BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	**Chair**
Edward A. Garvey	**Commissioner**
Marshall Johnson	**Commissioner**
LeRoy Koppendrayer	**Commissioner**
Phyllis A. Reha	**Commissioner**

In the Matter of Northern States Power Company d/b/a Xcel Energy for Approval of a Short Term Coal Supply Agreement Between Xcel Energy and NRG Energy Inc.

ISSUE DATE: July 20, 2001

DOCKET NO. E-002/AI-01-242

ORDER APPROVING AGREEMENT, GRANTING VARIANCE AND DIRECTING REPORTING

PROCEDURAL HISTORY

On February 16, 2001, Northern States Power Company d/b/a Xcel Energy (Xcel) filed a petition requesting Commission approval of a short-term Coal Supply Letter Agreement (Agreement) with its affiliate NRG Energy, Inc.(NRG). The Agreement provides that Xcel will purchase and deliver coal to NRG's Steam Heating Operation at the High Bridge Power Plant in St. Paul, Minnesota through December 31, 2001. Xcel requested that the Agreement be effective January 17, 2001.

On April 18, 2001, the Department of Commerce (DOC) filed comments recommending approval with modifications and reporting requirements.

On May 7, 2001, Xcel filed reply comments.

This matter came before the Commission on June 21, 2001.

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 approval of a short-term Coal Supply Letter Agreement which provides that Xcel will purchase and deliver coal to NRG's steam heating operation at the High Bridge Plant in St. Paul through December 31, 2001.

NRG and Xcel are subsidiaries of Xcel Energy Inc., a registered holding company. NRG is engaged in the ownership or operation of various non-utility projects in the United States and Internationally. One of the projects operated by NRG is a high pressure steam line from the company's High Bridge generation plant in downtown St. Paul to the Rock-Tenn Corporation (Rock-Tenn) corrugated products plant in western St. Paul. The steam delivered through the line is produced by coal combustion at the High Bridge plant and delivered to Rock-Tenn.

Prior to the execution of the Agreement between Xcel and NRG, NRG purchased its own coal from third party suppliers and arranged its own rail transportation to the High Bridge plant.

Xcel indicated that NRG would be able to purchase delivered coal at a lower cost than from third party subscribers. Xcel would benefit through more efficient use of its coal supply contracts and rail transportation capacity. Retail customers would benefit by receiving approximately $50,000 in delivered cost savings over the term of the agreement. These savings would be reflected in the Fuel Clause Adjustment.

III. DOC's Comments

The DOC in its initial comments recommended that the Commission approve the Agreement with the following modifications and reporting requirements:

- **require the Company to spread 50 percent of the additional profits generated by the Agreement through the fuel clause over the life of the Agreement;**

- **require the Company to provide, upon request in its next rate case, documentation establishing the costs and benefits accrued to Xcel and its ratepayers through this Agreement.**

IV. Xcel's Reply Comments

Xcel stated that the accounting and fuel clause treatment intended to be used by the Company met the DOC's concerns by flowing through the fuel clause approximately 78% of the gross margin of the Agreement.

Xcel also agreed that it would provide the documentation, upon request in the next electric rate case, of the costs and benefits for Xcel and the ratepayers of the Agreement if the Agreement affects the test year cost of service. Xcel also indicated that the Company's Fuel Clause Adjustment treatment of the Agreement's costs and revenues would be submitted in its Annual Automatic Adjustment of Charges report.

Xcel indicated that the fuel clause treatment that the Company was proposing would credit to FERC Account 151 a larger amount than the identified incremental fuel and fuel related costs to serve NRG's coal supply requirements. To the extent that this treatment did not conform to the Commission's fuel clause rules, the Company requested a variance to permit this.

Xcel indicated that after clarifying its position with the DOC, the DOC was in agreement with the above clarifications.

V. Commission Action

A. Regarding the Agreement

With no party opposing the Agreement and the DOC recommending approval and accepting Xcel's clarification, the Commission finds the Agreement reasonable and in the public interest and will approve it. Xcel will benefit by more efficient use of its coal supply contracts and the retail electric customers of Xcel will benefit by receiving 78% of the gross margin of the Agreement during the term of the Agreement.

B. Regarding a Variance

Minn. Rules, Part 7825.2400, subp. 8 defines the costs of fossil fuel that may be flowed through the fuel clause essentially as the incremental fuel and fuel related costs incurred by utilities. The Company needs a variance to Minn. Rules, Part 7825.2400, subp. 8 to authorize its proposal because the item the Company has proposed to flow through to ratepayers in the fuel clause amount (a percentage of the gross margin of Xcel's Agreement with NRG) does not meet the rule's definition of a "cost of fossil fuel."
Having considered the Company's request in light of the requirements for a variance

established in Minn. Rules, Part 7829.3200, the Commission will grant the variance, in effect expanding Minn. Rules, Part 7825.2400, subp. 8 to include the gross margin of Xcel's Agreement with NRG, thereby allowing that amount (as proposed by Xcel) to pass to ratepayers through the fuel clause. The Commission's analysis of the Company's request in terms of the requirements for a variance follows.

Minnesota Rules part 7829.3200 requires that the following conditions be met for granting a variance:

- **enforcement of the rules would impose an excessive burden upon the applicant or others affected by the rule;**
- **granting the variance would not adversely affect the public interest;**
- **the proposed variance will not conflict with standards imposed by law.**

In the current situation, in order for the approximately 78% of gross margin of the Agreement to flow through the fuel clause to the ratepayers, the variance is necessary. If the variance was not granted, there would be no non-burdensome way for the retail electric customers to get the additional cost savings during the term of the Agreement.

The public interest would not be adversely affected by the granting of this limited variance.

The variance does not conflict with other laws.

C. Future Reporting

In order for the Commission (and the DOC) to review Xcel's treatment of the costs and revenues associated with this Agreement, the Commission will direct Xcel to include information on the fuel clause treatment of costs and revenues associated with this Agreement in its Annual Automatic Adjustment of Charges report.

ORDER

1. **The short-term coal agreement between Xcel and NRG is approved.**

2. **The Commission hereby grants Xcel a variance to Minnesota Rules Part 7825.2400 subp. 8, to allow a percentage of the gross margin of Xcel's agreement with NRG to pass to ratepayers through the fuel clause.**

3. **Xcel shall include information on the fuel clause treatment of the costs and revenues associated with this Agreement in its Annual Automatic Adjustment of Charges report.**

4. **This Order shall become effective immediately.**

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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