

125 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services Inc.

Docket No. OA07-39-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 26, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA)¹ and Order No. 890,² Xcel Energy Services Inc., on behalf of Xcel Energy Operating Companies (Xcel)³ submitted revisions to its Joint Open Access Transmission Tariff (OATT). The Commission issued an order on April 17, 2008, conditionally accepting such filing.⁴ On May 19, 2008, Xcel submitted a filing in compliance with the April 17 Order. In this order, we will accept Xcel's filing in compliance with Order No. 890 and the April 17 Order, as discussed below.

I. Background

2. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights

¹16 U.S.C. § 824e (2006).

²*Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008).

³Xcel is comprised of four operating companies: Public Service Company of Colorado (PSCo), Southwestern Public Service Company (SPS), Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin company (the latter two, together, NSP Companies).

⁴*Xcel Energy Operating Companies*, 123 FERC ¶ 61,053 (2008) (April 17 Order).

and reassignments of transmission capacity. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890.

3. On July 13, 2007, Xcel made the requisite compliance filing on behalf of its operating companies.⁵ In a Commission order issued April 17, 2008, we found that Xcel largely complied with the requirements of Order No. 890 and conditionally accepted the compliance filing, subject to Xcel filing various revisions to its Joint OATT or providing support for certain compliance language within 30 days of the date of the order.

II. Compliance Filing

4. On May 19, 2008, Xcel filed revised tariff sheets to the Joint OATT to comply with directives of the April 17 Order relative to the following areas of the OATT: creditworthiness procedures, distribution of energy imbalance revenue, clustering, and rollover reform language. Xcel requests an effective date of July 13, 2007, for its tariff sheets.

III. Notice of Filing and Responsive Pleadings

5. Notice of Xcel's filing was published in the *Federal Register*, 73 Fed. Reg. 31,086 (2008), with interventions and protests due on or before June 9, 2008. On June 9, 2008, Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a motion to intervene and protest. On June 24, 2008, Xcel filed an answer in response to the protest.

IV. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motion to intervene serve to make Golden Spread a party to this proceeding.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the

⁵ Xcel's operating companies are affected in different ways by Order No. 890. SPS and the NSP Companies are members of regional transmission organizations (RTOs)—Southwest Power Pool (SPP) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO), respectively—while PSCo is not. Thus, for most transmission-related functions, SPP serves as transmission provider for SPS, and Midwest ISO serves as transmission provider for the NSP Companies pursuant to Order No. 890, with service administered under the respective RTO tariffs. Since there is presently no functioning RTO for the PSCo system, PSCo itself is the transmission provider for its system, and all service is pursuant to Xcel's Joint OATT.

decisional authority. We will accept Xcel's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

8. We find that Xcel's filing complies with the April 17 Order, as discussed below. Accordingly, we accept Xcel's filing to be effective July 13, 2007.

1. Creditworthiness Procedures (Attachment Q)

a. April 17 Order Requirements

9. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.⁶

10. Xcel filed its creditworthiness procedures as Attachment Q in its July 13, 2007 filing, listing the financial measures that will be considered in computing the financial score and the non-financial measures that will be assessed in determining the qualitative score for both public and non-public entities. Regarding the qualitative analysis, Xcel proposed to take into account a variety of information, but at a minimum will assess the following characteristics (when applicable) of each applicant/transmission customer: (1) the ability to set rates without seeking regulatory approval; (2) the financial protections afforded unsecured creditors contained in the contracts and other legal documents related to the formation and governance of public or non-public power entities; (3) the number and composition of members or customers of the entity; and (4) rating agency ratings assigned to unsecured debt.⁷

11. In the April 17 Order, we found that Xcel's language was incomplete with regard to other factors that may be considered in the qualitative assessment at Xcel's option, and could afford Xcel too much discretion. The April 17 Order required Xcel to strike "at a minimum" from the listing of creditworthiness criteria and specify additional characteristics, if any, in its compliance filing.

12. Also, for the qualitative criteria, the Commission found that Xcel did not indicate whether specific requirements will be used to assess these criteria. Accordingly, the

⁶ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

⁷ Xcel Energy Operating Companies, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 464-65.

order required Xcel to explain whether specific requirements are applied to each qualitative criterion (e.g., whether it requires a specific minimum credit rating) to assess the creditworthiness of public and non-public entities, in a compliance filing.

13. In addition, under Attachment Q, the transmission provider performs a credit evaluation for each customer every twelve months but may do so “more frequently if, in its sole discretion, the Transmission Provider deems it appropriate.” Similarly, Xcel has the right to modify any unsecured credit limit and require additional financial security at any time. Although Xcel specifies instances of material adverse change that would necessitate a credit re-evaluation,⁸ the language allowing Xcel to re-evaluate credit and modify credit limits at any time affords Xcel unlimited discretion in choosing when to perform credit re-evaluations.⁹ The April 17 Order required Xcel to revise this language at P 20 to provide specific criteria that could trigger a credit re-evaluation or cause the unsecured credit limit and/or financial security requirement to be modified, and to remove the language that allows Xcel unlimited discretion.

14. Finally, although Xcel’s credit policy specifies certain procedural time frames, we found that other key timing requirements are lacking. For example, Attachment Q does not state how many days Xcel has to notify a potential customer of the results of its initial credit evaluation or of any modifications to the unsecured credit limit. Nor does it provide a time period for the customer to contest determinations of credit levels or collateral requirements. Therefore, the order at P 21 required Xcel to modify Attachment Q to specify all timing requirements for customers.

b. Xcel’s May 19 Compliance Filing

15. Xcel filed a revised tariff sheet to remove the “at a minimum” language from its creditworthiness provisions. In addition, Xcel now proposes that its qualitative analysis (for both public and non-public power entities) shall take into consideration the following eight specific characteristics:

- (1) the ability to set rates without seeking regulatory approval (a positive attribute);
- (2) the financial protections afforded unsecured creditors contained in the contracts and other legal documents related to the formation and governance of public power entities (financial protections are positive);

⁸For example, creditworthiness will be re-evaluated in the event of a downgrade of any debt rating or issuer rating, or if the customer files for bankruptcy.

⁹See *Maine Public Service Company*, 122 FERC ¶ 61,073, at P 14 (2008); *South Carolina Electric & Gas Company*, 122 FERC ¶ 61,070, at P 12 (2008); and *Entergy Services, Inc.*, 106 FERC ¶ 61,039, at P 14 (2004).

- (3) availability of current information, financial, economic, or otherwise, relevant to the creditworthiness analysis of the applicant/transmission customer, on publicly accessible internet sites (a positive factor);
- (4) rating agency ratings assigned to unsecured debt (investment grade is positive, non-investment grade is negative, negative outlook or credit watch is negative);
- (5) relative size, composition of assets, type of entity (a generation and transmission entity with fixed assets is positive, a marketing entity with little or no fixed assets is negative);
- (6) length of time in business (ten years or more is positive, five or fewer is negative);
- (7) trade references and payment history (positive or negative); and
- (8) overall quality of financial information (complete and audited statements including all notes are positive).

16. Xcel makes clear that there are no specific requirements for these qualitative criteria, and there is no minimum rating required for criterion (4) above; instead, qualitative criteria receive only a positive or negative assessment.

17. With regard to credit re-evaluations, Xcel has removed the language permitting it to perform a credit re-evaluation “in its sole discretion” and inserts new language allowing an applicant or transmission customer to be evaluated more frequently than every twelve months if the transmission provider has commercially reasonable grounds to believe there has been a material adverse change in the transmission customer’s creditworthiness. A list of such material adverse changes that may trigger such a re-evaluation is also provided and includes, but is not limited to (a) a downgrade of any debt rating or issuer rating to below investment grade; (b) a bankruptcy filing; (c) late payments to the transmission provider; (d) default on any contractual obligation exceeding 10% of tangible net worth; and (e) a judgment in a proceeding adversely affecting creditor’s rights. The tariff also provides that such re-evaluation may result in the need for the transmission customer to provide financial security or additional financial security to protect the transmission provider against the risk of non-payment. In addition, the tariff language has been revised to state that Xcel may modify the unsecured credit limit of an applicant/transmission customer based on a material adverse change.

18. With regard to the initial credit application, an applicant will be notified in writing within ten business days of the status of its credit evaluation. The compliance filing provides that within ten business days after notification of the transmission provider’s determination an applicant may request, in writing, a review of determinations of credit

levels or collateral requirements. The transmission provider will respond no later than twenty business days after receipt of the written request.

19. With regard to the revision of a transmission customer's existing unsecured credit limit, Xcel has provided clarifying language as follows: (a) the transmission provider will notify the transmission customer in writing of the requirement to provide financial security as a result of the reduction or revocation of the unsecured limit within three business days of the revision; (b) the transmission customer has two business days from receipt of written notification (three business days if notification occurs after twelve o'clock p.m. Mountain Prevailing Time) to provide the financial security; (c) the transmission customer may request, in writing, a review of the credit evaluation within ten business days after receipt of such notification; and (d) the transmission provider will respond no later than twenty business days after receipt of such written request.

c. Protest

20. Golden Spread avers that, even after deleting the words "at a minimum" from the qualitative evaluation provision and proposing eight characteristics to be considered instead, certain aspects of Xcel's filing still leave Xcel with excessive discretion and are thus unjust and unreasonable. Specifically, with regard to "availability of current information, financial, economic, or otherwise" on publicly accessible internet sites, Golden Spread states that Xcel provides no indications as to the kinds of information that may be considered under the "otherwise" rubric; nor does it explain why information beyond financial and economic information would be relevant to its evaluation of an applicant or, if other types of information are relevant, why those types of information cannot be specified in the tariff. Golden Spread points out that the open-ended "otherwise" provision is particularly worrisome in the context of a provision providing that the availability of information on the internet will be considered a positive factor when the fact that something is posted on the internet does not deem it accurate or reliable.

21. Golden Spread therefore requests that the Commission direct Xcel to explain what information from publicly accessible websites Xcel uses in its creditworthiness evaluation so the customer can ensure that questionable or inaccurate information does not affect its score, and to provide a procedure for customers to correct or challenge erroneous or misleading information.

22. Golden Spread also asserts that Xcel's filing fails to explain how Xcel will utilize the information available to it regarding the eight qualitative factors in determining an entity's unsecured credit limit. After listing the eight factors, Xcel states that the overall qualitative score will range from one (positive) to six (negative) according to the overall assessment of all characteristics. However, Golden Spread states there is no indication how many of the eight characteristics must be rated positive to receive a score of one, or how many negatives will result in a score of six; nor does it explain how a particular

score between one and six will affect the evaluated entity's credit limit. Golden Spread requests that Xcel be directed to file further tariff revisions to explain the derivation of the score and how that score will be included in the calculation of an entity's credit limit.

d. Answer

23. Xcel responds that Golden Spread's assertions are without merit. Xcel claims it proposes to include some purposely subjective criteria in order to prevent use of simple quantitative factors that might deny credit, particularly to smaller customers that might not have an official rating. Xcel explains that reasonable creditors look "beyond the numbers" and attempt to incorporate evaluation of non-quantitative factors if those factors indicate a customer should be found creditworthy. Xcel contends this is fully consistent with Order No. 890, in which the Commission emphasized that its minimum creditworthiness requirements were intended to provide the transmission provider with flexibility in determining credit requirements in light of qualitative and quantitative factors.¹⁰ Xcel states that its provisions reflect commercial reasonable terms, and Golden Spread is attempting to turn a qualitative analysis into a strictly quantitative one. Furthermore, Xcel adds that there is recourse for a customer that is denied credit. For instance, the customer could ask Xcel to reconsider or to explain the denial of credit, and if still not satisfied, could either file a complaint with the Commission under section 206 of the FPA or contact the Commission's compliance hotline.

e. Commission Determination

24. Xcel has complied with the directives of the April 17 Order to remove "at a minimum" and to remove language that could give Xcel unlimited discretion. Xcel has also explained the qualitative factors that will be considered, and responded to the Commission's queries regarding the specific requirements for these criteria. Finally, Xcel has clarified the schedule that will be followed for an initial application as well as for reviews of unsecured credit limits. Xcel's clarification included the time period for the transmission provider to notify a potential customer of the results of an initial credit evaluation or of any modifications to the unsecured credit limit and the time period for the customer to contest determinations of credit levels or collateral requirements. Nevertheless, Golden Spread asks for further detail on the information that Xcel would consider and for Xcel to explain the derivation of the score for the qualitative criteria and how that score will be included in the calculation of an entity's credit limit.

25. We find that Xcel's provision of tariff language that would require the transmission provider to provide to the transmission customer a review of the credit evaluation upon request, should satisfy Golden Spread's concerns that either poor information could be used by the transmission provider or that the transmission provider

¹⁰ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1659.

could exercise poor judgment in considering qualitative factors. Golden Spread could request Xcel to reconsider or to explain the denial of credit, and if still not satisfied, could either file a complaint with the Commission under section 206 of the FPA, or contact the Commission's compliance hotline.

26. Therefore, with regard to the creditworthiness issues, we find that Xcel has satisfactorily complied with the directives of the April 17 Order.

2. Imbalance Energy Revenue Distribution

a. April 17 Order Requirements

27. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.¹¹

28. In its July 13, 2007 filing, Xcel submitted language in section three (Ancillary Services) of its OATT which provided for monthly crediting of revenues above the transmission provider's incremental costs to all non-offending customers in proportion to their total point-to-point or network charges in the billing month for which the penalty revenues were received.

29. Consistent with Order No. 890-A and *PacifiCorp*,¹² the April 17 Order at P 30 directed Xcel to file tariff language for the distribution of imbalance penalty revenues that specifies that the determination of whether or not a customer is non-offending is made on an hourly basis and that such determination excludes offending customers from receiving penalty revenues only for that offending hour.

b. Xcel's May 19 Filing

30. Section 3 of the Joint OATT now specifies that the distribution of penalty revenues collected under Schedule 4 (Energy Imbalance Service) or Schedule 9 (Generator Imbalance Service) will be credited on an hourly basis. Furthermore, penalty revenues collected from offending customers in each hour will be credited to all non-offending customers for that same hour in proportion to each non-offending customer's

¹¹*Id.* P 663, 667, 727.

¹² See *PacifiCorp*, 121 FERC ¶ 61,223, at P 44-45 (2007) (accepting in part and rejecting in part *PacifiCorp*'s Order No. 890 compliance filings).

usage of the transmission system in MW during that hour, including the transmission provider's bundled load.

c. Commission Determination

31. We find that Xcel's proposed language satisfactorily responds to the directives of the April 17 Order with regard to imbalance energy revenue distribution.

3. Clustering

a. April 17 Order Requirements

32. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission encouraged transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if customers request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.¹³

33. In its July 13, 2007 filing, Xcel proposed revisions to sections 19 and 32 of its Joint OATT to describe how cluster studies would be processed whether initiated by the transmission provider or requested by a transmission customer.

34. The April 17 Order at P 38 found that Xcel's proposed clustering provisions required further specificity to address what happens when a transmission customer requests to opt out of a cluster study and how Xcel will proceed (should it determine that the request can be studied individually), including specifying whether the remaining customers in the cluster can move forward as their own cluster and addressing how Xcel will structure the remaining customers' obligations when one or more participants opt out of a clustered system impact study.¹⁴

35. With regard to the proposed 180-day time frame for completing a cluster study, the April 17 Order at P 39 agreed that this time frame was unsupported because Order No. 890-A clearly stated that the Commission will not exempt clustering of studies from the 60-day due diligence deadline,¹⁵ and we required Xcel to revise its language accordingly.

¹³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

¹⁴ See *Idaho Power Company*, 122 FERC ¶ 61,243, at P 20-22 (2008).

¹⁵ Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 761.

b. Xcel's May 19 Filing

36. Xcel has filed tariff language addressing the procedures to be followed when a transmission customer requests to opt out of a cluster study. Specifically, when a transmission customer has requested to opt out of a cluster study prior to the execution of the system impact study agreement, the tariff language states that the customer may request an individual study. If the transmission provider determines it is feasible to study the transmission customer's transmission service request individually, it will tender an individual system impact study agreement to the transmission customer and the transmission customer will retain its individual queue position.

37. The provision further states that if the transmission customer elects to opt out of a cluster study after signing the system impact study agreement, the transmission customer will be responsible for its share of any system impact study costs incurred before its departure, and may submit a new transmission service request for an individual study, if the provider determines that such request can be studied individually. The remaining transmission customers in the cluster shall be responsible for a re-allocated share of all clustered study costs incurred after such transmission customer opts out of a cluster, and the request of the transmission customer who elected to opt out after having previously signed the system impact study agreement will be treated as a new request and placed at the end of the queue.

38. With regard to the time frame for completing cluster studies, Xcel has removed references to the 180-day period and now states that the transmission provider will be allowed up to 60 days to complete a clustered system impact study or facilities study.

c. Commission Determination

39. We find that Xcel has complied with the directive in the April 17 Order regarding the procedures to be followed in the event a customer elects to opt out of a cluster study and the timeline for completing a clustered study.

4. Rollover Rights Effective Date

a. April 17 Order Requirements

40. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a

rollover right must be set aside for rollover customers and included in transmission planning.¹⁶

41. Since Xcel had prematurely included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007, the April 17 Order at P 43 directed Xcel to file a revised tariff sheet that reflects the previous language of section 2.2.

b. Xcel's May 19 Filing

42. Xcel has filed a revised tariff sheet in which it re-inserts the pre-Order No. 890 language for section 2.2.

c. Commission Determination

43. Xcel has satisfactorily complied with the directive in the April 17 Order with regard to rollover rights.

The Commission orders:

Xcel's compliance filing is hereby accepted effective July 13, 2007.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁶ Order No 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.