

March 1, 2018

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket Nos. E002/M-14-761 and E002/M-17-828

Dear Mr. Wolf:

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

Northern States Power Company d/b/a Xcel Energy's Annual Informational Letter and Compliance Filing regarding its Nuclear Decommissioning Trust Fund.

The Letter was filed on December 1, 2017. The petitioner is:

Lisa H. Perkett
Principal Financial Consultant
Northern States Power Company d/b/a Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) require Xcel to **change the investment mix and accept Xcel's responses to the tax related issues for decommissioning**, and is available to answer any questions the Commission may have.

Sincerely,

/s/ EILON AMIT
Statistical Analyst

EA/lt
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket Nos. E002/M-14-761 and E002/M-17-828

I. BACKGROUND

On December 1, 2014, in Docket No. E002/M-14-761, Northern States Power Company d/b/a Xcel Energy (Xcel or the Company) filed its 2016-2018 Triennial Nuclear Plant Decommissioning Accrual with the Minnesota Public Utilities Commission (Commission).

On April 1, 2015, in Docket No. E002/M-14-761, the Minnesota Department of Commerce (Department) filed comments on Xcel's decommissioning filing raising concerns about Xcel's proposed Nuclear Decommissioning Trust (NDT, or Qualified Trust Fund, or Fund) investment portfolio mix. In those comments, the Department noted that Xcel's investments of the nuclear decommissioning trust resulted in returns that were less than half of the average returns of the Standard and Poor's 500 Index and more than 100 basis points lower than 10-Year Treasury Bills.

On May 1, 2015, in Docket No. E002/M-14-761, Xcel filed reply comments attempting to address the Department's concerns regarding Xcel's proposed investment portfolio mix. The concerns remained unresolved, as discussed in the Department's May 11, 2015 response comments.

On October 5, 2015, in Docket No. E002/M-14-761, the Commission issued its *Order Approving Nuclear Decommissioning Study, Assumptions, and Annual Accrual, and Setting Filing Requirements*. In that Order, the Commission required the following:

In its next annual decommissioning filing, Xcel shall include possible benchmarks and methodologies for assessing annual performance of the Qualified Trust Fund. The filing must include, at a minimum, proposals for:

- a. Annual performance benchmarks.
- b. The date the Qualified Trust Fund's achieved returns will be measured against the benchmarks.

- c. The date Xcel will make a compliance filing comparing the Qualified Trust Fund's achieved returns to the benchmarks.

and a discussion of:

- d. The acceptable deviation level between the performance benchmarks and the Qualified Trust Fund's achieved returns. (For example: 100 basis points).
- e. The amount of any true-up, in dollars, that falls outside of the acceptable band, if applicable.
- f. The date on which the true-up would take place.

On April 1, 2016, in Docket No. E002/M-14-761, Xcel filed an Annual Informational Letter discussing, among other things, its investment policy and investment asset allocation.

On August 15, 2016, in Docket No. E002/M-14-761, the Department issued Response Comments, updating its analysis, which showed that Xcel's investments were still below the returns of a 10-Year Treasury Bill; based on this information, the Department made various recommendations to hold Xcel accountable to improving the performance.

On August 25, 2016, in Docket No. E002/M-14-761, Xcel Energy (Xcel or the Company) issued Reply Comments objecting to the Department's August 15 recommendations.

On September 6, 2016, in Docket No. E002/M-14-761, the Department issued additional Reply Comments making the following recommendations:

1. Require Xcel to re-evaluate its investment mix with the purpose of reducing the Qualified Trust investment management fees and increasing the Qualified Trust annual return on its investment portfolio.
2. Require the Company to file for each year during the triennial period, the average annual return on the NDT portfolio and the return on each individual asset and compare the annual return on the portfolio to the annual return for the S&P 500, 10-year treasury bonds, and the portfolio demonstrated by the Department in Table 2 of its August 15, 2016 Comments.
3. Require the Company to adjust the accruals collected from its ratepayers in the next triennial period by an amount equal to the difference in achieved returns on the portfolio for the Qualified Trust presented in Table 2 of the Department's August 15, 2016 Comments, and the return on Xcel's selected

investment portfolio in the event Xcel's selected portfolio falls more than 100 basis points lower than the Table 2 portfolio.

The above calculations should be based on the five-year period ending with the year prior to the next triennial filing. These calculations should be done for each consecutive triennial filing. If at any time under these calculation Xcel's portfolio return exceeds the Department's proposed benchmark by more than 100 basis points, the Company may use this excess against any future deficits in calculating the accrual required.

On February 27, 2017, in Docket No. E002/M-14-761, the Commission issued an Order directing Xcel to re-evaluate its investment mix and retain outside expert. The Commission Order states:

C. Re-evaluation of Investments

Second, the Commission shares the Department's concerns about the low growth and high fees associated with the NDT's investments strategy. Consequently, the Commission will adopt the Department's recommendation to direct Xcel to re-evaluate the fund's investment strategy.

In addition, the Commission will direct Xcel to retain a third-party expert in long-term institutional investment strategies to also evaluate Xcel's investment strategy. This expert will analyze how the fund's assets could best be invested to ensure that the trust amasses sufficient funds to meet the decommissioning costs by the time they will have to be borne, and maximize the return from the investment consistent with the appropriate risk level. The expert will be charged with the duty of filing a report on his or her conclusions within six months.

By pursuing these two paths—acquiring objective information about alternative investment opportunities, as well as receiving more subjective recommendations of knowledgeable parties—the Commission will lay the foundation for making further decisions about the NDT in the future.

ORDER

1. Xcel shall include in its annual compliance filings in this docket the following information:

- A. the average annual return on –
- 1) the Nuclear Decommissioning Trust Fund (NDT) portfolio, including the return on each individual asset,
 - 2) the Standard & Poor’s 500 stock market index,
 - 3) 10-year treasury notes,
 - 4) other qualified nuclear decommissioning trust funds,
 - 5) any other benchmarks proposed by Northern States Power Company d/b/a Xcel Energy, or jointly by Xcel and the Minnesota Department of Commerce, and
 - 6) Vanguard Exchange-Traded Funds (ETFs) invested according to the Charles Schwab Moderately Aggressive Asset Allocation as set forth below:

Fund Name	Weight
Vanguard Large Cap ETF	45%
Vanguard Small Cap ETF	15%
Vanguard Total World Stock ETC	20%
Vanguard LT Corporate Bond ETF	20%

- B. calculated over the five-, ten-, and twenty-year periods ending in the calendar year preceding the filing.
2. Regarding the investment strategy of the NDT:
- A. Xcel shall re-evaluate its investment mix with the purpose of reducing the NDT’s investment management fees and increasing the annual return on its investment portfolio.
 - B. Xcel shall retain a third-party expert in long-term institutional investment strategies to evaluate Xcel’s investment strategy with respect to the NDT with a goal of assuring sufficient funding to meet the decommissioning obligations at the time they are expected to come due and maximize return from the investment consistent with the appropriate risk level.

The expert shall file a report on the matter with the Commission within six months of this order.

3. This order shall become effective immediately.

On April 3, 2017, in Docket No. E002/M-14-761, Xcel filed a Compliance Filing providing information on the Fund Composition and the Fund Performance.

On July 14, 2017, in Docket No. E002/M-14-761, the Commission issued a *Notice of Comment Period* requesting comments on the following:

- Does Northern States Power Company's (Xcel's) April 3, 2017 compliance filing comply with the Commission's October 5, 2015 *Order Approving Nuclear Decommissioning Study, Assumptions, and Annual Accrual, and Setting Filing Requirements* and February 27, 2017 *Order Directing Xcel to Analyze Fund Investments and Retain Outside Expert*?
- Why is there such a large variance in income taxes paid by each nuclear facility's fund when compared to the income each fund generated?
- How does the Nuclear Decommissioning Trust's (NDT's) financial results compare against other benchmarks over time?

On September 5, 2017, in Docket No. E002/M-14-761, the Department filed Comments stating in part that:

Xcel's filing shows that the five-year return for the Fund averaged 7.29 percent compared to 11.80 percent for the Department's proposed portfolio. Neither Xcel's Reply Comments dated August 25, 2016 nor Xcel's Compliance Filing dated April 3, 2017 provide any new analyses to show either that the Company's portfolio are reasonable or that the Department's conclusions and recommendations are invalid.

On September 5, 2017, the Department also asked Xcel to address the following tax related issues in its reply comments:

- a. Further information to support the 42.6 percent of 2016 estimated tax expense for Monticello.
- b. Copies of the IRS 2016 Private Letter Rulings (PLRs) and explanation of the reason(s) for these PLRs.

- c. Address the concern about possible double-recovery of income taxes related to nuclear decommissioning.

On September 15, 2017, in Docket No. E002/M-14-761, Xcel filed responses to the Department's questions on tax related issues, which the Department discusses below in its Analysis and Recommendations Section.

On February 6, 2018, in Docket No. E002/M-14-761, the Commission issued a *Notice of Comment Period* requesting comments on the following:

- Does Northern States Power Company's (Xcel's) September 15, 2017 Reply Comments address concerns regarding possible double recovery of income taxes, as raised by the Department of Commerce (Department) in its September 5, 2017 Comments?
- Did Xcel provide the Private Letter Rulings (PLRs) requested by the Department in its September 5, 2017 Comments? Are there any additional concerns regarding these PLRs?

II. DEPARTMENT ANALYSIS AND RECOMMENDATIONS

A. INVESTMENT STRATEGY

On August 25, 2017, in Docket No. E002/M-14-761, Xcel filed:

- Compliance Filing – Third Party
- Evaluation Nuclear Decommission
- Accrual, Docket No. E002/M-14-761.

The study investigated the reasonableness of Xcel's proposed target allocation. This recommended target allocation excluded Global Equity, Long Corporate Bond, Private Debt, Commodities and Hedge Funds. Xcel stated in that filing that:

We note that our next NDT triennial petition will be filed on December 1, 2017. Consistent with past triennial dockets, in our upcoming filing we intend to discuss our investment assumptions and strategy, as well as request approval for any changes to our investment assumptions from our last triennial filing. In the

interest of efficiency, the Commission may want to include discussion of this report in the upcoming NDT triennial docket.

As indicated in its December 1, 2017 filing in Docket No. E002/M-17-828, the new Xcel Target Portfolio is as follows:

<u>Total Equity</u>	60%
US Large Cap	23.2%
US Small Cap	2.6%
Int'l Developed	14.1%
EM Equity	10.1%
Private Equity	10.0%
<u>Total Fixed Income</u>	30.0%
Investment Grade	12.1%
High Yield	10.0%
EM Debt	7.9%
Private Real Estate	10.0%

Importantly, Xcel excluded Global Equity, Long Corporate Bond, Private Debt, Commodities and Hedge Funds, many of the investments that were concerning. The Department compared the returns on Xcel's Target Allocation to the Department's proposed allocation. Table 1 compares the expected returns of Xcel's portfolio and the Department portfolio.

Table 1: Comparison of Expected Return

	<u>XCEL</u>	<u>DEPARTMENT</u>	<u>DIFFERENTIAL</u>
10 Years	5.09%	5.61%	52 basis points
30 Years	5.49%	7.95%	246 basis points

Table 2 compares the historical return.

Table 2: Comparison of Historical Return

	<u>XCEL</u>	<u>DEPARTMENT</u>	<u>DIFFERENTIAL</u>
5 Years	6.09%	7.59%	150 basis points
30 Years	5.86%	6.09%	23 basis points

While returns under the Department's proposed portfolio continue to be higher than Xcel's, the differential has decreased over time in this proceeding. Thus, the Department concludes that Xcel's performance has improved.

To address the remaining issues, the Department proposes several small but important changes to Xcel's allocation:

- increase Xcel's small cap to 15%,
- eliminate real estate and
- reduce High Yield bond by 2.4%.

The Department's proposed modified allocation would result in an expected return of 5.64% over 10 years rather than 5.09% under Xcel's proposed allocation (all the above returns are after-tax returns).

B. TAX RELATED ISSUES

1. Further support for 42.6 percent of 2016 estimated tax expense for Monticello

Xcel clarified on page 2 of its September 15, 2017 Reply Comments that, if Monticello was 42.6 percent of the total market value of the decommission fund for all three units combined, then 42.6% of the tax costs for 2016 should be assigned to Monticello.

Xcel also provided support for its composite tax rate on pages 2 and 3 of its Reply Comments. Xcel noted that the composite tax rate is 27.84 percent and is based on a 20 percent federal tax rate and a 9.8 percent Minnesota tax rate, and reflects the fact that Minnesota taxes are deductible on the federal tax return.

The Department appreciates the clarification and additional information, and considers Xcel's responses regarding the tax rates in Docket E002/M-14-761 to be reasonable.

To the extent that any adjustment is needed to address the Tax Cuts and Job Act, that issue will be addressed in the Department's comments in Docket E002/M-17-828, due June 1, 2018.

2. Concerns with double recovery

On page 6 of the Department's September 5, 2017 Comments, the Department raised concerns about possible double recovery due to income taxes being deducted from the decommissioning fund, in addition to decommissioning costs being grossed for tax purposes in the Company's rate case. Xcel on pages 3 to 4 of its September 15, 2017 Reply Comments, explained that there are several taxable items for nuclear decommissioning. The taxes paid and deducted from the decommissioning fund related to taxes the Company pays on the earning of the fund. In a rate case the Company in order to collect the full amount of the decommissioning accrual or expense needs to apply a tax gross-up. Xcel provided the detailed calculation for the revenue requirement on page 4, Table 2.

The Department appreciates Xcel's explanation on tax deductibility and gross-up related to the revenue requirement, and discussion of why these are separate but interrelated items. Based on this information, the Department concludes that the Company's response and approach are reasonable.

3. *Private Letter Rulings (PLRs)*

Finally, the Department appreciates that Xcel provided the requested PLRs as Attachment A to the Company's September 15, 2017 Reply Comments. The Company noted that in order to deduct from taxes the contribution to the Qualified Trusts, the Company must request the amounts to be deducted through a PLR. The Company files these PLRs when the authorized amount is changed by the Commission, to ensure full deductibility of the amount, or every ten years if the authorized amount has not changed.

The Department reviewed the PLRs provided by the Company and was able to confirm that these PLRs are related to tax deductibility for decommissioning accruals. Thus, the Department concludes that this issue is resolved.

C. *CONCLUSIONS*

Based on the compliance filing dated August 22, 2017 and based on the Department analysis, the Department concludes that Xcel's Target Allocation as modified by the Department is reasonable.

Based on the Department's review of the Company's September 15, 2017 Reply Comments regarding the tax related issues, the Department considers the Company's responses to be reasonable.

/lt

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. E002/M-14-761 and E002/M-17-828

Dated this 28th day of February 2018

/s/Sharon Ferguson

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