

137 FERC ¶ 61,186  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER11-2700-005

ORDER ON CLARIFICATION

(Issued December 8, 2011)

1. In this order, we grant, as discussed below, Central Minnesota Municipal Power Agency's (CMMPA) and the Midwest Municipal Transmission Group's (MMTG) (collectively, CMMPA/MMTG) request for clarification of the Commission's May 13, 2011 order.<sup>1</sup>

**I. Background**

2. On December 31, 2007, as amended on January 25, 2010 and January 11, 2011, in Docket No. EL08-32, CMMPA/MMTG filed a petition for a declaratory order seeking approval of rate incentives for their investment in the CapX2020 Brookings project (Brookings Project),<sup>2</sup> which the Commission conditionally granted.<sup>3</sup> On January 19, 2011, as amended on January 21, 2011, March 4, 2011 and March 16, 2011, in Docket No. ER11-2700, Midwest Independent Transmission System Operator, Inc. (MISO) submitted on behalf of CMMPA/MMTG proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to include CMMPA's Attachment O formula rate under MISO's Tariff.

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<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131 (2011) (May 13 Order).

<sup>2</sup> The Brookings Project is 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.

<sup>3</sup> *Cent. Minn. Mun. Power Agency and Midwest Mun. Transmission Group*, 134 FERC ¶ 61,115 (2011).

3. The May 13 Order conditionally accepted the proposed Tariff revisions, established hearing and settlement judge procedures and directed MISO to make a compliance filing. Of particular relevance to this proceeding, the Commission rejected CMMPA's proposed Attachment O variance to set the transmission plant allocator to one, finding that CMMPA has no in-service transmission assets and, absent a modification to the *pro forma* Attachment O formula rate template, CMMPA will have a transmission plant allocator of zero.<sup>4</sup> Furthermore, the Commission found that, based on the Uniform System of Accounts,<sup>5</sup> certain expenses were not properly includable in construction work in progress (CWIP).<sup>6</sup>

4. On June 13, 2011, MISO submitted further revisions to its Tariff on behalf of CMMPA/MMTG in compliance with the Commission's directives in the May 13 Order. The Commission set MISO's proposed revisions for hearing and settlement judge procedures, consolidating the compliance filing with the hearing and settlement judge procedures established in the May 13 Order.<sup>7</sup>

## **II. Request for Rehearing or, in the Alternative, Clarification**

5. CMMPA/MMTG submitted a request for rehearing or, in the alternative, clarification of the May 13 Order's determination that CMMPA must apply a transmission plant allocator of zero, thereby, disallowing recovery of operations and maintenance (O&M) and administrative and general (A&G) costs. Subsequently, on

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<sup>4</sup> May 13 Order, 135 FERC ¶ 61,131 at P 38. The Commission stated that there is currently no mechanism by which CMMPA can recover O&M and A&G expenses; however, the Commission noted that other entities faced a similar circumstance as the one faced by CMMPA in which case the Commission accepted a proposed regulatory asset account to defer such expenses for recovery over a ten-year period once construction commenced and there is an approved tariff mechanism in place. *Id.* P 38 & n.49 (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 107-109 (2009)).

<sup>5</sup> 18 C.F.R. Part 101 (2011).

<sup>6</sup> May 13 Order, 135 FERC ¶ 61,131 at P 23. The Commission noted that CMMPA has the ability to propose regulatory asset treatment in order to recover these expenditures not properly includable in CWIP. *Id.* P 11 & n.11, 23 & n.28.

<sup>7</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,060 (2011).

June 27, 2011, CMMPA/MMTG withdrew their request for rehearing, but they maintain their alternative request for clarification.<sup>8</sup>

6. More specifically, CMMPA/MMTG request that the Commission clarify that CMMPA may file to include in a regulatory asset account all of its disallowed O&M/A&G expenses, including the expenses that the Commission determined should be transferred from the CWIP account and including a return. CMMPA/MMTG state that they interpret the May 13 Order as authorizing CMMPA to file to establish a regulatory asset account and to charge all O&M/A&G costs that are non-recoverable through an alternative mechanism.<sup>9</sup>

7. On June 28, 2011, MISO Transmission Owners (MISO TOs)<sup>10</sup> filed an answer to CMMPA/MMTG's request for rehearing or, in the alternative, request for clarification, and to CMMPA/MMTG's withdrawal of their request for rehearing. They do not oppose the withdrawal of CMMPA/MMTG's request for rehearing, but they also seek to answer CMMPA/MMTG's alternative request for clarification. MISO TOs ask that we not pre-approve any costs that may be recovered through a regulatory asset account nor prejudge

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<sup>8</sup> CMMPA Withdrawal of Request for Rehearing at 2-3. CMMPA/MMTG note that CMMPA will be able to finance its participation in the Brookings Project through a regulatory asset account and, therefore, they no longer request rehearing of the May 13 Order regarding the transmission plant allocator. *Id.* at 2.

<sup>9</sup> *Id.* at 13 (citing May 13 Order, 135 FERC ¶ 61,131 at P 11 & n.11, 23 & n.28, 38 & n.49).

<sup>10</sup> MISO TOs for 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; 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, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; 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.

any issues with respect to the merits of a filing to establish a regulatory asset account. MISO TOs state that CMMPA must make a section 205 filing to establish a regulatory asset account, at which time parties will be free to intervene in response to such a filing and raise issues as appropriate.<sup>11</sup>

### **III. Discussion**

8. CMMPA/MMTG request clarification that “all O&M/A&G expenses that are disallowed because the [transmission plant] allocator is set to zero may be recovered through inclusion in a regulatory asset, including allowance for funds used before [the Brookings Project] is placed into service and a return on unamortized balances.”<sup>12</sup> We clarify that deferred cost recovery through the use of a regulatory asset is an option available to CMMPA in order to recover certain O&M and A&G costs that are otherwise unrecoverable with a transmission plant allocator of zero, i.e., CMMPA/MMTG are not barred from filing to establish a regulatory asset.<sup>13</sup>

9. In order for CMMPA to establish a regulatory asset, it must make a filing under section 205 of the Federal Power Act<sup>14</sup> demonstrating, among other things, that the creation of the regulatory asset account is appropriate and identifying each of the costs that are to be included in the regulatory asset account.<sup>15</sup> Further, CMMPA must propose and justify an effective date, amortization period, carrying charge, and accounting

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<sup>11</sup> MISO TOs Answer at 10-11.

<sup>12</sup> CMMPA/MMTG Request for Rehearing at 2.

<sup>13</sup> CMMPA/MMTG’s unopposed withdrawal of their request for rehearing of the May 13 Order became effective, by operation of law, after 15 days from the date they filed the withdrawal. 18 C.F.R. § 385.216 (2011) (the withdrawal of any pleading is effective at the end of 15 days from the filing of a notice of withdrawal, if no motion in opposition is filed within that period and the decisional authority does not issue an order disallowing the withdrawal within that period).

<sup>14</sup> 16 U.S.C. § 824d (2006).

<sup>15</sup> We note that MISO recently submitted on behalf of CMMPA/MMTG a request to establish a regulatory asset account for pre-commercial expenses associated with the Brookings Project. MISO, CMMPA Regulatory Asset Filing, Docket No. ER12-427-000 (filed Nov. 16, 2011).

mechanisms for the regulatory asset.<sup>16</sup> Finally, if regulatory asset treatment is granted prior to any regulatory asset amounts being included in rates, CMMPA must demonstrate through a section 205 filing that the costs recorded as regulatory assets are just and reasonable.<sup>17</sup>

The Commission orders:

CMMPA/MMTG's request for clarification of the May 13 Order is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>16</sup> CMMPA/MMTG do state that they plan to ask MISO to make an incentive rates filing to establish a regulatory asset and that they plan to request an amortization of the account over five years from when Brookings Project enters service. CMMPA/MMTG Request for Rehearing at 14.

<sup>17</sup> See, e.g., *RITELine Illinois, LLC*, 137 FERC ¶ 61,039, at P 95-98 (2011); *Green Power Express LP*, 127 FERC ¶ 61,031 at P 59-61; *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 63-64 (2008); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008).