

154 FERC ¶ 61,271  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

South Central MCN LLC

Docket No. ER15-2594-001

ORDER ON REHEARING

(Issued March 31, 2016)

1. In this order, we deny the requests for rehearing and grant clarification of the Commission's October 29, 2015 order accepting, subject to condition, South Central MCN LLC's (South Central) proposed formula rate template and formula rate protocols (together, Formula Rate) and request for transmission rate incentives.<sup>1</sup>

**I. Background**

2. On September 1, 2015, South Central filed under Federal Power Act (FPA) sections 205<sup>2</sup> and 219<sup>3</sup> a proposed Formula Rate to establish a mechanism to recover costs associated with facilities South Central will own, including transmission projects that it intends to own and develop as part of Southwest Power Pool, Inc.'s (SPP) Order No. 1000<sup>4</sup> competitive solicitation process (September 1 Filing). South Central requested a base return on equity (ROE) and certain transmission rate incentives, which included the following: (1) a 50 basis points adder for participation in a Regional Transmission

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<sup>1</sup> *South Central MCN LLC*, 153 FERC ¶ 61,099 (2015) (October 29 Order).

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> 16 U.S.C. § 824s (2012).

<sup>4</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, *order on reh'g and clarification*, 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).

Organization (RTO); (2) a 100 basis points adder for being a Transco; (3) a hypothetical capital structure of 60 percent equity and 40 percent debt; (4) a regulatory asset for prudently-incurred, non-capitalized start-up costs, including pre-commercial and formation costs, and deferred recovery until South Central has \$75 million in rate base; and (5) 100 percent construction work in progress (CWIP) in rate base for the North Liberal—Walkemeyer 115 kV transformer project if South Central is the successful bidder.

3. In the October 29 Order, the Commission accepted the Formula Rate to be effective once the template and protocols are filed with the Commission to become part of SPP's Open Access Transmission Tariff (Tariff), consistent with the effective date established in that future proceeding, subject to a further compliance filing.<sup>5</sup> The Commission also accepted South Central's ROE for filing, suspended it for a nominal period, to be effective November 2, 2015, subject to refund, and set it for hearing and settlement judge procedures. Additionally, the Commission granted South Central's requested RTO adder, subject to the resulting ROE being within the zone of reasonableness established for South Central, and denied South Central's request for the Transco adder. Finally, the Commission conditionally granted South Central's hypothetical capital structure under section 205 of the FPA, subject to a further compliance filing, granted the regulatory asset incentive under section 205 of the FPA, and granted the CWIP incentive under section 219 of the FPA.<sup>6</sup>

## **II. Requests for Rehearing and Clarification**

4. On November 27, 2015, Xcel Energy Services Inc. (Xcel) filed a request for clarification, or in the alternative rehearing, of certain aspects of the Commission's October 29 Order. On November 30, 2015, South Central and City Utilities of Springfield, Missouri (Springfield) filed requests for rehearing of certain aspects of the October 29 Order. On December 8, 2015, Springfield filed a motion to strike the documents attached to South Central's request for rehearing and South Central's arguments based on those documents, arguing that South Central's arguments and accompanying attachments are additional evidence submitted for the first time on rehearing.<sup>7</sup> On December 17, 2015, South Central filed an answer to Springfield's motion to strike. Also on December 17, 2015, Sunflower Electric Power Corporation and

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<sup>5</sup> October 29 Order, 153 FERC ¶ 61,099 at P 1.

<sup>6</sup> *Id.* P 2.

<sup>7</sup> Springfield Motion to Strike at 2.

Mid-Kansas Electric Company, LLC (Sunflower and Mid-Kansas) filed an answer to the requests for rehearing and a response in support of Springfield's motion to strike.

**A. Transco Adder**

**1. Request for Rehearing**

5. South Central argues that the Commission erred in denying South Central's request for a 100 basis points Transco adder because South Central's business model is comparable to non-affiliated Transcos or Transcos with only passive ownership by market participants and meets the Commission's policies of having ample capital that is focused on transmission expansion.<sup>8</sup> South Central argues that it meets the definition of a Transco and that it is eligible for the Transco adder for the following reasons: (1) its characteristics demonstrate "an ability and propensity to increase transmission investment"; (2) its co-ownership of transmission assets with market participants does not affect the integrity of its investment planning, capital formation, and investment process; (3) its public participation business model furthers the Commission's policy objectives of attaining public power and cooperative participation in RTOs and bringing important and underrepresented Public Power Partners<sup>9</sup> into the RTO planning and transmission ownership process; and (4) the total package of incentives required is "tailored to address the demonstrable risks and challenges faced by the applicant."<sup>10</sup>

6. South Central also asserts that the Commission denied its request for a Transco adder based on the fact that South Central did not explain the process for selecting projects or include any relevant governance documents in its application, including co-development agreements and *pro forma* joint ownership documents, to demonstrate that active ownership by its Public Power Partners does not affect the integrity of its investment planning, capital formation, and investment processes.<sup>11</sup> South Central

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<sup>8</sup> South Central Rehearing Request at 2.

<sup>9</sup> According to South Central, its Public Power Partners are "non-jurisdictional electric cooperatives, municipally-owned electric utilities, and joint action agencies within SPP and on SPP's seams with other [RTOs]." September 1 Filing at 2.

<sup>10</sup> South Central Rehearing Request at 2-3 (quoting *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, at P 40 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007)).

<sup>11</sup> *Id.* at 3 (citing October 29 Order, 153 FERC ¶ 61,099 at P 67).

argues, however, that the testimony submitted with its request for the Transco adder quotes the relevant provisions of the co-development agreements that South Central entered into with its Public Power Partners, which establish the governance process and project selection criteria.

7. South Central states that, in light of the Commission's concern that the governance documents were not previously provided in South Central's September 1 Filing, it includes a representative co-development agreement as Attachment 1 to its request for rehearing. According to South Central, this co-development agreement demonstrates that all of the governance and investment planning principles were provided in its September 1 Filing.<sup>12</sup> While it acknowledges the Commission's general rule against supplementing the record at the rehearing stage, South Central seeks leave to submit the co-development agreement between South Central and Oklahoma Municipal Power Authority included as Attachment 1 in its request for rehearing, as this document would be useful to the Commission's analysis.<sup>13</sup>

8. South Central argues that the co-development agreements provide its Public Power Partners with some protection against major corporate reorganizations, which require approval of a double-majority of the South Central Board of Directors. South Central argues that the limited rights of its Public Power Partners (e.g., to approve the sale of all or a substantial portion of South Central's assets, merge or consolidate or begin an initial public offering prior to 2020, or amend South Central's corporate organization documents) are not the types of rights the Commission views as control rights, but rather are types of corporate protections the Commission has held are consistent with passive investor status for investors in an entity that the Commission found was eligible for a Transco adder.<sup>14</sup>

9. South Central argues that the testimony submitted with its September 1 Filing explained the role of the South Central Project Planning and Review Board, which oversees the "investment planning" and "investment processes" roles that the October 29 Order identifies as criteria for awarding a Transco adder. South Central argues that its Public Power Partners may put forward projects for consideration by the Project Planning and Review Board, but that such projects must "qualify for cost recovery under the applicable RTO tariff and meet any other requirements of the SPP [Tariff]."<sup>15</sup>

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<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> *Id.* n.4.

<sup>14</sup> *Id.* at 4-5 (citing *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 42 (2003)).

<sup>15</sup> *Id.* at 5.

South Central argues that there is thus no concern that its Public Power Partners will be able to direct South Central to build projects that are inconsistent with the governing regional planning standards and SPP Tariff. South Central also argues that the co-development agreements prohibit its Public Power Partners from vetoing any project that South Central's independent management decides to pursue.<sup>16</sup> South Central contends that the co-development agreements provide specific guidance on the process for reviewing, selecting, and implementing projects.<sup>17</sup> South Central argues that the co-development agreements strike a balance between affording its Public Power Partners the opportunity to participate in the economic benefits of participating in South Central projects while ensuring that its management team makes the final decisions as to which projects to pursue, how they are pursued, and their timing.

10. In addition, South Central asserts that it is fulfilling the role as “problem solver” for the transmission grid. South Central states that it submitted 45 Detailed Project Proposals to SPP and a proposal for SPP's first Order No. 1000 competitive project.<sup>18</sup> South Central argues that its proposals are evidence that it is seeking investment opportunities for new transmission development, which is the role the Commission envisioned for Transcos in Order No. 679.<sup>19</sup>

## 2. Motion to Strike

11. According to Springfield, South Central is attempting to introduce new evidence on rehearing. Springfield points to, specifically, Attachment 1 through Attachment 4 of South Central's request for rehearing, as well as arguments based on those materials in the request for rehearing. Springfield argues that the Commission has consistently held that the submission of additional factual information in a request for rehearing is

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* South Central “requests the Commission take official notice of almost identical language in the ITC Great Plains, LLC Co-Development Agreement with Mid-Kansas Electric Company, LLC,” which was filed at the Kansas Corporation Commission and is included as Attachment 2 in South Central's Rehearing Request. *Id.* n.7.

<sup>18</sup> *Id.* at 6. South Central includes screenshots of SPP's acceptance of its Detailed Project Proposals and Order No. 1000 project bid in Attachments 3 and 4, respectively.

<sup>19</sup> *Id.* at 6-7 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,322 at P 224).

inappropriate.<sup>20</sup> Springfield argues that, as such, the Commission should strike the attachments and corresponding arguments in South Central's request for rehearing.

12. Springfield also asserts that South Central does not provide any justification for its failure to provide this new evidence with its September 1 Filing. Springfield argues that the co-development agreements that South Central includes as Attachment 1 and Attachment 2 are dated prior to the filing date of South Central's September 1 Filing, and could have been included with the September 1 Filing, but South Central instead chose to include witness testimony. In addition, Springfield argues that Attachment 3 and Attachment 4, which are screenshots of SPP's acceptance of South Central's Detailed Project Proposals and Order No. 1000 project bid, do not add anything of substance to the record, and create an impermissible moving target.<sup>21</sup>

### **3. Answer to Motion to Strike**

13. South Central argues that the Commission should deny Springfield's motion.<sup>22</sup> South Central contends that the documents attached to its request for rehearing do not raise a new issue or new argument, and instead address whether South Central's business model is comparable to non-affiliated Transcos or Transcos with only passive ownership by market participants. South Central argues that this issue was raised in its September 1 Filing and the October 29 Order. South Central also argues that the Commission has discretion to waive its regulations for good cause, arguing that, even if the Commission were to not accept Attachment 1 through Attachment 4, the Commission should not strike the arguments regarding the Transco adder, which are primarily based on the testimony submitted as part of its September 1 Filing.

14. South Central argues that the testimony submitted with its September 1 Filing specifically discusses and provides language from the pertinent sections of the co-development agreement that South Central submitted in its request for rehearing, and that the October 29 Order suggests that the co-development agreement would be useful to the Commission's analysis. South Central asserts that, therefore, the substance of the argument raised with respect to the Transco adder is premised on materials included in its September 1 Filing and within the scope of Rule 713.<sup>23</sup>

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<sup>20</sup> Springfield Motion to Strike at 2-5.

<sup>21</sup> *Id.* at 3-5.

<sup>22</sup> South Central Answer at 1.

<sup>23</sup> *Id.* at 3.

15. South Central argues that its Detailed Project Proposals were not available for consideration by the Commission because the proposals were submitted to SPP on October 30, 2015. In addition, South Central contends that the Detailed Project Proposals do not raise a new issue or new argument, but demonstrate that South Central is seeking investment opportunities for new transmission development, which is the role that the Commission envisioned for Transcos in Order No. 679.<sup>24</sup>

**B. Intra-Year Adjustment Provision**

16. South Central argues that the Commission erred in denying South Central's request for intra-year adjustments to its forecasted revenue requirement to account for the acquisition of facilities, because the customer benefits of allowing such adjustments outweigh the Commission's concerns with the possibility that customers could begin paying for costs that have not been subject to the informational exchange and challenge procedures.<sup>25</sup> South Central states that it included in its formula rate protocols a provision, effective for the first three years of its operation, that allows for the formula rate template to incorporate during the course of the rate year the costs of facilities acquired by South Central that increase its rate base by five percent or more, upon Commission approval and South Central's consummation of the acquisition. South Central argues that the Commission denied its request for intra-year adjustments because the provision did not meet the standards for protocols established by the Commission in the Midcontinent Independent System Operator, Inc. formula rate protocols proceedings,<sup>26</sup> and because the provision creates the possibility that customers could begin paying for costs that have not been subject to the required informational exchange and challenge procedures.<sup>27</sup>

17. However, South Central argues that it explained in its September 1 Filing that the intra-year adjustment provision is necessary because customers could see significant and unnecessary swings in their transmission rates due to the need to account for under-

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<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> South Central Rehearing Request at 2.

<sup>26</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,127 (2012), *order on investigation*, 143 FERC ¶ 61,149 (2013), *order on reh'g*, 146 FERC ¶ 61,209 (2014), *order on compliance*, 146 FERC ¶ 61,212 (2014), *order on compliance*, 150 FERC ¶ 61,025 (2015).

<sup>27</sup> South Central Rehearing Request at 8 (citing October 29 Order, 153 FERC ¶ 61,099 at P 111).

recoveries in a given year.<sup>28</sup> South Central contends that the Commission's concerns regarding the inability of customers to review and challenge costs through the annual informational filing are less critical in the context of facility acquisitions. South Central argues that the primary cost category affecting the Annual Transmission Revenue Requirement (ATRR) is the net book value of transmission plant, which will be established in a filing submitted under section 203 of the FPA<sup>29</sup> that seeks authorization for South Central to acquire a particular facility. South Central argues that, for purposes of the adjustment to the ATRR, that Commission-approved figure and the allowed rate of return will constitute the majority of the costs. South Central asserts that, without the intra-year adjustment provision, customers may underpay transmission rates for a given period until costs that are not reasonably disputable are passed through the following year's review cycle.<sup>30</sup>

### C. Regulatory Asset

18. Springfield argues that the Commission should reverse its determination to allow South Central to establish a regulatory asset for start-up and development costs to be recovered as part of South Central's ATRR with respect to transmission facilities purchased or otherwise acquired by South Central, as opposed to transmission facilities constructed under an Order No. 1000 competitive solicitation process.<sup>31</sup> Springfield argues that allowing recovery of the regulatory asset incentive with respect to acquired facilities creates an additional uneconomic cost shift among customers within the affected transmission cost zone under SPP's Tariff. Moreover, Springfield argues that the application of the regulatory asset incentive to South Central's acquisition of existing transmission facilities adds South Central's "expenses to develop its unique business model" to the other carrying costs shifted to Springfield's customers without improving the operation or functionality of the acquired assets and without deploying any of the

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<sup>28</sup> *Id.* at 8-9.

<sup>29</sup> 16 U.S.C. § 824b (2012).

<sup>30</sup> South Central Rehearing Request at 9. South Central states that if the Commission remains concerned about inclusion of expenses in the ATRR prior to the full compliance with South Central's Review and Challenge Procedures in its formula rate protocols, South Central would accept as a condition that only the rate base, not expenses, could be included in the intra-year adjustment. *Id.* n.17.

<sup>31</sup> Springfield Rehearing Request at 1-2.

claimed benefit of its “unique business model” to the customers tasked with paying for it.<sup>32</sup>

19. Springfield argues that the Commission’s authorization of South Central’s regulatory asset is flawed in two ways. First, Springfield argues that South Central’s acquisition of existing facilities does not add value to those facilities; rather, it increases and shifts the costs of those facilities. Springfield argues that the Commission has a “duty to examine the cost shifting effects of its orders,” and that the October 29 Order provides no indication that any such examination has been applied.<sup>33</sup> Second, Springfield argues that there is no indication in this record that South Central’s “unique business model” provides any benefit to transmission customers required to pay its ATRR as the result of its acquisition of any existing facilities. Springfield argues that the result is at odds with the cost allocation policies of the FPA, under which customers should receive some benefit at least “roughly commensurate” with the costs they incur.<sup>34</sup> Springfield also argues that Commission precedent requires that the establishment of a regulatory asset be limited to specific projects involving the construction of new transmission developed through the Order No. 1000 competitive solicitation process, rather than the acquisition of existing facilities.<sup>35</sup>

#### **D. Reclassification and Associated Cost Allocation**

20. Xcel requests that the Commission clarify that South Central is required to make a filing under section 205 of the FPA if South Central seeks to classify facilities as transmission facilities and the Commission has previously determined that those facilities do not qualify as transmission facilities, and where reclassification would result in a change in cost responsibility for entities located in the same rate zone in which the facilities are located.<sup>36</sup> Xcel argues that the October 29 Order is unclear as to whether

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<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.* at 4-5.

<sup>34</sup> *Id.* at 5-6.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> Xcel Rehearing Request at 4. Alternatively, Xcel requests rehearing of this issue if the Commission denies its request for clarification.

South Central is required to make such a filing because it only addresses changes in cost allocation between rate zones.<sup>37</sup>

21. Xcel states that it is concerned that South Central's intention is to acquire facilities that the Commission has determined are not transmission facilities, reclassify those facilities as transmission facilities under the SPP Tariff, and spread the costs associated with those facilities to other load in Zone 11, including, but not limited to, Southwestern Public Service Company's (SPS) retail native loads.<sup>38</sup> Xcel explains that its concerns relate to the facilities currently owned by Tri-County Electric Cooperative, Inc. (Tri-County) that South Central is attempting to acquire. Xcel argues that any change to the classification of these Tri-County facilities, which the Commission has already found to be distribution facilities rather than transmission facilities, should be made subject to review and comment.<sup>39</sup> According to Xcel, the October 29 Order provides South Central a loophole through which South Central can spread costs within the SPS rate zone (i.e., Zone 11) without recourse because the October 29 Order adopts South Central's commitment to make a filing under section 205 of the FPA to reflect a change in Attachment H of SPP's Tariff if any change in a facility's classification results in a new allocation of cost responsibility between rate zones. Xcel argues that, if South Central acquires the Tri-County facilities and later seeks to treat those facilities as transmission facilities, there is no new allocation of cost responsibility between rate zones because neither South Central nor Tri-County has rate zones within SPP. However, according to Xcel, there would be a new allocation of cost responsibility within Zone 11. Xcel argues that its clarification request will ensure that South Central is required to receive Commission approval for including facilities' costs in its ATRR even if a new cost allocation impacts only entities in the rate zone where the facilities are located.<sup>40</sup>

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<sup>37</sup> *Id.* at 1 (citing October 29 Order, 153 FERC ¶ 61,099 at P 110).

<sup>38</sup> *Id.* at 5.

<sup>39</sup> *Id.* at 5-6. South Central's request to acquire the facilities from Tri-County was approved by the Commission in Docket No. EC15-206-000. *South Central MCN LLC*, 154 FERC ¶ 61,174 (2016).

<sup>40</sup> Xcel Rehearing Request at 6-7.

### III. Discussion

#### A. Procedural Matters

22. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits answers to a request for rehearing. Therefore, we reject the answer submitted by Sunflower and Mid-Kansas.

23. Rule 713(c)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(c)(3) (2015), requires any party seeking rehearing to set forth the matters relied upon by the party requesting rehearing, if rehearing is sought on matters not available for consideration by the Commission at the time of the final decision or final order.<sup>41</sup> As the Commission has stated previously, it is reluctant to chase a "moving target" by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.<sup>42</sup> In addition, the Commission has the discretion to reject evidence that was available but not proffered for consideration at the time of the final decision or final order.<sup>43</sup> Even if this evidence were allowed, however, it would not change our ruling on the merits; it presents no new facts and does not undermine the conclusions in the prior order. Accordingly, we will grant Springfield's motion to strike Attachment 1 through Attachment 4 of South Central's request for rehearing. However, because the testimony submitted with South Central's September 1 Filing discusses and provides language from sections of the co-development agreement, we will consider the arguments in South Central's request for rehearing, which are attributable and relevant to the testimony submitted with the September 1 Filing.

#### B. Substantive Matters

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<sup>41</sup> 18 C.F.R. § 385.713(c) (2015).

<sup>42</sup> See, e.g., *Boralex Livermore Falls LP*, 123 FERC ¶ 61,279, at P 23 (2008); *PJM Interconnection, L.L.C.*, 121 FERC ¶ 61,173, at P 34 (2007); *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005).

<sup>43</sup> See *Arkansas Power & Light Co.*, 52 FERC ¶ 61,029, at 61,156 (1990); *American Electric Power Service Corp.*, 106 FERC ¶ 61,020, at P 91 (2004).

## 1. Transco Adder

24. We will deny South Central's request for rehearing of the Commission's determination to deny South Central's request for a 100 basis points Transco adder.<sup>44</sup> As the Commission explained in the October 29 Order, South Central has not demonstrated that its proposed ownership structure, particularly with respect to the role of South Central's Public Power Partners, possesses the characteristics to qualify for a Transco adder under Commission precedent.<sup>45</sup> In Order No. 679, the Commission stated that independence is an important component of the positive contribution of Transcos on the investment in needed transmission infrastructure, and that a Transco with active ownership by a market participant is eligible for the incentive to the extent it can show, for example, why active ownership by an affiliate does not affect the integrity of its investment planning, capital formation, and investment processes or how its business structure provides support for transmission investments in a way similar to the structure of non-affiliated Transcos or Transcos with only passive ownership by market participants.<sup>46</sup> However, as the Commission stated in the October 29 Order, South Central has not shown how its business model is comparable to non-affiliated Transcos or Transcos with only passive ownership by market participants. The Commission noted that South Central's Public Power Partners, which South Central acknowledges as market participants, will make up one-third of South Central's board and will co-own up to 30 percent of each transmission project awarded by SPP to South Central.<sup>47</sup>

25. Notwithstanding its arguments on rehearing pertaining to language from sections of the co-development agreement, which are intended to demonstrate that South Central's business model is comparable to Transcos with only passive ownership by market participants, South Central has presented no new arguments on rehearing that persuade us that South Central qualifies for a Transco adder. Rather, South Central merely reiterates the argument advanced in its September 1 Filing that it qualifies for the Transco adder because its Public Power Partners will have the types of rights that the Commission has held are consistent with passive investor status in *ITC Holdings Corp.*<sup>48</sup> In that case, the

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<sup>44</sup> October 29 Order, 153 FERC ¶ 61,099 at P 67.

<sup>45</sup> *Id.* (citing Order No. 679, FERC Stats. & Regs. ¶ 31,322 at P 240).

<sup>46</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 240.

<sup>47</sup> October 29 Order, 153 FERC ¶ 61,099 at P 67.

<sup>48</sup> See South Central Rehearing Request at 4-5 (citing *ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 42).

Commission assessed whether the limited partners would have the ability to affect International Transmission Company's operation and found that its partnership agreement does not trigger such concerns. The Commission explained that the consent rights in the partnership agreement mainly apply to merger, consolidation, and reorganization actions, and that such provisions do not provide a limited partner with the ability to direct day-to-day operations of the partnership.<sup>49</sup> However, in this case, South Central's Public Power Partners are market participants, but are not limited partners with passive investor interests.<sup>50</sup> Rather, South Central's Public Power Partners will co-own assets and persons nominated by the Public Power Partners will hold one-third of the South Central board seats,<sup>51</sup> which would allow market participants the ability to influence day-to-day operations.<sup>52</sup>

26. Further, although we deny South Central's request for rehearing of the Commission's finding that South Central does not qualify for a Transco adder, as noted in the October 29 Order, and consistent with Order No. 679, South Central could propose an incentive under Order No. 679 tailored to encouraging public power participation in new transmission projects.<sup>53</sup>

## **2. Intra-Year Adjustment Provision**

27. We will deny rehearing regarding the intra-year adjustment provision in South Central's formula rate protocols. We disagree with South Central's argument that the customer benefits of allowing such adjustments outweigh the Commission's concerns with the possibility that customers could begin paying for costs that have not been subject to the informational exchange and challenge procedures. The Commission has explained that interested parties must be afforded the ability to challenge a transmission owner's annual update and resolve related disputes through straightforward and defined procedures, and has required such procedures to permit interested parties to raise

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<sup>49</sup> *ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 42.

<sup>50</sup> October 29 Order, 153 FERC ¶ 61,099 at P 67.

<sup>51</sup> September 1 Filing at 15.

<sup>52</sup> Indeed, in its September 1 Filing, South Central states that it "is not seeking an independence adder, as has been awarded to some Transcos." *Id.* at 15 (citing, *e.g.*, *ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 68).

<sup>53</sup> October 29 Order, 153 FERC ¶ 61,099 at P 69 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,322 at PP 354-355).

informal challenges for a reasonable period of time after transmission owners initially post their annual updates.<sup>54</sup> South Central's provision allowing for intra-year adjustments permits South Central to incorporate costs of facility acquisitions during the rate year in which the acquisition is consummated without first allowing interested parties to challenge those costs as required by the Commission. Additionally, we disagree with South Central that an interested party's ability to review and challenge costs is less critical in the context of facility acquisitions. The Commission has not carved out an exception for intra-year acquisitions from the standards set in its previous orders on formula rate protocols and South Central did not justify such an exception.

### 3. Regulatory Asset

28. We will deny rehearing regarding the regulatory asset incentive. We disagree with Springfield that allowing recovery of the regulatory asset incentive with respect to acquired facilities creates an additional uneconomic cost shift among customers within the affected transmission cost zone under SPP's Tariff. As explained in the October 29 Order, South Central is a start-up entity that intends to acquire existing transmission assets in SPP and work with its Public Power Partners to plan, construct, and operate new transmission assets in SPP.<sup>55</sup> We disagree with Springfield's argument that South Central's unique business model does not provide any benefit to transmission customers required to pay its ATRR. In its September 1 Filing, South Central states that it intends to transfer functional control of any transmission assets it acquires or constructs to SPP.<sup>56</sup> By acquiring non-jurisdictional facilities and bringing them under the functional control of SPP, South Central will help promote the competitive, efficiency, and reliability benefits offered by an RTO.<sup>57</sup>

29. In addition, we disagree with Springfield's argument that the regulatory asset incentive must be limited to specific projects involving the construction of new transmission developed through the Order No. 1000 competitive solicitation process. As explained in the October 29 Order, the Commission may grant the regulatory asset

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<sup>54</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at PP 118-120.

<sup>55</sup> October 29 Order, 153 FERC ¶ 61,099 at P 4.

<sup>56</sup> September 1 Filing at 14.

<sup>57</sup> See *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *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).

incentive under section 205 of the FPA if the incentive furthers a public policy goal. Here, the regulatory asset incentive furthers the policy goal of facilitating the participation of South Central, a nonincumbent transmission developer, in the Order No. 1000 competitive solicitation process, thereby encouraging competition.<sup>58</sup>

30. Moreover, once South Central acquires assets, it could assess its start-up costs to its initial rate base, causing a spike in rates among customers within the affected cost zone. However, South Central instead proposed to assess its start-up costs to a larger pool than its initial rate base by setting a floor of \$75 million in rate base and deferring recovery of its start-up costs until that floor is met, which protects South Central's initial rate base from bearing a disproportionate burden of its start-up costs.

#### **4. Reclassification and Associated Cost Allocation**

31. We will grant Xcel's request for clarification regarding the reclassification of facilities and the associated cost allocation. We clarify that South Central is required to make a filing under section 205 of the FPA if it seeks to classify facilities as transmission facilities and the Commission has previously determined those facilities do not qualify as transmission facilities.<sup>59</sup>

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<sup>58</sup> October 29 Order, 153 FERC ¶ 61,099 at PP 24-27.

<sup>59</sup> For example, if in the future South Central becomes a transmission-owning member of SPP and seeks to reclassify facilities that it has acquired as "Transmission Facilities" under Attachment AI of the SPP Tariff, an amendment to the SPP Tariff would be required to propose the pricing zone treatment for such facilities under the SPP Tariff. *See South Central MCN LLC*, 154 FERC ¶ 61,090, at P 37, n.59 (2016).

The Commission orders:

(A) The requests for rehearing of South Central and Springfield are hereby denied, as discussed in the body of this order.

(B) Xcel's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission. Commission Clark is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.