168 FERC ¶ 61,197
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 26, 2019

In Reply Refer To:
MidAmerican Central California
Transco, LLC
Docket No. ER19-2314-000

Van Ness Feldman, LLP
1050 Thomas Jefferson St., NW
Washington, DC 20001

Attention: Douglas W. Smith, Esq.

Dear Mr. Smith:

1. On June 28, 2019, MidAmerican Central California Transco, LLC (MidAmerican Transco) filed a request pursuant to section 205 of the Federal Power Act (FPA)[1] for Commission authorization to recover 100 percent of its abandoned plant costs associated with its Central Valley Power Connect Project (Project) through MidAmerican Transco's formula rate. In this Order, as described below, we grant in part and deny in part MidAmerican Transco's request to recover prudently-incurred costs associated with the Project.

2. MidAmerican Transco states that, in 2013, the Project was initially approved through the California Independent System Operator Corporation's (CAISO) transmission planning process and was awarded to MidAmerican Transco and Pacific Gas and Electric Company (PG&E). MidAmerican Transco and PG&E subsequently entered into a Development, Construction, and Ownership Agreement (Development Agreement), which set forth the Project development activities including management of the Project, permitting, engineering, and construction. On April 4, 2014, pursuant to Order No. 679,[2] MidAmerican Transco filed a petition for declaratory order, seeking

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[1] 16 U.S.C. § 824d (2018).

[2] *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).

approval for certain transmission rate incentives including the abandoned plant incentive. On June 3, 2014, the Commission issued an order granting MidAmerican Transco's request to recover prudently incurred costs in the event that the Project is abandoned for reasons beyond MidAmerican Transco's control, subject to MidAmerican Transco filing under section 205 of the FPA for recovery of abandonment costs.[3] The abandonment incentive became effective on the date of issuance of the order, June 3, 2014.

3. In March 2017, MidAmerican Transco explains, CAISO placed the Project in deferred status, and subsequently cancelled it in March 2019, due to changed circumstances.[4] Now that the Project has been cancelled, MidAmerican Transco proposes in this filing to recover the abandoned plant costs associated with the Project, and to amortize these costs over a 57-month period ending December 31, 2023.[5] Specifically, MidAmerican Transco seeks to recover $7,084,511 of Project costs which it asserts were prudently incurred from November 6, 2013 through March 2017 including: (1) labor-related costs; (2) costs for engineering, permitting, and project management; (3) costs reimbursed to PG&E pursuant to the Development Agreement;[6] and (4) allowance for funds used during construction (AFUDC).

4. In support of its request, MidAmerican Transco provides testimony to demonstrate its costs were prudently incurred. Specifically, MidAmerican Transco explains its efforts to regulate and monitor Project costs, which included reviewing the need for and

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[3] *See MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 (2014) (June 2014 Order). In addition to abandoned plant, MidAmerican Transco also requested (and was granted) the RTO participation incentive, hypothetical capital structure incentive, and regulatory asset incentive.

[4] MidAmerican Transco Transmittal at 1, 4-5. MidAmerican Transco notes that CAISO determined that changed energy and demand forecasts indicated that the reliability need for the Project may be deferred for up to 10 years. Subsequently CAISO completed a reassessment of the reliability need for the Project in its 2018-2019 Transmission Plan, which continued to show the reliability need driving the Project had been deferred 10 years, and further revealed that the economic benefit of the avoided curtailment thereof was not enough to justify the estimated Project cost. Therefore, MidAmerican Transco explains, CAISO subsequently canceled the Project.

[5] *Id.* at 1-2.

[6] MidAmerican Transco notes that Project costs were shared equally with PG&E on a monthly basis under a cost-sharing mechanism in the Development Agreement. *Id.* at 6, and Ex. MCCT-300 at 2.

estimated costs of any planned Project work in advance.[7] MidAmerican Transco also states that it regularly coordinated with PG&E to review work performed, and reviewed invoices to ensure consistency with contracts. MidAmerican Transco notes that it stopped incurring Project development costs upon CAISO's deferral of the Project, and excluded costs necessary to place the Project on hold pending further CAISO assessments.[8] Finally, MidAmerican Transco presents exhibits to clarify the Project costs by category and year; details on AFUDC accrual and accounting thereof; and, descriptions of mechanisms explaining its Construction Work in Progress (CWIP) and abandoned plant cost recovery mechanism.[9]

5. MidAmerican Transco states that its proposal includes 100 percent recovery of costs incurred prior to the issuance of the June 2014 Order granting the abandoned plant incentive, i.e., from November 6, 2013 through June 2, 2014.[10] MidAmerican Transco advances several reasons why the Commission should permit 100 percent recovery of prudently incurred costs for this earlier time period, including the following: (1) the Project emerged from CAISO's transmission planning process; (2) the responsibility to develop the Project was assigned to MidAmerican Transco through CAISO's competitive solicitation process; (3) CAISO made the decision to cancel the Project, and thus this was unlike the situation where a utility made the decision to undertake and then abandon a project; (4) MidAmerican Transco's request for transmission rate incentives was filed as promptly as practicable, unlike other cases where the applicant waited a significant amount of time; (5) the timeline for the development of the Project was established by CAISO and began soon after the Project was awarded to MidAmerican Transco; and (6) the costs that it seeks to recover include costs incurred after it was selected as co-developer of the Project.[11]

6. On August 27, 2019, Commission staff issued a letter seeking additional information in connection with statements in the filing referencing AFUDC and carrying costs. On August 30, 2019, MidAmerican Transco filed a supplement in response to the request for additional information.

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[7] MidAmerican Transco Transmittal at 7.

[8] MidAmerican Transco Transmittal at Ex. MCCT-200 at 3-4.

[9] MidAmerican Transco Transmittal at Ex. MCCT-300 at 3-7.

[10] Of the $7,084,511 requested, $482,959.20 were incurred prior to issuance of the June 2014 Order. MidAmerican Transco Transmittal at 7.

[11] *Id.* at 7-13.

7. Notice of MidAmerican Transco's filing was published in the *Federal Register*, 84 Fed. Reg. 32,452 (2019), with interventions or protests due on or before July 19, 2019. Timely motions to intervene were filed by Public Citizen, Inc., Modesto Irrigation District, City of Santa Clara, California, PG&E, and CAISO. Notice of MidAmerican Transco's response to the Commission's deficiency letter was published in the *Federal Register*, 84 Fed. Reg. 46,948 (2019), with interventions or protests due on or before September 13, 2019. Timely motions to intervene were filed by the California Department of Water Resources State Water Project and the Northern California Power Agency.

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

9. We grant in part and deny in part MidAmerican Transco's request for Commission authorization to recover 100 percent of prudently incurred costs as a result of the Project's abandonment. Specifically, we grant MidAmerican Transco's request to recover 100 percent of the costs associated with the Project from the date of the June 2014 Order onward, i.e., June 3, 2014, through March 2017. MidAmerican Transco explains the circumstances that led to the cancellation of the Project by CAISO in March 2017. Consistent with the June 2014 Order, we agree with MidAmerican Transco that the Project was abandoned for reasons outside of MidAmerican Transco's control.[12] Turning next to the question of whether MidAmerican Transco's costs in developing the Project were prudently incurred, we find that the costs MidAmerican Transco incurred appear to be just and reasonable, and have not been shown to be unjust and unreasonable.

10. However, we deny MidAmerican Transco's request for authorization to recover 100 percent of costs incurred for the time period preceding the issuance of the June 2014 Order. MidAmerican Transco is entitled to recover 50 percent of the costs of the Project that were prudently incurred prior to the issuance of the June 2014 Order, i.e., the $482,959.20 in costs incurred from November 6, 2013 through June 2, 2014, consistent with Commission precedent.[13] While MidAmerican Transco argues that the

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[12] *See* June 2014 Order, 147 FERC ¶ 61,179 at PP 39-42.

[13] *See, e.g.*, *San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158 (*SDG&E*), *order denying reh'g*, 157 FERC ¶ 61,056 (2016) (*SDG&E* Rehearing Order), *aff'd*, *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019); *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,075-078, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

circumstances presented here warrant an exception to the Commission's general policy, we disagree.

11. As the Commission explained in the *SDG&E* Rehearing Order, "the function of an incentive is to encourage action that has not yet occurred,"[14] and therefore an incentive by definition does not apply to past behavior. Affirming the Commission's orders in the *SDG&E* proceeding, the U.S. Court of Appeals for the D.C. Circuit recognized the prospective nature of the Commission's abandonment incentive, and commented that "[a]n applicant must show a nexus between each incentive it seeks and the incentive's role in financing reliable and economically efficient transmission infrastructure."[15] The court then explained that the Commission "must ensure that 'incentives are not provided in circumstances where they do not materially affect investment decisions.'"[16] Thus, the Commission generally does not permit 100 percent recovery of prudently incurred costs associated with an abandoned transmission project prior to the date the Commission grants the abandonment incentive to an applicant. The Commission's policy thus recognizes that, prior to a utility being granted the abandoned plant incentive, the risks of an abandoned transmission project should be shared equally between the utility's ratepayers and its shareholders, pursuant to Opinion No. 295.

12. While MidAmerican Transco cites a number of considerations that it argues justify its requested relief, we are not persuaded that MidAmerican Transco's request warrants deviating in this case from the Commission's general policy.[17] For example, MidAmerican Transco argues that its circumstances differ from those at issue in *SDG&E*, where the applicant waited several years before it requested the abandoned plant incentive. However, as noted above, the *SDG&E* Rehearing Order explains that

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[14] *SDG&E* Rehearing Order, 157 FERC ¶ 61,056 at P 15.

[15] *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d at 137.

[16] *Id*. (citing Order No. 679-A, 117 FERC ¶ 61,345 at P 25).

[17] MidAmerican Transco cites *Southern California Edison Company*, 112 FERC ¶ 61,014 (2005) (*SoCal Edison*) in support of its argument that the circumstances here favor 100 percent recovery for costs expended prior to the June 2014 Order. MidAmerican Transco Transmittal at 10. MidAmerican Transco's reliance on *SoCal Edison* is misplaced. As the Commission has explained, both *SoCal Edison* and Order No. 679 indicated that 100 percent recovery before the issuance of an order granting the incentive would be "atypical." *See PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,156, at P 54 (2013) (*PJM*) (citing *SoCal Edison*, 112 FERC ¶ 61,014 at PP 57, 60-61 and Order No. 679, 116 FERC ¶ 61,057 at P 156 and n.105). As discussed herein, we find that an exception to the general policy is not warranted.

incentives are inherently forward-looking, and therefore the abandonment incentive is awarded prospectively from the date of a Commission order granting it.[18] Similarly, we do not believe that the other considerations cited by MidAmerican Transco – that the Project emerged from a regional transmission planning process, that MidAmerican Transco was selected to develop the Project through a competitive process, and that CAISO established the Project development schedule and ultimately made the decision to cancel the Project – render its request "atypical" in any meaningful sense. Rather, these considerations are simply part of regional transmission planning processes.

13. Accordingly, we grant MidAmerican Transco's request for authorization to recover 100 percent of the costs incurred from the issuance date of the order granting the incentive, June 3, 2014, through March 2017. MidAmerican Transco may recover 50 percent of its costs incurred from November 6, 2013 through June 2, 2014 - consistent with Opinion No. 295.[19] Finally, we grant MidAmerican Transco's unopposed request to amortize the costs it is permitted to recover during the period April 1, 2019 to December 31, 2023.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[18] *See supra* note.15.

[19] We also clarify that the unamortized abandoned plant costs may not include the 50-basis point adder for MidAmerican Transco's participation in CAISO that was granted in the June 2014 Order. The adder applies to projects that have been turned over to the operational control of an RTO (here, CAISO). The Commission has previously explained that "the facility at issue in an abandoned plant cost recovery situation will not be transferred to the RTO's control, and therefore the benefits from that project's inclusion in an RTO will not materialize." *Pac. Gas and Elec. Co.*, 160 FERC ¶ 61,018, at P 75 (2017) (quoting *PJM*, 142 FERC ¶ 61,156 at P 40). Under MidAmerican Transco's formula rate, the average unamortized balance of abandoned plant costs will be reflected as a component of rate base and will earn a return until the abandoned plant costs have been fully amortized. Because the project has been canceled, the return on the unamortized plant may not include the 50-basis point adder for RTO participation. *See PJM*, 142 FERC ¶ 61,156 at PP 41-42.