

137 FERC ¶ 61,014
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 4, 2011

In Reply Refer To:
Xcel Energy Services Inc., on behalf of
Northern States Power Company
Docket No. ER10-1377-000

Xcel Energy Services Inc.
Attention: James P. Johnson
Assistant General Counsel
414 Nicollet Mall
Fifth Floor
Minneapolis, MN 55401

Dear Mr. Johnson:

1. On April 25, 2011, you filed on behalf of Xcel Energy Services Inc. (Xcel) and on behalf of its operating company affiliate Northern States Power Company, a proposed Offer of Settlement and Settlement Agreement (Settlement) with the Commission in the above-referenced docket.
2. On May 16, 2011, Commission Trial Staff filed comments in support of the Settlement, and on May 26, 2011, Xcel filed comments on the Settlement and responded to Trial Staff's comments. No adverse comments were filed and on May 26, 2011, the settlement judge certified the Settlement to the Commission as uncontested.¹
3. The Settlement resolves all issues set for hearing in Docket No. ER10-1377-000, which concern revisions to rates under eight transmission service agreements, as part of a transition to transmission service under the Midwest Independent Transmission System Operator, Inc.'s open access transmission tariff. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in this proceeding.

¹ *Xcel Energy Services, Inc.*, 135 FERC ¶ 63,012 (2011).

4. Pursuant to sections 3.2 and 3.7 of the Settlement, Xcel shall submit rate schedule sheets revising the service agreements referenced in the Settlement within 30 days of the date of this order.

5. Xcel made its baseline electronic tariff filing pursuant to Order No. 714; however, it did not file the Settlement in the eTariff format required by Order No. 714. Therefore, within 30 days of the date of this order, Xcel is directed to make a compliance filing in eTariff format to reflect the Commission's action in this order.²

6. Article 6.3 of the Settlement provides that

[a]bsent the written agreement of all Settlement Parties to a proposed change, the "public interest" presumption shall apply to challenges or proposed changes to the Settlement Agreement whether the change is proposed by a Settlement Party, a non-party or the Commission acting *sua sponte*, as set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra doctrine"), as interpreted and applied by the Supreme Court in subsequent cases.

Because, as noted above, the rates at issue here stem from bilateral transmission service agreements that are not under an open access transmission tariff and are not generally applicable, we find that those rates are contract rates. In this situation, we agree that the "public interest" presumption applies as described in Article 6.3 of the Settlement. The Settlement should not be understood as establishing the standard of review for changes to Xcel's open access transmission tariff's rates, terms, and conditions.

7. This order terminates Docket No. ER10-1377-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

² See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).