

166 FERC ¶ 61,025
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Transmission Company LLC

Docket No. ER19-360-000

ORDER GRANTING ABANDONED PLANT INCENTIVE

(Issued January 17, 2019)

1. On November 16, 2018, American Transmission Company LLC (ATC) submitted a request under sections 205 and 219 of the Federal Power Act (FPA)¹ for incentive rate treatment pursuant to Order No. 679.² ATC requests authorization to recover 100 percent of all prudently-incurred costs associated with its investment in the Cardinal-Hickory Creek 345 kV Project (Project) if the Project is abandoned or cancelled for reasons beyond ATC's control (Abandoned Plant Incentive). In this order, we grant ATC's request for incentive rate treatment, effective the date of this order.

I. Background

2. ATC states that it is a transmission-owning member of Midcontinent Independent System Operator, Inc. (MISO), with more than 9,400 miles of transmission facilities in Wisconsin, Illinois, Minnesota, and Michigan. ATC explains that transmission service over facilities developed and owned by ATC is provided pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff).³

¹ 16 U.S.C. §§ 824d, 824s (2012).

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).

³ ATC Filing at 2-3.

3. ATC states that the Project is a MISO Multi-Value Project (MVP)⁴ that will consist of approximately 102 to 120 miles of new 345 kV transmission line from Dane County, Wisconsin to Dubuque County, Iowa, with associated substation expansions. According to ATC, ATC and ITC Midwest LLC (ITC Midwest) each owns 45.5 percent of the Project, and Dairyland Power Cooperative (Dairyland) owns the remaining nine percent. ATC states that the Project is estimated to cost between \$492 million and \$543 million, depending on the route, and that the transmission line is expected to be in service in December 2023.⁵

4. ATC requests an effective date of January 15, 2019.⁶

II. Notice of Filing and Responsive Pleadings

5. Notice of ATC's filing was published in the *Federal Register*, 83 Fed. Reg. 60,838 (2018), with interventions and protests due on or before December 7, 2018. Notices of intervention were filed by the Iowa Utilities Board and the Public Service Commission of Wisconsin. Timely motions to intervene were filed by: ITC Midwest; Dairyland; Alliant Energy Corporate Services, Inc.; and Ameren Services Company.

III. Discussion

A. Procedural Matters

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

⁴ MVPs are projects that "enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple [MISO] transmission zones." *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,235, at P 2 (2016).

⁵ ATC Filing at 3, 6.

⁶ *Id.* at 2, 11.

B. Substantive Matters**1. Section 219 Requirement**

7. In the Energy Policy Act of 2005,⁷ Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the Abandoned Plant Incentive. Additionally, in November 2012, the Commission issued the 2012 Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.⁸

8. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of section 219, i.e., the 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.”⁹ The Commission established the process for an applicant 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 the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.^[10]

9. The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce

⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁸ See *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012).

⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

¹⁰ *Id.*

congestion by presenting [to the Commission] a factual record that would support such a finding.”¹¹

a. ATC’s Request

10. ATC argues that the Project meets the rebuttable presumption. In support, ATC states that MISO approved the Project as an MVP in its 2011 MISO Transmission Expansion Plan (MTEP). Further, ATC notes that the Commission has already found that the Project is entitled to the rebuttable presumption.¹²

b. Commission Determination

11. The Commission has previously found that projects approved through a regional transmission planning process that evaluated whether the identified transmission projects will enhance reliability and/or reduce congestion are entitled to the rebuttable presumption established under Order No. 679.¹³ In this case, the MTEP transmission planning process, through which the Project was approved, evaluated whether identified transmission projects will enhance reliability and/or reduce congestion. Therefore, we find that the Project is entitled to the rebuttable presumption that it meets this requirement of section 219.

2. Order No. 679 Nexus

12. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made.¹⁴ 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

¹¹ *Id.* P 57; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

¹² ATC Filing at 7 (citing *Dairyland Power Coop.*, 161 FERC ¶ 61,301, at P 14 (2017) (order granting Dairyland an abandoned plant incentive for its portion of the Project)).

¹³ *See, e.g., TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 17 (2015) (*TransCanyon*); *Pacific Gas and Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014); *Midcontinent Independent Sys. Operator, Inc. and WPPI Energy*, 151 FERC ¶ 61,246, at P 15 (2015); *Southern Indiana Gas & Elec. Co.*, 125 FERC ¶ 61,124, at P 28 (2008).

¹⁴ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48.

is “tailored to address the demonstrable risks or challenges faced by the applicant.”¹⁵ The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.¹⁶

a. ATC’s Request

13. ATC contends that the requested Abandoned Plant Incentive is tailored to address the Project’s demonstrable risks and challenges. In support, ATC states that there are a number of federal, state, and local approvals that will be required to construct the Project that are not guaranteed to be granted, including permits from U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, permits and approvals in Wisconsin and Iowa. ATC notes that the Project could be delayed or terminated, or the final route changed, if ATC is unable to obtain any of these approvals or permits or if the permits select different route locations. In addition, ATC states that the easement acquisition process may be contentious resulting in delays or increased costs, and notes that the Project must also cross the Mississippi River.¹⁷

14. ATC argues that scope, size, and cost of the Project are significant, and approval of the requested Abandoned Plant Incentive would help to address the inherent risks posed by the Project.¹⁸

15. ATC states that its request is narrowly tailored and it does not seek additional rate incentive treatments beyond the Abandonment Plant Incentive.¹⁹ ATC states that recovery of specific abandoned costs would be subject to a future separate rate filing.²⁰

b. Commission Determination

16. We grant ATC’s request for the Abandoned Plant Incentive. In Order No. 679, the Commission found that the abandoned plant incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs in

¹⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

¹⁶ See 18 C.F.R. § 35.35(d) (2018).

¹⁷ ATC Filing at 8-9 and Ex. ATC-1 (Testimony of Thomas Degenais) at 7-8.

¹⁸ *Id.* at 9.

¹⁹ *Id.*, Ex. ATC-1 at 10.

²⁰ *Id.* at 10.

the event a project is abandoned for reasons outside the control of management.²¹ We agree that the Project faces certain regulatory, environmental, and siting risks that are beyond the control of management and which could lead to abandonment of the Project. In addition, we find that ATC has demonstrated that approval of the Abandoned Plant Incentive will protect ATC if the Project is cancelled for reasons beyond ATC's control.

17. We will not determine the justness and reasonableness of ATC's recovery of costs for abandoned electric transmission facilities, if any, until ATC seeks such recovery in a future section 205 filing that a public utility is required to make if it seeks abandoned plant recovery.²²

The Commission orders:

ATC's request for the Abandoned Plant Incentive is hereby granted, effective the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163; *see also, e.g., Midcontinent Indep. Sys. Operator, Inc. and ALLETE, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

²² Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.