

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Union Electric Company
American Electric Power Service Corporation

Docket Nos. ER05-1012-001
ER05-1072-001

ORDER DENYING CLARIFICATION

(Issued December 27, 2005)

1. On August 22, 2005, Xcel Energy Services, Inc. (Xcel) filed a motion for clarification of the Commission's July 22, 2005 order accepting notices of cancellation filed by Union Electric Company (Union Electric) and by American Electric Power Service Corporation (AEP) on behalf of Public Service Company of Oklahoma (PSO).¹ In this order, we deny Xcel's motion for clarification.

I. Background

2. The July 22 Order accepted notices of cancellation filed by Union Electric and AEP to terminate their obligations under the terms of an Amended Interchange Agreement for the Missouri-Kansas-Oklahoma 345 kV Interconnection (MoKanOk Agreement). The MoKanOk Agreement was an agreement between Union Electric, PSO, Associated Electric Cooperative, Inc. (Associated), and Kansas Gas & Electric Company (KG&E). It was initially entered into in 1971 for the construction and operation of a transmission line extending through the service territories of Union Electric and Associated in Missouri, KG&E in Kansas, and PSO in Oklahoma. Each participant owned and maintained the portion of the line in its service area. Associated is an electric cooperative and, because it receives financing through the Rural Utilities Service, is not

¹ *Union Electric Company and American Electric Power Service Corporation*, 112 FERC ¶ 61,089 (2005) (July 22 Order).

considered a public utility subject to the Commission's jurisdiction. Associated's system is situated between Southwest Power Pool, Inc. (SPP), a regional transmission organization (RTO) of which PSO and KG&E are transmission-owning members, and Midwest Independent Transmission System Operator, Inc. (Midwest ISO), an RTO, of which Union Electric is a transmission-owning member. In 1998, the Commission accepted a revision to the MoKanOk Agreement² that incorporated third-party access to comply with Order No. 888.³ KG&E and PSO have placed their capacity rights in the MoKanOk line under the control of SPP, and Union Electric's capacity rights have been placed under Midwest ISO's control.⁴ As a result, the MoKanOk Agreement provides a direct interconnection between SPP and Midwest ISO.

3. Section 12.1 of the MoKanOk Agreement provides that it will be in effect for 30 years starting from June 1, 1971 and is subject to cancellation by any party at the end of the initial term, provided that the party seeking to cancel the agreement submits written notice to all other parties not less than four years before the end of the term. On June 1, 2001, Associated notified all parties of its intent to terminate the agreement, as of June 1, 2005. Accordingly, Union Electric and AEP submitted notices of cancellation to terminate their respective agreements.

4. Many parties, including Xcel, protested Union Electric and AEP's notices of cancellation arguing that the termination of the MoKanOk Agreement would reduce the Available Transfer Capacity (ATC) between Midwest ISO and the SPP. Protestors also argued that, if the Commission accepted the notices of cancellation, then the Commission should condition such acceptance on Union Electric's commitment to hold existing

² *Western Resources, Inc.*, 85 FERC ¶ 61,243 (1998). The MoKanOk Agreement was designated as Union Electric FERC Rate Schedule No. 171, PSO FERC Rate Schedule No. 241, and KG&E FERC Rate Schedule No. 241.

³ *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

⁴ The capacity rights are governed by the terms and provisions of SPP's and Midwest ISO's Open Access Transmission Tariff (OATT).

transmission reservations harmless from reduced capacity over the MoKanOk transmission line.

5. The Commission found Union Electric and AEP's notices of cancellation just and reasonable and determined that many of the issues protestors raised were outside the scope of the proceeding. The Commission declined to require Union Electric or AEP to hold customers with existing transmission reservations harmless from reduced capacity along the MoKanOk transmission line available under the SPP and Midwest ISO tariffs. The Commission explained that it would be unreasonable to require the public utility parties to the MoKanOk Agreement to hold others harmless for the consequences of Associated's termination of the MoKanOk Agreement, since that is an event that is beyond the control of Union Electric or AEP.⁵

6. On August 22, 2005, Xcel filed a request for clarification of the July 22 Order with the Commission seeking clarification that its existing long-term transmission reservations, and their associated rollover rights, will be honored by Associated. Specifically, Xcel asks that its requests for transmission service from Associated will be treated in accordance with the Commission's reciprocity requirements under Order No. 888. Under the reciprocity requirement of Order No. 888, non-public utilities that receive transmission service are required to provide comparable transmission service on similar terms and conditions over the non-public utilities' own facilities.⁶ Without this requirement, non-public utilities could take advantage of the competitive opportunities of open access required by public utilities regulated by the Commission and offer inferior access over the non-public utilities' facilities.⁷ Xcel requests clarification that the Commission will review Associated's treatment of the existing rollover rights associated with the firm transmission reservations in accordance with the requirements set forth in Order No. 888.⁸

7. On September 2, 2005, Associated filed an answer to Xcel's request for clarification. Associated argues that Xcel's request for clarification is beyond the scope of the proceeding since the proceeding deals with the cancellation of rate schedules that

⁵ July 22 Order at P 18.

⁶ Order No. 888.

⁷ *Id.* at 31,636.

⁸ *Id.*

constituted the MoKanOk Agreement. Associated states that if the Commission does grant Xcel's request for clarification, then the Commission should conclude that Associated has no obligation to provide service to Xcel since no contractual obligation between Associated and Xcel exists pursuant to an existing reservation or rollover of an existing reservation after termination of the MoKanOk Agreement. Associated states that no issue of reciprocity exists because Associated had not requested transmission service over Xcel's transmission facilities and Xcel has not requested transmission service from Associated.

II. Discussion

8. We deny Xcel's motion for clarification. We find that the issues raised by Xcel have already been found to be outside the scope of the proceeding. Xcel attempts to persuade the Commission to commit to review issues that exceed the scope of the present proceeding. Xcel, in its request for clarification, does not present the Commission with new information which would convince the Commission to revisit this issue. We will make no such commitment to review these issues and affirm the determination set forth in the July 22 Order.

9. The July 22 Order addressed the issue of accepting the notices of cancellation to terminate Union Electric and AEP's obligations under the MoKanOk Agreement. Here, Xcel requests that the Commission clarify what obligations Associated may have to provide transmission service to Xcel, including under the reciprocity obligations of Order No. 888. This issue, of the obligations between Xcel, SPP and Associated, are beyond the scope of this proceeding which deals with accepting Union Electric and AEP's notices of cancellation and terminating their obligations under the MoKanOk Agreement. In their request for clarification, there is no evidence that Xcel has been improperly denied transmission service over Associated's facilities. If Xcel believes that such action occurs in the future, Xcel may file a complaint with the Commission in a separate docket.

10. As previously stated, Associated is an electric cooperative that receives funding from the Rural Utilities Service. As such, Associated is not a public utility whose rates are subject to Commission regulation under sections 205 and 206 of the Federal Power Act (FPA).⁹ As such, the Commission cannot, under sections 205 or 206 of the FPA, require Associated to continue to offer service under the terms of a contract that it has properly terminated; nor can the Commission modify the rates for service Associated provides over its facilities. For this reason, we deny Xcel's request for clarification.

⁹ 16 U.S.C. § 824d and § 824e (2000).

The Commission orders:

Xcel's motion for clarification is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.