

135 FERC ¶ 61,131
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.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER11-2700-000 ER11-2700-001 ER11-2700-002 ER11-2700-003
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ORDER ON TARIFF REVISIONS AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued May 13, 2011)

1. On January 19, 2011, as amended on January 21, 2011, March 4, 2011 and March 16, 2011, Midwest Independent Transmission System Operator, Inc. (MISO)¹ submitted for filing proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).² The proposed Tariff revisions are to include a transmission formula rate for CMMPA, CMMPA Agency-Attachment O, which is the *pro forma* Attachment O with deviations to allow CMMPA to recover certain incentive rates for the CapX2020³ Twin Cities to Brookings County transmission project (Brookings Project) as part of its Annual Transmission Revenue Requirements (ATRR) submittals under the MISO Tariff. CMMPA/MMTG request that the Commission accept the proposed Tariff changes for filing effective January 1, 2010, without suspension or hearing. In this order, we conditionally accept MISO's proposed revisions to the Tariff

¹ MISO submitted these proposed Tariff changes as the administrator of the Tariff at the request of Central Minnesota Municipal Power Agency (CMMPA) and Midwest Municipal Transmission Group (MMTG) (collectively, CMMPA/MMTG).

² MISO, FERC Electric Tariff (0.0.0).

³ CMMPA/MMTG are participating in a comprehensive regional planning initiative by eleven utilities in the region known as the Transmission Capacity Expansion Initiative by the Year 2020 (CapX2020). Transmittal Letter at 1 n.1.

for filing, subject to a compliance filing, to become effective March 21, 2011. We also establish hearing and settlement judge procedures, as set forth below.

I. Background

A. Description of CMMPA/MMTG

2. CMMPA is a public body formed in 1987 under Minnesota law and headquartered in Blue Earth, Minnesota. Its 12 members are the cities of Blue Earth, Delano, Fairfax, Glencoe, Granite Falls, Janesville, Kasson, Kenyon, Mountain Lake, Sleepy Eye, Springfield, and Windom, all in Minnesota. CMMPA plans to invest in the Brookings Project, both for its own and MMTG's requesting members.⁴

3. CMMPA, the Iowa Association of Municipal Utilities and the Minnesota Municipal Utilities Association formed MMTG, which represents municipally-owned electric utilities that purchase and sell both wholesale and retail electricity. Its members are all within the MISO footprint and are members of MISO. MMTG is a member of CapX2020 and its Vision Group.

4. CMMPA and MMTG are both non-jurisdictional utilities.⁵ CMMPA is a MISO transmission owner and network transmission customer. CMMPA entered into the Brookings Project Development Agreement in 2007 (amended 2009). Under the agreement, CMMPA has paid and is responsible for paying 2.2 percent of project development costs.⁶

⁴ CMMPA plans to invest in the Brookings Project for the following Minnesota member cities: Blue Earth, Delano, Fairfax, Glencoe, Granite Falls, Janesville, Kasson, Kenyon, Mountain Lake, Sleepy Eye, Springfield, and Windom. CMMPA also intends on investing in the Brookings Project for the following non-member MMTG cities: Elk River and Willmar, Minnesota, and Independence, Indianola, Montezuma, and Waverly, Iowa. *See* Transmittal Letter at 8.

⁵ It has been firmly established that the Commission has the statutory authority to consider whether the rates of a non-jurisdictional entity are just and reasonable to the extent necessary to determine that jurisdictional rates are just and reasonable. *Transmission Agency of N. Cal.*, 495 F.3d 663, 671-672 (D.C. Cir. 2007) (citing *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002) (*TANC*)).

⁶ Thompson Test., Ex. CMM-113 at 3-4. CMMPA also states that it may increase their ownership share to approximately 5 percent of their load ratio share and plans to participate in other future CapX2020 expansion projects.

5. CMMPA has agreements with its member cities as well as MMTG's member cities under which it will, to the extent that those cities request: finance Brookings Project investments with debt for both its and MMTG's member cities; obtain necessary additional funds to allow such investment, including planning and other pre-construction costs; file MISO Attachment Os for existing city investments; and reimburse participating cities from MISO rate payments. In addition, CMMPA has Agency Agreements with certain of its members, as well as MMTG's members, which transfers control of these cities' transmission assets over to CMMPA, who in turn transfer these same facilities over to MISO's functional control. In this way, CMMPA is a MISO Transmission Owner without any current in-service transmission assets. In this role, CMMPA acts as the agent for collecting and distributing the revenues on behalf of these member cities.

B. Description of the Brookings Project

6. The Brookings Project consists of a 240-mile, 345 kV transmission line that runs from Brookings County, South Dakota, to the Southeast Twin Cities in Minnesota, as well as a 10-mile, 230 kV line from a new Hazel Creek substation to a substation in Granite Falls, Minnesota. The original estimate of Brookings Project costs was \$598 million (in real 2007 dollars). The most recent estimate of Brookings Project costs is \$794 million (in real 2009 dollars).

C. The Filing

7. On January 19, 2011, as amended, MISO filed revisions to its Tariff to include CMMPA's company-specific Attachment O template and revisions to Schedule 7 (Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service); Schedule 8 (Non-Firm Point-to-Point Transmission Service); and Schedule 9 (Network Integration Transmission Service) of MISO's Tariff to reflect the addition of CMMPA as a pricing zone in connection with its proposed integration into MISO. CMMPA states that the instant filing also arises out of a CMMPA/MMTG petition for declaratory order in Docket No. EL08-32-000 concerning formula rates and incentives (Incentive Petition) which sought authorization for certain incentive rates for CMMPA's investment in the Brookings Project. On February 15, 2011, the Commission issued an order on CMMPA/MMTG's request for transmission incentives.⁷

⁷ *Cent. Minn. Mun. Power Agency & Midwest Mun. Transmission Group*, 134 FERC ¶ 61,115 (2011) (*Incentive Order*).

II. Notice of Filing and Responsive Pleadings

8. Notices of CMMPA/MMTG's original filing and amendments filed January 21, 2011, March 4, 2011, and March 16, 2011 were published in the *Federal Register*, 76 Fed. Reg. 4647 (2011), 76 Fed. Reg. 5574 (2011), 76 Fed. Reg. 13,608 (2011), and 76 Fed. Reg. 16,621 (2011), respectively, with interventions or protests due on or before January 19, 2011, February 11, 2011, March 25, 2011 and April 6, 2011, respectively. On February 2, 2011, MISO and MISO Transmission Owners (MISO TOs)⁸ requested an extension of time to file comments until February 22, 2011, which the Commission granted. Missouri River Energy Services, FirstEnergy Service Company, and Dairyland Power Cooperative filed motions to intervene. On February 22, 2011, MISO, MISO TOs, and Consumers Energy Company (Consumers Energy) filed motions to intervene and protests, and Xcel filed a motion to intervene and comments.

9. On March 21, 2011, MISO submitted a clarification of its protest filed on February 22, 2011. On March 23, 2011, Xcel filed a motion for leave to answer and answer and CMMPA/MMTG filed an answer to protests and comments of MISO, MISO TOs, Xcel and Consumers Energy. On April 6, 2011, Xcel filed comments in response to the amendment filed March 16, 2011. On April 7, 2011, MISO submitted a motion for leave to respond and answer in response to CMMPA/MMTG and Xcel's answers. Finally, on April 14, 2011, CMMPA/MMTG submitted a reply to MISO's answer and Xcel's comments.

⁸ The MISO TOs for purposes of this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy (Great River); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company (NSP), a Wisconsin corporation, subsidiaries of Xcel Energy Inc.); Northwestern Wisconsin Electric Company; Otter Tail Power Company (Otter Tail); Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

III. Discussion

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a) of the Commission's Rules of Practice and Procedure¹⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Xcel, CMMPA/MMTG and MISO's answers, as well as CMMPA/MMTG's reply, because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

11. As discussed below, we will conditionally accept MISO's proposed revisions to the Tariff to include CMMPA in MISO pricing zones. We also establish hearing and settlement judge procedures to address the following issues: (1) the proposed formula rate Attachment O variances and inputs, with the exception of the transmission plant allocator; and (2) the pricing zone allocation. We also make determinations as to certain accounting matters relating to expenditures CMMPA currently identifies as includable in CWIP.¹¹

1. Construction Work in Progress

a. CMMPA/MMTG Request

12. As an initial matter, CMMPA/MMTG request that the Commission rule on whether certain expenditures are properly includable in Account 107, CWIP.¹² According to CMMPA/MMTG, these costs should be includable in CWIP or operation and maintenance (O&M) or administrative and general (A&G) accounts. However, because these costs closely relate to Brookings Project development, as opposed to being

⁹ 18 C.F.R. § 385.214 (2010).

¹⁰ *Id.* § 385.213(a)(2).

¹¹ As CMMPA recognizes, and as discussed below, CMMPA has the ability to propose regulatory asset treatment in order to recover these expenditures. *See* Transmittal Letter at 30.

¹² In the *Incentive Order*, the Commission approved CMMPA's request for 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base. *Incentive Order*, 134 FERC ¶ 61,115 at P 33-37.

more general transmission planning expenses, CMMPA/MMTG believe that they are more appropriately includable in CWIP.¹³

13. CMMPA/MMTG propose to include in CWIP, \$73,079 of costs incurred for financial advice in issuing tax-exempt bonds to support the project. These costs are primarily for financial consultant analysis and recommendations regarding CMMPA's ability to issue tax-exempt bonds to finance the Brookings Project and how the bonds might be structured. CMMPA's auditors have capitalized these costs because they are directly related to issuance of Brookings Project bonds. CMMPA states that these costs were incurred after CMMPA decided to participate in the project and that the value extends well beyond a one-year timeframe. CMMPA includes its actual debt costs in its Attachment O ATRR, to the extent that CMMPA can use tax-exempt financing, and CMMPA/MMTG state that this reduces the cost of CMMPA's participation in the Brookings Project, which in turn reduces MISO transmission costs and costs to ratepayers generally.¹⁴

14. CMMPA/MMTG state they do not include these costs in Account 181, Unamortized Debt Expense, because Account 181 pertains to *issuance costs* of long-term debt. These costs are not underwriting costs as bonds for the Brookings Project have not yet been issued. Moreover, CMMPA/MMTG state that the Uniform System of Accounts¹⁵ definition of debt expense relates to bonds that have been marketed and issued; however, CMMPA has not yet issued any bonds.

15. In addition, CMMPA/MMTG proposes to include in CWIP, \$277,120 of costs incurred for "Primary legal and consulting fees related to the determination of limits of investment to maintain tax-exempt bond status." According to CMMPA/MMTG, the tax-exempt limit calculations are performed at the agency level and at the member level and include consultant analysis and legal counsel opinion as to the validity of the calculations. CMMPA capitalized these costs because, as CMMPA/MMTG state, they are not directly related to CMMPA's ability to issue tax-exempt bonds for the Brookings Project. Instead, CMMPA/MMTG maintain that they have a continuing value that extends well beyond a one-year timeframe and they are a necessary cost to allow project participation. Further, CMMPA/MMTG state that these costs are not bond issuance costs.

¹³ Blaine Test., CMM-115 at 21-22.

¹⁴ *Id.* at 22-23.

¹⁵ Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, 18 C.F.R. Part 101 (USofA).

16. In addition, CMMPA/MMTG state that there were legal and consulting costs to support CMMPA/MMTG's incentive-based rate treatment requests, filed in October 2007 and December 2007. These costs include \$28,431 to prepare the Incentive Petition for the Brookings Project, and \$114,831 for legal and outside consulting costs specifically related to the development of the upstream and downstream participation agreements in the Brookings Project. CMMPA/MMTG state that these costs are directly related to the Brookings Project and, therefore, are included in CWIP. CMMPA/MMTG maintain that because these costs were incurred after CMMPA decided to participate in the Brookings Project and have continuing value, they are classified as CWIP and not O&M or A&G.¹⁶

17. Finally, CMMPA/MMTG proposed to include in Account 560, Operation Supervision and Engineering, transmission planning expenses largely involving labor costs, principally tied to the evaluation of potential transmission projects to improve the grid. CMMPA/MMTG argue that other MISO Transmission Owners have included similar costs in their Attachment O ATTRs.¹⁷ CMMPA/MMTG states that these costs belong in Account 560 because this account is a broad based account that includes many types of operating expenses and items that have little or nothing to do with operation supervision and engineering of the physical operation of the transmission asset, can be included in this account.¹⁸

b. Comments and Protests

18. MISO TOs state that it is not clear whether the amounts CMMPA proposes to recover though CWIP are specifically related to the Brookings Project and are otherwise properly recoverable through CWIP. For example, MISO TOs note that in discussing its proposed CWIP recovery, CMMPA states that while it "has evaluated several potential transmission projects, [the] Brookings [Project] is the only CapX2020 project to which CMMPA has currently committed."¹⁹ MISO TOs state that this, among other things,²⁰ calls into question whether the proposed CWIP recovery relates exclusively to the Brookings Project or may include costs related to other potential CMMPA investments.

¹⁶ Transmittal Letter at 33.

¹⁷ *Id.* at 20.

¹⁸ *See* Blaine Test., Ex. CMM-115 at 10.

¹⁹ *Id.* at 21, lines 6-7.

²⁰ In addition, Exhibit CMM-116, item 3, includes \$113,007 for "Project MISO TO Costs." Item 4 includes \$1,845 for other project expenses, which MISO TOs state appears to be a catch-all category and there is no showing that these costs relate solely to the Brookings Project. MISO TOs Protest at 20.

Thus, MISO TOs question whether these costs are properly recovered as CWIP.²¹ Finally, MISO TOs state that CMMPA has not shown that it is appropriate to recover the costs of negotiating the downstream participation agreements with its members through CWIP.²²

19. MISO questions whether certain expenses that CMMPA characterizes as O&M and A&G expenditures are properly classified as such and are accurate. MISO maintains that CMMPA has adjusted the CWIP balances contained in the audited financial statements and it is unable to tie the amounts contained in CMMPA Agency-Attachment O back to the amounts contained in the financial statements. Accordingly, MISO requests that the Commission require CMMPA to produce restated 2006 and 2007 Audited Financial Statements that reflect the proposed changes, an auditor's certification, the reason for reclassification and also require that CMMPA provide exhibits similar to CMM-116 and CMM-120 that contain the CWIP expenditures and adjustments for 2006 through 2010, as well as a total of the ending CWIP balance that would appear on the 2010 balance sheet.²³

20. Further, MISO states that it is unable to also verify what labor costs CMMPA has included in the Brookings CWIP balance. MISO states that CMMPA's filing lacks consistency in determining which expenditures are capitalized and which are expensed. For example, MISO states that Mr. Blaine's and Mr. Thompson's testimony are inconsistent on whether \$5,158 of labor cost is capitalized or expensed. Finally, MISO requests additional documentation because it is unable to verify certain costs attributable to financial advice, legal and consulting fees to maintain tax-exempt status, and legal and consulting fees related the incentive filing.

21. In addition, MISO disagrees with CMMPA/MMTG regarding transmission planning expenses that can be included in Account 560, as proposed. MISO contends that this account relates specifically to the actual operation of the physical asset, and not planning related expenses.²⁴ MISO argues that since CMMPA has no asset to operate CMMPA cannot record labor or any other expense to the transmission accounts until CMMPA/MMTG has existing physical assets.²⁵

²¹ *Id.* at 20-21.

²² *Id.* at 21.

²³ MISO Protest at 37-39, 42.

²⁴ *Id.* at 50.

²⁵ *Id.* at 50-51.

c. CMMPA/MMTG Answer

22. According to CMMPA/MMTG, CMMPA can prepare a FERC Form No. 1 and still follow the mandated Government Accounting Standards Board (GASB) standards; and CMMPA will reconcile the GASB standards to the USofA through the mapping of the accounts.²⁶ In addition, according to CMMPA/MMTG, the standard for capitalizing expenditures is whether those expenditures are necessary for the Brookings Project and CMMPA's Brookings Project participation. Therefore, CMMPA/MMTG state that CMMPA's costs should be recoverable on the same basis as other MISO Transmission Owners.²⁷

d. Commission Determination

23. CMMPA/MMTG request that the Commission rule on certain cost issues regarding whether expenses are properly includable in CWIP. We share protesters' concerns regarding whether certain expenses are properly classified O&M and A&G expenditures as proposed by CMMPA/MMTG. Therefore, as an initial matter, the Commission will make an accounting determination with respect to specific costs CMMPA proposes to recover as CWIP. CMMPA/MMTG has agreed to provide MISO with FERC Form No. 1, which follows the USofA, and states that it will reconcile GASB to the USofA through the mapping of accounts. We find that, based on the USofA, as discussed below, certain expenses are not properly includable in CWIP. Further, as discussed below, we are rejecting CMMPA's proposed Attachment O variance to set the transmission plant (TP) allocator to one, therefore we do not need to address at this time arguments relating to the unverified amounts for these expenditures.²⁸

24. Specifically, with regard to CMMPA's proposed charges to Account 560, Operation Supervision and Engineering, we find that the cost of labor, materials and expenses incurred for developing transmission expansion plans under the USofA are properly includable in Account 561.5, Reliability, Planning and Standards Development.²⁹ Specifically, item 3 of this account specifies that the cost of assessing, developing and documenting transmission expansion plans is to be recorded in Account 561.5. Therefore, these types of costs are properly recordable in Account 561.5.

²⁶ CMMPA/MMTG Answer at 42 & Att. 2 at 9.

²⁷ CMMPA/MMTG Answer at 9.

²⁸ Arguments related to the unverified amounts for these expenditures may be raised by parties if CMMPA proposes to recover these expenditures through a regulatory asset.

²⁹ 18 C.F.R. Part 101 (2010).

25. CMMPA further states that it capitalized the cost of obtaining financial advice and for legal and consulting fees in support of its investment in the Brookings Project.³⁰ In addition, CMMPA states that it incurred legal and outside consulting costs specifically related to the development of the upstream and downstream participation agreements in the Brookings Project and recorded these amounts in Account 107. CMMPA argues that all of these costs are directly related to the Brookings Project and are therefore properly includable in CWIP.

26. However, under the USofA, the cost of legal and consulting fees incurred by a company regarding its ability to issue debt including tax exempt bonds or how a particular bond issuance may be structured, and the costs incurred related to the development of upstream and downstream participation agreements, is considered an operating activity of the entity. Therefore, the costs of performing these types of activities are properly includable in Account 923, Outside Services Employed.³¹ The instructions to Account 923 state that this account includes fees and expenses of professional consultants and others for general services, which are not applicable to a particular operating function or other accounts.³² Further, once a company decides to issue a bond, the cost of drafting mortgages and trust deeds, fees and taxes for issuing or recording evidence of debt, and the cost of engraving and printing bonds and fees and other services is properly includable in Account 181, Unamortized Debt Expense, rather than Account 107.

27. In addition, CMMPA states it capitalized, in Account 107, \$28,431 of legal and consulting costs to support its incentive rate filings.³³ CMMPA argues that these costs are directly related to the Brookings Project and are therefore properly includable in Account 107. Under the USofA, the costs incurred for formal cases before a regulatory commission are considered operating expenses and properly includable in Account 928, Regulatory Commission Expenses.³⁴ The instructions to Account 928 state that this account shall include all expenses incurred by the utility in connection with formal cases

³⁰ Transmittal Letter at 31-32.

³¹ 18 C.F.R. Part 101.

³² *Id.*

³³ Transmittal Letter at 32.

³⁴ 18 C.F.R. Part 101.

before regulatory bodies or commissions.³⁵ Therefore, these expenses are properly includable in Account 928.

2. Attachment O Formula Rate Template

28. The proposed addition to the MISO Tariff, CMMPA Agency-Attachment O, will be used to calculate CMMPA's ATRR. As a MISO Transmission Owner, CMMPA (and not CMMPA/MMTG jointly) will own a share of the Brookings Project. CMMPA will act for its members and MMTG members in submitting Attachment O ATRRs and in sharing Brookings Project revenues. As a MISO Transmission Owner, CMMPA will distribute MISO transmission revenues to its member cities and the participating member cities of MMTG.³⁶

a. Current O&M and A&G Recovery

i. CMMPA/MMTG Proposal

29. As an initial matter, CMMPA proposes to modify its Attachment O formula rate to allow recovery of current O&M and A&G costs. CMMPA states that these expenses are like those that other MISO transmission owners incur and charge but CMMPA cannot charge them because as a start-up transmission owner, at the agency level, it does not own other existing transmission.³⁷ Therefore, in Footnote BB of its Attachment O, CMMPA proposes to set the transmission plant (TP) allocator to a value of one until there are transmission plant assets in-service.³⁸ Further, CMMPA includes Footnote MM which allows for inclusion of indirect transmission department labor and other transmission expenses in O&M.³⁹ In accordance with generally acceptable accounting principles, CMMPA/MMTG states that these expenses are not capitalized and, therefore, are not recovered through CWIP. CMMPA/MMTG state that these O&M expenses largely involve labor costs, principally including costs related to evaluations of potential transmission projects to improve the grid, and are the type of transmission planning expenses that other MISO Transmission Owners have included in their Attachment O ATRRs.

³⁵ *Id.*

³⁶ Transmittal Letter at 15.

³⁷ *Id.* at 11.

³⁸ *See* MISO, FERC Electric Tariff, Att. O, § 37 (0.0.2), Note BB.

³⁹ Transmittal Letter at 19.

30. Moreover, CMMPA/MMTG state that disallowance of CMMPA O&M expenses could have a secondary consequence to CMMPA of disallowing A&G. Under the MISO Attachment O template, A&G costs are allocated based upon transmission labor costs that are included in O&M. CMMPA/MMTG state that disallowing such costs to CMMPA would be “blatantly discriminatory” with a consequence to CMMPA of a negative cash flow during construction and a negative bond coverage, making financing expensive or impossible.⁴⁰ The likely result, CMMPA/MMTG state, is at least some member city approvals would not be obtained for project participation during the construction phase. CMMPA/MMTG state that denial of recovery of similar costs to those that are allowed for other transmission owners would clearly be unjust and unreasonable, discriminatory, preferential to incumbent transmission owners, and would be anticompetitive because such a denial would tend to limit transmission ownership to favored entities and would discourage desirable broader transmission participation.

ii. Comments and Protests

31. MISO, MISO TOs, Consumers Energy, and Xcel maintain that recovery of O&M and A&G expenses prior to having any in-service transmission facilities is contrary to Commission policy, as well as the structure of the Attachment O template. Furthermore, they state that CMMPA has failed to demonstrate that its proposed changes are just and reasonable. The Attachment O template assumes that a transmission owner has existing facilities in-service; thus, according to MISO TOs, this formula was designed to recover the costs of current transmission owners, not potential future transmission owners.⁴¹ Absent a modification to the formula rate template, an entity that has no transmission in-service will have a TP allocator of zero.⁴² Therefore, several parties state that the standard Attachment O template dictates that an entity with no transmission plant cannot recover O&M or A&G in MISO rates.⁴³

32. Without operating any transmission facilities, several parties state that the Commission’s USofA does not provide a proper way to account for and recover said costs; therefore, these costs should not be recovered from MISO customers, and

⁴⁰ *Id.* at 20.

⁴¹ MISO TOs Protest at 9.

⁴² *Id.* at 4-5 (citing MISO, FERC Electric Tariff, Att. O, § 3 (0.0.0)).

⁴³ MISO TOs Protest at 10; Consumers Energy Protest at 3; MISO Protest at 46-47.

CMPA/MMTG's proposed use of USofA accounts to recover these costs is inaccurate.⁴⁴

33. MISO TOs state that because CMPA/MMTG's request to recover O&M and certain A&G expenses prior to having any in-service transmission facilities is contrary to the structure of Attachment O and Commission policy, the Commission should reject CMPA/MMTG's proposal to recover these costs. Alternatively, if the Commission does not reject the proposal, MISO TOs argue that the Commission should set issues related to CMPA/MMTG's proposed O&M and A&G recovery for hearing, including whether CMPA has reflected the appropriate expenses in its O&M and A&G accounts.

34. MISO believes that when CMPA has transmission assets in-service, to account for the expenses properly recorded as O&M, CMPA should do as other entities have done and establish a regulatory asset in Account No. 182.3 to record all preconstruction project expenses that are not capitalized and included as CWIP.⁴⁵

35. In addition, MISO TOs note that some of CMPA/MMTG's members recover their revenue requirements through their own Attachment O templates.⁴⁶ According to MISO TOs, because these member cities' costs cannot be recovered simultaneously under two Attachment O templates, it is improper for CMPA to rely on these member cities' transmission facilities to justify its own recovery of O&M. Further, MISO TOs state that this justification introduces confusion about what costs will be recovered under CMPA's Attachment O and what costs are being recovered in the member cities' existing Attachment O templates, whether double-recovery will occur, and whether costs can be shifted between these entities.⁴⁷

⁴⁴ MISO TOs Protest at 13, 14-15; MISO Protest at 50-51.

⁴⁵ MISO Protest at 52-53.

⁴⁶ The member cities with their own Attachment O formula rate templates are those that CMPA has Agency Agreements with, and thus CMPA serves as a MISO Transmission Owner on their behalf. According to information posted on MISO's website, the following CMPA members are subject to Attachment O: Blue Earth, Delano, Mountain Lake, and Windom. *See* MISO, Att. O Jan. 2011 Pricing Analysis, *available at* http://www.midwestmarket.org/publish/Folder/469a41_10a26fa6c1e_-7bd60a48324a?rev=1.

⁴⁷ MISO TOs Protest at 12.

iii. CMMPA/MMTG Answer

36. In its answer, CMMPA/MMTG state that the Commission has sufficient information to rule on whether entities that invest in new transmission that do not currently own existing transmission, but that incur some of the same type of O&M and/or A&G costs as existing transmission owners, may charge those O&M and/or A&G costs in rates. Outside of CMMPA's investment in the Brookings Project, CMMPA/MMTG notes that CMMPA does not own any existing transmission. However, CMMPA/MMTG state that other MISO transmission owners are now receiving compensation for transmission planning and other expenses in MISO rates relating to transmission plant that is not yet in-service, and accordingly, disallowing such costs to CMMPA would be discriminatory. CMMPA/MMTG note that CMMPA has been a MISO Transmission Owner since 2007, and its transmission investments are not speculative as CMMPA is actively pursuing investment in the Brookings Project for its members and on behalf of MMTG's municipal utility members. CMMPA/MMTG argue that the fact its members own existing transmission and the fact that CMMPA is incurring grid-beneficial transmission costs places CMMPA and MISO transmission owners in exactly the same position with respect to new transmission. None of the CapX2020 projects are in-service at this time, yet, according to CMMPA/MMTG, the MISO TOs believe that their transmission O&M and A&G costs are entitled to recovery, but CMMPA's is not. Further, CMMPA/MMTG state that in-service assets are not the only source of O&M. For example, CMMPA/MMTG note that other O&M expenditures include planning and evaluation of potential new transmission projects and participating in planning meetings.⁴⁸

iv. MISO Answer

37. MISO states that the Commission needs to decide: (1) whether CMMPA can collect O&M and A&G prior to having any in-service transmission assets; and (2) whether CMMPA should be permitted to modify its Attachment O formula with a TP allocator of one, although for an entity with no transmission assets, such as CMMPA, the TP allocator would be zero.

v. Commission Determination

38. We reject CMMPA's proposed Attachment O variance to set the transmission plant allocator to one. However, the Commission recognizes CMMPA's concern that it will not be able to recover O&M and A&G expenses prior to the Brookings Project going into service on the same basis as other transmission owners. Though CMMPA is currently a MISO Transmission Owner, it currently has no in-service transmission assets.

⁴⁸ CMMPA/MMTG Answer at 22-23.

Absent a modification to the *pro forma* Attachment O formula rate template, as an entity that does not have transmission in-service, CMMPA will have a transmission plant allocator of zero. As such, even though CMMPA incurs similar O&M and A&G expenses as other MISO Transmission Owners, and these MISO Transmission Owners can recover these similar expenses, there is currently no mechanism by which CMMPA can recover these similar expenses.⁴⁹

b. Other Attachment O Provisions

39. In addition to the *pro forma* Attachment O provisions, with the modifications discussed above, CMMPA/MMTG's proposed Attachment O template includes provisions to implement the incentive rates granted in the Incentive Petition, specifically: (1) 100 percent of prudently incurred CWIP in the rate base (100 Percent CWIP Recovery); (2) 100 percent recovery of the prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the petitioners' control (Abandoned Plant Recovery); and (3) a hypothetical capital structure of 50 percent equity and 50 percent debt (Hypothetical Capital Structure), to be applied in both the period of construction and the term of bond financing for the proposed investment in the Brookings Project.

40. For Abandoned Plant Recovery, CMMPA/MMTG state that the proposed Abandoned Plant Recovery template language is consistent with the language in other approved MISO templates.⁵⁰ For CWIP, CMMPA/MMTG state that the proposed template is consistent with previous Commission decisions, including the requirements to

⁴⁹ The Commission has not expressly accepted a proposal to recover such expenses on a current basis as incurred once a tariff mechanism is in place but before the transmission owner has plant in service, as CMMPA proposes, and we find it would be unjust and unreasonable to do so here. However, other entities have faced a similar circumstance as the one faced by CMMPA. For example, in *Green Power Express, LP* the Commission accepted Green Power Express LP's (Green Power) proposed regulatory asset in which it deferred such expenses for recovery over a ten-year period once construction commenced and it had an approved tariff mechanism. In addition, the Commission accepted Green Power's proposal to create additional regulatory assets for such costs that are incurred each year once it has an approved tariff mechanism in place and recover each of those vintage year regulatory assets over the ten-year period immediately following the vintage year. See *Green Power Express, LP*, 127 FERC ¶ 61,031, at P 107-109 (2009).

⁵⁰ *Id.* at 17.

prevent duplicative cost recovery.⁵¹ Further, CMMPA/MMTG maintain that by using the most recent MISO templates, CMMPA's agency-specific Attachment O enters costs for the CWIP transmission plant a single time and eliminates any amounts of Allowance for Funds Used During Construction.⁵²

41. The proposed template, as amended, implements the Hypothetical Capital Structure and applies the MISO 12.38 percent rate of return on common equity.⁵³ If this 12.38 percent return amount is changed, CMMPA/MMTG commits to apply the then applicable MISO equity rate of return in future Attachment O ATRRs.

i. Protests

(a) Potential for Double-Recovery of Costs

42. MISO states that it has discovered what it believes are a number of inconsistencies that have raised a "red flag" with respect to the wages and salaries allocator in CMMPA Agency-Attachment O.⁵⁴ Specifically, MISO states that there are a number of inconsistencies between accounting treatments and statements made in this docket and CMMPA's Incentive Petition and requests clarifications and adjustments. In addition, MISO requests that the Commission require CMMPA to (1) provide information concerning which expenses have been reimbursed to CMMPA and how CMMPA accounts for such reimbursements in its financial statements along with a copy of the participation agreement;⁵⁵ (2) provide details concerning the costs associated with its employees and outside consultants related to the CapX2020 projects (including the details for any expenses related to CapX2020 meetings); and (3) provide additional

⁵¹ *Id.* (citing *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007); *Great River Energy*, 130 FERC ¶ 61,001 (2010); *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009)).

⁵² *Id.* at 18.

⁵³ *Incentive Order*, 134 FERC ¶ 61,115 at P 31-33. MISO also filed an amendment on March 4, 2011 to correct the Hypothetical Capital Structure; however, according to MISO, that filing contained certain erroneous changes to the initially submitted attachments. Therefore, MISO states that the amendment filed March 16, 2011 contains only revisions to properly reflect the Hypothetical Capital Structure as 50 percent equity and 50 percent debt.

⁵⁴ MISO Protest at 65.

⁵⁵ *Id.* at 63.

detailed information as necessary in order to make an accurate determination of the transmission wages.⁵⁶

43. MISO also contends that CMMPA has failed to provide sufficient detail regarding the costs it proposes to include in the CMMPA Agency-Attachment O. While CMMPA does rely on audited financial statements and Energy Information Administration (EIA) Form No. 412 to populate its Attachment O, MISO states that CMMPA has reclassified various expenses from CWIP to O&M and made other reclassifications between accounts without verifiable justification or restating financial statements to reflect the changes. MISO finds that many of the reclassifications are incorrect or require additional documentation.⁵⁷ MISO TOs note that the Commission requires that all formula calculations be incorporated in rate schedules so that public utilities cannot unilaterally revise the calculations at their discretion.⁵⁸ Further, MISO TOs state that the formula must incorporate all necessary detail and calculations⁵⁹ and references in the formula rate template to publicly available information, such as the FERC Form No. 1, for input data to facilitate transparency.⁶⁰ In addition, MISO TOs assert that the formula and all inputs must be stated with such clarity such that a third party can easily calculate the rate charged, a standard which CMMPA's filing does not meet.⁶¹

44. MISO TOs maintain that the relationship between CMMPA and its related entities, as well as CMMPA's relationship to its member cities that recover costs through the standard Attachment O template, raise significant issues of transparency. Further, MISO TOs state that though CMMPA's "crosswalk" attempts to reconcile CMMPA's audited financials and the EIA Form No. 412, it is not a mapping of CMMPA's costs to the

⁵⁶ *Id.* at 69-71, 76. MISO notes that it appears the \$2,530 of Vision Team costs have already been reimbursed by CMMPA's participating Brooking participants and therefore should not be included CMMPA ATTRs.

⁵⁷ *Id.* at 11.

⁵⁸ MISO TOs Protest at 26 (citing *ME. Yankee Atomic Power Co.*, 42 FERC ¶ 61,307, at 61,923, *reh'g denied*, 43 FERC ¶ 61,453 (1988)).

⁵⁹ *Id.* (quoting *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 32, *reh'g denied*, 121 FERC ¶ 61,245 (2007)).

⁶⁰ *Id.* (quoting *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205 at P 33).

⁶¹ *Id.* at 26-27 (quoting *NoAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,037 (1996)).

USofA.⁶² MISO TOs maintain that it is unclear how CMMPA and its member cities determine which costs will be recovered through CMMPA's Attachment O and which costs will be recovered through the member cities' Attachment Os. Significantly, MISO TOs state that the relationship between CMMPA and its member cities raises the possibility that duplicative costs could be recovered through both CMMPA's proposed Attachment O and the member cities' Attachment Os, and there is no apparent mechanism in CMMPA's proposal to prevent such double recoveries.⁶³

45. Further, MISO contends that CMMPA has not described its proposed variances from the *pro forma* Attachment O and, therefore, has not shown that its proposed modifications to the *pro forma* Attachment O will result in just and reasonable rates. MISO requests that the Commission require CMMPA to provide a discussion of each proposed change and how it impacts the derivation of the related line items in the template.⁶⁴

(b) Use of FERC Form No. 1 Data

46. MISO is also concerned about the review process for CMMPA Attachment O submittals for several reasons. Among other things, MISO is concerned with whether: (1) it will be able to gain assurance that the information being provided is correct when CMMPA is reclassifying expenditures; (2) CMMPA is reporting the information to proper accounts in conformity with the USofA; (3) the independent outside auditor could be changing the audited financial statements; (4) CMMPA and MISO are going to have to go before the Commission for each Attachment O submittal in order to clarify where expenditures should be properly reported; (5) additional MISO staff is going to be needed to verify CMMPA's and other municipals' Attachment O submittals in order to comply with the Tariff under the current method; and (6) there is enough transparency in the current review process of CMMPA and other municipals. Most importantly, MISO questions how far it must go in order to verify: CMMPA's Attachment O expenses (the invoice level, journal entries, company policies, etc.); CMMPA's financial statements; EIA Form No. 412; and the expenses contained in the CMMPA Agency-Attachment O.⁶⁵

47. MISO requests that the Commission require CMMPA to prepare a FERC Form No. 1 as a regulated utility in support of its proposal to add its ATRR to jurisdictional

⁶² *Id.* at 27.

⁶³ *Id.* at 27-28.

⁶⁴ MISO Protest at 33-36.

⁶⁵ *Id.* at 94.

rates to avoid such issues.⁶⁶ MISO further requests that the Commission require CMMPA to post its FERC Form No. 1 and audited financial statements on its own Open Access Same Time Information System (OASIS) page and on MISO's OASIS website. MISO also has concerns with the lack of transparency with respect to how CMMPA calculates its ATRR under Attachment O and, more specifically, how CMMPA reconciles its financial statements with the EIA Form No. 412 and Attachment O. MISO believes that CMMPA is taking its audited financial statements and reclassifying various expenses as it sees fit without certification from its auditor that these variances from CMMPA's audited financial statements are appropriate. Because CMMPA will have to reconcile its audited financial statements to the EIA Form No. 412 and Attachment O on an annual basis, MISO is concerned that these issues will continue year after year.⁶⁷

48. MISO believes that CMMPA's completing and providing a FERC Form No. 1 annually, rather than EIA Form No. 412, would address the consistency and transparency issues; however, it concedes that neither the Commission's rules nor the MISO Tariff requires CMMPA to use FERC Form No. 1. Nonetheless, MISO states that this proposal is consistent with the requirements of Attachment O because FERC Form No. 1 is listed among the publicly available documents that MISO can use to verify the amounts in Attachment O.⁶⁸ MISO would be willing to accept FERC Form No. 1 certified by CMMPA's independent auditor.

ii. MISO Clarification

49. In its clarification, MISO states that it will accept FERC Form No. 1 from CMMPA in lieu of the information it requested in its protest. Accordingly, MISO requests that the Commission require CMMPA to submit a CMMPA-Agency FERC Form No. 1 in this proceeding in lieu of directing CMMPA to provide the various forms of documentation requested in its protest. MISO states that the submission of FERC Form No. 1 will result in a more efficient review of the CMMPA-Attachment O.

iii. CMMPA/MMTG Answer

50. In their answer, CMMPA/MMTG state that regardless of CMMPA's source of funds, MISO ratepayers would not pay for the same cost twice – either a transmission cost is on the CMMPA's books and the CMMPA-Attachment O or, if it is a city cost, it is on the city's (or cities') books and on the city's (or cities') Attachment Os.

⁶⁶ *Id.* at 93-95.

⁶⁷ *Id.* at 95.

⁶⁸ *Id.* at 97.

CMMPA/MMTG also commit to providing MISO with a certified FERC Form No. 1 annually, to be used for updating CMMPA's formula rates. Further, CMMPA/MMTG agree to provide MISO with an independent outside auditor's certification (and will also provide appropriate work papers) to ensure that there is no double-recovery of costs between CMMPA and the member cities' Attachment Os.⁶⁹

51. With respect to the Attachment O template and remaining cost issues, CMMPA/MMTG state that if a hearing is necessary CMMPA's rates should be placed into effect subject to refund. CMMPA/MMTG maintain that though CMMPA is non-jurisdictional under part 2 of section 201 of the Federal Power Act (FPA), 16 U.S.C. § 824, they agree that their transmission costs are subject to Commission and MISO review because CMMPA's costs are included in the jurisdictional MISO transmission rate, which must be just and reasonable.

iv. MISO Answer

52. In its answer, MISO notes that regardless of whether CMMPA submits a FERC Form No. 1 there still remains a necessary assurance that there will be no double-recovery of costs by virtue of the relationship between CMMPA and its members when some of those members have their own Attachment Os.⁷⁰ MISO states that it still has a number of questions and comments related to CMMPA's answer; however, rather than making any additional comments at this time, MISO states that it will wait until it receives the additional information CMMPA has agreed to provide including a FERC Form No. 1, restated financial statements and FERC Form No. 1 version of CMMPA Agency-Attachment O template.⁷¹

v. Commission Determination

53. As amended March 16, 2011, we find that CMMPA Agency-Attachment O now properly reflects a ratio of 50 percent debt and 50 percent equity. However, the Commission granted in the Incentive Petition the use of the Hypothetical Capital Structure for "both the Brookings Project construction period and for the life of [CMMPA's] bond issuance, which is anticipated to be thirty-years."⁷² Contrary to this granted incentive, Note II, as amended March 16, 2011, indicates that the hypothetical capital structure will be used until 2045, which may be more than the anticipated thirty-

⁶⁹ CMMPA/MMTG Answer at 11, 14, Att. 1.

⁷⁰ MISO Answer at 5-6.

⁷¹ *Id.* at 20.

⁷² *Incentive Order*, 134 FERC ¶ 61,115 at P 33.

years. CMMPA/MMTG provide no justification for this provision. Therefore, we direct MISO to submit a revised CMMPA Agency-Attachment O to correct Note II or provide appropriate support for the 2045 date.

54. In addition, in the amendment filed March 16, 2011, the CMMPA Agency-Attachment O is populated. This is inappropriate as the formula is the rate (and not the inputs).⁷³ Therefore, we direct MISO to submit an un-populated Attachment O for CMMPA within 30 days in the compliance filing ordered herein.

55. We expect that CMMPA will honor its commitment to provide MISO with a FERC Form No. 1 annually.⁷⁴ Therefore, MISO will be able to review costs to ensure no double-recovery of costs by CMMPA from its member cities. Notwithstanding the above, we find that, as discussed below, hearing and settlement judge procedures are appropriate to determine the justness and reasonableness of CMMPA/MMTG's proposed Attachment O.

3. Schedules 7, 8 and 9 Tariff Revisions

56. According to CMMPA/MMTG, the Brookings Project will likely be proposed as a Multi Value Project (MVP),⁷⁵ and thus a Commission determination of the Pricing Zone Allocation in which CMMPA's Attachment O costs are charged is likely to be interim. MISO submits on CMMPA/MMTG's behalf proposed revisions to Schedules 7, 8 and 9 of MISO's Tariff which state that CMMPA's total Net Revenue Requirement will be allocated based on an interim allocation (or longer if MVP Project status for the Brookings Project is not approved or if otherwise necessary) of 89 percent to Zone 16 and 11 percent to Zone 8, and that such interim allocation will be in effect until the cost allocation for the Brookings Project is specifically defined or the Brookings Project goes into service. The revisions also state that if the Net Revenue Requirement is approved for regional cost sharing, then the CMMPA Net Revenue Requirement will be allocated according to those rules.

⁷³ See, e.g., *Pub. Utils. Comm'n of Cal. v. FERC*, 254 F.3d 250, 254 (D.C. Cir. 2001); *NRG Power Mktg., Inc. v. N.Y. Indep. Sys. Operator, Inc.*, 91 FERC ¶ 61,346, at 62,165 (2000); *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,545 (1994).

⁷⁴ See CMMPA/MMTG Answer at 14 & Att 1.

⁷⁵ The Commission recently approved a MISO proposal under which the costs of certain new transmission projects will be charged to all MISO zones. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (conditionally accepting proposed Tariff revisions to establish a new category of transmission projects designated as MVPs and allocating MVP costs to all load in, and exported from, MISO on a postage-stamp basis).

a. **MISO Pricing Zone Allocation**

i. **CMMPA/MMTG Proposal**

57. For the interim period (or longer if MVP status is not approved or if otherwise necessary), CMMPA/MMTG state that CMMPA considers equitable that 89 percent of its Attachment O costs be allocated to the NSP (Xcel) pricing zone⁷⁶ and 11 percent to the Great River pricing zone.⁷⁷ This represents the estimated percentage of Brookings Project investment that will be in each zone. However, CMMPA/MMTG state that they would agree to any other reasonable allocation among zones.⁷⁸

ii. **Comments and Protests**

58. MISO TOs state that CMMPA/MMTG offer no explanation for its proposed zonal rate allocation or why the Brookings Project should be approved as an MVP Project in which case its costs would be spread to zones outside of where the Brookings Project is located. Further, MISO TOs state that if the MISO Board of Directors were to deny regional cost allocation for the Brookings Project that decision would represent the determination of the MISO that the project does not meet the relevant criteria for regional cost sharing. According to MISO TOs, if the project does not qualify for regional cost sharing, the project's costs should be collected from the zones where the facilities are located.⁷⁹

59. Xcel states that CMMPA's proposal to recover nearly 90 percent of its costs from Zone 16 is unreasonable. Xcel states that even if it is appropriate for CMMPA to recover its CWIP and O&M charges associated with the Brookings Project only in Zone 16 and Zone 8 pricing zones until MISO makes its MVP determination, it is unreasonable for nearly 90 percent of the *total* CMMPA ATRR to be allocated to Zone 16 when a

⁷⁶ MISO Zone 16.

⁷⁷ MISO Zone 8.

⁷⁸ Transmittal Letter at 36.

⁷⁹ MISO TOs Protest at 25-26; *see also* MISO, FERC Electric Tariff, Att. FF, §§ III.A.1 (stating the responsibility for Network Upgrades included in the approved MTEP will be addressed in accordance with the Owners Agreement), II.B.1, II.A.1 (explaining that “[t]he Zonal rates for each Zone shall be based on the costs of the booked transmission facilities within the Zone”). The full name of the Owners Agreement is the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation.

substantial portion of the CMMPA ATRR costs are not related to the Brookings Project, but relate to CMMPA's activities in several MISO pricing zones.⁸⁰

iii. CMMPA/MMTG Answer

60. In their answer, CMMPA/MMTG state that its proposed pricing zones allocation is based on the location of the Brookings Project instead of apportioning costs to pricing zones based upon the existing assets or load of CMMPA/MMTG's members. Otherwise, according to CMMPA/MMTG, the load in other pricing zones would be assessed the costs of the Brookings Project when the benefits of the Brookings Project will accrue to load in Zone 16 and Zone 8 pricing zones.

iv. Xcel Answer and Comments

61. In its answer, Xcel states that it continues to have concerns with the proposed allocation of CMMPA's ATRR to Zone 16. In its comments, Xcel states that the proposed pricing zone allocation continues to be unreasonable. Xcel maintains that the Commission should refer CMMPA's proposal to a settlement judge, or set it for hearing procedures.

v. Commission Determination

62. We find that CMMPA/MMTG's proposed MISO pricing zone allocation has not been shown to be just and reasonable, and may be unjust and unreasonable. Accordingly, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

b. Additional Modifications

63. According to MISO, regardless whether the Commission approves CMMPA's proposed pricing zone allocation methodology, additional language should be added to Schedule 7, 8 and 9 to clarify that once the Brookings Project is placed into service, the CMMPA Net Revenue Requirement will be allocated proportionately as described in the Joint Zone Rate Development Section that discusses CMMPA's allocation methodology in each schedule.⁸¹

64. In addition, according to MISO, since there is a possibility that the Brookings Project could be classified as a MVP under MISO's Tariff, additional modifications are necessary to ensure that CMMPA's revenue requirement under Attachment O is reduced

⁸⁰ Xcel Comments at 9-11.

⁸¹ MISO Protest at 79, 80-81.

by all amounts collected under Attachment MM in the event that the Brookings Project is classified as a cost-sharing MVP. Accordingly, MISO proposes an insertion of Attachment MM in various places in Schedule 7, 8, and 9 to: 1) add a reference to Attachment MM to clarify that Attachment O zonal transmission facilities, for each Transmission Owner, are derived based on the gross transmission facilities by pricing zone less Attachment GG and Attachment MM; and 2) state that the Net Revenue Requirement excludes the Attachment GG and Attachment MM transmission revenue requirement for transmission facilities, the costs of which are recovered under Schedule 26 and 26-A, respectively of the Tariff.

65. In its answer, Xcel states that some of MISO's proposed revisions to Schedule 7, 8, and 9 of the Tariff appear to improperly characterize the status of certain CMMPA members as MISO Transmission Owners and should be modified to clarify the relationship between CMMPA and its members. Accordingly, Xcel suggests that the entities listed in Zone 16 of Schedule 7, 8, and 9 be modified to further read: "Central Minnesota Municipal Power Agency, individually and as an agent with functional control of the transmission assets of certain of its members including Blue Earth Board of Public Works and Delano Water, Light & Power Commission."⁸²

66. MISO further requests that the Commission require CMMPA to provide an Attachment MM, modified for the incentives CMMPA was granted by the Commission in the Incentive Petition. According to MISO, if the Brookings Project is approved as a MVP, this will require modification to Attachment MM, and these incentives should be applied to Attachment MM and would require variances to the standard attachment MM.⁸³ MISO states that CMMPA has not included the appropriate modification to its Attachment O because the Brookings Project may be classified as an MVP, and as such, it is important to have in place the mechanisms for how the cost allocation for the Brookings Project will be applied to CMMPA-Agency Attachment O ATRR. Thus, according to MISO, the Commission should also require CMMPA to submit a proposed CMMPA-Agency Attachment MM in this proceeding to ensure the proper references are included in both Attachment O and Attachment MM. In addition, MISO feels that in order to add clarity to the Attachment O and Attachment MM process, the Commission should require CMMPA to modify the proposed CMMPA-Agency Attachment O to include a line for Attachment MM similar to the line that subtracts the Attachment GG revenue requirements included in the CMMPA-Agency Attachment O.⁸⁴

⁸² Xcel Answer at 6.

⁸³ *Id.* at 82.

⁸⁴ *Id.*

c. Commission Determination

67. We agree with MISO and Xcel that additional changes need to be made to Schedule 7, 8, and 9, to clarify which entities will be included within each pricing zone. However, we do not agree with MISO that a CMMPA-Agency Attachment MM, and corresponding CMMPA-Agency Attachment O revisions are necessary at this time. We understand that certain revisions will be necessary if the Brookings Project is determined to be an MVP; however, currently the need for these revisions is speculative and thus not ripe for consideration.

68. Therefore, we direct MISO to revise Schedule 7, 8, and 9 within 30 days in the compliance filing ordered below to make the revisions proposed by Xcel and MISO above.

4. Xcel Request to Make CMMPA/MMTG Rates Subject to Refund

a. Xcel Comment

69. In its comments filed February 22, 2011, Xcel states that like MISO and the MISO TOs it does not support the request for a January 1, 2010 retroactive effective date. Accordingly, Xcel requests that the Commission accept the proposed Tariff revisions for filing effective March 1, 2011, less than sixty-days after filing, but subject to refund.⁸⁵ Xcel further states that it does not request that the proposed Tariff revisions be subject to a five month suspension period; rather, to facilitate the decision of potential CMMPA members in the Brookings Project, Xcel requests that CMMPA's filing be set for expedited procedures so the Commission can make a decision on a time line that allows CMMPA to obtain financing and participate in the Brookings Project.⁸⁶

b. CMMPA/MMTG Answer

70. In their answer, CMMPA/MMTG state that they agree with Xcel that if their CMMPA-Agency Attachment O cannot be ruled upon and implemented expeditiously that their proposed rates should be put into effect subject to refund.⁸⁷ According to CMMPA/MMTG, CMMPA is a non-jurisdictional entity and, therefore, the Commission may not order it to involuntary refund rate collections. Nevertheless, CMMPA/MMTG state that CMMPA can itself agree to pay refunds. If the Commission allows CMMPA's

⁸⁵ Xcel Comments at 5.

⁸⁶ *Id.* at 6.

⁸⁷ CMMPA/MMTG Answer at 65.

rates to be implemented before it can issue a final order, CMMPA/MMTG state, CMMPA commits to pay refunds that may be ordered by the Commission and is further willing to enter into a reasonable contractual arrangement with MISO to effectuate its agreement to pay refunds pursuant to such an order.⁸⁸

c. Commission Determination

71. We will deny Xcel's request to make CMMPA's rates subject to refund. As discussed in *City of Riverside, California*,⁸⁹ the structure of the FPA reflects Congress' intent to exempt governmental entities and non-public utilities from the Commission's refund authority over wholesale electric energy sales.⁹⁰ FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."

72. Although the Commission can subject the rates of non-jurisdictional utilities (like CMMPA) to a full section 205 review to ensure that MISO's Attachment O rate is just and reasonable,⁹¹ CMMPA is not subject to section 205 (aside, that is, from our applying a just and reasonable standard), including Commission-imposed rate suspension and refund obligations. Therefore, any requests that the Commission suspend CMMPA's proposed rate, subject to refund, is outside our jurisdiction.⁹² We cannot act on Xcel's request. As indicated above, while we make a determination as to the justness and reasonableness of CMMPA's rates under the same just and reasonable standard as that found in section 205, CMMPA is not itself subject to the refund requirements of section 205. Therefore, it is not within our authority to direct CMMPA to comply with any suspension or refunds.

⁸⁸ *Id.*

⁸⁹ 128 FERC ¶ 61,207 (2009) (*Riverside*).

⁹⁰ *Id.* P 24 (citing *TANC*, 495 F.3d 663, 673-674).

⁹¹ *TANC*, 495 F.3d at 672.

⁹² As noted above, CMMPA agrees to repay amounts found to exceed the just and reasonable rate. To the extent that CMMPA has an obligation to make such repayment, but fails to do so, the affected parties may seek to enforce any such obligation in the appropriate forum. *See Riverside*, 128 FERC ¶ 61,207 at P 26, n.35 (citing *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 925 (9th Cir. 2005)).

5. Effective Date

a. CMMPA/MMTG Proposal

73. In the Incentive Petition amended January 25, 2010, CMMPA/MMTG requested that their proposed incentives be allowed, effective January 1, 2010 or earlier if allowed by law. In this docket, which flows from and implements their incentive rates, CMMPA/MMTG request the same effective date or an effective date as early as the Commission may allow. CMMPA/MMTG maintain that the requested January 1, 2010 effective date is fully justified stating that their investment partners in the Brookings Project were granted January 1, 2008 (for Xcel) and a January 1, 2010 (for Great River and Otter Tail). Further, CMMPA/MMTG originally filed their incentive rates request in Xcel's incentive rates docket on October 26, 2007, and refiled on December 31, 2007. CMMPA/MMTG state that the Commission should grant the implementation of incentives because the relief requested by CMMPA/MMTG parallels the relief that has been approved and implemented for their other Brookings Project co-owners.⁹³ CMMPA/MMTG also state that any argument that accommodating the proposed effective date would be procedurally burdensome should be weighed against the relatively small amount of CMMPA costs that are at issue, especially related to total MISO rates, that such a small number do not justify burdensome arguments.

74. Further, CMMPA/MMTG state that they are paying transmission rates that include incentive rates allowance for these other co-owners of the very same project. CMMPA/MMTG maintain that time of implementation of incentive rates is important because CMMPA, which will finance for CMMPA/MMTG member cities, is filing its first Attachment O. Approval of incentives will allow CMMPA to have an effective MISO Attachment O and, therefore, to begin receiving revenues for CMMPA/MMTG's participation in the project; and timing of rate recover can be highly significant to CMMPA/MMTG.⁹⁴

75. CMMPA's Attachment O ATTR uses 2007 test year data, which CMMPA/MMTG state is consistent with the requested January 1, 2010 effective date. CMMPA/MMTG state that use of 2007 data came about because some member audits and CMMPA's financial audit take place after the MISO's data submission deadline of April 30, there is a one-year lag in providing data. CMMPA/MMTG believe the use of 2007 test year data provides consistency between the provision of CMMPA and member cities data. Test year data for 2007 was used in the Incentive Petition on which the filing

⁹³ Transmittal Letter at 35.

⁹⁴ *Id.*

in this docket is based. CMMPA/MMTG also state that the 2007 test year data has been thoroughly reviewed by MISO.⁹⁵

b. Comments and Protests

76. MISO and MISO TOs state that CMMPA/MMTG have failed to demonstrate that a retroactive effective date is just and reasonable and, therefore, should be rejected. According to MISO TOs, the Commission allows exceptions to the 60-day notice requirement⁹⁶ when the proposed revisions result in a rate decrease, or are unopposed and do not affect any rates or the offering of any service under the tariff.⁹⁷ Accordingly, MISO TOs state that the Commission should reject the proposed effective date and allow the CMMPA/MMTG filing to become effective no earlier than April 5, 2011, 60 days after the submission of its February 4, 2011 amendment.⁹⁸ MISO requests that the Commission make CMMPA's agency-specific Attachment O effective at least 60 days after the January 19, 2011 filing.⁹⁹

77. In addition, MISO TOs state that there is no *de minimis* exception to the FPA, and the fact that the actual dollar amounts are small does not excuse the obligation to file a rate change on a timely basis. Further, MISO and MISO TOs maintain that CMMPA/MMTG's reliance on other Brookings Project participants' effective dates is misplaced, as those entities sought an effective date that was consistent with the Commission's 60-day notice requirement and they did not seek a retroactive effective date, as CMMPA/MMGT have requested.¹⁰⁰ In addition, because CMMPA has continuously failed to provide quality information in a timely manner MISO also believes that granting the effective date will be administratively burdensome.¹⁰¹

78. MISO argues that if the Commission sets the effective date 60 days after CMMPA's section 205 filing, CMMPA will need to provide its Attachment O based on 2008 data for the period March 20, 2011, through May 31, 2011; however, if the

⁹⁵ *Id.* at 33.

⁹⁶ *See* 16 U.S.C. § 824(d); 18 C.F.R. § 35.3(a)(1).

⁹⁷ MISO TOs Protest at 23-24.

⁹⁸ *Id.*

⁹⁹ MISO Protest at 84.

¹⁰⁰ MISO TOs Protest at 24.

¹⁰¹ MISO Protest at 88-92.

Commission does make CMMPA's Attachment O effective as of January 1, 2010, MISO requests that the Commission provide clarification on how the MISO should proceed during future periods.¹⁰²

79. With regard to test period data, if 2011 rates use 2009 data and 2010 rates use 2007 data, MISO TOs state that it is unclear when CMMPA proposes to recover costs incurred in 2008. MISO TOs request that the Commission order CMMPA to clarify when and how it plans to recover 2008 costs, or whether it proposes to skip 2008 and not recover those costs at all.¹⁰³ Moreover, MISO TOs state that it appears CMMPA misapprehends the role of illustrative data when filing a formula rate and maintains that the formula is the rate. Thus, MISO TOs state that illustrative data shows how CMMPA intends to implement the formula, and the Commission is not approving the 2007 data itself. In addition, MISO TOs assert that the Commission should clarify that it is not making a determination concerning the accuracy of any particular year's costs.¹⁰⁴

80. MISO and CMMPA have agreed that CMMPA will use data with a one-year lag so that they anticipate that rates effective June 1, 2011, will be based upon 2009 data. However, MISO states that CMMPA's statements do not clarify whether they intend to use the Attachment O based on 2007 data until the June 1, 2011 period begins, or whether the appropriate 2008 test year data will be used for the period beginning on June 1, 2010 and ending on May 31, 2011. MISO would like clarification from the Commission on this matter. Further, MISO states that CMMPA should not be permitted to use the 2007 data for the entire period beginning on January 1, 2010 and ending on May 31, 2011.

c. CMMPA/MMTG Answer

81. In its answer, CMMPA/MMTG argue that the delays in the Commission's decision have been largely due to the mediation process and CMMPA/MMTG's efforts to accommodate demands of other parties. CMMPA/MMTG emphasize that they originally filed their incentive rates on December 31, 2007, and have diligently pursued implementation of their rates since. Therefore, CMMPA/MMTG maintain that their proposed effective date of January 1, 2010 is just and appropriate.

¹⁰² *Id.* at 78.

¹⁰³ MISO TOs Protest at 22.

¹⁰⁴ *Id.* (citing *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,347, at P 13 (2008); *Sw. Power Pool, Inc.*, 125 FERC ¶ 61,292, at P 6 (2008); *N.Y. Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 93 (2008); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306, at P 34 (2008)).

d. MISO Answer

82. In its answer, MISO states that the earliest date that CMMPA's rates should be made effective is 60 days after the January 19, 2011 section 205 filing to implement its Attachment O. According to MISO, granting CMMPA a retroactive effective date without good cause for its late Attachment O filing when its Brookings Project partners filed for their Attachment O modifications in a timely manner would result in CMMPA receiving favorable treatment.

e. Commission Determination

83. We deny CMMPA/MMTG's requested waiver of the 60-day notice requirement. CMMPA/MMTG requests that the Commission grant waiver of the prior notice requirement to permit a January 1, 2010 effective date. Absent "a strong showing of good cause," the Commission will generally deny waiver for rate increases that do not implement a contract or settlement requirement.¹⁰⁵ Pursuant to section 205(d) of the FPA, we will conditionally accept the proposed Tariff revisions, as amended, to become effective March 21, 2011.¹⁰⁶

6. Waivers

a. CMMPA/MMTG Requests

84. CMMPA/MMTG request waiver of the Commission's regulations concerning the Period I and Period II cost data requirements¹⁰⁷ to the extent this is deemed applicable to this filing. In light of the fact that the inputs for the formula rate are provided annually,

¹⁰⁵ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*); *see also New England Power Co.*, 73 FERC ¶ 61,392, at 62,207-08 (1995); *Ne. Util. Serv. Co.*, 123 FERC ¶ 61,324, at P 35 (2008).

¹⁰⁶ We note that the date of filing for purposes of calculating the effective date is the original filing date, January 19, 2011, and the subsequent amendments submitted by MISO in good faith to cure a deficiency will not affect the date of filing for this purpose. *Central Hudson*, 60 FERC at 61,339 n.10.

¹⁰⁷ 18 C.F.R. § 35.13(d) (2010).

CMMPA/MMTG state that waiver of these provisions is appropriate and supported by Commission precedent.¹⁰⁸

85. CMMPA/MMTG also request waiver of the filing requirements of 18 C.F.R. § 35.25(c)(4). Ordinarily, an applicant seeking 100 percent CWIP recovery as an incentive must comply with all the provisions of 18 C.F.R. § 35.25.¹⁰⁹ However CMMPA/MMTG state that the Commission has granted a general waiver of § 35.25(c)(4), and the waiver should be allowed here. In addition, CMMPA/MMTG request waiver of any other Commission rule or regulation as may be necessary to permit their application to be accepted and ruled upon by the Commission. If permission is required, CMMPA/MMTG request that any party may refer to or rely upon the Incentive Petition record in this section 205 proceeding, subject to the right of any other party to object to any such reference or reliance.

b. Commission Determination

86. We will grant CMMPA/MMTG's request for waiver of section 35.13 requirements pertaining to the filing of cost statements, consistent with our prior approval of formula rate templates.¹¹⁰ In addition, consistent with Order No. 679, we will grant CMMPA/MMTG's request for waiver of section 35.35(c)(4) in regards to CWIP.¹¹¹ Nonetheless, to the extent that parties in the hearing procedures ordered herein can show the relevance of additional information needed to evaluate this proposal, the presiding judge can provide for appropriate discovery of such information.

¹⁰⁸ Transmittal Letter at 40 (citing *Great River Energy*, 130 FERC ¶ 61,001 (2010); *Mich. Elec. Transmission Co.*, 117 FERC ¶ 61,314 (2006); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308 (2005)).

¹⁰⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, P 121 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹¹⁰ *See, e.g., Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 95 (2008); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007); *Oklahoma Gas & Electric Co.*, 122 FERC ¶ 61,071, at P 41 (2008).

¹¹¹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,236, at P 119 (2006).

7. Hearing and Settlement Judge Procedures

87. As discussed above, CMMPA/MMTG's filing raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

88. Our preliminary analysis indicates that MISO's proposed Tariff revisions have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept MISO's proposed Tariff revisions for filing, make them effective March 21, 2011, and set them for hearing and settlement judge procedures.

89. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹² If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹¹³ 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.

The Commission orders:

(A) MISO's proposed Tariff revisions are hereby accepted for filing, effective March 21, 2011, subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) MISO is hereby directed to make a compliance filing, due within 30 days of the date of this order, as discussed in the body of this order.

¹¹² 18 C.F.R. § 385.603 (2010).

¹¹³ 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 list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(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.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.