

138 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

In re Xcel Energy Inc.

Docket No. IN08-7-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued January 17, 2012)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and Xcel Energy Inc. (Xcel). This order is in the public interest because it resolves the investigation by Enforcement into whether Xcel committed violations of the Xcel Energy Operating Companies' open access transmission tariff (Xcel OATT) and the Southwest Power Pool, Inc.'s (SPP) open access transmission tariff (SPP OATT) by the use of firm network integrated transmission service (NITS) in connection with the purchase and sale of electricity over the Lamar Tie Line. Xcel has agreed to pay a civil penalty of \$2,000,000 and to submit compliance monitoring reports.

Background

2. Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) are interconnected utility subsidiaries of Xcel. PSCo lies in the Western Interconnection and SPS lies in the Eastern Interconnection. The two utilities are interconnected through the Lamar Tie Line, which consists of: (i) a 345 kV line from Amarillo, Texas to Holcomb, Kansas; (ii) a second line from Holcomb to Lamar, Colorado; and (iii) an HVDC converter at Lamar, which allows for exchanges of electricity between the two systems. The Lamar Tie Line has a capacity of 210 MW.

3. Construction of the Lamar Tie Line was integral to the Securities and Exchange Commission's (SEC's) 1997 approval of the merger between PSCo and SPS that resulted in the formation of Xcel Energy's predecessor in interest, New Century Energies, Inc. (NCE). In 1997, the Commission conditionally approved a settlement regarding that merger, which included plans to construct the tie line, and required PSCo and SPS to offer transmission service under a single OATT. The subsequent merger of NCE and Northern States Power Company to form Xcel Energy was approved in 2000, and Xcel Energy's single OATT for the four Xcel Energy operating companies was accepted for filing. In 2004, Xcel Energy filed, and the Commission accepted for filing, revisions

to the Xcel Energy Operating Companies Joint Operating Agreement (JOA) that provided, in Schedule E thereof, for capacity and energy exchanges across the tie line.

4. After the tie line was declared commercially available to provide transmission services on May 17, 2005, both SPS and PSCo reserved the full capacity of the tie line through long-term firm network transmission service reservations. Since then, both PSCo and SPS have from time to time purchased capacity and energy from one another on a firm network transmission service basis. Prior to March 1, 2007, no compensation for transmission service for such JOA exchanges was paid. Effective on March 1, 2007, SPS and PSCo executed with one another Network Integration Transmission Service (NITS) Agreements, which provide for network transmission service compensation between the two companies for transmission service across the tie line.

5. SPS and PSCo have not used secondary network transmission service for transmission service across their own systems, nor used point-to-point transmission for service across the other's system, for any exchanges of capacity or energy over the tie line under the JOA. SPS is a member of SPP and lies within SPP's footprint. During the period relevant to the investigation, Schedule E of the Xcel Energy JOA and the Network Integration Transmission Service Agreements between PSCo and SPS were not listed as grandfathered agreements in the SPP OATT.

Violations

6. Enforcement staff concluded that Xcel violated both the Xcel OATT and the SPP OATT by using firm NITS for its purchase and sale transactions between PSCo and SPS when those transactions were not eligible for use of that service.

7. Enforcement staff determined that according to both the Xcel OATT and the SPP OATT, for an entity to use firm network service to serve loads on its own system the resources providing the energy must be network resources.¹ Network resources include owned, purchased and leased generation designated by the customer to serve network load.² Such resources cannot be committed for sale to non-designated third party load or otherwise be unavailable to meet the network customer's network load on a non-interruptible basis (unless called upon for reliability needs).

8. Enforcement staff also determined that in addition to the requirements regarding designated network resources, there are requirements under the Xcel and SPP OATTs regarding designated network load. First, a utility purchasing power from another utility can only request network service across that other utility's system if the load to be served

¹ Xcel OATT, § 28.3; SPP OATT, § 28.3.

² Xcel OATT, § 30.1; SPP OATT, § 30.1.

is a designated network load.³ Second, a utility selling power can only authorize network service across its own system if the load to be served is a designated network load.⁴ Moreover, in order for load on another utility's transmission system to qualify as designated network load, the transmitting utility must elect to include that utility's entire load as network load and designate network resources to serve it.⁵

9. Enforcement staff concluded: (i) that the resources used in the transactions between SPS and PSCo do not qualify as designated network resources; and (ii) that the load to be served does not qualify as designated network load. For those reasons, Enforcement staff determined that SPS and PSCo should have used point-to-point transmission service to bring energy across the other's system (and secondary network service to bring energy across its own system), not NITS. In the case of energy transfers from SPS to PSCo, Enforcement staff concluded further that PSCo was obligated to seek point-to-point transmission service from SPP, using SPP's OASIS and compensating SPP in accordance with SPP's tariff requirements, because SPS is a member of SPP and is obligated to operate under the SPP OATT. Such point-to-point revenues are distributed by SPP to SPP's transmission owning members, in accordance with tariff-approved allocation formulas.

Stipulation and Consent Agreement

10. Enforcement and Xcel have resolved Enforcement's investigation of the violations by means of the attached Agreement. While Xcel accepts the facts stipulated in the Agreement, it neither admits nor denies that those facts constitute violations by Xcel of the Federal Power Act (FPA), Commission rules or regulations, or the Xcel or SPP OATTs. Xcel, however, agrees to take the following actions:

11. The Agreement requires Xcel to pay a \$2,000,000 civil penalty to the United States Treasury within ten days of this order accepting and approving the Agreement.

12. The Agreement requires Xcel to submit semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement, with the option of a second year at Enforcement's discretion. Each compliance report shall describe any new and existing compliance program measures, including training, and alert Enforcement to any additional OATT violations that may occur.

³ Xcel OATT, § 28.6; SPP OATT, § 28.6.

⁴ *Id.*

⁵ Xcel OATT, §31.3; SPP OATT, § 31.3.

Determination of the Appropriate Civil Penalty

13. Pursuant to section 316A(b) of the FPA, the Commission may assess a civil penalty up to \$1,000,000 for each day that the violation continues.⁶ In approving the Agreement and the \$2,000,000 civil penalty, we considered the factors set forth in section 316A(b) of the FPA and the Revised Policy Statement on Penalty Guidelines.⁷ However, we determined that a downward departure from the Penalty Guidelines penalty range is appropriate here, given the unique facts and circumstances surrounding the merger of PSCo and SPS and the construction of the Lamar Tie. Furthermore, Xcel has demonstrated a commitment to remedying its violations on a prospective basis by working with SPP to file under Section 205 of the FPA⁸ for revisions to the Xcel and SPP OATTs that would provide for NITS transmission service over the Lamar Tie.⁹

14. The Commission concludes that the civil penalty and the compliance monitoring reports specified in the Agreement are fair and equitable, and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶ 16 U.S.C. § 825o-1(b) (2006).

⁷ *Enforcement of Statutes, Regulations and Orders*, 123 FERC ¶ 61,156 (2008) (Revised Policy Statement on Penalty Guidelines).

⁸ 16 U.S.C. § 824d (2006).

⁹ *See Pub. Serv. Co. of Colorado*, Docket No. ER12-435-000 (Nov. 18, 2011); *Pub. Serv. Co. of Colorado*, Docket No. ER12-436-000 (Nov. 18, 2011); *N. States Power Co.*, Docket No. ER12-437-000 (Nov. 18, 2011); *N. States Power Co.*, Docket No. ER12-438-000 (Nov. 18, 2011); *Sw. Pub. Serv. Co.*, Docket No. ER12-439-000 (Nov. 18, 2011); *Southwestern Power Pool, Inc.*, Docket No. ER12-455-000 (Nov. 18, 2011).

United States of America
Federal Energy Regulatory Commission

Xcel Energy Inc.) Docket No. IN08-7-000

STIPULATION AND CONSENT AGREEMENT

INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and Xcel Energy Inc. (Xcel Energy) enter into this Stipulation and Consent Agreement (Agreement) to resolve a formal investigation conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. part 1b (2011). The investigation examined possible violations of the Xcel Energy Operating Companies' open access transmission tariff (Xcel OATT) and the open access transmission tariff of Southwest Power Pool, Inc. (SPP) by the use of firm network integrated transmission service (NITS) for the purchase and sale of electricity over the Lamar Tie Line between two utility subsidiaries of Xcel Energy, Public Service Company of Colorado (PSCo) and Southwestern Public Service (SPS).

STIPULATED FACTS

Enforcement and Xcel Energy hereby stipulate to the following:

2. PSCo lies in the Western Interconnection and SPS lies in the Eastern Interconnection, and the two utilities are interconnected through the Lamar Tie Line, which consists of (i) a 345 kV line from Amarillo, Texas to Holcomb, Kansas, (ii) a second line from Holcomb to Lamar, Colorado, and (iii) an HVDC converter at Lamar, which allows for exchanges of electricity between the two systems. The tie line has a capacity of 210 MW.

3. The Lamar Tie Line project was an outgrowth of a merger between PSCo and SPS that resulted in the formation of Xcel Energy's predecessor in interest, New Century Energies, Inc. (NCE). Construction of the tie line was an integral part of the merger proposal approved in 1997 by the Securities and Exchange Commission (SEC). A settlement regarding the merger, which included plans to construct the tie line, was conditionally approved by the Commission in 1997. In addition, the Commission required PSCo and SPS to offer transmission service under a single OATT. The subsequent merger of NCE and Northern States Power Company to form Xcel Energy was approved in 2000, and Xcel Energy's single OATT for the four Xcel Energy operating companies was accepted for filing. On May 17, 2005, the tie line was declared commercially available to provide transmission services. Both SPS and PSCo made long term firm network transmission service reservations on each other's OASIS and on SPP's OASIS for the full capacity of the tie line.

4. In 2004, Xcel Energy filed, and the Commission accepted for filing, revisions to the Xcel Energy Operating Companies Joint Operating Agreement (JOA) that provided, in Schedule E thereof, for capacity and energy exchanges across the tie line. Since the in-service date of the tie line, both PSCo and SPS have from time to time purchased capacity and energy from one another, and done so on a firm network transmission service basis. Prior to March 1, 2007, no compensation for transmission service for such JOA exchanges was paid. Effective on March 1, 2007, SPS and PSCo executed with one another Network Integration Transmission Service (NITS) Agreements, which provide for network transmission service compensation between the two companies for transmission service across the tie line.

5. Both before and after execution of the NITS Agreements, SPS and PSCo have not used secondary network transmission service for transmission service across their own systems, nor used point-to-point transmission for service across the other's system, for any exchanges of capacity or energy over the tie line. SPS is a member of SPP and lies within SPP's footprint. During the period relevant to the investigation, Schedule E of the Xcel Energy JOA and the Network Integration Transmission Service Agreements between PSCo and SPS were not listed as grandfathered agreements in the SPP OATT.

VIOLATIONS

Enforcement determined that Xcel Energy violated certain requirements of its OATT and of the SPP OATT in the use of firm NITS for its purchase and sale transactions between PSCo and SPS, as outlined below:

6. In order for an entity to use firm network service to serve loads on its own system, both the Xcel OATT and the SPP OATT mandate that the resources providing the energy

must be network resources.¹ Network resources include owned, purchased and leased generation designated by the customer to serve network load.² Such resources cannot be committed for sale to non-designated third party load or otherwise be unavailable to meet the network customer's network load on a non-interruptible basis (unless called upon for reliability needs).³

7. In addition to the requirements regarding designated network resources, a utility purchasing power from another utility can only request network service across that other utility's system if the load to be served is a designated network load.⁴ Similarly, a utility selling power can only authorize network service across its own system if the load to be served is a designated network load.⁵ In order for load on another utility's transmission system to qualify as designated network load, the transmitting utility must elect to include that utility's entire load as network load and designate network resources to serve it.⁶

8. Enforcement concluded that the resources used in the transactions between SPS and PSCo do not qualify as designated network resources, and that the load to be served does not qualify as designated network load. For those reasons, SPS and PSCo should have used point-to-point transmission service to bring energy across the other's system (and secondary network service to bring energy across its own system). In the case of energy transfers from SPS to PSCo, staff concluded that PSCo was obligated to seek point-to-point transmission service from SPP, using SPP's OASIS and compensating SPP in accordance with SPP's tariff requirements. Such point-to-point revenues are distributed by SPP to SPP's transmission owners, in accordance with tariff-approved allocation formulas.

¹ Xcel OATT, § 28.3; SPP OATT, § 28.3.

² Xcel OATT, § 30.1; SPP OATT, § 30.1.

³ *Id.*

⁴ Xcel OATT, § 28.6; SPP OATT, § 28.6.

⁵ *Id.*

⁶ Xcel OATT, §31.3; SPP OATT. § 31.3.

REMEDIES AND SANCTIONS

9. For purposes of settling any and all civil and administrative disputes arising from Enforcement's investigation, Xcel Energy accepts the facts as stipulated above, but neither admits nor denies Enforcement's determinations that the facts set forth herein constitute violations by Xcel Energy of the Federal Power Act, Commission rules or regulations or the Xcel Energy or SPP OATTs. In resolution hereof, Xcel Energy agrees to undertake the following obligations:

Civil Penalty

10. Xcel Energy shall pay a civil penalty in the amount of \$2 million, payable to the United States Treasury, within 10 days of the Commission's issuance of an order approving this Agreement without modification or condition.

Compliance Plan

11. Xcel Energy shall make semi-annual reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than ten days after the end of the second calendar quarter after the quarter in which the Effective Date of this Agreement falls. The second report shall be submitted six months thereafter. In its reports, Xcel Energy shall include summary data regarding the type of transmission service used for purchases and sales of electricity between PSCo and SPS, and shall indicate its compliance with the NITS and point-to-point requirements of the Xcel Energy and SPP OATTs, as presently in effect or as may be modified by order of the Commission. Each report shall include an affidavit executed by an officer of Xcel Energy that the compliance report is true and accurate.

12. Upon request by Enforcement, Xcel Energy shall provide all documentation supporting its reports. After receipt of the second semi-annual report, Enforcement may, at its sole discretion, require Xcel Energy to submit semi-annual reports for one additional year.

Relationship to Other Proceedings

13. This Agreement shall have no effect on, nor be deemed an admission regarding, any issue pending before the Commission in Docket Nos. ER12-435-000, ER12-436-000, ER12-437-000, ER12-438-000, ER12-439-000, ER12-455-000, or any other proceeding, whether initiated under FPA section 205 or 206, with respect to the same or similar matters.

TERMS OF CONSENT AGREEMENT

14. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without modification or condition.

15. Unless the Commission issues an order approving the Agreement in its entirety and without material modification or condition, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor Xcel Energy shall be bound by any provision or term of the Agreement, unless otherwise agreed in writing by Enforcement and Xcel Energy.

16. The Agreement binds Xcel Energy and its agents, successors and assigns. The Agreement does not create or impose any additional or independent obligations on Xcel Energy, or any affiliated entity, its agents, officers, directors or employees, other than the obligations identified in Section IV of this Agreement.

17. In connection with the payment of the civil penalty provided for herein, Xcel Energy agrees that the Commission's order approving the Agreement without modification or condition shall be a final order assessing a civil penalty under the Federal Power Act, 16 U.S.C. § 792, *et seq.*, as amended. Xcel Energy further waives rehearing of any Commission order approving the Agreement without material modification or condition, and judicial review by any court of any Commission order approving the Agreement without material modification or condition.

18. Commission approval of this Agreement without material modification or condition shall release Xcel Energy and forever bar the Commission from holding Xcel Energy, its affiliates, agents, officers, directors and employees, both past and present, liable for any and all civil and administrative claims arising out of, related to, or connected with the investigation addressed in this Agreement. In further consideration for this release, Xcel Energy represents that it is not aware of any material facts concerning the events that were not disclosed to Enforcement during the investigation and which might reasonably be considered to constitute further violations of the NITS provisions of the Xcel Energy or SPP OATT. Upon the Effective Date of this Agreement, Enforcement's investigation of Xcel Energy shall terminate.

19. Failure to make a timely payment or to comply with any other provision of this Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act and may subject Xcel Energy to additional action under the enforcement and penalty provisions of the Federal Power Act.

20. If Xcel Energy does not make the payment above at or before the time agreed by the parties, interest on the portion payable to the United States Treasury will begin to

accrue and be payable to the United States Treasury, pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii), from the date that payment is due.


21. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or Xcel Energy has been made to induce the signatories or any other party to enter into the Agreement.

22. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.


23. The undersigned representative of Xcel Energy affirms that he or she read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

24. The Agreement may be signed in counterparts, and each counterpart so executed shall be deemed to be an original.

Agreed to and accepted:


Norman Bay
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 12/28/11


Scott Wilensky
Senior Vice President and General Counsel,
Xcel Energy Services Inc.

Date: 12-22-11

Document Content(s)

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