137 FERC ¶ 61,250
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company
Midwest Independent Transmission System Operator, Inc.

Docket No. ER12-242-000

ORDER ON TRANSMISSION RATE INCENTIVES
AND FORMULA RATE PROPOSAL

(Issued December 30, 2011)

1. On October 28, 2011, MidAmerican Energy Company (MidAmerican) and the Midwest Independent Transmission System Operator, Inc. (MISO) (collectively, Applicants) filed, pursuant to section 205 of the Federal Power Act (FPA),[1] proposed revisions to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to allow recovery of certain transmission rate incentives, pursuant to section 219 of the FPA[2] and Order No. 679.[3] Specifically, Applicants seek approval to include 100 percent of prudently incurred Construction Work in Progress (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 MidAmerican's control (Abandoned Plant Recovery), and authorization to use a forward-looking formula rate, in connection with four new transmission projects, the Sheldon-Webster Project, the Hampton-Blackhawk Project, the Oak Grove-Galesburg Project, and the Ottumwa-Adair Project (collectively, Projects). In this order, we grant Applicants' request for transmission rate incentives with respect to each project and accept

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[1] 16 U.S.C. § 824d (2006).

[2] 16 U.S.C. § 824s.

[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).

Applicants' proposed tariff sheets for filing, effective January 1, 2012, as requested, as discussed below.

I. Proposal

A. Description of MidAmerican

2. MidAmerican, an Iowa corporation, is an electric and natural gas utility serving regulated retail customers in the states of Iowa, Illinois, South Dakota, and Nebraska, and competitive retail customers in the central and eastern United States. MidAmerican is a transmission-owning member of MISO and owns an extensive transmission system within the MISO footprint. MidAmerican is actively engaged in marketing wholesale electric power in various regions. Applicants state that, in 2010, MidAmerican provided service to approximately 729,000 electric customers in a 10,600 square mile area, and it has approximately 7,000 megawatts of wind production. MidAmerican had a peak load of 4,515 megawatts. Applicants further state that MidAmerican is a "public utility" within the contemplation of the FPA, and owns or operates approximately 2,200 miles of transmission facilities.[4] MidAmerican currently collects its annual transmission revenue requirement using the rate formula template in Attachment O of MISO's Tariff. Under the Attachment O rate formula, MidAmerican's rates are updated every June 1 to reflect historic transmission costs and loads for the previous calendar-year, as reported in MidAmerican's FERC Form No. 1.[5]

B. Description of the Projects

3. MidAmerican proposes to build four projects over a six-year period, which have been included in the MISO 2011 Multi-Value Project (MVP) Portfolio,[6] and are estimated to cost between $532 million and $572 million dollars.[7] Applicants state that

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[4] Applicants Filing, Transmittal Letter at 3.

[5] *Id.*, Ex. MEC-3 at 4-5.

[6] MidAmerican states that, even though the Projects have not received final approval, MISO staff included the Projects as Appendix A MVPs in the MISO Transmission Expansion Plan (MTEP) 2011 and MidAmerican expects the MISO Board of Directors to approve the MVP Portfolio at its December 8, 2011 meeting. MidAmerican also notes that it has not started the siting process for the Projects.

[7] Applicants Filing, Transmittal Letter at 2.

MISO evaluated the Projects on a portfolio basis as part of a set of 17 MVPs.[8] Applicants assert that the Projects will increase transmission capacity in order to meet state renewable energy standards and tap the strong potential for wind energy generation in the region.[9]

4. The Projects are:

- The **Sheldon-Webster Project**, which will consist of the Sheldon, Iowa to Burt, Iowa to Webster, Iowa 345 kV and 161 kV transmission line, the new Sheldon and Burt area 345 kV switching stations, and additional substation work at the Webster Substation (collectively, the Sheldon-Webster Project). As part of the Sheldon-Webster Project, some 161 kV facilities will be rebuilt as double-circuit 345 kV/161 kV facilities to utilize the existing rights-of-way. MidAmerican will construct and own an estimated 116 miles of the total 212 mile project.[10] MidAmerican states that the Sheldon-Webster Project will provide a second 345 kV source to the Webster Substation, increasing the reliability of the transmission system in the Webster Count/ Ft. Dodge, Iowa area.[11] The Sheldon-Webster Project is estimated to cost $295 million, with an expected in-service date of 2016.[12]

- The **Hampton-Blackhawk Project**, which will consist of the Hampton area to Blackhawk 345 kV and 161 kV transmission line, MidAmerican's portion of the Blackhawk to Hazleton 345 kV and 161 kV transmission line, and the Blackhawk 345-161 kV transformer (collectively, the Hampton-Blackhawk Project). As part of the Hampton-Blackhawk Project, some 161 kV facilities will be rebuilt as double-circuit 345 kV/161 kV facilities to utilize the existing rights-of-way. MidAmerican will construct and own an estimated 71 miles of the

[8] *Id.* at 3.

[9] *Id.* at 19.

[10] ITC Midwest LLC (ITC Midwest) will construct and own the other portion of the overall MVP project. *Id.*, Ex. MEC-2 at 8.

[11] Applicants Filing, Transmittal Letter at 5; *id.*, Ex. MEC-2 at 23.

[12] Applicants Filing, Transmittal Letter at 5.

total 189 mile project.[13] MidAmerican states that the Hampton-Blackhawk Project will provide a new transmission source to the Waterloo-Cedar Falls, Iowa metro area, which will increase the reliability of service to that area.[14] The Hampton-Blackhawk Project is estimated to cost $163 million, with an expected in-service date of 2015.

- The **Oak Grove-Galesburg Project**, which will consist of a new 345 kV and 161 kV double-circuit transmission line extending from the Oak Grove Substation in Rock Island County, Illinois to the Galesburg Substation in Knox County, Illinois, a new 345 kV facilities at the Oak Grove Substation, and a project to re-conductor the existing Substation 56-Substation 85 161 kV transmission line (collectively, the Oak-Grove Galesburg Project). MidAmerican will construct and own an estimated 32 miles of a total 74 mile project.[15] The Oak-Grove Galesburg Project is estimated to cost $75 million, with an expected in-service date of 2014.[16]

- The **Ottumwa-Adair Project**, which will consist of a new 345 kV transmission line segment as part of a new 345 kV line from the existing 345 kV Ottumwa Substation in Wapello County, Iowa to new 345 kV facilities at the Adair Substation in Adair County, Missouri (collectively, the Ottumwa-Adair Project).[17] Portions of the existing 161 kV transmission line from Wapello County Substation in Wapello County, Iowa to Adair Substation will be rebuilt as double circuit 345 kV/161 kV facilities to utilize existing rights-of-way. MidAmerican expects to own at least 17 miles of the total 71 miles of

[13] ITC Midwest will construct and own the other portion of the overall MVP project. *Id.*, Ex. MEC-2 at 8.

[14] Applicants Filing, Transmittal Letter at 5; *id.*, Ex. MEC-2 at 9-10.

[15] Ameren Service Company (Ameren) will construct and own the other portion of the overall MVP project. Applicants Filing, Transmittal Letter at 5-6; *id.*, Ex. MEC-2 at 12.

[16] Applicants Filing, Transmittal Letter at 5-6; *id.*, Ex. MEC-2 at 12.

[17] Applicants Filing, Transmittal Letter at 6; *id.*, Ex. MEC-2 at 14.

> the project.[18] The Ottumwa-Adair Project is estimated to cost $40 million, with an expected in-service date of 2017.[19]

C. **Request for Incentives**

5. Applicants request approval of two transmission rate incentives pursuant to sections 205 and 219 of the FPA and Order No. 679 for each of the Projects. First, Applicants seek CWIP Recovery during the development and construction period for the Project. They state that 100 percent CWIP Recovery will help MidAmerican maintain its overall financial integrity by ensuring a steady cash flow of the costs associated with the Projects, which also strengthens MidAmerican's ability to invest in future transmission projects.[20] Applicants also propose revisions to MidAmerican's formula rate template to implement CWIP Recovery.[21]

6. Second, Applicants request approval for Abandoned Plant Recovery in the event that any of the Projects must be abandoned for reasons outside of their control. They state that granting this incentive is appropriate because it will remove a potential disincentive to the Projects' completion by eliminating the risk that shareholders may have to bear the costs of transmission projects that are cancelled for reasons outside of MidAmerican's control.[22] Applicants also propose two revisions to MidAmerican's formula rate template to allow Abandoned Plant Recovery.[23]

7. Finally, Applicants request acceptance of certain tariff sheets, effective January 1, 2012, for MidAmerican's proposed forward-looking Attachment O formula rate with a true-up mechanism to allow MidAmerican to recover its expenses and investments in transmission through a formula rate using projected, rather than historical data.[24]

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[18] ITC Midwest will construct and own an estimated 38 miles, and Ameren will construct and own an estimated 33 miles of the overall MVP project. *Id.*, Ex. MEC-2 at 14.

[19] Applicants Filing, Transmittal Letter at 6; *id.*, Ex. MEC-2 at 14.

[20] Applicants Filing, Transmittal Letter at 20-22.

[21] *Id.* at 10.

[22] *Id.* at 22-24.

[23] *Id.*

[24] *Id.* at 6-7, 11-12.

D. Technology Statement

8. 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 projects, Applicants state that MidAmerican plans to employ the following advanced technologies for the Projects: (1) T2 conductors;[25] (2) single steel pole construction; (3) phase balancing technology; and (4) optical ground wire technology.[26] Applicants further state that MidAmerican plans to use other advanced technologies as needed, including micro-processor based protective relays, a smart-grid wide area measurement system, advanced disturbance monitoring equipment that consists of digital fault recorders and sequence of event recorders, programmable logic controller-based control and annunciation, efficient and resilient 345-161 kV transformers, synchronous closing circuit breakers for reactor and capacitor switching, optical voltage sensors, and substation automation architecture.[27]

II. Notice of Filing and Responsive Pleadings

9. Notice of Applicants' filing was published in the *Federal Register*, 76 Fed. Reg. 69,258 (2011), with interventions and protests due on or before November 18, 2011. Illinois Commerce Commission (Illinois Commission) and Indiana Utility Regulatory Commission (Indiana Commission) submitted notices of intervention. Ameren, Consumers Energy Company, Midwest ISO Transmission Owners (MISO Transmission Owners),[28] City of Pella, Iowa (City of Pella), and Midwest Municipal Transmission

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[25] T2 conductors consist of two standard round conductors twisted around each other with a twist length of approximately three meters. MidAmerican states that T2 conductors provide a major reliability benefit during the winter months in the upper Midwest due to the prevention of wind-inducing galloping on icing conductors. *Id.*, Ex. MEC-2 at 41.

[26] Optical ground wires consist of fiber optic cables imbedded in the core of the shield wires. MidAmerican states that optical ground wires provide high-capacity, high-speed communication channels that allow MidAmerican to more efficiently maintain reliable grid operation and security. MidAmerican explains that this is because private optical communication facilities provide much more bandwidth and are more reliable than leased communications facility, especially in rural areas. *Id.* at 43.

[27] *Id.* at 41-44.

[28] MISO Transmission Owners 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;

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Group (Midwest Municipal) filed timely motions to intervene and comments. In addition to their timely intervention, Indiana Commission filed a timely protest.

10. On November 21, 2011, and on November 23, 2011, the Organization of MISO States (OMS) and Illinois Commission filed motions to intervene and/or comments out-of-time, respectively.

11. On December 2, 2011 and December 5, 2011, MidAmerican and MISO Transmission Owners filed a motion for leave to answer and answer to the comments and protests, respectively. On December 13, 2011, Midwest Municipal filed a reply to the MidAmerican's answer.

III. <u>Discussion</u>

A. <u>Procedural Matters</u>

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), we will grant Illinois Commission's and OMS' late-filed motions to intervene given their interest in this proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept MidAmerican's and MISO

American Transmission Company LLC; Central Minnesota Municipal Power Agency; 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, Inc.; Indiana Municipal Power Agency; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; 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 Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

Transmission Owners' answers and Midwest Municipal's reply because they have provided information that assisted us in our decision-making process.

B. Requests to Suspend Commission Action

1. Comments

14. OMS requests that the Commission suspend this filing pending the outcome of Docket No. RM11-26-000, in which the Commission has published a Notice of Inquiry reevaluating its transmission incentive regulation and policies.[29] OMS argues that the Commission should avoid making substantive decisions on transmission incentives in the Notice of Inquiry while it is reviewing its policies on transmission incentives because those incentives may become anachronistic in light of new Commission policies and such incentive awards would not encourage the development of transmission infrastructure in the most cost-effective manner.[30] In the alternative, OMS recommends that the Commission reject the filing without prejudice to refiling upon completion of the Notice of Inquiry proceeding.[31] Additionally, Indiana Commission also requests that the Commission stay this proceeding until it has reconsidered its policies on transmission rate incentives in Docket No. RM11-26-000.[32]

2. Answers

15. MidAmerican states that the Commission has already clarified in the Notice of Inquiry that it will not suspend Commission consideration of requests for incentives.[33] MidAmerican further states that neither OMS nor Indiana Commission have identified the harm that may occur by the Commission's timely action on MidAmerican's filing other than speculation that the Commission's policies on granting incentives may change.

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[29] OMS Comments at 2.

[30] *Id.*

[31] *Id.*

[32] Indiana Commission Protest at 3.

[33] MidAmerican Answer at 3 (citing *Promoting Transmission Investment Through Pricing Reform,* Notice of Inquiry, 135 FERC ¶ 61,146, at P 13 n.18 (2011)).

Therefore, MidAmerican states that an indefinite deferral of action on a section 205 filing is not appropriate.[34]

16. MISO Transmission Owners also state that the Commission should deny the requests to reject or defer action on the application pending the outcome of the Notice of Inquiry proceeding. MISO Transmission Owners maintain that deferring action or rejecting the application on the basis of the Notice of Inquiry would cause regulatory uncertainty during a time when the Commission is encouraging the construction of transmission. Furthermore, MISO Transmission Owners state that the Notice of Inquiry did not indicate any intention to forestall action on requests for approval of transmission rate incentives and, in fact, declared the opposite.[35] Additionally, MISO Transmission Owners argue that section 205(d) of the FPA obligates the Commission to act on this section 205 filing within 60 days of filing and, thus, should reject the proposals to delay action beyond the statutory period.[36]

3. <u>Commission Determination</u>

17. We will deny the requests to stay this proceeding or reject the instant filing without prejudice pending the outcome of the Notice of Inquiry on transmission incentives. The Commission expressly stated in the Notice of Inquiry that "[d]uring the pendency of this proceeding, the Commission will continue to evaluate incentive requests under Order No. 679 on a case-by-case basis."[37] Therefore, we reject OMS' and Indiana Commission's request to reject or defer a substantive ruling in this proceeding on the basis of the Commission's issuance of the Notice of Inquiry.

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[34] *Id.* at 3-4.

[35] MISO Transmission Owners Answer at 3-4 (citing Notice of Inquiry, 135 FERC ¶ 61,146 at P 13 n.18, 14).

[36] *Id.* at 5 (citing 16 U.S.C. § 824d(d); *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074, at P 187 (2011)).

[37] Notice of Inquiry, 135 FERC ¶ 61,146 at P 13, n.18. *See also, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at P 187 ("If the Commission refrained from acting on proposals merely to avoid potential conflicts with potential future rulemakings, it would be hampered in its ability to complete its work that is required by the FPA."); *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,207, at P 49 (2010) (declining to grant a request to defer action on a section 205 filing until issuance of a final rule because the Commission does not have the authority under section 205 to defer action on a filing beyond the statutory deadline).

C. Request to Participate and Order Conference

1. Comments

18. Midwest Municipal and the City of Pella state that they are interested in participating in the development of the Projects[38] and request that the Commission order a conference in which interested parties, such as Midwest Municipal and the City of Pella, can discuss participation in the Projects.[39] Midwest Municipal states that holding such a conference would help to ensure that the requested incentives are just and reasonable and in the public interest.[40] They also state that the Commission has recognized the public benefits of public power participation in major transmission projects. Midwest Municipal states that it has not yet been able to have serious discussions with MidAmerican concerning its participation in the Projects and the terms of such participation. It states that it will formally contact MidAmerican shortly after filing its comments.[41]

2. Answers

19. MidAmerican states that the MOU does not compel any particular arrangement between MidAmerican and Midwest Municipal because any decisions regarding joint ownership in regional transmission facilities are subject to the "mutual agreement" of MidAmerican and Midwest Municipal, and it is clear that MidAmerican retains full authority over its investment decisions.[42] MidAmerican further states that it stands ready to discuss Midwest Municipal's interests in additional transmission investment, and it currently meets with Midwest Municipal on a regular basis. However, MidAmerican contends that the request to convene a conference is not relevant to this proceeding.[43]

[38] Midwest Municipal contends that it has a legal right to participate in the Projects because it has entered into an Agreement and Memorandum of Understanding (MOU) with MidAmerican, which Midwest Municipal argues, provides a contractual vehicle for Midwest Municipal transmission participation. Midwest Municipal Comments at 8.

[39] *Id.* at 6-9; City of Pella at 3 (supporting Midwest Municipal's comments).

[40] Midwest Municipal Comments at 9.

[41] *Id*. at 2.

[42] MidAmerican Answer at 6.

[43] *Id.* at 6-7.

MidAmerican further states that this proceeding is confined to the two incentive requests and authorization for a forward-looking formula rate and Midwest Municipal's potential interest in investing in the MidAmerican facilities has no bearing on whether MidAmerican's filing is just and reasonable.[44] Finally, MidAmerican states that Commission policy does not permit the suspension of a section 205 filing and request for incentives in order to convene an open-ended discussion about how third parties may invest in MidAmerican's transmission facilities.[45]

20. In reply to MidAmerican's answer, Midwest Municipal states that the Commission should order a conference because joint participation clearly furthers Commission policy.[46] Contrary to MidAmerican's implicit concern that a conference to discuss participation by interested parties would delay transmission construction, Midwest Municipal states that it supports construction and does not ask that the Commission delay an incentives order to allow for a conference. Accordingly, Midwest Municipal asserts that a conference will not delay transmission construction or the ordering of incentives.[47] Midwest Municipal also contends that MidAmerican is incorrect in stating that "[its] potential interest in investing in the MidAmerican facilities has no bearing on whether MidAmerican's filing is just and reasonable."[48] Midwest Municipal explains that the pro-competitive need to allow joint participation makes Commission action appropriate here.[49] Further, because the Projects support the construction of MVPs, Midwest Municipal argues that antitrust issues are implicated and the Commission has the broad authority to prevent the impeding of competition and reliability and to ensure just and reasonable rates.[50] Finally, Midwest Municipal argues that the MOU: (1) is consistent with the Commission's policy of supporting the ability of smaller municipal systems to participate in planning and transmission development; (2) is a valid, binding contract that

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[44] *Id.* at 7.

[45] *Id.*

[46] Midwest Municipal Reply at 3.

[47] *Id.* at 4.

[48] *Id.* at 5 (quoting MidAmerican Answer at 7).

[49] *Id*.

[50] *Id.* at 6-7 (citing 15 U.S.C. § 825h; *Gulf States Utils. Co. v. FPC*, 411 U.S. 747 (1973); *United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223 (1965); *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153 (D.C. Cir. 1967)).

was relied upon by MidAmerican to obtain market-based rates and merger authorizations; and (3) requires that the parties negotiate.[51]

3. Commission Determination

21. The Commission encourages joint ownership that allows public power participation and investment in transmission facilities.[52] Nonetheless, the Commission expressly stated in Order No. 679 that "[the Commission] will not, however, require public power or other joint participation in a transmission project in order for investment in a project to be eligible for incentives."[53] Therefore, we will not require public power participation in the Projects in order for MidAmerican to be eligible for incentives, and we find that Midwest Municipal's and the City of Pella's claim that MidAmerican should provide other entities with the opportunity to invest in the Projects is outside the scope of this proceeding. Accordingly, we reject Midwest Municipal's and the City of Pella's request to order a conference for interested parties to discuss potential participation in the Projects.

D. Section 219 Requirement

22. In the Energy Policy Act of 2005,[54] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by Applicants.

23. Pursuant to Order No. 679, 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."[55] Also, as part of this demonstration, "section 219(d) provides that all rates approved under the Rule are subject to the requirements of

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[51] *Id.* at 6-10.

[52] *See Cent. Minn. Mun. Power Agency*, 134 FERC ¶ 61,115, at P 19 n.23 (2011); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 354.

[53] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 356.

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

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

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."[56]

24. 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 must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.[57] Order No. 679 established a process for an applicant to follow to demonstrate that it meets this standard, including a rebuttable presumption that the standard 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.[58] 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.[59]

1. <u>Proposal</u>

25. Applicants argue that the Projects are entitled to a rebuttable presumption that section 219 is satisfied. Applicants state that the Projects have been thoroughly reviewed by MISO and vetted through MISO's regional transmission planning process and they expect the MISO Board of Directors to approve the Projects under Criterion 1 of the MVP Criteria[60] as part the MISO MVP Portfolio during the December 2011 meeting.

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

[57] 18 C.F.R. § 35.35(i) (2011).

[58] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

[59] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

[60] Under the MISO tariff, for a project to be designated as an MVP, among other things, it must satisfy one of three functional criteria. To satisfy Criterion 1, "[an MVP] must be developed through the [MTEP] process for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of

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Because the Projects satisfy Criterion 1, Applicants contend that the Projects qualify for the rebuttable presumption.[61]

2. **Comments**

26. Illinois Commission argues that Applicants have not satisfied the requirements for receiving a rebuttable presumption. In particular, Illinois Commission points out that the MISO Board of Directors has not approved the Projects' inclusion in Appendix A of the MTEP nor have the Illinois and Iowa authorities granted the requisite approval for the Projects. Illinois Commission maintains that the Commission should deny Applicants' request or hold action in abeyance until the Applicants can demonstrate satisfaction of one of the rebuttable presumptions. Furthermore, Illinois Commission argues that Criterion 1 of the MVP Criteria does not require that the Projects actually ensure reliability or reduce the cost of delivered power by reducing transmission congestion. Accordingly, even if the MISO Board of Directors accepts the Projects as part of the MISO MVP Portfolio, Illinois Commission maintains that the Projects are not eligible for a rebuttable presumption.[62] Furthermore, Illinois Commission argues that it would be inappropriate for the Commission to grant the incentives request because the Projects' expected in-service dates or lead times are preliminary.[63]

3. **Answer**

27. MidAmerican states that it has provided information explaining how each of the Projects would ensure reliability and provide benefits to the MISO region and therefore it is not relying solely on the MVP portfolio analysis.[64] MidAmerican further argues that the Commission has already determined that "approval in the MTEP as an MVP under Criterion 1 'establishes eligibility for the Order No. 679 rebuttable presumption that

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generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade." MISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 3451A.

[61] Applicants Filing, Transmittal Letter at 15 (citing *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 31 (2011) (*Ameren*)).

[62] Illinois Commission Comments at 4-8.

[63] *Id.* at 3-4.

[64] MidAmerican Answer at 7-8.

relies on a transmission planning process.'"[65] Accordingly, MidAmerican asserts that the Commission should reject Illinois Commission's argument as a collateral attack on the prior Commission order because Illinois Commission raised this same argument in Docket No. EL10-80-000 and the Commission rejected it.[66] Regarding the in-service dates, MidAmerican argues that the fact that the projected in-service dates for the Projects are not final is not a basis for denying incentives.[67] MidAmerican points out the majority of rate incentive applications have estimated in-service dates because the projects have not yet been built.[68]

4. Commission Determination

28. As stated above, Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or one that has received construction approval from the appropriate state authority, if the process considers whether a project ensures reliability or reduces the cost of delivered power by reducing congestion.[69] Further, in Order No. 679, the Commission indicated that it would consider a request for incentive treatment for a project, which is still undergoing consideration in a regional planning process, but may make any requested rate treatment contingent upon the project being approved under the regional planning process.[70]

29. We find that each of the Projects is entitled to the rebuttable presumption because the MISO Board of Directors approved each of the Projects under Criterion 1 as part of Appendix A of the MTEP on December 8, 2011.[71] Therefore, with regard to Illinois Commission's argument that the filing is premature, we find that approval of the Projects

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[65] *Id.* at 8 (quoting *Ameren*, 135 FERC ¶ 61,142 at P 31).

[66] *Id.*

[67] *Id.* at 10.

[68] *Id.*

[69] 18 C.F.R. § 35.35(i) (2011).

[70] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 n.39.

[71] *See MISO Approves 215 New Transmission Projects*, *available at* https://www.midwestiso.org/AboutUs/MediaCenter/PressReleases/Pages/MISOBoardApproves215NewTransmissionProjects.aspx.

by the MISO Board of Directors moots this argument. We also note that the Commission stated in Order No. 679 that it will consider incentives requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.[72] Thus, the Commission has not found that lacking final approval from the regional planning process is a basis for rejection of, or holding action in abeyance on a request for transmission incentives, as suggested by Illinois Commission.

30. With regard to Illinois Commission's argument that the Projects' in-service dates are preliminary, the Commission finds that this argument is not a basis for denying incentive requests. In Order No. 679, the Commission explained that "it is valuable for an applicant to obtain an order indicating it qualifies for incentive-based rates prior to making a formal section 205 filing and prior to commencing siting, permitting and construction activities because such orders facilitate financing and investment in new facilities."[73] Thus, requiring applicants to demonstrate the exact in-service date, rather than an estimated date, is not required by Order No. 679.

E. Order No. 679 Nexus Requirement

31. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[74] The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

32. As part of this evaluation, the Commission has found the question of whether a project is routine to be particularly probative.[75] In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine

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[72] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58 & n.39.

[73] *Id.* P 77.

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

[75] *Baltimore Gas &Elec. Co.*, 120 FERC ¶ 61,084, at P 48 (*BG&E*), *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *reh'g denied*, 122 FERC ¶ 61,034, *reh'g denied*, 123 FERC ¶ 61,262 (2008).

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).[76] 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."[77]

33. More recently, the Commission stated that an applicant may demonstrate that several individual projects are appropriately considered as a single overall project based on their characteristics or combined purpose, and seek incentives for that single overall project.[78] The Commission has also stated that if the applicant is unable to satisfy that criterion, then the applicant may still file a single application for incentives, but the Commission will consider each individual project separately in applying the nexus test and determining whether each project is routine or non-routine.[79]

1. Proposal

34. Applicants assert that none of the Projects are routine because each: (1) is an MVP and any MISO MVP is not routine by its very nature; (2) requires sizeable investments, estimated to be between $532 million and $572 million over a six-year period; (3) will have long lead-times; (4) involves at least one other project participant; (5) requires approval by multiple state regulatory agencies; (6) integrates new generation resources in order to meet state renewable energy standards and tap the strong potential for wind energy generation in the region; (7) is a regional project that involve multiple utilities; and (8) will utilize several advanced transmission technologies.

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

[77] *Id.* P 54.

[78] *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010) (citing *PacifiCorp*, 125 FERC ¶ 61,076 (2008)).

[79] *Id.*

a. MVP Category

35. Applicants contend that the MVP category was specifically developed to accommodate extraordinary types of projects, which deliver regional benefits and address public policy requirements.[80] Further, Applicants claim that the MVP projects themselves represent substantial increases in terms of added miles of transmission lines and investment. Applicants state that the MISO MTEP 2011 MVPs total over 2,000 miles of 345 kV transmission line, which compares to the annual average of 160 miles of 345 kV transmission lines approved in total in MTEPs 2008-2010, and represents $5.2 billion of investment as compared to the annual average MTEP costs of $400 million approved by MISO in 2008-2010.[81] Accordingly, Applicants argue that the Projects are not routine because they are MVPs and that MVPs are by their very nature not routine.[82]

b. Scope of Projects

36. Next, Applicants argue that the Projects are not routine in light of the capital investment that MidAmerican expects to make in them.[83] MidAmerican asserts that the scope of the Projects is significant as MidAmerican estimates the costs of the Projects to be between $532 million and $572 million over a six-year period, which will effectively result in MidAmerican's existing transmission plant investment ($450 million) more than doubling. Thus, the investment associated with the Projects is two times greater than MidAmerican's current net transmission plant in service. Moreover, Applicants state that the annual capital investment in the Projects will require an average expenditure of $89 million to $95 million over the next six years. They further state that MidAmerican currently spends an average of $23 million per year on transmission projects. Thus, Applicants assert that the Projects would more than quadruple MidAmerican's current annual investment.[84]

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[80] Applicants Filing, Transmittal Letter at 17; *id.*, Ex. MEC-2 at 35-36.

[81] Applicants Filing, Transmittal Letter at 17.

[82] *Id.*

[83] *Id.* (citing *BG&E*, 120 FERC ¶ 61,084 at P 53; *Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 54 (2008)).

[84] *Id.*

37. Applicants also state that the Projects will, to a large degree, overlap with each other and, therefore, contend that it is reasonable, from a financing perspective, to evaluate the impact of the Projects in the aggregate. Applicants, however, contend that, even if evaluated on an individual basis, the costs of each of the Projects demonstrate that they are not routine.[85] MidAmerican asserts that both the Sheldon-Webster Project and the Hampton-Blackhawk Project are clearly significant investments when compared to MidAmerican's current rate base of 65 percent and 36 percent, respectively, of MidAmerican's current rate base. Applicants further state that the Oak Grove-Galesburg Project and the Ottumwa-Adair Project are extraordinary when evaluated in terms of MidAmerican's average annual capital investment (i.e., approximately 175 percent and 321 percent, respectively).[86]

c. <u>Lead Times</u>

38. Consistent with other projects that have been approved for incentives, Applicants contend that the Projects will have a long lead time.[87] MidAmerican states that the Projects would be placed in-service, under the following time-frames: (1) the Sheldon-Webster Project at the end of 2016; (2) the Hampton-Blackhawk Project at the end of 2015; (3) the Oak Grove-Galesburg Project at the end of 2014, but the in-service date may occur in 2018; and (4) the Ottumwa-Adair Project at the end of 2017. MidAmerican asserts that these long-lead times create additional risks, including risks of delay and financing, and the impact on MidAmerican of difficulties encountered by other project participants.[88]

d. <u>Siting Risks and Multiple Participants</u>

39. Additionally, Applicants identify risks and challenges associated with each project. As noted above, they state that each project is a component of a larger MVP that involves at least one other project participant. Applicants contend that there is a "special risk" present because MidAmerican's ultimate success in completing each project, realizing each Projects' benefits, and maintaining MVP status depends upon the other

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[85] *Id.*

[86] *Id.* at 17-18.

[87] *Id.* at 18 (citing *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284, at P 59 (2007); *Okla. Gas & Elec. Co.*, 133 FERC ¶ 61,274, at P 45 (2011); *Desert Sw. Power, LLC,* 135 FERC ¶ 61,143, at P 65 (2011)).

[88] *Id.*

project participants completing their portions of the Projects in a timely manner.[89] Applicants further state that MidAmerican is dependent on each participating partner to deliver on its obligations, attract the necessary capital, secure the required state permits, and perform the various planning, design, and construction activities needed to complete the MVPs that connect to the Projects. Applicants also note that the Projects require approval of multiple state regulatory agencies, specifically Illinois and Iowa, while other project participants (Ameren and ITC Midwest) will need to obtain state approvals in Iowa, Minnesota, Illinois and Missouri.[90] Applicants further contend that additional formal governmental approvals, public education and participation in the routing process will be necessary to avoid potential opposition to or protracted delay of the Projects. Applicants also note that, once the routes are designated, MidAmerican will need to notify and secure easements from landowners spanning potentially hundreds of miles of rights-of-way through either consent or condemnation proceedings.[91]

e. **Integration of New Generation**

40. Applicants state that one of the reasons MidAmerican is constructing the Projects is to increase transmission capacity in order to meet state renewable energy standards and tap the strong potential for wind energy in the region. Consequently, it asserts that increasing the system's capability to deliver new renewable resources involves risks and provides regional benefits that are not present in routine projects.[92]

f. **Regional Nature of the Projects**

41. Applicants contend that the Commission has found that regional projects are "by definition" not routine,[93] and argue that the Projects involve multiple utilities developing a joint plan to meet what they call the "backbone" transmission infrastructure needs of a large region for most of the next decade. Further, Applicants state that each project requires coordination with MISO, non-MISO utilities, Commission-jurisdictional and non-jurisdictional utilities, and investor-owned and public power utilities.[94] Therefore,

[89] *Id.*

[90] *Id.*, Ex. MEC-2 at 39-40.

[91] *Id.*, Transmittal Letter at 19.

[92] *Id.*

[93] *Id.* (citing *BG&E*, 120 FERC ¶ 61,084 at P 58).

[94] Applicants Filing, Transmittal Letter at 19-20; *id*., Ex. MEC-2 at 36-37.

Applicants assert that MidAmerican is dependent on each participating partner to deliver on its obligations to successfully attract significant capital, secure required state permits, and perform the various planning, design, and construction activities needed to complete the MVPs that connect to the Projects.[95]

42. Applicants also contend that each project works in conjunction with the total set of 17 MVPs to provide regional benefits across the entire MISO footprint.[96] In particular, Applicants state that the Sheldon-Webster Project and the Hampton-Blackhawk Project and the other parts of MVP No. 3 and MVP No. 4 work together to collect power and energy from the MVP Candidate Incremental Wind Areas and other wind-generation-rich areas of northwestern Iowa and southwestern Minnesota and transmit it to eastern Iowa. Applicants state that the Sheldon-Webster Project and the Hampton-Blackhawk Project also works in conjunction with other MVPs to transmit wind generation power and energy from southern Minnesota and the Dakotas to Illinois and Iowa, and to address congestion by providing additional pathways for energy to flow.[97] Applicants further state that the Oak Grove-Galesburg Project and the other MVP projects work together to address congestion by increasing the ability to transmit power and energy between Iowa to Illinois. Finally, Applicants assert that the Ottumwa-Adair Project along with other portions of MVP No. 7 allows additional power and energy to be transmitted between southern Iowa to northern Missouri.[98]

g. <u>Advanced Technology</u>

43. Applicants argue that the Projects cannot be considered routine because of their use of advanced technologies.[99] As discussed above, Applicants state that MidAmerican plans to employ the following advanced technologies in each of the Projects: (1) T2 conductors; (2) single steel pole construction; (3) phase balancing technology; and (4) optical ground wire technology.[100]

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[95] *Id.*, Ex. MEC-2 at 39.

[96] *Id.* at 29.

[97] *Id.*

[98] *Id.* at 30.

[99] *Id.*, Transmittal Letter at 20.

[100] *Id.*, Ex. MEC-2 at 41-44.

h. Needs and Benefits Addressed by the Projects

44. In addition, Applicants expect each project to provide congestion relief, mitigate North American Electric Reliability Corporation (NERC) contingencies, improve reliability, integrate new renewable generation, and enhance transfer capabilities. With respect to congestion relief, Applicants state that the Sheldon-Webster Project and the Hampton-Blackhawk Project are grouped together in the MTEP Report for purposes of mitigating constraints.[101] Both projects are part of the MVP No. 3 and No. 4, and are expected to mitigate transmission constraints for twenty-nine NERC Category B contingencies and thirty-three NERC Category C contingencies. These projects also will be located in the general vicinity of several proposed wind farms currently in MISO's queue.[102] The Oak Grove-Galesburg Project is part of MVP No. 16 and is expected to mitigate transmission constraints for ten NERC Category B contingencies and eleven NERC Category C contingencies.[103] The Oak Grove-Galesburg Project also will provide reinforcement and establish a tie between the states of Iowa and Illinois to assist with congestion and price differentials. The Oak Grove-Galesburg project also will reduce loop flows on the Oak Grove to Galesburg 161 kV transmission line during west-to-east and east-to-west power transfer conditions.[104] The Ottumwa-Adair Project is part of MVP No. 7 and is expected to mitigate transmission constraints for five NERC Category B contingencies and six NERC Category C contingencies. The Ottumwa-Adair Project also will provide reinforcement and establish an additional north-south path between Iowa and Missouri, which is expected to experience increasing congestion due to new generation.[105]

2. Commission Determination

45. Applicants presented four distinct projects in its application and, therefore, we will review them as such. We find that Applicants have demonstrated that the scope and effect of each project is significant, making each project non-routine. Therefore, we find that Applicants have sufficiently demonstrated a nexus between the risks and challenges

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[101] *Id.* at 21-24.

[102] *Id.* at 21-22.

[103] *Id.* at 24-26.

[104] *Id.*

[105] *Id.* at 27-28.

they are undertaking to develop and construct each of the four projects and the incentives they have requested.

46. Applicants have demonstrated that the scope and effects of the Sheldon-Webster Project, the Hampton-Webster Project, and the Oak Grove-Galesburg Project are significant, which contributes to our determination that those projects are non-routine.[106] Relative to MidAmerican's current rate base, we find that these investments are significant and would challenge MidAmerican's ability to maintain adequate cash flows to prevent the degradation of its credit metric and ratings, which is critical to maintaining the availability of reasonably priced capital. The safety margin from a higher credit rating is ultimately beneficial for MidAmerican's customers, as it protects from rate increases associated with potential increases in financial costs as a result of MidAmerican's investment in these projects.

47. Applicants also have demonstrated that the effects and the risks and challenges faced by the Ottumwa-Adair Project are significant, which contributes to our determination that this project is non-routine. The Ottumwa-Adair Project involves two other project participants, Ameren and ITC Midwest, and it is not expected to be place in-serviced until the end of 2017. Further, this project is expected to span multiple states, increasing the risk associated with obtaining state regulatory and routing permits. We also note that the Ottumwa-Adair Project provides key reinforcement in an area experiencing congestion between Iowa and Missouri.[107]

48. Additionally, we find that it is relevant for purposes of the nexus test that each of the four projects is expected to provide congestion relief, mitigate NERC contingencies, improve reliability, integrate new renewable generation including wind generation, and enhance transfer capabilities.

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[106] With regard to the Sheldon-Webster Project, Applicants estimate MidAmerican's investment to be $295 million, which represents 65.56 percent of MidAmerican's current rate base. With regard to the Hampton-Blackhawk Project, Applicants estimate MidAmerican's investment to be $163 million, which represents 36.22 percent of MidAmerican's current rate base. Finally, with regard to the Oak Grove-Galesburg Project, Applicants estimate MidAmerican's investment to be $74 million, which represents 16.44 percent of MidAmerican's current rate base.

[107] Applicants Filing, Ex. MEC-2 at 27.

F. Construction Work in Progress

1. Proposal

49. Applicants seek CWIP Recovery during the development and construction period for the Projects.[108] Applicants state that authorizing CWIP Recovery will: (1) benefit MidAmerican's customers by reducing the price increase that would otherwise occur when MidAmerican places the Projects in-service; and (2) improve MidAmerican's cash flow and support its credit metrics during construction of the Projects.[109] Unlike the traditional capitalized allowance for funds used during construction (AFUDC) method, Applicants state that CWIP Recovery improves a utility's cash flows by stabilizing borrowing costs and providing an additional source of financing. Furthermore, Applicants state that CWIP Recovery reduces the total dollar amount eventually placed into rate base and collected from customers because interest does not accumulate on funds allocated under the CWIP Recovery. Applicants note that CWIP Recovery reduces the costs of the Projects by a total of over $146.7 million or 7.1 percent when compared to the traditional AFUDC method.[110] Finally, Applicants note that CWIP Recovery results in a more gradual rate increase to customers.[111]

50. Applicants state that they have attached a Statement Business Manual in support of MidAmerican's CWIP Recovery request as required under section 35.13(h)(38) of the Commission's regulations.[112] Applicants also state that they have satisfied the requirements of sections 35.25 (e) and (f) of the Commission's regulations,[113] and state that, in developing its expansion program, MidAmerican considered alternative strategies and is only seeking CWIP Recovery for Projects that receive state siting authorization.[114] Applicants also state that developed accounting procedures ensure that MidAmerican will

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[108] *Id.* at 20-22.

[109] *Id.*, Ex. MEC-4 at 2.

[110] *Id.* at 6.

[111] *Id*.

[112] 18 C.F.R. § 35.13(h)(38) (2011); Applicants Filing, Ex. MEC-2.1.

[113] 18 C.F.R. §§ 35.25 (e)-(f) (2011).

[114] Applicants Filing, Transmittal Letter at 26-27.

not double recover investment costs through AFUDC and CWIP.[115] Applicants further contend that they have satisfied the requirements in sections 18 C.F.R. §§ 35.25(c)(4) and (g)[116] related to the anti-competitive impacts of CWIP Recovery by providing extensive information regarding the CWIP balances for the year 2012, the estimated amount of CWIP in rate base for the years 2012 through 2017 and a comparison of the rate impact of CWIP Recovery with traditional AFUDC recovery.[117]

51. Applicants next propose that MidAmerican will annually file the FERC-730 form, Report of Transmission Investment Activity, with the Commission in order to satisfy the annual filing requirement for CWIP Recovery applicants.[118] Applicants state that the annual FERC-730 form requires MidAmerican to provide information regarding transmission investment costs and project construction status, including estimated completion dates.[119] Further, as part of the annual customer notification and information procedures, MidAmerican will develop and post Open Access Same-Time Information System (OASIS) work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP Recovery amounts to be included in its estimates for each year.

2. <u>Commission Determination</u>

52. We will grant Applicants' request to include 100 percent of CWIP in rate base. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently incurred transmission-related CWIP in rate base.[120] The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[121]

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[115] *Id*.

[116] 18 C.F.R. §§ 35.35 (c)(4), (g) (2011).

[117] Applicants Filing, Transmittal Letter at 28.

[118] *Id.*

[119] 18 C.F.R. §§ 35.25(h)(1)-(2) (2011).

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

[121] *Id.* P 115.

53. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.[122] We find that Applicants have shown a nexus between the proposed CWIP Recovery and its investment in each of the four projects. As discussed above, the Sheldon-Webster Project is estimated to cost $295 million and the project is expected to go into service around 2016. The Hampton-Blackhawk Project is estimated to cost $163 million based on an expected in-service date of 2015. The Oak-Grove Galesburg Project is estimated to cost $75 million based on an expected in-service date of 2014. The Ottumwa-Adair Project is estimated to cost $40 million based on an expected in-service date of 2017. The cost and timing for completing these projects will put pressure on MidAmerican's finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense as MidAmerican moves forward with each project. Considering the relative size of MidAmerican's investment in each project, as compared to its current transmission rate base, we find that authorization of the CWIP incentive is appropriate to assist in the construction of new transmission facilities.

54. Under Order No. 679 and the Commission's regulations, an applicant must propose accounting procedures that ensure customers will not be charged for both capitalized allowance for funds used during construction (AFUDC) and corresponding amounts of CWIP in rate base.[123] To satisfy this requirement, Applicants explain, if the Commission grants their request for 100 percent CWIP, MidAmerican will use a two-step accounting methodology to ensure that it does not double recover with AFUDC and a return on CWIP on a project once it is included in rate base.[124] Applicants explain that MidAmerican will calculate AFUDC for the Projects and then book a regulatory liability equal to 100 percent of the AFUDC for each project. Applicants propose to include this regulatory liability as a reduction to rate base in its transmission formula rate by creating a "Pre-funded AFUDC Regulatory Liability" entry in Attachment O – MidAmerican (page 2, line 23a). Once the project is placed in-service, Applicants propose to amortize the amount of the Pre-funded AFUDC Regulatory Liability over the life of the Projects.[125] Applicants explain that MidAmerican will include the amortization of the regulatory liability in the depreciation expense section of its formula rate by creating a "Prefunded AFUDC Amortization" entry in Attachment O – MidAmerican (page 3,

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[122] *Id.* P 117.

[123] 18 C.F.R. § 35.25 (2011).

[124] Applicants Filing, Transmittal Letter at 20-22; *id.*, Ex. MEC-3 at 14-16.

[125] *Id.*

line 9a). Applicants also explain that MidAmerican will adopt procedures to ensure the correct amounts are booked and reviewed consistent with approaches the Commission has previously accepted, and the Sarbanes-Oxley Act.

55. Accordingly, we find that the proposed accounting procedures that Applicants filed in Exhibit No. MEC-5 sufficiently demonstrates that MidAmerican has appropriate accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent that MidAmerican is allowed to include CWIP in rate base. MidAmerican, however, must record the prefunded AFUDC regulatory liability in Account 254, Other Regulatory Liabilities, and amortize the regulatory liability by debiting Account 254 and crediting Account 407.4, Regulatory Credits.

56. To comply with the requirement that an applicant seeking CWIP Recovery in rate formulas make an annual filing with the Commission, Applicants state that MidAmerican will make such filing in its annual form FERC-730 report.[126] The Commission has previously found that filing a FERC-730 report satisfies the Commission's requirement for an annual filing for CWIP Recovery through a rate formula.[127] Accordingly, we will accept Applicants' proposal to make an annual FERC-730 report filing.

G. Abandoned Plant Recovery

1. Proposal

57. Applicants request Abandoned Plant Recovery in the event that the Projects are abandoned for reasons outside of MidAmerican's control. Applicants state that granting this incentive is appropriate because it will remove a potential disincentive to the Projects completion by eliminating the risk that its shareholders may have to bear the costs of transmission projects that are cancelled for reasons outside of MidAmerican's control.[128] Applicants state that the risk associated with each project includes: (1) the risk of reliance upon multiple participants; (2) the risks of state regulatory permitting and routing processes; and (3) cost allocation and recovery risks.[129] For this incentive, Applicants

[126] *Id.* at 28.

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

[128] Applicants Filing, Transmittal Letter at 22-24.

[129] Applicants Filing, Transmittal Letter at 22-24; *id.*, Ex. MEC-3 at 21-22.

state that MidAmerican is only seeking approval to revise its formula rate to add placeholders in Attachment O that would allow Abandoned Plant Recovery.

2. Commission Determination

58. We will grant Applicants' request for Abandoned Plant Recovery, provided that the abandonment is a result of factors beyond MidAmerican's control, which must be demonstrated in a subsequent section 205 filing for recovery of abandoned plant costs.[130] As we have emphasized in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[131]

59. We find that Applicants have demonstrated a nexus between the recovery of prudently incurred costs associated with abandoned transmission projects and its planned investment. We agree with Applicants that each project faces substantial risks outside of MidAmerican's control. Approval of the abandonment incentive will both attract financing for the Projects, and protect Applicants from further losses if any of the projects is cancelled for reasons outside MidAmerican's control. In addition, based on information in the filing, MidAmerican faces risks in the permitting process because each project still requires routing and other regulatory approvals from various state commissions.[132] These factors introduce a significant element of risk. Granting this abandoned plant incentive will help ameliorate this risk by providing MidAmerican with some degree of certainty as it moves forward.

60. However, we note that, if any of the Projects are cancelled before they are completed, MidAmerican is required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs. Applicants also must propose in its section 205 filing a just and reasonable rate to recover these costs. Order No. 679 specifically requires that any utility granted this incentive that then seeks to recover abandoned plant costs must submit such a section 205 filing.[133]

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[130] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163-166.

[131] *Id.* P 163.

[132] Applicants Filing, Transmittal Letter at 23.

[133] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166.

H. Total Package of Incentives

1. Proposal

61. Applicants state that they have tailored the requested incentives to the special risks and challenges associated with each project. Applicants note that they are not seeking any ROE-based incentives, but have limited their requested incentives to CWIP and abandoned plant.[134] Applicants further state that the two requested incentives serve the same purpose – to reduce the risks presented by transmission projects and to remove potential obstacles to construction of the Projects.[135]

2. Commission Determination

62. As noted above, in Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risk or challenges faced by the applicant. The Commission noted that 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,[136] the Commission has, in prior cases, approved multiple rate incentives for particular projects.[137] This is consistent with our interpretation of section 219 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 section 219 and that there is a nexus between the incentives proposed and the investment made.

63. Here, we find that the total package of incentives requested are tailored to the risks that MidAmerican faces in investing in each of the Projects. As discussed above, Applicants have demonstrated that each of the requested incentive will reduce the risk

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[134] Applicants Filing, Transmittal Letter at 24-25.

[135] *Id*. at 24.

[136] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55.

[137] *Atl. Grid Operations A LLC Wind*, 135 FERC ¶ 61,144, at P 127 (2011) (internal citations omitted) (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, 59, 61 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *see also Cent. Me.*, 125 FERC ¶ 61,182 at, P 100 (2008) (granting both abandonment and ROE incentives).

that MidAmerican faces and will remove potential obstacles to the construction of each project.

I. Formula Rate, Annual Rate Calculation and True-Up Procedures

1. Proposal

64. In light of MidAmerican's plans to invest approximately $532 to $572 million in new transmission lines and transmission substations over the next several years, Applicants propose that MidAmerican move from a historical-based formula rate to a forward-looking formula rate in order to collect on a current basis.[138] Applicants state that, at the wholesale level, MidAmerican's transmission rates are currently recovered through the formula rate in Attachment O of the MISO Tariff, which means that only historic costs recorded in MidAmerican's Form No. 1 are recovered. Applicants contend that there is a lag of as many as 18 months before the costs of transmission investments are recovered, which becomes problematic during years of extensive transmission expansion activity.[139]

65. Applicants state that the proposed forward-looking Attachment O will enable MidAmerican to recover its investment expenditures in the same year as costs are incurred. This will alleviate stresses on MidAmerican's cash flow position and potential downward pressure on credit ratings, and promote its ability to carry out its transmission expansion plans. Applicants further contend that MidAmerican will provide cost recovery that is consistent with other transmission owners in the MISO footprint. Finally, Applicants note that, because of the true-up mechanism, acceptance of MidAmerican's proposed forward-looking Attachment O would not result in any increase or change in the rate that MidAmerican's customers actually pay over time.

66. Applicants' proposal also includes protocols that provide customer notifications and input procedures to ensure that customers are fully informed of the basis for the estimates and subsequent true-up adjustment and have an opportunity to discuss those calculations with MidAmerican before the costs are collected through the formula rate. Applicants state that these elements of its proposal are closely modeled after the true-up

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[138] Applicants Filing, Transmittal Letter at 11.

[139] *Id*. at 12.

mechanisms and procedures that the Commission has previously accepted for other transmission owners in MISO.[140]

67. In addition, Applicants request waiver of section 35.13 of the Commission's regulations, including the requirements to submit Period I and II data, consistent with prior waivers granted by the Commission for formula rates.[141]

2. **Protests**

68. Illinois Commission and Indiana Commission claim that the annual rate calculation and true-up procedures proposed by MidAmerican are inadequate to ensure that the resulting rate is both just and reasonable and not unduly discriminatory. Specifically, they argue that interested parties do not have a meaningful opportunity to evaluate the formula rate input data or to challenge either the correctness or reasonableness of the inputs or the prudence of the costs to be recovered.[142] Illinois Commission objects to MidAmerican's proposal, as stated in its Attachment O provision, to calculate its own true-up adjustment and explain it only at a customer's request. To remedy this problem, Illinois Commission and Indiana Commission recommend that the Commission require MidAmerican to adopt additional protocols that enable interested parties, including state commissions and ratepayers, to comprehensively review and challenge rate inputs and calculations.

3. **Answer**

69. MidAmerican states that the Commission should deny Illinois Commission's and Indiana Commission's requests to revise the formula rate protocols because they do not take into account the large amount of information that is already available to the public under MISO's existing protocols. MidAmerican states that the proposed protocols

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[140] *Id.* at 8 (citing *Xcel Energy Servs., Inc.*, 121 FERC ¶ 61,284 at P 24-25, 69-70; *Mich. Elec. Trans. Co.*, 117 FERC ¶ 61,314, at P 18-20 (2006), *order on reh'g*, 118 FERC ¶ 61,139 (2007); *Int'l Transmission Co.*, 116 FERC ¶ 61,036, at P 20-21 (2007)).

[141] Applicants Filing, Transmittal Letter at 28 (citing *PPL Elec. Util. Corp.*, 125 FERC ¶ 61,121, at P 40-41 (2008); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 23 (2008); *Okla. Gas & Elec. Co.*, 133 FERC ¶ 61,274; *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007), *order on reh'g*, 122 FERC ¶ 61,037, *order on reh'g*, 124 FERC ¶ 61,231 (2008)).

[142] Illinois Commission Comments at 8-12; Indiana Commission Comments at 2-3.

require MidAmerican to post the costs that it includes in its rates and the true-up calculations on MidAmerican's OASIS page. Accordingly, MidAmerican argues that the state commissions, and any other interested party, would have the information they seek readily available to them. MidAmerican also argues that each MISO transmission owner that has forward-looking formula rates uses almost identical customer notification procedures under the MISO Attachment O. Because MidAmerican's formula rate protocols are based upon these procedures, it argues that the Commission should accept the proposed formula rate protocols.[143]

4. Commission Determination

70. We will accept Applicants' forward-looking formula rate and true-up mechanism for MidAmerican. The Commission has approved the use of forward-looking formula rates for other transmission-owning members of MISO.[144] Similarly, forward-looking formula rates, if properly designed and supported, as is the case here, would be acceptable to avoid lag in cost recovery for the Projects.

71. Additionally, we will accept Applicants' proposed protocols. Applicants' proposed protocols are virtually identical to the accepted protocols of other MISO transmission owners that use a forward-looking Attachment O formula rate and, with respect to the issue raised by Illinois Commission and Indiana Commission, also conform to MISO's Attachment O formula rate protocols. We note that Illinois Commission's and Indiana Commission's filings on that issue thus challenge MISO's existing Attachment O formula rate protocols and, therefore, are more appropriately characterized as complaints on that broader issue than as protests on the issue presented by MidAmerican in this proceeding. The Commission discourages the combination of complaints with other types of filings, including protests.[145] Accordingly, we will reject Illinois Commission's and Indiana Commission's protests pertaining to this issue, without prejudice. Illinois Commission and Indiana Commission are of course free to file separate complaints on this issue pursuant to section 206 of the FPA.

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[143] MidAmerican Answer at 10-12 (citations omitted).

[144] *See, e.g.*, *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at P 37 (2009); *Xcel Energy Servs., Inc*, 121 FERC ¶ 61,284 at P 69; *Mich. Elec. Transmission Co., LLC*, 117 FERC ¶ 61,314, at P 17 (2006).

[145] *See Entergy Servs., Inc.*, 104 FERC ¶ 61, 084, at P 13 (2003); *Yankee Atomic Elect. Co.*, 60 FERC ¶ 61,316, at 62,096 n.19 (1992); *Midwest Energy Co.*, 55 FERC ¶ 61,464, at 62,533 (1991).

72. We will grant Applicants' request for waiver of section 35.13 of the Commission's regulations. Applicants have provided testimony describing the proposed tariff changes to the formula rate, which we find sufficient to grant waiver in this case.

The Commission orders:

(A) Applicants' request for the CWIP Recovery and Abandoned Plant Recovery incentives are hereby granted, as discussed in the body of this order.

(B) Applicants' request for authorization to use forward-looking formula rates with a true-up mechanism is hereby granted, to become effective January 1, 2012, as discussed in the body of this order.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

MidAmerican Energy Company
Midwest Independent Transmission System
Operator, Inc.

Docket No. ER12-242-000

(Issued December 30, 2011)

NORRIS, Commissioner, *concurring in part*:

With increasing investments in transmission nationwide and more utilities using formula rates to recover their costs in transmission investments, the integrity in how these formula rates are calculated is critically important. It is from this perspective that I consider arguments from the Illinois and Indiana Commissions that MidAmerican's rate protocols do not enable interested parties, including state commissions and ratepayers, to comprehensively review and challenge the utilities' rate inputs and calculations.

While I agree with the majority's decision that the protests from the Illinois and Indiana Commissions raise issues more broadly with the MISO tariff that are more appropriately considered in a separate complaint, I believe the state commissions' concerns may have merit. I therefore believe that the Commission should consider whether future action is warranted to address such concerns with the rate protocols in MISO's tariff.

For this reason, I concur in part with today's order.

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John R. Norris, Commissioner