

**From:** PUC  
**Sent:** Tuesday, July 01, 2014 1:32 PM  
**To:** [REDACTED]  
**Subject:** FW: Xcel Energy Proposed Rate Hike

Mr. Steele:

You make comparisons between unregulated businesses and Xcel Energy, which is a regulated utility. As a regulated utility, Xcel has its rates set by the commission based on an authorized rate of return. Note that this is "authorized" but not "guaranteed." The utility is not guaranteed to earn that rate of return. The rates are set based on a rate of return that is in turn based on utility debt and equity market rates as determined by present market conditions. In the past few years, the South Dakota Public Utilities Commission's approved rates of return have been the lowest in the nation for the electric sector.

The commission is required by law to allow rates based on a reasonable rate of return for the regulated utility sector. The reasons for this are: 1. It is required by the statutes passed by the South Dakota Legislature, and 2. This has been upheld by multiple decisions of the South Dakota Supreme Court and the United States Supreme Court. The Supreme Court has ruled that it is unconstitutional according to the "takings clause" of the Constitution for the commission to set rates based on debt and equity values that are not within the current range of market rates for utility debt and equity securities.

The reason for this is that the rates of regulated utilities – such as Xcel Energy, Black Hills Power, Montana-Dakota Utilities, Otter Tail Power, NorthWestern Energy and MidAmerican Energy – are regulated. These utilities are in a "captive" rate situation. In other words, these utilities are not permitted to charge whatever rates management decides to charge, like other businesses. Because Xcel is a monopoly situation, there is no "market" to discipline prices in a regulated utility situation as there is in unregulated business sectors. One effect of this is that regulated utility rates of return are almost always significantly lower than for unregulated business corporations.

A regulated utility may have a rate that is set based in part on current debt and equity return values, but that process also results in the utility not being able to earn the higher rates of return that unregulated businesses can and do charge. However, the utility's shareholders are entitled to earn some profit since that is why they invest their funds in the corporate entity that owns the regulated utility.

You mention that Xcel shareholders should have to pay for new investments out of a rainy day fund or save for such investments like other businesses do. Again, the laws governing a regulated utility cause it to operate in a different manner than largely-unregulated businesses. If a rainy day fund were part of Xcel's overall asset and funding make-up and deemed by the commission to have been prudently incurred, Xcel would then be legally entitled under South Dakota statute to recover those costs at the time of incurrence, even though not currently being used or ever used.

The laws over regulated utilities include what is known as "ring-fencing." This separates the accounting and revenue of the regulated entity from the other owned entities within that larger corporate ownership structure. It essentially prevents an investor-owned utility of being stripped of its profits by shareholders. The purpose is to retain sufficient funds to operate the utility and reinvest in the system in order to provide safe, reliable service to the utility's customers. Incidentally, I authored and spearheaded the passage of the utility ring-fencing law in South Dakota.

You reference corporate jets versus commercial air travel and how the latter would save funds. This is also a legitimate concern and was a huge concern of the commissioners in the prior Xcel rate case. In fact, commission staff requested background and expenses from the utility on travel and analyzed the costs of corporate plane versus commercial air for Xcel's South Dakota portion of expenses. They took into account staff productivity for travel time. The commission will again investigate Xcel's travel costs for the rate case filed last week.

Thank you again for writing and being concerned about this rate case. You are correct to be concerned, just as my fellow commissioners and I are seriously concerned about the effects the new Environmental Protection Agency rules are having on utilities' investments in power plants and likewise, these effects on South Dakotans' energy costs. This is very real and extremely serious. As much as the new EPA rules are discussed and written about in the press, folks don't seem to understand until they see the new rates reflected in their monthly invoices from not only their electric utility, but from all the other goods and services they purchase whose providers rely on electricity. I want to provide you with accurate information since you are interested in the work of the commission. Our messages will be filed in the Xcel rate case docket, EL14-058.

Gary Hanson, Chairperson  
South Dakota Public Utilities Commission  
[www.puc.sd.gov](http://www.puc.sd.gov)