

154 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

South Central MCN LLC

Docket No. EC15-206-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued March 4, 2016)

1. On September 14, 2015, as amended January 20, 2016, South Central MCN LLC (South Central) filed, pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² an application seeking all authorizations necessary to permit South Central to acquire from Tri-County Electric Cooperative, Inc. (Tri-County) certain existing transmission assets (the Tri-County Assets) that are not presently subject to the Commission's rate jurisdiction under the FPA (Proposed Transaction).³ The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁴ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. § 824b(a)(1) (2012).

² 18 C.F.R. pt. 33 (2015).

³ Application for Authorization to Acquire Transmission Facilities Pursuant to Section 203 of the Federal Power Act and Request for Expedited Consideration Shortened Comment Period and Certain Waivers, Docket No. EC15-206-000 (Sept. 14, 2015) (Application). South Central MCN, LLC, Docket No. EC15-206-000 (Jan. 20, 2016) (Supplemental Information Filing).

⁴ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy

(continued...)

I. Background

A. Description of the Parties to the Proposed Transaction

1. South Central

2. South Central states that it is a limited liability company organized to operate as a transmission-only company, or transco, within the Southwest Power Pool, Inc. (SPP).⁵ South Central explains that it is entering into long-term agreements to develop, jointly own, operate, and maintain new and existing regulated transmission assets with non-jurisdictional electric cooperatives, municipally-owned electric systems, and joint action agencies.⁶

3. South Central states that it is wholly owned by GridLiance Heartland LLC (Heartland), which also owns a sister transco that was formed to develop and operate transmission assets in the Midcontinent Independent System Operator, Inc. (MISO) region. South Central further states that Heartland is owned by GridLiance Holdco, LP (GridLiance), which indirectly owns a transco that will develop transmission facilities in the Electric Reliability Council of Texas (ERCOT) region. According to South Central, GridLiance is owned by Blackstone Power and Natural Resources, LP, which is owned by Blackstone Capital Partners VI, LP (Blackstone Capital Partners). Blackstone Capital Partners, in turn, is owned by the Blackstone Group, L.P. (Blackstone), an investment and advisory firm.⁷

4. South Central states that Blackstone is not affiliated with any facilities for the generation or transmission of electric energy in the SPP region, but does have energy-

Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (Order No. 642), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

⁵ Application at 2, 6.

⁶ *Id.* at 2-3.

⁷ *Id.* at 6-7.

related investments in other areas of the country. Specifically, South Central notes that Blackstone holds 100 percent of the interests in Lonestar Generation LLC, an entity that owns and operates four generating facilities located in ERCOT; owns 100 percent of TDI-USA Holdings Corporation, a participant in a joint venture that is developing a High Voltage Direct Current (HVDC) transmission line that is planned to run from the border between the United States and Canada to New York City; and is affiliated with TDI-New England, which is developing an HVDC line that will run from Quebec, Canada, to Ludlow, Vermont.⁸

5. South Central also notes that Blackstone, through its credit-oriented affiliate, GSO Capital Partners LP, owns the following companies that are exempt wholesale generators with market-based rate authority:

- BIV Generation Company, L.L.C., which owns and operates a 123 megawatt (MW) natural gas-fired generating facility located near Brush, Colorado.
- Colorado Power Partners, which owns and operates 55 MW and 24 MW natural gas-fired generating facilities located near Brush, Colorado.
- Rocky Mountain Power, LLC, which owns and operates a 115.7 MW electric generation facility located in Hardin, Montana.
- San Joaquin Cogen, LLC, which owns and operates a 48 MW electric generation facility located in Lathrop, California.
- Tanner Street Generation, LLC, which owns and operates an 85 MW dual fuel combined cycle electric generation facility located in Lowell, Massachusetts that is interconnected to the transmission system operated by ISO New England Inc.⁹

6. South Central also explains that Blackstone is affiliated with two wholesale power marketers that are authorized by the Commission to make wholesale sales at market-based rates, Twin Eagle Resource Management, LLC (Twin Eagle) and Enserco Energy LLC (Enserco). South Central states that Twin Eagle is an energy marketing company, and that Enserco, a wholly owned subsidiary of Twin Eagle, is a marketing entity that purchases and sells wholesale electricity, natural gas, crude oil, environmental credits, coal, energy-related financial products, and renewable energy credits.

⁸ *Id.* at 7.

⁹ *Id.* at 8.

7. South Central further explains that Blackstone is affiliated with Cheniere Energy Partners, L.P. (Cheniere), which is primarily engaged in the liquefied natural gas industry. South Central states that Cheniere is the 100 percent owner of Sabine Pass LNP, L.P., Sabine Pass Liquefaction, LLC, and Cheniere Creole Trail Pipeline, L.P., which own and develop natural gas storage and pipelines.¹⁰

8. South Central notes that Blackstone is not affiliated with any public utility with a franchised electric service territory in the United States.

2. Tri-County

9. South Central states that Tri-County is a non-jurisdictional, not-for-profit distribution cooperative that serves approximately 23,000 households and businesses in the Oklahoma Panhandle, southwestern Kansas, the northern border of the Texas Panhandle, and parts of Colorado and New Mexico. According to South Central, Tri-County currently owns nearly 5,500 miles of transmission and distribution lines, and the Tri-County Assets are currently part of that electric utility system. As an electric cooperative that sells less than 4,000,000 megawatt hours of electricity per year, South Central notes that Tri-County is excluded from the Commission's general FPA authority under FPA section 201(f).¹¹ South Central states that Tri-County does not own or control inputs to electricity products or electric power production.

B. Description of the Proposed Transaction

10. South Central explains that the Proposed Transaction involves the purchase of the Tri-County Assets, which consist of approximately 410 miles of 69 and 115 kilovolt (kV) transmission lines and substations, feeders, switches, transformers, and related assets. According to South Central, the vast majority of the Tri-County Assets are located in Oklahoma (the Tri-County Oklahoma Assets), with only a single 69 kV transmission line located in Kansas (the Tri-County Kansas Assets).¹² South Central notes that although the Tri-County Assets are all of a voltage level to be accounted for as transmission facilities (60 kV or above), the Commission previously determined that certain of the Tri-County Assets are not "Transmission Facilities" under Attachment AI

¹⁰ *Id.* at 8-9.

¹¹ 16 U.S.C. § 824(f).

¹² Application at 4.

of the SPP Tariff¹³ or transmission facilities under the Commission's seven factor test, and that none of the Tri-County Assets are therefore eligible to be rolled into SPP's Zone 11 Annual Transmission Revenue Requirement.¹⁴

11. In the Application, South Central stated that it anticipated that, after acquiring the Tri-County Assets, it would transfer functional control of them to SPP, and that under SPP control, the Tri-County Assets would be classified as wholesale distribution facilities. South Central's stated intention was to provide Wholesale Distribution Service to Tri-County over the Tri-County Assets pursuant to Schedule 10 of the SPP Open Access Transmission Tariff (SPP Tariff) after closing of the Proposed Transaction.¹⁵ South Central explained that the costs for the Wholesale Distribution Service that it would provide to Tri-County would be collected pursuant to a transmission formula rate for which it sought approval of in Docket No. ER15-2594-000 (Proposed Formula Rate).¹⁶ As filed in Docket No. ER15-2594-000, the Proposed Formula Rate provides that, upon consummation of the Proposed Transaction, the costs related to the acquired assets would be collected by SPP under the Wholesale Distribution Service provision of

¹³ Attachment AI: Transmission Definition of the SPP Tariff defines Transmission Facilities and establishes the criteria for inclusion of Transmission Facilities in Annual Transmission Revenue Requirements under the SPP Tariff. Attachment AI of the SPP Tariff "is the mechanism by which Transmission Providers determine whether their facilities should be classified as Transmission Facilities, and...only facilities classified as Transmission Facilities under the SPP Tariff can be included in [Annual Transmission Revenue Requirements], which allows their costs to be recovered from all customers in a specific zone." *Southwest Power Pool, Inc.*, Opinion No. 535, 149 FERC ¶ 61,051, at P 17 (2014) (Opinion No. 535).

¹⁴ Application at 5 (citing Opinion No. 535, 149 FERC ¶ 61,051 at P 16).

¹⁵ South Central sometimes refers to providing service pursuant to Section 10 of the SPP Tariff. *Id.* at 5. However, Schedule 10 of the SPP Tariff governs Wholesale Distribution Service. *See* SPP Tariff, OATT, Schedule 10 Wholesale Distribution Service (0.0.0).

¹⁶ *See* Application for Approval of Transmission Rate Formula and Approval of Transmission Rate Incentives, Docket No. ER15-2594-000 (Sept. 1, 2015) (Proposed Formula Rate Filing).

the SPP Tariff.¹⁷ The Commission addressed the Proposed Formula Rate Filing, which included other related requests, in *South Central MCN, LLC*.¹⁸

12. In a subsequent filing submitted to the Commission pursuant to FPA section 205¹⁹ in a separate proceeding, South Central noted that its expectations regarding its post-Proposed Transaction arrangements had changed:

Initially, South Central expected all of its assets to be under SPP's function [*sic*] control and [the Proposed Formula Rate] to be effective once the template protocols [were] filed with the Commission to become part of the SPP Tariff. However, SPP has stated that it may not accept functional control of facilities not considered "Transmission Facilities" under the terms of Attachment AI of the SPP Tariff and may not collect rates under Schedule 10 of its Tariff (Wholesale Distribution Service) if South Central does not yet have "Transmission Facilities" subject to SPP's control.²⁰

13. For this reason, in the December 10 Filing, South Central requests that "the Commission accept and make effective the [Proposed Formula Rate] in [Docket No. ER16-505-000], for purposes of collecting its costs for [Wholesale Distribution Service] utilizing the [Tri-County Assets]."²¹ South Central further explains, in the December 10 Filing, that it is filing the Wholesale Distribution Service and the Wholesale Operating Agreement "as the mechanism to provide the delivery service to Tri-County" given that "the delivery service South Central will provide to Tri-County cannot be provided pursuant to the SPP Tariff and the cost of the [Tri-County Assets] cannot be included in an Annual Transmission Revenue Requirement...under the SPP Tariff."²²

¹⁷ Application at 5.

¹⁸ 153 FERC ¶ 61,099 (2015) (addressing South Central's Proposed Formula Rate and related formula rate protocols, proposed base return on equity, and various transmission rate incentives).

¹⁹ 16 U.S.C. § 824d.

²⁰ South Central MCN LLC at 2, Docket No. ER16-505-000 (Dec. 10, 2015) (December 10 Filing).

²¹ *Id.*

²² *Id.* at 3.

14. In response to the December 10 Filing, the Director of the Division of Electric Power Regulation – West issued a letter notifying South Central that additional information was required to analyze the Application (Request for Additional Information). In response to the Request for Additional Information, South Central submitted the Supplemental Information Filing. The Supplemental Information Filing is discussed below, as part of the Commission’s analysis of the Proposed Transaction.

15. Finally, in the Application, South Central notes that because it is a start-up and will not have its own operators in place until 2016, it is developing an Operation and Maintenance Agreement with Tri-County for routine operation and maintenance of the Tri-County Assets. South Central states that this arrangement will continue while South Central is building its own control center and arranging for long-term operation and maintenance services.²³

II. Notice of Filings

16. Notice of the Application was published in the *Federal Register*, 80 Fed. Reg. 56,974 (2015), with interventions and protests due on or before October 5, 2015.

17. The Missouri Public Service Commission filed a notice of intervention.

18. Motions to intervene were filed by the following parties: Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company; the National Rural Electric Cooperative Association; American Electric Power Service Corporation; Western Farmers Electric Cooperative; and Tri-County.

19. The New Mexico Cooperatives filed an out-of-time motion to intervene.

20. Sunflower Electric Power Corporation and Mid-Kansas Electric Company, LLC (together, Sunflower Electric) filed a motion to intervene and comments. Occidental Permian Ltd. (Occidental) also filed a motion to intervene and comments.

21. Xcel Energy Services, Inc. (Xcel) filed a motion to intervene and protest on behalf of its utility operating company affiliate, Southwestern Public Service Company (Southwestern).

22. South Central filed a motion for leave to answer and answer. Southwestern filed a motion to reply and reply to South Central’s answer.

²³ Application at 9-10.

23. On December 15, 2015, South Central filed a letter requesting Commission action on the Application no later than December 22, 2015. Southwestern filed an answer opposing South Central's request.

24. On January 13, 2016, the Kansas Corporation Commission (Kansas Commission) submitted a motion for leave to intervene out-of-time.²⁴

25. On January 20, 2016, in response to the Request for Additional Information, South Central submitted the Supplemental Information Filing. Notice of the Supplemental Information Filing was published in the *Federal Register*, 81 Fed. Reg. 5,436 (2016), with interventions and protests due on or before February 3, 2016.

26. Tri-County filed comments on the Supplemental Information Filing, affirming its "strong support" for the Application.²⁵

III. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁶ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

28. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,²⁷ we will grant the late-filed motions to intervene given intervenors' interests in the

²⁴ The Kansas Commission states that the subsequent developments cited by South Central in the December 10 Filing "fundamentally changed the potential impact on Kansas ratepayers and increased the import of this proceeding to Kansas ratepayers," and therefore it "made the decision to devote resources to participating in this proceeding and took prompt action to work through its internal processes to facilitate its involvement." Motion for Leave to Intervene Out-of-Time of the Kansas Corporation Commission at 3, Docket No. EC15-206-000 (Jan. 13, 2016).

²⁵ Comments of Tri-County Electric Cooperative, Inc. in Support of South Central MCN LLC's Response to Request for Further Information and Underlying Application at 2, Docket No. E15-206-000 (Feb. 3, 2016) (Tri-County Comments).

²⁶ 18 C.F.R. § 385.214.

²⁷ *Id.* § 385.214(d).

proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁸ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Standard of Review under FPA Section 203

30. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.²⁹ The Commission's analysis of whether a proposed transaction will be consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.³⁰ FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."³¹ The Commission's regulations establish verification and information requirements for

²⁸ *Id.* § 385.213(a)(2).

²⁹ 16 U.S.C. § 824b(a)(4).

³⁰ *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 at 30,111, *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321. *See also* Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253. *See also* Order No. 642, FERC Stats. & Regs. ¶ 31,111, *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289. *See also Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200, *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225.

³¹ 16 U.S.C. § 824b(a)(4).

applicants that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets.³²

2. Analysis of the Proposed Transaction

a. Effect on Competition

i. South Central's Analysis

31. In the Application, South Central argues that the Proposed Transaction will not have an adverse effect on competition and does not raise any horizontal or vertical market power issues.

32. With respect to horizontal market power issues, South Central notes that the Proposed Transaction will result in it acquiring existing transmission assets currently owned by Tri-County. South Central states that, since the Proposed Transaction does not involve the disposition of any generating assets, the Proposed Transaction will not result in any change in market concentration for generation. South Central therefore concludes that the Proposed Transaction does not raise any horizontal market power concerns.³³

33. South Central also contends that the Proposed Transaction does not raise any vertical market power issues. South Central explains that the Proposed Transaction involves no inputs to electric products or electric power production, and that therefore the Tri-County Assets cannot be used to erect barriers to entry or exercise vertical market power. South Central observes that the Commission has previously found that ““anticompetitive effects are unlikely to arise with regard to ... transactions that involve only the disposition of transmission facilities.””³⁴

34. In the Supplemental Information Filing, South Central asserts that the “updated facts and circumstances discussed in the December 10 Filing do not alter or change South Central’s analysis of the Proposed Transaction’s effect on competition.”³⁵ South Central reiterates that, following the Proposed Transaction, the Tri-County Assets will be operated by South Central to provide Commission-jurisdictional, wholesale

³² 18 C.F.R. § 33.2(j).

³³ Application at 11.

³⁴ *Id.* at 12 (quoting *ITC Holdings Corp.*, 143 FERC ¶ 61,256, at P 60 (2013) (citation omitted)).

³⁵ Supplemental Information Filing at 2.

distribution service to Tri-County, and that Commission precedent recognizes that the disposition of transmission assets typically does not raise any horizontal market power concerns. According to South Central, the only potentially relevant changed circumstance with respect to the Tri-County Assets is that the wholesale distribution service will not be provided under Schedule 10 of the SPP Tariff. South Central claims, however, that this change does not affect the competitive impact of the Proposed Transaction since, in their current configuration, the Tri-County Assets serve a single customer. South Central explains that it is requesting waiver of the requirement to file its own Open Access Transmission Tariff (OATT) in light of the nature of the Tri-County Assets, but has committed to file an OATT upon receipt of a request to do so. South Central states that, as a result, if it receives a request by a third-party to use the Tri-County Assets, a mechanism will be in place for open access to be granted. South Central therefore concludes that the Tri-County Assets will be subject to the open access policies of the Commission.³⁶

ii. Commission Determination

35. We find that the Proposed Transaction will not have an adverse effect on competition and does not raise any horizontal or vertical market power issues.

36. As South Central notes, the Commission has recognized that anticompetitive effects are unlikely to arise with regard to transactions involving only the transfer of transmission facilities.³⁷ Because the Proposed Transaction will only involve the transfer of transmission facilities, we find that it will not have an adverse effect on horizontal competition.

37. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity. We find that because there is no transfer of generation facilities or inputs to electric power generation that may be combined with South Central's assets, the Proposed Transaction will not have an adverse effect on vertical competition.

³⁶ *Id.*

³⁷ *See, e.g.*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,903 (recognizing that there is no need for a Competitive Analysis Screen when a transaction only involves a disposition of transmission facilities); *DTE Energy Co.*, 97 FERC ¶ 61,330, at 62,572 (2001) (“[A]nticompetitive effects are unlikely to arise in a transaction that only involves a disposition of transmission facilities.”).

b. Effect on Rates

i. South Central's Analysis

38. In the Application, South Central explains that its initial rates for service over the Tri-County Assets will affect only Tri-County as the sole customer for Wholesale Distribution Service provided over those facilities. South Central also states that the rates for Wholesale Distribution Service will be based on the price South Central paid Tri-County for the Tri-County Assets, and the return on equity approved by the Commission in the proceeding on the Proposed Formula Rate Filing in Docket No. ER15-2594-000. With respect to the price paid by South Central to Tri-County, South Central notes that the price has been agreed upon through arm's length negotiations based on the original cost of the facilities less depreciation, and that no premium will be included in the purchase price for the Tri-County Assets. South Central concludes that the Proposed Transaction will not have an adverse effect on rates without relying on hold harmless commitments or other ratepayer protection mechanisms.³⁸

39. South Central asserts that the updated facts and circumstances discussed in the December 10 Filing do not alter or change its analysis of the Proposed Transaction's effect on rates. South Central reiterates that the Tri-County Assets currently serve a single customer, Tri-County, and that the costs of the acquired facilities will be directly assigned to Tri-County. According to South Central, the anticipated cost of service is only minimally affected by the switch from having the costs collected under a South Central-specific portion of the SPP Tariff, as proposed in the Application, to a stand-alone South Central tariff, as proposed in the December 10 Filing.³⁹ In the December 10 Filing, South Central confirms that the initial rates for Tri-County will be based on the price South Central pays Tri-County for the Tri-County Assets, and the rate of return approved by the Commission under the Proposed Formula Rate. South Central also confirms that the acquisition price has been agreed upon through arm's length negotiations based on the original cost of the Tri-County Assets less depreciation.⁴⁰

³⁸ Application at 12.

³⁹ South Central states that the difference is due to the exclusion of the 50 basis point adder to its return on equity approved by the Commission in Docket No. ER15-2595-000. South Central explains that, since the Tri-County Assets will not be under the control of a Regional Transmission Organization (RTO), it did not seek, in the December 10 Filing, to include that adder in the Proposed Formula Rate it requests the Commission make effective in Docket No. ER16-505-000. Supplemental Information Filing at n.3.

⁴⁰ December 10 Filing at 5.

40. In the Supplemental Information Filing, South Central acknowledges that Tri-County will “see an increase in costs due to paying rates to a third-party for services it previously self-provided.”⁴¹ South Central, however, notes that nothing in the December 10 Filing changes the fact that Commission-jurisdictional transmission rates paid by other transmission customers will not be affected by the transaction. South Central further asserts that, even if not under the immediate control of an RTO, the ownership of the Tri-County Assets by South Central will “still result in the same benefits of transco ownership recognized by the Commission” and described in the Application.⁴²

41. In the Application, South Central asserted that, in addition to transco ownership, the Proposed Transaction would result in several offsetting benefits. First, South Central claimed that the anticipated integration of certain of the Tri-County Assets into South Central’s regional facilities would “enhance the overall reliability of Tri-County facilities and the transmission grid as a whole, as the Commission has recognized in finding that placing transmission facilities under an RTO improves power market performance and reliability.”⁴³ Second, South Central cited as a benefit of the Proposed Transaction that the Tri-County Assets would be placed under the control of an RTO. Third, South Central argued that the Proposed Transaction would promote the Commission’s policy goal of bringing municipal and cooperative utilities into the RTO planning and transmission ownership process. South Central claimed that its co-development activities with its public power partners, including Tri-County, would ensure that public power utilities get “a more meaningful seat at the table”⁴⁴ for planning the regional and local transmission grid.

ii. Protest and Comments

42. The protests of and comments on the Application focus on the potential for South Central to roll the costs of the Tri-County Assets into SPP transmission pricing

⁴¹ Supplemental Information Filing at 3. In the Application, South Central had explained that the primary driver of any difference in cost to Tri-County arose from South Central’s different capital structure and need to earn a return. Application at 13.

⁴² Supplemental Information Filing at 3.

⁴³ Application at 13-14 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,023-24 (1999) (Order No. 2000), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁴⁴ *Id.* at 15.

zones under the SPP Tariff. Occidental, for example, states that it does not object to the Proposed Transaction, but that, as it noted in the proceeding on the Proposed Formula Rate Filing, it is concerned that South Central may seek to shift the costs of the Tri-County Assets to SPP Zone 11 ratepayers.⁴⁵

43. Similarly, Southwestern states that it does not object to South Central acquiring the Tri-County Assets, “subject to the principle that other loads in SPP Zone 11 should not be harmed.”⁴⁶ Southwestern also argues, however, that South Central’s long-term business model is designed to enable South Central and its public power partners to reallocate costs associated with existing public power-owned facilities to entities that derive no benefits from the facilities.⁴⁷ In addition, Southwestern claims that the primary offsetting benefit relied upon by South Central, its transco business model, does not support its claims. First, Southwestern states that the Application fails to address the fact that public power involvement will actually decrease as South Central acquires public power-owner resources in SPP. Second, Southwestern asserts that South Central’s business model calls into question the extent to which it is an independent transco since South Central will be involved “in an agency relationship with its public power partners,” and will co-own and co-develop facilities with these partners. Third, Southwestern argues that the Proposed Transaction is unnecessary to create public power involvement in SPP because public power and cooperatives are already active in SPP.⁴⁸

44. Sunflower Electric also raises concerns regarding cost recovery of the Tri-County Assets,⁴⁹ and notes that South Central did not include with the Application the Co-Development or Wholesale Distribution Agreements, which are referenced as attachments to the Asset Purchase Agreements included with the Application. Sunflower Electric states that to the extent these agreements contain rates, terms and conditions relevant to the Commission’s review of the Application under FPA section 203, neither interested parties nor the Commission can ensure that the Proposed Transaction will not

⁴⁵ Motion to Intervene and Comments of Occidental Permian Ltd. at 2-3, Docket No. EC15-206-000 (Oct. 5, 2015).

⁴⁶ Motion to Intervene and Protest of Xcel Energy Services, Inc. at 5, Docket No. EC15-206-000 (Oct. 5, 2015).

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 13-14.

⁴⁹ Motion to Intervene and Comments of Sunflower Electric Corporation and Mid-Kansas Electric Company, LLC at 4, Docket No. EC15-206-000 (Oct. 4, 2015).

adversely affect competition, rates, or regulation without their inclusion in the Application.⁵⁰

iii. Answers and Responsive Pleadings

45. South Central asserts that Southwestern's arguments regarding its long-term business model are based entirely on events that may or may not happen in the future, and that are subject to the provisions of the SPP Tariff, SPP planning protocols, and review by the Commission. South Central states that the Commission's review of the Proposed Transaction is properly directed at the transaction, not potential future transactions or other developments.⁵¹ South Central also disputes Southwestern's claims regarding the impact of the Proposed Transaction on rates, stating that Southwestern inappropriately raises events that may or may not happen in the future.⁵²

46. Southwestern argues that South Central attempts to avoid criticism of the Proposed Transaction by focusing on the transaction at a snapshot in time and ignoring any moment beyond South Central's acquisition date. Southwestern asserts that the Application reveals South Central's intention to acquire the Tri-County Assets and loop them into a larger network, and argues that South Central's explanation that Southwestern and others will have the opportunity to protest any changes in classification at that time does not obviate the need for South Central to provide a public interest analysis of the Proposed Transaction.⁵³

47. In response to the Supplemental Information Filing, Tri-County affirms its strong support for the Application, explaining that the Proposed Transaction will "result in many benefits to Tri-County, its members, and the grid."⁵⁴ Tri-County states that, by operating the Tri-County Assets and devoting considerable expertise and resources to regional transmission planning, South Central will provide Tri-County a greater stake and voice in those matters. According to Tri-County, the fact that SPP will not immediately take

⁵⁰ *Id.* at 5.

⁵¹ Motion for Leave to Answer and Answer at 3-4, Docket No. EC15-206-000 (Oct. 20, 2015) (South Central Answer).

⁵² *Id.* at 5-6.

⁵³ Motion for Leave to Reply and Reply of Xcel Energy Services Inc. at 2-3, Docket No. EC15-206-000 (Nov. 5, 2015).

⁵⁴ Tri-County Comments at 2.

functional control of the Tri-County Assets does not affect the Proposed Transaction from Tri-County's perspective. Tri-County states that both it and South Central "remain committed to working together in the SPP transmission development process to improve the reliability and efficiency of the transmission in the Tri-County service area."⁵⁵

iv. **Commission Determination**

48. We agree with South Central that the Proposed Transaction will not have an adverse effect on rates.

49. First, the price for the Tri-County Assets has been agreed upon by the parties through arm's length negotiations, based on the original cost of the facilities, less accumulated depreciation. In addition, South Central states that no premium will be included in the purchase price for the Tri-County Assets. Second, South Central notes that, although rates for service over the Tri-County Assets will increase as a result of the Proposed Transaction, the primary driver for any difference in cost to Tri-County arises from South Central's different capital structure, and the need to earn a return. As noted in the Application, however, the Tri-County Assets are currently under the control of a non-jurisdictional, not-for-profit cooperative so this increase is not unexpected. We note that the sole customer over the Tri-County Assets, Tri-County, has indicated its support for the Proposed Transaction,⁵⁶ and stated that the Proposed Transaction will result in many benefits to it.

50. We do not agree with the arguments raised in the comments and protest that the Proposed Transaction will result in an adverse effect on rates or increased costs to non-Tri-County customers and therefore decline to condition our approval of the Proposed Transaction as requested by Southwestern. As explained in the December 10 Filing, Wholesale Distribution Service to Tri-County will no longer be provided pursuant to the SPP Tariff. Accordingly, there is no mechanism through which South Central could

⁵⁵ *Id.*

⁵⁶ *See, e.g.* Motion to Intervene of Tri-County Electric Cooperative Inc. at 2, Docket No. EC15-206-000 (Oct. 5, 2015). We note that "doc-less" interventions should not contain substantive comments. Under Commission rules, substantive comments are to be filed separately from doc-less motions to intervene. *See Filing Via the Internet*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,621, at P 18 (2007) (explaining that the new system for filing "would require that users file protests, substantive comments, and other matters besides intervention as separate documents using the existing eFiling process"), *adopted in relevant part, Filing Via the Internet*, Order No. 703, FERC Stats. & Regs. ¶ 31,259, at P 4 (2007).

assign the costs for the Tri-County Assets to SPP customers. Further, as South Central notes in its answer, if an upgrade made by South Central to the Tri-County Assets changes the classification of those facilities, parties such as Southwestern and other SPP transmission owners will receive adequate notice of the change and have the opportunity to challenge the new classification, just as they did in the proceeding that yielded Opinion No. 535. In any such case, SPP would be required to submit an FPA section 205 filing with the Commission to reflect the change in Attachment H of the SPP Tariff, thereby providing interested parties the opportunity to challenge any change in cost allocation resulting from a change in classification of the Tri-County Assets.⁵⁷ As South Central has stated, any “future developments with respect to the Tri-County Assets will occur in accordance with the Commission’s regulations and policies in future dockets and in accordance with SPP’s rules and practices.”⁵⁸ We agree with South Central that those future proceedings are the proper fora for addressing any concerns with any future developments related to the Tri-County Assets. All affected parties will have the opportunity to provide comments in those proceedings.

51. We also find that arguments based on South Central’s future business model and plans are not relevant to our analysis under FPA section 203. Our focus here is only on whether the Proposed Transaction itself will have an adverse effect on jurisdictional rates. Any future changes in cost allocation for the Tri-County Assets are not predicated on the change in ownership of the Tri-County Assets that will result from the Proposed Transaction and will be subject to additional proceedings wherein interested parties will have the opportunity to challenge the revised cost allocation. Accordingly, we reject the arguments on these issues finding that they do not demonstrate that the Proposed Transaction will have an adverse effect on rates.⁵⁹

⁵⁷ South Central Answer at 5.

⁵⁸ Supplemental Information Filing at 3.

⁵⁹ In addition, while section 33.2(f) of the Commission’s regulations requires FPA section 203 applicants to include with their applications “[a]ll contracts related to the proposed transaction together with copies of all other written instruments entered into or proposed to be entered into by the parties to the transaction,” South Central requests waiver of section 33.2(f) to the extent that it would require submission of any other documents. Since the Application, as amended, provides sufficient information for us to evaluate the Proposed Transaction, South Central’s failure to include the Co-Development and Wholesale Distribution Agreements has not interfered with our ability to evaluate whether the Proposed Transaction is in the public interest.

52. Finally, we remind South Central that applicants under FPA section 203 are required to supplement their applications “promptly to reflect in their analysis material changes that occur after the date a filing is made with the Commission, but before final Commission action.”⁶⁰ The Commission first learned of a change to the Application via a separate filing South Central made in an unconsolidated FPA section 205 proceeding in Docket No. ER16-505-000. South Central claims that the information provided in the Supplemental Information Filing demonstrates that “there are no changes in the facts and circumstances that are relevant to the Commission’s review under [FPA section 203].”⁶¹ We disagree. The fact that South Central no longer intends to place the Tri-County Assets under the control of SPP is directly relevant to at least two of the offsetting benefits that South Central relied upon in the Application to support Commission approval of the Proposed Transaction: (1) placing the facilities under the control of an RTO,⁶² and (2) promoting “the Commission’s policy goal of bringing municipal and cooperative utilities into the RTO planning and transmission ownership process.”⁶³ While we are able to rely on other factors to find that the Proposed Transaction will not have an adverse effect on rates, we expect FPA section 203 applicants to ensure that the representations in their applications are accurate, and to supplement their FPA section 203 applications as appropriate.

c. Effect on Regulation

i. South Central’s Analysis

53. In the Application, South Central asserts that the Proposed Transaction will not have an adverse effect on regulation. South Central explains that the Tri-County Oklahoma Assets are currently owned by a cooperative and that their use is not subject to regulation by either the Commission or the Oklahoma Corporation Commission. South Central also explains that the Tri-County Kansas Assets are likewise not subject to the jurisdiction of the Kansas Commission because Tri-County previously elected, pursuant to Kansas state law, to be exempt from the jurisdiction, regulation, supervision

⁶⁰ 18 C.F.R. § 33.2(g).

⁶¹ Supplemental Information Filing at 4.

⁶² Application at 14.

⁶³ *Id.* at 15.

and control of the Kansas Commission.⁶⁴ South Central also notes that, upon approval by the Commission and closing of the Proposed Transaction, South Central's rates, which would include cost recovery for the Tri-County Assets, would be subject to the Commission's jurisdiction under the FPA for the first time.⁶⁵

54. South Central asserts that the updated facts and circumstances in the December 10 Filing do not alter or change its analysis of the Proposed Transaction's effect on regulation. South Central reiterates that, as discussed in the Application, the Tri-County Assets are not subject to regulation at either the federal or state level, and that, upon closing, the facilities will be owned by a public utility subject to the Commission's jurisdiction and used to provide jurisdictional service.⁶⁶

ii. Commission Determination

55. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.⁶⁷ We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Tri-County Assets will be brought under the Commission's rate jurisdiction. As to the state level, no state commission has raised concerns about the effect of the Proposed Transaction on state regulation, nor do we find that the Proposed Transaction raises any such concerns.

⁶⁴ Application at 16 (citing *In the Matter of the Election of Tri-County Elec. Coop., Inc. to Deregulate Pursuant to K.S.A. 66-104d*, Order Affirming Tri-County Electric Cooperative, Inc.'s Election to Deregulate, Docket No. 10-TCEE-139-DRC (Kan. Corp. Comm'n Sept. 28, 2009)). South Central notes, however, that a limited certificate of public convenience from the Kansas Commission will be required for South Central to own, operate, and maintain the Tri-County Kansas Assets.

⁶⁵ *Id.* at 16.

⁶⁶ Supplemental Information Filing at 3-4.

⁶⁷ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

d. Cross-Subsidization

i. South Central's Analysis

56. South Central states that, based on the facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.⁶⁸

57. In support of this claim, South Central states that the Proposed Transaction will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under FPA sections 205 and 206.

ii. Commission Determination

58. Based on the representations in the Application, we find that the Proposed Transaction will not result in inappropriate cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

59. When a controlling interest in a public utility is acquired by another company, whether a domestic company or a foreign company, the Commission's ability to adequately protect public utility customers against inappropriate cross-subsidization may be impaired unless it has access to the acquirer's books and records. Section 301(c) of the FPA gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. To the extent

⁶⁸ Application, Exhibit M: Verification of No Cross-Subsidization.

that South Central is subject to the Public Utility Holding Company Act of 2005,⁶⁹ it will be subject to the record-keeping and books and records requirements of that statute. The approval of the Proposed Transaction is based on such ability to examine books and records.

C. Accounting Analysis

60. Attachment 1 of the Application includes proposed accounting entries recording the Proposed Transaction. South Central's proposed accounting entries clear the purchase through Account 102, Electric Plant Purchased or Sold, and record the original cost and related accumulated depreciation of the assets on its books.

61. South Central's accounting for the Proposed Transaction is found to be in compliance with Electric Plant Instruction No. 5 and the instructions for Account 102 of the Uniform System of Accounts.⁷⁰ We will require South Central to submit all final accounting entries recording the Proposed Transaction as directed in Ordering Paragraph H of this order.

D. Other Considerations

62. Order No. 652 requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁷¹ To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

63. Information and/or systems connected to the bulk system involved in these transactions may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or

⁶⁹ 42 USC § 16451, *et seq.* (2012).

⁷⁰ 18 C.F.R. Part 101.

⁷¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North America Electric Reliability Corporation or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

The Commission orders:

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) South Central must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) South Central shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) South Central shall notify the Commission within 10 days of the date that the Proposed Transaction has been consummated.

(H) South Central shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5 and the instructions to Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. South Central shall submit its final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.