

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of an Inquiry into the Possible  
Effects of Financial Difficulties at NRG and  
Xcel on NSP and its Customers and Potential  
Mitigation Measures

ISSUE DATE: December 4, 2006

DOCKET NO. E,G-002/CI-02-1346

ORDER CLOSING DOCKET SUBJECT TO  
SAFEGUARDS AND REQUIREMENTS

**PROCEDURAL HISTORY**

On August 8, 2002, the Commission met to consider the possible effects of financial difficulties at NRG and Xcel on NSP and its customers. The Commission decided to open this docket and directed Xcel to respond to various questions and provide certain information. Over the course of this docket (August 2002 to present) the Commission has received and considered numerous comments, monitored Xcel's performance, and issued several Orders in this and related dockets to protect ratepayers from the actual and potential negative effects of the Xcel corporate financial problems, and to mitigate the negative effects which exist.

The issue addressed in this Order is whether additional procedures or actions in the instant docket are warranted.

On September 30, 2005, Myer Shark served information requests on Xcel Energy (Xcel) and filed with the Commission a Petition for Additional Procedures and Comments.

On December 1, 2005, Xcel served responses to Mr. Shark's information requests.

On May 16, 2006, Mr. Shark filed a Motion for Order Mandating Answers to Information Requests, alleging that Xcel's answers to the information requests were evasive, incomplete, and unresponsive.

On May 25, 2006, Xcel responded to Mr. Shark's May 15 Motion.

On June 1, 2006, Mr. Shark renewed his September 30, 2005 Petition for Additional Procedures and Comments.

On June 5, 2006, Mr. Shark responded to Xcel's May 25 filing.

On June 30, 2006, Xcel filed a supplemental response to Mr. Shark.

On July 25, 2006, Mr. Shark filed a motion requesting that the Commission not consider Xcel's June 30, 2006 comments when it met July 27, 2006 to consider Mr. Shark's Motion for Order Mandating Answers to Information..

On August 24, 2006, the Commission issued its ORDER REQUIRING XCEL TO PROVIDE INFORMATION REGARDING CERTAIN CLAIMS.

On September 6, 2006, Myer Shark filed a Motion for Supplemental Discovery Order.

On September 18, 2006, Xcel filed a response to Mr. Shark's September 6, 2006 Motion.

On October 30, 2006, Robert S. Carney filed a petition and comments requesting that the Commission keep the current docket open and authorize a comment period.

The Commission met to consider this matter on November 2, 2006.

## **FINDINGS AND CONCLUSIONS**

### **I. Myer Shark's Motion for Supplemental Discovery**

In response to Myer Shark's earlier request for an Order to compel Xcel to respond to certain information requests, the Commission's August 24, 2006 Order directed the Company to provide Mr. Shark with documents responsive to Information Request Nos. 1 and 2. The documents were to be provided from among documents 1) previously filed with the Commission in this matter; 2) in NRG's bankruptcy proceedings; and 3) in 10-Q Reports to the Securities and Exchange Commission (SEC).<sup>1</sup>

At the hearing in this matter, Mr. Shark informed the Commission that Xcel had provided the documents he had sought and which was the subject of the Commission's August 24, 2006 Order. The Commission concurs that Xcel has provided the requested documents. In these circumstances, no further Commission action on Mr. Shark's motion is warranted.

### **II. Robert S. Carney's Filing**

Mr. Carney's October 30, 2006 filing is untimely, being received long after the time for response comments had passed and only two days before the scheduled hearing on this matter.

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<sup>1</sup> See Order at page 3.

Nonetheless, the Commission agreed to receive oral comments from Mr. Carney as an interested member of the public.

In light of the disposition of Mr. Shark's Motion in the previous section and the safeguards discussed in the following section, Mr. Carney's comments supporting Mr. Shark's positions are not persuasive that this docket should be kept open.

### **III. Safeguards**

Over the course of this investigation, the Commission has found several concerns that warranted imposition of measures to guard against ratepayer detriment. Xcel's Minnesota retail ratepayers must continue to be protected from any negative effects of the NRG and Xcel Energy, Inc. situation. This obligation will not end with the closing of this investigation nor with the final Order in the rate case docket (E-002/GR- 05-1428). It is an ongoing requirement in any and all pending and future proceedings.

Specifically, the Commission finds it prudent to require Xcel to continue to abide by the commitments the Company has made in previous filings in this docket and in Docket Nos. E-002/M-00-1553 and E,G-002/PA-99-1031, all of which are summarized in Order Paragraph 1 of the Commission's October 22, 2002 Order in Docket No. E,G-002/CI-02-1346. The Commission also finds it prudent to require the Company to comply with certain requirements imposed in Order Paragraphs 3, 6, 7, and 8 of that Order as well as the requirements in Order Paragraphs 2b and 2c of the Commission's December 30, 2004 Order in the current docket. These safeguards are referenced more fully in the Order Paragraphs below.

### **IV. Request for Extension of the Docket**

On September 30, 2005, Mr. Shark filed a Petition for Additional Procedures and Comments, along with serving Xcel with the information requests discussed earlier. On June 1, 2006, Mr. Shark renewed his September 30, 2005 Petition for Additional Procedures and Comments. Mr. Shark requested that the Commission solicit comments from the parties on the issues identified in the December 30, 2004 Order which have not yet been resolved, and/or refer the matters for contested case hearing.

In its August 24, 2006 ORDER REQUIRING XCEL TO PROVIDE INFORMATION REGARDING CERTAIN CLAIMS, the Commission did not specifically rule on Mr. Shark's petition for additional procedures and comments. The Commission stated:

The Commission also clarifies that it will be revisiting this investigation docket after addressing Xcel's rate case to determine at that time whether there are issues remaining which require attention (including the production of documents) or whether this inquiry should be terminated and the docket closed.<sup>2</sup>

Having now reviewed the investigation following issuance of its Order in the Xcel rate case<sup>3</sup> and having heard oral argument from the parties, the Commission finds that Mr. Shark has not identified specific unresolved issues that need to be resolved through further proceedings in this docket. All issues that need to be resolved in this docket have been resolved or are in the process of being resolved in another docket.<sup>4</sup> Accordingly, the Commission will close it, subject to certain safeguards, conditions, and requirements as set forth in the Order Paragraphs.

### **ORDER**

1. The Commission hereby closes this docket, subject to the following commitments and requirements.
2. Xcel shall continue to protect its Minnesota retail ratepayers from any negative effects of the NRG and Xcel Energy, Inc. situation. This obligation does not end with the closing of this investigation nor with the final Order in rate case docket E-002/GR- 05-1428, and is an ongoing requirement in any and all pending and future proceedings.
3. Xcel shall continue to abide by the commitments the Company has made in dockets E-002/M-00-1553 and E,G-002/PA-99-1031 and in this docket to protect NSP-MN customers, including, but not limited to, the following:

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<sup>2</sup> August 24, 2006 ORDER REQUIRING XCEL TO PROVIDE INFORMATION REGARDING CERTAIN CLAIMS at page 3.

<sup>3</sup> *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-05-1428, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ORDER OPENING INVESTIGATION (September 1, 2006).

<sup>4</sup> For example, an issue previously raised by Mr. Shark, whether NSP ratepayers were entitled to a refund or credit resulting from the NRG tax losses taken by Xcel Energy, Inc., was thoroughly examined by the Commission's October 1, 2004 Order in Docket No. E,G-002/C-03-1871 has been upheld by the Minnesota Court of Appeals. See 2005 WL 3527152 (Minn.App.), Util. L. Rep. P 26,938 (December 27, 2005). Other issues raised by Mr. Shark, such as how to calculate income taxes for the test year in light of the NRG tax losses, were thoroughly examined in Xcel's electric rate case, Docket No. E-002/GR-05-1428.

- a. Xcel and NSP shall meet the utility's obligation under Minnesota law and Commission Orders to provide adequate service at reasonable costs, and to shield ratepayers from any direct or indirect effect of NRG's investments in exempt wholesale generators (EWGs) and foreign utility corporate organizations (FUCOs);
  - b. NSP shall not encumber any utility property in Minnesota for purposes other than operating the utility, and no Minnesota property will be used for the benefit of NRG or other nonutility purposes.
  - c. NSP shall not seek recovery from Minnesota's ratepayers for costs and expenses incurred by NSP because of NRG's ownership of EWGs or foreign utility assets, and day-to-day operations will not be affected by these investments.
  - d. NSP shall provide the Commission, its staff, the Department of Commerce, and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) the requested information needed to regulate NSP effectively and protect ratepayer interests.
  - e. NSP shall adjust the Renewable Development Fund and Emissions Reduction Riders to remove any capital costs attributable to the NRG situation when a specific rate rider adjustment is established.<sup>5</sup>
4. Xcel shall also comply with the following requirements, initially imposed in Ordering Paragraph 3 of the Commission's October 22, 2002 Order in this docket, with modifications to make certain provisions ongoing:
- a. Xcel shall use the Commission-approved cost of capital in all its present and future filings before the Commission where cost of capital is being used.
  - b. Xcel shall identify all issuances of debt and associated costs from June 1, 2002 forward in all future rate cases in a manner that will facilitate a potential adjustment to mitigate impacts of adverse market factors due to NRG's situation.
  - c. Xcel shall provide a discussion and analysis in all pending and future rate cases of the effects of NRG's financial situation on NSP's cost of common equity.
5. In its capital structure/securities issuance filings, Xcel shall continue to do the following, initially imposed by Order Paragraphs 6, 7, and 8 of the October 22, 2002 Order in Docket No. E,G-002/CI-02-1346:

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<sup>5</sup> Conditions in Paragraph 3a-e are derived from Ordering Paragraph 1 of the Commission's October 22, 2002 Order in Docket No. E,G-002/CI-02-1346.

- a. make such filings at least annually (Paragraph 6);
  - b. provide more specific explanations of the purpose for the security issuance than the explanation that funds will be used for “general corporate purposes” (Paragraph 7); and
  - c. address the appropriate cost of capital to apply to filings for the next 12 months (Paragraph 8).
6. Xcel shall do the following, as initially required by Ordering Paragraph 2b and 2c of the Commission’s December 30, 2004 Order in Docket No. E, G-002/CI-02-1346:
- a. report any significant event for NSP-MN or Xcel to the Commission (Paragraph 2b);
  - b. provide by e-mail to the Commission, Department, RUD-OAG, and Myer Shark copies of the reports it makes to the SEC (Paragraph 2c).
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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