

June 1, 2016

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-16-396

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 one-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 May 3, 2016 by:

Amy A. Liberkowski
Manager, Regulatory
Analysis
Xcel Energy
414 Nicollet Mall, 7th Floor
Minneapolis, MN 55401

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

Sincerely,

/s/ MICHAEL RYAN
Rates Analyst

MR/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES****DOCKET No. G002/M-16-396****I. INTRODUCTION AND SUMMARY OF PETITION**

Pursuant to Minn. Stat. §216B.16, Subd. 7, and related Minn. Rule Part 7825.2400 (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) on May 3, 2016. The Company requested Minnesota Public Utilities Commission (Commission) approval to include recovery of property taxes related to natural gas storage in the current cost of natural gas supply. The proposed approval would be a one-year extension of the variance granted in Docket No. G002/M-15-149.

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. The validity of Kansas property taxes on natural gas in storage has been the subject of litigation.

II DEPARTMENT ANALYSIS**A. BACKGROUND OF KANSAS NATURAL GAS STORAGE**

As discussed above, the validity of Kansas property taxes has been disputed for many years and has recently 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 of 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-Kansas public utilities, disputing and appealing the tax, the Supreme Court of the United States upheld the ability of states to

¹ Petition at page 5

² K.S.A. § 79-5A01.

assess property tax on out-of-state public utilities in October 2014.³ This ended the legal routes for appeal.

B. COMMISSION'S ORDER IN DOCKET NO. G002/M-15-149

In 2015, the Company petitioned the Commission for recovery of the tax through the PGA via Docket No. G002/M-15-149. The Commission granted Xcel's request on October 21, 2015, covering both the retroactive lump sum recovery of 2009-2014 and one-year prospective variance beginning November 1, 2015. The retroactive lump sum 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.

Order Points 6 and 7 state:

6. With its annual AAA and true-up reports, Xcel shall submit a report detailing the total amount paid to Kansas and collected from ratepayers during the gas year.

7. Within 30 days of the date of this order, Xcel shall make a compliance filing that fully explains its storage contracts with the Northern Natural Gas Company and the arrangements and agreement between Xcel's retail natural gas and electric generation operations, complete with storage reservation and capacity quantities for each operation for the last three years, with explanations for any variations in the storage balances through the three years.

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

As to compliance with Order Point 6, Xcel has not yet provided an annual AAA or true-up report with the amount paid to Kansas and collected from ratepayers because the October 21, 2015 Order was issued after the due date for the 2014-2015 annual AAA filing.⁴ The compliance report will be due with the 2015-2016 annual reporting to be filed September 1, 2016.

In compliance with Order Point 7, Xcel filed information pertaining to the storage contracts on November 20, 2015. The compliance filing included data on the storage agreements, operations, and three years of inventory. Xcel included detail on the split between retail natural gas and electric generation operations.

In its Petition, Xcel noted that it is “actively examining other alternatives that would cost-effectively serve the same essential purpose as storing gas in Kansas without incurring the Kansas tax. We will report on these efforts in conjunction with our next annual variance request.”⁵

C. *PROPOSED PGA RECOVERY*

Xcel proposed to continue PGA recovery from ratepayers of ongoing tax obligations. Xcel proposed to use the actual tax amount billed in 2015 and “allocate the annual tax expense to state and across all months by the forecasted volumetric sales to retail customers.”⁶ This is consistent with the approach used for recovery of the 2014 tax as approved in Docket No. G002/M-15-149. The Company stated that “any over- or under-recovery of the tax obligations will be captured through the annual PGA True-up factors.”⁷ The Department concurs with Xcel’s approach.

The Company proposed beginning recovery of 2016 tax amounts on November 1, 2016 to remain consistent with the prior variance. Xcel estimated the cost to be approximately \$0.63 annually or \$0.06 per month for a residential customer using 863 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 To clarify, regarding the proposed reporting in the Company’s AAA report and PGA True-Up filings, filed in September each year, the actual amount paid in ad valorem tax as well as recovered from ratepayers by state should be detailed in Xcel’s annual True-Up Report. Additionally, the costs and revenues should be listed as separate line items in the Company’s Schedule C, Schedule D page 1 through 2 of 4, and page 4 of 4. The Department agrees that the property tax cost should remain a separate line item on the monthly PGA and annual AAA reports.

⁴ Docket No. G999/AA-15-612

⁵ Petition at pages 2 and 3.

⁶ Petition Page 11-12.

⁷ *Id.*

⁸ Petition at page 11.

⁹ Petition at page 12.

The Company stated in its Petition that its current storage contracts will expire in 2017 and 2018. A one-year variance would allow Xcel to explore other competitive storage options that would not include property tax. The Department agrees that a one-year variance is acceptable.

B. PUBLIC INTEREST OF THE 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 No. G002/M-15-149. That is, it meets the conditions provided in Minn. R. 7829.3200. Specifically:

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

Xcel 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." Xcel further stated as follows, "To 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."¹⁰

The Department agrees that the Company should be allowed to recover storage related property tax costs in a reasonable manner. Enforcement of the rules may not allow Xcel to participate in natural gas storage contracts. Therefore, Xcel may not be able to diversify its supply portfolio. Therefore, 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."¹¹ 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 storage is in the public interest since it enables price stability and assists with reliability. To the extent that granting a variance facilitates optimal use of storage, the variance would not adversely affect the public interest

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

Xcel stated that there is no conflict with the law. The Company contends that the Kansas property tax is clearly a cost directly tied to the cost of gas. Although the tax

¹⁰ Petition at page 9.

¹¹ Petition, Page 9-10.

is not specifically outlined in Minn. R. 7825.2400, subp.12, the Company feels it should be included as “cost of purchased gas.”

The Commission has previously granted this rule variance in Docket No. G002/M-15-149, in which it determined that a variance to the PGA rules did not conflict with standards imposed by law. As such, the variance is consistent with the purpose of the PGA statute and rules and does not conflict with any other laws.

II. CONCLUSION AND RECOMMENDATION

The Department recommends that the Commission approve Xcel’s Petition including the following conditions:

- grant 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;
- 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. 2, to provide a discussion of the storage alternatives examined and its efforts to obtain the most cost-effective storage options.

/ja

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-16-396

Dated this 1st day of June 2016

/s/Sharon Ferguson

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