

April 16, 2018

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

RE: **In the Matter of Northern States Power Company's, doing business as Xcel Energy,
Annual Report of its Incentive Compensation Plan**
Docket Nos. E002/GR-92-1185; G002/GR-92-1186; and E,G002/M-17-429

Dear Mr. Wolf:

Attached are the complete Comments (including Attachment A) of the Minnesota Department of Commerce, Division of Energy Resources (Department) in response to the Minnesota Public Utilities Commission's (Commission) March 14, 2018 *Notice of Comment Period*.

The Department apologizes for inadvertently excluding Attachment A from its April 12, 2018 Comments.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ DALE V. LUSTI
Public Utility Financial Analyst

DVL/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E-002/GR-92-1185

Docket No. G-002/GR-92-1186

Docket No. E,G-002/M-17-429

I. INTRODUCTION

On March 14, 2018, the Minnesota Public Utilities Commission (Commission) issued a request for Initial Comments by April 12, 2018 (April 12, 2018 Notice) on the issue of the “Calculation of incentive compensation funds collected in rates that are not paid.” The Commission requested Comments on the following topics:

- In determining whether a ratepayer refund is due, should Xcel compare the amount approved in base rates to (1) the amount eligible for recovery that was actually paid, or (2) the total amount of incentive compensation paid, including both the current amount that is eligible for cost recovery and the amount ineligible for cost recovery?
- Are there other issues or concerns related to this matter?

II. BACKGROUND INFORMATION

Before specifically responding to the request, the Department provides the following background on the Commission’s treatment of incentive compensation in several of Xcel’s rate cases.

The Commission in its November 27, 1991 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in Docket No. E-002/GR-91-1 (its 91-1 Order), beginning at page 55 stated:

Finally, the Commission notes that a threshold earnings per share of \$2.75 must be met before any incentive compensation is paid under the program to any NSP employee. The Commission finds that this component of the Company’s incentive program is unreasonable and unacceptable.

Because compensation is linked to Company earnings per share, employees may be motivated to gauge their actions by immediate

Company earnings rather than overall Company benefit. NSP's incentive compensation program may motivate employees towards decisions bringing immediate profit, regardless of the long-term consequences.

Although NSP's incentive plan incorporates some individual performance goals, an employee who meets those goals will still be denied compensation if the Company's earnings per share threshold is not reached. It would be unreasonable and unfair to deny an employee the compensation he or she may have personally earned because the utility's earnings per share reach \$2.74 rather than the required \$2.75. This hypothetical would hold true under NSP's plan, even though the Company's failure to reach targeted goals had nothing to do with the employee's performance.

The Commission concludes that NSP's incentive compensation program is an improper effort by the Company to pass the risk of operations from shareholders to ratepayers and employees. This program is an attempt to maximize shareholders' benefits at the expense of ratepayers. The Commission will exclude all test year incentive compensation costs.

The Commission in its January 14, 1994 ORDER AFTER RECONSIDERATION in Docket No. E-002/GR-92-1185, beginning at page 7 stated:

All these considerations together lead the Commission to conclude that granting partial recovery of incentive compensation expenses would be a better course than totally disallowing them. The Commission will therefore allow recovery of incentive compensation costs as outlined below.

1. Recoverable Payments limited to 15 percent of Base Salary

The Commission continues to believe, for the reasons set forth in the Original Order, that the officers' and executives' plans allow too high a proportion of these employees' total wages to come from incentive compensation. (These plans provide for incentive payments of up to 40 percent of base pay.) The Commission will

limit recoverable incentive payments to 15 percent of an individual's base salary.

2. Shortfall to be Held for Ratepayers

In the original Order, the Commission expressed strong disapproval of the Company's retention of the right not to make incentive payments earned under the plan. The Commission continues to view this as an inappropriate transfer of risk from shareholders to ratepayers and as inconsistent with the test year concept on which rates are based. The Commission will therefore require the Company to record all earned but unpaid incentive compensation recoverable in rates under this Order for future return to ratepayers. This will adequately protect ratepayers' interests and prevent erosion of the test year concept.

The Administrative Law Judge in her February 22, 2012 ORDER in Docket No. E-002/GR-10-971, on page 29, paragraph 159 stated:

The Company also stressed that it has agreed to limit the level of AIP included in Test Year expenses to 15 percent of base salary which assures that the ratepayers are not paying more for compensation than is reasonable. Also, any AIP [Annual Incentive Plan] that is not earned by employees (hence, not expended by the Company) will be returned to ratepayers, as part of a refund mechanism that has been in operation for several years.

Conclusion – Cash Compensation

Page 30, paragraph 167 – ...The Company has agreed that it will refund to ratepayers any AIP that is not awarded to its employees.

The Commission in its September 3, 2013 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER in Docket No. E-002/GR-12-961, at Order point 29 stated:

Xcel shall retain its existing refund mechanism, which provides customer refunds in the event the incentive compensation payouts are lower than the test-year level approved in rates.

Ms. Anne E. Heuer, Director of Revenue Analysis for Xcel Energy Services, Inc., describes on Page 78 of her pre-filed Direct Testimony in Xcel's most recent rate case, Docket No. E002/GR-15-826 (the 15-826 docket), how Xcel limited its AIP cost recovery request for incentive compensation as follows:

Consistent with prior rate case treatment, we have adjusted 2016 test year costs to exclude the budgeted costs for: 1) the long-term portion of the incentive compensation; 2) any non-corporate incentive plan costs, and 3) all Annual Incentive Plan amounts above 15 percent of each individual's base pay. Company witness Ms. Ruth Lowenthal discusses incentive compensation in her Direct Testimony.

Ms. Ruth K. Lowenthal, Vice President, Total Rewards for Xcel Energy Services, Inc., describes on Page 8 of her pre-filed Direct Testimony in Xcel's most recent rate case, Docket No. E002/GR-15-826, how Xcel limited its AIP cost recovery request for incentive compensation as follows:

We have limited our request for AIP cost recovery in several ways, consistent with previous rate cases and Commission precedent. First, we are requesting rate recovery of our incentive compensation costs subject to a four-year average pay-out of AIP – capped at 100 percent performance target and limited to a cap of 15 percent of base salary. Therefore, customers are not funding the full cost of employee compensation. This cap not only implements the Commission's original intent¹ of excluding recovery of part of the incentive compensation costs related to executives, but it also excludes recovery of part of the incentive compensation paid to middle management employees as part of their total compensation package.

¹ Docket Nos. E002/GR-92-1185 and G002/GR-92-1186.

Second, we are proposing to retain the refund mechanism that would provide customer refunds if actual incentive compensation payments are lower than the test year level approved in rates.

III. DEPARTMENT ANALYSIS

A. *WHAT ITEMS SHOULD BE COMPARED TO DETERMINE WHETHER A REFUND IS DUE IN THE UTILITY'S ANNUAL INCENTIVE COMPENSATION REPORT?*

The Department uses Attachment A to this response, in its discussion of the two options specified in the Commission's April 12, 2018 Notice to determine whether a ratepayer refund is due.

Option 1 – This option compares the amount of AIP paid out that was eligible for recovery from ratepayers (this amount excludes AIP in excess of 15 percent of an individual's base pay) to the amount included in base rates. In this option, if the amount of AIP paid during the year that was eligible for rate recovery is greater than the amount approved in base rates, there would be no refund due. In the year 2016, using information provided in the Company's May 26, 2017 Incentive Compensation Annual Report, Attachment E, Page 1 of 1, (and also as included in Attachment A to these Comments), the Company's AIP compensation that was eligible for recovery from Xcel Electric customers was \$18,114,696. Thus, because the amount approved in electric base rates was \$19,393,351, and is larger than the amount eligible for recovery, there would be an over-collection of \$1,278,656 eligible for refund.

Option 2 – This option compares the total amount of AIP paid (including both amounts eligible for recovery as well as those ineligible for recovery) to the amount included in base rates. In this option, if the amount of AIP paid during the year is greater than the amount approved in base rates, there would be no refund due. Thus, in the year 2016, as shown in Attachment A, the Company paid \$22,443,649 in Minnesota jurisdictional incentive compensation. Since the amount of incentive compensation approved in base rates in its most recent rate case was \$19,393,351, which is less than the amount paid, there would be no refund due. Additionally, the Company would have recovered through base rates, 86.4 percent of the incentive compensation paid out in 2016.

The Department notes under Option 1, there would have been refunds due to ratepayers in the years 2015 and 2016. However, under Option 2, there would be no refunds due ratepayers in any of the years 2012 thru 2016 as can be seen in Attachment A.

B. ARE THERE OTHER ISSUES OR CONCERNS RELATED TO THIS MATTER?

The Department notes that Xcel's May 26, 2017 compensation report filed in Docket E,G002/M-17-429 inappropriately summed up the incentive compensation levels for both Xcel Gas and Xcel Electric. However, since Xcel Gas and Xcel Electric are two different utilities with two different sets of rates, Option 1 requires that the incentive compensation paid to the employees in these two companies be compared to the amounts of incentive compensation reflected in the two different sets of rates for Xcel Gas and Xcel Electric.

Unfortunately, the Department's comments filed on June 22, 2017 focused on the text of Xcel's filing and did not identify that Attachment C of Xcel's May 26, 2017 filing showed that the incentive compensation paid by Xcel Electric was less than the amount built into rates. The Department apologizes for this inadvertent oversight. Specifically, as noted above, Xcel Electric paid \$18,114,696 in annual incentive compensation while charging Xcel Electric Ratepayers \$19,393,351. As a result, under Option 1, the Department now concludes that Xcel Electric owes its ratepayers \$1,278,656.²

The Department also notes that over the years the topic of AIP compensation has existed, the recoverable part of incentive compensation sometimes has been stated as limited to 15 percent of base compensation; whereas, other times it has been stated as limited to 15 percent of an individual employee's base salary. As noted above in the BACKGROUND section of these *Comments*, in the 92-1185 docket – the first Xcel rate case where it specifically allowed recovery of incentive compensation – the Commission limited recoverable incentive payments to 15 percent of an individual's base salary. Similarly, in Xcel's most recent rate case, the 15-826 docket, Xcel witness Ms. Heuer testified that she has adjusted 2016 test year costs to exclude all Annual Incentive Plan amounts above 15 percent of each individual's base pay. The similarity above is that in both the Commission's Order in the 92-1185 docket, and Ms. Heuer's testimony in the most recent rate case, the 15-826 docket, all AIP payments above 15 percent of an individual's base pay were treated as non-recoverable compensation.

From a review of Xcel's Incentive Compensation Annual Reports, the Department notes that Xcel does calculate both the amount of AIP paid during the year that was eligible for rate recovery, and the amount approved in base rates.

² A similar circumstance occurred in Docket No. E,G002/M-16-482, with Xcel Electric paying \$17,254,100 in annual incentive compensation while charging ratepayers \$17,584,311, resulting in an overcharge of \$330,211. However, the Commission issued its Order in that proceeding on October 3, 2016.

Docket No. E-002/GR-92-1185
Docket No. G-002/GR-92-1186
Docket No. E,G-002/M-17-429
Analyst assigned: Dale V. Lusti
Page 7

IV. CONCLUSION

The Department asserts that Option 1 is the appropriate comparison based on the fact that the amount of incentive compensation approved by the Commission in recent rate cases is based on the summation of all individual eligible employees' AIP compensation being limited to 15 percent of his/her base compensation.

As first stated by the Commission in its 92-1185 Order identified above, "the Commission will limit recoverable incentive payments to 15 percent of an individual's base salary." The methodology of calculating Xcel's test-year AIP compensation in recent rate cases by both the Company and the Department has been to limit recoverable payments to 15 percent of an individual's base compensation.

Refunding to ratepayers AIP amounts included in base rates that exceed amounts paid that are eligible for recovery is in keeping with the Commission's 92-1185 Order identified above, which limits recoverable compensation to 15 percent of an individual's base compensation. Therefore, the Department concludes that Xcel Electric owes its ratepayers \$1,278,656.

/ja

Northern States Power Company
DOC Review of Annual Incentive Compensation Plan Reports
For the Years 2012 through 2016

Attachment A

Line No.	Year		2016 Total	2016 Electric	2016 Gas
1	2016	AIP paid, State of MN Jurisdictional amount	23,774,717	22,443,649	1,331,068
2	2016	Amount eligible for recovery. Excludes AIP over 15% of base pay	19,237,706	18,114,695	1,123,011
3	2016	Amount approved in base rates	20,321,236	19,393,351	927,885
4	2016	Percent recovered [Lines (3) / (1)]	85.5%	86.4%	69.7%
5	2016	Ratepayer refund [Lines (3) - (1). If negative, show 0.	-	-	-
6	2016	DOC calculation of the potential ratepayer refund [Lines (3) - (2). If negative, show 0. 2/	1,278,656	1,278,656	-
	Year		2015 Total	2015 Electric	2015 Gas
7	2015	AIP paid, State of MN Jurisdictional amount	22,599,513	21,225,804	1,373,709
8	2015	Amount eligible for recovery. Excludes AIP over 15% of base pay	18,343,064	17,254,100	1,088,964
9	2015	Amount approved in base rates	18,512,196	17,584,311	927,885
10	2015	Percent recovered [Lines (9) / (7)]	81.9%	82.8%	67.5%
11	2015	Ratepayer refund [Lines (9) - (7). If negative, show 0.	-	-	-
12	2015	DOC calculation of the potential ratepayer refund [Lines (9) - (8). If negative, show 0. 2/	330,211	330,211	-
	Year		2014 Total	2014 Electric	2014 Gas
13	2014	AIP paid, State of MN Jurisdictional amount	24,797,810	23,337,575	1,460,235
14	2014	Amount eligible for recovery. Excludes AIP over 15% of base pay	19,577,456	18,455,221	1,122,235
15	2014	Amount approved in base rates	18,512,196	17,584,311	927,885
16	2014	Percent recovered [Lines (15) / (13)]	74.7%	75.3%	63.5%
17	2014	Ratepayer refund [Lines (15) - (13). If negative, show 0.	-	-	-
18	2014	DOC calculation of the potential ratepayer refund [Lines (15) - (14). If negative, show 0. 2/	-	-	-
	Year		2013 Total	2013 Electric	2013 Gas
19	2013	AIP paid, State of MN Jurisdictional amount	27,762,500	26,207,706	1,554,793
20	2013	Amount eligible for recovery. Excludes AIP over 15% of base pay	21,004,309	19,898,270	1,106,039
21	2013	Amount approved in base rates	19,817,654	18,889,769	927,885
22	2013	Percent recovered [Lines (21) / (19)]	71.4%	72.1%	59.7%
23	2013	Ratepayer refund [Lines (21) - (19). If negative, show 0.	-	-	-
24	2013	DOC calculation of the potential ratepayer refund [Lines (21) - (20). If negative, show 0. 2/	-	-	-
	Year		2012 Total	2012 Electric	2012 Gas
25	2012	AIP paid, State of MN Jurisdictional amount	23,834,174	22,286,161	1,548,013
26	2012	Amount eligible for recovery. Excludes AIP over 15% of base pay	18,217,814	17,100,102	1,117,713
27	2012	Amount approved in base rates	13,132,031	12,204,146	927,885
28	2012	Percent recovered [Lines (27) / (25)]	55.1%	54.8%	59.9%
29	2012	Ratepayer refund [Lines (27) - (25). If negative, show 0.	-	-	-
30	2012	DOC calculation of the potential ratepayer refund [Lines (27) - (26). If negative, show 0. 2/	-	-	-
		1/ All information is per the Xcel Energy Annual Incentive Compensation Plan Reports filed for the years 2012 through 2016.			
		2/ The total refund is the sum of the electric refund and gas refund, if any.			

CERTIFICATE OF SERVICE

I, Marcella Emeott, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, 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 Nos. **Docket No. E-002/GR-92-1185**
Docket No. G-002/GR-92-1186
Docket No. E, G-002/M-17-429

Dated this **16th** day of **April 2018**.

/s/Marcella Emeott

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