

155 FERC ¶ 61,327
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services, Inc.

Docket No. ER15-833-000

ORDER GRANTING WAIVER OF AFFILIATE PRICING RULES
UNDER ORDER NOS. 707 AND 707-A

(Issued June 30, 2016)

1. On January 8, 2015, Xcel Energy Services Inc. (XES), filed on behalf of Xcel Energy Transmission Holding Company, LLC (Xcel Holdings) a petition for waiver of the affiliate pricing rules established under Order Nos. 707 and 707-A.¹ Specifically, Xcel Holdings requests waiver, under section 35.44(b)(2) of the Commission’s affiliate transaction pricing rules,² in order to allow Xcel Holdings to allocate the costs of non-power goods and services to its franchised public utility affiliates on an “at cost” standard, where the non-power goods and services were supplied by a centralized service company affiliate at cost to the utility affiliates, but billed to Xcel Holdings. In this order, we grant the requested waiver.

I. Background

2. Xcel Holdings and XES are wholly-owned subsidiaries of Xcel Energy Inc. (Xcel), a public utility holding company under the Public Utility Holding Company Act of 2005 (PUHCA 2005).³ Xcel Energy Transmission Development Company, LLC (XETD) and Xcel Energy Southwest Transmission Company, LLC (XEST) are wholly-owned subsidiaries of Xcel Holdings. Xcel formed Xcel Holdings in April 2014 to facilitate transmission investment under Midcontinent Independent System Operator,

¹*Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, FERC Stats. & Regs. ¶ 31,264, *order on reh’g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 (2008).

² 18 C.F.R. § 35.44(b)(2) (2015).

³ 42 U.S.C. §§ 16451–16463 (2012).

Inc.'s and Southwest Power Pool, Inc.'s Order No. 1000 competitive solicitation processes. Xcel also owns four wholly-owned first tier subsidiaries that are vertically integrated public utility operating utilities under the Federal Power Act: (1) Northern States Power Company (Minnesota); (2) Northern States Power Company (Wisconsin); (3) Southwestern Public Service Company; and (4) Public Service Company of Colorado. Each Xcel operating company provides state jurisdictional retail service subject to cost-based regulation.

3. XES states that it is the centralized service company⁴ for the Xcel holding company system and is subject to the Commission's jurisdiction under PUHCA 2005. XES explains that, prior to PUHCA 2005, XES provided services subject to the Securities and Exchange Commission's "at cost" standard. Further, XES explains that it files a FERC Form No. 60 (annual report of centralized service companies), which details XES's affiliate cost allocation methods, as well as the required accounting information. For purposes of section 35.44 of the Commission's regulations, XES clarifies that the Xcel holding company system is a multi-state holding company.

4. In addition, XES notes that, under separate Commission orders conditionally accepting the XETD⁵ and XEST⁶ transmission formula rates, the Commission reminded both XETD and XEST of their obligations under section 35.44(b)(1) of the Commission's regulations regarding any sales of non-power goods and services among affiliates.⁷

⁴ A centralized service company means "a service company that provides services such as administrative, managerial, financial, accounting, recordkeeping, legal or engineering services, which are sold, furnished, or otherwise provided (typically for a charge) to other companies in the same holding company system. Centralized service companies are different from other service companies that only provide a discrete good or service." 18 C.F.R. § 367.1(a)(7) (2015).

⁵ *Xcel Energy Transmission Development Co., LLC*, 149 FERC ¶ 61,181 (2014).

⁶ *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014).

⁷ Section 35.44(b)(1) specifies that, unless otherwise permitted by Commission rule or order, a franchised public utility that has captive customers or owns or provides transmission service over jurisdictional transmission facilities and that provides non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate must sell them at a price that is the higher of cost or market price. 18 C.F.R. § 35.44(b)(1) (2015).

II. Waiver Request

5. XES explains that most of the non-power goods and services that XEST and XETD receive are and will be provided by XES, a centralized service company. When XES provides such service to just one of Xcel Holdings' subsidiaries, the service is priced at cost and is billed directly to that entity. When XES provides a service that supports both of the Xcel Holdings' subsidiaries, the service is provided at cost and XES either will directly charge Xcel Holdings for that service or will allocate that cost to Xcel Holdings' subsidiaries using allocation methods set forth in an "Appendix A" to each service agreement. In instances where XES does bill Xcel Holdings, Xcel Holdings will then pass through the cost of XES's services by allocating the total costs to the appropriate subsidiaries.

6. For example, XES explains that both XEST and XETD were required by the Commission to submit compliance filings in their respective formula rate and rate protocols proceedings, describing how costs from affiliates are allocated to XEST and XETD. XES states that it has provided the legal and regulatory support needed to submit the compliance filings, using XES employees and assistance from outside suppliers. XES explains that the compliance effort has involved legal and factual issues that are common to both XEST and XETD. Accordingly, XES intends to bill Xcel Holdings for this service and price the service "at cost." XES concludes that, when it allocates the cost of a service directly to XEST and XETD using Appendix A allocation methods, the Commission affiliate pricing rules permit "at cost" pricing, and no waiver of section 35.44(b)(2) is needed. However, XES believes that a waiver of section 5.44(b)(2) is needed whenever Xcel Holdings (which XES describes as a non-utility affiliate under the Commission's affiliate pricing rules) passes the cost of these services through to the appropriate subsidiaries.⁸

7. XES argues that the fact that the accounting occurs in two steps (from XES to Xcel Holdings to its subsidiaries), rather than one step (from XES directly to Xcel Holdings' subsidiaries), does not change the substance of the transaction. Thus, XES asserts that it is logical that the pricing from Xcel Holdings to XEST and XETD should be "at cost" just as if the transactions were directly between XES and XEST and XETD.

⁸ XES explains that this might involve a service provided only to XEST and XETD, both considered to be franchised public utilities. It also may involve a service or function performed on behalf of all Xcel Holdings' subsidiaries, including Xcel Energy Western Transmission Company, LLC, which currently is not a franchised public utility because it is not yet a "public utility" under the Federal Power Act. XES Transmittal at 9.

8. XES contends that its two-step process to assign the costs under the affiliate transactions poses no risk of cross-subsidization. First, XES states that, since it is a centralized service company, XES is subject to the Commission's Uniform System of Accounts for Centralized Service Companies and each year XES submits a FERC Form No. 60.⁹ XES believes that applicable Commission rules pertaining to centralized service companies adequately address any cross-subsidization concerns.

9. Second, XES explains that Xcel Holdings was established to own transmission-only companies providing service at cost-based formula rates. Under the related formula rate protocols, XEST and XETD must file with the Commission and provide to all interested parties an annual update that provides details about the costs included in their respective formula rates. XES argues that XEST's and XETD's protocols will give all interested parties the ability to evaluate the basis and reasonableness of any sub-allocation of costs from Xcel Holdings to either XEST or XETD, thus ensuring that captive customers are protected from cross-subsidization.

10. Third, XES asserts that requiring Xcel Holdings to apply a market price standard when allocating costs under covered transactions is unnecessary, burdensome, and disruptive. XES states that the Commission allows a centralized service company to provide services at cost in part because the "at cost" pricing standard for transactions for non-power goods and services from centralized service companies to franchised public utilities with captive customers "benefits ratepayers through economies of scale, and eliminates the speculative task of defining a market price in these instances."¹⁰

⁹ *Id.* at 13 (citing *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 84 (2005), *order on reh'g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, *order on reh'g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) ("The annual financial reporting requirement for service companies in FERC Form No. 60, which is based on a truncated version of SEC Form U-13-60, will provide transparency and will enable the Commission and others to better monitor for cross-subsidization"))).

¹⁰ *Id.* at 14 (citing Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 72, *order on reh'g*, Order No. 707-A, FERC Stats. & Regs. ¶ 31,272 at PP 24, 26 and quoting Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 169 ("Further, we recognize that it is frequently difficult to define the market value of the specialized services provided by centralized service companies. Accordingly, the Commission will apply a rebuttable presumption that costs incurred under 'at cost' pricing of such services are reasonable"))).

11. Finally, XES contends that denying the requested waiver would prevent Xcel Holdings from using a straightforward approach in assignment of pass-through costs. Instead, Xcel Holdings would be forced to develop and implement a process to measure the market value of the centralized service company services. XES argues that such market-based reviews would either: (1) confirm that service is being provided at or below the “market” price, which would become the charge to the Xcel Holdings subsidiaries; or (2) indicate that the price of the services is above market. In the latter case, XES states that the price of the services would be reduced to match the “market,” thus providing services to Xcel Holdings’ subsidiaries at a price lower than the price XES charges to any other members of the holding company system. XES stresses that lowering its prices under these circumstances would materially disrupt how services are provided to all members of the holding company system and how those services are priced.

III. Notice of Filing

12. Notice of XES’s filing was published in the *Federal Register*, 80 Fed. Reg. 2689 (2015), with interventions and protests due on or before January 29, 2015. None was filed.

IV. Discussion

13. Section 35.44(b)(2) of the Commission’s regulations specifies that, unless otherwise permitted by a Commission rule or order, and except as permitted by sections 35.44(b)(3) and 35.44(b)(4),¹¹ a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or non-utility affiliate at a price above market.¹² Section 35.44(b)(3) provides that a franchised public utility that has captive customers, or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.¹³

¹¹ 18 C.F.R. §§ 35.44(b)(3), 35.44(b)(4) (2015). Section 35.44(b)(4) applies only to a company in a single-state holding company system, and therefore, does not apply to the Xcel holding company system.

¹² 18 C.F.R. § 35.44(b)(2) (2015).

¹³ 18 C.F.R. § 35.44(b)(3) (2015).

14. The affiliate pricing rules in Order Nos. 707 and 707-A were issued to ensure that customers of franchised public utilities do not inappropriately cross-subsidize the activities of non-regulated affiliates, and are not financially harmed as a result of affiliate transactions and activities. However, the affiliate pricing rules are subject to waiver if transmission customers are adequately protected against inappropriate cross-subsidization.

15. Based on the information provided by XES, we will grant the requested waiver of the affiliate restrictions under section 35.44(b)(2) for the specific transactions described in XES's waiver request and in the body of this order.¹⁴ The Commission finds that, even with the requested waiver, there is no potential for cross-subsidization of non-regulated affiliates by regulated operating companies. Similar to the circumstances in *NUSCO*,¹⁵ where the Commission previously granted waiver, we find that, for the specific transactions described in XES's waiver request, Xcel Holdings is not acquiring the relevant services for its own use or to service non-utility affiliates. Rather, Xcel Holdings is merely serving as a pass-through entity and both is billed and bills for services at the same aggregate costs. Therefore, Xcel Holdings is not in a position to benefit from the acquisition of these goods or services from XES at below market prices. In fact, Xcel Holdings only serves as an accounting intermediary and provides goods or services that it procures from XES at cost. Thus, we agree with XES that there is no opportunity for inappropriate cross-subsidization.

16. Finally, the waiver granted herein is based on the specific facts and representations made by XES. To the extent that there is any material change in circumstances that would reflect a departure from the facts and representations that we have relied upon in granting the requested waiver, XES will be required to inform the Commission within 30 days of any such change.

The Commission orders:

(A) XES's request for waiver of the affiliate restrictions under section 35.44(b)(2) of the Commission's regulations is hereby granted for the transactions identified in the body of this order, as discussed in the body of this order.

¹⁴ We note that our action does not preclude complaints in specific instances alleging that an at-cost price for a specific service supplied to a franchised public utility exceeds the market price and leads to effects on rates that are unjust and unreasonable.

¹⁵ *Northeast Utils. Serv. Co.*, 141 FERC ¶ 61,016 (2012) (*NUSCO*).

(B) XES must inform the Commission within 30 days of any material change in circumstances that would reflect a departure from the facts, policies, and procedures the Commission relied upon in granting the waiver herein.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.