

149 FERC ¶ 61,182  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Southwest Transmission  
Company, LLC

Docket No. ER14-2751-000

ORDER ON TRANSMISSION FORMULA RATE  
PROPOSAL AND INCENTIVES, ACCEPTING AND SUSPENDING FILING, AND  
ESTABLISHING SETTLEMENT AND HEARING JUDGE PROCEDURES

(Issued November 26, 2014)

1. In this order, we conditionally accept Xcel Energy Southwest Transmission Company, LLC's (XEST) proposed formula rate template and formula rate implementation protocols (protocols) 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. 1000<sup>1</sup> competitive solicitation process. We accept the formula rates to be effective once filed with the Commission to become part of SPP's Open Access Transmission Tariff (Tariff), consistent with the effective date established in that proceeding, subject to a further compliance filing. We accept XEST's proposed base return on equity (ROE) for filing, suspend it for a nominal period, to be effective November 1, 2014, as requested, subject to refund, and set it for hearing and settlement judge procedures. We also grant XEST's request for authorization to defer as a regulatory asset its prudently-incurred costs, including pre-commercial and formation costs, effective November 1, 2014, as requested, and its request to use a hypothetical capital structure.

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<sup>1</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*, 762 F.3d 41 (D.C. Cir. 2014).

## I. Background

2. In Order No. 1000, the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. The Commission noted that, although not mandatory, public utility transmission providers in a transmission planning region could use, for example, a competitive bidding process as one method to comply with the requirements of Order No. 1000.<sup>2</sup> In response to the requirements of Order No. 1000, SPP has established a competitive solicitation process, under which qualified transmission developers can bid to develop transmission projects that have been selected in SPP's regional transmission plan for purposes of cost allocation.<sup>3</sup>

3. On August 29, 2014, XEST submitted for filing under section 205 of the Federal Power Act (FPA)<sup>4</sup> a proposed transmission formula rate template to recover costs associated with transmission projects that it intends to own and develop as part of the SPP Order No. 1000 competitive solicitation process. XEST states that it is a wholly owned subsidiary of Xcel Energy Transmission Holding Company, LLC (Xcel Energy Transmission Holdco), which in turn is a first tier subsidiary of Xcel. XEST states that Xcel formed Xcel Energy Transmission Holdco in April 2014 to facilitate transmission investment by Xcel. XEST also states that Xcel Energy Transmission Holdco currently has two wholly owned subsidiaries – XEST and Xcel Energy Transmission Development

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<sup>2</sup> *Id.* P 336.

<sup>3</sup> *See Sw. Power Pool, Inc.*, 144 FERC ¶ 61,059 (2013), *order on reh'g and compliance*, 149 FERC ¶ 61,048 (2014).

<sup>4</sup> 16 U.S.C. § 824d (2012).

Company, LLC (XETD).<sup>5</sup> XEST states that its primary focus is on participating in SPP's Order No. 1000 regional transmission planning and competitive solicitation process. XEST states that it does not currently own operational transmission facilities.<sup>6</sup>

4. XEST states that it is submitting the formula rate template for ultimate inclusion in Attachment H of SPP's Tariff, and that costs will not flow through the formula rate template to transmission customers until XEST becomes an SPP transmission owner. XEST explains that the formula rate template consists of two parts: (1) a formula rate template, which will calculate, on a project-by-project basis, an annual transmission revenue requirement (ATRR) that will be recoverable through the SPP Tariff; and (2) an Annual True-Up, Information Exchange and Challenge Procedures. XEST also proposes depreciation rates that are principally based on the depreciation rates of Northern States Power-Minnesota (Northern States), an operating company of Xcel Energy, Inc. (Xcel).<sup>7</sup>

5. XEST is also seeking, pursuant to section 205 of the FPA, an initial fixed or "hypothetical" capital structure of 55 percent equity and 45 percent long-term debt. In addition, XEST requests authorization to defer as a regulatory asset its costs prudently incurred prior to its rates taking effect, but which are not capitalized, including pre-commercial and formation costs. XEST states that it is not pursuing these incentives under section 219 of the FPA or Order No. 679.<sup>8</sup> XEST also requests a base ROE of 10.64 percent. Finally, pursuant to section 219(c) of the FPA, XEST requests a 50 basis point adder to its ROE for regional transmission organization (RTO) participation.

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<sup>5</sup> Transmittal at 4. XETD made a similar filing in Docket No. ER14-2752-000, and we address that filing in an order being issued contemporaneously with this order. See *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014).

<sup>6</sup> Transmittal at 4-5.

<sup>7</sup> *Northern States Power Company, a Minnesota Corporation*, Docket No. ER14-1325-000 (June 10, 2014) (delegated letter order); *Xcel Energy Servs., Inc.*, Docket No. ER08-224-000 (Jan. 4, 2008) (delegated letter order).

<sup>8</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

## **II. Notice of Filing and Responsive Pleadings**

6. Notice of XEST's filing was published in the *Federal Register*, 79 Fed. Reg. 53,700 (2014), with interventions and protests due on or before September 19, 2014.

7. The following entities filed timely motions to intervene: Transource Energy, LLC; Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC; South Central Municipal-Cooperative Network, LLC; Western Farmers Electric Cooperative; Arkansas Electric Cooperative Corporation; Tri-County Electric Cooperative Inc.; and West Texas Municipal Power Agency. On September 19, 2014, Occidental Permian, Ltd. (Occidental) and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed motions to intervene and protests, and Arkansas Electric Cooperative Corporation filed a motion to intervene and comments in support of Golden Spread's protest. On September 22, 2014, Ameren Services Company (Ameren) filed a motion to intervene out-of-time. On September 25, 2014, Central Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc. (collectively, New Mexico Cooperatives) filed a motion to intervene out-of-time and protest. On October 6, 2014, XEST filed a motion for leave to answer and answer. On October 14, 2014, Golden Spread and New Mexico Cooperatives jointly filed a motion to lodge. On October 16, 2014, XEST filed a motion to strike or disregard Golden Spread's and New Mexico Cooperatives' motion to lodge. On October 21, 2014, Occidental filed a motion for leave to answer and answer.

## **III. Discussion**

### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the late-filed motions to intervene of Ameren and New Mexico Cooperatives given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept XEST's answer because it provides information that assisted the Commission in its decision-making process. We accept Golden Spread and New Mexico Cooperatives' motion to lodge as it provides information that assisted us in our decision-making process. Because we accept Golden Spread and New Mexico Cooperatives' motion to lodge, as discussed below, we also accept XEST's motion to strike or disregard the motion to lodge. We also accept Occidental's answer.

## **B. Substantive Matters**

10. As discussed below, we conditionally accept XEST's proposed formula rate template and protocols, grant its requests for a hypothetical capital structure and regulatory asset treatment of certain costs, subject to a compliance filing as described below and set for hearing and settlement judge procedures XEST's proposed base ROE. The Commission has accepted formula rates for nonincumbent transmission developers prior to the construction of transmission facilities.<sup>9</sup> Although the formula rate template and protocols in this case do not yet apply to a specific project, we find that conditional acceptance of the proposed formula rate template, protocols, and the specific incentives requested in this filing are consistent with Commission precedent and with the objectives of Order No. 1000.

### **1. Capital Structure**

#### **a. Proposal**

11. XEST proposes an initial fixed or "hypothetical" capital structure of 55 percent equity and 45 percent long-term debt, pursuant to section 205, and not as an "incentive" pursuant to section 219 and Order No. 679. XEST states that, once it owns commercially operational transmission facilities, it will target an actual capital structure of approximately 55 percent equity and 45 percent long-term debt, and its actual capital structure will be used in the formula rate template. XEST states that its proposed capital structure should allow XEST to achieve reasonable costs of capital and is similar to the target capital structures set by many other transmission-only entities. XEST contends that its requested capital structure will place XEST on an equal footing with other transmission-only companies so that it can compete for projects in SPP's Order No. 1000 competitive solicitation process.<sup>10</sup>

12. XEST states that, due to the challenge of raising capital, XEST's actual capital structure may deviate from its target. XEST explains that it will initially receive equity infusions and intra-company loans from its parent, Xcel Energy Transmission Holdco. XEST states that a fixed 55 percent equity and 45 percent debt capital structure will help XEST achieve a strong credit profile and support an investment grade credit rating, which

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<sup>9</sup> See, e.g., *Transource Missouri, LLC*, 141 FERC ¶ 61,075 (2012); *RITELine Illinois LLC*, 137 FERC ¶ 61,039 (2011) (*RITELine*); *Green Power Express LP*, 127 FERC ¶ 61,031 (2009) (*Green Power Express*).

<sup>10</sup> Transmittal at 13.

will in turn demonstrate that XEST is a sufficiently creditworthy entity, enabling it to secure additional loans.<sup>11</sup>

13. XEST argues that its proposed hypothetical capital structure is just and reasonable, and, in contrast, that the use of XEST's actual capital structure, which may be highly volatile in this early development stage, would be unreasonable and could undermine XEST's ability to secure credit and investment at a reasonable cost. XEST further states that, in recent incentives cases issued pursuant to section 219, the Commission has approved the use of such an initial fixed, or "hypothetical," capital structure for other newly formed transmission companies.<sup>12</sup>

**b. Protests**

14. Occidental objects to XEST's request for a hypothetical capital structure and argues that XEST seeks to obtain section 219 and Order No. 679 transmission incentives without making the required showings. Occidental states that the Commission, in Order No. 679, established incentive-based rate treatments to encourage transmission infrastructure investment intended to promote bulk power transmission system reliability and reduce transmission congestion. Occidental further argues that, to qualify for transmission incentives under section 219 and Order No. 679, there must be a nexus between the incentive sought and the investment being made such that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant in undertaking the project.<sup>13</sup> Occidental contends that, even though XEST cannot demonstrate such a nexus since it does not identify any specific transmission projects in its filing, it still seeks to obtain the incentive benefits available under Order No. 679, while claiming that it is only submitting its formula rate filing under section 205. Occidental also observes that XEST relies on Commission precedent under section 219 and Order No. 679.<sup>14</sup> However, Occidental argues that, if XEST is not seeking transmission incentives under Order No. 679 as it claims, it cannot rely on Order No. 679

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<sup>11</sup> *Id.* at 13-14.

<sup>12</sup> *Id.* at 14 (citing *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 76 (2012); *RITELine*, 137 FERC ¶ 61,039 at P 131; *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 55 (2008) (*PATH*), *reh'g granted in part and denied in part*, 133 FERC ¶ 61,152 (2010)).

<sup>13</sup> Occidental Protest at 6 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21).

<sup>14</sup> *Id.* (citing Transmittal at 14).

precedent to support its rate treatment requests, as it has not met the Order No. 679 nexus standards.

15. Golden Spread contends that, once XEST “implements its actual capital structure” upon owning operational transmission facilities, XEST’s capital structure should: (1) be based on 13-month average balances; and (2) include a 55 percent cap on equity. Golden Spread argues the 13-month average capital structure is consistent with XEST’s intent to use 13-month balances for plant in its rate base and with the Commission’s regulations.<sup>15</sup> Golden Spread contends that XEST’s capital structure will face potential volatility until XEST reaches a level of capitalization where the capital infusion caused by large projects becomes smaller relative to total capitalization. Golden Spread argues that ratepayers should not bear the risk of potentially higher capital costs due to uncertainty regarding XEST’s ability to manage its capital structure. Further, Golden Spread asserts that it is just and reasonable to cap XEST’s equity capital component of its capital structure at its target of 55 percent.<sup>16</sup>

**c. Answers**

16. XEST disputes Occidental’s claim that XEST seeks a fixed capital structure as a rate incentive under section 219 and Order No. 679 without making the required showings.<sup>17</sup> XEST contends that Occidental appears to be arguing that XEST’s proposed capital structure cannot be shown to be just and reasonable under section 205 because such a fixed capital structure would be similar to the capital structures that the Commission has approved for other utilities as rate incentives under section 219 and Order No. 679. XEST argues that, although the Commission identified various rate-making tools that could be deployed as rate incentives in Order No. 679, these same rate-making tools existed before the passage of section 219<sup>18</sup> and are not “off-limits” for purposes of establishing just and reasonable rates under section 205. XEST argues that it showed that its proposed capital structure is just and reasonable under section 205 and

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<sup>15</sup> Golden Spread Protest at 47-48 (citing 18 C.F.R. § 35.13(h)(4)(i) (2014)).

<sup>16</sup> *Id.* at 50. (citing *Alabama-Tennessee Nat. Gas Co.*, 38 FERC ¶ 61,251 (1987), (*Alabama-Tennessee*), *reh’g granted in part and denied in part*, 40 FERC ¶ 61,244 (1987)).

<sup>17</sup> XEST Answer at 3 (quoting Occidental Protest at 5).

<sup>18</sup> *Id.* at 4 (citing *Va. Elec. & Power Co.*, 125 FERC ¶ 61,391, at P 27 (2008); *Am. Elec. Power Serv. Corp.*, 104 FERC ¶ 61,013, at P 24 (2003), *reh’g denied*, 105 FERC ¶ 61,081 (2003)).

Occidental provides no factual or legal basis challenging this showing. XEST notes that the Commission's preference is for a company to use its actual capital structure; however, using a hypothetical capital structure is an option when setting rates under section 205.

17. XEST states that, for transmission developers that do not own operational transmission facilities, but plan to develop such facilities, the use of an actual capital structure may be volatile and unrepresentative of a target capitalization consistent with industry norms and can impose additional costs on the utility and customers. In contrast, XEST argues that a fixed capital structure for rate-making avoids volatility in cash flows, can result in lower debt costs, and provides a foundation for "receiving and maintaining an investment grade credit rating profile."<sup>19</sup> XEST avers that, even though the Commission recently applied this principle in the context of Order No. 679 rate incentive cases, the underlying factual conclusions are not limited to the context of Order No. 679 and remain true in this case. XEST states that its proposed initial fixed capital structure is just and reasonable under section 205 because it: (1) enables XEST to fully participate in the SPP Order No. 1000 process; and (2) is comfortably within the range of actual capital structures for SPP members.<sup>20</sup>

18. XEST objects to Golden Spread's proposal that XEST's actual capital structure should be capped at 55 percent equity, once XEST starts using its actual capital structure. XEST argues that it demonstrated that its capital structure is likely to be volatile until its first transmission project goes into operation, and Golden Spread fails to substantiate the claim that XEST's actual capital structure is likely to be volatile after that date. XEST notes that the Commission has repeatedly recognized that capital structure volatility is likely to harm a transmission developer—up until the point the developer's first project goes into service,<sup>21</sup> and posits that the Commission has never been swayed by arguments that capital structure volatility warrants fixing a utility's capital structure after the developer's project first goes into operation.

19. XEST maintains that, even if Golden Spread is correct in asserting that XEST's actual capital structure will remain volatile after XEST's first transmission facility goes into commercial operation, Golden Spread's proposal to cap XEST's equity ratio is an

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<sup>19</sup> *Id.* at 5 (citing *Transource Missouri, LLC*, 143 FERC ¶ 61,104, at P 66 (2013); *PATH*, 122 FERC ¶ 61,188 at P 55).

<sup>20</sup> *Id.* (citing Exhibit No. XES-200, Direct Testimony of George E. Tyson, II at 10-12).

<sup>21</sup> *Id.* at 6 (citing *Ameren Servs. Co.*, 135 FERC ¶ 61,142, at P 72 (2011); *Green Power Express*, 127 FERC ¶ 61,031 at P 76).

unreasonable and unjustifiable way to respond to such volatility. Specifically, XEST argues that Golden Spread's proposed rate mechanism would require XEST's actual capital structure to move down in response to downward volatility, but bar it from moving up in response to upward volatility, which is not reasonable.

20. XEST distinguishes the one case Golden Spread cites, *Alabama-Tennessee*,<sup>22</sup> by stating that the case addressed an actual capital structure that was "anomalous" where the natural gas pipeline's 95 percent equity level was judged to be too high,<sup>23</sup> which established the basis for the Commission to set the pipeline's equity ratio at a level lower than the company's actual capital structure. XEST states that, in contrast, Golden Spread's concern is that the equity component of XEST's actual capital structure may be volatile. XEST also notes that the Commission in *Alabama-Tennessee* did not establish an anticipatory equity cap.<sup>24</sup> XEST argues that Golden Spread seeks to establish an anticipatory equity cap on XEST's actual capital structure, based solely on its speculation that XEST's actual capital structure might be volatile in the future, and Golden Spread has not and cannot make the showing needed to justify an equity cap.

21. Occidental, in its answer, argues that XEST, even with its additional arguments, should not be eligible for the regulatory asset and hypothetical capital structure incentives under section 205. Occidental contends that XEST has not cited any examples of the Commission granting such incentives for new transmission – only public utilities without any assets currently in service – and in fact only cites cases filed pursuant to section 219. Occidental also points out that the Commission has stated that the amount of risk faced by a company contributes to the Commission's determination of the ROE and not of the capital structure.<sup>25</sup>

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<sup>22</sup> *Id.* at 7 (citing *Alabama-Tennessee*, 38 FERC ¶ 61,251).

<sup>23</sup> *Id.* (citing *Alabama-Tennessee*, 38 FERC at 61,845, 61,489-50).

<sup>24</sup> *Id.* (citing *Williston Basin Interstate Pipeline Co.*, 84 FERC ¶ 61,081, at 61,377-77 (1998), *reh'g granted in part and denied in part*, 87 FERC ¶ 61,264 (1999), *reh'g granted in part and denied in part*, 88 FERC ¶ 61,301 (1999)).

<sup>25</sup> Occidental Answer at 2-3 (citing *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 196 (2014) (*ABATE v. MISO*)).

**d. Commission Determination**

22. We grant XEST's section 205 request to use a hypothetical capital structure consisting of 55 percent equity and 45 percent debt prior to its first transmission project going into service. We disagree with Occidental's contention that XEST has inappropriately requested incentives through section 205 that it should request and support pursuant to section 219. The Commission has previously held that incentives identified in Order No. 679 can also be granted under the Commission's section 205 authority under certain circumstances, such as to promote important public policy goals.<sup>26</sup> Here, we find that granting the requested hypothetical capital structure furthers the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process, thereby encouraging competition.<sup>27</sup> Nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers. Therefore, allowing nonincumbent transmission developers to utilize a hypothetical capital structure would help level the playing field between incumbent and nonincumbent transmission developers in the Order No. 1000 competitive solicitation process. We note that the Commission has previously granted hypothetical capital structures to transmission-only companies under section 205.<sup>28</sup> The Commission has also approved, without reference to Order No. 679 incentives, hypothetical capital structures for transmission revenue requirements of public power RTO members<sup>29</sup> and entities that have relied on non-equity financing to finance a transmission project.<sup>30</sup> We note that the Commission's policy goal

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<sup>26</sup> See *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008); see also *S. Cal. Edison Co.*, 133 FERC ¶ 61,107 (2010).

<sup>27</sup> See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 87 (“[T]he Commission seeks to make it possible for nonincumbent transmission developers to compete in the proposal of more efficient or cost-effective transmission solutions.”).

<sup>28</sup> See, e.g., *Morongo Transmission LLC*, 148 FERC ¶ 61,139 (2014); *W. Area Power Admin.*, 99 FERC ¶ 61,306, *reh'g denied*, 100 FERC ¶ 61,331 (2002), *aff'd sub nom. Pub. Utils. Comm'n of the State of Cal. v. FERC*, 367 F.3d 925 (D.C. Cir. 2004); *Mich. Elec. Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003).

<sup>29</sup> *City of Vernon, California*, 109 FERC ¶ 63,057, at PP 110-19 (2004), *aff'd*, 111 FERC ¶ 61,092 (2005).

<sup>30</sup> *Morongo Transmission LLC*, 148 FERC ¶ 61,139 at P 18.

of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, XEST may only apply the hypothetical capital structure incentive to projects that are developed through Order No. 1000 competitive solicitation processes.

23. A hypothetical capital structure will provide XEST with the formula inputs needed to determine the rate for allowance for funds used during construction (AFUDC), which will improve the predictability of XEST's AFUDC accrual and its overall project costs.<sup>31</sup> This improved predictability of costs will assist XEST in making informed bids in SPP's Order No. 1000 competitive solicitation process. Further, if XEST submits a later request to include construction work in progress (CWIP),<sup>32</sup> a hypothetical capital structure will improve cash flow predictability during the construction period. Such cash flow predictability could assist XEST in raising capital at more reasonable costs.

24. With respect to Golden Spread's contention that the actual capital structure used after XEST's first transmission project goes into service should be based on 13-month average balances rather than year end balances, we find that the capital structure components should not be based on year end balances, because that may not be representative of the capital structure during the entire forward-looking period. We, therefore, direct XEST to propose another methodology, such as using an average of beginning and end of year balances or 13-month average balances, to address these concerns.

25. We also disagree with Golden Spread's proposal that the capital structure be capped at 55 percent equity. The stated intent of an applicant to target a given capital structure does not justify setting the applicant's target equity percentage as a cap. Potential volatility in a transmission owner's capital structure also does not justify such a cap, as suggested by Golden Spread. The Commission recently rejected a proposed cap

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<sup>31</sup> See Electric Plant Instruction No. 3 Components of Construction Cost, (A)(17) Allowance for Funds Used During Construction.

<sup>32</sup> XEST is not seeking to include CWIP in rate base at this time, but has indicated that it may request such an incentive in the future and has included a placeholder in its formula rate template if it seeks and is granted this incentive in the future. See Transmittal at 2; Exhibit No. XES-200, Direct Testimony of George E. Tyson, II at 10.

on transmission owner capital structures, stating that “the Commission has never capped the capital structures used for ratemaking at a particular numerical value.”<sup>33</sup>

**2. Request for Authorization to Establish Regulatory Asset**

**a. Proposal**

26. XEST seeks to defer as a regulatory asset its prudently incurred costs that are not capitalized, such as pre-commercial and formation costs. XEST claims that, in order to participate in SPP’s Order No. 1000 competitive solicitation process, a company must be formed earlier and incur costs well in advance of being selected to develop a transmission project. XEST states that it began to incur pre-commercial and formation costs in 2014 even though XEST’s first transmission project, if it emerges from SPP’s Order No. 1000 process, cannot be identified until late 2015 at the earliest. XEST also notes that, as a result of Order No. 1000’s timing requirements, XEST has incurred these costs too early to qualify for project-specific incentive rate treatment pursuant to section 219. XEST requests that these costs be considered eligible for recovery in rates to be collected after XEST wins and develops transmission projects and XEST’s rate goes into effect. XEST notes that the Commission has issued orders confirming that RTO-formation costs are eligible for recovery in rates to be collected after the RTO is formed. XEST argues that, without a Commission order granting XEST’s request, it may be more difficult to recognize a regulatory asset for pre-commercial and formation costs for generally accepted accounting principles financial reporting purposes, which would impose a real financial burden on XEST. XEST recognizes that, at the time it seeks to amortize and collect the regulatory asset account through rates, it will need to make another section 205 filing.<sup>34</sup>

27. XEST states that, when the regulatory asset is recognized, it will accrue carrying costs at a rate equal to its AFUDC on the unamortized cost balances, including the balance of deferred carrying costs, until a rate is first charged by XEST through the SPP Tariff. XEST requests the Commission grant an effective date of November 1, 2014 for establishment of this regulatory asset incentive.<sup>35</sup>

28. In the alternative, XEST asks that the Commission confirm that, if in the future XEST files a request for a regulatory asset rate incentive, nothing in this proceeding will

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<sup>33</sup> *ABATE v. MISO*, 149 FERC ¶ 61,049 at P 193.

<sup>34</sup> Transmittal at 18-20.

<sup>35</sup> *Id.* at 20.

bar XEST from including, within the scope of that request for incentives, a request to recover all prudently incurred costs not capitalized, such as pre-commercial and formation costs, including costs dating back to 2014.<sup>36</sup>

**b. Protest**

29. Occidental asserts that the Commission made certain incentives available pursuant Order No. 679, including recovery of pre-commercial expenses. Occidental argues that, under section 219 and Order No. 679, there must be a nexus between the incentive sought and the investment being made.<sup>37</sup> Occidental asserts that XEST is seeking to obtain incentive benefits available under Order No. 679 without making the necessary demonstrations, while claiming that it is only submitting its formula rate template filing under section 205. Occidental further alleges that XEST is comparing itself to an RTO to justify recovery of costs for which it otherwise would not be eligible.

**c. Answer**

30. XEST disputes Occidental's claims that XEST is "seeking to obtain" a regulatory asset determination as a rate incentive under section 219 and Order No. 679 "without making the required showings"<sup>38</sup> and states that the fact that a longstanding rate-making tool qualifies as a potential rate incentive under Order No. 679 does not permanently bar that rate-making tool from being applied in the context of a section 205 filing.

31. XEST states that it made clear that its request for regulatory asset treatment is not a request for rate incentives under Order No. 679, and the Commission has a long history of using deferred cost recovery mechanisms in contexts unrelated to Order No. 679. XEST claims that such mechanisms recognize that there are instances when costs incurred in one time period provide benefits in a later time period, such as costs associated with forming a new business.<sup>39</sup>

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<sup>36</sup> *Id.* at 20-21.

<sup>37</sup> Occidental Protest at 5-6 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21).

<sup>38</sup> XEST Answer at 8 (citing Occidental Protest at 5).

<sup>39</sup> *Id.* (citing *Am. Elec. Power Serv. Corp.*, 104 FERC ¶ 61,013 at P 23; *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012, at P 50 (2004), *reh'g granted in part and denied in part*, 110 FERC ¶ 61,234 (2005), *petitions for review dismissed sub nom. Va. State Corp. Comm'n v. FERC*, 468 F.3d 845 (D.C. Cir. 2006)).

32. XEST states that Occidental mistakenly criticizes XEST for comparing itself to an RTO, and instead argues that it compared itself to the individual utilities that incurred costs in one time period (during RTO formation), but did not accrue the associated benefits until later time periods (after RTO operation). XEST contends that it similarly is incurring business formation and other costs now, but that the associated benefits will accrue to consumers when XEST's transmission facilities are in service. XEST concludes that, like individual utilities that incurred RTO formation costs, XEST should be allowed to seek and receive from the Commission a rate determination confirming its ability to seek recovery of current costs through future filings.<sup>40</sup>

**d. Commission Determination**

33. We grant XEST's request to defer as a regulatory asset all of its prudently incurred costs that are not capitalized, such as pre-commercial and formation costs. The Commission has granted regulatory asset incentives requested under section 205 in the past.<sup>41</sup> We disagree with Occidental's assertion that XEST is seeking Order No. 679 incentives without having to demonstrate a nexus between the incentive sought and the investment being made. Granting this request under section 205 is appropriate because it furthers the policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process. Nonincumbent transmission developers wishing to bid on regional transmission projects in SPP's competitive solicitation process must incur early pre-commercial and formation costs, but because they do not have plant in service and/or rates in effect, they do not have a mechanism to recover these costs as they are incurred, as do incumbent transmission owners whose transmission planning-related costs are expensed to transmission operations and maintenance accounts that are typically included in transmission formula rates. We note that the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, XEST may only apply the regulatory asset incentive to projects that are developed through Order No. 1000 competitive solicitation processes.

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<sup>40</sup> *Id.* at 9.

<sup>41</sup> *See, e.g., ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 74 (2009) (allowing the deferral of project specific start-up and development costs through a regulatory asset where incentive was not requested under Order No. 679).

34. We also approve XEST's request to accrue a carrying charge from the effective date of the regulatory asset and to apply this carrying charge to any amounts recorded in this regulatory asset account. Also, we direct XEST to restrict the compounding of carrying charges to no more frequently than semi-annually. Although, as discussed below, we find that XEST's proposed formula rate template and protocols will become effective on the date on which it files at the Commission to include them in the SPP Tariff, we find that XEST may establish the regulatory asset and begin accruing a carrying charge on the requested effective date of November 1, 2014.

35. However, while in this order we provide XEST with the ability to record its prudently incurred costs as a regulatory asset, XEST must make a section 205 filing to demonstrate that the pre-commercial and formation costs are just and reasonable. In that filing, XEST must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein, and entities will be able to challenge the reasonableness of costs at that time. Until XEST is issued a Notice to Construct by SPP, rendering it eligible to recover costs through the SPP Open Access Transmission Tariff, it is unclear whether XEST will have any customers from which to recover its regulatory asset.

### **3. Accounting Treatment**

#### **a. Proposal**

36. XEST states that its financial books and records will reflect the assets, liabilities, equity, and results of operations for XEST. XEST proposes to use the accrual method of accounting as required by generally accepted accounting principles to record revenues and expenses. Although XEST will be a pass-through entity and will not directly pay income taxes on earnings, it will maintain its books of account based on the Uniform System of Accounts as if it were a taxable corporation. All services provided to XEST by Xcel Energy Services will be priced at cost, as will all goods and services provided to XEST by the Xcel Energy Operating Companies.<sup>42</sup>

37. Also, XEST states that it will incur both native costs, which it expects to consist primarily of billings from third parties pursuant to contracts entered into by XEST, and direct and allocated costs from its affiliates. According to XEST, it will not initially have any employees and so will have all of its services provided by its affiliates. XEST states that all costs that can be directly charged to XEST will be charged to XEST. XEST

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<sup>42</sup> Transmittal at 17-18; Exhibit No. XES-300, Direct Testimony of Michael J. Rodriguez at 6.

further states that allocated costs are comprised of its allocated share of centrally managed services that benefit all of its affiliates. XEST states that Xcel Energy Services has procedures in place for allocating these types of costs to companies and that all services provided to XEST will be priced at cost. XEST further states that costs incurred by Xcel Energy Transmission Holdco on behalf of both XEST and XETD will be charged evenly to both XEST and XETD.<sup>43</sup>

**b. Commission Determination**

38. 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 or direct-billing of those costs in a compliance filing.<sup>44</sup> In addition, to the extent there are sales of non-power goods and services among affiliates, we remind XEST of its obligations under section 35.44 (b)(1) of the Commission's Regulations.<sup>45</sup>

**4. Base ROE and RTO Participation ROE Adder**

**a. Proposal**

39. XEST requests a base ROE of 10.64 percent. XEST explains that it calculated this ROE by using the two-step discounted cash flow (DCF) method put forward by the Commission in Opinion No. 531, in addition to the results of risk premium, capital asset pricing model, and expected earnings analyses.<sup>46</sup> XEST contends that the median value of the DCF analysis, 8.7 percent, is too low to be reasonable. XEST states that the results

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<sup>43</sup> Exhibit No. XES-300, Direct Testimony of Michael J. Rodriguez at 4-6.

<sup>44</sup> *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 151 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at PP 39-42, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) (describing Commission's authority to require the filing of cost-allocation agreements).

<sup>45</sup> 18 C.F.R. § 35.44(b)(1) (2014).

<sup>46</sup> Exhibit No. XES-500, Direct Testimony of Adrien M. McKenzie at 11-13 (citing *Martha Coakley, Mass. Attorney Gen. v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014)).

of its other analyses support placing the ROE at the midpoint between the median and the top end of the results as the Commission did in Opinion No. 531.<sup>47</sup>

40. XEST also requests a 50 basis point ROE adder for participation in SPP pursuant to section 219 of the FPA. XEST's ROE witness, Mr. McKenzie, contends that the resulting 11.14 percent ROE falls well within the range of reasonableness established by the two-step DCF analysis.<sup>48</sup> XEST argues that this incentive is distinct from incentives related to the construction of new facilities. It notes that, in Order No. 679, the Commission stated that it will approve the RTO participation ROE adder "for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization."<sup>49</sup> XEST explains that it will become a transmission-owning member of SPP as soon as it constructs or acquires its first transmission project that forms part of the SPP transmission system, or is granted a Notice to Construct by SPP, and XEST will turn over operational control of its transmission facilities to SPP at the time they become operational.

**b. Protests**

41. Occidental argues that XEST has not shown how a base ROE calculation based on a "current" cost of equity represents a just and reasonable ROE for when/if XEST is selected by SPP to construct an unknown transmission project at some undetermined time in the future. Specifically, Occidental avers that it is highly likely that what XEST claims are "anomalous capital market conditions" today<sup>50</sup> can be expected to be different, perhaps substantially different, some years in the future when XEST may actually construct transmission facilities. Occidental notes that recent increased activity by investors in the stock markets raises a serious question as to XEST's claim that there is a "flight to safety" that warrants a higher base ROE. Occidental also observes that the Federal Reserve announced that it would maintain short-term interest rates near zero for a "considerable time," and the Dow Jones Industrial Average reached a new record high,<sup>51</sup>

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<sup>47</sup> Transmittal at 12 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 142).

<sup>48</sup> *Id.* at 12-16.

<sup>49</sup> *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326, *order on reh'g*; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86).

<sup>50</sup> Occidental Protest at 3 (citing Exhibit No. XES-500, Direct Testimony of Adrien M. McKenzie at 19-25).

<sup>51</sup> *Id.* at 4 (citing *S&P Closes Above 2000 for First Time*, THE WALL STREET JOURNAL, Aug. 26, 2014; *Dow Closes at Record as Fed Reassures on Rates*, THE WALL

thus undercutting the claim of the existence of an “anomalous capital market condition.” Further, Occidental posits that there is no assurance or even a reasonable basis to predict that, once certain of the “anomalous capital market conditions” identified by XEST have ended, the median value in the two-step DCF methodology for determining a public utility’s ROE will rise, especially to the high level sought by XEST.

42. Similarly, New Mexico Cooperatives argue that a fixed ROE for XEST that reflects current market conditions cannot be just and reasonable when applied to cost recovery for projects whose costs may not be incurred for many years after the end of this proceeding.<sup>52</sup>

43. Golden Spread and New Mexico Cooperatives also allege that XEST’s proposed base ROE is substantially over-stated and was developed using a flawed methodology.<sup>53</sup> Golden Spread alleges that Mr. McKenzie’s ROE recommendation is based on a convoluted amalgam of 13 different analyses designed to inflate the base ROE above the point of central tendency calculated using the Commission’s two-step, constant growth DCF.<sup>54</sup> Golden Spread contends that the base ROE should be 8.67 percent, the median of XEST’s DCF results after excluding Portland General Electric Company (Portland).<sup>55</sup> Golden Spread contends that it is inappropriate in this case to set the ROE at the midpoint of the upper range as the Commission did in Opinion No. 531 because XEST is just one transmission owner while the ISO New England Transmission Owners comprised a group of transmission owners.<sup>56</sup> Golden Spread further argues that the anomalous conditions that caused the Commission to set the ISO New England Transmission Owners’ ROE in the top half of the range are no longer present and cites to indicators showing that the economy has improved.<sup>57</sup> Golden Spread cites to lower bond yields as reason not to set the allowed ROE anywhere other than the median of the proxy group DCF results.

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STREET JOURNAL, Sept. 17, 2014).

<sup>52</sup> New Mexico Cooperatives Protest at 24.

<sup>53</sup> Golden Spread Protest at 10-11; New Mexico Cooperatives Protest at 8-9.

<sup>54</sup> Golden Spread Protest at 11.

<sup>55</sup> *Id.* at 23, 41-42.

<sup>56</sup> *Id.* at 23-24.

<sup>57</sup> *Id.* at 24 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 145).

44. Golden Spread argues that the DCF analysis relied on by XEST departs from the Commission's guidance in Opinion No. 531 in ways designed to inflate the ROE. Specifically, Golden Spread alleges that it was improper for Mr. McKenzie to use the "short-term" Institutional Broker Estimate Services growth rates and their subsequent conversion to dividend yields rather than the long-term composite growth rate as specifically reflected in the Commission's Appendix in Opinion No. 531. Golden Spread alleges that this has the effect of increasing the calculated ROE for most of the proxy companies, especially Portland. Golden Spread alleges that, if Mr. McKenzie used the composite growth rate, Portland's calculated ROE would have been four basis points lower, or 12.55 percent.<sup>58</sup>

45. Golden Spread contends that the methodology employed by the Commission in Opinion No. 531<sup>59</sup> assumes an eventual convergence to the growth rate of gross domestic product very far into the future. Golden Spread alleges that, if the growth rate of each proxy company were to converge to the long-term gross domestic product growth rate, the short-term rate would receive a lower 5/50 weighting and the long-term rate would get a much higher 45/50 weighting.<sup>60</sup> Golden Spread notes that Portland's ROE, which is the highest in the proxy group, is 194 basis points, or 18 percent higher than the next highest ROE – 10.65 percent – and that the high end ROE eliminated in the ISO New England case cited by Mr. McKenzie was only 14 percent higher than the next highest ROE in its proxy group.<sup>61</sup> Golden Spread contends that, even if Portland were included in the calculation, the base ROE should be 9.16 percent, the median of the upper half the proxy group ROEs.

46. Golden Spread contends that XEST erroneously failed to eliminate Portland's 12.59 percent ROE as a high end outlier from the DCF results and that adoption of a two-step DCF does not render high end outlier tests moot. Golden Spread contends that Portland should also be eliminated because the calculation of its investor-required return incorporates an illogical, anomalous 11.21 percent forecasted short-term growth rate. Golden Spread states that Portland's 11.21 percent growth rate is 421 basis points, or 60

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<sup>58</sup> *Id.* at 12-14.

<sup>59</sup> In Opinion No. 531, the Commission adopted a two-step DCF method for calculating ROEs that assigns relative weights of 1/3 to long-term projected growth in gross domestic product and 2/3 to short-term growth.

<sup>60</sup> *Id.* at 16-17.

<sup>61</sup> *Id.* at 17-18 (citing Exhibit No. XES-500, Direct Testimony of Adrien M. McKenzie, which cites *ISO New England, Inc.*, 109 FERC ¶ 61,147, at P 205 (2004)).

percent higher, than the next highest growth rate and 122 percent or 616 basis points higher than the sustainable growth rate calculated for Portland from Value Line projections in its May 2, 2014 report on Portland.<sup>62</sup> Golden Spread argues that a growth rate found to be illogical or unrepresentative of investor expectations should be excluded from the DCF model calculations, even if it is found to be within a “sustainable range.” Therefore, Golden Spread argues that Portland should be eliminated because its composite growth rate – 46 percent higher than the next highest composite growth rate – is unrepresentative of investor expectations.<sup>63</sup> Golden Spread contends that eliminating Portland would reduce the base ROE by 98 basis points to 9.66 percent, much nearer to the 9.16 percent median of the top half of the DCF results.<sup>64</sup> Golden Spread further asserts that eliminating Portland from the proxy group would still put XEST’s requested ROE above the zone of reasonableness.

47. Golden Spread argues that the median is a better measure of central tendency of the proxy group and should be used to set XEST’s ROE. Golden Spread states that the Commission adopted in Opinion No. 531 the same two-step DCF methodology it has long used in gas and oil pipeline cases. Golden Spread contends that, because the Commission uses the median of the proxy group DCF results to set the ROE in those cases, it should continue to do so here.<sup>65</sup> Golden Spread contends that the Commission has continued to find that applicants have a heavy burden of proof to show that their project’s risks substantially deviates from the proxy group average in order to justify setting the ROE above the median of the proxy group DCF results. Golden Spread contends that XEST is not likely to be viewed as more risky than the electric utility proxy group average because the Commission is likely to grant XEST the opportunity to recover its prudently incurred costs and a 55/45 capital structure.<sup>66</sup>

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<sup>62</sup> *Id.* at 19-20.

<sup>63</sup> *Id.* at 20.

<sup>64</sup> *Id.* at 18; *see id.* at 20-21.

<sup>65</sup> *Id.* at 25-26 (citing *El Paso Nat. Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 592 (2013); *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, *reh’g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *aff’d*, *CAPP v. FERC*, 254 F.3d 289; *Consol. Gas Supply Corp.*, 10 FERC ¶ 61,029, at 61,055-56 (1980)).

<sup>66</sup> *Id.* at 26-27.

48. Golden Spread argues that state-commission approved ROEs do not support XEST's requested 10.64 percent base ROE. Golden Spread notes that the Commission referenced state commission-approved ROEs and other alternative benchmarks in setting the ROE at the midpoint of the upper half of the range of reasonableness in Opinion No. 531. However, Golden Spread contends that as bond yields have fallen, state commission-allowed ROEs have fallen, although with a lag, and are expected to fall further. Golden Spread notes that the average state commission-approved ROE fell from 10.01 percent in 2012 to 9.72 percent for the first six months of 2014.<sup>67</sup> Golden Spread further notes that the average requested ROE before state commissions was 10.24 percent in the fourth quarter of 2013, lower than XEST's requested 10.64 percent, with the approved ROEs likely to be lower.<sup>68</sup> Golden Spread contends that Commission-approved ROEs for transmission rates should be lower than state commission-approved ROEs because state commission-approved ROEs cover higher risk activities and are subject to regulatory lag.<sup>69</sup>

49. Golden Spread further contends that Mr. McKenzie's additional analyses using non-DCF methodologies, specifically the risk premium, capital asset pricing model, and expected earnings methods, are ill-conceived and do not offer a reasonable basis for determining investors' required return for investing in the equity capital of a company like XEST. Golden Spread notes that the Commission refused to endorse these analytical models in Order No. 679 and has relied on DCF analyses for decades.<sup>70</sup> Further, Golden Spread notes that, while the Commission found certain alternative analyses to be informative in Opinion No. 531, it only used them to inform the just and reasonable placement of the ROE within the zone of reasonableness established by the DCF methodology.<sup>71</sup> Additionally, Golden Spread alleges several flaws in XEST's alternative benchmark analyses and contends that they produce little or no justification to place the

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<sup>67</sup> *Id.* at 27-28 (citing RRA Regulatory Focus, Major Rate Case Decisions – 2013, January 15, 2014, at 1; Regulatory Focus, Major Rate Case Decisions – January-June 2014, July 10, 2014, at 1).

<sup>68</sup> *Id.* at 26-27.

<sup>69</sup> *Id.* at 28-29.

<sup>70</sup> *Id.* at 30.

<sup>71</sup> *Id.* at 31 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 146).

point of central tendency in the upper half of the zone of reasonableness as was done in Opinion No. 531.<sup>72</sup>

c. **Answers and Motion to Lodge**

50. XEST contends that its requested 10.64 percent ROE is just and reasonable and should be established now. XEST contends that the Commission has never denied a utility's proposed ROE on the basis that the rate will apply in the future.<sup>73</sup> XEST argues that, if market conditions change in the future, interested parties will have rights under section 205 or 206<sup>74</sup> of the FPA by which to seek a change to XEST's stated base ROE. Further, XEST contends that a fixed ROE, like the one it is requesting, is consistent with all recent section 205 formula rate filings and Commission orders.<sup>75</sup>

51. XEST further argues that it is appropriate to set its ROE in the top half of the range as was done in Opinion No. 531. XEST contends that the economic conditions that led the Commission to place the ROE for the ISO New England Transmission Owners in the upper half of the range still persist. Specifically, XEST reiterates its assertion that current capital market conditions continue to reflect the legacy of the Great Recession and are not representative of what investors expect in the future.<sup>76</sup> XEST contends that the currently abnormally low interest rates combined with low-end DCF results that are barely above the Commission's low-end threshold pull down the range of reasonableness and the median that the Commission traditionally used to set ROE levels for individual utility risk.<sup>77</sup> XEST contends that using the median under the present circumstances would fail to meet *Bluefield* and *Hope* tests.

52. XEST argues that its use of Institutional Broker Estimate Services growth projections is appropriate and points out that that the Commission itself uses these growth

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<sup>72</sup> *Id.* at 32-42.

<sup>73</sup> XEST Answer at 23.

<sup>74</sup> 16 U.S.C. § 824e (2012).

<sup>75</sup> XEST Answer at 24 (citing *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 73 (2008)).

<sup>76</sup> *Id.* at 29 (citing Exhibit No. XES-500, Direct Testimony of Adrien M. McKenzie at 21).

<sup>77</sup> *Id.* at 30.

rate figures.<sup>78</sup> XEST further contends that Golden Spread's objection to XEST's calculation of dividend yield is baseless and immaterial. XEST contends that its calculation of dividend yields is consistent with Opinion No. 531, which only required using the short-term growth rate. XEST contends that the change to Portland's calculated ROE that would result from accepting Golden Spread's argument is only four basis points and immaterial.<sup>79</sup>

53. XEST contends that Portland should still be included in the proxy group and that its proxy group was established using criteria that comply fully with Commission policy and precedent. XEST contends that, contrary to Golden Spread's claims, the Commission in Opinion No. 531 found the "high-end outlier" issue moot in that case because the Commission adopted a two-step DCF methodology for determining the ROE for public utilities.<sup>80</sup> XEST argues that the previous high end outlier test was not dynamic, as asserted by Golden Spread, and that, even if the previous high end outlier screen still applied, Portland would not have been eliminated.<sup>81</sup>

54. XEST contends that it is an above-average-risk company when compared to other members of the proxy group. XEST argues that it does not yet own transmission facilities and is focused primarily on new transmission projects that need to be selected through SPP's competitive solicitation process and issued a notice to construct.<sup>82</sup> XEST argues that Golden Spread is incorrect in arguing that XEST is no more risky than other utilities in the proxy group, a contention that contradicts Golden Spread's own statements about XEST's potentially increased risks due to discounting.<sup>83</sup> XEST asserts that other utilities in the proxy group already own substantial assets and rights to build and own certain transmission projects, none of which XEST has.<sup>84</sup> XEST claims that the added

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<sup>78</sup> *Id.* at 27-28 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 89; *RITELine*, 137 FERC ¶ 61,039 at P 68; *N. Pass Transmission LLC*, 134 FERC ¶ 61,095, at P 46 (2011); *Pub. Serv. Elec. & Gas Co.*, 126 FERC ¶ 61,219, at P 62 (2009), *reh'g denied*, 131 FERC ¶ 61,208 (2010)).

<sup>79</sup> *Id.* at 37-38.

<sup>80</sup> *Id.* at 24 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 118).

<sup>81</sup> *Id.* at 25-26.

<sup>82</sup> *Id.* at 32.

<sup>83</sup> *Id.* at 32-34 (citing Golden Spread Protest at 7, 53).

<sup>84</sup> *Id.* at 33.

risks it faces support establishing an ROE at the middle of the top-half of the zone of reasonableness.<sup>85</sup> Similarly, XEST contends that Golden Spread's recommended base ROE of 8.67 percent is too low to be credible and would not offer investors a return comparable to those offered by other utilities of comparable risk.<sup>86</sup>

55. XEST also contends that, in setting its base ROE in the top half of the range, the proper point is the midpoint of the top half of the zone of reasonableness. XEST notes that Commission explained in Opinion No. 531 that, when "placing a base ROE above the central tendency of the zone of reasonableness, the Commission has in the past placed the base ROE at the midpoint of the upper half of the zone."<sup>87</sup> XEST argues that none of the Commission's reasoning in Opinion No. 531 supports a distinction between individual utilities or a group of utilities when deciding whether to use the median or the midpoint when setting the ROE in the top half of the range of reasonableness.<sup>88</sup> XEST asserts that there is no policy reason to use the median again when establishing a fair ROE within the top half of the range.<sup>89</sup> XEST further argues that Golden Spread's argument that the ROE should not be set in the upper half of the range of reasonableness should be dismissed as a collateral attack on Opinion No. 531.<sup>90</sup> XEST contends that its recommendation of an ROE at the midpoint of the top half of the range of reasonableness complies with Opinion No. 531 and prior precedent and suggests the Commission confirm the continued relevance and applicability of the "upper half" adjustment established in Opinion No. 531.<sup>91</sup>

56. In response to Golden Spread's criticisms of Mr. McKenzie's use of alternative ROE methodologies, XEST asserts that such methodologies were not the basis for XEST's proposed ROE calculations. XEST states that these methodologies merely

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<sup>85</sup> *Id.* at 34.

<sup>86</sup> *Id.* at 38-39.

<sup>87</sup> *Id.* at 34 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 152).

<sup>88</sup> *Id.* at 35 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 152 & n.307; *So. Cal. Edison Co.*, 92 FERC ¶ 61,070, at 61,266 (2000); *Consumers Energy Co.*, 85 FERC ¶ 61,100, at 61,363-64 (1998)).

<sup>89</sup> *Id.* at 36.

<sup>90</sup> *Id.* (citing Golden Spread Protest at 25).

<sup>91</sup> *Id.* at 37.

provided Mr. McKenzie with benchmarks with which to evaluate the results of the two-step DCF calculation as the Commission did in Opinion No. 531. XEST asserts that the Commission should take this opportunity to confirm the importance of applying these alternative methodologies to evaluate the results of the Commission's DCF methodology.<sup>92</sup>

57. Occidental, in its answer, contends that the Commission should not determine XEST's base return on equity at this time because it has not proposed any specific projects.<sup>93</sup>

58. In their Motion to Lodge, Golden Spread and New Mexico Cooperatives contend that a filing made to the Commission on October 6, 2014 in another proceeding demonstrates a major error in the data used to determine XEST's ROE. They state that recent testimony submitted by Dr. J. Randall Woolridge on September 25, 2014 in FERC Docket No. EL13-33 *et al*, regarding a pending ROE complaint in ISO New England, demonstrates that the high growth rate of Portland, which affects its calculated ROE and ultimately substantially raises the ROE resulting from the DCF analysis, was the result of an error that was later corrected by Thomson Reuters and subsequently corrected by *Yahoo!*. Specifically, Golden Spread and New Mexico Cooperatives contend that the 20.34 percent growth rate was in error and has been corrected to 7.8 percent.<sup>94</sup> Golden Spread and New Mexico Cooperatives ask to put these facts on the record and argue that XEST's requested ROE can thus not be accepted. Golden Spread also contends that it was surprised that XEST's answer did not address this new information.<sup>95</sup>

59. XEST, in its motion to strike Golden Spread and the New Mexico Cooperatives' Motion to Lodge, states that those parties present a single fact for consideration – the growth rate and ROE results for Portland. XEST argues that the Motion to Lodge attempts to selectively adjust the ROE based on a single point of data, which would be

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<sup>92</sup> *Id.* at 31.

<sup>93</sup> Occidental Answer at 3-4.

<sup>94</sup> Motion to Lodge at 2-3 (citing Woolridge Affidavit, Docket No. EL13-33-000, at 12-13).

<sup>95</sup> *Id.* at 3-4.

inconsistent with Commission guidance on ROE determinations<sup>96</sup> and is insufficient ground for Commission action in XEST's filing. XEST notes that the submitted data is not a document issued by a court, regulatory agency, or another neutral source but of a party challenging an ROE. XEST asserts that movants in one case should not be permitted to submit the affidavits and testimony filed by like-minded parties in pending cases, particularly if the information has not yet been accepted in the proceeding in which it was filed. XEST also argues that the remainder of the Motion to Lodge, which argues about this importance of this data point, is not proper for a motion to lodge. Finally, XEST argues that its answer responded to intervenors' specific arguments, such that the fact that it did not address the data point brought up in the Motion to Lodge should not have surprised Golden Spread and the New Mexico Cooperatives.

**d. Commission Determination**

60. Our preliminary analysis indicates that XEST's proposed base ROE has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept XEST's proposed ROE for filing, suspend it for a nominal period, to be effective November 1, 2014, as requested, subject to refund, and set it for hearing and settlement judge procedures.

61. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>97</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions.

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<sup>96</sup> Motion to Strike Motion to Lodge at 2 (citing *Bangor Hydro-Elec. Co.*, 117 FERC ¶ 61,129, at P 28 (2006) (noting the general Commission policy that "data inputs reflect a uniform time period" for the DCF calculation and citing *Consumer Advocate v. Allegheny Generating Co.*, Opinion No. 281, 40 FERC ¶ 61,117, at 61,316 (1987), as "requiring updated values to reflect both dividend yield and growth rate data."), *reh'g granted in part and denied in part*, 122 FERC ¶ 61,265 (2008), *clarified*, 124 FERC ¶ 61,136 (2008), *petition for review denied sub nom. Conn. Dept. of Pub. Util. Control v. FERC*, 593 F.3d 30 (D.C. Cir. 2010)).

<sup>97</sup> 18 C.F.R. § 385.603 (2014).

Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

62. We disagree with Occidental's contention that the Commission should not determine XEST's base ROE now because XEST has no projects. As noted above, we are acting on XEST's ROE at this time because it will facilitate XEST's participation in SPP's competitive solicitation process. The Commission has never required plant in service or proposed projects for determining base return on equity because the DCF analysis used to determine ROE does not require such input and develops the return on equity based a nationwide proxy group of utilities. We also note that XEST requests no ROE incentives based on the risks and benefits of specific projects. Although the Commission has not been presented with a request for an ROE determination prior to a description of potential projects, the Commission has provided up-front ROE certainty for transmission projects well in advance of the anticipated completion date of transmission projects when rates will take effect.<sup>98</sup>

63. Motions to lodge information from other proceedings may be appropriate in some instances to supplement the Commission's record,<sup>99</sup> and the Commission has discretion to accept or reject such filings.<sup>100</sup> The Commission will accept a motion to lodge because it provides information that assists in the decision-making process.<sup>101</sup> The Commission will not accept motions to lodge or similar filings when these filings contain information that is repetitive, outside the scope of the proceeding, or of no assistance in the decision-making process.<sup>102</sup> We are not persuaded by XEST's arguments in opposition to Golden Spread and New Mexico Cooperatives' motion. Although in *CMS Midland, Inc.*, which XEST cites, the Commission rejected a motion to lodge, that case involved a distinguishable situation where the filing was made after the 30-day request for rehearing

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<sup>98</sup> See, *Atlantic Grid Operations A LLC, et. al.*, 135 FERC ¶ 61,144 (2011) (granting an ROE to a transmission project well in advance of its projected in service date based on current information).

<sup>99</sup> *Barclays Bank PLC*, 143 FERC ¶ 61,024, at P 20 (2013).

<sup>100</sup> *High Prairie Pipeline, LLC v. Enbridge Energy, LP*, 149 FERC ¶ 61004, at P 34 (2014) (*High Prairie*) (citing *Pub. Serv. Co. of New Hampshire*, 56 FERC ¶ 61,105 (1991)).

<sup>101</sup> See, e.g., *Entergy Servs. Inc.*, 145 FERC ¶ 61,247, at P 23 (2013).

<sup>102</sup> *High Prairie*, 149 FERC ¶ 61,004 at P 34 (citations omitted).

period had lapsed.<sup>103</sup> The Commission found that it had no statutory authority to waive the jurisdictional requirement by extending the time for filing rehearing materials.<sup>104</sup> In this proceeding, there is no jurisdictional requirement that would prohibit our accepting the motion to lodge. Therefore, we accept Golden Spread and New Mexico Cooperatives' motion to lodge, as it has provided information that assisted us in the decision-making process.

64. Finally, consistent with previous Commission orders,<sup>105</sup> we grant XEST's request for a 50 basis point incentive ROE adder for its participation in SPP.

## 5. Depreciation Rates

### a. Proposal

65. XEST explains that it has no direct historical data to perform a depreciation study because it has no specific proposed projects at this time. Instead, XEST proposes to use depreciation rates that are in large part identical to the depreciation rates currently in effect for Northern States, another Xcel subsidiary.<sup>106</sup> XEST states that the Northern States facilities are a good proxy for the transmission facilities that XEST is likely to own in the future. Specifically, XEST states that it plans to rely on the same service providers as Northern States and follow the same practices when constructing, operating, and maintaining its own facilities in the future. In addition, XEST notes that the Northern States facilities cover the largest number of states, making them a good proxy for XEST, which could own facilities anywhere in the SPP region. XEST also states that it needs additional categories of depreciation rates that Northern States does not require, therefore

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<sup>103</sup> *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991).

<sup>104</sup> *Id.* The Commission also noted that motions to lodge can be proper pleadings under appropriate circumstances. *Id.* at 61,624.

<sup>105</sup> *See, e.g., MidAm. Transco Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri, LLC*, 141 FERC ¶ 61,075 at P 75.

<sup>106</sup> XEST references the depreciation rates accepted by the Commission in Docket No. ER14-1325-000, involving an interchange agreement between Northern States and Northern States Power Company of Wisconsin. These depreciation rates were supported by depreciation studies submitted to the state public utility commissions in Minnesota, North Dakota, and South Dakota. Transmittal at 16 n.74.

XEST derived the rates from other Xcel Operating Companies' Commission-approved depreciation rates.<sup>107</sup>

**b. Commission Determination**

66. We accept XEST's proposed depreciation rates. We recognize that, because XEST's transmission facilities have yet to be identified, there is no historical data to support a depreciation study. In the past, the Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission joint venture start-up, and we do so here.<sup>108</sup> We find that, as Northern States is an affiliate company with numerous transmission facilities, Northern States' depreciation rates are an appropriate proxy for XEST to adopt in determining its proposed depreciation rates.

**6. Formula Rate Template and Protocols**

**a. Proposal**

67. XEST requests Commission approval of its formula rate template, which tracks increases and decreases in cost and investment. XEST notes that it will forecast the net revenue requirement for each year, including any discount, and assess the resulting rate in the same year pursuant to the SPP Tariff.<sup>109</sup> XEST explains that it forecasts average rate base balance and annual expenses for the subsequent year by October 1. The rate for the next year will be calculated based on these forecasts.<sup>110</sup> XEST explains that the formula rate template uses 13-month average plant balances to determine the rate base, upon which the return and the income tax components of the ATRR are calculated. XEST explains that forecasted values are subject to a subsequent true-up with interest.<sup>111</sup> XEST states that it is not seeking Order No. 679 incentives in this filing, but has included

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<sup>107</sup> *Id.* at 16-17.

<sup>108</sup> *See RITELine*, 137 FERC ¶ 61,039 at P 124.

<sup>109</sup> Transmittal at 7.

<sup>110</sup> *Id.* at 7-8.

<sup>111</sup> *Id.* at 7. XEST explains that interest on any over-recovery is calculated pursuant to section 35.19a of the Commission's regulations while interest on any under-recovery is calculated using the interest equal to XEST's actual short-term debt costs capped at the Commission interest rate calculated pursuant to section 35.19a. *Id.* at 8.

placeholders in the formula rate template to accommodate project-specific incentives that may be granted in the future.<sup>112</sup>

68. XEST contends that the formula rate template is reasonable because XEST plans to invest substantial amounts in transmission facilities in SPP. XEST contends that its formula rate template allows it to collect a rate that is representative of the costs in the current period, provides for greater certainty for cost recovery of capital expenditures, and ensures that customers pay no more than the cost to serve them over the lives of the projects.<sup>113</sup> XEST explains that the formula rate template is derived from the Commission-approved, forward-looking formula rate filed by American Transmission Company, LLC<sup>114</sup> and that the Commission has approved numerous other transmission formulas that employ similar true-up mechanisms.<sup>115</sup>

69. XEST also requests approval of its protocols, which contain its annual true-up, information exchange, and challenge procedures. XEST contends that the protocols clarify that project-specific revenue requirements determined by the formula rate template are ceiling rates and will allow XEST to discount its revenue requirements, if necessary, to recognize any cost commitments XEST makes during the competitive bidding process in connection with a specific project.<sup>116</sup> XEST claims that the protocols are consistent with recent Commission orders addressing the Midcontinent Independent System Operator, Inc. (MISO) Tariff Attachment O protocols for forward-looking formula rates.<sup>117</sup>

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<sup>112</sup> *Id.* at 9.

<sup>113</sup> *Id.* at 8.

<sup>114</sup> *Id.* (citing *Am. Transmission Co.*, 97 FERC ¶ 61,139 (2001)).

<sup>115</sup> *Id.* (citing *Boston Edison Co.*, 91 FERC ¶ 61,198 (2000); *Northeast Utils. Serv. Co.*, 105 FERC ¶ 61,089 (2003), *reh'g denied*, 111 FERC ¶ 61,333 (2005); *San Diego Gas & Elec. Co.*, 103 FERC ¶ 61,115 (2003), *reh'g denied*, 104 FERC ¶ 61,149 (2003); *Commonwealth Edison Co.*, 122 FERC ¶ 61,030 (2008); *Am. Elec. Power Serv. Corp.*, 124 FERC ¶ 61,306 (2008); *Tallgrass Transmission, LLC*, 132 FERC ¶ 61,114 (2010); *Am. Elec. Power Transmission Co.*, 135 FERC ¶ 61,066 (2011); *RITELine*, 137 FERC ¶ 61,039).

<sup>116</sup> *Id.* at 9.

<sup>117</sup> *Id.* at 9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 (2013), *reh'g denied*, 146 FERC ¶ 61,209 (2014); *Midcontinent Indep. Sys.*

**b. Protests**

70. Golden Spread argues that investors could perceive XEST as more risky and require higher bond rates and equity returns because XEST may discount projects in the Order No. 1000 process and not achieve its allowed ROE. Golden Spread asserts that any such increased capital costs due to this increased risk would be spread across all of XEST's projects, thus forcing undiscounted projects – including those undertaken outside of the Order No. 1000 bidding process – to subsidize discounted projects.<sup>118</sup> Golden Spread contends that XEST's protocols should be modified to insulate the pricing for non-discounted projects from the adverse effects on the cost of capital and revenue requirements brought on by discounting.<sup>119</sup> Specifically, Golden Spread argues that XEST should be required to modify its proposed formula rate template to reflect project-specific costs to the extent applicable and that XEST should be required to implement accounting procedures to facilitate such project-specific cost determinations.

71. Golden Spread raises further concerns that the formula rate template potentially could spread costs across projects. Golden Spread alleges that XEST's projects are not likely to constitute an integrated transmission system but will instead likely be scattered across the SPP region. Golden Spread asserts that XEST will likely contract with external entities to operate and maintain its transmission holdings, leading to different costs across projects. Additionally, Golden Spread points out that different states within the SPP region have different income taxes. Golden Spread alleges that, because of the likely discrete and scattered nature of the projects, use of rolled-in embedded cost allocations for these operations and maintenance expenses and taxes will result in potential cost shifting and cross-subsidization among projects. Golden Spread argues that, absent a showing that XEST's filing addresses how such rolled-in pricing is reasonable, the Commission should direct XEST to modify its formula rate template to reflect project-specific costs to the extent applicable and implement accounting procedures to facilitate project-specific cost determinations.<sup>120</sup>

72. Golden Spread argues that there is an inherent tension created when an entity such as XEST is allowed to engage in the development of projects procured through the Order No. 1000 competitive bidding process and other projects developed outside the bidding

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*Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (*MISO*)).

<sup>118</sup> Golden Spread Protest at 7.

<sup>119</sup> *Id.* at 53.

<sup>120</sup> *Id.* at 8-9.

process.<sup>121</sup> Golden Spread notes that XEST does not address how it will account for its costs associated with the bidding process, but argues that it is reasonable to assume that the costs associated with a successful competitive bid would be capitalized as part of the project cost. Golden Spread contends that, if costs associated with unsuccessful bids are recorded as expenses under the proposed formula rate template, such costs will be recovered as part of its SPP ATRR both from the successful bid-based projects and any other non-bid-based projects undertaken by XEST. If such accounting and ratemaking treatment for costs associated with unsuccessful bids were allowed to occur pursuant to XEST's accounting and formula rate template, Golden Spread concludes that the result will be an unjust and unreasonable cross-subsidization of unsuccessful bidding activities by successful competitively-bid projects and other non-bid-based projects.<sup>122</sup>

73. Golden Spread argues that, if XEST wants to participate in a presumptively competitive Order No. 1000 bidding process, it should assume the risks associated with such a competitive environment. Consequently, Golden Spread asserts that XEST should not be allowed to recover its costs associated with unsuccessful bids through its formula rate otherwise applicable to successful projects, whether or not bid-based. Further, Golden Spread contends that XEST should be required to adopt accounting procedures that will identify and track the costs of preparing unsuccessful bids, and that will prevent such costs from being recovered in its formula rate applicable to successful projects. Golden Spread explains that such accounting procedures should not allow such costs to be treated as either deferred assets or abandoned project costs subject to a filing with the Commission for recovery through the formula rate template.<sup>123</sup>

74. New Mexico Cooperatives note XEST's statement that, in addition to projects subject to the Order No. 1000 bidding process, it "may pursue other projects whose costs would be recovered under the SPP OATT."<sup>124</sup> New Mexico Cooperatives question how XEST might seek to recover the costs of projects within the service area of its affiliate, Southwestern Public Service Company (SPS). New Mexico Cooperatives note that SPS has a formula rate that differs in several respects from that proposed by XEST. New Mexico Cooperatives allege that Xcel is allowing itself the option to choose which formula rate it will use to recover the costs of projects within SPS's service territory and

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<sup>121</sup> *Id.* at 9.

<sup>122</sup> *Id.* at 9-10.

<sup>123</sup> *Id.* at 10.

<sup>124</sup> New Mexico Cooperatives Protest at 7 (quoting Exhibit No. XES-100, Direct Testimony of Teresa M. Mogensen at 11).

contend that it would be unjust and unreasonable to be subject to different sets of costs depending on which formula rate Xcel decides to use.<sup>125</sup>

75. Golden Spread argues that placeholders in the formula rate template for common plant and common expenses should be deleted.<sup>126</sup> Golden Spread states that, common plant and expense related items typically occur where a utility has multiple departments (e.g., electric and gas) that share the use of common facilities. However, because XEST's stated sole purpose is to own transmission facilities, Golden Spread contends that the placeholders should be eliminated. Golden Spread alternatively argues that the Commission should, at a minimum, require XEST to make an section 205 filing regarding these components, including any associated allocation factors, to allow such components and allocation factors to be appropriately vetted once identified, rather than be subject to predetermined treatment in a vacuum in this proceeding.<sup>127</sup>

76. Golden Spread argues that XEST's transmission rate base will be inflated unless unfunded reserves are deducted from rate base. Golden Spread explains that utilities routinely establish contingent liabilities and accrue monies through charges to operations and maintenance expenses to fund such liabilities, and often these accruals are unfunded. Golden Spread states that, when utilities use such unfunded accruals to cover future obligations, those accruals should be included in the allocated cost of service as credits (i.e., reductions) to rate base so that the utility does not utilize customer contributed capital without compensation.<sup>128</sup> Golden Spread asserts that it is impossible to identify the unfunded reserves that should be rate base credited since XEST presently has no on-going business experience; however, XEST's proposed formula rate template should include a component for such rate base credits for unfunded reserves. Golden Spread argues that the failure to include a component in the formula rate template for such rate base credits would cause the unjust and unreasonable shifting of the burden to identify unfunded reserves to affected ratepayers when they occur in the future, and XEST should not be permitted to avoid its burden of proof regarding the overall justness and reasonableness of its formula rate template.<sup>129</sup>

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<sup>125</sup> *Id.* at 7-8.

<sup>126</sup> Golden Spread Protest at 46 (citing Exhibit No. XES-602, Formula Rate Template, at 2 Lns 5, 12, 19; 3 Lns 8, 18; 4 Lns 12-16).

<sup>127</sup> *Id.* at 46-47.

<sup>128</sup> *Id.* at 42.

<sup>129</sup> *Id.* at 43.

77. Golden Spread also argues that XEST's cash working capital requirements should be determined based upon a fully developed and reliable lead/lag analysis. Golden Spread objects to XEST's use of the Commission's default rule calculating cash working capital as equal to one-eighth of allowable transmission operations and maintenance expense. Golden Spread explains that prior experience with the Xcel subsidiaries has shown that a fully developed and reliable cash working capital lead/lag analysis will produce a much lower cash working capital requirement than that produced by the one-eighth default rule. Golden Spread contends that prior cases, in particular XEST-affiliate SPS's production rate case, which was filed in 2006, and later a transmission formula rate proceeding in Docket No. ER08-313, have demonstrated that such a lead/lag analysis would produce a negative cash working capital requirement, if the Commission's precedent would permit it, and at most a zero cash working capital.<sup>130</sup>

78. Golden Spread asserts that XEST's use of the default rule effectively forecloses interested parties from performing a new lead/lag analysis and challenging that component. Golden Spread states that interested parties would be required to file a complaint under section 206 of the FPA in the future to seek a change to this formula rate template cash working capital allowance and to assume the burden of proof with regard to such change, without access to the necessary, detailed data required to perform a lead/lag analysis. Golden Spread contends that, in this circumstance, XEST would presumably argue that seeking to change the cash working capital allowance would be a change to the rate structure that is not allowable under the Annual True-up, Information Exchange, and Challenge Procedures, effectively preventing interested parties from seeking a cash working capital change and meeting their burden of proof.<sup>131</sup>

79. Golden Spread argues that the Commission should set the formula rate template cash working capital allowance at zero without prejudice to XEST making a filing seeking to change such allowance after the commercial operation of its first transmission project. Golden Spread states that this procedure would require XEST to carry the burden of proof, which a filing utility proposing a formula rate would normally carry and where the data necessary to challenge the one-eighth rule would be available. Golden

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<sup>130</sup> *Id.* at 43-46 (citing Exhibit No. XES-602, Rate Formula Template, at 2; Exhibit SPS-51, Prepared Testimony of Deborah A. Blair, Docket No. ER06-274-003 at 13, filed Mar. 6, 2007 (citing *Kansas Gas and Elec. Co.*, 31 FERC ¶ 61,012 (1985)); Exhibit XES-5, Prepared Testimony of Alan G. Heintz, Docket No. ER08-313-000 at 10, filed Dec. 7, 2007; Exhibit No. XES-603, Annual True-Up, Information Exchange, and Challenge Procedures, at 14-15, Section III.J).

<sup>131</sup> *Id.*

Spread states that interested parties should not be prejudiced because XEST is in a start-up mode and lacks operating experience that would produce such data.<sup>132</sup>

80. Golden Spread asserts that XEST's protocols need to contemplate periodic publication of updates of its projected ATRR and net revenue requirement for each project when new projects go into commercial operation instead of an annual projection each fall.<sup>133</sup> Golden Spread contends that the requested effective date of the protocols of November 1, 2014 creates a conflict with the date of the annual update, October 1. Golden Spread alleges that, if XEST were to incur costs for a project placed into commercial operation in 2015, there is no provision in the protocols to publish the associated projected net revenue requirement information for 2015 if it becomes known subsequent to October 1, 2014. Golden Spread contends that an annual update is not enough as those projections can become stale as events unfold in the Order No. 1000 bidding process.<sup>134</sup>

81. Golden Spread also raises concerns over disclosure requirements and challenge procedures in XEST's proposed protocols. Specifically, Golden Spread states that section II.E.8.a of the protocols specifies certain Annual True-Up disclosure obligations for XEST regarding "any change in accounting that affects inputs to the formula rate or the resulting charges billed under the formula rate ('Accounting Change')," and notes that one of those disclosures is to "[i]dentify any Accounting Change, including . . . the initial implementation of an accounting standard or policy." However, Golden Spread alleges there is no obligation for XEST to identify modifications that are made to existing accounting standards or policies.<sup>135</sup> Golden Spread also points out that one of the disclosure obligations in the protocols requires XEST to "[i]dentify items included in the Annual True-Up at an amount other than on a historic (sic) basis (e.g., fair value adjustments)."<sup>136</sup> Golden Spread alleges that this disclosure provision requires explanation by XEST because there is nothing in the proposed formula rate template indicating that all inputs are based on embedded, accrual-accounting costs. Golden

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<sup>132</sup> *Id.* at 46.

<sup>133</sup> *Id.* at 55.

<sup>134</sup> *Id.* at 54.

<sup>135</sup> *Id.* at 55-56 (citing Exhibit No. XES-603, Annual True-Up, Information Exchange, and Challenge Procedures, at 3, Section II.E.8.a.ii).

<sup>136</sup> *Id.* at 56 (citing Exhibit No. XES-603, Annual True-Up, Information Exchange, and Challenge Procedures, at 4, Section II.E.8.b).

Spread contends that any values XEST intends to use that are not based on embedded, accrual-accounting costs should be rejected as inconsistent with Commission policy. Golden Spread contends that sections II.F.4.a and 4.b of the protocols, containing disclosure obligations for the projected net revenue requirement, contain the same errors as the sections referenced above and should be similarly resolved. Golden Spread further alleges that the protocols do not contain any obligation for XEST to disclose changes in its reporting procedures that might have an effect on the implementation and functioning of the formula rate template, and contends that such a disclosure requirement should be added.

82. Golden Spread also argues that XEST should add to its protocols an explicit acknowledgement that an interested party has the right to utilize any information received as part of the information exchange process in any matter involving challenges to the implementation of the formula rate template or in seeking to change the formula rate template. Golden Spread contends the best way to deal with these and any additional concerns that may arise regarding the protocols is through dialogue with all interested parties in the settlement process.<sup>137</sup>

83. Golden Spread further contends that XEST's proposed methodologies for determining the capital structure and cost of debt are ambiguous and raises multiple issues.<sup>138</sup> For instance, Golden Spread argues that Note Q implies that specific debt issuances will be tied to specific transmission projects but that nothing in the formula rate appears to ascribe project-specific debt costs to individual projects. Additionally, Golden Spread contends that, rather than determine all debt costs based on the annual interest expense of issuances and outstanding amounts of the issuances once the first transmission project becomes commercially operational, XEST appears to mix IRR-based costs of certain issuances identified for specific projects under construction with traditional debt costs based on annual interest expense divided by outstanding debt.

84. Golden Spread also raises concerns that XEST's proposed mechanism for calculating the true-up adjustment is flawed. Golden Spread notes that, upon its request, XEST provided to Golden Spread a Microsoft Excel version of its proposed formula rate template. Based on a preliminary review of the proposed formula rate template, Golden Spread claims that it identified numerous flaws and potential errors related to the true-up calculations, and in particular the calculation reflected in Attachment 3. Golden Spread avers that: (1) Column E in Attachment 3 references Footnote 1, which points to

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<sup>137</sup> *Id.* at 57-58.

<sup>138</sup> *Id.* at 48-49 (citing Exhibit No. XES-602, Formula Rate Template, at 5).

Attachment 1 Columns 17 and 19, however, there are no Columns 17 and 19 in Attachment 1; (2) there are no algebraic formulas in Column E of Attachment 3 that reference specific cells on Attachment 1, so it is unclear what amounts should be reflected in that Column and what is the effect of any discount on XEST's ATRR; (3) there is a calculation error in Column F of Attachment 3, which also impacts the value for Line 3 of Attachment 3; (4) there is an unexplained inconsistency in the calculations for Columns G and H of Attachment 3 and missing algebraic formulas in certain cells that reference Attachment 11; (5) it is unclear how Columns G and H of Attachment 3 are to be used; and (6) Line 9 of Attachment H references Attachment 3, but gives no indication what amount is to be reflected in the line item.<sup>139</sup>

85. Golden Spread believes that additional flaws may exist in the formula rate template, particularly in the calculations contained in the Microsoft Excel template, however it is difficult to detect such issues in an unpopulated template that is filed without actual data. Golden Spread states that the Commission should carefully scrutinize the formula (or provide adequate opportunity for intervenors to do so) to ensure that the initial formula rate template does not produce aberrational results when XEST does have a project in service.<sup>140</sup>

**c. Answer**

86. XEST argues that Golden Spread's claim that Order No. 1000 discounting will lead to cross subsidization is deeply flawed. XEST notes that, rather than award a base ROE to a project, the Commission grants a base ROE to the company itself. XEST contends that competition for transmission projects may make investment in XEST and other companies riskier, but argues that only establishes a basis for a higher base ROE for some companies. However, XEST asserts that the increased competition from Order No. 1000 will lead to more cost-effective transmission solutions and lower rates for consumers irrespective of the base ROE for XEST.<sup>141</sup>

87. XEST contends that its recovery of expenses associated with operations and maintenance, income taxes, and taxes other than income taxes through cost-allocation factors is just and reasonable. XEST asserts that its allocation factors will apply costs based on a project's share of XEST's total plant balance and that the use of allocation

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<sup>139</sup> *Id.* at 58-60.

<sup>140</sup> *Id.* at 60.

<sup>141</sup> XEST Answer at 18-19.

factors is commonplace in SPP and the industry.<sup>142</sup> XEST further argues that its cost allocation factors are well-designed for developing a utility's annual transmission revenue requirement in the post-Order No. 1000 world and that they are based on the formula rate template in the MISO OATT accepted by the Commission.<sup>143</sup> XEST contends that Golden Spread is asking it to disaggregate costs in a way that is unrealistic and would impose significant costs on XEST and SPP that would likely outweigh any potential benefit to transmission service customers.<sup>144</sup>

88. XEST also argues that concerns over what facilities it may own in the future are beyond the scope of the proceeding. XEST further argues that any facilities it may own in the future will constitute an integrated system – even if they are geographically disparate – because they will all be governed by the SPP OATT. XEST contends that the costs of each existing and new transmission facility subject to the SPP OATT, such as those XEST may eventually build, are allocated according to the SPP OATT. Similarly, XEST asserts that the fact that two affiliated entities located in the SPP region have different formula rates does not imply that either of those formula rates is unreasonable. XEST argues that its formula rate template and protocols will, in fact, provide the granularity and transparency needed by customers, the Commission, and interested parties.<sup>145</sup>

89. XEST also disagrees with Golden Spread's argument that XEST should be required to “track the costs of preparing unsuccessful bids” and ensure that these costs are not “being recovered in its formula rate applicable to successful projects.”<sup>146</sup> XEST asks

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<sup>142</sup> *Id.* at 13.

<sup>143</sup> *Id.* at 14-15 (citing MISO Tariff, Attach. FF, § VIII; *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,147, at P 33 (2012); *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *reh'g granted in part and denied in part*, 137 FERC ¶ 61,074 (2011), *aff'd in relevant part sub nom. Ill. Commerce Comm'n v. FERC*, 721 F.3d 764 (7th. Cir. 2013), *cert denied*, 134 S. Ct. 1277, *cert denied*, 134 S. Ct. 1278 (2014); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *reh'g denied*, 117 FERC ¶ 61,241 (2006), *reh'g granted in part*, 118 FERC ¶ 61,208 (2007), *review denied sub nom. Pub. Serv. Comm'n of Wis. v. FERC*, 545 F.3d 1058 (2008)).

<sup>144</sup> *Id.* at 15-16.

<sup>145</sup> *Id.* at 10-12.

<sup>146</sup> *Id.* at 20 (quoting Golden Spread Protest at 9-10).

only that it be treated like every other utility that has a transmission formula rate on file with the Commission. XEST notes that, if its filing raises a “bid cost” recovery issue, then that issue potentially affects every public utility with a transmission formula rate (or who files such a rate) that meets RTO bidder qualification criteria, and such an industry-wide issue should be addressed in a rulemaking or appropriate filings by RTOs and other regions.

90. In response to Golden Spread’s arguments that the Commission should delete certain placeholders in the formula rate template and that XEST’s true-up mechanism is flawed, XEST argues that any clarifying revisions deemed necessary should be addressed in a compliance filing rather than through further proceedings. XEST argues that many of Golden Spread’s concerns with respect to XEST’s formula rate are meritless. In addition, XEST states that certain alterations that Golden Spread identifies are discretionary in nature, and XEST has used its best judgment for what placeholders to include in the formula rate template. XEST argues that Golden Spread’s preferences for a different approach does not undermine the reasonableness of the formula rate template.<sup>147</sup>

91. Similarly, XEST argues that any errors in the formula rate template and Microsoft Excel version of the formula rate template could be addressed through a compliance filing. XEST notes that, in such a compliance filing, XEST could be required to: (1) resolve any inadvertent errors in the formula rate template, such as a page/line of the formula rate template that includes an incorrect page/line reference to another part of the formula rate template; and (2) ensure that the Excel “formulas” within the spreadsheet that ultimately will be used to calculate the XEST Annual True-Up match the as-filed “paper” version of the formula rate template.<sup>148</sup>

**d. Commission Determination**

92. We conditionally accept XEST’s proposed formula rate template and protocols, subject to a compliance filing to be made within 30 days of the date of this order to address the matters discussed below. While the formula rate template and protocols generally conform to other Commission-accepted formula rates, there are several variances that XEST has not explained as well as errors that XEST would need to correct.

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<sup>147</sup> *Id.* at 39-40.

<sup>148</sup> *Id.* at 40.

**i. Formula Rate Issues**

93. We disagree with Golden Spread's assertions regarding cross-subsidization between Order No. 1000 and non-Order No. 1000 projects due to discounting of the former. All transmission formula rates apply to a range of projects with different risk profiles, and the Commission has not imposed a requirement to reflect project-specific costs on transmission owners in the past. Golden Spread has not demonstrated that cross-subsidization could take place through its theoretical argument about the potential for reduced earned return from discounted projects affecting perceived risk and raising the cost of debt allocated to all customers. For example, it has not described what potential projects could be developed outside of the Order No. 1000 process or the magnitude of the resulting effects on costs of debt. Golden Spread has not demonstrated that the magnitude or frequency of potential cross-subsidization from discounting differs from that which inherently takes place in the formula rates of incumbent utilities.

Accordingly, we do not require XEST to, as advocated by Golden Spread, modify its formula rate template to reflect project-specific costs to the extent possible. We similarly find that Golden Spread's concern about cross-subsidization regarding the cost of projects due to different contractors performing work for geographically diverse projects is speculative. XEST's proposed allocation methods to determine project-specific revenue requirements reflect practices common in Commission-accepted transmission formula rates. Golden Spread has not sufficiently demonstrated that its concern about cross-subsidization is more than theoretical or attempted to quantify its magnitude or show that such an outcome would differ from what takes place with other transmission owners. Accordingly, we dismiss Golden Spread's request to require XEST to modify its formula rate template to reflect project-specific cost determinations.

94. We also dismiss Golden Spread's request to direct XEST to adopt accounting procedures that identify and track the cost of unsuccessful bids to prevent them from being recovered in the formula rates of successful projects. Incumbent transmission owners recover the costs of pre-commercial costs as expenses in their formula rates as they are incurred. A requirement that XEST segregate (and potentially not recover) the cost of unsuccessful bids would be unduly discriminatory compared to incumbent transmission owners.

95. We also disagree with New Mexico Cooperatives' contention that it is unjust and unreasonable for Xcel to have two affiliates operating under different Commission approved formula rates within the same service territory. The Commission has never barred affiliates from operating within the same service territory, and in fact has granted

an affiliate the right to build a transmission line in another affiliate's territory.<sup>149</sup> To the extent that both formula rates have been found to be just and reasonable, the charges stemming from those rates are likewise just and reasonable.

96. We also disagree with Golden Spread's concern regarding XEST's formula rate template placeholders for common plant and expenses. As Golden Spread points out, transmission-only companies have no common plant. However, such placeholders reflect practices common in Commission-accepted transmission formula rates and there is no reason to believe they will produce unreasonable results should XEST have common plant or expenses in the future.

97. However, we find that XEST's formula rate template should recognize unfunded operations and maintenance costs reserves as a form of cost-free financial capital to XEST. Utilities may accrue monies through charges to operation and maintenance expense to fund contingent liabilities, and such accrued reserves should be deducted from rate base until they are used to fund the liabilities because such reserves represent a cost-free form of financial capital from customers to utilities, not unlike accumulated deferred income taxes (ADIT) which are deducted from rate base. Accordingly, we direct XEST, in a compliance filing, to propose revisions to its formula rate template to credit any unfunded reserves against rate base.

98. We also disagree with Golden Spread's contention that XEST's formula rate template should require it to conduct a full lead-lag study to determine its cash working capital rate base component. The Commission has consistently allowed utilities to choose either to use a lead-lag study or use one eighth of operations and maintenance costs minus fuel expenses to determine cash working capital.<sup>150</sup> Forcing XEST to use a lead-lag study on the basis of the cash flow of its affiliate would be unduly discriminatory. We also find that Golden Spread's concerns regarding XEST's cash working capital methodology, which are based on what it observed in an Xcel affiliate,

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<sup>149</sup> See *RITELine*, 137 FERC ¶ 61,039 at PP 123-29 (accepting formula rate, subject to a compliance filing, for transmission facility being developed by RITELine Indiana, LLC, a company partially owned by AEP Transmission Holding Company, that will run through the territory of Indiana Michigan Power, another operating company of AEP Electric Power Company, Inc.).

<sup>150</sup> *AEP Appalachian Transmission Co., Inc.*, 130 FERC ¶ 61075, at P 24 (2010) (citing *Va. Elec. and Power Co.*, 123 FERC ¶ 61,098, at P 75 (2008); *Trans-Elect NTD PATH 15, LLC*, 117 FERC ¶ 61,214, at PP 39, 43 (2006); *PATH*, 122 FERC ¶ 61,188 at P 158).

are speculative and unsupported. To the extent that Golden Spread believes that the default cash working capital methodology leads to rates that unjust or unreasonable, it may file a complaint at the Commission pursuant to section 206 of the FPA.

99. We disagree with Golden Spread's concern regarding a conflict between XEST's requested effective date of November 1, 2014 and the October 1 date of the annual update, with respect to providing information about projects placed in service in 2015. As noted by XEST, SPP will not award Order No. 1000 projects until well into 2015, making their completion during 2015 highly unlikely. Additionally, any rates in 2015 associated with projects completed in that year would be subject to true-up procedures which would enable informal and formal challenges by customers.

100. We also disagree with Golden Spread's criticisms of section II.E.8.b of XEST's proposed protocols, which require XEST to identify items included in the Annual True-Up at an amount other than on a historic basis. This provision, like proposed section II.F.4.a of XEST's protocols, which Golden Spread criticizes on the same basis, is identical to that which the Commission recently approved for MISO Transmission Owners.<sup>151</sup> It is the Commission's policy that rate recovery is generally limited to the original cost of facilities, and, absent express authorization from the Commission to recover amounts paid above original cost, the Commission requires removal of the effects of acquisition premiums and goodwill from a utility's cost-of-service, including the inputs to formula rates.<sup>152</sup> The requirements to disclose items included in the in formula inputs at an amount other than on a historic basis, rather than authorizing the inclusion of amounts above historic cost in rates, is intended to provide transparency to ensure that such amounts are excluded from the formula inputs unless the utility has received express authorization to include such amounts in its rates.

101. We also disagree with Golden Spread's concern that the proposed protocols improperly lack an obligation for XEST to disclose modifications that are made to existing accounting standards or policies or changes in its reporting procedures that might have an effect on the implementation and functioning of the formula rate template. As an initial matter, Golden Spread has not specified the manner of changes in reporting about which it is concerned. XEST's proposed protocols also contain requirements for XEST to disclose *any changes in accounting that affect inputs to the formula rate or the resulting charges billed under the formula rate*. We find that such requirements adequately ensure transparency and address Golden Spread's concerns regarding

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<sup>151</sup> *MISO*, 146 FERC ¶ 61,212.

<sup>152</sup> *Ameren Corp.*, 140 FERC ¶ 61,034, at P 30 (2012).

modifications to existing accounting standards or policies or changes to reporting procedures.

102. We disagree with Golden Spread's assertion that XEST should add to its protocols an explicit acknowledgement that interested parties have the right to utilize any information received as part of the information exchange process in any matter involving challenges to the implementation of the formula rate template or in seeking to change the formula rate template. Nothing in the existing protocols prevents use of any information received as part of the information exchange process in challenges or complaints, rendering such language unnecessary.

103. We also disagree with Golden Spread's contention that Column E of Attachment 3 is flawed for lack of algebraic formulae referencing Attachment 1. The Column, Net Revenue Requirement in Attachment 3, references Column 14 of Page 2 of Attachment 1, which is the revenue requirement, which itself reflects the discount but excludes the true-up. This reference appears appropriate and in no need of additional formulae. However, as discussed by Golden Spread, we find that the reference in Note 1 of Attachment 3 to Columns 17 and 19 of Attachment 1 is erroneous because Attachment 1 does not contain Columns 17 and 19. In addition Column D references, "as Reported in Form No. 1," but does not include a specific page or line reference. We direct XEST to provide a reference for Column D. Further, we agree with Golden Spread that it is unclear how columns G and H are incorporated into the true-up. Therefore, we direct XEST to include in Attachment 3 a narrative explanation of how it calculates the true-up adjustment.

104. We disagree with Golden Spread's concern regarding Note Q stating that specific debt issuances will be tied to specific transmission projects but nothing in the formula rate appears to ascribe project-specific debt costs to individual projects. Nothing in this Note Q<sup>153</sup> or the formula states that specific debt issuances will be tied to specific projects. Rather Note Q describes the different methodologies that will be used to

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<sup>153</sup> Note Q in the formula rate template states:

Prior to issuing any debt, a cost of debt of 2.4 [percent] will be used without true-up. After [i]ssuing any debt, the cost of debt is determined using the internal rate of return methodology shown on Attachment 8 until a project is placed in service obtained subject to true-up pursuant to Attachment 9. The cost of debt is determined using the methodology in Attachment 5 once a project is placed in service. Attachment 8 contains a hypothetical example of the internal rate of return methodology; the methodology will be applied to actual amounts for use in Appendix A.

calculate the cost of debt before and after XEST has any plant in service (i.e., a project is placed in service).

105. However, we agree in part with Golden Spread's concerns with respect to the determination of the cost of debt. Attachment 8 provides an estimate for the cost of debt with Note 2 stating "The [internal rate of return] is a discount rate that makes the net present value of a series of cash flows equal to zero. The [internal rate of return] equation can only be solved through iterations performed by a computer program (i.e. [net present value] function with goal seek in a spreadsheet program." Neither this explanation nor the discussion in Mr. Tyson's affidavit mathematically demonstrates how the internal rate of return is calculated, including how any calculations draw from the information in Attachment 8. Accordingly, we direct XEST, in its compliance filing, to propose revisions to its formula rate template to explain its calculation of the cost of debt during the construction period and an explanation of how Attachment 8 will be implemented and updated each year. Specifically, it is not clear if the forecast is illustrative and only forecasts and actual costs will be included for each year that the rate is implemented, or if XEST is instead going to forecast out for the construction period (2020) and then update each year based on actual interest, withdrawals, origination fees, commitment fees, as well as Commitment, Utilization, and Ratings Fees. We direct XEST to explain and support such calculations as well as specify their inputs. Additionally, we direct XEST to provide a narrative explanation of the basis for the proposed interest rate prior to issuing debt. XEST states that it reflects a 200 basis point spread over the LIBOR rate in 2014, which is "based on the expectation that XEST would not have a credit rating when it secures its internal revolving credit facility or construction financing."<sup>154</sup> Although this statement explains why there is a spread over the LIBOR rate, XEST has not described why 200 basis points is the appropriate spread. We also note that there is a discrepancy between Note Q (2.4 percent) and Attachment 5 (2.24 percent), Attachment 8 (2.24 percent) and the testimony (2.24 percent), which we direct XEST to correct.<sup>155</sup>

106. Golden Spread also raises concerns about the accuracy of the internal calculations in XEST's underlying formula rate template spreadsheets. We are conditionally accepting the proposed written formula rate template, as filed, with its written descriptors, formulas, and narrative instructions, and not the underlying electronic spreadsheets that will be used to implement the filed formula. We have reviewed the formula rate template and have identified errors in the formula rate template, described

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<sup>154</sup> Exhibit No. XES-200, Direct Testimony of George E. Tyson, II at 12.

<sup>155</sup> Exhibit No. XES-500, Direct Testimony of Adrien M. McKenzie at 14.

herein, that we direct XEST to correct. Any errors in the internal calculations in the formula rate template spreadsheets that XEST uses to implement the filed formula rate template, to the extent that they do not follow the instructions of the written formula, can be addressed in the formula rate annual update process, in which parties can examine inputs and calculations to ensure they conform to the filed formula rate template.

107. As observed by Golden Spread, XEST's formula rate template contains several errors that would need to be corrected. In particular, on Page 1, Line 9 of XEST's proposed formula rate template, "True-up Adjustment with Interest,"<sup>156</sup> references Attachment 3 but does not cite a specific Line or Column number. It appears that Line 9, True-Up Adjustment with Interest, should reference Column J of Attachment 3, Total True-Up Adjustment.

108. Note B of the formula rate template states,

The balances in Accounts 190, 281, 282, 283, as adjusted by any amounts in contra accounts identified as regulatory assets or liabilities related to FASB [Financial Accounting Standards Board] 106 or 109. Balance of Account 255 is reduced by prior flow throughs and excluded if the utility chose to utilize amortization of tax credits against taxable income. Account 281 is not allocated. The maximum deferred tax offset to rate base is calculated in accordance with the proration formula prescribed by IRS regulation section 1.167(l)-1(h)(6).<sup>157</sup>

XEST has also included reference to the Internal Revenue Service (IRS) regulation in Attachment 4, Note B. However, in calculating ADIT Accounts 190, 281, 282, and 283 in Columns D, E, F, and G of Attachment 4, respectively, XEST cites to Note D, which states "ADIT is computed using the average of beginning of the year and the end of the year." This note appears to contradict Note B included in the formula rate template and Note B in Attachment 4. XEST is directed to propose revisions that explain how it will calculate the ADIT inputs in the compliance filing due within 30 days of this order.

109. The Commission's policy has been to use beginning and end of year ADIT balances to calculate an average balance to be used for ADIT.<sup>158</sup> In a recent order, the

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<sup>156</sup> Exhibit No. XES-602, Formula Rate Template, at 1 Ln 9.

<sup>157</sup> *Id.* at 5 Note B.

<sup>158</sup> 18 C.F.R § 35.13(h)(6) (2014).

Commission found the use of the proration formula prescribed by IRS regulation section 1.167(l)-1(h)(6) to be an issue of first impression.<sup>159</sup> In that order, the Commission stated that the decision on usage of the proration formula would greatly benefit from a private letter ruling from the IRS on the specific matters of tax law in order to obtain the IRS's interpretation of how its Normalization Rules apply in the context of formula rates.<sup>160</sup> While the Commission set the tariff sheets for hearing, it held the proceedings in abeyance until the applicant in that proceeding receives and supplements the record with a private letter ruling from the IRS. In this order, to the extent XEST is proposing to use the proration formula as prescribed by the IRS, we conditionally accept the usage of the proration formula, subject to XEST receiving a private letter ruling from the IRS stating that XEST must use the proration formula in its formula rate template to comply with IRS regulations and, in the compliance filing due within 30 days of this order, providing workpapers and a narrative explanation of how XEST intends to implement the proration formula. If XEST seeks but does not receive such a ruling, it must submit a compliance filing within 30 days of receiving notice of the IRS' determination to remove references to the proration formula from the formula rate template and instead use beginning and end of year balances to calculate an average ADIT balance. If XEST does not seek such a ruling, in the compliance due within 30 days of this order, XEST is directed to remove references to the proration formula from the formula rate template and instead use beginning and end of year balances to calculate an average ADIT balance.

110. In Attachment 1, Page 1, Lines 8 and 10 are both titled "Annual Allocation Factor for Other Taxes." We direct XEST to correct this error. Further, we direct XEST to clarify the mechanics of Attachment 1 in calculating the discounting, and to specify whether the amount in Column 13 of Page 2 of XEST's proposed Attachment 1 equals the amount by which the annual revenue requirement is reduced from the ceiling rate.

111. In Attachment 7, XEST calculates the post-retirement benefits other than pensions (PBOP) costs which will be included on Page 3, Lines 6a and 7a of the formula rate template. XEST has included amounts in Line 2 which based on Note A are reflective of amounts from 2015 data from the May 7, 2014 actuarial report. However, XEST did not provide the May 7, 2014 actuarial report in the instant filing for the Commission to evaluate the proposed PBOP costs, nor has it previously been filed with the Commission for use by XEST's affiliates. The Commission has stated in the past that future PBOP recovery filings must include the actuarial reports and all pertinent rate sheets.<sup>161</sup> We

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<sup>159</sup> See *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,254, at P 18 (2014).

<sup>160</sup> *Id.*

<sup>161</sup> *Boston Edison Co.*, 74 FERC ¶ 61,178 (citing *Maine Yankee Atomic Power*

therefore direct XEST to file the actuarial report referenced in Note A in its compliance filing. In addition, Attachment 7 is unclear of the source (page and/or line number cite) for those costs on Lines 2, 3, and 5 and how the costs from Lines 4, 6 and 8 are to be calculated. In order to ensure sufficient specificity in calculations and the source for data, we direct XEST to provide those clarifications in Attachment 7. Further, we direct XEST to propose revisions to the formula rate template explaining what Note B relates to and who “former NMC” is. We also note that PBOP amounts can only be changed pursuant to a section 205 or 206 filing.

**ii. Formula Rate Corrections**

112. On Page 3, Line 6a (“Less PBOP [Post-employment Benefits Other than Pension] Expense in Year”) and 7a (“Plus PBOP Expense Allowed Amount”) of the formula rate template, reference as the source, Attachment 7, Line 10 and Line 8, respectively. However, Attachment 7 contains no Line 10, and the references on Page 3, Line 6a and 7a should instead reference Attachment 7, Line 8 and Line 6, respectively. XEST needs to correct these references. Additionally, XEST needs to provide a specific Column number as a reference to ensure specificity of the source data.

113. XEST’s proposal includes separate line items on Page 3 of the formula rate template for Amortization of Regulatory Asset, Line 11, and Miscellaneous Transmission Expense, Line 12, which reference Columns I and J of Attachment 5. Amortization of Regulatory Asset is a component of Miscellaneous Transmission Expense. We direct XEST to revise the labeling of Line 12 and Attachment 5, Column J to “Miscellaneous Transmission Expense (less Amortization of Regulatory Asset)” to ensure that the amounts in Line 11 are not included in Line 12.

114. On Page 5, Note L references Page 4, Line 33. However, it should reference Page 4, Line 28. We direct XEST to correct this error.

115. Lines 3, 4, and 5 of Attachment 2 contain references to Notes O, DD, and EE. These references appear in error, given that Notes DD and EE do not exist and Note O pertains to revenue credits. We direct XEST to correct these references. Further, Lines 23 and 24 reference Attachment H, Line 46, Column 5, and Attachment H, Line 44, Column 5, respectively. They should also note that these references are to Page 3 of Attachment H.

116. In Attachment 4, Column E, XEST references “205.5.g and 207.90.g” as the source for “General and Intangible.” The second source, Line 90 of Page 207 of the FERC Form No. 1 incorrectly references “Stores Equipment,” which is one type of general plant. The correct line reference with respect to total general plant should be 207.99.g, which is “Total General Plant” in the FERC Form No. 1. We direct XEST to correct this error.

117. In Attachment 5, Columns A through K, Lines 1 through 13 reference Attachment H, Page 4, Line number 8. This reference appears to be in error as these are expenses found on Page 3. Likewise, Columns A through D, Lines 27 through 41, reference Attachment H, Page 3. This reference likewise appears to be in error as these are revenue credits found on Page 4. Line 51 references the sum of Lines 20 through 22, when it should reference the sum of Lines 48 through 50. In addition, because some of the content of Attachment 5 deals with material on Pages 1 and 4 of Attachment H, the title of Attachment 5 should not be “Attachment H, Page 3 Worksheet.” We direct XEST to correct these errors.

118. Lastly, XEST explains that its protocols are based on those filed by the MISO transmission owners that are under Commission review in Docket Nos. ER13-2379, *et al.* Therefore, we conditionally accept the protocols, subject to a further compliance filing within 30 days of Commission action in those proceedings directing further changes to the MISO protocols. In that compliance filing, XEST is directed to conform its protocols to the changes ordered in the MISO proceedings, or justify why it should not be required to do so.

## 7. Request for Waivers

119. XEST asks that the Commission find that the formula rate satisfies the requirement of 18 C.F.R. § 35.13 to file detailed cost of service schedules, or waive the requirement because the rates are formulary and will be based on actual costs. We grant XEST’s request for waiver of section 35.13 requirements, consistent with our prior approval of formula rates.<sup>162</sup>

120. XEST also asks for a partial limited waiver, to the extent necessary, of the Commission’s regulations regarding the filing of rate schedules in eTariff. XEST states that after it becomes a transmission owner, it will ask SPP to incorporate XEST’s formula rate into the SPP Tariff, at which time an eTariff filing will be made. Given that the formula rate cannot be used to charge customers before the formula rate is incorporated into SPP’s Tariff, we waive the eTariff requirement at this time.

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<sup>162</sup> See *RITELine*, 137 FERC ¶ 61,039 at P 134.

The Commission orders:

(A) XEST's request for a hypothetical capital structure is hereby granted, as discussed in the body of this order.

(B) XEST's request to defer as a regulatory asset all of its prudently incurred costs that are not capitalized, including pre-commercial and formation costs, is hereby granted effective November 1, 2014, as discussed in the body of this order.

(C) XEST's proposed RTO participation ROE adder is approved, as discussed in the body of this order.

(D) XEST's proposed formula rate template and protocols are hereby conditionally accepted for filing, subject to a compliance filing to be made within 30 days of the date of this order, and subject to the formula rate protocols proceedings currently pending in Docket No. ER13-2379, *et al.* as discussed in the body of this order.

(E) XEST's proposed formula rate template and protocols will take effect once filed with the Commission to become part of SPP's Tariff, consistent with the effective date established in that future proceeding.

(F) XEST's proposed ROE is hereby accepted for filing and suspended for a nominal period, to be effective November 1, 2014, as requested, subject to refund, as discussed in the body of this order.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 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), a public hearing shall be held concerning the XEST's proposed base ROE. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (H) and (I) below.

(H) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(I) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(J) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.