

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer  
Marshall Johnson  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of Xcel Energy's Petition for  
Approval of Cost Recovery for Time-of-Use  
Rate Design Pilot

ISSUE DATE: July 22, 2003

DOCKET NO. E-002/M-02-1944

ORDER DETERMINING APPROPRIATE  
PROCEDURAL TREATMENT

**PROCEDURAL HISTORY**

On July 20, 2001 the Commission opened a comprehensive investigation into the impact of Xcel Energy's rate design on its demand-side management and conservation goals and on the potential for using rate design to further those goals. On April 24, 2002, the Commission issued an Order in that case concurring in the Company's proposal to develop a residential time-of-use rate pilot project.<sup>1</sup> In subsequent Orders the Commission adjusted implementation dates to accommodate project development needs.

On November 1, 2002, Xcel filed its residential time-of-use rate pilot project. On November 5, 2002, the Company filed a request to place the costs of developing and implementing the project, which it estimated at \$9.2 million, in its Conservation Improvement Program (CIP) tracker account. After prudence review, costs in that account are automatically factored into ratepayers' bills and recovered under the Company's CIP automatic adjustment rider.

The Minnesota Department of Commerce (the Department), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), and the Energy CENTS Coalition filed comments on the cost recovery proposal. The RUD-OAG and the Energy CENTS Coalition recommended rejecting the proposal. The Department recommended requiring the Company to file a petition for deferred accounting treatment of project costs instead of permitting their inclusion in the CIP tracker account.

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<sup>1</sup> *In the Matter of an Investigation into Using Rate Design to Achieve the Demand-Side Management Goals of Xcel Energy*, E-002/CI-01-1024, Order Modifying Procedural Schedule and Making Other Changes (April 24, 2002).

The matter came before the Commission on May 22, 2003.

## FINDINGS AND CONCLUSIONS

### **I. Factual Background**

#### **A. The CIP Program**

The Conservation Improvement Program (the CIP program) is a statutory program designed to promote conservation and energy efficiency. The CIP statute (Minn. Stat. § 216B.241) requires Minnesota's gas and electric utilities to invest specified percentages of their gross operating revenues in conservation activities under the supervision of the Department of Commerce.

Every two years, affected utilities must file plans for delivering conservation services to their customers.<sup>2</sup> Typically, these two-year CIP plans contain several discrete projects, some operated by the utility and some operated by local government units or community-based organizations. The Commissioner of Commerce approves, rejects, or modifies each utility's CIP plan; utilities and other stakeholders may appeal the Commissioner's decisions to this Commission.<sup>3</sup> Once CIP projects are approved, their costs are recoverable through the automatic rate adjustment authorized in the CIP statute.<sup>4</sup>

The CIP program is part of the Public Utilities Act's overarching commitment to conservation and energy efficiency. At other points, for example, the Act authorizes the Commission to establish financial incentives to encourage conservation;<sup>5</sup> requires utilities to file plans for meeting 50% and 75% of their future capacity needs through conservation and renewable resources;<sup>6</sup> and prohibits certificates of need for power plants, transmission lines, and other large energy facilities unless the applicant demonstrates that the need for the facility cannot be met more cost-effectively through conservation and load management measures.<sup>7</sup>

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<sup>2</sup> Minn. Stat. § 216B.241, subd. 2, Minn. Rules, part 7690.0500.

<sup>3</sup> Minn. Stat. § 216B.241, subd. 2 (g).

<sup>4</sup> Minn. Stat. § 216B.241, subd. 2b.

<sup>5</sup> Minn. Stat. § 216B.16, subd. 6c.

<sup>6</sup> Minn. Stat. § 216B.2422, subd. 2.

<sup>7</sup> Minn. Stat. §§ 216B.243, subd. 3; 216 B.2425, subd. 3 (2).

## **B. The Company's CIP Application**

The Company did attempt to include the residential time-of-use rates pilot project in its 2001-2002 CIP plan. The Commissioner of Commerce rejected the project on grounds that it failed the cost-benefit analysis required by CIP statute and rule and on grounds that its inclusion would likely divert funds from other projects with more certain and direct conservation benefits.

The Company did not appeal the Commissioner's rejection of the project.

## **II. Positions of the Parties**

### **A. The Company**

Xcel argued that it had a right to dollar-for-dollar recovery of all prudently incurred costs of the pilot project because the project was part of a Commission-mandated initiative. The Company also argued that using the existing CIP automatic rate adjustment would minimize ratepayer confusion and maximize intergenerational equity by matching as closely as possible those ratepayers on whose behalf project costs were incurred and those ratepayers whose bills would include project costs.

The Company claimed that, although the statute places most of the responsibility for the CIP program on the Commissioner of Commerce, it does not prohibit the Commission from designating specific projects as CIP projects and permitting recovery of their costs through the CIP automatic rate adjustment. Finally, the Company explained that it chose not to appeal the Commerce Commissioner's rejection of the pilot project both to avoid inter-agency jurisdictional conflict and because it was less cumbersome to simply ask the Commission to place the pilot project costs in the CIP tracker account.

### **B. The Department of Commerce**

The Department urged the Commission to make no finding on whether the Commission had the authority to designate the pilot project a CIP project. The Department argued that even if the Commission had that authority – which it thought questionable – it would not serve the public interest to exercise it, that the confusion and inefficiency that would result from both agencies certifying CIP projects would outweigh any conceivable advantage.

Further, the Department argued that deferred accounting, the traditional vehicle for tracking recoverable costs between rate cases, would preserve any entitlement to recovery the Company might have without incurring the costs of the Commission duplicating the Department's functions.

The Department therefore urged the Commission to require Xcel to file a petition for deferred accounting and to demonstrate on the record that all claimed expenses were prudently incurred.

### **C. RUD-OAG**

The RUD-OAG rejected the claim that the Commission had independent authority to designate the pilot project a CIP project and argued that the Company's sole and now-lapsed remedy had been to appeal the Commerce Commissioner's decision to the Commission. The RUD-OAG argued in the alternative that, even if the Commission had the authority to designate the pilot project a CIP project, it would have to refuse to do so on grounds that it could not be fairly characterized as a conservation project.

### **D. Energy CENTS**

The Energy CENTS Coalition opposed Xcel's cost recovery proposal on grounds that the project was not properly a CIP project, on grounds that the claimed costs were inadequately documented and appeared to be excessive, and on grounds that recovery by any mechanism other than the unavailable CIP automatic rate adjustment would violate the rate freeze provisions of the Company's merger Order.<sup>8</sup>

## **III. Commission Action**

The Commission concurs with the Department that a deferred accounting petition is the best procedural vehicle for examining the Company's request to recover the costs of the pilot project. Deferred accounting has long been the main regulatory tool for permitting rate recovery of costs incurred between rate cases that present a compelling justification for rate recovery. Costs approved for deferred accounting treatment are tracked and recovered through rates set in the next rate case.

Automatic rate adjustments, on the other hand, are specialized regulatory tools used to pass through specific categories of costs which the Legislature has found to merit immediate recovery or dollar-for-dollar recovery. Statutes authorizing automatic rate adjustments are construed narrowly to achieve their stated purpose.

A deferred accounting petition would make it unnecessary to resolve the complex and far-reaching legal and policy issues surrounding the claim that the Commission should designate the pilot project a CIP project. In the interests of judicial economy, the Commission will therefore require that any claim for recovery of the costs of the pilot project be submitted in a deferred accounting petition.

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<sup>8</sup> In the Matter of the Application of Northern States Power Company for Approval to Merge with New Century Energies, Inc., Docket No. E,G-002/PA-99-1031, ORDER APPROVING MERGER, AS CONDITIONED (June 12, 2000).

Finally, the Commission notes that to qualify for deferred accounting treatment, costs must be both prudently incurred and outside the parameters of the normal operating costs that were, or should have been, included in the test year of the last rate case. To make this showing, the Company should take the actions listed below in conjunction with any petition to defer rate recovery of the costs of the pilot project:

- submit testimony explaining why it is appropriate to defer rather than expense the costs;
- submit testimony demonstrating that the costs are just, reasonable, and prudent;
- demonstrate that the costs are not already included in rates;
- demonstrate that the costs are above normal operating expenses;
- itemize the regulatory costs allowed in rates during the last rate case proceeding;
- propose an appropriate amortization schedule;
- demonstrate that the deferred accounting treatment would not be retroactive ratemaking;
- demonstrate that the internal structure necessary to review and evaluate rates to better serve customers has been appropriately maintained (including staff, information technology equipment and support, and efficient negotiation with suppliers);
- provide information detailing the costs associated with the request, including
  - copies of agreements, contracts, and understandings,
  - the product or service received for each expense,
  - when the costs were incurred,
  - dates, time lines, expenses, and selection process for any contracts resulting in costs included in the request;
- provide details on any rights to the data and information resulting from the proposed study;
- demonstrate that the expenses were not attributable to the meter upgrade performed independent of the pilot project.

The Commission will so order.

### **ORDER**

1. The Commission finds that a deferred accounting petition is the most appropriate procedural vehicle for any request by Xcel for inter-rate-case recovery of the costs of developing the residential time-of-use pilot project.
2. Xcel Energy shall include the information listed above in section III in any petition for deferred accounting treatment of the costs of the pilot project.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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