

152 FERC ¶ 61,210
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
and Tony Clark.

Midwest Power Transmission Arkansas, LLC

Docket No. ER15-2236-000

ORDER ON TRANSMISSION FORMULA RATE PROPOSAL AND INCENTIVES

(Issued September 17, 2015)

1. In this order, we conditionally accept Midwest Power Transmission Arkansas, LLC's (Midwest Power) proposed formula transmission rate to recover costs associated with transmission projects that it intends to own and develop as part of Midcontinent Independent System Operator, Inc.'s (MISO) Order No. 1000 competitive solicitation process.¹ We accept the formula rates to be effective once filed with the Commission to become part of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), consistent with the effective date established in that future proceeding, subject to a further compliance filing. We conditionally accept Midwest Power's proposed base return on equity (ROE) for filing to be effective September 21, 2015, as requested, as well as its request for a 50 basis point adder. We also grant, under section 205 of the Federal Power Act (FPA),² Midwest Power's request for authorization to defer as a regulatory asset its prudently incurred costs, including pre-commercial and formation costs, effective September 21, 2015, as requested, and grant its request to use a hypothetical capital structure, to remain in effect until the first transmission project it has been awarded through the MISO competitive solicitation process is placed in service.

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

² 16 U.S.C. § 824d (2012).

Further, we accept Midwest Power's request that other yet-to-be-formed affiliates be authorized to utilize the same formula rate template, implementation protocols (protocols), and requested incentives.

I. Background

2. In Order No. 1000, the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. The Commission noted that, although not mandatory, public utility transmission providers in a transmission planning region could use, for example, a non-discriminatory competitive bidding process as one method to comply with the requirements of Order No. 1000.³ In response to the requirements of Order No. 1000, MISO established a competitive solicitation process, under which qualified transmission developers can bid to develop transmission projects that have been selected in MISO's Transmission Expansion Plan (MTEP) for purposes of cost allocation, which MISO calls Open Transmission Projects.⁴

3. Midwest Power states that it is a wholly owned subsidiary of Midwest Power Midcontinent Transmission Development, LLC, a transmission-focused joint venture between BHE Midcontinent Transmission Holdings, LLC (BHE) and Westar Transmission LLC (Westar). Midwest Power states that it was created to construct, finance, own, operate, and maintain new Open Transmission Projects that are posted for bidding through the MTEP.

³ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 336.

⁴ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013), *order on reh'g and compliance filings*, 147 FERC ¶ 61,127 (2014) (addressing MISO's filings to comply with the local and regional transmission planning and cost allocation requirements of Order No. 1000).

II. Midwest Power Filing

4. On July 22, 2015, Midwest Power submitted for filing a forward looking formula rate, consisting of formula rate templates for Attachment O, GG, and MM of the MISO Tariff and implementation protocols (together, Formula Rate) to recover costs associated with investment in transmission facilities located within MISO. Midwest Power also proposes depreciation rates based on a depreciation study that was conducted using Westar's electric utility plant that was placed into service on December 31, 1999.⁵ Midwest Power states that it will utilize the MISO ROE, subject to the outcome of the pending complaint in Docket No. EL14-12-000. Midwest Power also requests a 50 basis point adder to its ROE for regional transmission organization (RTO) participation.

5. In addition, Midwest Power seeks approval of the following non-ROE incentive rate treatments: (1) recovery of all prudently incurred pre-commercial costs, and establishment of a regulatory asset that will include all expenses that are incurred prior to the rate year in which Midwest Power's costs are first flowed through to customers under the MISO Tariff, including authorization to amortize the regulatory asset with interest over five years for cost recovery purposes; and (2) use of a hypothetical capital structure of up to 60 percent equity and 40 percent debt until Midwest Power's first Open Transmission Project is awarded and placed into service.⁶ Midwest Power requests the incentive rate treatments pursuant to Order No. 679⁷ or, in the alternative, pursuant to section 205 of the FPA. Midwest Power also requests authorization for state-specific

⁵ Direct Testimony of Kevin Kongs, Exh. No. MPA-400 at 3.

⁶ We note that at one place in its transmittal letter, Midwest Power states that it proposes to use the hypothetical capital structure "until the first Open Transmission Project awarded to Midwest Power or [a Midwest Power MISO Entity] is placed into service." Transmittal at 2. This sentence could be read as meaning that when the first Midwest Power MISO Entity places a project into service, that would terminate the hypothetical capital structure for all affiliates. As this would be inconsistent with all other descriptions in the filing, we assume that Midwest Power's request is to utilize the hypothetical capital structure until Midwest Power places its first Open Transmission Project into service, independent of what the other Midwest Power MISO Entities have done. Similarly, we assume that the request is for other Midwest Power MISO Entities to use the same requested hypothetical capital structure until that Midwest Power MISO Entity placed a project in service.

⁷ *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).

affiliates of Midwest Power that develop transmission facilities within MISO (Midwest Power MISO Entities) to replicate and adopt the proposed formula rate template, including the requested incentives.

6. Midwest Power states that it is requesting approval of its proposed formula rate template and incentives to secure a measure of rate certainty in advance of the first MISO competitive solicitation bidding window. According to Midwest Power, without a formula rate on file, it cannot properly develop the necessary components of a bid for an Open Transmission Project and cannot compete in MISO's competitive solicitation process.

7. Midwest Power filed its proposed formula rate template and protocols in Midwest Power's eTariff database. Midwest Power requests an effective date of September 21, 2015, although it recognizes that no costs will flow through the formula rate template until the requisite section 205 filing to include the formula rate template in the MISO Tariff is approved.⁸

III. Notice of Filing and Responsive Pleadings

8. Notice of Midwest Power's filing was published in the *Federal Register*, 80 Fed. Reg. 45,209 (2015), with interventions and protests due on or before August 12, 2015. A notice of intervention was filed by the Arkansas Public Service Commission. The Missouri Public Service Commission (Missouri Commission) filed a notice of intervention and comments. On August 21, 2015, Midwest Power filed an answer to the Missouri Commission's comments.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Midwest Power's answer because it has provided information that assisted us in our decision-making process.

⁸ Transmittal at 3.

B. Requests for Incentives

10. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.⁹ 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 Midwest Power.¹⁰

11. Pursuant to section 219, 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.”¹¹ Also, as part of this demonstration, “section 219(d) provides that all rates approved under the Rule are subject to the requirements of 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.”¹²

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.¹³ 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.”¹⁴ In November 2012, the Commission issued a transmission incentives policy statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.¹⁵

⁹ Pub. L. No. 109-58, §§ 1261, 1241, 119 Stat. 594 (2005).

¹⁰ 16 U.S.C. § 824s (2012).

¹¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

¹² *Id.* P 8 (citing 16 U.S.C. §§ 824(d)-(e)).

¹³ *Id.* P 48.

¹⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

¹⁵ See *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

13. Midwest Power submitted its request for the regulatory asset and hypothetical capital structure incentives under Order No. 679. However, Midwest Power asserts that the Commission could also authorize these incentives under section 205 because the requested incentives are just and reasonable and, as the Commission has held in other recent orders, the requested incentives promote “the Commission’s policy goal of placing non-incumbent transmission developers on a level playing field with incumbent transmission developers in the Order No. 1000 competitive solicitation process.”¹⁶

14. The Commission previously has held that the regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the projects, a demonstration that cannot be met when the requesting entity has not identified any specific projects.¹⁷ However, incentives available under Order No. 679 can also be granted under the Commission’s section 205 authority under certain circumstances, such as to promote important public policy goals.¹⁸ The Commission has exercised its section 205 authority to grant certain incentives to nonincumbent transmission developers competing in the Order No. 1000 competitive solicitation process.¹⁹

1. Request for Authorization to Establish Regulatory Asset

a. Proposal

15. Midwest Power requests that it be allowed to recover all prudently incurred pre-commercial costs that are not capitalized and to establish a regulatory asset that will include expenses that are incurred prior to the rate year in which costs are first flowed through to customers pursuant to the Formula Rate.²⁰ Midwest Power further seeks

¹⁶ Transmittal at 9-10 (citing *Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at P 33 (2014) (*XEST*)).

¹⁷ *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180, at P 15 (2014).

¹⁸ See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008); *So. Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010).

¹⁹ See *XEST*, 149 FERC ¶ 61,182; *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014) (*XETD*); *Transource Wisconsin*, 149 FERC ¶ 61,180; *Transource Kansas*, 151 FERC ¶ 61,010 (2015).

²⁰ Midwest Power states that these costs could include, for example, engineering expenses, attorney and consultant fees, administrative expenses, travel expenses,

(continued ...)

authorization to amortize the regulatory asset with interest over five years for cost recovery purposes. Midwest Power states that it does not currently have transmission rates in effect under the MISO Tariff, and thus has no mechanism to recover pre-commercial costs absent the establishment of a regulatory asset. Midwest Power states that once it is awarded an Open Transmission Project and incorporates its Formula Rate into the MISO Tariff, it will discontinue booking expenses to the regulatory asset and will instead recover those expenses through the use of Midwest Power's formula rate.

16. According to Midwest Power, the establishment of a regulatory asset will provide upfront regulatory certainty and improve its overall financial strength and stability of cash flows at the outset. Midwest Power adds that, if it is not granted the regulatory asset incentive, it would be at a distinct disadvantage to both incumbent transmission developers within MISO as well as non-incumbents such as Transource Wisconsin, which has received this rate incentive.²¹

b. Commission Determination

17. We find that it is appropriate to grant Midwest Power's regulatory asset incentive under section 205. The Commission has held that this incentive can be granted under the Commission's section 205 authority if the incentive furthers a public policy goal, including the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 competitive solicitation processes.²² Consistent with the Commission's decisions in *XEST*, *XETD*, *Transource Wisconsin*, and *Transource Kansas*, we find that Midwest Power's request for the regulatory asset incentive under section 205 furthers the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in Order No. 1000 competitive solicitation processes, thereby encouraging competition.²³ Nonincumbent transmission developers wishing to

development surveys, and costs to support planning and bid development activities. Transmittal at 29.

²¹ Direct Testimony of Tony Somma, Exh. No. MPA-200 at 13.

²² See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 at P 33; *So. Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 62; *XEST*, 149 FERC ¶ 61,182 at P 33; *XETD*, 149 FERC ¶ 61,181; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 16; *Transource Kansas*, 151 FERC ¶ 61,010 at P 19.

²³ See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 87 (“[T]he Commission seeks to make it possible for nonincumbent transmission developers to compete in the proposal of more efficient or cost-effective transmission solutions.”).

bid on regional transmission projects in MISO's competitive solicitation process must incur early pre-commercial and formation costs, but because they do not have plant in service and/or rates in effect, they do not have a mechanism to recover these costs as they are incurred, as do incumbent transmission owners whose transmission planning-related costs are expensed to transmission operations and maintenance accounts that are typically included in transmission formula rates. We note that the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, Midwest Power may only apply the regulatory asset incentive approved in this proceeding to transmission projects that are developed through MISO's Order No. 1000 competitive solicitation processes. We also grant Midwest Power's request to amortize the regulatory asset and to accrue monthly carrying charges, compounded semi-annually over five years for cost recovery purposes, effective September 21, 2015.

18. However, while we will allow Midwest Power to record its prudently incurred costs as a regulatory asset, Midwest Power must make a section 205 filing to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes such costs in rates. In that filing, Midwest Power must establish that the costs included in the regulatory asset are costs that would otherwise have been eligible to expense in the period incurred but were deferred consistent with the authorization granted herein; additionally, entities will be able to challenge the reasonableness of costs at that time. Until Midwest Power becomes a transmission owner, rendering it eligible to recover costs through the MISO Tariff, it is unclear whether Midwest Power will have any customers from which to recover its regulatory asset.

2. Request for Authorization to Use Hypothetical Capital Structure

a. Proposal

19. Midwest Power proposes the use of a hypothetical capital structure consisting of up to 60 percent equity and 40 percent debt until Midwest Power has its first transmission project in service. Midwest Power states that it reserves the right to adjust its hypothetical capital structure below 60 percent equity for any bid but states that the equity level of any specific hypothetical structure will never exceed 60 percent equity.²⁴ Midwest Power states that the hypothetical capital structure incentive will provide a level of predictability as to cash flows and recovery that will support its efforts to obtain at least a BBB/Baa2 investment grade quality, and smooth out the wide swings in the

²⁴ Transmittal at 30.

capitalization ratio that can result from the cash demands of construction. Midwest Power adds that this incentive will help it to raise capital at more reasonable costs, which will ultimately lower costs for the customer.²⁵

d. Commission Determination

20. We grant Midwest Power's request to use a hypothetical capital structure consisting of up to 60 percent equity and 40 percent debt prior to its first transmission project going into service. As the Commission held in *XEST*, *XETD*, and *Transource Kansas*, nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.²⁶ We grant this request under section 205 because we find that granting the requested hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.²⁷ In this instance, allowing the nonincumbent transmission developer to utilize the requested hypothetical capital structure would facilitate the nonincumbent transmission developer's participation in the Order No. 1000 competitive solicitation process. Because the requested hypothetical capital structure is intended solely for participation in Order No. 1000 competitive solicitation processes, Midwest Power may only apply the hypothetical capital structure incentive approved in this proceeding to transmission projects that are developed through MISO's Order No. 1000 competitive solicitation processes.

B. Base ROE and ROE Adder for RTO Participation

1. Proposal

21. Midwest Power explains that it will turn over to MISO functional control of each Open Transmission Project it develops once the project becomes operational. Therefore, Midwest Power seeks authorization to use the Commission approved MISO regional base ROE, which is currently 12.38 percent. Midwest Power notes that the MISO regional base ROE has been challenged in a complaint proceeding in Docket No. EL14-12-000,

²⁵ Direct Testimony of Tony Somma, Exh. No. MPA-200 at 14.

²⁶ *XEST*, 149 FERC ¶ 61,182 at P 22; *XETD*, 149 FERC ¶ 61,181 at P 13; *Transource Kansas*, 151 FERC ¶ 61,010 at 25.

²⁷ See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 87.

and therefore commits to make a compliance filing, if necessary, to modify the ROE consistent with the outcome of that proceeding.²⁸

22. Midwest Power also requests a 50 basis point adder to its base ROE for RTO participation. It notes that, in Order No. 679, the Commission stated that it will approve the RTO participation ROE adder “for public utilities that join and/or continue to be a member of an [independent system operator], RTO, or other Commission-approved Transmission Organization.”²⁹ Midwest Power continues that the Commission recently agreed that a 50 basis point adder is available “for use by any transmission-owning members of MISO that have turned operational control of their transmission system over to MISO and use the generally applicable MISO ROE.”³⁰ Midwest Power states that it meets these qualifications and should be granted the 50 basis point adder.

2. Commission Determination

23. We grant Midwest Power’s request to use the MISO regional base ROE, subject to the outcome of the complaint proceedings in Docket Nos. EL14-12 and EL15-45.³¹ Transmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement. If Midwest Power becomes a transmission-owning member of MISO, it will also be entitled to receive the then-current ROE that the Commission has approved for MISO transmission owners, as long as it remains a transmission-owning member of MISO.

24. Consistent with previous Commission orders,³² we grant Midwest Power’s request for a 50 basis point incentive ROE adder for its participation in MISO conditioned on it being applied to a base ROE that has been shown to be just and reasonable based on an

²⁸ Transmittal at 21.

²⁹ *Id.* at 22 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326).

³⁰ *Id.* (citing *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,004, at P 48 (2015)).

³¹ *Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049 (2014); *Arkansas Electric Cooperative Corporation, et al. v. ALLETE, Inc., et al.*, 151 FERC ¶ 61,219 (2015).

³² *See, e.g., MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64.

updated discounted cash-flow analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated discounted cash-flow analysis, as those may be determined in the ongoing MISO ROE proceedings in Docket Nos. EL14-12 and EL15-45.³³

C. Accounting Treatment

1. Proposal

25. Midwest Power states that the tax obligations incurred through Midwest Power's operations will be passed through to and reported on the tax returns of its corporate parents.³⁴ Therefore, Midwest Power states, for ratemaking purposes, Midwest Power will be treated as a corporation and will receive an income tax allowance. Midwest Power argues that this treatment is fully consistent with Commission policy³⁵ and was accepted by the Commission in *Transource Kansas*.³⁶ Midwest Power adds that because it is a pass-through entity, it will not record income taxes on its books.³⁷ Midwest Power argues that because Transource Kansas is a similar entity to Midwest Power, the Commission's ruling should apply to Midwest Power as well.³⁸

26. Midwest Power states that its expenses related to developing competitive bids in MISO will either be directly incurred by Midwest Power or incurred by Midwest Power for services provided to it by Westar and BHE or its affiliates. Midwest Power states that the direct expenses are expected to consist primarily of third-party (non-affiliate) contracts for technical services, while expenses charged to Midwest Power from affiliated companies are expected to consist primarily of cash management and treasury services, risk management services, tax and accounting services, budgeting and forecasting services, legal services, engineering, design, and project management for construction of the facilities. Midwest Power states that costs for services provided by affiliate

³³ See *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,166 (2015).

³⁴ See Direct Testimony of Kevin Kongs, Exhibit No. MPA-400 at 8.

³⁵ Transmittal at 20 (citing *Policy Statement on Income Tax Allowances*, 111 FERC ¶ 61,139, at P 32 (2005)).

³⁶ *Id.* (citing *Transource Kansas*, 151 FERC ¶ 61,010 at P 59).

³⁷ See Direct Testimony of Kevin Kongs, Exhibit No. MPA-400 at 8.

³⁸ Transmittal at 20.

companies will also fall into two categories: (1) costs for services which are requested by, and whose costs are charged only to Midwest Power; and (2) allocated costs for shared services whose costs that are billed to multiple affiliates.³⁹

27. Midwest Power states that BHE affiliates will directly assign costs that are 100 percent attributable to Midwest Power whenever possible, but, in instances where costs are attributable to more than one BHE affiliate, costs will be allocated using a formula consisting of “an equal weighting of each affiliate’s labor and assets expressed as a percentage of the whole.”⁴⁰ Midwest Power states that these transactions will be assigned based on BHE’s Intercompany Administrative Services Agreement (Intercompany Agreement). Midwest Power states that allocation of costs from Westar affiliates will be allocated to Midwest Power based on employees’ time entered into an Activity Tracking System and accumulated on a monthly basis equal to the billable employee hours multiplied by the employee’s labor rate plus applicable labor loadings for pension and benefits, payroll taxes and non-productive labor. Midwest Power continues, explaining that a separate administrative and general charge is added to the base payroll and payroll related loading amounts to recover supervisory costs of employees working for Midwest Power. Midwest Power states that the final component of costs allocated to Midwest Power will be a facilities charge, which is a per hour charge that is applied to the hours employees submit to Midwest Power on a monthly basis. Midwest Power states that this charge represents costs for items such as building operations and maintenance, building depreciation, lease expense, ad valorem taxes, computer equipment, and depreciation and amortization for accounting systems. Midwest Power states that this methodology will be used by all affiliated Westar subsidiaries.⁴¹ Midwest Power notes that this methodology has been utilized by Westar to bill costs of its employees who work on Prairie Wind Transmission, LLC since December 2008. Midwest Power notes that Westar outlined this process for the Commission in its May 2, 2011 compliance filing for the Prairie Wind Project, which was accepted by the Commission.⁴²

³⁹ See Direct Testimony of Kevin Kongs, Exhibit No. MPA-400 at 10-11.

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 11-12.

⁴² *Id.* at 12 (citing *Prairie Wind Transmission, LLC*, Docket No. ER09-36-002 (Mar. 2, 2012) (delegated letter order)).

2. Commission Determination

28. To the extent that costs are allocated or directly-billed from Midwest Power's parent company or any of its affiliates, we direct Midwest Power to further explain and provide the methodology for the allocation of those costs in a compliance filing to be made within 30 days of the date of this order.⁴³ The cost allocation manuals submitted by Midwest Power do not adequately describe the transactions among BHE and all of its direct or indirect subsidiaries. Additionally, the BHE Affiliate Cost Memorandum states that affiliate transactions for BHE are governed by the Intercompany Agreement with each subsidiary.⁴⁴ Midwest Power has not provided the Intercompany Agreements governing affiliate transactions for all of BHE's direct or indirect subsidiaries. We direct Midwest Power to provide the Intercompany Agreements for all of BHE's direct or indirect subsidiaries.

D. Depreciation Rates

1. Proposal

29. Midwest Power proposes to use depreciation rates based on a depreciation study that was conducted by its affiliate Westar, using Westar's electric utility plant, and accepted by the Commission for use in a settlement.⁴⁵ Midwest Power states that the depreciation rates were calculated based on electric plant and the accumulated provision for depreciation balances, the straight line method of depreciation, the average service life procedure, and the average remaining life basis.⁴⁶ Midwest Power contends that, because it has not yet constructed any facilities and there is no historical data upon which to base its depreciation rates, it is appropriate to use the service lives and net salvage percentages supported by the Westar depreciation study. Furthermore, Midwest Power asserts that any Open Transmission Project that it develops will be operated in a manner

⁴³ See *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 151 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at PP 39-42, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) (describing Commission's authority to require the filing of cost-allocation agreements).

⁴⁴ See BHE Affiliate Cost Memorandum, Exhibit No. MPA-402 at 2.

⁴⁵ See *Westar Energy, Inc.*, 117 FERC ¶ 61,172 (2006).

⁴⁶ Exhibit No. MPA-400, Direct Testimony of Kevin Kongs at 4.

similar to the manner in which Westar operates its facilities and will also be located in the same RTO region.

2. Commission Determination

30. We accept Midwest Power's proposed depreciation rates. We recognize that, because Midwest Power's transmission facilities have yet to be identified, there is no historical data to support a depreciation study. In the past, the Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission start-up, and we do so here.⁴⁷ We find that, as Westar is an affiliate company with transmission facilities similar to those Midwest Power intends to own in the MISO footprint, Westar's depreciation rates are an appropriate proxy for Midwest Power to adopt in determining its proposed depreciation rates.

E. Formula Rate

1. Proposal

31. Midwest Power requests approval of its Formula Rate, which will be used to determine revenue requirements for any Open Transmission Projects awarded to Midwest Power by MISO.⁴⁸ Midwest Power states that the Formula Rate is a forward-looking formula and is similar to the formula rate accepted in *Transource Wisconsin*.⁴⁹ The formula rate template also includes an Attachment GG, which calculates project-specific revenue requirements to be collected by MISO as Network Upgrade Charges, and an Attachment MM, which calculates project-specific revenue requirements for Multi-Value Projects, to be collected by MISO from customers under Schedule 26-A of the MISO Tariff. Midwest Power states that its proposed protocols are based on the Commission's most recent guidance in the MISO formula rate proceeding and commits to conform its protocols to the outcome of those proceedings.⁵⁰

32. Midwest Power states that its formula rate template is flexible enough to incorporate competitive annual transmission revenue adjustments on a project-by-project

⁴⁷ See *XEST*, 149 FERC ¶ 61,182 at P 124.

⁴⁸ Midwest Power states that it will make a later joint filing with MISO, pursuant to section 205, to incorporate the Formula Rate into Attachment O of the MISO Tariff.

⁴⁹ Transmittal at 18.

⁵⁰ *Id.* at 23.

basis. As an example, Midwest Power states that it might choose to offer concessions on a project ROE, the requested hypothetical capital structure, or a revenue requirement.⁵¹ Midwest Power states that any concession on a bid for a project that Midwest Power is ultimately selected to develop will be reflected in a project sponsor agreement between Midwest Power and MISO, which will be filed with the Commission.⁵² Midwest Power states that this is consistent with the approach accepted by the Commission in *Transource Wisconsin* and *Transource Kansas*.⁵³

2. Comments

33. The Missouri Commission contends that the protocols do not provide for remote access to Midwest Power open meetings for interested parties that are not able to attend the open meetings in person.⁵⁴ The Missouri Commission asks that the Commission require Midwest Power to provide remote access to its open meetings for interested parties, which, according to the Missouri Commission, Midwest Power has informally expressed willingness to do.

3. Answer

34. Midwest Power filed an answer agreeing to submit a compliance filing making changes to the protocols as requested by the Missouri Commission.⁵⁵ Midwest Power adds that the compliance filing will also include several clarifying changes to reflect informal discussions that it had with MISO staff. In addition, Midwest Power clarifies that, as described in the protocols, during the true-up process, its actual revenue requirement will be compared to the actual revenues received by Midwest Power.

4. Commission Determination

35. We conditionally accept Midwest Power's proposed formula rate template, subject to a compliance filing to be made within 30 days of the date of this order to address the

⁵¹ *Id.*

⁵² *Id.*

⁵³ Transmittal at 22-23 (citing *Transource Wisconsin*, 149 FERC ¶ 61,180; *Transource Kansas*, 151 FERC ¶ 61,010).

⁵⁴ Missouri Commission Protest at 3.

⁵⁵ Midwest Power Answer at 3.

matters discussed below. While the formula rate template generally conforms to other Commission-accepted formula rate templates, there are variances that Midwest Power has not explained, as well as errors that Midwest Power must correct. We also accept Midwest Power's commitment to make the revisions described in its answer. We also conditionally accept the protocols, subject to a compliance filing. We agree with the Missouri Commission's assertion that Midwest Power's protocols should require Midwest Power to provide remote access to their Annual Update and True-Up Adjustment meetings. We find it reasonable to allow for remote access to ease burdens (e.g., travel costs) and ensure all interested parties have the opportunity to participate in the meetings. We will therefore direct Midwest Power to modify their formula rate protocols to explicitly require remote access for participation at Annual Update and True-Up Adjustment meetings. We also accept Midwest Power's commitment to conform its protocols to the standards established in the MISO proceedings currently pending in Docket No. ER13-2379-000, *et al.*⁵⁶

36. We, therefore, direct Midwest Power to modify its formula rate template and protocols and to provide further explanation, as described below.

a. Formula Rate Template Corrections

37. Attachment O, Page 2, Line 23c should include the phrase "(enter negative)" after "Unfunded Reserves" to ensure that unfunded reserves are appropriately credited against rate base. We direct Midwest Power to make this change.

38. Attachment O, Page 3, Line 5a should include Note I. We direct Midwest Power to make this change.

39. Attachment O, Page 5, Note MM states, "It is possible [Midwest Power] will not have any salaries and wages to report in the FERC Form No. 1 (that is page 4, lines 12-15 are zero), even if [Midwest Power] has existing transmission assets in service. If and when this occurs page 4, line 13, column 3 will be input as 1." However, Attachment O, Page 4, Line 16 states, "Total (W/S Allocator is 1 if line 12-15 are zero)." These both describe a condition if Midwest Power has no salaries and wages to report, but with conflicting directions. We direct Midwest Power to revise Note MM or Page 4, Line 16 to be consistent with the other.

⁵⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014), 150 FERC ¶ 61,025 (2015).

40. Attachment O, Page 5, Note CC incorrectly references Attachment H instead of Attachment O. We direct Midwest Power to make this change.
41. Attachment O, Page 5, Note DD states, "Calculate using a simple average of beginning of year and end of year balances as determined on Attachment 4, Line 13." Attachment 4, Line 13 is the data for one month on the Rate Base Worksheet and it is unclear how to calculate a beginning of year and end of year balance from this source. We direct Midwest Power to correct this note.
42. Attachment O, Page 5 Note K should include the phrase, "Excess Deferred Income Taxes reduce income tax expense by the amount of the expense multiplied by $(1/1-T)$ (page 3, line 26a)." We direct Midwest Power to make this change.
43. In Attachments GG, MM and 1, Line 6, the word, "depreciation" is misspelled. We direct Midwest Power to correct these lines.
44. Attachment MM, Page 3, Note F references the Attachment GG true-up template instead of the Attachment MM true-up template. We direct Midwest Power to correct this.
45. Attachment 2, Line 28 should include, "line 26/line 27." We direct Midwest Power to make this change.
46. Attachment 3, Page 1, Column D does not include a source for the revenues received nor describe the input. Page 3, Lines 36 and 37 include, "Sum Lines 2 through 8" and "Line 9 divided by 7" for their sources, respectively. We direct Midwest Power to clarify the sources for these items or revise Attachment 3 to indicate the proper sources.
47. The FERC Form No. 1 reference for Attachment 4, Page 1, Column H should be 214.x.d. We direct Midwest Power to make this change. Attachment 4, Page 2, Column F, the heading and the purpose of Column F is unclear, as is the phrase "exclude the portion of any balance offset by a balance sheet account" in Attachment 4, Note G. We direct Midwest Power to explain the purpose of Column F and the quoted phrase in Note G, and how it will ensure that capital contributions from customers are appropriately deducted from rate base before they are used to fund liabilities. We also direct Midwest Power to revise the heading of Column F to make clear the inputs and/or calculations to be placed in that column, and to clarify Note G consistent with its explanation of the purpose of the quoted phrase.
48. Attachment 5, Page 1, the columns that include Depreciation Expense – General & Intangible and Depreciation Expense – Common should all refer to Note BB on Attachment O to ensure that asset retirement obligations are properly excluded from these amounts. Attachment 5, Page 1, Column J, Excess Deferred Income Taxes should refer to Note K on Attachment O. Furthermore, Lines 34 and 36 do not include the proposed

hypothetical capital structure, as they should. Lastly, Note E should reflect that the cost of debt is calculated on Attachment 8 until such time that Midwest Power issues debt. We direct Midwest Power to make these changes.

49. Attachment 7, Post-Retirement Benefits other than Pension (PBOPs) contains some items that are not clearly supported. Specifically, it is not clear from the submitted actuarial reports how Midwest Power derived for BHE its total PBOP expenses on line 2 or its labor dollars on Line 5. We direct Midwest Power to provide additional clarification and support to address these issues. Furthermore, we remind Midwest Power that all amounts collected for PBOPs must be deposited into an irrevocable external trust fund, pursuant to Commission policy.⁵⁷

50. Attachment 8 contains the methodology to determine the cost of debt and contains a 175 basis point spread over the LIBOR rate. Midwest Power states that it bases this spread on the spread currently charged to Transource Missouri. Midwest Power states that it will update the spread using the best available information. Midwest Power Attachment 8, Note 4 should reference Line 11-21. Furthermore, to the extent that Midwest Power continues to utilize Attachment 8, we direct Midwest Power, in its annual informational filing, to provide supporting documentation for the credit spread in Attachment 8.

F. Request for Authorization to Replicate the Formula Rate and Incentive Rate Treatments

1. Proposal

51. Midwest Power requests authorization for any of the Midwest Power MISO Entities that develop a MISO transmission project in their respective state to replicate and adopt the Formula Rate without the need for section 205 filing. Midwest Power further requests that the Midwest Power MISO Entities be permitted to incorporate one or more of the requested rate incentives into their bids for a MISO Open Transmission Project and to utilize such incentives if it is awarded a project. Midwest Power asserts that its proposal is consistent with the approach accepted by the Commission in *Transource Kansas, Transource Wisconsin, and TransCanyon*.⁵⁸

⁵⁷ See *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330, at 62,200 (1992).

⁵⁸ Transmittal at 6 (citing *Transource Wisconsin*, 149 FERC ¶ 61,180; *Transource Kansas*, 151 FERC ¶ 61,010; *TransCanyon*, 152 FERC ¶ 61,017 (2015)).

52. Per the Commission's guidance in *Transource Wisconsin*, Midwest Power states that the replication of the Formula Rate by the Midwest Power MISO Entities would be a two-step process: first, as a result of the instant filing the Formula Rate will be included in Midwest Power's database; second, once Midwest Power is awarded an Open Transmission Project, it will make a section 205 filing in conjunction with MISO to incorporate the Formula Rate into the MISO Tariff and will label the Formula Rate as *pro forma*, enabling the other Midwest Power MISO Entities to utilize it without the need for additional 205 filings.

2. Commission Determination

53. We grant Midwest Power's request for use of the proposed Formula Rate by the yet-to-be-formed Midwest Power MISO Entities. We find that there is no reason to open a new proceeding to re-litigate the justness and reasonableness of a formula rate that is identical to the one being accepted in the instant filing.⁵⁹ We accept Midwest Power's proposal that, if and when it is awarded an Open Transmission Project, Midwest Power and MISO will make a joint section 205 filing to incorporate the formula rate into the MISO Tariff. In that filing, Midwest Power should label the formula rate template and protocols as the *pro forma* formula rate template and protocols for use by any Midwest Power MISO Entity, which will obviate the need to make additional section 205 filings.⁶⁰

54. We will also allow the Midwest Power MISO Entities to use the regulatory asset and hypothetical capital structure incentive rate treatments that we are approving for Midwest Power. Because the rationale for granting the regulatory asset rate treatment to the Midwest Power MISO Entities would be identical to the rationale adopted in this proceeding, the issue need not be re-litigated through further section 205 or 219 filings.⁶¹

The Commission orders:

(A) Midwest Power's request for authorization to defer as a regulatory asset all of its prudently incurred pre-commercial and formation costs that are not capitalized, is hereby granted effective September 21, 2015, as discussed in the body of this order.

⁵⁹ *Transource Kansas*, 151 FERC ¶ 61,010 at P 81; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 63; *TransCanyon*, 152 FERC ¶ 61,017 at P 65.

⁶⁰ We note that Midwest Power MISO Entities would need to make a section 205 filing before making any changes to the Formula Rate, including any changes to depreciation rates or ROE.

⁶¹ *Transource Kansas*, 151 FERC ¶ 61,010 at P 82.

(B) Midwest Power's request to use a hypothetical capital structure is hereby granted, as discussed in the body of this order.

(C) Midwest Power's proposed formula rate template and protocols are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days of the date of this order, and subject to the formula rate protocols proceedings currently pending in Docket No. ER13-2379-000, as discussed in the body of this order. Midwest Power's proposed formula rate template and protocols will take effect once filed with the Commission to become part of MISO's Tariff, consistent with the effective date established in that future proceeding.

(D) Midwest Power's request that other state-specific affiliates be authorized to replicate its Formula Rate and utilize the same incentives awarded to Midwest Power is hereby granted, as discussed in the body of this order.

(E) Midwest Power's request to use the ROE approved for MISO transmission owners is hereby granted, subject to the outcome of the pending proceedings in Docket Nos. EL14-12-000 and EL15-45-000, as discussed in the body of this order. Midwest Power's proposed ROE adder for RTO participation is approved, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.