
STAFF MEMORANDUM

TO: COMMISSIONERS AND ADVISORS

FROM: PATRICK STEFFENSEN, JOSEPH REZAC, AND AMANDA REISS

RE: EL19-002 - In the Matter of the Petition of Northern States Power Company dba Xcel Energy for Approval of a Credit Mechanism for Payments from the Second Extended Department of Energy Settlement

DATE: February 12, 2019

BACKGROUND

On January 22, 2019, the South Dakota Public Utilities Commission (Commission) received a Petition for Approval of a Credit Mechanism for Payments from the Second Extended Department of Energy Settlement (Petition) from Northern States Power Company dba Xcel Energy (Xcel or Company). This is the second extended settlement agreement to the July 7, 2011 settlement agreement with the United States Department of Energy (DOE) due to a partial breach of the Standard Contract for Disposal of Spent Nuclear Fuel for failing to take title to, transport, and dispose of spent nuclear fuel. The second extended settlement agreement covers damages for the period January 1, 2017 through December 31, 2019, payments 9 through 11, and represent the payments ultimately refunded to customers in 2019 through 2021.

Xcel is proposing continuation of a credit mechanism, including the one-time bill credit, interest, refund timing, and compliance filings, consistent with that approved in dockets EL11-023 and EL16-001, except for two proposed variations on the 2019 refund (ninth payment). First, Xcel proposes an August 2019 customer credit instead of crediting customers within 90 days of the Commission's order, as was required on past refunds. Second, Xcel proposes a \$252,677 offset to the 2019 refund (ninth payment) to, in effect, reimburse the Company for a supplemental Tax Cut and Jobs Act (TCJA) refund made in November 2018.

STAFF'S ANALYSIS

Delayed 2019 Refund

Xcel has indicated to Staff that its refund program can only handle one refund at a time and the TCJA refunds, and refund testing, for South Dakota and Xcel's other jurisdictions have occupied and will continue to occupy the computer server used for customer refunds until August 2019. Staff does not oppose this one-time refund delay, as it is a relatively short delay, customers will continue to earn interest during the delay, and Xcel has stated future refund payments (payments ten and eleven) will be made within 90 days of the DOE payment receipt.

TCJA Offset

Staff first became aware of issues with Xcel's TCJA refunds through customer inquiries to the Public Utilities Commission's Consumer Affairs Division, and subsequently learned Xcel was receiving similar complaints on its end. Upon investigation of the inquiries from customers regarding their TCJA refunds, it was determined that two variations occurred which were inconsistent with the Settlement Stipulation in TCJA docket GE17-003. In some instances where a customer moved within Xcel's service territory during the May 2017 to April 2018 refund measurement period, some customers received a refund reflecting only a portion of their usage during the relevant period. In other instances where the customer moved between the usage cutoff date of April 30, 2018 and the refund qualification date of July 25, 2018, they did not receive a refund at all.

Xcel corrected this oversight by implementing a supplemental refund in November 2018 to the approximate 7,500 customers affected in the amount of \$252,677. Xcel now wishes to be made whole by requesting this \$252,677 supplemental refund be subtracted from the DOE refund owed its customers for a net August 2019 refund amount of \$605,681. Staff does not support this request for reasons stated below.

Docket GE17-003 Settlement Stipulation

The Settlement Stipulation filed jointly by Xcel and Staff in docket GE17-003 clearly stated under Element One that "individual customer refunds will then be calculated based on each *customer's* most recent 12 months of sales available at the time of the refund". As stated on page 6 of the Petition, the refund was then calculated based on "usage at the premise" rather than customer usage. Xcel believes that since it adhered to the total refund amount agreed to in the Settlement Stipulation, it should receive recovery of any supplemental refund amount required due to the breach of the specific language regarding individual customer refunds in the Settlement Stipulation. However, Staff believes this error by Xcel to not follow stipulated language in the TCJA docket should not affect refunds due to customers in this DOE refund docket.

Similar Stipulation Breach by Peer Company

Staff has relayed to Xcel that it was not the only company that had a refund system tied to premise usage rather than customer usage that caused them to break the terms of the stipulation and require a supplemental refund. This happened to one other company subsequent their initial TCJA refund; however, the difference is this other company has not requested to be reimbursed for these excess refund dollars through another mechanism. Staff believes this demonstrates the other company recognized its error in not strictly adhering to the settlement stipulation and Xcel should likewise follow this approach and not expect customers to correct this error by partially offsetting the DOE payment with the supplemental refund amount. Should the other company request recovery at a future date, Staff would likely oppose that request for many of the same reasons mentioned in this memo.

Equity Among Customers

Even if the first two reasons were not present, Staff could not support the method in which Xcel is shifting refund dollars in this proposal. Even though this proposal makes Xcel whole and results in equivalent total refund payments as shown in the table on page 8 of the Petition, this proposed method is not equitable among the customers. While the supplemental TCJA refund made payments to the Xcel customers that were either under refunded or not refunded at all in the initial TCJA refund, Xcel's proposal to offset the DOE refund by the supplemental TCJA refund means these very same customers will not receive a DOE refund equal to what they otherwise would have.

Xcel representatives have indicated to Staff that since the filing of the Petition, they are now able to correct this mismatch at the total class level; however, they have also confirmed that the issue will still be present at the individual customer level. While this is a step in the right direction, the three issues mentioned above are still present, and ultimately the first two issues discussed above outweigh Xcel's attempt to correct the inequity among customer classes.

RECOMMENDATION

For the reasons stated above, Staff recommends the Commission approve the Company's request for the continuation of the one-time bill credit mechanism and the request for a delayed payment number nine; however, Staff recommends the Commission denies the Company's request to offset the DOE refund by the amount of its supplemental TCJA refund.