (Tariff) under sections 205 and 219 of the Federal Power Act.¹ The tariff sheets set forth formula rates and formula implementation protocols to recover the costs of transmission facilities it plans to build and/or own in the SPP region. ITC Great Plains requests rate incentives for its investments in certain high voltage transmission projects ITC Great Plains plans to build and/or own.² In this order, we conditionally accept the tariff sheets for filing, establish hearing and settlement judge procedures, and grant in part and deny in part ITC Great Plains' request for transmission rate incentives, effective on the date requested.

I. Background

A. Description of ITC Great Plains

2. ITC Great Plains is a transmission-only limited liability company formed under Michigan law, authorized to do business in Kansas and Oklahoma. ITC Great Plains is a wholly-owned subsidiary of ITC Grid Development, LLC, which also is a Michigan limited liability company. ITC Grid Development, LLC, in turn, is wholly owned by ITC

¹ 16 U.S.C. § 824d (2006).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Holdings, Inc., a publicly-traded, Michigan-based corporation. ITC Great Plains became an independent transmission company member of SPP in September 2006. On June 5, 2007, the Kansas Corporation Commission (Kansas Commission) issued an order granting ITC Great Plains' request for a certificate of convenience and authority for the limited purpose of building SPP transmission projects in Kansas.³

B. ITC Great Plains' Proposal

3. First, ITC Great Plains states that it will purchase two existing substations⁴ in order to qualify as a transmission owner under the SPP Tariff, which will then allow it to construct SPP transmission projects.

4. Second, ITC Great Plains proposes to construct the Kansas portion of the Kansas Electric Transmission Authority Project (KETA Project) at an estimated cost of approximately \$311 million. The KETA Project is a 210 mile, 345 kV/765 kV transmission line from Spearville, Kansas to Axtell, Nebraska. The first segment of the KETA Project will be approximately 170 miles of new transmission line in Kansas. It will include an 86-mile, 765 kV transmission line, operated initially at 345 kV, commencing at the Sunflower Electric Power Corporation (Sunflower) Spearville substation in Kansas running northeast to a new substation near Hays connecting into Midwest Energy Inc.'s Knoll 230 kV switchyard. ITC Great Plains expects it to be complete by the end of 2011. The second segment of the KETA Project, which is expected to be complete by 2012, is a 345 kV line running from the Knoll switchyard into Nebraska, where it will terminate at the Axtell 345 kV switchyard owned by the Nebraska Public Power District (NPPD).

5. Third, ITC Great Plains also proposes to construct, at an estimated cost of approximately \$476 million, a 765 kV transmission project in Kansas, known as the Kansas V Plan. The Kansas V Plan consists of approximately 180 line miles of 765 kV transmission facilities extending from a substation near Wichita, Kansas, southwest to a new substation in Comanche County, Kansas, and then west-northwest to a substation near Spearville, Kansas.

6. Finally, ITC Great Plains requests rate incentives for Similar Future Projects that are: (1) part of the SPP Transmission Expansion Plan (STEP) or otherwise approved by SPP; (2) high voltage facilities of 345 kV or higher; and (3) investments of at least \$50 million.

³ Pursuant to the Kansas Commission's order, ITC Great Plains must amend its certificate of convenience for each project that it plans to build in Kansas.

⁴ Elm Creek substation and Flat Ridge substation, discussed below.

C. Requested Incentives

7. ITC Great Plains requests return on equity incentives of 50 basis points for participation in SPP and 100 basis points for independence as a transco. ITC Great Plains also requests the following non-return on equity incentives: abandoned plant incentive, pre-construction and start-up costs recovered in a regulatory asset, and 100 percent construction work in progress. ITC Great Plains requests the return on equity incentives for the purchased substation assets, KETA Project, Kansas V Plan, and Similar Future Projects. ITC Great Plains requests the non-return on equity incentives for the KETA Project, Kansas V Plan and Similar Future Projects.

D. Technology Statement

8. Order No. 679 requires an applicant to provide a technology statement that describes any advanced technology a proposed project will use. ITC Great Plains states that, while the final decision on advanced technologies has not been made, the preliminary designs indicate that the KETA Project and Kansas V Plan will use the following advanced technologies: (1) advanced conductor design; (2) phase and shield wire transposition; (3) fiber-optic shield wires; (4) wide-area monitoring and control; (5) remote station equipment diagnostics and security; and (6) switchable shunt reactors.⁵

II. Notices and Responsive Pleadings

9. Notice of ITC Great Plains' filing was published in the *Federal Register*, 74 Fed. Reg. 5,834 (2009), with interventions and comments due on or before February 5, 2009.

10. Xcel Energy Services, Inc. and SPP filed motions to intervene. Prairie Wind Transmission, LLC (Prairie Wind) and Tallgrass Transmission, LLC (Tallgrass) filed a joint motion to intervene. The Kansas Commission filed a notice of intervention and protest. Motions to intervene and protest were filed by Westar Energy, Inc.; East Texas Cooperative, Inc., Northeast Texas Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc., (collectively, Texas Cooperatives); Arkansas Electric Cooperative Corporation and Golden Spread Electric Cooperative Inc., (collectively, Cooperatives); and Occidental Permian, LTD., Occidental Power Marketing, LP and Occidental Chemical Corporation (collectively, Occidental). Additionally, Sunflower and Mid-Kansas Electric Company, LLC (Mid-Kansas) jointly filed a late motion to intervene. Occidental filed an answer opposing Mid-Kansas' motion to intervene late.

11. On February 20, 2009, ITC Great Plains filed a motion for leave to answer and answer. On March 6, 2009, Occidental filed an answer in opposition to ITC Great Plains'

⁵ See Exhibit GP-600 at 8.

motion for leave to answer and answer, and an alternative motion for leave to reply to such motion and answer. On March 9, 2009, Cooperatives filed a motion for leave to answer and answer.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed joint motion to intervene of Sunflower and Mid-Kansas given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

13. Rule 213(a) of the Commission's Rules of Practice and Procedure⁷ prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept ITC Great Plains' answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Occidental's answer in opposition to ITC Great Plains' motion for leave to answer and answer or its alternative motion for leave to reply to such motion and answer and will, therefore, reject both. We are also not persuaded to accept Cooperatives' motion for leave to answer and answer and will, therefore, reject it.

B. Requested Non-ROE Incentives

14. In the Energy Policy Act of 2005,⁸ Congress provided for incentive-based rate treatments for new transmission construction. Specifically, section 1241 of the Energy Policy Act of 2005 directed the Commission to establish, by rule, incentive-based rate treatments for electric transmission. Pursuant to Congress' direction, the Commission issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives, including the incentives that ITC Great Plains requests here.

15. Order No. 679 provides that a public utility may file a petition for declaratory order, or a request under section 205 of the Federal Power Act to obtain incentive rate treatment for transmission infrastructure investments. The applicant must demonstrate

⁶ 18 C.F.R. § 385.214 (2008).

⁷ *Id.* § 385.213(a)(2).

⁸ 16 U.S.C. § 824 (2006).

that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.⁹ Order No. 679 includes a rebuttable presumption that a project satisfies the threshold criteria for eligibility for transmission rate incentive treatment if: (1) a transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion, which the Commission finds acceptable, or (2) a project has received construction approval from an appropriate state commission or state siting authority.¹⁰ Order No. 679-A clarifies the operation of this rebuttable presumption by stating that the authorities and/or processes on which it is based (i.e., a regional planning, state commission, or siting authority process) must consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.¹¹

1. Timing of Filing

a. Comments and Protests

16. Several protesters state that it is too early for the Commission to consider incentive rate treatment for the KETA Project and Kansas V Plan, as well as Similar Future Projects. Texas Cooperatives argue that the preliminary nature of ITC Great Plains' plans restricts the parties from examining financial aspects of the projects because ITC Great Plains has a minimal accounting history.¹² Texas Cooperatives allege that there has not been an adequate independent evaluation of whether the facilities will relieve congestion and improve reliability in the region.¹³ Texas Cooperatives state that much of the alleged benefit is predicated on the construction of numerous proposed wind projects that might not be built.¹⁴

17. The Kansas Commission asserts that the filing is premature because ITC Great Plains has not received siting approval from the Kansas Commission and SPP has not approved a funding mechanism or issued a notice to construct for any of the projects.¹⁵

⁹ See 18 C.F.R. § 35.35(i) (2008).

¹⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 57-58 (2006).

¹¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 49 (2006).

¹² Texas Cooperatives' Motion at 4.

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ Kansas Commission Motion at 4.

18. Westar contends that the filing is premature because ITC Great Plains has not been selected by SPP and the Kansas Commission as the party designated to design and construct the Kansas V Plan.¹⁶ In fact, Westar notes that Prairie Wind, LLC is proposing a similar competing project.¹⁷ Westar states that the proposed Kansas V Plan crosses multiple service territories including those of Westar, Sunflower and Mid-Kansas. Westar states that Sunflower and Mid-Kansas offered Westar the right to build in their service territories for \$20 million. Westar notes that ITC Great Plains' filing does not explain how much ITC Great Plains paid Sunflower and Mid-Kansas for rights to build the facilities in their service territories.¹⁸ Westar asserts that the Kansas Commission has ruled that agreements between ITC Great Plains and both Sunflower and Mid-Kansas must be approved by the Kansas Commission.¹⁹

19. Occidental states that the filing is premature and urges the Commission to reject the formula rate, or alternatively, set it for hearing, because the intervenors should not be required to devote resources to analyze facilities that never may be built.²⁰

20. Westar notes that the Kansas Commission granted a certificate to ITC Great Plains to build the KETA Project over six months ago and ITC Great Plains has yet to submit a siting application to the Kansas Commission. Westar states that the delay is contrary to the public interest. Westar asserts that the Commission should require ITC Great Plains to explain why it deserves incentives when it has not moved forward expeditiously.²¹

¹⁶ Westar Motion at 2.

¹⁷ Similarly, Occidental notes that KETA has stated that it would play a role in constructing the KETA Project if a private sector entity, like ITC Great Plains, does not do so.

¹⁸ *Id.* at 3.

¹⁹ The Kansas Commission argues that ITC Great Plains should disclose the agreements with Sunflower and Mid-Kansas (the Designation Agreements) because they form the basis for ITC Great Plains' contention about its construction rights. *See* discussion, below.

²⁰ Occidental Motion at 7.

²¹ Westar Motion at 4.

b. ITC Great Plains' Answer

21. ITC Great Plains states that the Kansas Commission also argued during the Prairie Wind proceeding that the request for transmission incentives for Prairie Wind's similar project was premature because the proposed project had not been properly vetted with SPP.²² The Commission nevertheless ruled on the Prairie Wind application without opining on the issues pending at the SPP or state level, by confining its review to "only whether these specific projects meet the requirements for incentives under Commission policy."²³

22. ITC Great Plains states that it provided a complete description to SPP and the Kansas Commission for consideration of these projects, including citations to relevant Kansas Commission proceedings and correspondence between ITC Great Plains and SPP.²⁴ ITC Great Plains has received authorization from the Kansas Commission to construct the KETA Project. ITC Great Plains notes that its filing indicates that its commitment to build the KETA Project is contingent on the KETA Project's being eligible for SPP-adopted or Commission-approved regional cost allocation. ITC Great Plains states that it is moving ahead with public meetings regarding the proposed routes for the KETA Project, and will continue to advance the project as part of SPP's first balanced portfolio of economic projects qualifying for regional cost allocation.

23. In response to Occidental's suggestion that the Commission should "summarily reject" the proposed formula rate for facilities that may never be built, ITC Great Plains states that it does not seek a rate applicable to projects that it will not propose.²⁵ ITC states that it has proposed already constructing the KETA Project and Kansas V Plan and that they are far more "real" than other projects that Occidental seems to prefer with similar formula rates.

c. Commission Determination

24. We disagree with protestors that the filing is premature. Receipt of siting approval from the Kansas Commission or notice to construct by SPP are not prerequisites to the Commission's grant of incentives. Moreover, the Commission has found that ruling on requests for incentives pursuant to Order No. 679 does not risk prejudging siting

²² ITC Great Plains' Answer at 6.

²³ *Tallgrass Transmission LLC*, 125 FERC ¶ 61,248, at P 42 (2008) (*Tallgrass*).

²⁴ See Huslig Testimony at 26-28, and Exhibit Nos. GP-102 and GP-113.

²⁵ ITC Great Plains Answer at 40.

procedures at state commissions.²⁶ Thus, our action here will not undermine the consideration of the proposal by SPP or the Kansas Commission, because nothing here will change SPP or the Kansas Commission's method of evaluating projects. Similarly, whether these projects qualify for incentives does not depend on whether SPP has completed its cost allocation methodology because cost allocation is not a prerequisite for eligibility for incentives under Order No. 679.²⁷ Additionally, in *Tallgrass* we conditionally accepted a proposal despite the lack of an accounting history of the applicants, both of which were new companies.²⁸

25. We disagree with the Kansas Commission's contention that the Designation Agreements must be provided. We believe we have the information in this proceeding necessary to determine whether ITC Great Plains' proposed projects qualify for incentives.

2. Rebuttable Presumption

a. Proposal

26. ITC Great Plains states that both the KETA Project and the Kansas V Plan are entitled to the rebuttable presumption under Order No. 679 because they are included in the 2008-2017 STEP.²⁹ ITC Great Plains states that the KETA Project has been "embraced by the Kansas transmission planning authority created especially to identify and secure the construction of the transmission most important to the State of Kansas," and that the three criteria for its Similar Future Projects are designed to ensure that they will also meet the test for the rebuttable presumption.³⁰

27. ITC Great Plains states that the KETA Project and Kansas V Plan will allow for the interconnection of new wind generation facilities. ITC Great Plains' witness Huslig states that as of November 2008, over 3900 MW of wind interconnection was proposed in the vicinity of the Spearville substation, where the Kansas V Plan terminates. ITC

²⁶ *Central Maine Power Company*, 125 FERC ¶ 61,079, at P 39 (2008), and *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 41 (2008).

²⁷ *New York Regional Interconnect, Inc.*, 124 FERC ¶ 61,259, at P 19, 24 and 60 (2008).

²⁸ *Tallgrass*, 125 FERC ¶ 61,248 at P 34, 40-43.

²⁹ ITC Great Plains Filing at 15.

³⁰ *Id.*

Great Plains states that the Spearville-Knoll-Axtell line is a superior alternative to other projects proposed to link Kansas and Nebraska, which have congestion on existing flowgates between them.³¹

b. Comments and Protests

28. Occidental states that the inclusion of the KETA Project and Kansas V Plan in the 2008-2017 STEP does not reflect an SPP determination that these projects are needed to address either reliability or congestion issues, nor did SPP find that the projects are economic. Instead, Occidental states that the inclusion of the projects in the STEP is the product of ITC Great Plains' representation that it would shoulder responsibility for the construction of these economically-driven projects.³²

29. Occidental adds that even if the Commission were to apply the rebuttable presumption, it could be rebutted easily because SPP has determined that the projects are not required for reliability purposes. SPP's analysis did not evaluate the projects for their effect on congestion and, consequently, could not have found those projects helpful in relieving congestion.³³

30. Westar states that under SPP Tariff's Attachment O (Coordinated Planning Procedures),³⁴ for a potential economic upgrade to be listed in the STEP, it must pass a "screening analysis" and be endorsed by the SPP markets and operations policy committee and SPP board of directors.³⁵ Economic upgrades are preliminarily included in the STEP "because of their *potential* economic benefits and *likelihood* of having a positive impact on congestion in the transmission system."³⁶ Thus, Westar argues that inclusion of an economic upgrade in the STEP reflects only a preliminary conclusion about congestion benefits. Westar concludes that, before the KETA Project and Kansas

³¹ *Id.* at 17.

³² Occidental Motion at 15.

³³ *Id.* at 16.

³⁴ SPP Tariff, Attachment O (FERC Electric Tariff, Fifth Revised Volume No. 1, Original Sheet No. 300C.01).

³⁵ Westar Motion at 6.

³⁶ SPP Transmission Expansion Plan 2008-2017 (2008-2017 STEP) at 23 available at http://www.spp.org/publications/2007%20SPP%20Transmission%20Expansion%20Plan%2020080131_BOD_Public.pdf. 2008-2017 STEP at 80 (emphasis added by Westar).

V Plan can be considered as finally having been included in the SPP regional plan, they must go through an additional round of screening in the SPP regional planning process.³⁷

31. Both Westar and Cooperatives note that the Kansas V Plan was identified as a 345 kV project when it was presented to SPP for inclusion in the STEP, and not the 765 kV project for which ITC Great Plains currently requests incentive rates.³⁸ Westar and Cooperatives argue that ITC Great Plains' claim of being entitled to a rebuttable presumption is thus based on the SPP board of directors' approval of a fundamentally different set of facilities that could have been constructed at considerably lower cost. The economics of constructing a 345 kV line are very different from the economics of constructing a 765 kV transmission line. Moreover, they assert that the fact that a 345 kV line between two points may reduce the cost of delivered power does not demonstrate that a higher cost 765 kV line will have the same effect. Westar and Cooperatives conclude that the Commission should therefore reject ITC Great Plains' request for incentives, without prejudice to ITC Great Plains' right to submit its proposal in its current form for consideration in the SPP regional planning process.³⁹

c. ITC Great Plains' Answer

32. In response to Occidental, Westar and Cooperatives' contention that inclusion of the KETA Project and Kansas V Plan in the STEP does not entitle them to a rebuttable presumption, ITC Great Plains states that economic upgrades are included in the STEP "because of their potential economic benefit and likelihood of having a positive impact on congestion in the transmission system."⁴⁰ If the rebuttable presumption for incentive rates under Order No. 679 requires more than this, then SPP's planning process is of little value because no economic project included in the STEP would ever qualify for the rebuttable presumption.

33. In response to Cooperatives' argument that the projects included in the STEP were different from the KETA Project and the Kansas V Plan, ITC Great Plains states that whether the lines are constructed at 345 kV or 765 kV does not matter for purposes of whether these projects are entitled to the project specific non-ROE incentives requested for them. ITC Great Plains believes that developments since September 2007, including the updating of SPP's Extra High Voltage Overlay Study in March 2008, have made it

³⁷ Westar Motion at 8.

³⁸ *Id.* at 7, Cooperatives Motion at 8.

³⁹ *Id.*

⁴⁰ 2008-2017 STEP at 80.

prudent to plan on constructing these lines at 765 kV, but whether these lines are ultimately constructed at 765 kV or 345 kV is a decision that will be made by SPP through its continuing planning processes.

d. Commission Determination

34. The Commission finds that ITC Great Plains is not entitled to the rebuttable presumption for the KETA Project and Kansas V Plan because the inclusion of these projects in the STEP does not reflect an SPP determination that they are needed to address either reliability or congestion. The 2008-2017 STEP states that inclusion in the STEP reflects only a preliminary conclusion about a project's benefits, and that should an economic network upgrade sponsor step forward, the top-ranking upgrades⁴¹ should be considered for further study.⁴² In addition, while the Kansas Commission has given ITC Great Plains the authority to construct the KETA Project,⁴³ nothing in the Kansas Commission certificate to construct orders indicates that the Kansas Commission evaluated the project to determine whether it ensures reliability or reduces the cost of delivered power by reducing congestion.

3. Demonstration of Incentive Eligibility

a. Proposal

35. In the event that the Commission found that ITC Great Plains' request for incentive rates for the KETA Project and Kansas V Plan was not entitled to the rebuttable presumption, ITC Great Plains submitted studies to demonstrate that the projects meet Order No. 679's requirements. The first submitted study, the "SPP Updated Extra High Voltage Overlay Study" dated March 3, 2008, was performed by Quanta Technology, LLC. The study updates an earlier study commissioned by SPP in January 2007 to: (1) perform a strategic assessment regarding the long-term reliability and capacity needs through the use of a 345 kV, 500 kV, and 765 kV or higher voltage transmission system to overlay the existing transmission system within the SPP footprint; (2) assess SPP's potential integration with neighboring systems to address future transmission needs required by SPP; and (3) ensure an efficient and optimal transmission system to address

⁴¹ SPP ranked the KETA Project and Kansas V Plan as numbers 20 and 38 out of 49 proposed projects in terms of benefit-cost ratios. *Id.* at 78.

⁴² *Id.* at 80 (Adding that such study would involve a more detailed analysis looking at individual upgrades over an entire year and could also include an analysis of sensitivity to various factors such as fuel pricing and interaction between upgrades.)

⁴³ <http://www.kcc.state.ks.us/scan/200706/20070605095212.pdf>.

long-term future transmission needs. Quanta Technology, LLC updated the study to evaluate the effect of increased wind development on the SPP system, develop and compare four overlay designs, and develop a construction sequence for the high voltage overlay.

36. ITC Great Plains' proposed Kansas V Plan is similar to one of the facilities in the SPP Updated Extra High Voltage Overlay Study. The SPP Updated High Voltage Overlay Study identifies a 765 kV project that goes from Spearville, Kansas to Comanche County, Kansas and then to Wichita, Kansas. ITC Great Plains has proposed a project that follows the same path from Spearville, Kansas to Wichita, Kansas through Comanche County. Moreover, such study recommends sequencing of construction of the high voltage overlay that begins in the western portion of the SPP system and expands eastward. The construction of the planned high voltage overlay is broken down into three "packages" with the first package further broken down into three steps. Facilities similar to the Kansas V Plan are reflected in package one - step one of the construction sequence. The study shows that this construction sequencing is best because wind development is already occurring in the western portion of the system, there is a lack of transmission from west to east to deliver this energy, and western portions have been authorized to proceeding with development to deliver the wind generation to load centers.⁴⁴

37. ITC Great Plains also submits the "Kansas Electric Transmission Authority Study" (KETA Study) dated April 2007 with this filing. KETA commissioned SPP to perform the KETA Study to evaluate which project is the best fit project given proposed circumstances that would meet the needs of the State of Kansas and future wind development. The KETA Study concludes that the KETA Project will convey the greatest benefits when compared to other electric transmission projects in Kansas.⁴⁵

38. The third study, "Phase 1 Summary Report for ITC/NPPD Transmission Study" was performed by Ventyx (Ventyx Study) and dated November 20, 2008. ITC Great Plains and NPPD commissioned Ventyx, a business solutions provider, to update the assumptions used by SPP in the KETA Study. Ventyx evaluated the KETA Project and the Kansas V Plan under various scenarios of wind development and average gas prices. Ventyx calculated the cost to serve load, net profit from sales and adjusted production cost value for the State of Kansas and the entire SPP region for the two projects. ITC Great Plains states that the Ventyx Study found that with both the KETA Project and

⁴⁴ Exhibit GP-111 at 3.

⁴⁵ Exhibit GP-100 at 20.

Kansas V Plan installed, projected annual benefits would range between \$85.9 million and \$100.3 million.⁴⁶

b. Comments and Protests

39. Occidental states that the KETA Project and Kansas V Plan, by definition, are not required for reliability because they are economic upgrades. Moreover, Occidental notes that SPP has determined they are not required for reliability.⁴⁷ Occidental also states that the costs of the projects outweigh their benefits according to the 2008-2017 STEP. Occidental contests ITC Great Plains' reliance on the KETA study as demonstrating the project is economic. Occidental states that the purpose of the study was simply "to determine the potential 345 kV expansions having the greatest benefit to the state of Kansas as conditions are known to exist in 2007."⁴⁸ Occidental continues that the study only considered a small group of proposed Kansas projects and determined that the KETA project, while the best of the small group of projects, was still uneconomic.

c. ITC Great Plains' Answer

40. ITC Great Plains states that SPP's screening studies⁴⁹ show varying cost - benefit ratios for the KETA Project and the Kansas V Plan, depending on such things as the levels of wind development assumed, other projects considered and the cost of natural gas.⁵⁰ Thus, Occidental's characterization of the KETA Project and Kansas V Plan as categorically "uneconomic" is a distortion because the KETA Project and Kansas V Plan were considered worthy of evaluation for inclusion in balanced portfolios of economic projects by SPP staff during 2008 and continuing to today.

⁴⁶ *Id.* at 29.

⁴⁷ Occidental Protest at 11, citing SPP Transmission Expansion Plan 2008-2017 at 23.

⁴⁸ Occidental Protest at 13, citing SPP Kansas Electric Transmission Study (April 2007).

⁴⁹ ITC Great Plains adds that in the June 2008 analysis that the SPP staff presented to the cost allocation working group, the addition of the KETA Project to three different proposed balanced portfolios provided a significant increase in the cost/benefit ratio of each portfolio of economic projects that was evaluated. This demonstrates a cost/benefit ratio above 1.0 for the KETA Project under the assumptions used for this analysis (ITC Great Plains' Answer at 38).

⁵⁰ *Id.* at 38-39.

41. ITC Great Plains states that beyond these facts, it should be noted that SPP's cost-benefit studies define benefit solely in terms of reduced adjusted production costs. No other benefits are taken into account, such as the interconnection of wind resources and reduced line losses. Moreover, ITC Great Plains states that Occidental makes no effort to address the Ventyx Study,⁵¹ the sensitivity analysis performed by SPP as part of the balanced portfolio analysis,⁵² the SPP Extra High Voltage Updated Overlay Study⁵³ and the data provided by ITC Great Plains concerning the number of megawatts of wind awaiting interconnection at points to be served by ITC Great Plains' proposed projects. ITC Great Plains states that these analyses demonstrate that the projects proposed by ITC Great Plains produce significant economic benefits when analyzed in the proper context.

d. Commission Determination

42. Even if a project fails to qualify for a rebuttable presumption, the Commission will evaluate a project's eligibility for incentives if the applicant can demonstrate that the project meets Order No. 679's eligibility requirements. We find that ITC Great Plains has adequately demonstrated that the KETA Project and Kansas V Plan meet such requirements and are thus eligible for incentives. The KETA Project and facilities similar to the Kansas V Plan are reflected in the Quanta study of the SPP high voltage overlay. The SPP high voltage overlay is a plan being considered by SPP to construct a high voltage (e.g., 765 kV) grid that would overlay the existing SPP transmission system to facilitate greater wind interconnection and regional transmission service.⁵⁴ With its study of the high voltage overlay, SPP has taken a very forward-looking approach to assess the regional needs of its system. The SPP high voltage overlay study considers comprehensive plans for transmission expansion within SPP, including but not limited to facilities similar to ITC Great Plains' projects, to achieve objectives that are considered to be priorities by stakeholders and the states. Facilities similar to the Kansas V Plan are in

⁵¹ Exhibit GP-110.

⁵² Exhibit GP-109 at 15-18.

⁵³ Exhibit GP-111.

⁵⁴ The SPP high voltage overlay study identified specific facilities that were to be completed within the SPP region at the time of the study to be built in each of four different scenarios. We note that the portion of the KETA Project from the Knoll substation to the Axtell substation was not entirely within the SPP region at the time of the study. This portion of the KETA Project, while not specifically identified in the lists of facilities included in the four scenarios, is nonetheless identified on the maps associated with each of the four scenarios and was included in the base case of the study.

package one – step one of the recommended construction sequencing in the study; thus, the high voltage overlay will begin with facilities such as these. Considering SPP’s approach to regional planning, the benefits of the high voltage overlay will be significant, including providing overall reliability reinforcement of the SPP system with improved voltage support throughout SPP.⁵⁵

43. In addition, ITC Great Plains commissioned a study performed by Ventyx that examined the benefits to Kansas and the entire SPP region from the KETA Project and Kansas V Plan. The study found substantial reductions in the cost to serve load and significant power production cost savings due in substantial part to increased transfer capability that would reduce congestion and allow transportation of low-cost wind energy to displace higher cost energy from fossil fuel sources. For example, the study determined that under normal wind expansion assumptions, the SPP region could expect annual savings of approximately \$85 million with both projects put into service. This study provides a reasonable basis to conclude that ITC Great Plains’ projects will reduce the cost to serve load by reducing congestion through facilitating integration and delivery of low-cost wind energy in the SPP region and providing greater transfer capability.⁵⁶ Moreover, we note that SPP expects the KETA Project to provide relief on one of the top ten congested flowgates in SPP.⁵⁷

44. As for whether the projects deserve incentives because there are competing projects, we reiterate that it is the Commission’s policy to review each request for incentives on its own merits and on a case-by-case basis.⁵⁸ The only projects before the Commission are the KETA Project and Kansas V Plan. Thus, we review only whether these specific projects meet the requirements for incentives under the FPA and Commission policy.

⁵⁵ Exhibit GP-111, “SPP Updated EHV Overlay Study”, March 3, 2008, at 28.

⁵⁶ Additionally, as we found in *Tallgrass*, we find that with SPP’s proposed high voltage overlay, lower voltage facilities will be relieved of their congestion resulting in a reduction in the cost of delivered power.

⁵⁷ Exhibit GP-112, “Top Ten Congested Flowgates/Solutions – 2008 to Date.”

⁵⁸ *Pacific Gas & Electric Company*, 123 FERC ¶ 61,067 (2008) and *Central Maine Power Company*, 125 FERC ¶ 61,079 (2008).

4. Similar Future Projects

a. Proposal

45. ITC Great Plains requests rate incentives for Similar Future Projects that are: (1) included in the STEP or otherwise approved by SPP; (2) high voltage facilities of 345 kV or higher; and (3) an investment of at least \$50 million.

b. Comments and Protests

46. Texas Cooperatives state that the requested incentives should be denied for Similar Future Projects. Texas Cooperatives state that the unknown nature of the Similar Future Projects precludes such facilities from meeting Commission requirements for incentives. Texas Cooperatives state that the Commission's approach is to examine each project on a case-by-case, fact-based basis to determine if the project is eligible for incentives and whether the applicant has met the nexus test (i.e., the incentives sought must be tailored to address demonstrable risks and challenges).⁵⁹ Texas Cooperatives and Cooperatives argue that granting the blanket pre-authorization requested by ITC Great Plains precludes a review of each project on a case-by-case basis. Similarly, they argue that ITC Great Plains' arbitrary minimum total project cost will merely encourage ITC Great Plains to bundle a number of otherwise unqualified projects together in order to satisfy the investment threshold. Texas Cooperatives state that the Commission's rejection of Similar Future Projects would not prejudice ITC Great Plains from seeking incentives for such facilities at a later time.⁶⁰

47. Westar states that incentive rate treatment for Similar Future Projects should be denied. Westar states that such projects should not qualify for a rebuttable presumption as a result of being included in the STEP⁶¹ and such projects would not meet the nexus test absent the presentation of specific facts about a project. Westar states that the

⁵⁹ Texas Cooperatives' Motion at 6.

⁶⁰ *Id.* at 8.

⁶¹ Cooperatives also note that the proposal states that this criterion is to be included in the STEP "or otherwise approved by SPP," which does not guarantee the projects meet the Commission requirements for incentive rate treatment. Cooperatives also state that, even if the Commission were to find that a project included in the STEP or otherwise approved by SPP gives Similar Future Projects a rebuttable presumption, other parties still should be able to rebut the presumption. However, by automatically approving Similar Future Projects in this proceeding, other parties would not be able to rebut the presumption.

Commission has rejected a similar proposal in the past⁶² and rejection here would be consistent with prior Commission rulings.⁶³ Moreover, Occidental asserts that Similar Future Projects have not met the nexus test, because information about the projects is not available and ITC Great Plains acknowledges that some of the projects will be routine. Occidental points out that routine projects do not qualify for incentive rate treatment under Order No. 679.⁶⁴

c. ITC Great Plains' Answer

48. ITC Great Plains states that it has defined Similar Future Projects carefully to meet the requirements of Order No. 679 and Commission precedent for approving such future incentives. The proposed projects are included in the STEP, are 345 kV or above extra high voltage, and are at least \$50 million in cost. Therefore, these projects should qualify for the requested non-ROE incentives without the need for additional filings. ITC Great Plains asserts that this is particularly true when viewed in the context of the demonstrated need for transmission in SPP, lack of any demonstrated cost allocation methodology applicable to economic projects, and risks faced by ITC Great Plains as an independent start-up transmission company are considered.

49. ITC Great Plains asserts that the precedent Westar cites as undermining ITC Great Plains' request here was taken into account by ITC Great Plains and is distinguishable. Baltimore Gas & Electric Company (BG&E) sought incentive rate treatment for "37 transmission projects which will cost approximately \$183 million and that *may be approved* under future PJM RTEPs *if* PJM determines that such construction is needed for reliability or congestion mitigation, or both."⁶⁵ ITC Great Plains states that all of the

⁶² Westar Motion at 9, citing *Baltimore Gas and Electric Company*, 120 FERC ¶ 61,084, at P 13 (2007) (*BG&E*).

⁶³ *Id.* at 9, citing *Bangor Hydro-Electric Co.* 122 FERC ¶ 61,265 (2007) (*Bangor Hydro*).

⁶⁴ Occidental Motion at 18, *citing* Order No. 679 at P 3.

⁶⁵ *BG&E*, 120 FERC ¶ 61,084 at P 13 (emphasis added by ITC). In rejecting BG&E's request for incentives for 37 future projects described generally as projects to "reinforce the BGE transmission system" (*See* Exhibit No. BGE-6 in Docket No. ER07-576 at 11), the Commission determined that "[a] listing of projects that have not been through a regional planning process and have not received state siting approval" was insufficient. *Id.* at 45. ITC Great Plains asserts that it has gone beyond the BG&E proposal, not only by requiring inclusion in the STEP, but also by imposing criteria to assure that the requested incentives will be necessary to address the risks that face projects of significant size and scope.

37 transmission reinforcement projects for which BG&E sought incentives were smaller than the \$50 million cost threshold proposed by ITC Great Plains, and only two of such projects included extra high voltage transmission. BG&E did not propose criteria to assure that routine projects would not receive the incentives.

50. ITC Great Plains states that in contrast, the Similar Future Projects for which ITC Great Plains seeks incentives will be significant new transmission facilities in the SPP region, not routine upgrades or incremental expansions of an existing system.⁶⁶ Unlike BG&E, ITC Great Plains has no existing system in SPP to upgrade. The criteria proposed by ITC Great Plains are intended to eliminate those projects that would be considered merely routine and thus not appropriate for incentives. The Commission said in *BG&E* that “projects that are not routine face inherent risks and challenges.”⁶⁷ ITC Great Plains explains that any project it constructs in SPP will face the inherent risks and challenges discussed in detail in its application.⁶⁸

d. Commission Determination

51. The Commission’s approach in evaluating requests for rate incentives is to examine each project on a case-by-case, fact-based basis to determine if the project is eligible for incentives and whether the applicant has met the nexus test. ITC Great Plains seeks to circumvent the case-by-case review requirement by establishing three criteria for Similar Future Projects. To begin with, as discussed above, inclusion of economic upgrade projects in the STEP does not mean that those projects have been found to ensure reliability or reduce the cost of delivered power through a reduction in congestion, a finding that is necessary for the Commission to grant rate incentives.⁶⁹ In addition, the Commission stated in *Bangor Hydro* that “we will not extend a pre-approved

⁶⁶ ITC Great Plains also states that the requested incentives for Similar Future Projects have been carefully tailored to address the risks facing ITC Great Plains in constructing such projects. ITC Great Plains adds that these non-return on equity incentives would not be applied to “routine” projects.

⁶⁷ *BG&E*, 120 FERC ¶ 61,084 at P 54.

⁶⁸ ITC Great Plains adds that the need for the incentives in the case of BG&E, a vertically integrated utility with multiple revenue streams, is significantly different from that of ITC Great Plains. Unlike BG&E, ITC Great Plains does not have multiple revenue streams and typically invests in transmission expansions and improvements amounts that are well in excess of its free cash flow. Thus, ITC Great Plains needs these incentives to support its ability to finance transmission projects now and in the future.

⁶⁹ Order No. 679 at P 1.

authorization for any future projects without a specific showing justifying the incentive on a project-by-project basis, consistent with the requirements of Order No. 679.”⁷⁰ Therefore, consistent with Commission precedent and Order No. 679, we deny ITC Great Plains’ request for approval of incentives for Similar Future Projects.

5. Nexus Test

52. In addition to satisfying the Order No. 679 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”⁷¹ As part of our evaluation of whether the incentives requested are tailored as required, the Commission has found the question of whether a project is “routine” to be particularly probative. In *BG&E*,⁷² the Commission provided guidance on the factors that it will consider when determining whether a project is routine. The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on the: (1) scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, and effect on region); (2) effect of the project (e.g., improving reliability or reducing congestion costs); and (3) challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, and other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for the purposes of the nexus test, shown that the project faces risk and challenges that merit incentive rate treatment.⁷³

a. Nexus with Overall Package of Incentives

i. Proposal

53. ITC Great Plains states that the KETA Project and Kansas V Plan meet the nexus test because they are not routine, and the package of incentives requested are necessary to

⁷⁰ *Bangor Hydro* at P 51.

⁷¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁷² *BG&E*, 120 FERC ¶ 61,084, at P 52-55.

⁷³ *Id.* P 54.

compensate for the risks the projects pose.⁷⁴ To support its contention, ITC Great Plains asserts that the KETA Project is the first major transmission project constructed by an independent transmission company in the SPP region. ITC Great Plains states that the cost of the KETA Project, which it estimates at \$311 million, is also not routine. Similarly, it asserts that the cost of the Kansas V Plan, \$476 million, is “clearly” not routine.

54. ITC Great Plains explains that the voltage level of the projects may pose risks requiring devices to provide voltage support for wind projects, such as static var compensators or static synchronous compensators.⁷⁵ ITC Great Plains notes that, if approved, its projects would be the first application of 765 kV in SPP, and given the large amount of wind generation anticipated to be built in SPP, it may be necessary to evaluate and incorporate technologies to address operational issues associated with variable wind energy. ITC Great Plains points out that while there is every indication that NPPD will build the Nebraska portion of the KETA Project, there is risk that Nebraska may be delayed in becoming integrated with SPP, which could delay the energization of the KETA Project. ITC Great Plains states that as an independent transmission owner, it faces hurdles in qualifying as a transmission owner under the SPP Tariff. Moreover, ITC Great Plains must obtain a certificate of convenience and authority from the Kansas Commission for each project it builds in Kansas.⁷⁶ For all these risks and challenges, ITC Great Plains seeks certain incentives.

ii. Comments and Protests

55. While they protest other aspects of ITC Great Plains’ filing, Texas Cooperatives do not contest the requested incentives for the KETA Project or Kansas V Plan.

56. Occidental states that ITC Great Plains’ proposal is contrary to the commitment that ITC Great Plains made to induce SPP to include the KETA and Kansas V Plan projects in the STEP as economic upgrades.⁷⁷ Such economic upgrade projects are purely elective and are distinct from base plan upgrades, which are required for reliability. Economic upgrades generally were not eligible for region-wide cost recovery. Additionally, a third party that constructs and owns a transmission facility as an

⁷⁴ ITC Great Plains’ Filing at 16-17.

⁷⁵ *Id.* at 17.

⁷⁶ *Id.* at 18.

⁷⁷ Occidental Motion at 6 and 8.

economic upgrade bears the upfront costs of constructing the upgrade but is eligible to receive transmission credits, according to Occidental.

57. Thus, Occidental states that by committing to build the KETA Project and Kansas V Plan, ITC Great Plains voluntarily accepted the full risk of going forward with those projects.⁷⁸ Occidental notes that ITC Great Plains claims that its commitments are conditional even though there is no mechanism in the SPP Tariff for a conditional commitment.⁷⁹ Occidental concludes that given that ITC Great Plains committed to build the KETA Project and Kansas V Plan as economic projects, the Commission should flatly reject its attempt now to insulate itself from risk and obtain additional incentives.⁸⁰

iii. ITC Great Plains' Answer

58. ITC Great Plains states that it filed with its application the letters it sent to SPP requesting that the KETA Project and Kansas V Plan be included in the STEP.⁸¹ In the letters, ITC Great Plains stated its understanding that the projects would be eligible for any SPP-adopted or other FERC-approved regional cost allocation methodology for economic projects in SPP and that it would be compensated for service over the projects. Thus, contrary to protestors allegations, ITC Great Plains asserts that its request for incentives is consistent with its earlier statements to SPP.

iv. Commission Determination

59. We agree that ITC Great Plains still faces significant state regulatory and siting risks. The KETA Project and Kansas V Plan have not received all the approvals necessary to build the facilities and may face landowner complaints about the projects. For example, ITC Great Plains must also receive project-specific authorization to build from the Kansas Commission, separate and apart from siting authorization. ITC Great Plains has requested SPP to include the KETA Project in the STEP as an economic upgrade, which SPP has done; however, SPP has not yet issued a notice to construct the project. SPP also has included the Kansas V Plan in the STEP as an economic upgrade.⁸²

⁷⁸ *Id.* at 10.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ ITC Answer at 37.

⁸² Moreover, ITC Great Plains' request to have the KETA Project and Kansas V Plan included in the 2008-2017 STEP as economic upgrades does not reflect a binding commitment on ITC Great Plains to construct the projects. Thus, protests arguing that incentives should not be granted because ITC Great Plains allegedly committed to build

(continued...)

The Kansas Commission has established a procedural schedule for consideration of ITC Great Plains' request to amend its certificate of convenience to construct the Kansas V Plan, but none of the necessary approvals are assured. ITC Great Plains states that with timely regulatory approvals it plans to commence construction in early 2011, and predicts completion in 2012. SPP has not yet determined that ITC Great Plains is a Transmission Owner under its Tariff.

60. No party disputes that the KETA Project and Kansas V Plan pose substantial financial risk to ITC Great Plains, including the necessity for additional voltage control equipment to integrate a 765 kV facility into the SPP system. Nor does any party dispute that while wind project integration is desirable in the SPP region, it is challenging and poses uncertainties. An extraordinary number of wind generators currently seek to interconnect to SPP's system, and while a substantial amount of transmission is necessary to integrate such generation without major bottlenecks, SPP does not know how many of these projects will actually be built.⁸³ Moreover, the fact that SPP has not established a cost allocation mechanism to recover the costs of any facilities identified in the high voltage overlay study adds to the challenge and uncertainty involved in integrating wind resources. Accordingly, given these risks, we find that ITC Great Plains' proposed projects meet the nexus test.

61. We find that ITC Great Plains has demonstrated a sufficient nexus between the risks of the KETA Project and Kansas V Plan and the requested incentives. ITC Great Plains has demonstrated that its projects are not routine, based on the scope, effects, risks, and challenges.

62. The proposed high voltage projects are exceptional in both size and purpose and will facilitate the interconnection and transportation of about 7,000 MW of new

the facilities before seeking incentives are misplaced. In its request to include the projects in the STEP, ITC Great Plains stated that it understood that the projects "would be eligible for any SPP-adopted or other FERC-approved regional cost allocation methodology for economic projects in SPP." In addition, Order No. 679 states that "inclusion of a facility in a[n] [expansion] plan does not mean that a project can or will be built. Even where a project already has been planned or announced, the granting of incentives may help in securing financing for the project to completion sooner than anticipated." Order No. 679 at P 35. Therefore, the Commission did not intend the inclusion of a project in an expansion plan to preclude granting incentive rates for that project.

⁸³ As of December 2008, SPP had over 50,000 MW of wind projects in its interconnection queue. In comparison, SPP's record peak load is just over 43,000 MW. See http://www.spp.org/publications/SPP_Wind_Integration_QA.pdf.

renewable power. Additionally, as part of the SPP high voltage overlay, ITC Great Plains expects the projects to improve the reliability of the bulk transmission grid in these geographic regions while causing fewer losses and minimizing the rights-of-way impacts on local area communities.⁸⁴ ITC Great Plains claims that access to the new renewable resources will help reduce the cost of delivering power to customers because additional transmission capacity will allow the markets access to more generation and will avoid or reduce congestion on the underlying system. As the Commission noted in *Tallgrass*, the approval of the incentives for the early phase of the SPP high voltage overlay will encourage other transmission owners to begin work on completing the remaining portions of the SPP high voltage overlay.⁸⁵

63. In *BG&E*, we found that the challenges or risks faced by a project can include: siting, long lead times, regulatory risks, unusual financing challenges and other similar impediments.⁸⁶ Incentives help to mitigate these risks and thereby send the correct message to transmission owners and the investors who supply the capital to build transmission. ITC Great Plains has demonstrated similar challenges and risks here. We also agree with ITC Great Plains that the incentives will address the financial, regulatory, and construction risks.

64. As stated above, the project will entail regulatory risk associated with obtaining the necessary approvals from the Kansas Commission as well as approval in the SPP transmission expansion plan. These projects also present a significant capital investment for ITC Great Plains totaling approximately \$787 million.

b. Abandoned Plant Incentive

i. Proposal

65. ITC Great Plains requests the abandoned plant incentive that would allow it to recover the prudently-incurred investment costs in the two projects in the event that the project must be abandoned for reasons outside of its control. ITC Great Plains would also apply this incentive to the Similar Future Projects that meet its proposed three criteria.

⁸⁴ Exhibit GP-111, “SPP Updated EHV Overlay Study”, March 3, 2008, at 28 and 45.

⁸⁵ *Tallgrass*, 125 FERC ¶ 61,248 at P 54.

⁸⁶ *BG&E*, 120 FERC ¶ 61,084 at P 48.

ii. Comments and Protests

66. The Kansas Commission and the Cooperatives state that ITC Great Plains has not supported the request for abandoned plant. The Kansas Commission explains that ITC Great Plains has taken risks by seeking preemptive approval of an incentive rate design for projects not yet approved, and the company is trying to hedge this risk by seeking blanket authority for recovery of these costs. The Cooperatives add that the Commission must consider from whom the costs of abandoned plant would be recovered because a customer is supposed to receive service prior to being charged.⁸⁷ If the facilities are abandoned prior to being put into service, then ITC Great Plains would have never served the customers it is attempting to charge and the facilities would not have been used and useful.

iii. ITC Great Plains' Answer

67. In response to the Kansas Commission's argument that the abandoned plant incentive sought by ITC Great Plains is inappropriate, ITC Great Plains states that the purpose of the abandoned plant incentive is to provide some insurance that if project developers spend years of effort and expense developing a project that ultimately is not approved, they can at least recover the prudently incurred costs of the effort. ITC Great Plains adds that the Commission recently determined that Prairie Wind qualifies for this incentive, although the Commission was advised that ITC Great Plains' Kansas V Plan was a competing project. The Kansas Commission offers no reason why this Commission should not apply this policy equally to ITC Great Plains' projects, including the Kansas V Plan.

68. ITC Great Plains disagrees with Cooperatives' contention that Commission precedent precludes ITC Great Plains from qualifying for the abandoned plant incentive as it will not actually have provided any service. ITC Great Plains notes that the Commission has previously approved the abandoned plant incentive for new transcos, including Tallgrass and Prairie Wind.

iv. Commission Determination

69. We find that it is appropriate to grant ITC Great Plains' request to recover prudently incurred abandonment costs. As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means of encouraging transmission

⁸⁷ Cooperatives Motion at 10, *citing AES Somerset, LLC v. Niagara Mohawk Power Corp.*, 105 FERC ¶ 61,337 (2003), *reh'g denied*, 110 FERC ¶ 61,032 (2005), *aff'd sub nom. Niagara Mohawk Power Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006).

development by reducing the risk of non-recovery of costs.⁸⁸ Such is the case here. We expect that allowing ITC Great Plains to recover these costs will help ITC Great Plains finance the projects.⁸⁹ We reject Cooperatives' suggestion that the Commission must consider whether facilities are used and useful in order to allow cost recovery. Facilities that are abandoned prior to being put into service are by definition not used and useful, but the Commission still believes that this incentive will encourage transmission development. Accordingly, we will grant ITC Great Plains' request for recovery of 100 percent of prudently incurred costs if the projects are abandoned for reasons beyond its control.

70. However, we note that, should the project be cancelled before it is completed, it is unclear whether ITC Great Plains will have any customers from which to recover its abandonment incentive. At such time, ITC Great Plains will be required to make a showing in its section 205 filing that the abandonment costs were prudently incurred and it must propose a rate and cost allocation method to recover the costs in a just and reasonable manner.

c. Pre-Construction Cost Incentive

i. Proposal

71. ITC Great Plains seeks permission to establish two regulatory assets. The first regulatory asset, the Start-Up and Development Regulatory Asset, is intended to allow recovery of approximately \$6.1 to \$6.6 million on its books related to the formation of the company and development of transmission projects from the company's inception to the effective date of the formula rate.⁹⁰ The second regulatory asset will allow ITC Great Plains to recover project-specific development and pre-construction costs associated with obtaining the necessary approvals of specific projects.⁹¹ This regulatory

⁸⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

⁸⁹ Exhibit GP-200 at 21.

⁹⁰ The Start-Up and Development Regulatory Asset includes costs related to obtaining the various state, SPP and Commission approvals necessary for the company to own transmission assets and build new facilities in the SPP region. These costs include the efforts to establish the formula rate, establishing itself as a public utility in Kansas and Oklahoma as well as education and outreach to stakeholders to bring the independent transmission company business model to the SPP region.

⁹¹ ITC Great Plains explains that these costs include project-specific studies, education and outreach, and regulatory activities. The amounts included in this regulatory asset are not included in the Start-Up and Development Regulatory Asset.

asset will also apply to Similar Future Projects. ITC Great Plains states that the regulatory asset to recover the start-up costs will be amortized over ten years commencing upon the in-service date of the KETA Project, the Kansas V Plan, or when total in-service gross property, plant and equipment exceeds \$100 million, whichever occurs first. The project-specific regulatory asset that includes pre-construction costs will be amortized over ten years from the in-service date of each project.

ii. Comments and Protests

72. The Cooperatives argue that costs not associated with a particular project are not eligible for incentives because incentive rate treatment is limited to facilities that ensure reliability or reduce the cost of delivered power by reducing transmission congestion. Moreover, these costs have not resulted from a fair and open regional planning process, and thus are not entitled to a presumption that they will ensure reliability or reduce the cost of delivered power. Occidental adds that allowing ITC Great Plains to recover developmental costs not associated with any particular project is inappropriate.

iii. Answer to Protests

73. ITC Great Plains states that because the Commission has granted recovery for similar start-up and development cost in the past,⁹² even before Order No. 679 was issued,⁹³ it is not seeking this regulatory asset under Order No. 679. ITC Great Plains notes that if it fails to succeed in obtaining total in-service Gross Property, Plant and Equipment in excess of \$100 million, these start-up costs will not be recovered. Thus, customers are protected against recovery of these costs unless and until ITC Great Plains achieves a measure of success. ITC Great Plains states that this should be contrasted with the situation applicable to incumbent utilities, which ITC Great Plains claims may simply pass along the costs of such development to their existing retail and wholesale customers.

iv. Commission Determination

74. To the extent that ITC Great Plains has customers to assess the costs, we will grant its request to recover prudently incurred start-up and developmental costs as well as

⁹² ITC states that in *Tallgrass*, the Commission approved the applicants' request for recovery of pre-commercial costs as a regulatory asset that Tallgrass and Prairie Wind requested pursuant to section 205. *See Tallgrass*, 125 FERC ¶ 61,248 at P 16-17 and 63.

⁹³ *See* ITC Filing at 13, n. 42 *citing Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,224, *reh'g denied*, 117 FERC ¶ 61,108 (2006) and *American Electric Power Service Corp.*, 116 FERC ¶ 61,059 (2006), *order on reh'g*, 118 FERC ¶ 61,041 (2007).

project-specific pre-commercial costs as regulatory assets. While ITC Great Plains clarifies in its answer that it is not seeking the regulatory asset associated with start-up and development costs as an incentive rate under Order No. 679, as noted by ITC Great Plains we have permitted the deferral of pre-construction costs in other proceedings, and we do so here.⁹⁴ Allowing ITC Great Plains to establish these regulatory assets will provide it with more regulatory certainty that it will be able to recover the costs.⁹⁵ Because SPP does not yet have a cost allocation methodology for such high voltage facilities, regulatory asset treatment gives ITC Great Plains and potential lenders an opportunity to recover such costs. Given the size of the projects and their construction lead time, this incentive can be significant as the applicant moves forward with the projects.

75. As explained above for the abandonment incentive, if ITC Great Plains' projects are cancelled before completion, it is unclear whether ITC Great Plains will have any customers from which to recover its regulatory asset.

76. Thus, while we provide ITC Great Plains with the ability to record project-specific, pre-construction costs and start-up costs as regulatory assets, ITC Great Plains must make a section 205 filing prior to the commencement of amortization of the regulatory assets to demonstrate that the pre-construction costs and start-up costs are just and reasonable. ITC Great Plains will also have to establish that the costs included in the regulatory assets are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.

d. Construction Work in Progress Incentive

i. Proposal

77. ITC Great Plains requests the inclusion of 100 percent of construction work in progress in rate base during the development and construction period of the two projects and Similar Future Projects.

ii. Comments and Proposals

78. The Kansas Commission argues that ITC Great Plains has not presented sufficient evidence to warrant inclusion of 100 percent of construction work in progress into the

⁹⁴ *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,224, *reh'g denied*, 117 FERC ¶ 61,108 (2006) and *American Electric Power Service Corp.* 116 FERC ¶ 61,059 (2006), *order on reh'g*, 118 FERC ¶ 61,041 (2007).

⁹⁵ Order No. 679 at P 178.

rate base. It would not be just and reasonable to permit ITC Great Plains to recover the incentive if the projects are never built, if for example, a competing project is selected.

iii. Answer to Protests

79. In response to the Kansas Commission's position against granting the construction work in progress incentive, ITC Great Plains states that if the project is never built because SPP selects a competing project, there will be no construction work in progress in rate base because ITC Great Plains will not begin construction of such a project.⁹⁶

iv. Commission Determination

80. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related construction work in progress in rate base.⁹⁷ Order No. 679 noted that this rate treatment will further the Commission's objectives by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.⁹⁸ We find that ITC Great Plains has shown a nexus between the proposed construction work in progress incentive and their investment in the projects.

81. Consistent with Order No. 679, we find that authorizing 100 percent of construction work in progress in rate base for the projects will support ITC Great Plains' credit rating, improve cash flow and lower borrowing costs.⁹⁹ ITC Great Plains has also committed to employ appropriate accounting controls to prevent charging customers for both capitalized allowance for funds used during construction and a return on construction work in progress for the projects, as discussed further herein.¹⁰⁰

82. We also find that allowing ITC Great Plains to include 100 percent of construction work in progress in the rate base for these projects will result in better rate stability for customers. As we have explained in prior orders,¹⁰¹ we find that, without construction

⁹⁶ ITC Great Plains Answer at 7.

⁹⁷ Order No. 679 at P 29 and 117.

⁹⁸ *Id.* P 115.

⁹⁹ Exhibit GP-200 at 17-18.

¹⁰⁰ Exhibit GP-500 at 13-15.

¹⁰¹ See, e.g., *American Electric Power Co.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

work in progress in rate base, a new project has no direct effect on consumer prices until it begins being used to provide service. The proposed projects are estimated to cost \$787 million and have a lead time of about three years. If the Commission does not permit ITC Great Plains to recover a return on construction work in progress in rate base, all of the projects' borrowing costs will be accrued over the next three years, and capitalized and recovered once the projects go into service, along with a return of the investment cost through depreciation. Such a process will increase consumers' bills more significantly at the time the projects are placed into service than if the Commission were to allow construction work in progress to be included in rate base.

C. Requested ROE Incentives

1. Proposal

83. ITC Great Plains requests an incentive return on equity of 12.16 percent, which is comprised of the 10.66 base return on equity and includes a 50 basis point incentive adder for participation in a regional transmission organization and a 100 basis point adder for independence.¹⁰² Under ITC Great Plains' proposal, the incentive adders would apply to all of rate base including the Similar Future Projects.

2. Comments and Protests

84. Westar states that it does not believe that ITC Great Plains' rates associated with substations that were either planned or already built by others should be eligible for incentives in the absence of an explanation of why the purchase is in the public interest.¹⁰³ Westar states that the only reason ITC Great Plains purchased the substations was to gain transmission owner status for ITC Great Plains.¹⁰⁴ Thus, according to Westar there is no public interest benefit from ITC Great Plains' purchase of these substations, and therefore no reason to grant incentive rates for these projects.¹⁰⁵

¹⁰² In Order No. 679 the Commission stated that, while not quantifying a precise formula or method, it would consider the level of independence of a transco as part of its analysis when it determines the proper return on equity for the transco, and evaluate the specific attributes of a particular proposal, including the level of independence, to determine appropriate incentives.

¹⁰³ Westar Motion at 10-11.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

85. Westar contests ITC Great Plains' proposed 100 basis point adder for independence claiming that ITC Great Plains is not independent.¹⁰⁶ Westar states that under Commission precedent, ITC Great Plains' contractual arrangement with Sunflower and Mid-Kansas impairs ITC Great Plains' independence.¹⁰⁷ Westar claims that under these contractual arrangements Sunflower and Mid-Kansas will operate and maintain transmission facilities owned by ITC Great Plains for a period of seven years and the parties will decide who will build additional transmission facilities in the future. Westar states that this arrangement makes ITC Great Plains far from independent of Sunflower and Mid-Kansas.

86. Sunflower and Mid-Kansas state that the Maintenance Agreement between ITC Great Plains with Mid-Kansas will not affect ITC Great Plains' independence because all of the maintenance work will be done at ITC Great Plains' direction. They continue that Mid-Kansas also benefits because it can garner maintenance efficiencies from the arrangement. Additionally, they state that the Designation Agreements provide for Sunflower and Mid-Kansas to designate ITC Great Plains to build and own any projects for which they are required by SPP to construct.

87. The Kansas Commission states that the 12.16 percent return is excessive because no economic incentives are needed, because there are competing entities interested in developing essentially the same transmission projects.

3. ITC Great Plains' Answer

88. ITC Great Plains notes that while no party raised concerns about its discounted cash flow method, Westar has alleged that ITC Great Plains is not independent because of agreements with Mid-Kansas. The Form of Maintenance Agreement¹⁰⁸ between ITC Great Plains and Mid-Kansas (Maintenance Agreement) provides for Mid-Kansas to perform maintenance on specified ITC Great Plains' transmission facilities. ITC Great Plains adds that this maintenance would be performed under its direction or, at its

¹⁰⁶ Westar states that while the Commission's incentive policy does not require transcos to be independent to receive incentives, it notes that independence is an important component of the positive contribution of transcos on investment in needed transmission infrastructure. *Id.* at 11 *quoting* Order No. 679 at P 240.

¹⁰⁷ Westar Motion at 12, *citing ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 48 (2003).

¹⁰⁸ Attachment 1 to ITC Great Plains Answer.

election, an independent third-party contractor, and would be done pursuant to standards established by ITC Great Plains. However, Mid-Kansas will not operate the facilities.¹⁰⁹

89. ITC Great Plains asserts that the Maintenance Agreement poses no threat to its independence and is entirely different from the comprehensive corporate administration and operating agreements before the Commission when International Transmission Company was sold to ITC Holdings Corp. by Detroit Edison Company. Rather, the Maintenance Agreement merely provides a cost-effective way for ITC Great Plains to have maintenance performed on its transmission facilities by the cooperative in the area.

90. ITC Great Plains explains that the Designation Agreements relate to the designation of rights to build and own transmission that Mid-Kansas and Sunflower possess as transmission owners pursuant to the SPP tariff and Kansas law and regulation. Nothing in these agreements affects ITC Great Plains' independence or the independent operation of any transmission facilities built by ITC Great Plains, all of which will be turned over to the functional control of SPP. Rather, the purpose of these agreements is to enable ITC Great Plains to obtain the rights to build transmission in the SPP footprint consistent with rights of first refusal employed by both SPP and the State of Kansas. If ITC Great Plains' Designation Agreements impair the independence of ITC Great Plains, then no independent transmission company will ever be able to construct transmission in SPP. These agreements are essential to address the rights of first refusal in place in SPP and in some SPP states, according to ITC Great Plains.

91. ITC Great Plains states that the purchase of the two substations is necessary in order for it to become a Transmission Owner in SPP, which in turn is necessary for it to be able to receive assignments to build transmission from SPP or other SPP transmission owners.¹¹⁰ Because ownership of the substations by ITC Great Plains will enable it to participate in SPP as a new, independent transmission company, these substations should be subject to the 12.16 percent incentive return on equity applicable to all ITC Great Plains assets.

4. Commission Determination

92. We will grant the 150 basis point adder for ITC Great Plains. We will grant up to 50 basis points of incentive return on equity for participation in SPP effective upon the

¹⁰⁹ The services to be provided are specified in section 2.2.23 of the maintenance agreement, which states that “[f]or the avoidance of doubt, the Core Services shall *not* include . . . any ongoing system operation services.” (Emphasis added by ITC Great Plains.)

¹¹⁰ ITC Great Plains Answer at 14.

date that ITC Great Plains becomes a transmission owner member of SPP and the facilities are placed under SPP's functional control.¹¹¹ The Commission's decision to grant the applicant an incentive return on equity for participation in SPP is consistent with the stated purpose of section 219 of the FPA. The incentive applies to all utilities joining the transmission organization and is intended to encourage the applicant's continued involvement in SPP.¹¹²

93. We also grant the 100 basis point incentive adder for independence. We find that the 100 basis point adder is appropriate here because of the very significant transmission investment that has been undertaken by transcos to date.¹¹³ Furthermore, the Commission has found that the singular focus of transmission-only companies, the elimination of competition for capital between generation and transmission investments, and the access to capital markets all support the value of the transco business model for getting new transmission built. In addition, the purpose of our policy of incentives for transcos is to build much needed transmission infrastructure and ITC Great Plains' proposal is consistent with this policy. It is for these reasons that the Commission adopted incentive-based rate treatments applicable to transcos that would both encourage Transco formation and attract investment.¹¹⁴

94. While Westar claims the Designation Agreements compromise ITC Great Plains' independence, based on ITC Great Plains' representations about the content of the Designation Agreements, we disagree. ITC Great Plains states that the Designation Agreements relate solely to the designation of rights-of-first-refusal that Mid-Kansas and Sunflower possess as transmission owners pursuant to the SPP Tariff and Kansas law and regulation. We are persuaded by ITC Great Plains because, as SPP's Tariff currently stands, the Designation Agreement is indeed necessary to enable ITC Great Plains to operate as a Transmission Owner within SPP's footprint.

95. ITC Great Plains has provided a Maintenance Agreement that reflects the extent of its relationship with Mid-Kansas. The agreements between International Transmission Company and Detroit Edison Company in *ITC Holdings Corp.* were far more comprehensive than the Maintenance Agreement here.¹¹⁵ In *ITC Holdings Corp.*, Detroit

¹¹¹ See, e.g., *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007).

¹¹² *Id.* P 26 (finding that there are considerable benefits associated with a utility's membership in a regional transmission organization).

¹¹³ Order No. 679 at P 222-23.

¹¹⁴ Order No. 679-A at P 77.

¹¹⁵ *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P48 (2003) (*ITC Holdings Corp.*).

Edison Company agreed to provide International Transmission Company with corporate administration services as well as construction, maintenance, engineering and system operations services in order to facilitate International Transmission's transition to a stand-alone transmission company. The Maintenance Agreement at issue here does not compromise ITC Great Plains' independence, because: (1) it pertains only to maintenance service (it does not involve operational or any other services); (2) ITC Great Plains retains the option to appoint a third-party contractor to carry out the required maintenance; and (3) the service that is performed is done at the direction of ITC Great Plains.

96. Finally, because the two purchased substations will be under the functional control of SPP and since we find ITC Great Plains merits the 100 basis points return on equity adder for independence, we find that it is appropriate to grant these return on equity incentives for the two purchased substations.

D. Section 205 Demonstrations

1. Range of Reasonableness

a. Proposal

97. As described above, ITC Great Plains requests an incentive return on equity of 12.16 percent, which reflects a base return on equity of 10.66 percent with incentive adders of 50 basis points for participation in a regional transmission organization and 100 basis points for being an independent transmission-only company. ITC Great Plains states that the proposed 12.16 percent return on equity is more than 300 basis points below the high end of the zone of reasonableness.

b. Comments and Protests

98. No party has protested ITC Great Plains' discounted cash flow analysis.

c. Commission Determination

99. We find the applicant's proposed base return on equity of 10.66 percent is reasonable because the Commission's analysis supports a median return of equity of 10.79 percent and a range of reasonableness of 8.91 percent through 14.29 percent. Moreover, no party protested ITC Great Plains' discounted cash flow analysis. Accordingly, we exclude the base return on equity and zone of reasonableness issues from the hearing ordered below.

2. Formula Rate and Protocols

a. Proposal

100. ITC Great Plains states that its formula rate is just and reasonable and is based on other formulas accepted by the Commission. ITC Great Plains explains that its formula rate will be used to recover the revenue requirement associated with the company's initial purchase of two substations.¹¹⁶ ITC Great Plains states that it has entered into agreements to purchase these substations from the Mid-Kansas. According to ITC Great Plains, the substations are being acquired from Mid-Kansas to enable ITC Great Plains to be considered a Transmission Owner under the SPP Tariff and therefore eligible to be designated to construct SPP transmission projects.¹¹⁷ Both substations were placed in service in October 2008 and are under the operational control of SPP. As of the in-service date, the net book value of the Elm Creek substation was estimated to be approximately \$4.6 million. The net book value of the Flat Ridge Substation is zero as it was funded entirely by the interconnecting wind generator.¹¹⁸ ITC Great Plains' revenue requirement for these facilities will be recovered in the Mid-Kansas pricing zone under Attachment H of the SPP Tariff.

b. Comments and Protest

101. With respect to the formula rate, Westar states that ITC Great Plains has testified that it will not seek recovery of the 25 percent premium above net book value that it paid to purchase the Elm Creek substation.¹¹⁹ Westar also notes that ITC Great Plains has committed to reflect the purchase of one substation at no cost on its books.¹²⁰ Westar argues that if ITC Great Plains were to alter its proposal in order to recover an acquisition adjustment for the second substation or to include the first in ratebase, Westar would object.¹²¹ Thus, Westar requests the Commission to condition its acceptance of the formula rate on the permanence of ITC Great Plains' commitment.¹²²

¹¹⁶ ITC Great Plains Transmittal Letter at 1.

¹¹⁷ *Id.* at 6.

¹¹⁸ *Id.* at 2.

¹¹⁹ Westar Motion at 13.

¹²⁰ *Id.*

¹²¹ *Id.* at 13-14.

¹²² *Id.* at 14.

102. Cooperatives also raise concerns about the formula rate that will be used to recover the costs of the two purchased substations as well as the KETA Project and Kansas V Plan.¹²³ Cooperatives aver that the costs attributable to the substations will differ substantially from the KETA Project and Kansas V Plan. Cooperatives assert that ITC Great Plains does not explain sufficiently the process or specific methodology for calculating revenue requirements for each project.¹²⁴ Moreover, the formula uses different interest rates for refunds and surcharges determined during the true-up process. Additionally, Cooperatives question the use of a generic formula to determine transmission revenue requirements for these projects.¹²⁵ If the nature of future projects is different from the projects at issue in this proceeding, Cooperatives observe that it might not be appropriate to recover the costs of all the projects under a single transmission formula rate.

103. Cooperatives also raise several issues regarding the formula inputs.¹²⁶ For example, the formula does not exclude Operation and Maintenance FERC Account No. 561 from the revenue requirement as Cooperatives state should be done because this is recovered through Schedule 1. Other issues include: (1) the inclusion of a placeholder for common plant when ITC Great Plains has no common plant; (2) a formula rate component to recover Post-Employment Benefits Other than Pensions that is not stated; (3) a formula rate component that would allow automatic recovery of lease payments even though no payments are expected initially and the nature of any future lease payments is not known; and (4) a formula rate component allowing Edison Electric Institute payments even though it is not known whether ITC Great Plains will be a member of the organization.

104. Texas Cooperatives argue that the formula rate protocols filed by ITC Great Plains fail to provide customers with an adequate opportunity to review the rates before they are implemented and deny customers any opportunity to challenge those rates until after they have been in effect for at least six months.¹²⁷ Even with an after the fact review, Texas Cooperative allege that ITC Great Plains restricts the customers' rights to examine the

¹²³ Occidental states that the proposed formula rate is not similar to other formula rate proposals because ITC Great Plains proposes to apply the formula rate to undefined Similar Future Projects. Occidental Motion at 17-18.

¹²⁴ Cooperatives Motion at 14-16.

¹²⁵ *Id.* at 12.

¹²⁶ *Id.* at 18-21.

¹²⁷ *Id.* at 10.

basis of those rates.¹²⁸ Only those parties with “standing to file a complaint” may request information about the formula or projects. Texas Cooperatives assert that ITC Great Plains should post such information publicly.¹²⁹ Additionally, Texas Cooperatives object that ITC Great Plains proposes to limit supporting documentation made available as part of the annual update and limit the amount of information available in response to information requests. Texas Cooperatives also find other portions of the proposed formula protocols to be burdensome. For example, they object to the requirement to consolidate an information requests with other parties that might file an information request.¹³⁰ Further, Texas Cooperatives state that the protocols shift the burden of proof for prudence to the customers and inappropriately tie the preliminary challenge period to resolution of a discovery dispute; thereby creating uncertainty about the dates of the challenge period if no discovery dispute occurs.

105. Occidental and Cooperatives also contest the formula rate protocols raising several issues, including: (1) limiting supporting documents for the formula rate to significant components of ITC Great Plains’ net revenue requirement; (2) potentially limiting an interested party’s right to obtain information solely to a single customer meeting; (3) vague language with regard to the true-up provisions; and (4) unclear timelines for challenges. Occidental also notes that implementation of a formula rate by ITC Great Plains’ affiliates is currently subject to a complaint before the Commission.¹³¹

106. Cooperatives also contend that the Commission should set the issue of whether it is appropriate for ITC Great Plains to include the cost of the Elm Creek substation in the Mid-Kansas pricing zone for hearing. Cooperatives oppose the proposed allocation and believe that the substation costs should be directly assigned to the wind generation project that necessitated the need for such interconnection facility.¹³²

c. Answer to Protests

107. ITC Great Plains argues that its formula rate is just and reasonable and properly takes into account the varying characteristics of the transmission projects. ITC Great

¹²⁸ *Id.*

¹²⁹ *Id.* at 10.

¹³⁰ Texas Cooperatives Motion at 11.

¹³¹ Occidental Motion at 27-28 referencing *Interstate Power and Light Company*, Docket No. EL09-11-000.

¹³² Cooperatives Motion at 18.

Plains states that protestors seem to endorse a separate company for each project which would reduce the economies of scale that could be realized by ITC Great Plains. Furthermore, the formula rate requires separate tracking by project of such things as gross plant in service, depreciation reserve and revenues.

108. ITC Great Plains asserts that the formula rate protocols properly protect customer rights and remedies and should be accepted without an evidentiary hearing. ITC Great Plains states that it is interested in resolving the issues raised regarding the formula rate protocols. In some instances, ITC Great Plains has offered suggestions on how its proposal might be clarified.

109. ITC Great Plains also states that Mid-Kansas determined that it was appropriate for it to pay for the network upgrade costs associated with the Elm Creek substation and charge its customers. Now that the Elm Creek substation is being purchased by ITC Great Plains, it is appropriate for ITC Great Plains to charge transmission customers for its use.

d. Commission Determination

110. ITC Great Plains' formula rates and rate protocols raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that ITC Great Plains' proposed formula rate and protocols have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposal for filing, suspend it for a nominal period, subject to refund and set it for hearing. At the hearing, ITC Great Plains will be required to demonstrate the justness and reasonableness of its proposal except to the extent the Commission has made summary findings herein. Additionally, the parties at the hearing may address Cooperatives' issue of allocation of the Elm Creek substation to the wind generator.

111. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. Given ITC Great Plains' professed desire to quickly resolve the issues in the proceeding and its suggestions in its answer to resolve some of the issues involving the formula rate protocols, we believe that settlement discussion would be especially beneficial in quickly resolving many of the remaining issues. 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.¹³³ If the parties desire, they may, by mutual agreement, request a specific

¹³³ 18 C.F.R. § 385.603 (2008).

judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹³⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of 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 the commencement of a hearing by assigning the case to a presiding judge.

112. Nonetheless, we find that we can narrow the scope of the hearing by making certain summary findings involving certain formula components. First, we accept the proposed rate incentives, as discussed above, and those incentives are not set for hearing; however, the formula calculations that reflect those incentives may still be addressed in the hearing. Generally, when the formula rate includes a placeholder for an incentive that requires a future section 205 filing, the Commission requires the placeholder to have zero in the amount column.¹³⁵ Second, having summarily determined the return on equity of 12.16 percent (reflecting a base return on equity of 10.66 percent, 50 basis points for participation in a regional transmission organization and 100 basis points for independence incentives) and the range of reasonableness, as discussed above, those issues are not included in the hearing and settlement procedures.

E. Accounting Issues

1. Accounting for Construction Work in Progress

113. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensures that customers will not be charged for both capitalized accumulated funds used during construction (AFUDC) and corresponding amounts of construction work in progress in rate base.¹³⁶ To satisfy this requirement, ITC Great Plains states it will use its fixed asset accounting system, PowerPlant, to ensure that projects that are included in construction work in progress in rate base do not

¹³⁴ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

¹³⁵ See, e.g., *American Electric Power Service Corporation*, 120 FERC ¶ 61,025, at P 35-37 (2007).

¹³⁶ 18 C.F.R. § 35.25 (2008) (recovery of construction work in progress in rate base).

accrue AFUDC.¹³⁷ ITC Great Plains states that it will assign each incentive transmission project a unique Funding Project Number (FPN). ITC Great Plains states it will then record actual construction costs to each FPN through work orders that are coded to correspond to the FPN for each incentive transmission project and that those work orders will be segregated from non-incentive transmission projects. Additionally, ITC Great Plains states the fixed asset accounting system requires certain basic information to establish a work order, such as whether the work order is eligible for AFUDC. ITC Great Plains claims these accounting procedures will assure that AFUDC is not capitalized on construction work in progress included in rate base. Further, ITC Great Plains notes that these controls are subject to internal monitoring and the overall control framework is subject to external auditor procedures and attestation annually. The Commission finds that ITC Great Plains' proposed procedures demonstrate that it has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent it is allowed to include construction work in progress in rate base.

114. Public utilities that receive a current return on construction work in progress through rate base recover this cost in a different period than it ordinarily would be charged to expense under the general requirements of the Commission's Uniform System of Accounts. To promote comparability of financial information between entities, the Commission has required a specific accounting treatment or the use of footnote disclosures to recognize the economic effects of having construction work in progress in rate base.¹³⁸ ITC Great Plains requests authorization to use footnote disclosures consistent with disclosures previously authorized by the Commission.¹³⁹ We will authorize ITC Great Plains to provide footnote disclosures in the notes to the financial statements of its annual FERC Form No. 1 and its quarterly FERC Form No. 3-Q that: (1) fully explain the impact of the construction work in progress in rate base; (2) include details of AFUDC not capitalized because of the incentive allowing construction work in progress in rate base for the current year, the previous two years, and the sum of all years; and (3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amount of AFUDC not capitalized because of the inclusion of construction work in progress in rate base.

¹³⁷ See ITC Great Plains Appendix B at 6-7 and Exhibit GP-500 at 13-15.

¹³⁸ *American Transmission Company LLC*, 105 FERC ¶ 61,388 (2003), *order on reh'g*, 107 FERC ¶ 61,117 (2004) (ATC); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, *order on reh'g*, 121 FERC ¶ 61,009 (2007) (TrAILCo); and *Tallgrass*, 125 FERC ¶ 61,248.

¹³⁹ ITC Great Plains Exhibit GP-500 at 13, citing *ATC*, *TrAILCo*, and *Tallgrass*.

2. Accounting for Start-up and Development Costs

115. The Commission has found it appropriate for ITC Great Plains to recover, in future rates, its general and project specific start-up and development costs. Therefore, these costs may be deferred as a regulatory asset in Account 182.3, Other Regulatory Assets, and may only include amounts that otherwise would be chargeable to expense in the period incurred, are not recoverable in current rates, and are probable for recovery in rates in a different period.¹⁴⁰ Furthermore, the instructions to Account 182.3 require that amounts deferred in this account are to be charged to expense concurrent with the recovery of the amounts in rates. If rate recovery of all or part of the costs deferred in Account 182.3 is later disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, in the year of disallowance.

3. Purchase of Utility Assets

116. ITC Great Plains has entered into agreements to acquire the Elm Creek and Flat Ridge Substations from Mid-Kansas. Both substations were placed into service in October 2008 and are under the operational control of SPP. As of the in-service date, ITC Great Plains states the net book value of the Elm Creek Substation was estimated to be approximately \$4.6 million. The net book value of the Flat Ridge Substation is zero because it was funded entirely by the interconnecting wind generator.

117. ITC Great Plains must account for the acquisition of the Elm Creek and Flat Ridge Substations in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts.¹⁴¹ ITC Great Plains must submit its final accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

¹⁴⁰ The term “probable” as used in the definition of regulatory assets, refers to that which can reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved. *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clear Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2, and 2-A*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,967 (1993).

¹⁴¹ 18 C.F.R. Part 101 (2008).

4. Accounting for Income Taxes

118. ITC Great Plains is a limited liability company and is not subject to federal taxation. Instead, the tax obligations incurred through its operations are reported on the tax return of its corporate parent, ITC Holdings, Inc.¹⁴² For ratemaking purposes, the Commission treats pass-through entities such as ITC Great Plains as though they are corporations, and it allows them to receive an income tax allowance for the tax liability ultimately paid by ITC Holdings, Inc. ITC Great Plains states it will record income taxes in its FERC accounts as if it were a stand-alone corporation subject to income taxes, consistent with the stand-alone method approved by the Commission in recent orders. ITC Great Plains' income tax accounting proposal is consistent with Commission policy and is approved.¹⁴³

119. ITC Great Plains also states that the creation of the regulatory asset will trigger the recognition of a deferred tax liability for the book and tax basis difference of the regulatory asset. ITC Great Plains proposes not to recognize the deferred tax liability relating to the regulatory asset until it is included in rate base to achieve consistent rate treatment. However, ITC Great Plains' proposal to defer recognition of the deferred tax liability relating to the regulatory assets is inconsistent with the Commission's income tax accounting requirements. The Commission's Uniform System of Accounts provides that, where there are timing differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income, the income tax effects of such transactions are to be recognized in the periods in which the differences between book accounting income and taxable income arise and in the periods in which the differences reverse using the deferred tax method.¹⁴⁴ Thus, for accounting purposes, ITC Great Plains must recognize all deferred tax assets and liabilities in the periods in which differences between book accounting income and taxable income arise, including those related to regulatory assets.

¹⁴² ITC Great Plains Exhibit GP-500 at 15.

¹⁴³ Commission policy requires ITC Great Plains to follow the income tax accounting requirements of the Uniform System of Accounts prescribed in *General Instructions No. 18, Comprehensive Interperiod Income Tax Allocation; and Text to Account 190, Accumulated Deferred Income Taxes, Account 236, Taxes Accrued, Account 281, Accumulated Deferred Income Taxes-Accelerated Amortization Property, Account 282, Accumulated Deferred Income Taxes-Other Property, and Account 283, Accumulated Deferred Income Taxes-Other*, 18 C.F.R. Part 101 (2008). See *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008).

¹⁴⁴ 18 C.F.R. Part 101, General Instruction No. 18(A), *Comprehensive Interperiod Income Tax Allocation* (2008).

F. Requested Effective Date and Waivers

120. ITC Great Plains requests that the filing become effective 60 days after filing or upon closing of the acquisition of the Elm Creek and Flat Ridge substations, whichever occurs later. The applicant also requests waivers of section 35.13 of the Commission's regulations, including the full Period I - Period II data requirements.¹⁴⁵ There were no comments on the waiver requests.

121. We grant the requested effective date for the formula rate and the incentives granted, as discussed above. We also grant ITC Great Plains' request for waiver of section 35.13 requirements pertaining to the filing of cost statements, consistent with our prior approval of formula rates.¹⁴⁶

The Commission orders:

(A) ITC Great Plains' tariff sheets are conditionally accepted for filing subject to the hearing and settlement judge procedures described herein;

(B) ITC Great Plains' request for transmission rate incentives is granted in part and denied in part as discussed in the body of this order;

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act (FPA),¹⁴⁷ 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 issues outlined above. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) – (F) below;

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), 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 the powers and duties enumerated in Rule

¹⁴⁵ ITC Great Plains cites *Tallgrass*, 125 FERC ¶ 61,248; *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008); and *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 92-94 (2007).

¹⁴⁶ *Id.*

¹⁴⁷ 16 U.S.C. § 824e (2006).

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 in writing or by telephone within five (5) days of the date of this order;

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

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.