

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Valerie Means
Matthew Schuerger
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Review of the July 2018–
December 2019 Annual Automatic
Adjustment Reports

ISSUE DATE: September 16, 2020

DOCKET NO. E-999/AA-20-171

ORDER ACCEPTING 2018–2019
ELECTRIC AAA REPORTS; NOTICE
OF AND ORDER FOR HEARING

PROCEDURAL HISTORY

By March 2, 2020, the Commission had received Annual Automatic Adjustment (AAA) Reports for July 2018–December 2019 from Minnesota Power, Northern States Power Company d/b/a Xcel Energy (Xcel), and Otter Tail Power Company (Otter Tail Power) (collectively, the Companies). Xcel made a revised filing on April 8.

On April 15, 2020, the Minnesota Department of Commerce (Department) filed its own report on the Companies' reports.

By July 31, 2020, the Companies and the Department had filed various reply and responsive comments.

On August 20, 2020, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary

The Commission will accept the Companies' reports as substantially complete.

However, the Commission finds that it has insufficient evidence to resolve disputes about the reasonableness and prudence of Minnesota Power's forced outages, and will therefore refer this matter to the Minnesota Office of Administrative Hearings (OAH) for contested case proceedings.

II. Automatic Annual Adjustment Reports

A. Introduction

Under Minn. Stat. § 216B.16, subd. 7, and Minn. R. 7825.2390–7825.2920, rate-regulated gas and electric utilities may adjust their rates between general rate cases to reflect fluctuations in energy-related costs—that is, the prices they pay for gas or electricity purchased for delivery to ratepayers, or for fuel purchased to generate electricity for ratepayers. These adjustments are called automatic adjustments because a utility generally implements these rate changes in advance of Commission approval.

The adjustments automatically affect retail rates and some wholesale transactions. The tariffs of each regulated electric utility contain a fuel clause adjustment (FCA) mechanism setting forth the formula for making adjustments to the utility’s retail rates to reflect changes in the utility’s energy-related costs. And the terms of each wholesale transaction govern whether and how fluctuations in energy-related costs alter the amount charged to a wholesale customer.

Commission rules require utilities to make detailed filings supporting each automatic adjustment. They also require utilities to make comprehensive annual filings reporting on all automatic adjustments made during a specified twelve-month period.

B. Filing Requirements

The automatic adjustment rules direct public utilities to make an annual filing including at least the following categories of information:

Minn. R. 7825.2800

- The utility’s procurement policies
- A summary of actions taken to minimize costs, including conservation actions

Minn. R. 7825.2810

- All automatic adjustments made during each month of the reporting year for each customer class
- Total revenues collected from customers for energy delivered
- All billing adjustments, supplier refunds, and any refunds credited to customers

Minn. R. 7825.2820

- An independent auditor’s report evaluating the utility’s accounting for automatic adjustments for the reporting year

Minn. R. 7825.2830

- A five-year projection of fuel costs by energy source

In addition, over the years the Commission has ordered the Companies to provide reports on 18 other topics related to their AAA filings—including the following:

- The Commission authorized the Companies to join the Midcontinent Independent System Operator, Inc. (MISO) subject to conditions, including that the utilities report certain information about their costs and revenues arising from these markets.
- The Commission directed the Companies to report on certain auxiliary businesses. For example, electric utilities can generate and sell electricity to non-retail customers by employing the same plant, staff, fuel and long-term power contracts that the utility acquired to serve its retail customers, thereby creating asset-based margins. And a utility may authorize MISO to use the utility's resources to maintain system reliability, creating ancillary services margins. The Commission monitors these activities to ensure that a fair share of the profits are allocated for the utility's operations, offsetting the portion that would be borne by ratepayers.
- The Commission directed the Companies to report the amount that each utility spends for maintaining its plant, as well as the maintenance budget that ratepayers provide to each utility, as reflected in the utility's last rate case. The Department then compares this data with data about unplanned (or forced) outages in the utility's plant. When a utility's plant cannot operate, the utility may need to buy replacement energy from the wholesale market—and the FCA causes ratepayers to bear the cost of this replacement energy. The Commission has declared that “utilities have a duty to minimize unplanned facility outages through adequate maintenance...”¹ To guard against the possibility that a utility would seek to increase profits by skimping on maintenance—with the expectation that ratepayers would bear any financial consequences—the Commission monitors utility expenditures related to maintenance and forced outages.

C. Timing

Minn. R. 7825.2390–7825.2920 direct applicable utilities to adjust their FCA amount monthly, and to draft their AAA reports to address the period from July 1 to June 30 (the fiscal year).²

But in 2018 the Commission varied its rules and directed the Companies, starting January 1, 2020, to begin making these adjustments annually, and to report these changes on the basis of a calendar year rather than a fiscal year.³ To transition to this new regulatory regime, the Commission directed the Companies to draft their next AAA report to cover the period July 2018

¹ *In the Matter of the Review of the 2006 Annual Automatic Adjustment of Charges for All Electric and Gas Utilities*, Docket No. E-999/AA-06-1208, Order Acting on Electric Utilities' Annual Reports, Requiring Further Filings, and Amending Order of December 20, 2006 on Passing MISO Day 2 Costs Through Fuel Clause, at 5 (February 6, 2008).

² See Minn. R. 7825.2820. Note that the Commission granted Northwestern Wisconsin Electric Company a variance from the automatic adjustment rules' annual reporting requirements. See *In the Matter of the Review of the 2000 Annual Automatic Adjustment of Charges for Gas and Electric Utilities*, Docket No. G,E-999/AA-00-1027, Order Acting on Gas and Electric Utilities' 2000 Annual Automatic Adjustment Reports and Setting Further Requirements, at 3-4, 9 (December 18, 2001).

³ *In the Matter of an Investigation into the Appropriateness of Continuing to Permit Electric Energy Cost Adjustments*, Docket No. E-999/CI-03-802, Order Revising Implementation Date, Establishing Procedural Requirements, and Varying Rule (December 12, 2018).

through December 2019—that is, the final 18 months in which they would make monthly adjustments.

III. The Reports

Minnesota Power, Otter Tail Power, and Xcel filed their AAA reports by March 2, 2020.⁴

The Department examined the Companies' filings in detail, and sought supplementary clarification and explanation as necessary. On April 15, 2020, the Department filed its own report with industry-wide and company-specific comments and recommendations. In its report, the Department analyzed the reasonableness of the rates the Companies charged, evaluating whether the Companies accurately adjusted their energy rates to reflect changes in energy-related costs consistent with applicable rules. The Department evaluated the Companies' compliance with the Commission's rules. And in Section III of its report, the Department reviewed the Companies' compliance with the Commission's 18 additional reporting requirements, designated A through R.

Ultimately the Department concluded that the Companies had demonstrated substantial compliance with the AAA reporting requirements.

However, the Department argued that Minnesota Power's large expenditures for forced outages, coupled with its modest investments in plant maintenance, raised doubts about the reasonableness and prudence of its management. Accordingly, the Department recommended that Minnesota Power reimburse ratepayers for some portion of its forced outage costs. Minnesota Power opposed the Department's recommendation, arguing that it has maintained its plant consistent with good utility practices.

IV. Filings Accepted

The Commission will accept the AAA reports filed by the Companies, as revised and supplemented in response to the Department's comments, as being substantially complete under Minn. R. 7825.2390 to 7825.2920. The Commission concurs with the Department that the filings demonstrate substantial compliance with the automatic adjustment statute, the automatic adjustment rules, and related Commission orders. Thus, the Commission generally accepts the Department's recommendations as set forth in the ordering paragraphs below.

V. Referral for Contested Case Proceeding

However, the Commission finds a genuine issue of material fact in dispute about whether Minnesota Power's forced outage costs for the period were reasonable and prudent—and, if not, the amount of overcharges (plus interest) that should be returned to ratepayers through the FCA.

Therefore, the Commission will refer this matter to the Minnesota Office of Administrative Hearings for a contested case proceeding. Minnesota Power will bear the burden of proving that any or all of its forced outage costs were reasonably and prudently incurred, applying good utility practices.

⁴ Dakota Electric Association continues to make monthly adjustments, and to file its AAA report based on the fiscal year. See, for example, *In the Matter of the Review of the 2018–2019 Annual Automatic Adjustment for Dakota Electric Association*, Docket No. E-999/AA-19-402.

Minn. Stat. § 216B.62, subd. 8, provides for retaining expert assistance for evaluating utility conduct:

If the commission ... determines that it is necessary, in order to carry out its duties imposed under this chapter ... to conduct an investigation or audit of any public utility operations, practices, or policies requiring specialized technical professional investigative services for the inquiry, the commission may request the commissioner of commerce to seek authority from the commissioner of management and budget to incur costs reasonably attributable to the specialized services.

If the Department deems it necessary, the Commission requests that the Department seek authorization to incur costs for any specialized services required.

VI. Issues to be Addressed

Over the course of this case, the Commission expects the parties will thoroughly develop a full record addressing, at a minimum, whether Minnesota Power's forced outage costs for the period were reasonable and prudent and, if not, the amount of overcharges (plus interest) that should be returned to ratepayers through the FCA.

VII. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge (ALJ) assigned to this case is Barbara Case. Her address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. She can be reached through her legal assistant, Lisa Armstrong, 651-361-7888, lisa.armstrong@state.mn.us.

B. Hearing Procedure

• Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62; the rules of the Office of Administrative Hearings, Minn. R. 1400.5100–1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100–7829.4000.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700–1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Jason Bonnett at (651) 201-2235, jason.bonnett@state.mn.us, or Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the ALJ if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the ALJ after consultation with the Commission and intervening parties. The Commission delegates authority to its Executive Secretary to establish the schedule with the OAH to submit the report of the contested case.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the ALJ within 20 days of the date of this Notice of and Order for Hearing.

- *Sanctions for Non-Compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the ALJ, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Department and Minnesota Power. Other persons wishing to become formal parties shall promptly file petitions to intervene with the ALJ. They shall serve copies of such petitions on all current parties and on the Commission.⁵

D. Prehearing Conference

A prehearing telephone conference will be held on Thursday, October 15th at 10:00 am by phone, 1.888.742.5095, conference code 752 390 7175#. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

VIII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. § 10A.01 et seq., apply to general rate cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 539-1190, with any questions.

IX. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300–7845.7400, which all parties are urged to consult.

ORDER

1. Having reviewed the Annual Automatic Adjustment reports for July 1, 2018–December 31, 2019, as filed and subsequently amended by Minnesota Power, Northern States Power Company d/b/a Xcel Energy, and Otter Tail Power Company, the Commission accepts –
 - A. the reports as substantially complete under Minn. R. 7825.2390 through 7825.2920;
 - B. the compliance filings required by Commission order, as discussed in the report of the Minnesota Department of Commerce, Section III, A through R;
 - C. the Companies’ MISO Day 2, asset-based margin, and ancillary services market reporting; and
 - D. the Companies’ auditor reports filed under Minn. R. 7825.2820.

⁵ Minn. R. 1400.6200.

2. The Commission finds a genuine issue of material fact in dispute about whether Minnesota Power's forced outage costs for the period were reasonable and prudent, and if not, the amount of overcharges (plus interest) that should be returned to ratepayers through the Fuel Clause Adjustment mechanism.
 - A. The Commission refers this matter to the Minnesota Office of Administrative Hearings for a contested case proceeding where Minnesota Power bears the burden to establish that any or all of the forced outage costs were reasonably and prudently incurred, applying good utility practices.
 - B. If the Department deems it necessary, the Commission requests that the Department seek authorization to incur costs for any specialized services required to assist in this matter under Minn. Stat. § 216B.62.
 - C. The Commission delegates to its Executive Secretary to establish the schedule with the OAH to submit the report of the contested case.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Will Seuffert
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Review of the July 2018-
December 2019 Annual Automatic
Adjustment Reports

OAH DOCKET NO. 82-2500-37082

PUC DOCKET NO. E-999/AA-20-171

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that:

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter.

Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.⁶

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Party's/Agency's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Party's/Agency's Attorney: _____

Firm Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Respondent's/Opposing Party's Name: _____

Email: _____ Telephone: _____

Mailing Address: _____

Dated: _____

Signature of Party/Agency or Attorney

⁶ In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. See 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).