

Xcel's Interim Rate Proposal

PUC Staff: Bob Harding

Statement of the Issue

Should the Commission authorize Xcel to propose, in its thirty-day compliance filing, a netting or offset of its test-year interim rate revenue over-collections (i.e. its test-year interim rate refund obligation) against step-year interim rate revenue under-collections?

Relevant Statutes and Commission Orders

Interim rate refunds, Minn. Stat. § 216B.16, Subd. 3(c)

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. ... If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect. ...

Final determination defined, Minn. Stat. § 216B.16, Subd. 2(g)

For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

Multiyear Rate Plan Order

In its June 17, 2013 Order Establishing Terms, Conditions, and Procedures for Multiyear Rate Plans,¹¹¹ the Commission stated that

- If the applicant seeks interim rates as part of its rate case, the Commission will direct the applicant to address how the collection and possible refund of interim rates could be implemented in conjunction with the multiyear rate plan rate adjustment. [Order, p. 10]

¹¹¹ In the Matter of the Minnesota Office of Attorney General-Antitrust and Utilities Division's Petition for a Commission Investigation Regarding Criteria and Standards for Multiyear Rate Plans under Minn. Stat. § 216B.16, Subd. 19, Docket No. E,G-999/M-12-587

- It is presumed that interim rates will be calculated based upon the rate case test year unless it is demonstrated to be reasonable to do otherwise. [Order, paragraph 5, p. 12]
- Regarding any proposal to establish new rates on an interim basis, an application for a multiyear rate plan must include or be accompanied by an explanation of how the utility proposes to collect and possibly refund interim rates in conjunction with the collection of and transition to the rates arising from a multiyear rate plan. [Order, paragraph 21, p. 14]

Xcel Energy (Xcel)

Compliance proposal related to interim rates - November 13, 2014

Reply comments - January 13, 2005

Xcel “proposes to calculate the interim rate refund by comparing the total interim rate revenue collected under [its] interim rate schedule to the total final rate revenues authorized for the 2014 Test Year and 2015 Step. In other words, [Xcel’s] approach would net the total interim rate revenues collected against the aggregate of the two separate revenue requirements for these years ordered by the Commission for the period [Xcel’s] interim rate schedule is in effect and then refund any excess amount to customers.”

Xcel believes its proposal is consistent with the purpose and intent of the interim rate statute and the multiyear rate plan statute. Xcel does not believe the interim rate statute only applies to a single, one-year or twelve-month interim rate time period. For a variety of reasons, Xcel did not propose an interim step increase at the beginning of this rate case or later in the proceeding. Xcel believes the interim rate statute allows interim rates to remain in effect for the duration of the proceeding, however long it may take, and refunds (and perhaps surcharges) to be calculated on a prorated basis according to the test-year (and step, if applicable) based on the length of time interim rates have been in effect.

Xcel also believes its proposal

- meets the purpose of the two statutes by reducing the effect of regulatory lag while allowing for the extended length of time that was needed to review this case.
- allows Xcel to avoid charging its customers a second interim step increase which could potentially confuse consumers, complicate billing and destabilize Xcel’s revenue stream.
- is complimentary to Xcel’s goals and proposal for moderating the rate increase(s) that result from this proceeding.

Department of Commerce (Department)

Comments – January 13, 2015

Amended Comments – January 16, 2015

The Department believes the Commission has two alternatives. The first would be Xcel's approach which would net the test year and step period together and treat the "interim-rate period as one time period in which the revenues collected under the interim rates are compared to the total revenues collected under the two sets of rates for the test years 2014 and 2015."

The second alternative would treat "the two test years of 2014 and 2015 separately for purposes of determining the total refund to ratepayers. This approach would continue to charge interim rates based on the authorized interim rate increase of approximately \$127,400,000 per year; however, under this option the over- and/or under-recovery of interim rates would be calculated separately for each year. For 2014, ratepayers would receive a refund based on the difference between the actual revenues and authorized revenues. The same would be true for 2015 if final rates are less than authorized interim rates. However, if final rates are higher in 2015 than authorized interim rates, then consistent with Minn. Stat. § 216B.16 (c), Xcel would be allowed to surcharge ratepayers for under-recovered revenues for the period between the date of the Commission's final rate determinations and the date new rate schedules are put into effect. Since new rates for 2015 will not be implemented on January 1, 2015, the recovery of under-recovered rates would only pertain to the few months between the date of final rate determination and the date new rate schedules are put into effect under this approach."

For purposes of determining the interim rate refund, the Department recommends the Commission consider each year in Xcel's multiyear rate plan as separate test years. The Department also recommends that the interim rate refund be determined by adding interest to the 12 monthly over collections during the year 2014, reduced by under-collections during the period March 24, 2015 (rather than May 8, 2015) through the date new rate schedules are put into effect. The Department believes Xcel should be compensated for the time it agreed to give up to give the Commission more time to make its decision. The Department did not make this argument for time Xcel gave up to give the ALJ more time to issue her report.

Office of Attorney General (OAG)

Comments – January 13, 2015

Reply Comments – January 23, 2015

OAG believes Xcel should clearly explain how it plans to apply and calculate the interim rate refund and be required to account for interest on any over-collection of interim rate revenue. OAG believes Xcel needs to calculate different interim refund factors for each year interim rates are collected (i.e. the test year and the step). OAG believes this is necessary for Xcel to be consistent with the method used in previous rate cases and to compensate ratepayers for the time value of their money. In addition, OAG does not believe Xcel should be allowed to collect interest (or a carrying charge) on any under-collection during the interim period.

OAG also argued that Xcel should not be allowed to change the level or amount of interim rates collected during this case regardless of Xcel's proposal for a multiyear rate plan.

OAG also argued against the Department's recommendation that the surcharge period (if there is a surcharge) be lengthened by moving the start of the surcharge period to March 24 from May 8, 2015. OAG believes Minnesota law prohibits the surcharge period from starting until the date of the Commission's final determination on (or about) May 8, 2015.

OAG also asked the Commission to limit its decision to the facts presented in this case despite the likelihood of this case setting a pattern for future MYRP filings. OAG suggested the Commission require all utilities in future MYRP rate filings to fully explain and commit to the interim rate plans and proposals in their initial MYRP filings.

Staff Comment

The main question the Commission may want (but is not required at this time) to decide is whether to give advance approval (provisional or otherwise) to Xcel's request to

net the total interim rate revenues collected against the aggregate of the two separate revenue requirements for these years ordered by the Commission for the period Xcel's interim rate schedule is in effect and then refund any excess amount to customers.

The Department and OAG are opposed but do not agree on the date on which Xcel should be allowed to begin recovering the difference between interim and new, final (step year) rates.

The following table provides a comparison of Xcel's interim rates and revenue compared to a hypothetical 2014 test year and step year revenue requirements. Xcel may over-recover its revenue requirement in 2014 and under-recover in 2015.

Hypothetical MYRP over and under-collection of revenue requirement	Calendar year 2014-test year	Calendar year 2015-step year	Cumulative total in 2015-step year
Interim rates	\$127,406,000		\$127,406,000
ALJ recommended rate increase as interpreted by Xcel (as of Jan. 16, 2015)	\$69,600,000	\$121,700,000	\$191,300,000
Interim rate refund of test year over-collection	\$56,806,000		
Interim rate surcharge of step year under-collection (probably must begin no later than date of Commission final determination)			\$63,894,000

Normally, the interim rate refund (or surcharge) plan is a compliance item proposed by the utility in the thirty-day compliance filing at the end of the rate case. Usually, the refund plan is fairly straightforward and is not disputed by the parties. However, because Xcel's November 13 compliance proposal is disputed, the Commission may want to give some indication of what kind of plan it would approve in advance of Xcel making a compliance filing at the end of this case.

The MYRP Order indicates interim rates should be based on the test-year rather than the test-year plus the step period. In making its decision, the Commission may want to consider the extent Xcel (and any other utility asking for a multiyear rate plan) should be allowed to update or change its request for interim rates a year or more into a proceeding after making its initial request and receiving approval for a certain level of interim revenue.

With respect to the point that this proceeding has lasted a long time, the MYRP statute provides for an extra 90 days because of the MYRP and the Commission is allowed an extra 90 days if there is more than one rate case pending. Xcel's two waivers of the statutory deadlines provided an extra eight to nine weeks in addition to the 180 days the Commission was entitled to under the statute.

Staff believes Xcel's argument about this "delay" causing regulatory lag would carry more weight if Xcel had not recently completed rate cases filed in 2010 and 2012 and was not continuing to recover significant amounts of cost and capital expenditures using riders.

With respect to the specific objections and points raised by the Department and OAG, staff notes that in its pro forma calculations, Xcel proposed a different factor for the test year and step rather than one combined factor for the entire period. If the Commission allows Xcel to net step period under-collection against its test-year refund obligation, Xcel's proposed methodology appears consistent with previous Xcel refund plans.

Staff does not believe the Department's proposal to move the date on which Xcel would be entitled to surcharge for any interim period under-collection ahead of the date of the Commission issuing its final determination is permitted under Minnesota law. Minn. Stat. § 16, subd 2 is very clear about the definition of the date of final determination being the date of the Commission's initial decision and not the date that the Commission could have made its decision absent other circumstances.

In addition, staff does not believe the interim rate statute requires the Commission to approve Xcel's request. The interim rate statute is very clear about the significance of the final determination and the Commission is not required to allow Xcel to collect the difference between interim and final rates until the date of the final determination.

... If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. ... If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect. ... (Minn. Stat. § 216B.16, Subd. 3(c))

On the other hand, the Commission could interpret the interim rate statute to apply to all of Ch. 216B, section 16, including the multi-year rate plan statute and decide that the increase at the end of the case resulting from the MYRP filing, if higher than interim rates, takes effect at the time of the Commission's final determination, as defined in Ch. 216B, section 16. The interim rate refund statute is clearly and intentionally asymmetrical in its choice of effective dates for the interim refund obligation and the final rates if higher than interim rates.

Several additional points are worth noting. First, the revenue requirement the Commission authorizes for Xcel for the test-year and the step-year are likely to be different from what the ALJ recommended. If the rate increase in the test-year plus the step-year are less than \$121.7 million than Xcel's request will probably be moot. However, if it is more than \$121.7 million, the Commission could decide to allow Xcel to net the amount of the under-collection in the against the test-year refund obligation.

Staff does not believe the Commission needs to address specific details in Xcel's hypothetical proposal for calculating the refund or surcharge mechanism absent any exact numbers to work with. If the Commission does want to address this issue and provide guidance, staff believes it could generally address the MYRP netting question and whether the statute allows any flexibility with the respective to the date of the final determination as that terms relates to the interim rate statute.

Decision Alternatives

1. Authorize Xcel, in its thirty day compliance filing, to propose netting its test year interim rate revenue refund obligation against its step year interim rate revenue under-collections.
2. Do not authorize Xcel to propose netting its test year interim rate revenue refund obligation against its step year interim rate revenue under-collections.
3. Determine that in Xcel's multi-year rate plan, the date of the Commission's final determination does not control the date upon which the utility is allowed to recover the difference between interim rates and final (step year) rates. Determine the as of date on which Xcel may be allowed to recover the difference between interim and final (step year) rates is March 24, 2015.
4. Determine that in Xcel's multi-year rate plan, the date of the Commission's final determination is the date the Commission issues its initial decision regardless of circumstances and controls the date upon which the utility is allowed to recover the difference between interim rates and final (step year) rates.

(Note: The decision alternatives for this item correspond to alternative VII, L (1 through 4) on p. 45 of the deliberation outline.)

Interest Rate on Interim Rates Refund

PUC Staff: Jorge Alonso

Introduction

This issue is disputed between Xcel and the OAG. The Company proposed that the interest rate on any possible interim rate refund should not be higher than the prime interest rate. The OAG recommended that the Commission, as it did in Xcel's previous rate case, approve an interest rate equal to the Company's overall rate of return.

Note: Parties positions that repeat or reaffirm a previous position are not repeated; however, all references on the record for this subject are listed at the bottom of this section.

Party Positions

Xcel – Direct Testimony

Xcel proposed that, for purposes of refunding, the same refund mechanism used its 2011 electric rate case be used in this rate case.¹¹²

Office of Attorney General – Direct Testimony

The OAG pointed out that the prime rate does not compensate ratepayers who may be subject to credit card debt interest of up to 15% or higher and opined that, if the prime rate is used, NSP would be holding ratepayer funds at an unreasonably low cost. The OAG concluded that a higher rate is justified in these circumstances just as they were in NSP's last rate case and recommended usage of Xcel's full weighted cost of capital as the interest rate for refunds.¹¹³

Xcel – Rebuttal Testimony

Xcel pointed out that Interest on interim rates at the Prime Rate exceeds the Company's cost of replacement short term borrowing¹¹⁴ and concluded that application of the Company's ROR to the entire refund would be inappropriate.¹¹⁵

¹¹² Clark Direct, page 26

¹¹³ Lindell Direct, page 59

¹¹⁴ Tyson Rebuttal, page 31

¹¹⁵ Heuer Rebuttal, page 39

Xcel – Initial Brief

Xcel stated that, since the Company's cost of short term borrowing is 0.62% and the Prime Rate is 3.25%, it is clear that the Company will pay far more in interest on interim rate refunds than it would cost for replacement short term borrowing. Xcel added that the comparison to short term debt rates is further supported by the fact that interim rates are, on average, outstanding for less than 12 months and, if the interim rate refund is completed by September, 2015, the total period of the interim rate refund would be 21 months. However, some of the interim rate refunds would be returned in less than 1 month (those collected in September 2015) and some would have been outstanding for 21 months (those collected in January 2014). The average would be 10.5 months (one half of the 21 month period). A 10.5 month average outstanding time period is consistent with short term debt, which by definition has a term of less than one year.¹¹⁶

Office of Attorney General – Initial Brief

The OAG pointed out that the reasoning for awarding the larger interest rate in the last rate case applies to this case as well. The OAG mentioned that Xcel has requested the largest rate increase in the history of the state, and it was granted an interim rate in accordance with that request. But based upon the challenges presented by the OAG, the Department, and other intervenors, and the concessions that Xcel has made, it is very likely that Xcel's final rate will be substantially lower than the interim rate.¹¹⁷ The OAG pointed out that, regarding the rate case's likely outcome, the Department noted, "[T]here's a similarity between the last case and this case . . . in that there is a large increase and a good percentage of that increase was being requested by the Department not to be granted."¹¹⁸

The Commercial Group (CG) – Initial Brief

The Commercial Group pointed out that, by setting the interim refund rate at NSP's overall cost of capital in the last rate case, the Commission corrected an unfairness (as perceived by the CG) whereby NSP had over-projected its revenue requirement for interim rates at least seven straight times while paying low interest on such over-collections. The CG saw no reason for the Commission to alter their conclusions from the last rate and supported the OAG's position that interim rate refunds accrue interest at the overall cost of capital set in this proceeding.¹¹⁹

¹¹⁶ Xcel, Initial Brief, pages 106-107

¹¹⁷ Office of Attorney General, Initial Brief, page 42

¹¹⁸ Tr. Evid. Hearing, Volume 5, at 80–81 (Lusti)

¹¹⁹ The Commercial Group, Initial Brief, pages 13-14

ALJ Report

The ALJ discussed the interest rate on a possible interim rate refund issue in Findings 968 through 985. Since authorizing a higher interest rate would necessitate a variance, the ALJ listed those requirements in Finding 969¹²⁰:

969. Pursuant to Minn. R. 7829.3200 (2013), the Commission can vary its rules when it determines that the following requirements are met:
- i. Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
 - ii. Granting the variance would not adversely affect the public interest; and
 - iii. Granting the variance would not conflict with standards imposed by law.

In Findings 981 through 983, the ALJ addressed the three prongs mentioned in Finding 969:¹²¹

981. The third prong of Minn. R. 7829.3200 requires a finding that granting the variance would not conflict with standards imposed by law. Minn. Stat. § 216B.16, subd. 3, provides:

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including *interest on it which shall be at the rate of interest determined by the commission.*

This statute gives the Commission the authority to determine the interest rate applied to any interim rate refund. Thus, granting the variance would not conflict with standards imposed by law.

982. The second prong of Minn. R. 7829.3200 requires a finding that “granting a variance would not adversely affect the public interest.” Because the Company seeks to impose a carrying charge on its customers for nuclear refueling outage costs that is equal to its rate-of-return, grossed up for taxes, the Administrative Law Judge concludes that the public interest would not be adversely affected if the Company were required to pay that same rate on interim rate refunds. Both rates are essentially payments for the use of money. The Company has failed to explain how the public interest is served by the Company paying only 3.25 percent interest on the interim rate refund at the same time imposing a much higher rate on its customers as a carrying charge.

¹²⁰ ALJ Report, page 219

¹²¹ Ibid, page 222

983. The first prong of Minn. R. 7829.3200 requires a determination that “enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule.”

The ALJ concluded the following and made a qualified recommendation:¹²²

984. Based on the Commission’s decision in the last rate case, the Administrative Law Judge concludes that the determination of whether enforcement of the rule will impose an excess burden on ratepayers in this case depends largely on the magnitude of the over-collection of interim rates, if any, in this case. If the amount of over-collection is comparable to the last case, then the reasoning in the Commission’s 12-961 ORDER would apply equally to this case given the magnitude and frequency of the over-collections by the Company. On the other hand, if the over-collection is a much smaller amount, the burden on ratepayers from lending the Company funds at the 3.25 percent Average Prime Rate may not be excessive.

985. Therefore, a final determination on the first prong can only be made by the Commission after it makes the revenue requirement decisions in this case.

Staff Analysis

Based on Xcel’s January 9, 2015 compliance filing of revised financial and rate design schedules based on the ALJ’s Report, the Company calculates that, should the Commission adopt all recommendations, its revenue deficiencies for 2014 and 2015 would be \$74.067 million and \$196.458 million, respectively. The Commission’s January 2, 2014 Order accepting the Company’s filing and suspending rates authorized Xcel to annually collect \$127.406 million.

Based on that information, Staff calculates that Xcel would have *over*-collected \$53.339 million during all of 2014 (\$4.44 million per month). Based on the same numbers, Xcel also began *under*-collecting \$5.754 million per month (\$196.458 million minus \$127.406 million divided by twelve) in January 2015.

Parties so far have proposed two possible alternatives for the applicable interest rate – Prime or the Company’s ROR. Staff would like to introduce a hybrid alternative for the Commission to consider – have the Company’s ROR apply to all amounts twelve months and older and have the Prime Rate apply to all other amounts. Staff believes that this alternative takes into account all the parties’ positions and arguments and provides a more balanced approach to the dispute.

Finally, Staff points out that Xcel’s Monticello prudence review¹²³ final outcome could have a material impact on this case’s revenue requirement; however, the outcome in that docket was still unknown at the time these briefing papers were written. Regardless of Monticello’s and other Commission decisions’ combined revenue requirement impact, Staff believes that Xcel will

¹²² Ibid, pages 222-223

¹²³ Docket E-002/CI-13-754

still owe ratepayers a refund for 2014. Procedurally, Staff's proposed hybrid alternative can still be used to calculate interest on the possible refund.

Decision Alternatives

Decision alternatives for Interest Rate on Interim Rates Refund

1. Determine that the appropriate interest rate to be paid on a possible interim rate refund should be the prime interest rate, or 3.25%. (Xcel, ALJ – if refund amount is not large)
2. Determine that the appropriate interest rate to be paid on a possible interim rate refund should be based on the Company's rate of return¹²⁴. (OAG, CG, ALJ – if refund amount is large)
3. Determine that the appropriate interest rate to be paid on over-collections older than twelve months should be based on the Company's rate of return and, conversely, the appropriate interest rate to be paid on over-collections than twelve months old should be the prime interest rate, or 3.25%. (Staff)

(Note: The decision alternatives for this item correspond to alternative VII, M (1 through 3) on p. 45 of the deliberation outline.)

Reference to Record

Xcel Direct: Clark, page 26 starting at line 4

OAG Direct: Lindell, page 58 starting at line 8

Xcel Rebuttal: Heuer, page 37 starting at line 6

Xcel Rebuttal: Tyson, page 31 starting at line 17

Xcel Initial Brief: Starting on page 106

OAG Initial Brief: Starting on page 40

CG Initial Brief: Starting on page 13

Xcel Reply Brief and Proposed Findings: Starting on pages 86 and 103, respectively

OAG Reply Brief: Starting on page 4

OAG Proposed Findings: Starting on page 26

ALJ Report: Findings 968-985, starting on page 218

OAG Exceptions to ALJ Report: Starting on page 19

¹²⁴ The rate of return will be based on the return on equity (ROE) approved in this rate case.