

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota

DOCKET NO. E-002/GR-13-868

**REPLY COMMENTS OF THE OFFICE
OF THE ATTORNEY GENERAL -
RESIDENTIAL UTILITIES AND
ANTITRUST DIVISION**

The Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) submits the following Reply Comments in response to the Notice of a Compliance Proposal Related to Interim Rates (“Interim Rates Proposal”) filed by Northern States Power Company (“Xcel” or “the Company”) on November 13, 2014. In light of the Initial Comments of the Department of Commerce, and the supplemental letter filed by the Department on January 16, 2015, it is necessary to address the two alternative proposals that Xcel discussed in its Interim Rate Proposal. Xcel suggested that if its Interim Rate Proposal is not accepted, it would instead either request permission to increase its interim rates for the 2015 step year or request permission to move the effective date of the Commission’s final determination to a date in the past. The Department, in its January 16, 2015 letter, appears to recommend that the Commission adopt Xcel’s second alternative proposal to change the effective date of the Commission’s final determination. The Commission should deny both of these alternatives if they are proposed by Xcel because they are unreasonable and unsupported by Minnesota law.

I. THE COMMISSION SHOULD NOT ALLOW XCEL TO INCREASE THE INTERIM RATE.

Xcel's first alternative position was the possibility of increasing its interim rates for the 2015 step year.¹ This alternative proposal should be rejected because it is not permitted by Minnesota law, and because it would be unreasonable.

A. MINNESOTA LAW DOES NOT PERMIT XCEL TO INCREASE THE INTERIM RATE AT THIS TIME.

The interim rate statute allows a utility to request an "interim rate schedule [that will go] into effect not later than 60 days after the initial filing" of a rate case.² The statute does not give a utility the opportunity to request a *new* interim rate schedule after 60 days have passed. In fact, the statute specifically prohibits any attempt to change an interim rate schedule after it has initially been ordered: "[N]o interim rate schedule . . . shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final determination."³ Once an interim rate schedule has been ordered, it is final until the Commission has rendered its final determination in the case. For this reason, Xcel is prohibited by law from increasing the interim rate at this time.

B. MODIFYING THE INTERIM RATE AT THIS TIME WOULD BE UNREASONABLE.

Even if the Commission determines that Minnesota law allows the interim rate to be changed at this time, it would be unreasonable to do so for practical reasons. In its Interim Rate Proposal, Xcel made clear that it had considered the alternative proposal of increasing its interim rate for the 2015 step, but was not making that recommendation.⁴ An interim rate schedule does

¹ Interim Rate Proposal, at 1.

² Minn. Stat. § 216B.16, subd. 3(a) (2014).

³ *Id.*

⁴ Interim Rate Proposal, at 1.

not typically become effective until 60 days after it is filed; in this unusual situation, the Commission may require additional time to determine whether the proposal is reasonable in light of all the circumstances in this case. Based on the time it will take to receive a decision on any requested interim rate increase, it appears unlikely that any requested interim rate increase would be effective before the Commission's deliberation on March 26, 2015.

As a threshold matter, it would be unreasonable to make any change to interim rates after the Commission makes a final decision in this case. Additionally, resolving any interim rate increase in this abbreviated time period before deliberation would be an unreasonable administrative burden. The Commission must already decide a number of complex issues in the first-ever multi-year rate plan, and resolve the investigation of cost overruns at Xcel's Monticello plant. Changing interim rates at the end of this process would unnecessarily complicate an already complicated case. Xcel could have minimized this burden by raising the issue sooner. Instead, Xcel waited more than a year after its initial filing to bring up its request for different interim rate procedures. Xcel's decision to wait means that there is not enough time to resolve any significant change to the interim rate process, and for that reason Xcel's alternative proposal is unreasonable.

Further, increasing the interim rate at this time would be confusing for ratepayers. According to the current schedule, the Commission's final determination is required by May 8, 2015. From that date, the interim rate statute will permit Xcel to surcharge ratepayers if there is a difference between its current interim rate and final approved rates.⁵ The final approved rates will likely go into effect a short time later; as a result, ratepayers will have experienced rate

⁵ Minn. Stat. § 216B.16, subd. 3 (2014).

changes on January 3, 2014,⁶ the date of the Commission’s final determination on or around May 8, 2015, and when new approved rates become effective. Permitting a *fourth* change in less than 18 months, within a few weeks of the surcharge period and only a few months before new approved rates, will be confusing for customers. As with the administrative burden of changing rates, Xcel could have avoided this customer confusion by addressing interim rates for the 2015 step year at the outset of the rate case. It would be unreasonable to make such a change at this time. For these reasons, any request by Xcel to modify interim rates should be denied.

II. THE COMMISSION SHOULD NOT ALLOW XCEL TO LENGTHEN THE INTERIM RATE SURCHARGE PERIOD BY MODIFYING THE EFFECTIVE DATE OF THE FINAL DETERMINATION.

Xcel's second alternative position was the possibility of changing the effective date of the Commission’s final decision so that Xcel will be allowed to collect a surcharge based on final rates for a longer period of time.⁷ The Department appears to support this alternative proposal and recommends that the Commission permit Xcel to change the effective date of the Commission’s order to March 24, 2015. The interim rate statute provides:

If, at the time of final determination, the commission finds that interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect.⁸

Under this provision, Minnesota law allows Xcel to assess a surcharge if the final approved rates are greater than the approved interim rates, but limits the time period that Xcel can assess the surcharge to the time from the Commission’s “final determination” to the date that the new rates

⁶ See Order Setting Interim Rates, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, E-002/GR-13-868 (Jan. 2, 2014).

⁷ Interim Rate Proposal, at 1.

⁸ Minn. Stat. § 216B.16, subd. 3(c) (2014).

are implemented.⁹ Xcel's alternative proposal to change the effective date of the Commission's final order must be rejected for two reasons: first, Xcel has previously committed to abide by the new effective date created by its statutory waiver; and second, Minnesota law does not allow the effective date of the Commission's order to be changed retroactively.

A. XCEL HAS AGREED TO ABIDE BY THE NEW EFFECTIVE DATE CREATED BY ITS STATUTORY WAIVER.

Xcel voluntarily waived its statutory deadline twice in this matter. On February 7, 2014, Xcel filed a voluntary waiver extending the deadline for the Commission's final decision to March 24, 2015.¹⁰ On October 24, 2014, Xcel filed a second voluntary waiver extending the deadline for the Commission's final decision to May 8, 2015.¹¹ In the October 24 waiver, Xcel stated:

The Company further acknowledges it will not place final rates into effect until May 9, 2015 or a later date as may be established by the Commission or the Executive Secretary.

The Company affirmatively commits to refund any amounts collected in interim rates in excess of rates approved by the Commission's final determination in this case in accordance with Minn. Stat. § 216B.16, subd. 3, including those interim rates collected during the additional time interim rates may be in effect due to the Company's commitment to waive the statutory time constraints discussed in this letter.¹²

In making this statement, Xcel acknowledged that it understood and accepted the impact that its waiver would have on interim rates, including the impact the waiver would have on the timing of any interim rate surcharge. Xcel agreed to conduct its interim rate refund "in accordance with

⁹ *Id.*

¹⁰ Waiver of Statutory Deadline, Doc. ID 20142-96267-01 (Feb. 7, 2014).

¹¹ Waiver of Statutory Deadline, Doc. ID 201410-104113-01 (Oct. 24, 2014).

¹² *Id.*

Minn. Stat. § 216B.16, subd. 3,”¹³ and that statute provides that a utility may only surcharge from the “date of the final determination” to the “date the new rate schedules are put into effect.”¹⁴ Xcel gave its commitment that it would conduct the interim rate refund according to Minnesota law, regardless of the impact of its waiver, and it should not be allowed to withdraw that commitment when it becomes inconvenient.

B. MINNESOTA LAW DOES NOT ALLOW THE LENGTH OF THE SURCHARGE PERIOD TO BE INCREASED.

Xcel’s request, or the Department’s modified recommendation, to change the effective date of the Commission’s order would increase the length of the surcharge period and require the Commission to choose an effective date that is in the past. Neither of these things are permissible under Minnesota law.

The interim rate statute provides a clear explanation of when a utility may surcharge ratepayers as a result of interim rates. The surcharge period is limited to the time between the “date of the final determination and the date the new rate schedules are put into effect.”¹⁵ The directive of the statute is unambiguous, and there is only one exception: the legislature provided that the Commission shall extend the surcharge period “when an extension is granted for *settlement discussions* under subdivision 1a.”¹⁶ The extensions in this case do not fit under this exception because they were not granted for the purpose of the settlement discussions. When the Company provided its waiver, it did not mention settlement discussions or the statutory exception; instead, the Company stated that it was waiving its rights under Minnesota Statutes

¹³ *Id.*

¹⁴ Minn. Stat. § 216B.16, subd. 3(c) (2014).

¹⁵ *Id.*

¹⁶ *Id.*

section 216B.16, subdivisions 2(a), 2(e), and 19.¹⁷ Because Xcel's extension was not made for the purpose of settlement discussions, Xcel may not increase the length of the surcharge period. Given that the legislature specifically addressed the issue and identified only one reason for extending the surcharge period, there is no reasonable justification for assuming that the legislature intended to permit the surcharge period to be extended for other reasons.

Even if Minnesota law did allow the Commission to increase the length of the surcharge period, the Commission should not do so. Xcel's alternate proposal would require the Commission to change the effective date of its final determination to a date in the *past*. While Minnesota Statutes section 216B.26 gives the Commission authority to determine the date that orders become effective, it does not give the Commission the authority to choose an effective date *before* the Commission even makes its decision. Moving the effective date of the Commission's order backwards in time to March 3, 2015, would be an unreasonable

¹⁷ Waiver of Statutory Deadline, Doc. ID 20142-96267-01 (Feb. 7, 2014).

interpretation of Minnesota law. If Xcel proposes such an unreasonable maneuver to circumvent Minnesota law, it should be denied.

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Respectfully submitted,

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