



September 4, 2018

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

**RE: Response Comments of the Minn. Dept. of Commerce, Division of Energy Resources
Docket No. G004/M-18-282**

Dear Mr. Wolf:

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

Petition of Great Plains Natural Gas Company for Approval of Recovery of Updated Gas Utility Infrastructure Costs.

The petition was filed on April 13, 2018 by:

Tamie A. Aberle
Director of Regulatory Affairs
Great Plains Natural Gas Company
400 North 4th St
Bismarck, ND 58501.

The Department recommends **conditional approval** and is available to respond to any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ MARK JOHNSON
Analyst Coordinator

/s/ STEPHEN COLLINS
Rates Analyst

MJ/ja
Attachment



Before the Minnesota Public Utilities Commission

Response Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. G004/M-18-282

I. INTRODUCTION

On April 13, 2018, Great Plains Natural Gas Company (Great Plains or GP or the Company) filed a petition requesting that the Minnesota Public Utilities Commission (Commission) approve updates to the Company's Gas Utility Infrastructure Costs (GUIC) tariff, to be effective October 1, 2018.

On June 27, 2018, the Minnesota Department of Commerce, Division of Energy Resources (Department) filed comments recommending approval of Great Plains' petition with conditions and potential modifications. Specifically, the Department recommended that the Commission approve Great Plains' petition, modified if necessary to account for any costs still being recovered in base rates of pipes being replaced. Given ongoing tax issues, the Department also recommended that the Commission condition approval on requiring Great Plains to replace its forecasted prorated accumulated deferred income tax (ADIT) balances with actual nonprorated ADIT balances in its beginning-of-month and end-of-month average calculations for true-up purposes in future GUIC rider filings. The Department stated that, alternatively, the Commission could require the Company's GUIC rider to be based solely on historical costs by implementing recovery of rates one day after the period in which the costs were incurred.

On July 9, 2018, Great Plains filed reply comments addressing the Department's recommendations regarding continued recovery of costs associated with the pipes being replaced and ADIT.

On July 23, 2018, Great Plains filed supplemental reply comments further addressing the Department's recommended treatment of ADIT.

II. RESPONSE TO GREAT PLAINS

A. PIPES BEING REPLACED

Great Plains' reply comments confirmed that the Company does not adjust its GUIC rates to remove the costs associated with the pipes or infrastructure being replaced, but concluded that such treatment is appropriate due to the use of mass accounting. The Department notes that

the issues surrounding mass accounting in terms of quantifying “incremental costs” is discussed extensively in the Department’s July 2, 2018 Comments in Xcel Energy’s GUIC Rider in Docket No. G002/M-17-787. In that docket, Xcel Energy argued that it wasn’t able to track the individual costs of the pipes being replaced due to the use of mass accounting despite being able to track and include the removal costs associated with these pipes in its GUIC rate base. As a result, the Department determined that if the costs to remove the old pipes are included in the GUIC rate base, the GUIC rate base must also be adjusted for the remaining original cost of the existing pipes being replaced. Consequently, the Department recommended that Xcel Energy either exclude its removal costs from GUIC rate base or remove the remaining original cost of the old pipes being replaced.

In the current proceeding, unlike Xcel Energy, GP did not include any additional removal costs associated with the pipes being replaced in its GUIC Rider. As a result, the Department does not oppose GP’s treatment of the pipes being replaced in its GUIC Rider at this time. However, the Department intends to revisit this issue in future GUIC filings to assess on a case-by-case basis the reasonableness of each approach.

B. PRORATED ADIT

Beginning on page 2 of its reply comments, GP stated that:

In its Comments, the Department states that based upon its review of Internal Revenue Service (IRS) Regulation Section 1.167(l)-1(h)(6), it continues to recommend that the Commission require Great Plains to replace its forecasted prorated ADIT balances with actual nonprorated ADIT balance for true-up purposes in future GUIC rider filings. The Department notes that this methodology is consistent with the methodology Otter Tail Power Company (Otter Tail) used in its Transmission Cost Recovery rider in Docket No. E017/M-16-374. While Great Plains appreciates the Department’s goal of minimizing customer impacts related to the proration of accumulated ADIT, Great Plains has concerns with the Department’s proposed solution.

Initially, Great Plains did submit the instant GUIC Adjustment under the methodology described in the Department’s comments as employed by Otter Tail in Docket No. E017/M-16-374. However, Great Plains’ treatment of ADIT balances continues to evolve based on recent Private Letter Rulings issued by the IRS and discussions with external auditors.

These Private Letter Rulings and discussions with its auditors have led Great Plains to conclude that future filings will need to preserve the effect of the application of the proration methodology used in the projected test year calculation in order

to comply with Section 1.67(l)-1(h)(6)(ii) of the IRS's Regulations which Great Plains believes requires the use of proration. With that said, Great Plains was recently made aware of a proposal set forth by Northern States Power Company, doing business as Xcel Energy, in its Transmission Cost Recovery Rider in Supplemental Reply Comments submitted on May 25, 2018 in Docket No. E002/M-17-797. Xcel's proposal may provide an acceptable alternative treatment to addressing the ADIT proration issue. Great Plains, however, requires additional time to review the alternative approach proposed by Xcel and agrees to submit supplemental comments by July 20, 2018.

Great Plains respectfully requests that the Commission consider the Reply Comments expressed above and as will be further supplemented to address the ADIT issue. As indicated above, the Company maintains that the GUIC Rider as filed meets the requirements as outlined in the GUIC statute, is in the best interest of Great Plains' customers and should be approved. [Footnotes omitted]

GP's supplemental reply comments further commented on this issue and confirmed that Xcel's alternative methodology would avoid a potential tax normalization issue.

The Department has reviewed GP's reply comments and supplemental reply comments, and continues to disagree with GP and other utilities' proposals to maintain proration in true-up calculations for the following reasons, as explained in the Department's July 5, 2018 Reply Comments in Xcel Energy's State Energy Policy (SEP) Rider in Docket No. G002/M-18-184:

First, the Commission's 17-174 Order specifically states that "Xcel Gas shall not prorate its accumulated deferred income taxes in the SEP rider" and thus Xcel's proposal would violate the 17-174 Order. Even if Xcel Gas's proposal would minimize the proration of ADIT, that proration would still exist.

Second, Xcel's proposed monthly method is needlessly complex, difficult to monitor, and would still violate the requirement that "Xcel Gas shall not prorate its accumulated deferred income taxes in the SEP rider." By contrast, as discussed below, the Internal Revenue Service (IRS) has already provided a simple and reasonable means by which the rider can go forward without ADIT proration. Again, while the Department appreciates that Xcel tried to minimize the effects of ADIT proration on ratepayers, the significant and needless degree of complexity in Xcel's new method would require excessive resources to implement and monitor, year after year.

Third, Xcel's statement that "the Company has no particular interest in the provision other than it is required in order to preserve the significant deferred tax

benefits for our customers” is not accurate, for two reasons. First, the Company clearly stands to financially benefit from charging higher rates to its ratepayers when ADIT is prorated. Second, the Company is not required to prorate ADIT to preserve tax benefits. Xcel ignores the fact that the IRS, which Xcel Gas appropriately cites as the authority requiring ADIT proration to preserve normalization, has been abundantly and repeatedly clear that “if rates go into effect after the end of the test period, the opportunity to flow through the benefits of future accelerated depreciation to current ratepayers is gone, and so too is the need to apply the proration formula.” Thus, Xcel Gas is not required to prorate ADIT when the rider is implemented after the test period.

Fourth, the Company’s statement that “without changing the law or regulation, the Company sees no way to avoid this circumstance” is at odds with the fact that, as noted above, the IRS has already provided a means by which Xcel Gas can charge higher rates to its ratepayers through a rider, without violating any IRS requirements. Implementing the rider after the test period allows the Company and its customers to benefit; the Company benefits from the extraordinary ratemaking treatment of a rider rather than a rate case whereas the Company’s ratepayers are given the full credit they deserve from the reduction in rate base from ADIT without any of the issues caused by proration.

Fifth, the Company’s concern about a one-year delay in implementation of the SEP rider rates ignores important facts. As noted above, Xcel Gas chose not to provide actual sales data for 2017. However, the Company’s annual jurisdictional report indicated that Xcel Gas underestimated natural gas sales in 2017 by 6.4 percent. Since weather in January through April, 2017 was generally warmer-than-normal, Xcel Gas’s underestimation of sales compared to actual sales in 2017 is particularly concerning. If the lower forecast is used the SEP Rider Factor would be set unreasonably high, and would likely lead the Company to over-charge its ratepayers for costs. Although these values would be tried up later, there are no carrying charges applied to this over-recovery, so the Company would retain any interest earned on these amounts, and thus has an incentive to under forecast its sales. As a result, the Department concludes that Xcel Gas has not demonstrated that its sales forecasts are reasonable to use in setting rates.

Sixth, as also noted above, Xcel Gas’s concern about a minor delay in recovery of costs ignores the fact that recovery of costs through riders is extraordinary ratemaking as it would allow recovery of costs that would normally be recovered during a rate case, only after the utility demonstrates that the facilities are used and useful and all costs are prudently incurred. Thus even using historical data would result in recovery earlier than would regularly be expected.

Seventh, Xcel Gas also ignores the small benefit that its ratepayers receive as a result of this minor (one-year or less) delay, compared to the ordinary, reasonable process whereby utilities are responsible for costs until the facilities are in place, used and useful, and shown to be reasonably incurred. As the National Regulatory Research Institute explained in its October 2009 webinar and report, “The Two Sides of Cost Trackers: Why Regulators Must Consider Both” Ken Costello pointed out that riders “weaken the incentive of a utility to control its costs”. This report stated the following benefits of the lag:

Economic theory predicts that the longer the regulatory lag, the more incentive a utility has to control its costs; when a utility incurs costs, the longer it has to wait to recover those costs, the lower its earnings are in the interim. The utility, consequently, would have an incentive to minimize costs.

Based on the above, the Department concludes that the IRS’s solution of waiting until the end of the test period to implement rates is a reasonable, straight-forward and accurate fix for these problems. As such, the Department recommends that the Commission require GP’s GUIC Rider to be based solely on historical costs by implementing the updated GUIC factor one day after the rate recovery period (January 1, 2019), rather than the requested date of October 1, 2018, thereby eliminating the need to prorate ADIT.

III. UPDATED INCOME TAXES UNDER THE TAX CUTS AND JOBS ACT OF 2017

On December 22, 2017, the President of the United States signed into law Pub L. 115-97 (H.R. 1—115th Congress: An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018), which is referred to as the Tax Cuts and Jobs Act of 2017 (TCJA). Among other things, the TJCA lowered the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This enactment constituted a known and measurable change for Minnesota rate-regulated utility rates going forward.

On December 29, 2017, the Minnesota Public Utilities Commission (Commission) issued its *Notice of Commission Investigation into the Effect of the 2017 Federal Tax Act on Utility Rates and Services* in Docket No. E,G999/CI-17-895 (Tax Docket).

The Tax Docket was before the Commission at its August 9, 2018 Agenda Meeting. The Commission required utilities to refund all impacts of the TCJA to ratepayers. This included changes to current period tax expense on the income statement, changes to the tax gross-up on the revenue requirement deficiency, and the amortization of excess ADIT balances. In addition, the Commission required utilities to separately address the effects of the TCJA in each rider. The Commission has not yet issued its Order in the Tax Docket.

GP stated the following regarding the TCJA on page 7 of its initial filing:

The projected 2018 costs take into account the 2017 Tax Cuts and Jobs Act (TCJA). The TCJA changes the corporate income tax rate from 35% to 21% for 2018, and also requires the re-measurement of the accumulated deferred income tax balance to determine the amount of excess deferred income tax to be returned to the customers over the remaining life of the asset. Excess deferred income taxes on the GUIC additions were calculated as of December 31, 2017, however, tax depreciation still exceeds book depreciation. Therefore, the amortization of the excess deferred income tax balance will take place in future periods when book depreciation exceeds tax depreciation.

The Department notes that GP did not provide its excess ADIT balance for its GUIC Rider as of December 31, 2017. In addition, the Department notes that GP did not provide the related amortization period associated with its excess ADIT balance using the Average Rate Assumption Method (ARAM). Finally, the Department notes that the amortization of excess ADIT balances is not dependent upon whether total tax depreciation exceeds total book depreciation.

Based on the above, the Department recommends that the Commission require GP provide its excess ADIT balance as of December 31, 2017 for its GUIC Rider along with its proposed amortization period using the ARAM. In addition, consistent with the Commission's decision in the Tax Docket, the Department recommends that the Commission require GP to begin amortizing and refunding its excess ADIT balances in the GUIC Rider by including the amortization amount in its 2018 annual revenue requirement calculations.

IV. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission conditionally approve GP's petition with the following conditions:

- Require GP's GUIC rider to be based solely on historical costs by implementing recovery of rates one day after the rate recovery period (January 1, 2019), thereby eliminating the need to prorate ADIT;
- Require GP to provide its excess ADIT balance as of December 31, 2017 for its GUIC Rider along with its proposed amortization period using the ARAM; and
- Require GP to begin amortizing and refunding its excess ADIT balances in the GUIC Rider by including the amortization amount in its 2018 annual revenue requirement calculations.

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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
Response Comments**

Docket No. G004/M-18-282

Dated this 4th day of September 2018

/s/Sharon Ferguson

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-282_M-18-282
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