

# Minnesota Public Utilities Commission

## Staff Briefing Papers

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**Meeting Date:**    **October 24, 2013**..... **Agenda Item #** \_\_\_\_

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**Companies:**        All Commission-Regulated Electric Utilities

**Docket Nos.**        E-999/AA-11-792  
In the Matter of the Review of the 2010-2011 Annual Automatic Adjustment  
Reports for All Electric Utilities

E-999/AA-12-757  
In the Matter of the Review of the 2011-2012 Annual Automatic Adjustment  
Reports for All Electric Utilities

**Issues:**            Should the Commission have a general discussion with interested parties and  
stakeholders about the benefits, difficulties, expectations and other matters  
related to the operation of the electric utilities' fuel clause adjustment (FCA)  
mechanisms?

**Staff:**              Robert C. Harding ..... 651-201-2237  
Jorge Alonso ..... 651-201-2258

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### ***Relevant Documents***

#### 2011 Electric Annual Automatic Adjustment Reports - Docket No. E-999/AA-11-792

Order Acting on Electric Utilities' Annual Reports, Requiring Refund of  
Certain Curtailment Costs, And Requiring Additional Filings (pp. 4-5)..... Aug. 16, 2013  
Department of Commerce - Comments ..... Sep. 5, 2013  
Minnesota Power - Comments ..... Sep. 12, 2013  
Otter Tail Power - Comments ..... Sep. 12, 2013  
Interstate Power - Comments ..... Sep. 16, 2013  
Xcel Energy - Comments ..... Sep. 18, 2013  
Department - Comments ..... Sep. 16, 2013

#### 2012 Electric Annual Automatic Adjustment Reports - Docket No. E-999/AA-12-757

Department of Commerce - Annual Review (pp. 16-22) ..... Jun. 5, 2013  
Xcel Energy- Reply Comments (pp. 22-26) ..... Aug. 26, 2013  
Minnesota Power - Reply Comments (pp. 3-4) ..... Sep. 20, 2012  
Otter Tail Power - Reply Comments (pp. 6-10) ..... Sep. 20, 2013  
Interstate Power - Reply Comments (pp. 3-13) ..... Sep. 20, 2013  
Minnesota Chamber of Commerce - Reply Comments ..... Sep. 20, 2012  
Minnesota Large Industrial Group - Reply Comments ..... Sep. 20, 2013  
Office of Attorney General - Reply Comments ..... Sep. 20, 2013

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The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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*October 16, 2013*

## Statement of the Issues

Should the Commission have a general discussion with interested parties and stakeholders about the benefits, difficulties, expectations and other matters related to the operation of the electric utilities' fuel clause adjustment (FCA) mechanisms?

## Department Request for a Meeting to Discuss Fuel Clause Adjustment (FCA) Mechanisms

On September 5, 2013, the Department submitted a letter describing ongoing challenges and difficulties related to the oversight and regulation of the investor-owned electric utilities' fuel clause adjustment (FCA) mechanisms. The Department also described governing principles and guidelines that may generally apply to the oversight and regulation of these fuel clause adjustment mechanisms.

In addition to being concerned about the overall functioning of the current process for reviewing fuel costs, the Department indicated it is concerned about the Commission's decision in the 2011 electric fuel cost docket. In that docket, the Commission decided not to take action on the Department's recommendation (based on the record developed up to that point) that the excess cost of replacement power purchased during certain unplanned, forced plant outages be refunded to ratepayers.<sup>1</sup> The Department's main concerns appear to be about the legal standard of review in these fuel clause adjustment cost recovery proceedings and the escalating complexity and increased amount of time and resources needed to conduct these annual review. Despite these concerns, the Department did not ask for reconsideration.

The Department also noted its recommendation in the pending 2012 electric fuel cost docket. In the 2012 docket, the Department recommended that

- rather than allowing utilities to recover all changes in energy costs on a month-to-month basis, recovery of energy costs should be fixed in a rate case, with no adjustment between rate cases, at the IOU's average energy costs (\$/kWh) over the previous three years before a rate case is filed, and
- this new recovery mechanism be implemented at the earliest of each IOU's next rate case filing or July 1, 2014, which is the beginning of the next fiscal year (after the 2013-14 fiscal year) for annual automatic adjustments. The Department anticipates that the IOUs would continue to file monthly FCA filings.<sup>2</sup>

The Department noted the extended timeline under which the annual review of fuel costs usually occurs. For the fiscal-year ending June 30, 2012, the utilities submitted their initial filings (annual automatic adjustment (AAA) reports) on September 1, 2012. The Department's annual review and preliminary recommendation was submitted on June 5, 2013, approximately ten months later. Replies to the Department annual review and preliminary recommendations were

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<sup>1</sup> Order Acting on Electric Utilities' Annual Reports, Requiring Refund of Certain Curtailment Costs, and Requiring Additional Filings, In the Matter of the Review of the 2010 – 2011 Annual Automatic Adjustment Reports for All Electric Utilities, Docket No. E-999/AA-11-792, August 16, 2013, p. 5

<sup>2</sup> Department, Review of 2011-2012 (FYE12) Annual Automatic Adjustment Reports, Docket No. E-999/AA-12-757, June 5, 2013, pp. 21-22

submitted on September 20, 2013, approximately three-and-a-half months later. The Department demonstrates how drawn out and resource intensive any substantive proceeding involving fuel costs usually becomes.

The Department also noted that fuel cost-related cost recovery issues have been thought about at various times with varying degrees of intensity since at least 2003 when the Commission opened an investigation into the appropriateness of the electric fuel clause adjustment mechanisms. The Commission issued orders<sup>3</sup> opening an investigation in 2003 and comments were filed in 2003 and 2007. Because of various factors, including the start of MISO, and other issues raised in 2003, 2007, and in the parties' September 20, 2013 comments in the 2012 docket, these issues have not been resolved.

To this end, and before proceeding further in the 2012 docket, the Department

... recommend[ed] that the Commission convene a meeting with all interested parties to discuss the benefits, difficulties, expectations and other matters pertaining to the operation of the FCA. It is critical to hear the views of all parties and the views of the Commissioners about how the FCA operates and how it should operate in the future. This meeting is intended to be a check-in where participants can share their views. If, at the end of that meeting, there is an agreement to proceed with the E999/AA-12-757 docket, that process could move forward.<sup>4</sup>

In its September 16, 2013 comments, the Department clarified its expectations for this meeting. The Department stated that its request for this meeting is not

... to discuss proposal(s) in the 12-757 case. Rather, the overall intent of the meeting is to discuss the general purpose and function of the FCA as a necessary step prior to any further discussion or analysis in the current (12-757 and 13-599) dockets and future AAA proceedings.<sup>5</sup>

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<sup>3</sup> Order Approving Proposal Requiring Compliance Filing, and Opening Investigation into the Continuing Usefulness of Fuel Clause Adjustments for Electric Utilities (June 4, 2003), and Order Determining Scope and Setting Procedural Framework (December 19, 2003), In the Matter of an Investigation into the Appropriateness of Continuing to Permit Energy Cost Adjustments, Docket No. E-999/CI-03-802

<sup>4</sup> Department, September 5, 2013 Comments, p. 3

<sup>5</sup> Department, September 16, 2013 Comments, Attachment, p. 1

The Department recommended the following issues be discussed:<sup>6</sup>

- What are the overall goals of the FCA?
- Is there a regulatory role in the operation of the FCA?
- If so:
  - What are the roles for the Commission and the Department?
  - Are the regulatory standards that apply to the FCA different than the standards in other rate proceedings (e.g. rates must be reasonable and the utility has the burden of proof to show that the rates are reasonable)?
    - If so, what are those differing regulatory standards?
    - If not, how is the determination made as to whether the utility has met its burden of proof and whether the rates are reasonable?
  - When is utility recovery of costs under the current operation of the FCA approved?
- Is the current operation of the FCA meeting the intended goals?
- If so, what role do the varying interests of ratepayers and utility shareholders have in the operation of the FCA?

The Department emphasized that it

... is not requesting either consensus on these questions or a Commission determination about any of the above questions. Instead, the only goal is to have the discussion to help set the context for the current (12-757 and 13-599) dockets and future AAA proceedings. In general, this discussion is intended as a check-in so participants can provide their perspectives about these questions.

... The goal is to have the discussion wherein the Commission, the Department, the utilities and any other willing participant can discuss, most broadly, what the FCA is and what is and is not working in the current operation of the FCA.<sup>7</sup>

## Party Comments

Interstate Power (Interstate), Minnesota Power (MP), Northern States Power (Xcel), Otter Tail Power (Otter Tail), the Minnesota Chamber of Commerce (Chamber), Minnesota Large Industrial Group (MLIG) submitted comments supporting the Department's request for a meeting.

Interstate,<sup>8</sup> MP,<sup>9</sup> and Otter Tail<sup>10</sup> agreed to the proposal for a meeting but not that there is a problem. Xcel also agreed to the proposal for a meeting, and while Xcel does not support the

<sup>6</sup> Department, September 16, 2013 Comments, Attachment, p. 1

<sup>7</sup> Department, September 16, 2013 Comments, Attachment, p. 2

<sup>8</sup> Interstate, Comments, September 16, 2013, p. 1 & Reply Comments, September 20, 2013, p. 5

<sup>9</sup> Minnesota Power, Comments, September 12, 2013, pp. 1-2 & Reply Comments, September 20, 2013, p. 12

Department's proposal for a fixed rate to recover fuel costs, Xcel committed, as it has in the past, to work on developing an alternative cost recovery mechanism that would include an incentive feature.<sup>11</sup>

The Chamber<sup>12</sup> and MLIG<sup>13</sup> agreed to the Department's proposal for a meeting but do not believe the current system is working in the best interests of ratepayers. The Chamber also noted that one issue of particular concern to the Department is the standard of review that seems to be applied in these proceedings which the Chamber believes shifts the burden of proof away from the utilities and onto ratepayers.

The Office of Attorney General (OAG) believes there is a problem with the current operation of the electric fuel clause adjustment mechanisms and has proposed an incentive mechanism rather than a fixed rate for recovering fuel costs in numerous proceedings. However, the OAG does not believe additional meetings or workgroups would be helpful. The OAG has participated in dialogs, meetings and workgroups in the past and does not believe they have been a productive use of the OAG's time and resources.<sup>14</sup>

### **PUC Staff Comment**

If the Commission decides that it would like to listen to or participate in the discussion recommended by the Department, then its needs to decide whether to have this discussion during this agenda meeting or at another time.

If this discussion is included as an agenda meeting item, then staff recommends this discussion occur at the end of (or after) the Commission agenda meeting. Alternatively, this discussion could be scheduled for a separate, single-issue meeting. Because of the pending fuel clause dockets for 2012 and 2013, staff believes it is appropriate to have this dialog on the Department's discussion points as part of an agenda meeting or stand-alone, single-issue Commission meeting rather than a planning meeting.

### **Decision Alternatives**

Staff does not believe the Commission needs to make a decision at this time in these two dockets.

However, because the 2012 docket (#12-757) is pending and unresolved, the Commission may want to direct staff to issue a notice requesting supplemental comments in the 2012 docket from the Department and other parties. The Commission may also want to discuss other procedural alternatives.

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<sup>10</sup> Otter Tail, Comments, September 12, 2013, p. 1 & Reply Comments, September 20, 2013, p. 6

<sup>11</sup> Xcel, Comments, September 18, 2013, p. 1 & Reply Comments, August 26, 2013, p. 26

<sup>12</sup> Chamber, Reply Comments, September 20, 2013, p. 5

<sup>13</sup> MLIG, Reply Comments, September 20, 2013, p. 7

<sup>14</sup> OAG, Reply Comments, September 20, 2013, p. 6