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 Nos. ER04-1174-000 ER04-1174-001 ER04-1174-002
Southwest Power Pool, Inc.	ER04-1232-000
Xcel Energy Services, Inc. and Southwest Power Pool, Inc.	EL05-41-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF REVISIONS AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 17, 2004)

1. On September 2, 2004, as amended on October 13 and 20, 2004, Xcel Energy Services Inc., (Xcel) filed on behalf of its affiliates, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (Southwestern Public Service), tariff revisions that include formula rates. As discussed below, the Commission accepts the revisions, suspends them for five months, to become effective May 20, 2005, subject to refund, and establishes hearing and settlement judge procedures.

2. On September 17, 2004, Southwest Power Pool, Inc. (SPP) filed proposed tariff revisions to reflect the Southwestern Public Service rate changes. As discussed below, the Commission accepts the revisions, suspends them for five months, to become effective May 20, 2005, subject to refund and to the outcome of the hearing and settlement judge procedures ordered below.

3. In addition we institute an investigation pursuant to section 206 of the Federal Power Act[1] and establish a refund effective date.

4. This order benefits customers by ensuring just and reasonable rates.

[1] 16 U.S.C. § 824e (2000).

I Description

A. Description of Xcel Filing

5. Specifically this filing proposes: (1) a change to the transmission revenue requirement and ancillary service rates in the Xcel Energy Operating Companies Joint Open Access Transmission Tariff (OATT); (2) a new Attachment O to the Xcel Energy OATT that sets forth a formula to be used annually to update transmission rates on the PSCo and Southwestern Public Service systems; (3) a change in network transmission charges recovered under PSCo's power sales contracts applicable to Grand Valley Rural Power Lines, Inc., Intermountain Rural Electric Association, Yampa Valley Electric Association, Inc., the town of Julesburg, Colorado, the city of Burlington, Colorado, and the town of Center, Colorado;[2] and (4) a change in rates for network and ancillary services charged to Municipal Energy Association of Nebraska, Tri-State Generation and Transmission Association, Inc., and Cheyenne Light, Fuel and Power Company for use of the PSCo system under the Xcel Energy OATT, and Golden Spread Electric Cooperative, Inc. (Golden Spread) for the use of the Southwestern Public Service system under the Xcel Energy OATT.

6. Xcel proposes to increase PSCo's annual transmission revenue requirement by 29 percent from $72,901,394 to $94,155,053 and Southwestern Public Service's annual transmission revenue requirement by 6 percent from $64,200,000 to $68,089,518. Xcel proposes to make various changes to its ancillary services rates.

7. Xcel states that the proposed Attachment O formula rate is modeled after Midwest Independent Transmission System Operator Inc.'s (Midwest ISO) OATT, and is to be used to annually update transmission rates on the PSCo and Southwestern Public Service systems. Xcel also states that the formula rate will be posted on its Open Access Same-Time Information System (OASIS) by May 30 of each calendar year, to become effective June 1. Xcel also explains that the proposed changes in rates for network and ancillary services would apply to charges to Municipal Energy Association of Nebraska, Tri-State Generation and Transmission Association Inc. and Cheyenne Light, Fuel and Power Company for use of the PSCo system and to charges to Golden Spread for use of the Southwestern Public Service system. Xcel proposes direct pass through of SPP administrative fees for Golden Spread's load to Golden Spread, and explains that the pass through is necessary since Southwestern Public Service incurs the SPP administrative fees on Golden Spread's behalf.

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[2] These power sales agreements, which are not part of the instant filings, provide that these requirements customers will reimburse PSCo for the network integration transmission service that PSCo procures for their benefit under the Xcel Energy OATT at stated rates identical to those that would apply if these customers obtained such transmission service directly under the Xcel Energy OATT.

B. Description of SPP Filing

8. Southwestern Public Service, a wholly owned subsidiary of Xcel, is a transmission-owning member of SPP. Consequently, SPP has filed OATT revisions to track the proposed transmission service rates applicable to the Southwestern Public Service pricing zone proposed in Xcel's filing described above. SPP has filed revised OATT Attachment H, the annual revenue requirement for network integration transmission service, and Attachment T, rate sheets for point to point transmission service, applicable to the Southwestern Public Service pricing zone. SPP states that it is adopting a formula rate. On November 12, 2004, SPP amended its September 17 filing identifying its intent that the tariff charges proposed in its September 17 filing take effect coincident with the effective date adopted by the Commission for the Xcel tariff changes.

II. Notices and Filings

A. Xcel Filings

9. Notices of Xcel's filings were published in the *Federal Register*, 69 Fed. Reg. 56,212 (2004), 69 Fed. Reg. 62,441 (2004), 69 Fed. Reg. 64,744 (2004), with interventions and protests due on of before November 8, 2004. El Paso Electric Company, Tri-State Generation and Transmission Association, Inc., Aquila, Inc., Cap Rock Energy Corporation, Power Natural Resources USA, Inc., the New Mexico Attorney General, and Pacificorp filed motions to intervene. The Intermountain Rural Electric Association (IREA), the Municipal Energy Agency of Nebraska (MEAN), the West Texas Municipal Power Agency (West Texas), the Farmer's Electric Cooperative, Inc., Lea County Electric Cooperative Inc., Central Valley Electric Cooperative, Inc., and the Roosevelt County Electric Cooperative (collectively Cooperative Customers), Golden Spread, Lyntegar Electric Cooperative (Lyntegar), Grand Valley Rural Power Lines, Inc. (Grand Valley), Yamapa Valley Electric Association, Inc. (Yampa), and the Western Area Power Administration (Western) filed motions to intervene and protests. On October 8, 2004, Xcel filed an answer.

10. Protesters argue that Xcel has failed to provide sufficient or correct data to support its tariff revisions. Cooperative Customers argue that Xcel has increased costs to Cooperative Customers based on questionable data and cost inclusions and without providing any showing of a need to change to a formula rate. Western argues that Xcel's data contains errors and needs to be thoroughly reviewed. Grand Valley, Yampa, Golden Spread, and Lyntegar protest the structure of Xcel's proposed formula rate and the implementation and administration procedures.

11. Protesters assert that even though Xcel's proposed formula rate is essentially the same formula rate utilized by the Midwest ISO, the formula rate is not necessarily just and reasonable in this situation. Cooperative Customers argue that Xcel's proposed formula rate does not protect customers by, for example, failing to provide sufficient notice before future rate increases take effect. Protesters assert that Xcel's proposed posting of increases on May 30 to become effective on June 1 provides no method of review, no refund protection and potentially no knowledge of the rate until the day before it is to take effect.

12. IREA argues that Xcel's filing fails to include a demand charge reduction in the wholesale rates charged to IREA, as required in a settlement provision, to offset the ancillary service rate increase.[3]

13. Golden Spread, Lyntegar, Grand Valley and Yampa argue that the Commission should summarily find that Southwestern Public Service is prohibited from assessing Golden Spread the SPP administrative fee as proposed in Xcel's filing. Golden Spread argues that it is receiving service under a grandfathered agreement and that the Commission has already determined that SPP administrative fees do not apply in this instance.[4] Therefore, Golden Spread argues that Xcel is barred from raising this issue in this filing.

14. In its answer, Xcel asserts that its return on equity and other data contained in its revised filing are accurate and supportable. Xcel maintains that its proposed formula rate is modeled after the Commission-approved Midwest ISO formula rate and as such does not need periodic review by the Commission. Xcel also states that it intends to abide by the settlement provisions with IREA and will reduce the Generation Service Demand Charge accordingly. Finally, Xcel argues that it is appropriate for Golden Spread to pay the SPP administrative charge since the Commission now requires that all load served under grandfathered agreements be assessed the administrative fee. Furthermore, Xcel argues that the Commission's prior ruling cited by Golden Spread[5] does not bar Xcel from making this section 205 filing seeking the pass through of these costs.[6]

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[3] *See Public Service Company of Colorado*, 106 FERC ¶ 61,189, *clarified*, 107 FERC ¶ 61,228 (2004) (accepting PSCo's proposed settlement, which provided that PSCo would adjust the Generation Demand Service Charge accordingly).

[4] Golden Spread, Lyntegar and Grand Valley, Yampa Protest, at 44, *citing Southwest Power Pool, Inc.*, 92 FERC ¶ 61,174, *reh'g denied*, 93 FERC ¶ 61,050 (2000).

[5] *Id.*

[6] Xcel Answer at 13.

B. SPP Filing

15. Notice of SPP's filing was published in the *Federal Register*, 69 Fed. Reg. 58,425 (2004) with interventions and protests due on or before September 30, 2004. Southwestern Public Service filed a motion to intervene. West Texas, Golden Spread, Lyntegar, and Cooperative Customers filed motions to intervene and protests. Golden Spread and Lyntegar request the Commission consolidate Xcel's and SPP's filing to ensure the same effective date. SPP filed an answer clarifying that it intends that its effective date correspond to Xcel's effective date.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Xcel's and SPP's answer and SPP's clarification because they have provided information that assisted us in our decision making process.

B. SPP Administrative Charge

17. In 2000, the Commission agreed that Golden Spread was taking service pursuant to a grandfathered agreement (GFA) under the Xcel OATT, and not under the SPP OATT.[7] Therefore, at that time, Golden Spread was not liable for the SPP administrative fee. However, subsequently, in granting SPP RTO status (upon the fulfillment of certain requirements), the Commission provided that transmission owners may seek recovery of SPP costs associated with serving grandfathered load under the SPP OATT.[8] The Commission explained that SPP had become "the sole provider of transmission service" in this region and the Commission required that transmission owners, such as Southwestern Public Service, take service from SPP to service load under the GFAs.[9] Consequently, Southwestern Public Service, a member of SPP, is now taking service under SPP's OATT to serve grandfathered load, and is being assessed

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[7] *See supra* note 4.

[8] *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, *order on reh'g*, 109 FERC ¶ 61,010 at 48 (2004).

[9] *Id.* at P109.

administrative fees for Golden Spread's grandfathered load. Southwestern Public Service's section 205 filing is the proper avenue for it to seek recovery of these fees.[10] Furthermore, there does not appear to be any provision in Golden Spread's GFA to prevent Southwestern Public Service from making this filing. Therefore, we find that Southwestern Public Service is not barred from making this filing, and may recover SPP's administrative costs associated with Golden Spread's grandfathered load.

C. Hearing Procedures

18. Xcel's proposed tariff revisions raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

19. Our preliminary analysis indicates that Xcel's proposed tariff revisions have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed tariff revisions for filing, suspend them, and set them for hearing and settlement judge procedures.

20. In *West Texas Utility Company*,[11] the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive (as defined in *West Texas*), the Commission would generally impose a five month suspension. In the instant proceeding, our preliminary analysis indicates that the proposed rates may be substantially excessive. Therefore, we will accept Xcel's filing, suspend it for five months to be effective May 20, 2005, subject to refund, and set it for hearing and settlement judge procedures. Additionally, since SPP's tariff revisions implement Xcel's tariff revisions, and SPP asks for the same effective dated accorded Xcel's tariff revisions, we will accept SPP's proposed tariff revisions and suspend them, to become effective May 20, 2005, subject to refund and to the outcome of Xcel's hearing and settlement judge procedures.

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[10] *See Louisville Gas & Electric Co.*, 101 FERC ¶ 61,182 at P 22-23 (2002) (providing for a transmission owner to pass through Midwest ISO administrative costs to a customer under a grandfathered agreement).

[11] 18 FERC ¶ 61,189 (1982) (*West Texas*).

21. Because the ultimately approved rates for Southwestern Public Service (and thus the ultimately approved rates for SPP) may be lower than both the last clean rate and the proposed rate, we will institute an investigation in Docket No. EL05-41-000 of Southwestern Public Service's rates (and secondarily SPP's rates) under section 206 of the Federal Power Act, and establish a refund effective date under section 206 of the Federal Power Act.

22. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the *Federal Register*, and no later than five months subsequent to the expiration of the 60-day period. In order to be consistent with the effective dates established above, we will establish the refund effective date to be May 20, 2005, coincident with the effective date of the filings at issue here. This date is more than 60 days from the date on which notice of our initiation of the investigation in Docket No. EL05-41-000 is published in the *Federal Register* yet within five months following that 60 day period.

23. Section 206 requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate of when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding judge to provide a report to the Commission no later than 15 days in advance of the refund effective date in Docket No. EL05-41-000 in the event the presiding judge has not, by that date: (1) certified to the Commission a settlement which, if accepted, would dispose of the proceeding; or (2) issued an initial decision. The presiding judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or issuance of an initial decision.

24. Given the common issues of fact and law, we will consolidate Docket Nos. ER04-1174-000, ER04-1174-001 and ER04-1174-002 and Docket No. EL05-41-000 for purposes of hearing and decision.

25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[12] If the parties desire, they may,

[12] 18 C.F.R. § 385.603 (2004).

by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[13] The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Xcel's proposed revisions are hereby accepted for filing and suspended for five months, to become effective May 20, 2005, subject to refund, as discussed in the body of this order.

(B) SPP's proposed revisions are hereby accepted for filing and suspended, to become effective May 20, 2005, subject to refund and the outcome of Xcel's hearing and settlement judge procedures, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act, (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER04-1174-000, *et al.* concerning the justness and reasonableness of the proposed revisions. However, the hearing will be held in abeyance to provide time for settlement judge procedures as discussed in Paragraphs (E) and (F) below.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act, (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL05-41-000 concerning the justness and reasonableness of the proposed rates, as discussed in the body of this order.

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[13] If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission judges and a summary of their background and experience (www.FERC.gov – click on Office of Administrative Law Judges).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Chief Judge and the Commission of the parties' progress toward settlement.

(G) If the settlement discussions fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL05-41-000.

(I) The refund effective date in Docket No. EL05-41-000, established pursuant to section 206(B) of the Federal Power Act, will be May 20, 2005.

(J) Docket No. EL05-41-000 is hereby consolidated with Docket Nos. ER04-1174-000, *et al.* for purposes of hearing and decision.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.