

Exhibit No. 10

STAFF MEMORANDUM

TO: COMMISSIONERS AND ADVISORS
FROM: BRITTANY MEHLHAFF, PATRICK STEFFENSEN, ERIC PAULSON, AND KRISTEN EDWARDS
RE: GE20-002 - In the Matter of Investor Owned Utilities' Joint Request for Deferred Treatment of the Financial Effects of COVID-19 and the Creation of Regulatory Assets
DATE: August 12, 2020

Commission Staff (Staff) submits this Memorandum regarding its recommendations for the above captioned matter.

BACKGROUND

On March 13, 2020, South Dakota Governor Kristi Noem issued Executive Order 2020-04 declaring a state of emergency regarding the outbreak of the disease COVID-19, caused by the novel coronavirus. On this same date, President Trump declared the COVID-19 pandemic a national emergency.

Neither the Governor nor the Commission ordered a moratorium on utility disconnections. However, in the weeks following the emergency declarations, South Dakota Investor Owned Utilities (IOUs), at various start times, all placed moratoriums on disconnections and late payment fees during the pandemic for an indefinite amount of time.

On May 1, 2020, the Commission received a joint request from five IOUs (Petitioners) for deferred treatment of the financial effects of COVID-19 and the creation of regulatory assets. The Petitioners include Northern States Power Company dba Xcel Energy (Xcel), MidAmerican Energy Company (MidAmerican), NorthWestern Energy (NorthWestern), Otter Tail Power Company (Otter Tail), and Montana-Dakota Utilities Company, a Division of MDU Resources Group (Montana-Dakota). The Petitioners seek approval for the deferred accounting treatment beginning March 13, 2020, the date the emergency was declared.

Examples of such costs to be deferred as stated in the Petition include: specific operational responses to the pandemic, personal protective equipment, bad debt expense, administrative and financing costs associated with arrearages and uncollectible accounts, technology to continue business operations from remote locations, training for employees, legal and regulatory expenses to determine and communicate responses, and other undetermined impacts.

Staff obtained additional information during discovery to aid in its analysis and recommendation to the Commission. Below, Staff addresses the companies' actions in response to the COVID-19 pandemic, potential expense and revenue impacts related to COVID-19, potential future recovery options, and actions taken in other states.

PETITIONER ACTIONS IN RESPONSE TO PANDEMIC

In response to this unprecedented pandemic, each company took measures to respond regarding employee and customer health and safety, financial hardships, and ensuring reliability of utility systems. Each utility took necessary actions to adapt their operations including remote work, limiting travel, employee social distancing, estimated meter readings when necessary, and preparations for sequestering essential employees in place if need be.

Two of the more notable changes for customers were disconnection moratoriums and waived late fees, which although helps customers experiencing hardships due to loss of job, reduced work hours, or illness, also has the potential to increase utility arrearages and bad debt. Therefore, a balance must be reached that provides fairness to all customers. Each of the Petitioners had varying timelines associated with the disconnection moratoriums, which are discussed individually below.

- **MidAmerican** – On March 18, 2020, MidAmerican issued a press release stating that it had temporarily suspended all disconnections for non-payment and would work with customers by waiving deposits and fees for late payments and providing payment plans as needed¹. MidAmerican resumed its collection process on July 1, 2020².
- **Montana-Dakota** – Disconnections for non-pay were suspended effective March 16, 2020 and late payment fees were suspended on April 1, 2020³. Montana-Dakota plans to restart the credit process September 1, 2020. Accounts qualifying for disconnection will be subject to the credit process from that point forward. Late payment charges will also be restarted on this date⁴.
- **NorthWestern** – Collection actions were suspended for residential customers starting March 16, 2020. Collections processing was suspended for most non-residential customers after further review⁵. NorthWestern resumed the process for service disconnections on July 13, 2020. Actual disconnections will occur August 24, 2020 for a customer billed on July 13, 2020. For the time being, NorthWestern continues to waive late payment fees⁶.
- **Otter Tail** – Otter Tail suspended the disconnection process on March 17, 2020⁷, and on March 20, 2020, Otter Tail suspended late payment charges⁸. On July 13, 2020, Otter Tail began sending disconnection notices and disconnection actions will follow for accounts with outstanding balances as of August 4, 2020. Late payment fees will be reinstated as of August 12, 2020⁹.

¹ See MidAmerican's Response to Staff Data Request 2-6.

² See MidAmerican's Response to Staff Data Request 2-5.

³ See Montana-Dakota's Response to Staff Data Request 1-7.

⁴ See Montana-Dakota's informational letters filed on June 3, 2020 and July 7, 2020.

⁵ See NorthWestern's Response to Staff Data Request 1-7.

⁶ See NorthWestern's informational letter filed on July 10, 2020.

⁷ Email from Pete Beithon to Brittany Mehlhaff on July 27, 2020.

⁸ See Otter Tail's Response to Staff Data Request 1-7.

⁹ See Otter Tail's informational letter filed July 6, 2020.

- **Xcel** – Physical disconnections were suspended effective March 15, 2020. Xcel resumed physical disconnections of residential customers effective August 4, 2020.¹⁰ Xcel waived late payment charges from June 1 to July 17, 2020¹¹.

Staff believes it was appropriate for each utility to restart the disconnection process at this time. Otherwise arrearages would likely continue to grow, creating overdue balances difficult for some customers to get ahead of and pay off. It is in all customers' interests to reduce these balances before winter and in the event a future surge in COVID cases would create the need to suspend disconnections again.

Although disconnection notices were not sent during this time, utilities have encouraged customers who are past due on their accounts to seek assistance and establish payment arrangements in order to avoid establishing unmanageable balances¹².

POTENTIAL EXPENSE AND REVENUE IMPACTS

It is important to note that the COVID-19 pandemic has impacted the financials of all the IOUs in South Dakota; however, each of the Petitioners has been impacted in its own unique way and each Petitioner plans to approach the regulatory asset differently. The following highlights how each Petitioner's expenses and/or revenues have been (or are anticipated to be) impacted by the pandemic.

- MidAmerican anticipates several adverse financial impacts as a result of COVID-19, including the following cost increases: labor cost increases such as overtime/premium pay, extended sick leave, shifts in labor from capital projects to Operations and Maintenance (O&M) activities, outsourcing and staff augmentation, and sequestration related labor and premiums, as well as non-labor O&M costs such as additional communication materials, personal protective equipment (PPE), medical equipment, remote work equipment and supplies, increased transportation expense, outside services, employee reimbursement expense, and non-labor sequestration costs¹³. MidAmerican provided a list of cost increases through July 14th totaling \$366,400, however, was not able to provide estimated totals associated with the pandemic¹⁴. MidAmerican also anticipates increased bad debt expense, foregone late payment fee and reconnection fee revenues, and changes in revenues due to decreased sales associated with lower demand to be included in the regulatory asset¹⁵. MidAmerican is not proposing to include any cost reductions to offset cost increases related to COVID-19 at this time. MidAmerican says it has "not identified any permanent costs reduction items directly attributable to the pandemic¹⁶."

¹⁰ See Xcel's informational letter filed July 16, 2020.

¹¹ Email from Matt Harris to Brittany Mehlhaff on August 11, 2020.

¹² See Company responses to Staff Data Requests 1-7, 1-8, 2-3, and 2-6.

¹³ See MidAmerican's Response to Staff Data Request 1-3.

¹⁴ See MidAmerican's Response to Staff Data Request 3-5.

¹⁵ See MidAmerican's Response to Staff Data Request 1-3.

¹⁶ See MidAmerican's Response to Staff Data Request 3-6.

- Montana-Dakota is anticipating including various accounts in its regulatory asset. Some of the categories include, but are not limited to, increase in bad debt expense, late payment fees waived or short-term cost of debt, cell phone priority costs, PPE, control room costs, additional computers, additional network/broadband/internet/software costs, issuance costs related to incremental short-term borrowings, and load reductions specifically identified as related to the pandemic¹⁷. Montana-Dakota has also identified cost savings to net against the cost increases in the form of decreased travel, training, and vehicle costs.¹⁸ As of June 30, 2020, Montana-Dakota has seen cost increases, not including bad debt, of \$23,942 for electric and \$110,705 for gas.¹⁹ Also, as of June 30, 2020, Montana-Dakota has seen cost decreases totaling \$22,868 for electric and \$20,822 for gas.²⁰
- NorthWestern is limiting its request to the establishment of a regulatory asset to record the deferral of incremental bad debt expense in excess of amounts currently included in its electric and natural gas rates, effective with the date of service disconnections²¹. Staff also notes that NorthWestern proposes to offset any bad debt recorded in the electric regulatory asset with the electric refund required due to the 2019 earnings sharing mechanism refund²². In the event the amount ultimately recorded in the electric regulatory asset associated with COVID-related bad debt does not exceed the refund required, NorthWestern will either issue a refund to customers at that time or include the refund as an adjustment in its next rate case. Considering the size of the refund²³, Staff agrees with NorthWestern's preferred approach.
- Otter Tail is anticipating cost increases including, but not limited to, labor, materials and supplies, information technology, miscellaneous, costs at power plants including PPE and sequestration preparation, increases for vehicle use, and bad debt²⁴. Otter Tail provided a breakdown of increased costs associated with COVID-19 for second quarter 2020, totaling \$288,000, excluding bad debt²⁵. Otter Tail potentially has decreases in travel expenses or other expenses but has not created an itemized list of reductions at this time.²⁶ Otter Tail also notes it is experiencing significant loss of load and may seek recovery of this lost revenue through the deferred accounting process²⁷.
- Xcel states it has incurred and is still incurring costs to meet important public policy, health and safety objectives for customers and employees. Some specific types of costs include increases in bad debt and administrative and financing costs associated with arrearages and uncollectible

¹⁷ See Montana-Dakota's Response to Staff Data Request 1-3.

¹⁸ See Montana-Dakota's Response to Staff Data Request 3-6.

¹⁹ See Montana-Dakota's Response to Staff Data Request 3-5.

²⁰ See Montana-Dakota's Response to Staff Data Request 3-6.

²¹ See NorthWestern's Response to Staff Data Request 3-5.

²² Refer to NorthWestern's Compliance Filing in Docket GE17-003 for the electric refund amount of \$442,000 required for 2019.

²³ NorthWestern relayed to Staff that the average residential customer refund would be \$3.44.

²⁴ See Otter Tail's Response to Staff Data Request 3-5.

²⁵ See Otter Tail's Response to Staff Data Request 3-5.

²⁶ See Otter Tail's Response to Staff Data Request 3-6.

²⁷ See Otter Tail's Response to Staff Data Request 1-3.

expenses, technology to continue business operations from remote locations, training for employees, legal and regulatory expenses to determine and communicate responses, and additional purchases of PPE, tools, materials, and supplies²⁸. Through the first and second quarter of 2020, Xcel's incremental costs related to COVID-19 include \$143,000 in bad debt expense and \$68,000 in non-labor expenses²⁹. Xcel has preliminarily noted certain categories of reduced costs as of July of approximately \$76,000 due to reduced company travel and avoided costs of disconnects³⁰.

It is evident from review of the data request responses that the Commission will be faced with a wide variety of utility requests for recovery and the magnitude of such requests. It appears some utilities are being conservative and limiting the items they intend to defer while others identified a myriad of expenses. Some companies have identified potential cost reductions while others have not identified any at this time. Staff and the Commission will need to assess each request on an individual basis and evaluate each utility's unique situation, while also being equitable to each utility and all customers.

Utilities must be able to clearly identify which expenses are COVID-related. This could prove to be complicated for certain expenses to determine which increased costs are above and beyond normal fluctuation and outside of the realm of normal business risk. The same complication will arise if companies request to include lost revenues in the regulatory asset. Determining which sales decreased solely because of COVID-19 is an almost impossible task due the amount of changes utilities can see in sales due to other items. Furthermore, some lost revenues could be in the realm of normal business risk. Staff also believes it is very important to capture all cost decreases and revenue impacts occurring as a result of COVID-19 if we are to uphold the matching principle while allowing utilities to defer cost increases for future recovery. If a company wishes to include in its regulatory asset all COVID-related cost increases that are temporary in nature and outside the normal operation of business, it must also account for all COVID-related cost decreases that are temporary in nature and outside the normal operation of business.

While it is premature to make a definitive decision on the appropriateness of the recovery of certain costs until such time as the magnitude of the costs are known and recovery is requested, Staff does invite Commissioner feedback at this time regarding the types of expenses to potentially be recovered, or not recovered, in the future. Commission guidance is important given the language of ASC³¹ 980-340-25-1 which states that the "rate action of a regulator can provide reasonable assurance of the existence of an asset." All or part of an incurred cost that would otherwise be charged to expense should be capitalized as a regulatory asset if a) it is probable that future revenues in an amount approximately equal to the capitalized cost will result from inclusion of that cost in allowable costs for ratemaking purposes and b) the regulator intends to provide for the recovery of that specific incurred cost rather than to provide for expected levels of similar future costs.

²⁸ See Xcel's Response to Staff Data Request 1-3.

²⁹ See Xcel's Response to Staff Data Request 3-5.

³⁰ See Xcel's Response to Staff Data Request 3-6.

³¹ Financial Accounting Standards Board (FASB)'s Accounting Standards Codification

FUTURE RECOVERY OPTIONS

While most of the Petitioners are planning on rate recovery in a future rate case, and it might be consistent and uniform to require each Petitioner to wait on rate recovery until its next rate case, Staff realizes a situation may arise where a different recovery mechanism might actually delay a rate case for an individual utility. Therefore, Staff does not recommend the Commission order a specific rate recovery mechanism at this time. Below is a description of how each Petitioner currently plans to recover its approved COVID-related costs in rates based on each company's responses to Staff Data Request 1-5.

- MidAmerican is still evaluating the preferred method for cost recovery. The company plans to make this decision once costs are known and after careful consideration of the balance between customer and company impact.
- Montana-Dakota intends to request recovery of the net costs recorded in the COVID-19 regulatory asset as part of its next natural gas and electric rate cases.
- NorthWestern's current plan is to only recover bad debt costs with the filing of its next electric and natural gas rate cases if those costs are approved to be included in a regulatory asset.
- Otter Tail plans to account for any approved COVID-19 costs in a deferred asset while seeking recovery in a future rate case, currently anticipated in 2022.
- Xcel has not yet determined the method it will propose to recover the costs recorded in the regulatory asset. Xcel states the magnitude of the costs is uncertain at this time and will impact the Company's determination on how to seek recovery.

BLACK HILLS ENERGY

On June 16, 2020, Black Hills Power, Inc. dba Black Hills Energy (Black Hills Energy) filed a letter in the docket to provide an explanation as to why it did not sign onto the petition with the other five IOUs. As indicated in the letter, Black Hills Energy had conversations with Staff on whether deferred accounting treatment or utilizing the current Stipulation Agreement in dockets EL17-006 and EL17-008 was the best option for Black Hills Energy and its customers.

Ultimately, Black Hills Energy and Staff agreed the best option was to utilize the Stipulation Agreement, as it provided the most efficient means of cost recovery of COVID-related costs by eliminating the need to address recovery in a future rate proceeding, while maintaining Staff's ability to review costs for reasonableness and prudence during the annual filings.

Even though Black Hills Energy is not formally one of the Petitioners in this docket, Staff has obtained similar discovery and performed a similar analysis regarding Black Hills Energy's response to the pandemic and the impacts seen by the Company. Black Hills Energy has committed to supplying similar reporting information as Staff recommends for the Petitioners in the recommendation section below.

ACTIONS IN OTHER STATES

While the actions taken by other states and commissions have varied among the states and commissions in the region, each state commission has had to (or will have to) address the unplanned costs its utilities have faced regarding the COVID-19 pandemic. As of the date of this memo, here is how the neighboring states have addressed the issue:

- The North Dakota Public Service Commission (NDPSC) received a joint filing from Montana-Dakota, Otter Tail, and Xcel on April 24, 2020 requesting similar deferred accounting treatment to that requested in South Dakota, and the NDPSC established separate cases for each company³². There was an informal hearing held on July 23, 2020 where discovery requests were asked of each of the Companies; however, no NDPSC decision has been made at this time.
- On April 20, 2020, the Minnesota Public Utilities Commission (MNPUC) received a joint petition³³ from its regulated electric and natural gas service providers in Minnesota, including Otter Tail, Xcel, and Great Plains (a division of Montana-Dakota). This petition requested deferred accounting of COVID-related costs similar to the joint petition in South Dakota. The MNPUC granted the petitioners' request on May 22, 2020 with the caveat that the grant is for accounting purposes only, as each utility still bears the burden to establish significance, reasonableness, prudence, and the incremental nature of the costs. Further, the MNPUC ordered that the petitioners must track known and estimated costs and revenues and file with the MNPUC on a quarterly basis.
- The Iowa Utilities Board (IUB) opened a docket³⁴ to address COVID-related concerns and on March 27, 2020 ordered a moratorium on disconnections until the Iowa public health emergency is lifted by written statement of Governor Kim Reynolds. On April 27, 2020, Governor Reynolds issued a proclamation which ended the public health emergency on May 27, 2020; however, the IUB ordered on May 20, 2020 that Iowa's investor-owned utilities could resume disconnections on July 1, 2020, subject to conditions.

On May 1, 2020, the IUB ordered that its rate-regulated utilities, including MidAmerican and Black Hills Energy, may utilize a regulatory asset account to track the increased expenses and other financial impacts incurred after March 1, 2020. This order also included a monthly reporting requirement of rate-regulated utilities regarding customer disconnections, payments in arrears, and customer payment agreements and established individual dockets for each utility³⁵ to identify its specific COVID-related costs and to propose appropriate periodic reporting requirements of these costs.

³² Montana-Dakota Electric – PU-20-191; Montana-Dakota Gas – PU-20-219; Otter Tail – PU-20-193; Xcel Electric – PU-20-192; Xcel Gas – PU-20-220

³³ MNPUC Docket No. 20-427

³⁴ IUB Docket No. SPU-2020-0003

³⁵ MidAmerican – ARU-2020-0156; Black Hills Energy – ARU-2020-0225

- On March 24, 2020, the Nebraska Public Service Commission (NEPSC) opened a docket³⁶ to respond to the state of emergency declared in Nebraska on March 13, 2020 and ordered a ban on natural gas disconnections until June 1, 2020. However, on May 19, 2020, the NEPSC ordered the ban shall continue until further ordered by the NEPSC. This further order came on July 28, 2020, when the NEPSC ordered that the ban be rescinded effective August 15, 2020. This order also requested that the natural gas utility companies, including NorthWestern and Black Hills Energy, remain in contact with the Commission and continue to provide up-to-date information regarding the status of customer accounts in arrears and the impact of COVID-19 on natural gas utilities and customers in Nebraska.
- On March 26, 2020, the Wyoming Public Service Commission (WYPSC) issued an order³⁷ directing public utilities to file an application to establish a deferred accounting order if they anticipate applying for authority to recover through rates any extraordinary expenses related to actions taken in response to the COVID-19 pandemic. Thus, companies, including Black Hills Energy³⁸ and Montana-Dakota³⁹, filed for approval of a deferred accounting order allowing it to establish a regulatory asset to track COVID-related expenses. The WYPSC issued orders approving the individual requests of Black Hills Energy on May 18, 2020 and Montana-Dakota on June 1, 2020. These orders directed the companies to file written quarterly status updates and to also account for any benefits received related to the pandemic in the deferred regulatory account. Further, these orders only authorized the establishment of the deferred regulatory account and did not determine any ratemaking.
- In Montana, the individual companies made separate petitions with the Montana Public Service Commission (MTPSC) to address its COVID-related costs, with Montana-Dakota⁴⁰ and NorthWestern⁴¹ making requests similar to those made in South Dakota. NorthWestern requested deferral of COVID-related costs but limited its request to just the COVID-related costs due to the increase in bad debt expense. Montana-Dakota requested the same deferred accounting treatment and similar categories of costs as in South Dakota. No MTPSC decision has been made at this time.

If interested in actions taken in other states not listed above, the National Association of Regulatory Utility Commissioners (NARUC) currently has a “State Response Tracker” available on its website at: <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

³⁶ NEPSC Docket No. PI-231

³⁷ WYPSC Docket No. 90000-151-XO-20

³⁸ WYPSC Docket No. 20002-117-EA-20

³⁹ WYPSC Docket No. 20004-147-EA-20 and 30013-365-GA-20

⁴⁰ MTPSC Tracking No. 2020.05.055

⁴¹ MTPSC Tracking No. 2020.05.066

RECOMMENDATION

Staff recommends the Commission enter an order allowing the Petitioners to use deferred accounting for costs incurred as a result of the COVID-19 pandemic, with the following conditions:

1. The deferred accounting method and the resulting creation of a regulatory asset shall not preclude Commission review of these amounts and any future cost recovery for reasonableness and prudence, including both rate filings by the Petitioners and rate reviews initiated by the Commission, and does not guarantee any such recovery.
2. The allowance for deferred accounting and the resulting creation of a regulatory asset in this docket is based on the facts of this case and any future deferred accounting method and the resulting creation of a regulatory asset for any other costs not related to this current docket must be approved by the Commission.
3. In instances where a Petitioner intends to include COVID-related cost increases in addition to incremental bad debt in its regulatory asset, it must also include an account of all COVID-related cost decreases and, if applicable, all benefits received related to the pandemic (federal and other) in the regulatory asset as well.
4. The Petitioners will provide, on a quarterly basis, updates regarding all known and estimated cost increases and decreases and revenue increases and decreases it plans to include in its regulatory asset. These updates are required until there are no changes to report regarding the balance of the regulatory asset.
5. The Petitioners will provide, on a quarterly basis, status updates regarding, at a minimum, the number of customers that have been disconnected, number of customers that are in arrears at the time the quarterly report is submitted, the total amount of arrears associated to the number of customers reported, and payment arrangements that have been made with its customers, including number of payment arrangements made, average length of payment arrangements, and total dollar amounts associated with such payment arrangements. The updates shall include both quarterly and cumulative information, if available, and be required until utilities are no longer tracking bad debt associated with COVID-19.

Staff also notes that in the Petition, Petitioners suggested that each company submit a separate filing including justification for the deferred amount ultimately to be recovered along with a proposed recovery mechanism addressing each company's individual circumstances. Such filings would be made following Commission approval of the request for deferred accounting and creation of regulatory assets. However, Staff and the Petitioners agree such separate filing approving a proposed recovery mechanism is an unnecessary step. Each company can request approval of the recovery mechanism when it files for approval to implement the mechanism, whether that be in its next rate case, or some other mechanism requested. A separate filing before that time is unnecessary.