

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services, Inc.

Docket No. ER99-1610-006

Xcel Energy Services, Inc.

Docket No. ER04-1207-000

ORDER TERMINATING PROCEEDING
AND ACCEPTING TARIFF REVISION

(Issued November 1, 2004)

1. On February 11, 2003, the United States Court of Appeals for the District of Columbia Circuit issued an order¹ finding that the Commission's prior orders in this proceeding² did not answer contentions by Golden Spread Electric Cooperative, Inc. (Golden Spread) that allowing Southwestern Public Service Company (SPS) to sell power to its affiliates at market-based rates would frustrate Golden Spread's contractual protection against possible SPS market power.

2. In response to the court's remand, the Commission issued an order establishing a paper hearing.³ The Commission found that it would be appropriate for the parties to update the record before the Commission reexamined whether SPS's ability to sell to affiliates would frustrate Golden Spread's contractual protection against possible SPS market power.⁴

¹ Golden Spread Electric Cooperative, Inc. v. FERC, 319 F.3d 522 (D.C. Cir. 2003) (Remand Order).

² New Century Services, Inc., 86 FERC ¶61,307 (1999) (Initial Order), *reh'g denied*, 96 FERC ¶61,223 (2001) (Rehearing Order).

³ New Century Services, Inc., 108 FERC ¶ 61,148 (2004) (August 2004 Order).

⁴ *Id.* at P 11.

3. In response to the August 2004 Order, Xcel Energy Services, Inc. (Xcel Energy, formerly New Century Services, Inc.) filed a letter on September 7, 2004, informing the Commission that SPS had reached agreement with Golden Spread that there was no longer a need to resolve the issue raised in the Remand Order because Xcel Energy no longer owned any marketing affiliates that would qualify to make purchases from SPS (or any sister operating companies) and that it was filing to amend the tariff accordingly to delete the affiliate sales authority provision. The letter also requested that the Commission agree that if, at some future time, Xcel Energy and SPS seek Commission approval to make affiliate sales, Golden Spread shall not be precluded from making any and all arguments in opposition to the request to grant such authority.
4. Notice of Xcel Energy's filing in Docket No. ER99-1610-006 was published in the *Federal Register*, 69 Fed. Reg. 59,914 (2004), with comments due on or before October 7, 2004. None was received.
5. On September 7, 2004, in Docket No. ER04-1207-000, Xcel Energy separately filed an amendment to its market-based rate tariff to delete the provision allowing it to make sales to affiliates. Xcel Energy requests this revision be made effective immediately and requests waiver of the Commission's prior notice requirement to allow an immediate effective date.
6. Notice of Xcel Energy's filing in Docket No. ER04-1207-000 was published in the *Federal Register*, 69 Fed. Reg. 56,210 (2004), with comments due on or before September 28, 2004. None was received.
7. In light of Xcel Energy's September 7, 2004 letter in Docket No. ER99-1610-006, we find that the issues raised in the Remand Order are now moot and we hereby terminate this proceeding. Moreover, as requested in the September 7, 2004 letter in Docket No. ER99-1610-006, if, at some future time, Xcel Energy and SPS seek Commission approval to make affiliate sales, Golden Spread shall not be precluded from arguing in opposition to the request to grant such authority.

8. We also hereby accept Xcel Energy's uncontested filing in Docket No. ER04-1207-000 to revise its market-based rate tariff to delete the provision allowing it to make sales to affiliates.⁵

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁵ The designation for this tariff revision is FERC Electric Tariff, First Revised Volume No. 1, First Revised Sheet No. 6 (Supersedes FERC Electric Tariff, First Revised Volume No. 1, Original Sheet No. 6), effective September 8, 2004, one day after filing. Waiver of the prior notice requirement is granted to allow for the effective date noted.