



May 21, 2021

VIA E-FILING

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of a Petition of Minnesota Power
for the Approval of Deferred Accounting Treatment
for Approved Program Costs
E015/M-21-XXX

Dear Mr. Seuffert:

Please find attached Minnesota Power's (or, the "Company") petition for approval of deferred accounting relating to the Company's previously filed portfolio of EV programs (Docket No. E015/M-20-638).

If you have any questions regarding this filing, please contact me at (218) 428-9846 or jmccullough@mnpower.com.

Yours truly,



Jess McCullough
Public Policy Advisor

JM:th
Attach.

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

In the Matter of a Petition of Minnesota
Power for the Approval of Deferred Accounting
Treatment for Approved EV Program Costs

Docket No. E015/M-21-XXX

PETITION FOR APPROVAL

SUMMARY

On July 31, 2020, Minnesota Power filed a petition for approval of a proposed portfolio of residential EV programs, including a residential EV Charging Rewards Pilot Program, a Residential EV Charging Rebate Program, and a dedicated education, outreach and development budget (or, “Portfolio”).¹ On April 21, 2021, the Commission issued its written order approving Minnesota Power’s Portfolio of EV programs and noted that it “Minnesota Power is welcome to request deferred accounting for its EV program costs; if the Company does so, the Commission will consider the request on its merits at the appropriate time.” In response to the April 21, 2021 Commission Order, and consistent with the regulatory treatment for similar EV programs of other Minnesota utilities, Minnesota Power respectfully requests Commission approval for deferred accounting for its previously approved EV Portfolio program costs.

¹ Docket No. E015/M-20-638.

**STATE OF MINNESOTA
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MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of a Petition of Minnesota
Power for the Approval of Deferred Accounting
Treatment for Approved EV Program Costs

Docket No. E015/M-21-XXX

PETITION FOR APPROVAL

I. INTRODUCTION

Minnesota Power (or, “the Company”) respectfully submits this Petition to the Minnesota Public Utilities Commission (“Commission”) for approval of deferred accounting treatment for previously approved costs related to the Company’s Electric Vehicle (“EV”) programs. On July 31, 2020, Minnesota Power filed a petition for approval of a proposed portfolio of residential EV programs, including a residential EV Charging Rewards Pilot Program, a Residential EV Charging Rebate Program, and a dedicated education, outreach and development budget (or, “Portfolio”).² The Portfolio of EV programs proposed by the Company is intended to address barriers for residential customers in adoption EVs, particularly the upfront investment of installing a dedicated second service.

On April 21, 2021, the Commission approved Minnesota Power’s Portfolio of EV programs. However, while the Company requested current cost recovery for these programs, the Commission did not approve the proposed rider. Instead, the Commission noted in its Order that it “will treat Minnesota Power’s EV program cost recovery in a way that is consistent with the other utilities’ EV-related programs, which do not have dedicated rider funding. Minnesota Power is welcome to request deferred accounting for its EV program costs; if the Company does so, the Commission will consider the request on its merits at the appropriate time.”

In response to the April 21, 2021 Commission Order, and consistent with rate treatment for similar EV programs of other Minnesota utilities, Minnesota Power respectfully requests Commission approval for deferred accounting for its approved EV Portfolio program costs. If the Commission approves this request for deferred accounting the Company will not request to recover costs associated with this docket in its upcoming rate case.

² Docket No. E015/M-20-638.

II. PROCEDURAL MATTERS

Pursuant to Minn. Stat. § 216B.16, subd. 1 and Minn. Rule 7829.1300, Minnesota Power provides the following required filing information.

A. Summary of Filing (Minn. Rule 7829.1300, subp.1)

A one-paragraph summary accompanies this Petition.

B. Service on Other Parties (Minn. Rule 7829.1300, subp. 2)

Pursuant to Minn. Stat. § 216.17, subd. 3 and Minn. Rule 7829.1300, subp. 2, Minnesota Power eFiles the Petition on the Department of Commerce - Division of Energy Resources ("the Department") and the Minnesota Office of the Attorney General - Antitrust and Utilities Division. Copies of the filing will also be served to those on the service list for Docket No. E015/M-20-638, In the Matter of the Petition for Approval of Minnesota Power's Portfolio of Electric Vehicle Programs. A summary of the filing prepared in accordance with Minn. Rule 7829.1300, subp. 1 is being served on Minnesota Power's general service list.

C. Name, Address and Telephone Number of Utility (Minn. Rule 7829.1300, subp. 4(A))

Minnesota Power
30 West Superior Street
Duluth, MN 55802
(218) 722-2641

D. Name, Address and Telephone Number of Utility Attorney (Minn. Rule 7829.1300, subp. 4(B))

David R. Moeller
Senior Attorney and Director of Regulatory Compliance
Minnesota Power
30 West Superior Street
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(218) 723-3963
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E. Date of Filing and Date Proposed Rate Takes Effect (Minn. Rule 7829.1300, subp. 4(C))

This Petition is being filed on May 21, 2021. The effective date is the date of the Commission's Order or such other date as directed in the Commission's Order.

F. Statute Controlling Schedule for Processing the Filing (Minn. Rule 7829.1300, subp. 4(D))

There is no specific statutorily prescribed timeframe for processing this filing, which is made pursuant to Minn. Stat. § 216B.1614 and § Minn. R. 7825.0300, subp. 4. . Accordingly, this filing is controlled by the Commission's rules on Miscellaneous Filings, Minn. R. 7829.1300 and 7829.1400.

G. Information Required for Affiliated Interest Agreement Petitions (Minn. R. 7825.2200(B))

This Petition does not include any Affiliated Interest Agreements.

H. Utility Employee Responsible for Filing (Minn. Rule 7829.1300, subp. 4(E))

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I. Service List (Minn. Rule 7829.0700)

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III. JUSTIFICATION FOR DEFERRED ACCOUNTING REQUEST

A. Minnesota Power's Deferred Accounting Request for EV Programs

Minnesota Power is requesting deferred accounting to track all EV Portfolio program expenses approved in Docket No. E015/M-20-638 for cost recovery consideration in a future general rate case or applicable rider mechanism. The approved EV Portfolio costs are outlined in Table 1 below:

Table 1: Program Costs

Proposed Projects	2021	2022	2023	Total
EV Charging Rewards Pilot Program (1)	\$82,300	\$54,200	\$54,200	\$190,700
Second Service and Residential EV Charger Rebate Programs (2)	\$33,000	\$33,000	\$33,000	\$99,000
Education and Outreach (3)	\$60,000	\$125,000	\$125,000	\$310,000
Program Development & Delivery (4)	\$237,000	\$207,000	\$207,000	\$651,000
TOTAL	\$412,300	\$419,200	\$419,200	\$1,250,700

(1) Includes costs associated with program implementation and customer rewards.

(2) Includes the costs associated with incentives for level two smart chargers and second service installation.

(3) Costs associated with the promotion of EV programs and general EV awareness, trade ally engagement and online tools.

(4) Includes internal labor to deliver EV programs, consulting to continue EV program development and training costs.

B. Minnesota Power's Request is Consistent with Legal and Regulatory Precedents

The Portfolio directly supports both the energy policy of the State of Minnesota and Commission direction and as such, are in the public interest. The Company's request for deferred accounting

is consistent with the Commission orders in both Xcel Energy's³ and Otter Tail Power's EV pilot programs.⁴ A brief summary of Commission action on both programs follows.

On July 17, 2019, the Commission granted a request from Xcel Energy for deferred accounting for expenses related to their EV pilot program.⁵ Xcel had proposed in 2018 two new EV pilot programs, a Fleet EV Service Pilot and a Public Charging Pilot. In the Commission's order it reasoned that the deferred accounting request could be approved under the authority provided under Minn. Rules 7825.0300, subp. 4 for several reasons. First, the investments in the case supported important public policy objectives that both the legislature and Commission had affirmed. Second, the Commission reasoned that "these two pilots will be the first window into evaluating the utility's growing role in transportation electrification." The Order also notes that deferred accounting was confined to the two proposed pilot programs which were limited in scope and duration, thus containing the costs to be recovered.

The Minnesota Court of Appeals recently affirmed the Commission's order for Xcel in an unpublished decision. The applicable section is reprinted in full below and provides a precedent that should be applied to Minnesota Power's request:⁶

Deferred accounting, as the MPUC explained in its order, is "a regulatory tool used primarily to hold utilities harmless when they incur out-of-test-year expenses that, because they are unforeseen, unusual, and large enough to have a significant impact on the utility's financial condition, should be eligible for possible rate recovery in the next rate case." Deferred accounting "has also been permitted when utilities have incurred sizeable expenses to meet important public policy mandates." Minn. R. 7825.0300, subp. 4 (2019), instructs that the MPUC may grant a public utility's petition for "approval of an exception to a provision of the system of accounts" if "good cause" is shown.

Xcel petitioned for an exception to the standard accounting treatment of operations and maintenance expenses and depreciation expenses related to its capital investments in the pilots. It represented that it would request recovery of the costs

³ Docket No. E002/M-18-643.

⁴ Docket No. E017/M-20-181.

⁵ Docket No. E002/M-18-643.

⁶ Matter of Xcel Energy's Petition for Approval of Elec. Vehicle Pilot Programs, No. A19-1785, 2020 WL 5626040, at *13–14 (Minn. Ct. App. Sept. 21, 2020)

in its next general rate case, and in the meantime would track the costs in an EV tracker account established in a separate docket.

After reviewing stakeholder input, the MPUC found that good cause existed to grant Xcel's deferred accounting request. It reasoned that the "investments for which deferred accounting is sought in this case are clearly intended to serve important public policy objectives" because both the legislature and the MPUC had "indicated that transportation electrification is an important public policy goal." The legislature expressed this goal with the enactment of Minn. Stat. § 216B.1614, and the MPUC further prodded utilities to bring forth proposals that would encourage EV use following its general inquiry into EV charging and infrastructure in Minnesota.

The MPUC also reasoned that the pilots at issue are "targeted to produce maximum public and ratepayer benefit, while having a limited rate impact." It went on to note that allowing some costs to qualify for deferred accounting did not guarantee the recovery of those costs in the next general rate case; rather, the MPUC will later consider whether they were reasonable and prudent and thus recoverable. It also elected to limit the timeframe during which the costs may qualify for deferred accounting up to January 1, 2020.

XLI argues that the MPUC granted the deferred-accounting request arbitrarily and capriciously because its decision does not comport with a "four-part test" previously applied by the MPUC and because no public policy "mandate" supports the expenses incurred.

As to the "four-part test" argument, XLI references the MPUC's decision in *In re Petition by the Minn. Energy Res. Corp. for Approval of Farm Tap Customer-Owned Fuel Line Replacement Plan, Tariff Amendments, & Deferred Accounting*, MPUC Docket No. G-011/M-17-409 (Nov. 30, 2017) (*MERC Petition*). There, the MPUC granted a deferred-accounting request both because it found that the proposal at issue served "an important policy goal," and because it found that the costs sought to be deferred were: "(1) Related to utility operations for which ratepayers have incurred costs or received benefits; (2) Significant in amount; (3) Unforeseen, unusual, or extraordinary; and (4) Subject to review for reasonableness and prudence." *MERC Petition*, MPUC Docket No. G-011/M-17-

409, at 9-10. The MPUC did not, however, suggest that these four criteria must always be met before a deferred-accounting request may be granted. Moreover, in the present case, the MPUC explicitly stated in its order that it was not granting Xcel's request for deferred accounting based on a demonstration that the "costs are unforeseen, unusual, and significant in size," but instead based on the policy-goal justification and the specific facts of the case. We accordingly evaluate whether the justification actually relied upon by the MPUC evidences arbitrary or capricious decision-making.

XLI acknowledges that the MPUC has historically found "good cause" to grant deferred-accounting requests when utilities incur sizeable expenses to meet important public-policy mandates. XLI argues, though, that (1) Xcel's expenses are not "sizeable" and (2) no public-policy *mandate*, but merely a public-policy *objective*, supports the pilot programs.

XLI argues that the expenses will not be sizeable because the cost of the fleet and public-charging pilots will account for only one-quarter of one percent of Xcel's total revenue. The MPUC responds that no precedent suggests that comparison to overall revenue is the proper measure of "sizeable," as "[n]o expense, not even the construction of a large generation facility, could possibly meet this standard." Because XLI points to no precedent supporting its view of "sizeable," we defer to the agency's discretion that the expenses at issue qualify as such. See *St. Otto's Home v. Minn. Dep't of Human Servs.*, 437 N.W.2d 35, 40 (Minn. 1989) ("When the agency's construction of its own regulation is at issue, ... considerable deference is given to the agency interpretation, especially when the relevant language is unclear or susceptible to different interpretations.").

As to a public-policy mandate versus objective, XLI similarly has not shown that the agency's decision was arbitrary or capricious. In fact, in one of the decisions cited by XLI, the MPUC referred to the proposal at issue as serving "an important policy *goal*" rather than "mandate." *MERC Petition*, Docket No. G-011/M-17-409 at 9 (emphasis added). And, most importantly, the overarching question for granting deferred accounting is whether there is "good cause" to do so; the distinction XLI relies on is of little consequence in light of this flexible standard. We accordingly hold that XLI has not shown that the MPUC acted arbitrarily or capriciously in granting, with modifications, Xcel's request for deferred accounting.

One year after the MPUC's decision on Xcel's EV programs, on October 27, 2020, the Commission issued an Order approving a proposal from Otter Tail of an EV charging pilot program for DCFC service.⁷ As a part of this approval, the Commission approved Otter Tail's proposal to utilize deferred accounting to track and recover their investments and expenses associated with the EV pilot program. Consistent with the Commission's position on Xcel Energy's deferred accounting proposal, the Commission again cited Minn. Rules 7825.0300, subp. 4, which permits it to approve an exception to a provision of the system of accounts if good cause is shown. In its October 27, 2020 Order, the Commission states that good cause was shown to warrant deferred accounting for a number of reasons: the pilot advances important legislative policy goals around transportation electrification, the proposal is modest in size and budget and is aimed at increasing electrification in rural areas, and that the educational aspects of the program also advance legislative goals.

Given these recent Commission and judicial precedents, Minnesota Power requests consistent regulatory treatment for similar investments that advance transportation electrification. Minnesota Power believes deferred accounting is consistent with overall Commission public policy directives and actions to facilitate EV implementation requirements.

⁷ Docket No. E017/M-20-181.

IV. CONCLUSION

Minnesota Power is committed to meeting not only the State of Minnesota and the Minnesota Public Utilities Commission's goals for greenhouse gas reduction and electrification of transportation, but also the needs of its customers. Customer-focused outreach, market research and industry best practices informed the development of the Company's Portfolio of EV programs that were designed to reduce the primary barriers to residential EV adoption and ultimately approved by the Commission. Through this Petition, and consistent with the Commission's direction in its April 21, 2021 Order⁸, Minnesota Power requests recovery of the approved program costs through deferred accounting and eventual recovery in a future rate case or rider mechanism.

Dated: May 21, 2021

Respectfully submitted,



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⁸ Docket No. E015/M-20-638.

STATE OF MINNESOTA)
) ss
COUNTY OF ST. LOUIS)

AFFIDAVIT OF SERVICE VIA
ELECTRONIC FILING

Tiana Heger of the City of Duluth, County of St. Louis, State of Minnesota, says that on the 21st day of May, 2021, she served Minnesota Power's Petition for the Approval of Deferred Accounting Treatment for Approved Program Costs in **Docket No. E015/M-21-XXX** on the Minnesota Public Utilities Commission and the Energy Resources Division of the Minnesota Department of Commerce via electronic filing. The persons on E-Docket's Official Service List for this Docket were served as requested.



Tiana Heger