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March 31, 2017

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. G002/M-17-174

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Modification to the Natural Gas State Energy Policy (SEP) Tariff Rate, 2017 SEP Rate Factor, and 2016 SEP Compliance Filing.

The Petition was filed on March 1, 2017 by:

Lisa R. Peterson
Manager, Regulatory Analysis
Xcel Energy Service, Inc.
414 Nicollet Mall – 401, 7th Floor
Minneapolis, Minnesota 55401

The Department recommends that **Xcel provide in reply comments the statutory authority to allow the SEP rider mechanism to continue.** The Department intends to review Xcel's reply comments and provide final recommendations to the Minnesota Public Utilities Commission.

Sincerely,

/s/ DOROTHY MORRISSEY
Financial Analyst

DEM/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET NO. G002/M-17-174

I. BACKGROUND

In its April 6, 2004 *Order Approving State Policy Rate Rider, as Modified* in Docket No. E,G002/M-03-1544 (03-1544 Order), the Minnesota Public Utilities Commission (Commission) approved Northern States Power Company, d/b/a Xcel Energy (Xcel or the Company), State Energy Policy Rider (SEP Rider). The Commission also directed Xcel Energy to submit an annual filing by March 1 of each year detailing the following information:

- A. electric-related Reliability Administrator (RA) and State building guidelines (SBG) expenses, Xcel Energy-Prairie Island settlement expenses, and costs associated with the independent study of intermittent resources;
- B. revenues obtained from the approved electric SEP Rider adjustment;
- C. proposed revised electric SEP Rider rate, together with a listing and description of all assumptions used to calculate the proposed revised electric SEP Rider rate;
- D. natural gas related RA and SBG expenses;
- E. revenues obtained from the approved gas SEP Rider rate; and
- F. proposed revised gas SEP Rider rate, together with a listing and description of all assumptions used to calculate the proposed revised gas SEP Rider rate.

Since its 03-1544 Order, the Commission has issued determinations concerning the Company's SEP Rider in thirteen separate proceedings.¹ Of those,

¹ The specific proceedings are:

- Docket No. E002/M-05-359;
- Docket No. E002/M-06-364;
- Docket No. E,G002/M-07-283;
- Docket No. E,G002/M-08-261;
- Docket No. E,G002/M-09-201;
- Docket No. E,G002/M-10-210;
- Docket No. E,G002/M-11-175;
- Docket No. E,G002/M-12-185;
- Docket No. E,G002/M-13-161;
- Docket No. E002/M-13-959;
- Docket No. E,G002/M-14-185;

- In Docket No. E,G002/M-08-261, under new legislation Minn. Stat. 216B.1637, Xcel requested recovery of costs associated with the replacement of natural gas cast iron pipe through the SEP rate factor. The Commission's November 25, 2008 Order approved Xcel's request.
- The Commission's June 3, 2013 Order, in Docket No. E,G002/M-13-161, discontinued the cast iron replacement project reporting requirement due to construction completion.
- With the Commission's December 11, 2013 Order in Docket No. E002/M-13-959, the electric SEP Rider charge was discontinued, effective January 1, 2014, in conjunction with the transfer of cost recovery into electric base rates.²
- Most recently, the Commission's May 20, 2016 Order in Docket No. G002/M-16-206 set Xcel Energy's natural gas SEP Rider adjustment factor to \$0.001368 per therm, and required Xcel to continue to provide a comparison between actual and budgeted monthly costs in the Company's next SEP Rider filing, including a discussion of reasons for deviations from budgeted amounts (both higher and lower).

II. SUMMARY OF FILING

On March 1, 2017, Xcel Energy filed its *Petition for Approval of a Modification to the Natural Gas SEP Tariff Rate, 2017 SEP Adjustment Factor, and 2016 SEP Compliance Filing* (Petition) in the present docket to revise the Company's natural gas SEP Rider rates, with a proposed effective date of July 1, 2017. The Company's proposal would increase the natural gas SEP Rider rate from \$0.001368 per therm to \$0.002103 per therm.

The Company identified three types of expenses currently included in the SEP Rider for recovery:

1. Greenhouse Gas Infrastructure (GHGI) Costs (*i.e.*, Cast Iron Replacement Project);
2. Reliability Administrator (RA); and
3. Sustainable Building Guidelines (SBG)

Xcel's petition summarized the forecasted revenue requirement associated with each of these costs, along with the tracker true-up balance and the factor calculation.³ An excerpt, shown in Table 1 below, provides the revenue requirement by type of expense:

- Docket No. G002/M-15-194; and
- Docket No. G002/M-16-206.

² Docket No. E002/GR-13-868.

³ See Petition, Table 2, page 7.

Table 1 -Gas SEP Costs and Rate Factor

	2017 Forecast
(GHGI) Cast Iron (net) ⁴	\$1,681,941
RA/SBG	\$10,565
Tracker Carryover	\$139,726
<i>Total Revenue Requirement</i>	<i>\$1,832,232</i>
Forecasted Therm Sales: (July 1, 2017 – June 30, 2018)	871,444,973
<i>Proposed SEP Factor (\$/therm)</i>	<i>\$0.002103</i>

Xcel Energy proposed to continue to include the natural gas SEP Rider charges in a separate line item on customer bills entitled “Resource Adjustment.” In addition, Xcel Energy proposed to notify its customers of the updated Resource Adjustment with a message on customer bills.

III. MINNESOTA DEPARTMENT OF COMMERCE (DEPARTMENT OR DOC) ANALYSIS

A. STATUTORY REQUIREMENTS

In its evaluation of this annual filing, the Department revisited and researched the underlying bases for the inclusion of each of these three identified cost categories requested for recovery through a rider mechanism. From the Department’s analysis, it appears that there is no longer statutory authority to continue the SEP Rider. Absent statutory authority, the Department concludes that the Commission may have discretion to continue a rider that was approved at the time statutory authority existed. However, given that it appears that the statutes allowing a special cost recovery mechanism for the costs currently included in the SEP Rider no longer exist, the Department concludes that it is reasonable to similarly discontinue the SEP Rider. The Department discusses each component of Xcel’s proposed SEP below.

⁴ \$1,681,941 = \$1,754,251 - \$72,310 (O&M credit)

1. *Greenhouse Gas Infrastructure (GHGI) Costs (i.e., Cast Iron Replacement Project)*

This category represents 92 percent of Xcel Gas' proposal. However, [Minn. Stat. §216B.1637](#), which permitted cost recovery of Xcel Gas greenhouse gas infrastructure costs (cast iron pipe replacement project) through a rider was repealed in 2013.⁵

Prior to its repeal, the 2012 version of Minn. Stat. §216B.1637 read as follows:

216B.1637 RECOVERY OF CERTAIN GREENHOUSE GAS INFRASTRUCTURE COSTS.

A public utility that owns a nuclear power plant and a public utility furnishing gas service may file for recovery of investments and expenses associated with the replacement of cast iron natural gas distribution and service lines owned by the utility and to replace breakers that contain sulfur hexafluoride in order to reduce the risk of greenhouse gases being released into the atmosphere. Upon a finding that the projects are consistent with the public interest and do not impose excessive costs on customers, **the commission shall provide timely recovery of the utility's investment and expenses on any approved projects through a rate adjustment mechanism** similar to that provided for transmission projects under section [216B.16, subdivision 7b](#), paragraphs (b) to (d). **[emphasis added]**

The Department did not find any replacement legislation wherein recovery of these costs were authorized to be continued through a rider mechanism. Thus, it is unclear as to whether it is permissible for Xcel Gas to continue to recover these costs in a rider. Even if it is not permissible to allow continued cost recovery through the rider, Xcel Gas does have the option to file a general rate case to request recovery of costs not otherwise allowed through a rider mechanism. The Department requests that, in reply comments, Xcel address whether it can demonstrate under what statutory authority recovery of Xcel Gas' greenhouse gas infrastructure costs is permitted through a rate adjustment (rider) mechanism.

2. *Reliability Administrator (RA)*

This component represents 0.6 percent of Xcel's proposal. The Department found that the originating statute ([Minn. Stat. §216C.052](#), Subd. 2) which gave statutory authority to allow recovery of RA costs through an automatic adjustment mechanism was repealed in May 2011.

⁵ Minn. Laws 2013, Chapter 85, Article 13, Section 6.

Prior to its repeal, Minn. Stat. §216C.052, Subd. 2 read:

216C.052 RELIABILITY ADMINISTRATOR.

Subd. 2. Administrative issues.

(a) The commissioner may select the administrator. The administrator must have at least five years of experience working as a power systems engineer or transmission planner, or in a position dealing with power system reliability issues, and may not have been a party or a participant in a commission energy proceeding for at least one year prior to selection by the commissioner. The commissioner shall oversee and direct the work of the administrator, annually review the expenses of the administrator, and annually approve the budget of the administrator. The administrator may hire staff and may contract for technical expertise in performing duties when existing state resources are required for other state responsibilities or when special expertise is required. The salary of the administrator is governed by section 15A.0815, subdivision 2.

(b) Costs relating to a specific proceeding, analysis, or project are not general administrative costs. For purposes of this section, "energy utility" means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state.

(c) The Department of Commerce shall pay:

(1) the general administrative costs of the administrator, not to exceed \$1,000,000 in a fiscal year, and shall assess energy utilities for those administrative costs. These costs must be consistent with the budget approved by the commissioner under paragraph (a). The department shall apportion the costs among all energy utilities in proportion to their respective gross operating revenues from sales of gas or electric service within the state during the last calendar year, and shall then render a bill to each utility on a regular basis; and

(2) costs relating to a specific proceeding analysis or project and shall render a bill to the specific energy utility or utilities participating in the proceeding, analysis, or project directly, either at the conclusion of a particular proceeding, analysis, or project, or from time to time during the course of the proceeding, analysis, or project.

(d) For purposes of administrative efficiency, the department shall assess energy utilities and issue bills in accordance with the billing and assessment procedures provided in section 216B.62, to the extent that these procedures do not conflict with this subdivision. The amount of the bills rendered by the department under paragraph (c) must be paid by the energy utility into an account in the special revenue fund in the state treasury within 30 days from the date of billing and is appropriated to the department for the purposes provided in this section. **The commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover amounts paid by utilities under this section.** All amounts assessed under this section are in addition to amounts appropriated to the commission and the department by other law. [emphasis added]

Xcel pointed out in Footnote 1 of its Petition that the Minn. Stat. §216C.052 legislation was repealed in 2011, and that in the same 2011 legislative session, Minn. Stat. § 216B.62, Subd. 3b. was passed, authorizing the Assessment for Department Regional and National Duties; the Minn. Stat. § 216B.62, Subd. 3b assessment was renewed through June 30, 2017 during the 2015 legislative session. The Department notes that there is a proposal to address the sunset date with the Legislature. For consistency, Xcel continued to label the assessment “Reliability Administrator” after the 2011 legislative changes.

Minn. Stat. § 216B.62, Subd. 3b, reads:

Subd. 3b. Assessment for department regional and national duties.

In addition to other assessments in subdivision 3, the department may assess up to \$1,000,000 per fiscal year for performing its duties under section 216A.07, subdivision 3a. The amount in this subdivision shall be assessed to energy utilities in proportion to their respective gross operating revenues from retail sales of gas or electric service within the state during the last calendar year and shall be deposited into an account in the special revenue fund and is appropriated to the commissioner of commerce for the purposes of section 216A.07, subdivision 3a. An assessment made under this subdivision is not subject to the cap on assessments provided in subdivision 3 or any other law. For the purpose of this subdivision, an “energy utility” means public utilities, generation and transmission cooperative electric associations, and municipal power agencies providing natural gas or electric service in the state. This subdivision expires June 30, 2017.

If the sunset is addressed, the question remains as to authorization for recovery of the costs through a rider as opposed to recovery in base rates in a rate case. The Department did not find any replacement legislation wherein recovery of the Minn. Stat. § 216B.62, Subd. 3b regional/national duty assessment costs were authorized to be recovered through a rider mechanism. However, Xcel Gas does have the option to file a general rate case to request recovery of costs not otherwise allowed through a rider mechanism. The Department requests that, in reply comments, Xcel discuss whether it can demonstrate under what statutory authority recovery of Xcel Gas’ RA costs is permitted through a rider.

3. Sustainable Building Guidelines (SBG)

SBG-related assessments are captured under the Conservation Improvement Program (CIP) costs (Minn. Stat. §216B.241 Subd. 1f and Subd. 9). Xcel did not include SBG-related assessments in its SEP Rider request, despite its labelling schedules’ cost lines/columns “RA/SBG” (Attachments B and D1). Legislative changes enacted in 2007 and 2008 moved SBG under CIP.⁶ In the event the SEP Rider is authorized to continue, to prevent double-recovery of costs, the Department recommends that in future SEP Rider filings, Xcel update its petition to reflect current legislation and be directed to remove language that suggests SBG costs are includable in this rider.

⁶ Prior to the 2007 and 2008 legislative changes, SBG assessments fell under the original RA statute, 216C.052, Subd. 3 [expired June 30, 2008].

4. *Tracker Carryover Balance*

This component represents 7.6 percent of the Company's proposal. Xcel Gas forecasted a tracker carryover under-collection of \$139,726 as of June 30, 2017, and has included this amount in determining its revised tariffed SEP Rider rate. As noted above, it is unclear whether statutory authority to continue the SEP rider mechanism still exists. If Xcel is unable to demonstrate valid bases for the SEP rider, the Department concludes that any under-collected tracker balance should remain uncollected in light of the lack of foundation for recovering the costs in a rider.

If the SEP Rider is discontinued and the current tracker carryover balance at that point reflects an over-collection, the Department recommends that the over-collection be set up as a regulatory liability to be returned to ratepayers in future base rates, or other authorized gas rate mechanism. For calculating SEP tracker true-up and tracker balance/carryover amounts, in order to recognize ratepayers' income tax prepayments, the Department recommends that the Commission direct Xcel to use the non-prorated, actual accumulated deferred income tax (ADIT) amounts for historical months in this instant petition. A detailed discussion of the ADIT issue follows.

5. *Prorated Accumulated Deferred Income Taxes (ADIT)*

As noted above, if the SEP Rider is discontinued and there remains an over-collected tracker balance that is set up as a regulatory liability to be returned to ratepayers in future base rates, the tracker balance should reflect the non-prorated, actual accumulated deferred income tax amounts for the historical months.

Xcel Gas stated in this petition⁷, and in its 2016 SEP Rider petition, that when calculating ADIT reduction to rate base, it is using the prorate schedule, in accordance with Internal Revenue Service (IRS) tax regulation Sec. 1.167(l), when forecast information is used to set rates. Xcel stated that it applies this method to comply with the tax normalization requirements of the IRS code.

The Department has raised concerns in several proceedings (summarized in Attachment 1) of the mismatch and ratepayer harm that occurs with the prorate calculation for the ADIT rate base reduction because it does not recognize the full tax amounts ratepayers have prepaid.

The prorated ADIT issue stems from recently issued Private Letter Rulings (PLRs) from the IRS. According to these PLRs, based on facts in proceedings that may be different from the facts in the instant case, the IRS is concerned that utilities may be violating tax normalization rules by passing back the benefits of accelerated depreciation (via an ADIT credit to rate base) to ratepayers too soon. IRS Section 1.167(l)(h)(6) defines the procedures a company must use to normalize the impact on rate making in a forward-looking test year if a company elects to use accelerated depreciation. This section

⁷ See Xcel's Attachment G, pages 1-2.

stipulates that the monthly changes to the deferred taxes balance, as calculated by the company, must be prorated prior to computing the average of beginning and ending balances for ADIT. Xcel Energy is in the process of requesting a PLR from the IRS, and has involved both the Department and Commission staff.

The Department notes that there is a difference in how one can approach prorated ADIT balances in rider rate petitions as opposed to base rate setting. Riders have subsequent true-up calculations based on historical actuals, whereas rate cases do not. For calculating SEP tracker true-up and tracker balance/carryover amounts, the Department recommends that the Commission direct Xcel to use the non-prorated, actual ADIT amounts for historical months in this instant petition. Therefore, the Department recommends that the Commission not approve the 2016 SEP Tracker reports as initially filed. The Department recommends that the Commission direct Xcel to submit a recalculated SEP tracker balance using the non-prorated, actual ADIT amounts for historical months.

IV. CONCLUSION AND RECOMMENDATIONS

In conclusion, the statutory authority to support recovery of Xcel's requested SEP costs through a rider mechanism appears to no longer exist. Absent statutory authority, the Department concludes that the Commission may have discretion to continue a rider that was approved at the time statutory authority existed. However, given that it appears that the statutes allowing a special cost recovery mechanism for the costs currently included in the SEP Rider no longer exist, the Department concludes that it is reasonable to similarly discontinue the SEP Rider.

Absent a showing by Xcel that the required statutory authority still exists, the Department recommends that the Commission:

- Discontinue the SEP Rider;
- Deny recovery of any tracker carryover under-collection;
- Allow Xcel Gas to establish a regulatory liability if the tracker carryover balance reflects an over-collection, to be returned to ratepayers through future base rates, or other authorized gas rate mechanism;
- In the event a regulatory liability is created, direct Xcel to recalculate the 2016 SEP Tracker balance using non-prorated, actual ADIT amounts for historic months and to make an informational filing to report this information within 60 days after the SEP Rider charge is discontinued.

Should Xcel Gas provide information demonstrating statutory authority for its SEP Rider, the Department will submit responsive supplementary comments, including a thorough analysis of the merits of the Company's initial petition.

**Summary of Petitions with Discussion on the
Prorated Accumulated Deferred Income Taxes (ADIT) Issue**

- **OTP's 2015 Environmental Cost Recovery Rider (ECCR) (Docket No. E017/M-15-719).** OTP first proposed to incorporate the effects of prorated ADIT in its 2015 ECRR. As explained in the DOC's January 15, 2016 Reply Comments, OTP proposed to raise the annual revenue requirements by \$55,000 due to the effects of proration. However, since OTP proposed to keep its current ECRR rate in effect, the DOC concluded and the Commission agreed that this issue did not need to be addressed in that proceeding.⁸
- **Xcel Energy's 2015 TCRR (Docket No. E002/M-15-891).** Xcel Energy also proposed to incorporate the effects of prorated ADIT in its 2015 TCRR, which increased the annual revenue requirements by \$150,830. Xcel's 2015 TCR Rider was based on forecasted calendar year 2016 figures. This docket was before the Commission on December 8, 2016. Since the 2016 calendar year was nearly complete, the Commission directed Xcel to refile its proposed annual revenue requirements using actual 2016 balances once they became known. This approach essentially eliminated the need for Xcel to prorate its ADIT balances for its 2015 TCRR purposes. In addition, the Commission directed the Department to work with Xcel to seek its own Private Letter Ruling (PLR) from the IRS to determine the proper treatment of prorated ADIT balances in forecasted riders and whether the effects of proration may be returned to ratepayers in subsequent rider true-up calculations that replace prorated ADIT balances with actual non-prorated ADIT balances once they become historical. Xcel sent the first draft of its PLR request and held one meeting with stakeholders on the Company's PLR request.
- **Xcel Energy's 2015 Renewable Energy Standards Rider (RES Rider) in Docket No. E002/M-15-805.** Xcel Energy proposed to incorporate the effects of ADIT proration in its 2015 RES Rider, which increased its annual revenue requirement by \$38,754. The Department opposed Xcel's proposal to prorate its ADIT balances. However, for purposes of resolving the issue and not using limited state resources, the Department's alternative recommendation was to: 1) allow the prorated ADIT only for recovery of forecasted costs and, 2) require a true-up in the following year (once all amounts are historical/actual) by using actual non-prorated ADIT amounts. Finally, if Xcel continued to pursue this issue to the detriment of ratepayers, the Department recommended that the Commission consider either denying rider recovery or limiting rider recovery to historical costs, as both of these approaches would eliminate the need to prorate ADIT balances. Prior to the Commission's January 26, 2017 Agenda meeting, the Company proposed that the Commission apply the same treatment to the prorated ADIT issue in this proceeding as it had in Xcel's TCR Rider.
- **Xcel Energy's 2015 Rate Case in Docket No. E002/GR-15-826).** Xcel Energy proposed to incorporate the effects of prorated ADIT in its 2015 Rate Case, which increased its annual revenue requirements for 2016 through 2019 by \$11,549,000. The Department recommended in its Direct Testimony an adjustment to excluded

⁸ See Commission's March 9, 2016 Order in Docket No. E017/M-15-719.

prorated ADIT from the rate case.⁹ However, since the parties entered into an aggregated financial settlement, even though the settlement was largely informed by the Department's testimony, specific decisions on individual financial issues were not determined. As a result, the issue remains unresolved.

- **OTP's 2015 Rate Case in Docket No. E017/GR-15-1033.** The prorated ADIT issue was also discussed at length in OTP's 2015 Rate Case. In order to resolve this complex issue, the Department and OTP agreed to jointly seek a PLR from the IRS to determine the proper rate case treatment of prorated ADIT balances in OTP's forecasted test year and interim rates, including the interim rate refund. OTP filed its PLR request with the IRS on December 29, 2016. A response from the IRS is expected later in 2017.
- **OTP's 2016 ECR Rider in Docket No. E017/M-16-373.** OTP proposed to incorporate the effects of ADIT proration in its 2016 ECR Rider, which increased its annual revenue requirement by \$396,020 for the Minnesota jurisdiction. However, OTP also proposed replace its forecasted prorated ADIT balances with actual non-prorated ADIT balances for true-up purposes.¹⁰ The Department agreed with this approach.¹¹

⁹ See Ms. Nancy Campbell's June 14, 2016 Direct Testimony in Docket No. E002/GR-15-826, Page 23; \$6,483,000+\$1,896,000+1,813,000+1,357,000 = \$11,549,000 (for 2016 to 2019).

¹⁰ DOC's February 1, 2017 Comments in Docket No. E017/16-373, Page 11.

¹¹ *Id.*

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

Minnesota Department of Commerce
Comments

Docket No. G002/M-17-174

Dated this 31st day of March 2017

/s/Sharon Ferguson

[illegible]

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