

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Northern States Power
Company d/b/a Xcel Energy's Petition for
Approval of Deferred Accounting for Costs
Incurred for the Web Tool and Time-of-Use
Pilot Project

ISSUE DATE: February 25, 2005

DOCKET NO. E-002/M-03-1462

ORDER APPROVING DEFERRED
ACCOUNTING

PROCEDURAL HISTORY

On February 14, 2002, the Commission issued an Order¹ directing Xcel to design time-of-use (TOU) rates, which would charge consumers different amounts for electricity consumed at different times of the day. The Order directed Xcel to design a way for a consumer to learn, on the World Wide Web, the history of how much electricity his or her household consumed each hour of the day. The Commission directed Xcel to initiate the web site on July 1, 2002 and to file the TOU rates on November 1, 2002, for implementation by April 1, 2003.

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.

In its July 22, 2003 ORDER DETERMINING APPROPRIATE PROCEDURAL TREATMENT,² the Commission found that a deferred accounting petition was the most appropriate procedural vehicle for Xcel's request for inter-rate-case recovery of the costs of developing the residential time-of-use pilot project, instead of permitting their inclusion in the CIP tracker account.

¹ *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 ESTABLISHING PROCEDURAL SCHEDULE (February 14, 2002).

² *In the Matter of Xcel Energy's Petition for Approval of Cost Recovery for Time-of-Use Rate Design Pilot*, Docket No. E-002/M-02-1944.

On September 11, 2003, Xcel filed its petition for approval of deferred accounting treatment for approximately \$2.5 million, resulting from costs and expenses incurred in developing the TOU project.³ Xcel requested that this amount be deferred for future recovery in its next retail rate case filing.

On November 12, 2003, the Department of Commerce (DOC) and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) each filed comments. On November 24, 2003, Xcel filed reply comments.

At the Commission's January 22, 2004 agenda meeting the Commission heard Xcel's request that deferred accounting treatment be granted for approximately \$2.5 million in costs incurred for developing and implementing a residential time-of-use project. Approximately \$1.6 million of these costs were incurred under a contract with Deloitte Consulting. As a result of this meeting, the Commission required further examination of Xcel's selection of Deloitte Consulting and the charges incurred. No order was issued.

On March 30, 2004, the Commission issued a notice requesting Xcel Energy to file comments and information detailing the selection of Deloitte Consulting, including addressing why Xcel did not conduct competitive bidding, explaining why the contract does not appear to follow standard commercial contract form, and describing the benefits obtained for the costs incurred.

Xcel made its supplemental filing on May 28, 2004.

The DOC filed comments on July 27, 2004. RUD-OAG filed its comments on July 28, 2004. Xcel filed reply comments on August 16, 2004.

This matter came before the Commission on February 10, 2005.

FINDINGS AND CONCLUSIONS

I. Background

Xcel developed the TOU pilot project in consultation with the DOC pursuant to the Commission's Order in the Rate Design Investigation proceeding in Docket No. E-002/CI-01-1024. The project allowed the DOC, the Commission and the Company to explore the potential of rate designs and personalized energy usage information to elicit a demand response from customers.

³ With Commission concurrence, Xcel changed the scope and scale of the project and delayed incurring certain costs pending a Commission decision regarding the proposed TOU rates. The Commission ultimately declined to approve the proposed pilot program. See the Commission's ORDER DECLINING TO PROCEED WITH PILOT PROJECT, *In the Matter of an Investigation into Using Rate Design to Achieve the Demand-Side Management Goals of Xcel Energy*, and *In the Matter of Xcel Energy's Time of Use Rate Proposal*, Docket Nos. E-002/CI-01-1024 and E-002/M-02-1894, respectively. (June 23, 2003)

II. Xcel's Proposal

Xcel requested approval for deferred accounting treatment for \$2,469,247,⁴ resulting from costs and various expenses incurred in the development of the TOU project.

Xcel argued that to meet the Commission's directive and design an appropriate project within the given time lines, the Company had to retain various industry experts and consultants. Xcel did not have the available staff to manage and complete the project under the time frames set by the Commission without significant assistance in terms of additional resources and expertise.

Because the Commission had ordered Xcel to implement the web tool and TOU rates for all of its Minnesota customers within a very short time, Xcel argued that it was most expedient to select experts already familiar with the Company as well as TOU issues. The Company selected Deloitte Consulting based on its ability to start the project quickly as well as its experience and knowledge of the Company's systems and processes.

Further, Xcel argued that due to the time line for delivering the program, the scope of the project and Deloitte's past working relationship with Xcel, this selection was justified without entering into a request for proposals process. Xcel noted that it did consider three other consultants but concluded that Deloitte was the most qualified.

Xcel argued that the rates charged by Deloitte Consulting were comparable to other consulting firms.

Xcel argued that the Company was able to meet the requirements of the Commission's Order due to Deloitte's assistance. Specifically, on November 1, 2002, Xcel proposed a residential TOU program that would have enabled residential customers to monitor their actual electric usage and determine the effect of the usage on their bills.

At hearing Xcel, in response to the RUD-OAG concern that Xcel did not provide adequate information regarding the amount spent, stated that its supplemental filing provided an explanation of the work performed as well as examples of work product. Xcel argued that the payments to Deloitte were supported by valuable work product. Further, Xcel denied that there was any violation of Securities and Exchange Commission (SEC) rules in its hiring of Deloitte Consulting in this situation.

Xcel argued that a public utility was entitled to recover the cost of providing service, including the cost of a government mandated project. In this case, the Commission initiated both the requirement to develop a TOU program and also oversaw the scope of the project.

III. DOC's Position

The DOC recommended that the Commission approve Xcel's requested cost deferral of \$2,469,247 for the TOU Pilot Project costs until Xcel's next rate case.

Based upon the information provided by Xcel in its original petition, its supplemental comments and its reply comments, the DOC determined that:

⁴ This was the final figure submitted by Xcel both in its May 28, 2004 supplemental filing and its August 16, 2004 reply comments.

- 1) The selection of Deloitte Consulting by Xcel was reasonable.
- 2) The contract with Deloitte Consulting for purposes of the TOU project was reasonable.
- 3) The information provided by Xcel regarding the timely development of the TOU Pilot Project and the costs of Deloitte Consulting and the delivered project support that the costs were reasonable.
- 4) The cost deferral of \$2,469,247 until the next rate case, as requested by Xcel, was reasonable.

The DOC further recommended that the amortization schedule be set in the next rate case because additional information may be available at that time regarding the useful life of the benefit period and the time period between rate cases.

IV. The RUD-OAG's Position

The RUD-OAG recommended that the Commission deny deferred accounting for the Deloitte Consulting expenses and deny deferred accounting treatment for Xcel's other TOU project costs as well.

The RUD-OAG argued that the Commission deny the requested deferred accounting for several reasons including the following:

- 1) Deloitte performed the TOU project management activities for Xcel at the same time that Deloitte was retained as Xcel's auditor, in violation of SEC rules. Ratepayers should not be paying for prohibited activities.
- 2) Xcel has not justified awarding Deloitte Consulting a no-bid multi-million dollar consulting contract.
- 3) Xcel has not justified the seemingly high hourly costs charged by Deloitte Consulting for the TOU pilot program.
- 4) Xcel has not justified why it did not award the TOU management contract to SchlumbergerSema (SLB) when SLB was the consultant for the Puget Sound Energy project, which was the inspiration for the Xcel project.
- 5) The TOU pilot program did not provide ratepayer benefit, the threshold requirement for burdening ratepayers with any costs.

The RUD-OAG further stated that if the Commission were to consider providing deferred accounting treatment of any costs associated with the TOU pilot program, the Commission should require an audit by a firm other than Deloitte & Touche of all TOU program costs, examining hourly rates for all TOU program contractors for reasonableness and prudence.

V. Commission Action

The Commission agrees with the DOC and finds that the cost deferral of \$2,469,247 for Xcel's TOU pilot project until Xcel's next rate case is reasonable. Therefore, the Commission will approve it.

The Commission agrees with the DOC and finds that the information provided by Xcel on the timely development of the TOU pilot project, the costs of Deloitte Consulting, and the final delivered product demonstrate that the costs incurred were reasonable. Further, the selection of Deloitte Consulting outside the request for proposals process was reasonable, given the short time frame required. Xcel's use of a short engagement letter, which set forth the scope of the work for this project and which was considered an addendum to the base agreement providing general terms and conditions for work performed by Deloitte Consulting, was also efficient and reasonable in these circumstances.

The Commission recognizes that deferred accounting is a regulatory tool that is not generally used. It has traditionally been reserved for costs that were unusual, unforeseeable and large enough to have a significant impact on the utility's financial condition.⁵ More recently, deferred accounting has been permitted when utilities have incurred sizeable expenses to meet important public policy mandates.⁶

The Commission agrees with the Company and the DOC that fairness requires permitting deferred accounting in this case. This is not a case where the Company is asking to defer costs the Company should have foreseen during its last rate case. Rather, the costs for which the Company is asking deferred accounting treatment were incurred because of the Commission's directive that the Company develop a time-of use pilot project within a short period of time.

Although the Commission determined at a later date that a mandatory time-of-use program for residential customers should not be pursued, the Commission recognized the importance of the investigation leading up to this determination,⁷ and the decision not to proceed further with the program does not require that the deferred accounting be denied. Denying the deferred accounting would essentially be requiring the shareholders of the Company to fund the program.

Further, the Commission recognizes that denying the deferred accounting to Xcel would have a chilling effect on other companies' willingness to work with the Commission in the pursuit of new ideas.

⁵ *In the Matter of the Application of Northern States Power Company Gas Utility for Approval of Deferred Accounting for Certain Manufactured Gas Plant Site Cleanup Costs*, Docket No. G-002/M-94-104, ORDER GRANTING REQUEST FOR DEFERRED ACCOUNTING (September 6, 1994).

⁶ *In the Matter of Peoples Natural Gas Company's Request to Establish a Tariff for Repairing and Replacing Farm Tap Lines*, Docket No. G-011/M-91-989, ORDER PERMITTING COMPANY TO CONTINUE DEFERRED ACCOUNTING (February 17, 1998).

⁷ See ORDER DECLINING TO PROCEED WITH PILOT PROJECT, *In the Matter of an Investigation into Using Rate Design to Achieve the Demand-Side Management Goals of Xcel Energy*, and *In the Matter of Xcel Energy's Time of Use Rate Proposal*, Docket Nos. E-002/CI-01-1024 and E-002/M-02-1894, respectively (June 23, 2003).

In conclusion, the Commission finds that the \$2,469,247 in costs for developing the TOU pilot project as directed by the Commission arose from a unique set of circumstances and have been shown to be reasonable. Xcel should not be penalized financially for complying with the Commission's directive to develop a program that had the potential to positively impact residential customers' consumption of electricity patterns. Xcel will be allowed deferred accounting for these costs.

Finally, the Commission will accept the DOC's recommendation that the amortization period be set in the next rate case.

The Commission clarifies that no carrying charges will be allowed.

The Commission will so order.

ORDER

1. The Commission hereby approves deferred accounting treatment of \$2,469,247 in costs related to the time-of-use pilot project to Xcel's next electric rate case.
2. The amortization period shall be determined in Xcel's next electric rate case.
3. No carrying charges shall be allowed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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