168 FERC ¶ 61,055
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pioneer Transmission, LLC — Docket No. ER18-2119-000

ORDER REJECTING FILING TO RECOVER PRE-COMMERCIAL COSTS, WITHOUT PREJUDICE

(Issued July 25, 2019)

1. On July 31, 2018, Pioneer Transmission, LLC (Pioneer)[1] and Midcontinent Independent System Operator, Inc. (MISO) filed a request for Pioneer to amortize and recover the pre-commercial operation costs, deferred as a regulatory asset (regulatory asset balance) incurred during development of the Greentown-to-Reynolds 765 kV transmission line located in Indiana (Greentown-to-Reynolds segment). As discussed below, we reject Pioneer's filing to recover the regulatory asset balance, without prejudice to Pioneer making a future filing for recovery.

I. Background

2. On October 15, 2008, as amended on January 26, 2009, in Docket No. ER09-75-000, *et al.*, Pioneer filed tariff sheets (with deferred effective dates), pursuant to sections 205 and 219 of the Federal Power Act (FPA),[2] to the open access transmission tariffs (tariffs) administered by PJM Interconnection, L.L.C. (PJM) and MISO to establish a formula rate for transmission services rendered by the proposed Pioneer project, which

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[1] Pioneer is a limited liability company organized and existing under the laws of the State of Indiana, with its principal executive office in Plainfield, Indiana. Pioneer is a joint venture formed by American Electric Power Company, Inc. (AEP) and Duke Energy Transmission Holding Company, an affiliate of Duke Energy Corporation (Duke).

[2] 16 U.S.C. §§ 824d, 824s (2012).

included the Greentown-to-Reynolds segment.[3] In addition, Pioneer requested four Order No. 679[4] transmission rate incentives for the Pioneer project: (1) a return on equity (ROE) of 13.5 percent, which would include certain requested ROE adders; (2) recovery of a return on 100 percent of its costs for construction work in progress (CWIP); (3) recovery of prudently-incurred costs if the Pioneer project, or any component thereof, is abandoned for reasons outside of Pioneer's control; and (4) permission to establish a regulatory asset consisting of all project related expenses that are not capitalized and included in CWIP prior to the effective date of the formula rate, and authorization to amortize the regulatory asset for a five-year period from the effective date of the formula rate, which Pioneer stated should correspond closely with the period during which the project is constructed.

3. On March 27, 2009, the Commission issued an order[5] that: (1) established a base ROE of 10.54 percent; (2) approved an ROE adder of 50 basis points for membership in a regional transmission organization (RTO), effective upon the date that Pioneer becomes a member of PJM and MISO and upon the project being placed under their operational control; (3) approved an ROE adder of 150 basis points for new transmission, which "will not go into effect unless and until the project is approved by the regional transmission planning processes of PJM and MISO and there is a Commission-approved cost allocation methodology in place;"[6] (4) denied without prejudice an ROE adder for advanced technologies; (5) approved the CWIP incentive, which "will not go into effect unless and until the project is approved by the regional transmission planning process of PJM and MISO and there is a Commission-approved cost allocation methodology in

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[3] In that filing, the Pioneer project was proposed as a 240-mile, 765 kV interregional transmission project between two existing 765 kV substations that would cross the electrical border between PJM and MISO and estimated to cost $1 billion. Pioneer stated that the Pioneer project was designed to address a critical shortage of high voltage transmission that existed in Indiana and would eliminate reliability violations, reduce transmission congestion, and allow for the interconnection of up to 4,000 MW of new wind generation then under development in southwestern Indiana with the more populated load centers in central and northern Indiana. The Greentown-to-Reynolds segment was to be a part of this larger project.

[4] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[5] *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) (*Pioneer*), *order granting clarification and denying rehearing*, 130 FERC ¶ 61,044 (2010).

[6] *Pioneer*, 126 FERC ¶ 61,281 at P 56.

place;"[7] (6) approved the abandonment incentive; and (7) approved the incentive allowing Pioneer to establish and subsequently amortize a regulatory asset for certain expenses, finding "Pioneer's recovery of pre-construction costs during the construction period to be appropriate."[8] In addition, the Commission accepted the tariff sheets subject to settlement and hearing procedures for certain formula rate issues.[9]

4. On July 19, 2012, in Docket No. EL12-24-000, the Commission addressed several issues raised in a complaint by Pioneer against Northern Indiana Public Service Company (NIPSCO) and MISO regarding the Pioneer project.[10] As relevant here, Pioneer argued that MISO would not permit Pioneer to implement the CWIP incentive,[11] and the Commission dismissed this part of the complaint as moot. The Commission noted Pioneer's commitment that the CWIP incentive would not go into effect unless and until the project was approved by the PJM and MISO regional planning processes and a Commission-approved cost-allocation methodology was in place, and held that because both PJM and MISO had not approved the project, the CWIP incentive was not applicable.[12]

5. On March 22, 2018, in Docket No. ER18-1159-000, as the Greentown-to-Reynolds segment neared completion, Pioneer filed tariff sheets to be included in the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff) to establish and recover the annual transmission revenue requirement for its

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[7] *Id*. P 65.

[8] *Id*. P 83.

[9] On October 26, 2009, the Commission issued an order approving the settlement resulting from those procedures filed under Docket No. ER09-75-001. *Pioneer Transmission, LLC*, 129 FERC ¶ 61,065 (2009).

[10] *Pioneer Transmission, LLC v. Northern Indiana Public Service Co.*, 140 FERC ¶ 61,057 (2012) (*Pioneer v. NIPSCO*).

[11] *Id.* P 105.

[12] *Id.* P 106. Another issue raised in the complaint was whether NIPSCO was entitled to invest in and own a share of the Greentown-to-Reynolds segment. Pioneer argued that NIPSCO had no rights to the Greentown-to-Reynolds segment because the line would not connect to any existing NIPSCO facilities. The Commission found that, among other things, under the plain terms of the MISO Transmission Owners Agreement, ownership and the responsibilities to construct the Greentown-to-Reynolds segment belong equally to NIPSCO and Duke, a parent of Pioneer. *Id*. PP 95-96.

portion of the Greentown-to-Reynolds segment.[13] Pioneer submitted a formula rate consisting of the Attachments O and MM templates to MISO's Tariff and formula rate implementation protocols. As part of this filing, Pioneer proposed to recover two of the transmission rate incentives granted in *Pioneer* for the larger Pioneer project, the 50 basis point ROE adder for RTO membership and 150 basis point ROE adder for investment in new transmission, for the Greentown-to-Reynolds segment. Pioneer explained that, as the Pioneer project moved forward in MISO's and PJM's transmission planning processes, it encountered challenges to being studied and evaluated as a single, interregional transmission project. Pioneer stated that this was due to the fact that at that time, there were no tariff mechanisms under which either PJM or MISO could evaluate and allocate the costs of an interregional transmission project, such as the Pioneer project. In order to allow the project to move forward, Pioneer pursued the development of just the Greentown-to-Reynolds segment, which is located entirely in MISO.

6. On August 30, 2018, the Commission accepted Pioneer's proposed formula rate template as an addition to the MISO Tariff, effective June 1, 2018, but denied Pioneer's request to implement the 150 basis point ROE adder for investment in new transmission.[14] The Commission found that:

> Pioneer's implementation of the 150 basis point adder that the Commission previously granted to Pioneer for the Pioneer Project is premature as the conditions the Commission set forth in *Pioneer I* have not been met yet. Therefore, at this time we deny Pioneer's implementation of the 150 basis point adder that the Commission previously granted to Pioneer for the Pioneer Project without prejudice to Pioneer in the future seeking to implement the full 150 basis point ROE adder if Pioneer satisfies the Commission's previously stated conditions.[[15]]

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[13] In its filing in Docket No. ER18-1159-000, Pioneer explained that the Greentown-to-Reynolds segment is a joint venture between Pioneer and NIPSCO. Docket No. ER18-1159-000 Transmittal at 8.

[14] *Midcontinent Indep. Sys. Operator, Inc. and Pioneer Transmission, LLC*, 164 FERC ¶ 61,155 (2018) (August 2018 Order).

[15] *Id*. P 22.

II. Pioneer's Filing

7. In the instant filing, Pioneer requests that it be allowed to amortize and recover the "pre-commercial costs" incurred during development of the Greentown-to-Reynolds segment up until commercial operation began on June 25, 2018, which Pioneer has deferred as a regulatory asset. Pioneer asserts that its proposed recovery is "in accordance with the Commission's authorization" in *Pioneer*.[16] Pioneer states that, for the period March 2009 through April 2018, it incurred approximately $8,828,383 in pre-commercial operation costs, including carrying charges. Pioneer also states that it is finalizing pre-commercial operation costs incurred between May 1, 2018 and June 24, 2018, and requests to recover those costs via the true-up to its formula rate.[17]

8. Pioneer asserts that the identified pre-commercial operation costs were prudently incurred and properly recorded and categorized as: (1) business services; (2) legal services; (3) FERC regulatory services; (4) Indiana regulatory services; (5) tax services; and (6) carrying costs.[18] Pioneer states that these prudently incurred costs would have otherwise been chargeable to expense in the period incurred, but Pioneer's formula rate was not then in effect. Pioneer asserts that such costs associated with owning and operating facilities that are used to provide utility service are recoverable in rates.[19]

9. Pioneer proposes to recover approximately $3,501,768 of carrying charges for the period March 2009 through April 2018.[20] Pioneer states that it has been accruing a carrying charge on the regulatory asset from March 27, 2009 and will continue to do so until the regulatory asset is included in rate base, which it asserts was authorized by the Commission in *Pioneer*. Pioneer explains that it must stop accruing the carrying charges on the regulatory asset once the regulatory asset balance is included in rate base because Pioneer will then be able to earn a return on the unamortized balance.[21] Pioneer states

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[16] Transmittal at 4-5.

[17] *Id.*

[18] *Id.* at 6-7.

[19] *Id.* at 8 (citing *Denver Union Stock Yard Co. v. U.S.*, 304 U.S. 470, 475 (1938); *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1178 (D.C. Cir. 1987); *Tennessee Gas Pipeline Co. v. FERC*, 606 F.2d 1094, 1123 (D.C. Cir. 1979)).

[20] Pioneer Filing, Exhibit PT-101.

[21] Transmittal at 8.

that the cost of capital used in the determination of the carrying costs is generally based on a hypothetical capital structure reflecting 50 percent equity and 50 percent debt, and includes an ROE of 12.54 percent.[22] Pioneer also states that the carrying charges are calculated and compounded semi-annually.[23]

10. Pioneer requests to amortize and recover the pre-commercial operation costs deferred as a regulatory asset over a five-year period beginning on the effective date to be granted by the Commission in the instant filing, which it asserts is consistent with the Commission's authorization in *Pioneer*. Pioneer requests an effective date of August 1, 2018, and adds that its previous filing in Docket No. ER18-1159-000, which included a footnote stating that Pioneer would submit a separate section 205 filing to recover the pre-commercial operation costs deferred as a regulatory asset, provided notice to MISO transmission customers that Pioneer intended to recover those pre-commercial operation costs.[24]

III. Notice of Filing

11. Notice of Pioneer's filing was published in the *Federal Register*, 83 Fed. Reg. 39,084 (2018), with motions to intervene and protests due on or before August 21, 2018. Timely motions to intervene were filed by Northern Indiana Public Service Company LLC, American Municipal Power, Inc., and Ameren Services Company.

IV. Discussion

A. Procedural Matters

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

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[22] *Id*. at 9.

[23] *Id*. (citing *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 57 (2012); *Midwest Independent Transmission System Operator, Inc.*, 138 FERC ¶ 61,012, at P 23 (2012)).

[24] *Id*. at 10.

B. Substantive Matters

13. We reject Pioneer's filing for recovery of the $8,828,383 in pre-commercial operation costs, including carrying charges, deferred as a regulatory asset, incurred during the development of the Greentown-to-Reynolds segment for the period March 27, 2009 through April 30, 2018. Pioneer's carrying charge calculation includes the 150 basis point ROE adder for investment in new transmission which, as discussed above, the Commission denied in the August 2018 Order for the Greentown-to-Reynolds segment, because Pioneer had not satisfied the conditions imposed in *Pioneer* for receipt of that incentive. We continue to find that Pioneer has not satisfied the conditions imposed in *Pioneer* with respect to the Greentown-to-Reynolds segment, as the project has not "been approved in the RTO planning processes of both PJM and MISO."[25] Our rejection of Pioneer's filing is without prejudice to Pioneer making a future filing to amortize the regulatory asset for pre-commercial costs that does not include the 150 basis point ROE adder in its carrying charge calculation. Any such future filing must provide the calculations for the total pre-commercial operation costs and carrying charges in separate workable Microsoft Excel spreadsheets with the formulas intact.

14. Further, we deny Pioneer's request to use the true-up mechanism in its formula rate to recover the pre-commercial operation costs incurred for the Greentown-to-Reynolds segment for the period May 1, 2018 through June 24, 2018. In *Pioneer*, the Commission determined that:

> while this order provides Pioneer with the ability to record pre-construction costs as a regulatory asset, Pioneer must make a [Federal Power Act] section 205 filing when the formula rate becomes effective to demonstrate that the preconstruction costs are just and reasonable. Pioneer also will have to establish that costs included in the regulatory asset are costs that would have otherwise been chargeable to expense in the period incurred. Parties will be able to challenge these costs at that time.[26]

Therefore, in order for Pioneer to recover the pre-commercial operation costs incurred for the period May 1, 2018 through June 24, 2018, Pioneer must include those costs and relevant cost support in an FPA section 205 filing.

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[25] August 2018 Order, 164 FERC ¶ 61,155 at P 54.

[26] *Pioneer*, 126 FERC ¶ 61,281 at P 86.

<u>The Commission orders</u>:

Pioneer's filing to recover the regulatory asset balance for pre-commercial operation costs incurred during the development of the Greentown-to-Reynolds segment is hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.