

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 15, 2015** **Agenda Item # 5****

Company: Northern States Power Company d/b/a Xcel Energy (Xcel or the Company)

Docket No. E-002/GR-13-868
In the Matter of the Application of Northern States Power Company for
Authority to Increase Rates for Electric Service in the State of Minnesota

Issues: Should the Commission grant the petition for reconsideration of its August 31,
2015 Order as requested by the Office of the Attorney General?

If so, should the Commission change or modify its decision authorizing Xcel
to recover its 2015 revenue deficiency as it accrued beginning on March 3,
2015 and through the date new, final rates are put into effect?

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Relevant Documents

PUC – ORDER REOPENING, CLARIFYING, AND
 SUPPLEMENTING MAY 8, 2015 ORDER (pp. 8-11 & 19) Aug. 31, 2015
OAG – Petition for Reconsideration Sep. 21, 2015
Xcel – Response to OAG’s Petition for Reconsideration Sep. 30, 2015

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Statement of the Issues

- Should the Commission grant the petition for reconsideration of its August 31, 2015 Order as requested by the Office of the Attorney General?
- If so, should the Commission change or modify its decision authorizing Xcel to recover its 2015 revenue deficiency as it accrued beginning on March 3, 2015 and through the date new, final rates are put into effect?

Introduction

On August 31, 2015, the Commission issued its ORDER REOPENING, CLARIFYING, AND SUPPLEMENTING MAY 8, 2015 ORDER (August 31, 2015 Order).¹ In this order, the Commission authorized Xcel to use March 3, 2015 for the date on which Xcel would be allowed to start collecting the difference between the final, authorized rate increase of \$149.420 million per year and the interim rate increase of \$127.406 million per year.

The Commission finds that the interim rates were in excess of approved 2014 rates and less than the rates approved for 2015. The Commission will require Xcel to refund the excess amount collected in 2014, and will permit Xcel to recover the 2015 deficiency, but only as it accrued beginning on March 3, 2015 and through the date the new rate schedules are put into effect. This will permit Xcel to recover the difference in 2015 revenues beginning on the date the final determination in this case was statutorily due, but for accommodations made by the Company.²

This decision was based on a motion made by Chair Heydinger which passed 3 – 1. Commissioner Tuma voted no.

On September 21, 2015, the Office of Attorney General – Residential Utilities and Antitrust Division (OAG) asked the Commission to reconsider. In the conclusion to its petition, the OAG argued that

¹ Overall, for the two-year (multi-year) period, instead of the \$291.2 million (or 10.4 percent) rate increase that Xcel proposed in its initial request, the Commission authorized an increase of approximately \$149.4 million (or approximately 5.28 percent).

Xcel's Multi Year Rate Plan	PUC – Order (August 31, 2015)	
	Increase (millions)	Increase (percent)
Calendar year 2014 - test year	\$55,511,000	1.96%
Calendar year 2015 – step	\$93,908,000	3.32%
Two-year total (approximate)	\$149,420,000	5.28%

Xcel is currently authorized to collect an interim rate increase of approximately \$127,406,000 per year, or approximately 4.57 percent, effective January 3, 2014, subject to refund.

² August 31, 2015 Order, this docket, p. 10

The Commission should reconsider its decision to permit Xcel to surcharge ratepayers for under-collected interim rates before the date of the Commission's final determination. The Commission's powers are limited to only those powers that are granted by the legislature, and the legislature created a statute that clearly defines the time period that utilities may surcharge ratepayers. Because the Interim Rate Refund Statute clearly limits interim rate surcharges to the period between the final determination and when final rates become effective, the Commission exceeded its authority by permitting Xcel to extend the surcharge period before the final determination.³

On September 30, 2015, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) submitted its answer to the OAG's petition and asked the Commission to deny the OAG's petition. Xcel does not believe the OAG provided any new basis for the Commission to reconsider its August 31, 2015 Order.

Petitions for Reconsideration - Minn. Stat. § 216B.27

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minn. Rules, part 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the OAG's petition, the OAG's request would be considered denied as of November 20, 2015.

The Commission may also affirmatively deny the OAG's petition for reconsideration.

However, if the Commission grants the OAG's petition for reconsideration, the Commission could reconsider, and

- a. change, significantly modify or reverse its August 31 decision, or
- b. clarify and further explain without significantly changing its August 31 decision, or
- c. affirm (i.e. not change) its August 31 decision (this would have the same effect as denying the OAG's request for reconsideration), or
- d. request additional comments and/or hold further hearings.

The Commission may also reconsider or clarify its August 31, 2015 Order on its own motion.

(A copy of Minn. Stat. § 216B.27, Minn. Rules, Part 7829.3000, and other relevant statutes and orders can be found at the end of these briefing papers in Attachment A.)

August 31, 2015 Order - Interim Rate Refund Plan Discussion

In its August 31, 2015 Order the Commission explained its decision authorizing the interim rate refund (on pp. 8-11) including its reason for allowing Xcel to use March 3, 2015 as the date on which Xcel would be allowed to start collecting the difference between the authorized final rate increase of \$149.420 million per year and the interim rate increase of \$127.406 million per year.

³ OAG, petition, this docket (September 21, 2015), pp. 17-18

The Commission believes that the Department's refund proposal, as modified below, reasonably balances the interests of ratepayers and the Company consistent with the purposes of Minn. Stat. § 216B.16 and the Commission's overall obligation to establish just and reasonable rates. The Commission agrees with the Department that the relevant statutes do not explicitly address their application to the facts of this multi-year rate plan proceeding. Exigent circumstances warrant an interim rate over- and under-collection calculation that reflects the unique circumstances of this case.

The Commission agrees with the parties asserting that the interim rate calculations should recognize two distinct test years with distinct amounts recovered relative to approved rates. Netting the two years together as the Company proposes would permit it to recover more under-collected revenue in 2015 than Minn. Stat. § 216B.16, subd 3(c) appears to contemplate. Instead, the over- or under- recovery calculation must be performed separately for 2014 and 2015.

The Commission finds that the interim rates were in excess of approved 2014 rates and less than the rates approved for 2015. The Commission will require Xcel to refund the excess amount collected in 2014, and will permit Xcel to recover the 2015 deficiency, but only as it accrued beginning on March 3, 2015 and through the date the new rate schedules are put into effect. This will permit Xcel to recover the difference in 2015 revenues beginning on the date the final determination in this case was statutorily due, but for accommodations made by the Company.

As described above, several factors contributed to prolong this proceeding, including ALJ- and Commission-initiated requests to extend deadlines, which could not have occurred without Xcel's agreement. This first-of-its-kind multi-year rate plan involved novel and complex disputed issues-including this dispute over the appropriate interim rate refund, an issue not usually complicated nor subject to dispute. The Company agreed to deadline extensions that prolonged the proceeding by over two months. Xcel also refrained from seeking increased interim rates as the case proceeded to avoid introducing another disputed issue.

Accordingly, the Commission will authorize Xcel, in its thirty-day compliance filing, to net its test year interim rate revenue refund obligation against step-year interim rate revenue under-collections for the period from March 3 through the date final rates take effect. The effect of this decision will be to make final rates effective as of March 3, 2015 -- the statutory deadline for a final determination in this proceeding that the company waived. This calculation method will avoid penalizing the company for agreeing to a delayed final determination to accommodate stakeholders and decision-makers.

The OAG argued that the Commission lacks authority to "change the date that surcharges may begin" under Minn. Stat. 216B.16, subd. 3(c). However, nothing

in subdivision 3 prohibits the Commission from authorizing recovery for under-collection between March 3 and May 8 where doing so is just and reasonable under the circumstances.

There is also no explicit direction in statute on how to calculate over- or under-recovery in multi-year rate proceedings. Apart from the Commission's authority under subdivision 3(b) to determine how to calculate interim rates when it finds exigent circumstances, as it does here, the Commission also has authority under Minn. Stat. 216B.16, subd. 19(c) to "ensure that rates remain just and reasonable" during a multi-year rate plan. The Commission uses the March 3 date as a marker for calculating just and reasonable rates in the unique circumstances of this case.

The Commission will not authorize Xcel to: (a) net its test-year interim rate revenue refund obligation against its 2015 interim rate revenue under-collections through March 3, 2015, nor (b) reduce the amount of interest paid on excess interim rates collected in 2014 by offsetting the average balance of excess interim rates collected using under-collections in 2015. These proposals would permit the Company to recover more than it could have even if the rate case were decided by the statutory deadline and do not appropriately distinguish the 2014 over-collection and the 2015 under-collection. The Commission believes that the March 3 date best balances the interests of ratepayers and the Company in a fashion consistent with the Commission's obligation to set just and reasonable rates, and consistent with the object of the interim rate statute.⁴

OAG's Petition for Reconsideration

The OAG asked the Commission to reconsider its decision authorizing Xcel to recover the difference between interim rate and final rates beginning March 3, 2015. The OAG believes the Commission should reconsider because

... [in] the interim rate refund statute [Minn. Stat. § 216B.16, subd. 3(c)], the legislature clearly defined when the Commission could permit utilities to surcharge customers for interim rate under-collections. By authorizing a surcharge period different than the one defined by law, the Commission has exceeded its authority." ...⁵

In support of its request, the OAG argued that

[t]he plain language of the Interim Rate Refund Statute requires the Commission to authorize Xcel to recover under-collected interim rates from the date of the Final Determination, until final rates are implemented. In contrast, the Commission authorized Xcel to recover under- collected interim rates beginning on March 3, 2015, more than two months before its May 8 Findings of Fact, Conclusions, and Order, and nearly six months before the August 31 Order that

⁴ August 31, 2015 Order, this docket, pp. 10-11

⁵ OAG, petition, this docket, September 21, 2015, p. 4

some Commissioners acknowledged would be the final determination. By doing so, the Commission exceeded the authority it was granted by the legislature.⁶

The OAG believes that because the language in the statute is so clear and straightforward in describing how to apply the interim rate refund statute, the Commission does not have the authority to authorize the March 3, 2015 date as the effective date for final rates in this case. The OAG also argued that because the statute is so clear, the statute cannot be interpreted to imply the legislature has granted authority to the Commission to vary the time period. The OAG believes the multiyear rate plan (MYRP) statute is irrelevant because the MYRP statute states that interim rates shall be implemented in the same manner as allowed under the interim rate refund statute.

The OAG also argued that there is no justification for the Commission to not follow the statute. According to the OAG

In its August 31 Order, the Commission stated that one of the factors impacting its decision was the fact that Xcel had agreed to extend the deadline of this case. Similarly, during their discussion of the matter, several Commissioners stated that they did not believe that it would be fair to require Xcel to refund more dollars as a result of agreeing to extend the deadline in this case. While issues of equity have a place in many Commission decisions, they are not relevant in this case because the legislature has already decided the balance between utilities and ratepayers as a matter of policy. ...⁷

At the time that it made its waivers, Xcel knew that extending the time period would change the way that interim rates were refunded, and Xcel “affirmatively commit[ed]” to conducting the refund in accordance with the Interim Rate Refund Statute, which clearly states that the time period for surcharging is limited to the time after the Commission’s final determination. Xcel agreed to accept the balance established by the legislature, and allowing Xcel to retroactively recover rates that it had previously agreed it would not seek to collect would be inherently unreasonable. And, regardless of all other factors, allowing Xcel to go back on its earlier guarantee at this point would be prejudicial to ratepayers and open the door to similar deal- breaking in the future.⁸

The OAG also objects to the Commission’s finding of exigent circumstances. The OAG believes that even if Xcel’s circumstances could be construed to be exigent, and the OAG does not believe that they can, it would not matter because there is nothing in the interim rate refund statute that allows the Commission to make that finding. The OAG believes that because the exigent circumstance provision in section 16 of Minn. Ch. 216B is in the subdivision related to interim rates rather than interim rate refunds, it cannot apply to this situation involving the interim rate refund subdivision.

⁶ OAG, petition, this docket, September 21, 2015, p. 5

⁷ OAG, petition, this docket, September 21, 2015, p. 12

⁸ OAG, petition, this docket, September 21, 2015, p. 13

The OAG also disputes the Commission's reasoning that it had the authority to approve the Department's recommendation because nothing in the interim rate refund statute that expressly prohibits the Commission from doing so.

In effect, the Commission argues that it has the authority to modify the surcharge date because, even though the legislature clearly defined the surcharge period in statute, the legislature did not also include a specific statutory provision prohibiting the Commission from modifying it. That argument would allow for an incredible expansion of the Commission's authority. Taken to its logical conclusion, the Commission's argument would allow the Commission to do anything it wanted that the legislature had not specifically prohibited. Such a result would be absurd, and would upend decades of precedent ruling that the Commission's authority, like every other administrative agency, is limited to the powers granted by the legislature. The Commission does not have the authority to do everything that the legislature has not prohibited. In fact, Minnesota law is exactly the opposite: the Commission only has the authority that the legislature has affirmatively granted.⁹

Xcel's Answer

In its response to the OAG, Xcel stated that

The OAG's Petition for Reconsideration presents no new basis for the Commission to reconsider its August Order. Accordingly, we respectfully request that the Commission deny the OAG's Petition.

Minnesota Statutes set forth the standard for the Commission's review of Petitions for Reconsideration: "If in the commission's judgment, after rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify, or suspend the original action accordingly." The OAG offers no new information about the lawfulness or reasonableness that the Commission has not already heard. Rather, the OAG repeats prior arguments that the Commission has already considered and rejected.

Further, the Commission has denied reconsideration in the past when "[b]ased on [its] review ...the petitions do not raise new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in that order." In other words, in cases where rehearing has recently been denied, the Commission had considered all argument, arrived at a reasoned decision, and therefore had no reason to rehash the prior deliberation process. Under this standard, the OAG has not raised any new arguments that would merit reconsideration. Thus, its Petition should be denied. As the Commission

⁹ OAG, petition, this docket, September 21, 2015, pp. 16-17

considers the OAG's petition, the Company also notes that its interim rate proposal is the only proposal on the record whose full compliance with the Interim Rate Statute has not been challenged by any party.

The OAG's Petition creates further delays in this already protracted proceeding. And, by making its filing, the OAG has lengthened the surcharge period that is currently underway prior to implementation of final rates. Therefore, in the interest of bringing this case to a close as quickly as possible, the Company respectfully requests that the Commission schedule its hearing of the OAG's Petition for the same time it schedules its hearing of our September 2, 2015 Compliance Filing or as close to it as possible so the Company can implement final rates by November 1.¹⁰

Staff Comment

This issue has been heard twice in this proceeding. The first time was in March 2015 when the Commission requested additional comments in its May 8 Order. The second time was on July 9, 2015 which resulted in the decision in the Commission's August 31, 2015 Order.

In its petition, the OAG implies there was something irregular about off the record scheduling discussions regarding Xcel's waivers and the extensions of time in this proceeding and references Minnesota Rules, Ch. 7845. The Commission may want to take note of the definition of ex parte communication in Minnesota Rules, Part 7845.7000, Subpart 4.

"Ex parte communication" means an oral or written, off-the-record communication made to or by commissioners or commission decision-making personnel, without notice to parties or participants, that is directed to the merits or outcome of an on-the-record proceeding. This term does not include procedural, scheduling, and status inquiries or other inquiries or requests for information that have no bearing on the merits or the outcome of the proceeding.

Staff does not believe there is new information in the OAG's petition or new argument that the Commission has not heard before. Nevertheless, under Minn. Stat. § 216B.27, the Commission does have the authority to rehear and reconsider this issue and then decide whether it has changed its mind.

Staff does not have anything to add to what was in the staff briefing papers on this issue for the March 19 and 26, 2015 and July 9, 2015 Commission meetings. A copy of the staff comment on this issue for the July 9, 2015 Commission meeting can be found in Attachment B. A list of relevant documents on this issue from the record of this case can be found in Attachment C.

¹⁰ Xcel, Answer, pp.1-2, footnotes omitted

Commission Decision Alternatives

Rehearing, Reconsideration (and Clarification) of the August 31 Order

1. Grant the Office of Attorney General – Residential Utilities and Antitrust Division’s (OAG’s) petition for reconsideration, or
2. Deny the OAG’s request for reconsideration, or
3. On its own motion, reconsider the August 31 Order, or
4. Take no action and allow the OAG’s petition for reconsideration to be denied by operation of law.

Interim Rate Refund Plan

If the Commission grants the OAG’s petition for reconsideration or on its own motion reconsiders, the Commission could

5. change its August 31, 2015 Order and authorize Xcel to recover under-collected interim rates beginning on January 1, 2015 (Xcel’s original position, Xcel did not ask for reconsideration), or
6. affirm its August 31, 2015 Order and reauthorize Xcel to recover under-collected interim rates beginning on March 3, 2015, or
7. change its August 31, 2015 Order and authorize Xcel to recover under-collected interim rates beginning on May 8, 2015 (OAG), or
8. change its August 31, 2015 Order and authorize Xcel to recover under-collected interim rates beginning on August 31, 2015 (OAG).

Relevant Statutes and 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. The utility shall commence distribution of the refund to its customers within 120 days of the final order, not subject to rehearing or appeal. 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.

Interim Rates, Minn. Stat. § 216B.16, subd. 3(b)

Unless the commission finds that exigent circumstances exist, the interim rate schedule shall be calculated using the proposed test year cost of capital, rate base, and expenses, except that it shall include: (1) a rate of return on common equity for the utility equal to that authorized by the commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and (3) no change in the existing rate design. ...

Multiyear Rate Plan Order

In its June 17, 2013 ORDER ESTABLISHING TERMS, CONDITIONS, AND PROCEDURES FOR MULTIYEAR RATE PLANS,^{1, 2} the Commission stated that

¹ 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

² In 2015, the Legislature enacted amendments to the MYRP statute, including the following provision that allows a utility to request an interim rate step increase:

A utility that filed a petition with the commission to approve a multiyear rate plan may request to be allowed to implement interim rates for the first and second years of the multiyear plan. If the commission approves the request, interim rates shall be implemented in the same manner as

- 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]
- 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, p. 12, paragraph 5]
- 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, p. 14, paragraph 21]

Minn. Stat. § 216B.27. Rehearing; Condition Precedent to Judicial Review.

Subdivision 1. Applying for rehearing.

Within 20 days after the service by the commission of any decision constituting an order or determination, any party to the proceeding and any other person, aggrieved by the decision and directly affected thereby, may apply to the commission for a rehearing in respect to any matters determined in the decision. The commission may grant and hold a rehearing on the matters, or upon any of them as it may specify in the order granting the rehearing, if in its judgment sufficient reason therefor exists.

Subd. 2. Contents of application; condition precedent for review.

The application for a rehearing shall set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court to any person or corporation unless the plaintiff or petitioner in the action or proceeding within 20 days after the service of the decision, shall have made application to the commission for a rehearing in the proceeding in which the decision was made. No person or corporation shall in any court urge or rely on any ground not so set forth in the application for rehearing.

Subd. 3. Rules; procedural requirements; commission's authority.

Applications for rehearing shall be governed by general rules which the commission may establish. In case a rehearing is granted the proceedings shall conform as nearly as may be to the proceedings in an original hearing, except as the commission may otherwise direct. If in the commission's judgment, after the rehearing, it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the commission may reverse, change, modify, or suspend the original action accordingly. Any decision, order, or determination made after the rehearing reversing, changing, modifying, or

suspending the original determination shall have the same force and effect as an original decision, order, or determination. Only one rehearing shall be granted by the commission; but this shall not be construed to prevent any party from filing a new application or complaint. No order of the commission shall become effective while an application for a rehearing or a rehearing is pending and until ten days after the application for a rehearing is either denied, expressly or by implication, or the commission has announced its final determination on rehearing.

Subd. 4. Deadline to grant application.

Any application for a rehearing not granted within 60 days from the date of filing thereof, shall be deemed denied.

Subd. 5. Effect of decision on application.

It is hereby declared that the legislative powers of the state, insofar as they are involved in the issuance of orders and decisions by the commission, have not been completely exercised until the commission has acted upon an application for rehearing, as provided for by this section and by the rules of the commission, or until the application for rehearing has been denied by implication, as above provided for.

Minn. Rules, part 7829.3000, Petition After Commission Decision.

Subpart 1. Time for request.

A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary.

Subp. 2. Content of request.

A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for the amendments.

Subp. 3. Service.

A petition for rehearing, amendment, vacation, reconsideration, or reargument, and an answer, reply, or comment, must be served on the parties and participants in the proceeding to which they relate.

Subp. 4. Answers.

Other parties to the proceeding shall file answers to a petition for rehearing, amendment, vacation, reconsideration, or reargument within ten days of service of the petition.

Subp. 5. Replies.

Replies are not permitted unless specifically authorized by the commission.

Subp. 6. Commission action.

The commission shall decide a petition for rehearing, amendment, vacation, reconsideration, or reargument with or without a hearing or oral argument. The commission may vacate or stay the order, or part of the order, that is the subject of the petition, pending action on the petition.

Subp. 7. Second petition not entertained.

A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.

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The main question the Commission needs to decide is whether to approve Xcel's proposal

... that the interim rate refund be calculated by taking the difference between: (1) the sum of the total revenue collected for the months that interim rates were in effect and (2) the total amount of revenue that would been collected had final revenue requirements for 2014 and final revenue requirements for 2015 been effective over the course of the period beginning January 1, 2014 through the Commission's final determination.¹

The Department, the OAG and AARP object to Xcel's proposal for various reasons.

The following table compares the three alternatives.

Interim Refund Estimates	Xcel (column 2)	Department ² (column 3)	OAG ³ (column 4)
2014 over-collection	\$65.5 million	\$65.5 million	\$68.6 million
2015 under-collection (Jan. 3 – May 7, 2015)	-\$13.5 million	- \$0 -	- \$0 -
2015 Statutorily Allowed surcharge (May 8 – Aug. 31, 2015)	-\$13.5 million	-\$13.5 million	-\$14.4 million
2015 total under-collection/surcharge	-\$27 million	-\$13.5 million	-\$14.4 million
Final Refund	\$38.5 million	\$52.0 million	\$54.2 million
Interest	\$2.2 million	\$2.4 million	\$5.8 million
Final Refund plus Interest	\$40.7 million	\$54.4 million	\$60.1 million
Estimated Average Residential Refund	\$14.55	\$19.46	\$20.80

(This table is adapted from the table on p. 3 of the Department's May 28, 2015 comments and the table in Attachment A of the OAG's May 28, 2015 comments.)

It is very likely the numbers in this table will need to be recalculated as described by the Department in footnote 22. For example, on June 30th, the OAG submitted reply comments on the settlement of BWNE lawsuit and recommended that the Commission require Xcel to reflect the BWNE adjustment in the calculation of final rates and to incorporate the BWNE adjustment into the interim rate refund. Likewise, on June 30th, Xcel submitted a 2014 property tax compliance filing which should be incorporated into the revenue requirement calculations for 2014 and 2015. Both of these adjustments will decrease the revenue requirement calculation for 2014 and 2015 and increase the refund amount under all three scenarios.

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 a rate case. Usually, the refund plan is fairly

¹ Xcel, Notice of Compliance Proposal Related to Interim Rates, November, 13, 2014, p. 3

² The Department notes that all of the data in columns 2 & 3 in this table is from Schedule A, p. 1 of 7 of Xcel's April 30, 2015 preliminary compliance – interim rate refund filing. If the authorized rate increase changes for the test-year or the step-year, the authorized interest rate changes, and/or the actual revenue collections differ from Xcel's estimates, the refund amount will need to be recalculated.

³ The data in column 4 is from the attachment to the OAG's May 28 comments and is based on a different time period and interest rate.

straightforward and is not disputed by the parties. However, because Xcel's refund proposal is disputed, and because this multiyear rate plan presents a new set of circumstances under the interim rate statute, the Commission should give Xcel some indication of what kind of refund 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 (either prospectively or, in this case, arguably, retroactively) a year or more into a proceeding after making its initial request and receiving approval for a certain level of interim revenue.⁴

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 deadline were made at the request of the ALJ and Commission and provided an extra eight to nine weeks in addition to the 180 extra days the Commission was entitled to under the statute.

The Department does not believe Xcel's proposal to begin recovering the difference for the January 3 through May 7, 2015 time period is permitted under the interim rate statute absent a finding of exigent circumstances. The Department appears to suggest the Commission could find that this delay caused an exigent circumstance under the interim rate statute that would allow for the Commission to make an adjustment to accommodate Xcel for the March 3 through May 7, 2015 time period. However, the Department did not specifically identify what it thought those exigent circumstances might be or had caused or what specifically the finding of exigent circumstances would permit Xcel to do, for example, retroactively impute a lower level of interim rates for the January 3, 2014 through January 2, 2015 time period and retroactively impute a higher level of interim rates for the January 3 through May 7, 2015 time period.

Staff believes Xcel's argument about this "delay" causing regulatory lag and confiscation of Xcel's entitlement to its revenue requirement would carry more weight if Xcel had not been collecting interim rates for almost all of the past five or more years under recently completed rate cases filed in 2010 and 2012 and was not continuing to recover significant amounts of cost and capital expenditures using various riders.

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.

⁴ In 2015, the Legislature enacted amendments to the MYRP statute, including the following provision that allows a utility to request an interim rate step increase:

A utility that filed a petition with the commission to approve a multiyear rate plan may request to be allowed to implement interim rates for the first and second years of the multiyear plan. If the commission approves the request, interim rates shall be implemented in the same manner as allowed under subdivision 3. [First Special Session (2015), House File 3, Article 3, Section 19, p. 71, lines 16-19]

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))

The Commission could interpret the interim rate statute, as suggested by the Department, the OAG and AARP, 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, does not take effect until the Commission's final determination is issued, 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.