

PUBLIC UTILITIES COMMISSION  
STATE OF SOUTH DAKOTA

Gary Hanson  
Chris Nelson  
Kristie Fiegen

Chairperson  
Vice Chair  
Commissioner

IN THE MATTER OF THE PETITION OF  
NORTHERN STATES POWER COMPANY  
FOR APPROVAL OF A CREDIT MECHANISM  
TO RETURN TO CUSTOMERS DEPARTMENT  
OF ENERGY SETTLEMENT PAYMENTS

DOCKET NO.: EL19-\_\_\_\_

**PETITION**

**INTRODUCTION**

Pursuant to S.D. Codified Laws § 49-34A-6, Northern States Power Company, doing business as Xcel Energy, operating in South Dakota, submits this Petition to the South Dakota Public Utilities Commission (Commission) for an Order approving a credit mechanism for funds received pursuant to the Second Extended Settlement (Settlement) with the United States Department of Energy (DOE) for the partial breach of its contract to take spent nuclear fuel.

The Company and the U.S. Government reached an agreement on February 23, 2017 to further extend the Settlement Agreement for the recovery of spent fuel storage damages for an additional three-year period, 2017 through 2019. On November 13, 2018, the Company received the first payment under the Second Extended Settlement (the 9<sup>th</sup> payment in total) from the DOE of \$15.4 million on a total Company basis, or \$858,358 on a South Dakota jurisdictional basis, for damages incurred during the period of January 1, 2017 to December 31, 2017.

We file this Petition for approval to return the Settlement proceeds to our current South Dakota electric customers in the form of a one-time bill credit. In addition, we request approval to retain a portion of this recent payment to offset a correction implemented as part of the Federal Tax Cut and Jobs Act (TCJA) customer refund. We discuss this correction and our proposal in more detail below.

The Company has placed these funds into a separate external interest bearing account and will include the interest received, minus bank fees, in calculating the amount of the credit. Consistent with the standards set out in the Commission's Order in our

prior cases,<sup>1</sup> our goal is to once again seek an administratively efficient return of the funds to our customers as they are received. Specifically, we request approval to return the settlement payments to our current South Dakota electric customers in the form of one-time bill credits based upon the customers' most recent and available twelve months of usage. We will receive two additional payments in late 2019 and 2020 for damages incurred in 2018 and 2019 respectively, and we request approval to return these payments to our customers when they are received.

## **I. GENERAL FILING INFORMATION**

### **A. Utility Employee Responsible for Filing**

Steve Kolbeck  
Principal Manager  
Xcel Energy  
500 West Russell Street  
Sioux Falls, South Dakota 57104  
(605) 339-8350  
[Steven.T.kolbeck@xcelenergy.com](mailto:Steven.T.kolbeck@xcelenergy.com)

### **B. Name, Address and Telephone Number of Utility Attorney**

Ryan Long  
Lead Assistant General Counsel  
Xcel Energy  
14 Nicollet Mall, 401 8<sup>th</sup> Floor  
Minneapolis, MN 55401  
[Ryan.J.Long@xcelenergy.com](mailto:Ryan.J.Long@xcelenergy.com)

### **C. Date of Filing and Date Modified Rates Take Effect**

Xcel Energy submits this Petition for approval on January, 21 2019. The effective date and method used to credit the Settlement payment is to be determined by the Commission.

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<sup>1</sup> *In the Matter of the Filing by Northern States Power company dba Xcel Energy for Approval of a Credit Mechanism for a Department Of Energy Settlement Payment with Deferred Accounting and Approval to Depart From its Fuel Clause Tariffs, as Necessary*, Docket No. EL11-023, ORDER APPROVING CREDIT MECHANISM; ORDER APPROVING DEFERRED ACCOUNTING TREATMENT OF FUTURE SETTLEMENT PROCEEDS (Jan. 30, 2012) and *In the Matter of the Petition of Northern States Power Company DBA Xcel Energy for Approval of a Credit Mechanism for a Department of Energy Settlement Payment*, Docket No. EL16-001, ORDER APPROVING CREDIT MECHANISM (Feb. 17, 2016)

## **II. DESCRIPTION AND PURPOSE OF FILING**

The Company requests Commission approval of a credit mechanism to flow through to customers funds received pursuant to the Second Extended Settlement with the DOE. The Company also requests the approval to include the interest earned, minus bank fees, on the single purpose account established to receive the DOE Settlement 1 payments.

In support of this filing, Xcel Energy provides:

- History of the case and background;
- A description of the Company's proposed credit mechanism;
- Background for request for TCJA offset, and
- Public interest benefits of the Settlement.

## **III. HISTORY OF THE CASE AND BACKGROUND**

### **A. 2011 Settlement**

Under the Nuclear Waste Policy Act, utilities such as Xcel were required to enter into contracts for the disposal of spent nuclear fuel; utilities contributed 1.0 mil for every kilowatt-hour of electricity generated by their nuclear power plants. In exchange, the DOE committed to transport and dispose of the spent nuclear fuel beginning no later than January 31, 1998. However, the DOE has not accepted any spent nuclear fuel to date.

In 1998, the Company filed the first of two suits against the DOE seeking to recover damages associated with storage of spent nuclear fuel at our Prairie Island and Monticello nuclear generating plants. The Company's claims were for 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 beginning no later than January 31, 1998. The first lawsuit sought damages through 2004; the second sought damages through 2008.

The Company reached a settlement with the U.S. Government on these suits on July 7, 2011. The 2011 Settlement Agreement provided a mechanism for the Company to recover its spent nuclear fuel storage damages through December 31, 2013.

On August 16, 2011 Xcel Energy submitted a petition in Docket No. EL11-023 requesting approval of a credit mechanism for funds received from the original

settlement (2011 Settlement) with the United States Department of Energy (DOE). The Commission issued its Order approving a credit mechanism on January 30, 2012.

### **B. Extended Settlement Agreement**

The Company and the U.S. Government reached an agreement on January 24, 2014, to extend the 2011 Settlement for the recovery of spent fuel storage damages for the three-year period of 2014 through 2016. On January 8, 2016, the Company submitted a petition in Docket No. EL16-001, notifying the Commission of the receipt of the first payment under the Extended Settlement and requesting approval of a credit mechanism. The Commission issued its Order approving a credit mechanism on February 17, 2016.

### **C. Customer Credits 2012 to 2017**

Through 2017, the Company received eight payments under the 2011 Settlement Agreement and the Extended Settlement Agreement. Attachment A provides a summary of the South Dakota jurisdictional portion of the DOE payments which were returned to customers in the form of bill credits.

### **D. Second Extended Settlement Agreement**

On February 23, 2017, the Company and the U.S. Government agreed to extend the Settlement to allow for recovery of damages through December 31, 2019 (Payments 9 to 11) which resolves the issues of damages for spent nuclear fuel through 2019. The first payment under the Second Extended Settlement was received on November 13, 2018 in the amount of \$15.4 million on a total Company basis (see Attachment B), or approximately \$858,358 on a South Dakota jurisdictional basis (see Attachment C) and represents damages for costs incurred in 2017. This payment was placed into a segregated bank account established specifically and solely for the settlement proceeds similar to the Company's treatment of the previous under the 2011 Settlement Agreement and Extended Settlement.

## **IV. PROPOSED CREDIT MECHANISM**

### **A. One-time Bill Credit**

We are formally requesting a one-time bill credit which is consistent with Commission precedent as the approved method for the 2011 Settlement and Extended Settlement Agreement in Docket Nos. EL11-023 and EL16-001, respectively. Consistent with the procedures used in that docket, the DOE payment would be allocated to customer classes using the applicable allocator from the Company's most recent Class Cost of Service Study. The allocator used for nuclear plant investment costs was developed using a stratification process that resulted in an allocation factor that was

approximately 80.9% “energy-related” and 19.1% “capacity-related.”<sup>2</sup> Future credits would be allocated using the most recently approved nuclear plant cost allocator.

As outlined in Attachment C to this Petition, once the credit amounts have been allocated to each customer class, a credit factor will be calculated for each customer class based on the most recent and available 12 months of actual kWh usage for active customers. The appropriate credit factor will then be applied to each active customer’s actual kWh usage for that time period to determine the actual credit amount for each customer. Customers that have an active account on the date the credit is calculated will receive a bill credit based on their usage for their current address. Using 12-months of usage avoids the problems inherent with selecting a particular point in time to calculate the credit (e.g. the fluctuating usage of seasonal customers).

## **B. Interest**

The Company placed the funds in a separate interest-bearing account to protect both customers and the Company and to ensure the funds are accurately accounted for pending the actual bill credit. The interest bearing sweep account earns 1.50% annually and the interest is posted daily. The Company requests that the credit amount include the actual amount of interest earned by the Company, minus any bank fees or charges on these funds. Placing the funds in a separate interest-bearing account is consistent with treatment of the funds from the previous payments.

## **C. Credit Timing and Compliance Filings**

The Commission’s Orders in Docket Nos. EL11-023 and EL16-001 required that we begin implementation of customer credits within 90 days of the Commission’s order or receipt of the subsequent payments. For the ninth payment, we request additional time for implementation and propose posting the credits to customers’ accounts in August 2019. The Company’s refund program can handle only one refund at a time. Due to already scheduled implementation of TCJA refunds and other refunds in our NSP states, we request this additional time only for the ninth DOE payment.

For the future tenth and eleventh payments and consistent with Docket Nos. EL11-023 and EL16-001, we propose providing the same compliance filing within 30 days after receipt each payment, and will include documentation like that provided in Attachments B and C in this filing for Commission Staff review. We would begin implementation of the bill credits within 90 days of the DOE payment receipt.

For all payments, the Company will file a compliance report within 30 days after

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<sup>2</sup> See Attachment C.

completion of each credit providing a summary of the settlement payment, interest credited, class allocations and the actual average customer credit per customer class as was done in Docket Nos. EL11-023 and EL16-001.

## V. PROPOSED OFFSET FOR TCJA CUSTOMER CREDIT

As part of the Settlement approved by the Commission in Docket GE17-003<sup>3</sup>, the Company implemented a customer bill credit totaling \$10.9 million in July 2018. After implementing the entire required credit amount, we discovered that certain customers entitled to a refund under the Settlement did not actually receive one due to the process qualification used to identify qualifying customers..

To qualify for a refund, a customer had to be active at a premise within our service territory as of July 25, 2018. The refunds were based on premise usage for the period from May 2017 to April 2018 to capture the most recent months of billings completed at the time we began the setup and testing of the July refund.

The refund calculation was tied to usage at the premise rather than customer usage since our refund processing application cannot distinguish between a customer who moves out of our service territory and a customer who moves from one premise to another within our service territory. In either case, the customer's earlier account is "finalled." Only the customer's own usage at the premise that was active as of July 25, 2018 was used in calculating the refund. This refund logic is consistent with logic used for the DOE settlement customer credits in all of our jurisdictions. This logic allocates the required refund amount to currently active customers.

In reviewing the history of customers that inquired about their credits, we discovered two outcomes that were inconsistent with the terms of our Settlement:

- **Partial Year Refund:** If a customer moved within our service territory during the refund measurement period (May 2017 to April 2018), then only the customer's usage at their last residence was used to calculate the refund. As a result, these customers received a refund reflecting only a portion of their usage during the relevant period.

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<sup>3</sup> In the Matter of Staff's Request to Investigate the Effects of the Tax Cuts and Jobs Act on South Dakota Utilities, Docket No. GE17-003, ORDER GRANTING JOINT MOTION FOR APPROVAL OF SETTLEMENT STIPULATION BETWEEN STAFF AND XCEL ENERGY, July 18, 2018.

- **No Refund:** If a customer moved between the usage cutoff date (April 30, 2018) and the refund qualification date (July 25, 2018), they did not receive any refund. Even if they were an active customer at a premise within our service territory on July 25, they did not have any qualifying usage at that premise from May 2017 to April 2018.

In consultation with Commission Staff, we determined there were 7,543 customers eligible to receive a supplemental refund based upon the two scenarios described above. We posted the additional credits to these accounts on November 7, 2018. The table below summarizes the results of the supplemental refund.

<b>Scenario</b>	<b>Count of Customers</b>	<b>Refund Amount</b>
Partial Refund	5,807	\$175,315
No Refund	1,736	\$77,362
Total	7,543	\$252,677

These amounts are above the \$10.9 million required in the Settlement and paid out to customers in July 2018. In other words, as part of the July refund, we paid some customers too much and some customers too little. Then, in November, we issued supplemental refunds to those customers who received too little in July. We did not reduce the refunds for the customers who received too much in July.

With this Petition, the Company is requesting permission to retain a portion of the ninth DOE payment to offset the cost of the supplemental refund issued in November. We acknowledge the Company should have done a better job of working through the planned refund mechanics with Staff during the discussions of the TCJA customer refund, and we take this as a lesson learned for future refunds. That said, we believe our proposal is reasonable and returns both the Company and our customers to the status quo (*i.e.*, as if we had calculated and distributed the \$10.9 million TCJA refund correctly in the first place). We therefore request approval to offset the supplemental TCJA refund with \$252,677 of the ninth DOE payment and to issue a one-time DOE refund in the amount of \$605,681. Attachment D provides an updated view of class allocations and estimated credit by customer class if the Commission approves our proposal.

The table below summarizes the TCJA refund and DOE #9 credit amounts:

TCJA Refund Ordered in Docket No. GE17-003	\$10,868,000
DOE Payment #9, SD Jurisdiction Portion	\$858,358
<b>Combined Total Due to Customers</b>	<b>\$11,726,358</b>
TCJA July 2018 Refund	\$10,868,000
Additional TCJA November 2018 Refund	\$252,677
Proposed DOE #9 Credit	\$605,681
<b>Total Returned to Customers</b>	<b>\$11,726,358</b>

## **VI. THE SETTLEMENT IS IN THE PUBLIC INTEREST**

As was similarly stated in our prior case, the Company believes the extended DOE Settlement is in the public interest. The Settlement continues to fairly represent the status of current federal law on this issue and, in addition, holds the DOE to higher standards than the DOE had accepted in litigation.

The Settlement also continues to provide a mechanism for the Company to recover its spent nuclear fuel storage damages from January 1, 2017 through December 31, 2019 on a timely basis, as negotiated by the parties, without pursuit of further litigation.

## **VII. EFFECT OF THE CHANGE UPON XCEL ENERGY REVENUE**

There is no effect on the Company's revenues since the Settlement payments will be returned to customers with interest.

## **VIII. JURISDICTIONAL ALLOCATIONS**

The funds are payable to Northern States Power Company – Minnesota (NSPM), and will first be allocated between NSPM and NSP-Wisconsin (NSPW) Companies. The NSPM portion will be further allocated by jurisdiction (North Dakota, South Dakota, Minnesota and then to customer classes. Finally, they will be credited to individual customers. Consistent with the method used in Docket Nos. EL11-023 and EL16-001 we propose using allocators from the year the damages were incurred. Thus for the ninth payment, we would use the appropriate vintage allocator for 2017 between North Dakota retail, South Dakota retail, and Minnesota retail.



## IX. MISCELLANEOUS INFORMATION

We request that all communications regarding this proceeding, including data requests, pleadings, documents and other filings also be directed to:

Ryan Long  
Lead Assistant General Counsel  
Xcel Energy  
14 Nicollet Mall, 401 8<sup>th</sup> Floor  
Minneapolis, MN 55401  
[Ryan.J.Long@xcelenergy.com](mailto:Ryan.J.Long@xcelenergy.com)

Lynnette Sweet  
Regulatory Administrator  
Xcel Energy  
414 Nicollet Mall, 401 7<sup>th</sup> Floor  
Minneapolis, MN 55401  
[Regulatory.Records@xcelenergy.com](mailto:Regulatory.Records@xcelenergy.com)

## CONCLUSION

The Company respectfully requests the Commission approve a credit mechanism to provide the Company's electric customers of the State of South Dakota retail portion of the proceeds received as a result of the extended Settlement reached with the DOE (net of the TCJA offset we propose above). The mechanism will credit customers the ninth and future payments under the extended Settlement in the form of three one-time bill credits based upon the customers' most recent and available calendar year usage. The payments will be deposited in a separate interest-bearing bank account and if approved by the Commission, the actual interest earned minus bank fees will be included with the credit provided to customers.

Dated: January 21, 2019

Northern States Power Company