135 FERC ¶ 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ameren Services Company Docket No. EL10-80-000

ORDER ON TRANSMISSION RATE INCENTIVES

(Issued May 19, 2011)

1. On August 2, 2010, Ameren Services Company (Ameren Services) filed, under Rule 207 of the Commission's Rules of Practice and Procedure,[1] and section 219 of the Federal Power Act (FPA),[2] a petition for a declaratory order to approve various transmission infrastructure investment incentives[3] for its affiliates, including Ameren Transmission Company (ATX), and requesting authorization to use other ratemaking proposals, in connection with a portfolio of projects called "Grand Rivers," which consists of four new transmission projects (the Projects) in the first phase.[4] In this order, we grant Ameren Services' request for transmission rate incentives with respect to two of

[1] 18 C.F.R. § 385.207 (2011).

[2] 16 U.S.C. § 824s (2006).

[3] *See 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).

[4] Ameren Services' affiliates include Central Illinois Public Service Company d/b/a AmerenCIPS (AmerenCIPS), Central Illinois Light Company d/b/a AmerenCILCO (AmerenCILCO), Illinois Power Company d/b/a AmerenIP (AmerenIP) (collectively, Ameren Illinois Utilities), as well as Union Electric Company d/b/a AmerenUE (AmerenUE), Ameren Illinois Transmission Company (AITC), ATX, and future subsidiaries of ATX (collectively, Ameren Companies).

the projects conditioned on their approval in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) Transmission Expansion Planning Process (MTEP) and deny the requested incentives with respect to the remaining two Projects, without prejudice, authorize certain additional ratemaking proposals and deny Ameren Services' requested depreciation ratemaking proposal, without prejudice, as discussed in more detail below.

I. Background

A. Description of Ameren Services

2. Ameren Services is a centralized service company that is a wholly-owned subsidiary of Ameren Corporation, a public utility holding company under the Public Utility Holding Company Act of 2005.[5] Ameren Corporation is the corporate parent of four public utility operating companies in Illinois and Missouri: AmerenCILCO, AmerenCIPS, AmerenIP and AmerenUE (collectively, the "Ameren Operating Companies").[6] The Ameren Operating Companies are transmission-owning members of Midwest ISO, and as such, the Ameren Operating Companies provide transmission service in accordance with the rates, terms and conditions of the Commission-approved Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). The Ameren Operating Companies' transmission revenue requirement is established through the Midwest ISO Attachment O formula rate found in the Tariff. Ameren Corporation is also the corporate parent of AITC, a company that assists in the financing and construction of transmission assets in Illinois, and which may be involved in developing the Projects. ATX is a newly formed, wholly-owned subsidiary of Ameren Corporation. Ameren Corporation created a separate transmission company within the corporate family in order to enhance the transmission business line's access to credit and to provide business focus on transmission. ATX may have one or more subsidiaries that would each function as the owner of new transmission assets. Ameren Services states that ATX and its transmission-owning subsidiaries will join Midwest ISO as transmission owner members and thereby recover their transmission revenue requirements under the Tariff, similar to their affiliates, the Ameren Operating Companies.

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[5] 16 U.S.C. § 791a, *et seq*.

[6] On October 1, 2010, AmerenCILCO, AmerenIP and AmerenCIPS merged to form Ameren Illinois Company. *Ameren Corp.*, 131 FERC ¶ 61,240 (2010); Ameren Corp., Notice of Consummation, EC10-52-000, at 2 (filed Oct. 12, 2010).

B. Ameren Services' Transmission Proposal

3. Ameren Services proposes to build during the next 10 to 15 years, a portfolio of projects named "Grand Rivers," which it estimates will cost $3 billion. The first phase of Grand Rivers, for which Ameren Services seeks incentives in the instant petition, consists of the Projects, which it estimates will cost $1.3 billion. Ameren Services asserts that the Projects will facilitate the interconnection of various renewable energy resources, and enhance reliability and relieve congestion both within and outside of the Ameren zones.

4. The Projects consist of the following four projects:

a. The **Illinois Rivers Project** will consist of a 331 mile 345-kV line extending from Palmyra, Missouri to Pawnee, Illinois and then continuing to Sugar Creek, Indiana along with two line segments from Meredosia to Ipava, Illinois and Sidney to Rising, Illinois.[7] Ameren Services estimates that this project will cost $739 million.

b. The **Big Muddy River Project** will consist of a 185 mile 345-kV line with a hub at Grand Tower and segments to Baldwin, Joppa, and West Frankfort East in Illinois, then extending across the Mississippi River to Missouri. Ameren Services estimates that this project will cost $383 million.

c. The **Spoon River Project** will consist of a 70 mile 345-kV line in Illinois, extending from Fargo to Galesburg to Oak Grove. Ameren Services estimates that this project will cost $146 million.

d. The **Wabash River Project** will consist of a 52 mile 345-kV line extending from Newton to Hutsonville in Illinois, and then continuing to Merom, Indiana. Ameren Services estimates that this project will cost $110 million.

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[7] On July 15, 2010, in Docket No. ER10-1791-000, Midwest ISO filed a comprehensive cost allocation methodology that establishes a new category of transmission projects called Multi Value Projects (MVP) along with a corresponding cost allocation methodology for such projects (Midwest ISO MVP Cost Allocation Filing). The Illinois Rivers Project is included in Midwest ISO's "starter set" of MVPs. On December 16, 2010, the Commission conditionally accepted Midwest ISO's proposal. *See Midwest Indep. Trans. Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (December 16 Order).

5. Ameren Services states that, in addition to the Projects, Ameren Companies will be developing and constructing the "underbuild"[8] necessary for the Projects to operate reliably. Ameren Services further states that the cost of these necessary improvements will be identified in the MTEP process and will be included in the Projects' scope.

6. Ameren Services states that the Projects meet multiple needs identified in the Illinois and Missouri areas of Midwest ISO. The Projects will improve the north-south transfer capability in the southeastern part of Missouri and the southwestern part of Illinois by over 6,700 MW and add 3,400 MW of transfer capability between Missouri and Illinois. Ameren Services asserts that the Projects will significantly reduce congestion within and between the Midwest ISO and PJM Interconnection, L.L.C.

7. Ameren Services contends that the Projects will facilitate the interconnection of various renewable energy projects by providing a contiguous tie across central Illinois. Ameren Services also asserts that the Projects will improve reliability in southeastern Missouri and southwestern Illinois, strengthen the efficiency of the transmission system by reducing total system losses by over 44 MW, enhance delivery of existing generation and mitigate regional transmission flows on local 138-kV transmission facilities. Ameren Services adds that the Projects will improve the deliverability of power from the future clean coal technology plants planned to be built in Illinois by FutureGen and Tenaska.

8. Ameren Services requests four incentive rate treatments under Order No. 679, including: (1) inclusion of 100 percent construction work in progress (CWIP) in rate base; (2) recovery of 100 percent prudently incurred abandoned plant costs; (3) use by AITC, ATX and any future subsidiaries of ATX of a hypothetical capital structure during the construction period of 56 percent equity and 44 percent debt;[9] and (4) for AITC, ATX and any future subsidiaries of ATX, the approval to expense and recover on a current basis all prudently incurred costs for the Projects' pre-commercial operations.[10]

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[8] Ameren Services defines "underbuild" as the improvements to lower voltage lines and equipment that must be completed to ensure the reliable delivery of the benefits from the high voltage projets.

[9] Ameren Services states that this hypothetical capital structure reflects the consolidated capital structure of ATX's affiliates AmerenCIPS, AmerenCILCO and AmerenIP as of December 31, 2009, and, is therefore, the actual capital structure contained in the transmission rates currently in effect in the Ameren Illinois pricing zone of Midwest ISO.

[10] Ameren Services does not seek the hypothetical capital structure and pre-commercial operations cost recovery incentives for the Ameren Operating Companies.

9. In addition, Ameren Services requests that the Commission authorize the use of: (1) a thirty (30)-year depreciable life for the Projects; (2) a 12.38 percent return on equity (ROE) currently available to all transmission-owning members of Midwest ISO; and (3) forward-looking formula rates with a true-up mechanism. Finally, Ameren Services requests the ability to assign the requested incentives to any future affiliates which may be created to build these projects, and authorization that the incentives also apply to the necessary "underbuild" to integrate the Projects.

10. Although Ameren Services is not seeking a stand-alone incentive ROE adder for advanced technologies, it states that it intends to utilize several new technologies on the Projects such as: microprocessor-based protective relays, microprocessor-based supervisory control and data acquisition equipment for real-time monitoring and control, digital fault recorders, fiber-optic technologies including optic cables in the shield wire, additional phase measurement units to support the Eastern Interconnection Synchrophaser System, and state of the art low-loss, high efficiency transmission transformers with additional SmartGrid application of fiber-optic monitoring and sensor technology to provide predictive data for preventative maintenance and diagnostics. Ameren Services states that all of these technologies will "increase the capacity, efficiency or reliability" of the Projects.

II. Notice of Filings and Responsive Pleadings

11. Notice of Ameren Services' filing was published in the *Federal Register*, 75 Fed. Reg. 48,965 (2010), with interventions and comments due on or before August 31, 2010. Timely motions to intervene were filed by Exelon Corporation, Duke Energy Corporation, Clean Line Energy Partners LLC, American Municipal Power, Inc., Missouri Industrial Energy Consumers,[11] and Midwest ISO Transmission Owners.[12]

[11] Missouri Industrial Energy Consumers consist of: Anheuser-Busch, Boeing, Doe Run, Enbridge, JW Aluminum, General Motors, GKN Aerospace, Hussmann, Monsanto, Noranda Aluminum, Procter & Gamble, Nestle Purina, Saint Gobain and Solutia.

[12] Midwest ISO Transmission Owners for this filing consist of: American Transmission Company LLC; American Transmission Systems, Incorporated; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy

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Consumers Energy Company (Consumers Energy) filed a timely motion to intervene and comments. Republic Transmission, LLC (Republic) filed a timely motion to intervene and request for clarification. Missouri Public Service Commission filed a notice of intervention. Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and comments. Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative (Hoosier and Southern Illinois Coop), Prairie Power, Inc. (Prairie Power), the Illinois Municipal Electric Agency (Illinois Municipal), Illinois Industrial Energy Consumers (Illinois Industrials),[13] and Southwestern Electric Cooperative, Inc. (Southwestern Coop) submitted timely motions to intervene and protests. Late motions to intervene were submitted by Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc. and PSEG Companies.[14] Finally, Missouri Joint Municipal Electric Utility Commission (Missouri Municipal) filed a late motion to intervene and protest with a separate motion to accept the late-filed intervention and protest. On September 15, 2010, Ameren Services filed a motion for leave to answer and answer (Answer) to the comments and protests.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[15] the timely, unopposed motions to intervene and the notices of intervention serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the

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Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation; and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

[13] Illinois Industrials consist of: Air Products & Chemicals Company, Cargill, Inc., ConocoPhillips, Enbridge Energy, LLP, Olin Corporation, United States Steel Corporation and Viscofan USA, Inc.

[14] PSEG Companies consist of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade.

[15] 18 C.F.R. § 385.214 (2011).

Commission's Rules of Practice and Procedure, the Commission will grant the late-filed motions to intervene given the parties' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.[16]

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[17] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Ameren Services' Answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Timing of Commission Action

a. Comments

14. The majority of entities filing protests argue that Ameren Services' filing is premature because the Projects have not been approved in the MTEP process or by any state authorities. Illinois Commission maintains that because this filing is closely related to the Midwest ISO MVP Cost Allocation Filing, it argues that the Commission should not act on Ameren Services' petition until it acts on that filing.[18] Illinois Industrials and Republic argue that it is premature to allow implementation of the requested CWIP, abandoned plant recovery and pre-commercial operations incentives for specific projects until such time as those projects are approved in the MTEP. Illinois Industrials state that any Commission approval of the Projects should be conditioned on the incentives not going into effect for an individual project until, and only to the extent, the project is approved in the MTEP.[19] Prairie Power requests that the Commission reject Ameren Services' petition as premature or, in the alternative, reduce and modify its requested incentives to properly reflect the reality of the Projects. Southwestern Coop argues that Ameren Services' petition is premature because the Projects have not been accepted

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[16] *Id.* § 385.214(d).

[17] *Id.* § 385.213(a)(2).

[18] Illinois Commission Comments at 4-5, 12-14. Requests for rehearing of the December 16 Order are pending in Docket No. ER10-1791-001.

[19] Illinois Industrials Protest at 5-6.

through a regional planning process and Ameren Services has not received state construction approval.[20]

15. Hoosier and Southern Illinois Coop request that the Commission make clear, to the extent it approves Ameren Services' petition, that the specific routes of any of the projects planned by Ameren Services will be determined in the Midwest ISO planning process and that no such determination is being made by the Commission in the instant docket.

b. Ameren Services' Answer

16. Ameren Services states that its filing is not premature and that by filing its petition at this time, it is seeking Commission guidance and assurance as to Commission policy and precedent with respect to incentive rate treatments and its proposed future section 205 filing. Ameren Services states that given the current economic climate, the extraordinary nature of the Projects, and its overall transmission investment plans for the next 15 years, it is entirely reasonable for it to seek assurances as to the continuing application of transmission rate incentives.[21]

17. In addition, Ameren Services states that commenting parties' arguments that its petition is premature are unpersuasive and contrary to Commission precedent. Further, Ameren Services states that the Commission should condition its approval of incentives on the future approval of the Projects in the MTEP because such a result would be consistent with Commission precedent.[22]

c. Commission Determination

18. We disagree with the argument that Ameren Services' petition is premature. The Commission has acted on incentive rate requests prior to the conclusion of the applicable regional transmission planning process or before any permit has been issued by the relevant governmental authorities.[23] As the Commission has stated previously, granting

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[20] Southwestern Coop Protest at 7.

[21] Ameren Services Answer at 3-4.

[22] Ameren Services Answer at 5-8.

[23] See, e.g., Green Energy Express LLC, 129 FERC ¶ 61,165, at P 13 (2009) (Green Energy Express); Western Grid Development, LLC, 130 FERC ¶ 61,056, at P 16 (2010) (Western Grid).

rate incentives under Order No. 679 is not intended to prejudge the outcome of any regional transmission planning process, including the MTEP, or any governmental permitting or similar proceeding.[24] Furthermore, as discussed below, we accept Ameren Services' proposal that we grant the requested incentives for the Illinois Rivers Project and the Big Muddy River Project conditioned on approval of those projects in the MTEP. We find that this condition will ensure that Ameren Services provides adequate and sufficiently detailed data on these projects to be properly considered by Midwest ISO, thereby satisfying protestors' concerns.

19. In response to Illinois Commission's argument that the Illinois Rivers Project may be classified as a MVP under the Midwest ISO MVP Cost Allocation Filing, and therefore action on Ameren Services' Petition should be delayed until the Commission has acted on the MVP Cost Allocation Filing, we disagree. While the Commission's conditional approval of the MVP Cost Allocation Filing is pending on rehearing and compliance, we see no reason that we cannot act on Ameren Services' requests at this time. In this proceeding, the Commission is authorizing the use of certain transmission rate incentives. Ameren Services' ratemaking proposals to recover such incentives through rates will be filed with the Commission in a separate section 205 filing. Further, because we are granting the requested incentives for the Illinois Rivers and Big Muddy River Projects conditioned on approval of those projects in the MTEP, customers and state commissions will have the opportunity to address issues related to eligibility of those projects for various cost allocation mechanisms under the Midwest ISO Tariff in the MTEP planning process.

2. Section 219 Requirement

20. In the Energy Policy Act of 2005,[25] Congress added section 219 to the FPA and directed the Commission to establish rules providing incentives to promote capital investment in transmission infrastructure. The Commission subsequently issued Order No. 679, setting forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, such as the incentives requested here by Ameren Services.

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[24] *See, e.g.*, *Green Power Express LP*, 127 FERC ¶ 61,031, at P 42 (2009) (*Green Power Express*) ("ruling on a request for incentives pursuant to Order No. 679 does not prejudge the findings of a particular transmission planning process or the siting procedures at state commissions"); *see also Green Energy Express,* 129 FERC ¶ 61,165 at P 13.

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

21. 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."[26] 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."[27]

22. Order No. 679 provides that a public utility may file a petition for declaratory order or a section 205 filing to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of section 219.[28] Order No. 679 establishes 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) the transmission project has received construction approval from an appropriate state commission or state siting authority.[29] 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.[30]

a. Ameren Services' Proposal

23. Ameren Services contends that it meets the rebuttable presumption under Order No. 679 because it expects that all four projects will be approved in the MTEP process. Ameren Services states that Ameren Companies have developed their transmission expansion plans in cooperation with Midwest ISO and the Projects are being assessed by Midwest ISO through the MTEP process. The MTEP is developed on an annual basis by Midwest ISO with transmission owners and other stakeholders.

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

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

[28] 18 C.F.R. § 35.35(i) (2010).

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

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

24. Ameren Services states that the primary goals of the MTEP process are to ensure continued compliance with national electric reliability standards, to relieve congestion on the grid, and to facilitate the development of new generation resources. Further, the purpose of the MTEP analysis is to identify required and highly desirable transmission system projects. The MTEP process identifies both short and long-term projects and classifies projects into three general categories, Appendix A, Appendix B and Appendix C. In order to be included in Appendix A, a project must be approved by the Midwest ISO Board of Directors and must be determined to be the preferred solution to an identified reliability, policy or other need, or to achieve an indentified cost savings or provide other benefits. Once a project is approved by the Midwest ISO Board of Directors, the project is implemented in accordance with the Midwest ISO Transmission Owners Agreement and the Tariff, and may be eligible for regional cost sharing.

25. The Projects are currently in Appendix B and Appendix C of the MTEP, but Ameren Services anticipates that the Projects will be approved by the Midwest ISO Board of Directors and placed into Appendix A of the MTEP. Ameren Services states that once the Projects have been approved by the Midwest ISO Board of Directors as part of the MTEP process, it will constitute a finding by Midwest ISO that the Projects enhance reliability, reduce congestion and provide other policy benefits, such as facilitating the integration of new renewable resources. Therefore, Ameren Services maintains that approval of the Projects through the MTEP process will satisfy the requirements for the rebuttable presumption.

26. Ameren Services further explains that the Ameren Companies that are, or will be, regulated by the Illinois Commission as Illinois public utilities will be required to secure certificates of public convenience and necessity from the Illinois Commission for Projects located in Illinois before construction begins. Ameren Services states that the Illinois Commission will grant a certificate of public convenience and necessity only if the applicant demonstrates, among other things, "that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers or that the proposed construction will promote the development of an effectively competitive electricity market that operates efficiently, is equitable to all customers, and is the least cost means of satisfying those objectives."[31]

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[31] Ameren Services Petition at 19-20 (citing 220 Ill. Comp. Stat. Ann. 5/8-406(b) (Lexis Nexis 2010).

b. Comments and Protests

27. Several protesters contend that Ameren Services does not qualify for the rebuttable presumption under section 219 of the FPA because the Projects have not been approved by a regional planning process; nor have they received construction approval from an appropriate state commission or state siting authority. Illinois Commission states that the Commission should not condition Ameren Services' request on acceptance of the Projects into Appendix A of MTEP as, according to Illinois Commission, not all projects in Appendix A will be included on the basis of relieving congestion or increasing reliability, the elements identified in section 219 for eligibility for incentive rate treatment.[32] Specifically, the Illinois Commission notes that Ameren Services states in testimony that it expects the Projects to qualify as MVPs. However, the Illinois Commission asserts that even if the criteria for MVP projects were subject to change, inclusion of the Projects in Appendix A under Criterion 1 of the proposed MVP definition[33] would not satisfy the rebuttable presumptions.

28. Further, some protesters argue that Ameren Services has not produced sufficient evidence to meet the section 219 requirement. Southwestern Coop states that Ameren Services has not shown that the Projects will ensure reliability or reduce the cost of delivered power by reducing congestion.[34] Illinois Municipal states that although one can presume that the construction of additional transmission paths would reduce congestion, no analyses have been presented to demonstrate the magnitude of any benefits from the Projects as to reduced congestion costs and no showing has been made

[32] Illinois Commission Comments at 4, 7-11.

[33] Under the Midwest ISO Tariff, for a project to be designated as an MVP, among other things, it must satisfy one of three functional criteria. To satisfy Criterion 1 "[an MVP] must be developed through the [MTEP] for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade." Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 3451A.

[34] Illinois Commission Comments at 8-9.

that the Projects will produce, or even are likely to produce, benefits greater than their expected costs.[35]

c. Ameren Services' Answer

29. Ameren Services notes that while the Projects have not been found to meet the requirements of section 219 at this time, in prior cases the Commission has conditioned approval of incentives on future findings that projects meet section 219 requirements, and states that the Commission should do the same here. In addition, Ameren Services states that contrary to commenting parties' assertions, approval of the Projects in the MTEP will satisfy the rebuttable presumption and demonstrate that the Projects ensure reliability and/or reduce congestion.[36]

d. Commission Determination

30. As stated above, Order No. 679, as modified by Order No. 679-A, provides that a rebuttable presumption can be applied to a transmission project that results from a fair and open regional planning process or one that has received construction approval from the appropriate state authority, if the process considers whether a project ensures reliability or reduces the cost of delivered power by reducing congestion.[37] In this case, the Projects have not yet received approval through the MTEP process. In Order No. 679, the Commission indicated that it would consider a request for incentive treatment for a project, which is still undergoing consideration in a regional planning process, but may make any requested rate treatment contingent upon the project being approved under the regional planning process.[38] Ameren Services' proposal is consistent with this approach.

31. We disagree with Illinois Commission's claims that designation as an MVP does not necessarily satisfy the rebuttable presumption because Criterion 1 does not require that projects ensure reliability or reduce the cost of delivered power. Qualifying as an MVP through Criterion 1 requires, pursuant to the MISO tariff, that the project "must be developed through the [MTEP] for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy

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[35] Illinois Municipal Protest at 7.

[36] Ameren Services Answer at 8-12.

[37] 18 C.F.R. § 35.35(i) (2010).

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

mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. [The project] must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade."[39] In the December 16 Order, the Commission explained that pursuant to this criterion, "[A]ny candidate MVP must be subject to an open, transparent analysis in the MTEP of the costs and regional benefits that it will provide, even if the MVP is proposed primarily for reasons of public policy."[40] Based on this understanding, we find that receiving approval in the MTEP as an MVP under Criterion 1 establishes eligibility for the Order No. 679 rebuttable presumption that relies on a transmission planning process.[41] Therefore, consistent with Ameren Services' proposal, we condition the incentives granted herein on the Illinois Rivers Project and the Big Muddy River Project receiving approval through the MTEP process.

3. The Nexus Requirement

a. Application of the Nexus Requirement

i. Ameren Services' Proposal

32. Ameren Services asserts that the incentives requested in connection with the Projects satisfy the nexus test established in Order No. 679 because the Projects are non-routine and the incentives are tailored to address the risks and challenges of the Projects. Ameren Services maintains that given their scope and effects, and the challenges and risks the Ameren Companies face in developing them, the Projects are not routine. Further, according to Ameren Services, the effect of the Projects will result in numerous benefits, including increased reliability in and around the Ameren zones of Midwest ISO, improved north to south transfer capability and west to east transfer capability, and completion of "missing links" in the existing 345 kV network that are needed to accommodate future high-voltage transmission system overlays. Additionally, Ameren Services states that the Projects will improve the efficiency of the transmission system by reducing losses by over 44 MW and will reduce congestion within and between the

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[39] Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Original Sheet No. 3451A.

[40] December 16 Order, 133 FERC ¶ 61,221 at P 208.

[41] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57. We reiterate that our findings here do not predetermine the outcome of the MTEP.

Midwest ISO and PJM. Finally, Ameren Services states that the Projects will face many challenges and risks in developing and construction. The Projects are expected to be subjected to multiple layers of regulatory and public scrutiny, including the following: required siting and need determinations by as many as three states, public proceedings in multiple local jurisdictions, and review and approval by the Army Corps of Engineers with regard to two river crossings, which implicate major Mississippi River shipping channels thus creating unusual construction risk. Additionally, a portion of the Projects may be routed through national forest land, requiring special siting procedures.

ii. Comments and Protests

33. Prairie Power asserts that the package of incentives sought by Ameren Services would, taken together, virtually reduce all risk and amount to an unreasonable guarantee, which is inappropriate, especially where the Projects have not been approved as part of the MTEP. Southwestern Coop argues that if the Commission grants all of the incentives requested by Ameren Services, its investment will be virtually risk-free.[42]

34. Hoosier and Southern Illinois Coop contend that any incentives granted by the Commission for the Projects should not apply to the "underbuild." They argue that Ameren Services does not make any claim that the "underbuild" will meet the requirements of Order No. 679. They further argue that Ameren Services has presented no evidence upon which the Commission could find that the "underbuild" is deserving of incentive rate treatments.[43]

iii. Commission Determination

35. In addition to satisfying the section 219 requirement of ensuring reliability or reducing the cost of delivered power by reducing congestion, an applicant for a transmission rate incentive must demonstrate that there is a nexus between the incentive sought and the investment being made. In evaluating whether an applicant has satisfied the required nexus test, the Commission will examine the total package of incentives being sought, the interrelationship between the incentives, and how any requested incentives address the risks and challenges faced by the project.[44] In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that

[42] Southwestern Coop Protest at 18.

[43] Hoosier and Southern Illinois Coop Protest at 9.

[44] 18 C.F.R. § 35.35(d) (2010); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26.

incentives requested are "tailored to address the demonstrable risks or challenges faced by the applicant."[45] The nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

36. As part of this evaluation, the Commission has found the question of whether a project is "routine" to be particularly probative.[46] In *BG&E*, the Commission clarified how it will evaluate projects to determine whether they are routine. Specifically, to determine whether a project is routine, the Commission will consider all relevant factors presented by an applicant. For example, an applicant may present evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, internal competition for financing with other projects, long lead times, regulatory and political risks, specific financing challenges, other impediments).[47] Additionally, the Commission clarified that "when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive."[48]

37. More recently, the Commission recognized that the application of the nexus test may be unclear when an applicant presents multiple projects as a group for consideration for transmission rate incentive treatment.[49] The Commission found that on some occasions, it has applied the nexus test to an aggregate group of projects when the applicant has submitted its request for incentives with respect to the group of projects.[50] The Commission has also stated previously that individual projects, when considered in the aggregate, may not be routine for purposes of incentive treatment because they face significant risks and challenges in constructing all of the projects.[51] On other occasions,

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

[46] *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 48 (2007) (*BG&E*).

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

[48] *Id.* P 54.

[49] *See PJM Interconnection, L.L.C.*, 133 FERC ¶ 61,273, at P 45 (2010) (*PJM*).

[50] *Id.* P 44 (citing *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176 (2008)). *See also PacifiCorp*, 125 FERC ¶ 61,076 (2008).

[51] *See BG&E*, 120 FERC ¶ 61,084 at P 53.

the Commission has applied the nexus test to each individual project.[52] In *PJM*, the Commission found that the applicant's filing revealed the necessity to change Commission policy with respect to the application of the nexus test to groups of projects.[53] The Commission stated that an applicant may demonstrate that a number of individual projects are properly considered to comprise a single project, based on their characteristics and combined purpose, in which case the Commission will consider whether incentives are warranted for that single project.[54] Alternatively, a company may file for incentives for numerous individual and unconnected projects at the same time and even in a single filing, but the company still must provide sufficient justification for why each project qualifies for incentives.[55]

38. Ameren Services has not demonstrated that these four projects that are part of the first phase of "Grand Rivers" are parts of a single overall project or share other characteristics that warrant reviewing the projects as a single project. Rather, it appears from the current record that they are four distinct projects, and we will review them as such. Accordingly, while Ameren Services may submit its request for incentives for all four of the projects in one application, it must provide sufficient information demonstrating how each project satisfies the nexus requirement. Based on our review of Ameren Services' filing, we find that Ameren Services has demonstrated that the Illinois Rivers Project and the Big Muddy River Project meet the nexus requirement but has not shown that the Spoon River Project and the Wabash River Project meet the nexus requirement, as discussed below.

39. Ameren Services has demonstrated that the scope and effect of the Illinois Rivers Project and the Big Muddy River Project are significant, making each project non-routine. As proposed, the Illinois Rivers Project is a 330 mile 345kV transmission line with an estimated cost of $739,000,000 and the Big Muddy River Project is a 185 mile 345kV transmission line with an estimated cost of $383,000,000, with in-service dates anticipated to be around 2022. The scope and effect of each of these projects are significant as each of these projects is projected to span multiple states and have crossings across the Mississippi River. As Ameren Services explains, the river crossing for each of these projects will implicate major Mississippi River shipping channels, thus

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[52] *See, e.g., Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008).

[53] *See PJM*, 133 FERC ¶ 61,273 at P 45.

[54] *Id.*

[55] *Id.*

creating unusual construction risk.[56] The multiple river crossings and multi-state jurisdictional nature of each of these projects combine to increase the risk associated with these projects. Moreover, the Illinois Rivers Project and the Big Muddy River Project represent approximately 93 percent and 48 percent, respectively, of Ameren Services' current net transmission plant of $800 million.[57] This investment is significant and challenges Ameren Services' ability to maintain adequate cash flows to prevent degradation of its credit metrics and ratings, and to ensure the availability of reasonably priced capital. The safety margin from a higher credit rating is ultimately beneficial for Ameren Services' customers, as it protects customers from rate increases associated with potential increases in financial costs as a result of Ameren Services' investment in these projects. In addition, the Illinois Rivers Project is expected to provide congestion relief, mitigate North America Electric Reliability Corporation (NERC) contingencies, improve reliability, integrate new renewable generation, and enhance transfer capabilities.[58] Similarly, the Big Muddy River Project is expected to provide congestion relief, increase north-south transfer capability, mitigate NERC contingencies, and improve reliability.[59]

40. We disagree with Prairie Power and Southwestern Coop that granting the requested incentives for these two projects will amount to an unreasonable risk-free guarantee. For the reasons discussed above, Ameren Services has demonstrated that the risk associated with each of these projects makes them non-routine and warrants the incentives granted herein.

41. We find that Ameren Services has failed to demonstrate that the other two projects, individually, meet the nexus test. Specifically, the Spoon River Project and the Wabash River Project have not been shown to face risks and challenges comparable to those associated with the above mentioned projects. For example, the Spoon River Project is located in a single state and represents approximately 18 percent of Ameren Services' current net transmission plant. Further, the Wabash River Project represents approximately 14 percent of Ameren Services' current net transmission plant, and has not been shown to face atypical siting, constructing or financing challenges. In addition, Ameren Services has not demonstrated that its investment in these two projects will hinder its ability to maintain cash flows, thereby putting downward pressure on its finances, its credit metrics or ratings.

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[56] Borkowski Affidavit at 17.

[57] Borkowski Affidavit at 13.

[58] Kramer Affidavit at 14-15.

[59] *Id*. at 15.

42. Based on the record in this proceeding, Ameren Services has not met the requirements of the nexus test on a project-by-project basis for the Spoon River Project or the Wabash River Project. Accordingly, we will grant the incentives discussed herein only for the Illinois Rivers Project and the Big Muddy River Project. Because Ameren Services submitted its incentives application before the Commission made the above-noted clarifications in *PJM*, we will deny the requested incentives for the Spoon River Project and the Wabash River Project without prejudice to Ameren Services filing a new application with additional information on those projects.

43. With respect to Ameren Services' request that the Commission authorize incentives for the "underbuild" as it is necessary to, and integrated with, the Illinois Rivers Project and the Big Muddy River Project, the Commission finds that it is appropriate to grant this request to the extent that the MTEP process includes these improvements within the scope of the Illinois Rivers Project and the Big Muddy River Project, if and when it approves those projects.

b. Construction Work in Progress

i. Ameren Services' Proposal

44. Ameren Services seeks inclusion of 100 percent of CWIP in AITC, ATX or any future ATX subsidiaries' rate base for the Projects. Ameren Services states that including 100 percent of CWIP in rate base will provide the up-front regulatory certainty and cash flow needed to support such a substantial investment in new and advanced transmission facilities. Ameren Services further contends that including 100 percent of CWIP in rate base will allow for additional cash flow during the approximately eleven year period it will take to construct the Projects. The additional cash flow will allow Ameren Companies to reduce their short-term borrowings and related costs, maintain healthy credit metrics, and meet other financial obligations. Ameren Services also states that the substantial capital expenditures during the construction period would have an adverse impact on Ameren Companies' cash flows and liquidity metrics, which would put downward pressure on Ameren Companies' credit ratings.[60]

ii. Comments and Protests

45. Prairie Power asserts that the requested incentive of 100 percent of CWIP in rate base is excessive because it addresses the same risks as recovery of pre-commercial operation costs, recovery of 100 percent abandonment costs and a hypothetical capital structure. Southwestern Coop opposes 100 percent of CWIP in rate base for the

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[60] Ameren Services Petition at 25-26.

following reasons: (1) Ameren Services fails to show a reasonable nexus between the inclusion of CWIP in rate base and the investment in the Projects; (2) Ameren Services' request could result in profits of tens of millions of dollars; (3) Ameren Services did not make the necessary commitment regarding the rate treatment for customer pre-payment or generator interconnection costs, which should not be included in rate base; and (4) Ameren Services' request is not in conformance with the Commission's requirements that applicants seeking incentives through a formula rate must make an annual filing informing the Commission of their request for inclusion of CWIP in rate base.[61]

46. Hoosier and Southern Illinois Coop state that it is unclear from the petition whether the construction period which is projected by Ameren Services to last through 2022 covers only the first phase of the overall initiative, which has a projected cost of $1.3 billion, or the entire construction initiative, which Ameren Services projects to cost $3 billion. They maintain that Ameren Services has provided no evidence that any future projects to be constructed after the first phase of the Projects meet the statutory or Order No. 679 criteria for incentive rate treatment, and therefore no incentives granted by the Commission in this proceeding should apply beyond phase one.[62]

iii. Ameren Services' Answer

47. In response to Southwestern Coop, Ameren Services explains that the Projects do not include generation interconnection facilities, and instead are transmission network facilities. Ameren Services further responds that allowing 100 percent CWIP in rate base provides advantages of upfront cash flow that gives the project developer the time value of money in order to incentivize the development and construction of transmission infrastructure.[63]

iv. Commission Determination

48. We will grant Ameren Services' request for the CWIP incentive for those projects that we have found meet the nexus test, the Illinois Rivers Project and the Big Muddy River Project, conditioned upon their approval in the MTEP process, as discussed above. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate

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[61] Southwestern Coop Protest at 14-15.

[62] Hoosier and Southern Illinois Coop Protest at 4.

[63] Ameren Services Answer at 17 -18.

base.[64] The Commission stated that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow, reducing the pressures on an applicant's finances caused by investing in transmission projects.[65]

49. In Order No. 679, the Commission stated that it will consider each proposal on the basis of the particular facts of the case.[66] We reject Southwestern Coop's claim that Ameren Services fails to show a reasonable nexus between the inclusion of 100 percent of CWIP in rate base and the investment in the Illinois Rivers Project and the Big Muddy River Project, and we find that Ameren Services has shown a nexus between the proposed CWIP incentive and its investment in the Illinois River Project and the Big Muddy River Project. The Illinois Rivers Project and the Big Muddy River Project are estimated to cost $739 million and $383 million, respectively, and the projects are not expected to go into service until around 2022. The cost and timing for completing these projects will put pressure on Ameren Services' finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense as Ameren Services moves forward with the Illinois Rivers Project and the Big Muddy River Project. Considering the relative size of Ameren Services' investment in the Illinois Rivers Project and the Big Muddy River Project, as compared to its current transmission rate base, we find that authorization of the CWIP incentive is appropriate to assist in the construction of new transmission facilities.

50. Additionally, we reject Southwestern Coop's claims that Ameren Services' request could result in profits of tens of millions of dollars. The Commission has previously recognized that the initial inclusion of CWIP in rate base affects only the timing of cost recovery, not the level of cost recovery.[67] We also disagree with Prairie Power's assertion that the requested incentive of 100 percent CWIP is excessive because it addresses the same risks as recovery of pre-commercial operation costs, recovery of 100 percent abandonment costs and a hypothetical capital structure. As discussed below, the incentive rate treatments proposed by Ameren Services are not mutually exclusive.

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

[65] *Id.* P 115.

[66] *Id.* P 117.

[67] *See, e.g.*, *Commonwealth Edison Co. and Commonwealth Edison Co. of Indiana*, 124 FERC ¶ 61,231, at P 28-29 (2008).

51. In response to Hoosier's and Southern Illinois Coop's concerns, we clarify that Commission authorizations of incentives for future projects beyond the Illinois Rivers Project and the Big Muddy River Project would require separate, case-specific petitions for declaratory orders and/or section 205 filings applicable to those specific projects.[68]

52. We also agree with Southwestern Coop's claims that, as noted in Order No. 679, pre-payments, i.e., payments prior to the start of construction for project costs by third-parties, should not be included in rate base.[69] In addition to interconnection facilities, pursuant to Attachment FF of the Tariff, network upgrades can be directly assigned to generators in certain circumstances. In this case, generators make upfront payments to the transmission owner, and the transmission owner may refund such amounts to the generator over time.[70] The Commission's accounting regulations require upfront payments, i.e., construction advances received from customers which are refunded either wholly or in part to be recorded in Account 252, Customer Advances for Construction.[71] To ensure construction advances associated with the projects, if any, are not included in rate base, Ameren Services will need to deduct the balance of customer advances associated with the projects recorded in Account 252 from the amount of CWIP included in rate base. As customer advances are refunded to customers over time, the balance in Account 252 will decrease and the amount of CWIP included in rate base will increase. Further, we agree with Southwestern Coop's claims that applicants seeking incentives through a formula rate must make an annual filing informing the Commission of their request for inclusion of CWIP in rate base. Pursuant to Order No. 679[72] and the Commission's regulations, an applicant must propose accounting procedures that ensure that customers will not be charged for both capitalized Allowance for Funds Used During Construction (AFUDC) and corresponding amounts of CWIP in rate base.[73] Accounting procedures that have satisfied this requirement have provided internal procedures,

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[68] *See ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 51 (2009); *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,265, at P 51 (2008).

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

[70] *See, e.g.*, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3463; Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 3464.

[71] 18 C.F.R. pt. 101 (2010).

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

[73] 18 C.F.R. § 35.25 (2010).

processes, and/or journal entries intended to prevent costs recovered in current rates from being included in future rates. For example, entities have provided detailed narratives and illustrations showing modifications to the accounting system to identify and segregate work orders associated with projects that include CWIP in rate base in order to ensure proper accounting.[74]

53. Accordingly, we find that the Illinois Rivers Project and the Big Muddy River Project are eligible to receive the incentive for 100 percent of CWIP in rate base, contingent on their approval in the MTEP, as discussed above. Our acceptance of Ameren Services' proposal to recover 100 percent of CWIP in rate base is also conditioned upon Ameren Services' fulfilling the Commission's requirements for CWIP inclusion for these transmission facilities in a future filing under section 205.[75] In its future section 205 filing,[76] Ameren Services must demonstrate that it has accounting procedures and internal controls in place to prevent recovery of AFUDC to the extent they are allowed to include CWIP in rate base.

c. Abandoned Plant Recovery

i. Ameren Services' Proposal

54. Ameren Services requests an abandoned plant incentive so that it will have the opportunity to recover prudently incurred costs if the Projects are abandoned due to forces outside of Ameren Services' control. Ameren Services states that the abandoned

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[74] *See, e.g.*, The United Illuminating Co., Docket No. ER07-653-000, Exh. Nos. UI-13, UI-14 and UI-15 (filed Mar. 23, 2007); Boston Edison Co., Docket No. ER05-69-000, Exh. Nos. BE-2 (at 4-5) and BE-6 (filed Oct. 25, 2004); American Trans. Co. LLC, Docket No. ER04-108-000, Exh. Nos. ATC-9 and ATC-10 (filed Oct. 30, 2003).

[75] *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs., ¶ 30,455 (1983), *order on reh'g*, Order No. 298-B, FERC Stats. & Regs., ¶ 30,524 (1983).

[76] *See Construction Work In Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, 48 *Fed. Reg.* 24,323 (June 1, 1983), *FERC* Stats. and Regs., Regulations Preambles 1982-1985 ¶ 30,455 (1983), *order on reh'g*, Order No. 298-B, 48 *Fed. Reg.* 55,281 (Dec. 12, 1983), *FERC* Stats. and Regs., Regulations Preambles 1982-1985 ¶ 30,524 (1983). *See also Boston Edison*, 109 FERC ¶ 61,300 (2004); *American Trans. Co. II*, 107 FERC ¶ 61,117; *Northeast Utilities Service Co.*, 114 FERC ¶61,089 (2006).

plant incentive is appropriate here because of the Projects' long lead times and the multiple permitting risks it will face. Ameren Services further states that the Projects must be approved by three state commissions and must be subject to a public process in each county in Illinois. Ameren Services also contends that there is no guarantee that the factors underlying the Projects, such as new renewable development, demand growth and congestion relief, will not change due to public policy shifts and thereby render the Projects unnecessary. Further, Ameren Services states that the abandoned plant incentive will avoid the Ameren Companies having to offer their shareholders an additional "risk premium" that would push the necessary ROE higher.

ii. Comments and Protests

55. Southwestern Coop protests Ameren Services' request for recovery of 100 percent abandoned plant recovery. Southwestern Coop argues that Ameren Services has presented no compelling reason for any deviation from the Commission's practice of allowing recovery of only 50 percent of abandoned cost. Hoosier and Southern Illinois Coop note that if the Commission allows for recovery of abandoned plant costs, Ameren Services should be required to commit to making a filing pursuant to section 205 as a precondition to recovery of such costs.

56. Illinois Commission states that the abandoned plant incentive, if not properly limited, exposes ratepayers to risks that rightfully reside with the applicant. Illinois Commission argues that the Commission should not grant the requested incentive until boundaries are established on what types of costs are judged to be prudently incurred or what events are judged to be outside of Ameren Services' control.

iii. Ameren Services' Answer

57. Ameren Services states that granting the opportunity to recover costs of abandoned plant does not insulate the applicant from all risks. Ameren Services maintains that the abandoned plant incentive only provides protection against a fairly narrow set of risks, i.e., those factors truly beyond the applicant's control; the applicant still has every incentive to manage all of those risks that are within its control.[77] In addition, Ameren Services clarifies that if the Projects must be abandoned for reasons beyond its control, it intends to make a section 205 filing in order to recover prudently-incurred abandoned plant costs.[78]

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[77] Ameren Services Answer at 18.

[78] Ameren Services Answer at 19.

iv. Commission Determination

58. We grant the requested incentive for Ameren Services to have the opportunity to recover its prudently incurred costs for those projects that we have found meet the nexus test, the Illinois Rivers Project and Big Muddy River Project, if either of those projects are abandoned for reasons beyond Ameren Services' control, conditioned upon the Illinois Rivers Project and the Big Muddy River Project being approved in the MTEP process, as discussed above. In Order No. 679, the Commission found that the abandonment incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs.[79] Contrary to Southwestern Coop's assertion**,** we find that Ameren Services has demonstrated, consistent with Order No. 679, a nexus between the recovery of 100 percent of prudently-incurred abandonment costs and its planned investment in the Illinois Rivers Project and the Big Muddy River Project.

59. We find that this incentive will be an effective means to encourage the Illinois Rivers Project's and the Big Muddy River Project's completion. Ameren Services has demonstrated that factors outside of its control could prevent the Illinois Rivers Project and the Big Muddy River Project from being completed. As Ameren Services notes, it faces the risk of changes in public policy, energy markets, and capital markets, rendering the Illinois Rivers Project and the Big Muddy River Project unnecessary. In addition, based on information provided in its petition, Ameren Services faces risks in the permitting process, because it needs to secure various approvals from federal, state, and/or local municipal bodies.[80] These factors introduce a significant element of risk; granting this abandoned plant incentive will help ameliorate this risk by providing Ameren Services with some degree of certainty as it moves forward.

60. We note, however, that if the Illinois Rivers Project and the Big Muddy River Project are cancelled before they are completed, Ameren Services is required to make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred before it can recover any abandoned plant costs, as Ameren Services commits to doing in its Answer. Ameren Services must also propose in its section 205 filing a just and reasonable rate to recover these costs. Order No. 679 specifically requires that any utility granted this incentive that then seeks to recover abandoned plant costs must submit such a section 205 filing.[81]

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

[80] Ameren Services Petition at 27.

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

61. In response to Illinois Commission, individuals that are concerned about their potential exposure to additional costs as a result of the abandoned plant incentive will have an opportunity to comment on any proposal to recover such costs if and when Ameren Services makes a section 205 filing. Arguments about whether it was prudent for Ameren Services to incur specific costs, or whether the project was abandoned for reasons outside of Ameren Service's control, can be raised at that time.

d. Hypothetical Capital Structure

i. Ameren Services' Proposal

62. Ameren Services requests a hypothetical capital structure of 56 percent equity and 44 percent debt, which is the consolidated capital structure of their affiliates, and therefore is the actual capital structure contained in the transmission rates currently in effect in the Ameren Illinois pricing zone of Midwest ISO. Ameren Services contends that such a hypothetical capital structure is appropriate where new companies do not have a capital structure of their own and are adopting the capital structure of affiliates in the same line of business during their initial development phase. Additionally, according to Ameren Services, AITC currently is financed with debt from generator interconnection prepayments, which will be repaid once the interconnection facilities are placed in service in 2011. According to Ameren Services, this incentive will mitigate cash flow volatility that would otherwise result from significant and frequent variances in capital structure during the Projects' construction cycles. Further, Ameren Services states that a more predictable stream of cash flow will decrease risk associated with the Projects and lower Ameren Services' overall cost of capital. Therefore, Ameren Services maintains that approval of the proposed hypothetical capital structure will enable AITC, ATX and future ATX subsidiaries to generate cash flows adequate to meet their financial obligations, minimize borrowings and financing costs, and maintain healthy credit metrics and investment grade ratings.[82]

ii. Comments and Protests

63. Hoosier and Southern Illinois Coop state that use of a hypothetical capital structure should only be permitted in limited circumstances. They argue that permitting a vertically-integrated, investor-owned incumbent transmission owner like Ameren Services to utilize a hypothetical capital structure would have no effect on public power participation in regional transmission projects at all. Hoosier and Southern Illinois Coop maintain that the Commission should reject Ameren Services' request for use of a

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[82] Martin Affidavit at 15.

hypothetical capital structure.[83] However, they argue that if the Commission grants Ameren Services' request, it should base the allowed capital structure on the actual capital structure of Ameren Services' corporate parent, with an equity component of no more than 50.3 percent. Additionally, Hoosier and Southern Illinois Coop contend that the Commission should reject Ameren Services' proposal that the hypothetical capital structure approved be locked in place through the end of the construction period.[84] Hoosier and Southern Illinois Coop argue that permitting Ameren Services to calculate rates for twelve years or more is almost certain to produce rates that are excessive, rather than rates that are just and reasonable. They argue that if the Commission accepts Ameren Services' proposal, it should require Ameren Services to make a filing pursuant to section 205 no less frequently than every three years.

64. Illinois Municipal argues that, in addition to the failure to provide the necessary supporting calculations, Ameren Services did not provide support for use of a hypothetical capital structure. Illinois Municipal argues that Ameren Services makes none of the showings the Commission considers when assessing whether a proposed hypothetical capital structure is just and reasonable, such as the need to raise significant levels of new debt and equity capital, the maintenance of an investment grade rating to access a broad base of investors and obtain financing at reasonable cost and lower overall cost of capital, and whether the proposed hypothetical capital structure is within the range of actual capital structures for transmission owners. Additionally, Illinois Municipal contends that there is no reason why the capital structure of Ameren Services' operating utility in Missouri, AmerenUE, should be not be included when determining Ameren Services' hypothetical capital structure. At the very least, Illinois Municipals argues that the Commission should require Ameren Services to explore whether a mix of debt to equity ratios (for example, a 5-year moving average) can or should be designed.

65. Missouri Municipal argues that the Commission should recognize that Ameren Services has recently undergone rate proceedings at the state level that will likely reduce Ameren Services' equity percentages. It notes that the Illinois Commission recently set common equity percentages for Ameren Services' utility operating companies in Illinois in the range of 43.6 percent to 48.7 percent.[85] Therefore, according to Missouri Municipal, the December 2009 data reflecting the 56 percent equity percentage of

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[83] Hoosier and Southern Illinois Coop Protest at 5.

[84] Hoosier and Southern Illinois Coop Protest at 8.

[85] Missouri Municipal Protest at 6-7, citing *Cent. Ill. Light Co.*, Docket Nos. 09-0306 to 09-0311 (Ill. Commerce Comm'n Apr. 29, 2010).

Ameren Services' companies in Illinois is eight months stale, ignores the significant change in circumstances given the Illinois Commission's recent order, and 56 percent equity is substantially in excess of the equity percentages Ameren Services' utility operating companies in Illinois are likely to have in the very near future. Missouri Municipal notes that Ameren Services has excluded its operating utility located in Missouri, AmerenUE from its justification for a hypothetical capital structure of 56 percent equity and 44 percent debt.[86] According to Missouri Municipal, the Missouri Public Service Commission has set a common equity percentage of 51.26 percent for AmerenUE. It argues that the Commission should include the Ameren Missouri zone capital structure data, or simply use the Ameren Corporation capital structure as a proxy, which would result in a hypothetical capital structure of 52 percent equity and 48 percent debt in both scenarios.[87]

66. Southwestern Coop also protests Ameren Services' request for approval of its proposed hypothetical capital structure. Southwestern Coop states that Ameren Services failed to provide a proper nexus between the proposed capital structure and investment in the Projects and that a 50 percent equity and 50 percent debt capital structure is appropriate based on Commission precedent.[88]

iii. <u>Ameren Services' Answer</u>

67. Ameren Services clarifies that if construction started next year, the anticipated in-service dates for the Projects would result in a 10-year construction period, not a 15-year period. Further, Ameren Services states that annual capital investments in the Projects is not expected to reach $10 million until 2013, at the earliest. Ameren Services contends that if the Commission were to artificially limit the term of years, the hypothetical capital structure would be meaningless because the term would run out just as large expenditures begin to be made. Therefore, Ameren Services states that granting the hypothetical capital structure for the entire construction period of the Projects is consistent with Commission precedent.[89]

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[86] Ameren Services' proposal is based on the consolidated capital structures of its Illinois utility operating companies, AmerenCIPS, AmerenCILCO and AmerenIP, as of December 31, 2009.

[87] Missouri Municipal Protest at 7-9.

[88] Southwestern Coop Protest at 15-17.

[89] Ameren Services Answer at 20, citing *Green Power Express*, 127 FERC ¶ 61,031 at P 72.

68. In addition, Ameren Services states that the most reasonable proxy for ATX, AITC and any future ATX subsidiaries is 56 percent equity and 44 percent debt because that is the current actual capital structure in effect in Attachment O for the Ameren Illinois utility companies' pricing zone. Ameren Services explains that the bulk of the Projects will be in Illinois, so there is no reason to include AmerenUE in the calculation. Ameren Services further explains that ATX and its subsidiaries are stand-alone entities and will not be traditional, vertically-integrated utilities so there is no reason for it to use its holding company's capital structure for these operating entities. Finally, Ameren Services states that it expects to finance the Projects with a mix of short- and long-term debt and equity, and this mix will flux during the construction period of the Projects.[90]

iv. Commission Determination

69. We will allow Ameren Services to use a hypothetical capital structure of 56 percent equity and 44 percent debt for those projects that we have found meet the nexus test, the Illinois Rivers Project and the Big Muddy River Project, until such time as those projects are placed in service, contingent on the Illinois Rivers Project and the Big Muddy River Project receiving approval in the MTEP process, as discussed above. We conclude that Ameren Services has demonstrated a nexus between the requested incentive and the risks and challenges faced by the Illinois Rivers Project and the Big Muddy River Project. Specifically, the developer and eventual owner of the Illinois Rivers Project and the Big Muddy River Project, ATX, and any future subsidiary of ATX, are either in the early development stage or have not yet been created. Given the estimated cost of the Illinois Rivers Project and the Big Muddy River Project, Ameren Services will need to raise significant levels of new debt and equity capital. Approval of the hypothetical capital structure will allow Ameren Services flexibility in financing its projects to allow for prevailing market and regulatory conditions, which should lower the overall cost of capital.[91]

70. We disagree with Hoosier and Southern Illinois Coop's contention that Ameren Services should not be eligible for a hypothetical capital structure. The Commission refused to categorically deny the incentive to vertically-integrated utilities in Order No.

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[90] Ameren Services Answer at 20-22.

[91] *See, e.g., Potomac-Appalachian Trans. Highline*, 122 FERC ¶ 61,188, at P 55 (2008) (*PATH*). *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93 (finding that hypothetical capital structures "can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances").

679.[92] Moreover, Ameren Services' request is limited to ATX and any future subsidiaries of ATX, which are either in the early development stage or have not yet been created, and AITC, which is currently financed primarily with debt. Additionally, we disagree with Hoosier and Southern Illinois Coop that hypothetical capital structures should be limited to the encouragement of public power participation in large scale transmission projects. Order No. 679 places no such limitation on the entities eligible to utilize a hypothetical capital structure.

71. In response to protestors' claims that Ameren Services' hypothetical capital structure should be based on its corporate parent, we have previously found that requiring an applicant to adopt its corporate parent's capital structure until such time that it has its own capital structure would be inappropriate and would be inconsistent with the intent of the hypothetical capital structure incentive discussed in Order No. 679.[93]

72. We disagree with Illinois Municipal's claim that Ameren Services makes none of the showings the Commission considers when assessing whether a proposed hypothetical capital structure is just and reasonable. For instance, according to Ameren Services, during the project development and construction periods, the capital structures of AITC, ATX, and any future subsidiaries of ATX can be expected to be highly volatile and to vary significantly because of the timing and frequency of required borrowings and equity infusion and erratic cash flows. Ameren Services states that this volatility in their capital structure will continue until these companies develop a level of assets and regular cash flows that will allow them to attract external financing at a reasonable cost and on reasonable terms.

73. We also disagree with claims that the proposed hypothetical capital structure should include the capital structure of Ameren Services' affiliate in Missouri, AmerenUE. As the vast majority of the Illinois Rivers Project and the Big Muddy River Project will be located in the State of Illinois, relying on Ameren Illinois Utilities' actual capital structure is appropriate. It is also noteworthy that Ameren Services' proposed hypothetical capital structure of 56 percent equity and 44 percent debt is within the range of actual capital structures for transmission-owning members of Midwest ISO. As of June 2010, the average equity percentage for transmission-owning members of Midwest ISO was 56 percent, with investor owned utilities' equity percentages ranging from

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

[93] *Green Power Express*, 127 FERC ¶ 61,031 at P 76.

around 45 percent to 60 percent.[94] Finally, the Commission has previously approved hypothetical capital structures, for use during the construction period of projects, as proposed by Ameren Services, with 60 percent equity and 40 percent debt ratios as a transmission incentive.[95]

e. Pre-Commercial Operations Expenses

i. Ameren Services' Proposal

74. Ameren Services seeks authorization to expense and recover on a current basis, rather than capitalizing, all prudently incurred costs of AITC, ATX and any future ATX subsidiaries for planning, regulatory and related approvals during the Projects' pre-commercial operations period. These would include costs of legal, engineering, environmental and consulting services, and other development expenses that are not captured in CWIP accounts. Ameren Services contends that recovery of pre-commercial operations costs provide up-front regulatory certainty and enhanced cash flows which will ease the pressure on Ameren Companies' finances caused by the increased transmission investment over the extended construction period of the Projects.

ii. Comments and Protests

75. Illinois Municipal argues that the Commission should reject Ameren Services' request to recover pre-commercial operations expenses. Illinois Municipal argues that the costs involved, such as legal, engineering, environmental, and consulting services, are all difficult to review and under Ameren Services' proposal, they will get little, if any, review. Moreover, Illinois Municipal argues that Ameren Services makes no attempt to justify this incentive in light of its request to receive 100 percent CWIP in rate base. According to Illinois Municipal, both transmission incentives provide added cash flows and certainty, but this alone does not demonstrate that both are necessary. If the Commission does approve Ameren Services' petition, Illinois Commission recommends the Commission deny Ameren Services' request for current recovery of pre-commercial expenses as not sufficiently supported. For instance, according to Illinois Commission, it is not clear when Ameren Services intends to start assigning and recovering costs for these expenses and which customers it intends to collect the costs from over what time period. Illinois Commission also argues that Ameren Services fails to satisfy the nexus

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[94] The June 2010 Attachment O data is *available at*: http://www.midwestmarket.org/publish/Folder/13b9ea_1265d1d192a_-7f4c0a48324a.

[95] *See, e.g.*, *Green Power Express*, 127 FERC ¶ 61,031 at P 72.

standard because the purpose underlying its request for this incentive is the same as the purpose underlying its request for 100 percent of CWIP in rate base.

iii. Ameren Services' Answer

76. In response to Illinois Commission, Ameren Services clarifies that its request for "current" recovery of pre-commercial operations expenses means recovery of such expenses through an Attachment O pursuant to section 205 of the FPA. In response to Illinois Municipal, Ameren Services restates its commitment to ensure that CWIP and pre-commercial operations costs are tracked in Ameren Services' accounts to ensure that there is no overlap of CWIP and pre-commercial operations costs.[96]

iv. Commission Determination

77. We will approve Ameren Services' request to expense and recover on a current basis pre-commercial operations costs for those projects that we have found meet the nexus test, the Illinois Rivers Project and the Big River Project, for AITC, ATX, and any future subsidiaries of ATX, conditioned upon Ameren Services sufficiently fulfilling the Commission requirements as discussed below, and conditioned and effective upon the Illinois Rivers Project and the Big Muddy River Project being approved in the MTEP process, as discussed above. We note that the Commission has previously permitted companies to expense and recover on a current basis all prudently incurred planning, regulatory, and related approval costs incurred during the pre-commercial period, rather than having to capitalize such costs as investment in plant accounts.[97] In addition, we find that this incentive is akin to the CWIP incentive discussed above in that it will enhance cash flows to allow AITC, ATX, and any future subsidiaries of ATX to meet their financial obligations and minimize borrowings and financing cost.

78. As noted above and discussed below,[98] the incentive rate treatments proposed by Ameren Services are not mutually exclusive. The Commission has, in prior cases, approved multiple rate incentives for particular projects.[99] We find that Ameren Services

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[96] Ameren Services Answer at 22-23.

[97] *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 99 (2006) (*Allegheny Energy*).

[98] *See infra*, P 82-84.

[99] *See, e.g., PATH*, 122 FERC ¶ 61,188; *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007).

has shown a nexus between recovery of pre-commercial operations expense and its investment in the Illinois Rivers Project and the Big Muddy River Project.

79. We will not determine the justness and reasonableness of Ameren Services' recovery of pre-commercial operations expenses, if any, until it seeks such recovery in a section 205 filing. The Commission has previously held that entities receiving this incentive must demonstrate that the costs were prudently incurred and just and reasonable in a subsequent filing under section 205 of the FPA.[100] We find that the concerns raised by Illinois Commission and Illinois Municipal, related to the specific details of recovery of pre-commercial operations expenses, may be raised if, and when, Ameren Services makes a section 205 filing.

80. Illinois Municipal is also concerned about review of costs granted under this incentive. We have previously imposed a reporting requirement or sought a detailed explanation to satisfy accounting concerns,[101] and we shall do so here. In Ameren Services' section 205 filing, it is directed to provide a comprehensive list of the pre-commercial costs to be included in these accounts. Ameren Services must also propose a method of tracking all of the prudently-incurred pre-commercial costs that are expensed, to ensure that these items are not capitalized in for subsequent inclusion in rate base.

81. We note that Ameren Services' filing does not indicate which account will be used to expense pre-commercial costs. The Commission's Uniform Systems of Accounts does not specifically address accounting for pre-commercial costs which are expensed as incurred and subsequently recovered in rates. Therefore, consistent with previous Commission precedent,[102] we will require Ameren Services to expense all pre-commercial costs related to the Illinois Rivers Project and the Big Muddy River Project in FERC Account No. 566, Miscellaneous Transmission Expense, as this account includes transmission expenses not included elsewhere.

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[100] *Green Power Express*, 127 FERC ¶ 61,031 at P 61; *Western Grid*, 130 FERC ¶ 61,056 at P 103.

[101] *See Boston Edison Co.*, 109 FERC ¶ 61,300, at P 33, 36 (2004); *Northeast Utilities Service Co.*, 114 FERC ¶ 61,089, at P 19, 23 (2006); *Allegheny Energy*, 116 FERC ¶ 61,058 at P 108.

[102] *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007); *PATH*, 122 FERC ¶ 61,188.

f. **Nexus with Total Package of Incentives**

82. We reject the arguments that there is no nexus between the incentives requested and the investment and find that Ameren Services has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by Ameren Services in investing in the Illinois Rivers Project and the Big Muddy River Project.[103] As we have stated above, the incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. 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, the Commission has, in prior cases, approved multiple rate incentives for particular projects as long as each incentive satisfies the nexus test.[104]

83. Our finding is based upon our interpretation of section 219 as 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 being proposed and the investment being made.

84. Here, we find that the total package of incentives requested by Ameren Services is tailored to the risks that it faces in investing in the Illinois Rivers Project and the Big Muddy River Project. As discussed above, Ameren Services has demonstrated that each of the requested incentives will reduce the risks that Ameren Services faces and will remove potential obstacles to the construction of these projects.

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[103] *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

[104] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 55; *see, e.g., Allegheny Energy*, 116 FERC ¶ 61,058 at 60,122 (approving ROE at the upper end of the zone of reasonableness and 100 percent abandoned plant recovery); *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 55 (2007) (granting an enhanced ROE, 100 percent CWIP, and 100 percent abandoned plant recovery); *PPL Elec. Utils. Corp. and Pub. Serv. Elec. and Gas Co.*, 123 FERC ¶ 61,068, at P 39,42,46 (2008) (approving ROE at the upper end of the zone of reasonableness, 100 percent CWIP, and 100 percent abandoned plant recovery).

4. Additional Ratemaking Proposals

a. Use of a Thirty-Year Depreciable Life

i. Ameren Services' Proposal

85. Ameren Services requests that the Commission approve a 30-year depreciable life for the Projects. Ameren Services notes that it is not seeking accelerated depreciation, and instead requests that the Commission approve a 30-year depreciation life for the Projects as being reasonable and consistent with previous Commission orders.[105]

ii. Comments and Protests

86. Southwestern Coop argues that Ameren Services' request for accelerated depreciation is not justified because, according to Southwestern Coop, the facilities in question would normally justify a 50 to 70 year service life.[106]

iii. Commission Determination

87. At this time, the Commission denies without prejudice Ameren Services' request that the Commission authorize the use of a 30-year depreciation life for the Projects. We find that Ameren Services' reliance on Commission orders approving 10- and 30-year depreciable lives with respect to Pacific Gas and Electric and TransElect, Inc. ownership shares in the Path 15 facilities is not persuasive.[107] Ameren Services has made no attempt to demonstrate that it is similarly situated to the circumstances that existed in California at the time of the Path 15 upgrade. In the order denying rehearing in the Path 15 proceeding, the Commission specifically stated that, among other things: "Path 15 is a uniquely critical path, with transmission limitations that have had serious impacts on the ability to move power over the system."[108]

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[105] Ameren Services Petition at 35, citing *W. Area Power Admin.*, 99 FERC ¶ 61,306, *order on reh'g*, 100 FERC ¶ 61,331 (2002), *Pub. Utils. Comm'n of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004); *Ameren Servs. Co.*, Docket No. ER10-677-000 (Mar. 5, 2010) (delegated letter order).

[106] Southwestern Coop Protest at 19-20.

[107] Ameren Services Petition at 35.

[108] *W. Area Power Admin*., 100 FERC ¶ 61,331, at P 7 (2002).

88. Further, Ameren Services argues that it is not seeking accelerated depreciation.[109] However, Ameren Services has provided no explanation as to why it believes a 30-year depreciable life reflects the expected useful life of the Projects. Therefore, we deny this request without prejudice to Ameren Services re-applying for approval of this request if Ameren Services makes an adequate showing that the use of a 30-year depreciable life is just and reasonable as part of a section 205 filing.

b. Use of a 12.38 Percent Return on Equity

i. Ameren Services' Proposal

89. Ameren Services requests authorization for AITC, ATX, and any future ATX subsidiaries to utilize a ROE of 12.38 percent. Ameren Services states that it is not requesting any ROE adder incentives. Rather it is seeking for its transmission-owning affiliates the same 12.38 percent ROE that is available to all transmission-owner members of Midwest ISO and is currently used in the Attachment O formula rates for the Ameren Operating Companies.[110]

ii. Comments and Protests

90. Consumers Energy states that while Ameren Services is correct that the 12.38 percent ROE has been applied to the transmission-owner members of Midwest ISO, its reliance on this fact is misplaced. Consumers Energy maintains that recent changes in equity markets mean that the 12.38 percent ROE for transmission owners within Midwest ISO is inflated due to falling bond yields and lower expectation of ROE in the common equity markets. Accordingly, Consumers Energy states, the Commission should require that Ameren Services provide an ROE study that follows the Commission's discounted cash flow methodology that reflects current equity market conditions. Additionally, Consumers Energy states that if any future ATX subsidiaries are formed, the Commission should also require that updated ROE studies be performed reflecting market conditions at the time the new subsidiaries are formed.[111] Consumers Energy respectfully requests that the Commission set this matter for trial type evidentiary hearing, or at minimum, convene a technical conference to address the issue.

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[109] Ameren Services Petition at 35.

[110] *See Midwest Indep. Trans. Sys. Operator, Inc.*, 128 FERC ¶ 61,047, at P 7 (2009).

[111] Consumers Energy Comments at 3.

91. Prairie Power argues that an upfront ROE is inappropriate because the Projects have not been approved by the MTEP or by a state commission or siting authority. Prairie Power requests that the Commission not make any decision regarding Ameren Services' ROE request until Ameren Services has made a section 205 filing.[112] Prairie Power further argues that if the Commission decides to grant Ameren Services' request, a 12.38 percent ROE is inappropriate because the risks and challenges addressed by it are met through the other incentives requested.

92. Southwestern Coop also protests Ameren Services' requested ROE of 12.38 percent because, according to Southwestern Coop, an ROE of 12.38 percent is not reflective of risk in 2010 or 2011.[113]

iii. <u>Ameren Services' Answer</u>

93. Ameren Services states that it seeks, and the Commission should grant, assurance that it is entitled to the Commission-approved 12.38 percent ROE that is available to other transmission owning members of Midwest ISO.[114]

iv. <u>Commission Determination</u>

94. Transmission-owning members of Midwest ISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement. Accordingly, if AITC, ATX or any future ATX subsidiary become transmission-owning members of Midwest ISO such entities will also be entitled to receive the then-current ROE that the Commission has approved for Midwest ISO transmission owners, as long as these entities remain members of Midwest ISO. The Commission has approved a single base ROE for transmission-owning members of Midwest ISO,[115] and protestors have not

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[112] Prairie Power Protest at 2.

[113] Southwestern Coop Protest at 21.

[114] Ameren Services Answer at 24.

[115] Midwest Indep. Trans. Sys. Operator, Inc., 100 FERC ¶ 61,292 (2002), reh'g denied, 102 FERC ¶ 61,143 (2003), order on voluntary 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. Trans. 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 Midwest ISO transmission owners).

demonstrated why AITC, ATX, or any future ATX subsidiary should not also be entitled to the same treatment if such entities become transmission-owning members of Midwest ISO. We also find that protestors have not adequately supported their assertions that the currently authorized ROE is no longer just and reasonable.

c. Formula Rate

i. Ameren Services' Proposal

95. Ameren Services requests that the Commission approve its affiliates' plan to use, in their section 205 filings implementing the requested incentives, if approved, a formula rate based on projected test year costs with a true-up mechanism to reflect actual costs. Ameren Services states that this forward-looking formula rate would enable Ameren Services to avoid the lag in cost recovery created by formula rates based on the prior year's data. As Ameren Services' affiliates will be investing large amounts of capital in the Projects, Ameren Services states that such a lag is problematic and would undercut the requested incentives. Ameren Services states that the details of such a projected test year and the accompanying true-up would be finalized in a section 205 filing, and would include the customer meeting and information sharing protocols the Commission has approved for other utilities.[116]

ii. Comments and Protests

96. Illinois Municipal contends that Ameren Services' request for pre-approved formula rates should be rejected.[117] According to Illinois Municipal, each of the cases Ameren Services relies on for its claim that the Commission should pre-approve its rate structure were cases filed under and reviewed under section 205. Illinois Municipal states that Ameren Services cites to no cases in which the Commission has provided the pre-approval Ameren Services seeks here without a section 205 filing and proceeding. Missouri Municipal argues that the Commission should reject Ameren Services' request for approval of a future rate filing as Ameren Services has not committed to the details of a formula rate filing. Missouri Municipal maintains that neither the Commission nor Ameren Services' future customers know what Ameren Services will ultimately file, and thus customers do not have any notice of the filing and cannot now inform the Commission as to any defects with that future filing.[118] Southwestern Coop argues that

[116] Ameren Services Petition at 36-37.

[117] Illinois Municipal Protest at 12-13.

[118] Missouri Municipal Protest 4-5.

the Commission should reject Ameren Services' proposed use of a future test period because allowing use of a future test period for all costs and expenses will require the evaluation of the reasonableness of all of the projected costs and expenses, which Southwestern Coop argues is an unnecessary burden for all parties. Southwestern Coop argues that the Commission should await the filing of a section 205 filing to determine whether to allow this requested incentive.[119]

97. Illinois Industrials contend that the formula transmission rates under the Tariff are updated annually without any significant review and that customers and other interested parties have no ability to verify or conduct any discovery of the source of updated inputs to the rate formula, nor evaluate the prudency of the costs and expenditures for which recovery is being sought through the formula rate. Illinois Industrials argue that to remedy this situation, new annual update protocols need to be imposed that require the affiliates of Ameren Services to provide sufficient information to customers, other interested parties and the Commission to determine whether those affiliates are properly developing the updated inputs for their respective formula rate updates, only including for recovery costs and expenditures that were prudently incurred, and otherwise properly implementing their respective formula rates.[120]

98. Illinois Commission states that because prudence of costs is critical for rate recovery and because Midwest ISO's Attachment O does not provide customers and other interested parties with a right and opportunity to review and challenge costs, it recommends that the Commission not approve Ameren Services' requested rate incentives unless such approval is conditioned on the development of meaningful revisions to Attachment O through which the prudence of project costs can be assessed before costs are recovered under Attachment O.[121]

iii. <u>Commission Determination</u>

99. The Commission has approved the use of forward-looking formula rates for other transmission-owning members of Midwest ISO.[122] Similarly, forward-looking formula

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[119] Southwestern Coop Protest at 22.

[120] Illinois Industrials Protest at 8-9.

[121] Illinois Commission Comments at 18-21.

[122] *See, e.g.*, *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at P 37 (2009), *Xcel Energy Services, Inc.* 121 FERC ¶ 61,284, at P 69 (2007), *Michigan Elec. Trans. Co., LLC*, 117 FERC ¶ 61,314, at P 17 (2006).

rates, if properly designed and supported, would be acceptable to avoid lag in cost recovery for the Illinois Rivers Project and the Big Muddy River Project. However, any proposal for such a formula rate would need to be considered under the Commission's section 205 authority, if and when Ameren Services makes the necessary section 205 filing.

100. We find that the concerns raised by protesters related to the details of the formula rate are beyond the scope of the instant petition for incentives. The details of the forward-looking formula rates, and necessary protocols, will be evaluated in Ameren Services' future section 205 filing to implement the requested incentives as well as the additional ratemaking proposals. Therefore, the Commission is making no finding as to the justness and reasonableness of a formula rate that may be proposed in a future section 205 filing.

d. Right to Assign to Affiliates

i. Ameren Services' Proposal

101. Ameren Services requests authorization to assign the CWIP and abandoned plant incentives, if approved, to any of the Ameren Companies (and their successors, such as Ameren Illinois Company, which will be the successor to AmerenCIPS, AmerenCILCO, and AmerenIP) that is involved in the development and construction of the Projects.[123] Ameren Services states that Ameren Companies have formed ATX, and plan to form one or more subsidiaries of ATX, but have not determined exactly what combination of ATX, ATX subsidiaries, AITC and the Ameren Operating Companies will be working on each of the Projects. ATX, AITC and any future ATX subsidiaries formed later, Ameren Services states, will all share the same characteristics that make the requested incentives appropriate for them. Ameren Services argues that although these companies have not been identified specifically at this time, because such affiliates will qualify for the incentives just as the identified companies do, it is appropriate to assign the CWIP and abandoned plant incentives to them. Ameren Services acknowledges that this request is subject to any necessary section 203 or section 205 filings being made with the Commission at a later date.[124]

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[123] Ameren Services Petition at 37.

[124] Ameren Services Petition at 38.

ii. Comments and Protests

102. Illinois Municipal argues that Ameren Services' request that it be allowed to assign the incentives should be rejected because this request is related to the request for formula rates, and the allocation of incentives will likely be dictated by how those formulas are developed. According to Illinois Municipal, pre-approved assignments as requested by Ameren Services would likely work to bar customer inquiries as to the propriety of those assignments at later dates when the costs are passed through the formula rates. Missouri Municipal contests the assignment of any other incentive besides CWIP and abandoned plant recovery to other affiliates of Ameren Services. Accordingly, Missouri Municipal requests that, if the Commission approves the request to assign incentives at all, it make clear that it is only approving the request to assign CWIP and abandoned plant recovery to another Ameren Services affiliate, subject to the necessary section 203 and section 205 filings being made with the Commission.

iii. Ameren Services' Answer

103. Ameren Services clarifies that it seeks the future flexibility to assign only two of the requested incentives, CWIP and abandoned plant recovery. Ameren Services states that these two incentives logically relate to the Projects, in that any Ameren Services entity that is involved in the financing and construction of the Projects will need these incentives.[125]

iv. Commission Determination

104. We find that the CWIP and abandoned plant recovery incentives requested by Ameren Services are tied to the characteristics of the Illinois Rivers Project and the Big Muddy River Project and therefore may follow the Illinois Rivers Project and the Big Muddy River Project.[126] Therefore, we grant Ameren Services' request for authority to assign the CWIP and abandoned plant incentives to an affiliate. This authorization is subject to the clarification that should Ameren Services elect to assign its incentives, the affiliate to whom that assignment is made will be required to make any necessary section 203 or section 205 filings with the Commission.

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[125] Ameren Services Answer at 30.

[126] *See PPL Elec. Utilities Corp.*, 123 FERC ¶ 61,068, at P 51, *reh'g denied*, 124 FERC ¶ 61,229 (2008).

5. Other Issues

a. Comments and Protests

105. Illinois Municipal asserts that Ameren Services has purposefully submitted privileged supporting calculations and assumptions on which it bases its incentives. Ameren Services should be required to make public the basis of its incentive requests. Specifically, Illinois Municipal notes that Ameren Services has filed as non-public supporting exhibits to Attachment D (Affidavit of Ryan J. Martin). These exhibits relate to calculations regarding CWIP recovery and cash flow impacts of receiving the requested incentives.[127]

106. Republic's request for clarification states that a number of the transmission facility expansions encompassed in the Projects are expansion proposals that Republic had identified for its sponsorship in prior Midwest ISO proceedings. Republic states that it is concerned that Commission approval of incentive rates for the Projects may be viewed by some as an endorsement or approval by the Commission of Ameren Services' sponsorship of the Projects, which Republic disputes. Republic requests that the Commission clarify that any approval of the future right for incentives rates for the Projects does not prejudge the issue of whether Republic or Ameren Services should be designated to construct and own the facilities that Ameren Services included in the petition.[128] Republic requests that any approval of incentives rates should be conditioned on (1) the Projects being approved for construction by Midwest ISO, and (2) appropriate designation of Ameren Services or an affiliate for construction of the Projects pursuant to a determination that Ameren Services or an affiliate was the sponsor of the Projects.[129]

107. Southwestern Coop protests that the Projects will mainly benefit new generation, but will provide few, if any benefits to customers that have already planned for their long-term generation needs.[130] Southwestern Coop argues that requiring such customers to pay for the costs of facilities that will provide no benefits will force them to subsidize those who did not plan their resources properly.

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[127] Ameren Services sought privileged treatment for certain information that it considered commercially sensitive and proprietary.

[128] Republic Protest at 5.

[129] Republic Protest at 6.

[130] Southwestern Coop Protest at 11-12.

b. Commission Determinations

108. We find without merit Illinois Municipal's arguments regarding Ameren's filing of certain information under privilege. Ameren Services has filed certain information contained in Attachment D of the petition and the exhibits to that affidavit as privileged and confidential in accordance with the Commission's regulations. Thus, interested parties had the opportunity to seek access to such information under the Commission's regulations.[131]

109. In response to Republic's request for clarification, we note that our findings here do not predetermine the outcome of the MTEP, including what entity should be designated to construct and own any particular facilities.

110. Finally, we note that the cost allocation issues raised by Southwestern Coop are more appropriately addressed in the MTEP process.[132]

<u>The Commission orders</u>:

(A) Ameren Services' requests for inclusion of 100 percent of CWIP in rate base, abandoned plant recovery, hypothetical capital structure, and recovery of pre-commercial operation expenses, and ability to assign incentives to affiliates are hereby conditionally granted in part and denied in part, as discussed in the body of this order.

(B) Ameren Services' requests with respect to other ratemaking proposals are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[131] *See* 18 C.F.R. § 388.108 (2010) (concerning Freedom of Information Act requests); 18 C.F.R. § 388.112 (2010) (concerning requests for privileged treatment); *see also* Kramer Affidavit at 4-11.

[132] *See* December 16 Order and Midwest ISO Tariff at Attachment FF.