

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services Inc.

Docket No. ER06-1145-001

ORDER DENYING REHEARING

(Issued November 22, 2006)

1. On August 28, 2006, Xcel Energy Services, Inc (Xcel) requested rehearing of the decision to deny waiver of the Commission's 60-day prior notice requirement¹ and make the Amended and Restated Generation Interconnection Agreement (Agreement) between its subsidiary, Public Service Company of Colorado (PSCo), and Blue Spruce Energy Center, LLC (Blue Spruce), effective 60 days after filing. Xcel requests that we waive the 60-day prior notice requirement, or, in the alternative, establish a nominal notice period and make the Agreement effective one day after filing. In this order, we deny rehearing and we deny Xcel's request for a nominal notice period.

I. Background

2. PSCo and Blue Spruce entered into the Agreement on January 26, 2001. Xcel filed the Agreement with the Commission on June 16, 2006, more than five years later. The Agreement was accepted for filing by the Director of the Division of Tariffs and Market Development – West, Office of Markets, Tariffs and Rates (Director) under delegated authority.² The Director denied waiver of the Commission's 60-day prior notice requirement and made the Agreement effective August 16, 2006, 60 days from the date it was filed.

¹ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice*); *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

² *Xcel Energy Services Inc.*, Docket No. ER06-1145-000 (July 27, 2006) (unpublished letter order).

3. On rehearing, Xcel requests that we either waive the 60-day prior notice requirement or make the Agreement effective one day after filing. Xcel asserts that “extraordinary circumstances . . . make a strong showing of good cause” for granting waiver.³ Specifically, Xcel explains that it intended to revise the Agreement according to an anticipated settlement in a separate proceeding,⁴ but that the settlement was “unusually delayed,” and post-settlement negotiations with Blue Spruce were further complicated by the bankruptcy of Blue Spruce’s owner, Calpine Corporation (Calpine).⁵ Xcel also argues that if we did not grant waiver, we would deny PSCo recovery for services rendered under the Agreement and frustrate the parties’ express intentions.

4. Xcel argues that we should, at least, establish a nominal notice period. According to Xcel, this a regular Commission practice, especially where the proposed filing would produce a reasonable result. Xcel claims that the result here would be reasonable because its delay in filing has benefited Blue Spruce by giving it the lower negotiated rate under the settlement. Without a one-day notice period, PSCo will not be able to charge for services under the contract from June 16, 2006 to the August 16, 2006 effective date established by the Commission.

II. Discussion

5. Xcel’s argument is not new.⁶ In *Xcel I*, we dealt with nearly identical circumstances. There, as here, Xcel was denied waiver, sought rehearing, and blamed its failure to timely file on its intention to revise the agreements in light of the same anticipated settlement.⁷ We see no meaningful distinctions between the facts in *Xcel I* and the facts here. We note that Calpine’s bankruptcy is not a meaningful distinction. By the time it allegedly could have affected Xcel’s filing of the Agreement, the filing was

³ Request for Rehearing at 5.

⁴ Plains End LLC protested its interconnection agreement and the Commission set the matter for hearing and settlement judge procedures. *See Xcel Energy Services Inc.*, 100 FERC ¶ 61,267 (2002).

⁵ Request for Rehearing at 5-6.

⁶ *See Xcel Energy Services, Inc.*, 114 FERC ¶ 61,295 at P 6 (2006) (*Xcel I*).

⁷ *Xcel I*, 114 FERC ¶ 61, 295 at P 3.

already over three years late.⁸ Accordingly, as in *Xcel I*, we find that Xcel's arguments are not persuasive and we will deny rehearing.

6. In *Xcel I*, we identified *Prior Notice* and *Central Hudson* as setting forth the standards for granting waiver.⁹ Under *Prior Notice*, the Commission will grant waiver for service agreements that are under umbrella tariffs if the service agreements are filed within 30 days after service begins.¹⁰ Here, the Agreement was not filed until years after service commenced. Thus, Xcel does not qualify for waiver under *Prior Notice*.

7. Under *Central Hudson*, we will generally grant waiver for agreements under contracts if the contract provides for an earlier effective date.¹¹ Even in these instances, however, the Commission has stressed the need for public utilities to make the filings as soon as possible.¹² When a filing for new service not under an accepted settlement is made on or after the day service has begun, *Central Hudson* explains that the Commission will not grant waiver, absent extraordinary circumstances.¹³ Here, none of the *Central Hudson* conditions are met. The Agreement is not under a previously-accepted contract or settlement providing for an earlier effective date, and as we explained in *Xcel I*, the facts in this case are not the "extraordinary circumstances" required to waive the 60-day prior notice requirement.¹⁴

8. Xcel argues that we should, at the least, establish a nominal notice period and make the Agreement effective one day after filing. Xcel claims that this is standard Commission practice, especially when the result is reasonable. Xcel cites three cases in which the Commission did so.¹⁵ Each of these cases, however, merited waiver under the

⁸ Request for Rehearing at 5.

⁹ *Xcel I*, 114 FERC ¶ 61, 295 at P 8.

¹⁰ See *Prior Notice*, 64 FERC at 61,983-84.

¹¹ *Central Hudson*, 60 FERC ¶ 61,106 at 61,338.

¹² *Id.*

¹³ *Id.* at 61,339.

¹⁴ *Xcel I*, 114 FERC ¶ 61, 295 at P 9.

¹⁵ Xcel cites *Entergy Services, Inc.*, 93 FERC ¶ 61,233 (2000); *Brownsville Power I, L.L.C., et al.*, 111 FERC ¶ 61, 398 at P 13 (2005); and *California Independent System Operator Corp.*, 113 FERC ¶ 61,187 at P 48 (2005). See *id.*

Central Hudson standards set forth above. As for Xcel's argument that we grant waiver whenever the result is reasonable, the letter order Xcel cites in support does not establish that proposition.¹⁶ The order simply states that PJM Interconnection, L.L.C. "maintains" that "no unreasonable results" is the standard. As we said in *Xcel I*, "*Central Hudson* established the Commission's current policy for when waiver will be granted."¹⁷ In cases where waiver is necessary for an entity to have its filing effective as of its requested date, the entity must first meet the requirements for waiver under *Prior Notice* or *Central Hudson* before the effective date becomes an issue. Here, as we have stated, Xcel does not qualify for waiver under either *Prior Notice* or *Central Hudson*. Lack of harm to Blue Spruce from Xcel's non-compliance is not an indicator of "good cause" and does not warrant waiver.¹⁸

9. Finally, the Commission again notes that this is not the first time Xcel has filed very late.¹⁹ This is the third time we have addressed this matter with Xcel.²⁰ By now, Xcel should have learned to make timely filings. Our reasoning here is consistent with these previous cases; accordingly, we deny rehearing.

The Commission orders:

The denial of waiver is hereby affirmed and Xcel's request for rehearing in this proceeding is hereby denied.

By the Commission.

Magalie R. Salas,
Secretary.

¹⁶ Xcel cites *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,379 at P 5 (2004).

¹⁷ *Xcel I*, 114 FERC ¶ 61, 295 at P 12.

¹⁸ *See Id.* at P 11; *El Paso Electric Co.*, 101 FERC ¶ 61,276 at P 5 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003).

¹⁹ *See Xcel I*, 114 FERC ¶ 61, 295 at P 13.

²⁰ *See id.* at P 13; *See also Xcel Energy Services Inc.*, 111 FERC ¶ 61,206 at P 8, 20 (2005).