

126 FERC ¶ 61,001
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. ER08-1377-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS,
SUBJECT TO COMPLIANCE FILING

(Issued January 2, 2009)

1. On August 8, 2008, under section 205 of the Federal Power Act (FPA),¹ Xcel Energy Services Inc. (Xcel), as agent for Northern States Power Company, a Minnesota Corporation (NSP), and Northern States Power Company, a Wisconsin Corporation (jointly, NSP Companies) submitted proposed amendments to NSP Companies' Rate Schedule Transmission Service TM-1 (Rate Schedule TM-1) and to various service agreements subject to that rate schedule. The amendments reflect changes in the ancillary services provided by NSP as a consequence of the proposed implementation of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) Ancillary Services Market. In this order, we conditionally accept the revised Rate Schedule TM-1 and the related service agreements, effective January 6, 2009, and subject to a compliance filing.

I. Background and Details of the Filing

2. Xcel states that Rate Schedule TM-1 has historically been on file with the Commission and is designated as a supplement to certain NSP service agreements.² Under these agreements, NSP has provided the following ancillary services to Rate Schedule TM-1 customers pursuant to Xcel's Joint Open Access Transmission Tariff

¹ 16 U.S.C. § 824e (2006).

² The affected service agreements in the instant filing include separate NSP agreements with Minnesota Municipal Power Agency and each of the following Minnesota cities: Sleepy Eye; St. James; Hillsboro; Sauk Centre; Ada; Fairfax; and Melrose. The agreements are all grandfathered transmission service agreements under Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff.

(Tariff): Schedule 3—Regulation and Frequency Response Services; Schedule 5—Operating Reserves-Spinning Reserve Service; and Schedule 6—Supplemental Reserve Service.

3. On September 14, 2007, Midwest ISO filed a proposal to implement a day-ahead and real-time Ancillary Services Market for operating reserves (spinning, supplemental and regulation). The Commission conditionally accepted Midwest ISO's plan, subject to compliance filings and reports.³ Midwest ISO originally requested an effective date of June 1, 2008, for its Ancillary Services Market implementation. As explained below, Midwest ISO now requests that its Ancillary Services Market become operational on January 6, 2009.⁴

4. In the instant filing, Xcel explains that, once Midwest ISO's Ancillary Services Market is operational, the NSP Companies will no longer provide the Schedule 3, 5, and 6 ancillary services because they will now be provided by Midwest ISO directly to customers.⁵ Therefore, the service schedules will no longer be necessary in Midwest ISO Transmission Owners' tariffs. Xcel proposes to amend the Rate Schedule TM-1 contained in the affected service agreements to reflect the elimination of the Schedule 3, 5, and 6 ancillary services resulting from the implementation of the Midwest ISO Ancillary Services Market. Xcel originally requested waiver or suspension of these ancillary service rate provisions with the commencement of the Ancillary Services Market and then deletion of these ancillary service rate provisions with an effective date of October 9, 2008 or such other day that Midwest ISO's Reversion Plan terminates.⁶

5. Shortly after Xcel's filing was made, Midwest ISO filed, on August 26, 2008, a request that the Commission defer action on the commencement of the proposed Ancillary Services Market in order to provide Midwest ISO the opportunity to resolve

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008); *order on reh'g*, 123 FERC ¶ 61,297 (2008); *order on compliance filing*, 123 FERC ¶ 61,296 (2008). The latter order also addressed Midwest ISO's request to delay the Ancillary Services Market's implementation from June 1, 2008, to September 9, 2008.

⁴ On December 18, 2008, the Commission authorized Midwest ISO's Ancillary Services Market for start-up on January 6, 2009. *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318 (2008).

⁵ Ancillary services for Schedules 1, 2, and 4 will continue to be included in the individual service agreements for each Rate Schedule TM-1 customer.

⁶ Midwest ISO submitted an Ancillary Services Market Reversion Plan on February 29, 2008, to address system operations in the event of a severe operations failure in the Ancillary Services Market. The Reversion Plan would last for one month following the launch of the Ancillary Services Market.

substantive issues and to facilitate a successful Ancillary Services Market launch. Consequently, on September 15, 2008, Xcel filed an answer and request for deferral of effective dates, proposing that the rates set forth in the subject service agreements be suspended upon the eventual commencement of the Ancillary Services Market, and then deleted 30 days later, upon the termination of Midwest ISO's Reversion Plan.⁷

6. On November 3, 2008, Midwest ISO filed a notice with the Commission requesting that Commission consideration in the Ancillary Services Market-related dockets recommence, and proposing that the Ancillary Services Market commence operations on January 6, 2009. On November 6, 2008, Xcel filed a notice requesting that the Commission resume its consideration of Xcel's proposed revisions in this proceeding so that the requested changes may take effect in a manner consistent with the implementation of Midwest ISO's Ancillary Services Market. Xcel requests that it be permitted to re-file the affected rate schedules to reflect the new implementation date after the Ancillary Services Market has commenced operation and the Reversion Plan has terminated.

II. Notice of Filing and Responsive Pleadings

7. Notice of Xcel's filing was published in the *Federal Register*, 73 Fed. Reg. 49,178 (2008), with interventions and protests due on or before August 29, 2008. On August 29, 2008, the City of Sleepy Eye, Minnesota (Sleepy Eye) filed a motion to intervene and protest. Missouri River Energy Services and Central Minnesota Municipal Power Agency, jointly, filed a motion to intervene. On September 15, 2008, Xcel filed a motion to answer and answer.

8. In its protest, Sleepy Eye states that Xcel has proposed amendments to an Interconnection and Interchange Agreement between NSP and Sleepy Eye,⁸ an agreement that Sleepy Eye states has been grandfathered in Attachment P to Midwest ISO's Tariff. Sleepy Eye further states that the agreement entitles Sleepy Eye to wheel power from Western Area Power Administration over NSP facilities, and NSP currently bills Sleepy Eye for this wheeling under the Rate Schedule TM-1 rate.

9. Sleepy Eye states that Xcel does not attempt to explain why the proposed revisions are just or reasonable. Sleepy Eye also questions why Xcel cannot continue to charge its existing rates to customers and take ancillary services on their behalf from Midwest ISO. Finally, Sleepy Eye is concerned that, rather than just deleting provisions relating to

⁷ Rather than requesting cancellation of the relevant rate schedules during the period the Reversion Plan is in effect, Xcel has requested suspension of the rate schedules during that time.

⁸ This agreement is designated as Service Agreement No. 393-NSP under FERC Electric Tariff, First Revised Volume No. 1.

Schedules 3, 5, and 6, Xcel is deleting additional provisions. Sleepy Eye requests that the Commission set the proceeding for hearing, but suspend the hearing to allow for settlement talks, acknowledging that there is significant potential for negotiated resolution of the issues.

10. In its answer, Xcel responds to each of the issues raised by Sleepy Eye. Regarding Sleepy Eye's contention that Xcel appears to be deleting additional provisions from its agreement, Xcel clarifies that such deletions are the result of Xcel's attempt to comply with Order No. 614⁹ by removing multiple superseded versions of Rate Schedule TM-1. Xcel further states that the proposed Rate Schedule TM-1 supplement to the agreement still includes all applicable provisions.

11. Regarding Sleepy Eye's assertions that the proposed changes may not be just and reasonable, Xcel responds that the justness and reasonableness of the rates to be charged to Sleepy Eye are not at issue here, but are properly the subject of Docket No. ER07-1372-000, *et al.*, in which the Midwest ISO Ancillary Services Market was found to be a mechanism that will result in just and reasonable rates. With respect to Sleepy Eye's suggestion that Xcel should continue to charge its existing rates to Sleepy Eye and take ancillary services on Sleepy Eye's behalf from Midwest ISO, Xcel argues that, as a Midwest ISO market participant, Sleepy Eye should take ancillary services under Schedules 3, 5, and 6 from the sole provider of those services, i.e., Midwest ISO. Xcel contends that the Midwest ISO energy markets will not function properly if market participants are allowed to opt out of those markets at their own election.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Xcel's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

13. We conditionally accept Xcel's proposed revisions for filing, as discussed below.

14. At the outset, we find that Xcel's proposed revisions to Service Agreement No. 393 delete only those provisions related to Schedules 3, 5, and 6 and those Rate Schedule

⁹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000) (Order No. 614).

TM-1 supplements that had been previously superseded.¹⁰ The deletion of provisions that had been previously superseded is proper in this filing.¹¹ However, Xcel has not gone far enough in meeting the requirements of Order No. 614. Although Xcel removed superseded versions of Rate Schedule TM-1 from the eight service agreements filed in this proceeding, four of those agreements still do not comply with Order No. 614 because Xcel failed to remove all unnecessary documents and language that is no longer effective (e.g., terms and conditions that were superseded by subsequent amendments) so that the service agreements reflect only currently applicable provisions.¹² Therefore, Xcel is directed to file, within 15 days of the end of the Ancillary Services Market reversion period, revised service agreements with the cities of Sleepy Eye, Ada, Fairfax, and Melrose that comply in all respects with Order No. 614.

15. Sleepy Eye next contends that Xcel has not shown why its proposed revisions are just and reasonable and that Xcel should continue providing Sleepy Eye with ancillary services. Xcel currently provides ancillary service to Sleepy Eye through stated rates under its grandfathered agreement. After the commencement of Midwest ISO's Ancillary Services Market, Midwest ISO will be the balancing authority that determines operating reserve requirements and procures operating reserves for participating transmission operators such as Xcel.¹³ At that time, Midwest ISO will provide the Schedule 3, 5, and 6 ancillary services that Sleepy Eye currently takes from Xcel pursuant to its grandfathered agreement, and the Ancillary Services Market will set the price of these services. The Commission found this balancing arrangement to be just and reasonable in its orders accepting Midwest ISO's Ancillary Services Market.¹⁴ Sleepy Eye was free to challenge this arrangement in those proceedings; it may not, however, do so here. Therefore, as a general matter, we find that Xcel is merely implementing changes to the grandfathered agreement with Sleepy Eye to reflect the new operating arrangement described above, and that nothing in the grandfathered agreement prevents Xcel from doing that.

¹⁰ We note Xcel's acknowledgement in its answer that it inadvertently did not remove one previous revised version of Rate Schedule TM-1 from Service Agreement No. 393. Xcel will remove such sheets in the compliance filing ordered herein.

¹¹ Order No. 614, FERC Stats. & Regs. ¶ 31,096 at 31,504 (noting that when a service agreement is revised or modified, the utility must file a complete revised service agreement with a new designation comporting with the Order No. 614 Guidelines).

¹² See *Boston Edison Co.*, 98 FERC ¶ 61,292 (2002).

¹³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, *order on reh'g*, 123 FERC ¶ 61,296 (2008).

¹⁴ *Id.*

16. This is not to say, however, that Xcel may unilaterally cease to provide Schedule 3, 5 and 6 ancillary services to customers under grandfathered agreements. In previous orders addressing the treatment of grandfathered agreements in Midwest ISO's energy markets, the Commission found that to the extent parties to a grandfathered agreement cannot agree on the designation of a Responsible Entity, the transmission owner would be the Responsible Entity.¹⁵ The Commission explained that it would consider proposals allowing a transmission owner to pass through such costs to customers under grandfathered agreements.¹⁶ In this case, Xcel's proposal to stop providing Schedule 3, 5, and 6 ancillary services, thereby requiring customers under its grandfathered agreements to obtain them from Midwest ISO, is reasonable to the extent that customers under those agreements approve of that arrangement. Sleepy Eye, however, does not. Therefore, although Xcel may amend the existing provisions of Schedule 3, 5, and 6 ancillary services under Sleepy Eye's grandfathered agreement to reflect the start-up of the Midwest ISO Ancillary Services Market, we find that Xcel must remain the Responsible Entity for these services under its agreement with Sleepy Eye. Xcel must, therefore, make a compliance filing in which it remains responsible to Midwest ISO for the costs of Schedule 3, 5, and 6 ancillary services and passes through those costs to Sleepy Eye under Service Agreement No. 393.

17. Consistent with our decision in *Otter Tail Power Company*,¹⁷ for the period when Midwest ISO's Ancillary Services Market is operative, Xcel's pre-January 6, 2009 tariff language pertaining to Schedules 3, 5, and 6 will not be operative. Should the Reversion Plan become operative, then that tariff language will again become operative. Accordingly, the proposed amendments are conditionally accepted for filing, to become effective January 6, 2009, subject to whether the Reversion Plan becomes operative.¹⁸

18. In its compliance filing, Xcel must indicate whether these amendments remained in effect without interruption. Xcel must also include language indicating that it is the Responsible Party for Service Agreement No. 393, but that the costs for Schedule 3, 5, and 6 ancillary services will be passed through to the customer. Additionally, Xcel must

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042, at P 142 (2005). In this context, Responsible Entity is defined as "[a]n entity financially responsible for all costs incurred by transactions pursuant to [grandfathered agreements] under this Tariff." *Id.* n.29.

¹⁶ *Id.* P 149.

¹⁷ 125 FERC ¶ 61,111, at P 14 (2008).

¹⁸ We note that Xcel's statement that the amendments are required for start-up of the Ancillary Services Market (i.e., January 6, 2009) and Xcel's proposed effective date of the day that the Reversion Plan terminates (30 days after the start-up of the Ancillary Services Market) are inconsistent.

also delete the tariff sheets noted in footnote 11 and include revised service agreements with the cities of Sleepy Eye, Ada, Fairfax, and Melrose that comply in all respects with Order No. 614.

The Commission orders:

(A) Xcel's proposed amendments are hereby conditionally accepted for filing, to be effective January 6, 2009, as discussed in the body of this order. Should Midwest ISO's Reversion Plan become operative, the tariff language supplanted by the proposed amendments in this filing will once again become operative.

(B) Xcel is hereby directed to submit a compliance filing within 15 days of the end of the Ancillary Services Market reversion period, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.