

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 Operating Companies

Docket Nos. ER04-419-001  
ER04-419-004  
ER04-419-005

ORDER ON REHEARINGS

(Issued October 26, 2004)

1. Xcel Energy Services, Inc. (XES), on behalf of the Xcel Energy Operating Companies,<sup>1</sup> requests rehearing of two orders<sup>2</sup> denying proposed modifications to XES' Order No. 2003 and 2003-A<sup>3</sup> compliance filings. XES' rehearing requests assert that its proposed modifications to the *pro forma* Large Generator Interconnection Procedures (LGIP) are necessary to accommodate a Colorado-mandated resource solicitation and are consistent with or superior to the *pro forma* LGIP. XES also offers to further modify its filing to address the Commission's concerns.

2. In this order, we accept the further modifications to the *pro forma* LGIP to accommodate the Colorado-mandated resource solicitation as being consistent with or superior to the Commission's *pro forma* LGIP, subject to the conditions discussed in this order. We also deny rehearing of XES' request to incorporate the Western Electricity

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<sup>1</sup> This filing would apply only to requests to interconnect with certain XES affiliates, namely the Public Service Company of Colorado (PSCo) and Cheyenne Light, Fuel and Power Company (Cheyenne).

<sup>2</sup> The two orders are: *Xcel Energy Operating Co.*, 106 FERC ¶ 61,260 (2004) (March 19 Order) and *Xcel Energy Operating Co.*, 107 FERC ¶ 61,313 (2004) (June 25 Order).

<sup>3</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004) (Order No. 2003-A), *reh'g pending*; *see also Notice Clarifying Compliance Procedures*, 106 FERC ¶ 61,009 (2004).

Coordinating Council (WECC) Reliability Management System (RMS) standards into its tariff by reference. XES' other requests for rehearing of the June 25 Order are denied.<sup>4</sup> This order benefits customers by ensuring just and reasonable terms, conditions, and rates for interconnection service.

## **I. Background**

### **A. Order No. 2003**

3. In Order No. 2003, pursuant to its responsibility under sections 205 and 206 of the Federal Power Act (FPA)<sup>5</sup> to remedy undue discrimination, the Commission required all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their open access transmission tariffs (OATT) a *pro forma* LGIP and a *pro forma* Large Generator Interconnection Agreement (LGIA). In order to achieve greater standardization of interconnection terms and conditions, Order No. 2003 required such public utilities to file revised OATTs containing the *pro forma* LGIP and LGIA by January 20, 2004.<sup>6</sup> The Commission left it to Transmission Providers<sup>7</sup> to justify any variations based on regional reliability requirements.<sup>8</sup> Transmission Providers were required to submit these regional variations to the Commission for approval referring to the relevant reliability standard.

4. Transmission Providers are also permitted to seek variations from the *pro forma* LGIP and LGIA not made in response to recognized regional reliability requirements. These requests for variation are FPA section 205 filings (rather than compliance filings)

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<sup>4</sup> We do not address XES' request for rehearing of the March 19 Order since XES states in its July 25 request for rehearing that it would withdraw its request for rehearing of the March 19 Order should the Commission allow the more limited variations proposed in section 4.2.2 to be placed into effect on April 26, 2004.

<sup>5</sup> 16 U.S.C. §§ 824d, 824e (2000).

<sup>6</sup> See *Notice Clarifying Compliance Procedures*, *supra* n. 3 (clarifying that Commission will deem OATTs of non-independent public utilities to be revised as of January 20, 2004).

<sup>7</sup> The "Transmission Provider" is the entity with which the Generating Facility is interconnecting. The term "Generating Facility" means the specific device (having a capacity of more than 20 megawatts) for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the "Interconnection Customer."

<sup>8</sup> See Order No. 2003 at P 822-24, 826.

and will be approved only if they are demonstrated to be "consistent with or superior to" the terms of the *pro forma* LGIA and LGIP.<sup>9</sup>

### **B. Colorado State Resource Solicitation Process**

5. Colorado's least cost resource solicitation program<sup>10</sup> requires Load Serving Entities (LSEs or "soliciting entities")<sup>11</sup> to periodically file plans to develop new generation to meet forecasted increases in their native load. The soliciting entity is required to develop an estimate of its future needs and submit that estimate to the state for approval every four years. After acceptance by the state of a soliciting entity's estimate, Colorado's rules require that the soliciting entity issue a request for proposals to meet its projected energy needs.

6. Upon receiving the bids, the soliciting entity first determines which bids meet certain non-price criteria and then determines fixed and variable generation costs for the bids. The soliciting entity is also responsible for determining interconnection and transmission upgrade costs for the bids.

### **C. XES' Proposed Modifications to the *Pro Forma* LGIP**

7. The *pro forma* LGIP requires each Interconnection Customer to file a separate Interconnection Request, which is then given an individual queue position based on the order in which the Interconnection Request is received. Interconnection Requests are then studied based on their position in the queue. Queue position also dictates cost assignment and may result in certain projects having the opportunity to take advantage of any available transmission capacity.

8. Section 4.2 of the *pro forma* LGIP states that the Transmission Provider, at its option, may study Interconnection Requests serially or in clusters for the purpose of the Interconnection System Impact Study. In a cluster, all Interconnection Requests received within a period not to exceed one hundred and eighty days (Queue Cluster Window) are studied together. Section 7.4 of the *pro forma* LGIP requires the Transmission Provider to use reasonable efforts to complete the System Impact Study within 90 days of the close

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<sup>9</sup> *Id.* at P 825.

<sup>10</sup> See Colo. Code Regs. § 723-3, Rule 3607(c)(II) (2003).

<sup>11</sup> XES states that its subsidiary, PSCo, is one of the two LSEs subject to Colorado's resource solicitation rules. Aquila Networks is the other.

of the Queue Cluster Window.<sup>12</sup> Section 6 of the *pro forma* LGIP gives the Transmission Provider 45 days to complete the Interconnection Feasibility Study, but does not normally allow the Transmission Provider to cluster multiple Interconnection Feasibility Studies.

9. Thus, Order Nos. 2003 and 2003-A allow a Transmission Provider to simultaneously conduct a single Interconnection System Impact Study to study all Interconnection Requests filed within the Queue Cluster Window. If it studies the Interconnection Requests serially, then the Transmission Provider is required to assume all higher-queued projects will be constructed. Likewise, if the Transmission Provider elects to study the Interconnection Requests in a cluster, it is required to assume that all of the projects within the Queue Cluster Window will be constructed.

10. In its Order No. 2003 and 2003-A compliance filings, XES asserted that several modifications to the queuing procedures in the LGIP are needed in order to accommodate the Colorado resource solicitation. Without these changes, XES argued, it will be unable to accurately determine the cost of interconnecting each project. According to XES, PSCo's transmission arm must be allowed "to study the interconnection and network transmission facilities required to serve various portfolios of generation plant that might actually be constructed to serve the LSE's ... needs, rather than studying all of the transmission facilities that would be required if all the bidding generators were assumed to be constructed."<sup>13</sup>

11. Fundamentally, XES proposes to allow a soliciting entity (in this case, the Resource Acquisition and Bidding arm of PSCo), upon receiving resource solicitation bids,<sup>14</sup> to request its own position in the interconnection queue as agent for the bidders participating in the solicitation. With a single queue position for the soliciting entity, PSCo's transmission arm would perform clustered Feasibility and System Impact Studies on combinations (portfolios) of bids and determine interconnection and transmission system upgrade costs for each portfolio.<sup>15</sup>

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<sup>12</sup> See Order No. 2003 at P 153-6.

<sup>13</sup> See XES' April 26 Filing, Affidavit of Sandra L. Johnson at 5.

<sup>14</sup> See XES' January 20, 2004 filing in Docket No. ER04-419-000. Resource Solicitation Process means any process authorized or required by Applicable Laws and Regulations for the acquisition of Network Resources by a Distribution Owner.

<sup>15</sup> See Attachments 2-A and 2-B of XES' April 26, 2004 compliance filing in Docket No. ER04-419-002.

12. After receiving the studies, the soliciting entity selects one of the studied portfolios before the start of the Interconnection Facility Study. Before completion of the Interconnection Facilities Study, the soliciting entity may change which Interconnection Customers are included in the portfolio. Ultimately, the soliciting entity's queue position would contain only the portfolio of projects chosen as a result of the solicitation.<sup>16</sup>

#### **D. Prior Commission Orders**

13. Twice previously the Commission rejected XES' proposed modifications. The Commission stated that, while it was sympathetic to XES' need to follow state law, it could not allow XES to adopt modifications to its OATT with anti-competitive effects and, therefore, found that XES' proposed modifications were not consistent with or superior to the *pro forma* LGIP. These prior orders are discussed in detail below.

##### **1. March 19 Order**

14. The March 19 Order rejected XES' January 20, 2004 filing to comply with Order No. 2003. In that filing, XES proposed to modify the *pro forma* LGIP to accommodate the Colorado state resource solicitation program. XES specifically proposed a method of grouping Interconnection Requests less formal than the cluster study process envisioned by the *pro forma* LGIP, which employs established start and stop dates to determine the set of Interconnection Requests to be studied. XES also proposed to study Interconnection Requests out of queue order. XES argued that while it submitted comments during the Order No. 2003 rulemaking process on the need to provide Transmission Providers flexibility to deal with various state resource solicitation processes and competitive bidding programs, the *pro forma* LGIP and LGIA did not include any language specifically addressing the state resource planning or competitive bidding process and that it needed the changes to comply with state law.<sup>17</sup>

15. The March 19 Order noted that XES' proposal required that Interconnection Customers bidding for, but not receiving a resource solicitation contract drop out of the queue. Second, the Commission found that the proposal appeared to allow projects submitted as part of the state process to jump ahead of other projects in the queue whose Interconnection Requests were filed first. We found that XES' proposal thus could unduly discriminate against Interconnection Customers that are not part of the state-sponsored bidding process. Therefore, the Commission rejected the proposed variations as not being shown to be consistent with or superior to the *pro forma* LGIP.<sup>18</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> XES transmittal letter at 8.

<sup>18</sup> See March 19 Order at P 22-24, 27.

## 2. June 25 Order

16. The June 25 Order rejected XES' April 26, 2004 filing to comply with Order No. 2003-A, which included XES' second attempt to justify modifications to accommodate its state solicitation process. In that filing, XES proposed to create an optional cluster study under a new section 4.2.2 of the LGIP. The optional cluster study would allow the Transmission Provider to analyze combinations of bidders to provide interconnection and transmission system upgrade cost information required for the soliciting entity to determine the overall least cost portfolio of resources pursuant to Colorado's rules while preserving the interconnection queue priority established in the LGIP.<sup>19</sup> XES' proposal again required that losing bidders be ejected from the queue. Finally, XES requested that if questions or concerns are raised by new section 4.2.2, that the filing be accepted subject to refund, a brief suspension period and the outcome of a technical conference.<sup>20</sup>

17. The June 25 Order found that XES had not explained how a generator seeking to interconnect under its proposal would be treated in a manner consistent with or superior to a generator seeking to interconnect under the *pro forma* LGIP. Specifically, we pointed to XES' proposal to require Interconnection Customers bidding for but not receiving a resource planning contract to drop out of the queue.<sup>21</sup> In the Commission's view, XES' proposal required a generator to choose between participating in the potentially lucrative state resource planning process, but with no guarantee of a queue spot, and foregoing the state resource planning process in exchange for the certainty of a queue position.<sup>22</sup> While we agreed that the state bidding process necessarily entails some business risk, XES' proposal unnecessarily raised the stakes by making it an all-or-nothing gamble. We also stated our concern that the proposal would allow a vertically integrated soliciting entity, such as XES, to receive valuable information from multiple interconnection studies that could aid it in discriminating in favor of its own generation, notwithstanding XES' insistence that it will follow the provisions of Order No. 2004.<sup>23</sup>

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<sup>19</sup> April 26 Transmittal Letter at 12.

<sup>20</sup> *Id.* at 5.

<sup>21</sup> June 25 Order at P 22.

<sup>22</sup> *Id.* at P 25.

<sup>23</sup> *Id.* at P 16 (*citing Standards of Conduct for Transmission Providers*, FERC Stats. & Regs. Vol. III, Regulation Preambles ¶ 31,155 (2003), *Order No. 2004*, 68 Fed. Reg. 69, 134 (2003), *reh'g pending*).

## **II. XES' Requests for Rehearing and Proposed Modifications**

### **A. July 26 Rehearing Request**

18. On July 26, 2004, XES submitted a request for rehearing of the June 25 Order in Docket No. ER04-419-004 (July 26 Rehearing Request). XES argues that the Commission engaged in arbitrary and capricious decision-making by ignoring the record and rejecting the proposed section 4.2.2.<sup>24</sup> XES contends that the proposed section 4.2.2 should be accepted because it is consistent with and superior to the Commission's *pro forma* LGIP and that regional differences require a departure from the *pro forma*.<sup>25</sup> In XES' view, the Transmission Provider is responding to a soliciting entity, and acting both as an intermediary to collect requests for individual generator proposals and an "agent" for a "single" multi-injection-point interconnection request. The soliciting entity is essentially requesting cost studies for interconnecting an identified amount of generation.<sup>26</sup> XES further requests rehearing of our decision not to allow it to incorporate WECC RMS standards into its tariff by reference. It cites *Allegheny Energy Service Corp.*, 94 FERC ¶ 61,308 (2001), as an example where the Commission accepted the incorporation by reference of regional standards. Finally, XES argues that the Commission's rejection of its proposed modifications unlawfully infringes on Colorado's authority over power plant construction and questions whether the Commission has the statutory authority to disregard Colorado's resource solicitation process.

### **B. September 27 Rehearing Request**

19. On September 27, 2004, XES submitted a rehearing request of the Director Letter Order accepting its July 26, 2004 compliance filing in Docket No. ER04-419-003,<sup>27</sup> stating that XES is concerned that if it does not make such a request its July 26, 2004 request for rehearing could be viewed as moot once the August 27, 2004 Director Letter Order became final.

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<sup>24</sup> July 26 Rehearing Request at 4.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 9.

<sup>27</sup> On July 26, 2004, XES submitted a filing to comply with Order Nos. 2003 and 2003-A and the June 25 Order. This filing included tariff sheets setting forth the *pro forma* LGIP and LGIA with no variations to section 4.2. The July 26 compliance filing was accepted for filing, in a Director Letter Order dated August 27, 2004, to be effective April 26, 2004.

### **C. XES' Most Recent Proposal**

20. In its July 26 Rehearing Request, XES agrees to strike the following sentence from section 4.2.2: "[t]he load serving entity must withdraw any Interconnection Requests no longer being considered for inclusion in the Resource Solicitation Process." XES states that it believes that most losing bidders will withdraw from the interconnection queue to avoid the expense of studies for generation projects that will never be constructed, and that therefore, it does not believe that making this change will result in queue management problems.<sup>28</sup>

21. Regarding the Commission's information sharing concerns, XES agrees to modify the proposed section 4.2.2 to indicate that the PSCo transmission arm will post the cluster study results on its Open Access Same Time Information System (OASIS) when the results are provided to the resource acquisition arm.<sup>29</sup>

## **III. Discussion**

### **A. XES' Most Recent Proposal**

22. The Commission accepts XES' July 26 proposed modifications as consistent with or superior to the *pro forma* tariff, subject to conditions discussed below. XES' proposed modifications to the LGIP when revised to incorporate the conditions in this order represent a reasonable approach to complying with a state-mandated resource solicitation process. It offers an innovative approach to queue management that will facilitate least cost planning without disadvantaging other generators in the queue.

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<sup>28</sup> XES' July 26 request for rehearing at 4 and n.5.

<sup>29</sup> *Id.* at 10-11 and n.13.

23. Increasing customer choice and ensuring access to reasonably priced power has been a long-standing Commission goal.<sup>30</sup> XES' proposal will allow a soliciting entity to occupy a position in the queue and fill that position with the portfolio of new generation that is the best value for Colorado customers. Allowing XES to conduct optional cluster studies will provide XES the ability to more accurately evaluate the costs of each portfolio.

24. Order Nos. 2003 and 2003-A do not address the concept of allowing load to reserve a queue position. However, subject to the conditions below, the Commission believes that XES' latest proposal meets the consistent with or superior to standard under Order No. 2003 for states that have mandated resource planning programs. One of the major goals behind standardizing the interconnection process was to further the development of fully competitive bulk power markets.<sup>31</sup> The Commission believes that XES' latest proposal fulfills this goal, while not disadvantaging Interconnection Customers who wish to interconnect regardless of the outcome of the resource solicitation process.

25. While the Commission accepts XES' stipulated modifications in its July 26 Rehearing Request as consistent with or superior to the *pro forma*, we condition this acceptance on XES making certain changes to its proposed section 4.2.2 within 30 days of the issuance of this order, as discussed below.

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<sup>30</sup> As we stated in Order No. 888, "[t]he Commission's goal is to remove impediments to competition in the wholesale bulk power marketplace and to bring more efficient, lower cost power to the Nation's electricity consumers." Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶31,036 at 31,632 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (*TAPS v. FERC*).

<sup>31</sup> See, e.g., Order No. 2003 at P 6.

## **B. Conditions of Acceptance**

### **1. Insulating Other Interconnection Customers from the Effect of the Resource Solicitation Process**

26. The Commission's major concern is that the consideration being given to the soliciting entity and participants in the resource solicitation process not spill over and harm other Interconnection Customers in the queue. While XES' proposal to allow an soliciting entity to reserve a queue position is consistent with or superior to the *pro forma* LGIP, XES must not disadvantage or delay other Interconnection Requests not involved in the solicitation.

27. We are concerned about the following sentence in proposed section 4.2.2: "After receipt of these studies, the load serving entity must select one of the studied combinations prior to the start of any Interconnection Facility Study associated with the Resource Solicitation Process." This language may be interpreted to provide XES with extended timeframes that go beyond those granted in Order Nos. 2003 and 2003-A. Our approval of XES' proposal is conditioned on XES meeting the milestones in Order Nos. 2003 and 2003-A, so that lower queued (*i.e.*, holding a queue position later than the queue position reserved by the soliciting entity) Interconnection Customers will not be disadvantaged. XES must be able to study bids associated with the resource solicitation and Interconnection Requests not associated with the resource solicitation within the required timeframes. To this end, the Commission will require XES to clarify that Interconnection Requests not associated with the resource solicitation will be insulated from the effects of XES' processing of the solicitation bids.

28. We are also concerned with the following sentence in proposed section 4.2.2: "Prior to the completion of the Interconnection Facilities Study of all of the components of the selected combination, the load serving entity may replace components...." If XES replaces a project in its selected portfolio, such replacement may constitute a Material Modification as defined in the *pro forma* LGIP, which would require the soliciting entity to submit a new Interconnection Request and reserve a new position at the end of the queue.<sup>32</sup> In such circumstances, we will not require that the soliciting entity's queue position change, but will require that the soliciting entity hold harmless lower queued Interconnection Customers from the effects of such Material Modifications. XES must modify its proposal accordingly.<sup>33</sup>

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<sup>32</sup> The *pro forma* LGIP defines Material Modifications as "those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date."

<sup>33</sup> See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,027 at P 122 (2004).

**2. Right of Interconnection Customers to Submit a Separate Interconnection Request for the Same Interconnection Project**

29. The Commission will also require XES to clarify the right of an Interconnection Customer to maintain a spot in the queue independent of its involvement in the solicitation.<sup>34</sup>

30. A bidder into the resource solicitation must be allowed to maintain a queue position under its own name for the same project that is bid into the solicitation until the results of the resource solicitation are released. At that point, a single interconnection project may only have one place in the interconnection queue. This will allow the Interconnection Customer to make a business decision about whether to go forward with its project even if it loses the resource solicitation.

31. Participating in the state solicitation using the soliciting entity's queue position, while keeping its own queue position for the same project should it lose the solicitation, is not a free ride for the Interconnection Customer. If it wishes to reserve a queue position outside the resource solicitation, the Interconnection Customer must separately meet Order No. 2003 milestones and payments so as not to impede the progress of lower queued Interconnection Customers.<sup>35</sup> This means that the Interconnection Customer must meet all milestones, including paying interconnection study costs, associated with its non-solicitation Interconnection Request, as well as any costs associated with its bid into the resource solicitation. This will better ensure that Interconnection Customers willing to make the financial commitment to complete the interconnection process will remain in the queue.

32. Any extra expense to both participate in the resource solicitation and guarantee a queue spot should it not win the solicitation is simply a cost of doing business for the Interconnection Customer. If it judges that its project is viable outside the solicitation, it should not be required to waste time awaiting the outcome of the solicitation to begin or continue the interconnection process. Similarly, the Interconnection Customer should not be denied the opportunity to bid into the resource solicitation simply because it wishes to build its project whether or not it wins the solicitation.

33. We also clarify that an Interconnection Customer competing in the resource solicitation has no right to a position in the queue (short of submitting a separate Interconnection Request) if it is not selected by the soliciting entity. However, XES may

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<sup>34</sup> See June 25 Order at P 25.

<sup>35</sup> We note that the Transmission Provider already has the obligation to use any existing interconnection studies "to the extent practicable in performing all studies." See also sections 6.3, 7.4 and 8.3 of the *pro forma* LGIP.

not prohibit that Interconnection Customer from submitting, at any time, an Interconnection Request completely separate from the Interconnection Customer's involvement in the solicitation. The Interconnection Customer's non-solicitation Interconnection Request must be handled by XES as a stand-alone request and the Interconnection Customer is to be treated no differently simply because it is also bidding into the solicitation. Simply put, an Interconnection Customer may bid in the resource solicitation, may submit an Interconnection Request outside the solicitation, or it may do both.

34. Once the solicitation's outcome is known - as to that project - the bidder's project may only have one queue position. If the Interconnection Customer's project loses the resource solicitation, that project will be ejected from the soliciting entity's queue position. If the Interconnection Customer's project ultimately wins, the Interconnection Customer's project may occupy only one queue spot. XES must propose language to this effect in its compliance filing.

### **3. Application**

35. We note that Holy Cross Electric Association, Inc. and Yampa Valley Electric Association, Inc. (Holy Cross/Yampa) have expressed concern that they also be able to avail themselves of the optional cluster study.<sup>36</sup> We note that XES already agreed in its July 26 Rehearing Request that cooperatives such as Holy Cross/Yampa would be allowed to conduct their own resource solicitations.<sup>37</sup> We will also require XES to modify its proposal to allow any entity (whether a cooperative, an industrial customer or a municipal customer) conducting a solicitation for a Commission-jurisdictional interconnection, whether state-sanctioned or not, to take advantage of the same flexibility we are allowing for LSEs. Similarly, the previous discussion regarding the ability of bidders to pursue development of their projects on a stand-alone basis as well as to pursue solicitation opportunities applies to any solicitation.

### **4. Information Sharing and Affiliate Abuse Concerns**

36. We accept XES' proposed modifications to section 4.2.2 requiring that any information shared by XES' transmission planning arm with its generation arm be posted on its OASIS site and direct XES to file revised tariff language incorporating this change. We reiterate that XES is still required to comply with Order No. 2004.

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<sup>36</sup> See May 17, 2004 Protest by Holy Cross/Yampa at 5.

<sup>37</sup> See July 26 Rehearing Request, n.15 and Attachment 3. We deny XES' rehearing request to accept its June 1, 2004 answer as moot given that XES has provided this information in its July 26 Rehearing Request.

37. We encourage open solicitations for resource planning but are concerned with the potential for affiliate abuse when a vertically integrated utility conducts the solicitation. We remind XES that we will address any concerns regarding affiliate abuse that may arise from a solicitation when an affiliated power purchase agreement is filed here.<sup>38</sup>

## **5. Integrity of the Interconnection Queue**

38. One of the major concerns expressed by XES from the beginning of this proceeding was the need to limit the number of "zombie projects" (*i.e.*, projects for which an Interconnection Request has been filed, but that have little or no chance of actually getting built) inhabiting its queue and to minimize the number of restudies that will be necessary. XES now believes that "[a]s a practical matter . . . most losing bidders will withdraw themselves from the interconnection queue to avoid the expense of System Impact Studies and/or Facilities Studies."<sup>39</sup>

39. By accepting XES' proposal, we expect to minimize the need for XES to perform restudies, because the modification permits XES to study the projects participating in the solicitation and within the soliciting entity's queue position based on an assumption that not all solicitation bids will prevail as to that queue position. Also, because the bids will occupy a single queue position reserved by the soliciting entity, XES will avoid the need for extensive iterative studies. This increased efficiency will benefit both generators participating in the solicitation and any lower queued generators that will not participate in the solicitation.

### **C. XES' Requests for Rehearing**

#### **1. Incorporating WECC Regulations by Reference**

40. In its July 26 request for rehearing, XES requests that the Commission reconsider its refusal to allow XES to incorporate WECC RMS rules into the LGIA by reference. We had directed XES to attach the WECC RMS rules verbatim as an attachment to the LGIA in our June 25 Order,<sup>40</sup> which it included as Attachment 7 in its June 26 compliance filing.

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<sup>38</sup> See *Ameren Energy Generating Co., et al.*, 108 FERC ¶ 61,081 (2004) and *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 (2004). See also *Southern California Edison Co. on behalf of Mountainview Power Co. LLC*, 106 FERC ¶ 61,183 (2004), *reh'g pending*; *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991).

<sup>39</sup> XES' July 26 Rehearing Request at 13.

<sup>40</sup> June 25 Order at P 29.

41. We deny XES' request for rehearing. As the Commission stated in its June 25 Order, a Transmission Provider may include relevant reliability rules as a verbatim attachment to the LGIA.<sup>41</sup> The terms and conditions of service provided by XES are required to be on file with the Commission and XES' proposal to incorporate the rules by reference does not meet this requirement.<sup>42</sup> We note that these rules were accepted by the Commission when it accepted XES' June 26 compliance filing.

42. XES cites *Allegheny Energy Service Corp.* as support for its assertion that the Commission has allowed incorporation by reference of regional or national standards into an OATT.<sup>43</sup> In *Allegheny*, the Allegheny Energy sought to modify its tariff to incorporate by reference the North American Electric Reliability Council's 'tagging' rules. The Commission found that "because the information [being incorporated by reference] is the same as that customers are already required to provide under their OATTs, our decision [to allow incorporation by reference] does not violate the requirements of the filed rate doctrine."<sup>44</sup> These rules are not already required to be provided under the OATT. Thus, we disagree with XES that prior Commission precedent supports its request to incorporate the WECC RMS rules by reference.

## 2. Other Issues

43. XES argues that the FPA vests states with the exclusive jurisdiction over how state-jurisdictional soliciting entities select generating and transmission facilities.<sup>45</sup> However, on the issue of generator interconnection as a component of jurisdictional transmission service, federal law preempts state law. Therefore we reject XES' arguments that the Commission is required to modify an OATT in response to state legislative action. The Commission's decision to allow XES to modify its OATT to accommodate the Colorado program, on terms and conditions fair to all Interconnection Customers, is based on XES meeting the "consistent with or superior to" standard for variations found in Order No. 2003.

44. XES also requests that we grant rehearing on our finding that the version of section 4.2.2 it proposed in its Order No. 2003-A compliance filing is not consistent with or superior to the *pro forma* LGIP. We deny this request. Nothing in XES' request for rehearing changes our finding that its April 26 filing would have treated Interconnection

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<sup>41</sup> *Id.* See, e.g. *Arizona Public Service Company, et al.*, 107 FERC ¶ 61,255 at P 20, 28 (2004).

<sup>42</sup> See FPA section 205(c), 16 U.S.C. § 824d(c) (2000).

<sup>43</sup> 94 FERC ¶ 61,308 (2001) (*Allegheny*).

<sup>44</sup> *Id.*

<sup>45</sup> See XES' July 26 request for rehearing at 14-19.

Customers in an unjust and unreasonable manner by treating Interconnection Customers taking part in the resource solicitation process more favorably than Interconnection Customers not taking part in that process.<sup>46</sup>

45. XES also argues that we should grant rehearing because its proposal is necessary to accommodate a regional difference. The regional flexibility we built into Order Nos. 2003 and 2003-A was designed to recognize differing reliability standards.<sup>47</sup> XES points to no established regional reliability standards in support of this argument, and we therefore deny it.

### 3. XES' September 27 Request for Rehearing

46. XES' request for rehearing of our August 27 Order acceptance of its compliance filing is now moot since we accept its July 26 proposed modifications. Upon XES' filing of a conforming proposal to this order, such proposal will amend the *pro forma* LGIP and LGIA currently on file at the Commission effective April 26, 2004 .

#### The Commission orders:

(A) XES' request for rehearing of the Commission's June 25 Order is hereby denied, as discussed in the body of this order.

(B) XES' request for rehearing of the Commission's August 27, 2004 Letter Order is hereby denied as moot, as discussed in the body of this order.

(C) XES' request for rehearing of the Commission's denial of XES' June 1, 2004 answer is hereby denied as moot, as discussed in the body of this order.

(D) XES' request for rehearing of the Commission's March 19 Order is hereby denied as moot, as discussed in the body of this order.

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<sup>46</sup> See June 25 Order at P 22.

<sup>47</sup> See Order No. 2003-A at P 44 ("However, the Commission will accept a regional variation from the *pro forma* LGIP and LGIA only if it is an existing and established regional reliability standard.") (citations omitted).

(E) XES' stipulated modifications are hereby conditionally accepted and XES is directed to make a compliance filing within 30 days, as directed in the body of this order.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

Linda Mitry,  
Acting Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Xcel Energy Operating Companies

Docket Nos. ER04-419-001  
ER04-419-002  
ER04-419-003  
ER04-419-004  
ER04-419-005

(Issued October 26, 2004)

KELLY, Commissioner, concurring:

I agree that XES' July 26 proposed modifications to the *pro forma* LGIP designed to accommodate the Colorado-mandated resource solicitation program are consistent with or superior to the Commission's *pro forma* LGIP, subject to the conditions discussed in the order. However, I believe that our standard is also satisfied by the prior version of section 4.2.2 proposed by XES in its April 26 filing. Accordingly, for the reasons I stated in *Xcel Energy Operating Companies*, 107 FERC ¶ 61,313 (June 25, 2004), I would grant rehearing and approve the prior version of XES' proposal.

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Sudeen G. Kelly