

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Xcel Energy’s Petition for Approval to Sell Two Liquid Propane Fuel Storage Tanks, Associated Equipment, and Real Property to Flint Hills Resources Pine Bend, LLC

ISSUE DATE: March 28, 2019

DOCKET NO. G-002/PA-18-294

ORDER GRANTING VARIANCE
AND APPROVING SALE WITH
CONDITIONS

PROCEDURAL HISTORY

On April 25, 2018, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a petition under Minn. Stat. § 216B.50 for approval to sell two liquid propane (LP) fuel storage tanks, associated equipment, and real property to Flint Hills Resources Pine Bend, LLC (Flint Hills or the refinery).

On October 1, Flint Hills and the Minnesota Department of Commerce, Division of Energy Resources (the Department) filed comments on the petition. The Department concluded that the sales price appeared reasonable but asked Xcel to provide more information in reply comments.

On October 11, Flint Hills and Xcel filed reply comments.

On November 26, the Department filed additional comments recommending that the Commission approve the sale with modifications.

On January 31, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Factual Background

Xcel seeks Commission approval of an Asset Purchase Agreement with Flint Hills under which the refinery would acquire two LP tanks, along with associated equipment and real estate, at its Wescott storage facility in Inver Grove Heights.

At one time, the Wescott LP tanks stored extra inventory for Xcel’s Sibley plant in Mendota Heights. The two facilities are connected via a Company-owned pipeline that allowed propane stored in the Wescott tanks to be moved to the Sibley plant, where it was injected into the Company’s distribution system to serve firm customers at times of peak demand.

In the late 1990s, Xcel determined that it no longer needed the full storage capacity of the Wescott tanks for operational purposes. The Company began leasing the tanks to Flint Hills, whose nearby Pine Bend refinery is connected to the Wescott facility by pipeline.¹

In September 2016, the Minnesota Office of Pipeline Safety (MnOPS) inspected the Wescott LP facilities and identified several issues that would require an investment of \$4 million to remedy. A separate analysis commissioned by Xcel identified issues with the pipeline to the Sibley plant that would require some \$310,000 to resolve.

Xcel concluded that the cost of remedying the various issues with the Wescott LP tanks, and its lack of operational need for their storage capacity, made selling them a more attractive option than continuing to own them. It identified Flint Hills as a potential buyer due to the refinery's proximity and its willingness to purchase the assets "as is," and invest in the required improvements.

Under the Asset Purchase Agreement, Flint Hills would pay \$10 million for the tanks, related facilities, and real estate. The net book value of the assets is approximately \$333,000, and Xcel expects to incur capital costs totaling \$2.66 million to prepare the tanks for sale, resulting in a pretax gain on the sale of approximately \$7 million (about \$6.3 million on a Minnesota-jurisdictional basis).² The gain would be passed on to ratepayers.

Xcel argued that the transaction is consistent with the public interest and asked that the Commission approve the sale of the assets to Flint Hills according to the terms of the Asset Purchase Agreement.

II. Legal Standard

Under Minn. Stat. § 216B.50, subd. 1,

No public utility shall sell . . . any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 . . . without first being authorized so to do by the commission. . . . If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

III. Preliminary Matter – Application Requirements

Xcel requested a variance from the requirement of Minn. R. 7825.1800(B) that its petition provide various detailed information identified in Minn. R. 7825.1400(F)–(I), which relate to petitions for approval of capital structure. Xcel argued that the identified information had no

¹ The most recent lease agreement expired at the end of March 2018, and Flint Hills no longer has any inventory in the tanks.

² These figures are approximate and will be verified through a compliance filing.

direct relevance and no application to ascertaining whether the asset sale is consistent with the public interest.

The Department agreed and recommended that the Commission grant a variance.

The Commission agrees that the information required by the provisions in question is not relevant to the issues before the Commission in this matter. Under Minn. R. 7829.3200, the Commission specifically finds that (1) enforcement of the rule would impose an excessive burden upon Xcel, (2) granting the requested variance would not adversely affect the public interest, and (3) granting the variance would not conflict with standards imposed by law.

Accordingly, the Commission will grant the requested variance.

IV. Sale Approved

A. Positions of the Parties

1. Xcel and Flint Hills

Xcel's initial cost-benefit analysis showed a Minnesota-jurisdictional customer benefit of \$7.4 million from selling the Wescott LP facilities, as compared to retaining the assets and making the necessary investments. This benefit consists primarily of the pretax gain discussed above, and also includes avoided operation and maintenance (O&M) and capital costs.

Xcel commissioned separate appraisals of (1) the LP tanks and related equipment and (2) the associated real estate. The tank appraisal found a market value of \$7.12 million, and the land appraisal found a market value of \$3.0 million.³ An updated tank appraisal conducted in July 2018 found a slightly lower market value of \$6.58 million.⁴

Based on its cost-benefit analysis, the market-value appraisals, and the fact that the Company can reliably serve its customers without the tanks, Xcel maintained that the sale was in the public interest.

Flint Hills agreed that the Wescott LP tank sale was in ratepayers' and the public's interest, based on:

- The fact that the sale price exceeds the appraised value of the assets;
- The avoided costs of continuing to operate the tanks, which will become costs that Flint Hills must bear;
- The pretax gain on the sale; and
- The fact that the facility will continue to be used to meet regional demand for propane, particularly in winter months when the demand is greatest.

³ See Xcel Petition, Attachments E and F.

⁴ See Department Comments, Attachment 5 (October 1, 2018).

2. The Department

The Department initially raised some concerns with the proposed transaction. In particular, the Department questioned the appraised value of the assets, especially given that Xcel commissioned a small number of appraisals and had not put the property on the open market. The Department asked Xcel to provide in its reply comments information about a recent sale of a potentially comparable facility in Florida.

The Department also noted that the cost savings of removing the Wescott tanks from rate base would not be realized until Xcel files its next rate case because current rates incorporate these facilities' revenue requirement. The Department requested that Xcel provide an updated cost-benefit analysis that includes its current revenue requirement for the Wescott tanks.

In its response comments filed in November 2018, the Department agreed with Xcel that the propane storage facility recently sold in Florida was not comparable to the Wescott facility. The Department also discussed several other recent potentially comparable sales but ultimately concluded that the record in this case did not support making an adjustment to the sale price.

Finally, after reviewing Xcel's updated cost-benefit analysis incorporating the Wescott facilities' revenue requirement, the Department concluded that the sale would result in a net benefit to ratepayers even if the Company does not file a rate case for another ten years. Accordingly, the Department recommended that the Commission approve the sale and pass the gain to ratepayers through a direct bill credit. In addition, the Department recommended the following process improvements for future asset sales:

- Independent market-value estimates from as many multiple sources as possible;
- For real estate transactions, independent appraisals that Xcel examines closely and that are ideally conducted prior to significant negotiations with interested parties and updated if additional information becomes available;
- Whenever possible, assets should be placed into the open market for sale that can be through verifiable public sources or through an independent request for proposal (RFP) process;
- If an open-market sale or RFP process is not possible, a detailed discussion in the initial filing explaining why this was not possible; and
- A detailed chronological timeline of the negotiation and sales process to allow for verification that the transaction was reasonably independent of the parties to the transaction.

B. Commission Action

Based on the entire record, the Commission finds that the proposed sale of the Wescott tanks, equipment, and land to Flint Hills is in the public interest. The sale will spare ratepayers from paying for the investments that would need to be made if Xcel were to retain ownership of the tanks. And the tanks will continue to be used by Flint Hills to meet seasonal demand for propane, benefitting the region. The Commission finds that the assets' appraised market value is reasonable and will approve the Asset Purchase Agreement between Xcel and Flint Hills.

The Department recommended several measures to improve the transparency of future asset-sale petitions. Xcel generally agreed but proposed a modification to the first recommendation—rather than requiring market-value estimates from “as many sources as possible,” Xcel suggested requiring estimates from “as many multiple sources as is appropriate for the particular transaction.” The Department agreed with this change.

The Commission concurs. Section 216B.50 sets a relatively low price threshold for transactions requiring Commission review. Multiple market-value estimates will not make sense for every sale priced at more than \$100,000, especially for sales just above that threshold, and may simply add unnecessary and disproportional transaction costs. The Commission therefore agrees with Xcel’s proposed modification.

In all other respects, the Department’s recommendations are reasonable and likely to result in better outcomes for ratepayers and more efficient review by regulators. Xcel will be required to provide this information in future asset-sale petitions.

V. Fuel Losses

A. The Issue

To prepare the tanks for sale, Xcel removed approximately 600,000 gallons of remaining propane. According to Xcel, this volume represents the “heel” of the tanks, which is the minimum amount of fuel that must be held in the tanks to keep the propane in a liquid state. There has been a heel in the tanks since they went into service in 1962 and 1972, respectively.

Xcel recorded two losses related to removing the heel from the tanks: First, the Company sold some 300,000 gallons to Flint Hills and recorded a loss of \$93,232 on this sale due to the current market price being lower than the original purchase price of the fuel. Second, Xcel recorded a loss of \$467,799 on the last 300,000 gallons, which could not be transferred to Flint Hills due to operational issues and had to be flared off.

Xcel seeks to recover these losses (totaling \$557,031) from ratepayers by netting them against the gain on the sale of the tanks. It argued that ratepayers have benefitted from the heel being in the tanks, and that while the Company has recovered a return on the heel through base rates, it has not recovered the cost of the propane comprising the heel. Xcel also argued that the heel had to be removed from the tanks before they could be sold and that the fuel losses are therefore a transaction cost.

The Department recommended that the Commission not allow Xcel to net these fuel losses against the gain on the tank sale. The Department acknowledged that the heel was necessary to operate the tanks. However, it argued that ratepayers have adequately compensated Xcel for this benefit through base rates, estimating that the Company has collected a return of more than \$1 million since 1972 for holding the heel volume in storage.

The Department, while conceding that Xcel has not recovered the cost of the heel propane, argued that ratepayers should not be charged any further costs because they have received no benefit from the heel as fuel—all of it has either been sold to a third party or flared off. And in any event, the Department argued, Xcel does not have records to establish the original purchase price of the heel propane: thus, it cannot establish the amount of its losses.

B. Commission Action

The Commission concurs with the Department: Xcel's ratepayers have compensated Xcel for the benefit of the heel by paying a return on it for more than forty years. Had the heel propane been used as fuel for the benefit of ratepayers, its cost could have been recovered through Xcel's Purchased Gas Adjustment rider. However, all of the propane was either sold to Flint Hills or flared off due to operational issues. Ratepayers received no additional benefit from it.

Xcel argued that the Commission has approved recovery of similar transaction costs in the past. However, the recovery of transaction costs was not a disputed issue in the prior cases Xcel cites, nor do any of the cited cases present factual circumstances similar to the present one.

Moreover, even if it made sense to charge ratepayers for either the loss of the flared propane or for the loss on the sale of 300,000 gallons to Flint Hills, Xcel is not able to establish the original purchase price. Thus, it is impossible to calculate the amount of the loss, an amount which Xcel carries the burden to establish.

For the foregoing reasons, the Commission will deny Xcel's request to net \$557,031 of propane losses against the sale transaction's gain.

VI. Propane Delivery to Sibley Plant

As previously mentioned, the pipeline linking Xcel's Sibley plant to the Wescott storage facility is not currently in service. As a result, Xcel has been incurring costs to deliver propane to the Sibley plant via truck. These costs are recovered through the Company's Purchased Gas Adjustment (PGA).

The Department conducted discovery on this topic and concluded that it was unreasonable for Xcel to charge ratepayers the cost of delivering propane to the Sibley plant, beyond the level already included in base rates.

The Commission concurs. Ratepayers are paying for the Sibley pipeline through base rates even though it is no longer in service. They should therefore not be charged again, through the PGA, for the cost of delivering propane to the Sibley plant by different means. Accordingly, the Commission will allow Xcel to recover Sibley propane-delivery costs only through base rates and not allow further recovery of such costs through the PGA until the Company files its next rate case.

ORDER

1. The Commission grants a variance to Minn. R. 7825.1800(B) to excuse Xcel from providing the information set forth in Minn. R. 7825.1400(F)–(I).
2. The Commission approves the Asset Purchase Agreement between Xcel and Flint Hills Resources Pine Bend, LLC.
3. In future asset transfer/sale petitions, Xcel shall comply with the following requirements and provide in its initial petition:

- a. independent market-value estimates from as many multiple sources as is appropriate for the particular transaction;
 - b. for real estate transactions, independent appraisals that Xcel examines closely and that are ideally conducted prior to significant negotiations with interested parties and updated if additional information becomes available;
 - c. whenever possible, assets should be placed into the open market for sale that can be through verifiable public sources or through an independent RFP process;
 - d. if an open-market sale or RFP process is not possible, a detailed discussion in the initial filing explaining why this was not possible; and
 - e. a detailed chronological timeline of the negotiation and sales process to allow for verification that the transaction was reasonably independent of the parties to the transaction.
4. Xcel is authorized to record the Flint Hills sale to FERC Account No. 182.3.
 5. Xcel's request to net \$557,031 of propane losses against the sale transaction's gain is denied.
 6. Xcel shall return the gain as a direct bill credit, based on the approved apportionment of revenue responsibility from the last general rate case and distributed evenly by customer count in each rate class.
 7. Xcel is authorized to recover propane delivery costs to the Sibley propane facility at the amount currently recovered in base rates and shall not be allowed further recovery of such costs until its next rate case.
 8. Xcel shall make a compliance filing 30 days after the close of the sale, reflecting the Commission's decisions in the final journal entries.
 9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary

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