

130 FERC ¶ 61,001
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer and Philip D. Moeller.

Great River Energy

Docket Nos. ER10-147-000
ER10-147-001
ER10-147-002

ORDER CONDITIONALLY GRANTING TRANSMISSION RATE INCENTIVES
AND ACCEPTING TARIFF REVISIONS, AND ORDERING COMPLIANCE FILING

(Issued January 5, 2010)

1. On October 29, 2009,¹ as revised on December 7, 2009² and December 10, 2009,³ Great River Energy (Great River) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed revisions to Attachment O-GRE to Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)⁴ and proposed the adoption of Attachment GG-Great River Energy to the Tariff to allow recovery of certain requested incentive-based rate treatment, pursuant to sections 205 and 219 of the Federal Power Act (FPA).⁵ In this order, we grant Great River's request for transmission rate incentives and conditionally accept Great River's proposed Attachment GG-Great River Energy and its proposed revisions to Attachment O-GRE, effective January 1, 2010.

¹ *Great River Energy*, Request for Approval of Revisions to Formula Rate to Provide for Incentive Rates and Other Changes, Docket No. ER10-147-000 (filed October 29, 2009) (Filing).

² *Great River Energy*, Docket No. ER10-147-001 (filed December 7, 2009).

³ *Great River Energy*, Docket No. ER10-147-002 (filed December 10, 2009).

⁴ Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1.

⁵ 16 U.S.C. §§ 824d; 824s (2006).

I. Background

2. Great River is a Minnesota electric generation and transmission cooperative corporation, a non-public utility that provides wholesale electric service to 28 member distribution cooperatives. As a transmission-owning member of Midwest ISO, Great River has filing authority over its own revenue requirements and derives its transmission revenue requirement using the formula rates in Attachments O and GG to the Midwest ISO Tariff.⁶

3. Great River states that, together with other utilities in the region and subject to the oversight of Midwest ISO, it has been developing plans to upgrade the regional transmission infrastructure in order to meet state renewable energy standards and to ensure that Great River can continue to serve growing load in the region reliably.⁷ Great River notes that Minnesota has enacted aggressive renewable energy mandates for electric utilities that require that 25 percent of the energy that Great River sells to its member customers must come from qualified renewable energy sources by the year 2025.⁸ With respect to load growth, Great River states that the demand for transmission capacity is outstripping supply and affecting, or will soon affect, reliability in the region. Great River asserts that it expects peak demand to continue to grow by three percent per year and reach 3,300 MW by the year 2020.⁹

4. As part of Great River's effort to expand regional transmission infrastructure, Great River is participating in a comprehensive regional planning initiative by eleven utilities in the region known as the Transmission Capacity Expansion Initiative by the Year 2020 (CapX2020 Project). Specifically, Great River states that it expects to invest \$309 million, or about \$51.5 million per year, over the next six years in the following three projects that are part of Phase 1 of the CapX2020 Project (together, GRE CapX2020 Projects):

⁶ Because it is not a public utility, Great River is not subject to the general rate regulations of the Commission and accordingly is not required to submit FERC Form No. 1. However, during the time Great River was a Rural Utility Service (RUS) borrower, the RUS Form 12 was the basis for its formula rates under Attachment O of the Midwest ISO Tariff. More recently, Great River has developed a comparable report entitled Great River Energy Annual Operating Report. Both the RUS Form 12 and the Great River Energy Annual Report are based on and utilize the RUS Uniform System of Accounts.

⁷ Filing, Transmittal Letter at 5.

⁸ *Id.*, Attachment 1 at 3-4.

⁹ *Id.*

(1) A 240-mile, 345 kV transmission line between Brookings County, South Dakota and the Southeast Twin Cities, as well as a 10-mile, 230 kV line. Great River states that the estimated cost of the lines is \$794 million and that it will fund \$131 million of the total cost. Great River expects to own a 17 percent share of the project upon completion of the lines (Brookings Line).¹⁰

(2) A 250-mile, 345 kV transmission line between Fargo, North Dakota and Monticello, Minnesota. Great River estimates that the line will cost \$659 million. Great River expects to invest \$165 million in the project and to own a 25 percent share of the line once the line is completed (Fargo Line).¹¹

(3) A 68-mile, 230 kV transmission line between Grand Rapids and Bemidji in northern Minnesota. Great River states that the estimated cost of the line is \$102 million. Great River explains that it will fund \$13 million of the total cost and that it expects to own a 13 percent share of the line upon completion (Bemidji Line).¹²

Great River states that the projects are expected to go into service in phases beginning in 2013.¹³ Great River also notes that, over the next six years, it will invest an additional \$279 million in routine transmission projects designed to maintain reliable transmission service to its members.¹⁴ According to Great River, these routine investments, combined with its investment in the GRE CapX2020 Project will add, over the next six years, approximately \$588 million in transmission investment to its year-end 2008 gross plant value of \$576 million.¹⁵

¹⁰ *Id.*, Transmittal Letter at 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*, Attachment 1 at 7. The Commission notes that in Docket No. ER10-183-000, Otter Tail Power Company is filing for incentive rate treatment for its participation in the same group of projects part of the CapX2020 Project, and states that it anticipates the projects to be phased into service beginning 2011 and 2015. Docket No. ER10-183-000, Transmittal Letter at 9.

¹⁴ Filing, Transmittal Letter at 6, Attachment 1 at 12.

¹⁵ *Id.*

II. The Filing

A. Proposed Incentive Rates

5. Great River proposes changes to its Attachment O-GRE and the adoption of an Attachment GG-Great River Energy in the Midwest ISO Tariff to allow recovery of incentive-based rate treatment for its investment in the GRE CapX2020 Projects. In particular, Great River requests recovery of the following three incentive-based rate treatments: (1) inclusion of 100 percent prudently incurred Construction Work in Progress (CWIP) in rate base (100 percent CWIP Recovery); (2) 100 percent recovery of the prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the control of Great River (Abandoned Plant Recovery); and (3) a hypothetical capital structure of 20 percent equity and 80 percent debt (Hypothetical Capital Structure).¹⁶ With respect to 100 percent CWIP Recovery, Great River seeks to revise its formula rate to reflect the costs of 100 percent CWIP Recovery for the three GRE CapX2020 Projects.¹⁷ Regarding Abandoned Plant Recovery, Great River explains that it is not seeking approval of any specific abandoned plant costs at this time, but is merely seeking approval to add a value of zero in its formula template to act as a placeholder for any future recovery of the prudently incurred costs of any of the GRE CapX2020 Projects that are abandoned for reasons beyond Great River's control.¹⁸ Great River also explains that, as required by Order No. 679,¹⁹ it would make a subsequent filing with the Commission before recovering any costs associated with the abandonment of a GRE CapX2020 Project through inclusion in its formula rate. With respect to the Hypothetical Capital Structure, Great River seeks authority to use an 80 percent debt and 20 percent equity structure for the GRE CapX2020 Projects through the end of 2020, at which time Great River expects that its equity level, which was at 13.1 percent at year-end 2008, will have reached 20 percent.²⁰

6. Great River asserts that the Commission may approve its request for incentive rates, despite the fact that it is a non-jurisdictional entity.²¹ Great River notes that the Commission has stated that it would consider requests for incentive-based rates by non-

¹⁶ *Id.*, Transmittal Letter at 2.

¹⁷ *Id.* at 8, 23.

¹⁸ *Id.* at 18.

¹⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

²⁰ Filing, Transmittal Letter at 8.

²¹ *Id.* at 4 (citing 16 U.S.C. § 824(f) (2006)).

jurisdictional entities.²² Great River also states that Commission review is the only method by which Great River can receive incentive rates, because it derives its transmission revenue requirement using the formula rates in Attachments O and GG of Midwest ISO's Tariff.²³ It asserts that, in these circumstances, the Commission has full authority to consider and approve Great River's request.²⁴

7. Great River contends that its request for incentives complies with Order No. 679 and Commission precedent. First, Great River asserts that the GRE CapX2020 Projects are entitled to a rebuttable presumption that the GRE CapX2020 Projects qualify for incentives under section 219 of the FPA. Great River explains that the Commission has previously determined that the three GRE CapX2020 Projects are entitled to a rebuttable presumption "if they receive a Certificate of Need from the Minnesota [Public Utilities Commission]" (Minnesota Commission).²⁵ Great River states that all three of the GRE CapX2020 Projects have now received Certificates of Need from the Minnesota Commission.²⁶

8. Second, Great River asserts that the requested incentives satisfy the nexus requirement embraced in Order No. 679 because the GRE CapX2020 Projects are not routine, and each requested incentive and the requested package of incentives as a whole are tailored to the demonstrable risks and challenges of the projects.

9. Great River explains that the Commission has previously found that the GRE CapX2020 Projects are not routine and present special risks, and that nothing has

²² Filing, Transmittal Letter at 4.

²³ *Id.* at 4-5 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 354).

²⁴ Filing, Transmittal Letter at 5 (citing *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 671-672 (D.C. Cir. 2007) (*Transmission Agency of Northern California*)).

²⁵ *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 53 (2007) (*Xcel*).

²⁶ *In the Matter of the Application of Great River Energy, Northern States Power Company (d/b/a Xcel Energy and Others for Certificates of Need for the CapX 345-kV Transmission Project, Order Granting Certificates of Need With Conditions*, Minnesota PUC Docket No. ET-2, E-002, *et al.*/CN06-1115; (May 2, 2009), *on reconsideration, Order Granting and Denying Motions for Reconsideration, and Modifying Conditions* (August 10, 2009), *appeal pending sub nom. A09-1646 and A09-1653.*; *In the Matter of the Application of Otter Tail Power Company, et al. for a 230 kV Transmission Line from Bemidji to Grant Rapids, Minnesota*, Minnesota PUC Dockets E-017, E-015, ET-6/CN-07-1222 (July 14, 2009). Filing, Attachment 1 at 17, Attachment 2 at 12.

changed since the Commission made that finding.²⁷ Great River asserts that the GRE CapX2020 Projects are not routine because Great River's investment in the projects represents an extraordinary investment for Great River and because these projects are among the largest transmission infrastructure projects constructed in the upper Midwest in approximately three decades.²⁸ Great River states that its expected investment in the GRE CapX2020 Projects is over 50 percent of its current gross transmission plant of \$576 million, and that this investment will effectively double Great River's historical annual budget for transmission capital expenditure.²⁹ In addition, Great River contends that the projects are not routine because the projects extend over Minnesota, South Dakota, and North Dakota, and, as the Commission has recognized, projects located in multiple states present special risks and challenges.³⁰ Great River also asserts that the Commission should find that the GRE CapX2020 Projects are not routine because the Commission has held that regional projects are not routine "by definition" and, in this case, the GRE CapX2020 Projects have been regionally planned in conjunction with Midwest ISO.³¹ Further, Great River states that the GRE CapX2020 Projects should not be considered routine, because one of the primary purposes of the projects is to increase the deliverability of wind energy, and that the Commission has recognized that transmission projects that integrate new generation resources are the type of projects that should receive incentives.³²

10. In support of its assertion that each requested incentive is tailored to the risks and challenges of the GRE CapX2020 Projects, Great River explains that its status as a cooperative comes with certain financial limitations that increase the importance of cash flow to Great River. Great River notes that, as a cooperative, it cannot raise equity through the sale of stock. Great River states that while most cooperatives rely heavily on the RUS for funding, Great River has not received any RUS funding since 2007 and relies primarily on the debt capital markets for procuring needed capital. Noting that it is rated by Standard and Poor's (S&P), Moody's, and Fitch, Great River contends that it is critical that Great River continue to be able to attract investment through the capital markets. In order for it to do so, according to Great River, it must maintain a track record

²⁷ Filing, Transmittal Letter at 11 (citing *Xcel*, 121 FERC ¶ 61,284 at P 56).

²⁸ Filing, Transmittal Letter at 11-13.

²⁹ *Id.* at 11-12.

³⁰ *Id.* at 12 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 94; *Xcel*, 121 FERC ¶ 61,284).

³¹ Filing, Transmittal Letter at 12-13 (citing *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084, at P 58 (2007) (*BG&E*)).

³² Filing, Transmittal Letter at 13 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 24-26).

of stable financial and operating statistics, including strong debt service coverage and equity-to-capitalization ratios, predictable and stable cash flows, and favorable regulatory treatment.³³

11. Great River argues that its request for 100 percent CWIP Recovery is tailored to the risks and challenges associated with its extraordinary investment in the GRE CapX2020 Projects. Great River argues that allowing 100 percent CWIP Recovery will improve Great River's financial options, provide up-front regulatory certainty to its lenders, stabilize rates, increase cash flow, and mitigate the strain on Great River's finances from the substantial expected capital expenditures during construction.³⁴ Further, Great River states that allowing 100 percent CWIP Recovery will help maintain Great River's investment grade rating,³⁵ generate cash to begin servicing debt, and lower the overall costs of the projects.³⁶ Great River emphasizes that 100 percent CWIP Recovery will not have an adverse impact on electric transmission rates. Great River argues that, on the contrary, the requested incentive will actually reduce rates on a nominal basis, and that customers will pay \$69 million less for the GRE CapX2020 Projects with 100 percent CWIP Recovery than they would have paid with the traditional AFUDC mechanism.³⁷

³³ Filing, Transmittal Letter at 15. Great River explains that its first mortgage bonds currently have a credit rating of A3 from Moody's, BBB+ from S&P, and A- from Fitch. Great River states that it expects to face a negative cash flow position as a result of its investment in the GRE CapX2020 Projects and other transmission projects. In particular, Great River states that, absent 100 percent CWIP Recovery, spending will exceed cash flows by approximately \$290 million. Great River states that allowing 100 percent CWIP Recovery will provide it with a more positive cash flow during this time than it would have if it were only accruing Allowance for Funds Used During Construction (AFUDC), as is currently the case. Great River contends that if 100 percent CWIP Recovery for these projects is authorized, Great River will be able to recover \$142 million on the GRE CapX2020 Projects from 2010 through 2015. In contrast, Great River asserts that it would only recover \$73 million of the costs from the GRE CapX2020 Projects during that time period using the current AFUDC mechanism. *Id.* at 12.

³⁴ *Id.*, Attachment 3 at 12.

³⁵ Great River argues that any downgrade of its current ratings from Moody's, S&P, and Fitch would have adverse financial consequences for Great River and its customers. Great River contends that allowing 100 percent CWIP Recovery will help it maintain its investment rating while it is developing and investing in the projects. *Id.*, Transmittal Letter at 16.

³⁶ *Id.*

³⁷ *Id.*, Exhibit GRE-15.

12. Great River states that Abandoned Plant Recovery is tailored to the risks associated with the GRE CapX2020 Projects. Great River argues that granting the incentive will eliminate the risk that Great River's member-customers will have to bear the costs of the abandonment of the GRE CapX2020 Projects. Great River asserts that the risk that the GRE CapX2020 Projects will be abandoned for reasons beyond its control is acute because the projects require the approval of multiple jurisdictions, are dependent upon continued participation by multiple owners, and are being constructed to support expected new generation without existing interconnection and transmission agreements.³⁸ Great River also asserts that potential opposition to the transmission lines increases the risk that a GRE CapX2020 Project may be abandoned for reasons outside of its control.³⁹

13. Great River contends that its requested Hypothetical Capital Structure through 2020 meets the Commission's nexus requirement. Great River states that its ability to maintain its credit rating, and, hence, its ability to achieve advantageous financing costs are directly influenced by its equity level and financial coverage ratios. It notes that the rating agencies have expressed concern about the effect of Great River's large capital expenditures on its financial performance.⁴⁰ Great River explains that its goal is to achieve a 20 percent equity-to-capitalization ratio by the end of 2020⁴¹ and that the requested Hypothetical Capital Structure will support it in reaching its goal. Thus, according to Great River, the requested Hypothetical Capital Structure is fully consistent with its financial objectives and commensurate with Great River undertaking the GRE CapX2020 Projects. Moreover, Great River states that the Hypothetical Capital Structure will provide an incentive to Great River's board of directors and members to direct resources to regional transmission projects by providing additional assurances that the regulatory framework exists to support the deployment of Great River's capital to these projects.⁴²

³⁸ *Id.*, Transmittal Letter at 16-17.

³⁹ *Id.* at 17 (citing *Southern Calif. Edison Co.*, 112 FERC ¶ 61,014, at P 58-61, *reh'g denied*, 113 FERC ¶ 61,143, at P 9-15 (2006)).

⁴⁰ Filing, Transmittal Letter at 18.

⁴¹ Great River emphasizes that it is only requesting a Hypothetical Capital Structure through 2020. Great River explains that if it has not reached its target of 20 percent equity by 2020, Great River will revert to its actual capital structure. Great River also explains that the Hypothetical Capital Structure will provide less incremental revenue in each subsequent year as Great River's actual equity level approaches 20 percent. *Id.* at 19-20.

⁴² *Id.* at 18.

14. Great River urges the Commission to grant its request for the Hypothetical Capital Structure in light of the unique circumstances of this case. Great River states that the “Commission [has] expressly recognized that ‘many of the instances in which hypothetical capital structures are used and can be used reflect unique circumstances, such as a project or consortium that requires a special capital structure where the capital structure may change significantly with new investments.’” Great River also states that its equity situation is unique. Great River maintains that the mean equity-to-debt percentage for the Midwest ISO transmission owning members is approximately 58 percent equity. Great River states that its equity-to-debt percentage falls far below that mean and far below hypothetical capital structures allowed in the past.⁴³

15. Great River asserts that, taken together, the total package of requested incentives is tailored to the risks and challenges of the GRE CapX2020 Projects. Great River argues that the requested incentives are consistent with each other because each incentive serves to reduce the risks of Great River’s investment in the project and to remove potential obstacles to construction of those projects.⁴⁴ Great River states that the Commission has expressly recognized that 100 percent CWIP Recovery and Abandoned Plant Recovery can be used together, and that the incentives are similar in that they are interrelated and each is designed to remove impediments to transmission construction.⁴⁵ Great River asserts that the requested Hypothetical Capital Structure serves to remove impediments to the construction of the projects, provides an important added cushion for rating agencies, and improves cash flow so that Great River can meet its capitalization objectives and obligations.⁴⁶

16. Third, Great River maintains that the rates resulting from allowing the requested rate incentives are just and reasonable. Great River asserts that its request to add a placeholder for Abandoned Plant Recovery will not affect rates. With respect to 100 percent CWIP Recovery, Great River explains that the requested incentive will affect the timing of cost recovery only, and that, to the extent it affects rates, may result in a nominal reduction in the costs that customers pay for the GRE CapX2020 Projects. Great River contends that the Hypothetical Capital Structure is just and reasonable because it will help to raise significant levels of new debt and equity capital, help Great River maintain access to a broad base of investors and reasonable cost financing, and is within

⁴³ *Id.* at 19 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 134).

⁴⁴ Filing, Transmittal Letter at 20.

⁴⁵ *Id.* at 20 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 28-29, 117).

⁴⁶ Filing, Transmittal Letter at 20.

the range of capital structures the Commission has approved for other transmission owners.⁴⁷

17. Great River also makes a number of requests and commitments regarding the Commission's regulations concerning recovery of CWIP. Great River notes that applicants seeking recovery of CWIP through a formula rate must make an annual filing informing the Commission of their request for inclusion of CWIP in rate base. Great River proposes to satisfy this requirement through an annual filing of FERC Form No. 730. However, Great River asserts that doing so will not affect Great River's jurisdictional status. Great River also states that, no later than April 18, it will show the regulatory accounting effects of the recovery of CWIP in the prior year through an annual update on its open access same-time information system (OASIS) site. Great River also commits that it will share cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in rates for the following year on an annual basis with Midwest ISO and its customers.⁴⁸ In addition, in order to meet the requirement that an applicant must propose accounting procedures ensuring that customers will not be charged for both capitalized AFUDC and amounts associated with CWIP in rate base,⁴⁹ Great River proposes to accrue AFUDC on 100 percent of its CWIP balance in Account No. 107, Construction Work in Progress - Electric, and record a regulatory liability to offset 100 percent of the recorded AFUDC in Account No. 254, Other Regulatory Liabilities. Great River also proposes to amortize the regulatory liability to Account No. 407.4, Regulatory Credits, over the average in service life of the GRE CapX2020 Projects to serve as an offset to depreciation expense.

B. Other Proposed Formula Rate Modifications

18. Great River proposes to modify the formula rate in Attachment O-GRE to include line items for CWIP, prefunded AFUDC on CWIP in rate base, and prefunded AFUDC amortization in depreciation expense to provide for 100 percent CWIP Recovery. Great River also proposes to modify Attachment O-GRE to include line items for inclusion of the unamortized balance of abandoned plant and abandoned plant amortization, with placeholders equal to zero, for Abandoned Plant Recovery.⁵⁰ Finally, Great River

⁴⁷ *Id.* at 21-22. *See, e.g., Green Power Express LP*, 127 FERC ¶ 61,031 (2009) (accepting a hypothetical capital structure of 60 percent equity and 40 percent debt). *See also Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (accepting a hypothetical capital structure of 50 percent equity and 50 percent debt).

⁴⁸ Filing, Transmittal Letter at 27.

⁴⁹ 18 C.F.R. § 35.25 (2009) (recovery of CWIP in rate base).

⁵⁰ Filing, Attachment 4 at 7-9.

proposes to modify Attachment O-GRE to include line items for the calculations of the Hypothetical Capital Structure to then be applied to Attachment GG-Great River Energy. Great River's proposed Attachment GG-Great River Energy is modified from Midwest ISO's *pro forma* Attachment GG to include the annual allocation factor for incentive return, calculated within Attachment O-GRE, to be applied to the costs of the GRE CapX2020 Projects.⁵¹

19. In addition to proposing revisions to implement the requested incentive-based rate treatments, Great River also proposes minor "clean-up" revisions to Attachment O-GRE conforming to the changes recently accepted by the Commission in Docket No. ER09-1657-000 and in Docket No. ER09-1779-000.⁵²

20. Finally, Great River requests waiver of a number of provisions of the Commission's regulations. Great River asks the Commission to waive the filing requirements in sections 35.25(c)(4) and 35.25(g) relating to the anticompetitive impacts of CWIP in rate base on the basis that it has provided sufficient information to meet the requirements of those sections. Great River also seeks waiver of the requirements of section 35.13(d) concerning Period I and Period II data on the basis that the inputs for its formula rate are provided annually. Noting that it has served the filing electronically and has posted a copy on Midwest ISO's website, Great River maintains that good cause exists for waiver of section 385.2010 because of the volume of potentially interested parties, the limited resources available for service, and the financial burden that mailing copies would impose. Lastly, Great River seeks waiver of any other Commission rule or regulation necessary to permit the proposed tariff changes to be accepted by the Commission and made effective as requested.

III. Notice of Filings and Responsive Pleadings

21. Notice of the Filing Parties' October 28, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 58,276 (2009), with interventions and comments due on or before November 19, 2009. Timely motions to intervene were filed by Otter Tail Power Company, Xcel Energy Services, Inc., and Missouri River Energy Services.

22. Notice of the Great River's December 7, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 66,633 (2009). The Commission granted Great River's request for

⁵¹ *Id.*

⁵² *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1657-000 (October 19, 2009) (unpublished letter order); *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER09-1779-000 (December 1, 2009) (unpublished letter order).

a shortened comment period of seven days making interventions and comments due on or before December 14, 2009. None were received.

23. Notice of Great River's December 10, 2009 filing was published in the *Federal Register*, 74 Fed. Reg. 67,867 (2009). The Commission granted Great River's request for a shortened comment period of seven days making interventions and comments due on or before December 17, 2009.

IV. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. Jurisdiction Over Great River's Request

25. We agree with Great River that we have authority to consider and grant Great River's application for incentive rate treatment. In Order No. 679, the Commission stated that it would, "to the extent [its] jurisdiction allows, entertain appropriate requests for incentive ratemaking for investment in new transmission projects when public power participates with jurisdictional entities as part of a proposal for incentives."⁵³ It has been firmly established that the Commission has the statutory authority to consider whether the rates of a non-jurisdictional entity are just and reasonable to the extent necessary to determine that jurisdictional rates are just and reasonable.⁵⁴ Great River derives its transmission revenue requirement using Midwest ISO's Attachment O and GG formula rates, and, as a result, its revenue requirements are subject to Commission review to ensure that rates for service provided by Midwest ISO, a public utility, are just and reasonable.

⁵³ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 354. We also noted that encouraging public power participation in such projects is consistent with the goals of section 219 of the FPA by encouraging a deep pool of participants.

⁵⁴ *Transmission Agency of Northern California*, 495 F.3d at 671-672 (citing *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1114 (D.C. Cir. 2002)).

2. Section 219 and Order No. 679 Incentives

a. Section 219 Requirements

26. In the Energy Policy Act of 2005,⁵⁵ 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 Great River.

27. 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.”⁵⁶ 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.”⁵⁷

28. 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 (i.e., the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion).⁵⁸ 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.⁵⁹ 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.⁶⁰

⁵⁵ Pub. L. No. 109-58 § 1241, 119 Stat. 594 (2005).

⁵⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

⁵⁷ *Id.* P 8 (citing 16 U.S.C. §§ 824(d) and 824(e) (2006)).

⁵⁸ 18 C.F.R. § 35.35(i) (2009).

⁵⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58.

⁶⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

29. In *Xcel*, we found that projects that are part of Phase 1 of the CapX2020 Project, three of which are the same as the GRE CapX2020 Projects, qualify for a rebuttable presumption that they are eligible for incentives under the requirements of FPA section 219 if they received Certificates of Need from the Minnesota Commission.⁶¹ Each of the projects has received a Certificate of Need. Therefore, we find that the GRE CapX2020 Projects qualify for a rebuttable presumption that they meet the requirements of FPA section 219.

b. The Nexus Requirement

30. We find that Great River's request for incentives meets the Commission's nexus requirement. To satisfy the nexus requirement, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."⁶² The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

31. As part of this evaluation, the Commission has found the question of whether a project is "routine" to be particularly probative.⁶³ 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).⁶⁴ 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."⁶⁵

⁶¹ *Xcel*, 121 FERC ¶ 61,284 at P 53.

⁶² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁶³ *BG&E*, 120 FERC ¶ 61,084 at P 48.

⁶⁴ *Id.* P 52-55.

⁶⁵ *Id.* P 54.

32. As we found in *Xcel*,⁶⁶ the GRE CapX2020 Projects are not routine and present special risks. As discussed further below, we find that Great River's request for incentives meets the nexus requirement.

i. Abandoned Plant Recovery

33. 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.⁶⁷ We find that Great River has shown, consistent with our discussion in *Xcel*,⁶⁸ a nexus between the requested Abandoned Plant Recovery incentive and its planned investment. Besides their scope, size and long-lead times, the GRE CapX2020 Projects present special risks because they require approvals from multiple jurisdictions and are still subject to potential cancelation or modifications due to decisions beyond Great River's control. Accordingly, we find that Great River's request for Abandoned Plant Recovery meets the nexus requirement.⁶⁹

ii. Construction Work in Progress

34. 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.⁷⁰ The Commission noted in Order No. 679 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.⁷¹

35. We find that Great River has shown a nexus between the proposed 100 percent CWIP Recovery and its investment in the GRE CapX2020 Projects. Great River has demonstrated that the size and scope of the GRE CapX2020 Projects pose risks of decreasing Great River's investment rating. We find that authorizing 100 percent CWIP Recovery for the GRE CapX2020 Projects will enhance Great River's cash flow, reduce interest expenses, assist Great River with obtaining favorable financing, and improve the

⁶⁶ *Xcel*, 121 FERC ¶ 61,284 at P 56.

⁶⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

⁶⁸ *Xcel*, 121 FERC ¶ 61,284 at P 63.

⁶⁹ We note that if any part of the GRE CapX2020 Projects is abandoned, Great River must make a filing demonstrating that the costs of the project were prudently incurred, and that the project was abandoned for reasons beyond Great River's control.

⁷⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁷¹ *Id.* P 115.

coverage ratios used by rating agencies to determine Great River's credit quality by replacing non-cash AFUDC with cash earnings. This, in turn, will reduce the risk of a down-grade in Great River's investment ratings. These factors are comparable to those that the Commission has taken into consideration in authorizing CWIP in rate base for other utilities.⁷²

36. Consistent with Commission precedent,⁷³ we will accept Great River's proposal to file a FERC Form No. 730 report to satisfy the filing requirements for inclusion of CWIP in rate base. We will also accept Great River's proposal to develop and post on OASIS, as part of the annual customer notification and information procedures, work papers that show the cost information and in-service date assumptions regarding the transmission projects and estimated CWIP amounts to be included in its formula rate for each year. We will also approve Great River's accounting proposal, subject to revisions to its corresponding formula rate modifications as discussed below, because it will ensure that customers are not charged for both capitalized AFUDC and corresponding amounts associated with CWIP in rate base, consistent with prior orders.⁷⁴

iii. Hypothetical Capital Structure

37. We also find that Great River has demonstrated that the requested Hypothetical Capital Structure is tailored to address the risks of Great River's investment in the GRE CapX2020 Projects and will therefore approve it. Great River has highlighted the importance of the Hypothetical Capital Structure to the development of the GRE CapX2020 Projects, providing statements developed by rating agencies reporting Great River's undertaking of largely debt-funded capital spending programs, such as the GRE CapX2020 Projects, and noting that the most negative factor on Great River's investment rating is Great River's low equity to capitalization ratio. For this reason we find that the requested Hypothetical Capital Structure will reduce the cost of financing the projects by improving Great River's financial coverage ratios and easing pressure on its investment rating. Further, the Hypothetical Capital Structure will enhance Great River's ability to pay the interest and principle on debt associated with its investments in the projects. We also agree with Great River that granting the requested incentive will provide both Great River's board and its members an incentive to direct resources towards the development of the GRE CapX2020 Projects and encourage public power to participate in regional transmission projects.

⁷² *Xcel*, 121 FERC ¶ 61,284 at P 59.

⁷³ *United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007).

⁷⁴ *Id.* P 13, 68.

iv. Nexus with Total Package of Incentives

38. We find that Great River has shown that the total package of incentives is tailored to address the demonstrable risks or challenges faced by Great River in investing in the GRE CapX2020 Projects.⁷⁵ Consistent with Order No. 679, the Commission has, in prior cases, approved multiple rate incentives for particular projects.⁷⁶ This is based upon our interpretation of FPA 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 FPA section 219 and that there is a nexus between the incentives being proposed and the investment being made.

39. Here, we find that the total package of incentives requested by Great River is tailored to the risks that it faces in investing in the GRE CapX2020 Projects. As discussed above, Great River has demonstrated that each of the requested incentives will reduce the risks that Great River faces and will remove potential obstacles to the construction of these projects.

3. Section 205 Demonstration

40. We find that rates resulting from the requested incentives are just and reasonable, subject to corrections to the formula rates discussed below. Great River's request for Abandoned Plant Recovery will not affect Great River's transmission rates because Great River is not currently seeking to recover any such abandoned plant cost associated with the projects. With respect to Great River's request for 100 percent CWIP Recovery, we find that the resulting rates are just and reasonable because granting Great River's request merely affects the timing of cost recovery, and not the level of cost recovery. In fact, as Great River demonstrates, allowing 100 percent CWIP Recovery may actually reduce the costs of the GRE CapX2020 Projects borne by its customers, on a nominal basis. We also find that Hypothetical Capital Structure results in just and reasonable rates because it will reduce the cost of financing and the ultimate financial cost paid by customers.

4. Conclusion

41. For the reasons discussed above, we find that Great River has demonstrated that it meets the requirements for the requested incentive-based rate treatments. However, the Commission finds that certain modifications need to be made to Attachment GG-Great River Energy.

⁷⁵ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

⁷⁶ See, e.g., *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008); *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007).

42. Attachment O-GRE and Attachment GG-Great River Energy work together to calculate charges associated with the GRE CapX2020 Projects. Attachment O-GRE includes a non-levelized formula rate used to calculate Great River's rates for charges under Schedules 7, 8, and 9 of the Tariff for service over Great River's facilities. Attachment O-GRE calculates total costs less costs recovered under other schedules and rate formula attachments in the Midwest ISO Tariff.

43. Attachment GG-Great River Energy, which will be used to recover the costs of the GRE CapX2020 Projects to the extent they qualify for regional cost sharing under Attachment FF of Midwest ISO's Tariff, is a formula rate used to calculate Great River's transmission service charges under Schedule 26 of Midwest ISO's Tariff which are in addition to any charges under Schedules 7, 8, and 9. Attachment GG-Great River Energy applies fixed charge rates, reflecting average company costs (e.g. return, income taxes, taxes other than income taxes, and operating and maintenance expenses), to project plant investment and adds depreciation. The Attachment GG-Great River Energy costs for the project are then treated as reductions on Attachment O-GRE to avoid double recovery.

44. Great River proposes to modify Attachment O-GRE to include line items for CWIP, prefunded AFUDC on CWIP in rate base and prefunded AFUDC amortization to provide for 100 percent CWIP Recovery. In addition, Great River proposes to modify Attachment O-GRE to include line items for inclusion of the unamortized balance of abandoned plant and abandoned plant amortization, with a placeholder equal to zero, for Abandoned Plant Recovery. Finally, Great River proposes to modify Attachment O-GRE to include line items for the calculations of the Hypothetical Capital Structure to then be applied to Attachment GG-Great River Energy. Attachment GG-Great River Energy would include the annual allocation factor for incentive return, calculated within Attachment O-GRE, to be applied to the costs of the projects.

45. However, it appears to the Commission that Great River overlooked some modifications to Attachment GG-Great River Energy that are necessary to reflect properly the requested incentives. A corresponding amount of prefunded AFUDC should be removed from rates for any accrued AFUDC amounts on plant included in CWIP balances in rate base. While Attachment GG-Great River Energy is explicit in the inclusion of any CWIP balance in rate base approved for projects, it lacks an explicit statement to remove a corresponding amount of prefunded AFUDC. The result could be that charges under Schedule 26 would over-recover return on capital expenditures (i.e. recover both AFUDC and return on CWIP). For this reason, Great River is directed to modify its Attachment GG-Great River Energy to state explicitly that a corresponding amount of prefunded AFUDC will be removed under the formula for any associated CWIP balance included in rate base for the projects.

46. In addition, Great River should modify its Attachment GG-Great River Energy to include the unamortized balance of abandoned plant in project net plant amounts so that customers taking service under Schedule 26 will be charged the return on any future abandoned plant costs, to the extent that the projects qualify for regional cost-sharing under Attachment FF, and so that such costs will not be fully borne by those customers taking service under Schedules 7, 8, and 9.

47. Accordingly, we will direct Great River to make a compliance filing within 30 days from the date of this order to revise its proposed formula rates as discussed above.

C. Request for Additional Waivers

48. We will grant Great River waiver of sections 35.25(c)(4) and 35.25(g) of the Commission's regulations because we agree with Great River that the information provided in the filing is sufficient to meet the requirements of those sections. Similarly, we will grant Great River's request for waiver of section 35.13(d) of the Commission's regulations because Great River provides the inputs for its formula rate on an annual basis.⁷⁷ Likewise, we find that Great River has shown good cause for waiver of section 385.2010 of the Commission's regulations, and we will grant its request.

The Commission orders:

(A) Great River's request for 100 percent CWIP Recovery, Abandoned Plant Recovery, and Hypothetical Capital Structure, are hereby conditionally granted, effective January 1, 2010, as discussed more fully above.

(B) Great River's proposed revisions to Attachment O-GRE are hereby conditionally accepted, effective January 1, 2010.

(C) Great River's proposed Attachment GG-Great River Energy is hereby conditionally accepted, effective January 1, 2010.

(D) Great River is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

⁷⁷ See *supra* note 48. See also *Michigan Electric Transmission Co., LLC*, 117 FERC ¶ 61,314, at P 33-34 (2006).

(E) Great River is hereby conditionally granted waiver of sections 35.25(c)(4), 35.25(g), 35.13(d), and 385.2010, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.