

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27956]

### Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 5, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 2, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 2, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### Xcel Energy, Inc., et al. (70-10275)

Xcel Energy, Inc., ("Xcel Energy"), a registered holding company; its public utility subsidiaries: Northern States Power Company, a Minnesota corporation ("NSP-M"); Northern States Power Company, a Wisconsin corporation ("NSP-W"); Public Service Company of Colorado ("PSCo"); and Southwestern Public Service Company ("SPS", collectively, "Utility Subsidiaries;" and its nonutility subsidiaries (as defined below, collectively "Subsidiaries"<sup>1</sup>), all of 800 Nicollet Mall, Minneapolis, MN 55402, have filed an application-declaration, as

amended ("Application") under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), and 13(b) of the Act and rules 40, 42, 43, 45, 46, 53, 54, 87 and 90 under the Act. Xcel Energy and its Subsidiaries are collectively referred to as "Applicants," and all the current Subsidiaries of Xcel are shown on Exhibit K to the Application.

Xcel Energy directly owns four utility subsidiaries that serve electric and/or natural gas customers in ten states. The service territories of these four subsidiaries, NSP-M, NSP-W, PSCo, and SPS, include portions of Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

Xcel Energy also engages through its subsidiaries in various other energy-related and nonutility businesses (these subsidiaries, together with any future direct or indirect nonutility subsidiaries of Xcel Energy, are collectively referred to as the "Nonutility Subsidiaries"). The principal Nonutility Subsidiaries that are directly or indirectly owned by Xcel Energy include: Utility Engineering Corp., a provider of engineering, design and construction management services;<sup>2</sup> Seren Innovations, Inc., a provider of cable, telephone and high-speed internet access systems and an exempt telecommunications company under Section 34 of the Act ("ETC"); and Eloigne Company, an investor in projects that qualify for low-income housing tax credits.

#### Requested Authorization

##### A. Summary of Transactions

By prior orders, the Applicants have been authorized to engage in various financing transactions through June 30, 2005. Applicants request authority to engage in the transactions set forth below during the period from the effective date of the order issued in this filing through the period ending June 30, 2008 ("Authorization Period"). This authority would replace and supersede all of Applicants current financing authorization under the prior orders. In particular:

(i) Xcel Energy requests authorization to issue and sell, from time to time during the Authorization Period, (i) in addition to any separate authority requested herein relating to direct stock purchase plans, dividend reinvestment plans, incentive compensation and other benefit plans, Common Stock (as

defined below), unsecured long-term indebtedness ("Long-term Debt"), equity linked securities, including units consisting of a combination of options, warrants and/or forward equity purchase contracts with debt or preferred securities ("Equity linked Securities"), directly or indirectly through Finance Subsidiaries (as defined below), and preferred securities, including trust preferred securities and monthly income preferred securities ("Preferred Securities"), directly or indirectly through Finance Subsidiaries, provided that the aggregate proceeds of Common Stock issued during the Authorization Period and principal amount or redemption or liquidation value of Long-term Debt, Equity linked Securities and Preferred Securities issued and outstanding at any time during the Authorization Period does not exceed \$1.8 billion (the "Equity/Long-term Debt Limit") and (ii) unsecured short-term indebtedness having maturities of 364 days or less at the date of issue ("Short-term Debt") in an aggregate principal amount at any time outstanding not to exceed \$1.0 billion (the "Short-term Debt Limit"); provided further that the aggregate amount of proceeds of Common Stock, principal amount or redemption or liquidation value of Long-term Debt, Equity linked Securities and Preferred Securities issued and outstanding and aggregate principal amount of Short-term Debt issued and outstanding pursuant to this authorization shall not exceed \$2 billion (the "External Financing Limit");

(ii) Applicants request authority for Xcel Energy and its Subsidiaries to (a) acquire the equity securities of one or more special-purpose subsidiaries ("Finance Subsidiaries"), organized solely to facilitate financing, and (b) to guarantee the securities issued by Finance Subsidiaries, to the extent not exempt pursuant to Rule 45(b) and Rule 52, as described below;

(iii) Applicants request authorization for the continuance of the Utility Money Pool, as described below;

(iv) Xcel Energy and its Subsidiaries request authority to enter into hedging transactions with respect to debt securities of Xcel Energy and its Subsidiaries in order to manage and mitigate interest rate risk and to enter into hedging transactions with respect to proposed issuances of debt securities by Xcel Energy and its Subsidiaries in order to lock-in current interest rates and/or manage exposure to interest rate risk ("Anticipatory Hedges");

(v) Applicants request authorization for Xcel Energy to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support ("Guarantees") with respect to the obligations of Utility Subsidiaries, the Utility Subsidiaries to enter into Guarantees with respect to the obligations of their respective Subsidiaries, and Xcel Energy and the Nonutility Subsidiaries to enter into Guarantees with respect to the obligations of Nonutility Subsidiaries; provided that the aggregate principal amount of Guarantees shall not exceed \$1.0 billion outstanding at any one time;

(vi) Xcel Energy and the Nonutility Subsidiaries request authorization for Xcel to make intercompany loans to its Nonutility

<sup>1</sup> The term "Subsidiaries" shall also include any future direct or indirect nonutility subsidiaries of Xcel Energy whose equity securities may be acquired in accordance with an order of the Commission or in accordance with an exemption under the Act or the Commission's rules under the Act.

<sup>2</sup> On March 3, 2005, Xcel Energy announced that it had signed an agreement to sell the outstanding shares of Utility Engineering Corp. to Zachry Group, Inc. The sale does not, however, include Quixx Corp., which directly and/or indirectly owns and operates energy related projects, including qualifying facilities and exempt wholesale generators.

Subsidiaries and for the Nonutility Subsidiaries to make intercompany loans to other Nonutility Subsidiaries in an aggregate principal amount outstanding at any one time not to exceed \$400 million;

(vii) Xcel Energy requests authorization to engage, directly or through Subsidiaries, in preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities"), in each case related to Xcel Energy's permitted nonutility investments, provided that the aggregate amount of such development costs at any time shall not exceed \$300 million;

(viii) Xcel Energy requests authorization to acquire directly or through Subsidiaries the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities ("Intermediate Subsidiaries") to facilitate the acquisition, holding and/or financing of nonutility investments;

(ix) Applicants request authorization to undertake internal reorganizations of then existing and permitted Nonutility Subsidiaries and businesses;

(x) Applicants request authorization to make changes to the capital structure of Xcel Energy's wholly-owned Subsidiaries;

(xi) Xcel Energy requests authorization to issue up to 35 million shares of Xcel Energy common stock under Xcel Energy's direct stock purchase and dividend reinvestment plans, certain incentive compensation plans and certain other benefit plans;

(xii) Applicants request authorization for any Nonutility Subsidiary to pay dividends out of capital and unearned surplus, as described below;

(xiii) Xcel Energy and its Subsidiaries each request authorization to acquire, redeem or retire its own securities and those of its respective subsidiaries; and

(xiv) Xcel Energy and its Subsidiaries request authorization to invest in money market funds and repurchase agreements, as described below.

#### *B. Parameters for Financing Authorization*

The following general terms would be applicable, as appropriate, to the financing transactions requested to be authorized in the Application:

(1) *Common Equity Ratio.* Xcel Energy and the Utility Subsidiaries state that at all times during the Authorization Period, Xcel Energy and each of the Utility Subsidiaries would maintain common equity (as reflected in the most recent Form 10-K and Form 10-Q filed with the Commission, as adjusted to reflect changes in capitalization since the applicable balance sheet) of at least 30% of its consolidated capitalization, provided that Xcel Energy would in any event be authorized to issue common stock (including without limitation pursuant to a direct stock purchase or dividend reinvestment plan or incentive compensation or other benefit plan) to the extent authorized in this Application. The term "consolidated

capitalization" is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interest, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities. Applicants request that the Commission reserve jurisdiction over the issuance of securities and the engaging in other authorized transactions when the common equity ratio component of Xcel Energy's and/or any one or more the Utility Subsidiaries' capitalization is below 30%.

(2) *Investment Grade Ratings.* Applicants represent that they would not issue any guarantees or other securities, other than securities issued for the purpose of funding money pool operations or intercompany loans to Nonutility Subsidiaries and common stock, unless: (i) The securities, if rated, are rated at least investment grade, (ii) all outstanding securities of the issuer that are rated, are rated investment grade, and (iii) all securities of Xcel Energy that are rated, are rated investment grade. For purposes of this provision, a security would be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, as amended ("Securities Exchange Act"). Applicants further request that the Commission reserve jurisdiction over the issuance of any securities that are rated below investment grade and over the issuance of any guarantees or other securities at any time that any of the investment grade conditions set forth above are not satisfied.

(3) *Effective Cost of Money on Financings.* The effective cost of capital for long-term debt, short-term debt, preferred securities and the debt component of equity linked securities would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event would the effective cost of capital on (i) any long-term debt securities exceed 500 basis points over comparable term U.S. Treasury securities ("Treasury Security"); or (ii) any short-term debt securities exceed 300 basis points over the comparable term London Interbank Offered Rate ("LIBOR"). The dividend and distribution rate on any series of

preferred securities or equity linked securities would not exceed at the time of issuance 700 basis points over a Treasury Security. For variable rate instruments the maximum allowable cost of capital would change from time as the applicable index changes. Applicants request that the Commission reserve jurisdiction over the issuance of securities at market rates that exceed the maximum allowable cost of capital specified above.

(4) *Maturity.* The final maturity of any long-term debt securities would not exceed 50 years. Preferred stock or preferred or equity linked securities (other than perpetual preferred stock) would be redeemed no later than 50 years after issuance.

(5) *Issuance Expenses.* The underwriting fees and commissions paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application would not exceed the greater of (i) 5% of the principal or total amount of the securities being issued or (ii) issuance expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

(6) *Use of Proceeds.* The proceeds from the sale of securities in external financing transactions would be used for general corporate purposes including (i) the financing, in whole or in part, of the capital expenditures of the Xcel Energy system, (ii) the financing of working capital requirements of the Xcel Energy system, (iii) the acquisition, retirement or redemption of securities previously issued by Xcel Energy or its Subsidiaries pursuant to Rule 42 or as otherwise authorized by the Commission, and (iv) direct or indirect investment in companies (including exempt wholesale generators ("EWGs") or foreign utility companies ("FUCOs")) authorized under the Act or any rule promulgated under the Act or authorized by the Commission in this proceeding or a separate proceeding, and (v) other lawful purposes. The Applicants commit that no financing proceeds would be used to acquire a new subsidiary unless the acquisition is consummated in accordance with an order of the Commission or an available exemption under the Act. In addition, any use of proceeds to make investments in any "energy-related company," as defined in Rule 58 under the Act, would be subject to the investment limitation of the rule, and any use of proceeds to make investments in any EWG or FUCO would be subject to the investment

limitation and other conditions set forth in Rule 53 or as authorized by Commission order, as applicable.

(7) *Authorization Period.* No security would be issued pursuant to the authority sought under this filing after the last day of the Authorization Period; provided, however, that securities issuable or deliverable upon exercise or conversion of, or in exchange for, securities which were issued during the Authorization Period, may be issued or delivered after that date.

### *C. Description of Specific Types of Financing*

(1) *Common Stock, Long-Term Debt, Equity linked Securities and Preferred Securities.* (a) *Common Stock.* Xcel Energy may issue and sell its common stock, or options, warrants or other purchase rights exercisable for common stock, or contracts to purchase common stock (collectively, "Common Stock"). Common Stock includes contracts obligating holders to purchase from Xcel Energy and/or Xcel Energy to sell to holders a number of shares specified directly or by formula at an aggregate offering price either fixed at the time the contracts are issued or determined by reference to a specific formula set forth in the contract. All Common Stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Specifically, Xcel Energy may issue and sell its Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, the securities would be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Common Stock may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Xcel Energy) or directly by one or more underwriters acting alone. Common Stock may also be sold directly by Xcel Energy or through agents designated by Xcel Energy from time to time. If Common Stock is being sold in an underwritten offering, Xcel Energy may grant the underwriters thereof a "green shoe" option permitting the purchase from Xcel Energy at the same price additional shares then being offered solely for the purpose of covering over-allotments.

Xcel Energy may also issue Common Stock in public or privately-negotiated

transactions as consideration for the securities or assets of other companies, provided that the acquisition of the securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act (e.g., Rule 58). For purposes of calculating compliance with the financing limit above, Xcel Energy's Common Stock issued in any such transaction would be valued at market value based upon the negotiated agreement between the buyer and the seller.

Securities issued upon the exercise of options, warrants or other purchase rights would be counted against the financing limit at the time of issuance of the options, warrants or other purchase rights, based upon the strike price established at issuance for the exercise of the options, warrants or purchase rights. The exercise of these options, warrants or other purchase rights would be authorized pursuant to the Commission's order in this matter, even if the exercise occurs beyond the Authorization Period.

(b) *Preferred Securities.* Xcel Energy also seeks authorization to issue and sell, directly or indirectly through Finance Subsidiaries, Preferred Securities in one or more series. Preferred Securities or securities convertible into Preferred Securities of any series (i) would have a specified par or stated value or liquidation value per security, (ii) would carry a right to periodic cash dividends and/or other distributions, subject, among other things, to funds being legally available, (iii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated liquidation value of the securities, (iv) may be convertible or exchangeable into Common Stock of Xcel Energy, Preferred Securities or unsecured debt that Xcel Energy is otherwise authorized to issue by Commission order directly or indirectly through Finance Subsidiaries, and (v) may bear such further rights, including voting, preemptive or other rights, and other terms and conditions, as set forth in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of such series of Preferred Securities. The issuance of securities upon conversion of Preferred Securities, to the extent that no additional financing proceeds are realized, shall not be counted against the financing limit.

Preferred Securities may be issued in private or public transactions. With respect to private transactions, Preferred Securities of any series may be issued

and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who will resell the Preferred Securities without registration under the Securities Act of 1933, as amended (the "Securities Act") in reliance upon one or more applicable exemptions from registration. From time to time Xcel Energy may also issue and sell Preferred Securities of one or more series to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of Preferred Securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments setting forth the terms.

(c) *Long-term Debt and Equity linked Securities.* Xcel Energy also seeks to have the flexibility to issue Long-term Debt and/or Equity linked Securities, directly or indirectly through one or more special-purpose Finance Subsidiaries. The proceeds of the Long-term Debt and Equity linked Securities would enable Xcel Energy to replace Short-term Debt with more permanent capital and provide an important source of future financing for the operations of, and for investments in, the Utility Subsidiaries and/or nonutility businesses, the acquisition of which are exempt under the Act.

Long-term Debt may (i) be convertible into any other securities of Xcel Energy approved by this Application, (ii) be subordinate to other indebtedness and/or obligations of Xcel Energy, (iii) be subject to optional and/or mandatory redemption, in whole or in part, at the option of Xcel Energy or of the holder, at par or at premiums above the principal amount thereof, (iv) be entitled to mandatory or optional sinking fund provisions, (v) provide for reset of the coupon pursuant to a remarketing arrangement, and (vi) be put by existing investors or called from existing investors by a third party and may contain features as may be appropriate under the circumstances and consistent with market practice at the time of issuance. Long-term Debt

may also include long-term indebtedness under agreements with banks or other institutional lenders. Unused borrowing capacity under a credit facility would not count towards the limit on the Equity/Long-term Debt Limit or the External Financing Limit. Any Long-term Debt of Xcel Energy would be issued on an unsecured basis.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding.

The Equity linked Securities may be issued by Xcel Energy or by a Finance Subsidiary of Xcel Energy, in one or more series with the rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by Xcel Energy's board of directors. Dividends or distributions on Equity linked Securities would be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Equity linked Securities may be exercisable or exchangeable for or convertible, either mandatorily or at the option of the holder, into Xcel Energy Common Stock or indebtedness or allow the holder to surrender to the issuer or apply the value of the security to the holder's obligation to make a payment on another security issued by Xcel Energy pursuant to authorization of the Commission. Any convertible or Equity linked Securities would be convertible into or linked to Common Stock, Preferred Securities or unsecured debt that Xcel Energy is otherwise authorized by Commission order to issue directly or indirectly through Finance Subsidiaries on behalf of Xcel Energy. The conversion of Equity linked or Preferred Securities and the subsequent issuance of other securities as a direct result of the conversion (or the performance of these forward purchase contracts), to the extent that no additional financing proceeds are realized, shall not be counted against the financing limit.

(d) *Short-term Debt.* Xcel Energy proposes to issue and sell from time to time Short-term Debt, on an unsecured basis, in an aggregate principal amount at any time outstanding not to exceed \$1.0 billion (including the aggregate principal amount of Short-Term Debt issued and outstanding pursuant to the prior financing orders).

Specifically, Xcel Energy may sell commercial paper, from time to time, in

established domestic or European commercial paper markets. The commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Xcel Energy would reoffer the paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that Xcel Energy's commercial paper may be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations. In connection with the sale of commercial paper, Xcel Energy may obtain lines of credit or letters of credit from one or more banks in support of these commercial paper obligations.

Xcel Energy may establish lines of credit with banks, financial institutions and related entities. Loans under lines of credit authorized hereunder as Short-Term Debt would have maturities not more than 364 days from the date of each borrowing. Unused borrowing capacity under a credit facility would not count towards the limit on Short-term Debt or the External Financing Limit.

Xcel Energy may also engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

(2) *Finance Subsidiaries.* Xcel Energy and/or its Subsidiaries request authorization to acquire, directly the equity securities of one or more Finance Subsidiaries, which may be organized as corporations, trusts, partnerships or other entities, created specifically for the purpose of facilitating the financing of the authorized and exempt activities of (including exempt and authorized acquisitions by) Xcel Energy or a Subsidiary through the issuance of Long-term Debt, Equity linked Securities or Preferred Securities, and any other type of security authorized by rule or order, to third parties. A Finance Subsidiary may dividend (including dividends out of capital to the extent permitted below by other Nonutility Subsidiaries), loan or otherwise transfer the proceeds of the financings to its direct parent. In the event that a Finance Subsidiary loans the proceeds of the financing to its direct parent, such parent company may issue notes to

evidence the borrowings. The terms of the notes (e.g. interest rates, maturity, amortization, prepayment terms, etc.) would be designed to parallel in all material respects the terms of the securities issued by the Finance Subsidiaries to which the notes relate.

Xcel Energy or the Subsidiary may, if required, guarantee, provide support for or enter into expense agreements to the extent of the obligations of any Finance Subsidiary organized for its benefit. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating the Finance Subsidiary from its parent for bankruptcy purposes, the rating agencies require that the parent provide financing related services to the Finance Subsidiary at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent or subsidiary in the event of the bankruptcy of the parent or subsidiary without interruption or an increase of fees. Therefore, Applicants seek approval under Section 13(b) of the Act and Rules 87 and 90 to provide the services described in this paragraph at a charge not to exceed a market price.

The amount of any Long-term Debt, Equity linked Securities or Preferred Securities issued by any Finance Subsidiary for the benefit of Xcel Energy shall be counted against the aggregate Equity/Long-term Debt Limit requested above to the extent that Xcel Energy issues a note to a Finance Subsidiary or guarantees these securities; however, the securities (e.g., note and/or guarantee) issued by Xcel Energy in connection therewith would not separately be counted against the Equity/Long-term Debt Limit or the financing limit requested for Guarantees.

(3) *Utility Money Pool.*

In order to provide intrasystem financing to the Utility Subsidiaries, Applicants request authorization to continue to operate the Utility Money Pool. It is anticipated that the Utility Money Pool would include some or all of the Utility Subsidiaries as borrowers from and lenders to the pool. Xcel Energy would participate in the Utility Money Pool, but only as a lender to the pool. Xcel Energy Services Inc. ("Xcel Energy Services") would act as the administrator of the Utility Money Pool. The Utility Subsidiaries request authorization to make unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory

notes from) one another through the Utility Money Pool. Xcel Energy requests authorization to contribute surplus funds and to lend and extend credit to the Utility Subsidiaries through the Utility Money Pool. No loans through the Utility Money Pool would be made to, and no borrowings through the Utility Money Pool would be made by, Xcel Energy.

The objective of the implementation of a Utility Money Pool is to provide more flexible cash management among the Utility Subsidiaries, by making excess funds at one Utility Subsidiary available to other Utility Subsidiaries on a cost-effective basis. The Applicants believe that the cost of the proposed borrowings through the Utility Money Pool would generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Utility Money Pool would generally be higher than the typical yield on short-term investments.

Under the proposed terms of the Utility Money Pool Agreement, a copy of which is attached as Exhibit J to the Application, short-term funds would be available from the following sources for short-term loans to each of the Utility Subsidiaries from time to time: (i) Surplus funds in the treasuries of Utility Money Pool participants, (ii) surplus funds in the treasury of Xcel Energy, and (iii) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by the Utility Money Pool participants for loan to the Utility Money Pool ("External Funds"). The determination of whether a Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool or shall borrow funds from the Utility Money Pool would be made by the participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in the participant's sole discretion.

Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (e.g., surplus treasury funds of Xcel Energy and other Utility Money Pool participants ("Internal Funds") and External Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each fund source in the Utility Money Pool in the same proportion that

the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

Borrowings from the Utility Money Pool would require authorization by the borrower's chief financial officer or treasurer, or by a designee thereof. No party would be required to effect a borrowing through the Utility Money Pool if it is determined that it could (and had authority to) effect a borrowing at lower cost directly from banks or through the sale of its own commercial paper.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool would initially be paid by the participant maintaining the line. A portion of the costs—or all of the costs in the event a Utility Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained thereby into the Utility Money Pool—would be retroactively allocated every month to the companies borrowing the External Funds through the Utility Money Pool in proportion to their respective daily outstanding borrowings of External Funds.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by the Utility Money Pool participants for all loans of Internal Funds outstanding on any day would be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal* on the last business day of the prior calendar month.

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of External Funds would be equal to the lending company's cost for the External Funds (or, if more than one Utility Money Pool participant had made available External Funds on that day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for the External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of these "blended" funds would be a composite rate equal to the weighted average of (i) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second-preceding

paragraph above) and (ii) the cost of all the External Funds (as determined pursuant to the immediately preceding paragraph above).

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision thereof, provided that these obligations are rated not less than "A" by a nationally recognized rating agency; (iv) commercial paper rated not less than "A-1" or "P-1" or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) other investments as are permitted by Section 9(c) of the Act and Rule 40.

The interest income and investment income earned on loans and investments of surplus funds would be allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution of funds bears to the total amount of funds in the Utility Money Pool.

Each Applicant receiving a loan through the Utility Money Pool would be required to repay the principal amount of the loan, together with all interest accrued thereon, on demand. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty.

Operation of the Utility Money Pool, including record keeping and coordination of loans, would be handled by Xcel Energy Services under the authority of the appropriate officers of the participating companies. Xcel Energy Services would administer the Utility Money Pool on an "at cost" basis.

Proceeds from the Utility Money Pool may be used by the Utility Subsidiary (i) for the interim financing of its construction and capital expenditure programs, (ii) for its working capital needs, (iii) for the repayment, redemption or refinancing of its debt and preferred stock, (iv) to meet unexpected contingencies, payment and timing differences and cash requirements, and (v) to otherwise finance its own business and for other lawful general corporate purposes. The Utility Subsidiaries request authority to

borrow up to an amount at any one time outstanding from the Utility Money Pool as set forth below:

Utility subsidiary	Money pool limit
NSP-M .....	\$250 million.
NSP-W .....	\$100 million.
PSCo .....	\$250 million.
SPS .....	\$100 million.

(4) *Hedging Transactions.* (a) *Hedging Transactions.* The Applicants request authorization (i) for Xcel Energy to enter into hedging arrangements intended to reduce or manage the volatility of interest rate risks ("Hedging Transactions") with respect to the indebtedness of Xcel Energy and its Subsidiaries and (ii) for each of Xcel Energy's Subsidiaries to enter into Hedging Transactions (to the extent not exempt under the Act) with respect to its own indebtedness, subject in each case to the limitations and restrictions described below.

Hedging Transactions would involve the use of financial instruments and derivatives commonly used in capital markets to manage interest rate risk ("Hedging Instruments"), such as interest rate futures, swaps, caps, collars, floors, forward agreements and similar products. Hedging Transactions may also include structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g.*, FNMA) obligations or LIBOR-based or credit spread related swap instruments. The transactions would be for fixed periods and stated notional amounts, which will not exceed the principal amount of the underlying security except to the extent necessary to adjust for differing price movements between the underlying and hedged securities or to allow the fees related to the transaction. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with a Hedging Transaction would not exceed those generally obtainable in competitive markets for parties of comparable credit quality. Xcel Energy and its Subsidiaries would not engage in "speculative transactions" as that term is described in Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities"). Xcel Energy and its Subsidiaries may employ derivatives as a means of prudently managing the interest rate risk associated with any

outstanding debt issued pursuant to Commission order in this proceeding or any other proceeding or pursuant to an applicable exemption. Hedging Transactions may be employed so as to, in effect, synthetically (i) convert variable rate debt to fixed rate debt, (ii) convert fixed rate debt to variable rate debt, and (iii) limit the impact of changes in interest rates resulting from variable rate debt.

(b) *Anticipatory Hedges.* In addition, the Applicants request authorization for Xcel Energy to enter into Anticipatory Hedges with respect to anticipated offerings of debt of Xcel Energy or debt securities of its Subsidiaries and, to the extent not exempt under Rule 52, for each of Xcel Energy's Subsidiaries to enter into Anticipatory Hedges (to the extent not exempt under the Act) with respect to its own anticipated debt issuances, subject to the limitations and restrictions described below. Anticipatory Hedges would be utilized to fix and/or limit the interest rate risk associated with any proposed issuance of debt securities through appropriate means, including (i) the forward sale of exchange-traded Hedging Instruments, (ii) the purchase of put options on Hedging Instruments, (iii) the purchase of put options, in combination with the sale of call options, on Hedging Instruments, (iv) some combination of the above and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges, and (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing.

Hedging Transactions and Anticipatory Hedges may be (i) executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the Chicago Mercantile Exchange or similar exchange, (ii) the opening of over-the-counter positions with one or more counterparties whose senior debt ratings, or whose parent companies' senior debt ratings, are rated investment grade by at least one nationally recognized statistical rating organization as defined in rule 15c3-1(c)(2)(vi)(F) under the Securities Act at the time that the Hedging Transaction is entered into ("Off-Exchange Trades"), or (iii) a combination of On-Exchange Trades and Off-Exchange Trades. The optimal structure of each Hedging Transaction and Anticipatory Hedge would be determined at the time of execution.

Xcel Energy and its Subsidiaries would comply with Statement of

Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Applicants represent that each Hedging Transaction and each Anticipatory Hedge would qualify for hedge accounting treatment under the FASB standards in effect and as determined as of the date the Hedging Transaction or Anticipatory Hedge is entered into. The Applicants request that the Commission reserve jurisdiction over the entering into of any Hedging Transaction or Anticipatory Hedge that does not so qualify. The Applicants would also comply with any existing or future FASB financial disclosure requirements associated with hedging transactions.

(5) *Intra-System Financings and Guarantees.* The Applicants request authorization for (i) Xcel Energy to enter into Guarantees with respect to the obligations of Utility Subsidiaries as may be appropriate to enable the Utility Subsidiaries to carry on their respective businesses; (ii) the Utility Subsidiaries to enter into Guarantees with respect to the obligations of their Subsidiaries to enable the Subsidiaries to carry on their respective businesses; and (iii) Xcel Energy and the Nonutility Subsidiaries to enter into Guarantees with respect to the obligations of Nonutility Subsidiaries as may be appropriate to enable the Nonutility Subsidiaries to carry on their respective businesses; provided that the aggregate principal amount of Guarantees pursuant to this paragraph shall not exceed \$1.0 billion outstanding at any one time during the Authorization Period. The \$1.0 billion excludes any Guarantees that are exempt pursuant to Rules 45(b) and 52. The authorization requested herein would permit issuances of Guarantees in situations where the exemptions provided by Rules 45(b) and 52 are not applicable. Any Guarantee outstanding at the end of the Authorization Period may remain outstanding until it expires or terminates in accordance with its terms.

Xcel Energy or other guarantor may charge the Subsidiary whose obligations are guaranteed a fee for each Guarantee provided on behalf of the Subsidiary, provided that the fee does not exceed the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or

letter of credit fees) for the period of time the Guarantee remains outstanding.

Guarantees may, in some cases, be provided to support obligations that are not readily susceptible of exact quantification or that may be subject to varying quantification. In these cases, the exposure under the Guarantee for purposes of measuring compliance with the proposed limitation on guarantees would be determined by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, the estimates would be made in accordance with generally accepted accounting principles. The estimation would be reevaluated on a periodic basis.

The Applicants also request authorization for Xcel Energy to make intercompany loans to its Nonutility Subsidiaries and its Nonutility Subsidiaries to make intercompany loans to other Nonutility Subsidiaries in an aggregate principal amount outstanding at any one time during the Authorization Period not to exceed \$400 million. The \$400 million excludes any financings that are exempt pursuant to Rules 45(b) and 52.

Intra-system financing would provide funds for general corporate purposes, including working capital requirements, investments and capital expenditures. Xcel Energy or the lending Nonutility Subsidiary would determine, at its discretion, how much financing to give each borrowing Nonutility Subsidiary as its needs dictate during the Authorization Period.

Generally, Xcel Energy or the lending Subsidiary's loans to, and purchase of capital stock from, the borrowing Subsidiaries would be exempt under Rule 52, and capital contributions and open account advances without interest would be exempt under Rule 45(b). The authorization requested herein would permit intra-system loans in situations where the exemptions provided by Rules 45(b) and 52 are not applicable.

Xcel Energy provides loans to its Nonutility Subsidiaries (e.g., Eloigne Company and Utility Engineering Corp. and its subsidiaries) through their respective intermediate holding companies. Typically, these loans are made on an exempt basis pursuant to Rule 52. However, circumstances can arise from time to time where maturity dates of an intercompany loan would not parallel the terms of recently issued debt of the lending company, as required by Rule 52(b)(2).<sup>3</sup> Thus, Xcel

Energy seeks the authorization requested herein for Xcel Energy to make loans to its Nonutility Subsidiaries and for the Nonutility Subsidiaries to make loans to other Nonutility Subsidiaries on the terms described below.

In the case of loans by Xcel Energy or a Nonutility Subsidiary to a Nonutility Subsidiary, the company making the loan or extending credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of the lending company, including an allocated share of commitment fees and related expenses. If no borrowings are outstanding, then the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York. In the limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly-owned by Xcel Energy, directly or indirectly, authority is requested under the Act for Xcel Energy or a Nonutility Subsidiary to make the loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If loans are made to a Nonutility Subsidiary which is not wholly-owned, the Nonutility Subsidiary would not provide any services to any associate Subsidiary except a company which meets one of the conditions for rendering of services on a basis other than "at cost," as previously authorized in Holding Company Act Release No. 27212 (August 16, 2000).

Funds for intercompany loans to Nonutility Subsidiaries will be derived from available funds of Xcel Energy and/or its Subsidiaries or from proceeds of exempt financings or financing authorized by the Commission elsewhere in this filing or in separate filings.

(6) *Development and Administrative Activities.* In connection with future investments in EWGs, FUCOs, ETCs, and in subsidiaries permitted pursuant to Rule 58 ("Rule 58 Subsidiaries"), Xcel Energy requests authority to engage directly and through Subsidiaries in Development Activities and Administrative Activities associated

appropriate index only in the event that the lender has not recently issued debt securities. Xcel Energy has encountered situations, at a time when it has no short-term debt outstanding, in which it has issued long-term notes and, directly or indirectly, applied the proceeds to fund the working capital or other funding needs of its Nonutility Subsidiaries. In such case, the maturities would not match and the interest rate on the intercompany loan would be determined in the manner described below.

with these investments. Development Activities and Administrative Activities include preliminary activities designed to result in a permitted nonutility investment such as an investment in an EWG or FUCO, ETC or a Rule 58 Subsidiary; provided however, the preliminary activities may not qualify for such status until the project is more fully developed. Accordingly, approval is sought for Xcel Energy and its Subsidiaries to engage in Development and Administrative Activities and for Xcel Energy, directly or indirectly, to acquire or form Subsidiaries to engage in these activities.

Development Activities would include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. Development Activities would be undertaken with the intent and purpose to make a permitted nonutility investment; however, it is possible that all these endeavors would not be successful and the potential investment may never be completed.

Administrative Activities would include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage Xcel Energy's investments in nonutility subsidiaries.

Xcel Energy proposes to expend, directly or through Subsidiaries, up to \$300 million in the aggregate outstanding at any time during the Authorization Period on Development Activities. Amounts expended in the development of projects leading to an investment in a Nonutility Subsidiary authorized by the Act, applicable rule or by Commission order will not count against the limitation on expenditures for Development Activities. Further, to the extent a Subsidiary for which amounts were expended for Development Activities becomes an EWG, FUCO, ETC or Rule 58 Subsidiary, the amount so expended would then be considered as part of the

<sup>3</sup> HCAR No. 25574, in which the Commission proposed amendments to Rule 52, provides that the lender's cost of capital may be tied to an

“aggregate investment” in the entity. In the case of EWGs, FUCOs, ETC and Rule 58 Subsidiaries, the aggregate investment would then count against the limitation on aggregate investment under Rule 53 (as it may be modified by Commission order) or Rule 58, as applicable.

(7) *Intermediate Subsidiaries.* Xcel Energy proposes to create and/or acquire directly or indirectly the securities of one or more Intermediate Subsidiaries. Intermediate Subsidiaries may be corporations, trusts, partnerships, limited liability companies or other entities in which Xcel Energy, directly or indirectly, owns a 100% interest, a majority equity interest, a minority equity interest or a debt position. Intermediate Subsidiaries would be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating Xcel Energy’s investments in, other direct or indirect nonutility investments. Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities.

Investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (ii) capital contributions; (iii) open account advances without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

Funds for any direct or indirect investment in any Intermediate Subsidiary would be derived from available funds of Xcel Energy and/or its Subsidiaries or from proceeds of exempt financings or financings authorized by the Commission elsewhere in this proceeding or in separate proceedings. No authority is sought under this heading for additional financing authority.

To the extent that Xcel Energy provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary, the amount of these funds would be included in Xcel Energy’s “aggregate investment” in these entities, as calculated in accordance with Rule 53 or Rule 58, as applicable.<sup>4</sup>

The authority requested for Intermediate Subsidiaries is intended to allow for the corporate structuring alternatives outlined herein and would not allow any increase in aggregate investment in EWGs, FUCOs, Rule 58 Subsidiaries, or any other business subject to an investment limitation under the Act.

(8) *Internal Reorganization of Existing Investments.* Xcel Energy currently engages directly or through Nonutility Subsidiaries in certain nonutility businesses. The Applicants seek authorization to restructure the nonutility interests of the Xcel Energy system from time to time, without the need to apply for or receive prior Commission approval, on the condition that the reorganization would not result in the entry by the Subsidiaries into new lines of business that are not permissible on an exempt basis under the Act or by Commission rule. The restructurings may involve the creation of new, or the elimination of existing, Intermediate or Nonutility Subsidiaries, the consolidation of Nonutility Subsidiaries engaged in similar businesses, the spin-off of a portion of an existing business of a Nonutility Subsidiary to another Nonutility Subsidiary, the re-incorporation of an existing Nonutility Subsidiary in a different state, the transfer of authority from one Nonutility Subsidiary to another or other similar type arrangements.

This authorization would permit Xcel Energy and its Subsidiaries to sell or otherwise transfer (i) assets or operations of Nonutility Subsidiaries, (ii) the securities of Nonutility Subsidiaries or (iii) Nonutility investments which do not involve a Subsidiary (*i.e.*, less than 10% voting interest) to Xcel Energy or a different Subsidiary, and, to the extent approval is required, the Subsidiaries to acquire the assets or operations of nonutility businesses, Nonutility Subsidiaries or investment interests therein. Transfers of the securities or assets may also be effected by share exchanges, share distributions or dividends and/or contribution of the securities or assets to the receiving entity. Xcel Energy may also liquidate or merge Nonutility Subsidiaries.

The internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax

savings, or for other ordinary and appropriate business purposes.

(9) *Changes in Capital Structure of Wholly-Owned Subsidiaries.* Applicants request authorization to change the terms of any wholly-owned Subsidiary’s authorized capitalization by an amount deemed appropriate by Xcel Energy or other intermediate parent company. The portion of an individual Subsidiary’s aggregate financing to be effected through the sale of equity to Xcel Energy or other intermediate parent company pursuant to Rule 52 and/or an order issued in this file is unknown at this time. The proposed sale of capital securities (*i.e.*, common stock, preferred stock or other equity interests)<sup>5</sup> may in some cases exceed the then authorized capital of the Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. The relief requested would provide necessary financing flexibility.

The requested authorization is limited to Xcel Energy’s wholly-owned Subsidiaries and would not affect the aggregate limits or other conditions contained herein. A Subsidiary would be able to change its authorized capital, to change the par value, or change between par value and no-par stock, and to amend the certificate or articles of incorporation or other constituent document to effect these changes, without additional Commission approval. Additional terms that may be changed include dividend rates, conversion rates and dates, and expiration dates. Any such action by any Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the applicable state commission or commissions with jurisdiction over the transaction. Applicants state that in event that proxy solicitations are necessary with respect to any change to a Subsidiary’s corporate structure or internal corporate reorganizations, the applicable Subsidiary will seek the necessary Commission approval, under section 6(a)(2) and 12(e) of the Act, through the appropriate filing of a declaration.

(10) *Incentive Compensation and other Benefit Plans; Direct Stock Purchase and Dividend Reinvestment Plans.* Xcel Energy seeks authorization to issue up to 35 million shares (the “Share Limitation”) of common stock, and/or options, units or other derivative

<sup>4</sup> If the Intermediate Subsidiary is merely a conduit, the aggregate investment would not “double count” both the conduit investment and the investment in the operating company

authorized as an EWG, FUCO, Rule 58 subsidiary or other approved investment.

<sup>5</sup> For example, such other equity interests may include partnership interests in a partnership or membership interests in a limited liability company.

securities<sup>6</sup> through the Authorization Period under its direct stock purchase plan, dividend reinvestment plan, incentive compensation plans and other employee and/or director benefit plans, whether now in effect or implemented after the date hereof (collectively, the "Plans").<sup>7</sup>

Xcel Energy issues and sells common stock pursuant to its dividend reinvestment plan and its common stock purchase plan to shareholders and other participants. Xcel Energy also has incentive compensation and other benefit plans under which Xcel Energy common stock, and/or options, units or other derivative securities, may be awarded to employees and/or directors of Xcel Energy and its Subsidiaries. Xcel Energy currently maintains the following stock-based benefit plans for employees and/or directors:

- Xcel Energy 401(k) Savings Plan. Defined contribution 401(k) retirement plan where matching contribution is made in Xcel Energy common stock.

- NCE Employee Savings and Stock Ownership Plan for Bargaining Unit Employees and Former Non-Bargaining Unit Employees. Defined contribution 401(k) retirement plan for bargaining unit employees of PSCo where matching contribution is made in Xcel Energy common stock.

- NCE Investment Plan for Bargaining Unit and Former Non-Bargaining Unit Employees. Defined contribution 401(k) retirement plan for bargaining unit employees of SPS where matching contribution and part of participant's elective deferrals are made in cash, and trustee purchases Xcel Energy common stock on open market.

- Xcel Energy Executive Annual Incentive Plan. Performance based annual awards to select group of Xcel Energy executives, which can be paid in cash, shares or restricted stock.

- Xcel Energy Omnibus Incentive Plan. Multi-component stock-based award document, providing Board-directed awards of stock, options,

restricted stock and restricted share units.

- Stock Equivalent Plan for Non-Employee Directors of Xcel Energy. A director's only plan allowing all or a portion of annual director's retainer to be paid in Xcel Energy common stock.

Xcel Energy proposes to issue and/or acquire in open market transactions, or by some other method which complies with applicable law and Commission interpretations then in effect, shares of Xcel Energy common stock distributable under Xcel Energy's current or any future Plans.

The number of shares of Common Stock issuable upon the exercise of options or rights shall count against the Share Limitation at the time of issuance of the options or units. The issuance of common stock upon the exercise of options or units shall not count against the Share Limitation, to the extent that the issuance of the options or units has already been counted against the Share Limitation. To the extent that any options or units pursuant to this authorization expire or are forfeited, or are applied to satisfy any income tax withholding obligation, the number of shares counted against the Share Limitation upon the issuance of the options or units shall be reinstated. Only newly issued shares would be counted against the Share Limitation. Any shares of common stock acquired by Xcel Energy, or the trustee of any Plan, on the open market<sup>8</sup> for delivery pursuant to any of these Plans shall not count against the Share Limitation and, to the extent the shares are applied to satisfy an obligation in respect of the exercise of options or units, the Share Limitation shall be reinstated. In addition, the issuance of common stock upon conversion of options or units would not count against the Equity/Long-term Debt Limit.

(11) *Dividends Out of Capital.* Xcel Energy and the Nonutility Subsidiaries request authority for each of the Nonutility Subsidiaries to pay dividends out of capital or unearned surplus to the fullest extent of the law, provided, however, that without further approval of the Commission, (i) no Nonutility Subsidiary that derives any material part of its revenues from the sale of goods, services or electricity to any Utility Subsidiary shall declare or pay any dividend out of capital or unearned surplus and (ii) no Nonutility Subsidiary shall declare or pay any dividend out of capital or unearned surplus unless it: (a) Has received

excess cash as a result of the sale of its assets, (b) has engaged in a restructuring or reorganization; and/or (c) is returning capital to an associate company. Further, Xcel Energy and the Nonutility Subsidiaries request that the Commission reserve jurisdiction over the payment of dividends out of capital or unearned surplus when any of these conditions are not met.

(12) *Acquisition, Redemption or Retirement of Securities.* The Applicants request authorization for each company in the Xcel Energy system to acquire, redeem or retire its securities or those of its direct and indirect subsidiaries, which securities may be either outstanding presently or issued and sold in the future from time to time during the Authorization Period. These transactions would be undertaken at either the competitive market prices for the securities or at the stated price for those securities, as applicable. The Utility Subsidiaries would acquire, retire or redeem securities only in accordance with Rule 42. The redemption or retirement of securities would be effected consistent with corporate law applicable in the jurisdiction where the company whose securities are being acquired, retired or redeemed is organized and in accordance with any applicable financing covenants.

(13) *Investment Securities.* In addition to the types of securities described in Section 9(c) and Rule 40, Applicants request authorization to invest in the following securities:

(i) Shares of money market funds registered under the Investment Company Act of 1940 whose shares are registered under the Securities Act with total fund assets in excess of \$500 million and rated in the highest short-term rating category by two or more nationally recognized statistical rating organizations ("NRSRO"), or one NRSRO if only one has rated the security or, if not rated, determined to be of comparable quality, whose investments include:

(a) U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the U.S. Government or its agencies;

(b) Obligations of any State of the U.S. or any political subdivision thereof;

(c) Obligations of commercial banks and savings and loan and thrift institutions (including certificates of deposit, time deposits, bankers' acceptances, bank notes, letters of credit, Eurodollar CD's and Eurodollar time deposits);

(d) Commercial paper;

(e) Corporate obligations;

(f) Variable rate instruments; and

(g) Repurchase agreements involving any of the foregoing obligations; and

<sup>6</sup> Such derivative securities could include, among other things, performance or phantom stock units.

<sup>7</sup> Under the Financing Orders, Xcel Energy has authorization to issue up to 30 million shares through June 30, 2007. As of September 30, 2004, Xcel Energy has issued approximately 12.8 million shares, or options or settlement of restricted stock units or phantom stock units in respect thereof, pursuant to such authorization. The issuance of common stock upon the exercise of options issued prior to the date of an order in this proceeding is authorized by prior financing orders and would not count against the limit described in this section. As to any awards of common stock, options or settlement of restricted stock units or phantom stock units issued after the date of the order in this proceeding, this authorization would supersede and replace the existing authorization.

<sup>8</sup> Such open-market purchases of shares would generally be exempt pursuant to Rule 42, but may include purchases from investors that are affiliates.

(ii) repurchase agreements involving:

(a) U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the U.S. Government or its agencies;

(b) Obligations of any State of the U.S. or any political subdivision thereof; and

(c) Obligations of commercial banks and savings and loan and thrift institutions (including certificates of deposit, time deposits, bankers' acceptances, bank notes, letters of credit, Eurodollar CD's and Eurodollar time deposits).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-1662 Filed 4-8-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51471; File No. SR-Amex-2005-030]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Specialist Liability for Failure To Send a Report to an Order-Providing Member

April 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 4, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On March 30, 2005, Amex submitted Amendment No. 1 to its proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its Rule 178 to limit an equity or ETF specialist's liability for a failure to send a report, to a member that provided the specialist with an order. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in

italics, and proposed deletions are in brackets.

#### Responsibility of Specialist

Rule 178. (a) If a specialist shall fail to send a report with respect to an odd-lot or full lot order which he *or she* executed or should have executed and the member or member organization giving the specialist such order shall have made a written request to the specialist for a report prior to and including one-half hour before the opening of trading on the following business day, the specialist *must answer such inquiry before the opening on that day. The failure of the specialist to meet this requirement will extend the responsibility of the specialist* [shall be responsible] for any loss which may be sustained until such time as he *or she* answers the request.

A written request for a report which is delivered to a specialist within one hour after the close regarding the execution of an order on that day shall be answered prior to one half-hour before the opening of trading on the following business day. *The failure of the specialist to meet this requirement will extend the responsibility of the specialist for any loss which may be sustained until such time as he or she answers the request.*

*The Exchange, through the Senior Supervisory Officer, or, in his or her absence, a Floor Governor or the Senior Officer of Market Operations, may change one or more of the times specified in this paragraph, on a temporary basis, if market conditions so warrant.*

(b) In the event a report has not been sent by a specialist with respect to an odd-lot or full lot order which he *or she* executed or should have executed and the member or member organization leaving the order with the specialist for execution makes a written request to the specialist for a report after one half-hour before the opening of trading on the following business day [but before the close on the business day following the day on which the order was executed or should have been executed, the specialist shall be responsible for one-half of any loss which may be sustained provided the loss is established before the closing on the business day following the day on which the order was executed or should have been executed; in the event the loss is established after the closing on the business day following the day on which the order was executed or should have been executed, the specialist shall not, without his consent, be responsible for any loss sustained. The member or member organization giving the

specialist such order shall be responsible for the remainder of such loss and for any further loss], *the specialist is responsible for any loss which may be sustained up to and including the opening price on the business day following the day on which the order was executed or should have been executed. The member or member organization giving the specialist the order is responsible for any further loss thereafter unless such member or member organization received the order from another member or member organization, in which case the remainder of such loss and any further loss shall be equally divided among such members or member organizations.*

Commentary. No Change.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Amex represents that both it and the New York Stock Exchange ("NYSE") have rules dealing with the specialist's responsibility for failure to send a report with respect to an order that the specialist executed or should have executed.<sup>4</sup> These rules date back over 30 years and have been amended from time to time to suit specific needs of each exchange. Amex believes that, because of the differences between the Amex rules and the NYSE rules on this issue, Amex equity specialists are currently in a more disadvantageous position than NYSE specialists.

If either an Amex or an NYSE specialist fails to send a report with respect to an order which the specialist executed or should have executed, the member or member organization which gave the specialist the order must request a report in writing no more than one-half hour before the next business day's opening. If that deadline is missed

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change and clarified the basis of the proposal.

<sup>4</sup> See Amex Rule 178 and NYSE Rule 123A.32.