141 FERC ¶ 61,004
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

WPPI Energy Docket No. EL12-67-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 1, 2012)

1. On May 9, 2012, WPPI Energy (WPPI) filed a petition[1] requesting that the Commission issue a declaratory order granting transmission incentive rate treatments pursuant to section 219 of the Federal Power Act (FPA) and Order Nos. 679 and 679-A for its investment in the Hampton-Rochester-La Crosse Project (La Crosse Project).[2] Specifically, WPPI seeks: (1) recovery of its La Crosse Project-related pre-commercial expenses and other transmission-related expenses through a regulatory asset (Regulatory Asset); (2) a hypothetical capital structure of 45 percent equity and 55 percent debt (Hypothetical Capital Structure); and (3) 100 percent recovery of the prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond WPPI's control (Abandoned Plant Recovery). As discussed below, we grant WPPI's incentive requests.

I. Background

A. Description of WPPI

2. WPPI is a not-for-profit regional municipal power company that develops and owns generation, negotiates and holds power purchase agreements, and arranges transmission service and congestion protection on behalf of 51 customer-owned electric utilities in Wisconsin, Iowa, and the Upper Peninsula of Michigan. All of WPPI's members and their customers are located within the Midwest Independent Transmission

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[1] WPPI May 9, 2012 Petition for Declaratory Order (Petition).

[2] 16 U.S.C. § 824s (2006); *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).

System Operator, Inc. (MISO) footprint. WPPI is a market participant in the MISO energy markets, but is not currently a transmission-owning member of MISO.

B. Description of the La Crosse Project

3. The La Crosse Project, part of the CapX2020 regional transmission planning initiative, primarily consists of a proposed double-circuit capable 345 kilovolt (kV) transmission line and related 161 kV lines running from Hampton, Minnesota through the vicinity of Rochester, Minnesota and terminating near La Crosse, Wisconsin.[3] According to WPPI, the La Crosse Project's existing Project Development Agreement provides for the following participating owners and ownership shares: two Xcel Energy Services Inc. subsidiaries (Northern States Power Company, a Minnesota Corporation, and Northern States Power Company, a Wisconsin based corporation; collectively, Northern States Power) (64 percent); Southern Minnesota Municipal Power Agency (13 percent); Dairyland Power Cooperative (Dairyland) (11 percent); Rochester Public Utilities (9 percent); and WPPI (3 percent).[4] WPPI explains that the La Crosse Project is currently projected to cost approximately $488 million,[5] of which WPPI's share will be approximately $14.6 million.[6] The project is expected to be placed in service near the end of 2015.

II. Notice of Filing and Responsive Pleadings

4. Notice of WPPI's Petition was published in the *Federal Register,* 77 Fed. Reg. 28,872 (2012), with interventions and protests due on or before June 8, 2012. Exelon Corporation filed a motion to intervene. The Midwest Municipal Transmission Group and Dairyland filed motions to intervene and comments in support of WPPI's Petition.

III. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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[3] Petition at 7.

[4] *Id.* at 9.

[5] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 23.

[6] Direct Testimony of Marty Dreischmeier, Ex. WPPI-2 at 4.

B. Substantive Matters

1. Section 219 Requirement

6. In the Energy Policy Act of 2005,[7] 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 WPPI.

7. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219, *i.e.*, the 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."[8] 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.[9] 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.[10]

8. WPPI states that it is entitled to the rebuttable presumption that the La Crosse Project meets the requirements of FPA section 219.[11] WPPI notes that the La Crosse Project was approved and included in the 2008 MISO Transmission Expansion Plan, through which MISO reviewed and affirmed the La Crosse Project's congestion relief

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[7] Pub. L. No. 109-58, § 1241, 119 Stat. 594.

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

[9] *Id.*

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

[11] Petition at 10.

and reliability benefits.[12] WPPI also states that the Minnesota Public Utilities Commission (Minnesota Commission) has issued a Certificate of Need for the facility based upon its own verification of the La Crosse Project's reliability and congestion benefits,[13] which the Commission has previously affirmed also establishes a rebuttable presumption under Order No. 679.[14]

9. The Commission has previously determined that the La Crosse Project is entitled to the rebuttable presumption based upon the issuance of a Certificate of Need by the Minnesota Commission.[15] Accordingly, we find that the La Crosse Project is entitled to the rebuttable presumption that it satisfies the requirements of section 219.

2. **Nexus Requirement**

10. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant must demonstrate a nexus between the incentives being 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 incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[16]

11. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative.[17] In *Baltimore Gas & Elec. Co.*, the Commission provided guidance on the factors it will

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[12] *Id.*; Prepared Testimony of James Pardikes, Ex. WPPI-3 at 18 (stating that the La Crosse Project was included in the 2008 MISO Transmission Expansion Plan).

[13] Petition at 10-11.

[14] *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 53 (2007) (*Xcel*) (considering a request for transmission rate incentives for six CapX2020 projects, including the La Crosse Project).

[15] *Id.* (adopting a rebuttable presumption that section 219 is satisfied upon a project's receipt of a Certificate of Need from the Minnesota Commission because "[the Minnesota Commission] considers whether the project ensures reliability or reduces congestion costs in evaluating an application for a Certificate of Need").

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

[17] *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 48 (2007).

consider when determining whether a project is routine. The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (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, long lead times, regulatory and political risks, specific financing challenges, or other impediments).[18] The Commission also explained that, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.[19]

12. WPPI asserts that the incentives requested in connection with the La Crosse Project satisfy the nexus test established in Order No. 679 because the La Crosse Project is non-routine and the incentives are tailored to address the La Crosse Project's risks and challenges. WPPI explains that its investment in the La Crosse Project will be its first direct investment in transmission. WPPI states that its investment of $14.6 million in the La Crosse Project will constitute 2.1 percent of its total net corporate assets, which exceeds the corresponding percentage for Xcel's investment in the La Crosse Project.[20] WPPI also asserts that the La Crosse Project faces the non-routine challenge of including owners that are investor-owned utilities, electric cooperatives, municipal joint-action agencies, and individual municipals.[21] WPPI contends that such a wide variety of owners renders the La Crosse Project's governance and approvals more complex, prolonging decision-making. WPPI also asserts that, given its small ownership share, it will have limited control of whether the La Crosse Project is cancelled and incurs the risk of larger partners pulling out.[22]

13. WPPI also states that the La Crosse Project is non-routine because it spans multiple jurisdictions, requiring the approval of both the Minnesota and Wisconsin state regulators as well as corresponding right of way easements on each side of the border. Additionally, WPPI states that the La Crosse Project crosses the Mississippi River and a federal wildlife refuge, triggering review by the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. WPPI also asserts that the cost of the La Crosse Project

[18] *Id.* P 52.

[19] *Id*. P 54.

[20] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 18-19.

[21] *Id.* at 19-20.

[22] *Id.* at 20

has considerable variability, as evidenced by the increase in estimates from $345 million in 2007 to the current estimate of $488 million. It contends that factors, including regulatory decisions that could potentially cause scope and route changes, could further affect the La Crosse Project's cost. Additionally, WPPI contends that the La Crosse Project uses advanced technologies.[23]

14. The Commission has previously determined that the La Crosse Project is a non-routine project.[24] Consistent with these holdings, we make a similar finding that WPPI's request for incentives meets the nexus requirement. We also find that WPPI has demonstrated that the requested incentives address the risks and challenges of the La Crosse Project. As discussed below, the Commission grants WPPI's request for Regulatory Asset, Abandoned Plant, and Hypothetical Capital Structure incentives.

a. Regulatory Asset

i. WPPI Proposal

15. WPPI seeks Commission approval to establish a regulatory asset account to include its pre-commercial expenses directly related to the La Crosse Project and other expenses that are related to WPPI's transmission function and expected to be recovered through the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) upon the La Crosse Project's commercial operation. WPPI requests that the regulatory asset include expenses incurred from the beginning of 2007 through the La Crosse Project's commercial operation. Such expenses would include transmission operation and maintenance and allocated administrative and general expenses in accordance with MISO's Attachment O formula.[25]

16. WPPI proposes to include all pre-commercial expenses associated with the La Crosse Project in the regulatory asset account, excluding costs that are properly classified as Construction Work in Progress (CWIP). WPPI states that these include the costs of: (1) efforts to establish the WPPI formula rate and incentives for the La Crosse Project; (2) efforts to develop the agreements with the La Crosse partners; (3) financial advice regarding the ability to issue bonds for the La Crosse Project and the proper bond

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[23] *Id.* at 24; *see also* Prepared Testimony of Timothy Noeldner, Ex. WPPI-1 at 13-14.

[24] *Xcel*, 121 FERC ¶ 61,284 at P 56; *see Missouri River Energy Services*, 138 FERC ¶ 61,045, at P 19 (2012) (*MRES*).

[25] Petition at 11-12.

structure; (4) education and outreach to stakeholders; (5) participation in La Crosse Project meetings; and (6) taxes other than income taxes.[26]

17. WPPI also seeks to include in the regulatory asset transmission-related expenses, which it states would otherwise be properly includable in its transmission revenue requirement under the formula rate if WPPI currently had transmission plant in service. Such transmission-related expenses include: (1) transmission department expenses includable in Accounts 560-579 of the Uniform System of Accounts; and (2) administrative and general costs apportioned to the regulatory asset account based on the percentage of WPPI transmission wages to total WPPI non-administrative and general wages.[27]

18. WPPI proposes for the regulatory asset to include a carrying charge that will be developed using its proposed hypothetical capital structure of 45 percent equity and 55 percent debt. WPPI requests the carrying charge be effective on the date its incentive request is approved by the Commission.[28] Consistent with the Commission's holding in response to a Central Minnesota Municipal Power Agency's request to include a carrying charge in its regulatory asset,[29] WPPI proposes that the interest on the carrying charge on the regulatory asset be compounded no more than semi-annually until the La Crosse Project is in service. Further, it proposes that the regulatory asset be amortized over five years following commercial operation of the La Crosse Project. WPPI proposes that the amount to be recovered will be established and made subject to Commission review through a subsequent section 205 filing.[30]

19. WPPI argues that it has incurred and will continue to incur pre-commercial expenses associated with the La Crosse Project and transmission-related expenses related to its underlying CapX2020 transmission planning effort. WPPI asserts that, because it is not yet a MISO transmission owner, it has no alternative way to recover those pre-commercial and transmission-planning expenses on a current basis from MISO transmission customers prior to the La Crosse Project entering commercial operation. WPPI contends that without the regulatory asset incentive it would be placed at a

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[26] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 49-51.

[27] *Id.* at 48-53.

[28] *Id.* at 59.

[29] *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,021, at P 23 (2012) (*MISO*).

[30] Petition at 12-13.

disadvantage compared to existing MISO transmission owners, its credit quality and capital costs could be adversely affected, and it would face a barrier to investing in both the La Crosse Project and future transmission projects.[31]

ii. Commission Determination

20. WPPI proposes to record pre-commercial and transmission-related costs not included as CWIP before the La Crosse Project is in-service as a regulatory asset. We find that this incentive is tailored to the risks and challenges posed by the La Crosse Project, as discussed above, and therefore grant it, because the incentive will provide added up-front regulatory certainty and enable WPPI to recover pre-commercial expenses and other related transmission expenses.

21. We approve WPPI's request to accrue a carrying charge, as proposed, which shall be compounded no more frequently than semi-annually. We also grant WPPI's request to begin accruing the carrying charge on the date of this order. Consistent with Commission precedent, the appropriate carrying charge should not result in a higher amount of interest than is allowed for construction expenditures that accrue an allowance for funds used during construction.[32] We authorize WPPI to amortize the regulatory asset over five years, consistent with rate recovery.[33] WPPI must record all associated carrying charges by debiting Account 182.3, Other Regulatory Assets, and crediting Account 421, Miscellaneous Nonoperating Income.[34] Further, we authorize WPPI to amortize the regulatory asset and related carrying charges associated with the La Crosse Project by debiting Account 566, Miscellaneous Transmission Expense, and crediting Account 182.3, consistent with Commission precedent.[35] Once WPPI includes the regulatory asset in rate base as part of its revenue requirement, it will earn a return on the

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[31] *Id.* at 13-14.

[32] *MISO*, 138 FERC ¶ 61,021 at P 23.

[33] *See, e.g.*, *Green Power Express LP*, 127 FERC ¶ 61,031, at P 59 (2009) (*Green Power*); *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 117 (2010) (*Primary Power*).

[34] *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2*-A, Order No. 552, FERC Stats. and Regs., Regulations Preambles January 1991- June 1996 ¶ 30,967, at 30,825 (1993) (requiring that deferred returns and/or carrying charges accrued on regulatory assets be credited to Account 421).

[35] *See, e.g.*, *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 71 (2012) (*DATC*).

unamortized balance of the regulatory asset and, therefore, WPPI must stop accruing carrying charges on the asset.[36]

22. While this order provides WPPI with the ability to record pre-commercial and transmission-related costs as a regulatory asset, WPPI must make a section 205 filing to demonstrate that these costs are just and reasonable before it will be allowed to recover any such costs. WPPI will have to establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred. Parties will be able to challenge any such costs at that time.

b. Abandoned Plant Recovery

i. WPPI Proposal

23. WPPI requests that it be permitted to recover 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned due to factors beyond its control. According to WPPI, the amount to be recovered, and the prudence of the underlying expenditures, would be established and subject to Commission review through a section 205 filing in the event that WPPI seeks such recovery.[37] WPPI asserts that its small ownership share limits its control over decisions related to planning and operations and causes it to have no effective control over whether the La Crosse Project will be abandoned. Without this incentive, according to WPPI, it would incur losses if another owner pulled out of the La Crosse Project. WPPI argues that Abandoned Plant Recovery is appropriate here because of the La Crosse Project's numerous required state and federal approvals, each of which could delay the La Crosse Project, as well as right of ways in both Minnesota and Wisconsin. WPPI also describes the risks of having numerous types of owners due to the resulting additional complexity for the La Crosse Project's governance and approvals.[38]

ii. Commission Determination

24. We grant the requested incentive for WPPI to have the opportunity to recover 100 percent of its prudently incurred costs for the La Crosse Project, if it is abandoned for reasons beyond WPPI's control. In Order No. 679, the Commission found that the

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[36] *See, e.g.*, *RITELine Illinois, LLC*, 137 FERC ¶ 61,039, at P 96 (2011); *Green Power*, 127 FERC ¶ 61,031 at PP 59-60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 84 (2009) (*Pioneer*).

[37] Petition at 21.

[38] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 9-10.

abandonment incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.[39] We find that WPPI has demonstrated a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and its planned investment in the La Crosse Project. We agree with WPPI that the La Crosse Project faces substantial risks outside of WPPI's control. Approval of the abandonment incentive will protect WPPI from further losses if the La Crosse Project should be cancelled for reasons outside WPPI's control.

25. We will not determine the justness and reasonableness of WPPI's abandoned plant recovery, if any, until WPPI seeks such recovery in a future section 205 filing.[40] Order No. 679 specifically reserves the prudence determination for the later section 205 filing that every utility is required to make if it seeks abandoned plant recovery.[41] At such time, WPPI will be required to demonstrate in its section 205 filing that abandonment was beyond its control, provide for rate authorization allowing for recovery of abandonment costs that were prudently-incurred, and propose a rate and cost allocation method to recover the costs in a just and reasonable manner.[42]

c. <u>Hypothetical Capital Structure</u>

i. <u>WPPI Proposal</u>

26. WPPI requests a hypothetical capital structure of 45 percent equity and 55 percent debt for the lifetime of the bonds that WPPI will issue to fund the La Crosse Project.[43] WPPI argues that as a minority participant with a relatively small share, WPPI has a limited ability to control La Crosse Project-related decisions affecting timing and costs. As a result, the requested 45 percent to 55 percent equity to debt ratio will counter this risk and encourage WPPI's members to invest in the La Crosse Project over alternatives.[44] Furthermore, WPPI argues that its analysis demonstrates that a 45 percent

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

[40] *Primary Power*, 131 FERC ¶ 61,015 at P 124.

[41] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

[42] *See Pioneer*, 130 FERC ¶ 61,044 at P 27; *Green Power*, 127 FERC ¶ 61,031 at P 52.

[43] WPPI expects the bonds to mature in 2037. Prepared Testimony of James Pardikes, Ex. WPPI-3 at 30.

[44] Petition at 16-17.

to 55 percent equity to debt ratio is needed to maintain WPPI's historic annual debt service coverage ratio of 1.25 and, thus, WPPI's targeted A+ credit rating.[45] According to WPPI, this credit rating would elicit more attractive financing terms for this and other projects, producing lower long-run MISO rates.[46]

27. In addition, and consistent with cited Commission precedent, WPPI proposes to utilize the generally-applicable MISO return on equity (ROE) of 12.38 percent.[47]

28. WPPI points out that Northern States Power is already authorized to use an actual capital structure comparable to WPPI's proposed hypothetical capital structure to collect a return on Northern States Power's investment in CapX2020, which WPPI partially pays for. WPPI argues that it should be allowed to utilize a hypothetical capital structure approaching that the capital structure used by Northern States Power because WPPI faces an equal or greater risk in that it cannot issue exchange-tradable equity shares.[48] WPPI states that this treatment is consistent with intent of FPA section 219 to promote transmission capital investment "regardless of the ownership of facilities."[49] In addition, WPPI claims that a hypothetical capital structure with an equity to debt ratio comparable to Northern States Power will allow WPPI to offset projected increases in transmission rates in the Northern States Power pricing zone, which WPPI pays as a MISO network integration transmission service customer for loads in the Northern States Power pricing zone.[50]

29. WPPI argues that without the requested hypothetical capital structure, WPPI members would pursue alternative investment areas. In the absence of WPPI investment, Northern States Power operating companies would likely replace WPPI as owners. As Northern States Power uses a 12.38 percent ROE with a 54 percent equity ratio, WPPI asserts that this would cause transmission rates to increase.[51]

[45] *Id.* at 17; Prepared Testimony of James Pardikes, Ex. WPPI-3 at 32-33; Ex. WPPI-8.

[46] Petition at 17.

[47] *Id.* at 14-15.

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

[49] *Id.* at 18.

[50] *Id.* at 18.

[51] *Id.* at 19.

30. WPPI argues that it should receive a hypothetical capital structure for the duration of the La Crosse Project's financing, as opposed to only during the construction period, because, unlike investor-owned utility CapX2020 owners, it is has no ability to issue common stock. Otherwise, according to WPPI, it would never obtain a return comparable to investor-owned utilities investing in the same project.[52]

ii. Commission Determination

31. We find that WPPI has demonstrated that the requested hypothetical capital structure is tailored to address the risks of their investment in the La Crosse Project, and we will therefore approve it, as discussed below.

32. Previously, the Commission has granted use of a hypothetical capital structure by municipal entities that have relied upon non-equity financing. Consistent with that precedent, we accept the use of a hypothetical capital structure for the La Crosse Project's entire thirty-year bond issuance period,[53] and, we find use of a 45 percent to 55 percent equity to debt ratio in conjunction with the generally-applicable MISO ROE of 12.38 percent appropriate for the La Crosse Project.[54] The Commission has approved a single base ROE of 12.38 percent for transmission-owning members of MISO.[55] Because WPPI is not yet a transmission-owning member of MISO, we will condition WPPI's use of the generally applicable MISO ROE of 12.38 percent on WPPI becoming a MISO transmission owner, consistent with the Commission's determination in *DATC*.[56]

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[52] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 40-41.

[53] *See, e.g., Central Minnesota Mun. Power Agency*, 134 FERC ¶ 61,115, at P 31 (2011) (*CMMPA*).

[54] *See, e.g., MRES*, 138 FERC ¶ 61,045 at PP 36-39.

[55] *Midwest Indep. Transmission Sys. Operator, Inc.*, 100 FERC ¶ 61,292 (2002), *reh'g denied*, 102 FERC ¶ 61,143 (2003), *order on remand*, 106 FERC ¶ 61,302 (2004), *aff'd in part, Pub. Serv. Co. of Ky. v. FERC*, 397 F.3d 1004 (D.C. Cir. 2005), *order on remand*, 111 FERC ¶ 61,355 (2005). *See also, e.g., Michigan Electric Trans. Co. and Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,343, at P 15 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006) (granting request to adopt the same 12.38 percent ROE used by the other MISO transmission owners).

[56] *See DATC*, 139 FERC ¶ 61,224 at P 83. The Commission notes that WPPI states that, if the Commission grants its requested incentives, "WPPI will most likely proceed with the La Crosse Project investment and commit to becoming a [MISO

(continued…)

d. Total Package of Incentives

i. Proposal

33. WPPI states that it has tailored the requested incentives risks of the La Crosse Project. It argues that the each incentive is needed to mitigate specific project risks. WPPI argues that, for instance, the hypothetical capital structure provides a return consistent with the higher risk of the La Crosse Project. Additionally, according to WPPI, the regulatory asset incentive is necessary because WPPI has no existing assets and has no other mechanism for recovering its expenses prior to the project going into service. WPPI argues that these incentives work together to help WPPI achieve/maintain a credit rating of A+.[57]

ii. Commission Determination

34. 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,[58] the Commission has, in prior cases, approved multiple rate incentives for particular projects.[59] 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. We find that the total package of incentives that we are approving for WPPI is tailored to address the risks and challenges that WPPI faces in constructing the La Crosse Project.

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transmission owner] as soon as practical." Prepared Testimony of Timothy Noeldner, Ex. WPPI-1 at 7.

[57] Prepared Testimony of James Pardikes, Ex. WPPI-3 at 67-68.

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

[59] *E.g.*, *CMMPA*, 134 FERC ¶ 61,115 at P 34 (finding that inclusion of 100 percent of CWIP in rate base, abandoned plant recovery, and use of a hypothetical capital structure were tailored to the unique challenges faced by the applicant).

<u>The Commission orders</u>:

WPPI's request for a declaratory order authorizing Regulatory Asset, Abandoned Plant Recovery, and Hypothetical Capital Structure incentives is hereby granted, 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

WPPI Energy Docket No. EL12-67-000

(Issued October 1, 2012)

NORRIS, Commissioner, *concurring in part*:

Public power participation in the joint ownership of new transmission remains as important as ever as we continue to develop the infrastructure necessary to ensure that our nation's energy system is reliable and efficient. As I have previously stated, joint ownership encourages a deeper and more collaborative pool of participants in the transmission development process and can generate key support for transmission projects that often face difficult siting decisions at the state and local levels.

Public power, however, cannot raise equity through a stock offering, and thus equity ratios for public power tend to be lower as compared to investor-owned utilities. Consequently, a return on equity adder that the Commission has the authority to grant under Order No. 679 may not adequately address the risks and challenges to a public power project sponsor; instead, a public power entity may choose to request a hypothetical capital structure incentive.

Today's order addresses an incentives request from WPPI, the third public power entity to have sought a hypothetical capital structure for its participation and investment in the CapX2020 regional transmission planning initiative. The CapX2020 initiative represents a great example of how joint ownership in the upper Midwest can harness the collaboration of eleven utilities, their regulators and the public to expand the transmission grid to meet increased demand and support renewable energy development.

I concur with the majority's decision in this order to grant WPPI's request for a hypothetical capital structure of 45 percent equity and 55 percent debt for the LaCrosse Project's thirty-year financing period. While the order finds that WPPI's request is consistent with the hypothetical capital structures granted to two other public power entities participating in the CapX2020 initiative in *Central Minnesota*[1] and *Missouri River*,[2] I believe it is important to distinguish between these two precedents.

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[1] *Central Minnesota Municipal Power Agency*, 134 FERC ¶ 61,115 (2011) *Norris, dissenting in part*.

[2] *Missouri River Energy Services*, 138 FERC ¶ 61,045 (2012) Norris, *concurring in part*.

As in *Missouri River,* WPPI has demonstrated the need for its requested hypothetical equity level.[3] In particular, WPPI demonstrates that its incentive request is needed to maintain an existing debt service coverage ratio of 1.25 and support a liquidity level of at least 65 days of cash on hand.[4] WPPI states that these two financial metrics are important to maintaining its credit rating with the three major credit rating agencies. WPPI's credit rating, in turn, is an important factor in determining WPPI's overall costs and ability to attract sufficient financing. When considering its requested hypothetical equity level of 45 percent, I also note that WPPI has more than doubled its actual equity to total capitalization in the last decade from 14 percent at the end of 2000 to over 30 percent at the end of 2011.[5]

New transmission will likely be needed in many parts of the country as we look to respond to changing generation resource mixes and aging infrastructure concerns. In ensuring just and reasonable rates, the Commission has an obligation to strike an appropriate balance between the returns utilities require to invest in necessary transmission and the cost impact to consumers from such investment. Part of this balance requires the Commission to ensure that utilities have demonstrated the need for any incentives requested. I believe that WPPI has adequately made this demonstration.

For these reasons, I respectfully concur in part.

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John R. Norris, Commissioner

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[3] In contrast, I did not believe that the applicant in *Central Minnesota* had justified its request for a hypothetical capital structure incentive, because its requested equity ratio was tied to the actual equity ratios of neighboring investor-owned utilities, which are not similarly situated.

[4] *See* WPPI May 9, 2012 filing, Exhibit WPPI-3 at 29-32, Exhibit WPPI-8 and Exhibit WPPI-9.

[5] *See* WPPI May 9, 2012 filing, Exhibit WPPI-2 at 7.