

170 FERC ¶ 61,089
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 7, 2020

In Reply Refer To:
Public Service Company of Colorado
Docket No. ER20-550-000

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Attention: Joseph W. Lowell

Dear Mr. Lowell:

1. On December 10, 2019, you submitted on behalf of Public Service Company of Colorado (PSCo), pursuant to section 205 of the Federal Power Act (FPA),¹ a System Impact Study Agreement (SIS Agreement) between PSCo and Holy Cross Electric Association, Inc. (Holy Cross)² to study a request by Holy Cross for firm transmission service. In this order, we accept the SIS Agreement, effective December 11, 2019, as requested.

2. PSCo states that the purpose of the SIS Agreement is to study Holy Cross's request for firm transmission service, over transmission facilities jointly owned by PSCo and Holy Cross, for deliveries of energy that Holy Cross will purchase from two new resources.³ PSCo states that the SIS Agreement is "non-conforming" because Holy Cross is not requesting a *pro forma* transmission service agreement under the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Xcel Energy OATT),⁴ but

¹ 16 U.S.C. § 824d (2018).

² Holy Cross is a rural electric cooperative that provides electric service in Garfield, Pitkin, Eagle, and Gunnison counties in Colorado.

³ Transmittal at 1. PSCo states that the two new resources are the Arriba Wind Project, which is planned for 100 megawatts (MW), and the Hunter Solar Project, which is planned for 30 MWs. *Id.* at 4.

⁴ PSCo provides wholesale transmission service under the Xcel Energy OATT.

instead transmission service under the grandfathered Transmission Integration and Equalization Agreement (TIE Agreement) between PSCo and Holy Cross.⁵

3. According to PSCo, the TIE Agreement provides for the integration of the PSCo and Holy Cross transmission facilities into the Integrated Transmission System⁶ and a mechanism whereby the two parties share the costs of the Integrated Transmission System in accordance with the loads each places on the integrated system. PSCo states that it is appointed operator for purposes of administering transmission service under the TIE Agreement, and that it treats the TIE Agreement as a grandfathered agreement not subject to the Commission's open access requirements because the agreement predates Order No. 888.⁷ PSCo states that PSCo and Holy Cross are also parties to a power supply agreement between PSCo and Holy Cross (Power Supply Agreement), under which PSCo supplies Holy Cross with full requirements service. PSCo explains that the Power Supply Agreement sets forth Holy Cross's rights to purchase economy energy to meet its needs in lieu of purchases from PSCo.

4. PSCo states that, in recent months, PSCo and Holy Cross have disagreed about the scope of Holy Cross's rights under the TIE Agreement and Power Supply Agreement. PSCo states that Holy Cross has requested that PSCo deliver the output of the two new resources across the Integrated Transmission System to serve Holy Cross's load using firm transmission service, but PSCo believes that the request for firm transmission service to deliver economy energy purchases is not permissible under their agreements.⁸ PSCo states that the dispute between PSCo and Holy Cross will be presented more fully in a petition for declaratory order.⁹

⁵ *Id.* at 5.

⁶ "The term Integrated Transmission System means all Transmission Facilities owned or leased by [PSCo] and Holy Cross." TIE Agreement § 1.7.

⁷ Transmittal at 3-4; *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁸ Transmittal at 2-5.

⁹ *Id.* at 2. On December 20, 2019, PSCo filed the petition for declaratory order in

5. PSCo explains that, notwithstanding the pending dispute between PSCo and Holy Cross, in order to mitigate harm to Holy Cross, it has agreed to process Holy Cross's transmission service requests while the Commission's consideration of the petition for declaratory order is pending.¹⁰ PSCo adds that the SIS Agreement does not provide for transmission service, but instead is simply an agreement to study the availability of transmission capacity. PSCo requests that, for purposes of the instant filing, the Commission decline to treat the SIS Agreement as indicating any expansion or modification that changes the grandfathered status of the TIE Agreement.¹¹

6. PSCo states that, under the SIS Agreement, the study will be conducted in a manner consistent with the study process for evaluating firm transmission service to deliver PSCo's network resources to its own native loads, as well as evaluation of third-party network integration transmission service customers' network resources under the Xcel Energy OATT. PSCo explains that the SIS Agreement will generally use the study methodology described in Attachment D of the Xcel Energy OATT and will assume a transmission service queue date of August 22, 2019. PSCo also states that most of the relevant standard provisions of the *pro forma* System Impact Study Agreement are reflected in the SIS Agreement, including the deposit fee and sixty (60) day study process time. PSCo explains that it will study Holy Cross's requested 100 MW and 30 MW injections, associated with the new resources, and will evaluate delivering the resources on a firm basis.¹²

7. PSCo requests waiver of the Commission's 60-day prior notice requirement to allow the SIS Agreement to become effective on December 11, 2019. PSCo states that there is good cause for granting the waiver because it will expedite the transmission service evaluation process and allow PSCo to begin the study activities requested by Holy Cross.¹³

8. Notice of the filing was published in the *Federal Register*, 84 Fed. Reg. 68,932 (2019), with interventions or protests due on or before December 31, 2019. On December 31, 2019, Holy Cross filed a timely motion to intervene and comments. Additionally, Guzman Energy LLC and Nereo GreenCapital Lux Partners each filed a timely motion to intervene. Municipal Energy Agency of Nebraska (Municipal Energy)

Docket No. EL20-14-000.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 7.

¹² *Id.* at 5-6.

¹³ *Id.* at 7.

filed a motion to intervene out-of-time. On January 14, 2019, Xcel Energy Services Inc., on behalf of PSCo, filed an answer to Holy Cross's comments.

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2019), we grant Municipal Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. Holy Cross supports PSCo's request that the Commission accept the SIS Agreement, but asserts that certain representations PSCo makes are incorrect. Holy Cross argues that the TIE Agreement is not a grandfathered agreement under Order No. 888, and thus not subject to policies applicable to modification or expiration of such agreements, because it provides for system integration, not just transmission service.¹⁴ Additionally, Holy Cross argues that the TIE Agreement prohibits adverse distinctions as between the parties, but PSCo is making an adverse distinction in the position it is taking with respect to Holy Cross's rights under the TIE Agreement. Specifically, Holy Cross asserts that, based on PSCo's Open Access Same-Time Information System (OASIS) postings, PSCo appears to not be studying Holy Cross's request for firm transmission service in the same manner PSCo studies service from its network resources, and by doing so is making an adverse distinction. Holy Cross also contends that, even though PSCo already performed a study for the Hunter Solar Project in April 2019 and determined that the request could be approved, PSCo appears to be restudying the request, potentially with a different methodology, which Holy Cross states is inconsistent with PSCo's obligations under the TIE Agreement.¹⁵

11. In its answer, PSCo reasserts that the TIE Agreement is subject to policies for a grandfathered transmission arrangement. It also asserts that Holy Cross's request for transmission service will be studied pursuant to the SIS Agreement, not the description in PSCo's OASIS postings. PSCo states that it has corrected the OASIS description regarding Holy Cross's request for transmission service to be more consistent with the SIS Agreement.¹⁶

12. We grant waiver of prior notice and accept the SIS Agreement, effective December 11, 2019, as requested by PSCo and Holy Cross.¹⁷ The SIS Agreement allows

¹⁴ Holy Cross Comments at 4-6.

¹⁵ *Id.* at 7-8.

¹⁶ PSCo Answer at 4.

¹⁷ Public Service Company of Colorado, FERC FPA Electric Tariff, Transmission

PSCo to study Holy Cross's request for transmission service over the parties' jointly owned transmission facilities, and does not obligate either party to provide or take transmission service.

13. Although Holy Cross argues that PSCo is conducting the study process for Holy Cross's request for firm transmission service in a manner that is inconsistent with PSCo's obligations under the TIE Agreement,¹⁸ it does not request any specific remedy to address these concerns in this proceeding. Indeed, Holy Cross requests that the Commission accept the non-conforming SIS Agreement.¹⁹ Recognizing that the parties have raised in their pleadings issues that are the subject of the pending petition for declaratory order in Docket No. EL20-14-000, our acceptance of the SIS Agreement here should not be construed as a determination of any issues pending in that proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

and Service Agreements Tariff; [570-PSCo, HLYCRS - ARRIBA - Non-Conf-SISA - 0.0.0 - Agrmt, 0.0.0](#).

¹⁸ Holy Cross Comments at 7-8.

¹⁹ *Id.* at 2, 4, 9.