

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of the Petition of Northern States Power Company for Approval to Sell Land and Tanks to Flint Hills Resources Pine Bend, LLC

ISSUE DATE: February 16, 2018

DOCKET NO. E-002/PA-17-529

ORDER APPROVING PETITION WITH CONDITIONS, APPROVING COST RECOVERY PROPOSAL, AND GRANTING VARIANCES

**PROCEDURAL HISTORY**

On June 30, 2017, Northern States Power Company d/b/a Xcel Energy (Xcel) filed a petition proposing to sell facilities (land and oil tanks) at its Inver Hills Generating Plant to Flint Hills Resources Pine Bend, LLC (Flint Hills). The petition requests approval of the Asset Purchase Agreement (Agreement) between Xcel and Flint Hill under Minn. Stat. § 216B.50. The Agreement provides for Xcel to sell three fuel storage tanks and associated equipment to Flint Hills. Part of the Agreement is a fuel supply arrangement whereby Flint Hills will maintain a fuel inventory sufficient for Xcel to continue operating the Inver Hills Generating Plant with black start capability—that is, the ability to start up even in the event of a widespread electric outage.<sup>1</sup>

On September 1, 2017, the Minnesota Department of Commerce (Department) filed comments recommending approval of the proposed sale.

On September 11, 2017, Xcel filed reply comments.

On December 21, 2017, the Commission met to consider the matter.

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<sup>1</sup> As a black start facility, the plant is subject to review and approval by the North American Electric Reliability Corporation and the Midcontinent Independent System Operator (MISO). In the event of a wide-spread electric outage, such as a natural gas supply failure, the plant takes the lead in restoring much of the Minnesota bulk electric system.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of Commission Actions**

In this matter the Commission approves Xcel's proposed sale of assets to Flint Hills under Minn. Stat. § 216B.50, and approves the Agreement as consistent with the public interest. The Commission also approves the proposed accounting treatment of the sales revenue, including allowing Xcel to keep a portion of the revenue because of the sale's unique circumstances and benefits to customers, and grants certain variances.

Finally, the Commission approves use of the gain-sharing concept specified in Attachment 1 to the Department's September 1, 2017 comments, with a placeholder return on equity subject to update to the return on equity to be established in Xcel's transmission cost recovery (TCR) rider docket and other actions set forth herein.

### **II. Factual Background**

Xcel's Inver Hills Generating Plant was originally designed to operate primarily on fuel oil. The plant's facilities include three ten-million gallon fuel storage tanks and associated equipment. The Inver Hills plant was later converted to use natural gas as its primary source of fuel, but retained its ability to operate on fuel oil as a backup. The plant now serves as a black start facility. Xcel's back-up fuel oil supply is stored in one of the three storage tanks proposed to be sold to Flint Hills.

Flint Hills is located close to the Inver Hills plant. Flint Hills refines oil, produces chemicals and biofuels, and operates a refinery in Rosemount.

The parties agree in the request for Commission approval of the transaction.

### **III. Legal Background**

Xcel's proposal to sell certain facilities (land and tanks) to Flint Hills Resources is governed by Minn. Stat. § 216B.50, which applies to the sale or transfer of a utility's "operating unit or system" for more than \$100,000, and authorizes such transfers only if the Commission determines that the transaction is consistent with the public interest. A corresponding rule, Minn. R. 7825.1800, sets forth filing requirements applicable to such transactions.

### **IV. Xcel's Proposal**

Xcel requests Commission approval to sell land, storage tanks, and other facilities<sup>2</sup> to Flint Hills. In its petition, Xcel asks the Commission to:

- Approve the sale of the land, storage tanks, fuel inventory and other facilities per the terms of the Asset Sale Agreement, as consistent with Minn. Stat. § 216B.50;

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<sup>2</sup> The Asset Purchase Agreement states that Xcel will sell three 10,000,000 gallon fuel storage tanks, the fuel oil inventory in one of the tanks, associated land, and other equipment to Flint Hills.

- Approve the proposed accounting treatment of the sales revenue, including allowing Xcel to keep a portion of the revenue because of the sale’s unique circumstances and benefits to customers; and
- Grant a variance to Minn. R. 7825.1800(B), as it relates to information sought under Minn. R. 7825.1400(F)–(I).

**V. Compliance with Minn. Stat. § 216B.50**

**A. Party Comments**

**1. Consistency with Minn. Stat. § 216B.50**

Xcel claims that the Inver Hills plant must retain its back-up fuel supply as readily available to maintain its black-start capability in case natural gas (the primary source of fuel) becomes unavailable. And Xcel asserted that the transaction would be in the public interest because (1) the Company and its customers would continue to have the benefits of the fuel in the operational storage tank at a lower cost than if the Company continued to own the assets, and 2) customers would receive a portion of the sale’s proceeds.

The Department reviewed Xcel’s petition, and concluded that the proposal complies with the requirements of Minn. Stat. § 216B.50:

- The assets Xcel proposes to sell are valued at greater than \$100,000, in compliance with the statute;
- The assets qualify as an “operating unit or system under § 216B.50”; and
- The proposed transaction is consistent with the public interest.

First, the Department found that the selling price is above the \$100,000 threshold.

Second, the Department found that the assets qualify as an “operating unit or system” under the statute, relying on the Commission’s analysis in Docket No. E-017/PA-98-1345.<sup>3</sup> Given that one of the three tanks at the Inver Hills plant is still being used by Xcel to store back-up fuel for its black start electric generating site (as required by MISO, Minn. Stat. § 216B.50 applies to the proposed transaction.

Third, after review of the transaction, the Department agreed that the proposed transaction is in the public interest. Customers would continue to receive the beneficial use of a storage tank, but at lower cost, and a portion of the gain derived from the sale would be used to offset rates.

**2. Information Requirements**

Minn. R. 7825.1800(B) requires the Company to provide the detailed information set forth in Minn. R. 7825.1400 for a transfer of property (Items A through J).

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<sup>3</sup> *In the Matter of Otter Tail Power Company’s Petition for Approval of the Transfer of Property to the City of Wahpeton*, Docket No. E017/PA-98-1345, Order Finding Jurisdiction and Approving Property Transfer (December 14, 1998)

Xcel asserted that it provided the relevant information in various attachments to its petition. Xcel did not submit information relating to Items F through I of the Rule, arguing that this information is required for purposes of investigating the issuance of securities, and is not relevant to a finding that the equipment sale is in the public interest for purposes of satisfying Minn. Stat. § 216B.50. Xcel requested that the Commission vary the filing requirements for purposes of this petition.

The Department agreed with Xcel that investigating the issuance of securities is not relevant to the petition, and recommended that the Commission approve a variance to Minn. R. 7825.1800(B) to suspend the requirement to provide the information specified in Minn. R. 7825.1400, items F—J.

## **B. Commission Action**

The Commission finds that the Agreement in this matter for the sale of land, the three fuel storage tanks, and associated equipment to Flint Hills cannot proceed without Commission approval under Minn. Stat. § 216B.50, as set forth below:

Subdivision 1. **Commission approval required.** No public utility shall sell . . . any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 . . . without first being authorized so to do by the commission. . . . If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

Further, the Commission agrees with the analysis of the Department that the proposal complies with the requirements of Minn. Stat. § 216B.50:

- The assets Xcel proposes to sell are valued at greater than \$100,000;
- The assets qualify as an “operating unit or system under § 216B.50”; and
- The proposed transaction is consistent with the public interest.

The Commission also finds that Xcel’s sale of assets (the Agreement) to Flint Hills is consistent with the public interest, as more fully set out in the discussion regarding cost recovery set forth below.

Finally, the Commission agrees with the Department that the information outlined in Minn. R. 7825.1800 F—J is not necessary for purposes of reviewing this transaction. Accordingly, the Commission will grant Xcel’s request for a variance from Minn. R. 7825.1400, Items F—J.

As an initial matter, under Minn. R. 7829.3200, the Commission will vary any of its rules upon making the following findings:

- Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- Granting the variance would not adversely affect the public interest; and

- Granting the variance would not conflict with standards imposed by law.

The Commission agrees with the Department that the information outlined in Minn. R. 7825.1800 F–J is not necessary for purposes of reviewing this transaction, finding as follows:

- If the Commission did not issue a variance, the Company would have to provide detailed information related to capital structure that has no bearing on the transaction at hand.
- The variance would be in the public interest due to the anticipated cost savings, because all parties support the proposed transaction, and because the required information does not further the investigation;.
- The variance would not violate any standards imposed by law.

Accordingly, the Commission will grant Xcel’s request for a variance from the requirements of Minn. R. 7825.1400, Items F–J.

## **VI. Cost Recovery**

### **A. Xcel’s Proposal**

Based on the unique circumstances of this transaction, Xcel asked the Commission to allow the Company to keep a portion of the sales proceeds equal to the return on the assets and fuel inventory it would have received if the assets had been in service through the end of the assets’ approved remaining life. Xcel pointed to the fact that here, the sales price exceeds the net book value, one of the three storage tanks is still in service and has a remaining life, and the Agreement will save customers money as compared to storing fuel in a regulated asset.

Xcel proposed to retain approximately \$1.2 million (46%) of the transaction’s \$2.6 million Minnesota jurisdiction net gain.<sup>4</sup> Xcel asserted that the \$1.2 million is equal to the return on assets and fuel inventory it would have received if the assets had been in service through the end of the Commission-approved remaining life (2017 - 2026).<sup>5</sup>

Xcel claimed that its Minnesota customers would receive a total benefit of approximately \$3.2 million from the transaction, consisting of the remaining net gain of \$1.4 million (54%) and cost savings of some \$1.8 million.

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<sup>4</sup> Xcel further explained its request to retain some \$1.2 million from the transaction in Attachment A to its petition, providing a rate analysis of this amount.

<sup>5</sup> Xcel’s Petition, Attachment D, p. 3. Xcel supported this \$1.2 million gain-share amount by calculating the return on the facilities and fuel inventory to be sold to Flint Hills as if the Company still owned the facilities from 2017 through 2026. The \$1.2 million represents the net present value of the annual return amounts over the nine-year period.

In support of its gain-sharing concept, Xcel argued that the Commission has allowed utilities to retain a portion of proceeds from other unique transactions to incentivize the Company to take action not specifically required by statute or Commission rules.

## **B. The Department**

The Department agreed with Xcel that in this matter, the Commission should allow Xcel to keep a portion of the transaction's gain, equal to the return it would have received if the assets had remained in service. The Department reasoned that this would benefit ratepayers by receiving the remaining 54% portion of the gain, while not harming Xcel.

The Department's analysis also supported Xcel's calculation of the transaction's gain-sharing amount.<sup>6</sup> The Department explained that if the Commission required that the remaining portion of the gain on sale be passed to customers through the fuel clause adjustment (FCA), the gains will partially offset the costs of transactions in other proceedings that also flow through the FCA.

But while supporting Xcel's gain-sharing concept, the Department raised questions about the appropriate method to calculate the gains. The Department agreed to calculate this amount provisionally based on Xcel's proposed return on equity, but argued that this calculation should later be revised based on the return on equity amount established in Xcel's pending transmission cost recovery docket.<sup>7</sup>

The Company agreed with the Department's recommendation, but noted that flowing the gains through the fuel clause would require a variance to Minn. R. 7829.3200 to allow the pass through of funds using the FCA.

The Department concurred, and clarified that to accomplish the pass through of gains through the fuel clause, variances to Minn. R. 7825.2500 and 7825.2600, subp. 2, would also be necessary.

The Department summarized the parties' joint recommendations as to cost calculations as follows:

- Allow Xcel to keep a portion of the revenue equal to the forgone return (the \$1.2 million);
- Direct Xcel to return to current ratepayers their portion of the gain on sale of \$1.7 million through the FCA; and
- Grant a variance to Minn. R. 7825.2500 and 7825.2600, subp. 2 to facilitate the transaction.

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<sup>6</sup> Department's September 1, 2017 comments, Attachment 1.

<sup>7</sup> *In the Matter of Xcel Energy's Transmission Cost Recovery Rider*, Docket No. E-002/17-797. Xcel's estimate of the accounting entries for this approach are provided in Attachment 1 to the Department's September 1, 2017 comments.

## **C. Commission Action**

### **1. Gain Sharing**

Xcel calculated a sales price for the transaction of \$7.3 million (total company).<sup>8</sup> The Company explained that it could not establish fair market value for the facilities because no market data was available and relatively few interested buyers could be found due to the condition, relatively small size, and location of the storage tanks. The assets purchased by Flint Hills include the three storage tanks, the associated facilities, and the land on which the tanks and facilities are located.

Xcel determined the selling price by estimating the cost of a unit of similar utility plant and then appropriately depreciating the cost. Xcel determined that the Minnesota jurisdiction's final sales price of the facilities was \$5.3 million.

The Commission agrees that the final sales price of \$5.3 million appears to be reasonable given the small number of interested buyers and the need for most buyers to have relocated the storage tanks. The Commission also finds that Xcel's allocation of the transaction's value to Minnesota ratepayers (72.5%) is reasonable.

The Commission has fully reviewed Xcel's proposal as to sharing the gain on the transaction in this matter and will approve the gain sharing concept, as set forth below. Xcel explained its reasons for requesting this treatment, stating that:

- The sales price agreed to for the transaction exceeds the net book value;
- Only one of the three storage tanks is still in service and has a remaining life; and
- The Agreement reached with Flint Hills will save customers money as compared to storing the fuel in a regulated asset.

Further, Xcel explained that this transaction benefits customers by reducing their cost of service. Finally, Xcel asserted that if it is allowed to keep a portion of the sale proceeds, it will be in the same position it would have been had the tanks never been sold.

The Commission agrees that in this unique instance Xcel's proposal to share in the profits of this transaction, as agreed to by the parties, is reasonable. The Commission also concludes that the allocation of the gains specified in Attachment 1 to the Department's September 1, 2017 comments<sup>9</sup> is reasonable in this case. By approving gain sharing here, the Commission does not adopt the principle articulated by the parties underlying their gain-sharing allocation. Rather, the Commission has determined that the amount and proportion proposed to be retained by Xcel is appropriate under the circumstances of this case—circumstances which include property of limited marketability, and the role of the Inver Hill Generating Plant as a black-start facility.

The Commission will authorize the parties to calculate the amount of the net gain from the transaction based on a placeholder return on equity, but require them to update the calculation

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<sup>8</sup> The selling price consists of \$5.3 million for the facilities and \$2 million for the fuel oil.

<sup>9</sup> \$1,742,052.00 to be returned to ratepayers, and \$1,159,848.00 to be retained by Xcel.

using the return on equity to be established in Xcel's pending transmission cost recovery rider (Docket No. E-002/17-797).

Finally, the Commission will grant Xcel's request for the necessary variances to Minn. R. 7829.3200, 7825.2500, and 7825.2600, subp. 2. Minn. R. 7829.3200 based on the following findings:

- If the Commission does not approve a variance the Company will be unable to flow the gains from the transaction through to ratepayers;
- The requested variance is in the public interest due to the anticipated cost savings and because all parties involved support the proposed transaction; and
- The variance would not violate any standards imposed by law.

## **VII. Compliance and Other Filings**

The Commission observes that the Company's gain-sharing calculation was based on the return of net savings from 2017 through 2026, but 2017 is over and Xcel has already collected the 2017 revenue requirement for the facilities. Accordingly, the Commission will require Xcel to make a compliance filing adjusting the net present value calculations set forth in Attachment D to 2018 – 2026.

As part of the settlement in Xcel's recent rate case (Docket E-002/GR-15-825), the Company agreed to file an annual capital projects revenue requirements true-up (Capital True-up Report). Because the proposed sale will transfer some of Xcel's capital assets to a third party, the Commission finds it is reasonable and appropriate to include the results of this transaction as a "negative" capital project in the Capital True-Up Report.

The Commission will also require the Company to identify this transaction as a separate line item in its annual true-up calculation and provide a detailed schedule explaining the amount of the calculations.

Finally, the Commission will require Xcel to update its fuel oil loss calculation for fuel prices at the closing of the transaction and incorporate the information into the final calculation of the transaction's gain. Xcel will be required to file a letter within 10 days of closing on this transaction illustrating the Company's final calculations that reflect the Commission's decisions.

## **ORDER**

1. Xcel's sale of assets (land and oil tanks) to Flint Hills is approved.
2. The Commission grants Xcel's request for a variance from Minn. R. 7825.1400, Items F—J.
3. The Commission approves use of a gain-sharing concept in this docket as set forth in Attachment 1 to the Department's September 1, 2017 comments, and with a placeholder return on equity, subject to update to the return on equity established in Xcel's TCR Rider docket.



4. Xcel shall return the transaction's gain to customers using a one-time credit through its fuel clause adjustment mechanism.
5. The Commission grants Xcel's request for the necessary variances to Minn. R. 7825.2500, 2525.2600, subp. 2, and 7829.3200.
6. Xcel shall update its plant balances affected by the Xcel/Flint Hills Agreement in its next annual capital projects revenue requirement true-up report (Capital Project True-up Report) as a negative capital project.<sup>10</sup>
7. Xcel shall identify this transaction as a separate line item in its next Capital Project True-up Report.
8. Xcel shall update its fuel oil loss calculation for fuel prices at the closing of this transaction and incorporate the information into the final calculation of the transaction's gain. Xcel shall file a letter within 10 days of closing on this transaction illustrating the Company's final calculations that reflect the Commission's decisions in this docket.
9. Xcel shall file final journal entries for this transaction within 10 days of closing.
10. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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<sup>10</sup> See Docket No. 15-826.