
MEMORANDUM

To: Commissioners and Advisors

From: Jon Thurber and Karen Cremer

RE: EL11-023 In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Credit Mechanism for a Department of Energy Settlement Payment along with Deferred Accounting and Approval to Depart from its Fuel Clause Tariff, as Necessary

December 28, 2011

On August 16, 2011, Northern States Power Company (Xcel or Company) petitioned the Commission for approval of a credit mechanism to return funds to customers received pursuant to a Settlement (Settlement) with the United States Department of Energy (DOE) regarding DOE's partial breach of its contract to take spent nuclear fuel beginning January 31, 1998.

The initial total Company Settlement payment of \$99,966,841, or \$4,285,234 on a South Dakota jurisdictional basis, includes damages for nuclear spent fuel storage costs incurred through December 31, 2008. Xcel requests authority to net South Dakota's share of outside legal costs of \$264,420 against the credit. The Company also requests approval to include the interest earned on these funds that were placed in a separate interest-bearing account earning 0.25% annually and posted daily.

Xcel identified three possible methods to refund South Dakota's jurisdictional share of the nuclear spent fuel storage damages incurred through December 31, 2008: (1) a one-time bill credit; (2) a per kWh credit calculated similar to the Fuel Clause Rider (FCR); and (3) an offset to the Company's revenue requirement in a rate case. The advantages and disadvantages of each method are discussed thoroughly in the filing.

Xcel's Settlement with the DOE also provides a mechanism for the Company to recover its spent nuclear fuel storage damages through December 31, 2013. A summary of the estimated Settlement payments are on Page 3, Table 1 of the Petition. The Settlement does not address potential claims beyond 2013.

On December 14, 2011, the Commission issued an *Order Granting Approval for Deferred Accounting Treatment of the 2011 Settlement Proceeds*. The Company also requests the Commission authorize deferred accounting for any anticipated future payments from DOE if the amounts cannot be credited to ratepayers in the year received.

ANALYSIS OF CREDIT MECHANISMS

As Xcel noted, there are no rules or statutes in South Dakota that specifically address refunds from damages for nuclear plant-related capital, operation and maintenance (O&M) expense, and property tax costs. The Company proposed three mechanisms for crediting the funds to current customers: (1) a one-time bill credit; (2) a per kWh credit calculated similar to the Fuel Clause Rider (FCR); and (3) an offset to the Company's revenue requirement in a rate case.

While each proposal has its merits, Staff recommends the one-time bill credit method to distribute the refund. The bill credit returns the funds to customers faster than the other two methods, and result in a transparent and understandable approach. Also, this method calculates the credit in a manner which closely resembles the way the nuclear plant fuel storage costs were recovered from customers.

The rate case method reduces the revenue requirement in Docket EL11-019, but provides the slowest return of funds to customers. The Company proposes to amortize the refund over a two year period. The amortization would need to be tracked to ensure the entire refund is returned to customers. After the refund is completely amortized, base rates may need to be adjusted higher to reflect the expiration of the approximate \$2,000,000 annual credit. The refund would not be transparent to customers as it would be combined with other revenues and costs in base rates. This mechanism is less efficient than the one-time bill credit.

Staff has concerns about using the fuel clause to refund the Settlement proceeds because capital, O&M, and property tax costs related to a nuclear plant are not fuel costs and were not recovered through the fuel clause rider. The proposed FCR method would refund the Settlement proceeds over a three to six month period and would not be identifiable on a customer's bill.

Staff recommends the one-time bill credit method detailed on Attachment B, revised to reflect actual sales from January 2011 through December 2011. Customer usage over the past year may not be reflective of their historical usage from 1998 through 2008, the time period covered by the initial Settlement payment. However, there will be inequities in any approach, and basing the credit on the most recent actual twelve months of usage seems reasonable.

LITIGATION EXPENSES

Xcel requests to reduce the South Dakota refund by \$264,420 for outside legal fees and other litigation expenses incurred from 1998 through 2008 to obtain this Settlement. According to the Company, none of the litigation costs incurred in this matter were included in base rates during that time period.

Staff generally does not support tracking one cost and granting retroactive recovery as base rates are set to be representative of normal, ongoing conditions. However, Staff recognizes the Company's position that it would not have been possible to obtain the Settlement and its significant benefits if the Company had not incurred these expenses. Staff believes the litigation expenses were reasonably incurred and recovery of incremental litigation expenses will provide an incentive to pursue other litigation for the benefit of customers. The allowance of legal fees should be evaluated on a case-by-case basis.

INTEREST

The Company placed the Settlement proceeds in a separate interest-bearing account earning 0.25% annually and posted daily. There appears to be no South Dakota rules or statutes that provide guidance on the interest rate to be paid on the refund of the Settlement proceeds. As Xcel indicated, the Commission previously ordered in Dockets EL00-002, EL00-003, EL00-009, and EL06-026 that interest is added to the refund, computed at the Xcel's last approved overall rate of return, from the time the Settlement proceeds were received by the Company to the

time the Settlement proceeds are returned to the customers. The Company's last approved overall rate of return was 8.32% in Docket EL09-009.

Since the funds were placed in a separate account, the Company has not used these funds in its operations. Given the magnitude of the refund, it would be a significant cost to the Company to order that interest be applied to the refund at the overall rate of return when the Company earns a significantly lower rate of return on the account. The interest rate obtained by the Company appears competitive in the market. Staff recommends that the Commission require all interest accumulated on the Settlement proceeds be returned to customers.

REFUNDS TO CUSTOMERS THAT ARE NO LONGER ON THE SYSTEM

The Company's three proposed credit mechanisms apply to either existing customer accounts or future rates. The current Settlement proceeds covered costs incurred from 1998 through 2008. Some former customers may be concerned that the methods proposed do not compensate them since they paid those costs and would not receive a refund.

Per South Dakota Administrative Rule 20:10:16:04, unless otherwise specified, all records shall be preserved by the utility no less than five years. As the Company noted on page 9, footnote 20 of the filing, the Company changed billing systems in 2005 and no longer has complete individual records before 2006. The lack of billing data makes it impossible to calculate the refund for all customers from 1998 to 2008.

The Company proposed various methods for handling individual claims upon receipt of documentation from a requesting customer. The number of customer complaints from selecting one of the three proposed mechanisms is unknown, but this issue is present in all refunds where the refund is not based on actual usage for the time period in question. The number of customers that saved their bills from 1998 through 2008 is probably limited. While these proposed methods are designed to reduce inequities, a method that requires a customer to maintain documentation of electric usage so far in the past is overly burdensome for the vast majority of customers.

Staff shares the same goal as Xcel in developing a credit mechanism that is administratively efficient. There are a variety of reasons staff has concerns about refunding the Settlement proceeds based on actual usage. First and foremost, the information is not available for all customers. Even if the information was available, the process of calculating the refund using 11 years of usage, tracking down customers, and eventually mailing the refund would be time consuming and expensive. In addition, not all customers would be found and unclaimed refunds would be considered abandoned property and escheat to the state.

In Docket NG97-020, the Commission authorized Montana Dakota Utilities Company to distribute a refund from Williston Basin Interstate Pipeline Company to current customers when the period of time of customer overcharges occurred much further in the past. Staff believes this method is reasonable and administratively efficient.

FUTURE SETTLEMENT PROCEEDS

The Settlement also includes provisions to refund four subsequent payments for the nuclear spent fuel storage damages incurred from 2009 through 2013. On page 3, Table 1 of the filing, the Company provided estimated payments, each of which must be approved by the DOE.

In order to address this matter only one time so as not to incur further expense, Staff recommends using the same one-time bill credit method for returning future Settlement proceeds to customers as Staff is recommending for current Settlement proceeds. The Company noted that future Settlement refunds could be made within 90 days of receipt of the Settlement payments. Staff recommends the Company provide the same documentation for future Settlement payments as the Company provided for the initial Settlement payment within 30 days of receipt from the DOE. This refund is both significant and unusual, so Staff is cautious in its recommendation. As refunds are distributed, the Commission may want to adjust the refund mechanism based on the effectiveness of the one-time bill method.

DEFERRED ACCOUNTING OF FUTURE SETTLEMENT PROCEEDS

The Company requests that the Commission authorize deferred accounting for any future Settlement payments from the DOE if the amounts cannot be credited to ratepayers in the year received. As stated by the Company, the purpose of this accounting treatment is to avoid book income and the concurrent tax effects in the year received if Settlement proceeds are returned to customers the following year. Staff agrees with the Company and recommends approval of deferred accounting treatment of future Settlement proceeds.

COMPLIANCE FILINGS AND CUSTOMER NOTICE

On page 14 of the filing, the Company stated it would provide a billing statement to the Commission for review within 30 days of the Commission's order selecting the one-time credit method. Also, the Company offered to provide a compliance filing within 30 days of completing the credit process showing the amount of the DOE Settlement and interest actually earned. This compliance filing should also apply to future Settlement payments.

The Company proposed the following customer bill message regarding the DOE Settlement payment:

The South Dakota Public Utilities Commission has approved a customer credit for funds received as part of a settlement with the U. S. Department of Energy regarding nuclear fuel storage. Your credit is shown as "Nuclear Fuel Settlement" on this billing statement. Questions? Contact us at 1-800-895-4999

RECOMMENDATIONS

Staff recommends refunding \$4,285,234 of the nuclear spent fuel storage Settlement proceeds incurred through 2008, net of litigation expenses of \$264,420, to South Dakota customers. All interest accumulated on the Settlement amount from the time of the Settlement proceeds receipt to the time of disbursement to customers should be returned to customers.

Staff recommends distributing the refund using the one-time bill credit described on Attachment B, modified to reflect actual sales from January 2011 through December 2011. Within 30 days of the issuance of the order, the Company shall provide a billing statement for review. The one-time bill credit will be provided to customers within 90 days after the issuance of the order. The Company offered to provide a compliance filing within 30 days of completing the credit process showing the amount of the DOE Settlement and interest actually earned. Staff recommends the Company provide this compliance filing.

Staff recommends using the same one-time bill credit method for returning future Settlement proceeds to customers as Staff recommends for current Settlement proceeds. Within 30 days of receipt of the Settlement proceeds from the DOE, Staff recommends the Company provide the same documentation for future payments as the Company provided for the initial payment. The Company will refund the Settlement proceeds within 90 days of receipt from DOE. A compliance filing showing the amount of the DOE Settlement and interest actually earned will be made within 30 days of completing the credit process.

Staff recommends granting deferred accounting treatment for any future Settlement payments from the DOE if the amounts cannot be credited to ratepayers in the year received.