

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Request by Northern States Power for Approval of an Affiliated Interest Agreement between Xcel Energy and e prime inc.

ISSUE DATE: July 3, 2001

DOCKET NO. G-002/AI-00-1278

ORDER APPROVING AFFILIATED INTEREST AGREEMENT AND SETTING REPORTING REQUIREMENTS

PROCEDURAL HISTORY

On September 22, 2000, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed a petition for approval under Minn. Stat. § 216B.48 of a pre-existing Base Contract for Short Term Sale and Purchase of Natural Gas between Xcel and e prime inc. (e prime), a natural gas marketer. Xcel submitted the agreement for approval after e prime became an affiliate of the company as a result of the NSP/New Century Energies, Inc. merger on August 18, 2000. Xcel requested approval effective September 1, 2000. Xcel also requested authorization to enter into capacity release transactions with e prime effective October 1, 2000.

On January 25, 2001, the Department of Commerce (DOC) filed comments recommending approval with modifications.

On February 5, 2001, Xcel filed reply comments proposing alternatives to two of the recommendations of the DOC.

On June 7, 2001, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Legal Standard

Transactions between public utilities and their affiliates are governed by Minn. Stat § 216B.48 and Minn. Rules, parts 7825.1900-7825.2300

Minnesota Statutes § 216B.48, subd. 3 states in part:

...The commission shall approve the contract or arrangement made or entered into ...only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest.

A petition for approval must normally include documentation of the cost of providing the goods and services which are the subject of the contract. It must also include a copy of the proposed contract, a list and narrative description of all outstanding contracts between the utility and the affiliate, an explanation of why the contract is in the public interest, a description of any competitive bidding process used in awarding the contract, and an explanation of any decision not to use competitive bidding. Minn. Rules, part 7825.2200 B.

Utilities are required to maintain detailed records of their transactions with affiliates, including ledgers and documentation showing on a monthly basis all payments made under each contract and the cost to the affiliate of providing the good or service for which each payment was made. Minn. Rules, part 7825.2300.

II. Xcel's Request

Xcel requested Commission approval of an affiliated interest agreement with e prime effective September 1, 2000. Xcel also requested authorization to enter into capacity release transactions with e prime effective October 1, 2000.

The agreement between Xcel and e prime is a standard form agreement developed by the Gas Industry Standards Board (GISB). Prior to the merger of NSP/New Century Energies Inc. on August 18, 2000, NSP Gas executed such agreements with numerous suppliers to provide for purchases from or sales to the supplier on a short-term basis. The agreement between Xcel and e prime is comparable to Xcel's natural gas supply agreements with many non-affiliates.

Xcel's petition included a request for authorization to enter into capacity release transactions with e prime pursuant to the standard form agreements contained in the applicable tariffs of interstate natural gas pipelines on file with the Federal Regulatory Commission (FERC) and subject to applicable FERC rules, and the Transaction Principles for capacity release transactions approved in Commission Docket No. G-002/AI-98-71.

Xcel stated that it would comply with the Transaction Principles and reporting requirements

approved by the Commission in the EMI docket¹ as well as report transactions with e prime in the Annual Automatic Adjustment of Charges report (AAA Report).

Xcel stated that the Agreement and Transaction Principles would allow Xcel to purchase spot market natural gas from e prime or sell natural gas to e prime at market based prices in a manner similar to such transactions with non-affiliates. Capacity release transactions would allow Xcel to resell contracted firm pipeline transportation capacity to e prime in a manner also similar to such transactions with non-affiliates.

III. DOC's Comments

The DOC, in its written comments, indicated that the proposed Affiliated Interest Agreement and Transaction Principles² were reasonable and fulfilled the filing requirements required under Minnesota rules. The DOC also recommended the following:

- **annually provide in its future AAA reports the date, volume, and price/cost (including any margins) and transaction point of receipt or delivery information, as well as evidence that the applicable quotation or bidding process was used, for each transaction that occurred pursuant to the Agreement during the preceding June through May true-up period;**
- **maintain information from a market publication, such as Gas Daily, as a further check on the reasonableness of the prices involved in the transactions between Xcel and e prime;**
- **for each bid solicitation, maintain information concerning the bid solicitation criteria put forth to bidders, the number of suppliers solicited for bids, and the terms of the proposals received including the name of each bidder;**
- **maintain information supporting each decision of Xcel to not solicit competitive bids in an exchange or swap transaction with e prime when such is the case.**

¹ In the Matter of a Request by Northern States Power Company for Approval of an Umbrella Agreement with Energy Masters International, Inc. for the short Term Sale and Purchase of Natural Gas, Docket No. G-002/AI-98-71, ORDER APPROVING CONTRACT AS MODIFIED, SETTLING REPORTING REQUIREMENTS, AND GRANTING VARIANCE (April 20, 1998).

² The DOC attached to its comments a modified copy of the Transaction Principles agreed to in the EMI Docket. In the modified copy the DOC substituted "Xcel Energy" and "e prime" for NSP-Gas and EMI respectively. The DOC also noted that in principle number 5 under both "Gas Supply Sales to EMI" and "Gas Supply Exchange transactions," the references to "18 CFR parts 161 and 275" should be changed to "18 CFR part 161," since part 275 has been repealed.

Further the DOC recommended that, for any costs paid or remitted by the Company that are caused by e prime, or are e prime's responsibility under the Agreement, Xcel be required to:

- separately identify in future AAA reports any payments Xcel has made to a third party for costs that are caused by e prime or are e prime's responsibility;**
- exclude any such costs from gas and/or cost-of-service utility accounts in all reports provided to Minnesota regulatory bodies (i.e., Annual Jurisdictional reports, Fuel Reports, Rate case Schedules and Budgets, etc.).**

The DOC also indicated, in its written comments, that annual reporting in the Company's future AAA Reports was sufficient at this time based on Xcel's estimate that transactions with e prime would account for no more than 1 percent of the total annual system supply. The DOC indicated, however, that if transactions between the Company and e prime were to become more significant the DOC may recommend monthly reporting, as opposed to annual. For this reason the DOC recommended that the Company notify the Commission and the DOC within 30 days of the date that transactions between Xcel and e prime exceed \$2,000,000 within any 12-month period.

IV. Xcel's Reply Comments

Xcel indicated that it was concerned with the DOC's requiring that Xcel submit in the AAA Report extensive detail on individual transactions with e prime. Xcel argued that this requirement would add to Xcel's reporting burden, when the present AAA Report and monthly PGA reporting was more efficient and appropriate.

Xcel further stated that it was concerned about the potential for third parties to obtain disclosure of pricing or other transaction information Xcel or e prime considered trade secret data. For Xcel to include all these records in the AAA report as trade secret data would take considerable time and expense. Rather, Xcel suggested that the company would make the records available for audit when requested by the DOC or the Commission.

The Company also objected to providing additional monthly reporting when the aggregate value of transactions with e prime exceed \$2,000,000 in any rolling 12-month period. Xcel stated that because of the increase in market prices, Xcel has already exceeded the \$2 million annual level over the last twelve months and would, under the DOC's recommendation, have to immediately begin additional monthly reporting.

V. Parties' Positions at the Hearing

At the hearing before the Commission, Xcel indicated that it would agree to the same reporting requirements as the Commission approved for Minnegasco for its gas purchases from affiliates. Xcel stated that the DOC recommended reporting requirement for Reliant Energy Minnegasco (REM) regarding purchases from its affiliate Reliant Energy Services was for REM to separately identify its purchases from its affiliate in the monthly PGA Report and in the AAA Report.³ Xcel stated that it would be willing to do the same reporting by including pre-month purchases (before the fact) in the PGA Report and actual purchases (after the fact) in the AAA Report.

At the hearing, Xcel and the DOC agreed that, beginning July 1, 2001, Xcel would report in the PGA on a one month lagged after the fact basis, the purchases from e prime in both volume and dollar amounts and would report the cumulative purchases going forward through the PGA year.

VI. Commission Action

The affiliated interest agreement is clearly in the public interest and merits approval. In order to get the best prices in the competitive wholesale market, utilities need as many and as wide a range of potential suppliers as possible. Similarly, utilities need as many customers for excess supply and excess capacity as possible. This agreement will allow Xcel to conduct potential gas supply and capacity transactions with e prime, thereby adding one more option for the Company to manage its system-supply portfolio and reduce its supply costs to the benefit of ratepayers.

The Commission recognizes the need to prevent preferential treatment of affiliates to ensure ratepayer protection and an efficient wholesale market and agrees that safeguards in the agreement and in the Transaction Principles will accomplish this goal, with monitoring by the DOC and the Commission. Further, the Commission agrees that several additional requirements put forward by the DOC are reasonable to enable regulators to adequately review the transactions.

Further, the Commission accepts as reasonable the agreement reached at the hearing between the DOC and Xcel whereby Xcel will separately identify purchases from e prime under the proposed affiliated interest agreement in the monthly PGA Report and in the AAA Report. Xcel will report on a one month lagged after the fact basis the purchases from e prime in both volume and dollar amounts and will report the cumulative total throughout the year. This reporting will aid regulators, does not place an excessive burden on the

³ See Docket G-008/AI-00-1570, In the Matter of a Request by Reliant Energy Minnegasco (REM), a division of Reliant Energy Resources Corp., for Approval of Two Affiliated Interest Agreements between REM and Reliant Energy Services, Inc. (RES), a Reliant Energy Company, Summary Order February 12, 2001.

Company and is consistent with positions in other Commission dockets.

For the above reasons the Commission will approve the affiliated interest agreement with additional reporting and/or record keeping requirements as discussed above.

The Commission also recognizes that transactions between Xcel and e prime currently account for only approximately 1% of the total annual system supply. The Commission believes the reporting requirements as set forth above are adequate for protection of ratepayers. For this reason the Commission will not impose any threshold that could require any more frequent reporting.

ORDER

1. The Affiliated Interest Agreement between Xcel and e prime is approved.
2. Xcel shall:
 - comply with the Transaction Principles as modified by the DOC and included as attachment 1 of the January 25, 2001 comments by the DOC.
 - separately identify purchases from e prime under the proposed affiliated interest agreement in the monthly PGA Report and in the AAA Report including pre- month purchases (before the fact) in the PGA Report and actual purchases (after the fact) in the AAA Report;
 - beginning with the 2001-2002 PGA true-up year, Xcel shall report on a one month lagged after the fact basis the purchases by Xcel from e prime for the month in both volume and dollar amount and report the cumulative total throughout the year;
 - separately identify in future AAA reports any payments Xcel has made to a third party for costs that are caused by e prime or are e prime's responsibility; and
 - exclude any such costs from gas and/or cost-of-service utility accounts in all reports provided to Minnesota regulatory bodies (i.e., Annual Jurisdictional reports, Fuel Reports, Rate case Schedules and Budgets, etc.).
 - maintain information from a market publication, such as Gas Daily, as a further check on the reasonableness of the prices involved in the transactions between Xcel and e prime;

- **for each bid solicitation, maintain information concerning the bid solicitation criteria put forth to bidders, the number of suppliers solicited for bids, and the terms of the proposals received including the name of each bidder;**
- **maintain information supporting each decision of Xcel to not solicit competitive bids in an exchange or swap transaction with e prime when such is the case.**

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

**Burl W. Haar
Executive Secretary**

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