

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Xcel Energy Services Inc.

Docket No. ER06-812-000

ORDER ACCEPTING NOTICES OF TERMINATION

(Issued May 26, 2006)

1. On March 31, 2006, Xcel Energy Services, Inc. (Xcel), as agent for Northern States Power Company (Minnesota) (NSP) and Northern States Power Company (Wisconsin) (NSPW) (collectively, NSP Companies), filed notices of termination for the Network Integration Transmission Service Agreements (NITSA) and Network Operating Agreements (NOA) (jointly, NSP Network Agreements) currently in effect between NSP Companies and: (1) Southern Minnesota Municipal Power Agency (Southern Minnesota); (2) Central Minnesota Municipal Power Agency (Central Minnesota); and (3) Great River Energy (Great River), under the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (Joint OATT). Xcel requests a waiver of the Commission's 60-day prior notice requirement to permit an effective date of April 1, 2006. As discussed below, the Commission accepts the notices of termination, to be effective April 1, 2006.

Background

2. Xcel seeks to terminate the NSP Network Agreements currently in effect under the Joint OATT between NSP Companies and Southern Minnesota, Central Minnesota, and Great River. Xcel states that the Central Minnesota NITSA allows the Central Minnesota member utilities to serve their loads on the NSP Companies transmission system. The NSP Network Agreements with Southern Minnesota and Great River allow Southern Minnesota and Great River to serve their loads on the NSP Companies' transmission system and the NSP Companies to serve their loads on the Southern Minnesota's and Great River's transmission systems.

3. Xcel states that, as required by the NSP Network Agreements, on March 31, 2004 it provided timely notice to the customers subject to this filing of Xcel's intent to seek termination, effective April 1, 2006, of the NSP Network Agreements (termination letter). Xcel also states that, in place of taking service from the NSP Companies, Central Minnesota and Southern Minnesota have secured network services under Midwest

Independent Transmission System Operator Inc's (Midwest ISO) Open Access Transmission and Energy Markets Tariff (TEMT), effective April 1, 2006, to satisfy their respective load serving obligations upon the termination of the NSP Network Agreements. Xcel states that Great River's Network Service under the Joint OATT converted to Network Service under the Midwest ISO Open Access Transmission Tariff prior to March 1, 2005.¹

4. Xcel requests that the notices of termination be made effective as of April 1, 2006, and seeks a waiver of the Commission 60-day prior notice requirement. Xcel states that such a waiver is appropriate and consistent with Commission policy² since Xcel gave timely notice to the customers who will now take network services from the Midwest ISO.

Notices of Filing

5. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 19,720 (2006), with protests and interventions due on or before April 21, 2006. Great River Energy and Southern Minnesota filed timely motions to intervene. Central Minnesota filed a timely motion to intervene and protest. On May 8, 2006, Xcel filed an answer to Central Minnesota's protest.

6. Central Minnesota argues that Xcel is terminating a contractual arrangement under which Xcel has compensated Central Minnesota for using Central Minnesota member-owned facilities without making alternative arrangements for fair future compensation. Central Minnesota acknowledges that Xcel has a contractual right under NSP Network Agreements to terminate the transmission service, and that Central Minnesota has agreed to take transmission service from the Midwest ISO. However, Central Minnesota contends that no provision has been made for it to receive credits from the Midwest ISO in the NSP Companies' zonal rates.

7. Central Minnesota asserts that Xcel stated in its termination letter that Xcel will negotiate in good faith alternative arrangements as required to provide continued transmission service and that it would submit a filing to the Commission for termination

¹ Xcel states that it is seeking to terminate these agreements in order to cancel rate schedules that are still on file with the Commission even though transmission service is no longer being taken under these agreements.

² See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

of NSP Network Agreements by no later than February 1, 2006. Central Minnesota argues that Xcel has not made a good faith effort to negotiate with Central Minnesota and did not make a filing by February 1, 2006. Instead, Xcel submitted a filing on March 31, 2006 with a request for waiver of the 60-day prior notice requirement. Central Minnesota asserts that the 60-day prior notice period is needed to negotiate with Xcel regarding facilities credits; Central Minnesota will take transmission service from the Midwest ISO under the relevant Midwest ISO zone rate but contends that, waiver of the 60-day prior notice requirement should be denied with respect to Central Minnesota's no longer receiving credits.

8. In response, Xcel contends that Central Minnesota's protest regarding facilities credits are outside the scope of this proceeding. It states that notice of termination proceedings are limited to whether or not the terminating party has satisfied its obligation under section 35.15 of the Commission's regulations, 18 C.F.R. § 35.15 (2005), to notify the Commission of a jurisdictional contract's termination, and that it has satisfied that requirement. Additionally, Xcel maintains that the parties have been in negotiations for the credits at issue, and states that if its filing "is accepted effective April 1, 2006 as proposed, [Xcel] commits that the NSP Companies will pay cost-based facilities credits to the [Central Minnesota] member utilities for their eligible transmission facilities effective April 1, 2006."³

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Xcel's answer filed in this proceeding because it has provided information that has assisted us in our decision-making process.

³ Xcel's Answer at 4.

B. Commission's Determination

11. The Commission will accept Xcel's notices of termination. As discussed below, we find that Xcel complied with the Commission's regulations in filing its notices of termination, which require that when a rate schedule that is on file with the Commission is terminated a notice is required.⁴

12. Central Minnesota does not dispute Xcel's right under the NSP Network Agreements to terminate network services. Rather, Central Minnesota asks the Commission to delay Xcel's requested April 1, 2006 effective date by 60 days because NSP Companies have not yet agreed to specific facility credit arrangements. Central Minnesota asserts that 60 days are needed for negotiations between the parties.⁵ However, the Commission finds that the instant notices of termination serve a different purpose than providing an opportunity to negotiate credits; rather their purpose is to reflect the customers' transition from taking services under the NSP Network Agreements to taking service under the Midwest ISO TEMT, effective April 1, 2006. Any disputes between Xcel and Central Minnesota regarding credits for customer-owned facilities are thus beyond the scope of this proceeding.⁶

13. Accordingly, we will grant Xcel's request for waiver of the 60-day prior notice requirement and accept the instant notices of termination for filing, effective April 1, 2006, as requested.

The Commission orders:

(A) Xcel's notices of termination of the NSP Network Agreements are hereby accepted, effective April 1, 2006.

⁴ 18 C.F.R. § 35.15 (2005).

⁵ Since this order is being issued 60 days after the date of Xcel's filing, Central Minnesota has been given the 60 days for negotiations that it seeks.

⁶ The Commission notes, however, that Xcel, in its answer, commits that the NSP Companies will provide cost-based facilities credits to Central Minnesota member utilities for eligible transmission facilities effective April 1, 2006.

(B) Xcel's request for waiver of the 60-day prior notice requirement is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.