

155 FERC ¶ 61,198
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. EC15-206-001

ORDER GRANTING CLARIFICATION

(Issued May 23, 2016)

1. On April 6, 2016, the Kansas Corporation Commission (Kansas Commission) filed a request for clarification of the Commission's March 4, 2016 order in this proceeding authorizing South Central MCN LLC (South Central) to acquire from Tri-County Electric Cooperative, Inc. (Tri-County) certain existing transmission facilities.¹ For the reasons discussed below, we grant the request for clarification.

I. Background

2. On September 14, 2015, as amended January 20, 2016, South Central filed, pursuant to section 203(a)(1) of the Federal Power Act (FPA)² and Part 33 of the Commission's regulations,³ an application seeking all authorizations necessary to permit South Central to acquire from Tri-County certain existing transmission facilities, located in Oklahoma and Kansas (the Tri-County Assets), that were not previously subject to the Commission's rate jurisdiction under the FPA.⁴ In the March 4 Order, the Commission authorized the proposed transaction as consistent with the public interest. As it relates

¹ *South Central MCN LLC*, 154 FERC ¶ 61,174 (2015) (March 4 Order).

² 16 U.S.C. § 824b(a)(1) (2012).

³ 18 C.F.R. pt. 33 (2015).

⁴ 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), amended by Supplemental Information Filing (Jan. 20, 2016).

specifically to the Commission's analysis of the effect of the proposed transaction on regulation, the Commission found, based on the representations made by South Central in the application, that there was "no evidence that either state or federal regulation will be impaired by the Proposed Transaction."⁵ The Commission noted that, as to the state level, no state commission had raised concerns about the effect of the proposed transaction on state regulation.⁶

II. Request for Clarification

3. The Kansas Commission asks the Commission to confirm that statements made in two paragraphs of the March 4 Order, summarizing South Central's application, were not intended to limit or preempt the Kansas Commission's jurisdiction. Specifically, in paragraph 53, the Commission stated:

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 and control of the Kansas Commission.
[footnote omitted]

Similarly, in paragraph 54, the Commission recited South Central's claim that "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 [i.e., South Central] subject to the Commission's jurisdiction and used to provide jurisdictional service.
[footnote omitted]"

4. The Kansas Commission states that South Central's claims regarding state jurisdiction do not "accurately portray the full scope of the [Kansas Commission's] jurisdiction."⁷ In this regard, the Kansas Commission states that it is an "oversimplification" to conclude that the Tri-County Assets located in Kansas are exempt from the Kansas Commission's jurisdiction because Tri-County previously elected, pursuant to state law, "to be exempt from the Kansas Commission's jurisdiction, regulation, supervision and control," noting that, under state law, exempt cooperatives, such as Tri-County, remain subject to the Kansas Commission's jurisdiction over various

⁵ March 4 Order, 154 FERC ¶ 61,174 at P 55.

⁶ *Id.*

⁷ Kansas Commission Request for Clarification at 2.

different matters affecting their business.⁸ Moreover, the Kansas Commission notes that it has and is continuing to exercise jurisdiction over the Tri-County Assets located in Kansas through its authority to decide whether South Central should be granted a certificate of convenience and necessity to own those assets.⁹ The Kansas Commission, therefore, asks the Commission to confirm that the above-quoted statements in paragraphs 53 and 54 of the March 4 Order were not intended to limit or preempt the Kansas Commission's jurisdiction.

III. Commission Determination

5. We grant the Kansas Commission's requested clarification. Specifically, we confirm that the above-quoted statements in paragraphs 53 and 54 of the March 4 Order, which described statements made by South Central in its application, were not intended to limit or preempt the Kansas Commission's jurisdiction.

The Commission orders:

The Kansas Commission's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *Id.* at 3-4.

⁹ *Id.* at 4.