

169 FERC ¶ 61,021
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

GridLiance High Plains LLC
Southwest Power Pool, Inc.

Docket Nos. ER19-1357-000
ER18-2358-001
(consolidated)

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES
AND CONSOLIDATING PROCEEDINGS

(Issued October 17, 2019)

1. On March 15, 2019, GridLiance High Plains LLC (GridLiance)¹ submitted its annual informational filing reflecting its projected net revenue requirement for the 2019 rate year (2019 Annual Update), effective January 1, 2019, for certain facilities that are included in the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (Tariff). On July 1, 2019, Xcel Energy Services Inc. (Xcel), on behalf of Southwestern Public Service Company (SPS), filed a formal challenge (Formal Challenge) to the 2019 Annual Update, arguing that GridLiance's inclusion of those facilities in its 2019 Annual Update is improper, and a motion to consolidate this proceeding with the pending hearing and settlement judge procedures in Docket No. ER18-2358-001. The proceeding in Docket No. ER18-2358-001 relates to the proposed Tariff revisions implementing the placement of those facilities in the SPS pricing zone (Zone 11), which are the subject of the Formal Challenge. As discussed below, we set the Formal Challenge for hearing and settlement judge procedures and consolidate this proceeding with the pending hearing and settlement judge procedures in Docket No. ER18-2358-001.

I. Background

2. GridLiance recovers its Commission-jurisdictional costs through a forward-looking transmission formula rate template and implementation protocols (Formula Rate)

¹ GridLiance was formerly known as South Central MCN LLC.

under the SPP Tariff.² On April 1, 2016, GridLiance acquired certain facilities from Tri-County Electric Cooperative, Inc. that are located in the Oklahoma panhandle region (Pre-Upgrade Oklahoma Assets).³ At the time of the acquisition, the Pre-Upgrade Oklahoma Assets did not meet the definition of “Transmission” under Attachment AI of the SPP Tariff⁴ or transmission facilities under the Commission’s seven-factor test,⁵ and thus were ineligible for cost recovery in SPP transmission rates.⁶ According to GridLiance, in response to reliability concerns, GridLiance subsequently constructed certain upgrades and extensions to the Pre-Upgrade Oklahoma Assets. GridLiance asserts that the upgrades resulted in a portion of the Pre-Upgrade Oklahoma Assets qualifying as transmission facilities under Attachment AI (i.e., the Upgraded Oklahoma Assets) and that SPP determined that the Upgraded Oklahoma Assets should be placed in SPP Zone 11 using its zonal placement process.⁷

3. On August 30, 2018, in Docket No. ER18-2358-000, SPP filed proposed Tariff revisions to add an annual transmission revenue requirement (ATRR) for the Upgraded Oklahoma Assets once GridLiance transferred functional control of those facilities to SPP. Specifically, SPP proposed revisions to update, among other things, Table 1 of Attachment H of the SPP Tariff to include GridLiance’s ATRR for the Upgraded

² SPP, Tariff, Attachment H, Addendum 43. *See also South Central MCN LLC*, 153 FERC ¶ 61,099 (2015), *order on reh’g*, 154 FERC ¶ 61,271 (2016), *order on compliance*, 161 FERC ¶ 61,053 (2017), *order on reh’g and compliance*, 166 FERC ¶ 61,092 (2019).

³ *South Central MCN LLC*, 154 FERC ¶ 61,174 (2016).

⁴ SPP, Tariff, Attachment AI (Transmission Facility Criteria and Pre-Filing Review Process).

⁵ *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).

⁶ *Sw. Power Pool, Inc.*, Opinion No. 535, 149 FERC ¶ 61,051 (2014).

⁷ GridLiance 2019 Annual Update at 4.

Oklahoma Assets within Zone 11. In its filing, SPP stated that GridLiance's projected ATRR for the Upgraded Oklahoma Assets is approximately \$8.9 million.⁸ Xcel protested the proposed Tariff revisions, arguing, among other things, that the Upgraded Oklahoma Assets do not qualify as transmission facilities and were not prudent investments. The Commission accepted SPP's proposed Tariff revisions, suspended them for a nominal period, effective November 1, 2018,⁹ subject to refund, and established hearing and settlement judge procedures.¹⁰

II. 2019 Annual Update

4. On March 15, 2019, pursuant to the requirements of GridLiance's Formula Rate protocols, GridLiance submitted its 2019 Annual Update, which includes its projected total costs for the upcoming rate year, including the costs associated with the Upgraded Oklahoma Assets. According to GridLiance's populated Formula Rate template, the projected ATRR for the Upgraded Oklahoma Assets is \$8,896,558.¹¹

5. According to GridLiance, in response to posting its 2019 projected ATRR, Xcel requested data on the inputs to the projected total costs (including details about the Upgraded Oklahoma Assets); GridLiance responded; Xcel submitted an informal challenge as to the inclusion of the Upgraded Oklahoma Assets in that projection; and GridLiance responded.¹² The issues related to the Upgraded Oklahoma Assets are unresolved.¹³

III. Formal Challenge and Motion to Consolidate

6. Xcel states that it is formally challenging GridLiance's inclusion of the Upgraded Oklahoma Assets in its projected ATRR for SPP Zone 11 transmission rates. Xcel

⁸ SPP, Filing, Docket No. ER18-2358-000, at 12 (filed Aug. 30, 2018).

⁹ According to GridLiance, it transferred functional control of the Upgraded Oklahoma Assets to SPP as of November 1, 2018. GridLiance 2019 Annual Update at 4.

¹⁰ *Sw. Power Pool, Inc.*, 165 FERC ¶ 61,066 (2018) (October 2018 Order).

¹¹ GridLiance 2019 Annual Update at Attachment A.

¹² *Id.* at 6-7. See also Xcel Formal Challenge at 7-8. According to Xcel, GridLiance agreed in writing to extend the deadline for filing a formal challenge to July 1, 2019. Xcel Formal Challenge at 8.

¹³ GridLiance 2019 Annual Update at 7; Xcel Formal Challenge at 8.

contends that the cost shift to SPS will be more than \$6 million in 2019, and more than \$1 million per year for other load serving entities in Zone 11.¹⁴ In addition, Xcel states that its Formal Challenge is intended to address only those costs resulting from the inclusion of the Upgraded Oklahoma Assets in SPP Zone 11 transmission rates to the extent that those issues are not already addressed in Docket No. ER18-2358-001.¹⁵

7. Xcel argues that the Upgraded Oklahoma Assets are the only plants in service under GridLiance's Formula Rate and thus, GridLiance's entire rate base is premised on the claim that the Upgraded Oklahoma Assets are eligible for recovery as transmission facilities under Attachment AI of the SPP Tariff. Xcel alleges that GridLiance's entire rate base should be removed from its Formula Rate because GridLiance fails to demonstrate that the Upgraded Oklahoma Assets qualify as transmission facilities under Attachment AI or the Commission's seven-factor test. Xcel also contends that GridLiance failed to demonstrate that the Upgraded Oklahoma Assets are necessary to mitigate reliability concerns, such as complying with North American Electric Reliability Corporation (NERC) Reliability Standards. As such, Xcel argues that there is no way to determine whether the Upgraded Oklahoma Assets were prudent investments.¹⁶

8. Xcel also requests that the Commission consolidate this proceeding with the pending hearing and settlement judge procedures in Docket No. ER18-2358-001. Xcel argues that both proceedings involve common issues regarding whether the Upgraded Oklahoma Assets can be recovered under GridLiance's Formula Rate. Xcel contends that consolidating these two proceedings will promote greater administrative efficiency and ensure that any overlapping issues are addressed comprehensively and consistently.¹⁷

IV. Notice of Filing and Responsive Pleadings

9. Notice of Xcel's Formal Challenge was published in the *Federal Register*, 84 Fed. Reg. 35,385 (2019), with interventions and protests due on or before July 31, 2019. On July 18, 2019, the Commission's Deputy Secretary issued an errata notice correcting and extending the deadline for interventions and protests to August 16, 2019. Western Farmers Electric Cooperative, Mid-Kansas Electric Company, and Sunflower Electric Power Cooperative filed timely motions to intervene. On August 16, 2019, GridLiance filed a response to Xcel's Formal Challenge. On September 3, 2019, Xcel filed an

¹⁴ Xcel Formal Challenge at 3, 11.

¹⁵ *Id.* at 3, 7.

¹⁶ *Id.* at 11-19.

¹⁷ *Id.* at 10-11.

answer to GridLiance's response. On September 17, 2019, GridLiance filed an answer to Xcel's answer.

A. GridLiance's Response

10. GridLiance argues that the Commission should dismiss the Formal Challenge because the issues raised by Xcel are the same as the issues the Commission set for hearing and settlement judge procedures in Docket No. ER18-2358-001. GridLiance asserts that, if the Commission does not dismiss the Formal Challenge (or reject it as unsupported), GridLiance would not oppose consolidating this proceeding with the proceeding in Docket No. ER18-2358-001 if the issues set for hearing are no broader than the issues in Docket No. ER18-2358-001.¹⁸ To that end, GridLiance requests that the Commission clarify that the only issue being consolidated is whether the Upgraded Oklahoma Assets meet the definition of transmission under Attachment AI and not whether the facilities must also meet the Commission's seven-factor test. GridLiance argues that the Commission does not require that facilities must satisfy both Attachment AI and the seven-factor test to qualify as transmission under the SPP Tariff.¹⁹

11. In response to Xcel's arguments, GridLiance contends that Xcel fails to acknowledge the distinction between the Upgraded Oklahoma Assets and the non-networked portion of Pre-Upgrade Oklahoma Assets that are used for wholesale distribution service. According to GridLiance, the only facilities included in its projected ATRR are the Upgraded Oklahoma Assets. GridLiance alleges that the non-networked Pre-Upgrade Oklahoma Assets remain covered by GridLiance's wholesale distribution tariff and the GridLiance open access transmission tariff and that these facilities will continue to be used to provide wholesale distribution service to Tri-County. GridLiance argues that no portion of the cost of the non-networked Pre-Upgrade Oklahoma Panhandle Assets is included in Zone 11 transmission rates.²⁰

12. GridLiance also argues that public utilities are entitled to a presumption of prudence regarding cost inputs and that parties have to raise a serious doubt as to the prudence of

¹⁸ GridLiance Response at 1-2.

¹⁹ *Id.* at 12-15 (citing *Sw. Power Pool, Inc.*, 112 FERC ¶ 61,355 (2005), *order on reh'g, clarification, and compliance*, 114 FERC ¶ 61,242, at P 8 (2006) (March 2006 Order)).

²⁰ *Id.* at 8-11.

expenditures.²¹ GridLiance alleges that the Upgraded Oklahoma Assets were planned along with Tri-County to address known reliability issues, and thus were prudent investments. GridLiance contends that Xcel's allegation that the upgrades were not required under NERC Reliability Standards is misleading, as a number of upgrades within the SPP region are constructed not because of NERC Reliability Standards, but to provide value to ensure the electric system continues to meet NERC's Reliability Standards.²²

B. Xcel's Answer

13. Xcel asserts that its Formal Challenge relates to the reasonableness and prudence of certain inputs (i.e., the costs of the Upgraded Oklahoma Assets) to GridLiance's Formula Rate. Xcel argues that GridLiance bears the burden of demonstrating the justness and reasonableness of the implementation of its Formula Rate, which GridLiance failed to do because it has not proven that the Upgraded Oklahoma Assets are transmission facilities eligible for cost recovery under SPP transmission rates.²³

14. Xcel contends that the Commission's seven-factor test is relevant to whether GridLiance has correctly populated its Formula Rate. According to Xcel, the Commission has previously found that the Pre-Upgrade Oklahoma Assets, which are a subset of the Upgraded Oklahoma Assets, do not meet the Commission's seven-factor test, which is a reason to doubt that the Upgraded Oklahoma Assets now meet that test.²⁴

15. Xcel alleges that GridLiance's claims about reliability concerns fail to demonstrate that the Upgraded Oklahoma Assets were constructed prudently. Xcel argues that, even assuming that GridLiance's reliability claims are valid, GridLiance has not demonstrated that it made prudent design choices in remediating those reliability concerns. Xcel also contends that the construction undertaken by GridLiance was intended to achieve cost shifts, not reliability gains, and that GridLiance's planning criteria are excessive and result in overbuilding.²⁵

²¹ *Id.* at 16-17 (citing *Delmarva Power & Light Co.*, 160 FERC ¶ 61,102, at n.34 (2017)).

²² *Id.* at 17-20.

²³ Xcel Answer at 3-8.

²⁴ *Id.* at 8-12 (citing Opinion No. 535, 149 FERC ¶ 61,051 at P 180).

²⁵ *Id.* at 12-15.

C. GridLiance's Answer

16. GridLiance contends that, until resolution of the issues in Docket No. ER18-2358-001, the Upgraded Oklahoma Assets are properly included in GridLiance's ATRR for Zone 11, consistent with the October 2018 Order. GridLiance asserts that, once those issue are resolved, if necessary, GridLiance will adjust its Formula Rate in accordance with its protocols and true-up mechanism.²⁶

17. GridLiance argues that Xcel does not demonstrate or explain how the Upgraded Oklahoma Assets do not meet Attachment AI. GridLiance alleges that the Upgraded Oklahoma Assets are not radial facilities and are not local distribution facilities. Finally, GridLiance contends that, in any event, the question whether the Upgraded Oklahoma Assets meet Attachment AI is an issue set for hearing in Docket No. ER18-2358-001 and should not be separately litigated here.²⁷

V. Discussion

A. Procedural Matters

18. 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.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept Xcel's and GridLiance's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

20. We find that Xcel's Formal Challenge raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

21. Xcel requests that the Commission consolidate this proceeding with the pending hearing and settlement judge procedures in Docket No. ER18-2358-001,²⁸ which GridLiance does not oppose if the issues set for hearing are no broader than the issues in

²⁶ GridLiance Answer at 2-3.

²⁷ *Id.* at 3-8.

²⁸ Xcel Formal Challenge at 10-11; Xcel Answer at 15-16.

Docket No. ER18-2358-001.²⁹ Here, Xcel formally challenges GridLiance's inclusion of the Upgraded Oklahoma Assets in its projected ATRR for SPP Zone 11 transmission rates. The proposed Tariff revisions establishing GridLiance's ATRR for the Upgraded Oklahoma Assets within Zone 11 have been accepted and set for hearing and settlement judge procedures in Docket No. ER18-2358-001. Thus, because of the common issues of law and fact raised here and in Docket No. ER18-2358-001, we grant Xcel's motion to consolidate these two proceedings for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

22. We also clarify that, in the event that the Upgraded Oklahoma Assets fail to meet the definition of transmission facilities under Attachment AI, the Upgraded Oklahoma Assets could be included in SPP transmission rates if they meet the Commission's seven-factor test. The Commission has previously stated that, in regards to Attachment AI, the seven-factor test may be applied to determine whether any facility is a transmission facility, regardless of whether it is operated at, above, or below 60 kilovolts, and that SPP would be required to honor such a determination.³⁰ Further, in Opinion No. 535, the Commission stated that the seven-factor test may be applied in order to determine whether a facility is included as a transmission facility under Attachment AI.³¹

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in ER19-1357-000 concerning Xcel's Formal Challenge to GridLiance's 2019 Annual Update. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraph (C) below.

(B) Docket Nos. ER19-1357-000 and ER18-2358-001 are hereby consolidated for purposes of settlement, hearing, and decision.

²⁹ GridLiance Answer at 1-2.

³⁰ March 2006 Order, 114 FERC ¶ 61,242 at P 8.

³¹ Opinion No. 535, 149 FERC ¶ 61,051 at PP 165-168.

(C) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER18-2358-001 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.