

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz
Matthew Schuerger
Katie J. Sieben
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Commissioner
Commissioner
Commissioner
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

ISSUE DATE: April 11, 2019

DOCKET NO. E-002/GR-12-961

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

In the Matter of the Review of the 2012 - 2013
Annual Automatic Adjustment Reports for All
Electric Utilities

DOCKET NO. E-999/AA-13-599

DOCKET NO. E-999/AA-14-579

In the Matter of the Review of the 2013 - 2014
Annual Automatic Adjustment Reports for All
Electric Utilities

DOCKET NO. E-999/AA-16-523

In the Matter of the Review of the 2015 - 2016
Annual Automatic Adjustment Reports for All
Electric Utilities

DOCKET NO. E-999/AA-17-492

In the Matter of the Department's Report on the
Electric Utilities' 2016 - 2017 Annual Automatic
Adjustment Reports for All Utilities

DOCKET NO. E-999/AA-18-373

In the Matter of the Review of the 2017 - 2018
Annual Automatic Adjustment Reports for All
Electric Utilities

ORDER AUTHORIZING SHERCO UNIT
3 RATEPAYER REFUND AMOUNT
AND METHOD AND REQUIRING
COMPLIANCE FILING

PROCEDURAL HISTORY

I. Background

On November 19, 2011, a catastrophic incident at the Northern States Power Company, d/b/a Xcel Energy (Xcel) Sherburne County Generating Station (Sherco), forced the shutdown of one

of its three generating units (Sherco Unit 3, or Sherco 3) until October 2013. As a result of the prolonged outage, Xcel had to purchase replacement power from other sources.¹

On November 15, 2013, the joint owners of Sherco 3, Xcel and the Southern Minnesota Municipal Power Agency, and the insurers of Sherco 3 filed a joint complaint against General Electric Company (GE) to recover costs associated with the Sherco 3 accident.

On May 4, 2015, the Commission referred the issues of prudence, recoverability, and ratemaking treatment of replacement power and additional fuel costs to the annual fuel-clause adjustment (FCA) dockets.²

On June 2, 2016, the Commission accepted the recommendation of the Minnesota Department of Commerce (the Department) and the Minnesota Office of the Attorney General–Residential Utilities and Antitrust Division (OAG) to withhold ultimate judgment on the prudence of replacement power costs pending the resolution of civil litigation addressing the legal liability for the Sherco 3 event.³

On November 2, 2018, Xcel filed an update on the civil litigation, stating that the Company had reached a settlement with GE resulting in a payment to Xcel which will be credited in its entirety to ratepayers. On October 9, 2018, Xcel’s claims against GE were dismissed, while Xcel’s insurers continued litigation against GE.

On December 3, 2018, Xcel proposed to return the settlement payment as a credit to customers through the monthly FCA for the month beginning February 1, 2019.⁴

On December 6, 2018, the Commission issued a Notice of Comment Period requesting comment on the following topics:

- Should the Commission authorize the refund amount and method proposed by Xcel for the GE settlement related to the 2011 - 2013 Sherco 3 outage?
- Are all the issues related to the Sherco 3 outage resolved and, if so, should Xcel be authorized to discontinue providing quarterly litigation updates?
- Are there any other issues or concerns related to this matter?

By February 6, 2019, Xcel, the Department, and the OAG had filed comments and reply comments.

¹ Due to the automatic fuel clause adjustment, ratepayers have already paid for the replacement power.

² *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, Findings of Fact, Conclusions and Order, at 47 (May 8, 2015).

³ *In the Matter of the Review of the 2013-2014 Annual Automatic Adjustment Reports for All Electric Utilities*, Docket No. E-999/AA-14-579, Order Acting on Electric Utilities’ Annual Reports and Requiring Additional Filings, at 5 (June 2, 2016).

⁴ The settlement amount is subject to a confidential settlement agreement with GE, the terms of which prohibit Xcel from publicly disclosing the settlement amount.

On March 21, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

On January 14, 2019, the Department filed comments recommending that: (1) Xcel's request to refund the settlement proceeds through the FCA be approved with a minor adjustment; (2) Xcel be required to return a portion of replacement power costs to ratepayers; and (3) Xcel be required to provide additional information in its upcoming general rate case.

The OAG agreed with the Department's recommendation that the Commission approve the settlement refund to ratepayers, but also recommended that the Commission withhold judgment on the prudence of the replacement power costs resulting from the Sherco 3 outage until the conclusion of the related civil litigation process. The OAG also recommended that the Company be required to submit a compliance filing reporting all costs and regulatory proceedings related to the litigation after the civil litigation is complete.

On January 29, 2019, Xcel filed reply comments, again recommending that the Commission approve the Company's settlement refund proposal, but concluding that no additional refunds or credits are necessary in connection with the Sherco 3 outage. Alternatively, Xcel recommended that the Commission allow the pending civil litigation to reach its conclusion, including appeals, before conducting its own factual, legal, and regulatory analysis.

In reply comments, the OAG dismissed Xcel's assertion that no additional refunds or credits to ratepayers are necessary. Both the OAG and the Department recommend that the Commission withhold judgment on the prudence of replacement power costs resulting from the Sherco 3 outage until the conclusion of the related civil litigation process.

II. Commission Action

Having reviewed the parties' recommendations regarding the return to ratepayers of the settlement money from the 2011 - 2013 Sherco 3 outage, the Commission finds that the agreed-upon refund amount and method proposed by Xcel is reasonable and in the public interest. The Commission will require Xcel to refund the settlement amount as a credit to ratepayers through the monthly FCA.

As recommended by the parties, the Commission will withhold a final determination on the prudence of replacement power costs until the completion of the related civil litigation, including any appeals. Further, the Commission will adopt the recommendation of the OAG to require Xcel to provide the following information:

- Total cost to the Company (total company and Minnesota jurisdictional);

- Identification of which of those costs have been recovered or approved for recovery, including both the mechanisms of recovery and citations to the Commission orders approving those recoveries;
- Identification of any attempts to recover costs that the Commission denied, including citations to the Commission orders denying those recoveries;
- Identification of any costs that the Commission has deferred or delayed final decisions on, including citations to Commission orders deferring or delaying those recoveries; and
- Identification of any insurance proceeds or settlements with third parties, including description of how those proceeds have been returned to ratepayers.

Finally, the Commission will require Xcel to provide a status update informing the Commission of the filing of any appeals in the Sherco Unit 3 litigation and thereafter when the court issues any orders related to the appeals.

ORDER

1. The Commission hereby authorizes the refund amount and method proposed by Xcel for the GE settlement related to the 2011 - 2013 Sherco Unit 3 outage.
2. Xcel shall submit a compliance filing with the following information at the conclusion of the civil litigation concerning the Sherco Unit 3 outage:
 - Total cost to the Company (total company and Minnesota jurisdictional);
 - Identification of which of those costs have been recovered or approved for recovery, including both the mechanisms of recovery and citations to the Commission orders approving those recoveries;
 - Identification of any attempts to recover costs that the Commission denied, including citations to the Commission orders denying those recoveries;
 - Identification of any costs that the Commission has deferred or delayed final decisions on, including citations to Commission orders deferring or delaying those recoveries; and
 - Identification of any insurance proceeds or settlements with third parties, including description of how those proceeds have been returned to ratepayers.

3. Xcel shall provide a status update informing the Commission of the filing of any appeals in the Sherco Unit 3 litigation and thereafter when the court issues any orders related to the appeals.
4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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