

October 24, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. G002/M-18-631

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Northern States Power Company, doing business as Xcel Energy's Petition for Approval of a Three-Year Variance to the Purchased Gas Adjustment (PGA) Rules to Allow Recovery of Storage-Related Ad Valorem Taxes through the PGA.

The Petition was filed on October 3, 2018 by:

Lisa Peterson
Manager, Regulatory Analysis
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

The Department recommends **approval of the Petition with conditions** and is available to answer any questions that the Minnesota Public Utilities Commission may have in this matter.

Sincerely,

/s/ MICHAEL N. ZAJICEK
Rates Analyst

MNZ/jl

Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. G002/M-18-631

I. INTRODUCTION AND SUMMARY OF PETITION

On October 3, 2018, pursuant to Minn. Stat. §216B.16, Subd. 7, and related Minn. Rule Part 7825.2400, subp. 12 (Purchased Gas Adjustment “PGA” rule), Northern States Power Company, doing business as Xcel Energy (Xcel or the Company), filed a request for an extension of a variance (Petition). The Company requested Minnesota Public Utilities Commission (Commission) approval to include payment of property taxes related to natural gas storage in the Company’s calculation of the current cost of natural gas supply. The technical accounting classification of this cost requires use of Federal Energy Regulatory Commission (FERC) account 408.1; this FERC account is not among those included in the cost of purchased gas as specified in the PGA rule. The proposed approval would be a three-year extension of the variance granted in Docket Nos. G002/M-15-149 and previously extended in Docket Nos. G002/M-16-396, G002/M-17-510, and G002/M-18-323.

As a general matter, ad valorem taxes are state taxes based on the value of property located in that state. Xcel stores natural gas on the Northern Natural Gas Pipeline system (Northern or NNG) in Kansas. NNG’s storage fields include facilities in Kansas, which imposes property taxes on gas held in fields in its state.

II. DEPARTMENT ANALYSIS

A. BACKGROUND OF KANSAS NATURAL GAS STORAGE

The validity of Kansas property taxes has been disputed for many years and has been subject to litigation. Xcel explained that the property tax was challenged in the mid-2000s and the Company, along with other utilities, prevailed in a 2007 Kansas Supreme Court decision overturning the tax.¹ In 2009, the Kansas legislature modified the enabling statute to allow for the collection of an inventory tax from public utilities based outside of Kansas and ultimately reversed the prior ruling that removed the tax.² Despite the Company, along with other non-

¹ Petition at 5

² K.S.A. § 79-5A01.

Kansas public utilities, disputing and appealing the tax, the Supreme Court of the United States upheld the ability of states to assess property taxes on out-of-state public utilities in October 2014.³ This decision ended the legal routes for appeal.

On February 6, 2015, the Company petitioned the Commission for recovery of the tax through the PGA in Docket No. G002/M-15-149. The Commission granted Xcel's request on October 21, 2015 (2015 Order), covering both the retroactive lump sum recovery of 2009-2014 and the one-year prospective variance beginning November 1, 2015. The retroactive lump sum amount stemmed from the Company legally deferring the taxes applicable during the period of appeals until all legal avenues were exhausted.

The Commission limited the variance related to prospective Kansas natural gas storage taxes, stating as follows:

The Commission believes, however, that it is appropriate to revisit the ideal method of recovering future gas storage tax costs sooner than five years from now. The Company stated at the Commission meeting that its current storage contracts are set to expire in 2017 and 2018.

The Commission will therefore limit the term of the variance for ongoing tax assessments to one year. While the Company has demonstrated its efforts to resist the application of this tax, now that the tax has withstood all available legal challenges, the Company should consider whether there are unexplored and less-costly alternatives that would serve the same purpose as storing gas in Kansas, without incurring the Kansas tax.

On May 3, 2016, Xcel filed a request in Docket No. G002/M-16-396 for a one-year extension of the variance granted in Docket No. G002/M-15-149. This extension was approved by the Commission on July 19, 2016.

On July 28, 2017, Xcel filed a request in Docket No. G002/M-17-510 for a one-year extension of the variance granted in Docket No. G002/M-15-149 and previously extended in Docket No. G002/M-16-396. This extension was approved by the Commission on November 1, 2017.

³ *Missouri Gas Energy v. State of Kansas, Div. of Property Valuation*, 135 S.Ct 151 (2014).

On May 7, 2018, Xcel filed a request in Docket No. G002/M-18-323 for a one-year extension of the variance granted in Docket No. G002/M-15-149 and previously extended in Docket No. G002/M-16-396 and Docket No. G002/M-17-510.

On November 1, 2018, the Commission approved Xcel's petition (2018 Order), with the following conditions:

- Granted Xcel a one-year variance to Minn. Rule 7825.2400, subp. 12 to allow recovery in the PGA of ad valorem taxes related to natural gas storage for retail natural gas operations.
- Directed Xcel to include the Kansas property tax as a separate line item in its monthly PGA.
- Required Xcel to list the Kansas property tax costs and revenues as separate line items in the Annual Automatic Adjustment report and PGA True-Up filings as well as in the Company's Schedule C, Schedule D page 1 through 2 of 4 and page 4 of 4.
- Required Xcel to submit a report with its Annual Automatic Adjustment and True-Up report detailing the total amount paid to Kansas and collected from ratepayers during the gas year.
- Required Xcel, in its next request for a variance to Minn. Rule 7825.2400, subp. 12, to provide a discussion of the storage alternatives examined and its efforts to obtain the most cost-effective storage options.
- Directed the Company to work with the Department to correct the Company's Annual Automatic Adjustment Report Attachment G narrative and table prospectively, and in the pending 2017 AAA Docket G-999/AA-17-493.

B. COMPLIANCE WITH THE 2018 ORDER

Based on its review of the instant filing, PGA filings and Xcel's Annual Automatic Adjustment reports in Docket Nos. G999/AA-18-374 and G-999/AA-17-493, the Department concludes that Xcel complied with the 2018 Order.

The Company's Petition included as required "a discussion of the storage alternatives examined and its efforts to obtain the most cost-effective storage options".⁴ Following a cost comparison of the available storage alternatives, Xcel concluded that:

⁴ Petition at 14-16.

Considering all factors, the lower reservation costs (including the pro-rata estimate of Kansas tax payment for the contract quantity being renewed, which in this case is \$421,976), the limited available connecting transportation capacity, and the loss of operational flexibility; renewal of the Northern storage entitlements remains the most cost effective and reliable option for our customers. The Company notes that we will not have [any] storage entitlement[s] on Northern expiring until 2022, and will evaluate all market conditions and options again at that time.

The Department notes that changes in market conditions may affect Xcel's analysis above. Therefore, the Department recommends that Xcel continue to be required, in its next request for a variance to Minn. Rule 7825.2400, subp. 12, to provide a discussion of the storage alternatives examined and its efforts to obtain the most cost-effective storage options.

C. PROPOSED 2018 PGA RECOVERY

Xcel proposed to continue PGA recovery from ratepayers of ongoing Kansas tax obligations. Xcel proposed to use the prior year's actual tax amount as a proxy for the current year in the PGA, and true-up to actual expense once the Company has received the storage tax bill.⁵ The Company proposed to "allocate the annual tax expense to the Minnesota and North Dakota jurisdictions and across all months by the forecasted volumetric sales to retail customers."⁶ The Company stated that "any over- or under-recovery of the tax obligations will be captured through the annual PGA True-up factors."⁷ This approach is consistent with the method used for recovery of the 2018 tax as approved in Docket No. G002/M-18-323. The Department concurs with Xcel's approach.

The Company proposed beginning recovery of 2019 tax amounts on January 1, 2019 to remain consistent with the prior variance. Xcel estimated the cost to be approximately \$0.72 annually or \$0.06 per month for a residential customer using 868 therms.⁸

The Company also proposed to "continue to reflect the tax cost as a separate line item in our monthly PGA, Annual Automatic Adjustment of Charges (AAA), and annual PGA True-up filings."⁹

⁵ Petition at 12-13.

⁶ Petition at 13.

⁷ Petition at 13.

⁸ Petition at 13.

⁹ Petition at 13.

The Company proposed to use the same methodology to estimate the 2020 and 2021 taxes in the PGA and begin recovery of the 2020 tax amounts starting on January 1, 2020, and the 2021 tax amounts starting on January 1, 2021.

The Company stated in its Petition that it will not have any storage entitlement on Northern expiring until 2022 and thus a three-year variance would allow Xcel to explore and report on other competitive storage options that would not include the Kansas property tax at the time of its next variance request.

D. REQUESTED VARIANCE

The Department concludes that Xcel's currently approved variance to the PGA rules should be extended for the same reasons it was granted in Docket Nos. G002/M-15-149, G002/M-16-396, G002/M-17-510, and G002/M-18-323. The Commission concluded that the Company or its ratepayers would be excessively burdened by denial of a variance, varying the rule will not adversely affect the public interest, and varying the rule conflicts with no legal standard (conditions provided in Minn. R. 7829.3200).

1. Enforcement of the Rules Would Impose an Excessive Burden upon the Applicant or Others Affected by the Rules

The Company argued that not granting the variance would be an excessive burden to the Company and ratepayers since, without storage, it would be deprived of a critical tool for "securing a prudent natural gas supply portfolio which is necessary to provide reliable and cost-effective natural gas service to our customers."¹⁰ Xcel further stated as follows, "[t]o require the Company to absorb this cost until it can be included in base rates would unfairly penalize the Company for a direct cost of gas over which the Company has no control."¹¹

As stated by the Commission in its 2015 Order,

[d]enying PGA recovery of *future* storage tax costs would unreasonably burden ratepayers. It would temporarily disguise from ratepayers the true cost of their natural gas, resulting in inefficient natural gas use—with the costs borne by ratepayers and the public. Denying a variance could also discourage the Company from moderating price volatility with storage, which benefits ratepayers.

¹⁰ Petition at 10.

¹¹ Petition at 10-11.

In addition, the Company's discussion of alternative storage options indicates that denying the variance may prevent optimal use of storage.

The Department concludes that enforcement of the rules may impose an excessive burden upon Xcel and its ratepayers.

2. Granting the Variance Would Not Adversely Affect the Public Interest

Xcel claimed that the public interest is served when the Company engages in prudent resource strategies. Xcel stated that granting the variance would encourage the Company to continue to use storage – “providing customers price stability and a hedge against the risk of supply disruptions from unforeseen circumstances.”¹² Also, Xcel argued that the tax is a direct cost of natural gas delivered so it would not adversely affect the public interest.

The Department concludes that having the storage resource is in the public interest since it enables price stability and assists with reliability. The Company's discussion of alternative storage options indicates that the variance would facilitate optimal use of storage. Therefore, granting a variance would not adversely affect the public interest.

3. Granting the Variance Would Not Conflict With Standards Imposed by Law

Xcel stated that the variance is not in conflict with standards imposed by law. The Company contended that the Kansas property tax is a cost directly tied to the cost of gas. Although the tax is not specifically outlined in Minn. R. 7825.2400, subp.12, the Company suggested that it could be included as a “cost of purchased gas.”¹³

As noted above, the Commission has previously granted this rule variance in Docket Nos. G002/M-15-149, G002/M-16-396, G002/M-17-510, and G002/M-18-323 in which it determined that a variance to the PGA rules did not conflict with any standards imposed by law. The Commission has authority to vary its own rule designating accounts included in the cost of purchased gas. As such, the variance is consistent with the purpose of the PGA statute and rules and does not conflict with any other laws.

III. RECOMMENDATION

The Department recommends that the Commission approve Xcel's Petition with the majority of the conditions of the 2018 Order:

¹² Petition at 11.

¹³ Petition at 11.

- grant Xcel a three-year variance to Minn. Rule 7825.2400, subp.12 to allow recovery in the PGA of *ad valorem* taxes related to natural gas storage for retail natural gas operations;
- direct Xcel to include the Kansas property tax as a separate line item in its monthly PGA;
- require Xcel to list the Kansas property tax costs and revenues as separate line items in the Annual Automatic Adjustment report and PGA True-Up filings as well as in the Company's Schedule C, Schedule D page 1 through 2 of 4 and page 4 of 4;
- require Xcel to submit a report with its Annual Automatic Adjustment and True-Up report detailing the total amount paid to Kansas and collected from ratepayers during the gas year; and
- require Xcel, in its next request for a variance to Minn. Rule 7825.2400, subp. 12, to provide a discussion of the storage alternatives examined and its efforts to obtain the most cost-effective storage options.

/jl

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. G002/M-18-631

Dated this 24th day of October 2018

/s/Sharon Ferguson

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