

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Xcel Energy's Petition for
Approval of Deferred Accounting and Refund
of DOE Settlement

ISSUE DATE: November 22, 2006

DOCKET NO. E-002/M-06-1126

ORDER AUTHORIZING REFUNDS

PROCEDURAL HISTORY

On August 8, 2006, Northern States Power Company d/b/a Xcel Energy (Xcel) disclosed that it had settled a claim that it had been overcharged for fuel-related costs, and proposed to use its fuel clause adjustment (FCA) to refund money to ratepayers, minus related legal fees. To implement its proposal, Xcel asked for authority to defer accounting for the settlement funds and for variances to the Commission's FCA rules.

On October 6, 2006, the Minnesota Department of Commerce (the Department) recommended approving Xcel's proposal generally, but disputed Xcel's calculation of the appropriate refund amount.

On October 16, 2006, Xcel accepted the Department's calculation without conceding the merits of its own calculation.

The Commission met on November 9, 2006, to consider this matter.

FINDINGS AND CONCLUSIONS

I. XCEL'S PROPOSAL

Having recovered overpayments of fuel-related costs, Xcel asks the Commission to approve its plans for returning these funds to ratepayers.

Xcel joined twelve other parties in suing the Department of Energy (DOE) for overcharging for uranium enrichment services between 1986 and 1993. On February 15, 2006, the parties settled the suit for a total of \$27.5 million. Xcel received \$1,587,794.

Xcel does not propose to refund this entire sum to Minnesota ratepayers. Xcel proposes to offset the amount of the refund by the \$101,439 in legal fees that Xcel incurred to secure the settlement. Then Xcel proposes to allocate the balance of the refund among all its ratepayers, which involves allocating nearly 30% of the funds to ratepayers outside of Minnesota.

Xcel proposes to distribute the refund through use of its fuel clause adjustment (FCA). While generally a public energy utility may not change its retail rates unless it undergoes a rate case,¹ the FCA permits energy utilities to adjust rates outside the context of a rate case to reflect changes in the cost of energy.² Xcel uses uranium to fuel its nuclear-powered electric generators at Monticello and Prairie Island. According to the petition, Xcel passed along the DOE's inflated cost of uranium processing to ratepayers through the FCA, so Xcel finds it appropriate to refund the settlement amounts in the same manner.

To implement this proposed refund, Xcel seeks permission to alter its traditional method of accounting. Specifically, Xcel proposes to defer recording the settlement amount as income in the current fiscal year and instead to record both the amount of the settlement and the offsetting amount of the legal fees to its Miscellaneous Current and Accrued Liabilities account (Account 242 of the federal Uniform System of Accounts). With the Commission's approval, Xcel would then transfer the funds to its Nuclear Fuel Expense account (Account 518), where it would be incorporated into the FCA calculations.

Also, because legal expenses are not generally regarded as fuel-related expenses, Xcel asks the Commission to vary its FCA rules to permit recovery of these particular legal expenses through the fuel clause.

Finally, Xcel acknowledges that it may need to obtain permission from authorities in the other states in which Xcel provides service before Xcel implements its proposal.

II. PARTY COMMENTS

The Department recommends approving Xcel's proposal generally, but proposes changes to Xcel's calculation of the amount of the refund. First, the Department notes that Xcel's current rates provide Xcel with revenues to pay legal expenses. The Department recommends that Xcel reduce its legal expenses by the amount it already recovers for that purpose through existing rates.

Second, the Department recommends that Xcel increase the amount of its refund to reflect the amount of interest Xcel has earned on the settlement amount.

While not conceding the merits of the Department's arguments, Xcel does not object to the Department's recommendations.

¹ Minn. Stat. §§ 216B.03, 216B.16; Minn. Rules, pt. 7825.3100 *et seq.*

² Minn. Stat. § 216B.16, subd. 7; Minn. Rules, pt. 7825.2390 - .2920.

III. COMMISSION ACTION

Having reviewed Xcel's proposal as modified by the Department, the Commission finds it reasonable. Xcel has appropriately pursued a remedy on behalf of its ratepayers. Under the circumstances it is appropriate to permit Xcel to recover its incremental cost in obtaining this remedy. The Department and Xcel have arrived at a calculation of Xcel's incremental legal costs and accrued interest. Finally, Xcel has designed an appropriate mechanism for both recovering its own costs and refunding the balance to its ratepayers.

The Commission will grant Xcel's request to defer recording the proceeds of the settlement as current revenues, and will authorize Xcel to record the settlement amount and interest, net of incremental legal costs, to Account 242 for subsequent transfer to Account 518. The Commission finds this deferred accounting provides an appropriate means for implementing Xcel's refund proposal.

Similarly, the Commission will grant Xcel's request to vary the FCA rules to permit refund of the settlement proceeds, along with accrued interest net of legal expenses. The Commission may vary a rule when enforcing the rule would impose an excessive burden, and when granting the variance would not conflict with legal obligations or the public interest. Minn. Rules, pt. 7829.3200. The Commission finds that granting the variance would be consistent with legal requirements and the public interest. Moreover, under the circumstances the Commission finds it appropriate and equitable to permit Xcel to reimburse ratepayers with the proceeds of the settlement plus accrued interest, minus legal expenses. Xcel has identified an appropriate mechanism for achieving this end, including use of the FCA. However, the Commission's FCA rules do not contemplate or provide for such refunds. Barring implementation of the refund would burden ratepayers without providing any corresponding benefit.

Finding the proposed remedy, the deferral request and the variance request to be reasonable, the Commission will grant them. To ensure appropriate administration of this refund, the Commission will direct Xcel to report on net refund amount when it records the refund to Account 518. Finally, Commission will direct Xcel to inform the Commission and all parties if the refunds have not been completed by March 1, 2007, due to delays in obtaining approval from other jurisdictions.

ORDER

1. Xcel's request for deferred accounting is granted.
2. Xcel shall pass through its fuel clause Minnesota's portion of the settlement from the Department of Energy plus the amount of interest accrued on this sum, offset by Minnesota's portion of the incremental legal expenses as discussed above. The Commission's FCA rules are varied for this purpose.
3. Xcel shall report on the sum refunded through the fuel clause at the time the entry is made, including updated interest calculations.

4. Xcel shall notify parties and the Commission if delays in obtaining approval in other jurisdictions cause the refund to be delayed beyond March 1, 2007.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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