

124 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services Inc.

Docket Nos. ER08-923-000
and
ER08-313-000
(consolidated)

ORDER CONSOLIDATING DOCKETS, ACCEPTING AND SUSPENDING
SERVICE AGREEMENTS, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued July 2, 2008)

1. On March 6, 2008, in Docket No. ER08-923-000, Xcel Energy Services Inc. (Xcel) submitted on behalf of Southwestern Public Service Company (SPS) unexecuted revised Network Integration Transmission Service (NITS) Agreements (Agreements) between SPS and two SPS network customers, Golden Spread Electric Cooperative, Inc. (Golden Spread) and South Plains Electric Cooperative, Inc., a member of Golden Spread (South Plains). The proposed revisions would recover meter charges and radial facilities charges under the Agreements. In addition, SPS proposes to revise the Agreements to update the list of delivery points and the list of designated network resources contained in the Agreements.

2. In this order, we will accept the proposed revised Agreements for filing, suspend them for a nominal period, make them effective July 6, 2008, as requested, subject to refund, and set the issues raised for hearing and settlement judge procedures. We will also consolidate this proceeding with Docket No. ER08-313-000 that addresses similar issues and is in settlement procedures.

I. Background

3. Xcel states that it is a public utility holding company that is organized around four utility operating companies including SPS. SPS is engaged in, *inter alia*, the generation, purchase, transmission, distribution and sale of electric energy in portions of Texas, New Mexico, Oklahoma and Kansas. SPS is a transmission-owning member of Southwest

Power Pool, Inc. (SPP), which is a Commission-approved regional transmission organization (RTO).¹ Xcel further states that transmission service over the SPS transmission system has been available under the SPP open access transmission tariff (OATT) since June 2000.

4. SPS filed in Docket No. ER08-313-000 proposed formula rates under its joint OATT with Public Service Company of Colorado, another Xcel operating company (Xcel OATT). The formula rates are designed to recover SPS's transmission cost of service, replacing stated transmission service rates previously established by settlement in 2006.² The proposed formula rate is contained in a new Attachment O – Southwest Public Service Company (Attachment O – SPS) to the Xcel OATT. In Docket No. ER08-313-000, SPS proposed to, *inter alia*, add a meter charge in section 34.9 that would directly assign to its customers the costs of meters at the delivery points with those customers. The meter charge is a cost-based rate assessed to each customer based on the number of delivery points the customer has with SPS.³

5. SPS states that in the proposed Attachment O – SPS filed in Docket No. ER08-313-000, it adhered to SPP's current definition of "Transmission Facilities" in Attachment AI (Transmission Definition) of the SPP OATT which excludes, *inter alia*, certain radial lines from the definition of Transmission Facilities. SPS removed the costs of certain radial lines from inputs to the formula rate in Attachment O – SPS in order to conform to this definition. It proposed instead an annual carrying charge to directly assign to specific customers served by the radial lines the costs of those lines that were removed from the transmission costs recovered from all customers on a rolled-in basis under the formula rate.⁴

6. By order issued February 5, 2008, the Commission accepted and suspended SPS's proposed formula rates and established hearing and settlement judge procedures.⁵ The Commission set for hearing all issues raised including the reclassification of transmission

¹ The Commission approved the transfer of functional control of SPS's facilities (69 kV and above) to SPP in *Southwest Power Pool, Inc.*, 109 FERC ¶ 61,009 (2004), *order on reh'g*, 110 FERC ¶ 61,137 (2005).

² *See Xcel Energy Servs. Inc.*, 115 FERC ¶ 61,011 (2006).

³ Cover Letter at 3.

⁴ *Id.* at 4.

⁵ *See Xcel Energy Servs. Inc.*, 122 FERC ¶ 61,098 (2008) (February 5 Order).

facilities and the proposed meter charge.⁶ By order issued March 21, 2008, in Docket No. ER08-472-000, the Commission accepted proposed ministerial revisions to the SPP OATT to track the proposed rate changes filed by SPS in Docket No. ER08-313-000.⁷ Both the February 5 Order and the March 21 Order established an effective date of July 6, 2008.

II. Description of the Filing

7. SPS's proposed revisions to the Agreements include (1) the addition of a provision authorizing SPS to directly assign a meter charge to the network customer; (2) the addition of a provision authorizing SPS to directly assign to the customer the costs of radial lines in accordance with Attachment O - SPS; and, (3) an updated list of delivery points to Golden Spread and South Plains that reflects the addition of new delivery points constructed after those Agreements were last updated.

8. To allow recovery of meter charges, SPS proposes to add a new section 7.0 to the Agreements that would assess a separate charge per delivery point for each customer. SPS also proposes to revise the Agreements to recover customer-specific radial facilities charges to the extent that they are determined to be recoverable as a result of the reclassification of facilities at issue in Docket No. ER08-313-000.

9. SPS also added eight new delivery points to the Golden Spread Agreement and three to the South Plains Agreement. SPS also proposes to revise the Agreements to update the list of designated network resources set forth in section 3.0 of the Specifications for Network Integration Transmission Service portion of the Agreements.

10. SPS requests that the Commission consolidate this proceeding with Docket No. ER08-313-000 to allow the related issues to be considered in the same settlement discussions. SPS further requests the same effective date for the subject filing, as that established for the filings in Docket Nos. ER08-313-000 and ER08-472-000, specifically July 6, 2008.

III. Notice of Filing and Responsive Pleadings

11. Notice of Xcel's filing was published in the *Federal Register*, 73 Fed. Reg. 62,225 (2008), with interventions and protests due on or before May 27, 2008. Cap Rock Energy Corporation filed a timely motion to intervene. Golden Spread filed a motion to intervene, protest and motion to summarily reject filing or, in the alternative, a request for

⁶ See February 5 Order at P 1, 77-80.

⁷ See *Southwest Power Pool, Inc.*, 122 FERC ¶ 61,266 (2008) (March 21 Order).

a five month suspension and statement in support of the request for consolidation. On June 11, 2008, Xcel filed an answer. On June 20, 2008, Golden Spread filed an answer to the answer filed by Xcel.

A. Golden Spread's Protest

12. In its protest, Golden Spread reiterates the objection it made to SPS's formula rate filing in Docket No. ER08-313-000, specifically that SPS has failed to provide cost information to support its proposed formula rate for transmission service. Golden Spread requests that the Commission reject SPS's application, and asserts that no meaningful review of SPS's proposed classification of transmission facilities or proposed direct assignment of radial facility costs can occur unless and until SPS files a request with the Commission for a determination as to which of its facilities are transmission facilities as required by Attachment AI of the SPP OATT.⁸

13. Golden Spread states that SPS's filing violates the Commission's principle of transmission access and rate comparability⁹ asserting that SPS has submitted proposed revisions only to these two Agreements under Xcel's OATT. Golden Spread further asserts that there are two other NITS customers, Public Service Company of Colorado (PSCO) and the Municipal Energy Agency of Nebraska (MEAN), for which SPS proposes no revisions. Golden Spread argues that it should not be subject to additional terms affecting rates before SPS's other NITS customers.¹⁰

14. Golden Spread further states that additional problems are present in the proposed revisions to the Agreements that require correction. These include (a) at section 6.0 of the Specifications for Network Integration Transmission Service in the Golden Spread Agreement, the listed Scheduling and Dispatch Service charge of \$0.019/kw is incorrect; (b) at Appendix A of the Golden Spread Agreement, eight new delivery points must be added; (c) at section 3.0 of the Specifications for Network Integration Transmission Service in the South Plains Agreement, a failure to reflect that South Plains no longer purchases power from SPS; and (d) at Appendix A of the South Plains Agreement, "09 Carlisle Substation" delivery point should be changed to "Reese."¹¹

⁸ Golden Spread Protest at 6-10.

⁹ See *Id.* at 10 citing *American Electric Power Service Corporation*, 67 FERC ¶ 61,168 (1994).

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 13-14.

15. Golden Spread states that if the Commission does not reject the filing, the Commission should consolidate it with the proceedings in Docket No. ER08-313-000. Golden Spread further requests that the Commission order SPS to make a compliance filing that includes detailed evidentiary support for the costs of its facilities that it contends fall outside the definition of Transmission Facilities, as set out in Attachment AI of the SPP OATT that would be assigned to Golden Spread.¹² Golden Spread also requests that the Commission suspend SPS's filing for the maximum five month period.¹³

B. SPS's Answer

16. In response to Golden Spread's protest that SPS has failed to file sufficient cost support for the radial line and meter charges, SPS maintains that all issues regarding those charges were set for hearing in the proceeding in Docket No. ER08-313-000. SPS further responds that because those charges are still being determined, attaching cost information would have been premature.¹⁴

17. SPS also states that because Golden Spread is a grandfathered customer, Golden Spread's Agreements are service agreements under the Xcel OATT while all of the other Agreements that need to be revised to add references to the radial line charges and meter charges are service agreements under the SPP OATT. SPS states that SPP will soon submit a filing that makes identical revisions to the agreements under the SPP OATT. SPS further states that it is not proposing to revise the Agreements for MEAN and PSCO because those customers are located outside the SPS transmission system and balancing authority area, and, hence, there are no SPS radial line or meter costs directly assigned to those customers.¹⁵

18. SPS agrees with Golden Spread that the enumerated ministerial and typographical errors should be corrected and states that it will submit a compliance filing making those corrections. SPS states that it should be allowed to collect the radial line charges and meter charges through the revised Agreements, subject to refund and further proceedings, as provided in the February 5 Order. SPS states that delaying the effective date of these

¹² *Id.* at 14.

¹³ *Id.* at 15.

¹⁴ Xcel Answer at 3.

¹⁵ *Id.* at 8.

charges for an additional five months, as Golden Spread requests, would result in an impermissible ten month suspension.¹⁶

C. Golden Spread's Answer

19. Golden Spread filed an answer in response to SPS's answer. Golden Spread reiterates its position as expressed in its protest that with respect to Attachment AI of the SPP OATT, SPS did not file with the Commission a request for a determination as to which of its facilities are Transmission Facilities. Golden Spread states that without a filing to specifically identify those facilities, SPS would be modifying the input to its transmission formula from year to year.¹⁷

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding. Rule 213(a) (2) of the Commission's Rules of Practice and Procedure¹⁸ prohibits the filing of an answer to a protest or answer unless otherwise ordered by the decisional authority. We find that good cause exists in this proceeding to allow SPS's and Golden Spread's answers because they aid us in our understanding of the issues raised in the proceeding.

B. Commission Determination

21. We find that SPS's proposed revisions to the Agreements designed to recover from its network customers meter and radial facilities charges raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in hearing and settlement judge procedures.

22. We will deny Golden Spread's request for a five month suspension. In *West Texas*, we explained that when our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in

¹⁶ *Id.* at 10.

¹⁷ Golden Spread Answer at 3-5.

¹⁸ 18 C.F.R. § 385.213(a)(2) (2008).

West Texas, we would generally impose a nominal suspension.¹⁹ Here, our examination indicates that the proposed rates may not yield substantially excessive revenues. Accordingly, the Commission will accept the proposed revised Agreements for filing, suspend them for a nominal period, make them effective July 6, 2008, subject to refund, and set them for hearing and settlement judge procedures.

23. Because the filings contain common issues of fact and law, in particular the reclassification of facilities in accordance with Attachment AI of the SPP OATT,²⁰ in order to provide administrative efficiency, we will consolidate the filing with the proceeding in Docket No. ER08-313-000 for purposes of settlement, hearing and decision.

24. While we are setting this matter for a trial-type evidentiary hearing, we encourage participants to make every effort to settle this dispute 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.²¹ If the parties desire, they may, by mutual agreement, request a special judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.²² The settlement judge shall report to the Chief Judge and to the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions.

25. 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.

¹⁹ *West Texas Utilities Company*, 18 FERC ¶ 61,189, at 61,374 (1982) (*West Texas*).

²⁰ See February 5 Order at P 74.

²¹ 18 C.F.R. § 385.603 (2008).

²² If the parties decide to request a specific judge, they must make their joint 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 list of Commission judges and a summary of their backgrounds and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) The proposed Agreements are hereby accepted, subject to refund, and suspended for a nominal period to become effective July 6, 2008.

(B) The proposed Agreements are hereby set for hearing and settlement judge procedures, as discussed in the body of this order.

(C) Docket Nos. ER08-313-000 and ER08-923-000 are hereby consolidated for purposes of settlement, hearing, and decision.

(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 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 concerning SPS's proposed Agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), 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 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 within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge 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 Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures 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 Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.