

123 FERC ¶ 61,053  
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 Operating Companies

Docket No. OA07-39-000

ORDER ACCEPTING COMPLIANCE FILING, AS MODIFIED

(Issued April 17, 2008)

1. On July 13, 2007, pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> Xcel Energy Operating Companies (Xcel) submitted its compliance filing as required by Order No. 890.<sup>2</sup> In this order, we will accept Xcel's filing, as modified, in compliance with Order No. 890, as discussed below.

**I. Background**

2. In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. Among other things, Order No. 890 amended the *pro forma* OATT to require greater consistency and transparency in the calculation of available transfer capability, open and coordinated planning of transmission systems and standardization of charges for generator and energy imbalance services. The Commission also revised various policies governing network resources, rollover rights and reassignments of transmission capacity.

3. The Commission established a series of compliance deadlines to implement the reforms adopted in Order No. 890. Transmission providers that have not been approved as independent system operators (ISO) or regional transmission organizations (RTO), and whose transmission facilities are not under the control of an ISO or RTO, were directed to submit, within 120 days from publication of Order No. 890 in the *Federal Register*

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<sup>1</sup>16 U.S.C. § 824e (2000 & Supp. V 2005).

<sup>2</sup>*Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (January 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), rehearing request pending.

(i.e., July 13, 2007), section 206 compliance filings that conform the non-rate terms and conditions of their OATTs to those of the *pro forma* OATT, as reformed by Order No. 890.<sup>3</sup>

4. Further, in Order No. 890, the Commission required transmission providers to file redesigned transmission charges that reflect the Capacity Benefit Margin (CBM)<sup>4</sup> set-aside to ensure that customers not benefiting from the CBM set-aside (i.e., point-to-point customers) do not pay for CBM. We directed transmission providers to submit redesigned transmission charges through a limited issue FPA section 205 rate filing within 120 days after the publication of the final rule in the *Federal Register*.<sup>5</sup>

## II. Compliance Filing

5. Xcel filed revisions to its Joint Open Access Transmission Tariff (Joint OATT) on behalf of its operating companies Public Service Company of Colorado (PSCo), Southwestern Public Service Company (SPS), Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin company (the latter two jointly, NSP Companies). Xcel states that with the exception of minor “clean up” revisions necessary to comply with Order No. 890, the proposed revisions adopt the revised Order No. 890 *pro forma* tariff verbatim.

6. Xcel explains that its operating companies are affected in different ways by Order No. 890 because they operate in both the Western and Eastern Interconnections, and because SPS and the NSP Companies are members of RTOs, Southwest Power Pool (SPP) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO), respectively, while PSCo is not. Thus, for most transmission-related functions, SPP serves as transmission provider for SPS, and Midwest ISO serves as transmission provider for the NSP Companies pursuant to Order No. 890, with service administered

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<sup>3</sup>The original 60-day compliance deadline provided for in Order No. 890 was extended by the Commission in a subsequent order. *See Preventing Undue Discrimination and Preference in Transmission Service*, 119 FERC ¶ 61,037 (2007).

<sup>4</sup>CBM is the amount of total transfer capability preserved by the transmission provider for load-serving entities, whose loads are located on the transmission provider’s system, to enable access by the load-serving entities to generation from interconnected systems to meet generation reliability requirements, or such definition as contained in Commission-approved reliability standards.

<sup>5</sup>Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 263.

under the respective RTO tariffs.<sup>6</sup> Since there is presently no functioning RTO for the PSCo system, PSCo itself is the transmission provider for its system, and all service is pursuant to Xcel's Joint OATT.

7. Xcel requests an effective date of July 13, 2007, for its tariff sheets, with the exception of Schedule 4 (Energy Imbalance Service) and Schedule 9 (Generation Imbalance Service) for which Xcel requests an effective date of August 1, 2007, to avoid changing billing for these services in mid-month, as permitted by Order No. 890.

### **III. Notice of Filing and Responsive Pleadings**

8. Notice of Xcel's filing was published in the *Federal Register*, 72 Fed. Reg. 41,726 (2007), with interventions and protests due on or before August 3, 2007. Midwest Municipal Transmission Group filed a motion to intervene. Powerex Corporation (Powerex) filed a motion to intervene and comments raising no substantive issues. Golden Spread Electric Cooperative, Inc. (Golden Spread) and Municipal Energy Agency of Nebraska (MEAN) each filed a motion to intervene and protest. Xcel filed an answer in response to the protests, and Golden Spread and MEAN each filed a reply to Xcel's answer.

### **IV. Discussion**

#### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Xcel's answer and Golden Spread and MEAN's replies because they have provided information that assisted us in our decision-making process.

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<sup>6</sup>Exceptions include certain grandfathered transmission service agreements on the NSP Companies system, as well as certain transmission service related to "Tie Line" facilities where SPS interconnects with PSCo at the Kansas/Colorado border. Point-to-point and network integration transmission service are available over the Tie Line pursuant to the Joint OATT. SPS is also subject to the non-rate terms and conditions of Xcel's Joint OATT for network services used to serve its native load customers.

**B. Substantive Matters**

11. We find that Xcel has largely complied with the requirements of Order No. 890. As discussed below, we will accept Xcel's compliance filing, as modified, to be effective on the dates proposed. We direct Xcel to file, within 30 days of the date of this order, a further compliance filing containing the revisions required herein in order to provide greater clarity. Finally, in some instances, we require Xcel to provide support for its compliance language.

**1. Capacity Benefit Margin**

12. Xcel states in the instant filing that its operating companies do not reserve CBM for native load or any other customer and, thus, no changes are needed to its charges. We conclude that Xcel's submittal complies with Order No. 890 and, accordingly, we will accept it.<sup>7</sup>

**2. Creditworthiness Procedures (Attachment Q)**

13. In Order No. 890, the Commission required transmission providers to amend their OATTs to include a new attachment that sets forth the basic credit standards the transmission provider uses to grant or deny transmission service. This attachment must specify both the qualitative and quantitative criteria that the transmission provider uses to determine the level of secured and unsecured credit required. In addition, the Commission required transmission providers to address six specific elements regarding the transmission provider's credit requirements.<sup>8</sup>

14. Xcel filed its creditworthiness procedures in Attachment Q which lists the financial measures that will be considered in computing the financial score and the non-financial measures that will be assessed in determining the qualitative score for both public and non-public entities. Attachment Q references the Xcel OASIS website for the criteria and weighting to be applied to the individual measures.

15. Xcel lists specific financial measures that will be considered in the quantitative analysis. Regarding the qualitative analysis, Xcel proposes to take into account a variety of information, but at a minimum will assess the following characteristics (when applicable) of each Applicant/Transmission Customer: (1) the ability to set rates without seeking regulatory approval; (2) the financial protections afforded unsecured creditors contained in the contracts and other legal documents related to the formation and

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<sup>7</sup>We note that to the extent Xcel uses CBM in the future or provides a CBM set-aside at the request of a customer, it must revise its transmission charges consistent with the requirements of Order No. 890.

<sup>8</sup>Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1656-61.

governance of the public or non-public power entities; (3) the number and composition of members or customers of the entity; and (4) rating agency ratings assigned to unsecured debt.<sup>9</sup>

16. Golden Spread contends that Xcel's creditworthiness procedures provide Xcel with excessive discretion and are therefore unjust and unreasonable. Golden Spread is particularly concerned about Xcel's unlimited ability to add factors to its evaluation and failure to specify how the factors will be evaluated, based on Xcel's proposed language that it will take into account "at a minimum" the four characteristics, as previously described. Golden Spread describes SPP's creditworthiness evaluation process, which is based on similar factors, and asserts that the Commission should require a similar degree of specificity and objectivity from Xcel.

17. Xcel responds that identical language has already been accepted by the Commission for the qualitative score provisions of other transmission providers' creditworthiness policies, citing cases involving Midwest ISO and SPP.<sup>10</sup>

18. We find that Xcel's language is incomplete with regard to other factors that may be considered in the qualitative assessment at Xcel's option, and could afford Xcel too much discretion. In response to Xcel's contention that its creditworthiness provision utilizes the same language contained in the Midwest ISO and SPP tariffs, such precedent is not controlling here because those transmission providers are independent of market participants and are not in the position of providing themselves with discretion to grant or withhold credit to entities with which they compete in wholesale power markets.<sup>11</sup> Accordingly, we find that all characteristics that will be taken into account in computing the qualitative credit score must be specified in Attachment Q. We require Xcel to strike "at a minimum" from the listing of creditworthiness criteria and specify additional characteristics, if any, in its compliance filing.

19. We find that other revisions or explanations are required for the remaining creditworthiness language in this compliance filing. For the qualitative criteria, Xcel does not indicate whether specific requirements will be used to assess these criteria, nor

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<sup>9</sup> Xcel Energy Operating Companies, FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 464-65.

<sup>10</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,285, at P 355-356 (2004) (accepting qualitative scoring process of Midwest ISO that will assess certain characteristics "at a minimum") and *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,222 (2006).

<sup>11</sup> See *Duquesne Light Company*, 103 FERC ¶ 61,227 (2003).

does the OASIS website help in this regard.<sup>12</sup> For instance, although rating agency ratings are one qualitative criterion, Xcel does not state what constitutes an acceptable rating. Accordingly, Xcel is required to explain whether specific requirements are applied to each qualitative criterion (e.g., whether it requires a specific minimum credit rating) to assess the creditworthiness of public and non-public entities, in a compliance filing.

20. Under Attachment Q, the transmission provider performs a credit evaluation for each customer every twelve months but may “more frequently if, in its sole discretion, the Transmission Provider deems it appropriate.” Similarly, Xcel has the right to modify any unsecured credit limit and require additional financial security at any time. Although Xcel specifies instances of material adverse change that would necessitate a credit re-evaluation,<sup>13</sup> the language allowing Xcel to re-evaluate credit and modify credit limits at any time affords Xcel unlimited discretion in choosing when to perform credit re-evaluations.<sup>14</sup> Xcel is required to revise this language to provide specific criteria that could trigger a credit re-evaluation or cause the unsecured credit limit and/or financial security requirement to be modified, and to remove the language that allows Xcel unlimited discretion.

21. Finally, although Xcel’s credit policy specifies certain procedural time frames, other key timing requirements are lacking. For example, Attachment Q does not state how many days Xcel has to notify a potential customer of the results of its initial credit evaluation or of any modifications to the unsecured credit limit. Nor does it provide a time period for the customer to contest determinations of credit levels or collateral requirements. Therefore, we require Xcel to modify Attachment Q to specify all timing requirements for customers.

22. We direct Xcel to file, within 30 days of the date of this order, a further compliance filing that addresses the creditworthiness issues described above.

### **3. Unreserved Use Penalties**

23. In Order No. 890, the Commission determined that transmission customers would be subject to unreserved use penalties in any circumstance in which the transmission

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<sup>12</sup> Language indicating what numerical score is indicative of good or poor financial health does not explain how these numerical scores are derived.

<sup>13</sup>For example, creditworthiness will be re-evaluated in the event of a downgrade of any debt rating or issuer rating, or if the customer files for bankruptcy.

<sup>14</sup>See *Maine Public Service Company*, 122 FERC ¶ 61,073, at P 14 (2008); *South Carolina Electric & Gas Company*, 122 FERC ¶ 61,070, at P 12 (2008); and *Entergy Services, Inc.*, 106 FERC ¶ 61,039, at P 14 (2004).

customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.<sup>15</sup>

24. Xcel proposes not to establish a penalty rate for unreserved use for the PSCo system at this time. In addition, Xcel proposes to delete existing penalty provisions from Schedules 3, 5, 6, 7 and 8.

25. MEAN questions whether the deletion of an existing penalty provision is outside the scope of the compliance filing, citing the Commission's statement in Order No. 890 that "the transmission customer must face a penalty in excess of the firm point-to-point transmission service charge it avoids through unreserved use of transmission service or the transmission customer will have no incentive to reserve the appropriate amount of service."<sup>16</sup> MEAN states that it is mystified by Xcel's omission of penalties for misuse of point-to-point and network service previously contained in Schedules 7 and 8, unless Xcel's aim is to protect Xcel's merchant function from penalties. MEAN requests that Xcel be required to explain and justify its proposal to entirely omit penalties for misuse of point-to-point and network service.

26. The Commission did not require companies to include a provision for unreserved use penalties in their OATTs.<sup>17</sup> Xcel's removal of penalties for unreserved use is permitted by Order No. 890; however, as a consequence of this removal, Xcel may not charge any such penalties to any other transmission customers. Xcel states that if PSCo experiences concerns with transmission service customers engaging in unreserved use, Xcel will file proposed tariff changes to establish penalties in a future section 205 filing.

#### **4. Imbalance Energy Revenue Distribution**

27. In Order No. 890, the Commission determined that charges for both energy and generator imbalances would be based upon a tiered approach that reflects incremental costs. The Commission also required transmission providers to credit revenues in excess of incremental costs to all non-offending customers. As a result, the Commission directed transmission providers to develop, as part of their Order No. 890 compliance filings, a mechanism for crediting such revenues to all non-offending transmission customers (including affiliated transmission customers) and to the transmission provider on behalf of its own customers.<sup>18</sup>

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<sup>15</sup>Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, 848.

<sup>16</sup>*Id.* P 848.

<sup>17</sup>*Id.* P 848. Order No. 890 states, "A transmission provider that wants to charge unreserved use penalties must explicitly state the penalty rate in its tariff."

<sup>18</sup>*Id.* P 663, 667, 727.

28. Xcel has submitted language in section 3 of its Joint OATT which provides for monthly crediting of revenues above the transmission provider's incremental costs to all non-offending customers in proportion to their total point-to-point or network charges in the billing month for which the penalty revenues were received. It further provides that imputed network revenue from the Transmission Provider's bundled load shall be included in the calculation apportioning penalty revenues to non-offending customers.

29. MEAN asserts that Xcel does not specify how it will determine whether a customer is non-offending. MEAN requests that the Commission require Xcel to specify who will be eligible for these revenue distributions so that customers and the Commission may consider whether Xcel's proposal is just and reasonable. In its answer, Xcel explains that imbalance penalty revenues above incremental cost will be distributed monthly to all non-offending customers, i.e., those customers who did not incur an imbalance penalty by exceeding the +/-1.5 percent band in any hour in the billing month. In its reply, MEAN takes issue with the eligibility designation, stating that it will produce unfair results. MEAN contends that Xcel's test for who is non-offending is unjust, unreasonable, and unduly discriminatory because a transmission customer that incurs an imbalance penalty of as little as one MW above the minimum two MW or 1.5 percent for even a single hour within a month would be completely excluded from the penalty revenue distribution for that month. Thus, MEAN states, it would be almost impossible for a transmission customer to be eligible for a share of the revenues, except for possibly the very smallest customers, virtually assuring that Xcel's own native load will receive all the revenues. MEAN states that Xcel's proposed standard for non-offending customers would be acceptable if it were applied on an hourly basis.

30. We find that Xcel's response that "non-offending customers would be those *customers who did not incur an imbalance penalty* by exceeding the +/-1.5 percent band in *any hour in the billing month*," (emphasis added) does not comport with the Commission's requirements. The Commission explained in Order No. 890-A that non-offending customers would include "those customers to whom the penalty component did not apply in the hour."<sup>19</sup> The Commission further explained that "customers that were out of balance, but within the first tier, should therefore be included in the distribution."<sup>20</sup> In discussing whether or not customers with imbalances outside of the first deviation band should be considered as non-offending customers at other times, the Commission concluded that "it would not be appropriate to exclude these customers from receiving a *pro rata* portion of penalty revenues in other hours."<sup>21</sup> Therefore, consistent with Order

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<sup>19</sup>Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 333.

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

<sup>21</sup> *Id.*

No. 890-A and *PacifiCorp*,<sup>22</sup> we direct Xcel to file, within 30 days of the date of this order, a further compliance filing with tariff language for the distribution of imbalance penalty revenues that specifies that the determination of whether or not a customer is non-offending is made on an hourly basis and that such determination excludes offending customers from receiving penalty revenues only for that offending hour.

## **5. Distribution of Operational Penalty Revenues**

31. Xcel has not included a proposal for distribution of other penalty revenues. MEAN asserts that the Commission intended that transmission providers include their proposed mechanisms with the July 13 compliance filings and that annually each transmission provider would submit an informational filing showing how it had distributed penalty revenues in the previous year in accordance with the previously-filed mechanism. Xcel contends it was not required to include such a provision in the July 13 compliance filing but was only required to make annual filings.

32. In Order No. 890-A, the Commission clarified that each transmission provider must submit a one-time compliance filing under FPA section 206 proposing the transmission provider's method for distributing revenues from late study penalties and, if applicable, unreserved use penalties. This one-time compliance filing can be submitted at any time before the first distribution of operational penalties.<sup>23</sup> Consistent with this clarification, Xcel is required to file its distribution mechanism before the first distribution of penalty revenues.

## **6. Clustering**

33. In Order No. 890, the Commission did not generally require transmission providers to study transmission requests in a cluster, although the Commission encouraged transmission providers to cluster studies when it is reasonable to do so. The Commission also explicitly required transmission providers to consider clustering studies if customers request a cluster and the transmission provider can reasonably accommodate the request. As a result, the Commission directed transmission providers to include tariff language in their Order No. 890 compliance filings that describes how the transmission provider will process a request to cluster studies and how it will structure transmission customers' obligations when they have joined a cluster.<sup>24</sup>

34. In sections 19 and 32 of its filing, Xcel proposes language describing how requests for cluster studies will be handled for the PSCo and SPS systems and allows a party to

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<sup>22</sup> See *PacifiCorp*, 121 FERC ¶ 61,223, at P 44-45 (2007) (accepting in part and rejecting in part *PacifiCorp*'s Order No. 890 compliance filings).

<sup>23</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 472.

<sup>24</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1370-71.

request cluster studies associated with new transmission services. Sections 19 and 32 provide, in part:

At Transmission Provider's option, or if specifically requested by a Transmission Customer and found feasible by the Transmission Provider, Transmission Service Requests may be studied in clusters for the purpose of the Transmission Service System Impact Study and Facilities Studies.

Clustering shall be implemented on the basis of Queue Position. If Transmission Provider elects to study Transmission Service Requests using Clustering, all Transmission Service Requests which impact a common transmission path or region received within a period not to exceed sixty (60) Calendar Days, hereinafter referred to as the "Transmission Service Queue Cluster Window," shall be studied together without regard to the nature of the underlying Transmission Service, whether Firm Point-to-Point, Network Integration Transmission Service or service to serve Transmission Provider's native load.

Transmission Provider may, at its option, announce an "open season" by a posting on Transmission Provider's OASIS seeking transmission service requests affecting a common transmission path (or paths) or region to establish a Transmission Service Queue Cluster Window. The open season shall have a fixed time interval based on fixed opening and closing dates. Any changes to the established open season opening or closing dates shall be announced with a posting on Transmission Provider's OASIS at least ten (10) days in advance of the change.

All transmission service requests affecting the common transmission path(s) or region received after the announced Transmission Service Queue Cluster Window will be considered serially after the clustered System Impact Study and Facilities Study (if necessary).

35. Golden Spread claims that the clustering provision is unjust and unreasonable because it provides Xcel with excessive discretion in determining whether, when and how to perform cluster studies. Golden Spread states that there are no objective criteria for determining when service requests will be studied in clusters. Golden Spread also states that the studies to be clustered are those that "impact a common transmission path or region," but Xcel does not define these terms. In addition, Golden Spread asserts that the clustering process is open to manipulation; for example, the transmission provider may announce an open season by a posting on the OASIS, but can subsequently change the dates through another posting. Golden Spread also contends that the time frame for responding to customers is too long (three times as long as for SPP). Golden Spread does not believe that Xcel has provided proper justification for the degree of discretion it

grants itself. In reply, Xcel declares that Golden Spread has misunderstood the Order No. 890 requirements, and that Xcel's cluster study provisions are intended to provide more efficient planning and are similar to those previously filed by Xcel in its Order No. 2003 compliance filing and accepted by the Commission.

36. MEAN requests that the clustering provisions be rejected because they go beyond the concept of customer-initiated clustering by proposing that Xcel will dictate when and whether to cluster service requests for study. Specifically, MEAN states that Xcel's proposal (1) fails to provide customers the right to opt out; (2) permits Xcel to declare an open season for a cluster study by giving the customers as little as ten days' notice; (3) gives Xcel an unreasonable amount of time, 180 days, to complete such a study and (4) should permit clustering only of those requests that are similar and add an opt-out provision for customers who did not voluntarily seek clustering.

37. As recognized in Order No. 890-A, the Commission did not preclude transmission providers from clustering additional request studies if they believe it reasonable to do so. The Commission stated that studying transmission service requests in a cluster in some cases can create synergistic benefits, simplify complex, interrelated transmission requests and help transmission providers reduce study queue backlogs.<sup>25</sup> Therefore, Xcel's proposal to use cluster studies is permissible under the guidelines of Order No. 890. Golden Spread faults Xcel's proposal stating there are no objective criteria for determining when service requests will be studied in clusters. We disagree and believe that the proposed tariff language—to cluster those [studies] that “impact a common transmission path or region”—is sufficiently clear.

38. Furthermore, we disagree with MEAN's assertion that Xcel's cluster provision should be rejected because it “fails to provide customers the right to opt out.” In Order No. 890, the Commission gave transmission providers “discretion to determine whether a transmission customer can opt out of a cluster and request an individual study,” because the transmission provider is in the best position to develop clustering procedures that prevent a customer from strategically participating in clusters to avoid costs for needed transmission system upgrades.<sup>26</sup> That notwithstanding, we find Xcel's provision requires further specificity to address what happens when a transmission customer requests to opt out of a cluster study. The tariff language should address how Xcel will proceed (should it determine that the request can be studied individually) including specifying whether the remaining customers in the cluster can move forward as their own cluster and addressing how Xcel will structure the remaining customers' obligations when one or more participants opt out of a clustered system impact study.<sup>27</sup>

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<sup>25</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 760.

<sup>26</sup> Order No 890, FERC Stats. & Regs. ¶ 31,241 at P 1371.

<sup>27</sup> See *Idaho Power Company*, 122 FERC ¶ 61,243, at P 20-22 (2008).

39. With regard to the proposed 180-day time frame for completing a cluster study, we agree that this time frame is unsupported. Order No 890-A was clear: the Commission will not exempt clustering of studies from the 60-day due diligence deadline.<sup>28</sup> Xcel is required to revise its language accordingly. Regarding Xcel's tariff language permitting Xcel to make changes to an open season for a cluster study by giving the customers ten days' notice, Golden Spread and MEAN have not explained why ten days is insufficient notice.

40. We direct Xcel to file, within 30 days of the date of this order, a further compliance filing that addresses the clustering issues described above.

### **7. Rollover Rights Effective Date**

41. In Order No. 890, the Commission adopted a five-year minimum contract term in order for a customer to be eligible for a rollover right and adopted a one-year notice period. The Commission determined that this rollover reform should be made effective at the time of acceptance by the Commission of a transmission provider's coordinated and regional planning process. The Commission explained that rollover reform and transmission planning are closely related, because transmission service eligible for a rollover right must be set aside for rollover customers and included in transmission planning.<sup>29</sup>

42. In its protest, MEAN asserts that Xcel's inclusion of the *pro forma* section 2.2 prematurely omits the currently effective rollover standards, leaving a serious gap in the rollover provisions.

43. Xcel has included the rollover reforms in section 2.2 of its revised tariff sheets, with a requested effective date of July 13, 2007. However, Xcel's Attachment R, setting forth its transmission planning process, filed in Docket No. OA08-35-000, has not yet been accepted by the Commission. This is contrary to Order No. 890's requirement that rollover reforms are not to become effective until after a transmission provider's transmission planning provision is accepted. Therefore, we direct Xcel to file, within 30 days of the date of this order, a revised tariff sheet that reflects the previous language of section 2.2. Xcel should re-file the rollover reform language established in Order No. 890 within 30 days after acceptance of its Attachment R, requesting an effective date commensurate with the date of that filing.

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<sup>28</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 761.

<sup>29</sup> Order No 890, FERC Stats. & Regs. ¶ 31,241 at P 1231, 1265.

## 8. Effective Date Applicable to Section 30.9

44. In section 30.9 of its Joint OATT, Xcel reflects the new test adopted by the Commission for determining whether customer-owned transmission facilities are eligible for credits. In its protest, MEAN asserts that Order No. 890 states that the regulations adopted therein are effective as of 60 days after publication of the order in the *Federal Register*. Since publication in the *Federal Register* occurred on March 15, 2007, MEAN contends that the date for implementation of the new test should be no later than May 14, 2007.

45. The Commission concluded in Order No. 890 that the new test “will apply only to transmission facilities added subsequent to the effective date of this Final Rule.”<sup>30</sup> While Order No. 890 established an effective date of sixty days after publication in the *Federal Register*, i.e., May 14, 2007, the Commission later extended the effectiveness of all reforms adopted in Order No. 890 to July 13, 2007.<sup>31</sup> We therefore reject MEAN’s proposed effective date for the revisions to section 30.9 made in compliance with Order No. 890.

46. Accordingly, we will accept Xcel’s compliance filing, as modified, effective on the dates proposed.

### The Commission orders:

(A) Xcel’s compliance filing is hereby accepted, as modified, effective July 13, 2007, with the exception of Schedules 4 and 9 which are accepted effective August 1, 2007, as discussed in the body of this order.

(B) Xcel is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>30</sup> Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 758.

<sup>31</sup> See Order Granting Extension of Compliance Action Dates, 119 FERC ¶ 61,037 (2007) at P 20.