

155 FERC ¶ 61,167
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kanstar Transmission, LLC

Docket No. ER15-2237-002

ORDER DENYING REHEARING

(Issued May 19, 2016)

1. In this order, the Commission denies a request for rehearing by the Kansas Corporation Commission (Kansas Commission) regarding the Commission's order issued in this proceeding on September 17, 2015.¹

I. Background

2. On July 22, 2015, Kanstar Transmission, LLC (Kanstar) filed an application under section 205 of the Federal Power Act (FPA)² and Part 35 of the Commission's regulations³ for approval of a proposed transmission formula rate template (template) and formula rate protocols (protocols) (together, Formula Rate) to establish a mechanism under which it would recover its costs associated with transmission projects that it intends to own and develop as part of Southwest Power Pool, Inc.'s (SPP) Order No. 1000 competitive transmission owner selection process.⁴ Kanstar also applied to

¹ *Kanstar Transmission, LLC*, 152 FERC ¶ 61,209 (2015) (September 17 Order).

² 16 U.S.C. § 824d (2012).

³ 18 C.F.R. Part 35 (2015).

⁴ *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).

receive various rate incentives under Order No. 679⁵ and FPA section 205. In addition, Kanstar sought the same Formula Rate and incentives for its three existing affiliates, as well as for affiliates it might create in the future.

3. In the September 17 Order, the Commission conditionally accepted Kanstar's 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. In addition, the Commission granted: (1) Kanstar's proposed 50 basis point adder for participation in a regional transmission organization (RTO), subject to the resulting return on equity (ROE) being within the zone of reasonableness established for Kanstar;⁶ (2) Kanstar's request for authorization to defer as a regulatory asset all of its prudently incurred pre-commercial and formation costs for later recovery, effective September 21, 2015, as requested;⁷ and (3) Kanstar's request to use a hypothetical capital structure of up to 60 percent equity and 40 percent debt, to remain in effect until the first transmission project it has been awarded through the SPP transmission owner selection process is placed in service.⁸ The Commission denied Kanstar's request to recover 100 percent of prudently incurred costs associated with the proposed North Liberal-Walkemeyer 115 kV Competitive Upgrade if Kanstar is selected to develop this project through the SPP competitive bidding process and that project is later discontinued.⁹ Finally, the Commission granted Kanstar's request that its existing three affiliates and other yet-to-be-formed affiliates within SPP (collectively, Midwest Power SPP Entities) be authorized to utilize the same Formula Rate and requested incentives.¹⁰ In addition, the Commission established hearing and settlement judge procedures to determine the reasonableness of Kanstar's proposed base ROE.¹¹

⁵ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁶ September 17 Order, 152 FERC ¶ 61,209 at P 51.

⁷ *Id.* P 22.

⁸ *Id.* P 28.

⁹ *Id.* PP 33-34.

¹⁰ *Id.* PP 83-84.

¹¹ *Id.* Ordering Paragraph G.

4. On October 19, 2015, Kansas Commission filed a request for rehearing of the September 17 Order. Thereafter, the parties reached agreement on an uncontested partial settlement (Settlement) that resolved the ROE issue set for hearing in the September 17 Order, but which did not resolve the issue raised by Kansas Commission on rehearing. The Settlement preserves Kansas Commission's rehearing request and reserves this issue for Commission resolution. The issues on rehearing do not impact the terms of the Settlement; thus, the Commission approved the Settlement as being in the public interest, while leaving Kansas Commission's rehearing request subject to a future order.¹²

II. Discussion

A. Kansas Commission's Rehearing Request

5. Kansas Commission's request for rehearing challenges the Commission's determination that other yet-to-be-formed Kanstar affiliates within SPP are authorized to use the same Formula Rate and requested incentives approved for Kanstar.¹³ In particular, Kansas Commission references the Commission's statement clarifying that "the Midwest Power SPP Entities will each be subject to the ROE that is determined through the hearing and settlement judge procedures that have been ordered herein for Kanstar."¹⁴

6. Kansas Commission argues that the Commission's clarification is inconsistent with the record evidence, is inconsistent with precedent that requires that a utility's ROE reflect the current market, and is contrary to the structure of the FPA.¹⁵ Kansas Commission concludes that the Commission should grant rehearing and find that each yet-to-be-formed Midwest Power SPP Entity will be required to support its formula rate template, as well as the ROE to be included in its formula rate, as part of an individual section 205 filing.¹⁶

¹² *Kanstar Transmission, LLC*, 155 FERC ¶ 61,098 (2016).

¹³ Request for rehearing at 3 (citing September 17 Order, 152 FERC ¶ 61,209 at PP 2, 83).

¹⁴ *Id.* (citing September 17 Order, 152 FERC ¶ 61,209 at P 84).

¹⁵ *Id.* at 4 & n.5 (citing, as example, *Portland Natural Gas Transmission Sys.*, 142 FERC ¶ 61,198, at P 233 (2013) (finding that "on balance ... the use of the most recent data in the record consistent with long standing policy outweighed any adjustment to reflect purportedly anomalous results"))).

¹⁶ *Id.* at 4.

7. Kansas Commission argues that the Commission's determination of the base ROE in this proceeding, through hearing and settlement judge procedures, relates solely to Kanstar and that it is arbitrary and capricious to impute this ROE to yet-to-be-formed Midwest Power SPP Entities. Kansas Commission argues that the ROE that would be applied to yet-to-be-formed Midwest Power SPP Entities would not reflect the capital market conditions at some future date. Kansas Commission also argues that the ROE should vary for each yet-to-be-formed Midwest Power SPP Entity, just as the other inputs to the formula rate template vary in accordance with each entity's FERC Form No. 1 data. Finally, Kansas Commission argues that allowing the yet-to-be-formed Midwest Power SPP Entities to adopt the Kanstar ROE would absolve those entities from the requirement under the FPA to demonstrate that their proposed rates would be just and reasonable.

8. Kansas Commission makes a similar argument with respect to other elements of the Kanstar Formula Rate being applied to the Midwest Power SPP Entities.¹⁷ For example, Kansas Commission asserts that the record is devoid of any testimony or other evidence that would support a finding that use of the 1999 depreciation study submitted to support Kanstar's depreciation rate is appropriate to use for yet-to-be-formed Midwest Power SPP Entities at some yet-to-be-determined time.¹⁸

B. Commission Determination

9. We deny Kansas Commission's request for rehearing here for the same reasons the Commission denied its similar arguments in *Transource Kansas*.¹⁹ Similar to the situation in that order, neither Kanstar nor any yet-to-be-formed Midwest Power SPP Entity currently has plant in service or proposed projects. We find that determining a base ROE for yet-to-be-formed Midwest Power SPP Entities using current market conditions, as the Commission did in *Transource Kansas* and in *XEST*,²⁰ is no different than determining a base ROE for any other Kanstar entity at this time using current capital market conditions. Moreover, the yet-to-be formed Kanstar affiliates within SPP will be state-specific transmission companies with the same parent companies utilizing the same formula rate and participating in the same SPP competitive solicitation process.

¹⁷ *Id.* at 6, 12-15.

¹⁸ *Id.* at 14.

¹⁹ *Transource Kansas, LLC*, 151 FERC ¶ 61,010, at PP 81-82 (2015), *order on reh'g and compliance*, 154 FERC ¶ 61,011, at PP 17-18 (2016) (*Transource Kansas*).

²⁰ *Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at PP 41, 62 (2014) (*XEST*).

In other words, the yet-to-be-formed Midwest Power SPP Entities will be similarly situated with respect to risk and capital requirements. Further, Kanstar's ROE is equally applicable to the three Kanstar affiliates that have already been formed. Therefore, we find it appropriate to apply the ROE determined in the Kanstar hearing and settlement judge procedures to the yet-to-be formed Kanstar affiliates within SPP.

10. We also disagree with Kansas Commission's view that the ROE and other inputs to the Formula Rate must necessarily vary for each yet-to-be-formed Midwest Power SPP Entity, as do other inputs to the formula rate template. As discussed above, each yet-to-be-formed Midwest Power SPP Entity will be similarly situated and will use the same formula rate. ROE is an input into the formula that is not dependent on company-specific FERC Form No. 1 cost data and the proper level of the base ROE was agreed-upon by the parties in the Settlement the Commission recently approved. Contrary to Kansas Commission's arguments, our determination does not obviate the obligations in the FPA. We see no reason at this time to litigate a separate ROE or depreciation rate for each yet-to-be-formed Midwest Power SPP Entity, but the Commission retains jurisdiction to change an ROE or depreciation rate through section 206 procedures if circumstances warrant.

The Commission orders:

Kansas Commission's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.