

PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

Chris Nelson
Kristie Fiegen
Gary Hanson

Chairperson
Vice Chair
Commissioner

IN THE MATTER OF THE PETITION OF
NORTHERN STATES POWER COMPANY
FOR APPROVAL OF A CREDIT MECHANISM
FOR PAYMENTS FROM THE THIRD
EXTENDED DOE SETTLEMENT &
WAIVER TO RETURN TO CUSTOMERS
SETTLEMENT PAYMENTS

DOCKET No.: EL21-____

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 Third Extended Settlement with the United States Department of Energy (DOE) for the partial breach of its contract to take spent nuclear fuel. In addition, the Company requests additional time to return the first payment received pursuant to the Third Extended Settlement (the twelfth payment in the series hereinafter referred to as the “Twelfth DOE Payment”).

The Commission’s February 22, 2019 Order in EL19-002 requires the Company to comply with the previous Orders related to the DOE settlement payments.¹ Those previous Orders require the Company to return the South Dakota jurisdictional portion to customers via a one-time credit within 90 days of the receipt of payment. This Petition requests a one-time waiver to the 90-day requirement and seeks approval of an additional 30 days to complete the return of the Twelfth DOE Payment to South Dakota customers in the form of a one-time bill credit.

The Company has placed the DOE settlement funds into a separate external interest bearing account and will include the interest received, minus bank fees, in calculating

¹ January 30, 2012 Order in Docket No. EL11-023 and February 17, 2016 Order in Docket No. EL16-001.

the amount of the credit. Consistent with the standards set forth in the Commission's Order in our prior cases,² the Company's goal is to once again seek an administratively efficient return of the funds to our customers as soon as practicable. Specifically, we request approval to return the Third Extended DOE Settlement funds 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 the fourth quarter of 2022 and 2023 for damages incurred in calendar years 2021 and 2022 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
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B. Date of Filing and Date Modified Rates Take Effect

Xcel Energy submits this Petition for approval on December 3, 2021. The effective date to credit the Settlement payment is to be determined by the Commission.

II. DESCRIPTION AND PURPOSE OF FILING

The Company requests Commission approval of a credit mechanism to return the payments received as a result of the Third Extended Settlement to South Dakota

² *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); *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), and *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*, Docket No. EL19-002, ORDER APPROVING CONTINUATION OF CREDIT MECHANISM AND APPROVING BILL CREDIT (Feb. 22, 2019)

electric customers. The Company also requests approval to include the interest earned, minus bank fees, on the single purpose account established to receive the DOE Settlement I payments. The Company also requests Commission approval of a one-time waiver to the 90-day requirement and asks for an additional 30 days to return the Twelfth DOE Payment only.

In support of this filing, Xcel Energy provides:

- History of the case and background;
- A description of the Company's proposed credit mechanism; and
- Public interest benefits of the Settlement.

III. BACKGROUND AND NEED FOR WAIVER

A. 2011 Settlement

Under the Nuclear Waste Policy Act, utilities such as Xcel Energy were required to enter into contracts for the disposal of spent nuclear fuel; utilities contributed \$1.0 million 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 lawsuits 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 lawsuits on July 7, 2011. The settlement 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. The Commission issued its Order approving a credit mechanism on January 30, 2012.

B. First Extended Settlement Agreement

On January 24, 2014, the Company and the U.S. Government reached an agreement 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 First Extended Settlement and requesting approval of a credit mechanism. The Commission issued its Order approving a credit mechanism on February 17, 2016.

C. Second Extended Settlement Agreement

On February 23, 2017, the Company and the U.S. Government agreed to extend the settlement another three years to allow for recovery of damages through December 31, 2019 (Payments 9, 10, and 11). On January 21, 2019 the Company submitted a petition in Docket No. EL19-002, notifying the Commission of the receipt of the first payment under the Second Extended Settlement and requesting approval of a credit mechanism. The Commission issued its Order approving a credit mechanism on February 22, 2019.

D. Customer Credits 2011 to 2020

As of December 31, 2020, the Company received eleven payments under the 2011 Settlement Agreement and the First and Second Extended Settlement Agreements. 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.

E. Third Extended Settlement Agreement

On August 24, 2020, the Company and the U.S. Government again agreed to extend the settlement an additional three years to allow for the recovery of damages through December 31, 2022 (Payments 12, 13, 14). The first payment under this third extension was received on October 27, 2021. Attachment B is a copy of the wire transfer confirming the amount received and has been redacted to remove Company-sensitive banking information. Attachment C provides a derivation of the South Dakota jurisdictional portion of \$911,481, along with the estimated credit by customer class. 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 proceeds under the 2011 settlement agreement and the extended settlements.

E. Need for Waiver

The first eleven DOE payments were completed and returned to South Dakota customers as prescribed by prior Commission Orders. Currently, due to previously scheduled refunds in our NSP states, along with our billing system's ability to handle only one refund at a time, we are requesting an additional 30 days to return the Twelfth DOE Payment.

IV. Proposed Waiver

The Twelfth DOE Payment was received on October 27, 2021 in the amount of \$16,550,164 million on a total Company basis (see Attachment B), or approximately \$911,481 on a South Dakota jurisdictional basis (see Attachment C) and represents damages for costs incurred in calendar year 2020. In total, we will return \$911,481 to our South Dakota customers before interest or bank fees are applied. The Twelfth DOE Payment has been placed in a segregated bank account established specifically and solely for the settlement proceeds, similar to the Company's treatment of the previous payments under the 2011 Settlement Agreement and Extended Settlement payments.

The Commission's Orders in Docket Nos. EL11-023, EL16-001 and EL19-002 required that we begin implementation of customer credits within 90 days of the Commission's order or receipt of the subsequent payments. For the Twelfth DOE Payment, we request 30 days additional time for implementation and propose posting the credits to customers' accounts no later than February 28, 2022. The Company's software which processes refunds can only process one refund at a time. Due to the early arrival of the DOE funds for all of our jurisdictions, and already scheduled refunds in our NSP states, we request this additional time only for the Twelfth DOE Payment.

V. 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 Agreements in Docket Nos. EL11-023, EL16-001 and EL19-002. Consistent with the procedures used for the previous DOE payments, the Twelfth DOE Payment will 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.”³

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 issues 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 currently earns 0.05% annually and the interest is posted daily. The credit amount will 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. Compliance Filings

For the future payments and consistent with Docket Nos. EL11-023, EL16-001, and EL19-002, we propose submitting the same compliance filing within 30 days after receipt of each payment, and will include documentation similar to that which is provided in Attachments B and C in this filing for Commission Staff review.

For all payments, the Company will file a compliance report within 30 days after 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 with the pervious DOE payments.

³ See Attachment C.

VI. THE SETTLEMENT IS IN THE PUBLIC INTEREST

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 through December 31, 2022 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, EL16-001 and EL19-002, we propose using allocators from the year the damages were incurred. Thus for the Twelfth DOE Payment, we would use the appropriate vintage allocator for 2020 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:

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CONCLUSION

The Company respectfully requests the Commission approve a credit mechanism for funds received pursuant to the Third Extended Settlement with the DOE for the partial breach of its contract to take spent nuclear fuel. In addition, the Company is requesting approval of an additional 30 days to complete the return of the Twelfth DOE Payment to South Dakota Customers.

The mechanism will credit customers the Twelfth DOE Payment under the extended Settlement in the form of a one-time bill credit based upon the customers' most recent twelve months of usage. The payment has been deposited in a separate interest-bearing bank account. The refund will include the actual interest earned minus bank fees.

Dated: December 3, 2021

Northern States Power Company