

Dated: June 27, 2000.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 00-16715 Filed 6-29-00; 8:45 am]

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## PRESIDIO TRUST

### Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California

**AGENCY:** The Presidio Trust.

**ACTION:** Public notice.

**SUMMARY:** This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Nextel Communications ("Nextel") for a wireless telecommunications facilities site (the "Project") in The Presidio of San Francisco. The proposed location of the Project is directly above the north entrance of the MacArthur Tunnel and adjacent to Park Boulevard near Amatory Loop, San Francisco, California (the "Project Site").

The Project involves placing a Yagi cellular antenna and a one-story equipment cabinet at the Project Site. The cellular antenna will be approximately six inches by 30 inches in size. The equipment cabinet will be five feet wide by 13 feet long by six feet tall and will sit on a ten-inch concrete pad. The equipment cabinet will be surrounded by a seven-foot high, black plastic clad chain link fence. Some grading of the area around the Project Site will be required; additional planting to camouflage the equipment cabinet will be performed, altering the historic ground cover and vegetation. Both telecommunication connectivity and electrical power for the Project will be provided through new underground cables connected to existing infrastructure.

*Comments:* Comments on the proposed Project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052, and be received by August 4, 2000. A copy of Nextel's application is available upon request to the Presidio Trust.

**FOR FURTHER INFORMATION CONTACT:** Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052. Telephone: 415-561-5300.

Dated: June 26, 2000.

**Karen A. Cook,**

*General Counsel.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27191]

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

June 23, 2000.

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 July 18, 2000 to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 July 18, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **New Century Energies, Inc., et al. (70-9635)**

New Century Energies, Inc. ("NCE"), a registered holding company under the Act, 1225 17th Street, Denver, Colorado 80202-5533; NCE's utility subsidiaries Public Service Company of Colorado ("PSCo"), 1225 17th Street, Denver, Colorado 80202-5533, Southwestern Public Service Company ("SPS"), Tyler at Sixth, Amarillo, Texas 79101, and Cheyenne Light, Fuel and Power Company ("Cheyenne"), 108 West 18th Street, Cheyenne, Wyoming 82003; NCE's nonutility subsidiaries New

Century Services, Inc., WestGas Interstate, Inc., NC Enterprises, Inc. ("NC Enterprises"), New Century International, Inc., PS Colorado Credit Corporation, Colorado Natural Fuels LLC, Natural Station Equipment LLC, P.S.R. Investments, Inc., Green and Clear Lakes Company, 1480 Welton, Inc., The Planergy Group, Inc., New Century-Cadence, Inc., New Century WYCO, Inc., and New Century O&M Services, Inc., all located at 1225 17th Street, Denver, Colorado 80202-5533; NCE's nonutility subsidiaries Utility Engineering Corporation and Quixx Corporation, both at 500 South Taylor, Amarillo, Texas 79101, and e prime, inc., 1099 18th Street, Denver, Colorado 80202; Northern States Power Company ("NSP"), a public utility company and a holding company exempt from registration under section 3(a)(2) of the Act, <sup>1</sup> 414 Nicollet Mall, Minneapolis, Minnesota 55401; NSP's utility subsidiary Northern States Power Company ("NSP-W"), 100 North Barstow Street, Eau Claire, Wisconsin 54701; NSP's nonutility subsidiaries Energy Masters International, Inc., Seren Innovations, Inc., Ultra Power Technologies, Inc., Eloigne Company, First Midwest Auto Park, Inc., United Power and Land Company, Reddy Kilowatt Corporation, NSP Financing I, and Nuclear Management Company, all located at 414 Nicollet Mall, Minneapolis, Minnesota 55401; and NSP's nonutility subsidiaries Viking Gas Transmission Company, 825 Rice Street, St. Paul, Minnesota 55117, and NRG Energy, Inc., 1221 Nicollet Mall, Minneapolis, Minnesota 55403 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 32 and 33 of the Act and rules 43, 45, 46, 53 and 54 under the Act.

#### **I. Background and Summary**

NCE and NSP have previously filed an application-declaration ("Merger Application")<sup>2</sup> seeking approvals related to the proposed combination of NCE and NSP ("Merger").<sup>3</sup> The new

<sup>1</sup> See Northern State Power Company, HCAR No. 22334 (Dec. 23, 1981). Section 3(a)(2) of the Act provides an exemption from registration to a holding company that is "predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and states contiguous thereto."

<sup>2</sup> The Commission issued a notice of the Merger Application on March 13, 2000 (HCAR No. 27152).

<sup>3</sup> Under an Agreement and Plan of Merger, dated as of March 24, 1999 ("Merger Agreement"), NCE will merge with and into NSP, and NCE's utility subsidiaries will become subsidiaries of NSP. As part of the Merger, NSP is expected to transfer its existing utility operations that are being conducted directly by NSP at the parent company level to a newly formed, wholly owned subsidiary ("New

combined entity will be named Xcel Energy Inc. ("Xcel"). Applicants now request authority with respect to the financing arrangements, ongoing financings and other matters pertaining to Xcel and its subsidiaries after giving effect to the Merger.<sup>4</sup>

In summary, Applicants request authority for the period through September 30, 2004 ("Authorization Period"), unless otherwise noted, for: (i) External financings by Xcel, Cheyenne and BMG; (ii) intrasystem financing, including guarantees, between Xcel and certain of the Subsidiaries, and among certain of the Subsidiaries, (iii) Xcel and, to the extent not exempt under rule 52, the Subsidiaries to enter into hedging transactions for existing and anticipated debt in order to manage interest rate costs; (iv) the issuance by the Subsidiaries of types of securities not exempt under rules 45 and 52; (v) Xcel and the Subsidiaries to establish, guarantee the obligations of, and borrow the proceeds of the debt and preferred securities issued by, one or more financial entities; (vi) Xcel and any Subsidiary to acquire and restructure investments in one or more special purpose entities organized for the purpose of acquiring, financing, and holding the securities of one or more Nonutility Subsidiaries; (vii) Xcel and any Nonutility Subsidiary to pay dividends out of capital and unearned surplus; and (viii) the use of proceeds of financings to invest in exempt wholesale generators ("EWGs"), as defined in section 32 of the Act, and foreign utility companies ("FUCOs"), as defined in section 33 of the Act.

The proceeds from the financings will be used for general corporate purposes, including: (i) Investments by and capital expenditures of Xcel and the Subsidiaries; (ii) the repayment, redemption, refunding or purchase by Xcel or any of the Subsidiaries of securities issued by such companies exempt under rule 42; (iii) working capital requirements of Xcel and the Subsidiaries; and (iv) other lawful

NSP"). In addition, Black Mountain Gas ("BMG"), a division of NSP with gas utility operations in Arizona, will become a utility subsidiary of Xcel.

<sup>4</sup> As used in this Notice, the term "Utility Subsidiaries" means PSCO, SPS, Cheyenne, New NSP, NSP-W and BMG. In addition, the term "Nonutility Subsidiaries" means each of the direct and indirect nonutility subsidiaries of NCE and NSP, including those identified above, and their respective subsidiaries, as well as any future direct or indirect nonutility subsidiaries of Xcel whose equity securities may be acquired in accordance with the Commission's authorization in this proceeding or in accordance with an exemption provided under the Act or applicable rules. Further, the term "Subsidiaries" means the Utility Subsidiaries and the Nonutility Subsidiaries collectively.

general purposes. Any use of proceeds to make investments in Subsidiaries organized under rule 58 ("Rule 58 Subsidiaries") will be subject to the investment limitation of that rule, and any use of proceeds to make investment in any EWG or FUCO will be subject to the limitation of rule 53(a), as it may be modified by order of the commission.

Applicants propose that the following general conditions apply, where appropriate, to the proposed financing transactions. First, the effective cost of money on securities issued to non-associates proposed by Applicants will not exceed competitive market rates for securities of comparable credit quality with similar terms and features. Second, the maturity of authorized indebtedness will not exceed 50 years. Third, any long-term debt to be issued by Xcel will, at the time of original issuance, be rated at least investment grade by a nationally recognized credit rating organizations. Fourth, Xcel's common equity, as reflected on its most recent Form 10-K or Form 10-Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of consolidated capitalization.

By order dated April 7, 1999 (HCAR No. 27000), NCE and certain of its Subsidiaries were authorized to engage in, among other things, various external and intrasystem financing transactions through December 31, 2001. NCE was also authorized by order dated February 26, 1999 (HCAR No. 26982), to use proceeds of financing invest in EWGs and FUCOs if the aggregate investment in EWGs and FUCOs does not exceed 100% of the system's consolidated retained earnings. These companies will relinquish the authority granted in those orders on the effective date of an order by the Commission in this proceeding approving the proposed transactions.

## II. Request Order

### A. Xcel External Financing

Xcel requests authority to issue and sell common stock and long-term debt securities during the Authorization Period, provided that the aggregate proceeds of these issuances, together with any long-term and preferred securities issued by financing entities established by Xcel more particularly described below, does not exceed \$2.0 billion. These amounts exclude issuances of Xcel common stock under various benefit and reinvestment plans more particularly described below.

All common stock sales will be at prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Xcel may also issue common stock in public

or privately negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act.

Xcel's long-term debt securities may be issued under an indenture to be entered into between Xcel and a national bank, as trustee, with a supplemental indenture to be executed in respect of each separate offering of one or more series of such securities. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to long-term debt securities, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Applications also request authority to have outstanding at one time short-term debt in an aggregate principal amount of up to \$1.5 billion, consisting of bank loans or commercial paper. Each loan under these facilities will have a maturity date not more than one year from the date of the borrowing.

Further, Applicants propose for Xcel to issue other types of securities from time to time as necessary or desirable in order to minimize financing costs or obtain new capital under then existing market conditions. Applicants request that the Commission reserve jurisdiction over the issuance of types of securities by Xcel.

### B. Benefit and Dividend Reinvestment Plan

Xcel requests authority to issue an additional 30 million shares of common stock (subject to adjustment for stock splits) of Xcel from time to time through June 30, 2007 under its benefits plans and dividend reinvestment plan.<sup>5</sup> Shares of Xcel common stock for use under these plans may either be newly issued shares, treasury shares or shares purchased in the open market.

NSP maintains an employee stock ownership plan for it and its Subsidiaries. NSP also maintains a stock equivalent award plan for the non-employee directors of NSP. Amounts held under the plan are paid in shares of NSP common stock upon a director's termination of service. In addition, NSP maintains for its officers and key employees a long-term incentive plan ("NSP Incentive Plan") under which

<sup>5</sup> Following the Merger, the Xcel dividend reinvestment plan will include participants in NCE's dividend reinvestment plan.

non-qualified stock options, incentive stock options, restricted common stock, stock appreciation rights and performance awards are granted to participants.

NCE currently maintains for its and its Subsidiaries' employees three different benefit plans which provide for the issuance and/or sale of common stock. In addition, NCE has adopted an incentive plan for certain employees ("NCE Incentive Plan"), which authorizes grants of common stock, stock options and other stock-based awards to eligible executives and other key employees, and a compensation plan for outside directors ("NCE Outside Directors' Plan") under which non-employee directors may elect to receive director compensation in the form of common stock. Upon completion of the Merger, all outstanding shares of and options to acquire NCE common stock under these plans will be converted into shares of Xcel common stock based on the ratio at which NCE common stock shares will be converted into NSP common stock shares in the Merger.

Following the Merger, it is not expected that any new awards will be made under the NCE Incentive Plan and that such plan will be replaced by the NSP Incentive Plan. In addition, following the Merger, the NCE Outside Directors' Plan will no longer be active.

Xcel may adopt on or more other plans which will provide for the issuance and/or sale of Xcel common stock, stock options and stock awards to a group which may include directors, officers and employees. Xcel may issue shares of its common stock within the proposed limitations described above in order to satisfy its obligations under those plans.

### C. Subsidiary Financing

#### 1. External

Applicants request authority for Cheyenne to issue short-term debt to nonassociate lenders maturing in less than one year in an aggregate amount at any one time outstanding that, when combined with borrowings from associate lenders described below, will not exceed \$40 million. All securities of Cheyenne, except for securities with maturities of less than 12 months, are approved by the Wyoming Public Service Commission.

Similarly, all securities of BMG, except for securities with maturities of less than 12 months, will be approved by the Arizona Corporation Commission. Accordingly, Applicants request authority for BMG to issue debt maturing in less than one year to one or

more nonassociate lenders in an aggregate principal amount at any one time outstanding that, when combined with borrowings from associate lenders described below, will not exceed \$40 million.

#### 2. Intra-system Financing

Applicants request authority (i) for Xcel to finance the Subsidiaries and certain of the Subsidiaries to finance other Subsidiaries and (ii) Xcel and the Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the debt and other obligations of Subsidiaries ("Intrasystem Financings"). the aggregate outstanding principal amount of Intrasystem Financings, other than borrowings by BMG and Cheyenne, would not exceed \$2.5 billion at any one time during the Authorization Period, excluding financings that are exempt under rules 45(b) and 52, as applicable.

Interest on any intra-system loans or extensions of credit not exempt under rule 45(b) or rule 52, as applicable, will equal the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of the lender, including an allocated share of commitment fees and related expenses. If the lender has non of these borrowings outstanding, then the interest rate will be predicated on the Federal Funds' rate. In the limited circumstances where a borrowing Nonutility Subsidiary is not directly or indirectly wholly-owned by Xcel, Applicants request authority for Xcel or a Nonutility Subsidiary to make loans to those subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.

Intrasystem Financings would generally be in the form of cash capital contributions, open account advances, loans and/or capital stock purchases. Intrasystem financings will provide funds for general corporate purposes and other working capital requirements, investments and capital expenditures.

Applicants request the Commission reserve jurisdiction over the issuance by the Subsidiaries of types of securities other than those described above where rules 45 or 52 would not provide an exemption.

#### D. Existing Financing Arrangements

The NCE system has entered into various financing transactions based upon prior Commission orders. With respect to existing financing obligations by NCE itself, NCE will to the extent possible transfer those obligations to

Xcel, and will count them towards the applicable proposed authorization limits for Xcel as described above. With respect to the existing financing obligations and arrangements that NCE's subsidiaries have entered into and that they are able to retain post-Merger, these obligations and arrangements will be counted towards the applicable proposed authorization limits for Subsidiaries, except as described below.

Separately, Applicants request authority for NC Enterprises to transfer its obligations under two notes issued in connection with its acquisitions, previously authorized by the Commission, of certain NCE Subsidiaries. One of the Notes, having an outstanding principal balance of approximately \$119.1 million, was issued to SPS in exchange for the acquisition by NC Enterprises of certain NCE Subsidiaries and would be transferred to another Subsidiary in connection with the expected reorganization of NCE's nonutility interests.

Another note, having an outstanding principal balance of approximately \$192.6 million, was issued to PSCo by NC Enterprises in exchange for its acquisition of New Century International, Inc., and would also be transferred to another Subsidiary in connection with the expected reorganization of NCE's nonutility interests.<sup>6</sup> The amounts of these notes would not count against the proposed intrasystem authorization limits described above.

Applicants also request authority to maintain in place through the Authorization Period the existing financing arrangements of NSP and its Subsidiaries, and any other guarantees and other credit arrangements entered into by NSP and its Subsidiaries prior to completion of the Merger and which remain in effect on the date the Merger is completed.<sup>7</sup> All of these borrowings

<sup>6</sup> According to Applicants, NCE was obligated under the terms of an order of the Commission dated May 14, 1998 (HCAR No. 26871) to notify the Commission if NC Enterprises did not prepay this note by December 31, 1999. The outstanding principal amount owed under the note has been reduced to its current balance from approximately \$292.6 million, and Applicants now propose to prepay the note by December 31, 2004.

<sup>7</sup> These arrangements are as follows: Under the terms of comfort letters provided to lenders to certain NSP Subsidiaries, NSP will require that those Subsidiaries maintain specified interest coverage ratios. In addition, NSP has provided a comfort letter to a third party stating that it has approved an equity investment in its subsidiary Energy Masters International, Inc. ("EMI") necessary to support certain performance guarantees made by EMI to the third party. Also, NSP Subsidiary NRG Energy, Inc., is the obligor on a \$6.5 million promissory note to NSP, which will assign its rights under the note to New NSP

by NSP, intra-company financings, and guarantees with respect to obligations of NSP or the Subsidiaries will be included in the proposed aggregate limits described above.

In addition to these arrangements, NSP has entered into an indenture dated as of January 30, 1997, as supplemented, under which NSP has issued junior subordinated debentures to NSP Financing I, which has in turn issued trust preferred securities to investors. Payments by NSP on account of the junior subordinated debentures are used by NSP Financing I to make payments on account of the trust preferred securities, which are guaranteed by NSP. Upon consummation of the Merger, NSP's obligations under the guaranty and the debentures will be assigned to New NSP, but Xcel, as NSP's successor, will not be released from its liability under these instruments. Xcel requests authority to maintain in effect the above-described financing arrangement, but to not include these obligations in the applicable limitations described above.

#### *E. Interest Hedge Transactions*

Xcel and, to the extent not exempt under rule 52, the Subsidiaries request authority to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Applicants state that Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes, or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities.

In addition, the Applicants request authority to enter into interest rate hedging transactions with respect to anticipated debt offerings, subject to certain limitations and restrictions. Anticipatory hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance through the use of various derivative or cash transactions, including, but not limited to structured notes, caps and collars.

following the Merger. Additionally, NSP is a borrower under three bank loans, related to its employee stock ownership plan, having an aggregate outstanding principal balance of \$11.6 million as of December 31, 1999.

#### *F. Financing Subsidiaries*

Applicants request authority for Xcel and the Subsidiaries to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Xcel and the Subsidiaries, through the issuance of debt or preferred securities to third parties. The proceeds of any securities issuance by a Financing Subsidiary would be loaned, dividend or otherwise transferred to Xcel or the Subsidiary that established the Financing Subsidiary or to another entity that they may designate. The proceeds of any securities issuances by a Financing Subsidiary would count against any applicable proposed authorization limit of Xcel or the Subsidiary establishing that Financing Subsidiary as described above. Xcel or the Subsidiary may, if required, guarantee all or part of the obligations of any Financing Subsidiary under any securities issued by the Financing Subsidiary. Xcel or the Subsidiary also may enter into expense arrangements in respect of the obligations of any of these Financing Subsidiaries. However, the amount of any guarantee by Xcel or the Subsidiary would not be counted against the proposed authorization limit on intra-system financings and guaranties described above.

#### *G. Intermediate Subsidiaries*

Xcel and its Subsidiaries propose to invest in one or more Subsidiaries ("Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs or FUCOs, Rule 58 Subsidiaries, Exempt Telecommunications Companies ("ETCs") or other Nonutility Subsidiaries authorized by order of the Commission. 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 equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect

of the securities or other obligations of any Intermediate Subsidiaries.

In addition, Applicants request authority for Xcel to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, including the Intermediate Subsidiaries through which it may hold investment sin Nonutility Subsidiaries, and the activities and functions of these Subsidiaries, under one or new Intermediate Subsidiaries, from time to time, without further Commission authority. In addition, as needed to accommodate these transactions and to provide for future issues, Applicants seek authority to change the terms of any wholly-owned Nonutility Subsidiary's authorized capital stock capitalization as deemed appropriate by Xcel or other immediate parent company.

#### *H. Payment of Dividends Out of Capital and Unearned Surplus*

Applicants state that there may be situations in which one or more Subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that the direct and indirect Nonutility Subsidiaries be permitted to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus (including any revaluation reserve), to the extent permitted under applicable state law.

#### *I. EWGs and FUCOs*

As indicated above, NCE currently has authority to use the proceeds of the issuances of securities to invest up to 100% of its "consolidated retained earnings," as defined in rule 53 under the Act, in EWGs and FUCOs. Assuming the Merger were effective as of December 31, 1999, aggregate investment in these entities would total approximately \$0.9 billion, or 41.9%, of Xcel's consolidated retained earnings, as defined in rule 53. Applicants now request authority for Xcel to use financing proceeds to invest in EWGs and FUCOs in amounts that would constitute 100% of Xcel's consolidated retained earnings.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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