

April 30, 2021

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

**Re: *Southwestern Public Service Company*
Xcel Energy Operating Companies Open Access Transmission Tariff
Revisions to Pro Forma Engineering, Design, Permitting and
Procurement Service Agreement
Docket No. ER21-1585-___**

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13(b) of the regulations of the Federal Energy Regulatory Commission's (the "Commission"), 18 C.F.R. § 35 (2021), and Order No. 714,¹ Xcel Energy Services Inc. ("XES"), on behalf of its operating company affiliate - Southwestern Public Service Company ("SPS")² submitted on April 1, 2021 revised tariff sheets to the Xcel Energy Operating Companies Joint Open Access Transmission Tariff ("Joint OATT"). The revised tariff sheets proposed to establish a new Attachment W to the Joint OATT to provide for standardized terms and conditions for engineering and procurement agreements ("E&P Agreement") between SPS and its Interconnection Customers ("Parties").

In the instant filing, SPS is amending their initial filing in order to add language which clarifies that, in the event that a customer and the Transmission Owner are unable to agree on terms for the E&P Agreement, the customer has the right to request that the Transmission Owner file the *pro forma* agreement unexecuted. This new language specifies that the Transmission Owner will make such an unexecuted filing within 30 days of a request to do so. The new language also clarifies what obligations the customer will have to provide security in the event of an unexecuted filing.

SPS respectfully requests the Commission accept this amendment to our filing and accept the revised tariff language effective within sixty days of this amendment, by June 29, 2021.

¹ *Electronic Tariff Filings*, FERC Stats. & Regs. ¶ 31,276 (2008) ("Order No. 714").

² Xcel Energy Operating Companies, FERC Electric Tariff, Third Revised Volume No. 1. Public Service Company of Colorado ("PSCo"), an affiliate of XES and SPS, has been designated as the Xcel Energy operating company responsible for submitting Joint OATT changes pursuant to the Commission's eTariff rules.

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SPS will electronically serve a copy of this amendment on all parties on the Commission's official service list for this proceeding and on the Texas Commission. Please direct any questions regarding this instant filing to Mark C. Moeller at (612) 330-7663.

Respectfully submitted,

/s/ Mark C. Moeller

Mark C. Moeller

Manager, Transmission Business Relations

Xcel Energy Services Inc.

414 Nicollet Mall, 414-6

Minneapolis, MN 55401

Telephone: (612) 330-7663

Email: mark.c.moeller@xcelenergy.com

Cc: Director, Division of Tariffs and Market Development (Central)

CERTIFICATE OF SERVICE

I, Elizabeth Walkup, hereby certify that I have this day electronically served a notice of the enclosed filing on the state of Texas Public Utilities Commission and on all parties on the Commission's official service list for this proceeding.

Dated at Minneapolis, Minnesota this 30th day of April, 2021.

/s/ Elizabeth Walkup

Elizabeth Walkup

Xcel Energy Services, Inc.

Senior Transmission Business Analyst

414 Nicollet Mall

Minneapolis, MN 55401

(612) 330-6780

elizabeth.a.walkup@xcelenergy.com

Official Service List:

tim.t.mastrogiacomo@xcelenergy.com;

mark.c.moeller@xcelenergy.com;

Liam.D.Noailles@xcelenergy.com;

skip.larry.black@xcelenergy.com;

william.a.grant@xcelenergy.com

Proposed Effective Date: 6-29-2021

**Attachment W-3
Form of Service Agreement for Engineering, Design, Permitting and
Procurement Service**

Engineering and Procurement Agreement

for

Transmission Owner Interconnection Facilities and Required Network Upgrades

for

Southwest Power Pool Project [INSERT QUEUE NUMBER]

This Engineering and Procurement Agreement (“E&P Agreement”) is entered into this _____ day of _____, 20__, by and between [INSERT COUNTERPARTY NAME], a [INSERT TYPE OF ORGANIZATION AND STATE OF ORGANIZATION] (“Interconnection Customer”) and Xcel Energy Services Inc. (“XES”), a Delaware corporation, on behalf of Southwestern Public Service Company, a New Mexico corporation, (“Transmission Owner” or “SPS”).

In this E&P Agreement, Interconnection Customer and Transmission Owner may each be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, Interconnection Customer intends to construct, own, and operate a [INSERT SIZE] MW [INSERT TYPE] generation project, also referred to by the Interconnection Customer as [INSERT PROJECT NAME] located in [INSERT NAME], [INSERT STATE] as identified in SPS [INSERT QUEUE NUMBER] (hereinafter the “Project”); and

WHEREAS, The Interconnection Customer has requested an in-service date of [INSERT DATE], and in an attempt to meet Interconnection Customer’s schedule the Parties agree to enter into this E&P Agreement; and

WHEREAS, Interconnection Customer and Transmission Owner intend to enter into a Generator Interconnection Agreement (“GIA”) that will provide for, among other things, the interconnection of the Project to the Transmission Owner’s [INSERT LINE OR SUBSTATION NAME] (“Transmission Owner’s Facility”). Such interconnection is referred to herein as (the “Interconnection”); and

WHEREAS, Appendixes A and B attached to this E&P Agreement are hereby incorporated into this E&P Agreement and shall be considered a part of this E&P Agreement; and

WHEREAS, Interconnection Customer may request in writing that Transmission Owner file with FERC this E&P Agreement in unexecuted form.

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed

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AGREEMENT

1. Services. All work and services to be performed for the Interconnection, including but not limited to the system upgrades described below for the Interconnection, are referred to herein as the “Work.”

2. Definitions. Unless specifically defined herein, capitalized terms used herein shall have the meaning as defined in the Xcel Energy Operating Companies Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission (the “Xcel Energy OATT”).

3. Work. The Parties agree to enter into this E&P Agreement with the purpose of authorizing and directing the Transmission Owner to begin the Work by commencing activities associated with land procurement, permitting, engineering and design, and long lead time material procurement associated with the Interconnection as specifically set forth in Appendix A (collectively, the “Preliminary Work”), and for Interconnection Customer to provide financial security for such Preliminary Work.

3.1 Upon completion of the Interconnection Facilities Study, Transmission Owner, Interconnection Customer and if applicable the Regional Transmission Organization will negotiate and execute a GIA to define the rights and responsibilities of each Party regarding the Interconnection and required system upgrades. The GIA is anticipated to provide, among other things, for the construction and financial responsibilities of Transmission Owner and Interconnection Customer to engineer, design, procure, and/or construct all areas, equipment, facilities, and/or upgrades which are necessary for:

- a) the interconnection of the Project to the Transmission Owner’s Facility, including the tie-in from the Transmission Owner’s Facility to the interconnection facilities to be owned and operated by Interconnection Customer (“Interconnection Customer Interconnection Facilities”), and
- b) the upgrades to the Transmission Owner’s Transmission System which are required to achieve adequate stability of the system with the Project on-line (“Network Upgrades”).

3.2 Should the Network Upgrades in the Facilities Study change, any additional costs from the change would be borne by the Interconnection Customer under the GIA.

3.3 The Preliminary Work completed by Transmission Owner under this E&P Agreement shall be considered Work completed in performance of Transmission Owner’s obligations under the GIA.

3.4 Notwithstanding that the GIA has not been entered into by the Parties at the time this E&P Agreement is executed, Interconnection Customer agrees to have Transmission Owner begin the Preliminary Work in order to meet Interconnection Customer’s schedule for the generation Project’s Commercial Operation Date. Transmission Owner will begin such Preliminary Work in the same way that Transmission Owner would be required to do so if the GIA were in effect. Preliminary Work under these conditions will be performed subject to (i) the terms set forth herein and (ii) the Interconnection Customer’s agreement to provide

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financial security to Transmission Owner for all reasonable and necessary costs and expenses incurred by Transmission Owner in performing the Preliminary Work.

4. Billing and Payment. The Interconnection Customer shall remit to Transmission Owner security in the amount of [INSERT DOLLAR AMOUNT] (“E&P Security”) in the manner set forth in Section 4.2 of this E&P Agreement in order to provide financial security to Transmission Owner for its portion of the Preliminary Work to be completed in advance of an executed GIA. Transmission Owner is willing to proceed with the Preliminary Work expressly contingent upon the following terms and conditions:

- 4.1. Upon execution of this E&P Agreement and receipt of the E&P Security, Transmission Owner will proceed with the Preliminary Work to facilitate the Interconnection. Transmission Owner shall perform the Preliminary Work in accordance with the standards set forth in the Xcel Energy OATT.
- 4.2. The Parties acknowledge that the GIA for the Project has not yet been executed and as such there is no security in place for any of Transmission Owner’s portion of the Preliminary Work completed prior to execution of the GIA. To provide financial security to Transmission Owner under this E&P Agreement, Interconnection Customer will remit the E&P Security to Transmission Owner in the form of cash, a parental guarantee, or letter of credit in the amount of [INSERT DOLLAR AMOUNT] ([INSERT WRITTEN DOLLAR VALUE]) payable to “Southwestern Public Service Company”. Upon receipt of the E&P Security and an executed copy of the E&P Agreement, Transmission Owner will assign the E&P Security to a project account maintained by the Transmission Owner (the “E&P Project Account”).
- 4.3. Interconnection Customer may request in writing that the Transmission Owner file this E&P Agreement with FERC in unexecuted form. If the Interconnection Customer makes such a request, Transmission Owner will file the agreement, unexecuted, within 30 days. In the event that this E&P Agreement is filed unexecuted the E&P Security shall be provided to Transmission Owner by Interconnection Customer pursuant to this Section 4 within: (a) thirty (30) business days of acceptance of this E&P Agreement by FERC if this E&P Agreement is filed unexecuted and the E&P Security is being contested by Interconnection Customer; or (b) thirty (30) business days of the date of filing of this E&P Agreement if it is filed unexecuted and the E&P Security is not being contested by Interconnection Customer. If the Interconnection Customer agrees that the Transmission Owner may proceed with the Preliminary Work under the agreed-upon terms of the unexecuted E&P Agreement, then Transmission Owner will proceed pending Commission action, provided however that Transmission Owner will proceed with the Preliminary Work only upon receipt of E&P Security.
- 4.4. At any time that Transmission Owner estimates that additional security is required before a definitive GIA for the Project has been executed to continue Transmission Owner’s portion of the Preliminary Work, Transmission Owner shall request in writing from Interconnection Customer additional security, which when totaled with the E&P Security in the E&P Project Account, will allow Transmission Owner to continue its portion of the Preliminary Work (“Additional Security”). Such request shall specifically describe the remaining scope of Preliminary Work to be completed by Transmission Owner and the additional security required by Transmission Owner

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to complete such work. Interconnection Customer will remit the amount of Additional Security requested to Transmission Owner within ten (10) business days in the same manner prescribed in Section 4.2 above. Failure of Interconnection Customer to remit Additional Security within ten (10) business days will result in the termination of this E&P Agreement. Any such termination shall not affect the Interconnection Customer's Interconnection queue position.

- 4.5. Subject to Section 4.6 of this E&P Agreement, the Transmission Owner will release the E&P Security after Transmission Owner and Interconnection Customer have executed a GIA for the Project if the E&P Security was provided in the form of a parental guarantee or letter of credit (including any Additional Security) to Interconnection Customer.
- 4.6. Interconnection Customer may direct Transmission Owner at any time, through written correspondence, to cease the Preliminary Work under this E&P Agreement. In such event, the E&P Security will be released or refunded to Interconnection Customer only after all documented fees, charges and penalties associated with Transmission Owner's Preliminary Work, including any associated cancellation costs of orders for equipment have been deducted. Transmission Owner shall provide documentation substantiating any fees, charges, and penalties incurred in connection with the cancellation of orders for equipment within the scope of this section. In the event that Interconnection Customer directs Transmission Owner to cease Preliminary Work or otherwise terminates this agreement, Transmission Owner shall mitigate any costs associated with Preliminary Work under this E&P Agreement in accordance with Section 9 of the SPP Generator Interconnection Procedures.
- 4.7. In the event that either, (i) this E&P Agreement is terminated or (ii) Interconnection Customer elects to cancel this E&P Agreement after Transmission Owner takes possession of any equipment ordered under this E&P Agreement, Transmission Owner may elect: (a) to take title to the equipment ordered on behalf of Interconnection Customer, in which event Transmission Owner shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (b) to transfer title to and deliver the equipment ordered by Transmission Owner to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment. Delivery instructions shall be provided to Transmission Owner by Interconnection Customer within thirty (30) days in either event. Both Transmission Owner and Interconnection Customer agree that if the Transmission Owner Interconnection Facilities and Network Upgrades are constructed as anticipated, then all costs, expenses, ownership rights etc. will be managed as described in the GIA.

5. Obligations. This E&P Agreement does not obligate Transmission Owner to construct any Transmission Owner Interconnection Facilities or Network Upgrades. Interconnection Customer understands that Transmission Owner is under no obligation to construct any facilities for the Interconnection until after the GIA is executed by Transmission Owner and Interconnection Customer. The GIA will establish the final milestone schedule and cost responsibility for costs and construction associated with interconnection of the Project.

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6. Notices. All communications hereunder will be given in writing and: (i) personally delivered or (ii) sent to the addressee by overnight courier service. The addresses to be used for all such communications are listed in Appendix B. Either Party may change its address for the purposes of this E&P Agreement by giving not less than five (5) business days prior written notice to the other in accordance with this Section 5.

7. Modifications. The Parties hereto agree that this E&P Agreement shall constitute the entire agreement and understanding between the Parties hereto with regard to the subject matter expressly provided for herein. The Parties hereto are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. No amendment of any provision of this E&P Agreement shall be effective unless set forth in a written document signed by authorized representatives of both Parties.

8. Limitation of Liability. In no event shall either Party be liable in connection with this E&P Agreement for any special, indirect, incidental, consequential or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, or any other theory of liability.

9. Authority. Each Party represents and warrants that it has full power and authority to enter into and to perform all obligations imposed upon it by this E&P Agreement. The person signing this E&P Agreement on behalf of each Party has been properly authorized and empowered to execute this E&P Agreement.

10. Disputes. The Parties shall exercise commercially reasonable good faith efforts to resolve any dispute that may arise between them in relation to this E&P Agreement through amicable discussions between their respective representatives. In the event the dispute cannot be resolved through such good faith efforts, the dispute resolution procedures set forth in Article 12 of the Xcel Energy OATT shall be used to resolve the dispute.

11. Governing Law. The validity, interpretation and performance of this E&P Agreement and each of its provisions shall be governed by the laws of the State of [INSERT STATE] without regard to its conflicts of law.

12. Generator Interconnection Agreement. With the exception of termination pursuant to Article 14 herein, nothing in this E&P Agreement will relieve either Party hereto of its obligation to negotiate a GIA to govern the interconnection of the facilities of the Parties hereto at the point of Interconnection.

13. Assignment. Upon written notice to the other Party, either Party hereto may assign this E&P Agreement to an affiliate of the assigning Party without the other Party's consent. In all other circumstances, neither Party hereto may assign this E&P Agreement without the other Party's prior written consent.

14. Termination. Unless earlier terminated as provided herein, this E&P Agreement will terminate (i) when the Parties hereto execute the GIA, (ii) upon FERC's acceptance of either an unexecuted GIA or a non-conforming GIA, or (iii) if the Interconnection Customer elects to cease the Preliminary Work pursuant to Section 4.6 of this E&P Agreement, and all financial settlements under this E&P Agreement

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have been completed. If a GIA is not signed by [INSERT DATE], the Interconnection Customer will be deemed to have to ceased the Preliminary Work under this E&P Agreement, unless the Parties otherwise mutually agreed.

15. Survival. The provisions of this E&P Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including those provisions relating to Section 4.6 (Early Termination), Section 8 (Limitation of Liability), Section 10 (Disputes), and Section 14 (Termination). In addition, the obligation to pay any money due and owing to either Party pursuant to this E&P Agreement will survive termination of this E&P Agreement.

16. Execution. If the foregoing correctly sets forth the agreement of the Parties, the Interconnection Customer shall indicate by signing one original counterpart of this E&P Agreement in the space provided and forward a PDF copy of the signature page to:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]
Email: [INSERT EMAIL]

Transmission Owner will sign original and provide a PDF copy of the fully executed E&P Agreement to Interconnection Customer for Interconnection Customer's files.

[Signatures on Following Page]

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SIGNATURES

[INSERT QUEUE NUMBER] E&P AGREEMENT

Transmission Owner

**Xcel Energy Services Inc. as authorized agent for
Southwestern Public Service Company, a New Mexico corporation**

By: _____

Printed Name: _____

Title: _____

Date: _____

Interconnection Customer

By: _____

Printed Name: _____

Title: _____

Date: _____

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Appendix A to E&P Agreement

Preliminary Work

The Transmission Owner agrees to begin the Preliminary Work by commencing activities associated with land procurement, permitting, engineering and design, and procurement of long lead material associated with the Interconnection as set forth below.

Engineering Estimates (+/- 30%) for the [INSERT PROJECT NAME] Project as defined in SPP [INSERT QUEUE NUMBER] Facilities Study:

Substations	\$ _____
Transmission	\$ _____
Siting and Land Rights	\$ _____
Long Lead Material Ordering	\$ _____
Total	\$ _____

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Appendix B to E&P Agreement
Addresses for Delivery of Notices

Notices:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]

Interconnection Customer:

[TO BE SUPPLIED]
ATTN: [TO BE SUPPLIED]
[ADDRESS]
[CITY AND STATE]

Billings and Payments:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]

Interconnection Customer:

[TO BE SUPPLIED]
ATTN: [TO BE SUPPLIED]
[ADDRESS]
[CITY AND STATE]

**Attachment W-3
Form of Service Agreement for Engineering, Design, Permitting and
Procurement Service**

Engineering and Procurement Agreement

for

Transmission Owner Interconnection Facilities and Required Network Upgrades

for

Southwest Power Pool Project [INSERT QUEUE NUMBER]

This Engineering and Procurement Agreement (“E&P Agreement”) is entered into this _____ day of _____, 20__, by and between [INSERT COUNTERPARTY NAME], a [INSERT TYPE OF ORGANIZATION AND STATE OF ORGANIZATION] (“Interconnection Customer”) and Xcel Energy Services Inc. (“XES”), a Delaware corporation, on behalf of Southwestern Public Service Company, a New Mexico corporation, (“Transmission Owner” or “SPS”).

In this E&P Agreement, Interconnection Customer and Transmission Owner may each be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, Interconnection Customer intends to construct, own, and operate a [INSERT SIZE] MW [INSERT TYPE] generation project, also referred to by the Interconnection Customer as [INSERT PROJECT NAME] located in [INSERT NAME], [INSERT STATE] as identified in SPS [INSERT QUEUE NUMBER] (hereinafter the “Project”); and

WHEREAS, The Interconnection Customer has requested an in-service date of [~~4~~INSERT DATE], and in an attempt to meet Interconnection Customer’s schedule the Parties agree to enter into this E&P Agreement; and

WHEREAS, Interconnection Customer and Transmission Owner intend to enter into a Generator Interconnection Agreement (“GIA”) that will provide for, among other things, the interconnection of the Project to the Transmission Owner’s [INSERT LINE OR SUBSTATION NAME] (“Transmission Owner’s Facility”). Such interconnection is referred to herein as (the “Interconnection”); and

WHEREAS, Appendixes A and B attached to this E&P Agreement are hereby incorporated into this E&P Agreement and shall be considered a part of this E&P Agreement; ~~and-~~

WHEREAS, Interconnection Customer may request in writing that Transmission Owner file with FERC this E&P Agreement in unexecuted form.

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed

AGREEMENT

1. Services. All work and services to be performed for the Interconnection, including but not limited to the system upgrades described below for the Interconnection, are referred to herein as the “Work.”

2. Definitions. Unless specifically defined herein, capitalized terms used herein shall have the meaning as defined in the Xcel Energy Operating Companies Open Access Transmission Tariff on file with the Federal Energy Regulatory Commission (the “Xcel Energy OATT”).

3. Work. The Parties agree to enter into this E&P Agreement with the purpose of authorizing and directing the Transmission Owner to begin the Work by commencing activities associated with land procurement, permitting, engineering and design, and long lead time material procurement associated with the Interconnection as specifically set forth in Appendix A (collectively, the “Preliminary Work”), and for Interconnection Customer to provide financial security for such Preliminary Work.

3.1 Upon completion of the Interconnection Facilities Study, Transmission Owner, Interconnection Customer and if applicable the Regional Transmission Organization will negotiate and execute a GIA to define the rights and responsibilities of each Party regarding the Interconnection and required system upgrades. The GIA is anticipated to provide, among other things, for the construction and financial responsibilities of Transmission Owner and Interconnection Customer to engineer, design, procure, and/or construct all areas, equipment, facilities, and/or upgrades which are necessary for:

- a) the interconnection of the Project to the Transmission Owner’s Facility, including the tie-in from the Transmission Owner’s Facility to the interconnection facilities to be owned and operated by Interconnection Customer (“Interconnection Customer Interconnection Facilities”), and
- b) the upgrades to the Transmission Owner’s Transmission System which are required to achieve adequate stability of the system with the Project on-line (“Network Upgrades”).

3.2 Should the Network Upgrades in the Facilities Study change, any additional costs from the change would be borne by the Interconnection Customer under the GIA.

3.3 The Preliminary Work completed by Transmission Owner under this E&P Agreement shall be considered Work completed in performance of Transmission Owner’s obligations under the GIA.

3.4 Notwithstanding that the GIA has not been entered into by the Parties at the time this E&P Agreement is executed, Interconnection Customer agrees to have Transmission Owner begin the Preliminary Work in order to meet Interconnection Customer’s schedule for the generation Project’s Commercial Operation Date. Transmission Owner will begin such Preliminary Work in the same way that Transmission Owner would be required to do so if the GIA were in effect. Preliminary Work under these conditions will be performed subject to (i)

the terms set forth herein and (ii) the Interconnection Customer's agreement to provide financial security to Transmission Owner for all reasonable and necessary costs and expenses incurred by Transmission Owner in performing the Preliminary Work.

4. Billing and Payment. The Interconnection Customer shall remit to Transmission Owner security in the amount of [INSERT DOLLAR AMOUNT] ("E&P Security") in the manner set forth in Section 4.2 of this E&P Agreement in order to provide financial security to Transmission Owner for its portion of the Preliminary Work to be completed in advance of an executed GIA. Transmission Owner is willing to proceed with the Preliminary Work expressly contingent upon the following terms and conditions:

4.1. Upon execution of this E&P Agreement and receipt of the E&P Security, Transmission Owner will proceed with the Preliminary Work to facilitate the Interconnection. Transmission Owner shall perform the Preliminary Work in accordance with the standards set forth in the Xcel Energy OATT.

4.2. The Parties acknowledge that the GIA for the Project has not yet been executed and as such there is no security in place for any of Transmission Owner's portion of the Preliminary Work completed prior to execution of the GIA. To provide financial security to Transmission Owner under this E&P Agreement, Interconnection Customer will remit the E&P Security to Transmission Owner in the form of cash, a parental guarantee, or letter of credit in the amount of [INSERT DOLLAR AMOUNT] ([INSERT WRITTEN DOLLAR VALUE]) payable to "Southwestern Public Service Company". Upon receipt of the E&P Security and an executed copy of the E&P Agreement, Transmission Owner will assign the E&P Security to a project account maintained by the Transmission Owner (the "E&P Project Account").

4.3. Interconnection Customer may request in writing that the Transmission Owner file this E&P Agreement with FERC in unexecuted form. If the Interconnection Customer makes such a request, Transmission Owner will file the agreement, unexecuted, within 30 days. In the event that this E&P Agreement is filed unexecuted the E&P Security shall be provided to Transmission Owner by Interconnection Customer pursuant to this Section 4 within: (a) thirty (30) business days of acceptance of this E&P Agreement by FERC if this E&P Agreement is filed unexecuted and the E&P Security is being contested by Interconnection Customer; or (b) thirty (30) business days of the date of filing of this E&P Agreement if it is filed unexecuted and the E&P Security is not being contested by Interconnection Customer. If the Interconnection Customer agrees that the Transmission Owner may proceed with the Preliminary Work under the agreed-upon terms of the unexecuted E&P Agreement, then Transmission Owner will proceed pending Commission action, provided however that Transmission Owner will proceed with the Preliminary Work only upon receipt of E&P Security.

4.4.3. At any time that Transmission Owner estimates that additional security is required before a definitive GIA for the Project has been executed to continue Transmission Owner's portion of the Preliminary Work, Transmission Owner shall request in writing from Interconnection Customer additional security, which when totaled with the E&P Security in the E&P Project Account, will allow Transmission Owner to continue its portion of the Preliminary Work ("Additional Security"). Such request shall specifically describe the remaining scope of Preliminary Work to be completed

by Transmission Owner and the additional security required by Transmission Owner to complete such work. Interconnection Customer will remit the amount of Additional Security requested to Transmission Owner within ten (10) business days in the same manner prescribed in Section 4.2 above. Failure of Interconnection Customer to remit Additional Security within ten (10) business days will result in the termination of this E&P Agreement. Any such termination shall not affect the Interconnection Customer's Interconnection queue position.

4.54. Subject to Section 4.65 of this E&P Agreement, the Transmission Owner will release the E&P Security after Transmission Owner and Interconnection Customer have executed a GIA for the Project if the E&P Security was provided in the form of a parental guarantee or letter of credit (including any Additional Security) to Interconnection Customer.

4.65. Interconnection Customer may direct Transmission Owner at any time, through written correspondence, to cease the Preliminary Work under this E&P Agreement. In such event, the E&P Security will be released or refunded to Interconnection Customer only after all documented fees, charges and penalties associated with Transmission Owner's Preliminary Work, including any associated cancellation costs of orders for equipment have been deducted. Transmission Owner shall provide documentation substantiating any fees, charges, and penalties incurred in connection with the cancellation of orders for equipment within the scope of this section. In the event that Interconnection Customer directs Transmission Owner to cease Preliminary Work or otherwise terminates this agreement, Transmission Owner shall mitigate any costs associated with Preliminary Work under this E&P Agreement in accordance with Section 9 of the SPP Generator Interconnection Procedures.

4.7.6 In the event that either, (i) this E&P Agreement is terminated or (ii) Interconnection Customer elects to cancel this E&P Agreement after Transmission Owner takes possession of any equipment ordered under this E&P Agreement, Transmission Owner may elect: (a) to take title to the equipment ordered on behalf of Interconnection Customer, in which event Transmission Owner shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (b) to transfer title to and deliver the equipment ordered by Transmission Owner to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment. Delivery instructions shall be provided to Transmission Owner by Interconnection Customer within thirty (30) days in either event. Both Transmission Owner and Interconnection Customer agree that if the Transmission Owner Interconnection Facilities and Network Upgrades are constructed as anticipated, then all costs, expenses, ownership rights etc. will be managed as described in the GIA.

5. Obligations. This E&P Agreement does not obligate Transmission Owner to construct any Transmission Owner Interconnection Facilities or Network Upgrades. Interconnection Customer understands that Transmission Owner is under no obligation to construct any facilities for the Interconnection until after the GIA is executed by Transmission Owner and Interconnection Customer. The GIA will establish the final milestone schedule and cost responsibility for costs and construction associated with interconnection of the Project.

6. Notices. All communications hereunder will be given in writing and:- (i) personally delivered or (ii) sent to the addressee by overnight courier service. The addresses to be used for all such communications are listed in Appendix B. Either Party may change its address for the purposes of this E&P Agreement by giving not less than five (5) business days prior written notice to the other in accordance with this Section 5.

7. Modifications. The Parties hereto agree that this E&P Agreement shall constitute the entire agreement and understanding between the Parties hereto with regard to the subject matter expressly provided for herein. The Parties hereto are not bound by or liable for any statement, representation, promise, inducement, understanding, or undertaking of any kind or nature (whether written or oral) with regard to the subject matter hereof not set forth or provided for herein. No amendment of any provision of this E&P Agreement shall be effective unless set forth in a written document signed by authorized representatives of both Parties.

8. Limitation of Liability. In no event shall either Party be liable in connection with this E&P Agreement for any special, indirect, incidental, consequential or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, or any other theory of liability.

9. Authority. Each Party represents and warrants that it has full power and authority to enter into and to perform all obligations imposed upon it by this E&P Agreement. The person signing this E&P Agreement on behalf of each Party has been properly authorized and empowered to execute this E&P Agreement.

10. Disputes. The Parties shall exercise commercially reasonable good faith efforts to resolve any dispute that may arise between them in relation to this E&P Agreement through amicable discussions between their respective representatives. In the event the dispute cannot be resolved through such good faith efforts, the dispute resolution procedures set forth in Article 12 of the Xcel Energy OATT shall be used to resolve the dispute.

11. Governing Law. The validity, interpretation and performance of this E&P Agreement and each of its provisions shall be governed by the laws of the State of [INSERT STATE] without regard to its conflicts of law.

12. Generator Interconnection Agreement. With the exception of termination pursuant to Article 14 herein, nothing in this E&P Agreement will relieve either Party hereto of its obligation to negotiate a GIA to govern the interconnection of the facilities of the Parties hereto at the point of Interconnection.

13. Assignment. Upon written notice to the other Party, either Party hereto may assign this E&P Agreement to an affiliate of the assigning Party without the other Party's consent. In all other circumstances, neither Party hereto may assign this E&P Agreement without the other Party's prior written consent.

14. Termination. Unless earlier terminated as provided herein, this E&P Agreement will terminate (i) when the Parties hereto execute the GIA, (ii) upon FERC's acceptance of either an unexecuted GIA or a non-conforming GIA, or (iii) ~~or (ii)~~ if the Interconnection Customer elects to cease the Preliminary Work

pursuant to Section 4.65 of this E&P Agreement, and all financial settlements under this E&P Agreement have been completed. If a GIA is not signed by [INSERT DATE], the Interconnection Customer will be deemed to have to ceased the Preliminary Work under this E&P Agreement, unless the Parties otherwise mutually agreed.

15. Survival. The provisions of this E&P Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including those provisions relating to Section 4.65 (Early Termination), Section 8 (Limitation of Liability), Section 10 (Disputes), and Section 14 (Termination). In addition, the obligation to pay any money due and owing to either Party pursuant to this E&P Agreement will survive termination of this E&P Agreement.

16. Execution. If the foregoing correctly sets forth the agreement of the Parties, the Interconnection Customer shall indicate by signing one original counterpart of this E&P Agreement in the space provided and forward a PDF copy of the signature page to:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]
Email: [INSERT EMAIL]

Transmission Owner will sign original and provide a PDF copy of the fully executed E&P Agreement to Interconnection Customer for Interconnection Customer's files.

[Signatures on Following Page]

SIGNATURES

[INSERT QUEUE NUMBER] E&P AGREEMENT

Transmission Owner

**Xcel Energy Services Inc. as authorized agent for
Southwestern Public Service Company, a New Mexico corporation**

By: _____

Printed Name: _____

Title: _____

Date: _____

Interconnection Customer

By: _____

Printed Name: _____

Title: _____

Date: _____

Appendix A to E&P Agreement
Preliminary Work

The Transmission Owner agrees to begin the Preliminary Work by commencing activities associated with land procurement, permitting, engineering and design, and procurement of long lead material associated with the Interconnection as set forth below.

Engineering Estimates (+/- 30%) for the [INSERT PROJECT NAME] Project as defined in SPP [INSERT QUEUE NUMBER] Facilities Study:

Substations	\$ _____
Transmission	\$ _____
Siting and Land Rights	\$ _____
Long Lead Material Ordering	\$ _____
Total	\$ _____

Appendix B to E&P Agreement
Addresses for Delivery of Notices

Notices:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]

Interconnection Customer:

[TO BE SUPPLIED]
ATTN: [TO BE SUPPLIED]
[ADDRESS]
[CITY AND STATE]

Billings and Payments:

Transmission Owner:

Southwestern Public Service Company
Attn: [INSERT NAME]
Xcel Energy Services Inc.
[ADDRESS]
[CITY AND STATE]

Interconnection Customer:

[TO BE SUPPLIED]
ATTN: [TO BE SUPPLIED]
[ADDRESS]
[CITY AND STATE]