

November 25, 2019

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-19-663

Dear Mr. Wolf:

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

Petition for Approval of the Amended Agreement with Liberty Paper, Inc. and Approval of Accounting and Rate Treatment.

The Petition was filed on October 25, 2019 by:

Al Krug
Associate Vice President of State Regulatory Policy
Xcel Energy
414 Nicollet Mall, 401 - 7th Floor
Minneapolis, MN 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the petition with conditions**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-19-663

I. INTRODUCTION

On October 25, 2019 Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed the Company's *Petition for Approval of the Amended Agreement with Liberty Paper, Inc. and Approval of Accounting and Rate Treatment* (Petition). The Petition requests that Minnesota Public Utilities Commission (Commission) approve the proposed *Steam Agreement between Liberty Paper, Inc. and Northern States Power Company* (Updated Agreement), dated effective as of September 10, 2019.¹ The Updated Agreement would allow for the provision of thermal energy, in the form of steam by Xcel to Liberty Paper, Inc. (LPI). The Company also requests that the Commission approve the proposed accounting and rate treatment.

The existing agreement between Xcel and LPI was approved by the Commission's February 14, 1995 *Order Approving Accounting Procedures* (1995 Order) in Docket No. E002/M-93-1253. The existing agreement between LPI and the Company expires on December 31, 2019.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTES AND RULES

1. Minnesota Statutes

Regarding the governing statutes, the 1995 Order stated that "The Commission finds that NSP properly submitted its petition for approval under Minn. Stat. §§ 216B.05 and 216B.10." The Company seeks Commission approval of the Updated Agreement pursuant to Minnesota Statutes § 216B.05 and the proposed accounting treatment pursuant to Minnesota Statutes §216B.10. Minnesota Statutes § 216B.05, Subd. 2 requires that:

Every public utility shall file with and as a part of the filings under subdivision 1, all rules that, in the judgment of the Commission, in any manner affect the service or product, or the rates charged or to be charged for any service or product, as well as any contracts, agreements, or arrangements relating to the service or product or the rates to be charged for any service or product to which the schedule is applicable as the

¹ The Company intends to commence service pursuant to the terms of the Updated Agreement with LPI on January 1, 2020, subject to a true-up payment in the event that the Commission makes changes to the agreement.

Commission may by general or special order direct; provided that contracts and agreements for electric service must be filed as required by subdivision 2a.²

Also relevant is Minnesota Statutes §216B.10, which requires that:

Every public utility engaged directly or indirectly in any other business than that of the production, transmission or furnishing of natural gas or electric service shall, if required by the Commission, keep and render separately to the Commission in like manner and form the accounts of all the other business, in which case all the provisions of Laws 1974, chapter 429 shall apply to the books, accounts, papers, and records of the other business.

Finally, Minnesota Statutes §216B.48 identifies requirements as to relationships between utilities and their “Relations with Affiliated Interests.” This statute defines affiliated interests in detail and broadly; for example, Subd 1(9) defines an affiliated interest as involving “every part of a corporation in which an operating division is a public utility.” Subd. 5 of that statute states the following regarding costs that are and are not the responsibility of the utility:

Subd. 5. Applicability to determining rates and costs.

In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with the affiliated interest unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 6 is clear that the Commission has continuing jurisdiction over the costs that the utility charges to ratepayers as a result of affiliated-interest transactions:

Subd. 6. Commission retains continuing authority over contract.

The commission shall have continuing supervisory control over the terms and conditions of the contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has

² Note that Minnesota Statutes § 216B.05, Subd. 2a states “A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the Commission pursuant to the Commission's rules of practice.”

over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

2. *Minnesota Rules*

Under the Commission's rules, the Company's request falls within the definition of a miscellaneous tariff filing under Minnesota Rules 7829.0100, Subp. 11 since no determination of Xcel's general revenue requirement is necessary. Minnesota Rules 7829.1300, Subp. 3, contains the completeness requirements for miscellaneous tariff filings. The Department reviewed the Petition for compliance with the requirements and concludes that the Petition is substantially complete.³

B. *DEPARTMENT ANALYSIS*

1. *Steam Sales*

Xcel is proposing to continue providing steam to LPI as a nonregulated venture, consistent with the accounting treatment approved by the Commission in the 1995 Order. According to Xcel this means:

Company shareholders will make the necessary investment and assume all business risks associated with the operations. Ratepayers will not be responsible for any risks associated with supplying steam to LPI and will not incur any increased costs. Costs associated with constructing and maintaining the Steam Supply System will be segregated from the utility rate base for ratemaking purposes. All operating and maintenance expenses and revenue will be recorded in nonutility operating accounts.

The Department observes the following:

- the existing arrangements were previously approved by the Commission and Xcel proposes to continue the existing treatment;
- the arrangement is an affiliated interest, subject to the provisions identified above and further in Minnesota Statutes §216B.48;
- Xcel's ratepayers will not be exposed to any costs or risks associated with the steam sales under the Updated Agreement; and
- the Company must appropriately allocate the costs resulting from the Updated Agreement.

³ The only required information missing is Mr. Krug's email address. However, the Department considers this omission to be insignificant.

With these observations, the Department concludes that the specific terms of the Updated Agreement related to steam sales will not impact Xcel's electric ratepayers.

On the issue of cost allocation, review of cost assignments and allocations will be necessary to ensure reasonable results. Therefore, in future rate recovery filings Xcel must demonstrate that its proposed allocations of costs between the utility and the unregulated entity are reasonable. The Department (and possibly other parties) intends to review and potentially recommend changes to Xcel's proposed costs, cost assignments, and the allocations to the steam sales to LPI.

To ensure that such analysis can proceed, the Department recommends that the Commission, for the duration of the LPI steam sales, require Xcel to offer testimony in its initial filings in rate proceedings outlining the services provided to LPI and demonstrating the reasonableness of Xcel's proposed cost allocations to the LPI steam sales in future rate proceedings. In addition, the Department recommends that the Commission require Xcel to report annually, in the April 1 filings required under Minnesota Rules 7825.2200, all of the services, associated costs and cost assignments between the utility and the part of the corporation that providing steam services to LPI.

2. Electric Service

According to the Petition, the Updated Agreement requires LPI to purchase electric service from the Company for the purposes of operating LPI's recycling facility for the entire term of the Updated Agreement. This provision in the Updated Agreement would impact Xcel's other ratepayers through the cost allocation and rate design for the rates that LPI uses. However, the Company is not requesting approval of any particular electric rate in this proceeding. The reasonableness of Xcel's rates to be used by LPI will be reviewed in other proceedings, including Xcel's general rate case, Docket No. E002/GR-19-564, if that proceeding continues.

3. Retirements at Sherco

Currently units 1 and 2 of Xcel's Sherburne County Generating Station (Sherco) are scheduled to retire in 2026 and 2023 respectively. In addition, the retirement of Sherco unit 3 in 2030 is being analyzed in Xcel's current integrated resource plan (Docket No. E002/RP-19-368). Finally, the Company has proposed to construct a combined cycle natural gas generating unit (CC) at Sherco in the Company's preferred plan.⁴

The Petition indicates that the potential retirement of the coal-fired units at Sherco and the potential construction of the CC unit are considered in various ways under the terms of the Updated Agreement. The Department notes that Minnesota's resource planning statutes and rules provide the Commission broad authority to consider various impacts when making decisions. Regarding LPI, it appears that the only impact on Xcel's other ratepayers of the Commission's resource planning decisions regarding the Sherco site would be the loss of revenues associated with electric service if the decision triggers the

⁴ Note that the Laws of Minnesota 2017, chapter 5, section 1 provides Xcel certain rights regarding the proposed CC unit.

closure of LPI's facilities. Any issues regarding the impact of Sherco-related decisions on LPI's facilities are most appropriately addressed in the Company's integrated resource plan proceeding so that the full benefits and costs can be reviewed.

The Department notes that Laws of Minnesota 2017, chapter 5, section 1 require: "No less than 20 months prior to the start of construction, a public utility intending to construct a plant under this section shall file with the Commission an evaluation of the utility's forecasted costs prepared by an independent evaluator..." The Department recommends that the Commission require Xcel to provide, in any filing under Laws of Minnesota 2017, chapter 5, section 1, a breakdown of the forecasted costs between those necessary for electric service and those necessary to support the Updated Agreement.

III. DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission:

- require Xcel to provide, in any filing under Laws of Minnesota 2017, chapter 5, section 1, a breakdown of the forecasted costs between those necessary for electric service and those necessary to support the Updated Agreement;
- require Xcel, for the duration of the LPI steam sales, to provide testimony in its initial filings in rate proceedings outlining the services provided to LPI and demonstrating the reasonableness of Xcel's proposed cost allocations to the LPI steam sales in future rate proceedings;
- require Xcel to report annually, in the April 1 filings required under Minnesota Rules 7825.2200, all of the services, associated costs and cost assignments between the utility and the part of the corporation that providing steam services to LPI; and
- approve the Petition.

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