150 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Great Plains, LLC Docket No. ER09-548-001

ORDER ON REHEARING

(Issued March 26, 2015)

1. In this order, we address the requests by Golden Spread Cooperative, Inc. and Arkansas Electric Cooperative Corporation (together, Cooperatives), and by Xcel Energy Services, Inc. (Xcel) for clarification, or, in the alternative, rehearing of certain aspects of the Commission's March 16, 2009 order.[1] In the Incentives Order, the Commission conditionally accepted, and set for hearing and settlement judge procedures, tariff sheets proposed by ITC Great Plains, LLC (ITC Great Plains) to recover the costs of constructing two high voltage transmission projects in the Southwest Power Pool, Inc. (SPP) region. The Commission also granted in part and denied in part ITC Great Plains' request for transmission rate incentives. For the reasons discussed below, we will clarify certain aspects of the Incentives Order but deny the remaining requests for clarification and rehearing.

I. Background

A. The Incentives Order

2. In the Incentives Order, the Commission addressed the two transmission projects that ITC Great Plains proposed in a January 15, 2009 application (Application). These projects are the Kansas portion (approximately 170 miles) of a 765/345 kV transmission line extending from Spearville, Kansas, to Axtell, Nebraska (the KETA Project), and a 180-mile-long, 765-kV, V-shaped transmission line in Kansas, extending from a substation near Wichita, to a new substation to be built in Comanche County, and from

[1] *ITC Great Plains, LLC,* 126 FERC ¶ 61,223 (2009) (Incentives Order).

there to an existing substation near Spearville (the Kansas V-Plan Project)[2] (together, the Projects).

3. Invoking the Commission's transmission incentives policy promulgated as Order No. 679, ITC Great Plains requested rate incentives for the Projects, including recovery of prudently-incurred investment costs in case the project must be abandoned for reasons outside ITC Great Plains' control, and inclusion of certain costs related to development of the Projects as regulatory assets. Additionally, without invoking Order No. 679, ITC Great Plains requested a rate incentive to include certain costs related to start-up and corporate development costs as a regulatory asset.

4. In the Incentives Order, the Commission granted both requests, explaining the statutory and regulatory framework under which the Commission evaluates requests for incentive-based rate treatments for new transmission construction.[3] The Commission conditioned exercise of the abandoned plant incentive on ITC Great Plains making a filing, under section 205 of the FPA,[4] to show that the project abandonment costs were prudently incurred, and to propose a rate and cost allocation to recover the costs in a just and reasonable manner.[5] Similarly, it conditioned exercise of the regulatory asset treatment of pre-commercial costs incentive on ITC Great Plains demonstrating, also in a

[2] The Kansas V-Plan Project is the northern half of SPP's 765-kV transmission project known as the X-Plan, whose hub is located near Mooreland, Oklahoma, and with connections going northerly into Spearville and Wichita, Kansas, and southerly into Texas and the Oklahoma City areas. The Kansas V-Plan Project represents the Spearville to Wichita portion of the X-Plan. *See* Application, Testimony of Carl A. Huslig at 25-26, Ex. No. GP-100. The Kansas V-Plan plus a transmission line to the Oklahoma border are referred to as the Kansas Y-Plan.

[3] The Commission discussed section 219 to the FPA, 16 U.S.C. § 824s (2012), which provides for incentive-based rate treatments for new transmission construction. It also discussed the Commission's transmission incentives policy in Order No. 679, as revised by Order No. 679-A, and the conditions under which a public utility may seek transmission rate incentives for transmission infrastructure investments. *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). The Commission issued Order No. 679 in response to FPA section 219.

[4] 16 U.S.C. 824d (2012).

[5] Incentives Order, 126 FERC ¶ 61,223 at P 70.

section 205 filing, that the pre-construction costs and start-up costs are just and reasonable, prior to amortizing the regulatory assets.[6]

B. Settlement

5. On February 3, 2010, the Commission accepted a settlement agreement (Settlement) on behalf of all the parties to these proceedings.[7] The Settlement resolved all the issues in this proceeding except the issues raised in the requests for clarification and rehearing.[8]

C. Cooperatives' Motion for Clarification and Request for Rehearing of the Incentives Order

6. Cooperatives state that another entity, Prairie Wind Transmission, LLC (Prairie Wind), also seeks to build the Kansas V-Plan. According to Cooperatives, if SPP chooses Prairie Wind's project over ITC Great Plains' Kansas V-Plan, the choice would reflect SPP's determination, through its planning process, that the competing project is more beneficial to the region with respect to proposed costs. In arguing against granting the incentive for abandoned plant to ITC Great Plains, Cooperatives contend that, where multiple entities are competing to build essentially the same transmission project, cost recovery for abandoned plant is not appropriate. Cooperatives maintain that the circumstances here differ from those cases where a project must be abandoned because of, for example, failure to receive rights-of-way or permits. Here, the abandonment of an ITC Great Plains project would likely be the result of a determination in the SPP regional planning process that the project was inferior to one or more competing projects. Cooperatives contend that, in the Incentives Order, the Commission did not explain why ratepayers should fully insulate ITC Great Plains' investors from the risks of an inferior plan. Cooperatives contend that, taken to extremes, when multiple developers bid for the same project, ratepayers could be required to pay costs for the abandonment of multiple

[6] *Id.* P 75. ITC Great Plains made the required filing for authorization to commence the amortization of the regulatory assets on May 20, 2013, in Docket Nos. ER09-548-002 and EC11-108-001 (May 20 Filing).

[7] *ITC Great Plains, LLC*, 130 FERC ¶ 61,088, at P 4 (2010)).

[8] Settlement § 1.1.

proposed projects. Such costs, Cooperatives contend, cannot be determined to be just and reasonable.[9]

7. Cooperatives also argue that, if ITC Great Plains' Projects are abandoned before being placed in service, ITC Great Plains will have no customers from whom to recover abandoned plant costs, because ITC Great Plains is an entirely new, independent transmission company, providing no services and having no customers. Cooperatives cite the Commission's statement in the Incentives Order that, if the Projects are cancelled before completion, ITC Great Plains "will be required to make a showing, in its section 205 filing, that the abandonment costs were prudently incurred and it must propose a rate and cost allocation method to recover the costs in a just and reasonable manner."[10] According to Cooperatives, the Commission should have gone beyond this holding and, consistent with Commission precedent, it should have stated that a public utility may charge only for services it has actually provided, and it may not recover its costs from entities that are not customers of the utility.[11] Cooperatives contend that the Commission should have decided the issue of abandoned plant costs the way it decided ITC Great Plains' request for approval to accrue and recover start-up and development costs and project-specific pre-commercial costs as regulatory assets: it should have granted the request "to the extent that ITC Great Plains has customers to assess the costs" and held that ITC Great Plains may not recover abandonment costs from entities that are not its customers.[12]

8. Cooperatives request clarification of the Commission's statements in the Incentives Order concerning ITC Great Plains' request for approval to include its costs incurred before the ITC Great Plains formula rate becomes effective as a Start-Up and Development Regulatory Asset. In the Incentives Order, the Commission cites ITC Great Plains' Answer, which states that if ITC Great Plains fails to obtain total in-service Gross Property, Plant, and Equipment in excess of $100 million, these start-up costs will not be recovered; thus, customers are protected against recovery of these costs unless and until

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[9] Cooperatives Motion for Clarification and Request for Rehearing (Cooperatives Rehearing Request) at 3-4.

[10] *Id*. at 4-5 (quoting Incentives Order, 126 FERC ¶ 61,223 at P 70).

[11] *Id*. at 5 (citing *AES Somerset, LLC v. Niagara Mohawk Corp.*, 105 FERC ¶ 61,337 at P 42 (2003), *reh'g denied*, 110 FERC ¶ 61,032 (2005), *aff'd sub nom. Niagara Mohawk Corp. v. FERC*, 452 F.3d 822 (D.C. Cir. 2006)).

[12] *Id.* at 5-6 (quoting Incentives Order, 126 FERC ¶ 61,223 at P 74).

ITC Great Plains achieves a measure of success.[13] Cooperatives point out that, in granting ITC Great Plains' request for approval to accrue these costs as regulatory assets,[14] the Commission did not specify this condition. Cooperatives seek clarification that the Commission approved the creation of a regulatory assets incentive for start-up and development costs only if ITC Great Plains obtains total in-service Gross Property, Plant, and Equipment in excess of $100 million. Should the Commission decline to provide this clarification, Cooperatives request rehearing on this issue.[15]

D. Xcel's Request for Clarification or Rehearing

9. Similarly, Xcel seeks clarification or rehearing concerning the recovery of costs of abandoned projects and of regulatory assets for an entity that may never have customers. It asks the Commission to clarify from whom and under what circumstances these costs would be recovered. Xcel asks whether the Commission intends the costs to be recovered from the transmission service customers in the rate zone(s) of the transmission owners from whom ITC Great Plains is purchasing substation assets, or from the entire SPP footprint through a regionalized charge.[16]

10. Xcel asks the Commission to clarify the burden of proof that ITC Great Plains must demonstrate if it is to recover costs associated with the abandonment and/or regulatory asset incentives. It also asks for clarification that granting the abandonment and regulatory asset incentives does not guarantee the recovery of any costs. Xcel asks for clarification that during a subsequent section 205 proceeding for recovery of such costs, the Commission will give all interested parties the opportunity to comment on recovery of costs associated with project abandonment and regulatory asset incentives.[17]

11. Xcel cites the Incentives Order's statement that proposals to recover costs through the project abandonment and regulatory asset incentives must be found to be just and reasonable. It asks for specific guidance as to the showing that ITC Great Plains must

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[13] *Id.* at 6 (citing Incentives Order, 126 FERC ¶ 61,223 at P 73). *See* ITC Great Plains February 20, 2009, Answer at 19-20 (ITC Great Plains Answer).

[14] Cooperatives Rehearing Request at 6 (citing Incentives Order, 126 FERC ¶ 61,223 at P 74).

[15] *Id.* at 6-7.

[16] Xcel Request for Clarification or, in the Alternative, Rehearing (Xcel Rehearing Request) at 3-5.

[17] *Id.* at 5.

make to recover these costs, and what constitutes a prudently incurred cost whose recovery from a non-customer is just and reasonable. Xcel also asks the Commission to clarify that merely being granted the cost recovery incentives does not guarantee or create a presumption concerning the recovery of any costs; rather, the incentive only provides the possibility of recovery. Lastly, if project abandonment costs are to be spread across a portion of or the entire SPP region, Xcel asks the Commission to clarify what must be demonstrated for these costs to be recoverable, consistent with section 205, and to identity the standards that must be met in a future section 205 proceeding. Xcel contends that the Commission must protect ratepayers from absorbing all the costs and risks associated with the proposals of start-up transmission developers.[18]

II. Discussion

12. As discussed below, we grant, in part, Xcel and Cooperatives' requests for clarification, but we deny the remaining requests for clarification and rehearing. While we are aware that the Projects have changed in size and scope since issuance of the Incentives Order,[19] this order concerns rehearing of the Incentives Order. The changes do not necessarily alter the basis for the Commission's previous grant of transmission incentives.[20] Therefore, our deliberations as to the reasonableness of the Commission's findings and determinations in that order are based on the record that was before the Commission when it acted on the requested incentives in December 2008. To act otherwise would contribute to unnecessary confusion and uncertainty and might prompt

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[18] *Id* at 5-6.

[19] In 2011, ITC Great Plains stated, concerning the Kansas V-Plan Project, "The Kansas V Plan Project was described in the 2010 Form [report] as a 765 kV facility from Spearville to Comanche to Medicine Lodge to Wichita. As determined in the Southwest Power Pool (SPP) planning process, the facility will be constructed at 345 kV. . . . As a result of negotiations with Prairie Wind Transmission, LLC, the ITC Great Plains project will no longer extend to Wichita, but rather will terminate at the Thistle substation near Medicine Lodge, KS." ITC Great Plains, Docket No. ZZ11-3, FERC Form No. 730 report at Table 2 & n.6 (filed Apr. 18, 2011) (ITC Great Plains April 2011 Report). Also in Table 2, ITC Great Plains described the KETA Project as "Spearville-Post Rock-Axtell; 345 kV transmission line."

[20] *Accord Pioneer Transmission, LLC*, 130 FERC ¶ 61,044, at P 21 (2010 (*Pioneer Transmission*). To the extent that Xcel or Cooperatives believe that the modifications to the Projects render invalid the basis for the transmission incentives granted in the Incentives Order, they or any other entity may raise these concerns in a proceeding under section 206 of the FPA, 16 U.S.C. § 824e (2012).

project developers to delay construction of their transmission projects until the Commission has acted on rehearing requests.

13. First, we clarify that, as ITC Great Plains itself proposed, ITC Great Plains must first obtain total in-service Gross Property, Plant, and Equipment in excess of $100 million before it may consider start-up and development costs a regulatory asset.[21] In the Incentives Order, the Commission repeated ITC Great Plains' statement to this effect[22] before granting ITC Great Plains' request to recover, as regulatory assets, prudently incurred start-up and developmental costs as well as project-specific pre-commercial costs to the extent that ITC Great Plains has customers who will be assessed the costs.[23]

14. Further, as requested by Xcel, we clarify that, in granting ITC Great Plains' request for recovery of project abandonment costs and regulatory assets costs, the Commission did not guarantee automatic recovery of these costs. The Commission has stated previously that the project abandonment incentive and any future finding allowing inclusion of such costs in authorized rates is not a guarantee of cost recovery. Moreover, the Commission also has explained that approval of the regulatory asset incentive is not an assurance that the costs will be recovered in future rates; rather it is only an indication that the Commission will allow the utility's authorized rates to include the relevant costs (i.e., that it would allow inclusion of such costs in rates if such costs, and the allocation of such costs, are shown to be just and reasonable).[24]

15. In the Incentives Order, the Commission stated that, should the project be cancelled for reasons beyond its control, ITC Great Plains will be required to make a section 205 filing to show that the abandonment costs were prudently incurred and to propose a rate and cost allocation method to recover the costs in a just and reasonable

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[21] *See* ITC Great Plains Feb. 20, 2009 Motion for Leave to Answer and Answer at 10-11 (ITC Great Plains February 2009 Answer). As noted in the concurrently issued order in Docket Nos. ER09-548-002 and EC11-108-001, ITC Great Plains reports that the KETA Project went into service in 2012, and ITC Great Plains' total in-service Gross Property and Equipment costs exceed $100 million. *ITC Great Plains, LLC*, 150 FERC ¶ 61,226, at P 9 & n.14 (2015).

[22] Incentives Order, 126 FERC ¶ 61,223 at P 73.

[23] *Id.* P 74.

[24] *Pioneer Transmission, LLC*, 130 FERC ¶ 61,044 at PP 27-28.

manner.[25] The Commission also explained that, while it was granting ITC Great Plains the ability to record project-specific, pre-construction costs and start-up costs as regulatory assets, ITC Great Plains still is required to make a section 205 filing prior to the commencement of amortization of the regulatory assets to demonstrate that the pre-construction costs and start-up costs are just and reasonable.[26] Should ITC Great Plains make these section 205 filings, notice will be published in the *Federal Register*, at which time interested entities will have an opportunity to intervene and comment.[27]

16. We deny rehearing as to certain issues that we regard as speculative. Cooperatives and Xcel speculate that ITC Great Plains may abandon its projects, and, if so, they ask who would pay project abandonment costs and what ITC Great Plains would have to show to justify recovery of abandonment costs as prudently incurred and consistent with the just and reasonable standard. We decline to speculate about consequences of project abandonment, an outcome that has become, with the passage of time, either moot or increasingly unlikely. Should project abandonment occur and ITC Great Plains file with the Commission a request for abandoned plant cost recovery, the Commission will evaluate the facts as they exist at the time ITC Great Plains makes such a filing before determining the justness and reasonableness of any recovery. Order No. 679 specifically reserves a determination of prudence for the section 205 filing that every utility is required to make if it seeks abandoned plant cost recovery.[28]

17. We deny rehearing as to the requests of Xcel and Cooperatives that the Commission was required to rule, at the time of the Incentives Order, on how and from whom ITC Great Plains may recover possible project abandonment costs. We also

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[25] Incentives Order, 126 FERC ¶ 61,223 at P 70. As noted above, the KETA Project went into service in 2012. The Kansas V-Plan Project has also entered service, in December 2014. *See* ITC Great Plains, News Release: ITC Great Plains Energizes V-Plan Transmission Line and Project Substations in Western Kansas (Dec. 18, 2014), *available at* http://www.itc-holdings.com/releases-news/item/901-itc-great-plains-energizes-v-plan-transmission-line-and-project-substations-in-western-kansas.html.

[26] *Id.* P 76.

[27] *See* 18 C.F.R. § 35.8 (2014). As stated above, ITC Great Plains made this filing. *See supra* note 6.

[28] *See Transource Missouri, LLC*, 141 FERC ¶ 61,075, at P 63 (2012), *settlement approved*, 143 FERC ¶ 61,104 (2013); *S. Cal. Edison Co.*, 134 FERC ¶ 61,181, at P 102 (2011); *Green Energy Express LLC*, 129 FERC ¶ 61,165, at P 55 (2009), *reh'g denied*, 130 FERC ¶ 61,117 (2010); Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-66.

decline to qualify the grant of prudent abandonment costs with the requested language "to the extent that ITC Great Plains has customers to assess the costs."[29] Additionally, we deny Cooperatives' request that we address on rehearing why a developer should recover the abandonment costs of a project that is not constructed because the regional planning process chose another project instead, and why the investors of the abandoned project should not bear the abandonment costs instead of ratepayers. These are hypothetical scenarios that are not before the Commission at this time.

18. Should ITC Great Plains seek to recover project abandonment costs in a section 205 filing, it would be required to demonstrate that such abandonment was beyond its control. It would also be required to demonstrate that the abandonment costs were prudently incurred and to propose a rate and cost allocation method to recover the costs in a just and reasonable manner. Concerned entities would have an opportunity to comment on any proposal to recover such costs, including whether it was prudent for ITC Great Plains to incur specific costs.[30] As the Commission has held previously, in situations where it is unclear whether the project developer would have any customers from whom to recover abandonment costs, such matters are addressed more appropriately in an actual section 205 proceeding.[31]

The Commission orders:

Cooperatives' and Xcel's requests for rehearing and clarification are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[29] Cooperatives Rehearing Request at 5-6.

[30] *See, e.g.*, *Green Power Express, LP*, 127 FERC ¶ 61,031, at P 52 (2009), *reh'g denied*, 135 FERC ¶ 61,141 (2011).

[31] *See, e.g., RITELine Ill.*, 137 FERC ¶ 61,039, at P 86 (2011); *Northeast Transmission Development, LLC*, 135 FERC ¶ 61,244, at P 68, *clarified*, 137 FERC ¶ 61,238 (2011).