

FERC Approves Incentives for Green Power Express Transmission Proposal

April 13, 2009

On April 10, the Federal Energy Regulatory Commission (FERC) issued an order in Docket No. ER09-681-000 (the Order) granting approval of various transmission infrastructure rate incentives requested by Green Power Express, LP (GPE). FERC also set for hearing GPE's requested approval of a formula rate, which GPE's application states would eventually be included in the tariffs of the Midwest Independent Transmission System Operator, Inc. (MISO) and the PJM Interconnection, LLC (PJM) regional transmission operators (RTOs).

GPE's proposal is for approximately 3,000 miles of 765 kV transmission lines to be constructed in seven Midwestern states. GPE's application states that its proposal will bring up to 12,000 MW of wind and stored energy from North Dakota, South Dakota, Minnesota, and Iowa to Midwest load centers, such as Chicago, southeastern Wisconsin, and the Minneapolis–St. Paul area. GPE states that it intends to become an independent transmission-owning member of both the MISO and PJM. Although there is not yet a definitive route for the proposed transmission facilities, the cost for the proposed project is estimated to be between \$10 billion and \$12 billion. GPE was formed by ITC Holdings Corp., whose other subsidiaries include International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC. GPE's application states that it is exploring the potential for partnering with other companies to develop its proposal; however, no partners have yet been identified.

GPE requested, and received approval for, (1) recovery of costs for abandoned facilities; (2) deferred recovery for start-up, development, and preconstruction costs through the creation of regulatory assets; (3) 100% of construction work in progress (CWIP) in rate base; (4) a hypothetical capital structure of 60% equity and 40% debt; and (5) a total return on equity of 12.38 %, including 50 basis points for participating in a RTO, 100 basis points for independence, and 10 basis points for the risks and challenges of the proposal.

In the Order, 127 FERC ¶ 61,031 (2009), FERC found that GPE had adequately demonstrated that its proposal would ensure reliability and/or reduce the cost of delivered power by reducing transmission congestion, thereby meeting the requirements for transmission incentives under Federal Power Act (FPA) section 219. Discussing several of the incentives (i.e., abandoned plant and regulatory asset), FERC noted that it is unclear whether GPE will have any customers from which to recover the costs it has incurred. Accordingly, GPE must make a proposal under section 205 of the FPA for a just and reasonable cost-allocation method to recover such costs. Protesters will have an opportunity to comment on any proposal to recover such costs if and when GPE makes the section 205 filing.

Arguments about whether it was prudent for GPE to incur specific costs may also be raised at that time. In addition, GPE must make a compliance filing at least 60 days prior to when it proposes to begin charging rates based on a revenue requirement that includes CWIP. (It should be noted that it is not clear which “customers” will be charged at such time, as GPE will not have its own customers unless and/or until its facility goes into service.)

With regard to GPE’s proposed formula rate, FERC found that GPE’s formula rate proposal has not been shown to be just and reasonable, and therefore, accepted the formula rates subject to refund, and set them for hearing and settlement judge procedures. FERC accepted the proposed tariff sheets for filing, deferring the effective date until (1) the proposal is approved by a FERC-approved regional transmission planning process; and (2) FERC approves a cost-allocation mechanism for the proposal.

More than 70 parties have intervened or filed protests and/or comments in this proceeding. FERC noted that the vast majority of entities that filed protests argued that GPE’s filing was premature because the proposal was developed outside of a FERC-approved transmission planning process. However, FERC’s Order states that such an evaluation is not a prerequisite to granting incentives in a declaratory order proceeding. In addition, a finding on incentives does not prejudge the findings of a particular transmission planning process or the siting procedures at state commissions.

For further information on the information discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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