

117 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman
Suedeem G. Kelly, Marc Spitzer
and Jon Wellinghoff.

Xcel Energy Services Inc.	Docket Nos. ER01-205-008 ER01-205-009 ER01-205-010 ER01-205-011 ER01-205-012 ER01-205-013
Northern States Power Company and Northern States Power Company (Wisconsin)	ER98-2640-006 ER98-2640-007 ER98-2640-008 ER98-2640-009 ER98-2640-010 ER98-2640-011
Public Service Company of Colorado	ER98-4590-004 ER98-4590-005 ER98-4590-006 ER98-4590-007 ER98-4590-008 ER98-4590-009
Southwestern Public Service Company New Century Services, Inc.	ER99-1610-011 ER99-1610-012 ER99-1610-013 ER99-1610-014 ER99-1610-015 ER99-1610-016 ER99-1610-017
Xcel Energy Services Inc., Northern States Power Company and Northern States Power Company (Wisconsin), Public Service Company of Colorado,	EL05-115-000

Southwestern Public Service Company and
New Century Services, Inc.

ORDER ON PROPOSED MITIGATION MEASURES AND COMPLIANCE FILINGS

(Issued November 9, 2006)

1. In this order, the Commission conditionally accepts Xcel Energy Services Inc.'s (XES)¹ proposal providing for cost-based rates applicable to sales of electric power at wholesale for transactions in the Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) control areas, in order to mitigate the presumption of generation market power in those control areas. The mitigation proposal will become effective August 12, 2005, as requested, subject to Commission acceptance of the compliance filings directed herein. The Commission also accepts for filing revisions to the market-based rate tariffs of XES, SPS and PSCo, as modified herein, effective August 12, 2005, to provide that service under the tariffs applies only to sales outside the PSCo and SPS control areas. In addition, the Commission accepts revisions to make clear that SPS is permitted to make sales into the Southwest Power Pool's (SPP) energy imbalance market, to become effective the date on which the SPP initiates the energy imbalance market.
2. Also in this order, the Commission accepts compliance filings containing: (1) information regarding sales into the PSCo and SPS control areas; (2) data Xcel submitted to support the simultaneous transmission import capability study, which Xcel relied on for its market power analysis; (3) information addressing the affiliate abuse and reciprocal dealing part of the Commission's market power analysis; and (4) revisions to the five Xcel affiliates' market-based rate tariffs to incorporate the Commission's change in status reporting requirement.
3. As discussed below, the Commission will continue to hold the investigation of the affiliate abuse issues in this proceeding in abeyance pending the outcome of the Consolidated Proceeding in Docket Nos. EL05-19-000 and ER05-168-000. Accordingly,

¹ XES submitted this filing as well as other filings on behalf of itself and the Xcel Energy Operating Companies - Northern States Power Company (NSP-M) and Northern States Power Company (Wisconsin) (NSP-W) (NSP-M and NSP-W, collectively, NSP), Public Service Company of Colorado (PSCo), and Southwestern Public Service Company (SPS) - (collectively, Xcel).

this order does not terminate the proceeding in Docket No. EL05-115-000, which was instituted in the June 2, 2005 Order² pursuant to section 206 of the Federal Power Act (FPA)³ to determine whether Xcel may continue to charge market-based rates and established a refund effective date.

I. BACKGROUND

4. In the June 2 Order, the Commission conditionally accepted Xcel's market power analysis for all relevant markets not subject to the section 206 proceeding (i.e., directly interconnected first-tier control areas to SPS and PSCo) subject to Commission acceptance of a compliance filing providing data to support Xcel's simultaneous transmission import capability studies for its first-tier control areas. The Commission also directed Xcel to submit a compliance filing to: (1) address the affiliate abuse and reciprocal dealing part of the Commission's market power analysis;⁴ (2) identify any current contract NSP or its affiliates had entered into for sales into either the SPS or PSCo control areas; and (3) revise its market-based rate tariffs to incorporate the change in status reporting requirement adopted in Order No. 652.⁵

5. In the June 2 Order, the Commission instituted a section 206 proceeding concerning the justness and reasonableness of Xcel's market-based rates in the PSCo and SPS control areas. Xcel's generation market power analysis indicated that it failed the pivotal supplier and wholesale market share screens for the four seasons in the PSCo control area, passed the pivotal supplier screen but failed the market share screen for the four seasons in the SPS control area, and passed both screens in the Midwest Independent

² *Xcel Energy Services Inc.*, 111 FERC ¶ 61,343 (2005) (June 2 Order).

³ 16 U.S.C. § 824e (2000).

⁴ The Commission instituted the proceeding pursuant to section 206 of the FPA since Xcel failed to address the affiliate abuse and reciprocal dealing part of the Commission's test for granting market-based rate authority, in addition to Xcel's failure of the indicative screens.

⁵ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

Transmission System Operator, Inc. (Midwest ISO) market.⁶ The Commission also established a refund effective date pursuant to the provisions of section 206.⁷

6. For the SPS and PSCo control areas, Xcel was directed to: (1) file a Delivered Price Test analysis; (2) file a mitigation proposal tailored to its particular circumstances that would eliminate the ability to exercise market power; or (3) inform the Commission that it would adopt the April 14 Order's default cost-based rates or propose other cost-based rates and submit cost support for such rates.⁸

II. CHANGE IN STATUS AND COMPLIANCE FILINGS

A. Change in Status Filings

7. On July 1, 2005, as amended on July 12, 2005, Xcel submitted a notice of change in status. The filing reports to the Commission 587 MW of additional generation that NSP acquired since March 20, 2005 in the Midwest ISO. Xcel states that the new generation does not materially affect the conditions that the Commission relied upon for the grant of market-based rate authority. This filing also included tariff revisions to incorporate the change in status reporting requirement in response to the June 2 Order on Xcel's updated market power analysis.

8. On January 23, 2006, Xcel filed on behalf of SPS a notice of change in status to report a purchase power agreement for 120 MW with San Juan Mesa LLC for the renewable wind energy produced from the San Juan Mesa Wind facility located in the SPS control area as well as increases of .66 MW and 4.6 MW under SPS's purchased power agreements with National Windmill Project Inc. and Borger Energy Associates, L.P., respectively. Xcel states that the new generation does not materially affect the conditions that the Commission relied upon for the grant of market-based rate authority.

9. On March 3, 2006 and March 28, 2006, Xcel filed notices of change in status to report changes in NSP purchase power agreements totaling 100.8 MW of power in the Midwest ISO market, PSCo's purchase of transmission equipment, and NSP's purchase of 375 MW of energy under the Alternative Energy Arrangement with Mankato Energy Center, LLC in the Midwest ISO market. Xcel states that these additions do not

⁶ June 2 Order, 111 FERC ¶ 61,343 at P 32.

⁷ The refund effective date in this proceeding is August 12, 2005.

⁸ June 2 Order, 111 FERC ¶ 61,343 at P 33 n.13 (citing April 14 Order, 107 FERC ¶ 61,018 at P 201, 207-09).

materially affect the conditions that the Commission relied upon for the grant of market-based rate authority.

B. July 5, 2005 Compliance Filing

10. On July 5, 2005, in compliance with the June 2 Order, Xcel filed workpapers containing information regarding the historical long-term and short-term network/firm reservation controlled by SPS and its affiliates to support the simultaneous transmission import capability studies. Xcel also informed the Commission that NSP has no contracts currently in effect for sales into the SPS or PSCo control areas.

11. The filing also includes information to address the affiliate abuse and reciprocal dealing part of the Commission's market-based rate analysis.⁹ Xcel states that they and their parent holding company do not presently own any non-utility power marketers. Further, Xcel states that their market-based rate tariffs do not permit sales to any affiliates. Xcel states that they can only transact with affiliates, including each other, pursuant to schedules or agreements that have been approved by the Commission. Xcel also states that their market-based rate tariffs include Commission-approved codes of conduct governing their relationship with non-utility marketing affiliates.

12. Xcel states that they are parties to a Commission-approved joint operating agreement (JOA)¹⁰ that provides the framework for coordinated operations, including capacity and energy transactions between the Xcel Energy Operating Companies at rates based on cost or a share-the-savings rate (sometimes referred to as a split-the-savings rate). Xcel states that the JOA contemplates that XES will engage in electric energy marketing activities on behalf of the Xcel Energy Operating Companies.

13. Xcel states that XES does not directly make sales of energy as an electric utility but acts as an agent on behalf of the individual Xcel Energy Operating Companies. Xcel clarifies that XES cannot profit from any of the transactions it may enter into on behalf of any of the Xcel Energy Operating Companies. Xcel states that to date XES has not transacted under its market-based rate tariff and all transactions have been conducted under each utility's individual market-based rate authority. Last, Xcel states that they are aware that they can only transact among or between themselves pursuant to the JOA or pursuant to another Commission-accepted agreement or rate schedule because their market-based rate tariffs do not permit sales to any affiliate.

⁹ See Xcel's July 5, 2005 Filing, Attachment B, Aff. of David T. Hudson.

¹⁰ *Xcel Energy Services, Inc.*, Docket No. ER05-293-000 (January 10, 2005) (unpublished letter order).

C. August 1, 2005, September 30, 2005 and August 31, 2006 Compliance Filings and Deficiency Letter

14. On August 1, 2005, Xcel filed a notice of withdrawal of its request for continued market-based rate authority with respect to certain sales and a proposal providing for cost-based rates applicable to sales of electric power at wholesale for transactions in the SPS and PSCo control areas, in order to mitigate the presumption of market power in those control areas.¹¹ Xcel states that it will continue to make market-based rate sales in the NSP control area and in areas outside the SPS and PSCo control areas.

15. Xcel's September 30, 2005 filing revises the market-based rate tariffs of XES, SPS and PSCo to reflect the use of Commission-approved cost-based rates for sales affected by the withdrawal. Xcel states that XES, SPS and PSCo are not obligated to sell power in the SPS and PSCo control areas. Xcel also states that if XES, SPS, and PSCo choose to enter into wholesale transactions delivered within the SPS and PSCo control areas, they shall do so subject to the cost-based rates on file and accepted by the Commission. Xcel states that for sales in the SPS control area, XES and SPS will transact at or below the cost-based price cap established under the Western Systems Power Pool (WSPP) Agreement.¹² Xcel states that XES and SPS are signatories to the WSPP Agreement and are authorized to make sales at the cost-based cap contained in that agreement. For the PSCo control area, XES and PSCo propose to either transact under the WSPP Agreement,¹³ or under the PSCo Electric Coordination Service Tariff (Coordination Tariff) accepted by the Commission on October 26, 1995.¹⁴ Xcel states that the Coordination Tariff is a cost-based tariff with two service schedules, one for coordination

¹¹ Xcel, in its August 1, 2005 and September 30, 2005 filings, describes the mitigation proposal as limitations on transactions that "sink" within the SPS and PSCo control areas. However, we note that the actual language in the proposed tariffs refers to mitigated sales as sales delivered within the PSCo and SPS control areas (not at a border location).

¹² Western System Power Pool Rate Schedule, FERC No. 6, Schedules A and C. *See Western Sys. Power Pool*, 55 FERC ¶ 61,099, *order on reh'g*, 55 FERC ¶ 61,495 (1991), *aff'd in relevant part and remanded in part sub nom. Environmental Action and Consumer Federation of America v. FERC*, 996 F.2d 401 (D.C. Cir. 1992) (*Environmental Action*), *order on remand*, 66 FERC ¶ 61,201 (1994).

¹³ PSCo is also a signatory to the WSPP Agreement.

¹⁴ *See Public Service Company of Colorado*, Docket No. ER95-1207-000 (October 26, 1995) (unpublished letter order).

power and energy and the other for power and energy exchanges. Sales under the Coordination Tariff's service schedules sales may be made at prices up to the cost cap determined by a formula rate stated in the Coordination Tariff. Xcel proposes that the cost-based rates will apply to transactions with a term "not to exceed one year."¹⁵ For transactions of "one-year or longer" delivered in the SPS and PSCo control areas, XES will file those agreements with the Commission for review and approval under section 205 of the FPA prior to the commencement of service.

16. On December 8, 2005, the Commission issued a deficiency letter requesting that Xcel provide additional information regarding its mitigation proposal.¹⁶ On January 10, 2006, as resubmitted on January 12, 2006, Xcel filed an amendment to its updated market power analysis in response to the deficiency letter.

17. On August 31, 2006, Xcel filed tariff revisions to permit SPS to make sales into the SPP energy imbalance market, which is provided for in SPP's Open Access Transmission Tariff (OATT).

III. NOTICE OF FILINGS AND RESPONSIVE PLEADINGS

18. Notice of Xcel's July 1, 2005 compliance filing, as amended on July 12, 2005, was published in the *Federal Register*, 70 Fed. Reg. 41,217 (2005), with comments, interventions, and protests due on or before August 2, 2005. None was filed.

19. Notice of Xcel's July 5, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 41,215 (2005), with comments, interventions, and protests due on or before July 26, 2005. Golden Spread Electric Cooperative, Inc., and Lyntegar Electric Cooperative, Inc. (collectively, Golden Spread/Lyntegar) and Occidental Permian Ltd. and Occidental Power Marketing, L.P. (collectively, Occidental) filed motions to intervene and protest, and Holy Cross Electric Association, Inc. filed a motion to intervene. Xcel filed an answer to the protests on August 10, 2005.

20. Notice of Xcel's August 1, 2005 notice of withdrawal of request for market-based rate authority in the SPS and PSCo control area, intent to transact under cost-based rates,

¹⁵ We note that Xcel's proposed tariff language differs from Xcel's description. The proposed tariff language states that mitigated sales would apply to periods of "one year or less."

¹⁶ *Xcel Energy Services, Inc.*, Docket No. ER01-205-010 (December 8, 2005) (unpublished letter order).

and request to terminate proceedings filing was published in the *Federal Register*, 70 Fed. Reg. 49,274 (2005), with comments, interventions, and protests due on or before September 1, 2005.¹⁷ Golden Spread/Lyntegar and Occidental filed motions to intervene and protest.

21. Xcel filed an answer to the protests on August 31, 2005. On September 1, 2005, Golden Spread/Lyntegar filed a supplemental protest to the August 1, 2005 proposed mitigation. On September 16, 2005 Xcel filed an answer to the supplemental protest.

22. Notice of Xcel's September 30, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 59,333 (2005), with comments, interventions, and protests due on or before October 21, 2005. Golden Spread/Lyntegar filed a protest to Xcel's proposed revisions to the market-based rate tariffs. On November 7, 2005, Xcel filed an answer to the protest.

23. Notice of Xcel's January 10, 2006 response to the Commission's deficiency letter was published in the *Federal Register*, 71 Fed. Reg. 3840 (2006), with comments, interventions, and protests due on or before January 31, 2006. Occidental and Golden Spread/Lyntegar filed a protest to Xcel's response. Xcel filed an answer on February 15, 2006.

24. Notice of Xcel's January 23, 2006 change in status filing was published in the *Federal Register*, 71 Fed. Reg. 5827 (2006), with comments, interventions, and protests due on or before February 2, 2006. None was filed.

25. Notice of Xcel's March 3, 2006 change in status filing was published in the *Federal Register*, 71 Fed. Reg. 13,830 (2006) with comments, interventions, and protests due on or before March 24, 2006. None was filed.

26. Notice of Xcel's March 28, 2006 change in status filing was published in the *Federal Register*, 71 Fed. Reg. 18,313 (2006), with comments, interventions, and protests due on or before April 18, 2006. None was filed.

27. Notice of Xcel's August 31, 2006 filing was published in the *Federal Register*, 71 Fed. Reg. 54,049 (2006), with comments, interventions, and protests due on or before

¹⁷ On August 11, 2005, Golden Spread/Lyntegar requested that the Commission recognize Xcel's August 1, 2005 filing as a proposed rate filing under section 205 of the FPA, and issue a notice of such filing. Although the Commission issued a notice of Xcel's August 1, 2005 compliance filing, it did not treat such compliance filing as a proposed rate filing under section 205 of the FPA.

September 13, 2006. Occidental and Golden Spread filed protests. On October 5, 2006, Xcel filed an answer to the protests.

IV. DISCUSSION

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept Xcel's answers because they provided information that assisted us in our decision-making process.

B. Analysis

1. Change in Status Filings

30. Xcel's July 1, 2005 change in status filing, as amended July 12, 2005, which includes revised tariff sheets to incorporate the change in status reporting requirement is accepted for filing. We also accept for filing Xcel's January 23, 2006, March 3, 2006 and March 28, 2006 change in status filings. None of the changes in circumstances materially affect Commission action with regard to Xcel's market-based rate authority. The control areas in which Xcel has added generation and transmission equipment are the same control areas, in which Xcel proposes to relinquish its market-based rate authority (SPS and PSCo). In addition, the generation added in the Midwest ISO market does not materially affect our generation market power analysis.

2. July 5, 2005 Compliance Filing

31. In its compliance filing, Xcel provides information regarding sales into the PSCo and SPS control areas. Specifically, in response to the Commission's directive in the June 2 Order for NSP to identify any current contract it has entered into for sales into the SPS or PSCo control areas, Xcel states that no contracts are currently in effect. Xcel's compliance filing also includes 2003 data and work papers to support the simultaneous transmission import capability study for the SPS and PSCo control areas. Last, Xcel provides information regarding affiliate abuse and reciprocal dealing.

a. Protests and Answers

32. Golden Spread/Lyntegar requests that the Commission analyze historical transactions by NSP into the SPS control area. It states that the SPS transmission data fails to identify and explain the use of all SPS import path reservations and contains errors. It requests additional information related to transmission data for the calendar year 2004. Last, Golden Spread/Lyntegar states that SPS has failed to comply with other Commission filing requirements, such as 2004 hourly load data contained in FERC Form 714.

33. In its answer, Xcel states that Golden Spread/Lyntegar's request for historical trading behavior is not a protest to the July 5 compliance filing but in fact a request for rehearing of the June 2 Order because the Commission did not ask for that information, rather, the Commission only requested information pertaining to current contracts. Additionally, SPS informs the Commission that it did file a FERC Form 714, but at the time these protests were filed it did not appear to be posted on eLibrary.¹⁸

34. Golden Spread/Lyntegar argues that if Xcel wishes to avoid Commission scrutiny of its market power, it must first concede that it accepts the presumption of market power. Golden Spread/Lyntegar states that since Xcel refuses to do so, whatever alternative mitigation proposal it proposes is patently deficient.¹⁹ Xcel responds that an affirmative declaration of market power is not required for the withdrawal of market-based rate authorization.

b. Commission Determination

35. First, the Commission finds that, with Xcel's July 5, 2005 compliance filing, Xcel satisfies the Commission's generation market power standard for market-based rate authority in the directly interconnected first-tier control areas to SPS and PSCo. The Commission will allow Xcel to make sales at market-based rates into markets outside of SPS and PSCo's control areas, including first-tier markets, because the Commission has reviewed Xcel's first-tier markets and has found Xcel lacks market power in the first-tier market areas. While we accept the July 5, 2005 submittal for filing, as discussed below,

¹⁸ We note that SPS's FERC Form 714 for 2003, used in Xcel's market power analysis, is posted on elibrary. The Commission has contacted SPS to replace a damaged data CD that contains SPS's timely filed FERC Form 714 for 2004 data in order to post such data on elibrary.

¹⁹ Golden Spread/Lyntegar August 16, 2005 Filing at 5.

we will continue to hold the investigation of the affiliate abuse issues in this proceeding in abeyance pending the outcome of the Consolidated Proceeding in Docket Nos. EL05-19-000 and ER05-168-000.

36. With regard to Golden Spread/Lyntegar's concerns that Xcel has not formally accepted a presumption of market power, we note that the April 14 Order states that an applicant may forego submitting a generation market power analysis and accept a presumption of market power and go directly to mitigation by proposing case-specific mitigation that eliminates the ability to exercise market power.²⁰ The Commission stated that under such circumstances there would be a presumption of market power in all of the default relevant markets. The Commission also stated that failing the indicative screens creates a presumption of market power.²¹ Xcel responded to the presumption of market power by proposing to withdraw its market-based rate authority in the SPS and PSCo control areas and to transact in those control areas pursuant to cost-based rates on file with the Commission. By its actions in this regard, Xcel has accepted the presumption of market power as discussed in the April 14 Order. We do not believe it is necessary for Xcel to make an affirmative admission of market power before it is allowed to withdraw its request for market-based rate authority and transaction at Commission-approved cost-based rates.²²

37. We agree with Xcel that Golden Spread/Lyntegar's request that the Commission analyze historical transactions by NSP into the SPS control area is beyond the scope of the compliance filing directed in the June 2 Order. The only issue in a compliance filing proceeding is whether the company has complied with the directives of the Commission's prior order.²³ Here we find that Xcel has complied with the directive of the June 2 Order by providing the workpapers necessary to support the simultaneous transmission import capability studies. Finally, we note that Xcel did indeed file the FERC Form 714.

²⁰ April 14 Order, 107 FERC ¶ 61,018 at P 39.

²¹ See June 2 Order, 111 FERC ¶ 61,343 at P 32 and April 14 Order, 107 FERC ¶ 61,018 at P 149.

²² April 14 Order, 107 FERC ¶ 61,018 at P 149.

²³ See, e.g., *Union Light, Heat and Power Co.*, 111 FERC ¶ 61,341 at P 11 (2005); *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,336 at P 5 (2004).

**3. August 1, 2005, September 30, 2005 and August 31, 2006
Compliance Filings: Mitigation Proposal and Tariff Revisions**

38. As discussed below, the Commission accepts Xcel's proposed use of the WSPP Agreement and Coordination Tariff as mitigation for sales made in the SPS and PSCo control areas subject to the outcome of the Market-Based Rate Rulemaking in RM04-7-000 and any determinations that the Commission makes regarding mitigation in that proceeding. The Commission has previously accepted the WSPP Agreement and Coordination Tariff and found them to be just and reasonable cost-based rates.

a. Cost Concerns

(1) Cost caps

39. Golden Spread/Lyntegar states that it is concerned that SPS is proposing to utilize the cost caps contained in the WSPP Agreement for purposes for which they were not intended, and in circumstances directly contrary to the reason that the pricing scheme of the WSPP was created in the first instance. Golden Spread/Lyntegar states that the Commission should analyze the use of the WSPP Agreement price caps faced both with the intended applicability of those rates, the SPS cost profile, and the lack of competition in the SPS control area, and it should do so with the backdrop of the default cost-based mitigation for market-power as proposed in the April 14 and July 8 Orders.²⁴ Regarding short-term sales of less than one year, Golden Spread/Lyntegar states that the default cost-based rates were much more narrowly tailored. Golden Spread/Lyntegar argues that the Commission's default mitigation is in stark contrast to XES's proposal for the SPS system, which has no correlation to the cost characteristics of SPS's generation fleet and controlled resources in the SPS control area. Golden Spread/Lyntegar argues that the WSPP Agreement cost cap permits capacity charges up to \$7.23/kw-month plus incremental energy, which is more than what SPS has charged in the second quarter of 2005 for market-based rate sales, which were typically in the \$5.00-\$6.00 kw/month range.²⁵

²⁴ Similarly, Occidental, in its August 16, 2005 filing, states that to the extent that the Commission considers the adoption of the cost-based rates as proposed in this proceeding, the Commission should direct Xcel to submit a complete cost-of-service study to support the cost-caps that it proposed.

²⁵ Golden Spread/Lyntegar's August 16, 2005 Filing at 10.

(2) Xcel's Cost and Cost Support

40. Occidental argues that Xcel has failed to comply with the Commission's June 2 Order. Occidental argues that Xcel ignores Commission precedent in *Carolina Power & Light Co.*, 113 FERC ¶ 61,130 at P 5 (2005) and *Tampa Electric Co.*, 113 FERC ¶ 61,159 at P 39 (2005), which established that a seller proposing mitigated cost-based rates must utilize its own costs for such rates.²⁶ Occidental rebuts Xcel's claim that there is inadequate guidance for developing cost-based rates where it has terminated market-based rate authority. Occidental refers to Xcel's statement in Xcel's January 10, 2006 filing at 3: "at the time [Xcel] developed its mitigation approach it was not aware, nor is it presently aware, of any precedent regarding what would be an acceptable approach under [April 14 Order and July 8 Order], other than the general guidance in the [April 14 Order and July 8 Order]." In response to that statement, Occidental states that Commission cost-based ratemaking policy "is designed to track the operations of a utility and all related costs."²⁷

41. Occidental protests that Xcel has not provided meaningful cost-support for its proposed rates. Occidental states that without adequate cost support it is impossible to determine whether Xcel's proposed cost-caps are excessive or not, considering SPS's low embedded costs. Similarly, Golden Spread/Lyntegar argues that the WSPP Agreement rate caps are not based on SPS's and PSCo's costs, and that Xcel failed to provide meaningful cost support. Occidental asserts that Xcel even concedes that its proposed rates are not "tied to individual WSPP members' costs," or to SPS's and PSCo's.²⁸ Occidental notes that Xcel asserts that WSPP caps were adopted to facilitate trading in the Western power markets and to minimize the administrative burden associated with Commission approval of each utility's rate based on its own costs and not necessarily to mitigate market power concerns.²⁹ Occidental rebuts Xcel's argument that the WSPP Agreement rate caps are justified as a matter of convenience by arguing that a "pragmatic" rate does not satisfy the utility's burden to demonstrate that its rates are just and reasonable, especially when the utility is presumed to have market power.

42. Finally, Occidental argues that Xcel's mitigation proposal not only fails to comply with the June 2 Order in that it is not a cost-based rate; even if it was based on SPS's

²⁶ Occidental's January 31, 2006 Protest at 5.

²⁷ *Id.* at 7 (citing *AEP Rehearing Order* at P 153).

²⁸ *Id.* at 8.

²⁹ *Id.* at 8.

costs, it would not address the affiliate abuse concerns that are the subject of the pending section 206 investigation.

43. In response to Xcel's argument that the WSPP Agreement rate cap methodology should be accepted as mitigation because it was approved by the Commission and the courts, Occidental argues that Xcel ignores the fundamental distinctions between rates set for transactions within a power pool, where there are no substantial market power concerns, and rates for individual transactions by a utility presumed to have market power within its control area. Occidental states that Xcel ignores that the court balanced the benefits that flexible pricing provides within a power pool against the risks of market power abuses.³⁰

44. In its February 15, 2006 answer, Xcel argues that it does not need to further justify why it has determined that seeking to retain its authority would not be valuable use of its own, or the Commission's, resources at this time. Xcel also argues that the Commission should not ignore the proposed rates for mitigation for the SPS and PSCo control areas because they have previously been approved by the Commission, have not been shown to be unjust or unreasonable, and are currently available to Xcel for cost-based power sales on the SPS and PSCo control areas.³¹ Xcel argues that the WSPP rates are filed rates, and the level of those rates is not an issue in this proceeding.

(3) Incremental Costs

45. Golden Spread/Lyntegar questions how Xcel calculates SPS's incremental cost, as contemplated by the WSPP Agreement. Golden Spread points to a flaw in Xcel's definition of "incremental cost." Xcel defines incremental cost to include "costs forecasted to be incurred by an Xcel Energy Operating Company solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission provider such as transmission and ancillary services and losses. Such costs may also include, the costs paid to third parties where Xcel has an existing contractual entitlement to purchase energy."³² Golden Spread/Lyntegar argues that thus, on a daily, hourly or monthly basis, included in Xcel's process of determining incremental energy costs are the existing market-based rate sales

³⁰ *Id.* at 10.

³¹ Xcel's February 15, 2006 Answer at 3-4.

³² Xcel's January 10, 2006 Filing at 6-7.

both within and outside the control area³³ and that therefore, incremental costs include some of the market-based rates that are the subject of the generation market power inquiry. This, it argues, would have the effect of increasing SPS' ability to exert market power within its control area.³⁴

46. Further, Occidental states that XES has not shown how using the WSPP specified demand charges as an adder to SPS's incremental fuel costs would provide SPS a just and reasonable contribution to fixed cost or eliminate the ability of SPS to exercise market power.³⁵

47. Xcel refutes Golden Spread's claim that implementing the cost-based rates under the WSPP Agreement can increase SPS' ability to exert market power within its control area. Xcel states that it is not obligated to provide existing wholesale customers, or those wholesale customers within the SPS and PSCo control area, a special incremental rate that is developed without regard to preexisting service obligations. Xcel states that the Commission (and the courts) in approving rates for WSPP has already addressed and rejected the same sorts of arguments as those made by Golden Spread and Occidental.³⁶ Xcel dismisses Golden Spread's argument that Xcel currently makes market-based rate sales below the cost-based caps by stating that the cost-based caps in the WSPP Agreement are caps, which means that Xcel can make sales below that rate.

48. Golden Spread/Lyntegar argues that Xcel's mitigation proposal does nothing with respect to transactions that sink in the control area to affect agreements entered into prior to the refund effective date and nothing in Xcel's proposal would have precluded it or SPS from entering into new market-based rate sales (whether short-term or long-term) prior to the refund effective date. It argues that Xcel should have provided the Commission with a list of all new market-based rate contracts entered into since SPS's

³³ Golden Spread/Lyntegar states that Xcel has made clear that if a market-based rate sale was made prior to the refund effective date established in this proceeding, it has no intention of converting such sales to cost-based rates, and that it would have an unfettered right to continue to make market-based rate sales to the edge of its system or beyond.

³⁴ Golden Spread/Lyntegar's January 31, 2006 Protest at 15.

³⁵ Occidental August 16, 2005 Filing at 14.

³⁶ *Id.* at 6.

triennial market power update was first filed in early 2004 so that the Commission could properly assess what the commitment that it would not enter into any future market-based rate contracts really means.³⁷

(4) Commission Determination

49. Based on our current practice, the Commission will accept Xcel's proposed use of the WSPP Agreement as mitigation for sales made in the SPS and PSCo control areas subject to the outcome of the Market-Based Rate Rulemaking in RM04-7-000 and any determinations that the Commission makes regarding mitigation in that proceeding. The Commission has previously accepted the WSPP Agreement and found it to be a just and reasonable cost-based rate. Furthermore, we note that Xcel has the option of transacting under the WSPP Agreement and thus can make sales under the WSPP Agreement without any further authorization from the Commission. We recognize that intervenors in this proceeding have raised a number of concerns regarding the use of the WSPP Agreement as mitigation. However, we find that this proceeding is neither the place to investigate the justness and reasonableness of the WSPP Agreement nor its use as mitigation where the Commission has found a presumption of market power as a result of a screen failure. The concerns raised by intervenors have ramifications beyond the customers and the seller at issue in this case and are issues under consideration in the Market-Based Rate Rulemaking in Docket No. RM04-7-000. Accordingly, our action in this regard is subject to the outcome of the Market-Based Rate Rulemaking in RM04-7-000 and any determinations that the Commission makes regarding mitigation in that proceeding.³⁸ Moreover, with regard to concerns raised by intervenors related to the calculation of Xcel's incremental costs and related matters, we remind customers that if they believe that the rate being charged is not just and reasonable, they have the right to file a complaint under section 206 of the FPA.³⁹

50. Also, we will accept the proposed use of the Coordination Tariff as mitigation for sales made in the PSCo control area. The Commission has previously accepted the Coordination Tariff and found it to be a just and reasonable cost-based rate. Furthermore, we note that PSCo has the option of transacting under the Coordination Tariff and thus

³⁷ Golden Spread/Lyntegar September 1, 2005 Protest at 2-3.

³⁸ *See Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Notice of Proposed Rulemaking*, 71 Fed. Reg. 33,102 (June 7, 2006), FERC Stats. & Regs. ¶ 32,602 (2006).

³⁹ 16 U.S.C. § 824e (2000).

can make sales under the Coordination Tariff without any further authorization from the Commission.

51. We will also accept Xcel's proposed revisions to its market-based rate tariffs, subject to the modifications directed below. We accept the proposal to revise the tariffs to provide that they do not apply to sales of electric power at wholesale for transactions in the SPS and PSCo control areas. However, we reject the specific tariff language that Xcel proposes to use to implement the sales prohibition in these control areas.

52. A component of Xcel's, SPS's and PSCo's mitigation proposal for the SPS and PSCo control areas is a revision of their market-based rate tariffs to provide that no Mitigated Sales shall be made under the tariffs. The term "Mitigated Sales" is defined in Xcel's tariff as physical sales of power and/or energy that are: (A) delivered within the SPS control area (not at a border location), or (B) delivered within the PSCo control area (not at a border location). In addition, SPS states that the Mitigated Sales do not include sales made into the SPP energy imbalance market, which is provided for in that entity's open access transmission tariff. Xcel further states that Mitigated Sales for periods of one year or less shall be made under Schedules A or C of the WSPP Rate Schedule,⁴⁰ FERC No. 6, as may be amended from time to time or under the PSCo Coordination Tariff. Mitigated Sales of greater than one year shall not be made unless Xcel obtains authorization for the transaction under section 205 of the FPA from the Commission.⁴¹

53. First, the Commission has stated that its role is to assure customers that sellers who are authorized to sell at market-based rates do not have market power or have adequately mitigated it.⁴² Further, the Commission's recent orders accepting mitigation proposals are clear that the mitigation is to apply to sales in the geographic market where a seller is found (or presumed) to have market power, not only to sales that sink (i.e.,

⁴⁰ *Western Sys. Power Pool*, 55 FERC ¶ 61,099, *order on reh'g*, 55 FERC ¶ 61,495 (1991), *aff'd in relevant part and remanded in part sub nom. Environmental Action and Consumer Federation of America v. FERC*, 996 F.2d 401 (D.C. Cir. 1992), *order on remand*, 66 FERC ¶ 61,201 (1994); *Western Sys. Power Pool*, 83 FERC ¶ 61,099 (1998); *Western Sys. Power Pool*, 85 FERC ¶ 61,363 (1998); *Western Sys. Power Pool, Inc.*, 95 FERC ¶ 61,483 (2001).

⁴¹ Xcel's September 30, 2005 and August 31, 2006 Filings.

⁴² July 8 Order, 108 FERC ¶ 61,026 at P 146.

sales to end users) in the control area.⁴³ In order to put in place adequate mitigation that eliminates the ability to exercise market power and ensure that rates are just and reasonable,⁴⁴ all market-based rate sales in a control area where an applicant is found or presumed to have the ability to exercise market power must be subject to mitigation approved by the Commission.

54. Xcel's proposed tariff language is unclear and may provide for market-based rate sales within the SPS and PSCo control areas if Xcel were to sell at points at the border location or interface between the mitigated control area and a non-mitigated control area. Accordingly, we direct XES, SPS and PSCo to file, within 30 days of the date of issuance of this order, revisions to their market-based rate tariffs to provide that service under the tariffs applies only to sales outside of SPS's and PSCo's control areas, effective as of the refund effective date in this proceeding, August 12, 2005. Our action in this regard is subject to the outcome of the Market-Based Rate Rulemaking in RM04-7-000 and any determinations that the Commission makes regarding mitigation in that proceeding.⁴⁵

55. In addition, because some provisions of the proposed tariffs identify services that are provided under the tariffs while other provisions identify exclusions from the service provided under the tariffs, we find that as proposed Xcel's, SPS's and PSCo's tariffs are confusing. We direct Xcel to revise the tariffs to identify the services that are provided there under, not the services excluded. Accordingly, as discussed more fully below, we will direct Xcel to revise its proposed tariff to strike the following language and replace it with language that states the services that are provided under the tariff: "Mitigated Sales do not include sales into the SPP energy imbalance market, which is provided for in that entity's open-access transmission tariff. Mitigated Sales for periods of one year or less shall be made under Schedules A or C of Western Systems Power Pool Rate Schedule, FERC No. 6, as may be amended from time to time. Mitigated Sales of greater than one year shall not be made unless the Company obtains authorization for the transaction under Section 205 of the Federal Power Act from the Commission. The foregoing

⁴³ See *Oklahoma Gas and Electric Company*, 114 FERC ¶ 61,297 (2006), *reh'g pending*; *Carolina Power and Light Company*, 114 FERC ¶ 61,294 (2006) (CP&L); *Duke Energy Trading and Marketing, L.L.C.*, 114 FERC ¶ 61,056 (2006); and *MidAmerican Energy Company*, 114 FERC ¶ 61,280 (2006).

⁴⁴ See April 14 Order, 107 FERC ¶ 61,018 at P 144.

⁴⁵ See *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities, Notice of Proposed Rulemaking*, 71 Fed. Reg. 33,102 (June 7, 2006), FERC Stats. & Regs. ¶ 32,602 (2006).

provisions governing Mitigated Sales shall end upon such date as the Commission allows these provisions to terminate or to be superseded by other measures.”

56. Occidental and Golden Spread protest Xcel’s proposed revisions to SPS’s market-based rate tariff to enable SPS to make sales at market-based rates in all regions in the energy imbalance service market to be administered by the SPP. They generally argue that the Commission has not concluded its investigation into whether Xcel may continue to charge market-based rates. Occidental states that SPS’s sole reliance upon the *SPP Order*⁴⁶ as justification for its requested authorization to sell at market-based rates in the SPP energy imbalance market is misplaced. Occidental maintains that SPS has not shown that it satisfies the Commission’s requirements for market-based rate sales. Golden Spread argues that the locational imbalance price of energy will be driven by the offer curves that SPS submits to the market, and given this fact and the presence of generation market power, SPS should be required to submit cost-based offer curves, reflecting the incremental cost of the resources it offers into the market. With regard to the SPP energy imbalance market, the Commission has found, and reaffirmed on rehearing, that SPP’s proposed mitigation and monitoring plans are adequate mitigation measures to ensure just and reasonable rates in SPP’s energy imbalance market and, thus, concluded that all market participants will be granted market-based rates for sales of imbalance energy into SPP’s energy imbalance market.⁴⁷ On rehearing of the *SPP Order*, the Commission considered and addressed intervenors’ concerns regarding the competitiveness of the SPP imbalance market. The Commission found that absent transmission constraints the SPP imbalance market is competitive. In addition, the Commission found that “when transmission constraints do bind and the imbalance market may not be competitive in certain constrained areas, SPP’s mitigation measures will ensure just and reasonable imbalance market prices and address the exercise of market power during transmission constraints.” Thus, SPP’s mitigation measures exist to mitigate the presence of generation market power in the imbalance market and to ensure just and reasonable imbalance market prices.

57. Thus, we find that Xcel’s mitigation proposal in this proceeding does not preclude Xcel from participation in the SPP energy imbalance market. However, to remove confusion and add clarity to SPS’s proposed tariff, SPS is directed to file, within 30 days of the date of issuance of this order, revised tariff sheets to provide for sales in the SPP

⁴⁶ *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,289 (2006) (SPP Order), *order on reh’g*, 114 FERC ¶ 61,289 (2006).

⁴⁷ *SPP Order*, 114 FERC ¶ 61,289 at P 203, *order on reh’g*, 114 FERC ¶ 61,289 at P 30-36 (2006).

imbalance market as provided for in the *SPP Order* under SPS's market-based rate tariff, subject to the rules and mitigation specific to SPP's energy imbalance market. This revision will clarify which services are provided under the tariff.

58. Next, Xcel's proposed revisions to their market-based rate tariffs include a reference to the proposal to use the WSPP Agreement as the basis for mitigation. The Commission notes that Xcel's cost-based mitigation proposal should not be referenced in the market-based rate tariffs. The Commission has previously stated that it is critical that customers know before entering into a transaction whether it is market-based or cost-based. Keeping the market-based and cost-based tariffs separate will avoid confusion.⁴⁸ Accordingly, we direct XES, SPS and PSCo to file, within 30 days of the date of issuance of this order, revised tariff sheets removing such references from the proposed revised market-based rate tariffs.

59. Finally, we note that Xcel states that it will transact under the WSPP Agreement for sales in the SPS and PSCo control areas of "one year or less" and commits that sales in the SPS and PSCo control area "greater than one year" shall not be made prior to Xcel first submitting a separate filing and receiving Commission authorization of the transaction under section 205 of the FPA. This commitment, however, is inconsistent with the April 14 Order, in which the Commission required long-term mitigation to apply to sales of one year or more.⁴⁹ Accordingly, our acceptance of Xcel's use of the WSPP Agreement for mitigation purposes is conditioned on that proposal applying to sales of "less than one year." Similarly, we accept Xcel's commitment to seek prior authorization for long-term sales to the extent that such commitment applies to sales of one year or more. Further, we interpret Xcel's proposal to be that sales of one year or longer will be made on an embedded cost-of-service basis and we will accept Xcel's proposal on the condition that any such sales be cost-justified. Consistent with the April 14 Order, the Commission "require[s] all long-term sales (one year or more) into any market where the applicant has market power to be filed with the Commission for review and approval prior to the commencement of service, and to be priced on an embedded cost-of-service basis."⁵⁰

60. Xcel is directed, within 30 days of the date of issuance of this order, to state whether it accepts these modifications to its mitigation proposal.

⁴⁸ *Northern States Power Company*, 83 FERC ¶ 61,293 (1998).

⁴⁹ April 14 Order at P 155.

⁵⁰ *Id.*

61. To the extent that Xcel made any sales under Xcel's market-based rate tariffs in the SPS and PSCo control areas since the refund effective date⁵¹ in this proceeding at rates that were above the rates under the mitigation proposal accepted herein, Xcel is directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, we direct Xcel to file a refund report within 15 days after making refunds. If no refunds were due, Xcel is expected to file with the Commission within 30 days of the date of issuance of this order so stating.

62. In the April 14 Order the Commission clarified that market-based rates would not be revoked and cost-based rates would not be imposed until there has been a Commission order making a definitive finding that the applicant has market power (i.e., after the Commission has ruled on a Delivered Price Test analysis) or, where the applicant accepts a presumption of market power, an order is issued addressing whether default cost-based rates or case specific cost-based rates are to be applied.⁵² Accordingly, Xcel is not required to propose mitigation that applies to transactions entered into prior to the refund effective date in this proceeding.

b. Entities not party to the WSPP Agreement

(1) Protests

63. Golden Spread/Lyntegar questions how XES/SPS would transact with entities that are not parties to the WSPP Agreement.

(2) Commission Determination

64. In the December 8, 2005 deficiency letter, Xcel was asked to explain how the rates under the WSPP Agreement adequately mitigate market power for XES, SPS and PSCo with regard to entities that are not parties to the WSPP Agreement.⁵³ In response, XES states that it would be willing to submit a compliance filing revising its market-based rate tariffs to incorporate the rates under the WSPP Agreement into the market-based rate tariffs and, instead of taking service under the WSPP Agreement, customers could reference the cost-based rates for specifically defined sales.⁵⁴

⁵¹ The refund effective date in this proceeding is August 12, 2005.

⁵² April 14 Order, 107 FERC ¶ 61,018 at P 149.

⁵³ December 8, 2005 Deficiency Letter at 2.

⁵⁴ Xcel January 10, 2006 Filing at 9.

65. In consideration of transactions with non-WSPP members, we will not require Xcel to submit a compliance filing revising its market-based rate tariffs to incorporate the rates under the WSPP Agreement into the market-based rate tariffs. As discussed above, keeping market-based and cost-based tariffs separate will avoid confusion. Therefore, we will require Xcel to file with the Commission for approval an appropriate rate schedule prior to consummating transactions with non-WSPP members for sales in the SPS and PSCo control areas.

c. Other mitigation proposal and tariff concerns

(1) Protests and Answers

66. Golden Spread/Lyntegar states that when the proposed revisions to XES's, SPS's and PSCo's market-based rate tariffs are considered together, nothing in the proposed changes would prohibit all affiliate transactions in the SPS and PSCo control areas. Golden Spread states that the proposed tariff revisions would allow PSCo to still have market-based rate authority to sell in the SPS control area pursuant to its tariff and similarly, SPS would have authority to sell at market-based rates in the PSCo control area.⁵⁵ Golden Spread/Lyntegar states that Xcel has explicitly designed this loophole.

67. Golden Spread/Lyntegar argues that Xcel's mitigation proposal is limited only to transactions that "sink" within the SPS control area and that its affiliates could sell from (e.g. source) from the SPS control area into other control areas at market-based rates. Golden Spread/Lyntegar argue that the June 2 Order did not narrow the investigation to transactions that sink in the control area and that therefore the Commission should investigate transactions that originate in the SPS control area but sink in other areas and investigate what would happen if XES and its affiliates can withhold power from the SPS market and only sell on their terms.⁵⁶

68. Golden Spread/Lyntegar's filing offers arguments of SPS's generation market dominance. It argues that SPS will be able to maintain its position vis-à-vis the control of barriers to entry, control of transmission rights, and a general lack of participation by third party entrants to the market.

⁵⁵ Golden Spread/Lyntegar October 21, 2005 Filing at 3-4.

⁵⁶ Golden Spread/ Lyntegar August 16, 2005 Filing at 6-8.

(2) Commission Determination

69. As discussed above, the Commission hereby directs XES, SPS, PSCo, NSP and any other entity affiliated with Xcel with market-based rate authority to submit, within 30 days of the date of issuance of this order, compliance filings to revise their market-based rate tariffs to limit sales of capacity and energy at market-based rates to areas outside of the SPS and PSCo control areas.

70. With regard to Golden Spread/Lyntegar's concerns about Xcel's potential ability to withhold generation, the Commission has previously acknowledged the concern that entities with a presumption of market power might attempt to withhold generation.⁵⁷ We note that Golden Spread/Lyntegar can utilize the complaint process under section 206 of the FPA if it can provide the Commission with specific instances and evidence of Xcel withholding generation. Here, we find that Xcel's mitigation proposal with the modifications directed in this order adequately address our concerns with respect to Xcel's market power.

71. With regard to Occidental's arguments as to potential market power concerns outside of the SPS control area, we clarify that, as discussed above, Xcel satisfies the Commission's generation market power concerns in the areas outside the SPS and PSCo control areas, where Xcel retains market-based rate authority and is not required to propose mitigation for those control areas.

72. In accepting Xcel's proposed mitigation the Commission provides relief to generation market power concerns in the SPS and PSCo control area. The Commission also has recently found Xcel to satisfy the transmission market power and other barriers to entry standards for the grant of market-based rate authority.⁵⁸

5. Affiliate Abuse

73. Xcel's mitigation proposal filing includes a request to terminate the section 206 proceeding. However, Golden Spread/Lyntegar argues that Xcel's proposal to terminate the investigation would deny the intervenors an opportunity to complete the Docket No. EL05-19-000 proceeding, use the record developed therein in this investigation to demonstrate to the Commission their concerns about affiliate abuse, and to seek appropriate remedies that are not available in the Consolidated Proceeding such as

⁵⁷ April 14 Order, 107 FERC ¶ 61,018 at P 147.

⁵⁸ June 2 Order, 111 FERC ¶ 61,343 at P 45-46.

prospective limitations on market-based sales in any control area that affect fuel adjustment clause charges to wholesale requirements customers embedded in the SPS system.⁵⁹ Similarly, Occidental urges the Commission to proceed with a thorough investigation of SPS's and its affiliates' conduct because, according to Occidental, the scope of the Consolidated Proceedings will not be broad enough to consider all of the affiliate abuse and reciprocal dealings issues.

74. In order to allow full review of the affiliate abuse and reciprocal dealing issues raised in this proceeding, the Commission will continue to hold the investigation of all the affiliate abuse issues in abeyance pending the outcome of the Consolidated Proceeding in Docket Nos. EL05-19-000 and ER05-168-000.

C. Additional Concerns

75. The Commission does not terminate Docket No. EL05-115-000. That proceeding was established to investigate generation market power issues and affiliate abuse issues in the SPS and PSCo control areas. Based on the above findings, the Commission finds that although Xcel has addressed the generation market power issues, the affiliate abuse issues remain pending.

76. Xcel is directed to file an updated market power analysis within three years of the date of this order. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) Xcel's mitigation proposal is conditionally accepted for filing, to be effective August 12, 2005, as discussed in the body of the order, subject to Commission acceptance of the compliance filings directed herein.

(B) XES, SPS and PSCo are directed to file, within 30 days of the issuance of this order, revisions to their market-based rate tariffs and to file a statement that they accept the modifications to Xcel's proposal as discussed in the body of this order.

(C) Xcel's July 5, 2005 compliance filing is accepted for filing, as discussed in the body of this order.

(D) To the extent that XES, SPS and PSCo made any sales under their market-based rate tariffs in the SPS and PSCo control areas since the refund effective date in this

⁵⁹ Golden Spread/Lyntegar's August 16, 2005 Filing at 14.

proceeding at rates that were above the rates under the mitigation proposal accepted herein, they are directed, within 30 days of the date of issuance of this order, to make refunds, with interest. In addition, we direct XES, SPS and PSCo to file a refund report within 15 days after making refunds. If no refunds were due, they are expected to file with the Commission within 30 days of the date of issuance of this order so stating.

(E) The correctly revised tariff sheets incorporating the change in status reporting requirement adopted in Order No. 652 are hereby accepted for filing, effective March 21, 2005.

(F) NSP and any other entities affiliated with Xcel are directed to submit, with 30 days of the date of issuance of this order, compliance filings to revise their market-based rate tariffs to limit sales of capacity and energy at market-based rates to areas outside of the SPS and PSCo control areas.

(G) Xcel's next updated market power analysis is due within three years of the date of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.