Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **October 1, 2015... Agenda Item 5**

Company: Northern States Power Company (Xcel)

Docket Nos. **G-002/M-15-149**
In the Matter of a Petition by Northern States Power Company (Xcel) for Approval of a Purchased Gas Adjustment (PGA) Rule Variance to include Kansas Ad Valorem tax as storage related cost of natural gas recovery through its PGA commodity factors.

Issue: Should the Commission approve Xcel's PGA variance request to include Kansas Ad Valorem taxes as storage related cost of natural gas recovery through its PGA commodity factor: 1) for an annual period; and 2) for the 2009 through October 2014 lump sum retroactive period?

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Relevant Documents

<u>G-002/M-15-149</u>
Xcel Initial Petition .... February 6, 2015
Department of Commerce (Department) Comments .... April 8, 2015
Xcel Reply Comments .... April 20, 2015
Department Response Comments .... June 10, 2015

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Table of Contents

Statement of the Issue

Should the Commission approve Xcel's PGA variance request to include Kansas Ad Valorem taxes as storage related cost of natural gas recovery through its PGA commodity factor: 1) for an annual period; and 2) for the 2009 through October 2014 lump sum retroactive period?

Introduction

Xcel purchases its natural gas supply at multiple interstate pipeline supply (receipt) points, which includes Northern Natural Gas (NNG) points as part of its diversified natural gas supply portfolio. This includes Xcel's storage and transportation interstate pipeline contracts (demand entitlements), and its hedging program that are necessary to meet its firm service Design Day (DD) requirements. As part of its firm service portfolio, Xcel contracted with NNG for storage capacity located in the State of Kansas. The State of Kansas legislature levied its Kansas Ad Valorem tax (the Kansas tax) on all Xcel quantities of natural gas stored in NNG's Kansas storage facilities.

Xcel believes that there are two methods available to recover the Kansas tax liabilities; 1) through a rate case's revenue requirement, but Xcel would be required to file a rate case in order to gain recovery of the Kansas tax liabilities; 2) through a Commission approved PGA rules variance to Minn. Rules Part 7825.2400, subp. 12 that would permit Xcel to recover the Kansas tax liabilities through the PGA commodity factor.

The Department recommended to the Commission that it approve a five-year variance to Minn. Rule 7825.2400, subp. 12 to allow Xcel recovery of its current year estimated Kansas tax and the 2009-2014 lump sum assessed tax (amortize recovery over a five year period) through the PGA commodity factor.

PUC staff does not necessarily disagree with the Department's recommendations, but believes that the Commission will need to exercise caution when rendering its decision on whether the Kansas tax should be recovered through Xcel's next rate case's revenue requirement or recovered through Xcel's proposed and Department recommended PGA rules variance. See the below staff discussion.

Background

The Kansas Ad Valorem tax (the Kansas tax) has been a contested issue for a number of years. Interstate pipelines contested the Kansas tax in the 1980's when the interstate pipelines provided the Local Distribution Companies (LDCs) with a "bundled merchant service." The interstate pipelines were obligated to pay the Kansas tax which was included in its merchant service pricing. Interstate pipelines recovered the Kansas tax amounts through their underlying cost of service base rates. At this time, Xcel stated that it reflected this bundled cost as part of its delivered cost of gas and recovered the costs through the appropriate PGA accounts.[1]

Effective with FERC Order 636 implementation in 1992, the LDC now owns the natural gas held in interstate pipelines storage facilities.[2] The natural gas held in the interstate pipeline's storage facilities is subject to the Kansas tax.[3] Initially, Kansas law exempted ***out-of-state*** LDCs from paying the Kansas tax, but due to legislative changes and judicial outcomes, the out-of-state LDCs lost their exemption status and were obligated to start paying the Kansas tax in May 2004. Xcel paid its tax liability from May 2004 through the end of 2006. Xcel petitioned for and received three separate annual PGA rules variances from the Commission's Rules that allowed it to collect the Kansas tax through its commodity PGA factor.[4] Xcel and other out-of-state LDCs challenged the Kansas tax and eventually the Kansas Supreme Court resolved the issue in the LDCs favor on July 13, 2007. After the tax was overturned in 2007, Xcel received a State of Kansas refund and later refunded these amounts collected for the Kansas tax to its customers in the fall of 2007.

Effective on July 1, 2009, the Kansas legislature modified its enabling Kansas tax statutes (from 2004) to make out-of-state LDCs subject to the Kansas tax.[5] The out-of-state LDCs again challenged the Kansas tax application in the Kansas courts and to the United States Supreme Court of America (SCOTUS) where it was *denied certiorari*. However, under Kansas law, during the period of the appeal, the LDC was not obligated to pay the Kansas tax, but the tax liability did accrue for the period.

In Docket No. 09-1153 (Xcel's last natural gas rate case), Xcel did not ask for recovery of any Kansas tax amounts through its revenue requirements that determined base rates. Further, for the 2009-2014 timeframe Xcel did not pursue any PGA rules variances at the Commission that would have allowed it to collect the Kansas tax through its commodity PGA factors.

Minnesota Statutes and Rules

Minn. Stat. §216B.16, Subd. 7. Energy and emission control products cost adjustment

Notwithstanding any other provision of this chapter, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in:

(2) direct costs for natural gas delivered;

[1] However, in the late 1990s, the interstate pipelines received refunds of these taxes collected by the State of Kansas and started the refund process to the LDCs, with Xcel refunding its customers in 2003.
[2] Previously, the interstate pipeline owned the gas until it was delivered to the LDC at its receipt point.
[3] Even though Xcel stores the gas in NNG facilities, the ownership (title) of the natural gas remains with Xcel. The natural gas is Xcel's property.
[4] Docket Nos. G002/M-05-534, G002/M-06-905, and G002/M-07-62, Xcel was granted a series of one-year PGA variances that included 2004, 2005, and 2006.
[5] K.S.A § 79-5a01.

Minn. R. 7825.2400, subp. 6d, Commodity-delivered gas cost

"Commodity-delivered gas cost" is the portion of the cost of purchased gas charged a distributing gas utility for its gas supplies and supply-related services, as defined in subpart 12, that is a function of the volume of gas taken. It refers to the cost of purchased gas, including associated costs incurred to deliver the gas to the utility's distribution system.

Minn. R. Part 7825.2400, subp. 12, Cost of purchased gas; incorporation by reference.

"Cost of purchased gas" is the cost of gas as defined by the Minnesota uniform system of accounts, class A and B gas utilities, including accounts 800, 801, 802, 803, 804, 804.1, 805, 805.1, 808.1, 809.1, 810, 854, and 858 for energy purchased, as provided by Code of Federal Regulations, title 18, part 201, as amended through April 1, 1988. These accounts are incorporated by reference. The cost of purchased gas also includes the normal and ordinary cost of injection and withdrawal of gas from storage at the time of withdrawal. All gas public utilities shall use this definition regardless of class.

Minn. R. 7829.3200 Other Variances

Subpart 1. **When granted.**

The commission shall grant a variance to its rules when it determines that the following requirements are met:

A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
B. granting the variance would not adversely affect the public interest; and
C. granting the variance would not conflict with standards imposed by law.

Subp. 2. **Conditions**.

A variance may be granted contingent upon compliance with conditions imposed by the commission.

Subp. 3. **Duration**.

Unless the commission orders otherwise, variances automatically expire in one year. They may be revoked sooner due to changes in circumstances or due to failure to comply with requirements imposed as a condition of receiving a variance.

Parties Comments

Xcel

As described in the Background section, prior to FERC's Order 636, the Kansas Ad Valorem tax (the Kansas tax) was billed directly to the interstate pipeline who owned the underground storage caverns and its natural gas quantities stored in the facilities. The interstate pipelines recovered its costs through its bundled sales services. Xcel stated the cost associated with the interstate pipeline's bundled sales service was recovered through its monthly commodity PGA factor.

Subsequent to FERC Order 636, the LDC owns the natural gas quantities stored in NNG's storage facilities and is responsible for the Kansas tax liability.

On February 6, 2015, Xcel filed its *Initial Petition* requesting Commission approval to recover the Kansas tax that was based on its natural gas storage quantities stored in NNG's storage facilities located in Kansas. Xcel's *Initial Petition* requested a PGA rules variance to the Commission's Rules (Minn. Rules Part 7825.2400, subp. 12) to allow Xcel to recover the Kansas taxes through its commodity PGA factor.

Specifically, Xcel requested that the Commission:

- Grant a four-year variance[6] to Minn. R. 7825.2400, subp. 12 to allow inclusion of the Kansas property tax expense as a component of the cost of gas supply on an ongoing basis, Xcel proposed a November 1, 2014 effective date; *and*
- Allow Xcel to collect approximately $5 million (represents the revised amount from Xcel's Initial Petition level of $5.3) of the Kansas tax for the 2009 through October 2014 period as a lump sum over a 12-month timeframe through its commodity PGA factor. Xcel proposed to start collecting this amount on July 1, 2015; *and*
- Allow Xcel to collect an annual Kansas tax amount of approximately $800,000 to $900,000 per year, through its commodity PGA factor, Xcel proposed a November 1, 2014 effective date.[7]

The Kansas tax liabilities represent the Minnesota customer's portion of the tax liabilities calculated by the State of Kansas.

Department

In its June 20, 2015 *Response Comments*, the Department recommended that the Commission approve Xcel's *Initial Petition*, as modified in Xcel's April 20, 2015 *Reply Comments*, including the following conditions and reporting requirements, which Xcel has agreed to:

1. grant Xcel a five-year variance to Minn. Rule 7825.2400, subp. 12 to allow recovery of its current year assessed tax and the 2009-2014 lump sum assessed tax through the PGA commodity factor; <u>and</u>
2. require Xcel to amortize the 2009-2014 lump sum tax assessment over a five-year period to reduce the impact of this one-time charge on ratepayers; <u>and</u>
3. direct Xcel to include the Kansas property tax as a separate line item in its monthly PGA, <u>and</u>
4. require Xcel to list the Kansas property tax costs and revenues as separate line items in the Annual Automatic Adjustment (AAA) and PGA true-up reports as well as in the Company's Schedules C, Schedule D page 1 through 2 of 4 and page 4 of 4; <u>and</u>
5. require Xcel to submit a report with its AAA and True-Up Reports detailing the total amount paid to Kansas and collected from ratepayers during the gas year.

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[6] Xcel stated that the four-year variance period is consistent with the variance period the Commission has established with another natural gas variance request (for hedging) and will afford the Commission and stakeholders increased transparency into the inclusion of this tax in the PGA.

[7] This calculation is based on Xcel's consistent amount of storage capacity from year to year and a stable natural gas price over the same time period.

PUC Staff Analysis

PUC staff does not necessarily disagree with the Department's recommendations, but staff does have concerns over Xcel's collection of the Kansas tax liability through a PGA rules variance. See the following staff discussion.

Does Xcel's Proposal satisfy Minnesota Rule 7829.3200 requirements?

Minn. R. 7829.3200 provides that the Commission may grant a variance to its Rules if it finds:

- Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule,
- Granting the variance would not adversely affect the public interest, and
- Granting the variance would not conflict with standards imposed by law.

Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule

Xcel

Xcel stated that by not allowing it to recover the Kansas tax through its proposed PGA rules variance, the Commission would be imposing an excessive burden on the utility. The Kansas tax was prudently incurred and was directly related to securing Xcel's natural gas supply portfolio to enable it to provide reliable and cost-effective natural gas service to its customers. By requiring Xcel to absorb the Kansas tax until it files its next rate case would unfairly penalize it for a ***direct*** cost of gas over which it has no control.

Department

The Department agreed with Xcel that recovery of the annual and lump sum Kansas tax liability through a PGA rule variance would lessen Xcel's financial burden. But, the Department does not necessarily agree with Xcel that the only way for Xcel to recover these costs is through a PGA rules variance. To adjust Xcel's rates for every cost and revenue modification outside a rate case would be impossible. However, the Department noted that the Kansas tax liability recovery from 2009 to the present has been delayed due to uncertain outcome of the legal process, and not caused by a rate case timing decision. The Department concluded that strict enforcement of Minn. Rule 7825.2400, subd. 12 "cost of gas" definition for the Kansas tax annual and lump sum liabilities could be considered an excessive burden on Xcel.

PUC Staff

PUC staff agrees with the Department and Xcel that the annual and lump sum Kansas tax liabilities would place a financial burden on Xcel. But, allowing Xcel to recover the Kansas tax through a PGA rules variance would in turn place additional burden on Xcel's customers without a thorough review by the Department of these costs during a rate case, where all of the increases and decreases in Xcel's costs that have occurred since Xcel's rate case could be reviewed.

PUC staff agrees with the Department that a PGA rules variance is not the only way Xcel can recover these Kansas tax liabilities (both annual and lump sum tax liability amounts.) PUC staff is not suggesting to the Commission that it should deny Xcel recovery of the Kansas tax, but is merely stating that a PGA rule variance is not the only way for Xcel to recover the Kansas tax, i.e. file a rate case.

PUC staff is of the opinion that the Commission must consider the ramifications of the Kansas tax liabilities before rendering it decision.

Granting the variance would not adversely affect the public interest

Xcel

Xcel stated that if the Commission granted it a PGA rules variance to recover the Kansas tax liabilities, it would be encouraged to continue its storage use as a part of its natural gas resource portfolio – providing customer's price stability and a hedge against the risk of supply disruptions. Further, the PGA rules variance would not adversely affect the public interest, since the Kansas tax is a ***direct*** cost for natural gas delivered and it is in the public interest for customers to pay the associated actual purchased gas costs.

Department

The Department agreed with Xcel that having storage is in the public interest since it enables price stability and assists with reliability. The Kansas tax PGA rules variance would facilitate the optimal use of storage, thus, the PGA rules variance would not adversely affect the public interest.

PUC Staff

PUC staff appreciates the Department and Xcel comments, but does not necessarily agree with their statements that: (1) the PGA rules variance is in the public interest; and (2) the Kansas tax is a direct cost of gas.

PUC staff is of the opinion that Xcel should not require an incentive in order to continue its storage use in order to provide its firm customers safe and reliable services at a reasonable cost. Further, PUC staff believes that the Kansas tax liabilities are not a direct cost of gas, but could be considered costs that are related or associated with the cost of gas. As a public utility, Xcel has a fiduciary responsibility to provide the best possible service to its customers and a utility's storage use has long been an effective way to accomplish reliable service at a reasonable cost.

Granting the variance would not conflict with standards imposed by law

All Parties

All parties agreed that granting the Kansas tax PGA rules variance would not be in conflict with any standards imposed by law.

In summary, PUC staff believes that Xcel generally satisfies the Minnesota Rule 7829.3200 requirements for a Commission variance, but is of the opinion the Commission may wish to consider the following staff discussion before rendering its decision.

What are the Kansas taxes?

The State of Kansas has long assessed Ad Valorem (property) taxes on parties that have stored natural gas quantities in underground storage caverns. Kansas considers the natural gas quantities stored underground an asset, similar to a piece of pipe or any other asset owned by a utility company.[8]

Xcel

Pursuant to the Minnesota chart of accounts for utilities,[9] Xcel recorded the Kansas tax in Account 408.1 (property taxes).

Department

Xcel correctly determined that Kansas taxes were properly recorded in Account 408.1 – the FERC Chart of Accounts[10] which is the account designated for property taxes incurred by the utility on its in-service assets.

PUC staff

PUC staff agrees with the Department that Xcel correctly recorded the Kansas tax liabilities in the correct account, i.e. Account 408.1, which under Minn. Rules Part 7825.2400, subp. 12, does not qualify as a **direct** cost of gas. Generally speaking, the Kansas tax, like other property taxes, is considered a component of a utility's underlying cost of service that is used to determine the utility's revenue requirement in a rate case. PUC staff further notes that because Xcel owns the stored natural gas quantities and that these natural gas quantities are considered an asset, Xcel could be earning a return by including the asset in its rate base calculation. From this docket's record, PUC staff cannot determine why Xcel has not included a representative level of the Kansas tax in its 2004 and 2009 rate cases, but believes that in its previous rate cases Xcel did not include a representative level of Kansas tax liability. [11]

What recovery methods are available to Xcel for the Kansas tax?

PUC staff believes that Xcel has two recovery alternatives for the Kansas tax liabilities:

1. Xcel could seek recovery through its next general natural gas rate case's revenue requirement (Xcel's last rate case was in 2009 in Docket No. 09-1153); **or**
2. The Commission could grant Xcel a PGA rule variance (Minn. Rules Part 7825.2400, subp. 12) to recover the Kansas tax.

Under Option 1, Xcel would be required to file a rate case with a representative Kansas tax level in its selected test year. The Department would have an opportunity to thoroughly review: 1) the

[8] As stated in the Background section, Xcel and other utilities have exhausted all legal avenues on having this tax repealed. Xcel estimated its annual tax assessment for the current year and received its Kansas tax lump sum assessment for the 2009-2014 time periods.
[9] The State of Minnesota has incorporated the FERC chart of accounts.
[10] Minnesota has adopted the FERC Charts of Accounts.
[11] Xcel stated that its 2004 general rate case was completed before the Commission's decision on Xcel's 2004, 2005, and 2006 PGA rule variance requests and its last general rate case (09-1158) did not include any cost level for the Kansas tax in its revenue requirement.

Kansas tax liability calculations; 2) the supporting documents from the State of Kansas; 3) thoroughly review the storage agreement between Xcel's retail natural gas and electric generation facilities; and 4) other changes in the cost of service since Xcel's last rate case and its sales forecast. The Commission would have the final decision in deciding the Kansas tax liability included in Xcel's final revenue requirement.

Under Option 2, Xcel could seek a PGA rule variance (Minn. Rules Part 7825.2400, subp. 12) from the Commission that would allow it to recover the Kansas tax through the commodity PGA factor. Xcel would then not be required to wait until its files its next rate case to recover the Kansas taxes.

Xcel

In its February 6, 2015 *Initial Petition*, Xcel filed its proposal to recover the Kansas tax liability through its commodity PGA factor by requesting the Commission to grant a PGA rules variance to Minn. Rules Part 7825.2400, subp. 12. Xcel originally requested that the Commission grant a four-year variance,[12] but later agreed to the Department's recommended five-year PGA rules variance.

Department

In its June 10, 2015 *Response Comments*, the Department recommended that the Commission approve Xcel's *Initial Petition*, as modified in its April 20, 2015 *Reply Comments* and grant Xcel a five-year variance to Minn. Rule 7825.2400, subp. 12, and allow Xcel recovery of its current year estimated tax and the 2009-2014 lump sum through the commodity PGA factor.

PUC Staff

PUC staff does not necessarily disagree with the Department's recommendation and further agrees with Xcel that recovery can be achieved either through a rate case or through a PGA rules variance. But, staff does have concerns over the Commission granting Xcel a PGA rules variance to Minn. Rules Part 7825.2400, subp. 12 for a 5 year period.

PUC staff believes that Xcel previously had two opportunities to include the Kansas tax liability in its revenue requirement in prior rate cases: its 2004 rate case and its 2009 general rate case (09-1158), but did not include the Kansas tax in its revenue requirement. From this docket's record, PUC staff cannot determine Xcel's justification for not including a representative Kansas tax level in these rate cases, except for the fact that Xcel had not exhausted its Kansas and Supreme Court appeals. If the Commission grants PGA exemption in this docket, Xcel – Gas may be able to extend its next rate case out until 2020 or later. However, this would preclude the Department and the Commission from having the opportunity until that time, to review this change in cost compared to all of other increases and decreases in Xcel's costs and revenues that have occurred since Xcel's last rate case. As previously stated by PUC staff, every Xcel change since its last rate case cannot be measured and recovered without the benefit of a rate case. PUC staff believes that the Commission may wish to consider this phenomenon before rendering its decision.

[12] Xcel stated that the four-year variance period is consistent with the variance period the Commission has established with another natural gas variance request (for hedging) and will afford the Commission and stakeholders increased transparency into the inclusion of this tax in the PGA.

PUC staff notes that both MERC and CenterPoint Energy recover the Kansas tax liability through their rate case revenue requirement.

What was Xcel's justification for requesting a PGA rules variance to recover the Kansas tax through its PGA?

Xcel

Xcel believes the Commission's PGA Rules are intended to encourage PGA gas cost recovery for transportation and storage requirements that are necessary to serve its customers. Xcel believed that Minn. Stat. § 216b.16, subd. 7, which permits "automatic adjustment of charges for public utility service in direct relation to changes in…***(2) direct costs for natural gas delivered,***" justified its proposed PGA rules variance to recover the Kansas tax through its commodity PGA factor. The Kansas tax is based on the volume of gas held in storage for its customers, thus, making the Kansas tax a ***direct*** cost of gas. These ***direct*** gas costs are typically recovered through the PGA.

Also, Minn. R. 7825.2400, subd. 6d defined "commodity-delivered gas cost" as the "portion of the cost of purchased gas charged to a distributing gas utility for its gas supplies and supply-related services…that is a function of the volume of gas taken." [Emphasis added] Xcel stated that its proposed recovery of the Kansas tax perfectly fits the description.

Xcel stated that strict enforcement of the definition of Minn. R. 7825.2400, subd. 12 would *prevent it from recovering* the Kansas tax on stored natural gas quantities in Kansas; Xcel's *Initial Petition* requested a four-year PGA rule variance to this rule. Minn. R. 7825.2400, subp. 12 requirements provide that the "cost of purchased gas" include the cost of storage injection and withdrawal. Xcel believes that the Kansas tax might not be a direct cost of injection or withdrawal and might not explicitly fall within the language of the rule, but the Kansas tax is clearly ***associated*** with direct costs of natural gas delivered.

Further, Xcel believed its justification for its proposed PGA rule variance was supported by the Commission's previous decisions in Docket Nos. 05-534 (2004 tax liability), 06-905 (2005 tax liability), and 07-62 (2006 tax liability), where the Commission granted Xcel three consecutive one-year PGA rule variances allowing it to recover the Kansas tax through its commodity PGA factor.[13] Xcel challenged the Kansas tax and prevailed in its 2007 Kansas Supreme Court decision, and later refunded all of the Kansas tax amounts collected to its customers.

[13] See Docket Nos. G002/M-05-534, G002/M-06-905, and G002/M-07-62. The Commission granted: A) Xcel three consecutive one year variances to Minn. Rule 7825.2400, subp. 12 to allow the recovery of the January 1, 2004, 2005, and 2006 assessed tax in the PGA; (2) Xcel shall include the Kansas property tax as a separate line item in its monthly PGA; (3) Xcel shall submit a report with its Annual Automatic Adjustment report detailing the total amount collected from ratepayers during the gas year; (4) Xcel shall file a quarterly report on the status of all administrative and legal activities regarding the Kansas property tax until such time as all administrative and legal avenues are exhausted; (5) If the Kansas property tax is overturned, Xcel shall refund immediately all charges collected through the PGA pursuant to Minnesota Rule 7825.2700, subp. 8.

Xcel believes that if the Commission concludes that the 2009-2014 cost recovery is similar to the Docket Nos. 05-534, 06-905, and 07-62 PGA rule variances, then it may be appropriate to allow Xcel to recover the current Kansas tax costs through the commodity PGA factor.

Xcel's justification for its proposed 4-year PGA rule variance period was comparing its current proposal to the four year PGA rule variance granted by the Commission in Docket No. 12-519 for hedging cost,[14] and Minn. Rules 7825.2400 subp. 6d – Commodity-delivered gas cost, where the Kansas tax would be a portion of the purchased gas cost charged a distributing gas utility for its gas supplies and supply-related services. In its April 20, 2015 *Reply Comments*, Xcel accepted the Department's recommendation to use a five-year amortization recovery period for the collection of the lump sum Kansas tax as opposed to its *Initial Petition's* one year period.

Further, previous to its 2004, 2005, and 2006 PGA rule variance, the Commission granted Xcel a PGA rule variance in Docket No. 90-630 to include carrying charges on gas storage inventory, where the Commission acknowledged that storage service is to benefit Minnesota consumers by lowering costs and providing greater reliability and flexibility of gas supply – noting that the Commission policy would encourage well-designed storage programs.

In its 90-630 Order, the Commission found that carrying costs associated with gas storage inventories were a direct cost of providing natural gas, and stated that Xcel's recovery could be either through base revenue requirement rates or the PGA. The Order concluded that allowing PGA recovery was within the statutory intent of the PGA – and determined that timely PGA recovery rather than base rates would incent Xcel to maintain appropriate storage services for its customers.

<u>*Department*</u>

The Department agreed with Xcel that its current proposal was similar to Xcel's previous 2004, 2005, and 2006 PGA rule variances. However, the Department noted that this petition reflected a slight difference. The difference in circumstances between Xcel's *Initial Petition* in this docket and prior dockets was that there is no longer uncertainty regarding whether Xcel is subject to the Kansas tax.[15] For the Kansas tax charged to Xcel in 2004, 2005, and 2006 the Kansas Supreme Court decision exempted Xcel from the Kansas tax based on a property tax exemption for inventory, which was removed by the State of Kansas legislature in 2009.

The Department stated that based on Minn. R. 7825.2400, subp. 12 only ***direct costs*** for natural gas delivered are allowed to be included in the PGA. The Department believes that the PGA is an exception to normal ratemaking; therefore, the costs that are allowed to be recovered through the PGA are intended to be *limited*. <u>The PGA was not intended to substitute for a rate case where all the costs and revenues can be examined.</u>

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[14] Used by Xcel as part of its gas supply portfolio and approved by the Commission in its September, 23, 2013 Order Extending Variance with Conditions. The hedging PGA rule variance was originally granted in Docket No. 01-1336.

[15] Xcel stated that in October 2014, it and other LDCs exhausted all of available legal challenges when SCOTUS *denied certiorari*, resulting in the Kansas tax being upheld. By the end of 2014, all of the Kansas counties had billed Xcel for the unpaid Kansas tax from 2009 – 2014; approximately $5 million (see Xcel's *Reply Comments*).

Minn. R. 7825.2400, subp. 12 which states:

> *……"Cost of purchased gas" is the cost of gas as defined by the Minnesota uniform system of accounts, class A and B gas utilities, including account numbers 800, 801, 802, 803, 804, 804.1, 805, 805.1, 808.1, 809.1, 810, 854, and 858 for energy purchased, as provided by Code of Federal Regulations…*….[Emphasis added]

The Department stated that the PGA rules ***do not*** allow recovery of costs that are merely ***related*** to or ***associated*** with the cost of gas. The FERC uniform system of accounts[16] provided specific guidance as to what costs are recorded in the accounts listed in the rule. The Department noted that (1) property taxes (recorded in Account 408.1) were not included in the identified accounts specified above that were automatically recovered through the PGA; and (2) property taxes were correctly recorded in Account 408.1. The Kansas tax is not defined by the Minn. Rules to be a **direct** cost of gas. The Department concluded that Xcel cannot collect its Kansas tax liability through the PGA unless the Commission grants a PGA rule variance.

The Department reviewed Xcel's proposal for a four year PGA variance. Based on its recommendation to amortize the lump sum Kansas tax over a five year period (see below), the Department recommended that the PGA rule variance should be for the same five year period.

In its June 10, 2015 *Response Comments*, the Department recommended that the Commission approve Xcel's *Initial Petition*, as modified in its April 20, 2015 *Reply Comments* and grant Xcel a five-year variance to Minn. Rule 7825.2400, subp. 12, and allow Xcel recovery of its current year estimated tax and the 2009-2014 lump sum through the PGA commodity factor.

PUC Staff

PUC staff agrees with the Department that this request for a PGA rules variance is similar to the PGA rules variances granted in 2004, 2005, and 2006, but there is a difference between current tax assessment and the previous tax assessments for the 2004, 2005, and 2006. In 2009, the Kansas legislature revised its statutes removing the property tax exemption for inventory which was used by Xcel to reverse the previous 2004, 2005, and 2006 Kansas tax assessments.[17]

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[16] Minnesota has adopted the FERC chart of accounts.

[17] The justification for granting Xcel a PGA rule variance that was in the Commission's November 4, 2005 Order was as follows: 1) enforcing the rule as written would impose an excessive burden on Xcel's ratepayers. Given current natural gas market conditions, the Department has advised the Commission that the Company's ratepayers will benefit from the Company maintaining adequate gas reserves in storage as a hedge against price volatility for the current heating season. Strict enforcement of the definition of "cost of gas" in Minn. Rules, Part 7825.2400, subd. 12 would prevent the Company from recovering Kansas tax payments on natural gas it holds in storage in Kansas. The Department advised that if the Company is not allowed to recover these tax costs through the PGA it would not maintain an optimum level of natural gas reserves in storage as a hedge against price volatility. The Commission finds that absent adequate gas storage, Xcel's ratepayers could experience severely burdensome price fluctuations during the current heating season. The Commission therefore finds that in the unique circumstances of this docket, strict enforcement of the definition of "cost of gas" in Minn. Rules, Part 7825.2400, subd. 12 would impose an excessive burden on the Company's ratepayers. Also, in the event that a challenge to the new property tax is successful, the PGA will allow the immediate discontinuance of collecting that tax and provide an efficient mechanism to track and return tax amounts that have been collected from customers. Absent PGA recovery, return

Further under this statute, Xcel was not required to make Kansas tax payments if an appeal was made to the Kansas courts.

PUC staff is of the opinion that just because the Commission granted a previous PGA rules variance, the previous variance does not set a precedent for the Commission to follow in this docket. PUC staff agrees with the Department that the circumstances in this docket are different than in 2004, 2005, and 2006. PUC staff believes that the Commission needs to consider each PGA rules variance request's circumstances independently of each other when making its decision.

PUC staff is concerned that Xcel did not attempt recovery of the Kansas taxes either through a petition for a PGA rule variance or through including a representative test-year level of the Kansas tax in its revenue requirements in Docket No. 09-1158. By not doing this, Xcel has increased the future Kansas tax burden on its customers.

Minn. Rules Part 7825.2400, subd. 12 lists several accounts that are automatically incorporated by reference into the cost of purchased gas, but these direct accounts do not include Account 408.1[18] because Ad Valorem taxes are generally considered part of a utility's revenue requirement in a rate case scenario, which leads PUC staff to believe that the Kansas tax liabilities are not considered a **direct** cost of gas, as Xcel claims. But, rather the Kansas tax liabilities are based on an assessment of on an asset's value like any other property assets that Xcel owns and receives a tax assessment on.[19]

PUC staff is not recommending to the Commission that it deny Xcel recovery of the Kansas tax liabilities, but PUC staff believes that the Commission will need to decide whether the Kansas <u>tax should be recovered through Xcel's next rate case's revenue requirement, where all of the</u> increases and decreases in Xcel's costs and revenues can be thoroughly reviewed or whether the Kansas tax liabilities should be recovered as part of Xcel's purchased gas costs, i.e. recovered through a PGA rule variance.

of the amounts collected from ratepayers would be much more cumbersome, delayed, and potentially mismatched; 2) granting the variance will not adversely affect the public interest. Given the current market volatility, encouraging establishment of reserves via such storage is clearly in the public interest; and 3) and finally, granting the variance does not conflict with standards imposed by law. The definition of "cost of gas" is defined solely in a Commission rule (Minn. Rules, Part 7829.2400, subd. 12) and hence is subject to expansion via variance pursuant to Minn. Rules, Part 7825.3200. ORDER GRANTING VARIANCE AND IMPOSING REQUIREMENTS, <u>In the Matter of the Petition of Northern States Power Company d/b/a Xcel energy for Approval of a Variance Allowing the Recovery of a New Kansas Property Tax Through the Purchased Gas Adjustment</u>, Docket no. G-002/M-05-534 (November 4, 2015) pp. 2 and 3.

[18] These accounts include 800, 801, 802, 803, 804, 804.1, 805, 805.1, 808.1, 809.1, 810, 854, and 858.

[19] PUC staff believes that the Kansas storage tax is related or associated with the cost of gas, i.e. if Xcel did not purchase NNG storage, the Kansas tax would not exist. However, if Xcel did not have any other assets, such as a piece of pipe, Xcel would not pay Ad Valorem taxes on those facilities either.

What is Xcel's proposal to recover its Kansas tax liabilities?

Xcel

Xcel's PGA rules variance proposal is to recover the following:

1. To recover an estimated annual Kansas tax amount of approximately $800,000 to $900,000 per year, through its commodity PGA factor, Xcel proposed a November 1, 2014 effective date.

2. To recover approximately $5 million of the lump sum Kansas tax from 2009 through October 2014 over the Department's recommended 5 year PGA rules variance period. (Xcel originally proposed to recover the lump sum over a 12-month timeframe through its commodity PGA factor, but later agreed to the Department's recommendation to recover this amount over a five year period.) Xcel proposed to start collecting this amount on July 1, 2015.

Annual Kansas tax liability

Xcel proposed to recover an estimated range of $800,000 to $900,000 for its annual Kansas tax liability, and estimated the annual per customer impact at approximately $0.82 (April 1, 2015 *Reply Comments*);[20] for each year of the proposed variance year period. For its current estimated annual Kansas liability, Xcel proposed to use its prior year's (2014) actual tax amount as proxy for the current year (2015). Xcel receives its annual bill in December of each year, based on the value of the gas held in storage on January 1 of that year.

If Commission approval is received, Xcel proposed to start collecting the monthly Kansas tax liability from November 1, 2014 to the date of Commission approval in its annual PGA true-up, and immediately start recovering the current estimated Kansas tax amounts through its monthly PGA.[21]

Xcel provided an illustration of its monthly allocation proposal in its *Reply Comments*[22] where it will allocate the annual Kansas tax liability and the lump sum Kansas tax liability to months by using its forecasted volumetric sales to retail customers, the monthly allocated tax liability would be included in each month's PGA commodity cost. Any over- or under-recovery of the current monthly and/or lump sum tax liability would be either refunded or collected in Xcel's next annual PGA True-up factors.[23]

Xcel believes that the Kansas tax will continue in the future and it will be necessary to recover the Kansas tax after its proposed PGA rules variance expires.

[20] Revised from $1.00 per customer in its *Initial Petition*.
[21] Xcel outlines its proposed tax recovery methodology in its *Reply Comments,* Attachment B.
[22] See Xcel's *Reply Comments,* Attachments B and C.
[23] To facilitate transparent review of its PGAs, Xcel will reflect the tax cost as a separate line item in its monthly PGA, Annual Automatic Adjustment of Charges (AAA), and annual PGA True-up filings.

Lump Sum Kansas tax liability

Xcel's *Reply Comments* proposed to collect its 2009-2014 lump sum Kansas tax amount of $5 million over a five-year period.[24] Xcel estimated the residential customer impact of its proposal would increase each customer's annual bill by approximately $1.15. Xcel stated that it would be less burdensome to its customers to include the lump sum recovery in its next annual PGA true-up, starting July 2015.

Department

Annual Kansas tax liability

The Department concluded that the annual Kansas tax liability appears to be reasonable and recommended the Commission grant Xcel a PGA rules variance and allow Xcel to recover the Kansas tax through its commodity PGA factor for a five-year period.

Lump Sum Kansas tax liability

The Department noted that Xcel recently received its Kansas tax bills from multiple Kansas counties that dated back to 2009 through October 2014, which raised Department concerns over ***retroactive ratemaking***.

The Department agreed with Xcel that the Kansas storage tax was a legitimate business cost, which Xcel should be permitted to recover. But, the Kansas tax recovery through a special PGA ratemaking mechanism must be carefully considered by the Commission especially for the 2009-2014 ***retroactive*** Kansas taxes and since the tax ***is not*** a ***direct*** cost of gas as defined by the PGA rules.

The Department concluded that if the Commission approves the PGA rules variance, that it require Xcel to amortize the lump sum 2009-2014 Kansas tax over a five-year period, in order to minimize impact on Xcel's ratepayers. The Department justification was that Xcel currently uses storage to hedge against system anomalies and to be consistent with the decision in Docket No. 12-519 a longer variance period seemed reasonable.

PUC Staff

Annual Kansas tax liability

PUC staff agrees with the Department that Xcel's annual Kansas tax liability appears to be reasonable, but PUC staff is of the opinion that the Commission will need to decide whether the tax liability should be recovered through Xcel's next rate case's revenue requirement or as part of Xcel's purchased gas costs, i.e. recovered through a PGA rules variance.

Lump Sum Kansas tax liability

PUC staff agrees with the Department that Xcel's proposal to recover the lump sum Kansas tax liability for 2009 through October 2014 could be considered a form of ***retroactive ratemaking***. PUC staff is concerned that Xcel did not make any attempt to collect these liabilities either in its

[24] See Xcel's *Reply Comments*.

last rate case or through a PGA rules variance request. PUC staff believes that the Kansas tax liability or at least a high possibility of a Kansas tax liability has existed since 2009 when Kansas changed its statutes to remove the property tax for inventory exemption used by Xcel in its 2007 Kansas court decision exempting Xcel from this tax. PUC staff believes that the Kansas tax is a legitimate business expense going forward, but believes the Commission will need to determine if the prior period lump sum Kansas tax liability is ***retroactive ratemaking*** and disallow the expense from recovery or determine that the prior period Kansas tax liability should be recovered.

Retroactive ratemaking[25] could be defined as: to change a pre-existing (i.e. filed) rate based on end-of-year (i.e. "corrected" or "updated") results. The Commission would have to order a change to previously approved rates and then apply that change to a past period. PUC staff realizes that the PGA provides a utility a different kind of recovery mechanism, but staff believes that the Commission should exercise caution in granting Xcel a PGA rule variance for the Kansas tax liability when that tax is not a direct cost of gas as defined by the Minn. Statutes and Rules.

PUC staff believes that the Commission will need to decide whether the lump sum Kansas tax liability is recoverable or if recovery of this out-of-period tax liability should be considered retroactive ratemaking, thus disallowing Xcel recovery. Further, if the Commission decides that the Kansas tax liability is recoverable, the Commission will need to decide whether the tax liability should be recovered through Xcel's next rate case's revenue requirement or if the Kansas tax liability should be recovered as part of Xcel's purchased gas costs, i.e. recovered through a PGA rule variance.

What are the Department's other concerns with this Petition?

Department Comments

The Department was concerned over Xcel's statements regarding its storage usage between Xcel's retail natural gas and natural gas electric generation operations. The Department believed that the Kansas tax should be allocated between Xcel's electric generation and retail natural gas operations based on the amount of storage capacity held by each operation. Primarily, the Department was concerned about the possibility of cross subsidization between Xcel's operations.

As a result of its concerns, the Department requested Xcel in its *Reply Comments* to clarify and provide detailed explanations for the following:

a) Is the NNG storage used by Xcel segregated between Xcel's gas and electric operations?
b) How is the NNG storage inventory segregated?
c) If the NNG storage inventory is segregated between Xcel's gas and electric operations, has Xcel sought recovery of the Kansas ad valorem taxes for its electric operations in a separate docket?

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[25] FERC's filed rate doctrine.

d) Whether Xcel has sought or not sought recovery of the Kansas ad valorem taxes for its electric operations in a separate docket, are any of those costs included in its current and pending electric rate case in Docket No. E002/GR-13-868?
e) If the NNG storage used by Xcel is commingled between Xcel's gas and electric operations, please identify in detail Xcel's proposal to allocate the Kansas ad valorem tax costs between the two.

Xcel - Reply Comments

On April 20, 2015, Xcel filed its *Reply Comments* in response to the Department's April 8, 2015 *Comments*.

Xcel stated that in 2010, it developed an administrative agreement between its retail natural gas and electric generation operations which granted each operation full access to Xcel's total combined withdrawal and injection rights when ***not fully used by the other operation*** – providing benefits to its overall operations and customers. Xcel justified this agreement, by stating that it was able to avoid separate storage injection and withdrawal charges occurring on the same day by the different operations where it would normally incur the charges for each transaction, thus saving its customers money.

Xcel stated it maintains separate NNG natural gas storage contracts for its retail natural gas and electric generation operations, including separate reservation and capacity requirements for each operation. Separate storage inventory balances were maintained based on each operations injection and withdrawal amounts. Xcel's storage management segregates and tracks storage inventories by the natural gas purchased and transported by each operation for injection. Storage withdrawals were tracked based on which operation transported gas from storage.

However, in preparation of its *Reply Comments*, Xcel discovered that during the lump sum time frame of 2009-2014, the State of Kansas incorrectly included both Xcel's natural retail gas and electric generation storage quantities in its Kansas tax calculation, which was assessed to Xcel's retail natural gas operations. Under Kansas law, electric generation storage quantities were exempted from this tax assessment. The 2009 K.S.A § 79-5a01 amendment specified that the Kansas tax applies to public utilities that store natural gas in Kansas for the purpose of resale[26] ***and not*** for the generation of electricity.[27]

Xcel's understanding of the Kansas tax calculations for 2009-2014 lump sum timeframe would not include its electric generation storage quantities. Xcel's analysis determined that a portion of the assessed lump sum period quantities were related to its electric generation operation and requested the State of Kansas to revise Xcel's retail natural gas operation Kansas tax liability.

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[26] Public utilities that own, broker or market natural gas inventories stored for resale in an "underground formation" in the state.
[27] K.S.A § 79-5a01 (part (5))

Xcel estimated that its revised lump sum Kansas tax assessment would be approximately $5 million.[28] Xcel believed that its revised Kansas tax calculations properly reflect the lump sum Kansas tax liability for its retail natural gas operations.

Xcel further stated that the year-round reliability and price stability were important considering its load shift toward more natural gas electric generation. Xcel further stated that beginning in the 2013-2014 heating season, it planned to cover all of its winter natural gas electric generation gas supply requirements through its storage commitments.

Department

On June 10, 2015, the Department filed its *Response Comments* to Xcel's April 20, 2015 *Reply Comments*.

The Department reviewed Xcel's *Reply Comments* and appreciated Xcel's clarification statements on its storage operations between its retail natural gas and electric generation operations, and further, the corrections to the lump sum Kansas tax liability to exclude Xcel's electric generation quantities. The Department reviewed Xcel's calculations provided in its *Reply Comments'* Attachments,[29] and concluded that the revised amounts were reasonable.[30]

PUC Staff

PUC staff appreciates both the Department's and Xcel's comments, but is concerned over Xcel's statements regarding the storage agreement between its retail natural gas and electric generation operations. As Xcel's above statements reflect, there was a calculation error in the lump sum Kansas tax liability. Because of this calculation error, PUC staff believes these calculations need to be thoroughly reviewed on an ongoing basis. Further, PUC staff believes that it needs a better understanding of Xcel's storage (and other) agreements and the arrangements in effect between Xcel's various businesses for the use of its storage contracts, for example, between its retail natural gas and electric generation operations, to ensure that Xcel's retail natural gas operation is not subsidizing its electric generation operation.

PUC Staff Summary

On February 6, 2015, Xcel filed its *Initial Petition* requesting Commission approval to recover the Kansas tax, based on its NNG's storage contracts for its natural gas storage quantities. Xcel's *Initial Petition* requested a PGA rules variance to the Commission's Rules (Minn. Rules Part 7825.2400, subp. 12) that would allow Xcel to recover the Kansas taxes through its commodity PGA factor.

The Kansas tax liability consisted of two components: 1) an estimated range of $800,000 to 900,000 for its on-going annual Kansas tax liability with a proposed November 1, 2014 effective

[28] See Xcel's Reply Comments, Attachment A.

[29] See Xcel's Reply Comments, Attachments, A, B, C, and D.

[30] The Department agreed with Xcel that it is appropriate for Xcel to recover only the Kansas tax liability attributable to the natural gas storage quantities used by its retail natural gas operations.

date; and 2) an approximate lump sum Kansas tax liability of $5 million for the 2009–October 2014 timeframe with a proposed July 1, 2015 effective date.[31]

PUC staff believes that Xcel has two options to recover the assessed Kansas tax liabilities: 1) the Commission could authorize Xcel to recover this tax only in a general natural gas rate case;[32] or 2) the Commission could grant Xcel's proposed variance to Minn. Rules Part 7825.2400, subp. 12, which would allow Xcel to recover the Kansas tax through its commodity PGA factor.

In above discussion, PUC staff discussed multiple concerns over Xcel's proposed PGA rule variance. Staff's concerns are:

1. Granting Xcel a PGA rule variance to Minn. Rules Part 7825.2400, subp. 12 for a 5 year period. PUC staff believes that by granting Xcel a five year PGA rule variance, Xcel's rates would increase and its financial standing would be further enhanced without Xcel filing a rate case where all increases and decreases in costs and revenues can be reviewed by the Department and the Commission.

2. PUC staff believes that the Kansas tax liabilities were correctly recorded in Account 408.1 as property taxes. Ad valorem taxes are by definition not included in Minn. Rules Part 7825.2400, subd. 12,[33] which lists several accounts that are automatically incorporated by reference into the **direct** cost of purchased gas. PUC staff believes that the Kansas tax liabilities are not part of Xcel's **direct** cost of gas, as Xcel claims. Ad Valorem taxes are, however, considered an expense that is part of a utility's rate case revenue requirement.

3. PUC staff is concerned that permitting Xcel to recover the lump sum Kansas tax liability from 2009-2014 could be considered ***retroactive ratemaking***, because Xcel did not attempt timely recovery of the prior period lump sum Kansas tax liability until now either through a request for a PGA rule variance or in its last rate case revenue requirements.

4. PUC staff is concerned over Xcel's statements regarding the storage agreement between its retail natural gas and electric generation operations. From this docket's record, PUC staff believes that Xcel has not provided a satisfactory explanation detailing how this agreement works and further has not provided sufficient detail regarding the storage commitments for its retail natural gas and electric generation operations. PUC staff is concerned about the possibility that one of Xcel's operations could be providing the other operation an undue subsidy, thus the possibility of cross-subsidization could exist.

If the Commission grants Xcel a PGA rule variance, PUC staff believes that Xcel's proposed effective Kansas tax recovery dates have passed and the Commission will need to state an

[31] Xcel originally proposed to recover the lump sum liability over a 12-month timeframe through its commodity PGA factor, but later agreed to the Department's recommendation to amortize this amount over a five year period.
[32] Xcel's last rate case was in 2009 - Docket No. 09-1153.
[33] These accounts include 800, 801, 802, 803, 804, 804.1, 805, 805.1, 808.1, 809.1, 810, 854, and 858.

effective date when Xcel will be authorized to start recovering the Kansas tax liabilities. There are three Kansas tax liabilities' components that Xcel could be authorized to recover:

1. The current year Kansas tax liability range of $800,000 to $900,000; for briefing purposes, and assuming the Commission grants Xcel's request to include Kansas ad valorem taxes in the definition of the cost of gas, PUC staff is assuming an effective date of November 1, 2015. Where Xcel will start recovering its annual level of current Kansas tax liability through its monthly PGA petition and will true-up the remaining annual balance in its September 1, 2016 AAA and PGA true-up report;

2. The Kansas tax liability from November 1, 2014 through October 1, 2015; for briefing purposes, PUC staff is assuming an effective date of November 1, 2015. Where Xcel will start recovery of this Kansas tax liability through its monthly PGA petition and will true-up the remaining balance in its September 1, 2016 AAA and PGA true-up report;

3. The estimated lump sum Kansas tax liability of $5 million amortized over a five-year period; for briefing purposes, PUC staff is assuming an effective date of November 1, 2015. Where Xcel will start recovery of this Kansas tax liability through its monthly PGA petition and will true-up the remaining balance in its September 1, 2016 AAA and PGA true-up report;

As previously mentioned, Xcel stated that it plans to allocate its Kansas tax liabilities to monthly amounts by using its monthly forecasted volumetric sales to retail customers for the annual period, the monthly allocated tax liabilities would be included in each month's PGA commodity cost. Any over- or under-recovery of the Kansas tax liabilities would be either refunded or collected in Xcel's next annual PGA True-up factors. PUC staff believes that this allocation methodology is reasonable.

In summary, PUC staff believes:

- that Xcel generally satisfies the requirements of Minnesota Rule 7829.3200 for a rule variance; **and**

- that the Commission will need to decide whether it will grant a rule variance that includes giving Xcel permission to recover out-of-period costs, i.e. retroactive ratemaking, for the lump sum Kansas tax liability; **and**

- that the Commission will need to decide whether the Kansas tax liabilities should be recovered through Xcel's next rate case's revenue requirement (if and when Xcel files a natural gas rate case), where all of Xcel's increases and decreases in costs and revenues since its last rate case can be thoroughly reviewed or whether the Kansas tax liabilities should be recovered as part of Xcel's purchased gas costs, i.e. recovered through a PGA rules variance.

Decision Alternatives

Department and Xcel

1. Grant Xcel a five-year variance to Minn. Rule 7825.2400, subp. 12 to allow recovery of its current year assessed tax and the 2009-2014 lump sum assessed tax through the PGA commodity factor; [the Commission may wish to establish an effective date, such as November 1, 2015] and

2. Require Xcel to amortize the 2009-2014 lump sum tax assessment over a five-year period to reduce the impact of this one-time charge on ratepayers; and

3. Direct Xcel to include the Kansas property tax as a separate line item in its monthly PGA reports, and

4. Require Xcel to list the Kansas property tax costs and revenues as separate line items in the Annual Automatic Adjustment (AAA) and PGA true-up reports as well as in the Company's Schedules C, Schedule D page 1 through 2 of 4 and page 4 of 4; and

5. Require Xcel to submit a report with its annual AAA and true-up reports detailing the total amount paid to Kansas and collected from ratepayers during the gas year.

Additional Decision Alternatives – PGA Rule Variance

6. Grant Xcel a five-year variance to Minn. Rule 7825.2400, subp. 12 to allow recovery of its current year assessed Kansas tax through the PGA commodity factor, effective November 1, 2015, on a going forward basis, but deny Xcel recovery of: (a) the prior year 2014-2015 Kansas tax liability, and (b) the lump sum 2009-2014 Kansas tax liability, on the basis that recovery would be out-of-period, retroactive ratemaking; or

7. Grant Xcel a variance to Minn. Rule 7825.2400, subp. 12 to allow recovery of its current year assessed Kansas tax through the PGA commodity factor, effective November 1, 2015, but deny Xcel recovery of: (a) the prior year 2014-2015 Kansas tax liability, and (b) the lump sum 2009-2014 Kansas tax liability. Grant Xcel the variance for five years for the current year assessed amount or until Xcel files its next rate case, whichever occurs first. At Xcel's next rate case, the Commission would make the determination that the prior year's tax liabilities are recoverable or not (Xcel would create a regulatory asset on its books with an expiration date of five years from the Commission's Order date); or

8. Deny Xcel a PGA rule variance to Minn. Rule 7825.2400, subp. 12 for the recovery of the annual and lump sum Kansas tax liabilities, but allow Xcel to propose tax liabilities recovery in its next general rate case's revenue requirement filed with the Commission.

Additional Decision Alternative – Storage Agreement Compliance Filing

9. Require Xcel to make a compliance filing 30 days after the Commission's Order that fully explains its storage contracts with the Northern Natural Gas Company and the arrangements and agreement between Xcel's retail natural gas and electric generation operations, complete with storage reservation and capacity quantities for each operation for the last three years with explanations for any variations in the storage balances through the three years.