133 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Oklahoma Gas and Electric Company   Docket No. ER11-112-000

ORDER ON TRANSMISSION RATE INCENTIVES

(Issued December 30, 2010)

1. On October 12, 2010, Oklahoma Gas and Electric Company (OG&E) filed, under section 205 of the Federal Power Act (FPA),[1] proposed modifications to its Open Access Transmission Tariff (OATT) and to the Southwest Power Pool (SPP) OATT to allow recovery of certain incentive rate treatments pursuant to section 219 of the FPA[2] and Order No. 679.[3] Specifically, OG&E seeks to include 100 percent of prudently-incurred Construction Work in Process (CWIP Recovery) in its rate base and to recover 100 percent of prudently-incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond OG&E's control (Abandoned Plant Recovery) associated with eight transmission projects to be constructed by OG&E in the SPP region (Projects). For the reasons discussed below, we will grant the requested CWIP Recovery and Abandoned Plant Recovery with respect to two of the Projects and deny the requested incentives with respect to the remaining six projects, without prejudice. Accordingly, we will accept OG&E's proposed tariff sheets for filing, effective January 1, 2011, as requested, as discussed below.

I. **Background**

2. OG&E is an electric public utility that produces, transmits, and distributes electric energy to wholesale and retail customers in Oklahoma and western Arkansas. OG&E

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[1] 16 U.S.C. § 824d (2006).

[2] 16 U.S.C. § 824s (2006).

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

serves more than 750,000 retail customers and sells electric power at wholesale to other electric utility companies, municipalities, rural electric cooperatives, and other market participants. OG&E's transmission system includes approximately 4,064 miles of transmission lines plus 48 substations.[4]

3. OG&E is a member of SPP, a regional transmission organization, and SPP serves as the transmission provider for all new transmission transactions on the OG&E system pursuant to the SPP OATT. All new transmission service requests on OG&E transmission facilities are obtained through the SPP OATT; however OG&E continues to serve two customers under existing long-term service agreements under the OG&E OATT.[5]

II. OG&E's Filing

4. In its filing, OG&E requests that the Commission accept its proposal to revise Attachment H of the SPP and OG&E OATTs[6] to authorize OG&E to include the requested CWIP Recovery and Abandoned Plant Recovery for the Projects. OG&E states that the Projects are the product of SPP's regional planning efforts implemented to meet North American Reliability Corporation (NERC) reliability standards, to relieve congestion, and to access a more diverse generation resource portfolio. According to OG&E, through its planning processes, SPP has identified the need for new large-scale transmission projects to facilitate expansive renewable resource developments in the western portion of the SPP system and to enable diverse resource options in load centers in the eastern portion of SPP and in neighboring balancing authority areas. OG&E states that the Projects were vetted and selected through SPP's planning processes in accordance with the SPP OATT and were included in the 2009 SPP Transmission Expansion Plan (STEP).[7] OG&E describes the Projects as follows:[8]

> (1) The Woodward-Hitchland Project (Woodward-Hitchland) is a double-circuit, 345 kV, 120-mile transmission line that will extend from

[4] OG&E Filing at 2.

[5] *Id.* (*citing Southwest Power Pool Inc.*, 106 FERC ¶ 61,110, at P 95 (2004)).

[6] Attachment H is entitled "Annual Transmission Revenue Requirement for Network Integration Transmission Service."

[7] The STEP includes transmission upgrades relating to transmission service requests, generation interconnection service requests, and satisfaction of reliability criteria, as well as transmission upgrades that provide economic benefits.

[8] *See* OG&E Filing at 3-4.

OG&E's Woodward District extra high voltage (EHV) substation to Southwestern Public Service Company's (SPS) Hitchland substation, together with associated upgrades to the Woodward District EHV substation. The OG&E portion of the Woodward-Hitchland 345 kV line is estimated to be 82 miles in length, will cost approximately $178.6 million, and has an estimated in-service date of June 30, 2014.

(2) The Woodward-Kansas Project (Woodward-Kansas) is a double-circuit, 345 kV, 80-mile transmission line to be built from OG&E's Woodward District EHV substation to the Prairie Wind LLC interception point at the Oklahoma-Kansas state line, together with associated upgrades to the Woodward District EHV substation. Woodward-Kansas is estimated to cost $134.4 million and has an estimated in-service date of December 31, 2014.

(3) The Sooner-Cleveland Project (Sooner-Cleveland) is a 345 kV, 38-mile transmission line to be constructed from OG&E's Sooner substation to the Grand River Dam Authority's Cleveland substation, plus associated upgrades to the Sooner substation. OG&E will construct the entire Sooner-Cleveland line. This project is estimated to cost $64 million, and has an expected in-service date of March 31, 2013.

(4) The Seminole-Muskogee Project (Seminole-Muskogee) is a single-circuit, 345 kV, 120-mile transmission line to be built from OG&E's Seminole substation to OG&E's Muskogee substation, as well as associated upgrades to both the Seminole and the Muskogee substations. Seminole-Muskogee has an estimated cost of $179.1 million and an estimated in-service date of December 31, 2013.

(5) The Tuco-Woodward Project (Tuco-Woodward) is a 345 kV, 250-mile transmission line from OG&E's Woodward District EHV to the SPS Tuco substation. The OG&E portion of the Tuco-Woodward project is 72 miles in length and will terminate at a reactor station to be constructed at approximately the Oklahoma-Texas state border south of Interstate 40. The project has an estimated cost of $120 million with an estimated in-service date of May 19, 2014.

(6) The Anadarko Project (Anadarko) is a 345/138-kV substation to be constructed on the OG&E line from Cimarron towards the American Electric Power Service Corporation's Lawton East Side 345 kV line near the town of Gracemont, Oklahoma. Anadarko is expected to cost $14.6 million and has an estimated in-service date of December 31, 2011.

(7) The Sunnyside-Hugo Project (Sunnyside-Hugo) is a 345 kV, 120-mile transmission line to be built from OG&E's Sunnyside substation to the Western Farmers Electric Cooperative's Hugo Generation Plant, as well as associated upgrades to the Sunnyside substation. Sunnyside-Hugo is estimated to cost $187 million and has an estimated in-service date of April 1, 2012.

(8) The Sooner-Rose Hill Project (Sooner-Rose Hill) is a 345 kV, 88-mile transmission line to be constructed from OG&E's Sooner substation to an interface with a Westar Energy, Inc. line segment at the Oklahoma-Kansas state line. The OG&E portion of the Sooner-Rose Hill line is 43 miles in length, is estimated to cost $57.8 million, and has an estimated in-service date of June 1, 2012.

5. OG&E states that the Projects are components of a larger group of transmission facility investments to be constructed by a number of SPP member utilities as part of a regional program to enhance system reliability and reduce constraints.[9] According to OG&E, pursuant to SPP's Commission-approved regional transmission planning process each project was evaluated as part of a group of related projects under one of the following three SPP planning categories: (1) Priority Projects; (2) Balanced Portfolio Projects; and (3) Transmission Service Upgrades. OG&E explains that the SPP Board approved Woodward-Hitchland and Woodward-Kansas as Priority Projects[10] and Sooner-Cleveland, Seminole-Muskogee, Anadarko, and Tuco-Woodward as Balanced Portfolio Projects.[11] Sunnyside-Hugo and Sooner-Rose were included in the 2009 STEP Report, which was approved by the SPP Board of Directors, to facilitate requests for transmission service in the region as a result of the Aggregate Study process in Attachment Z1 of the SPP OATT.[12] OG&E also states that, in accordance with the SPP OATT, SPP has issued a Notification to Construct[13] for each Project, which OG&E has accepted.

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[9] *Id.* at 6 (citing Crissup Test., Ex. No. OGE-1 at 6).

[10] *See id.* at 9.

[11] *Id*. at 12.

[12] *Id.* at 11. Attachment Z1 of the SPP OATT is entitled "Aggregate Transmission Service Study Procedures and Cost Allocation and Recovery for Service Upgrades."

[13] SPP issues Notifications to Construct to entities designated to construct facilities identified in the STEP. *See* SPP OATT Attachment O, section VI.4.

6. As to its proposed tariff amendments, OG&E states that its transmission rates are calculated pursuant to a Commission-approved formula, which does not currently have a placeholder to allow the automatic inclusion of the requested CWIP Recovery. Thus, OG&E proposes revisions to the rate formula to implement the CWIP Recovery and plans to populate its formula rate template with the costs of CWIP for the Projects.[14] OG&E also proposes changes to the Formula Rate Implementation Protocols to ensure that the Protocols apply to the CWIP Recovery associated with the Projects.

7. With regard to the Abandoned Plant Recovery, OG&E states that it does not seek to recover any costs associated with abandoned plant at this time. However, in the event that some or all of the Projects are abandoned, in whole or in part, OG&E will submit a filing under section 205 of the FPA to recover such costs at that time. OG&E states that CWIP balances and any future costs associated with Abandoned Plant will be included in OG&E's annual true-up calculation of its formula rate in the same manner as all other aspects of the formula rate. OG&E also proposes two additional changes to its OATT and to the SPP OATT to correct an error and an omission in its formula rate template.

8. OG&E requests that its proposed tariff changes be made effective January 1, 2011.

III. Request for Incentives

A. Rebuttable Presumption under FPA Section 219

9. OG&E asserts that it is entitled to a rebuttable presumption of eligibility for the requested incentives under Order No. 679 because the SPP planning processes through which the Projects were approved—i.e., Priority Projects, Balanced Portfolio Projects, and Transmission Service Upgrades—evaluated whether the Projects will enhance reliability and/or reduce the costs of delivered power by reducing congestion.[15]

1. Priority Projects: Woodward-Hitchland and Woodward-Kansas

10. OG&E states that in 2009, SPP began a series of studies to identify a group of "Priority Projects," intended to "reduce grid congestion, improve the Generation Interconnection and Aggregate Study processes, and better integrate SPP's east and west

[14] OG&E Filing at 22 (citing Kays Test., Ex. No. OGE-17 at 5-7). OG&E provides a populated version of the OG&E formula rate template, including CWIP Recovery, for informational purposes. *See* OG&E Filing at Ex. No. OGE-18.

[15] *See id*. at 8.

regions."[16] OG&E states that the report on the Priority Projects concluded that the Priority Projects, including Woodward-Kansas and Woodward-Hitchland, "will reduce [grid] congestion, as demonstrated in the APC [i.e., adjusted production cost] analysis and by the levelization of Locational Marginal Prices (LMPs) across the SPP footprint."[17] OG&E also notes that the Priority Projects "will improve the Aggregate Study process by creating additional transfer capability and allowing additional transmission service requests to be enabled."[18] OG&E adds that a backlog of generation interconnection requests currently exists in SPP, with many of the pending requests involving new wind facilities. OG&E asserts that the Woodward-Kansas and Woodward-Hitchland projects will help clear this backlog and enable substantial amounts of new wind generation to interconnect to the grid.[19]

2. Transmission Service Upgrades: Sunnyside-Hugo and Sooner-Rose

11. OG&E states that through an Aggregate Study conducted pursuant to Attachment Z1 of the of the SPP OATT, SPP has determined that Sunnyside-Hugo and Sooner-Rose Hill are necessary upgrades to alleviate congestion and thereby facilitate requests for transmission service in the region. According to OG&E, a key objective of the Aggregate Study process is determining which upgrades will relieve congestion on the system.[20] OG&E states that SPP also is charged with determining "the upgrades required to reliably provide all of the requested service" and with determining which "alternative solutions would reduce overall cost to customers."[21] OG&E notes that pursuant to Attachment Z1 these upgrades are included in the SPP Attachment O integrated transmission planning analysis, which addresses NERC Reliability Standards, load and capacity forecasts, and congestion within SPP and between SPP and other regions.[22]

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[16] *See id.* at 9 (citing "SPP Priority Projects Phase II Final Report" (Priority Projects Report), Ex. No. OGE-7 at 3).

[17] *See id*. (citing Priority Projects Report, Ex. No. OGE-7 at 6).

[18] *See id*. (citing Priority Projects Report, Ex. No. OGE-7 at 6, 23).

[19] *See id.* at 10.

[20] *See id.* (citing SPP OATT, Attachment Z1).

[21] *Id*. (citing SPP OATT, Attachment Z1).

[22] *See id*. (citing SPP OATT, Attachment O, section III.6).

3. Balanced Portfolio Projects: Sooner-Cleveland; Seminole-Muskogee; Anadarko; and Tuco-Woodward

12. OG&E states that SPP's Balanced Portfolio projects are intended to "reduce congestion on the SPP transmission system, resulting in savings in generation production costs."[23] According to OG&E, Attachment O of the SPP OATT provides that a Balanced Portfolio must be (1) cost beneficial and (2) balanced, meaning that the benefits must also equal or exceed the costs for each SPP zone.[24] According to OG&E, the final selection of the projects is conducted to ensure that a project is included for each SPP zone "with the most beneficial project chosen in each zone,"[25] and that the benefits of these projects outweigh their costs, by relieving congestion by addressing "many of the top constraints in the SPP."[26] OG&E states that this reduction in congestion will result in demonstrable cost savings to customers, with the net benefit to a typical residential customer estimated to be $0.78/month per kWh, based on a 1,000kWh/month usage.[27]

B. Order No. 679 Nexus Requirement

13. OG&E asserts that the Projects satisfy the nexus requirement under section 219 of the FPA. OG&E also asserts that the Commission has explained that an applicant may seek incentives and satisfy the nexus requirement for a group of projects.[28] OG&E states that in evaluating applications for incentives the Commission has found particularly relevant whether a project is "routine" compared to "other transmission projects or upgrades that are constructed in the ordinary course of maintaining a utility's transmission system to provide safe and reliable service."[29] OG&E notes that in

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[23] *Id*. at 11 (citing Crissup Test., Ex. No. OGE-1 at 21; SPP Balanced Portfolio Report, Ex. No. OGE-14 at 3).

[24] *Id*. (citing SPP OATT, Attachment O, section IV.3).

[25] *Id*. at 12 (citing SPP Balanced Portfolio Report, Ex. No. OGE-14 at 9).

[26] *Id*. (citing SPP Balanced Portfolio Report, Ex. No. OGE-14 at 9).

[27] *Id*. at 12 & n.60 (citing Crissup Test., Ex. No. OGE-1 at 23; Balanced Portfolio Report, Ex. No. OGE-14 at 3).

[28] *Id.* (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 123-124; *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009); *PacifiCorp*, 125 FERC ¶ 61,076, at P 46 (2008) (*PacifiCorp*); *Virginia Elec. and Power Co.*, 124 FERC ¶ 61,207 (2008)).

[29] *See id*. at 13 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 60; *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 53 (2007) (*BG&E*)).

determining whether a project is routine the Commission considers all relevant factors, including the project's scope and effect, and the challenges or risks the project faces.[30]

1. Scope and Effect

14. OG&E states that the Projects will add approximately 555 miles of new 345 kV transmission lines to the OG&E system in the SPP region, compared to the existing 4,450 miles of high voltage transmission lines, and will cost approximately $936 million, which is equal to 175 percent of OG&E's current net transmission plant of $534 million. OG&E asserts that projects of this scale are not routine.[31] OG&E also states that the annual investment associated with the Projects will equal approximately $187 million, representing more than nine times OG&E's previous average annual capital investment of $20 million. OG&E adds that several of the Projects will be multi-state (e.g., for Sooner-Rose Hill, OG&E and Westar Energy Inc. must complete their respective construction prior to the line being energized). OG&E argues that in such cases, OG&E is dependent on other parties to construct their portion of the joint facilities and to otherwise meet their obligations, and if they fail to do so, the project could be delayed or abandoned.

15. As to the Projects' effect, OG&E states that the Projects will modernize and integrate the SPP system and provide significant benefits to users of the SPP system. For example, OG&E asserts that in addition to substantially reducing congestion, the Priority Projects are expected to better integrate the SPP east and west regions, improve SPP's ability to deliver power to customers, and facilitate the interconnection of new renewable resources, primarily wind resources located in Texas and Western Oklahoma, to the grid.[32]

2. Risks and Challenges

16. OG&E claims that the Projects face substantial risks and challenges generally due to the Projects' size and scope, including siting, construction, regulatory, financial, and environmental risks and challenges. First, OG&E argues that because of the Projects' large size and scope, they will require long lead times to accommodate construction—in some instances up to four years. According to OG&E, the longer a project's lead time,

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[30] *See id*. (citing *BG&E*, 120 FERC ¶ 61,084 at P 52).

[31] *See id*. (citing *Pub. Serv. Elec. & Gas Co.*, 129 FERC ¶ 61,300, at P 44 (2009); *PacifiCorp*, 125 FERC ¶ 61,076 at P 44; *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 32 & n.21, *reh'g denied*, 124 FERC ¶ 61,229 (2008)).

[32] *See id.*

the more likely circumstances, such as the projected cost and required regulatory approvals, could change for reasons beyond OG&E's control resulting in the project becoming more expensive or unfeasible. OG&E adds that such projects also present complex logistical and management issues that also increase the risk of delay or cost increases.[33]

17. Second, OG&E argues that the Projects face risks attributable to required permits and approvals including, approvals from the U.S. Army Corps of Engineers, permits from the Federal Aviation Administration, and studies from the Oklahoma Archeological Survey. OG&E also argues that it will be required to comply with the National Environmental Policy Act, the Endangered Species Act, and the National Historic Preservation Act, as well as associated regulations. Further, OG&E states that it must secure the necessary rights-of-way, as well as address any relevant environmental or tribal land right concerns. As an example, OG&E states that the Woodward-Hitchland and Woodward-Kansas lines cross through the natural habitat of the Lesser Prairie Chicken, which is classified as a candidate for future listing as a Threatened Species by the U.S. Fish and Wildlife Service. OG&E states that this will present challenges in building the Projects while minimizing harm to the protected habitat. According to OG&E, the Commission has recognized that siting of transmission facilities within endangered species habitats presents the type of risk relevant to the nexus analysis.[34] Noting that a lawsuit has been filed challenging the construction of a power plant that the Sunnyside-Hugo project is designed to support, OG&E argues that environmental concerns may pose risks to the Projects.

18. OG&E also states that some of the Projects are undertaken jointly by OG&E and another utility, sometimes in a neighboring state, which means that OG&E is dependent on these other parties to construct their portion of the joint facilities and to otherwise meet their obligations. Noting that six of the Projects will connect with another transmission owner, OG&E asserts that timely completion of these projects therefore will depend on obtaining rights-of-way and other siting and regulatory approvals in more than one state, which adds additional risk of delay.[35] OG&E argues that the Commission has recognized that the need to coordinate with other utilities when planning transmission projects poses special challenges.

19. Next, OG&E states that the size of the investment required for the Projects will present a number of financial challenges and risks for OG&E. According to OG&E,

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[33] *See id.* at 15.

[34] *Id*. at 19 (citing *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 54 (2008)).

[35] *See id.* at 16 (citing Crissup Test., Ex. No. OGE-1 at 26).

funding the Projects requires significant outlays of cash, decreasing OG&E's current cash flow and increasing OG&E's debt ratios, thereby burdening OG&E's financial metrics and raising the risk of a credit downgrade.[36] OG&E also argues that internal competition for capital with other OG&E expenditures raises additional financing challenges. OG&E states that it is facing aging utility infrastructure that will require investments greater than historical levels and that it is investing in Smart Grid technology over the next three years as well as addressing additional obligations in renewable energy and environmental initiatives. OG&E adds that the long lead times associated with the Projects will compound each of these risks.

20. OG&E also argues that the Projects face commercial risks, as aspects of the Projects are intended to facilitate development of wind resources. OG&E argues that if the generation resources are not constructed some or all of the Projects may no longer be required or may be substantially re-designed.

3. **Total Package of Incentives**

21. According to OG&E, the Commission will grant the CWIP incentive where the transmission investment is large or where denying such an incentive would adversely affect the utility's ratings. OG&E states that the substantial level of investment OG&E will make in the Projects as well as the Projects' long lead times will place a major strain on OG&E's cash flow. OG&E argues that CWIP Recovery will ease this strain by ensuring adequate cash flow during the construction phase of the Projects and that the improved cash flow will help OG&E to maintain its credit ratings. OG&E also states that because 100 percent CWIP recovery reduces downward pressure on OG&E's credit ratings, OG&E would be able to borrow money at a lower cost. Additionally, OG&E avers that CWIP Recovery will also benefit customers through greater rate stability because transmission customers may experience rate shock when large-scale transmission projects are placed into service without CWIP Recovery.

22. In addition, OG&E argues that the Commission has recognized that allowing a utility Abandoned Plant Recovery is an "effective means to encourage transmission development by reducing the risk of non-recovery of costs."[37] OG&E concludes that its

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[36] *See id.* at 16-17. OG&E states that it on June 29, 2010 Fitch Ratings downgraded OG&E's Issuers Default Rating (IDR) to A from A+ due to "capital expenditures program that is significantly higher than the historical norm." *Id.* at 17.

[37] *See id.* at 20 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

requested package of incentives is focused on responding to the risks faced by the Projects and reducing disincentives to their construction and that the Commission has noted the linkage of these two incentives.

C. Additional Filing Requirements and Request for Waivers

1. Technology Statement

23. To address the requirement under Order No. 679 that an applicant seeking transmission incentives must provide a technology statement describing advanced technology considered for use in a proposed project, OG&E states that it plans to employ the following advanced technologies in the Projects: (1) SEL-421 relays for standard line protection on EHV transmission capable of transmitting synchro-phasor data; (2) Synchro-phasor technology for fourteen substations and twenty-five relays within the Projects; and (3) fiber optic cable and related systems.[38]

2. CWIP Requirements

24. OG&E states that it has attached a Statement BM in support of its CWIP Recovery request as required under section 35.13(h)(38) of the Commission's regulations.[39] OG&E also states that to satisfy the requirements of sections 35.25 (e) and (f) of the Commissions' regulations,[40] it will not accrue Allowance of Funds Used During Construction (AFUDC) in Account No. 107, Construction Work in Progress and will use the Systems, Applications, and Products in Data Processing (SAP) plant accounting system to maintain its accounting records for CWIP electric plant assets during construction and after the Projects are placed into service. OG&E also states that if it is accorded different ratemaking treatment of CWIP by the Oklahoma Corporation Commission or Arkansas Public Service Commission, any accrued AFUDC would be recorded in Account No. 182.3, Other Regulatory Assets.[41]

25. OG&E also seeks waiver of the Commission's requirement that utilities recovering a current return on CWIP follow the accounting procedure of debiting through Account No. 407.3 (Regulatory Debits) and crediting through Account No. 254 (Other Regulatory Liabilities). This procedure addresses the situation in which a utility that recovers a current return on CWIP recovers this cost in a different period than ordinarily

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[38] *See id*. at 23; Crissup Test., Ex. No. OGE-1 at 24-25.

[39] 18 C.F.R. § 35.13(h)(38) (2010).

[40] 18 C.F.R. §§ 35.25(e), (f) (2010).

[41] OG&E Filing at 25.

would occur under the Uniform System of Accounts. OG&E proposes instead to use footnote disclosures.

26. OG&E also requests waivers of sections 35.25(c)(4) and (g) of the Commission's regulations.[42] OG&E states that these regulations mainly address concerns about the potential for anti-competitive effects resulting from the inclusion of generation-related CWIP in rates. According to OG&E, these concerns are less significant with respect to transmission-related CWIP, which is at issue in the instant proceeding.

27. OG&E states that, under Order No. 679, recovery of CWIP on a formulary basis is not permitted without prior Commission review and that public utilities may propose a method to limit their filing requirement related to CWIP to an annual filing. OG&E states that consistent with this policy, it requests permission to satisfy the CWIP filing requirement through an annual submission of the form FERC-730.

3. Other Waiver Requests

28. OG&E requests waiver of section 35.13 of the Commission's regulations, including the requirements to submit Period I and II data. OG&E states that it has provided testimony describing the proposed tariff changes to the formula rate in lieu of full Statements AA through BL and that the Commission has recognized that these cost of service statements are not necessary with respect to formula rates, which are based on a utility's actual costs.

29. In addition, OG&E states that on October 7, 2010, it filed a "Request for Waiver of Baseline Electronic Filing Requirements" explaining that it had not yet been able to submit its baseline tariff filing pursuant to section 35.7 of the Commission's regulations[43] and requesting waiver to allow OG&E to submit its baseline filing on or before November 15, 2010. For these reasons, OG&E respectfully requests that the Commission waive its regulations to the extent necessary to accept this filing.

IV. Notice of the Filings and Responsive Pleadings

30. Notice of OG&E's filing was published in the *Federal Register*, 75 Fed. Reg. 65,315 (2010), with interventions and protests due on or before November 2, 2010. Timely motions to intervene were filed by SPP and Oklahoma Municipal Power Authority. Motions to intervene out-of-time were filed by American Electric Power

[42] 18 C.F.R. §§ 35.25(c)(4), (g) (2010).

[43] 18 C.F.R. § 35.7 (2010).

Service Corporation and Arkansas Electric Cooperative Corporation. No protests or adverse comments were filed.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant American Electric Power Service Corporation's and Arkansas Electric Cooperative Corporation's late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

1. FPA Section 219 and Order No. 679 Incentives

a. Section 219 Requirements

32. In the Energy Policy Act of 2005,[44] Congress added section 219 to the FPA and directed the Commission to establish rules providing incentives to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, setting forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, such as the incentives requested here by OG&E.

33. Pursuant to section 219, an applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[45] Also, as part of this demonstration, "section 219(d) provides that all rates approved under the Rule are subject to the requirements of sections 205 and 206 of the FPA, which require that all rates, charges, terms and conditions be just and reasonable and not unduly discriminatory or preferential."[46]

34. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219; i.e., the applicant

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

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

[46] *Id.* P 8 (citing 16 U.S.C. §§ 824(d) and 824(e) (2006)).

must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[47] Order No. 679 established a rebuttable presumption that the standard in section 219 is met if: (1) the transmission project results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.[48] Order No. 679-A clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.[49]

35. We find that OG&E has adequately demonstrated that the Projects will ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion, and therefore meets the requirements of FPA section 219 for incentive rate treatment. As detailed above, each of the Projects has been identified as either a Priority Project, Balance Portfolio project, or identified as a necessary upgrade for transmission service in the STEP 2009, which are components SPP's regional planning process, as provided in Attachment O of the SPP OATT. Thus, OG&E has demonstrated that each of the Projects is eligible for the first of the rebuttable presumptions established in Order No. 679.

b. The Nexus Requirement

36. In addition to satisfying the section 219 requirement, an applicant for a transmission rate incentive must demonstrate that there is a nexus between the incentive sought and the investment being made. In evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between the incentives, and how any requested incentives address the risks and challenges faced by the project.[50] In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that

[47] 18 C.F.R. § 35.35(i) (2010).

[48] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 58.

[49] *Id.* P 49.

[50] 18 C.F.R. § 35.35(d) (2010); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 ("By this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.").

incentives requested are “tailored to address the demonstrable risks or challenges faced by the applicant.”[51] The nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

37. As part of this evaluation, the Commission has found the question of whether a project is “routine” to be particularly probative.[52] In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the 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, other impediments).[53] Additionally, the Commission clarified that “when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive.”[54]

38. In an order issued contemporaneously with the instant order, the Commission recognized that the application of the nexus test may be unclear when an applicant presents multiple projects as a group for consideration for transmission rate incentive treatment.[55] The Commission found that on some occasions, it has applied the nexus test to an aggregated group of projects when the applicant has submitted its request for incentives with respect to the group of projects.[56] The Commission has also stated previously that individual projects, when considered in the aggregate, may not be routine for purposes of incentive treatment because they face significant risks and challenges in

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

[52] *BG&E*, 120 FERC ¶ 61,084 at P 48.

[53] *Id.* P 52-55.

[54] *Id.* P 54.

[55] *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010) (*PJM*).

[56] *Id.* P 44 (citing *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008)). *See also PacifiCorp*, 125 FERC ¶ 61,076.

constructing all the projects.[57] On other occasions, the Commission has applied the nexus test to each individual project.[58]

39. In *PJM*, the Commission found that the applicant's filing revealed the necessity to change Commission policy with respect to the application of the nexus test to groups of projects.[59] The Commission reiterated that Order No. 679 established that an incentive should be rationally tailored to the risks and challenges faced in constructing a new transmission project.[60] The Commission continued in *PJM* to state that in that case and future cases involving application of Order No. 679 the Commission will require each applicant to demonstrate that there is a nexus between the incentive sought and the specific investment being made. An applicant may demonstrate that a number of individual projects are properly considered to comprise a single project, based on their characteristics and combined purpose, in which case the Commission will consider whether incentives are warranted for that single project.[61] Alternatively, a company may file for incentives for numerous individual and unconnected projects at the same time and even in a single filing, but the company still must provide sufficient justification for why each project qualifies for incentives. OG&E has not indicated and has not demonstrated that these eight projects are parts of a single overall project or share other characteristics that warrant reviewing the projects as a single project. Rather, it appears from the current record that they are eight distinct projects, and we will review them as such.

40. Accordingly, while OG&E may submit its request for incentives for all eight of the projects in one application, it must provide sufficient information demonstrating how each project satisfies the nexus requirement. Based on our review of OG&E's filing, we find that OG&E fails to provide sufficient information for the Commission to determine whether each of the Sooner-Cleveland, Seminole-Muskogee, Tuco-Woodward, Anadarko, Sunnyside-Hugo, and Sooner-Rose Hill projects meets the nexus requirement. However, the Commission finds that the nexus test is met with regard to the Woodward-Hitchland and Woodward-Kansas Projects, as discussed below.

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[57] *See BG&E*, 120 FERC ¶ 61,084 at P 53.

[58] *See, e.g.*, *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008).

[59] *See PJM*, 133 FERC ¶ 61,273, at P 45.

[60] *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26; *id*. P 3 (incentives will "help with financing and up-front regulatory certainty for project investments"); P 27 (incentives may be appropriate "where the risks of a particular project exceed the normal risks undertaken by a utility")).

[61] *See PacifiCorp,* 125 FERC ¶ 61,076 at P 39-40.

41. With regard to scope and effect, OG&E provides information on the scope (i.e., length in miles, and expected total investment) of each project[62] and describes the effect of the projects collectively on the SPP system as a major addition of transmission infrastructure to the region that will modernize and integrate the SPP system and provide numerous significant benefits to the users of the SPP system.[63] OG&E also describes the expected effect of the Woodward-Hitchland and Woodward-Kansas Projects, as SPP Priority Projects, on the SPP system. Specifically, OG&E states that the report on the Priority Projects concluded that the Priority Projects, including Woodward-Kansas and Woodward-Hitchland, "will reduce [grid] congestion, as demonstrated in the APC [i.e., adjusted production cost] analysis and by the levelization of Locational Marginal Prices (LMPs) across the SPP footprint."[64] OG&E also notes that the Priority Projects "will improve the Aggregate Study process by creating additional transfer capability and allowing additional transmission service requests to be enabled."[65] Further, the Woodward-Hitchland and Woodward-Kansas Projects are expected to help clear SPP's backlog of generation interconnection requests, many of which involve new wind facilities.[66]

42. Further, in discussing risks and challenges, OG&E describes generally the risks and challenges the Projects face as a whole but does not provide information specific to each of the six other projects. For instance, OG&E argues that it faces risks attributable to required permits and approvals including, approvals from the U.S. Army Corps of Engineers, the Federal Aviation Administration, and the Oklahoma Archeological Survey, and that it must comply with various regulations and statutes. OG&E also states that it must secure necessary rights-of-way, as well as address any relevant environmental or tribal land right concerns. However, with respect to the Woodward-Hitchland and Woodward-Kansas Projects, OG&E discusses the specific environmental challenges it will face as a result of the Woodward-Hitchland and Woodward-Kansas lines crossing through the natural habitat of the Lesser Prairie Chicken, a candidate for future listing as a Threatened Species by the U.S. Fish and Wildlife Service. OG&E explains that there will be challenges associated with building the Woodward-Hitchland and Woodward-Kansas Projects in such a way as to minimize harm to the protected habitat of the Lesser Prairie Chicken. As OG&E argues, the Commission has recognized that siting of

[62] *See supra* P 4.

[63] OG&E Filing at 14.

[64] *See* OG&E Filing at 9 (citing Priority Projects Report, Ex. No. OGE-7 at 6).

[65] *See id*. (citing Priority Projects Report, Ex. No. OGE-7 at 6, 23).

[66] *See id.* Crissup Test., Ex. No. OGE-1 at 14.

transmission facilities within endangered species habitats presents the type of risk relevant to the nexus analysis.[67] However, with respect to the remaining six projects, OG&E's filing lacks information about the specific challenges that each project faces.

43. The scope of each of these projects is significant—the Woodward-Hitchland Project has an estimated cost of $178 million, which is approximately 32 percent of OG&E's net transmission plant in service and the Woodward-Kansas Project has an estimated cost of $135 million, approximately 24 percent of OG&E's net transmission plant in service. OG&E's portion of the Woodward-Hitchland Project is estimated to be 82 miles in length, and the Woodward-Kansas Project is estimated at 80 miles in length. These two projects have long lead times with expected in-service dates in 2014. Further, these two SPP Priority Projects are expected to benefit the SPP region by relieving congestion on existing flowgates and to tie the eastern and western sections of the region together.[68] Furthermore, OG&E had delineated the specific environmental and siting risks these two projects face. Accordingly, in light of all of these considerations, we find that OG&E has adequately demonstrated that the Woodward-Hitchland and Woodward-Kansas Projects are not routine, and thus, OG&E has sufficiently demonstrated a nexus between the incentives sought and the investments being made.

44. We recognize that OG&E is undertaking an unprecedented investment in its transmission infrastructure, pursuant to its obligations as an SPP transmission owner. OG&E's investment in the Projects will add approximately 555 miles of new 345 kV transmission lines to the OG&E system at a total cost of about $936 million, which is 175 percent of OG&E's current net transmission plant. This total investment may put a strain on OG&E's financial position; however, based on the record in this proceeding, OG&E has not met the requirements of the nexus test on a project-by-project basis for any of the remaining six projects. Accordingly, we will grant the requested incentives for the Woodward-Hitchland and Woodward-Kansas Projects and deny the requested incentives for the Sooner-Cleveland, Seminole-Muskogee, Tuco-Woodward, Anadarko, Sunnyside-Hugo, and Sooner-Rose Hill projects without prejudice to OG&E refiling to demonstrate how each of these six remaining projects meets the nexus requirement.

c. <u>Specific Incentives and Total Package of Incentives</u>

45. OG&E requests CWIP Recovery and Abandoned Plant Recovery for all eight of the Projects. As discussed above, we find that two projects, the Woodward-Hitchland, and Woodward-Kansas Projects, are eligible for these incentives. As further detailed below, we will grant the requested incentives with respect to these two projects.

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[67] *Id.* at 19 (citing *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 at P 72).

[68] *See Southwest Power Pool , Inc.*, 132 FERC ¶ P 61,042, at P 4 n.6 (2010).

i. <u>CWIP</u>

46. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP costs in rate base.[69] We noted that this rate treatment will further the goals of section 219 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.[70] We find that OG&E has shown a nexus between the proposed CWIP incentive and its investment in the Woodward-Hitchland and Woodward-Kansas Projects individually.

47. OG&E has demonstrated that the Woodward-Hitchland and Woodward-Kansas Projects' long lead times mean that over the next four years, OG&E's capital budget may be strained as it builds these two projects while conducting needed improvements to its existing transmission infrastructure. Without CWIP Recovery, OG&E appears likely to experience negative cash flows, with a converse increase in interest expenses from debt and a potential further negative impact to its credit rating.[71]

48. In addition, we find that allowing OG&E the requested CWIP Recovery for the Woodward-Hitchland and Woodward-Kansas Projects will provide greater rate stability for customers. As the Commission has explained in prior orders, when large-scale transmission projects come on line, consumers may experience "rate shock" if CWIP is not permitted in rate base. [72] By granting OG&E CWIP Recovery, the rate impact of the Woodward-Hitchland and Woodward-Kansas Projects can be spread over the entire construction period mitigating any potential rate shock on OG&E's customers.

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

[70] *Id*. P 115.

[71] OG&E illustrates the effect of CWIP Recovery for all of the Projects on its cash flow. *See* OG&E's Filing, Ex. Nos. OGE-21 and OGE-22. While OG&E's worksheets illustrate the effect of CWIP Recovery associated with all eight projects, the effect on OG&E's cash flow of CWIP Recovery associated with the Woodward-Hitchland and Woodward-Kansas Projects is expected to be significant as the investment in these two projects is $178.6 million (19 percent) and $134.4 million (14 percent), respectively of the $936 million total budget for the Projects.

[72] *See, e.g., PPL Electric Utilities Corp.*, 123 FERC ¶ 61,068, at P 40-43 (2008); *American Elect. Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g,* 118 FERC ¶ 61,041, at P 27 (2007).

49. Accordingly, we find that authorizing CWIP Recovery for the Woodward-Hitchland and Woodward-Kansas Projects will help mitigate potential rate shock, enhance cash flow, reduce interest expenses, assist OG&E with obtaining favorable financing, and improve the coverage ratios used by rating agencies to determine OG&E's credit quality by replacing non-cash AFUDC with cash earnings. In turn, this, will reduce the risk of a down-grade in OG&E's investment ratings. These factors are comparable to those that the Commission has taken into consideration in authorizing CWIP in rate base for other utilities.[73]

ii. <u>Abandoned Plant Recovery</u>

50. In Order No. 679, the Commission found that abandonment cost recovery is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[74] The Commission also found that in order to recover abandonment costs, an applicant for incentives that is granted Abandoned Plant Recovery must submit a filing under section 205 of the FPA showing that abandonment is a result of factors outside of its control.[75]

51. We find that OG&E has shown a nexus between the requested Abandoned Plant Recovery incentive and its planned investments in the Woodward-Hitchland and Woodward-Kansas Projects, consistent with Order No. 679. Besides their scope, size, and long lead-times, these two projects present special risks because they face a number of environmental and regulatory challenges that could subject these projects to potential cancellation or modification due to decisions and factors beyond OG&E's control, including the inability to secure regulatory approvals, rights-of-way and necessary lands.[76]

52. Accordingly, we find that OG&E's request for Abandoned Plant Recovery for the Woodward-Hitchland and Woodward-Kansas Projects meets the nexus requirement.

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[73] *See Great River Energy*, 130 FERC ¶ 61,001, at P 35 (2010); *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 59 (2007).

[74] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

[75] *Id*. P 163, 165-66; *see also Alleghany Energy, Inc.*, 116 FERC ¶ 61,058, at P 122 (2006).

[76] For example, OG&E faces specific environmental challenges in siting transmission facilities within endangered species habitats as noted in paragraph 42, above.

iii. Total Package of Incentives

53. As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.[77]

54. We find that OG&E has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by OG&E in investing in the Woodward-Hitchland and Woodward-Kansas Projects.[78] This is based upon our interpretation of FPA section 219 as authorizing the Commission to approve more than one incentive rate treatment for an applicant proposing a new transmission project, as long as each incentive is justified by a showing that it satisfies the requirements of FPA section 219 and that there is a nexus between the incentives being proposed and the investment being made.

55. Here, we find that the total package of incentives requested by OG&E is tailored to the risks it faces in investing in the Woodward-Hitchland and Woodward-Kansas Projects. As discussed above, OG&E has demonstrated that each of the requested incentives will reduce the risks that OG&E faces and will remove potential obstacles to the construction of these two projects.

2. Section 205 Demonstration

56. We find that the proposed formula rate revisions to implement the requested incentives are just and reasonable. OG&E proposes to amend its formula rate to allow for inclusion of the requested incentive treatments. OG&E proposes to populate the CWIP amounts as they are incurred and to make an FPA section 205 filing to recover any Abandoned Plant Recovery costs, if necessary. Regarding OG&E's request for CWIP Recovery, we find that the resulting rates are just and reasonable. We also find that

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[77] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55; *see, e.g., Allegheny Energy, Inc.*, 116 FERC ¶ 61,058 at 60,122 (2006) (approving ROE at the upper end of the zone of reasonableness and 100 percent Abandoned Plant Recovery); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 55 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent Abandoned Plant Recovery); ; *PPL Elec. Utils. Corp. and Pub. Serv. Elec. and Gas Co.*, 123 FERC ¶ 61,068, at P 39, 42, 46 (2008) (approving ROE at the upper end of the zone of reasonableness, 100 percent CWIP, and 100 percent Abandoned Plant Recovery).

[78] *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

granting OG&E's request for Abandoned Plant Recovery will not affect its transmission rates because OG&E is not currently seeking to recover any such abandoned plant cost associated with the projects.

3. Other Matters

a. Accounting and CWIP Requirements

57. Under Order No. 679 and the Commission's regulations,[79] an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of construction work in progress in rate base.[80] To satisfy this requirement, OG&E states that it will not accrue AFUDC in Account No. 107, Construction Work in Progress. Further, OG&E states that it will use the Systems, Applications, and Products in Data Processing (SAP) plant accounting system to maintain its accounting records for CWIP electric plant assets during construction and after the Projects are placed into service. OG&E indicates that the SAP system includes the capability to identify specific work orders that should not be included in the calculation and capitalization of AFUDC. OG&E also states that work orders related to the Projects will be identified in SAP, and no AFUDC will be calculated on their balances. OG&E indicates that these procedures will prevent a double-recovery of CWIP and capitalized AFUDC on the same rate base items.[81]

58. The Commission finds that the proposed accounting procedures sufficiently demonstrate that OG&E has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent it is allowed to include CWIP in rate base. However, OG&E's accounting for CWIP included in rate base and related accounting procedures and internal controls to prevent recovery of both capitalized AFUDC and a return on corresponding amounts of CWIP in rate base may be subject to scrutiny through a Commission audit.

59. Regarding OG&E's proposal to use footnote disclosures, we note that public utilities that receive a current return on CWIP through rate base recover this cost in a different period from when it would ordinarily be charged to expense under 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

[79] 18 C.F.R. § 35.25 (2010) (recovery of CWIP in rate base).

[80] 18 C.F.R. § 35.25(f) (2010) (Accounting Procedures).

[81] OG&E Filing, Rowlett Test. Ex. No. OGE-19.

CWIP in rate base.[82] Accordingly, the Commission accepts OG&E's proposal to use footnote disclosures to provide comparability of financial information. The Commission will require OG&E to provide footnote disclosures, as it stated it will do, in the notes to the financial statements of its annual FERC Forms No. 1 and its quarterly FERC Forms No. 3-Q. These disclosures must (1) fully explain the effect of the transmission rate incentives OG&E receives insofar as the incentives provide for a deviation from the general requirements of the Uniform System of Accounts; (2) include details of amounts not capitalized because of the transmission rate incentives 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 amounts not capitalized because of the transmission rate incentives.

60. To comply with the requirement that an applicant seeking CWIP recovery in rate formulas make an annual filing with the Commission, OG&E states that it will make such filing in its annual form FERC-730 report.[83] The Commission has previously found that filing a FERC-730 report would satisfy the Commission's requirement for an annual filing for CWIP recovery through a rate formula.[84] Accordingly, we will accept OG&E's proposal.

b. Other Waiver Requests

61. We will grant OG&E requests waiver of section 35.13 of the Commission's regulations. OG&E has provided testimony describing the proposed tariff changes to the formula rate, which we find sufficient to grant waiver in this case. Additionally, we find OG&E's request for waiver concerning its baseline electronic tariff filing to be moot. OG&E requested, and was granted[85] an extension of time to file its baseline tariff on or before November 15, 2010.

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[82] *See, e.g.*, *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 (2008); *Southern California Edison Company*, 122 FERC ¶ 61,187 (2008); *Trans-Allegheny Interstate Line Company*, 119 FERC ¶ 61,219, *order on reh'g*, 121 FERC ¶ 61,009 (2007); *American Transmission Company LLC*, 105 FERC ¶ 61,388 (2003), *order on reh'g*, 107 FERC ¶ 61,117 (2004).

[83] OG&E Filing at 26.

[84] *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007); *See also Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007).

[85] *See Oklahoma Gas & Elec. Co.*, Docket No. ER11-110-000 (Nov. 9, 2010) (unpublished letter order).

<u>The Commission orders</u>:

(A) OG&E's request for CWIP Recovery and Abandoned Plant Recovery is granted in part and denied in part as discussed in the body of this order.

(B) OG&E's proposed revisions to Attachment H of the OG&E and SPP OATTs are hereby accepted for filing, to become effective January 1, 2011, as discussed in the body of this order.

By the Commission. Commissioner Moeller is concurring with a separate statement attached. Commission Norris is dissenting in part with separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oklahoma Gas and Electric Company — Docket No. ER11-112-000

PJM Interconnection, L.L.C. — Docket No. ER11-1985-000

(not consolidated)

(Issued December 30, 2010)

MOELLER, Commissioner, *concurring*:

As I have repeatedly stressed over the years, promoting investment in our nation's transmission infrastructure has been my top policy priority.[1] Earlier this year, I explained that:

> [r]obust electric transmission infrastructure is the ultimate "enabling" energy technology, as it can provide a more efficient electric system, enhanced reliability, increased access to less expensive and often cleaner resources, and the ability to harness location-constrained renewable resources. Conversely, the lack of adequate transmission investments often disproportionately raises consumer rates due to congestion, threatens the reliability of the nation's bulk power system, and increases reliance on older and dirtier generating resources.[2]

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[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) (Moeller, Comm'r, concurring); *NSTAR Elec. Co.*, 125 FERC ¶ 61,313 (2008) (Moeller, Comm'r, dissenting in part) ("… the Commission should do what it can to encourage capital investment in needed transmission infrastructure projects."); *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 125 FERC ¶ 61,250 (2008) (Moeller, Comm'r, dissenting) ("… now is not the time for this Commission to discourage investment in needed transmission infrastructure."); *New York Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,045 (2009) (Moeller, Comm'r, dissenting) ("The main issue here is whether needed transmission is being built … I have encouraged investment in transmission infrastructure …"); *Southern California Edison Co.*, 129 FERC ¶ 61,013 (2009) (Moeller, Comm'r, dissenting in part) ("The transmission that is needed in this nation will not be built unless the companies that build it can attract adequate investment dollars.").

[2] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) (Moeller, Comm'r, concurring).

With regard to the appropriateness of rate incentives, the Energy Policy Act of 2005 required the Commission to consider awarding such incentives to transmission infrastructure projects. Congress has also shown interest in how infrastructure investment can simultaneously create jobs and expand economic opportunity while improving reliability and reducing congestion on the nation's transmission grid. Thus, I continue to believe that this Commission should grant rate incentives when appropriate.

However, there are instances when I believe that incentives are not appropriate. In an earlier dissent, I explained that I would not support a request for incentives because the evidence submitted by the applicant was insufficient.[3] As I noted at the time, "an applicant must place sufficient evidence into the record that will allow us to make an informed analysis of the project, including a comparison to other projects that will not receive incentives."[4] While such a comparison may not be feasible in every instance, I continue to believe that applicants must provide sufficient record evidence to allow this Commission to make an informed decision.

Today, the Commission denies incentive rate treatment for four and six projects as requested by PSE&G and OG&E, respectively. As discussed more fully in both orders, each applicant failed to provide sufficient information to justify the award of incentives for these infrastructure projects. While PSE&G and OG&E were able to articulate the scope and risks of these projects, they did not provide sufficient detail regarding the corresponding effects and challenges of each project to allow the Commission to determine whether an individual project meets the nexus requirement.

Accordingly, I would strongly encourage that PSE&G and OG&E consider the detailed guidance provided in today's orders prior to filing a new application for transmission incentives. As noted in the orders, the parties may file a new incentives application for the projects that we deny incentive treatment today. If the parties believe they can sufficiently demonstrate that their projects satisfy the Commission's nexus requirements, I would encourage the parties to reapply with a new application.

Philip D. Moeller
Commissioner

[3] *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 125 FERC ¶ 61,250 (2008) (Moeller, Comm'r, dissenting)

[4] *Id.* Dissent at P 6.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Oklahoma Gas and Electric Company — Docket No. ER11-112-000

(Issued December 30, 2010)

NORRIS, Commissioner, *dissenting in part*:

I support the majority's decision in this order to apply the new policy announced today in *PJM Interconnection, L.L.C.* (*PJM*),[1] and I also support our decision under that new policy to grant Oklahoma Gas and Electric Company's (OG&E) request for rate incentives for the Woodward-Hitchland and Woodward-Kansas Projects. However, for similar reasons to those explained in my partial dissent in *PJM*, I respectfully dissent in part from the Commission's decision in this order to deny OG&E's request to include 100 percent of Construction Work in Progress (CWIP) for the remaining six projects that are also included in its filing.

As I explained today in my partial dissent in *PJM*,[2] my dissent in this order follows up on my recent concurring statement in *Potomac-Appalachian Transmission Highline, L.L.C. (PATH)*.[3] As I state in both of those cases, I believe that transmission rate incentives must always work to benefit consumers.[4] Similar to my conclusion in *PJM*, in this case my review of the record evidence persuades me that granting OG&E's request to include 100 percent of CWIP in rate base for the eight projects described in its filing would work to benefit consumers.

OG&E's filing explains that the high level of investment required to complete the projects – all of which have estimated in-service dates within a two and a half year period from December 2011 to June 2014 – will present substantial financial risks, principally through a substantial decrease in the utility's cash flow.[5] The total cost of the projects of approximately $936 million represents 175 percent of OG&E's current net transmission plant.[6]

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[1] 133 FERC ¶ 61,273 (2010), Norris, *dissenting in part*.

[2] *Id.* at pg. 1.

[3] 133 FERC ¶ 61,152 (2010), Norris, *concurring*.

[4] *Id.* at pg. 4; *see also*, *PJM*, Norris, *dissenting in part* at pg. 1.

[5] *See* Exhibit No. OGE-19 at pgs. 4-5, 8, 10.

[6] *See* OG&E Filing at 13.

Given this substantial increase in its rate base, OG&E offers three reasons why granting its request for CWIP will benefit consumers, primarily through lower rates. First, OG&E explains that the decrease in cash flow that would result from this investment absent inclusion of 100 percent of CWIP in rate base can impact its credit rating and increase its cost of debt – a cost that is ultimately borne by consumers.[7] Second, OG&E submits evidence to demonstrate that in the absence of including 100 percent of CWIP in rate base, the utility would incur approximately $8.9 million in added interest expenses – again, costs that will ultimately be imposed on consumers.[8] Finally, OG&E explains that including 100 percent of CWIP in rate base will help avoid the rate shock consumers can experience from placing this level of transmission plant investment into rate base all at one time.[9]

For these reasons, and the reasons stated in my partial dissent from today's *PJM* order, I believe inclusion of 100 percent of CWIP in rate base in these circumstances is an appropriate and useful regulatory tool to address the particular challenges faced by OG&E in constructing these projects, while also providing tangible benefits for consumers.

Accordingly, I respectfully dissent in part.

John R. Norris, Commissioner

[7] *See* Exhibit No. OGE-19 at pg. 10.

[8] *See id*. at pg. 11.

[9] *See id.*