

November 16, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-15-922

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition for approval of an Amendment to the 2003 Settlement Agreement with the Prairie Island Indian Community.

The petition was filed on October 15, 2015 by:

Allen D. Krug
Associate Vice President
State Regulatory Policy
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

The Department recommends the Commission **require Xcel to provide additional information to address the items identified herein** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

STEVE RAKOW
Rates Analyst

SR/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. E002/M-15-922

I. INTRODUCTION

On October 15, 2015, Northern States Power Company, doing business as Xcel Energy. (Xcel or the Company) filed a petition with the Minnesota Public Utilities Commission (Commission) requesting Commission approval of the *2015 Amendment to the 2003 Settlement Agreement with the Prairie Island Indian Community* (2015 Amendment) between Xcel and the Prairie Island Indian Community (PIIC). The 2015 Amendment proposes changes that increase the size and duration of the current annual payments made by Xcel to PIIC under the 2003 Settlement Agreement.

The 2003 Settlement Agreement between Xcel and PIIC, provided as Attachment A to Xcel's petition, was intended to settle outstanding disputes involving a 1994 Agreement between Xcel and the state of Minnesota that made PIIC an intended third-party beneficiary. The 1994 Agreement was required by Minnesota Statutes section 116C.773, enacted as part of Chapter 641 of the 1994 Minnesota Session Laws that, among other things, granted Xcel the ability to use 17 casks to store spent nuclear fuel.

As further background material, an overview of the history of nuclear waste storage in Minnesota by the Legislative Reference Library is provided as Attachment 1. For ease of reference, Attachment 2 provides the Commission's April 6, 2004 Order Approving State Policy Rate Rider, As Modified in Docket No. E,G002/M-03-1544, where recovery of costs of the 2003 Settlement Agreement was first authorized. In that proceeding, Xcel represented that the payments to PIIC were finite in duration and were the result of mandates from the Minnesota Legislature. For these reasons, all costs of these mandates were charged only to Minnesota ratepayers.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTE

Xcel filed the Petition pursuant to Minnesota Statutes section 216B.1645, Subd. 4 which states in part:

The commission shall approve a rate schedule providing for the automatic adjustment of charges to recover the costs or expenses of a settlement between the public utility that owns the Prairie Island nuclear generation facility and the Mdewakanton Dakota Tribal Council at Prairie Island, resolving outstanding disputes regarding the provisions of Laws 1994, chapter 641, article 1, section 4. The settlement must provide for annual payments, not to exceed \$2,500,000 annually, by the public utility to the Prairie Island Indian Community ...

Thus, Minnesota Statutes section 216B.1645, Subd. 4 provides the Commission with authority over a particular rate schedule and presumably the reasonableness of any expenses that would be recovered through that rate schedule. Note that in this instance the legislature has limited the Commission's authority by mandating the approval of a form of recovery¹ (an automatic adjustment mechanism) and has capped the amount of expenses that the Commission may consider to be reasonable at \$2.5 million annually. It is unclear the extent to which this statute also gave the Commission authority to allow recovery of costs of amendments to the 2003 Settlement Agreement; thus, for clarity, the Department requests that Xcel provide its legal analysis of such authority in its Reply Comments.

As required by Minnesota Statutes section 216B.1645, Subd. 4, in Docket No. E,G002/M-03-1544 the Commission approved a rate schedule providing for the automatic adjustment of charges to recover the costs or expenses of the settlement between Xcel and PIIC. The 2003 Settlement Agreement is shown in Attachment A of Xcel's petition.

B. ANALYSIS OF THE AGREEMENTS

Upon a brief review of Xcel's filing, the Department concludes that Xcel's petition should provide additional information in this record to explain several important issues, including:

- The basis for extending the terms of each of the payments in question;
- Whether any previously unexpected costs are being incurred that the increased payments would offset;²

¹ Note that the statute does not require Xcel to use the automatic adjustment, only that the Commission must approve such a mechanism.

² Note that overall the payments are proposed to increase, not only above the level of the last 2 years, but above the level in any prior year.

- Further explanation as to how increasing the size and duration of the proposed payments related to Xcel's nuclear facilities is consistent with continued, long-term investment in Xcel's nuclear power fleet (see discussion below);
- Whether Xcel treats such instances symmetrically, that is, whether Xcel similarly negotiated payment decreases in contracts when expectations of the future were not met;
- Why it was considered necessary to remove the ratepayer protections in terms 3, 4, and 5;
- What criteria the Company proposes the Commission to use to judge the 2015 Amendment agreement;
- How the 2015 Amendment fulfills the Company's proposed criteria;
- Whether any changes to the rate schedule (State Energy Policy Rider) are necessary due to the 2015 Amendment;
- How the apparently conflicting language in clause 1 (i) directing payments "during plant operations" and clause 2 directing payment "until ... all spent nuclear fuel ...has been removed" is to be reconciled; and
- Since the rate schedule providing for the automatic adjustment of charges has not been proposed as the recovery mechanism³ why a filing under Minnesota Statutes section 216B.1645, Subd. 4 is appropriate.

Further, the Department notes that certain of the explanations offered by the Company for the changes in the 2015 Amendment are unclear, given the language in the Agreement. For example, the Company stated that one of the changes since 2003 was:

The DOE's decision in 2009 to end pursuit of its license application to construct a nuclear waste disposal facility at Yucca Mountain. This effort undermines a key mutually held belief that Yucca Mountain was on schedule to eventually become the site of a permanent waste repository in the first quarter of the 21st century. This action means that spent fuel could remain at Prairie Island beyond the time periods anticipated in 2003;

The Company cited several other examples regarding uncertainty about how long spent fuel might be stored at the Prairie Island site. While DOE's decision no doubt added to that uncertainty, there is no need to amend the agreement to address uncertainty since clause 1 (ii) of the 2003 Agreement is already written to cover payments during the term of storage and places no limit on how long storage might occur. Thus, the uncertainty cited by Xcel as a reason for 2015 Amendment was already addressed by the 2003 Agreement and no amendments driven by uncertainty seem to be necessary.

³ Xcel's petition states "We intend to seek cost recovery for the annual additional amount from our customers as part of the request in our next general electric rate case which will be filed on November 2, 2015, and will include the additional \$1.05 million in the 2016 Test Year."

Another explanation provided by Xcel that needs clarifying is the statement that “Additional years of safe generation will benefit Xcel Energy customers, the State and Nation by providing affordable, carbon free base load power.” However, the petition does not demonstrate any impact from the 2015 Amendment on the length of operation for the Prairie Island generating station, so Xcel’s use of the word “additional” is unclear.

Overall, the Department concludes that Xcel’s petition should:

- demonstrate that the statutory basis cited by the Company allows for Commission authority to implement the Company’s proposed action—approval of an amendment to a contract with recovery to occur through base rates;
- provide clear criteria by which the petition can be judged;
- identify the impact of the proposal on the economics of the Company’s nuclear units;
- provide any incremental benefits that would offset the incremental costs; and
- reconcile the internal inconsistencies noted above in the 2015 Agreement.

III. DEPARTMENT RECOMMENDATION

The Department recommends that Xcel provide the following information in its Reply Comments:

- A legal analysis of the extent to which Minnesota Statute section 216B.1645 gave the Commission authority to allow recovery of costs of amendments to the 2003 Settlement Agreement with recovery to occur through base rates;
- The basis for extending the terms of each of the payments in question;
- Whether any previously unexpected costs are being incurred that the increased payments would offset;
- Further explanation as to how increasing the size and duration of the proposed payments related to Xcel’s nuclear facilities is consistent with continued, long-term investment in Xcel’s nuclear power fleet;
- Whether Xcel treats such instances symmetrically, that is, whether Xcel similarly negotiated payment decreases in contracts when expectations of the future were not met;
- Why it was considered necessary to remove the ratepayer protections in terms 3, 4, and 5;
- What criteria the Company proposes the Commission to use to judge the 2015 Amendment agreement;
- How the 2015 Amendment fulfills the Company’s proposed criteria;
- Whether any changes to the rate schedule (State Energy Policy Rider) are necessary due to the 2015 Amendment;

- How the apparently conflicting language in clause 1 (i) directing payments “during plant operations” and clause 2 directing payment “until ... all spent nuclear fuel ...has been removed” is to be reconciled;
- Since the rate schedule providing for the automatic adjustment of charges has not been proposed as the recovery mechanism why a filing under Minnesota Statutes section 216B.1645, Subd. 4 is appropriate; and
- Any other information that Xcel believes would be helpful for the Commission.

/ja

Minnesota Legislative Reference Library

Last reviewed November 2013

Resources on Minnesota Issues Nuclear Waste Storage in Minnesota

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This guide is compiled by staff at the Minnesota Legislative Reference Library on a topic of interest to Minnesota legislators. It is designed to provide an introduction to the topic, directing the user to a variety of sources, and is not intended to be exhaustive.

Minnesota is the home of two nuclear generating facilities: the Prairie Island Nuclear Generating Plant and the Monticello Nuclear Generating Plant. They have been in operation since the early 1970s. The issues of how and where to store the nuclear waste generated by these facilities first came to the forefront in the late 1980s when the Prairie Island facility faced the prospect of closing if additional storage space wasn't found.

At that time, Prairie Island's high-level spent radioactive waste was stored in stainless steel-lined concrete vaults that were surrounded by cooling water. Under provisions of the [Nuclear Waste Policy Act of 1982](#), the U.S. Government was to develop a site that would accept radioactive waste from the country's nuclear power plants beginning on January 31, 1998. By the late 1980s, with a nuclear waste repository years from completion and Prairie Island running out of storage space, Northern States Power (NSP) (now known as [Xcel Energy](#)) asked the [Minnesota Environmental Quality Board](#) (EQB) for permission to store additional waste in dry casks at the Prairie Island site. In May 1990, the board called for an environmental impact study of the proposed dry cask storage. In the spring of 1991 the EQB approved and released the [Final Environmental Impact Statement: Prairie Island Independent Spent Fuel Storage Installation](#).

In April 1991, NSP approached the [Minnesota Public Utilities Commission](#) (PUC), seeking permission to build the facility ([Application for Certificate of Need](#)). Hearings were held in front of Administrative Law Judge Allan Klein in November and December 1991; in April 1992 Judge Klein [recommended](#) that the PUC deny the certificate of need. He stated, "The likelihood that the dry cask storage would become permanent is so great that it is appropriate to require legislative authorization if the project must go forward immediately." Despite these recommendations, the Public Utilities Commission ruled that NSP could store the waste, though the number of casks allowed was reduced from 48 to 17.

The [Mdewakanton Prairie Island Indian Community](#) and environmental groups opposed to the storage facility appealed the PUC decision to the Minnesota Court of Appeals. The groups argued that the additional storage should be classified as permanent and that under the 1977 [Minnesota Radioactive Waste Management Act](#), NSP needed authorization from the Legislature before the PUC could rule on the matter; on May 28, 1993, the Minnesota Court of Appeals [ruled](#) that legislative authorization was needed. In July 1993, the Minnesota Supreme Court refused to hear an NSP appeal, leaving the decision to the Minnesota Legislature. After extensive debate, the 1994 legislature passed a law that permitted NSP to use 17 casks for nuclear waste storage ([Laws of Minnesota 1994, chapter 641](#)). Also in that law was a provision prohibiting the construction of any additional nuclear-powered electrical generating plants in the state ([Minnesota Statutes 216B.243, subdivision 3b](#)). The casks were subsequently placed at the Prairie Island generating facility.

In 1998, after the [U.S. Department of Energy](#) failed to meet a January 31, 1998 deadline to accept waste from the country's nuclear power plants, NSP filed a lawsuit in the U.S. Court of Federal Claims against the department seeking reimbursement for the costs of storing the waste at its Minnesota facilities. (The suit was settled in September 2007, with Xcel Energy/NSP being awarded \$116 million for costs accrued through 2004. In August 2007, Xcel Energy filed another lawsuit against the U.S. Department of Energy seeking money to cover waste storage costs from 2005 through June 2007.)

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Nuclear Waste Storage in Minnesota - Resources on Minnesota Issues

As Prairie Island continued operating, the 17 storage casks were gradually filled, raising concerns that the reactors might have to cease operations due to the lack of storage space. By 2003 the issue was once again before the Minnesota Legislature. During the 2003 session, bills were introduced to allow additional storage space at Prairie Island ([House File 775](#) / [Senate File 794](#)). The legislation did not pass during the regular session but was enacted during the 2003 Special Session ([Laws of Minnesota 2003, 1st Special Session, chapter 11](#)). The new law, effective May 30, 2003, authorized the use of additional dry cask storage on the Prairie Island site. The waste storage capacity was subject to the limits set by the federal license that allowed up to 48 casks. The law also included provisions for renewable energy development and required Xcel Energy to give the Prairie Island Indian Community up to \$2.5 million per year for, among other purposes, the acquisition of land away from the Prairie Island facility. Finally, the law required that any future requests for additional nuclear waste storage capacity would be subject to the approval of the Minnesota Public Utilities Commission.

The next request for additional waste storage came in January 2005 when Xcel Energy filed an application for a *Certificate of Need* with the Minnesota PUC to build a nuclear waste storage facility at the site of its Monticello plant. In June 2005, the Minnesota Environmental Quality Board approved an [EIS Scoping Decision](#) that outlined the issues and the alternatives to be examined as part of a required environmental impact study (EIS). A [Draft EIS](#) was issued in November 2005 and a [Final EIS](#) in March 2006. An [Adequacy Determination](#) was issued on July 26, 2006 by the Minnesota Department of Commerce. On August 4, 2006, Administrative Law Judge Steve M. Mihalchick issued a ruling on Xcel Energy's *Certificate of Need* concluding, "It is respectfully recommended that the Public Utilities Commission issue a Certificate of Need to Xcel Energy for the construction and operation of a dry spent fuel storage facility at the Monticello generating plant with up to 30 spent fuel containers, vaults, and associated equipment necessary to allow the Monticello generating plant to continue in operation through 2030." On September 28, 2006, the PUC approved Xcel Energy's request for nuclear waste storage at the Monticello facility. The decision was effective in June 2007 and construction was planned to begin later that year.

In addition to these state regulatory activities, on March 24, 2005, Xcel Energy filed a license renewal application with the federal Nuclear Regulatory Commission (NRC), seeking a 20-year license renewal for its Monticello facility. The single reactor at the Monticello plant was licensed until 2010. On November 8, 2006, the NRC granted the renewal, extending Monticello's operating license until September 8, 2030. On April 15, 2008, Xcel Energy submitted an [application](#) to the Nuclear Regulatory Commission seeking 20 year license extensions for Prairie Island's two reactors. The current licenses expired in 2013 and 2014. The NRC issued a final [EIS](#) related to the license extension in May 2011 and on June 27, 2011 the NRC renewed the operating licenses of both Prairie Island reactors. Reactor 1 is now licensed to operate until 2033 and reactor 2 until 2034.

In May 2008, Xcel Energy announced it would seek permission from the Minnesota Public Utilities Commission to add 35 additional above-ground waste storage containers at the Prairie Island site; permission would also be sought to expand the generating capacity of each reactor by approximately 80 megawatts, bringing the generating capacity of the of the Prairie Island facility to nearly 1,240 megawatts. A separate application was filed in 2008 to increase the generating capacity of the Monticello plant. A [Final Environmental Impact Statement \(EIS\)](#) for the Prairie Island projects was issued in late July 2009. In October 2009, the Minnesota Office of Energy Security made a determination that the final EIS was adequate ([Adequacy Determination](#)). In December 2009, the Public Utilities Commission issued an [order](#) that accepted the Prairie Island environmental impact statement, granted the certificates of need for an extended power uprate (increased generating capacity) and additional dry cask storage, and issued a site permit with conditions. The Prairie Island Indian Community and the city of Red Wing subsequently filed an appeal of the order with the Minnesota Court of Appeals. In a [decision](#) filed November 16, 2010, the court rejected the challenge and upheld the Public Utility Commission's order. In August 2012, the Prairie Island Tribe filed a [petition](#) with the Nuclear Regulatory Commission, seeking to intervene in the license renewal proceedings.

In late March 2012, Excel Energy announced that they had asked the Minnesota Public Utilities Commission to review the need for the Prairie Island uprate in light of reduced energy demand and other economic factors. Uprate activity is on hold until the PUC releases its review in early 2013.

Unallotment

Still of Interest

Child Support Guidelines

Consolidated Conservation (Con-Con) Lands

CORE: Minnesota Commission on Reform and Efficiency

Dual Track Airport Planning Process

Educational Vouchers

Eminent Domain

Feedlots

Mighty Ducks Program

Minneapolis Interstate 35W Bridge Collapse

Minnesota Minority Child Heritage Protection Act

Northwest Airlines (Delta) and the State of Minnesota

Redistricting 2000

Redistricting 1990

Unicameral Legislatures

Meanwhile, the search for a permanent U.S. repository for spent nuclear waste continues. In 2008, the U.S. Department of Energy (DOE) submitted a license application to the Nuclear Regulatory Commission (NRC) seeking authorization to construct a nuclear waste repository at [Yucca Mountain](#), Nevada. However, in 2009, President Obama's proposed budget slashed funding for the project. In January 2010, President Obama issued an executive order creating the [Blue Ribbon Commission on America's Nuclear Future](#). The commission issued its [final report](#) in August 2012.

In March 2010, the U.S. Department of Energy announced plans to terminate the Yucca Mountain repository and requested that its license application be withdrawn. That request was [denied](#) by the NRC. Several states filed [lawsuits](#), arguing that the DOE did not have the authority to terminate the Yucca Mountain project. In August 2012, the U.S. Circuit Court of Appeals for the District of Columbia [stated](#) that the NRC is required by law to continue efforts to license the Yucca Mountain site. A final decision will be issued in mid-December 2012, pending possible Congressional action.

In a separate June 2012 [decision](#), the U.S. Circuit Court of Appeals for the District of Columbia found that the NRC's nuclear waste storage rulemaking process was deficient because it was based on the assumption that a permanent storage facility would be developed. In its ruling, the court found that the NRC's environmental review process did not calculate the environmental effects of not having a permanent storage facility; the court found that "... the Commission failed to properly examine future dangers and key consequences" of prolonged on-site nuclear waste storage. In response to this decision, the NRC issued an [order](#) that temporarily halted nuclear reactor final licensing decisions. In September 2014, the NRC published a [Generic Environmental Impact Statement for Continued Storage of Spent Nuclear Fuel](#). In the same month, new rules on [continued storage](#) were published in the *Federal Register*.

Legislative History

1994 Regular Session: Senate File 1706/House File 2140, ([Laws of Minnesota 1994, chapter 641](#)). (Approval of dry cask storage at Prairie Island.) (Moratorium on new nuclear plant construction is in article 2, section 2.)

2003 Regular Session: [House File 775](#) and [Senate File 794](#). (Debate on additional dry cask storage at Prairie Island. Neither of the bills passed.)

2003 Special Session: [House File 9](#); ([Laws of Minnesota 2003, 1st Special Session, chapter 11](#)). (Additional dry cask storage at Prairie Island approved.)

2011 Regular Session: [Senate File 4](#) and [House File 9](#). (If passed, would remove the moratorium on new nuclear plant construction by abolishing the nuclear power plant certificate of need prohibition.)

2011 Regular Session: ([Laws of Minnesota 2011, chapter 97, sec. 13](#)): (Nuclear power plant decommissioning and storage of used nuclear fuel; evaluation and costs)

Significant Books and Reports

[Amicus Curiae Brief of Certain Individual Members of the Minnesota House of Representatives and the Minnesota Senate](#), 1993. (A supplemental friend-of-the-court brief filed with the Court of Appeals.) (Vertical File: A43P)

[Background on Nuclear Power in Minnesota](#). St. Paul: Minnesota Department of Commerce, 2002. (TD899.A8 B33 2002)

Before the Minnesota Public Utilities Commission: Northern States Power Company, Docket No. E002/CN-91-19. St. Paul: Minnesota Department of Public Service, 1991 (TD899.A8 B44 1991)

Bull, Mike. [Nuclear Energy and Xcel Energy's 2002 Resource Plan](#). St. Paul: Minnesota House of Representatives, House Research Department, 2003. (TD899.A8 B85 2003)

Bull, Mike and John Helland. [Nuclear Waste Management and the Prairie Island Legislation](#). St. Paul: Minnesota House of Representatives, House Research Department,

1997. (KFM5780.A8 B85 1997)

[Commercial Nuclear Waste: Effects of a Termination of the Yucca Mountain Repository Program and Lessons Learned](#). Washington, DC: US GAO, 2011.

[DOE Nuclear Waste: Better Information Needed on Waste Storage at DOE Sites as a Result of Yucca Mountain Shutdown](#). Washington, DC: US GAO, 2011.

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Helland, John and Linda Taylor. [The Prairie Island Nuclear Waste Storage Issue: Questions and Answers](#). St. Paul: Minnesota House of Representatives, House Research Department, 1994. (TD899.A8 H45 1994)

Helland, John and Mike Bull. [Nuclear Waste Dry Cask Storage](#). St. Paul: Minnesota House of Representatives, House Research Department, 2001. (TD899.A8 H452 2001)

[In the Matter of an Application for a Certificate of Need for Construction of an Independent Spent Fuel Storage Installation](#). State of Minnesota, Court of Appeals, May 28, 1993. (C1-92-2314, C3-92-2315, C9-92-2321) (Vertical File: A43P)

[In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Construction of an Independent Spent Fuel Storage Facility](#). State of Minnesota, Office of Administrative Hearings, April 10, 1992. (6-2500-5462-2, E-002/CN-91-19.) (Vertical File: A43P)

Legislative Authorization of High Level Radioactive Waste Storage on Prairie Island in the Mississippi: Briefing Paper. (Prepared by Faegre & Benson at the Request of Minnesotans for Nuclear Responsibility). Minnesota, 2004. (Vertical File: A43P)

[Legislative Report Concerning Certificate of Need for Dry Cask Storage Facility, E-002/CN-05-123](#). St. Paul: State of Minnesota Public Utilities Commission, 2007. (TD899.A8 L44 2007)

[Legislative Report Concerning Certificate of Need for Dry Cask Storage Facility, Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation](#). St. Paul: State of Minnesota Public Utilities Commission, 2010. (TD899.A8 L442 2010)

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[Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Prairie Island Indian Community as a Cooperating Agency](#). 2008.

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[Monticello Spent Fuel Storage Installation: Draft Environmental Impact Statement](#). St. Paul: Minnesota Dept. of Commerce, 2005. (TD899.A8 M65 2005)

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[Northern States Power Company's Prairie Island Nuclear Facilities: An Analysis of Options](#). St. Paul: Minnesota Department of Public Service, 1994. (TD899.A8 N69 1994)

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Additional Library Resources

For historical information, check the following codes in the Newspaper Clipping File and the Vertical File:

A43M (Atomic Power Plants - Monticello), A43P (Atomic Power Plants - Prairie Island), A43.5 (Atomic Power Plants - Wastes), C118- Xcel Energy. (For clips prior to 2001, see C118- Northern States Power)

For additional reports at the Legislative Reference Library, use these [Library catalog](#) searches:
[Nuclear Waste](#)

Groups Involved with this Issue

[Minnesota Department of Commerce: Energy Division](#)

[Minnesota Environmental Quality Board](#)

[Minnesota Public Utilities Commission](#)

[Prairie Island Indian Community](#)

[Xcel Energy](#)

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by Northern States
Power Company d/b/a Xcel Energy for
Approval of an Electric and Gas State Energy
Policy Rate Rider

ISSUE DATE: April 6, 2004

DOCKET NO. E,G-002/M-03-1544

ORDER APPROVING STATE POLICY
RATE RIDER, AS MODIFIED

PROCEDURAL HISTORY

During the 2001 legislative session, the Minnesota Legislature created the position of Reliability Administrator (RA) within the Minnesota Department of Commerce (the Department) and directed the Minnesota Department of Administration (Administration) to develop sustainable buildings guidelines (SBG) for new state buildings. The Legislature determined that the costs related to the RA and the SBG should be recovered from ratepayers through an automatic rates adjustment mechanism approved by the Commission.

During the 2003 legislative session, the Minnesota Legislature determined that the costs of a legislative settlement of disputes between Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) and the Mdewankanton Dakota Tribal Council (Prairie Island Settlement expenses) would be recoverable (up to \$2.5 million annually) through an automatic adjustment mechanism. In addition, the Legislature determined that costs associated with an independent study of intermittent resources would be recoverable through an automatic adjustment mechanism.

On September 26, 2003, Northern States Power Company d/b/a Xcel Energy (Xcel) filed its petition in this matter on behalf of its electric utility and its gas utility.

- **Electric Utility:** Xcel proposed to implement a single rider for its electric customers to track electric related RA and SBG expenses separately from the Xcel-Prairie Island Settlement expenses but recover them all via a single rate rider, the State Energy Policy Rate Rider (SEP Rider).
- **Gas Utility:** Xcel requested permission to record gas related RA and SBG expenses (estimated at \$73,000) in a differed account and preserve the right to recover these amounts in a future rate case.

On November 26, 2003, Xcel amended its Petition as follows:

- **Electric Utility:** Xcel proposed to include in the State Energy Policy Rider the one-time costs of approximately \$500,000 in 2004 associated with the independent study on intermittent resources required by the Minnesota legislature.
- **Gas Utility:** instead of the deferred recovery originally requested, Xcel proposed a rider to recover the gas portion of RA and SBG expenses: \$230,000 in 2004, approximately \$75,000 in 2005, and approximately \$37,000 in 2006.

On December 26, 2003, the Department filed comments, recommending approval of Xcel's proposal, as amended, with some adjustments to the costs to be recovered. In addition, since the Company's proposal assumed that all State Energy Policy costs through 2004 would be recovered in 2004 (during the nine-month period April through December 2004), the Department requested that the Company provide an alternative schedule for recovery of State Energy Policy costs over the 12-month period April 2004 through March 2005. In addition, the Department requested that the Company provide further detail on its proposed implementation schedule.

On January 5, 2004, Xcel replied to the Department's December 26, 2003 comments. Xcel assessed the Department's recommendations, discussed the recovery method and expense adjustments, provided schedules and proposed rates for the 12-month recovery option, and proposed an implementation schedule. The Company also requested a variance to Minn. Rules, Parts 7820.3500 (K) and 7825.2600.

On January 22, 2004, the Department filed supplemental comments.

The Commission met on March 18, 2004 to consider this matter.

FINDINGS AND CONCLUSIONS

I. SUMMARY OF FINDINGS

The Department, for the most part, recommended that the Commission approve Xcel's proposals and for the most part, Xcel agreed with the changes or modifications that the Department recommended. The Commission finds that the items agreed upon are reasonable and will approve them. See the Order Paragraphs for specifics.

II. ITEMS WARRANTING SEPARATE DISCUSSION

Four items warrant separate discussion: 1) allocation of the costs of the Intermittent Resource Study; 2) implementation process; 3) notice to Xcel's customers regarding the recovery of the State Energy Policy costs; and 4) the variances requested by Xcel.

A. Allocation of the Costs of the Intermittent Resources Study

The Department agreed with Xcel's analysis that since the RA, SBG, and Xcel-Prairie Island Settlement expenses were all finite in duration and resulted from mandates from the Minnesota Legislature, it was appropriate and efficient to deal with these expenses in a single tracker account and a rate rider charged only to Minnesota customers.

The Department disagreed with Xcel's proposal, however, to add the expenses associated with the Intermittent Resources Study to the RA, SBG, and Xcel-Prairie Island Settlement expenses and recover them as part of the State Energy Policy Rate Rider charged only to Minnesota customers. The Department argued that the Intermittent Resources Study would benefit non-Minnesota ratepayers as well as Minnesota ratepayers and, consequently, a proportional share of the costs for the Study should be allocated to non-Minnesota ratepayers and deducted from the amount Xcel should be allowed to recover from Minnesota ratepayers.¹ The Department reasoned that the Study might lead to additional intermittent resources for Xcel's system, which would benefit non-Minnesota ratepayers for the reasons that would be indicated in the Study. The Department further argued that if the Study recommended no additional intermittent resources be acquired, that would also benefit non-Minnesota ratepayers because the maximum amount of intermittent resources the system can handle will have been determined.

In reply comments, Xcel disagreed with the Department's analysis and recommendation on this point. The Company noted that the requirement for a wind study stemmed from the 2003 Minnesota Legislature's adoption of a Minnesota-specific renewable energy objective. The Company stated that the Legislature required the Company to conduct the study to provide information needed for further consideration of state renewable energy objective requirements. The Company stated that the study is not necessary for the Company to meet its regulatory requirements in any other state. Since the Study is Minnesota-specific, the Company reasoned, all the related costs should be recovered from Minnesota ratepayers.

The Commission finds the Company's view of the matter to be persuasive. The Department's invitation to consider hypothetical benefits to non-Minnesota ratepayers would force the Commission to speculate regarding the comparative benefits derived from the Study as between Minnesota and non-Minnesota ratepayers. At least in the case of this Minnesota-specific Study, the duration and scope of whose value beyond the borders of Minnesota appear uncertain at best, the Commission finds that the Company's approach (examining the source or cause of the expense and allocating expenses on that basis) is a practical, reasonable and appropriate approach. Accordingly, the Commission will allocate all the costs of the Study to the Minnesota jurisdiction.

B. Implementation of the State Energy Policy Rate Rider

On March 17, 2004, Xcel and the Department submitted a proposed process for implementing the State Energy Policy Rate Rider. The parties proposed that the Rate Rider begin July 1, 2004 and run until June 30, 2005. The rider rate would be based on the recent sales forecast and costs already incurred and expected to be incurred through June 30, 2005. Xcel would make an annual filing beginning on March 1, 2005 reconciling amounts collected with actual costs, with any over or under amounts being trued-up in the next year. See Attachment A, a copy of the parties' proposal.

The Commission finds that the parties' proposed implementation process is reasonable and will accept it.

¹ Specifically, the Department recommended that the Commission allocate only 73.683 percent to Minnesota, thereby reducing the Study's \$500,000 estimated expenses to \$368,415 and the total expenses to be recovered in 2003 from \$3,608,671 to \$3,477,086.

C. Notice to Customers

Xcel did not submit a proposed notice to customers regarding the State Energy Policy Rate Rider and its manner of implementation. The Commission is concerned that customers receive appropriate information about the new and ongoing components of their bills. The Commission therefore will direct the Company to include a proposed notice along with the tariff filings that are to be filed within 10 days of the Order. The Notice should

- identify the various adjustments that are combined in the Resource Adjustment line item, i.e., the Prairie Island settlement costs, the Reliability Administrator costs, the costs associated with the sustainable buildings guidelines for new state buildings, and the costs of the Intermittent Resources Study;
- clarify that a similar Notice will be issued each year as the Resource Adjustment changes, indicating what adjustments are included at that time in the Resource Adjustment line item;
- express the impact of the Resource Adjustment on a customer's total bill in terms of dollars and cents and the impact of each component of the Rate Adjustment on the total Rate Adjustment also in terms of dollars and cents.

Related issues will be addressed in a separate docket when Xcel files its billing proposal.

D. Rule Variances

Minn. Rules, Part 7820.3500(K) requires a separate statement on the bill for the Fuel Clause Adjustment (FCA) and Minn. Rules, Part 7825.2600 requires that any FCA must be expressed per kWh on the customer bills. However, on January 14, 2003, the Commission issued an Order in Docket No. E-002/M-02-474 granting Xcel a variance and approving Xcel's proposal to combine the electric Fuel Clause Adjustment with the Conservation Improvement Program (CIP) Adjustment and the Renewable Cost Recovery Adjustment on one line of the bill called the Resource Adjustment.² The Company has been collecting these adjustments in a combined line item denominated Resource Adjustment (RA).

Xcel's petition requested approval to add the electric State Energy Policy Rate Rider to the current Resource Adjustment (RA) line item. The Company believes that since the RA includes the Fuel Clause Adjustment the addition of another adjustment to the RA implicates the need for an additional variance from Minn. Rules, Part 7820.3500(K), and its related rule, Minn. Rules, Part 7825.2600.

As noted by the Department, it is not completely clear that Xcel needs an additional variance under these circumstances since it already has a variance authorizing it to combine the Fuel Clause Adjustment with the other component adjustments comprising the Resource Adjustment line item.

² *In the Matter of Northern States Power Company d/b/a Xcel Energy Petition for Approval of a Renewable Cost Recovery Tariff and Tracker Account*, Docket No. E-002/M-02-474, ORDER APPROVING PROPOSAL WITH MODIFICATIONS (January 14, 2003).

Assuming for this Order that a variance is necessary, however, the Commission finds that the criteria for a variance³ are met. First, enforcement of the rule would impose an excessive burden on Xcel because multiple billing items can reduce the readability of the bill and do more to confuse than to clarify the bill for the customer. Second, granting this additional variance would not adversely affect the public interest because the Fuel Clause Adjustment is already not shown separately, for the good reasons identified in the January 14, 2003 Order in Docket No. E-002/M-02-474. Third and finally, there are no statutory provisions or other legal requirements that preclude the combination of automatic adjustment clauses in this fashion. The FCA one-line requirement is established by rule only, not in statute, and therefore is amenable to variance pursuant to Minn. Rules, Part 7829.3200.

ORDER

1. The Commission approves Xcel's proposed method of recovery with no carrying charges via the electric SEP Rider adjustment of electric related RA/SBG expenses, Xcel-Prairie Island Settlement expenses, and costs associated with the independent study of intermittent resources.
2. The Commission approves Xcel's proposal to combine the approved SEP Rider adjustment with other existing adjustments on electric customers' bills, as filed in the Company's Petition.
3. Xcel shall submit an annual filing on March 1 of each year, as agreed to by the Company and the Department in the implementation agreement submitted March 17, detailing the following information:
 - a) the electric related RA and SBG expenses, Xcel-Prairie Island Settlement expenses, and costs associated with the independent study of intermittent resources;
 - b) revenues obtained from the approved electric SEP Rider adjustment; and
 - c) a proposed revised electric SEP Rider adjustment, together with a listing and description of all assumptions used to calculate the proposed revised electric adjustment.
4. Xcel shall treat electric SEP Rider costs and revenues in the following manner:
 - a) treat electric related RA and SBG expenses, and Xcel-Prairie Island Settlement expenses, as Minnesota jurisdictional expenses;
 - b) reduce the costs associated with the RA and SBG to \$433,231 for 2002 and 2003 to account for the refund;
 - c) place these costs in Federal Energy Regulatory Commission (FERC) Account 182.3, Other Regulatory Assets (the Tracker Account); and

³ See Minn. Rules, Part 7829.3200.

- d) reduce the amount in FERC Account 182.3 as expenditures are recovered from customers via the electric SEP Rider.
5. Xcel shall use separate subaccounts within FERC Account 182.3 to separate and accurately track electric related RA and SBG expenses, Xcel-Prairie Island Settlement expenses, and costs associated with the Study of intermittent resources, together with revenues from the approved electric SEP Rider adjustment.
6. The Commission approves electric related RA and SBG costs incurred for FY2002, FY2003, and FY 2004 of \$433,231, as recommended by the Department and shown in the following table:

Electric Related RA and SBG Expenses for FY 2002, FY 2003, and FY 2004⁴

Fiscal Year	Department
2002	\$187,123
2003	\$ 93,877
2004	\$152,231
Total	\$433,231

7. Within ten days of this Order, Xcel shall make a compliance filing establishing an electric State Energy Policy rider to recover all approved costs anticipated to be incurred by the Company through June 2005.
8. The Commission approves Xcel's proposed tariff, provided in the Amendment, except that Xcel shall list the approved electric SEP Rider adjustment in electric Tariff Sheet No. 14.
9. The Commission approves Xcel's proposal in its Amendment to recover gas related RA and SBG expenses with no carrying charges via the gas SEP Rider adjustment.
10. The Commission approves Xcel's proposal in its Amendment to combine the gas SEP Rider adjustment with the CIP Adjustment Factor into a single line item on customers' bills called the Resource Adjustment.
11. Xcel shall submit an annual filing on March 1 of each year, as proposed by the parties in their March 17, 2004 submission, detailing the following information:
- a) gas related RA and SBG expenses;

⁴ The table shows the RA and SBG expenses as presented in the Department's December 26, 2003 comments. Note that the expenses listed in this table for FY 2004 were incurred in calendar year (CY) 2003. The Department obtained the figures for each fiscal year from its billing records.

- b) revenues obtained from the approved gas SEP Rider adjustment; and
 - c) a proposed revised gas SEP Rider adjustment, together with a listing and description of all assumptions used to calculate the proposed revised gas adjustment.
12. Xcel shall treat gas SEP Rider costs and revenues in the following manner:
- a) treat gas related RA and SBG costs as Minnesota jurisdictional;
 - b) place these costs in FERC Account 182.3, Other Regulatory Assets (the Tracker Account); and
 - c) reduce the amount in FERC Account 182.3 as expenditures are recovered from customers via the gas SEP Rider.
13. Xcel shall use separate subaccounts within FERC Account 182.3 to separate and accurately track gas related RA and SBG expenses, together with revenue from the approved gas SEP Rider adjustment.
14. The Commission approves gas related RA and SBG costs incurred for FY 2002, FY 2003, and FY 2004 of \$118,965, as recommended by the Department and shown in the following table:

Gas Related RA and SBG Expenses for FY2002, FY200, and FY 2004⁵

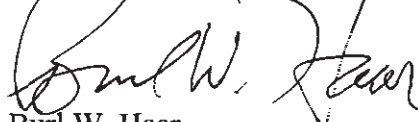
Fiscal Year	Department
2002	\$55,851
2003	\$25,475
2004	\$37,640
Total	\$118,965

15. Within ten days of this Order, Xcel shall make a compliance filing establishing a gas State Energy Policy rider to recover all approved costs anticipated to be incurred by the Company through June 2005.
16. The Commission approves Xcel's proposed tariff, as provided in the Attachment except require Xcel to incorporate the Department's modifications to the Company's proposed gas tariff, as noted above in Section III.B.3, including listing the approved gas SEP Rider adjustment in gas tariff Sheet No. 63.

⁵ The table shows the RA and SBG expenses as presented in the Department's December 26, 2003 comments. Note that the expenses listed in this table for FY 2004 were incurred in calendar year (CY) 2003. The Department obtained the figures for each fiscal year from its billing records.

17. Xcel shall submit, within 10 days of the date of the Order in the present docket, the relevant tariff sheets reflecting the Commission's determination of the Company's proposal.
18. **Allocation to Jurisdiction:** Xcel shall allocate all of the costs for the RA/SBG, Tribal Settlement, and Intermittent Resource Study to the Minnesota jurisdiction.
19. **Implementation:** The Commission hereby adopts the Process for Implementing the State Energy Policy Rider submitted by the parties on March 17, 2003. See Attachment A. The Company shall file tariff pages within 10 days of the Commission's Order in this matter and supply schedules of calculations supporting the rider charge computed based on the Commission's decisions in this proceeding. The compliance filing is for informational purposes and does not require further Commission action, unless issues are identified in the compliance filing which would require the Commission's attention. [Adoption of this process is reflected in Order Paragraphs 3,7,11, and 15.]
20. **Notice to Customers:** Xcel shall include a proposed notice with the tariff filings to be filed within 10 days of the Order in this matter. In particular the Notice shall
 - identify the various adjustments that are combined in the Resource Adjustment line item, i.e. the Prairie Island settlement costs, the Reliability Administrator costs, the costs associated with the sustainable buildings guidelines for new state buildings, and the costs of the Intermittent Resources Study;
 - clarify that a similar Notice will be issued each year as the Resource Adjustment changes, indicating what adjustments are included at that time in the Resource Adjustment line item;
 - express the impact of the Resource Adjustment on a customer's total bill in terms of dollars and cents and the impact of each component of the Rate Adjustment on the total Rate Adjustment also in terms of dollars and cents.
21. **Variances:** The Commission hereby grants Xcel a variance to Minn. Rules 7820.3500 (K) and to 7825.2600 as discussed above in Section D of this Order effective with the Rider, subject to review and renewal with each annual filing.
22. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).

PROCESS FOR IMPLEMENTING THE STATE ENERGY POLICY RIDER*Initial Rate Change*

The gas and electric SEP riders will be set to recover all approved costs anticipated to be incurred by the Company through June 2005. This includes payments incurred to date and anticipated payments through June 2005.

The rates will be developed using the terms approved by the Commission. Other assumptions include:

- The 2004 beginning balance has been adjusted to agree with the Department's analysis to include the amount refunded to the Company in May 2003.
- A July 1, 2004 implementation date.
- The most recent sales forecast information.

We will begin to use separate work orders within FERC account 182.3 to segregate and accurately track electric and gas expenses related to the costs recoverable through the SEP rider.

Future Process

The Company will make an annual filing each March 1 to provide compliance information regarding the operation of the rider. That compliance report will contain both actual and forecast information to allow for the determination of any true-up to be recovered from or returned to ratepayers in the subsequent year.

Each March 1, the Company will also make a miscellaneous filing to implement new riders to be effective July 1. The riders will be developed to recover the amounts anticipated to be incurred during the period July 1 – June 30, adjusted for any true-up stemming from the current year and using available sales forecast information.

In the event that the Commission has not approved the annual filing in time to allow for implementation by July 1, the Company will keep the existing riders in place. Once Commission approval is obtained, the Company will make a compliance filing establishing the riders consistent with the terms of the

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Commission's order and recovering the approved costs over the period ending
June 30 of the following year.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. E002/M-15-922

Dated this 16th day of November 2015

/s/Sharon Ferguson

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