

155 FERC ¶ 61,300
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Xcel Energy Southwest Transmission
Company, LLC

Docket Nos. ER14-2751-002
ER14-2751-003
EL16-73-000

ORDER ON COMPLIANCE FILINGS AND INSTITUTING
SECTION 206 PROCEEDING, COMMENCING PAPER HEARING PROCEDURES,
AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued June 23, 2016)

1. In this order, we accept Xcel Energy Southwest Transmission Company, LLC's (XEST) March 9, 2015 compliance filing containing revisions to its formula rate protocols, subject to condition, as discussed below. We also accept, for informational purposes, XEST's January 8, 2015 compliance filing, as supplemented through its November 23, 2015 response to a deficiency letter, containing information on cost allocation to XEST from its parent companies or affiliates. In addition, we find that XEST's formula rate protocols may be unjust, unreasonable, unduly discriminatory or preferential because they do not provide for XEST to include in the annual formula rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between XEST and its affiliates, and information indicating the magnitude of such cost allocations by service category or function. Accordingly, we institute a proceeding in Docket No. EL16-73-000 pursuant to section 206 of the Federal Power Act (FPA),¹ as discussed more fully below.

¹ 16 U.S.C. § 824e (2012).

I. Background

2. On August 29, 2014, XEST, a wholly-owned subsidiary of Xcel Energy Transmission Holding Company, LLC, which, in turn, is a first-tier subsidiary of Xcel Energy, Inc. (Xcel), filed a transmission formula rate, including a formula rate template and formula rate protocols (collectively, Formula Rate) to recover costs associated with transmission projects that it intends to own and develop as part of Southwest Power Pool, Inc.'s (SPP) Order No. 1000² competitive solicitation process. XEST also requested, pursuant to section 205 of the FPA,³ certain transmission rate incentives.

3. On November 26, 2014, the Commission accepted the Formula Rate to be effective once filed with the Commission to become part of SPP's Open Access Transmission Tariff, consistent with the effective date established in that future proceeding, subject to a further compliance filing.⁴

4. With respect to the formula rate protocols, the Commission accepted them in the November 2014 Order subject to the outcome of Midcontinent Independent System Operator, Inc.'s (MISO) formula rate protocols proceedings which were pending in Docket No. ER13-2379-000, *et al.* In response, XEST committed to make an additional compliance filing, if necessary, to revise its formula rate protocols at the conclusion of those proceedings.⁵ On March 9, 2015, XEST submitted revisions to the formula rate protocols based on the Commission's January 22, 2015 order in the MISO formula rate protocols proceedings.⁶

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

³ 16 U.S.C. § 824d (2012).

⁴ *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014) (November 2014 Order).

⁵ XEST Transmittal at 11, Docket No. ER14-2751-001 (filed Jan. 8, 2015).

⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,025 (2015).

5. On January 8, 2015, XEST also submitted a separate compliance filing in response to a directive in the November 2014 Order, providing additional supporting documents explaining the cost allocation and direct assignment to XEST from its parent companies or affiliates. On September 22, 2015, Commission staff issued a deficiency letter in response to that compliance filing requesting additional information relating to such cost allocation and direct assignment. XEST responded to that deficiency letter on November 23, 2015.

II. Notices of Filings

6. Notice of XEST's January 8, 2015 compliance filing was published in the *Federal Register*, 80 Fed. Reg. 2689 (2015), with interventions and protests due on or before January 29, 2015. None was filed.

7. Notice of XEST's March 9, 2015 compliance filing was published in the *Federal Register*, 80 Fed. Reg. 14,128 (2015), with interventions and protests due on or before March 30, 2015. None was filed.

8. Notice of XEST's November 23, 2015 response to the deficiency letter was published in the *Federal Register*, 80 Fed. Reg. 75,086 (2015), with interventions and protests due on or before December 14, 2015. None was filed.

III. Discussion

A. Formula Rate Protocols

9. In its March 9, 2015 compliance filing, XEST revised section IV.G of its formula rate protocols, to: (1) add the phrase "on any issue" to clarify that a party may not pursue a Formal Challenge if such party did not also submit an Informal Challenge; and (2) use April 15, instead of March 31, as the deadline for filing a Formal Challenge. XEST also revised section I.G of its protocols to state that XEST will hold its annual open meeting regarding the annual true-up and true-up adjustment "between the [p]ublication [d]ate and September 1," instead of October 1.⁷ We find that XEST's proposed revisions to its protocols are largely consistent with the Commission's directives in the MISO formula

⁷ XEST Transmittal at 2-3, Docket No. ER14-2751-003 (filed Mar. 9, 2015).

rate protocols proceeding. We, therefore, will accept them, subject to condition, as discussed below.⁸

10. Consistent with the Commission's findings in MISO's formula rate protocols proceedings, we find that XEST should include tariff language regarding joint meetings with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects subject to the same regional cost allocation. A joint meeting with other transmission owners using formula rates to establish the revenue requirements for recovery of the costs of projects that they develop that are subject to the same regional cost allocation would be an efficient way for such transmission owners to conduct annual meetings to discuss their annual updates, so that parties interested in the annual updates of multiple transmission owners with projects subject to the same regional cost allocation do not have to separately participate in each transmission owner's annual meeting.⁹ This could ease the burden of both transmission customers and owners by limiting the number of annual meetings necessary.¹⁰ Accordingly, we will direct XEST to submit a compliance filing to be made within 30 days of the date of this order to revise its tariff language to include a requirement that it endeavor to coordinate with other transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism and hold joint meetings to enable all interested parties to understand how those transmission owners are implementing their formula rates for recovering the costs of such projects.¹¹

⁸ The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212, at P 59 (2014).

¹⁰ *Id.* While we recognize that XEST's formula rate protocols only govern XEST's annual updates, we expect other public utility transmission owners using formula rates to establish revenue requirements for recovery of the costs of transmission projects that utilize the same regional cost sharing mechanism to cooperate in coordinating to hold joint meetings.

¹¹ XEST would not need to coordinate with transmission owners that do not use formula rates and thus do not update their rates each year.

B. Cost Allocation

11. In the November 2014 Order, the Commission stated, “To the extent that costs are allocated or directly-billed from XEST’s parent company or any of its affiliates, we direct XEST to explain and provide the methodology for the allocation of those costs in a compliance filing.” We find that XEST’s cost allocation compliance filing, as supplemented through its response to the deficiency letter, provides sufficient explanation of such inter-affiliate cost allocations for us to accept those filings.

12. However, the Commission recently held that utilities should include in their formula rate protocols requirements to provide, in their annual Formula Rate updates and informational filings, certain information about the methodologies for the allocation of costs between affiliates that affect the cost inputs to their formula rates in order to allow interested parties and the Commission to understand the reasonableness of such allocation methodologies and the resulting costs that are recovered through the formula rates.¹² In *PJM*, the Commission made acceptance of the formula rate protocols subject to the condition that the transmission entity there, Northeast Transmission Development, LLC (NTD), amend its protocols, to provide for it

to include in its annual Formula Rate updates and annual informational filings the following: (1) a detailed description of the methodologies used to allocate and directly assign costs between NTD and its affiliates by service category or function for the applicable rate year, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between NTD and each affiliate by service category or function for the applicable period.¹³

13. In the present case, in the November 2014 Order, the Commission accepted XEST’s formula rate protocols without conditioning our acceptance on revising them to include the terms we required in *PJM*. Therefore, it appears that the absence of such requirements in XEST’s formula rate protocols may be unjust, unreasonable, or unduly discriminatory or preferential because the protocols do not provide for XEST to include in its annual Formula Rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between XEST and its affiliates, and

¹² *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016) (*PJM*).

¹³ *Id.*

information indicating the magnitude of such cost allocations by service category or function. Accordingly, we institute a proceeding in Docket No. EL16-73-000, pursuant to section 206 of the FPA, to examine XEST's formula rate protocols with respect to this issue. Upon initial review, the concerns identified by the Commission might be addressed by revising XEST's formula rate protocols to provide for XEST to include in its annual Formula Rate updates and annual informational filings the following: (1) a detailed description of the methodologies used to allocate and directly assign costs between XEST and its affiliates by service category or function for the applicable rate year, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between XEST and each affiliate by service category or function for the applicable period. We also find that a paper hearing, as ordered below, is the appropriate procedure to resolve this matter.

14. As ordered below, any person desiring to participate in the paper hearing must file a notice of intervention or timely motion to intervene in Docket No. EL16-73-000, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015).

15. We will require XEST and other interested parties to file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of this section 206 proceeding in Docket No. EL16-73-000. Parties also may file reply briefs in response to parties' initial briefs due within 21 days after the due date of initial briefs.

16. In cases where, as here, the Commission institutes a proceeding under section 206 of the FPA, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceeding in the *Federal Register*, and no later than five months subsequent to that date.¹⁴ Consistent with Commission precedent,¹⁵ we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL16-73-000 is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this proceeding within six months of receiving reply briefs, or assuming XEST files revisions to its formula rate protocols, within three months of receiving the revisions.

¹⁴ 16 U.S.C. § 824e(b) (2012).

¹⁵ See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) XEST's March 9, 2015 compliance filing is hereby accepted, subject to condition, as discussed in the body of this order.

(B) XEST is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) XEST's January 8, 2015 compliance filing concerning cost allocation is accepted for informational purposes, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL16-73-000, concerning XEST's formula rate protocols, as discussed in the body of this order.

(E) XEST and other interested parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding in Docket No. EL16-73-000. Reply briefs may be filed no later than 21 days thereafter.

(F) Any interested person desiring to be heard in Docket No. EL16-73-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2015)) within 21 days of the date of issuance of this order.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under section 206 of the FPA of the proceeding in Docket No. EL16-73-000.

(H) The refund effective date in Docket No. EL16-73-000 established pursuant to section 206 of the FPA shall be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (G) above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.