121 FERC ¶ 61,284
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Xcel Energy Services, Inc. Docket No. ER07-1415-000

ORDER GRANTING INCENTIVES, AND ACCEPTING PROPOSED RATE FORMULA MODIFICATIONS, SUBJECT TO CONDITIONS

(Issued December 21, 2007)

1. On September 28, 2007, Xcel Energy Services, Inc. (Xcel), on behalf of Northern States Power Company of Minnesota (NSP Minnesota) and Northern States Power Company of Wisconsin (NSP Wisconsin) (jointly, the NSP Companies), filed with the Commission pursuant to section 205 of the Federal Power Act (FPA)[1] proposed modifications to the NSP Companies' transmission rate formula under Attachment O of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT). The NSP Companies seek to modify the formula to permit recovery of two types of incentive rate treatments in accordance with Order Nos. 679 and 679-A:[2] (1) 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base (100 percent CWIP Recovery), and (2) 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the NSP Companies' control (Abandoned Plant Recovery). The proposed incentive rate treatments would apply to six specific projects that will cost approximately $1 billion (jointly, the NSP Expansion Projects). The NSP Companies also seek to modify their Attachment O rate formula to use projected test year cost inputs, with a true-up mechanism to reflect actual costs. The NSP Companies request an effective date of January 1, 2008.

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[1] 16 U.S.C. § 824d (2000).

[2] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

2. For the reasons discussed below, we will grant the NSP Companies' request for incentive rate treatment for the NSP Expansion Projects. Moreover, we will accept the NSP Companies' proposed modifications to their Attachment O rate formula, to use projected test year cost inputs subject to conditions, to become effective on January 1, 2008, as requested.

I. Background

A. Description of the NSP Companies

3. The NSP Companies are operating utilities of Xcel, a public utility holding company under the Public Utility Holding Company Act of 2005. NSP Minnesota provides electric service to approximately 1.4 million customers in Minnesota, North Dakota, and South Dakota, while NSP Wisconsin provides electric services to approximately 245,000 customers in portions of western Wisconsin and in the western tip of the Upper Peninsula of Michigan. The NSP Companies are transmission-owning members of the Midwest ISO.[3] The NSP Companies currently collect their annual transmission revenue requirement using the generic rate formula in Attachment O of the Midwest ISO TEMT. Under the generic Attachment O rate formula, the NSP Companies' revenue requirement and rates are updated every June 1 to reflect historic transmission costs and loads for the previous calendar-year, as reported in the NSP Companies' FERC Form No. 1.

B. Description of the NSP Expansion Projects

4. The NSP Companies state that together with other utilities in the region and subject to the oversight of the Midwest ISO, they have been developing plans to upgrade the regional transmission infrastructure.[4] As a result of these planning efforts, the NSP Companies are currently undergoing a major electric transmission expansion program designed to provide the transmission infrastructure necessary to meet state renewable energy generation standards and reliably serve increased loads in the five state region served by the NSP Companies.[5] The NSP Companies state that they expect to invest

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[3] The Commission approved the transfer of functional control of the NSP Companies' transmission system facilities operating at 100 kV and above to the Midwest ISO in *Northern States Power Co.*, 91 FERC ¶ 61,157 (2000).

[4] Transmittal Letter at 1.

[5] *Id.*

approximately $1 billion in the NSP Expansion Projects during the next several years.[6] The projected cost of these projects is greater than the NSP Companies' total 2006 year-end net transmission plant of $928.5 million.[7]

5. The NSP Companies state that the transmission upgrades are needed to accommodate new renewable energy generation resources in the region, particularly wind generation resources.[8] According to the NSP Companies, several states in their region have enacted renewable energy standards in order to encourage the development and use of renewable energy resources.[9] For example, the NSP Companies state that in 2007, Minnesota enacted aggressive renewable energy mandates for electric utilities. For NSP Minnesota, this legislation requires 30 percent of energy generated for their retail customers to come from renewable energy resources, with 25 percent coming from wind energy resources, by the year 2020. Wisconsin has enacted legislation requiring electric providers to increase the amount of renewable energy sold to retail customers to 10 percent by 2015. For NSP Wisconsin, that amount would increase to 12.8 percent by 2016. The NSP Companies assert that their transmission system is located between rich wind energy locations and major Midwest load centers. Therefore, they state, significant new transmission capacity on their system is needed to enable access and deliver new renewable resources to loads in the region.[10]

6. The NSP Companies state that the transmission upgrades are also needed to allow the NSP Companies to continue to reliably serve growing loads in its region. According to the NSP Companies, the demand for electricity supply in their service territories has been growing at a steady rate each year and the demand for transmission capacity has been outstripping supply.

7. The NSP Expansion Projects include two projects the construction of which is proposed to begin in 2008 and four other projects that are part of Group 1 of the CapX 2020 Project.[11] The two projects proposed to begin construction in 2008 are the Buffalo

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 5.

[9] *Id.*

[10] *Id.*

[11] Group 1 of the CapX 2020 Project consists of four 345 and 230 kV projects that make up the first in a series of anticipated large scale transmission expansion projects to be completed as part of the CapX 2020 project initiative, which involves other electric

(continued…)

Ridge Incremental Generation Outlet Project (BRIGO) and 115/161 kV transmission line upgrade (from 69 kV) between Chisago County, Minnesota and the Apple River substation in Wisconsin (Chisago-Apple). The total estimated cost to the NSP Companies for these two projects is approximately $121 million.

8. The BRIGO project consists of three new 115 kV transmission lines totaling approximately 35-50 miles and several new substations. The purpose of this project is to provide expanded transmission outlet and delivery capability for new wind generation on Buffalo Ridge, which the NSP Companies state is one of the most promising sites for wind generation in the United States. The total estimated cost of this project is $72.5 million. The BRIGO project will have portions going into service in 2008, some portions in 2009, and the balance in 2010, subject to receipt of required routing permits.[12]

9. The Chisago-Apple project consists of a 41-mile, 115/161 kV transmission line upgrade (of an existing 69 kV line) between Chisago County, Minnesota and the Apple River substation owned by Dairyland Power Cooperative in Amery, Wisconsin. Eighteen miles of this line will be in Minnesota and 23 miles will be in Wisconsin. The total estimated cost to the NSP Companies for this project is $48.7 million. This project is proposed to be in service in 2010, subject to receipt of required state regulatory construction and routing approvals.[13]

10. The four projects in Group 1 of the CapX 2020 Project are Twin Cities – Brookings County, Twin Cities – Fargo, Twin Cities – LaCrosse, and Bemidji – Grand Rapids. The total estimated cost to the NSP Companies for the Group 1 CapX 2020 projects is approximately $850 million.

11. The Twin Cities - Brookings County project consists of a 240-mile, 345 kV transmission line between the NSP Brookings County, South Dakota substation and the proposed Hampton substation in the Southeast corner of Twin Cities, as well as a 10-mile, 230 kV segment from a new Hazel Creek substation to a substation in Granite Falls, Minnesota. The line will be located in South Dakota and Minnesota and will increase the deliverability of renewable energy generation resources from southwestern Minnesota

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utilities in the region in the participation in a comprehensive, regional planning initiative. The CapX 2020 project involves eleven electric utilities in the region, including utilities that are not subject to the Commission's jurisdiction as public utilities under the FPA and utilities that are not transmission-owning members of the Midwest ISO.

[12] Transmittal Letter at 7.

[13] *Id.*

and eastern South Dakota to large load centers in eastern Minnesota and western Wisconsin. This project will be jointly constructed and owned by NSP Minnesota and four other utilities in the region. The estimated cost of the project is anticipated to be $600 to $665 million and NSP Minnesota will own a 72 percent share of the project.[14]

12. The Twin Cities – Fargo project consists of a 250-mile, 345 kV transmission line between Fargo, North Dakota and Monticello, Minnesota. The line will be located in North Dakota and Minnesota. The line will address reliability problems in areas in the Red River Valley and northwestern and central Minnesota. This project will be jointly constructed and owned by NSP Minnesota and four other utilities in the region. The estimated cost of the project is $390 to $560 million, and NSP Minnesota will own a 36 percent share of the project.[15]

13. The Twin Cities – LaCrosse project consists of a 150-mile, 345 kV transmission line between the Hampton substation in the southeast corner of the Twin Cities to Rochester, Minnesota and LaCrosse, Wisconsin. The project will cross state boundaries and includes a crossing of the Mississippi River. The project will be jointly constructed and owned by the NSP Companies and four other utilities in the region. The estimated cost of the project is $330 to $360 million, and the NSP Companies will own a 64 percent share of the project.[16]

14. The Bemidji – Grand Rapids project consists of a 68-mile, 230 kV transmission line between Grand Rapids and Bemidji in northern Minnesota. The project will be jointly constructed and owned by NSP Minnesota and four other utilities in the region. The estimated cost of the project is approximately $70 million, and NSP Minnesota will own a 26 percent share of the project.[17]

C. Proposed Incentive Rates

15. The NSP Companies request approval of two incentive-based rate treatments under Order No. 679 for the NSP Expansion Projects: 100 percent CWIP recovery and Abandoned Plant Recovery. The NSP Companies' request for approval of incentives for the NSP Expansion Projects is contingent on the receipt of a Certificate of Need for those projects from the Minnesota Public Utility Commission (Minnesota Commission). With

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[14] *Id.* at 7-8.

[15] *Id.* at 8.

[16] *Id.*

[17] *Id.*

respect to the Abandoned Plant Recovery, the NSP Companies are only proposing a placeholder in their proposed rate formula with a value of zero and will make subsequent section 205 filings for Commission approval to change that value.

16. The NSP Companies state that the requested incentives comply with the standards of Order No. 679 and Commission precedent and submit that, consistent with Order No. 679: (1) the facilities for which they seek incentives satisfy the requirements of FPA section 219 – they either ensure reliability or reduce the costs of delivered power by reducing congestion; (2) the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project – the incentives meet the "nexus" test; and (3) the resulting rates are just and reasonable.[18]

17. The NSP Companies submit that they are entitled to a rebuttable presumption that the requirements of FPA section 219 are satisfied if the NSP Companies receive a Certificate of Need from the Minnesota Commission for the projects.[19] The NSP Companies explain that the Minnesota Commission's process for considering an application for a Certificate of Need considers in detail the need for the project, including a consideration of alternatives and the environmental impacts of the proposed project. According to the NSP Companies, the process requires evaluation of ten factors regarding the project before a Certificate of Need will be issued, including several factors which involve a consideration of reliability and congestion relief. The latter include: (1) benefits of the facility, including its uses to protect or enhance environmental quality, and to increase reliability of energy supply in Minnesota and the region; (2) possible alternatives for satisfying the energy demand or transmission needs including but not limited to potential for increased efficiency and upgrading of existing energy generation and transmission facilities, load management programs, and distributed generation; and (3) with respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of

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[18] *Id.* at 2.

[19] Pursuant to Order No. 679, and section 35.35(i) of the Commission's regulations, the Commission, in certain cases, will apply a rebuttable presumption where an applicant has shown that its project is needed to ensure reliability or reduces the cost of delivered power by reducing congestion. 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 requires that a project ensures reliability or reduces the cost of delivered power by reducing congestion. 18 C.F.R. § 35.35(i) (2007).

the transmission system or lower costs for electric consumers in Minnesota.[20] While several of the projects will be located in more than one state, the NSP Companies state that each of the multi-state projects include substantial facilities located in Minnesota, and, therefore, the NSP Companies will need to obtain a Certificate of Need from the Minnesota Commission for all of the NSP Expansion Projects. Thus, the common denominator for all the NSP Expansion Projects is the need for a Certificate of Need from the Minnesota Commission.[21]

18. In establishing the nexus between the incentive sought and the investment made, the NSP Companies state that allowing a 100 percent CWIP Recovery on the NSP Expansion Projects will eliminate disincentives to completing the projects in several ways.[22] First, it will reduce stresses on cash flows for the NSP Companies.[23] Second, it will relieve downward pressure on the NSP Companies' credit rating that could be caused by the NSP Expansion Projects.[24] Third, it should help the NSP Companies meet their

[20] Transmittal Letter at 17-18. The other 7 factors are: (1) the accuracy of the long-range energy demand forecasts on which the necessity for the facility is based; (2) the effect of existing or possible energy conservation programs under state statutes or other federal or state legislation on long-term energy demand; (3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report, or, in the case of a high-voltage transmission line, the relationship of the proposed line to regional energy needs, as presented in the transmission plan submitted under the biennial State Transmission Plan statute; (4) promotional activities that may have given rise to the demand for this facility; (5) the policies, rules, and regulations of other state and federal agencies and local governments; (6) any feasible combination of energy conservation improvements that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically; and (7) whether the applicant or applicants are in compliance with applicable provisions of state statutes pertaining to state renewable energy objectives and transmission needed to support renewable resources. *Id.*

[21] Ex. No. XES-24 at 12-13.

[22] Transmittal Letter at 25.

[23] *Id.* The NSP Companies' application includes an affidavit of the Vice President and Treasurer of the NSP Companies with analysis showing that they expect to face a negative cash flow position while undergoing the projects.

[24] *Id.*

financial goals, which might be threatened by the NSP Expansion Projects.[25] Finally, it will not have an adverse impact on the electric transmission rates for the NSP Companies' customers.[26]

19. The NSP Companies state that the Abandoned Plant Recovery will remove a potential disincentive to completion of the NSP Expansion Projects by eliminating the risk that shareholders may have to bear the costs of transmission projects that are cancelled for reasons outside the NSP Companies' control.[27] The NSP Companies state that there are several ways in which one or more of the NSP Expansion Projects could be cancelled for reasons outside the NSP Companies' control.[28] For example, a major purpose of the projects is to provide transmission capacity for potential new renewable generation resources on the NSP Companies' system. While the NSP Companies expect that these new renewable resources will be developed, the binding commitments to interconnect and transmit this power have not all been made. Therefore, there is a risk that some of these projects may be cancelled or significantly modified due to decisions by renewable generators to cancel or relocate. Further, the NSP Companies explain, five of the six projects are being constructed jointly with neighboring utilities, including utilities that are not subject to the Commission's jurisdiction as public utilities and/or are not members of the Midwest ISO. The NSP Companies state that it is possible that those partners may change or revise their plans, which could have an impact on the NSP Expansion Projects. Also, the Midwest ISO has substantial planning authority regarding transmission planning, and there is some risk that some of the NSP Expansion Projects could be cancelled or revised for reasons identified through the regional planning process. Finally, the NSP Companies explain, the projects require routing and other regulatory approvals from the various state commissions, and potential opposition to routing of the transmission projects may present the risk that a project might be abandoned for reasons outside of the NSP Companies' control.

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[25] *Id.* at 25-26. The NSP Companies' financial objectives include maintaining financial integrity by improving corporate credit ratings and senior unsecured debt ratings and continuing to provide reasonably-priced electric and natural gas services to their customers. They state that 100 percent CWIP Recovery will promote these objectives by enabling them to maintain lower borrowing costs as they complete the projects.

[26] *Id.* at 26.

[27] *Id.*

[28] Ex. No. XES-9 at 31-32.

20. The NSP Companies state that the two proposed incentives are consistent and compatible.[29] The NSP Companies state that they are not seeking any return on common equity (ROE) based incentives. Instead, the NSP Companies explain that they are seeking two incentives that serve the same purposes: to reduce risks presented by the transmission projects and to remove potential obstacles to construction of the projects.[30] The NSP Companies state that in Order No. 679, the Commission found that these two incentives are similar.

21. The NSP Companies state that the resulting rates will be just, reasonable and not unduly discriminatory.[31] With respect to the 100 percent CWIP Recovery incentive, the NSP Companies state that the Commission has recognized that the initial inclusion of CWIP in rate base affects only the timing of the cost recovery, not the level of cost recovery.[32]

22. Additionally, although the NSP Companies are not specifically requesting incentive ratemaking treatment for employing innovative transmission technologies, they include a technology statement for the NSP Expansion Projects, as required by Order No. 679.[33] Specifically, the NSP Companies state that, among other things, the NSP Expansion Projects will use "advanced transmission technologies" including: micro-processor based protective relays instead of solid-state or electro-mechanical relays; digital fault recorders, PLC-based control and annunciation, rather than reliance on control switches, light boxes and discrete relays; tubular steel structures rather than lattice-type structures; fiber-optic based communication where cost effective; and advanced conductor designs.[34]

23. The NSP Companies note when determining whether the nexus requirement is satisfied, it is not clear whether it is necessary to show that a project or group of projects is "routine" in cases where the applicant does not seek any ROE-based incentives. The NSP Companies state that this aspect of the nexus test should not apply to their request for incentives because they are not seeking any ROE-based incentives. Nevertheless, the

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[29] Transmittal Letter at 28.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 29 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 38).

[33] Transmittal Letter at 23 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 302).

[34] *Id.* at 23-24. *See also* Ex. No. XES-8 at 29-31.

NSP Companies state that the projects are not routine because: (1) the costs of the projects are extraordinary when compared to previous years' transmission expansion budgets;[35] (2) the projects are multi-state in nature;[36] (3) the projects involve joint planning and coordination with several neighboring utilities;[37] (4) the projects are regional projects that have been regionally planned;[38] (5) the projects will increase transmission capacity in order to meet aggressive state renewable energy standards;[39] (6) the projects are the largest transmission infrastructure projects in the upper Midwest in approximately three decades;[40] and (7) the projects will use advanced technologies.[41]

D. Proposed Rate Formula Modifications

24. The NSP Companies propose to implement the Attachment O rate formula using projected test period cost inputs. Under their proposal, the NSP Companies' revenue requirement and rates for transmission service would change each January 1 to reflect their estimated costs for the following calendar year, and these rates would be subject to subsequent true-up, with interest, based on actual costs, as reported in the NSP Companies' FERC Form No. 1. The estimated revenue requirement for the following calendar year would be provided to customers no later than October 1 of each year. The NSP Companies would hold a customer meeting by October 31 of each year to explain those rate formula input projections and cost details.

25. The NSP Companies state that their currently effective generic transmission rate formula in Attachment O designs rates taking effect June 1 of each year based on a company's costs for the preceding calendar year. They state that this lag in cost recovery is problematic during the years in which the NSP Companies are undertaking large transmission capital projects.[42] The NSP Companies contend that the proposed revisions to implement their Attachment O rate formula using projected test period costs would enable the NSP Companies to recover their costs in the same year they are incurred.

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[35] Transmittal Letter at 21.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 22-23.

[39] *Id.* at 23.

[40] *Id.*

[41] *Id.* at 23-24.

[42] *Id.* at 14.

Accordingly, the NSP Companies state, this would improve their cash flow position and promote their ability to carry out their transmission expansion program.[43] The NSP Companies state that the proposed formula modifications to use projected costs with subsequent true-up follow closely revisions to the Attachment O rate formulas of other Midwest ISO transmission owners that the Commission has approved.[44]

26. The NSP Companies also include provisions in their proposed Attachment O rate formula to allow recovery of the two incentive-based rate treatments for the NSP Expansion Projects that they seek under Order No. 679: 100 percent CWIP Recovery and Abandoned Plant Recovery. The NSP Companies state that the Midwest ISO's generic Attachment O rate formula does not contain line items to allow the NSP Companies to recover these two requested incentives, but the proposed forward looking Attachment O rate formula will allow those incentives.[45]

27. The NSP Companies state, however, that they are only seeking approval to add to the rate formula a placeholder in the line items for potential Abandoned Plant Recovery.[46] The NSP Companies state that they will maintain a value of zero for these lines in the rate formula template until the NSP Companies receive Commission approval to recover costs for the Abandoned Plant Recovery incentive through a separate section 205 filing. With respect to 100 percent CWIP Recovery, CWIP associated with each project will only be included in rate base beginning in the month in which a Certificate of Need for the project is granted by the Minnesota Commission.[47]

28. The NSP Companies state that they are not seeking to change the existing Commission-approved ROE of 12.38 percent.[48]

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[43] *Id.*

[44] *Id.* at 14-15 (citing *Michigan Elec. Transmission Co.*, 117 FERC ¶ 61,314 (2006), *order on reh'g*, 118 FERC ¶ 61,139, *order on compliance*, 119 FERC ¶ 61,203 (2007) (*Michigan Electric*); *International Transmission Co.*, 116 FERC ¶ 61,036 (2006) (*International Transmission*); *American Transmission Co.*, 97 FERC ¶ 61,139 (2001) (*ATC*)).

[45] *Id.* at 10.

[46] *Id.*

[47] Ex. No. XES-4 at 13.

[48] Ex. No. XES-1 at 18.

II. Notice of the Filing and Responsive Pleadings

29. Notice of the NSP Companies' filing was published in the *Federal Register*, 72 Fed. Reg. 57,549 (2007), with interventions and protests due on or before October 19, 2007. On October 10, 2007, Central Minnesota Municipal Power Agency (CMMPA) and the Midwest Municipal Transmission Group (MMTG) filed a motion requesting an extension of time to file comments until October 26, 2007, which the Commission granted.

30. Motions to intervene were timely filed by Missouri River Energy Services, Dairyland Power Cooperative, the Midwest Stand-Alone Transmission Companies,[49] Wisconsin Public Power Inc., the Midwest ISO Transmission Owners,[50] and Southern Minnesota Municipal Power Agency. Consumers Energy Company filed a motion to intervene out-of-time.

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[49] For purposes of this filing, the Midwest Stand Alone Transmission Companies include American Transmission Company LLC (ATCLLC), International Transmission Company (International Transmission), and Michigan Electric Transmission Company, LLC (Michigan Electric).

[50] For purposes of this filing, the Midwest ISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS; Central Illinois Light Co. dba AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department; City Water, Light & Power; Duke Energy Shared Services 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; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; 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.

31. Minnesota Municipal Power Agency filed a motion to intervene and protest. The Municipal Intervenors[51] filed a motion to intervene and comments. CMMPA and MMTG filed a motion to intervene and comments in support of the NSP Companies' proposal and a request for a declaratory order seeking authorization for incentive rate treatment for certain of their own transmission projects in their Attachment O rate formulas under the Midwest ISO TEMT.

32. On November 5, 2007, Xcel, on behalf of the NSP Companies, filed a motion for leave to intervene and answer.

33. On November 13, 2007 the Municipal Intervenors filed a response to Xcel's motion for leave to intervene and answer.[52]

34. Otter Tail Power Company (Otter Tail) filed a motion for extension of time to respond to CMMPA/MMTG's request for declaratory order. Otter Tail requests that the Commission grant an extension of time to December 3, 2007, or, in the alternative, that the Commission sever CMMPA/MMTG's request from this proceeding.

35. Great River Energy filed comments in support of Otter Tail's motion for extension of time. CMMPA/MMTG filed a motion for leave to answer and answer to Otter Tail's motion and Great River Energy's comment. Otter Tail and CMMPA/MMTG filed a motion for extension of time. NSP Companies filed a response to Otter Tail and CMMPA/MMTG's motion for extension of time. CMMPA/MMTG filed corrections to testimony attached to its motion to intervene and comments and request for declaratory order.

A. Comments

36. CMMPA and MMTG state that they support the NSP Companies' proposals and that the requested incentives are limited and tailored to support major transmission construction that is required to improve reliability and to relieve congestion in the region. CMMPA and MMTG also state that they are 3 percent co-owners of the Twin Cities-Brookings County project. As co-owners, CMMPA and MMTG seek similar rate formula and incentive rate treatment that is requested by the NSP Companies for the

[51] For purposes of this filing, Municipal Intervenors include the following cities and villages: Bangor, Cadott, Cornell, Medford, Rice Lake, and Spooner, Wisconsin.

[52] The City of Barron, since their first comment, was added as part of the Municipal Intervenors.

reasons given by the NSP Companies in their filing, to establish CMMPA's and MMTG's revenue requirements and rates under the Midwest ISO TEMT. They also seek this rate treatment for other similar projects.

37. Municipal Intervenors state that they are concerned that the NSP Companies' proposal to use projected test year cost inputs does not provide for adequate review procedures. Municipal Intervenors note that the NSP Companies propose to provide their customers with information on their annual updates to the Attachment O rate formula, and that the NSP Companies state they will hold a customer meeting to discuss the calculations by October 31 of each year to answer questions. However, Municipal Intervenors contend that it is not yet clear whether these procedures will provide for a sufficiently detailed information exchange between the NSP Companies and their customers, or for adequate time and procedures for follow-up questioning and informal discovery. Municipal Intervenors argue that in the event that errors are made in the NSP Companies' implementation of formula inputs, there appears to be no mechanism for ensuring that corrections can be made. Municipal Intervenors propose that the Commission establish informal settlement proceedings so that the NSP Companies and their customers can develop adequate procedures for information exchange and review.

38. MMPA argues that the NSP Companies' proposal to true-up budgeted transmission costs to actual transmission costs provides a guarantee of cost recovery even though the FPA provides for a regulated utility to "be allowed a reasonable opportunity to recover its expenses, including a fair and reasonable return on investment."[53] MMPA contends that the NSP Companies' true-up proposal eliminates the risk of under-recovery of costs due to weather abnormalities and reduced loads due to business cycle changes. Additionally, MMPA argues that the NSP Companies' request for a 100 percent return on their CWIP once a Certificate of Need has been issued for a project, will increase cash flows and reduce business risk for the NSP Companies.[54] MMPA argues that the NSP Companies' proposal changes the basic regulatory paradigm by reducing business risk without changing the allowed ROE. MMPA argues that allowing the NSP Companies to add the proposed true-up mechanism and incentive rate treatment to their rate formula without reducing their ROE to properly reflect the greatly reduced business risk will result in unjust and unreasonable transmission rates.

39. MMPA also argues that the NSP Companies' existing 12.38 percent ROE was established in a prior filing where there were no risk reducing true-ups for costs and

[53] MMPA's Protest at 4.

[54] *Id.*

billing determinants. MMPA contends that allowing the NSP Companies to add the proposed true-up mechanisms to their rate formula without reducing their ROE to properly reflect the greatly reduced business risk will result in unjust and unreasonable transmission rates. Additionally, MMPA argues that the NSP Companies' request for a 100 percent return on their CWIP once a Certificate of Need has been issued for a project, will increase cash flows and reduce business risk for the NSP Companies.

40. MMPA also argues that the NSP Companies' proposal to continue to use the 12.38 percent ROE currently authorized for all Midwest ISO transmission owners places MMPA in a "price squeeze." According to MMPA, Xcel recently completed a retail rate increase filing in Minnesota state proceedings in which the Minnesota Commission allowed a 10.54 percent ROE and a 8.81 percent weighted after-tax cost of capital.[55] If the Commission approves the amended Attachment O rate formula as the NSP Companies' request, the rate formula would yield a 12.38 percent cost of common equity and a 9.92 percent after-tax weighted cost of capital. MMPA argues that there would be a difference of 101 basis points on an after tax basis. MMPA believes that the difference in the NSP Companies' rates of return between the bundled retail rate and wholesale transmission rate will produce a significantly lower cost of transmission for the NSP Companies' retail customers compared to the rates paid by MMPA members. This effect, according to MMPA, places MMPA at a competitive disadvantage by putting it in a price squeeze and violates the Commission's Order No. 888 "comparability standard,"[56] which requires the transmission provider to offer third parties access to transmission on the same or comparable basis, and under the same or comparable terms and conditions, as the transmission provider's use of its system.

B. <u>The NSP Companies' Answer</u>

41. The NSP Companies state that none of the comments filed in the proceeding raise any reason for rejecting, modifying, suspending or setting for hearing their filing.

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[55] *Id.* at 5.

[56] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

42. With respect to CMMPA/MMTG's answer and request for declaratory order, the NSP Companies state that while they appreciate the support of CMMPA/MMTG concerning the NSP Companies' filing, they note that the request for declaratory order was submitted by CMMPA/MMTG alone, and neither Xcel nor the NSP Companies solicited CMMPA/MMTG's filing, nor did they participate in the preparation of it or review it. Further, they do not take a position on the merits of CMMPA/MMTG's filing or the requests contained therein at this time. The NSP Companies state in the event that the Commission finds that CMMPA/MMTG's request may prejudice or adversely impact the NSP Companies' request that its filing be accepted without suspension or hearing and with an effective date of January 1, 2008, or may result in an unduly complicated record or proceeding, the Commission should sever CMMPA/MMTG's request for a declaratory order and consider it in a separate docket that is not linked to this proceeding.

43. The NSP Companies dispute the Municipal Intervenors' assertions that the NSP Companies' procedures for customer review of the annual rate estimates are not sufficiently detailed and provide no mechanism for ensuring that corrections can be made. The NSP Companies state that the Municipal Intervenors have failed to justify their request that the Commission initiate informal settlement proceedings. The NSP Companies state that the customer review and information procedures proposed in their filing are similar to and were modeled after customer review and information procedures that the Commission approved in *Michigan Electric* and *International Transmission*. The NSP Companies state that the Municipal Intervenors do not explain why the procedures proposed by the NSP Companies are not sufficiently detailed. They state that the NSP Companies have already used the customer review and information procedures for the estimates that are proposed to take effect on January 1, 2008. The NSP Companies state that they held a customer meeting on October 11, 2007, to discuss the 2008 estimated costs and that the NSP Companies were able to answer all of the customers' questions regarding the 2008 estimates. The NSP Companies further state that a representative from the Municipal Intervenors was in attendance. For these reasons, the NSP Companies state that the Municipal Intervenors' request for informational settlement discussion to discuss these procedures is unsupported and would appear to serve no useful purpose.

44. The NSP Companies argue that the MMPA's arguments are inadequately supported and without merit. They argue that MMPA's objection to the proposed true-up mechanism is contrary to Commission precedent and that the Commission has accepted virtually identical true-up mechanisms for Michigan Electric and International Transmission, two other Midwest ISO transmission owners. The NSP Companies also state that while MMPA claims that the proposed true-up mechanism "provides a guarantee of recovery" and "eliminates the risk of under-recovery" MMPA fails to

acknowledge that it will also assure that the NSP Companies cannot over-recover from their customers because any deviation between estimates and the actual cost will be corrected with interest through the true-up.

45. The NSP Companies state that MMPA's claim that the Commission should lower the NSP Companies' existing ROE due to alleged changes in business risk is wholly unsupported. The NSP Companies state that in their filing they proposed no change to their currently approved ROE contained in the NSP Companies' existing rate formula and that when a party seeks to alter aspects of utility rate structure that the utility did not propose to change under section 205 of the FPA, that party must meet its burden of proof under section 206 of the FPA. The NSP Companies further state that if MMPA wants the Commission to lower the NSP Companies' existing ROE, it has the burden to prove that the existing ROE is unjust and unreasonable. But, the NSP Companies contend, MMPA provides no testimony and no analysis that might demonstrate that the existing ROE has become unjust and unreasonable, and MMPA's "bald allegations" are insufficient to support a contention that an existing rate has become unjust and unreasonable.[57]

46. The NSP Companies state that MMPA's contention that the difference between the NSP Companies' Commission-approved ROE and state-approved ROE violates the "comparability" principle is unsupported and contrary to Commission precedent. The NSP Companies state that MMPA conducts no analysis to show that the rates for retail customers are not comparable, other than pointing to a single element of the rate structure in a single state, Minnesota. Further, the NSP Companies state, MMPA cites no case where the Commission has held that a different retail and wholesale ROE violates the comparability principle. The NSP Companies state that it is well-settled that the Commission has exclusive jurisdiction over wholesale rates and is not obligated to rely on rates set by the states.

47. The NSP Companies state that MMPA's assertions that the difference between the Commission-approved and state-approved ROEs results in an anticompetitive "price squeeze" is unsupported and without merit. The NSP Companies state that under the Commission's regulations, a party arguing that there is a "price squeeze" must make a *prima facie* showing that an unlawful price squeeze exists. The NSP Companies state that MMPA's protest does not attempt to make a *prima facie* showing of the existence of

[57] The NSP Companies further state that the Commission rejected virtually identical claims in *Michigan Electric* and *International Transmission*, where the Commission stated that such assertions regarding changes in the transmission owner's business risk profile were "too general and unsupported" to warrant a section 206 investigation.

an unlawful price squeeze and, under well-settled precedent, the Commission will dismiss price squeeze allegations where the alleging party fails to make a *prima facie* showing.

C. Municipal Intervenors' Response

48. The Municipal Intervenors state that the NSP Companies overstate the holdings of the Commission in *Michigan Electric* and *International Transmission*. They state that neither *Michigan Electric* or *International Transmission* clearly identify the scope of the information or the level of detail that must be provided to interested parties regarding the implementation of the Attachment O rate formula. Additionally, the Municipal Intervenors state, in *Michigan Electric* and *International Transmission*, the Commission approved the submission of projected revenue requirements and estimated data 60 days in advance of the proposed customer meeting to discuss the calculation - not the 30 days advance distribution proposed by the NSP Companies and not the distribution 13 days in advance of the customer meeting this year to discuss the 2008 estimates. The Municipal Intervenors further state that just because the NSP Companies answered customers' questions regarding the 2008 estimates, does not mean that the review protocol could not be improved through informal settlement proceedings nor does the availability of the complaint procedure under section 206 of the FPA make informal settlement proceedings requested by the Municipal Intervenors a needless exercise. They further state that inviting informal settlement proceedings is a way to avoid costly and time-consuming litigation and, moreover, the Municipal Intervenors' request keeps the onus on the NSP Companies to maintain transparency and carry the burden of implementing just and reasonable rate formula adjustments.

III. Discussion

A. Procedural Matters

49. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[58] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, we will grant the unopposed, late intervention of Consumers Energy Company in view of the early stage of the proceeding and the absence of undue prejudice or delay.

[58] 18 C.F.R. § 385.214 (2007).

50. Rule 213(a) of the Commission' Rules of Practice and Procedure[59] prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept the NSP Companies' answer and Municipal Intervenors' response because they have provided information that assisted us in our decision-making process.

51. As discussed below, we will deny CMMPA/MMTG's request for declaratory order without prejudice. Therefore, we will also deny Otter Tail's motion for extension of time, and reject Great River Energy's comments in support of that motion, CMMPA/MMTG's answer, Otter Tail and CMMPA/MMTG's motion for extension of time, NSP Companies' response, and CMMPA/MMTG's corrections to its motion to intervene and comments and request for declaratory order.

B. Incentives

1. Section 219 Requirements

52. In the Energy Policy Act of 2005 (EPAct 2005), Congress addressed the allowance of incentive-based rate treatments for new transmission construction.[60] Specifically, section 1241 of the EPAct 2005 added a new section 219 to the FPA directing the Commission to establish, by rule, incentive-based (including performance-based) rate treatments. The Commission issued Order No. 679, which set forth processes by which a public utility could seek transmission rate incentives pursuant to section 219, including the incentives requested here by the NSP Companies.

53. The NSP Companies submit that the NSP Expansion Projects qualify for a rebuttable presumption that they meet the requirements of FPA section 219 if a Certificate of Need for the projects is granted by the Minnesota Commission for each of these projects. 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 requires that a project ensures reliability or reduces the cost of delivered power by reducing congestion.[61] In this case, the NSP Companies have not yet received a Certificate of Need from the Minnesota Commission for each of the projects. In Order No. 679, the Commission indicated that it would consider a request for incentive treatment for a

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[59] *Id.* § 385.213(a)(2).

[60] *See* Pub L. No. 109-58, 119 Stat 594, 961 (2005).

[61] 18 C.F.R. § 35.35(i) (2007).

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.[62] We find that it is appropriate to consider projects undergoing the state approval process in the same way because the regional planning and state approval processes are similarly treated in applying a rebuttable presumption under Order Nos. 679 and 679-A. The NSP Companies' proposal is consistent with this approach in that the incentives will not be included in rates until a Certificate of Need is received from the Minnesota Commission. In addition, the NSP Companies have demonstrated that the Minnesota Commission considers whether the project ensures reliability or reduces congestion costs in evaluating an application for a Certificate of Need. Therefore, we find that the NSP Expansion Projects qualify for a rebuttable presumption that they meet the requirements of FPA section 219 if they receive a Certificate of Need from the Minnesota Commission.

2. <u>The Nexus Requirement</u>

54. In addition to satisfying the section 219 requirement, an applicant for an incentive rate must show that there is a nexus between the incentive sought and the investment being made. The Commission stated that 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 any incentives, and how any requested incentives address the risks and challenges faced by the project.[63] Applicants must provide sufficient explanation and support to allow the Commission to evaluate the incentives. In addition, the Commission has clarified that it retains the discretion to grant incentives that promote particular policy objectives unrelated to whether or not a project presents specific economic risks or challenges.[64]

55. In Order No. 679-A, the Commission clarified that its nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[65] By its terms, this nexus test is fact-specific and requires the Commission to review each application on a

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

[63] 18 C.F.R. § 35.35(d); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 26. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21 ("By this we mean that the incentive(s) sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.").

[64] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at n.37.

[65] *Id.* P 40.

case-by-case basis. Notably, the Commission chose not to adopt a list of criteria or characteristics that must be met by every applicant before an incentive would be approved. The Commission recognized that it would be impossible to identify every conceivable challenge or risk faced by an applicant, or to develop *a priori* a menu of incentives that would or would not be appropriate given a particular set of risks and challenges. Furthermore, the Commission stated that it would "look favorably on an incentive request that includes public power joint ownership."[66]

56. We find that the NSP Companies have demonstrated that the NSP Expansion Projects are not routine construction projects and present special risks. As discussed below, we find that each incentive sought by the NSP Companies is designed to address a distinct set of the risks associated with the NSP Expansion Projects. Thus, we find that the total package of incentives is reasonable.

i. <u>100 Percent CWIP Recovery</u>

57. 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 base.[67] It noted that this rate treatment will further the goals of section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.[68] As discussed below, we find that the NSP Companies have shown a nexus between the proposed CWIP incentive and their investment in the NSP Expansion Projects.

58. Consistent with Order No. 679, we find that authorizing 100 percent of CWIP treatment for the NSP Expansion Projects would enhance the NSP Companies' cash flow, reduce interest expense, assist the NSP Companies with financing, and improve the NSP Companies' coverage ratios used by rating agencies to determine credit quality by replacing non-cash Allowance for Funds Used During Construction (AFUDC) with cash earnings. This, in turn, will reduce the risk of a down-grade in the NSP Companies' corporate credit and debt ratings.

59. The NSP Companies demonstrate that due to the size and the scope of the proposed projects, there is an increased risk to their credit rating. The NSP Companies

[66] Order No. 679-A, FERC Stats. & Regs. ¶ 31,245 at P 102.

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

[68] *Id.* P 115.

demonstrate that the NSP Expansion Projects have considerably long lead times, with final in-service dates largely occurring in 2012 or later, and that the overall magnitude of investment in the projects is significant ($1 billion, compared to the NSP Companies' current net investment in transmission plant of $925 million). These factors are comparable to those that the Commission has taken into consideration in authorizing CWIP in rate base for other utilities.

60. The increased cash flow from the CWIP incentive is used in calculating a utility's coverage ratio,[69] a ratio that Standard and Poor's considers in deciding what credit rating to give a utility.[70] NSP Minnesota's corporate credit rating is BBB, two notches above non-investment grade, and its senior unsecured debt rating is BBB-, the lowest investment rating. Without CWIP in rate base, the NSP Companies state that they will have negative cash flows, with a converse increase in interest expenses from debt and a potential negative impact to their credit rating and ability to procure debt at a low cost.[71] The NSP Companies provide information showing the correlation between corporate credit ratings and short-term credit ratings. This data shows that a down-grade in NSP Minnesota's corporate credit rating by one notch to BBB- would likely lead to a downgrade in its commercial paper rating from A-2 to A-3. Such a downgrade would limit NSP Minnesota's access to the low cost commercial paper market because money market funds, which are the primary investors in commercial paper, are restricted by the Securities and Exchange Commission from buying commercial paper rated below A-2.

61. For the reasons discussed above, the Commission finds that the NSP Companies should be granted the 100 percent CWIP Recovery incentive for the NSP Expansion Projects upon their receipt of a Certificate of Need from the Minnesota Commission.

ii. <u>Abandoned Plant Recovery</u>

62. In Order No. 679, the Commission found that abandoned plant recovery is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[72] We will grant the NSP Companies' request for recovery of 100 percent of prudently-incurred costs associated with abandonment of NSP Expansion

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[69] A coverage ratio is a measurement of a utility's ability to repay debt obligations.

[70] *See* Standard and Poor's Encyclopedia of Analytical Adjustments for Corporate Entities, pub. July 9, 2007, www.standardandpoors.com/ratingsdirect.

[71] The NSP Companies compare the cash flow impacts of CWIP in rate base to revenues without the incentive. *See* Ex. XES-18 at 2, lines 25-44.

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

Projects, provided that the abandonment is a result of factors outside the control of the NSP Companies which must be demonstrated in a subsequent section 205 filing for recovery of abandoned plant.[73] When the NSP Companies make a section 205 filing, they will bear the burden of supporting their decision to abandon the project for which they are seeking recovery of abandoned plant costs.

63. We find that the NSP Companies have shown, consistent with Order No. 679, a nexus between the recovery of prudently-incurred costs associated with abandoned transmission projects and their planned investment. Besides their scope, size, and long lead-times, the projects present special risks because they require approvals from multiple jurisdictions, are dependent upon continued participation by multiple owners, and are subject to potential cancellation or modification through the Midwest ISO regional planning process. Accordingly, the Commission finds that the NSP Companies should be granted the Abandoned Plant Recovery incentive for the NSP Expansion Projects.

iii. Other Requirements for CWIP Recovery

64. Pursuant to Order No. 679 and the Commission's regulations,[74] a company must propose accounting procedures that ensure that customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP in rate base. To satisfy this requirement the NSP Companies state that they will implement a "pre-funded" AFUDC calculation, which will assure that future rate base calculations are correct, the income statement and balance sheet are correct for financial statement presentation, and that the NSP Companies will have complied with the Commission's rules regarding the recording of AFUDC to construction.[75] Specifically, the NSP Companies state that AFUDC will be recorded to income and CWIP during the construction phase and a pre-funded AFUDC calculation will be simultaneously made on CWIP projects that are included in rate base in the projected rate formula.[76] The NSP Companies state that the pre-funded AFUDC, which they intend on recording in a miscellaneous deferred credit account, is an offset to the plant in service asset when the balances are combined. The NSP Companies explain that as depreciation is taken on the plant asset, the miscellaneous deferred credit will be amortized over the same time and at the same rate. Furthermore, the NSP Companies state that in future rate formula calculations, the transmission assets will be included in rate base offset by the pre-funded AFUDC miscellaneous deferred credit balance, which

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[73] *Id*. P 163, 165-66.

[74] 18 C.F.R. § 35.25 (2007) (recovery of CWIP in rate base).

[75] Referring to Testimony of Deborah A. Blair, Ex. No. XES-4 at 13-14.

[76] *Id*. at 13, lines 12-15.

the NSP Companies state will assure that there is no double recovery of financing cost incurred during construction.

65. While the NSP Companies' filing explains its rate mechanism to avoid double recovery, it lacks certain details necessary for the Commission to conclude that double recovery will indeed be avoided. For example, the filing does not provide the specific FERC accounts the NSP Companies will use to initially record pre-funded AFUDC or the accounts to be used to amortize the pre-funded AFUDC once the project is in service. The filing is also silent on the accounting procedures to be used to ensure the pre-funded AFUDC calculation includes all costs in CWIP receiving the rate base incentive.

66. To correct the deficiencies in its proposal, the NSP Companies are hereby ordered to submit, in a compliance filing to be made within 30 days of this order, proposed journal entries reflecting all the accounting entries related to the projects along with narrative explanations describing the basis for the accounting entries, including a description of procedures and controls that the NSP Companies will implement to prevent improper capitalization.[77]

67. To comply with the requirement that an applicant seeking CWIP recovery in rate formulas make an annual filing with the Commission, the NSP Companies state that they will annually file the FERC Form No. 730 report.[78] In addition, as part of the annual customer notification and information procedures, the NSP Companies state that they will

[77] Accounting procedures that have satisfied this burden have provided internal procedures, 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. These accounting procedures also explain the manner in which the costs of a work order will be traced to specific FERC accounts based on the appropriate accounting treatment. Other entities have provided accounting procedures showing and explaining specific accounting journal entries that ensure that no improper capitalization occurs. There may also be other accounting procedures and methodologies that satisfactorily achieve the objectives described above. *See, e.g.*, The United Illuminating Company, Docket No. ER07-653-000, Ex. Nos. UI-13, UI-14 and UI-15 (filed Mar. 23, 2007); Boston Edison Company, Docket No. ER05-69-000, Ex. Nos. BE-2 (at 4-5) and BE-6 (filed Oct. 25, 2004); American Transmission Company LLC, Docket No. ER04-108-000, Ex. Nos. ATC-9 and ATC-10 (filed Oct. 30, 2003).

[78] Transmittal Letter at 33.

develop and post on OASIS work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in their estimates for each year.[79]

68. The Commission has previously accepted a utility's proposal that the FERC Form No. 730 report would satisfy the Commission's requirement for an annual filing for CWIP recovery through a rate formula.[80] Accordingly, we will accept the NSP Companies' proposal to use their FERC Form No. 730 report to satisfy the filing requirements for CWIP recovery through their rate formula, subject to one condition. In their annual FERC Form No. 730 report, the NSP Companies should report the date upon which the Minnesota Commission issued a Certificate of Need for each project. We will also accept the NSP Companies' proposal to develop and post on OASIS work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in their estimates for each year.

C. Rate Formula

69. The Commission will conditionally accept for filing the NSP Companies' proposal to use projected test year cost inputs with a true-up mechanism, effective January 1, 2008. Our analysis indicates that the NSP Companies' proposal to switch to forward-looking estimated transmission costs with a true-up mechanism is just and reasonable. The use of projected costs is consistent with the Attachment O rate formulas that we have approved for Michigan Electric and International Transmission.

70. The NSP Companies will conduct the same kinds of customer meetings to share information regarding the rate inputs as the Commission approved for Michigan Electric and International Transmission, and, with one exception, the NSP Companies have adopted substantially the same tariff provisions approved by the Commission for Michigan Electric regarding sharing information. That exception involves the date by which the estimated revenue requirement for the following calendar year would be provided to customers. The NSP Companies propose to provide customers with such information by October 1 each year, while Michigan Electric and International Transmission provide the information by September 1. Because the customer meeting is held before October 31, we believe that customers should receive such information earlier than October 1 in order to allow sufficient time to review the information before the meeting. Therefore, we will require that the NSP Companies provide the estimated

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[79] *Id.*

[80] *The United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007).

revenue requirement for the following calendar year by September 1. These information sharing procedures will provide customers sufficient opportunity to monitor whether the NSP Companies are implementing the rate formula correctly.

71. Municipal Intervenors contend that it is not yet clear whether these procedures will provide for a sufficiently detailed information exchange between the NSP Companies and their customers, or for adequate time and procedures for follow-up questioning and informal discovery. The proposed tariff provisions state that the NSP Companies shall make available to customers their projected net revenue requirement and that all inputs shall be provided in sufficient detail to identify the components of such revenue requirement. We expect that the NSP Companies will provide sufficient information to demonstrate that they are implementing their formula correctly in the information distributed by each September 1, and that they will supplement that information if necessary upon request of customers. Municipal Intervenors also argue that in the event that errors are made in the NSP Companies' implementation of formula inputs, there appears to be no mechanism for ensuring that corrections can be made. If errors are detected in the course of information exchange between the NSP Companies and their customers, customers may seek to resolve these matters informally with the NSP Companies or they may seek to have the Commission resolve the matter by filing a formal complaint with the Commission.

72. We reject MMPA's assertion here that the Commission should initiate an investigation of the baseline ROE of the NSP Companies. The NSP Companies do not propose to change the Commission-authorized ROE applicable for all Midwest ISO transmission owners under the Attachment O rate formula. As such, as the proponent of a change in an unchanged component of rates, MMPA bears the burden under section 206 of the FPA to show that the existing ROE is unjust and unreasonable and that a different ROE and capital structure are just and reasonable.[81] The Commission has

[81] *See Boston Edison Company*, 65 FERC ¶ 61,311, at 62,425-27 (1993), *reh'g denied*, 66 FERC ¶ 61,337 (1994) (In addressing a proposal to increase the nuclear decommissioning cost recovery component of a rate formula without changing the ROE component, the Commission reviewed court decisions on the subject and determined that only if the increase that the utility proposes sufficiently increases its earnings so that the rate of return rises above what the Commission had previously allowed may the Commission change the return under section 205). In addressing International Transmission's proposal to revise its Attachment O rate formula to use projected test-period data instead of historic test-period data, the Commission found the justness and reasonableness of the unchanged ROE component of the rate formula to be beyond the scope of that section 205 proceeding. *International Transmission*, 116 FERC ¶ 61,036 at

(continued…)

discretion in deciding whether to initiate investigations pursuant to section 206 of the FPA and whether to set the issue for a formal hearing. While factors such as CWIP and abandoned plant recovery and formula true-up mechanisms can decrease a company's business risk, a number of factors have a bearing on a company's overall business risk. We find that MMPA's assertions that the currently authorized ROE is no longer just and reasonable are too general and unsupported to warrant initiation of a section 206 investigation.

73. We will dismiss MMPA's allegations of price squeeze.[82] As these allegations focus on the ROE, they are outside the scope of this proceeding.[83] Moreover, MMPA has failed to include the minimum information required by the Commission's regulations to have price squeeze considered in a section 205 rate proceeding.[84]

P 35. That holding applies equally to the instant proceeding, where the NSP Companies propose to revise their rate formula not only to use projected test-period data but also to provide for 100 percent CWIP Recovery. Like the switch to use of projected test-period data, 100 percent CWIP Recovery does not change the amount that the utility ultimately recovers for service, just the timing of such recovery. *See, e.g., International Transmission*, 116 FERC ¶ 61,036 at P 19; *Michigan Electric*, 117 FERC ¶ 61,314 at P 17. With respect to 100 percent Abandoned Plant Recovery, no rate change is being sought as this time; the NSP Companies propose to fix the value of this line item at zero and will only change this value through a new section 205 filing.

[82] While MMPA also argues that the difference between the ROE allowance reflected in bundled retail rates and the ROE reflected in wholesale transmission rates violates the comparability principles under the Commission open access rules, we view this argument as essentially an allegation of regulatory price squeeze.

[83] The Commission's regulations regarding proposals to include CWIP in rate base do require that a utility address the potential for *CWIP-related* price squeeze if the requested percentage of wholesale CWIP recovery sought exceeds that permitted by the relevant state or local authority to support the currently competing retail rates. As relevant to MMPA and its members, the NSP Companies indicate in their application that the Minnesota Commission has approved NSP Minnesota's proposal for inclusion of 100 percent CWIP in rate base in retail rates, and, therefore, no further analysis of the potential for price squeeze is required.

[84] 18 C.F.R. § 2.17(a) (2007).

D. Central Minnesota Municipal Power Agency Motion and Request for Declaratory Order for Incentives

74. The Commission rejects CMMPA's request for a declaratory order without prejudice. If a party other than the applicant wishes to request incentive rate treatment, it must submit such a request in a separate petition for a declaratory order or make a filing under section 205 of the FPA in order to give both the Commission and the public proper notice of the proposed incentive filing and allow for a meaningful comment period.[85]

The Commission orders:

(A) The NSP Companies' requested incentives and proposed rate formula modifications are hereby accepted for filing to become effective January 1, 2008, as discussed in the body of this order.

(B) The NSP Companies are hereby ordered to make a compliance filing, to be submitted within 30 days of this order, with proposed journal entries reflecting: (1) all the accounting entries related to the projects; (2) narrative explanations describing the basis for the accounting entries; and (3) a description of procedures and controls that the NSP Companies will implement to prevent improper capitalization, as discussed above.

(C) CMMPA/MMTG's request for a declaratory order is hereby rejected without prejudice, as discussed above.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

[85] *Louisville Gas and Electric Company*, 62 FERC ¶ 61,016, at 61,151-52 (1993); *American Electric Power Service Corporation*, 90 FERC ¶ 81,040, at 61,193 (2000).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Xcel Energy Services, Inc. Docket No. ER07-1415-000

(Issued December 21, 2007)

KELLY, Commissioner, *concurring*:

This order addresses a request for transmission rate incentives submitted by Xcel Energy Services Inc., on behalf of the Northern States Power Companies (NSP Companies). In accordance with criteria I have specified in previous statements,[1] I conclude that the NSP Companies have demonstrated that the projects addressed in this proceeding warrant incentive rate treatment. The NSP Companies have requested two types of incentive rate treatments for 6 projects: 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base and recovery of 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond their control. The NSP Companies have also demonstrated that the requested CWIP and abandonment costs incentives are warranted.

Four of the six projects represent the initial group of transmission projects planned as part of the CapX 2020 project, which involves eleven Midwest utilities.[2] I conclude that these projects merit incentive rate treatment for several reasons. First, these projects represent backbone transmission infrastructure and were the product of a coordinated planning process among a large group of investor-owned utilities and cooperative and municipal power agencies. Second, the CapX 2020 projects are intended to provide for regional transmission needs going forward 15 years or more. Furthermore, I have made this determination on the basis of the size of the investment ($800-$940 million for the NSP Companies) and the lead times involved. I conclude that the specific incentives sought—100 percent CWIP and abandonment costs incentives—are appropriate because they will mitigate the primary risks of the projects, i.e., the long/uncertain lead times, effects of capital expenditures on cash flows and creditworthiness, and the possibility that they might not be completed.

[1] See *American Electric Power Service Corporation*, 118 FERC ¶61,041 (2007).

[2] NSP Companies are joined in the CapX 2020 efforts by ten other utilities: Great River Energy, Minnesota Power, Missouri River Energy Services and Otter Tail Power Company, Dairyland Power Cooperative, the Central Minnesota Municipal Power Agency, Minnkota Power Cooperative, Rochester Public Utilities, Southern Minnesota Municipal Power Agency, and Wisconsin Public Power, Inc.

With regard to the Buffalo Ridge Incremental Generation Outlet (BRIGO) and Chisago-Apple projects, I also find that these warrant incentive rate treatment. The BRIGO project not only provides delivery capability for future wind generation, it enhances operations of CapX 2020 projects, and increases the reliability of the transmission network. Moreover, the BRIGO project resulted from a multi-utility study, which determined that it "provided the greatest increase in wind generation outlet capacity at the lowest cost."[3] I base my decision concerning the Chisago-Apple project on the fact that it is multi-state, multi-jurisdictional[4] and a jointly-owned project. I also note that the NSP Companies and its partner have faced opposition to a transmission solution in the Chisago-Apple area for 12 years.[5] The requested CWIP and abandoned plant incentives are appropriate for these projects given the risks these projects face: long lead time and the need to obtain regulatory approvals from a disparate set of authorities, some of which NSP Companies have not dealt with in prior projects.

For these reasons, I respectfully concur with this order.

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Suedeen G. Kelly

[3] See Exhibit XES-8 at 12:2-4.

[4] NSP Companies note that approval for the project must also be sought from the U.S. Army Corp of Engineers and National Park Service in addition to Minnesota and Wisconsin authorities.

[5] See Exhibit XES-8 at 5: 15-20.