

150 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

Xcel Energy Southwest Transmission Company, LLC	Docket Nos. ES15-3-000
Xcel Energy Transmission Development Company, LLC	ES15-4-000 (not consolidated)

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued March 4, 2015)

1. On October 31, 2014, as supplemented on January 26, 2015, Xcel Energy Southwest Transmission Company, LLC (Xcel Southwest Transmission) and Xcel Energy Transmission Development Company, LLC (Xcel Transmission Development) filed separate applications pursuant to section 204 of the Federal Power Act (FPA)¹ seeking authorization to enter into one or more secured or unsecured loans, credit agreements or financing agreements, and issue short-term and long-term debt securities to borrow an amount not to exceed an aggregate of \$250 million at any time outstanding for each applicant. We will grant the authorizations requested, as discussed below.

I. Background

2. Xcel Southwest Transmission and Xcel Transmission Development are Delaware limited liability corporations that are new entities with no current operations. Xcel Southwest Transmission states that it is developing future transmission facilities that it might own in the Southwest Power Pool, Inc.'s (SPP) region and that it expects to operate in one or more of the following states: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Texas. Xcel Transmission Development states that it is developing future transmission facilities that it might own in the Midcontinent Independent System Operator, Inc.'s (MISO) region and that it expects to operate in one or more of the following states: Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming. Each applicant

¹ 16 U.S.C. § 824c (2012).

expects to primarily focus on projects that it may develop and own through SPP's and MISO's Order No. 1000² competitive solicitation processes.

3. Xcel Southwest Transmission states that it became a public utility under the FPA when the Commission accepted its formula rates.³ Xcel Southwest Transmission explains that its formula rates are not yet effective and that costs it has incurred are not currently included in rates under the SPP Open Access Transmission Tariff (SPP Tariff).⁴ Xcel Southwest Transmission further explains that its costs will not flow through to SPP transmission service customers until Xcel Southwest Transmission becomes a Transmission Owner as defined by the SPP Tariff, which will occur on the earlier of Xcel Southwest Transmission owning operational transmission facilities that form part of the SPP transmission system or SPP's issuance of a "Notice to Construct" to Xcel Southwest Transmission.⁵

4. Xcel Transmission Development states that it became a public utility under the FPA when the Commission accepted its formula rates.⁶ Xcel Transmission Development explains that these formula rates are not yet effective and that costs it has incurred are not yet included in rates under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).⁷ Xcel Transmission Development further explains that these costs will not flow to MISO transmission service customers until Xcel

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011) (cross-referenced at 136 FERC ¶ 61,051), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

³ *See Xcel Energy Southwest Transmission Company, LLC*, 149 FERC ¶ 61,182 (2014).

⁴ Xcel Southwest Transmission Supplement at 2.

⁵ *Id.* n.5 (citing SPP, OATT, pt. I, § 1(T), Definitions T (2.0.0)).

⁶ *See Xcel Energy Transmission Development Company, LLC*, 149 FERC ¶ 61,181 (2014).

⁷ Xcel Transmission Development Supplement at 2.

Transmission Development is eligible to do so and transfers operational control of its transmission facilities to MISO when those facilities become operational.⁸

5. Xcel Southwest Transmission and Xcel Transmission Development also state that the Commission authorized each company to defer as a regulatory asset all of its prudently-incurred costs that are not capitalized, such as pre-commercial and formation costs, but applicable only to projects developed through the Order No. 1000 competitive solicitation process.⁹ Xcel Southwest Transmission and Xcel Transmission Development state that the Commission noted that granting the recovery of these costs “furthers the policy goal of placing non-incumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process.”¹⁰

II. Applications

A. Xcel Southwest Transmission Debt Securities

6. Xcel Southwest Transmission requests authorization through March 1, 2017 to issue long-term and short-term debt securities in an amount not to exceed \$250 million outstanding at one time.¹¹ Xcel Southwest Transmission states that it expects that these short-term and long-term securities will consist of one or more secured or unsecured loans, credit agreements or financing agreements provided by a bank, syndicate of banks, insurance companies or other financial institutions, intercompany loans from affiliates (including transactions in a to-be-formed money pool¹²) and short-term and long-term

⁸ *Id.* n.5.

⁹ *Id.* at 4; Xcel Transmission Development Supplement at 4.

¹⁰ Xcel Southwest Transmission Supplement at 3 (quoting *Xcel Energy Southwest Transmission*, 149 FERC ¶ 61,182 at P 33); Xcel Transmission Development Supplement at 3 (quoting *Xcel Energy Transmission Development*, 149 FERC ¶ 61,181 at P 18).

¹¹ Xcel Southwest Transmission Application at 3; Xcel Southwest Transmission Supplement at 6.

¹² Commission-regulated entities are required to file their cash management agreements with the Commission. The information provided is used to aid the Commission in monitoring cash management programs. The rule is not in the nature of a regulation governing participation in cash management programs. Therefore, this order does not address any request for authorization to participate in a cash management

(continued ...)

bonds, notes or other debt securities, including bank loans, issued by Xcel Southwest Transmission. More specifically, Xcel Southwest Transmission states that it currently expects to enter into one or more unsecured credit facilities to finance the planning, development, construction, acquisition, maintenance and/or modification of new or existing transmission lines and to provide itself with working capital.¹³ Xcel Southwest Transmission further states that any long-term debt will likely be structured with up to a 40-year maturity date, that short-term debt will have a maturity date of not more than one year, and that all debt securities may occur in multiple concurrent, successive, or revolving borrowings. Xcel Southwest Transmission states that its securities may evidence borrowing from one or more banks, trust companies, or other lenders and may consist of first mortgage bonds, secured or unsecured promissory notes, commercial paper, letters of credit, debentures, or other securities and evidences of indebtedness issued from time to time in one or more public or private transactions.¹⁴

7. Xcel Southwest Transmission states that the interest rate for any short- or long-term debt may be at a fixed or variable rate. Xcel Southwest Transmission states that the interest rate (exclusive of commissions, commitment fees, administrative fees and other charges) will not exceed, in the case of short-term debt securities, the greater of: (1) the 1-month, 2-month, 3-month, 6-month, or 12-month London Interbank Offered Rate (LIBOR) in effect at the time of borrowing, as referenced in the Wall Street Journal, plus up to 800 basis points, or (2) the greater of the federal funds rate or the prime rate (defined as the rate of interest per annum publically announced from time to time by JP Morgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City) in effect at the time of borrowing, plus up to 700 basis points; and, in the case of long-term debt securities, the 3-year, 5-year, 7-year, 10-year, 20-year, or 30-year U.S. Treasury rate in effect at the time of the borrowing as referenced at www.treasury.gov, plus up to 600 basis points.¹⁵

8. Xcel Southwest Transmission states that the use of short- and long-term debt to support working capital, development, and construction needs will afford it maximum

program. *See Regulation of Cash Management Practices*, Order No. 634-A, FERC Stats. & Regs., ¶ 31,152 (2003) (cross-referenced at 105 FERC ¶ 61,098).

¹³ Xcel Southwest Transmission Application at 3 (noting that Xcel Southwest Transmission may also receive capital contributions that are not subject to Commission jurisdiction).

¹⁴ *Id.* at 4.

¹⁵ *Id.*

flexibility in meeting its overall financing requirements in an orderly fashion. Xcel Southwest Transmission commits that the issuances of debt securities proposed in its application will not impair its ability to perform its service obligations as a public utility.¹⁶

B. Xcel Transmission Development Debt Securities

9. Xcel Transmission Development requests authorization through March 1, 2017 to issue long-term and short-term debt securities in an amount not to exceed \$250 million outstanding at one time.¹⁷ Xcel Transmission Development states that it expects that these short-term and long-term securities will consist of one or more secured or unsecured loans, credit agreements or financing agreements provided by a bank, syndicate of banks, insurance companies or other financial institutions, intercompany loans from affiliates (including transactions in a to-be-formed money pool) and short-term and long-term bonds, notes or other debt securities, including bank loans, issued by Xcel Transmission Development. More specifically, Xcel Transmission Development states that it expects to enter into one or more unsecured credit facilities to finance the planning, development, construction, acquisition, maintenance and/or modification of new or existing transmission lines and to provide itself with working capital.¹⁸ Xcel Transmission Development further states that any long-term debt will likely be structured with up to a 40-year maturity date, that short-term debt will have a maturity date of not more than one year, and that all debt securities may occur in multiple concurrent, successive, or revolving borrowings. Xcel Transmission Development states that its securities may evidence borrowing from one or more banks, trust companies or other lenders and may consist of first mortgage bonds, secured or unsecured promissory notes, commercial paper, letters of credit, debentures, or other securities and evidences of indebtedness issued from time to time in one or more public or private transactions.¹⁹

10. Xcel Transmission Development explains that the interest rate for short- or long-term debt may be at a fixed or variable rate. Xcel Transmission Development states that

¹⁶ *Id.* at 7.

¹⁷ Xcel Transmission Development Application at 3; Xcel Transmission Development Supplement at 6.

¹⁸ Xcel Transmission Development Application at 3 (noting that Xcel Transmission Development may also receive capital contributions that are not subject to Commission jurisdiction).

¹⁹ *Id.* at 4.

the interest rate (exclusive of commissions, commitment fees, administrative fees and other charges) will not exceed, in the case of short-term debt securities the greater of: (1) the 1-month, 2-month, 3-month, 6-month, or 12-month LIBOR in effect at the time of borrowing as referenced in the Wall Street Journal, plus up to 800 basis points, or (2) the greater of the federal funds rate or the prime rate (defined as the rate of interest per annum publically announced from time to time by JP Morgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City) in effect at the time of borrowing, plus up to 700 basis points; and, in the case of long-term debt securities, the 3-year, 5-year, 7-year, 10-year, 20-year, or 30-year U.S. Treasury rate in effect at the time of borrowing as referenced at www.treasury.gov, plus up to 600 basis points.²⁰

11. Xcel Transmission Development states that the use of short- and long-term debt to support working capital, development and construction needs will afford it maximum flexibility in meeting its overall financing requirements in an orderly fashion. Finally, Xcel Transmission Development assures the Commission that the issuances of debt securities proposed in its application will not impair its ability to perform its service obligations as a public utility.²¹

C. Waiver Requests

12. Xcel Southwest Transmission and Xcel Transmission Development each request waiver of the competitive bidding and negotiated placement requirements in sections 34.2(a) and 34.2(c)(1) of the Commission's regulations as applicable to the long-term debt securities proposed to be issued.²² Each applicant states that the Commission should grant waiver because: (1) the securities will be issued to commercial and investment banks, insurance companies, sophisticated investors or similar

²⁰ *Id.* at 4.

²¹ *Id.* at 7.

²² Section 34.2 sets forth the Commission's requirements regarding the method of issuance. It states, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers or underwriters, or negotiated offers are obtained from at least three prospective dealers, purchasers or underwriters. *See* 18 C.F.R. § 34.2(a) (2014). Section 34.2(c)(1) states that no securities will be placed with any person who "[h]as performed any service or accepted any fee or compensation with respect to the proposed issuance of securities prior to submission of bids or entry into negotiations for placement of such securities." *See* 18 C.F.R. § 34.2(c)(1) (2014). The provisions of this rule do not apply to securities having maturities of one year or less.

institutions; (2) all securities will bear interest at rates related to current market conditions; and (3) a cost advantage would not be achieved by the imposition of such a requirement.²³ Applicants state that their affiliated service company, Xcel Energy Services, Inc., continuously monitors the capital markets and the prevailing fees and charges of investment banks. Xcel Southwest Transmission and Xcel Transmission Development each commit to issue long-term debt with the best rates and terms for its respective customers and its stockholders. Furthermore, both Xcel Southwest Transmission and Xcel Transmission Development assert that they have implemented the necessary procedures to analyze the market in order to obtain the best rates at the lowest cost available.²⁴

III. Notices of Filing, Interventions, and Protests

13. Notice of Xcel Southwest Transmission's and Xcel Transmission Development's applications were published in the *Federal Register*, 79 Fed. Reg. 66,709 (2014), with interventions and protests due on or before November 21, 2014. Notice of Xcel Southwest Transmission's and Xcel Transmission Development's supplemental filings were published in the *Federal Register*, 80 Fed. Reg. 5741 (2015), with interventions and comments due on or before February 5, 2015. None was filed.

IV. Discussion

14. FPA section 204(a) provides that requests for authorization to issue securities or to assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service; and (2) is reasonably necessary or appropriate for such purposes.²⁵

15. Typically, under FPA section 204, the Commission utilizes an interest coverage calculation in order to determine whether the undertaking "will not impair [a public

²³ Xcel Southwest Transmission Application at 8; Xcel Transmission Development Application at 8.

²⁴ Xcel Southwest Transmission Application at 9; Xcel Transmission Development Application at 9.

²⁵ 16 U.S.C. § 824c(a) (2012).

utility's] ability to perform" service as a public utility.²⁶ And, typically, the Commission bases its finding that a proposed issuance of securities will not impair an applicant's ability to perform service as a public utility upon the applicant's demonstration that it will have an interest coverage ratio that is 2.0 or higher.²⁷

16. Xcel Southwest Transmission and Xcel Transmission Development each filed, as Exhibits C, D, and E, actual and *pro forma* financial statements as of and for the 12-month period ending June 30, 2014. However, Xcel Southwest Transmission and Xcel Transmission Development state that they are newly-formed entities formed in May 2014; therefore the financial statements included with their applications include projections. Xcel Southwest Transmission and Xcel Transmission Development state that during their pre-commercial stage of operation, they may not be able to meet the Commission's interest coverage ratio benchmark.²⁸

17. Xcel Southwest Transmission and Xcel Transmission Development request that the Commission find that their formula rates provide a basis to conclude that they each may reasonably be expected to service their proposed debt securities without impairing their ability to provide service as a public utility. Xcel Southwest Transmission and Xcel Transmission Development state that under their respective formula rates, they will each be able to track and recover the costs of their respective investments in transmission facilities, including operation and maintenance expenses, depreciation and amortization expense, interest expense and financing costs, as well as other prudently-incurred costs related to their respective transmission facilities. The formula rates also authorize both applicants to recover the actual costs of debt.²⁹ In addition, Xcel Southwest Transmission and Xcel Transmission Development state that there are other provisions under each

²⁶ *Id.*; see, e.g., *Mississippi Power Co.*, 145 FERC ¶ 61,218, at P 19 (2013); *Transource Missouri, LLC*, 145 FERC ¶ 61,146, at P 19 (2013) (*Transource Missouri*).

²⁷ *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (stating that "this screen is a mid-way number in a range that has been used by lenders and borrowers and provides a buffer against unforeseen, adverse financial events that might impair Startrans IO's ability to perform as a public utility").

²⁸ Xcel Southwest Transmission Supplement at 3; Xcel Transmission Development Supplement at 3.

²⁹ See Xcel Southwest Transmission Supplement at 5; Xcel Transmission Development Supplement at 5.

formula rate that will allow them to calculate long-term debt costs once a project is in service.³⁰

18. We conclude that Xcel Southwest Transmission and Xcel Transmission Development meet the standards of FPA section 204. We find, based on the statements set forth in the applications, that Xcel Southwest Transmission and Xcel Transmission Development have demonstrated that the proposed issuance of securities sought in each application: (1) is for some lawful object within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair the ability of either Xcel Southwest Transmission or Xcel Transmission Development to perform that service; and (2) is reasonably necessary or appropriate for such purposes.

19. Xcel Southwest Transmission's and Xcel Transmission Development's formula rates provide for recovery of all prudently-incurred costs to develop or own a project through SPP's or MISO's Order No. 1000 competitive solicitation process. If Xcel Southwest Transmission or Xcel Transmission Development pursues other projects³¹ and acquires transmission facilities outside of SPP's or MISO's Order No. 1000 competitive solicitation process, the formula rates will provide for recovery of debt service costs. The formula rates provide us an alternative basis to conclude that Xcel Southwest Transmission and Xcel Transmission Development may each reasonably be expected to service their proposed debt securities without impairing their ability to provide service as a public utility.³² If Xcel Southwest Transmission or Xcel Transmission Development is unable to develop a project or acquire existing facilities, neither entity will be able to recover the cost of borrowing through such entity's formula rates. In such case, however, given that definitionally, Xcel Southwest Transmission or Xcel Transmission

³⁰ See Xcel Southwest Transmission Supplement at 5; Xcel Transmission Development Supplement at 5.

³¹ See Xcel Southwest Transmission, Application, Docket No. ER14-2751-000, Exhibit No. XES-100 at 12 (filed Aug. 29, 2014) ("In addition, [Xcel Southwest Transmission] may pursue other projects whose costs would be recovered under the SPP [Tariff]."); Xcel Transmission Development, Application, Docket No. ER14-2752-000, Exhibit No. XET-100 at 14 (filed Aug. 29, 2014) ("In addition, [Xcel Transmission Development] may pursue other projects whose costs would be recovered under the MISO Tariff.").

³² See, e.g., *ITC Great Plains, LLC*, 147 FERC ¶ 61,005, at P 12 (2014); *Transource Missouri*, 145 FERC ¶ 61,146 at PP 21, 23.

Development will not have a project or existing facilities, then neither entity will be able to charge rates for the use of the non-existent facilities and customers will not face rates to recover the costs of such projects or facilities. The issue of whether its inability to recover the cost of borrowing in rates impairs its ability to provide service as a public utility does not arise in this situation.³³

20. We grant the requested authorizations effective as of the date of this order, through March 1, 2017. Finally, we will grant the requested waivers of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

21. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.³⁴ First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the assets and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. Xcel Southwest Transmission and Xcel Transmission Development acknowledge that any long-term debt obligation that they incur pursuant to the authorization requested in the Application will be subject to the restrictions specified in *Westar*, and we will condition our authorizations granted here upon Xcel Southwest Transmission and Xcel Transmission Development abiding by these restrictions.³⁵

The Commission orders:

(A) Xcel Southwest Transmission is hereby authorized to issue short-term and long-term debt securities in an aggregate amount not to exceed \$250 million outstanding at any one time, at the interest rates stated in the body of this order.

³³ See *supra* n.26. In such event, investors rather than ratepayers will be at risk.

³⁴ *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at PP 20-21 (2003) (*Westar*).

³⁵ Xcel Southwest Transmission Application at 7; Xcel Transmission Development Application at 7.

(B) Xcel Transmission Development is hereby authorized to issue short-term and long-term debt securities in an aggregate amount not to exceed \$250 million outstanding at any one time, at the interest rates stated in the body of this order.

(C) The authorizations granted to Xcel Southwest Transmission and Xcel Transmission Development become effective on the date of this order and terminate on March 1, 2017.

(D) The authorizations granted to Xcel Southwest Transmission and Xcel Transmission Development in this order are subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(E) The waivers requested by Xcel Southwest Transmission and Xcel Transmission Development of the Commission's competitive bidding and negotiated placement requirements as applicable to long-term debt under 18 C.F.R. §§ 34.2(a) and 34.2(c)(1) (2014) are hereby granted.

(F) Xcel Southwest Transmission and Xcel Transmission Development must file a Report of Securities Issued, under 18 C.F.R. §§ 34.9, 131.43, and 131.50 (2014), no later than 30 days after the sale or placement of the long-term debt securities or the entry into guarantees or assumption of liabilities.

(G) The authorization granted to Xcel Southwest Transmission and Xcel Transmission Development in Ordering Paragraphs (A) and (B) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(H) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.