

FEDERAL ENERGY REGULATORY COMMISSION

Office of Market Oversight and Investigations
Washington, DC 20426

In Reply Refer To:
OMOI-DOA
Docket No. PA05-1-000

November 28, 2005

James P. Johnson
Assistant General Counsel
Xcel Energy
800 Nicollet Mall, suite 2900
Minneapolis, Minnesota 55402

Dear Mr. Johnson,

1. The Division of Operational Audits (Operational Audits) within the Office of Market Oversight and Investigations (OMOI) has completed an audit of Public Service Company of Colorado (PSCo) for the period of January 2002 through August 2004. Operational Audits recommends corrective actions on certain findings of non-compliance with PSCo's Open Access Transmission Tariff and the Standards of Conduct regulations. The enclosed Audit Report describes our findings and recommendations.

2. Your letter dated November 7, 2005 stated that PSCo agrees with each of the findings and recommendations in the Audit Report and sets forth the corrective action(s) taken or planned and the targeted completion date. A copy of this letter is included as an Appendix to the Audit Report.

3. I hereby approve and direct the recommended corrective actions. PSCo must file all procedures pursuant to this audit within 90 days of this letter order. PSCo is directed to submit a status report detailing its progress in implementing the corrective actions and procedures on a quarterly basis until all the corrective actions are completed. Send status reports to:

Bryan K. Craig, Director
Division of Operational Audits
Federal Energy Regulatory Commission
888 First Street NE, RM 51-37
Washington, DC 20426

4. The Commission delegated authority to act in this matter to the Director of OMOI under 18 C.F.R. §375.314(2004). This letter order constitutes final agency action on the corrective actions approved and directed in the Audit Report. PSCo may file a request for rehearing within 30 days of the date of the order under 18 C.F.R. § 385.713(2004).

5. This letter order is without prejudice to the Commission's right to require hereafter any adjustments it may consider proper from additional information that may come to its attention.

6. I appreciate the courtesies extended to our auditors. If you have questions, please contact Eliot Wessler at (202) 502-8261 or via e-mail at eliot.wessler@ferc.gov.

Sincerely,

Susan Court, Director
Office of Market Oversight and Investigations

cc:

David T. Hudson
Director, Regulatory Administration
Xcel Energy Services, Inc.

Earle H. O'Donnell
Dewey Ballantine LLP
1775 Pennsylvania Avenue, NW
Washington, D.C. 20006

Enclosure

FEDERAL ENERGY REGULATORY COMMISSION

Audit of Standards of Conduct, and Open Access Transmission Tariff Public Service Company of Colorado

Audit Period: January 2002 through August 2004



Audit Report

Office of Market Oversight and Investigations
Division of Operational Audits

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I. EXECUTIVE SUMMARY

A. Overview

The Division of Operational Audits within the Office of Market Oversight and Investigations has completed an audit of Public Service Company of Colorado (PSCo). The audit covers the period from January 1, 2002 through August 31, 2004. The audit focuses on:

- Compliance with Part 37 of the Commission's regulations¹, principally the requirement for a Transmission Provider to: operate its transmission function independently from its wholesale merchant function (WMF) and affiliated power marketers (APM); and operate an Open Access Same-Time Information System (OASIS).
- Provision of transmission services consistent with a filed Open Access Transmission Tariff (OATT).²

The time frame for the audit covers a period prior to the effective date of Order No. 2004.³ Therefore, the audit measures compliance with then-existing rules, regulations, and requirements (*e.g.*, Part 37 of the Commission's regulations), not with the requirements of Order No. 2004. The recommendations made by audit staff in this audit report for the company's activities on a going-forward basis are consistent with Order No. 2004. The company must ensure that their detailed implementation of any such recommendations is consistent with all new requirements under Order No. 2004.

¹ Unless noted otherwise, all references to Part 37 of the Commission's regulations were from 18 C.F.R. §37 (2004).

² Open Access Transmission Tariff of the Utility Operating Company Subsidiaries of Xcel Energy Inc.: Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, Southwestern Public Service Company, Xcel Energy Operating Companies, FERC Electric Tariff, First Revised Volume No. 1.

³ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs., Regulations Preambles ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, III FERC Stats. & Regs. ¶ 31,161 (2004), 107 FERC ¶ 61,032 (2004), *order on reh'g*, Order No. 2004-B, III FERC Stats. & Regs. ¶ 31,166 (2004), 108 FERC ¶ 61,118 (2004), *order on reh'g*, Order No. 2004-C, 109 FERC ¶ 61,325 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

B. Public Service Company of Colorado

PSCo is one of four operating companies of Xcel Energy Inc., a registered holding company headquartered in Minnesota. Xcel Energy Inc. has electric operations principally in Minnesota, Wisconsin, Texas, and Colorado.

This audit addresses the operations of only one Xcel operating company (PSCo), except insofar as PSCo's operations are directed by or subsumed under parts of the Xcel corporate structure. The portions of the corporate structure relevant to this audit are:

- The wholesale electric merchant function for all of Xcel's operating companies is located in Denver, near the headquarters building of PSCo. The wholesale electric merchant function is within Xcel Energy Services Inc., the service company for the holding company (Xcel Energy Inc.).
- During the audit period, PSCo had three active affiliated power marketers.⁴ The audit did not address the activities of these affiliates because they did not own or control assets in the same geographic market in which PSCo has generating and transmission assets. Moreover, the audit did not address the activities of NRG, a former marketing affiliate of Xcel, because Xcel had begun and completed divesting its interests in NRG during the audit period.⁵

PSCo is a Transmission Provider; it operates a system control center (the Lookout Center) in Golden, Colorado. During the audit period, PSCo operated an OASIS node on the Rocky Mountain Area OASIS (RMAO) system.

Over the last two years, a majority of the Transmission Providers that had maintained nodes on the RMAO OASIS system have migrated to westTrans.net, an OASIS site that is hosted by Open Access Technology International, Inc (OATi). During the audit period, PSCo planned for the migration of its own OASIS operations to westTrans.net, and the migration was successfully completed on October 10, 2005. PSCo believes that the westTrans.net OASIS site has more powerful internal controls than the RMAO OASIS site had. PSCo suggests that some of the OASIS control problems that we have identified (and are discussed below), *e.g.*, review of NERC E-tags and posting of TTC values, will be mitigated as a result of the migration. Our recommendations for future actions by the company to improve its controls reflect the fact that the company has

⁴ Windpower Partners 1994, L.P., Quixx Linden, L.P., Borger Energy Associates, L.P.

⁵ Xcel Energy completed the divestiture of its ownership interests in NRG on December 5, 2003.

migrated to wesTTrans.net, and that its own control procedures need to be harmonized with those embedded in wesTTrans.net.

C. Conclusions

The audit findings are based on materials provided by PSCo in response to data requests, interviews with PSCo employees (principally employees of the transmission and merchant function), two site visits by audit staff, and a review of publicly available documents.

We believe PSCo employees showed a strong commitment to compliance with Standards of Conduct and OATT requirements. We were impressed with the controls that the company employs to monitor compliance on an on-going basis. We also found PSCo employees in the transmission and merchant functions that we worked most closely with to be supportive of the goals of this audit, and highly cooperative with respect to audit staff's requests.

Summary of Compliance Findings

We found five compliance exceptions, *i.e.*, programs or actions that we believe are inconsistent with the Commission's rules, regulations and requirements. However, we found no evidence that these programs or actions lead to preferential treatment for PSCo or its affiliates. The compliance exceptions include:

- *Sales Between Affiliated Operating Companies:* PSCo engaged in sales of power with its sister Xcel operating companies which were not clearly authorized in rates and tariffs filed at the Commission, although PSCo Merchant believed at the time it had authority to engage in such sales under the Xcel Joint Operating Agreement filed at the Commission. We found no evidence that these sales resulted in harm to Xcel customers or reflected affiliate abuse.
- *Use of Network Integration Transmission Service:* On a few occasions during the audit period, PSCo's merchant function made third-party sales of energy using network integration transmission (NITS) service instead of using point-to-point (PTP) service, as is required under Xcel's Open Access Transmission Tariff (OATT). PSCo transmission employees identified these occurrences during after-the-fact reviews of NERC E-tags. PSCo attributes the problem to human error, *i.e.*, incorrectly filling out tags, and after finding the errors, PSCo rebilled its transmission customers.

- *Posting Exercises of Discretion Under Open Access Transmission Tariff:* PSCo did not log on its OASIS the few occasions when it exercised discretion under its OATT, e.g., when it accepted late NERC E-tags. Part 37 of the Commission's regulations requires a Transmission Provider to keep a log of exercises of discretion under its OATT and post the log on its OASIS. We found no evidence that PSCo exercised discretion under its OATT in ways that provided preference for its affiliates.
- *Discounting Transmission Service:* PSCo offered transmission discounts over explicit transmission paths, consistent with Part 37 of the Commission's regulations. However, PSCo failed to follow guidance in Order 888-A which requires a Transmission Provider to provide the same discounted service over all other unconstrained transmission paths to the same delivery point. We found a small number of occasions when PSCo should have, but did not, charge the discounted price for reserved transmission. We specifically reviewed when discounts were provided to PSCo's merchant function and when discounts were provided to non-affiliated transmission customers, and we found no evidence of preferential treatment for affiliates.
- *Posting Total Transmission Capability on OASIS:* PSCo did not post Total Transmission Capability on its OASIS in accordance with the Commission's regulations at 18 C.F.R. § 37.6.

Summary of Recommendations

We recommend PSCo take the following steps to remedy the compliance exceptions identified in this audit report:

- (1) Make filings with the Commission at the earliest possible time after issuance of this audit report so that the company is in conformance with Section 205 of the Federal Power Act and the policy articulated in Prior Notice.
- (2) PSCo should codify, in writing, its control procedures for review of NERC E-tags to ensure that network transmission service is not being used inappropriately. PSCo should consider whether an internal audit is warranted to ensure that its manual control procedures and the automatic control procedures embedded in the westTrans.net system are consistent, and are sufficient to ensure compliance with OATT requirements, and the need for rebilling customers when the controls fail.
- (3) Develop written procedures to identify acts of discretion PSCo engages in with respect to tariff administration, and begin posting such acts of discretion on its OASIS site.

- (4) Develop written policies for its transmission employees if the company chooses to discount transmission service on a going-forward basis.
- (5) Post Total Transmission Capability (as well as all other OASIS posting requirements) in the detail required by § 37.6 of the Commission's regulations and current Standards & Communications Protocols (S&CP), and comply with S&CP requirements for querying data and provided responses.

D. Objective

Our overall audit objective was to determine PSCO's compliance with: Standard of Conduct and OASIS regulations required by 18 C.F.R. Part 37; and its Open Access Transmission Tariff.

E. Implementation Plan

We recommend PSCo file an implementation plan with audit staff detailing the company's plans to come into compliance with respect to the findings and recommendations summarized above. The implementation plan should describe how the actions the company will take are consistent with and complementary to the migration of PSCO's OASIS to westTrans.net. The implementation plan should be submitted within 30 days of the date of the order issuing this audit report. The implementation plan should include discussion of how PSCo will train its staff on new procedures that result from implementation of the audit recommendations. In addition, we recommend PSCo submit quarterly status reports detailing progress on the implementation plan, commencing with a first quarterly report within 90 days of the date of the order issuing this audit report, to continue until PSCo has taken all the corrective actions directed in the audit report.

II. COMPLIANCE FINDINGS AND RECOMMENDATIONS

1. Sales Between Affiliated Operating Companies

PSCo engaged in transactions involving sales of power with its sister Xcel operating companies that were made without prior Commission approval as required by Section 205 of the Federal Power Act 16 U.S.C. § 824d. At the time it engaged in these transactions, PSCo Merchant believed it did have authority to conduct these transactions under the Xcel Joint Operating Agreement (JOA).

Commission Requirements

As discussed in a series of Commission orders,⁶ under section 205 of the Federal Power Act and the Commission's implementing regulations, public utilities must file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service.

The Commission's policy was designed to "encourage compliance with those obligations", and in relevant part says:

If a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced, we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of our regulations...for the entire period that the rate was collected without Commission authorization....We will implement a similar remedy for the unauthorized late filing of market-based rates. If a utility files a market-based rate less than 60 days prior to the proposed effective date of new service, and waiver is denied, we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to section 35.19a of our regulations, for the entire period that the rate was collected without Commission authorization. In addition, the utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and a cost-justified rate.⁷

⁶ 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*). See also *El Paso Electric Company*, 105 FERC ¶ 61,131 (2003) (affirming the Commission's policy in *Prior Notice*).

⁷ *Id.* at pp. 61,979-80.

Background

We reviewed a number of power sales transactions engaged in by PSCo merchant during the audit period, using transaction data provided by the company, and from an Electric Quarterly Report (EQR) filing made by the company. We noted that some sales made by PSCo were for delivery in the Eastern Interconnect, even though PSCo did not have customers or assets in the Eastern Interconnect. Moreover, among the counterparties was NSP, one of PSCo's sister operating companies. We also found PSCo and SPS, another Xcel operating company, making similar sales, *i.e.*, sales at delivery points distant from the location of their generating assets and native loads.⁸

In response to our data request, PSCo provided explanations for these inter-affiliate sales. For example, in one series of trades, a trader had sold energy into the bilateral market at PJM West under PSCo's name. To cover this position, the traders sought to buy from PJM directly, which it believed would be the cheapest source of power. However, PSCo did not have a credit arrangement with PJM. The traders structured the deal as NSP purchasing from PJM and selling to PSCo because NSP did have a credit arrangement with PJM.

We reviewed in depth a sample of these inter-affiliate transactions. PSCo's explanation as to why the inter-affiliate sale was entered into fell into one of three categories:

- the Xcel Operating Company taking a position lacked credit or other enabling agreements with the counterparty eventually chosen to close the position,
- a counterparty's preference to deal with one or the other of the Xcel affiliates, or
- the transfer of a trading position from the Eastern Interconnect to the Western Interconnect to capture a larger margin on the deal.

Our review of these inter-affiliate transactions focused on whether there was any evidence of affiliate abuse. We found no evidence that these trades negatively affected PSCo's customers, other Xcel customers, or customers of non-affiliated suppliers.

We reviewed the profits and losses from trading in all books and found them to be allocated between the operating companies based on pre-determined factors (such as

⁸ Xcel has a consolidated trading operation, but we found that all traders may make trades in each operating company's book although traders have primary books within which they trade. This is consistent with the JOA, which provides for the consolidated trading operation to provide wholesale merchant services as an agent for all operating companies.

load), and not based on the trades recorded in each book. We reviewed working papers showing the calculation and allocation of the net revenue derived from a sample period of trading. We found no evidence that the profits and losses from off-system trading were allocated in a way that was inconsistent with the Xcel Joint Operating Agreement.

Although we found no evidence that these inter-affiliate trades represented affiliate abuse, we were concerned that these trades were not clearly authorized under rates or agreements filed at the Commission. We reviewed the company's authority to make such sales under its market-based rate authority⁹ and under the JOA,¹⁰ and concluded that no such authority existed. The JOA provides for an operating company to sell to another operating company from its generating resources.¹¹ None of the transactions we reviewed involved the sale of energy from an operating company's generating resources or to an operating company's native load.

PSCo originally explained that it conducted these trades in the belief that they were covered under the JOA. However, after we discussed our concerns with the company, PSCo now believes that the JOA "should either be clarified or a new service schedule added to make explicit the ability to transfer Non-system Purchase positions between Operating Companies."

During a site visit in June 2005, the company confirmed that it discontinued making new such sales among its affiliated operating companies at the time it became aware of our concerns. The company represents it has prepared a modified version of the JOA for filing that would explicitly include the types of inter-affiliate transactions that we reviewed.

Recommendation

We recommend:

1. PSCo make filings with the Commission at the earliest possible time after issuance of this audit report so that the company is in conformance with Section 205 of the FPA and the policy articulated in Prior Notice.

⁹ See 86 FERC 61,307 (1999).

¹⁰ See 90 FERC ¶61,020 (2000).

¹¹ JOA, Section 7.4. Generating resources are facilities or capacity owned by, or under long-term contract to, an operating company for the primary purpose of meeting the capacity and energy needs of its retail and wholesale requirements customers. JOA, Section 1.7.

2. Use of Network Integration Transmission Service

On a number of occasions during the audit period, PSCo's merchant function made third-party sales of energy using network integration transmission (NITS) service instead of using point-to-point (PTP) service, as was required under Xcel's Open Access Transmission Tariff (OATT).

Commission Requirements

PSCo's merchant function takes transmission service under Xcel's OATT—it is a network customer of Xcel, and it also reserves PTP transmission service over Xcel's system. We reviewed the relevant portions of the OATT and identified the following restrictions on the use of network transmission:

- Xcel's OATT allows a network customer, such as PSCo, to use NITS to "...provide firm transmission service over its Transmission System ...for the delivery of capacity and energy from its designated Network Resources to service its Network Loads..."¹²
- With respect to PTP service, the OATT makes the Transmission Provider (i.e., PSCo) "...subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales..."¹³

In a nutshell, this means that PSCo merchant can use network transmission service when it is dispatching its own generators and when it is making purchases to support sales to native load customers, but it must use PTP service when it is making third-party sales.

Background

In response to our initial data request, PSCo disclosed it used PTP service for all off-system sales with one exception. During two days in August 2003, PSCo used network transmission for a portion of its off-system sales.

During our site visit to the PSCo control center, we asked PSCo transmission employees whether there had been occasions when network service had been used inappropriately. The answer was yes, and in continuing discussions with PSCo transmission employees (and PSCo merchant employees), we learned that transmission employees reviewed NERC E-tags and occasionally found a tag that had been approved

¹² §28.3 of Xcel's Open Access Transmission Tariff.

¹³ §13.3. Note that Part II is the section of the OATT describing PTP service.

for a third-party sale using a NITS OASIS number. The tags approved in error showed PSCO merchant scheduling an energy sale where the source would be the PSCO system, and the sink would be a point-of-delivery that was not used to service native load. In most cases, the tags were prepared by PSCO merchant employees, but in some cases, the tags were prepared by another entity, usually the purchasing/selling entity in which the energy sale was sinking.

The inappropriate use of NITS service in August 2003 involved third-party sales of energy that PSCO delivered to Ault, a receipt and delivery point on PSCO's system. The company explains that a trader incorrectly assumed that the energy being delivered at Ault was energy intended to serve the load of Cheyenne Light, Fuel & Power Company, a full requirements customer of PSCO. For this reason, the tag that was prepared to schedule this transaction used an OASIS number for NITS service for delivery of energy to Ault, when in fact; an OASIS number for PTP service should have been used. This sale occurred in August 2003, and involved the sale of 418 MWh over an 8-hour period.

Through its review of tags, PSCO transmission employees found other examples of tags which had been approved using inappropriate OASIS numbers:

- In June 2003, a tag was prepared for a third-party sale to one customer using firm PTP service, but in fact the energy sale was to a different customer, requiring the use of a different OASIS number.
- In November 2003, PSCO transmission employees found a tag using an incorrect NITS OASIS number for a sale of 262 MWh over an 8-hour period.
- In July 2004, a GF designation was used for a tag for a 61 MWh sale over a 2-hour period; the GF designation was used for grandfathered transactions, but at the time, GF designations were no longer usable.

PSCO transmission found these occurrences during in-house review of tags, and after finding these occurrences, rebilled transmission customers to ensure that the customer was billed appropriately based on the correct use of reserved transmission services. This means, for example, when PSCO transmission found instances where NITS service was used by PSCO merchant in place of PTP service, PSCO merchant was billed for the PTP service.

In addition to manual review of tags, PSCO transmission has recently purchased and implemented software from OATi which reviews tags and catches problems with tags in real-time. This means that some tags which are inappropriately filled out will be rejected by PSCO transmission, and the customer will be required to prepare a correct tag if it wants the tag to be approved and the transaction to be scheduled. However, while the software will identify errors in the tags it did not identify tags for which the person

scheduling the transaction uses an OASIS number assigned to NITS service inappropriately. PSCo continues to rely on manual inspection for detecting this type of error. PSCo transmission employees told us that although they cannot eliminate human error, they were confident that the controls in place, *i.e.*, the manual review of tags and software review, are sufficient to ensure compliance with OATT requirements pertaining to appropriate use of transmission services.

Recommendation

PSCo has taken a number of steps to improve the controls it uses to ensure that its scheduling practices and review of NERC E-tags is done efficiently and on a non-preferential basis. We recommend:

2. PSCo should codify, in writing, its control procedures for review of NERC E-tags to ensure that network transmission service is not being used inappropriately. PSCo should consider whether an internal audit is warranted to ensure that its manual control procedures and the automatic control procedures embedded in the westTrans.net system are consistent, and are sufficient to ensure compliance with OATT requirements, and the need for rebilling customers when the controls fail.

3. Posting Exercises of Discretion Under Open Access Transmission Tariff

PSCo transmission employees provided us with a number of examples of how they use judgment in real-time transmission operations and tariff administration. The company posts on its OASIS a daily operations report, indicating actions taken during the course of the day to ensure system operation. There are no similar postings with respect to tariff administration, consistent with Part 37 of the Commission's regulations, which requires a Transmission Provider to keep a log of exercises of discretion under OATT and post the log on its OASIS.

Commission Requirements

18 C.F.R. §37.4 (b)(5)(iii) requires that "The Transmission Provider must keep a log, available for Commission audit, detailing the circumstances and manner in which it exercised its discretion under any terms of the tariff. The information contained in this log is to be posted on the OASIS..." Moreover, the OASIS postings must be consistent with § 37.7, which requires that OASIS postings be stored, dated and time stamped, must be available for download on the OASIS for 90 days, and must be retained and made available upon request for download for three years from the date when they are first posted.

Background

PSCo's RMAO OASIS was a JTSIN site that allows a user to query messages posted by the company, including general messages, standards of conduct messages, personnel transfers, and acts of discretion. For some of these queries, the user is provided a link to PSCo postings on Standards of Conduct, where the messages can be downloaded. The Standards of Conduct postings include: Emergency Circumstances, Discretion Log, Discount Offers, Contemporaneous Disclosures, Customer Written Consents, Meeting Notices, Operator/Daily Event Logs, and Transmission Customer Questions and Answers.

The Operator/Daily Event Logs posted by PSCo transmission include significant detail on the actions taken, the actions to be taken, or the actions contemplated, by transmission operators. PSCo explains that posting the log "...provides readers with summary information about daily activities...", and further explains that the information should be regarded as "Preliminary" and is offered as a service to our transmission customers." In our view, the information posted on these logs is potentially very helpful to PSCo's transmission customers, and goes a long way to making the operation of PSCo's transmission system transparent to all market participants. Moreover, we note that PSCo was not required to post such information, and the fact that it did so was an

indication of the care with which the company discharges its responsibilities as a Transmission Provider.

Turning from system operation to tariff administration, we believe the company did exercise discretion in administration of the OATT, and believe that the company should try to create the same level of transparency with respect to tariff administration that it has created with respect to system operation.

For example, on occasion, PSCo called the transmission customer if a tag was inaccurate or late, instead of merely rejecting the tag. PSCo transmission employees told us they operated under the principle that scheduled transactions should be approved when there was sufficient transmission capacity, and all parties should work together to accomplish this under the rules of the open access transmission tariff. In our view, this principle was appropriate, as long as it did not lead to preferential treatment.

We did not find any evidence that PSCo's review of inaccurate or late tags was done on a preferential basis. We therefore conclude that PSCo transmission acted consistent with tariff requirements, but we recommend that the company post as an act of discretion when such events occur.

Recommendation

We discussed with PSCo transmission employees and PSCo management the benefits of having PSCo post acts of discretion in tariff administration as well as system operation—it serves to make the market more transparent, and serves to help ensure all market participants that the company is providing open access transmission service on a non-preferential basis. The company suggests it is willing to use the posting requirement for acts of discretion in order to make its tariff administration more transparent. The company also suggests that the migration to westTTrans.net may change the nature of the discretion that PSCo transmission staff may exercise, *e.g.*, with respect to review of NERC E-tags. We therefore recommend that PSCo undertake a review of its control procedures following the migration to westTTrans.net:

3. PSCo transmission should develop written procedures to identify acts of discretion it engages in with respect to tariff administration, and should begin posting such acts of discretion on its OASIS.

4. Discounting Transmission Service Consistent with Commission Rules

PSCo offered transmission discounts over explicit transmission paths, consistent with Part 37 of the Commission's regulations. However, PSCo failed to follow guidance in Order No. 888-A which requires a Transmission Provider to provide the same discounted service over all other unconstrained transmission paths to the same delivery point.

Commission Requirements

In Order No. 888-A, the discounting requirements were changed in three significant ways "... to better permit the ready identification of discriminatory discounting practices while also providing greater discount flexibility."¹⁴

First, an offer to discount by a Transmission Provider or a request for a discount by a customer must be made only over the OASIS. Requiring that all discount offers and requests be posted on OASIS was intended to ensure that all transmission customers will have the same, timely access to discounted services.

Second, once there is agreement between a Transmission Provider and a customer on a discount, the details of the discounted service—the price, points of receipt and delivery, and length of service must be immediately posted on the OASIS.

Third, Order No. 888-A revised the rule with respect to what transmission paths would be eligible for discounted service. In Order No. 888, the requirement was that when a discount was offered over one path, the Transmission Provider would have to provide that discount over all other unconstrained paths on its system. In Order No. 888-A, the rule was changed. Under the Commission's policy articulated in Order No. 888-A, "if the transmission provider offers a discount on a particular path, *i.e.*, from a point of receipt to a point of delivery, the transmission provider must offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery on the transmission provider's system."

Further, under 18 C.F.R. § 37.4(b)(5)(iv) (2004) the transmission provider may not give preference to sales for resale by any wholesale merchant function over the interests of any other wholesale customer in matters relating to the sale or purchase of transmission service (including issues of price, curtailments, scheduling, priority, ancillary services, *etc.*).¹⁵

¹⁴ See Order No. 888-A, *FERC Statutes and Regulations* at pp. 30,274-75

¹⁵ 18 C.F.R. §37 (2004).

Background

We asked the company to provide a log of discounted transmission services offered during the audit period. The log indicates PSCo discounted transmission services in three different circumstances.

One circumstance involves discounted transmission service over a radial line connecting a generator to PSCo's portion of the grid. We do not view this as problematic because the generator interconnection pre-dated Order No. 888, and the generator, at the time of interconnection, was not affiliated with PSCo.

A second circumstance involves discounted transmission services that were provided to two customers after PSCo had, as a matter of policy, stopped discounting service. PSCo explains that the customers made bids for discounted transmission service over the OASIS, and the analyst inadvertently accepted these bids after PSCo had stopped offering discounts. In both cases, the customers were not affiliates of PSCo.

The third circumstance is the focus of our review. The vast majority of discounts offered by PSCo involve OASIS postings to discount different products, including hourly, daily, weekly and monthly service, on-peak and off-peak service, firm and non-firm service. The data we reviewed included discount offers for a period slightly longer than a year, from winter 2002 through spring 2003 when, as a matter of policy, the company stopped discounting transmission service. During this period, PSCo's wholesale merchant function and non-affiliated transmission customers took advantage of discounted service in about half the months; in the other half of the months, discounts were provided only to non-affiliates.

We asked the company to provide detailed information for the months in which PSCo's wholesale merchant function received discounted service, to evaluate whether preferential treatment was being provided by PSCo transmission to its merchant affiliate. Specifically, we evaluated whether PSCo should have provided the same discounts provided to PSCo's wholesale merchant function to non-affiliated transmission customers, either because these customers were buying the same product during the same time period and using the same receipt and delivery points, or because these customers were buying the same product during the same time period over an alternative path but to the same delivery point.

In a small number of cases, we found that PSCo failed to provide discounted service to non-affiliated transmission customers taking service over alternative transmission paths but to the same delivery point. We also identified cases where PSCo's merchant function was eligible for discounted service but did not receive discounted service. We found no evidence of preferential treatment for affiliates.

We assumed, by definition, that if a customer reserved and scheduled transmission service over an alternative transmission path, *i.e.*, from a different point of receipt but to the same point of delivery as the discounted transmission path, that the path used was unconstrained. We therefore conclude that PSCo transmission overcharged some of its customers, because PSCo did not offer discounted transmission service to the same delivery point over an unconstrained path for the same transmission product over the same time period.

In a number of the cases the overcharges were a *de minimus* amount. For example, a typical transaction involved a 10 MW flow of energy for two hours, with a transmission charge of \$3.50 per MWh. If PSCo had applied the discounted transmission charge (\$1.95), the customer's bill would have been \$31 less. Nevertheless, we recommended PSCo review its transmission billing records from the period when it was offering discounts, and rebill transmission customers to reflect the Commission's policy on discounting. PSCo agreed to do so. It calculated a total of nearly \$12,000 in refunds, of which a little over \$10,000 is principal, and the remaining amount is interest. We reviewed the method used by the company, and the refund calculations, and we found the refund amounts to be reasonable.

PSCo's transmission staff told us that the long-standing policy prior to Winter 2002 was to charge the full ceiling price for transmission service. On occasion, a customer would make a request for discounted service, but PSCo transmission staff would deny the discount request through an OASIS posting. We asked if PSCo's merchant staff had ever sought discounted service; transmission staff told us they could not recall such an occasion, but we could not establish either way whether the affiliate had requested discounted service.

PSCo transmission staff explained that the decision to start offering discounted service in winter 2002 was in the nature of an experiment to determine the extent to which the discounts would stimulate additional transmission use, thereby maximizing the beneficial use of the transmission system. An additional consideration for the company was that discounting transmission service could help manage the grid. For example, some of the discounted transmission services were on congested paths in the direction of counterflow on the congested path. The intent was to induce a counterflow on congested paths by offering discounted transmission service. We were told that PSCo chose to discount a transmission path in response to stress on this path, at a time just prior to construction designed to increase TTC on this path.

We asked PSCo transmission employees whether they were aware of the requirement to provide discounts to service requests over different paths but to the same delivery point—the answer was that transmission employees were not aware that this was a requirement under the Commission's rules at the time PSCo offered discounted service. Transmission employees suggested that the policy made sense from a market perspective,

i.e., to foster competition to deliver energy from any receipt point to a particular delivery point; but they questioned whether the policy might run counter to the explicit goal of using discounts to create incentives for counterflows on congested transmission paths. In any case, transmission employees told us if the company chooses to offer transmission discounts in the future, it would follow the policy.

Recommendation

We recommend:

4. If PSCo chooses to offer transmission discounts in the future, it should develop written policies for its transmission employees governing discounts. As discussed in Commission orders, these policies should follow two overriding principles—all offers by PSCo and requests by customers for transmission discounts must be posted on OASIS, and discounted transmission services must be offered to all transmission customers on a non-preferential basis.

5. Posting Total Transmission Capability on OASIS

PSCo did not post Total Transmission Capability (TTC) on its OASIS in accordance with the Commission's regulations at 18 C.F.R. §37.6.

Commission Requirements

18 C.F.R. § 37.6(b)(2004) requires the posting of transmission capability. Transmission Providers must calculate and post the TTC of the system for each posted path. The regulations at § 37.6(b)(1) define a posted path as:

- any control area to control area interconnection;
- any path for which service is denied, curtailed or interrupted for more than 24 hours in the past 12 months; and
- any path for which a customer requests to have ATC or TTC posted.

According to §37.6(b)(3), *Posting*, the Transmission Provider must post ATC and TTC for all posted paths in megawatts by specific direction. Firm ATC and TTC postings shall be by the hour, day and month as detailed in the Commission's regulations. Similarly, nonfirm ATC and TTC postings shall be posted by the hour and day, and if requested, by the month and year as detailed in the Commission's regulations.

This information should be available to the Transmission Provider's customers in electronic format from OASIS. 18 C.F.R. §37.6(a)(6) (2004) requires the Transmission Provider to transfer files and make automated computer-to-computer file transfers and queries as defined by the Standards and Communications Protocols document. Section 4.1(a) of the Standards & Communications Protocols, v 1.4, (S&CP) states "for providing information to Users, [Transmission Providers] shall use the specified OASIS Templates. These templates define the information that must be presented to Users, both in graphical displays and as downloaded files. Users shall be able to request Template information using query-response data flows." Section 3.6 of the S&CP defines "query-response" as allowing the user to determine the scope of the information queried by specifying values using Query Variables and their associated input values as defined with each Template in Section 4.3 of the S&CP. The user may enter queries through an HTML form, a URL string, or an uploaded file.

The OASIS template the company should use to perform and return queries about TTC is the System Data Template defined at section 4.3.4.4 of the S&CP document.

Background

As part of our review of PSCo's OASIS, we determined whether PSCo made TTC available in compliance with the Commission's regulations and the S&CP. While PSCo's OASIS contains screens which allow the user to request TTC information, our queries returned no data. We asked PSCo how it makes information required by § 37.6(b)(3) available. PSCo referred us to a file on its website in Portable Document Format (PDF) (www.rmao.com/documents/PSCO/Transmission_Path_Ratings.pdf)

The PDF file on its web site contains TTC information for several "TOT's" and paths on its system but not through user-defined queries. PSCo's website defines TOT's as

"transmission paths within the Rocky Mountain area, (Colorado and Wyoming), that have been identified as limiting the ability to freely schedule generation. These paths in the Rocky Mountain area have been historically labeled as TOT's, which is shorthand for the TOTAL flow on a specified grouping of transmission lines. The TOT's in the Rocky Mountain area have all been formally assigned a transfer capability, based on rigorous technical studies with the participation of all affected utilities. These TOT's have formal operating procedures that define the transfer capability under both normal and abnormal operating conditions. The transfer capability of the TOT is allocated among the various path owners."
(http://www.rmao.com/elec_trans_gen.html (8/5/2005))

We compared paths listed in the PDF file for which PSCo provides TTC information to the paths for which PSCo provides ATC information through its OASIS. PSCo did not provide TTC information in its PDF file for each path for which it provided ATC information on its OASIS or only provided the TTC information aggregated as a TOT without identifying which paths the TOT includes. Further, the PDF file does not include the detailed data required by the regulations and the S&CP, such as hourly and daily data.

In summary, PSCo did not provide its TTC information in the format or detail required by the Commission's regulations and the S&CP. Nor does PSCo's OASIS include a means for users to query and receive TTC data as contemplated by the S&CP. PSCo transmission staff told us that following the migration to wesTTrans.net, the posting of TTC will no longer be within the purview of PSCo transmission staff, but rather within the purview of wesTTrans.net.

Recommendation

Following the migration to wesTTrans.net, we recommend the company ensure its compliance with all OASIS posting requirements, including:

5. Post information on OASIS in the detail required by § 37.6 of the Commission's regulations and the S&CP, and
6. Comply with the S&CP requirements for querying data and providing responses.

III. IMPLEMENTATION PLAN

We recommend that PSCo file an implementation plan with audit staff detailing the company's plans to come into compliance with respect to the findings and recommendations summarized above. The implementation plan should describe how the actions the company will take are consistent with and complementary to the migration of PSCo's OASIS to westTrans.net. The implementation plan should be submitted within 30 days of the date of the order issuing this audit report. The implementation plan should include discussion of how PSCo will train its staff on new procedures that result from implementation of the audit recommendations. In addition, we recommend PSCo submit quarterly status reports detailing progress on the implementation plan, commencing with a first quarterly report within 90 days of the date of the order issuing this audit report, to continue until PSCo has taken all the corrective actions directed in the audit report.



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November 7, 2005

By Overnight Courier

Mr Bryan K. Craig
Director, Division of Operational Audits
Office of Market Oversight and Investigations
Federal Energy Regulatory Commission
888 First Street, N.E., Room 92-13
Washington, D.C. 20426

RE: Docket No. PA05-1-000

Dear Mr. Craig:

The Office of Market Oversight and Investigations ("OMOI") of the Federal Energy Regulatory Commission ("Commission") recently provided a final Audit Report ("Audit Report") setting forth the findings and recommendations of the Division of Operational Audits regarding the Audit of Standards of Conduct and Open Access Transmission Tariff of Public Service Company of Colorado ("PSCo"), a utility operating company subsidiary of Xcel Energy Inc. ("Xcel Energy").

Your letter requested a written response to each of the recommendations in the Audit Report within fifteen (15) days. Your letter indicated that PSCo should state:

- Whether we agree or disagree with each of the findings and recommendations;
- The corrective action(s) planned or taken and the targeted completion date; and
- If we disagree, we should explain why and provide an alternative action.

This letter provides the requested written response by Xcel Energy Services Inc. ("XES") on behalf of PSCo. As set forth below, PSCo agrees with each of the findings and recommendations and sets forth the corrective action(s) taken or planned and the targeted completion date.

Audit Report Recommendations and Response

1. Sales between Affiliated Operating Companies

The Audit Report finds that PSCo engaged in sales of power with its sister Xcel Energy operating company utilities which were not clearly authorized under rates and tariffs filed at the Commission, although PSCo believed at the time it had

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authority to engage in such sales under the Xcel Energy Joint Operating Agreement ("JOA") filed at the Commission. OMOI audit staff found no evidence that these inter-affiliate sales resulted in harm to PSCo's customers, other Xcel Energy customers, or reflected affiliate abuse.

Recommendation:

PSCo should make filings with the Commission at the earliest possible time after issuance of this audit report so that the Company is in conformance with Section 205 of the FPA and the policy articulated in the Commission's *Prior Notice* order.¹

Implementation Plan:

XES agrees that at the time it engaged in the trades with affiliates, PSCo Wholesale Merchant Function ("PSCo WMF") personnel believed the JOA (specifically Schedule C) included language that authorized the inter-affiliate trades and the trades did not represent affiliate abuse. XES also believe the trades provided a benefit to the various Xcel Energy Operating Companies, including PSCo, through the margin sharing mechanism set forth in the JOA.² However, when the OMOI staff submitted questions regarding the trades and the authority under the JOA, the PSCo WMF immediately ceased conducting such trades out of an abundance of caution.

XES will make a filing under Section 205 of the FPA to amend the JOA to expressly provide authority to conduct such inter-affiliate trades. The filing will request a retroactive effective date for the JOA amendments or other relief from the Commission so the Xcel Energy Operating Companies are not required to re-book prior period JOA revenue sharing.³ The target completion date for submission of the JOA amendments is ten (10) days after the Commission order issuing the Audit Report.

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*").

² The other Xcel Energy Operating Companies that are signatories to the JOA are Northern States Power Company ("NSP") and Southwestern Public Service Company ("SPS"). The JOA was initially accepted for filing in the Commission order approving the Xcel Energy Inc. merger (*Northern States Power Company et al.*, 90 FERC ¶ 61,020 (2000)). The currently effective JOA was accepted for filing in *Xcel Energy Servs., Inc.*, Docket No. ER05-293-000 (unpublished delegated letter order issued Jan. 10, 2005).

³ XES understands a retroactive effective date would be subject to Commission approval under the standards set forth in the *Prior Notice* order.

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2. Use of Network Integration Transmission Service

The Audit Report found that on a few occasions during the audit period, PSCo's merchant function made third-party sales of energy using Network Integration Transmission Service ("NITS") instead of using point-to-point ("PTP") service, as is required under Section 28.6 of the Xcel Energy Operating Companies Joint Open Access Transmission Tariff ("OATT"). The Audit Report states that the PSCo Transmission Function found these occurrences during in-house review of NERC E-tags, and after finding these occurrences, rebilled transmission customers to ensure that the customer was billed appropriately based on the correct use of reserved transmission services

Recommendation:

The Audit Report recommends that PSCo should codify, in writing, its control procedures for review of NERC E-tags to ensure that network transmission service is not being used inappropriately. PSCo should consider whether an internal audit is warranted to ensure that its manual control procedures and the automatic control procedures embedded in the new westTTrans.net system are consistent, and are sufficient to ensure compliance with OATT requirements, and the need for rebilling customers when the controls fail.

Implementation Plan:

PSCo Transmission Function will codify, in writing, its controls and procedures for review of NERC E-tags to ensure that NITS service is not being used inappropriately when PTP service should be used. The target completion date for the written procedure is November 30, 2005. The procedure will provide that if such inappropriate use occurs, PSCo Transmission Function will rebill the customer who used NITS service at the applicable OATT rates.

PSCo Transmission Function will also request that the XES Internal Audit function perform an audit to ensure that the manual controls and automated control procedures embedded in the westTTrans.net system are consistent and ensure compliance with the OATT requirements with regards to use of NITS service. The target completion date for the request is within thirty (30) days of the Commission order issuing the Audit Report.

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3. Posting Exercises of Discretion Under Open Access Transmission Tariff

The Audit Report finds that PSCo Transmission Function employees did not log on its OASIS the few occasions when it exercised discretion under its OATT consistent with Part 37 of the Commission's regulations, which requires a Transmission Provider to keep a log of exercises of discretion under the OATT and post the log on its OASIS. The Audit Report finds no evidence that PSCo exercised discretion under its OATT in ways that provided preference for its affiliates.

Recommendation:

PSCo Transmission Function should develop written procedures to identify acts of discretion PSCo engages in with respect to tariff administration, and should begin posting such acts of discretion on its OASIS site.

Implementation Plan:

PSCo Transmission Function will identify acts of discretion it may engage in and will also develop a written procedure regarding posting such acts of discretion on OASIS. PSCo Transmission Function will train employees on the identified acts of discretion and posting procedures and requirements. The target date for completing all these actions is approximately March 31, 2006. If an act of discretion occurs, PSCo Transmission Function will post the discretionary action in the log available on OASIS.

4. Discounting Transmission Service Consistent with Commission Rules

The Audit Report finds that PSCo offered transmission discounts over explicit transmission paths, consistent with Part 37 of the Commission's regulations. However, the Audit Report finds that PSCo failed to follow guidance in Order No. 888-A which requires a Transmission Provider to provide the same discounted service over all other unconstrained transmission paths to the same delivery point. The OMOI auditors found a small number of occasions when PSCo should have, but did not, charge the discounted price for reserved transmission. The OMOI auditors specifically reviewed when discounts were provided to PSCo's Merchant Function and when discounts were provided to non-affiliated transmission customers. The Audit Report finds no evidence of preferential treatment for affiliates.

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Recommendation:

If PSCo chooses to offer transmission discounts in the future, it should develop written policies for its Transmission Function employees governing discounts. As discussed in Commission orders, these policies should follow two overriding principles -- all offers by PSCo and requests by customers for transmission discounts must be posted on OASIS, and discounted transmission services must be offered to all transmission customers on a non-preferential basis. PSCo should also review its transmission billing records from the period when it was offering discounts, and should rebill transmission customers to reflect the Commission's policy on discounting.

Implementation Plan:

PSCo Transmission Function and XES have reviewed PSCo's transmission billing records for the months that transmission service discounts were provided during the audit period and will issue refund (with interest) to affected transmission service customers to reflect the Commission's Order No. 888-A policy on discounting. PSCo Transmission plans to issue the refunds by November 30, 2005. The refund amounts by customer (including interest) are as follows:

<u>Customer</u>	<u>Refund</u>
Colorado River Storage Project	\$1,378.75
UtiliCorp	4,610.61
PSCo Merchant Function	5,784.90
Colorado River Storage Project	<u>3.80</u>
Total	\$11,778.06

The Audit Report states that the OMOI auditors reviewed the refund methodology used by PSCo and found the refund amounts to be reasonable.

At this time, PSCo does not plan to offer transmission service discounts. However, if PSCo chooses to offer transmission discounts in the future, PSCo will develop a written policy governing discounts so the discounts are provided consistent with Commission policies.

5. Posting Total Transmission Capability on OASIS

The Audit Report finds that PSCo does not post Total Transmission Capability ("TTC") on its OASIS in accordance with the Commission's regulations at 18

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C.F.R. §37.6. The Audit Report states that PSCo Transmission Function employees told OMOI that following the migration to wesTTrans.net, the posting of TTC will no longer be within the purview of PSCo Transmission Function, but rather within the purview of wesTTrans.net.

Recommendation:

Following the migration to wesTTrans.net, PSCo should ensure its compliance with all OASIS posting requirements including: (i) Post TTC (as well as all other OASIS information posting requirements) in the detail required by § 37.6 of the Commission's regulations and the Standards & Communication Protocols ("S&CP"), and (ii) comply with the S&CP requirements for querying data and providing responses.

Implementation Plan:

As indicated in the Audit Report, PSCo implemented use of wesTTrans.net on October 10, 2005, replacing the Rocky Mountain Area OASIS ("RMAO") system. PSCo Transmission and XES believe the new wesTTrans.net OASIS system will correct the noted posting deficiencies. However, the wesTTrans.net implementation team will review the wesTTrans.net documentation to verify the system fully complies with all OASIS posting requirements specified by Section 37.6 of the Commission's regulations and the SC&P. PSCo Transmission Function and XES employees will also perform post migration testing to verify the posting requirements are fully compliant. The target date for completing post-migration testing is November 30, 2005.

6. **Implementation Plan**

Recommendation:

The Audit Report recommends that PSCo submit an implementation plan with audit staff detailing the Company's plans to come into compliance with respect to the findings and recommendations in the Audit Report. The implementation plan should describe how the Company's actions are consistent with and complementary to the migration of PSCo's OASIS to wesTTrans.net. The implementation plan should be filed within 30 days of the date of the order issuing the Audit Report. The implementation plan should include discussion of how PSCo will train its staff on new procedures that result from implementation of the audit recommendations. In addition, the Audit Report recommends PSCo submit quarterly status reports detailing progress on the Implementation Plan,

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commencing with a first quarterly report within ninety (90) days of the date of the order issuing this Audit Report, to continue until PSCo has taken all the corrective actions directed in the audit report

Implementation Plan:

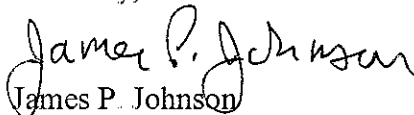
XES will submit an implementation plan on behalf of PSCo within 30 days of the date of the Commission order issuing the Audit Report. XES will also submit quarterly status reports detailing the progress on the implementation plan. The first quarterly report will be submitted within ninety (90) days of the date of the order issuing the Audit Report. XES will continue submission of such quarterly reports at the end of each quarter until PSCo has taken all corrective actions directed in the Audit Report.

Conclusion

Xcel Energy, XES and PSCo are committed to full compliance with the Commission's standards of conduct, open access and other regulations, and believe the audit and Audit Report process have provided a constructive means that will help us improve our operations to achieve the objective of full compliance.

Thank you for your prompt consideration of this response. OMOI staff should not hesitate to contact either Mr. James P. Johnson (612-215-4592) or Mr. Earle O'Donnell (202-429-2327) with any questions regarding this written response

Sincerely,


James P. Johnson

Assistant General Counsel
Xcel Energy Services Inc., on behalf of
Public Service Company of Colorado

cc: David I. Hudson
Director, Regulatory Administration
Xcel Energy Services Inc.

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