

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. ER06-1485-000

Westar Energy, Inc. Docket No. ER06-1471-000

Oklahoma Gas and Electric Company Docket No. ER06-1488-000

(Not Consolidated)

ORDER ACCEPTING IN PART AND REJECTING IN PART TARIFF REVISIONS

(Issued October 30, 2006)

1. In this order, the Commission accepts in part and rejects in part revisions to Xcel Energy Services Inc.'s (Xcel),¹ Westar Energy, Inc.'s (Westar), and Oklahoma Gas and Electric Company's (OG&E) (collectively, the Parties) Open Access Transmission Tariffs (OATT). The Commission accepts those provisions filed in response to Order No. 676.²

Background

2. In an order issued on July 20, 2006, the Commission directed Southwest Power Pool, Inc. (SPP) to, among other things, modify its OATT to provide that rates for emergency energy will reflect a pass-through of costs charged to SPP pursuant to a new emergency energy ancillary service schedule in the affected public utilities' OATTs or

¹ Xcel is filing on behalf of its operating company, Southwestern Public Service Company (Southwestern).

² *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676, 71 Fed. Reg. 26,199 (May 4, 2006), FERC Stats. & Regs. ¶ 31,216 (2006), *order on reh'g*, Order No. 676-A, 116 FERC ¶ 61,102 (2006).

non-utilities' reciprocal tariffs.³ The Commission added that the rate for emergency energy should reflect the actual costs of emergency energy, and should not include capacity costs.⁴

3. Separately, in Order No. 676, the Commission required public utilities to incorporate by reference the Open Access Same-Time Information Systems (OASIS)-related standards established by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB), effective July 1, 2006.⁵ The Commission also stated that public utilities could include these Order No. 676-related revisions when they made their next OATT-related filing. However, the Commission stated in Order No. 676 that, to the extent a public utility's OASIS obligations are administered by an Independent System Operator (ISO) or Regional Transmission Organization (RTO), and are not covered in its OATT, the public utility will not need to modify its OATT to meet these particular requirements.⁶

Description of filings

Schedule 4A (Emergency Energy)

4. Pursuant to the July 20 Order providing for utilities participating in the SPP imbalance market to file an emergency energy service schedule, the parties each

³ *Southwest Power Pool, Inc.*, 116 FERC ¶ 61,053 at P 40 (2006) (July 20 Order). The Commission noted that, prior to SPP passing through the costs of this service, any public utility participating in the SPP imbalance market must have on file a Commission-approved schedule for emergency energy. The Commission further noted that Schedule 4 (Imbalance Service) of the utilities' tariffs will no longer apply once SPP's own imbalance market is implemented. The Commission encouraged utilities participating in SPP's imbalance market to withdraw their current Schedule 4 for imbalance service. *Id.* at P 40 & n.57

⁴ *Id.* at P 40 & n.58 (“ . . . it may also be just and reasonable to derive a single emergency energy rate for service in the balancing authority area from the various interchange agreements to which a balancing authority is a party.”).

⁵ Order No. 676, FERC Stats. & Regs. ¶ 31,216 at P 96-99.

⁶ *Id.* at P 1, 20, 100.

submitted proposed OATT revisions to include a Service Schedule 4A (Emergency Energy). Each of the Parties request that the proposed Schedule 4A rates for emergency energy to SPP have a November 1, 2006 effective date.

5. Xcel's and OG&E's Schedule 4A's filed in Docket Nos. ER06-1485-000 and ER06-1488-000, respectively, provide that rates for service shall be the greatest of: (i) the hourly Locational Imbalance Price (LIP) at the Settlement Location used to provide such service, per megawatt-hour; (ii) 110% of the incremental cost of the resource(s) used to provide such service; or (iii) \$100 per megawatt-hour.⁷ Westar's Schedule 4A filed in Docket No. ER06-1471-000 provides that charges for service shall be the higher of 110% of the incremental costs or the minimum charge of the entity in the SPP Reserve Sharing Group receiving the energy if that entity utilizes a minimum charge for the Reserve Sharing Energy they supply to Westar.

6. In Docket No. ER06-1485-000, Xcel also states that notwithstanding its filing of Schedule 4A, it must retain its current Schedule 4 because it contains rates that are still in effect in other operating company systems and in the event of a market revision.

7. OG&E also argues that, if the rate for emergency energy is limited to incremental cost, a situation could arise where the price for emergency energy is lower than the market clearing price. According to OG&E, this would distort the energy imbalance market and could allow the entity that triggers a reserve sharing event to profit from the difference between the emergency energy rate and the LIP determined in the energy imbalance market. Moreover, OG&E argues that limiting the rate for emergency energy to incremental cost could have the effect of penalizing the utility providing the emergency energy by requiring the supplying utility to forego opportunity costs associated with sales in the energy imbalance market at the potentially higher rate. This, too, distorts the market by providing improper incentives to market participants and fails to ensure reserves will be provided to the market when needed.

8. The Parties seek waiver of the Commission's prior notice requirement and request that the Commission grant an effective date of November 1, 2006, SPP's scheduled start of its energy imbalance market.

⁷ Xcel has sought rehearing of the July 20 Order, arguing that the rate for emergency energy should include capacity costs. Accordingly, Xcel in the present docket similarly argues that utilities should be allowed to recover capacity costs through its OATT charge for emergency energy services.

Order No. 676 Compliance Filing

9. The Parties have included in their filings revised tariff sheets to incorporate by reference the NAESB-WEQ business standards in compliance with Commission Order No. 676 with a requested effective date of July 1, 2006.

Notice, Interventions and Protests

10. Notice of the Xcel filing was published in the *Federal Register*, 71 Fed. Reg. 54,984 (2006), with interventions and protests due on or before September 28, 2006. Timely motions to intervene and protests were filed by Redbud Energy LP (Redbud) and Golden Spread Electric Cooperative, Inc (Golden Spread). A timely motion to intervene was filed by Occidental Permian Ltd, and SPP filed a motion for leave to intervene out of time. On October 11, 2006, Xcel filed an answer to the protests of Redbud and Golden Spread.

11. Notice of the OG&E filing was published in the *Federal Register*, 71 Fed. Reg. 56,516 (2006), with interventions and protests due on or before October 4, 2006. Timely motions to intervene and protests were filed by Redbud and the Oklahoma Municipal Power Authority (OMPA). SPP filed a motion for leave to intervene out of time on October 11, 2006. On October 19, 2006, OG&E filed an answer to the protest of OMPA. On October 26, 2006, OMPA filed a reply to OG&E's answer.

12. Notice of the Westar filing was published in the *Federal Register*, 71 Fed. Reg. 54,643 (2006), with interventions and protests due on or before September 27, 2006. A motion to intervene out of time and protest was filed by Redbud Energy LP, and a motion for leave to intervene out of time was also filed by SPP.

13. Golden Spread states that Xcel has failed to comply with a direct order of the Commission in its proposed Schedule 4A language. According to Golden Spread, the proposed Schedule 4A double charges by charging for reserve capacity and emergency energy costs, because Xcel proposes to charge the highest of the hourly LIP at the Settlement Location, per megawatt-hour, 110% of the incremental cost of the resource(s) used to provide service, or \$100/MWh.

14. Redbud states that Xcel's and OG&E's proposed \$100/MWh charges constitute impermissible double charges for capacity and are inconsistent with the Commission's July 20 Order. Redbud also states that the Commission should require Westar to eliminate the minimum charge from its Schedule 4A.

15. OMPA argues that OG&E's proposed Schedule 4A language would undermine SPP's reserve sharing effort, contravene Commission orders, and subject OMPA to

unduly discriminatory charges. OMPA further argues that the proposed \$100/MWh charge would undermine the Commission's efforts to ensure that Reserve Sharing Service terms and conditions are cost-based and comparable to each other.

Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make Redbud, OPMA, and Golden Spread parties to the proceedings in which they moved to intervene. We will grant the late-filed motions to intervene given their interests in these proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest or a reply to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept OG&E's or Xcel's answer or OMPA's reply to OG&E's answer, and will, therefore, reject them.

Commission Determination

18. In its recent order on rehearing of the July 20 Order, the Commission determined that, in order to include its capacity costs in its emergency energy rates, Xcel must demonstrate that it would not double recover its capacity costs. Moreover, it would be unjust and unreasonable for Xcel to recover under ancillary service schedules a contribution towards its overall capacity costs from customers who take service under those schedules and also recover those same costs from customers who obtain emergency service. Therefore, the Commission stated, a just and reasonable emergency energy rate should reflect only the actual costs of emergency energy and should not include capacity costs. The Commission, however, agreed with Xcel that if the emergency energy rate were limited to incremental costs, the emergency energy rate could be lower than the market clearing price and that denying an entity the ability to recover its opportunity costs would be inappropriate. Therefore, reserve sharing charges can be based on the higher of the incremental costs plus an adder consistent with Commission precedent or the LIP for the unit responding to the reserve sharing event.⁸

⁸ See *Southwest Power Pool, Inc.*, 117 FERC ¶ 61,110 at P 28 (2006).

19. The Parties' proposed tariff revisions in response to the July 20 Order will be rejected, and the parties will be directed to make compliance filings, within 30 days of the date of this order, amending their Schedule 4As consistent with the Commission's determinations on rehearing of the July 20 Order.

20. With respect to the Order No. 676 compliance filing, we find that the Parties' proposed tariff sheets are in compliance with Order No. 676 and are therefore accepted and made effective July 1, 2006.

The Commission orders:

(A) The requested tariff sheets are hereby accepted as to the portions complying with Order No. 676, effective as of July 1, 2006, as requested, and rejected as to Schedule 4A, as discussed in the body of this order.

(B) The Parties are hereby ordered to submit compliance filings within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.