

125 FERC ¶ 61,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Suedeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Xcel Energy Services, Inc.

Docket No. ER08-313-001

ORDER ON REHEARING AND CLARIFICATION

(Issued October 24, 2008)

1. On February 5, 2008, the Commission accepted and suspended proposed tariff sheets filed by Xcel Energy Services, Inc. (Xcel) on behalf of its affiliate, Southwestern Public Service Company (SPS), that proposed to implement a transmission cost of service formula rate for transmission services over SPS's transmission facilities.<sup>1</sup> In this order, we address the request for clarification and rehearing filed by Xcel, and the joint request for rehearing filed by Golden Spread Electric Cooperative, Inc. (Golden Spread), Arkansas Electric Cooperative Corporation, and West Texas Municipal Power Agency (WTMPA) (collectively, Intervenors).<sup>2</sup>

**I. Background**

2. On December 7, 2007, Xcel filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>3</sup> a proposed formula rate on behalf of SPS for transmission

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<sup>1</sup> *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098 (2008) (February 5 Order).

<sup>2</sup> The Commission is not addressing in this order the pending requests for rehearing in Docket No. ER08-313-002. In its order in that subdocket, the Commission consolidated Docket No. ER08-313 with Docket No. ER08-923, which concerns certain unexecuted Network Integration Transmission Service Agreements filed by Xcel on behalf of SPS. See *Xcel Energy Servs., Inc.*, 124 FERC ¶ 61,011 (2008). Those rehearing requests will be addressed at a later date.

<sup>3</sup> 16 U.S.C. § 824d (2006).

service over SPS's transmission facilities (December 7 Filing). The proposed formula rate would replace SPS's currently effective stated rate for these services. According to the December 7 Filing, the proposed formula rate would accommodate a major transmission expansion program that SPS expected to begin in 2008. The December 7 Filing also stated that the proposed formula rate was based on FERC Form No. 1 costs for the previous year plus projected capital additions for the current year, and that the rate contained a true-up mechanism to ensure that any deviations are accounted for by an adjustment in the next rate period. The December 7 Filing included testimony from witnesses that supported the proposed formula rate and related issues.

3. The December 7 Filing explained that the proposed formula rate uses SPS's Commission-approved depreciation rates to determine the depreciation reserves and depreciation expense amounts. The December 7 Filing noted that SPS records depreciation expense in its FERC Form No. 1 based on "blended" depreciation rates. The December 7 Filing stated that, beginning with the 2007 FERC Form No. 1, "SPS will report the accumulated depreciation reserve and depreciation expense amounts based on both the FERC-approved rates and blended rates"<sup>4</sup> and that its proposed formula rate would use the Commission-approved depreciation rate. The December 7 Filing included sample 2006 FERC Form No. 1 sheets showing the depreciation reserve balances and depreciation expense based on the Commission-approved depreciation rate.

4. The December 7 Filing also requested certain waivers of section 35.13 of the Commission's regulations, which governs the information that must be included in a filing to revise existing rates. The December 7 Filing requested, among other things, "waiver of attestation concerning Period II submissions required by section 35.13(c)(6) . . . ."<sup>5</sup>

5. In their separate protests of the December 7 Filing, Golden Spread and WTMPA urged the Commission to summarily reject the filing because Xcel had failed to adopt as part of the formula rate the use of 13-monthly averages for plant in service. According to Golden Spread and WTMPA, the proposed use of end-

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<sup>4</sup> December 7 Filing at 12.

<sup>5</sup> *Id.* at 17.

of-year balances for plant in service ran contrary to the Commission's regulation and precedent.<sup>6</sup>

6. In the February 5 Order, the Commission accepted and suspended for a five-month period the proposed formula rate, explaining that its preliminary analysis indicated that the proposed rates may be unjust and unreasonable and substantially excessive. In addition, the Commission established hearing and settlement judge procedures because Xcel's filing raised issues of material fact that could not be resolved on the existing record. Among the issues the Commission set for hearing was the December 7 Filing's proposed use of end-of-year balances for plant in service for inclusion in the rate base. The Commission also granted most of the waivers requested in the December 7 Filing; however, the Commission denied waiver of the attestation requirement contained in 18 C.F.R. § 35.13(d)(6),<sup>7</sup> concluding that Xcel had not provided justification for not including the attestation.

## **II. Requests for Clarification and Rehearing**

### **A. Xcel's Request for Clarification and Rehearing**

7. Xcel filed a request for clarification and rehearing on February 21, 2008. In this filing, Xcel requests that the Commission clarify that Xcel had indeed included the attestation required by section 35.13(d)(6) of the Commission's regulations. Xcel states that it had mistakenly cited to an attestation requirement in section 35.13(c)(6) of the Commission's regulations – which it acknowledges

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<sup>6</sup> See *Motion to Intervene, Protest, Request for Partial Summary Disposition, Opposition to Waiver of Notice, and Request for Issuance of a Deficiency Letter, or, in the Alternative, Hearing and Maximum Five-Month Suspension of Golden Spread Electric Cooperative, Inc.* at 27-28 (Dec. 27, 2008); *Motion to Intervene and Protest of West Texas Municipal Power Agency* at 17-18 (Dec. 27, 2008).

<sup>7</sup> Section 35.13(d)(6) provides that the filing entity must include an attestation by an officer of the company that, "to the best of that officer's knowledge, information, and belief, the cost of service statements and supporting data submitted under this paragraph are true, accurate, and current representations of the utility's books, budgets, or other corporate documents." As discussed below, Xcel states that its reference to 18 C.F.R. § 35.13(c)(6) in the December 7 Filing was incorrect, as such a section does not exist.

does not exist – and did not request a waiver of the attestation requirement contained in 18 C.F.R. § 35.13(d)(6). Xcel points to Attachment 9 of the December 7 Filing, which is an attestation executed by Xcel’s Vice President and Controller, to demonstrate that it complied with the attestation requirement. Accordingly, Xcel requests clarification that it did satisfy the attestation requirement.

8. Further, Xcel takes issue with the manner in which the background section of the February 5 Order characterized how the proposed formula rate would reflect depreciation amounts. In the February 5 Order, the Commission stated that “SPS intends to use blended depreciation rates based on a blending of different retail and wholesale transmission depreciation rates, depreciation reserve balances and depreciation expenses.”<sup>8</sup> Xcel argues that the December 7 Filing stated that the formula rate would use the Commission-approved depreciation rate.<sup>9</sup>

9. Should the Commission not provide Xcel with the requested clarifications, Xcel alternatively seeks rehearing.

#### **B. Intervenor’s Request for Rehearing**

10. Intervenor filed a request for rehearing on March 6, 2008, arguing that the Commission erred in setting for hearing the issue of whether Xcel should use year-end plant balances or the average of thirteen monthly plant balances for plant in service for calculating the rate base. Intervenor points to section 35.13(h)(4)(i) of the Commission’s regulations, which they contend require the use of 13-month average plant balances. Intervenor also cites to Commission precedent<sup>10</sup> to support their contention that the Commission must impose this requirement.

11. Intervenor also states that, as a matter of policy, the Commission should “be encouraging transmission owners within the same Regional Transmission

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<sup>8</sup> February 5 Order at P 16.

<sup>9</sup> Xcel notes that P 48 of the February 5 Order, which describes Xcel’s answer to protests, accurately states that the proposed formula rate uses Commission-approved depreciation amounts.

<sup>10</sup> *American Elec. Power Serv. Corp.*, 121 FERC ¶ 61,245, at P 12 (2007) (*AEP*); *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 29 (2007) (*SDG&E*).

Organization [RTO]...to adopt consistent formula rate templates.”<sup>11</sup> According to Intervenor, because the Commission directed American Electric Power Service Corp. (AEP) to adopt the 13-monthly plant balance approach, and both AEP and Xcel are members of the Southwest Power Pool RTO, then it should similarly direct Xcel to adopt this approach as well.

### **III. Commission Determination**

#### **A. Xcel’s Request for Clarification and Rehearing**

12. The Commission grants the requested clarifications, as described below.

13. With respect to the attestation requirement, the Commission agrees with Xcel that Attachment 9 to the December 7 Filing contains the attestation required by section 35.13(d)(6) of our regulations. Thus, it was not necessary for the Commission to address the December 7 Filing’s request for a waiver of the attestation requirement. Regardless of why Xcel requested a waiver of this requirement in the first instance, in light of the inclusion of Attachment 9 in the December 7 Filing, we grant the requested clarification.

14. The Commission also grants clarification regarding the description of the depreciation amounts at P 16 of the February 5 Order. As that order noted elsewhere, and as Xcel correctly states, while SPS’s past versions of the FERC Form No. 1 filings reported the “blended” depreciation rates, the Commission-approved rate will be used in the formula rate. The Commission also notes that, in the December 7 Filing, Xcel’s witness, Ms. Deborah A. Blair, testified that “SPS does track in its accounting records the accumulated reserve for depreciation and depreciation expense based on the depreciation rates last approved by the Commission, and is proposing to use these balances for the calculation of the ATRR [Annual Transmission Revenue Requirement] in Attachment O – SPS.”<sup>12</sup>

15. Because the Commission is granting the requested clarifications, Xcel’s alternative request for rehearing is dismissed as moot.

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<sup>11</sup> Intervenor Request for Rehearing at 4.

<sup>12</sup> December 7 Filing, Exh. XES-7 at 8.

**B. Intervenors' Request for Rehearing**

16. The Commission grants Intervenors' request for rehearing. As Intervenors correctly state, the Commission's policy has been to require rate filings, including formula rate filings, to use the average of thirteen monthly plant balances rather than year-end plant balances.<sup>13</sup> Although Xcel had argued that using end-of-year balances would be a reasonable approach for its formula rate proposal,<sup>14</sup> it has not shown that it would be unable to use the average of thirteen monthly balances or that this approach is unrepresentative of its current plan for plant in service, which is required under our regulations if the filing party seeks to use a different methodology.<sup>15</sup> We also do not believe that requiring Xcel to adopt this approach will cause any undue hardship or discourage other transmission owning public utilities from filing formula rates in the future.<sup>16</sup>

17. Accordingly, we direct Xcel to include in its case-in-chief at the hearing a formula rate template that reflects the average of thirteen monthly plant balances, as well as any conforming changes to the formula rate template necessary to effect such a change.

**The Commission orders:**

(A) Xcel's requests for clarification are granted, as discussed in the body of this order.

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<sup>13</sup> See *AEP*, 121 FERC ¶ 61,245 at P 12; *SDG&E*, 118 FERC ¶ 61,073 at P 29.

<sup>14</sup> See Answer of Xcel Energy Services, Inc. at 10-11, Docket No. ER08-313-000 (Jan. 14, 2008) (Xcel Answer).

<sup>15</sup> See 18 C.F.R. § 35.13(h)(4)(i) (stating that the filing utility should use the average of thirteen monthly balances for calculating transmission plant in service unless any of the thirteen monthly balances is not available or if the approach is not representative of the utility's current plan for plant in service).

<sup>16</sup> Xcel had asserted that requiring public utilities to use the average of thirteen monthly balances for plant in service may discourage future hybrid formula rate filings. See Xcel Answer at 9, 11.

(B) Intervenors' request for rehearing is granted, as discussed in the body of this order. Xcel is hereby directed to reflect the required change in its case-in-chief, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.