

Xcel's Interim Rate Refund Proposal

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Statement of the Issue

Should the Commission authorize Xcel to offset (or net or reduce) its test-year interim rate revenue over-collections (i.e. its test-year interim rate refund obligation) against step-year interim rate revenue under-collections?

Introduction

The following table compares Xcel's interim rates and revenue to the 2014 test year and 2015 step-year revenue requirements stated in the Commission's May 8, 2015 Order. Xcel over-recovered its revenue requirement for 2014 and is under-recovered for 2015.

Xcel over and under-collection of MYRP test-year and step-year revenue requirement	2014-test year	2015-step year
Interim rates	\$127,406,000	\$127,406,000
Test-year and step-year revenue requirement	58,908,000	Test-year 58,908,000 <u>Step-year 105,854,000</u> Total \$164,762,000
Over and under-collection of revenue requirement based on 12 months of revenue	\$68,498,000 over-collection	(\$37,356,000) (under-collection)

The time period at issue covers approximately sixteen months starting on January 3, 2014 (when interim rates went into effect) and ending on May 7, 2015, until the Commission issued its Order (i.e. the final determination) and final rates go into effect. There is no dispute amongst the parties that Xcel may recover its \$164.762 million rate increase effective May 8, 2015, pursuant to the interim rate statute. However, final rates are not likely to be implemented (or applied) on customer bills until September 1 or later. Xcel proposes to effectuate the May 8, 2015 effective date for final rates by reducing the refund by the amount it would have collected through the surcharge.

The main dispute is about whether Xcel may recover approximately four months of under-collected 2015 step-year revenue covering the January 1 through May 7, 2015 time period. On an annualized, 12-month basis this under-collection is approximately \$37.4 million. For the four months at issue here (based on the \$168.084 million rate increase in Xcel's April 30th compliance filing rather than the \$164.762 million rate increase in the Commission's May 8 Order),³ Xcel's under-collection for the approximately four-month period was \$13.5 million (excluding interest).

Xcel proposes to offset this under-collection against its 2014 test-year over-collection and reduce the interim rate refund accordingly. The Department, the OAG and AARP object.

³ This difference is discussed in Volume II of the briefing papers in the section on the application of the step-year cost of capital.

The OAG further objects to Xcel's proposal because Xcel did not use prorated effective dates and uses the prime rate of interest rather than Xcel's authorized rate of return. AARP supports the OAG's objection to the use of the prime rate which is discussed in the next section of the briefing papers.

Relevant Statutes, Orders and Notices

Interim Rate Refunds, Minn. Stat. § 216B.16, subd. 3(c)

If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. ... If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect. ...

Final Determination Defined, Minn. Stat. § 216B.16, subd. 2(g)

For the purposes of this section, "final determination" means the initial decision of the commission and not any order which may be entered by the commission in response to a petition for rehearing or other further relief. The commission may further suspend rates until it determines all those petitions.

Multiyear Rate Plan Order

In its June 17, 2013 Order Establishing Terms, Conditions, and Procedures for Multiyear Rate Plans,⁴ the Commission stated that

- If the applicant seeks interim rates as part of its rate case, the Commission will direct the applicant to address how the collection and possible refund of interim rates could be implemented in conjunction with the multiyear rate plan rate adjustment. [Order, p. 10]
- It is presumed that interim rates will be calculated based upon the rate case test year unless it is demonstrated to be reasonable to do otherwise. [Order, p. 12, paragraph 5]
- Regarding any proposal to establish new rates on an interim basis, an application for a multiyear rate plan must include or be accompanied by an explanation of how the utility proposes to collect and possibly refund interim rates in conjunction with the collection of and transition to the rates arising from a multiyear rate plan. [Order, p. 14, paragraph 21]

⁴ In the Matter of the Minnesota Office of Attorney General-Antitrust and Utilities Division's Petition for a Commission Investigation Regarding Criteria and Standards for Multiyear Rate Plans under Minn. Stat. § 216B.16, Subd. 19, Docket No. E,G-999/M-12-587

Notice of Additional Comment Period

On November 21, 2014, the Commission issued its notice requesting comments on Xcel's November 13, 2014 interim rate refund proposal. The Department, the OAG, and Xcel submitted comments in January 2015.

May 8 Order (Final Determination)

In its May 8, 2015 Findings of Fact, Conclusions, and Order,⁵ on page 105, the Commission ordered the following:

49. The Company shall make a filing within 30 days of the final determination in this case if final authorized rates are higher or lower than interim rates. The filing shall contain a proposal to make adjustments of interim rates consistent with the Commission's decision in this proceeding, to affected customers. The Company shall calculate the following amounts:
 - a. The refunds due for 2014, based on the interim rate collections during 2014 and final rates in effect as of January 1, 2014; and
 - b. The amount of under-collection or over-collection for 2015, based on the interim rate collections in 2015 through the date of the Commission's final determination, compared with each of the following:
 - i. the final rates for 2015, if effective on January 1, 2015; and
 - ii. the final rates for 2015, if effective on the date of the Commission's final determination.
50. Parties wishing to comment on the interim-rates-proposal filing discussed above shall file comments within 20 days. Comments should address the Company's proposal, including whether Xcel's proposal is consistent with the
 - a. Interim rate statute, Minn. Stat. § 216B.16, subd. 3, including the provision in Minn. Stat. § 216B.16, subd. 3(c) for implementation of the new revenue requirement ("If at the time of its final determination, the Commission finds that the interim rate rates are less than the rates in the final determination, the Commission shall prescribe a method by which the utility will recover the difference in revenue between the date of the final determination and the date the new rate schedules are put into effect.");
 - b. Minn. Stat. § 216B.16, subd. 3(b), prohibiting changes in rate design while interim rates are in effect. ("[T]he interim rate schedule shall be calculated

⁵ In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, Docket No. E-002/GR-13-868

using the proposed test year cost of capital, rate base, and expenses, except that it shall include ... no change in the existing rate design.”);

- c. The multiyear rate plan statute, Minn. Stat § 216B.16, subd. 19, and the Commission’s June 17, 2013 Multiyear Rate Plan (Docket No. E,G-999/M-12-587); and
- d. The various approved extensions to the length of this proceeding.

Notice Clarifying Time Period for Comments

On May 13, 2015, the Commission issued its notice clarifying the time period for comments on Xcel’s April 30, 2015 Compliance Filing Related to Interim Rate Refund. The Department, the OAG, AARP and Xcel submitted comments on May 28 and June 8, 2015.

Parties’ Positions

Xcel Energy (Xcel)

On April 30, 2015, Xcel submitted a preliminary compliance filing with interim rate refund schedules, and, on June 8, 2015, submitted a reply to the OAG.⁶

Xcel’s Proposal

In its April 30th proposal, Xcel provided its preferred alternative which would result in a refund of approximately \$40.7 million or \$14.55 for the average residential customer based on various assumptions. However, these numbers could change dependent upon the Commission’s decision on reconsideration or Order clarifications.

Xcel’s proposal, if approved, would allow Xcel to reduce its obligation to refund over-collected interim rates in the test year by offsetting approximately \$13.5 million of that obligation against interim rates that under-collected Xcel’s revenue requirement during the first four months of the step-year, i.e. until the Commission issued its final determination. Xcel proposes to reduce the interim rate refund further by the amount (approximately \$13.5 million) that it would otherwise be allowed to surcharge its customers for the difference between interim rate and final rates between the date of the Commission’s final determination (May 8) and the date final rates go into effect (September 1).

Xcel also provided an alternative proposal that it believes reflects the Department’s proposal and would refund approximately \$54.4 million in total, or approximately \$13.7 million more (including interest) than Xcel’s proposal. (The Department’s proposal excludes recovery of the difference between interim and final rates during the step-year prior to the Commission issuing its final determination.)

⁶ Xcel’s November 13, 2014 Interim Rate Refund Proposal and January 23, 2015 Reply Comments are summarized in Staff Briefing Papers for the Commission’s meetings in March 19 & 26, 2015, Vol. VII, pp. 84-94.

Xcel believes its proposal is consistent with what the Minnesota Supreme Court has held is the main purpose of interim rates which “is to prevent the potentially confiscatory effect of regulatory delay” while maintaining a balance of various private and public interests. Xcel argued that

Our interim rate refund proposal is carefully constructed to service this purpose. Our proposal is not only straightforward but is also consistent with how we have traditionally calculated an interim rate refund. Simply put, we will compare the interim rate revenues collected from January 3, 2014 to May 8, 2015 to the final authorized rates for that same time period. The only difference in this instance is our final authorized rates increase from the 2014 test year to the 2015 Step year. The fact that final rates are higher in the second year of the MYRP is not an appropriate reason to deviate from past practice.⁷

Xcel believes its proposal is the alternative that is most consistent with the interim rate statute because

the Company’s refund calculation does not change the revenue allocation, rate of return, or items included or excluded from the approved interim rate schedule, and

both the [interim rate] statute and the Company’s proposal treat the entire interim rate period as a single time-period for purposes of determining whether a refund is owed to customers.⁸

Xcel does not believe the multiyear rate plan statute or the Commission’s multiyear rate plan order have changed this basic structure for the operation and purpose of interim rates.

In earlier filings Xcel argued that its proposal is consistent with the purpose and intent of the interim rate statute and the multiyear rate plan statute. Xcel does not believe the interim rate statute only applies to a single, one-year or twelve-month interim rate time period. For a variety of reasons, Xcel did not propose an interim step increase at the beginning of this rate case or later in the proceeding. Xcel believes the interim rate statute allows interim rates to remain in effect for the duration of the proceeding, however long it may take, and refunds (and perhaps surcharges) to be calculated on a prorated basis according to the test-year (and step, if applicable) based on the length of time interim rates have been in effect.

Xcel also believes its proposal

- meets the purpose of the two statutes by reducing the effect of regulatory lag while allowing for the extended length of time that was needed to review this case.
- allows Xcel to avoid charging its customers a second interim step increase which could potentially confuse consumers, complicate billing and destabilize Xcel’s revenue stream.

⁷ Xcel, April 30, 2015 Compliance Filing Related to Interim Rate Refund, pp. 2-3, footnotes omitted

⁸ Ibid, p. 3, footnotes omitted

- is complimentary to Xcel's goals and proposal for moderating the rate increase(s) that result from this proceeding.

Xcel believes that its proposal, if approved, would result in the best balancing of the facts and circumstances particular to this case. According to Xcel, its

[a]pproach has the benefit of moderating interim rates for customers by avoiding a second interim rate increase and therefore even higher interim rates. Similarly, rates are increasing in this case in 2015 due in part to the application of a higher percentage of the transmission, distribution, and generation theoretical reserve surplus to 2014 interim and final rates than to 2015 final rates. Thus the increase in final rates for 2015 reflects in part the 2014 rate moderation benefits, which are reflected in our interim rates, for our customers. And even with these moderations of interim rates, our customers will still receive a refund at the end of this proceeding.⁹

Xcel also argued that when the Company filed its case (in November 2013) it anticipated interim rates to only be in effect for a short time in calendar-year 2015, i.e. the step period. Xcel felt at that time (in November 2013) that a proposal for a 2015 interim rate increase would have confused the regulatory process. In retrospect, Xcel believes its interim rate proposal is simpler and less confusing than implementing a second interim rate increase would have been. It also does not punish the Company for agreeing to procedural delays that gave the ALJ and the Commission additional time to reach a decision.

Xcel's legal analysis of its interim rate proposal can be found on Schedule B, pp. 1-9, of Xcel's April 30, 2015 preliminary compliance filing, interim rate refund schedules.

Xcel's response to the Department

Xcel objects to the Department's proposal because

The Alternative method treats the interim rate period as two separate segments (one for calendar year 2014 and the other for calendar year 2015) and analyzes each calendar year in isolation for purpose of determining whether an under- or over-collection situation exists. Because the Company's interim rates are higher than final approved rates for 2014, the Department characterizes this as an over – collection and calculates a refund. Because the Company's interim rates are lower than final rates approved for 2015, the Department would not allow the Company to factor this under-recovery into the total refund provided to customers at the end of this proceeding.¹⁰

Xcel does not believe the Department's approach is consistent with previous rate cases in which the interim rate period has lasted for more than one calendar year and relies on too narrow a reading of the terms "rates" and "revenues" in the interim rate statute. Xcel believes the concepts associated with terms "rates" and "revenues" in the interim rate statute are closely, if

⁹ Ibid, pp. 3-4

¹⁰ Ibid., p. 4

not inextricably, related because “revenues are the results of rates and rates are calculated in terms of overall revenues”¹¹ Xcel also believes the Department’s interpretation of how the term “rates” appears in the statute is contrary to what the courts have held this to mean. According to Xcel, the courts have held that a utility owes a refund not on the basis of individual rates but only if final authorized revenues exceed revenues collected under interim rates.

While Xcel does not agree with the Department’s approach in this case, Xcel agrees that under a multiyear rate plan, the Company could have asked to adjust interim rate levels for each year of the plan while this case was pending. If that had been what the Company proposed to do, then Xcel would agree the Department’s refund method would be relevant. Xcel decided not to propose a two-step interim rate increase because this was the first multiyear rate plan, and the Company wanted to avoid regulatory and customer confusion. Nevertheless, Xcel believes that if it had proposed a two-step interim rate increase, its proposal and the Department’s proposal would have resulted in the same amount of refund at the end of the case.

Xcel’s response to the OAG

In its June 8, 2015 reply comments, on pp. 10-13, Xcel objected to the OAG’s comments and recommendations.

Xcel objects to the OAG’s recommendation that Xcel modify how it calculates the “outstanding” monthly balance of refundable dollars that the interest rate is applied to in the interim rate refund calculation. According to Xcel, the OAG objected to the way Xcel calculates the “excess amount collected” under interim rates because the amount (on which interest is paid) declines in 2015. This is because in the MYRP, the authorized step-year, final rates are higher than interim rates for 2014 and 2015.

Xcel believes its method of calculating the refund is correct because there is only one single interim rate period and one interim rate schedule. Xcel believes that to

... properly calculate the ‘excess amount collected’ we determine the difference in revenue we collected through interim rates during the interim rate period and the Commission’s authorized rates for the same period.

In a single test year case, this calculation is simply applying final rates to sales and netting it against the actual interim rates collected. However, because this case is the first MYRP in Minnesota, we must now account for the change in final authorized rates from 2014 and 2015. The schedules for our April 30, 2015 Compliance filing perform this calculation.¹²

Xcel also objected to the OAG’s challenge to the Company’s use of billing month data rather than calendar month billing data. Xcel believes the OAG’s proposal would cause additional inaccuracies in the calculation of interim rate refunds. Xcel stated that it has always used billing month data to calculate interim rates refunds because this is the most accurate data available and requires Xcel to make the fewest number of estimates. For the dates the OAG is concerned

¹¹ Ibid, p. 4 (Please also see: Xcel, reply comments, January 23, 2015, p. 4)

¹² Xcel, June 8, 2015 reply comments, p. 11

about, when interim rates first went into effect at the beginning of 2014, in the transition from 2014 to 2015 rates, and in May 2015 when the final determination was issued, Xcel stated that precise usage and billing data is not available to allow Xcel to make perfect calculations. If Xcel were required to prorate to the relevant effective dates, Xcel would still need to make estimates but based on less accurate underlying data. Xcel does not believe it should be required to change the approach it has used in the past. Xcel also noted that when there is an actual refund, the refund factor is applied to actual customer bills prepared on a billing month basis.

Relevant Documents

Compliance proposal related to interim rates - November 13, 2014

Reply comments - January 23, 2005

Preliminary Compliance - Interim Rate Refund Schedules - April 30, 2015

Reply Comments, pp. 10-13 – June 8, 2015

Department of Commerce (Department)

In its May 28, 2015 comments, the Department recommended approval of Xcel's alternative interim rate refund proposal of approximately \$54.4 million (including interest).¹³ The Department cautioned that the refund amount may need to be recalculated for a number of reasons. For example, if the authorized rate increase for 2014 or 2015 changes, the authorized rate of interest on the refund is different from the rate used by Xcel in its proposal, the amount of interim revenue actually collected is different from the amount Xcel assumed it would collect in its calculations due to higher or lower sales or final rates not going into effect on September 1st.

The Department argued that because the Commission issued its final determination on May 8th and based on that Order it is certain final rates will be higher than interim rates, the interim rate statute makes it clear that May 8th is the relevant date on which Xcel may begin recovering the difference between final and interim rates. The Department does not believe Xcel's proposal to begin recovering the difference for the January 3 through May 7, 2015 time period is permitted under the interim rate statute absent a finding of exigent circumstances.

The Department disagreed with Xcel's argument that Xcel's 2010 rate case established a precedent for approving Xcel's proposal in this case. The Department believes this case is different from Xcel's 2010 rate case because in this case, the final rates authorized in the second year of the multiyear rate plan are higher than interim rates. In contrast, in Xcel's 2010 rate case, in the second year interim rates were collected, interim rates were lower than final authorized rates in both in the first and second year they were in effect.

The Department appears to argue that its recommendation is consistent with the multiyear rate plan statute and the Commission's multiyear rate plan standards. However, the Department's argument appears to be that the interim rate statute controls interim rate refunds regardless of whether interim rates are set at one level for the duration of a proceeding or if interim rates changes during a proceeding. The Department argued that "interim rate level changes are irrelevant to how refunds are calculated." The Department appears to argue that the level at

¹³ The Department's January 13, 2015 comments and January 16, 2015 amended comments are summarized in Staff Briefing Papers for the Commission's meetings in March 19 & 26, 2015, Vol. VII, pp. 84-94.

which the interim rates are actually set (whatever level or levels that might be) controls the refund and/or surcharge, rather than the level they could have or might have been set.

The Department also argued that absent a finding of exigent circumstances that recognizes delays due to extensions of the deadlines in this proceeding, the interim rate statute is clear about the date of the final determination being the date when Xcel can begin recovering the difference between authorized final rates and interim rates.

With respect to the extended length of this proceeding, the Department does not appear to believe that any of the extensions to the timeline of this proceeding led to undue delay. The Department noted that Xcel agreed to both waivers of the statutory deadline that Xcel requested. The first was prompted by a request from the ALJ and the second by a request from the Commission. However, the Department did argue that if the Commission finds exigent circumstances, it would be reasonable to allow recovery of the difference between final and interim rates for the March 3 through May 7, 2015 time period because Xcel did not have to waive its right to a Commission decision by March 3, 2015.

Relevant Documents

Comments – January 13, 2015

Amended Comments – January 16, 2015

Comments – May 28, 2015

Office of Attorney General (OAG)

On May 28, 2015, the OAG submitted comments recommending the Commission reject Xcel's interim rate proposal.¹⁴

The OAG recommended the Commission require Xcel to refund excess interim rates with interest at Xcel's authorized rate of return. (This is discussed in the next section of the briefing papers).

The OAG also recommended the Commission require Xcel to base its refund on Xcel having two completely separate revenue requirement calculations, one for 2014 and another one for 2015, rather than one combined or blended overall revenue requirement for the 2014-2015 interim rate period. The OAG believes

... Xcel's proposal to combine the two test years would be an end-run around the limitation on surcharging ratepayers in the event of an interim rate under-collection.¹⁵

The OAG believes the interim rate statute clearly prohibits utilities from recovering the difference between interim and final rates except for the time period between the Commission's final determination and when final rates become effective. The OAG believes

¹⁴ The OAG's January 13, 2015 comments and January 23, 2015 reply comments are summarized in Staff Briefing Papers for the Commission's meetings in March 19 & 26, 2015, Vol. VII, pp. 84-94.

¹⁵ OAG, Comments, May 28, 2015, p. 6

Xcel's proposal to offset excess interim rates collected in 2014 with under-collections from 2015 effectively asks for permission to begin surcharging on January 1, 2015, rather than May 8, 2015, ...[while] ... [t]he Interim Rate Statute is clear: the utility may only recover under-collections 'between the date of the final determination and the date the new rate schedules are put into effect.' The Commission must reject Xcel's proposal because it would violate the law.¹⁶

The OAG does not believe Xcel's proposal is consistent with interim rate refunds in previous cases. The OAG argued that because this is the first multiyear rate case, it is clearly different from previous cases. Specifically, with respect to the example provided by Xcel, the OAG argued that

[w]hile Xcel's 2010 rate case did involve a limited step-year, that case was significantly different from this one because the interim rates were higher than final rates even after the step year was included. This is the first case in which the interim rates are higher than final rates in one year and lower in another; as such, it is unique, and what Xcel has done in other cases is not relevant.¹⁷

The OAG also does not believe Xcel was disadvantaged by having granted voluntary waivers to statutory deadlines. The OAG argued that Xcel was not disadvantaged because, in its waivers, Xcel stated that it agreed to refund interim rates collected in excess of authorized final rates in accordance with the interim rate statute. The OAG argued that

Xcel was well aware that its waiver could affect the interim rate refund in this case, acknowledged that fact, and voluntarily agreed to waive the deadlines regardless of those concerns; the Company should not be permitted to withdraw that commitment when it becomes inconvenient.¹⁸

The OAG believes Xcel should have recognized the potential for complications in this case and addressed this issue more decisively at the beginning of this case as directed by the Commission's Multiyear Rate Plan Order and as required by the interim rate statute.

The OAG also argued that the interim rate statute does not allow the Commission to change the date that surcharges may begin except under very limited circumstances. Surcharges may only begin as of the date of the Commission's final determination. According to the OAG, the only circumstance that allows for a variation of this is when there is a request for an extension of time for settlement discussions pursuant to Minn. Stat. § 216B.16, subd. 1a.

The OAG also recommended the Commission require Xcel to

... compensate ratepayers for the full time value of their money by providing interest for the full period that Xcel holds the funds, rather than offsetting it by under-collections.¹⁹

¹⁶ Ibid., pp. 6-7

¹⁷ Ibid., p. 7

¹⁸ Ibid., p. 8

¹⁹ Ibid., p. 10

The OAG believes Xcel's proposal is unfair because it

... reduces the amount of interest paid on excess interim rates collected in 2014 by offsetting the average balance of excess interim rates using under-collections in 2015.²⁰

The OAG also objected to Xcel's use of billing month interim rate revenue instead of prorated calendar-month interim rate revenue for the month of January 2014, January 2015 and the April/May 2015. The OAG believes Xcel's proposal that uses billing month revenues understates interim rate revenue for January 2014 (when interim rates were higher than authorized rates and subject to partial refund), overstates revenue collected in January 2015 (when authorized rates were higher than interim rates and potentially subject to a surcharge) and overstates May 2015 interim rate revenue (according to the OAG, most of this revenue should be attributed to the April 2015 time period prior to the Commission's final determination and should not be subject to a surcharge.) The OAG incorporated estimates of its adjustments in its alternative calculation of Xcel's interim rate refund obligation. (Xcel also used Xcel's authorized final overall rate of return.)

Relevant Documents

Comments – January 13, 2015

Reply Comments – January 23, 2015

Comments – May 28, 2015

AARP

On May 28, 2015, AARP submitted comments opposing Xcel's refund proposal. AARP objects to Xcel's request to offset test-year over-collections against step-year under-collections. AARP argued that the interim rate statute does not contemplate more than one test-year or time period, these test-years are subject to different calculations under the multi-year rate plan, they should be kept separate, and they should not be netted against each other.

AARP also believes consumers deserve to be compensated at a higher interest rate than the prime rate for allowing Xcel to use their money during 2014 and 2015. AARP believes Xcel's overall rate of return authorized in this rate case would be the appropriate rate of interest.

Relevant Document

Comments – May 28, 2015

²⁰ Ibid., p. 10

Staff Comment

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

... that the interim rate refund be calculated by taking the difference between: (1) the sum of the total revenue collected for the months that interim rates were in effect and (2) the total amount of revenue that would be collected had final revenue requirements for 2014 and final revenue requirements for 2015 been effective over the course of the period beginning January 1, 2014 through the Commission's final determination.²¹

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

The following table compares the three alternatives.

Interim Refund Estimates	Xcel (column 2)	Department ²² (column 3)	OAG ²³ (column 4)
2014 over-collection	\$65.5 million	\$65.5 million	\$68.6 million
2015 under-collection (Jan. 3 – May 7, 2015)	-\$13.5 million	- \$0 -	- \$0 -
2015 Statutorily Allowed surcharge (May 8 – Aug. 31, 2015)	-\$13.5 million	-\$13.5 million	-\$14.4 million
2015 total under-collection/surcharge	-\$27 million	-\$13.5 million	-\$14.4 million
Final Refund	\$38.5 million	\$52.0 million	\$54.2 million
Interest	\$2.2 million	\$2.4 million	\$5.8 million
Final Refund plus Interest	\$40.7 million	\$54.4 million	\$60.1 million
Estimated Average Residential Refund	\$14.55	\$19.46	\$20.80

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

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

Normally, the interim rate refund (or surcharge) plan is a compliance item proposed by the utility in the thirty-day compliance filing at the end of a rate case. Usually, the refund plan is fairly

²¹ Xcel, Notice of Compliance Proposal Related to Interim Rates, November, 13, 2014, p. 3

²² The Department notes that all of the data in columns 2 & 3 in this table is from Schedule A, p. 1 of 7 of Xcel's April 30, 2015 preliminary compliance – interim rate refund filing. If the authorized rate increase changes for the test-year or the step-year, the authorized interest rate changes, and/or the actual revenue collections differ from Xcel's estimates, the refund amount will need to be recalculated.

²³ The data in column 4 is from the attachment to the OAG's May 28 comments and is based on a different time period and interest rate.

straightforward and is not disputed by the parties. However, because Xcel's refund proposal is disputed, and because this multiyear rate plan presents a new set of circumstances under the interim rate statute, the Commission should give Xcel some indication of what kind of refund plan it would approve in advance of Xcel making a compliance filing at the end of this case.

The MYRP Order indicates interim rates should be based on the test-year rather than the test-year plus the step period. In making its decision, the Commission may want to consider the extent Xcel (and any other utility asking for a multiyear rate plan) should be allowed to update or change its request for interim rates (either prospectively or, in this case, arguably, retroactively) a year or more into a proceeding after making its initial request and receiving approval for a certain level of interim revenue.²⁴

With respect to the point that this proceeding has lasted a long time, the MYRP statute provides for an extra 90 days because of the MYRP and the Commission is allowed an extra 90 days if there is more than one rate case pending. Xcel's two waivers of the statutory deadline were made at the request of the ALJ and Commission and provided an extra eight to nine weeks in addition to the 180 extra days the Commission was entitled to under the statute.

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

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

If the Commission allows Xcel to net step period under-collection against its test-year refund obligation, Xcel's proposed methodology appears consistent with previous Xcel refund plans.

²⁴ In 2015, the Legislature enacted amendments to the MYRP statute, including the following provision that allows a utility to request an interim rate step increase:

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

Staff does not believe the interim rate statute requires the Commission to approve Xcel's request. The interim rate statute is very clear about the significance of the final determination and the Commission is not required to allow Xcel to collect the difference between interim and final rates until the date of the final determination.

... If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on it which shall be at the rate of interest determined by the commission. ... If, at the time of its final determination, the commission finds that the interim rates are less than the rates in the final determination, the commission shall prescribe a method by which the utility will recover the difference in revenues between the date of the final determination and the date the new rate schedules are put into effect. ... (Minn. Stat. § 216B.16, Subd. 3(c))

The Commission could interpret the interim rate statute, as suggested by the Department, the OAG and AARP, to apply to all of Ch. 216B, section 16, including the multi-year rate plan statute and decide that the increase at the end of the case resulting from the MYRP filing, if higher than interim rates, does not take effect until the Commission's final determination is issued, as defined in Ch. 216B, section 16. The interim rate refund statute is clearly and intentionally asymmetrical in its choice of effective dates for the interim refund obligation and the final rates if higher than interim rates.

Decision Alternatives

1. Approve Xcel's proposal, and authorize Xcel, in its thirty-day compliance filing, to net its test-year interim rate revenue refund obligation against its step-year interim rate revenue under-collections. (Xcel)
2. Approve the Department's proposal, and do not authorize Xcel, in its thirty-day compliance filing, to net its test-year interim rate revenue refund obligation against its step year interim rate revenue under-collections. (Department)
3. Find exigent circumstances and approve the Department's alternative refund scenario, and authorize Xcel, in its thirty-day compliance filing, to net its test-year interim rate revenue refund obligation against step-year interim rate revenue under-collections for the March 3 through May 7, 2015 time period, i.e. the "delay" period. (Department, second choice alternative)
4. Approve the OAG's proposal, and do not authorize Xcel, in its thirty-day compliance filing, to: (a) net its test-year interim rate revenue refund obligation against its step-year interim rate revenue under-collections, (b) reduce the amount of interest paid on excess interim rates collected in 2014 by offsetting the average balance of excess interim rates collected using under-collections in 2015, and (c) use billing month interim rate revenue instead of prorated calendar month interim rate revenue. (OAG)