

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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| LeRoy Koppendraye | Chair        |
| Marshall Johnson  | Commissioner |
| Ken Nickolai      | Commissioner |
| Thomas Pugh       | Commissioner |
| Phyllis A. Reha   | Commissioner |

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Variance Regarding the Timing of Transporter Refunds

ISSUE DATE: November 17, 2005

DOCKET NO. G-002/M-05-1332

In the Matter of an Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Natural Gas Service in the State of Minnesota

DOCKET NO. G-002/GR-04-1511

In the Matter of an Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Natural Gas Service in the State of Minnesota

DOCKET NO. G-002/GR-92-1186

ORDER GRANTING VARIANCE, REQUIRING REVISED REFUND PROCEDURES, AND MODIFYING ORDERS

**PROCEDURAL HISTORY**

**I. Transporter Refunds - Docket No. G-002/M-05-1332**

On November 25, 2002, Xcel filed a letter in Docket No. G,E-999/AA-01-838 reciting its agreement (hereafter referred to November 25, 2002 agreement) to comply with the Commission's supplier refund rules<sup>1</sup> and to follow the specific process for supplier refunds set forth in that letter.

On August 12, 2005, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) requested a variance from Minn. Rules, Part 7825.2700, subp. 8, which requires that supplier or transporter refunds "must be annually refunded."

On September 12, 2005, the Minnesota Department of Commerce (the Department) filed comments recommending approval of the variance and also recommended that the Commission:

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<sup>1</sup> Minn. Rules, Parts 7825.2700, subp. 8 and 7825.2810, subp. E, F, and G.

- require Xcel to begin complying with its November 25, 2002 agreement; or
- require Xcel to file a petition requesting a change to the current agreement.

On September 22, 2005, Xcel filed reply comments that included a proposal to modify the November 25, 2002 agreement.

On October 6, 2005, Xcel filed a letter stating that it was not technically feasible to combine the incentive compensation refund with the interim rate refund and instead stated its intent to combine the refund of unpaid 2004 incentive compensation with the pipeline refund.

## **II. Refunds of Over-Collected Interim Rates and Unpaid Incentive Compensation**

On August 11, 2005, the Commission issued its ORDER ACCEPTING AND MODIFYING SETTLEMENT AND REQUIRING COMPLIANCE FILINGS in Docket No. G-002/GR-04-1511. In its Order, the Commission directed Xcel to make a compliance filing containing, among other things, a proposal to refund 1) the amount overcollected interim rates and 2) if approved in Docket No. G-002/GR-92-1186, the \$624,909 unpaid 2004 incentive compensation that the Company had collected in rates.

On October 6, 2005, Xcel filed a letter in Docket No. G-002/GR-04-1511 stating that it discovered is not technically feasible to combine the 2004 incentive compensation refund with the amounts to be refunded as overcollected interim rates. The Company proposed instead to combine the unpaid incentive compensation amounts with a pipeline credit refund (the transporter refund) that it would start making on October 29, 2005 in Docket No. G-002/M-05-1332.

## **III. Commission Meeting to Resolve These Issues**

The Commission met on October 27, 2005 to consider these refund matters.

# **FINDINGS AND CONCLUSIONS**

## **I. Variance Request**

Minn. Rules, Part 7825.2700, subp. 8 requires utility companies to refund annually, via credits to bills, refunds received from suppliers or transporters of natural gas. In its August 12, 2005 filing, Xcel requested a variance from that requirement.

Minn. Rules, Part 7829.3200 establishes three conditions that must be met in order for the Commission to grant a variance to a Minnesota rule. The Commission finds that the three conditions are met and therefore will grant the requested variance.

- First: enforcement of the rule would be unreasonably administratively burdensome on Xcel since it would have required the Company to incur the expense of two separate refunds within a short period of time: 1) a refund stemming from the Williston Basin Interstate Pipeline Company (WBI) rate case and 2) a subsequent refund from Northern Natural Gas (NNG) related to two rate cases.
- Second: since the first refund (the WBI refund) is relatively small, the smaller of the two, and would be held for a relatively short additional time before being refunded, the variance does not adversely affect the public interest.
- Third: granting the variance does not conflict with standards imposed by law because the annual refund requirement is established by Commission rule rather than statute and, hence, is subject to variance pursuant to Minn. Rules, Part 7829.3200, as found in this case.

## **II. Xcel's November 25, 2002 Agreement**

On November 25, 2002, Xcel filed a letter reciting its agreement to comply with the Commission's supplier refund rules<sup>2</sup> and to follow the specific process for supplier refunds set forth in that letter. In the agreement, Xcel agreed to annually refund any balance in its refund account. The Company agreed to make the refund in May of each year with the goal that the account would be zero on June 30 of each year. The Company also stated that if the balance was *de minimis*, it would request a variance to the refund rule that would allow the Company to zero out the account balance so as to remain in compliance. The Company stated that it would most likely file the request in late January or February in order to ensure Commission action by May.

In comments filed September 12, 2005 in this matter, the Department stated that Xcel failed to comply with the refund procedures established in the November 25, 2002 agreement with respect to the WBI supplier refund. Specifically, the Department stated, the Company failed to either zero out the refund account or receive a Commission variance to Minn. Rules, Part 7825.2700, subp. 8 prior to the June 30 deadline. The Department recommended that the Commission either require Xcel to begin complying with its November 25, 2002 agreement or require Xcel to file a petition requesting a change to the current agreement.

In response, Xcel stated the timing and size of the WBI refund highlight a deficiency of the process set forth in the November 25, 2002 letter. The Company stated that the WBI refund was small (approximately 7-8 cents per customer) and was received in mid-May. The Company argued that it was not possible to receive a small refund in May (or even sometime in February through April) and receive Commission action on a variance by the end of May to comply with the provisions of the November 25, 2002 letter. Xcel submitted a revised supplier refund process, a modification of the November 2002 letter, and requested Commission approval.

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<sup>2</sup> Minn. Rules, Parts 7825.2700, subp. 8 and 7825.2810, subp. E, F, and G.

The Commission agrees that a more efficient and practical agreement can be reached. The Commission believes, however, that a collaborative effort is appropriate in this regard and will direct the Company, the Department, and Commission staff to develop a revised procedure.

### **III. Alternate Plan to Refund Unpaid Incentive Compensation**

In its August 5, 2005 Order in Docket No. G-002/GR-92-1186, the Commission deferred the refund of unpaid incentive compensation collected in gas rates until the refund of interim rates in the then pending gas rate case, Docket No. G-002/GR-04-1511.

On August 11, 2005, the Commission issued its ORDER ACCEPTING AND MODIFYING SETTLEMENT AND REQUIRING COMPLIANCE FILINGS in Xcel's gas rate case, Docket No. G-002/GR-04-1511. Order Paragraph 3G of that Order directed the Company to make a compliance filing that includes:

A proposal to make refunds of interim rates, including interest at the average prime rate to affected customers. This proposal shall include the \$300,000 amount for opportunity sales as agreed to in the April 29, 2005 Addendum to the Settlement Offer, and the \$624,909 amount for the incentive refund, if approved in Docket G-002/GR-92-1186.

On October 6, 2005, Xcel filed a letter in Docket No. G-002/GR-92-1186 stating that it had discovered that it is not technically feasible to combine the incentive compensation refund with the interim rate refund as directed in the Commission's August 5 Order. The Company proposed to make the incentive compensation refund in conjunction with a pipeline credit refund. The Company stated it does not believe that an amendment to the August 5 Order or other express Commission authorization is necessary because under its alternate plan, the incentive compensation refund would occur faster than if it were accomplished in conjunction with the interim rate refund.

The Commission finds that amendments to the August 5, 2005 Order in Docket No. G-002/GR-92-1186 and its August 11, 2005 Order in Docket No. G-002/GR-04-1511 are required. The effect of these Orders is to direct Xcel to combine the incentive refund with the interim rate refund. Xcel cannot do otherwise unless the Commission amends the Orders to authorize the Company to make the refund in some other manner.

In this case, it appears that making the incentive compensation refund as part of the interim rates refund is technically unfeasible. Moreover, the Company's alternative method benefits ratepayers in that it will accomplish the incentive compensation refund sooner than if the Company had followed the requirements of the August 5 Order. In these circumstances, the Commission will amend the Orders to authorize the Company's alternate refund proposal, i.e., to refund the unpaid incentive compensation when it makes the pipeline credit refund.

**ORDER**

1. The Commission hereby grants Xcel a variance to Minn. Rules, Part 7825.2700, subp. 8 to allow the Company to combine the refund stemming from the Williston Basin Interstate Pipeline Company (WBI) rate case WBI refund and any prior amounts in the purchased gas adjustment (PGA) refund account with the Northern Natural Gas Pipeline refund.
2. Xcel and the Department, together with Commission staff, shall develop a revised procedure and agreement for supplier/transporter refunds.
3. The Commission's August 5, 2005 Order in Docket No. G-002/GR-92-1186 and its August 11, 2005 Order in Docket No. G-002/GR-04-1511 are hereby modified to allow Xcel to make the incentive compensation refund as part of the supplier/transporter refund.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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