UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transource Missouri, LLC — Docket No. ER12-2554-000

(Issued November 1, 2012)

Attached is the statement by Commissioner Clark concurring in part to an order issued on October 31, 2012 in the above-referenced proceeding. *Transource Missouri, LLC*, 141 FERC ¶ 61,075 (2012).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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CLARK, Commissioner, *concurring in part*:

Transource Missouri has demonstrated that its Iatan-Nashua and Sibley-Nebraska City Projects face considerable risks and challenges that warrant several requested incentives. As discussed in our evaluation of Transource Missouri's application, the projects will require the transmission company to raise significant levels of debt and equity capital to develop and construct the projects. In addition, the projects provide substantial economic benefits in the form of congestion relief and increased transfer capability in the SPP region.

However, despite our broad finding that Transource Missouri has sufficiently demonstrated a nexus between its requested incentives and the risks and challenges of the project, I am concerned about the application of the nexus test for hypothetical capital structures. When contemplating whether an applicant has met their burden under section 219 of the FPA, I believe it is important to consider whether the applicant has fully justified the level of the requested incentive. I found the Commission's analysis of the hypothetical capital structure lacking in this respect.

Our decision to grant Transource Missouri a hypothetical capital structure did not include an evaluation of whether Transource Missouri had provided sufficient justification for a hypothetical capital structure of 40 percent debt and 60 percent equity. In its request, Transource Missouri states generically that its hypothetical capital structure during the construction phase is necessary to offset the risks of the Iatan-Nashua Project and the Sibley-Nebraska City Project. It also references similarly situated transmission developers that have been granted a 40 percent debt and 60 percent equity hypothetical capital structure.[1] Yet, there is no justification or evaluation regarding why a 40/60 hypothetical capital structure is more fitting for Transource Missouri than any other capital structure ratio. While this may be a tacit admission that a 40/60 hypothetical capital structure has become a default

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[1] Transource Missouri, LLC August 31, 2012 Filing, Docket No. ER12-2554-000, at fn 111, *citing Green Power Express LP*, 127 FERC ¶ 61,031 at P 72 (2009)*; Primary Power, LLC*, 131 FERC ¶ 61,015 at P 141 (2010)*; Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144 at P 121 (2011).

through precedent, I do not believe it can be said it comports very well with Order No. 679.

In that order, the Commission cautioned that an overly rigid approach to evaluating proposed capital structures may discourage the development of new transmission projects.[2] Therefore, the Commission posited that it will evaluate each proposal on a case-by-case basis and will not prescribe specific criteria or set target debt/equity ratios for evaluating hypothetical capital structures. However, as mentioned above, Transource Missouri's justification for its specific hypothetical capital structure largely relies on the fact that the Commission has previously approved the 40/60 hypothetical capital structure for similarly situated transmission developers, rather than on the specific risks and challenges of the projects. Going forward, if the Commission wishes to stay with the construct envisioned by Order No. 679 and give it meaning, I believe it would be prudent to consider whether policy criteria should be established to allow for a more case-specific review of the hypothetical capital structure. Similarly, I would encourage future applicants to provide the Commission with a sufficiently detailed analysis so as to afford us the fullest record possible on which to base our decisions.

For these reasons, I concur in part with the order.

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Tony Clark, Commissioner

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[2] *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).