166 FERC ¶ 61,024
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

ITC Midwest LLC Docket No. ER19-355-000

ORDER GRANTING ABANDONED PLANT INCENTIVE

(Issued January 17, 2019)

1. On November 16, 2018, ITC Midwest LLC (ITC Midwest) submitted a request under sections 205 and 219 of the Federal Power Act (FPA)[1] for incentive rate treatment pursuant to Order No. 679.[2] ITC Midwest requests authorization to recover 100 percent of all prudently-incurred costs associated with its investment in the Cardinal-Hickory Creek 345 kV Project (Project) if the Project is abandoned or cancelled for reasons beyond ITC Midwest's control (Abandoned Plant Incentive). In this order, we grant ITC Midwest's request for incentive rate treatment, effective the date of this order.

I. Background

2. ITC Midwest, a wholly-owned subsidiary of ITC Holdings Corp., states that it is a transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO), with more than 6,800 miles of transmission lines and more than 200 electric transmission substations in Iowa, Minnesota, Illinois, and Missouri. ITC Midwest explains that transmission service over facilities developed and owned by ITC Midwest is provided pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).[3]

3. ITC Midwest states that the Project is a MISO Multi-Value Project (MVP)[4] that will consist of approximately 102 to 120 miles of new 345 kV transmission line from

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[1] 16 U.S.C. §§ 824d, 824s (2012).

[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).

[3] ITC Midwest Filing at 1-2.

[4] MVPs are projects that "enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the

Dane County, Wisconsin to Dubuque County, Iowa, with associated substation expansions. According to ITC Midwest, ITC Midwest and American Transmission Company LLC (ATC) each owns 45.5 percent of the Project, and Dairyland Power Cooperative (Dairyland) owns the remaining nine percent. ITC Midwest states that the Project is estimated to cost between $492 million and $543 million, depending on the route, and that the transmission line is expected to be in service in December 2023. According to ITC Midwest, the cost for its portion of the Project would be 45.5 percent of the total, or approximately $224 to $247 million.[5]

4. ITC Midwest requests an effective date of January 15, 2019.[6]

II. Notice of Filing and Responsive Pleadings

5. Notice of ITC Midwest's filing was published in the *Federal Register*, 83 Fed. Reg. 60,840 (2018), with interventions and protests due on or before December 7, 2018. Notices of intervention were filed by the Iowa Utilities Board (Iowa Commission) and the Public Service Commission of Wisconsin (Wisconsin Commission). Timely motions to intervene were filed by: ATC; Dairyland; Alliant Energy Corporate Services, Inc.; and Ameren Services Company.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. Section 219 Requirement

7. 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 certain transmission infrastructure. The Commission subsequently

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development of a robust transmission system, multiple reliability and/or economic issues affecting multiple [MISO] transmission zones." *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,235, at P 2 (2016).

[5] ITC Midwest Filing at 2.

[6] *Id.* at 7, 9.

[7] Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the Abandoned Plant Incentive. Additionally, in November 2012, the Commission issued the 2012 Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[8]

8. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a 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."[9] The Commission established the process for an applicant 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 the project 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.[[10]]

9. The Commission also stated that "other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding."[11]

a. ITC Midwest's Request

10. ITC Midwest argues that the Project meets the rebuttable presumption. In support, ITC Midwest states that MISO approved the Project as an MVP in its 2011 MISO Transmission Expansion Plan (MTEP). According to ITC Midwest, MISO found in its 2011 MTEP Report that the Project would (1) provide load centers with access to less expensive wind power, and (2) help relieve constraints on the existing 345 kV and 138 kV systems in the vicinity of the Project. ITC Midwest asserts that therefore, even

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[8] *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

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

[10] *Id*.

[11] *Id.* P 57; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

without the rebuttable presumption, the Project satisfies the requirement of section 219 because it will relieve congestion and provide other benefits as an MVP.[12]

b. Commission Determination

11. The Commission has previously found that projects approved through a regional transmission planning process that evaluated whether the identified transmission projects will enhance reliability and/or reduce congestion are entitled to the rebuttable presumption established under Order No. 679.[13] In this case, the MTEP transmission planning process, through which the Project was approved, evaluated whether identified transmission projects will enhance reliability and/or reduce congestion. Therefore, we find that the Project is entitled to the rebuttable presumption that it meets this requirement of section 219.

2. Order No. 679 Nexus

12. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.[14] 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."[15] The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.[16]

a. ITC Midwest's Request

13. ITC Midwest contends that the requested Abandoned Plant Incentive is tailored to address the Project's demonstrable risks and challenges. In support, ITC Midwest states that the Project faces risks arising from the interaction among, and the timing of, required

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[12] ITC Midwest Filing at 4 & n.19 and Ex. ITC-100 (Testimony of David B. Grover) at 6-9.

[13] *See, e.g.*, *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 17 (2015) (*TransCanyon*); *Pacific Gas and Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014); *Midcontinent Independent Sys. Operator, Inc. and WPPI Energy*, 151 FERC ¶ 61,246, at P 15 (2015); *Southern Indiana Gas & Elec. Co.*, 125 FERC ¶ 61,124, at P 28 (2008).

[14] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48.

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

[16] *See* 18 C.F.R. § 35.35(d) (2018).

federal and state approvals. ITC Midwest explains that the Project requires state regulatory approvals from the Wisconsin and Iowa Commissions, along with authorizations from the U.S. Fish and Wildlife Service and the Army Corps of Engineers. ITC Midwest states that the Project could be delayed or even terminated if the necessary approvals and permits are not obtained. ITC Midwest notes that the permitting process for the Project is further complicated because the Project must cross the Mississippi River as well as federal wildlife refuge lands. According to ITC Midwest, the requirement for numerous independent permits and authorizations from state and federal agencies presents the most significant risk to the Project.[17]

14. ITC Midwest states that route changes or cost increases resulting from the regulatory approval process could also delay or jeopardize the Project. Further, ITC Midwest states that the easement acquisition process could be contentious, which could also result in delays or increased costs. ITC Midwest asserts that, in order to keep the Project on schedule toward its December 2023 in-service date, capital investments must be made before the ongoing, overlapping regulatory processes and easement acquisitions are complete. ITC Midwest states that those investments are at risk if the Project fails to move forward.[18]

15. ITC Midwest states that its request is narrowly tailored and it does not seek additional rate incentive treatments beyond the Abandonment Plant Incentive.[19] ITC Midwest states that recovery of specific abandoned costs would be subject to a future FPA section 205 filing.[20] Until the Commission approves such rates in the future section 205 filing, ITC Midwest states that it will maintain a zero balance in its Attachment O template for the placeholder associated with the recovery of abandoned plant costs for the Project. ITC Midwest explains that any abandonment costs recovered pursuant to the incentive will be recovered through the MISO Tariff using the underlying cost allocation for the Project as an MVP under Schedule 26-A, the MVP Usage Rate.[21]

b. Commission Determination

16. We grant ITC Midwest's request for the Abandoned Plant Incentive. In Order No. 679, the Commission found that the abandoned plant incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs in

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[17] ITC Midwest Filing at 4-6.

[18] *Id*. at 6.

[19] *Id*. at 5.

[20] *Id*. at 6.

[21] *Id*.

the event a project is abandoned for reasons outside the control of management.[22] We agree that the Project faces certain regulatory, environmental, and siting risks that are beyond the control of management and which could lead to abandonment of the Project. In addition, we find that ITC Midwest has demonstrated that approval of the Abandoned Plant Incentive will protect ITC Midwest if the Project is cancelled for reasons beyond ITC Midwest's control.

17. We will not determine the justness and reasonableness of ITC Midwest's recovery of costs for abandoned electric transmission facilities, if any, until ITC Midwest seeks such recovery in a future section 205 filing that a public utility is required to make if it seeks abandoned plant recovery.[23]

<u>The Commission orders</u>:

ITC Midwest's request for the Abandoned Plant Incentive is hereby granted, effective the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[22] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163; *see also, e.g.*, *Midcontinent Indep. Sys. Operator, Inc. and ALLETE, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

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