

Staff Briefing Papers

Meeting Date November 14, 2024 **Agenda Item 3****

Company Northern States Power Co., d/b/a Xcel Energy

Docket No. E002/M-13-867

In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy for Approval of its Proposed Community Solar Garden Program

Issues Was Xcel Energy’s Applicable Retail Rate (ARR) Compliance filing on July 31, 2024 properly filed by the process established in the July 22, 2022 Commission order?

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✓ **Relevant Documents**

	Date
Xcel Energy Compliance Filing	February 1, 2024
Xcel Energy Compliance Filing	July 31, 2024
Cooperative Energy Futures Letter	August 13, 2024
Notice of Comment Period	August 23, 2024

Initial Comments

Xcel Energy	September 24, 2024
Department of Commerce	September 24, 2024

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

Date

Reply Comments

Cooperative Energy Futures

October 7, 2024

Xcel Energy

October 8, 2024

Department of Commerce

October 8, 2024

BACKGROUND

The Commission's Order dated July 22, 2022 in Docket No. E002/M-13-867 (CSG Docket) established a 30-day negative check off process in which Xcel Energy (Xcel) must file their proposed applicable retail rate (ARR). The Order implemented the following:

1. Established a 30-day negative check off process for Xcel Energy's ARR.
2. Authorized Xcel Energy to implement the annual change by filing a compliance tariff if no objections are filed within 30 days of a petition for a new ARR.
3. Required Xcel to file the compliance tariff after the end of the 30-day period if there are no objections to the new approved rates.
4. Determined that the effective date of the compliance filing shall be the first date of the next calendar month following the end of the 30-day period.

On February 1, 2024, Xcel Energy filed the ARR computation compliance filing in the CSG Docket. In this filing, Xcel stated "consistent with past practice, we propose that the rates become effective on April 1, 2024 after the Commission issues its Notice of Effective Date."

No comments were received regarding this filing. Xcel filed a compliance tariff on July 31, 2024 with an effective date of August 1, 2024.

Cooperative Energy Futures (CEF) filed a letter on August 13, 2024, stating Xcel did not follow the process as required in the July 22, 2022 Order and requesting the Commission require Xcel "to retroactively restore the difference in bill credits all subscribers should have gotten and proceed with the bill credit rates as filed for 2024-25."

The Commission issued a Notice for Comment on August 23, 2024. Xcel and the Minnesota Department of Commerce (Department) filed initial comments on September 24, 2024. CEF filed reply comments on October 7, 2024. Xcel and the Department filed reply comments on October 8, 2024.

DISCUSSION

In its initial comments, Xcel conceded that it did not follow the correct approach for updating the ARR rate. However, the Company opposed the Commission requiring adjustment of the effective date to the originally filled April 1, 2024 for legal and practical reasons.

Legal Arguments

Xcel argued that if it were to implement the rates with an effective date of April 1, 2024, on August 1, 2024, this would amount to "retroactive ratemaking" despite the notice and intent of the filing on February 1, 2024.

Xcel argued that in applying the doctrine against retroactive ratemaking, the Commission has stated that it "... must require the Company to apply the rate in effect at the time of service. ... In order for the system of filed tariffs to be effective, the public must be able to look to the rate on file at the time service is rendered."¹

The Department stated:

The principle of retroactive ratemaking generally prohibits the Commission from setting future tariffed rates to account for something in the past (e.g., past utility losses or excess utility profits). Xcel's obligation to pay the new rates beginning April 1 took effect 30 days after the filing given that no one objected. As a result, ordering Xcel to pay the rates dating back to April 1 isn't retroactive ratemaking, it is making Xcel comply with a pre-existing obligation.²

Staff notes that Minn. Stat. § 216B.23, subd. 1a allows the Commission to require a public utility to refund customer revenues that the Commission determines were collected in violation of a Commissioner Order, and that this portion of statute should not be construed as retroactive ratemaking.

Practical Reasons

Xcel also argued that given the large number of subscribers, issuing the bill credits retroactively would cause undue burden and expense to the company. Xcel stated that retroactively adjusting rates would require the Company to manually re-bill all the effected subscribers. Given that about 112,000 invoices are at issue, to retroactively apply rates would take about three to six months (about 1500 person hours) from the time the project commenced.³ Xcel also insists outside resources would need to be retained and upskilled to handle this, adding to the cost.

Proposed Solution

Xcel proposed in its initial comments that rather than retroactively applying the bill credits, this adjustment could apply to the bill credit that would otherwise be in place for production in April, May, June and July 2025. For residential subscribers, Xcel proposed that an *adder* to the bill credit in the amount of \$ 0.00537 / kWh be applied for the months of April-July 2025, reflecting the difference in value from the prior ARR rate and current ARR rate for this class of subscribers. For Small General Service subscribers, Xcel proposed a *subtractor* to the bill credit in the amount of \$ 0.00319 / kWh be applied for the months of April-July 2025. For General Service subscribers Xcel proposed a *subtractor* to the bill credit in the amount of \$ 0.00016 /

¹ Xcel Initial Comments, September 24, 2024, at 3.

² Department Reply Comments, October 8, 2024, at 2.

³ Xcel Initial Comments, September 24, 2024, at 3.

kWh be applied for the months of April-July 2025.⁴ Xcel also noted that April 1, 2025 also coincides with the beginning date when the ARR transitions to the VOS. The Company attached proposed tariffs as Attachment A to its initial comments that aligned with its recommended approach.⁵ **(Decision Option 2)**

The Department recommended in its initial comments that the Commission should require Xcel to retroactively apply the bill credits to which the subscribers are entitled. However, in its reply comments the Department updated its recommendation to require Xcel Energy to adjust the effective date to the originally filed April 1, 2024 date or adopt the alternative proposal put forth by Xcel Energy in its September 24, 2024 initial comments.⁶

In initial comments, CEF requested the Commission require Xcel to retroactively apply the bill credits to which the subscribers are entitled. However, in its reply comments, CEF agreed with Xcel that “adjusting the effective date of the credit presents considerable practical problems for the Company and result (sic) in needless delays.”⁷ This is the primary reason CEF agrees with the Company’s proposed solution. **(Decision Option 2)** However, CEF did not concur with the Company’s legal reasoning for why it should not adjust the effective date of the credits.

While parties dispute Xcel’s claim that adjusting the effective date to the originally filed April 1, 2024 would constitute retroactive ratemaking, Staff recognizes that Xcel, CEF, and the Department have agreed to Xcel’s proposed solution in **Decision Option 2**. Staff understands the practical concerns involved in adjusting some 112,000 invoices, and appreciates the parties efforts to resolve the issues.

DECISION OPTIONS

1. Require Xcel to adjust the effective date to the originally filed April 1, 2024 date and to retroactively apply the bill credits to which subscribers are entitled per the originally filed effective date of April 1, 2024.

OR

2. Adopt the alternative proposal as described in Xcel’s September 24, 2024 Comments and approve the proposed tariffs which are attached to Xcel’s Comments. (Xcel, CEF, Dept)

⁴ Id at 6.

⁵ Id at Attachment A.

⁶ Department Reply Comments, October 8, 2024, at 1.

⁷ Xcel Initial Comments, September 24, 2024, at 2.

