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

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Otter Tail Power Company Docket No. ER23-1544-000

ORDER ON TRANSMISSION RATE INCENTIVES

(Issued May 18, 2023)

1. On March 31, 2023, as supplemented on April 3, 2023,[1] Otter Tail Power Company (Otter Tail) submitted, pursuant to sections 205 and 219 of the Federal Power Act (FPA),[2] Part 35 of the Commission's regulations,[3] and Order No. 679,[4] a request for incentive rate treatment of its investments in two regional transmission projects, the Jamestown Project and the Big Stone South Project (collectively, Projects). Specifically, Otter Tail requests authorization to: (1) include 100% of prudently incurred Construction Work in Progress (CWIP)[5] for the Projects in Otter Tail's rate base (CWIP Incentive); and (2) recover 100% of prudently incurred costs of the Projects that are cancelled or abandoned for reasons beyond Otter Tail's control (Abandoned Plant Incentive). Otter Tail proposes to use existing formula rate mechanisms in Attachment O-OTP of the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to implement the requested incentives. As discussed below, we grant Otter Tail's request, effective May 31, 2023, as requested.

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[1] The supplemental errata removed certain inadvertently included inapplicable discussion in the transmittal letter (Errata Transmittal).

[2] 16 U.S.C. §§ 824d, 824s.

[3] 18 C.F.R. pt. 35 (2022).

[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] Errata Transmittal at 2 (citing 18 C.F.R. § 35.35(d)(1)(ii) (2022)).

I. Background

2. Otter Tail states that it is a Minnesota corporation and provides electric service to over 400 communities in western Minnesota, northeastern South Dakota, and eastern North Dakota. Otter Tail also states that it owns approximately 1,050 MWs of generation capacity and owns and operates approximately 5,960 miles of transmission facilities in the three states. Otter Tail explains that, as a transmission-owning member of MISO, Otter Tail has transferred all of its transmission facilities rated at 100 kV and greater to the functional control of MISO.[6]

3. Otter Tail states that the Projects are Multi-Value Projects (MVP)[7] that were recently approved by the MISO Board of Directors as part of a portfolio of 18 Long Range Transmission Planning (LRTP) Tranche 1 projects included in an addendum to the 2021 MISO Transmission Expansion Plan (MTEP).[8] Otter Tail asserts that MISO has identified these projects as necessary for congestion and fuel savings, avoided capital cost of local resources, avoided transmission investment, resource adequacy savings, avoided risk of load shedding, and reduced carbon emissions.[9] Otter Tail also states that the Commission previously granted similar incentive rate treatment to Otter Tail for its investment and participation in MVP projects included in the 2011 MTEP.[10]

4. Otter Tail explains that the Jamestown Project involves the construction of a new approximately 85 to 95 mile, double-circuit 345 kV transmission connection from the existing Jamestown Substation near Jamestown, North Dakota to the existing Ellendale Substation near Ellendale, North Dakota.[11] In addition, Otter Tail states that the Jamestown Project includes the replacement of two existing 345/230 kV transformers at the Maple River Substation near Fargo, North Dakota, and the addition of two 345 kV

[6] *Id.* at 1.

[7] An MVP is one or more transmission facilities in MISO that address a common set of transmission issues. *See Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,219, at P 3 (2022) (citing *Midcontinent Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,124, at P 2 (2022)).

[8] Errata Transmittal at 2.

[9] *Id.*

[10] *Id.* at 3.

[11] *Id.* at 7.

shunt-connected reactors at the Twin Brooks Switching Station near Twin Brooks, South Dakota.[12]

5. Otter Tail explains that the Jamestown Project has an expected in-service date of 2028 and that the estimated total cost of the Jamestown Project is $438.7 million. Otter Tail states that it is leading the development and construction of the project on behalf of itself and Montana-Dakota Utilities Co., with Otter Tail's ownership and investment share at 53%. Otter Tail asserts that its expected investment of $233.4 million in the Jamestown Project represents 35% of Otter Tail's 2023 forecasted net transmission plant.[13]

6. Otter Tail explains that the Big Stone South Project is located in South Dakota and Minnesota. According to Otter Tail, this project involves: (1) expanding the Big Stone South Substation in South Dakota; (2) constructing between 95 and 105 miles of new 345 kV transmission line from the existing Big Stone South Substation in South Dakota, to the existing Alexandria Substation in Minnesota, using double circuit structures (with future double circuit capability); (3) expanding the Alexandria Substation in Minnesota; (4) installing a second 345 kV circuit between the Alexandria and Monticello Substations in Minnesota by using the spare position on the existing double-circuit capable transmission structures constructed as part of the CapX2020 Fargo – Monticello project; (5) installing a new 345 kV transmission line from this point along the double-circuit capable structures near the Monticello Substation to a new Big Oaks Substation in Minnesota; (6) constructing a new Big Oaks 345 kV Substation; and (7) modifying the existing 345 kV transmission lines in this area to connect into the new Big Oaks Substation.[14]

7. Otter Tail states that the Big Stone South Project has an expected in-service date of 2030 and that Otter Tail's anticipated ownership share of the Big Stone South Project is approximately 33%, with the remaining ownership share divided among Western Minnesota Municipal Power Agency (WMMPA), Great River Energy (GRE), Minnesota Power (MP), and Northern States Power Company doing business as Xcel Energy, Inc. (Xcel).[15]

8. Otter Tail states that the Big Stone South Project is separated into two segments, with Otter Tail leading the development and construction of the western segment on

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[12] *Id*.

[13] *Id*. at 8.

[14] *Id*. at 8-9.

[15] *Id*. at 9.

behalf of itself and WMMPA, and Xcel leading the development and construction of the eastern segment on behalf of itself, Otter Tail, WMMPA, GRE, and MP. Otter Tail states that the estimated total cost of the Big Stone South Project is $573.5 million (in 2022 dollars), with Otter Tail's investment being approximately $193.2 million.[16] Otter Tail states that, in addition to other state and federal approvals, the joint owners plan to submit applications for a Certificate of Need and Route Permit from the Minnesota Public Utilities Commission and a Facility Permit from the South Dakota Public Utilities Commission.[17]

9. Otter Tail states that the Projects address needs identified for the MISO Midwest Subregion. Otter Tail claims that the Projects are essential to realizing the benefits of the LRTP Tranche 1 portfolio because, out of the 18 total projects in the portfolio, Otter Tail's Projects are the only ones that directly connect wind resource-rich areas of North Dakota and South Dakota.[18] The Projects would allow for the interconnection and delivery of low-cost renewable energy resources to the MISO Midwest Subregion. In addition, Otter Tail states that the Projects collectively improve constraint issues on the 230 kV system in the eastern Dakotas and western/central Minnesota;[19] the Projects address loading and voltage issues by connecting two existing 345 kV systems; and the Projects relieve voltage violations and excessive thermal loading for N-1 contingencies, and voltage violations and excessive loading for N-1-1 contingencies.[20]

10. Otter Tail states that its investment of approximately $426 million into the Projects will increase Otter Tail's forecasted 2023 net transmission plant in service by over two-thirds.[21] According to Otter Tail, this investment represents a much greater annual capital expenditure than in the recent past. Otter Tail states that it is currently projected to spend an average of over $67 million for each of the six peak years of the Project (2025 to 2030), which is about four times greater than Otter Tail's average annual capital

[16] *Id.*

[17] *Id.*

[18] *Id*. at 7; Ex. OTP-2 (Weiers Testimony) at 11.

[19] Errata Transmittal at 7.

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

[21] *Id*. at 2, 6.

expenditures of $17.5 million for base transmission expansion projects over the previous 10 years.[22]

11. Otter Tail proposes to use the existing mechanisms in Attachment O-OTP to the MISO Tariff to implement the requested incentives.[23] Otter Tail states that the Commission previously granted certain incentive rates in 2009 for two projects related to the CapX2020 Transmission Capacity Expansion Initiative.[24] Otter Tail explains that, in that proceeding, Otter Tail adopted the following revisions to Attachment O-OTP to the MISO Tariff to implement the CWIP and Abandoned Plant Incentives authorized by the Commission: (1) line 18a on page 2 of the rate base section in Attachment O-OTP ("100% CWIP Recovery for Commission Approved Order No. 679 Transmission Projects") provides a rate mechanism for the requested CWIP Incentive; and (2) line 23b ("Unamortized Balance of Abandoned Plant") and line 9b ("Abandoned Plant Amortization") provide rate mechanisms for the requested Abandoned Plant Incentive.[25]

12. Otter Tail requests an effective date of May 31, 2023. Otter Tail clarifies that, although the Projects are anticipated to be in-service between 2028 and 2030, it seeks recovery of a return on CWIP prior to, and independent from, the Projects' in-service date. Otter Tail explains that the Projects are inextricably linked to the 16 other proposed LRTP Tranche 1 projects.[26]

II. <u>Notice of Filing and Responsive Pleadings</u>

13. Notice of Otter Tail's March 31, 2023 filing was published in the *Federal Register*, 88 Fed. Reg. 20,878 (Apr. 7, 2023), with interventions and protests due on or before April 21, 2023. A timely motion to intervene was filed by Missouri River Energy Services.

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[22] *Id*. at 6 (citing Ex. OTP-2 (Weiers Testimony) at 14-15).

[23] *Id.* at 19-20.

[24] *Id*. at 19 (citing *Otter Tail Power Co.*, 129 FERC ¶ 61,287, at PP 1, 31, 33 (2009)).

[25] *Id*.

[26] *Id*. at 10.

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the timely, unopposed motion to intervene serves to make Missouri River Energy Services a party to this proceeding.

IV. Substantive Matters

A. Requests for Incentives

1. Section 219 Requirements

15. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.[27] The Commission subsequently issued Order No. 679, establishing the processes by which a public utility may seek transmission rate incentives pursuant to section 219. Additionally, in November 2012, the Commission issued a Policy Statement providing guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[28]

16. 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."[29] Order No. 679 established a 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 projects for reliability 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.[30]

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

[28] *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

[29] Order No. 679, 116 FERC ¶ 61,057 at P 76.

[30] *Id.* P 58.

17. In addition to satisfying the section 219 requirement of ensuring reliability 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. 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."[31] Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.[32] The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.[33]

18. In the Transmission Incentives Policy Statement, the Commission reaffirmed that the CWIP Incentive and the Abandoned Plant Incentive are among the financial and regulatory risk-reducing transmission incentives available pursuant to Order No. 679.[34]

a. Otter Tail's Request

19. Otter Tail states that it seeks two types of incentive rate treatments for its portion of the investment in the Jamestown Project and the Big Stone South Project: (1) 100% of prudently incurred CWIP; and (2) recovery of 100% of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond the control of Otter Tail.[35]

20. Otter Tail asserts that MISO's MTEP process satisfies both the standard for the rebuttable presumption of Order No. 679 and the requirement of Order No. 679-A that the regional planning process evaluate projects for congestion and reliability.[36] Otter Tail explains that the Projects have been thoroughly reviewed by MISO and vetted through

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[31] Order No. 679-A, 117 FERC ¶ 61,345 at P 27.

[32] Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 27).

[33] Order No. 679, 116 FERC ¶ 61,057 at P 43.

[34] Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 11, 14.

[35] Errata Transmittal at 2-3 (citing 18 C.F.R. §§ 35.35(d)(1)(ii), (vi)).

[36] *Id.* at 11.

the open and transparent stakeholder process during the MTEP process over a two and a half year process and were approved by the MISO Board of Directors in July 2022.[37]

21. Otter Tail further asserts that both Projects provide reliability, economic, and policy benefits that demonstrate that they satisfy the section 219 requirement. According to Otter Tail, the Commission has already made this finding with respect to the Big Stone South Project.[38] Otter Tail argues that its Projects, therefore, are entitled to the rebuttable presumption that they satisfy the section 219 requirement.[39]

b. Commission Determination

22. The Commission has previously found that projects approved through a 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.[40] In this case, the MTEP transmission planning process, through which the Projects were approved, evaluated whether identified transmission projects will enhance reliability and/or reduce congestion. Therefore, we find that the Projects are entitled to the rebuttable presumption that they meet this requirement of section 219.

c. Order No. 679 Nexus

23. 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.[41] 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

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[37] *Id.* (citing Ex. OTP-2 (Weiers Testimony) at 9).

[38] *Id.* (citing *Midcontinent Indep. Sys. Op., Inc.*, 182 FERC ¶ 61,039, at P 19 (2023) (GRE Order) (approving, in relevant part, 100% CWIP recovery and 100% abandoned plant recovery for LRTP Tranche 1 projects)).

[39] *Id.*

[40] *See*, *e.g.*, *Midcontinent Indep. Sys. Op., Inc.*, 161 FERC ¶ 61,301, at P 14 (2017) (*Dairyland Power Coop.*); *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 17 (2015) (*TransCanyon*); *Pac. Gas & Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014); *Midcontinent Indep. Sys. Op., Inc.*, 151 FERC ¶ 61,246, at P 15 (2015) (*WPPI Energy*); *S. Ind. Gas & Elec. Co.*, 125 FERC ¶ 61,124, at P 28 (2008).

[41] Order No. 679, 116 FERC ¶ 61,057 at P 48.

is "tailored to address the demonstrable risks or challenges faced by the applicant."[42] The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.[43]

i. **CWIP Incentive**

24. Otter Tail explains that the Projects involve a transmission expenditure of approximately $426 million over the next eight years, representing an extraordinary transmission expenditure for Otter Tail. Otter Tail asserts that allowing the CWIP Incentive on the Projects will alleviate some of the disincentives to completing the projects in the following ways. First, Otter Tail states that the CWIP Incentive will reduce stresses on cash flows for Otter Tail.[44] Otter Tail states that it expects to face a negative cash flow position while undergoing extensive levels of capital expenditures over the next several years. Otter Tail explains that its anticipated capital expenditures over the next several years, not including investment in the Otter Tail Projects, total nearly $1 billion on routine transmission investment and non-transmission spending. Otter Tail asserts that these anticipated expenditures, coupled with Otter Tail's expected investment in the Projects, will place significant strain on Otter Tail's cash flows.[45] According to Otter Tail, from 2022 through 2030, it would be able to recover $182 million of the costs of the Projects with the CWIP Incentive versus $94.4 million under the current AFUDC recovery mechanism.[46]

25. Second, Otter Tail asserts the CWIP Incentive will relieve potential downward pressure on Otter Tail's credit ratings caused by the Projects. Otter Tail states that it currently holds a "Strong" business risk rating from Standard and Poor's, and that any downgrade of this rating to a non-investment grade rating would have adverse financial consequences for Otter Tail and its customers, such as increased borrowing costs, which would be reflected in higher rates for customers. Otter Tail asserts that the CWIP Incentive would help Otter Tail maintain its credit rating above non-investment grade

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[42] Order No. 679-A, 117 FERC ¶ 61,345 at P 40.

[43] *See* 18 C.F.R. § 35.35(d).

[44] Errata Transmittal at 13.

[45] *Id.* at 13-14 (citing Ex. OTP-6 (Miller Testimony) at 6-7).

[46] *Id.* at 14 (citing Ex. OTP-6 (Miller Testimony) at 8).

status during the construction of the Projects, which will benefit customers by avoiding higher borrowing costs.[47]

26. Third, Otter Tail explains that the CWIP Incentive can assist Otter Tail in meeting its financial goals that might otherwise be threatened by the Projects, including maintaining its corporate credit ratings and senior unsecured debt ratings, and continuing to provide reasonably priced electric service to its customers.[48] Otter Tail asserts that allowing 100% CWIP recovery will enable it to maintain its financial integrity and reduce the risk the Projects might pose to Otter Tail's existing operations.[49]

27. Otter Tail contends that the CWIP Incentive will result in rates that are just and reasonable because the inclusion of CWIP in Otter Tail's rate base affects only the timing of cost recovery and does not significantly affect the level of cost recovery. Also, allowing CWIP recovery in rate base may benefit ratepayers by easing in the cost of a transmission project, thereby lessening the rate impact that may otherwise occur when a large project is completed and subsequently included in rates.[50] Otter Tail further contends that the CWIP Incentive increases cash flows, enabling Otter Tail to reduce borrowing costs.[51] According to Otter Tail, 100% CWIP recovery will enable Otter Tail to avoid the need to finance approximately $88 million of costs, resulting in reduced interest of over $3.9 million over the next eight years, which Otter Tail argues will benefit ratepayers.[52]

28. Otter Tail commits that, if the Commission authorizes it to include 100% CWIP in transmission rate base in the Otter Tail formula rate, Otter Tail will identify individually the Projects as transmission construction projects eligible to be included in CWIP

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[47] *Id.*

[48] *Id.* (citing Ex. OTP-6 (Miller Testimony) at 16).

[49] *Id.*

[50] *Id.* at 18 (citing Order No. 679-A, 117 FERC ¶ 61,345 at P 38; *Construction Work In Progress for Pub. Utils.; Inclusion of Costs in Rate Base*, Order No. 298, 1982-1985 FERC Stats. & Regs., Regs. Preambles ¶ 30,455, at 30,499 (cross-referenced at 23 FERC ¶ 61,224), *order on reh'g*, Order No. 298-A, 1982-1985 FERC Stats. & Regs., Regs. Preambles ¶ 30,500 (cross-referenced at 25 FERC ¶ 61,023), *order on reh'g*, Order No. 298-B, 1982-1985 FERC Stats. & Regs., Regs. Preambles ¶ 30,524 (cross-referenced at 25 FERC ¶ 61,375) (1983)).

[51] *Id.* (citing Ex. OTP-6 (Miller Testimony) at 6-7).

[52] *Id.* at 18-19.

transmission rate base, and, once so designated, those projects will be flagged as ineligible to earn or accrue Allowance for Funds Used During Construction (AFUDC).[53] Additionally, in compliance with the Commission's ruling that applicants seeking 100% CWIP recovery under a formula rate must make an annual filing informing the Commission of their requests for inclusion of CWIP in rate base, Otter Tail commits to file the FERC Form No. 730 annually, providing information regarding transmission investment costs and project construction status, including estimated completion dates.[54] As part of the annual customer notification and information procedures, Otter Tail also commits to developing and posting on the MISO Open Access Same-Time Information System, work papers that show the cost information and in-service date assumptions regarding the transmission projects and CWIP amounts to be included in its estimates for each year.[55] Otter Tail asserts that the Commission has previously accepted this approach as satisfying the Commission's requirement for an annual filing regarding CWIP recovery.[56]

29. Otter Tail requests waiver of certain additional filing requirements governing CWIP recovery under Order No. 679. First, Otter Tail requests waiver of 18 C.F.R. § 35.13(h)(38) (2022), which requires the applicant to submit a Statement BM explaining how the long-range program provides reliable and economic power, among other things.[57] According to Otter Tail, the Commission previously waived this requirement for utilities with formula transmission rates because the requirement was designed primarily for CWIP recovery associated with new generation projects.[58] Second, Otter Tail requests waiver of 18 C.F.R. §§ 35.25(c)(4), (g) (2022), which require the applicant to explain the potential anti-competitive impacts of CWIP recovery, including the proposed CWIP levels included in wholesale and retail rates.[59] Otter Tail asserts that the information provided in this filing to support the CWIP Incentive request

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[53] *Id.* at 20.

[54] *Id.* at 21-22 (citing 18 C.F.R. § 35.35(h)(1)-(2)).

[55] *Id.* at 22.

[56] *Id.* (citing *Xcel Energy Servs. Inc.*, 121 FERC ¶ 61,284, at P 68 (2007); *United Illuminating Co.*, 119 FERC ¶ 61,182, at P 92 (2007)).

[57] *Id*. at 21.

[58] *Id*. (citing *Dayton Power & Light Co.*, 172 FERC ¶ 61,140, at P 74 (2020); *Commonwealth Edison Co*., 119 FERC ¶ 61,238, at PP 92, 94 (2007); *N. Y. Transco, LLC*, 151 FERC ¶ 61,004, at PP 48, 80-83 (2015)).

[59] *Id*.

satisfies these requirements. Moreover, Otter Tail argues that the Commission has granted waiver of these requirements in similar circumstances,[60] and that these requirements appear to primarily address anti-competitive impact concerns about generation-related CWIP in rates, and not transmission-related CWIP in rates.

ii. Commission Determination

30. We grant Otter Tail's request for the CWIP Incentive. We find that Otter Tail has demonstrated that the requested incentive is tailored to the risks and challenges faced by the Projects. We also find that the approval of the CWIP Incentive will bolster Otter Tail's financial metrics, help ensure its current credit rating, and enable its participation in the Projects. Additionally, we grant Otter Tail's request for waiver of 18 C.F.R. § 35.13(h)(38) and §§ 35.25(c)(4) and (g). We find that Otter Tail has provided sufficient information to satisfy the requirements of these provisions. Finally, we accept Otter Tail's proposal to use the existing rate mechanism in Attachment O-OTP of the MISO Tariff to implement the CWIP Incentive.

iii. Abandoned Plant Incentive

31. Otter Tail asserts that the need for the Abandoned Plant Incentive for the Projects is supported because there are several risks beyond Otter Tail's control that could jeopardize the Projects. According to Otter Tail, its Projects are expected to be subjected to multiple layers of regulatory and public scrutiny, including siting and need determinations by as many as three states, and public proceedings in multiple local jurisdictions.[61] Otter Tail further notes that, for portions of the Projects, it may need to acquire permits to traverse rivers and state or national wildlife or wetland areas, possibly subjecting the Projects to a federal Environmental Impact Study and other special siting procedures.[62] Otter Tail states that, as discussed by Mr. Weiers, receipt of required state and federal regulatory approvals for the Projects is not certain, and permits could be unreasonably conditioned.[63] Additionally, Otter Tail states that the Projects require multiple permits and must be coordinated jointly with neighboring utilities.[64] Otter Tail asserts that, given MISO's substantial authority regarding transmission planning in the region, there is a risk that all or part of one or both of the Otter Tail Projects could be

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[60] *Id*. (citing *Otter Tail Power Co.*, 129 FERC ¶ 61,287 at P 51).

[61] *Id.* at 16 (citing Ex. OTP-2 (Weiers Testimony) at 19-20).

[62] *Id.*

[63] *Id.* (citing Ex. OTP-2 (Weiers Testimony) at 19-20).

[64] *Id.*

cancelled or revised for reasons identified through the regional planning process. Otter Tail further asserts that the Commission has found that the possibility that projects may be cancelled through a regional planning process is sufficient to establish the nexus necessary to support the Abandoned Plant Incentive.[65]

32. Otter Tail explains that, in the event it is forced to abandon one or both of the Projects for reasons beyond its control, it will submit a filing under section 205 of the FPA to demonstrate that the costs it seeks to recover were prudently incurred.[66] According to Otter Tail, granting its request for the Abandoned Plant Incentive will not impact Otter Tail's transmission rates until such time as Otter Tail submits a section 205 filing to recover abandoned plant costs associated with the Projects. Otter Tail points out that the Commission previously authorized Otter Tail to include an Abandoned Plant Recovery placeholder in its formula rates, for which Otter Tail currently maintains and will continue to maintain a zero value, unless it files for and obtains Commission approval to recover abandoned plant costs. Therefore, Otter Tail explains that granting Otter Tail's request for the Abandoned Plant Incentive does not change the justness and reasonableness of Otter Tail's current transmission rates, because any rate impact will be determined in a future section 205 filing.[67]

iv. Commission Determination

33. We grant Otter Tail's request for the Abandoned Plant Incentive. In Order No. 679, the Commission found that this incentive is an effective means of encouraging transmission development by reducing the risk of non-recovery of costs in the event that a project is abandoned for reasons outside the control of management.[68] We find that Otter Tail has demonstrated that the Projects face certain regulatory, environmental, and siting risks that are beyond Otter Tail's control and could lead to the Projects' abandonment, and that approval of the Abandoned Plant Incentive will address those

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[65] *Id.* at 17 (citing *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 61 (2007); *Allegheny Energy, Inc.*, 116 FERC ¶ 61,058, at P 127 (2006); *Xcel Energy Servs. Inc.*, 121 FERC ¶ 61,284 at P 63).

[66] *Id*. (citing Order No. 679, 116 FERC ¶ 61,057, at P 166; *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 60 (2011); *Okla. Gas & Elec. Co.*, 135 FERC ¶ 61,038, at P 57 (2011)).

[67] *Id.* at 19.

[68] Order No. 679, 116 FERC ¶ 61,057, at PP 163-166; *see also, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,296, at P 28 (2015); *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

risks by protecting Otter Tail and its members if the Projects are cancelled for reasons outside its control.

34. Consistent with Commission policy, the Abandoned Plant Incentive for the Projects will be available to Otter Tail for 100% of prudently-incurred costs expended on and after the date of this order if the Projects were to be abandoned for reasons beyond Otter Tail's control.[69] We will not determine the justness and reasonableness of Otter Tail's recovery of costs for abandoned electric transmission facilities, if any, until Otter Tail seeks such recovery in a future section 205 filing that a recipient of this incentive is required to make if it seeks abandoned plant recovery.[70] Finally, we accept Otter Tail's proposal to use the existing rate mechanism in Attachment O-OTP of the MISO Tariff to implement the Abandoned Plant Incentive.

v. Total Package of Incentives

35. Otter Tail asserts that the total package of incentives sought is tailored to address the demonstrable risks and challenges of the Projects.[71] Otter Tail states that its requested CWIP Incentive and Abandoned Plant Incentive for the Projects are consistent and compatible. Otter Tail contends that the two incentives are consistent because they serve the same purpose of reducing risks presented by the transmission projects and removing potential obstacles to transmission construction.[72] Otter Tail asserts that, in Order No. 679, the Commission found that the two incentives were similar in that they are both designed to remove an impediment to transmission construction and recognized that the two incentives are interrelated such that, if a project receives permission for

[69] Order No. 679, 116 FERC ¶ 61,057 at P 163; *see San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127, 137-38 (D.C. Cir. 2019) (*SDG&E*); *see also, e.g., NextEra Energy Transmission Midwest, LLC*, 166 FERC ¶ 61,169, at P 21 (2019); *GridLiance W. Transco LLC*, 164 FERC ¶ 61,049, at P 20 (2018); *Pacific Gas & Elec. Co.*, 163 FERC ¶ 61,187, at P 14 (2018); GRE Order, 182 FERC ¶ 61,039 at P 28.

[70] Order No. 679, 116 FERC ¶ 61,057, at PP 165-166. In the event that Otter Tail seeks abandoned plant recovery for the time period prior to the effective date of this order, Otter Tail would be eligible to seek recovery of 50% of its prudently-incurred costs, consistent with prior precedent. *See, e.g., San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158, *order on reh'g*, 157 FERC ¶ 61,056 (2016), *aff'd*, *SDG&E*, 913 F.3d 127.

[71] Errata Transmittal at 12-13 (citing *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,229, at P 58 (2011); Order No. 679-A, 117 FERC ¶ 61,345 at P 21).

[72] *Id.* at 18.

100% CWIP recovery but never becomes used and useful, the applicant could be entitled to recover CWIP costs through the abandoned plant recovery incentive.[73]

vi. Commission Determination

36. We find that the total package of incentives sought by Otter Tail is tailored to address the risks and challenges that Otter Tail faces in undertaking the Projects. As noted above, 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.[74] Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package.[75] The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis. The Commission has, in prior cases, approved multiple rate incentives for particular projects where appropriate.[76] We find that Otter Tail has demonstrated that each of the requested incentives, and the incentives package as a whole, address the risks and challenges faced by Otter Tail in undertaking the Projects.

The Commission orders:

Otter Tail's requests for the CWIP Incentive and Abandoned Plant Incentive for the Projects are hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Christie is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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[73] *Id.* (citing Order No. 679, 116 FERC ¶ 61,057 at PP 28, 29 & 117).

[74] Order No. 679-A, 117 FERC ¶ 61,345 at P 40; 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10.

[75] 2012 Incentives Policy Statement, 141 FERC ¶ 61,129 at P 10 (quoting Order No. 679-A, 117 FERC ¶ 61,345 at P 40).

[76] Order No. 679, 116 FERC ¶ 61,057 at P 55. *See also WPPI Energy*, 151 FERC ¶ 61,246 at P 35.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Otter Tail Power Company Docket No. ER23-1544-000

(Issued May 18, 2023)

CHRISTIE, Commissioner, *concurring*:

1. Today's order is consistent with the Commission's existing policies regarding the CWIP Incentive and the Abandoned Plant Incentive, as articulated in Order No. 679;[1] thus, I will concur rather than dissent. This order illustrates, however, why I believe the Commission needs to revisit the array of incentives offered to transmission developers, including the CWIP Incentive and Abandoned Plant Incentive addressed in this order as well as the RTO participation adder.[2]

2. A core principle of utility law and regulation for decades is that consumers can only be forced to pay costs for assets that are "used and useful" to them. In Order No. 679, the Commission determined that it may be necessary to depart from this long-standing ratemaking principle to "address the substantial challenges and risks in constructing new transmission."[3] In prior concurrences, I questioned, among other concerns, whether the Commission's determination of whether "substantial challenges and risks" exist when granting the Abandoned Plant Incentive and other incentives has become nothing more than a check-the-box exercise.[4]

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[1] *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).

[2] I recognize that the RTO participation adder is not at issue in this proceeding.

[3] Order No. 679, 116 FERC ¶ 61,057 at PP 26, 117.

[4] *LS Power Grid Cal., LLC*, 182 FERC ¶ 61,201 (2023) (Christie, Comm'r, concurring at P 2), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-ls-power-grid-regarding-transmission-incentives; *Nev. Power Co.*, 182 FERC ¶ 61,186 (2023) (Christie, Comm'r, concurring at P 2), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nv-energy-regarding-transmission-incentives; *The Dayton Power and Light Co.*, 182 FERC ¶ 61,147 (2023) (Christie, Comm'r, concurring at P 2), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-dayton-power-and-light-company-regarding; *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,039 (2023) (Christie,

3. As I noted previously:

> The Commission's incentive policies—particularly the CWIP Incentive, which allows recovery of costs *before* a project has been put into service—run the risk of making consumers "the bank" for the transmission developer; but, unlike a real bank, which gets to charge interest for the money it loans, under our existing incentives policies the consumer not only effectively "loans" the money through the formula rates mechanism, but also pays the utility a profit, known as Return on Equity, or "ROE," for the privilege of serving as the utility's *de facto* lender.[5]

Further, just as the CWIP Incentive effectively makes consumers the bank for transmission developers, the Abandoned Plant Incentive effectively makes them the insurer of last resort as well. This incentive allows transmission developers to recover from consumers the costs of investments in projects that fail to materialize and thus do not benefit consumers. Just as consumers receive no interest for the money they effectively loan transmission developers through CWIP, they receive no premiums for the insurance they provide through the Abandoned Plant Incentive if the project is never built. And if the CWIP Incentive is a *de facto* loan and the Abandoned Plant Incentive is

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Comm'r, concurring at P 2), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-midcontinent-independent-system-operator-inc; *NextEra Energy Transmission Sw., LLC*, 180 FERC ¶ 61,032 (2022) (Christie, Comm'r, concurring at P 2) (July 2022 Concurrence), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-nextera-energy-transmission-southwest-llc; *NextEra Energy Transmission Sw., LLC*, 178 FERC ¶ 61,082 (2022) (Christie, Comm'r, concurring at P 2) (February 2022 Concurrence), https://www.ferc.gov/news-events/news/commissioner-mark-c-christie-concurrence-nextera-energy-transmission-southwest-llc.

[5] February 2022 Concurrence at P 3 (emphasis in original); July 2022 Concurrence at P 3 (citation omitted); *see also Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generation Interconnection*, 179 FERC ¶ 61,028 (2022) (Transmission Planning and Cost Allocation NOPR) (Christie, Comm'r, concurring at P 15) ("CWIP is, of course, passed through as a cost to consumers, making consumers effectively an involuntary lender to the developer. . . . Consumers should be protected from paying CWIP costs during this potentially long period before a project actually enters service, if it ever does."), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-e-1-regional-transmission-planning-and-cost.

de facto insurance — both provided by consumers — then the RTO participation adder, which increases the transmission owner's ROE above the market cost of equity capital, is an involuntary gift from consumers.[6] There is something really wrong with this picture.

4. As this Commission considers other potential reforms related to regional transmission planning and development, it is imperative that incentives like the CWIP Incentive, Abandoned Plant Incentive, and RTO participation adder are all revisited to ensure that all the costs and risks associated with transmission construction are not unfairly inflicted on consumers while transmission developers and owners stand to gain all the financial reward. Moreover, if the Commission determines it is appropriate to channel risks to consumers, those risks must be carefully weighed and considered and not simply awarded in an exercise of "check-the-box."

5. Early in 2021, a majority of this Commission voted to approve a supplemental notice of proposed rulemaking which proposed, among other things, to limit the RTO participation adder to the three years following a transmitting utility's initial membership in an RTO.[7] I joined in that vote and continue to support such a time limit. That supplemental notice of proposed rulemaking remains pending. Likewise, the Commission proposed to eliminate the CWIP Incentive in its April 2022 Transmission Planning and Cost Allocation NOPR, a proposal I continue to strongly support.[8] It is clear that the Commission's procedures and criteria for awarding the Abandoned Plant Incentive should also be reconsidered. Revisiting all these incentives is imperative at a time of rapidly rising customer power bills.

For these reasons, I concur.

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Mark C. Christie
Commissioner

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[6] *See, e.g.*, *Rockland Elec. Co.*, 178 FERC ¶ 61,232 (2022) (Christie, Comm'r, concurring at P 4), https://www.ferc.gov/news-events/news/commissioner-christies-concurrence-rockland-electric-er22-910.

[7] *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Supplemental Notice of Proposed Rulemaking, 175 FERC ¶ 61,035, at P 9 (2021).

[8] Transmission Planning and Cost Allocation NOPR, 179 FERC ¶ 61,028 at P 333 & n.530.