

155 FERC ¶ 61,301  
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 Transmission Development Company, LLC   Docket Nos. ER14-2752-002  
ER14-2752-004  
EL16-75-000

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, subject to condition, Xcel Energy Transmission Development Company, LLC's (XETD) January 21, 2016 compliance filing containing revisions to its formula rate template. We also accept, for informational purposes XETD's January 8, 2015 compliance filing, as supplemented by its November 23, 2015 response to a deficiency letter, containing information on cost allocation to XETD from its parent companies or affiliates. In addition, we find that XETD's formula rate protocols may be unjust, unreasonable, unduly discriminatory or preferential because they do not provide for XETD to include in the annual formula rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between XETD 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. EL16-75-000 pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> as discussed more fully below.

**I. Background**

2. On August 29, 2014, XETD, 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 template and protocols

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<sup>1</sup> 16 U.S.C. § 824e (2012).

(collectively, Formula Rate) to recover costs associated with transmission projects that it intends to own and develop as part of Midcontinent Independent System Operator, Inc.'s (MISO) Order No. 1000<sup>2</sup> competitive solicitation process. XETD also requested, pursuant to section 205 of the FPA,<sup>3</sup> 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 MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, consistent with the effective date established in that future proceeding, subject to a further compliance filing.<sup>4</sup>
4. On January 8, 2015 and March 9, 2015, XETD submitted revised tariff sheets in response to the Commission's directives relating to the formula rate template and protocols, respectively. On December 22, 2015, the Commission accepted these compliance filings, subject to condition and further compliance.<sup>5</sup> On January 21, 2016, XETD submitted a second compliance filing in response to the December 2015 Order.
5. On January 8, 2015, XETD also submitted a separate compliance filing in response to a directive in the November 2014 Order providing additional supporting documents explaining the cost allocation to XETD from its parent companies or affiliates. On September 22, 2015, Commission staff, pursuant to delegated authority, issued a deficiency letter in response to that compliance filing requesting additional information relating to such cost allocation. XETD was granted an extension of time to respond to that deficiency letter until November 23, 2015, and made its response on that date.

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<sup>2</sup> *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 (2012), *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, No. 762 F.3d 41 (D.C. Cir. 2014).

<sup>3</sup> 16 U.S.C. § 824d (2012).

<sup>4</sup> *Xcel Energy Transmission Development Co. LLC*, 149 FERC ¶ 61,181 (2014) (November 2014 Order).

<sup>5</sup> *Xcel Energy Transmission Development Co. LLC*, 153 FERC ¶ 61,329 (2015) (December 2015 Order).

## **II. Notice of Filings**

6. Notices of XETD's January 8, 2015 compliance filings were published in the *Federal Register*, 80 Fed. Reg. 2688 (2015), with interventions and protests due on or before January 29, 2015. None was filed. Notice of XETD's March 9, 2015 compliance filing was published in the *Federal Register*, 80 Fed. Reg. 14,127 (2015) with interventions and protests due on or before March 30, 2015. None was filed.

7. Notice of XETD'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.

8. Notice of XETD's January 21, 2016 compliance filing was published in the *Federal Register*, 81 Fed. Reg. 5436 (2016), with interventions and protests due on or before February 11, 2016. None was filed.

## **III. Discussion**

### **A. Formula Rate Revisions**

9. In the December 2015 Order, the Commission accepted, subject to condition, XETD's January 8, 2015 compliance filing, which contained revisions to its Formula Rate. However, it directed certain additional revisions with respect to Attachment 8.<sup>6</sup> Among these, the Commission found that Line 27, Column F did not contain a formula for the Interest and Principal and it was not apparent how this calculation works.

10. The Commission also directed XETD to explain further Attachment 4.<sup>7</sup> It found that the heading of Attachment 4, Page 2, Column F, as well as the purpose of that column, was unclear, as was the phrase "exclude the portion of any balance offset by a balance sheet account" in Attachment 4, Note G.

11. In response to the Commission's directives related to Attachment 8, XETD proposes, among other revisions, to revise Attachment 8 by: (i) splitting Column (F) into two columns, Columns (F1) and (F2), where the former shows interest payments made by XETD and the latter shows principal payments; (ii) adding a calculation to Note 8 to show how XETD calculates the interest payment amounts in Column (F1); and

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<sup>6</sup> December 2015 Order, 153 FERC ¶ 61,329 at P 12.

<sup>7</sup> *Id.* P 13.

(iii) altering the algebraic formula in Column (I) to account for having split Column (F) into two separate columns.

12. In response to the Commission's directives related to Attachment 4, XETD states that Note G of Attachment 4 defines an unfunded reserve as "funds collected from customers that (1) have not been set aside in a trust, escrow or restricted account; (2) whose balance are [sic] collected from customers through cost accruals to accounts that are recovered under the Formula Rate; and (3) exclude the portion of any balance offset by a balance sheet account[.]" Likewise, Column (f) states that, for each reserve, XETD should "[e]nter the percentage paid for by customers," which is "1 less the percent associated with an offsetting liability on the balance sheet[.]" XETD explains that an unfunded reserve exists only when a customer funds an amount for which XETD accrued an expense that is recovered through the formula rate. According to XETD, in contrast, when an accrual relates to an account for which no expenses are recovered through the formula rate, no unfunded reserve is created, and no rate base credit is required. XETD argues that just like an expense account whose costs are not recovered through the formula rate, some accounts that are included in the formula rate may be accounted for as an asset rather than as an expense. XETD states that because there is no customer-paid expense associated with that accrual, no unfunded reserve exists in connection with that asset, and no rate base credit is required.<sup>8</sup>

13. We accept XETD's proposed formula rate revisions, subject to condition and further compliance.<sup>9</sup> We find that while the separation of the interest and principal payments in Attachment 8 and calculations of the Interest Payments in Note 8 provide additional clarity and detail, XETD has not provided corresponding detail on how it calculates the Principal Payments in Column (F2). Accordingly, we direct XETD to add a note providing such detail in a further compliance filing due within 30 days of the date of this order. We also direct XETD to reinsert the numeric example from Attachment 8, which XETD removed in its January 21, 2016 compliance filing without explanation.

14. With respect to the Commission's directives related to Attachment 4, we find that XETD has sufficiently explained the purpose of Column F and the quoted phrase in Note G, and how it ensures that capital contributions from customers are appropriately

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<sup>8</sup> XETD January 21 Compliance Filing at 2-3.

<sup>9</sup> The Commission can revise a proposal filed under section 205 of the Federal Power Act 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.

deducted from rate base before they are used to fund liabilities. However, Note G does not accurately reflect this explanation and we direct XETD to revise Note G in a compliance filing, due within 30 days of the date of this order, to better reflect the explanation provided in the January 21, 2016 compliance filing.

**B. Cost Allocation**

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

16. 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.<sup>10</sup> 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.<sup>11</sup>

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<sup>10</sup> *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016) (*PJM*).

<sup>11</sup> *Id.*

17. In the present case, in the November 2014 Order, the Commission accepted XETD'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 XETD's formula rate protocols may be unjust, unreasonable, or unduly discriminatory or preferential because the protocols do not provide for XETD to include in its annual Formula Rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between XETD 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. EL16-75-000 pursuant to section 206 of the FPA, to examine XETD's formula rate protocols with respect to this issue. Upon initial review, the concerns identified by the Commission might be addressed by revising XETD's formula rate protocols to provide for XETD 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 XETD 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 XETD 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.

18. 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. EL16-75-000, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015).

19. We will require XETD 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. EL16-75-000. Parties also may file reply briefs in response to parties' initial briefs due within 21 days after the due date of initial briefs.

20. 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.<sup>12</sup> Consistent with

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<sup>12</sup> 16 U.S.C. § 824e(b) (2012).

Commission precedent,<sup>13</sup> 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. EL16-75-000 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 XETD files revisions to its formula rate protocols within three months of receiving the revisions.

The Commission orders:

(A) XETD's January 21, 2016 compliance filing is accepted subject to condition, as discussed in the body of this order.

(B) XETD 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) XETD'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. EL16-75-000, concerning XETD's formula rate protocols, as discussed in the body of this order.

(E) XETD 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. EL16-75-000. Reply briefs may be filed no later than 21 days thereafter.

(F) Any interested person desiring to be heard in Docket No. EL16-75-000 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.

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<sup>13</sup> 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).

(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. EL16-75-000.

(H) The refund effective date in Docket No. EL16-75-000 established pursuant to section 206 of the FPA will 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.