

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
Joe Sullivan	Commissioner
John Tuma	Commissioner

In the Matter of the Application by
Northern States Power Company d/b/a
Xcel Energy for Authority to Increase
Rates for Electric Service in the State of
Minnesota

MPUC Docket No. E-002/GR-21-630

COMMENTS OF XCEL ENERGY

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy (Xcel Energy or Company), submits these Comments in response to the Minnesota Public Utilities Commission (Commission) July 28, 2025 Notice of Comment Period on Executive Compensation in the above-referenced dockets (Notice). The Notice follows the January 21, 2025 decision of the Minnesota Court of Appeals reversing the Commission’s order limiting recovery of executive compensation for the Company’s ten highest-paid executives to \$1.5 million annually and noting that the Commission may reopen the record on this issue. The Commission determined not to reopen the record, but to decide this issue on the basis of the existing record, stating the issue before it as: “What disallowance, if any, should the Commission make for Top 10 Executive Compensation in the 2021 Xcel [Energy] rate case?”¹ The Notice asked parties to comment on this issue in light of “the

¹ Notice at 1.

existing record and the Court of Appeals order.”² As discussed below, after full consideration of the record and the Court of Appeals opinion, the Commission should make no additional adjustment to the portion of the Company’s executive compensation included in this rate case, beyond the Annual Incentive Plan (AIP), Long-Term Incentive (LTI) program and Minnesota electric jurisdiction adjustments already reflected in the Commission’s July 17, 2023 Findings of Fact, Conclusions, and Order (Commission Order) in this matter, which already significantly reduce the amount of executive compensation recovered in the Company’s rates.

I. BACKGROUND AND OVERVIEW

A. The Record

1. The Company’s Initial and Errata Filings

As part of the Company’s October 25, 2021 Initial Filing in this rate case, the Company requested rate recovery of a portion of the Minnesota electric jurisdictional share of its employees compensation—including that for its top ten highest-paid officers and employees—reflecting a combination of base salary, pension and other benefits, a portion of the cost of those employees’ annual incentive plan (AIP), and a portion of the cost of those employees’ long-term incentive (LTI) programs.

Company witness Ruth Lowenthal, a compensation professional with decades of experience, supported the Company’s compensation cost recovery request.³ Ms. Lowenthal testified that LTI and AIP are both integral components of the Company’s overall market-

² *Id.*

³ *See* Exhibit (Ex.) Xcel-53 (Lowenthal Direct) and Ex. Xcel-56 (Lowenthal Rebuttal).

based compensation.⁴ If the Company were to offer only base pay, and did not include either of these components, it would be at a competitive disadvantage with respect to other utility sector employers.⁵ To demonstrate the need for and reasonableness of its compensation programs, including its executive compensation, the Company provided a report from Willis Towers Watson (WTW), a global business management consulting firm.⁶ WTW conducted an analysis of Xcel Energy's compensation levels, including AIP and LTI, compared to two different groups: (1) a nationwide sample of all investor-owned utilities (IOUs) participating in WTW's compensation databases; and (2) a revenue-based sample of IOUs, to provide a closer revenue-based comparison to the Company.⁷ WTW drew the data for its analysis from two separate WTW surveys: its Energy Services Executive Survey and its Energy Services Middle Management, Professional and Support Compensation survey – the most comprehensive sources for compensation data in the utility industry.⁸ Each of these surveys included more than 50 other IOUs for the national analysis, and 30 utilities for the revenue-based analysis.⁹ The WTW Report shows that utility executives receive both AIP and LTI at *all* utilities surveyed.¹⁰ Additionally, WTW found that, with the inclusion of *all* AIP and LTI, Xcel Energy's total compensation for its

⁴ Ex. Xcel-53 at 25, 44 (Lowenthal Direct).

⁵ See Ex. Xcel-53 at 51-58 (Lowenthal Direct).

⁶ *Id.*, Sched. 2.

⁷ Ex. 53 at 51-54 and Sched. 2.

⁸ *Id.*, Sched. 2 at 4.

⁹ *Id.*

¹⁰ *Id.*, Sched. 2 at 9, 11-12.

executives and non-executive leadership positions was marginally below market compared to the group of revenue comparable utilities.¹¹

However, as Ms. Lowenthal explained, *the Company did not seek recovery of the full Minnesota electric jurisdictional portion of its “top ten” total compensation.* The Company’s Initial Filing proposed limiting AIP costs recovered from customers (including “top ten” AIP) in two ways: (1) incorporating a “100 percent” target payout level, despite the Company’s consistent history of rewarding exceptional work by paying out higher than that “100 percent” level; and (2) applying a 20 percent of base pay “cap” to the AIP costs included in the Company’s request.¹² As Ms. Lowenthal’s testimony demonstrated, the impact of these kind of limitations on recovery can be substantial. For the years 2018 – 2020, the combination of a 100 percent target payout level and a 15 percent of base pay cap (based on the Commission Order in the Company’s prior rate case) resulted in shareholders bearing responsibility for nearly \$16.7 million (or approximately 23 percent percent) of the Company’s total AIP payout of \$73.8 million.¹³ Put differently, in those years, the Company’s customers paid only 77 percent of the Minnesota-allocated portion of the AIP compensation the Company provided to its employees, notwithstanding that all such AIP is needed to ensure the Company’s employees receive market-level compensation.

¹¹ *Id.* at 53-54 and Table 6 (Lowenthal Direct).

¹² *Id.* at 25-26. The Company request for a 20 percent cap would have increased the amount of recoverable AIP from the 15 percent cap previously approved by the Commission. *Id.* at 33-34.

¹³ *Id.* at 41-42 and Table 3.

Ms. Lowenthal also explained that the Company’s Initial Filing did not seek recovery of the cost of the Total Shareholder Return (TSR) portion of its LTI program, which comprised 54 percent of the Company’s total LTI payout in 2020.¹⁴ This Company adjustment removed over \$6.7 million from its rate request.¹⁵ Combined, the Company adjustments to both AIP and LTI substantially reduced the Minnesota electric jurisdictional portion of the market-based compensation of its “top ten” executives included in its rate request.

The Company’s Initial Filing, as uploaded to eDockets, also indicated where parties or interested persons could find further information specific to its “top ten” employees’ compensation and expenses. In its Completeness List, the Company stated that information on “expenses for the ten highest paid officers and employees, including and separately itemizing all compensation and expense reimbursements” was at “Vol. 3, Section IV, Part 2 EER, Schedule 5.”¹⁶ Further, in Volume 3 of its Initial Filing, Part 5 of 25, the Company listed the specific Employee Expense Report (EER) schedules, including “EER-Schedule 5 Top Ten Compensation” and Schedules 5A through 5J, the expenses for those “top ten” employees.¹⁷ Finally, the Company’s Direct Testimony on this issue also identified EER-Schedule 5 and EER-Schedules 5A through 5J as containing information on the “top ten” compensation and expenses.¹⁸ That testimony included the following discussion:

¹⁴ *Id.* at 44-46.

¹⁵ *Id.* at 46, fn. 21. The Company did seek recovery of the Time-Based and Environmental components of its LTI program. *Id.*

¹⁶ Ex. Xcel-22, Sched. 2, p. 8 of 56 (Chamberlain/Liberkowsky Direct).

¹⁷ Ex. Xcel-5 (Oct. 25, 2021) (eDocket No. 202110-179148-04).

¹⁸ Ex. Xcel-71 at Sched. 7 (Husen/Cash Direct).

Q. PLEASE DESCRIBE THE INFORMATION REPORTED FOR THE TOP TEN HIGHEST PAID EMPLOYEES AND OFFICERS AS REQUIRED BY THE EMPLOYEE EXPENSE STATUTE?

A. EER Schedules 5A-5J comply with the Employee Expense Statute requirement that we provide itemized employee expense information for the ten highest paid officers and employees. We have provided reports of those officers' and employees' expenses for 2020, the most recently completed fiscal year.

The Employee Expense Statute also requires that we provide compensation information for the individuals on the top ten compensated list. EER Schedule 5 includes the State of Minnesota Electric Jurisdiction 2020 actual and the 2022-2024 budgeted compensation information for the top ten highest paid officers and individuals. The individuals included on EER Schedules 5 and 5A-5J change from 2020 to 2022 due to retirements or departures.¹⁹

Throughout the course of the proceeding, the Company received no information requests or other inquiries regarding these Schedules from parties or anyone else. However, prior to oral argument, Commission Staff informed the Company that although the Company had provided courtesy live copies of these Schedules to the Commission, Department of Commerce (Department), Office of the Attorney General – Residential Utilities Division (OAG) and Xcel Large Industrials (XLI), it did not appear that these or certain other EER Schedules had been filed in eDockets. The Company confirmed that EER Schedules 3 through 12 had been inadvertently omitted during the upload of the Initial Filing on October 25, 2021.²⁰ The Company efiled that information on May 24, 2023

¹⁹ *Id.* at 41.

²⁰ Errata Filing (May 24, 2023) (eDocket No. 20235-196081-01). The Company would note that it did upload the full EER Schedules in its natural gas rate case, MPUC Docket No. G002/GR-21-678, filed a few days later. (Nov. 1, 2021) (eDocket No. 202111-179349-04).

(Errata Filing), prior to the close of the record and the Commission included that filing in the record transmitted to the Court of Appeals.²¹

Regarding the “top ten” executive compensation, the Errata Filing included the four page EER Schedule 5 (included here for convenience as Attachment A), showing the 2020 compensation of the Company’s “top ten” executives, as well as the compensation amounts included in the 2022 Test Year and 2023 and 2024 Plan Year. As shown on that Schedule, prior to applying any allocation factors, the combination of applying a 15 percent cap on AIP and removing all LTI from the amount recovered from customers (consistent with the Commission’s Order in the Company’s prior rate case), resulted in approximately \$23.2 million in executive compensation being excluded from the calculation of compensation recovered from customers for that year.²² Given the total “top ten” compensation for that year of approximately \$37.2 million,²³ this means less than 40 percent of compensation paid to such employees would be included in the calculation of the Company’s rates were the Commission to have decided this rate case in a manner consistent with its prior decisions.

To then determine the amount of compensation actually included in the Company’s Minnesota electric rates requires allocations, first to NSP-Minnesota Electric, for those executives providing service to Xcel Energy Inc. affiliates other than the Company, and

²¹ *Id.* The Commission’s Final Order in this matter indicates that the record closed on June 1, 2023. FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Commission Order) at 3 (July 17, 2023).

²² *Id.* at EER-Schedule 5 Top Ten (sum of the column “Less Amount Not Recovered From Utility Customers”).

²³ *Id.* (sum of the column “Total”).

then to the Minnesota jurisdiction.²⁴ Those allocations showed Minnesota electric jurisdiction customers' rates including an even smaller fraction of the overall compensation for these executives, ranging from under 10 percent for the Chief Operating Officer and General Counsel positions to approximately 35 percent for the Chief Nuclear Officer and NSPM President positions.²⁵

2. Party Testimony

As noted above, in addition to the pre-filed testimony and schedules provided and uploaded with the Company's Initial Filing on October 25, 2021, that same day the Company provided courtesy live files of the EER Schedules to the Department, OAG and XLI.

OAG provided no testimony challenging any aspect of the Company's employee or executive compensation programs.

The Department provided Direct Testimony from Ms. Nancy Campbell that included challenging certain aspects of the Company's employee and executive compensation programs. First, Ms. Campbell recommended lowering the AIP "cap" to 15 percent of base pay, resulting in proposed disallowances of between \$1 million and \$2 million per year for the three-year term of the MYRP.²⁶ Ms. Campbell supported maintaining a 15 percent of base pay cap on the fact that the Company's AIP program continued to have an earnings per share (EPS) threshold, which she believes serves

²⁴ *See Id.*

²⁵ *Id.* ((“State of Minnesota Electric Jurisdiction Amount”/“Total”) x 100).

²⁶ Ex. DOC-21 at 28-36 (Campbell Direct); Ex. DOC-23 at 15-19 (Campbell Surrebuttal).

shareholder, not customer, interests. Ms. Campbell also based her objection to further recovery of AIP on the fact that a large percentage of executives' pay can come from the Company's AIP program.²⁷

Second, Ms. Campbell recommended denying recovery of all LTI costs, resulting in additional proposed disallowances of \$7.8 to \$8.5 million per year for those same years.²⁸ As Ms. Campbell noted, the Company had already removed from its request the TSR LTI, which is only granted to executives.²⁹ Her recommended additional adjustments removed the Environmental LTI, also only available to executives, and the Timed-Based LTI, available to both executives and non-executives.³⁰ Ms. Campbell stated the Commission has a history of denying recovery of these programs finding that "these types of long-term incentive programs are designed chiefly to serve shareholder interests and therefore shareholders should pay for them."³¹ Ms. Campbell did not otherwise address the overall reasonableness of the Company's compensation programs.

The only other party addressing compensation issues was XLI, who provided Direct Testimony from Ms. Billie LaConte. Ms. LaConte also recommended capping AIP recovery at 15 percent of base pay, arguing that any additional AIP should be funded by shareholders.³²

²⁷ Ex. DOC-21 at 25, 31, 35 (Campbell Direct); Ex. DOC-23 at 20 (Campbell Surrebuttal).

²⁸ Ex. DOC-21 at 24-28 (Campbell Direct); Ex. DOC-23 at 19-25 (Campbell Surrebuttal).

²⁹ Ex. DOC-21 at 25 (Campbell Direct).

³⁰ *Id.*

³¹ Ex. DOC-21 at 26 (Campbell Direct).

³² Ex. XLI-4 at 41-42 (LaConte Direct). Ms. LaConte also filed Rebuttal Testimony supporting Ms. Campbell's recommendation to deny recovery of all LTI costs. Ex. XLI-5 at 3-4 (LaConte Rebuttal).

Neither Ms. Campbell, Ms. LaConte, nor any other witness provided *any* testimony recommending any other limitation on recovery of executive compensation or challenging the reasonableness of, and necessity for, the portion of the Company's executive compensation included in its rate request.

The Company provided Rebuttal Testimony of Ms. Lowenthal, exclusively devoted to responding to the compensation-related recommendations of Ms. Campbell and Ms. LaConte.³³ Given the focus of Ms. Campbell's and Ms. LaConte's testimonies, Ms. Lowenthal similarly and appropriately focused her testimony solely on their challenges to AIP and LTI recovery.³⁴ In the course of addressing those challenges, Ms. Lowenthal noted that neither witness argued that the AIP and LTI costs they recommended removing from the case were unnecessary or out-of-line with market levels of compensation.³⁵ Similarly, she noted that neither witness contested the WTW study demonstrating the reasonableness of these costs.³⁶

Surrebuttal Testimony raised no new issues with respect to executive compensation, with Ms. Campbell responding to Ms. Lowenthal and restating her recommendations with respect to both the AIP cap and LTI recovery.³⁷ Ms. LaConte did not address compensation issues in her Surrebuttal Testimony.³⁸

³³ Ex. Xcel-56 (Lowenthal Rebuttal).

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.*

³⁷ Ex. DOC-23 at 15-25 (Campbell Surrebuttal).

³⁸ Ex. XLI-6 (LaConte Surrebuttal).

3. Public Comments

As in all rate cases, along with the evidentiary hearing process the Commission and Administrative Law Judge provided the public and Xcel Energy's over 1.3 million customers with the opportunity to comment – both at public hearings and through written comments. Approximately 40 individuals commented at the 10 public hearings held across the Company's service territory and hundreds of written comments were submitted by the January 6, 2023 deadline.³⁹ The Commission stated that it received more than 20 public comments expressing concern regarding the Company's executive compensation levels.⁴⁰ Those comments, including the comments cited in the Commission Order, focused largely on the overall compensation for the Company's Chief Executive Officer (CEO) and noted both the size of the Company's original request and the economic challenges faced by customers.⁴¹

4. The Post-Evidentiary Hearing Process

As discussed above—beyond limitations to the overall level of AIP and LTI included in rates—no party challenged the need for or reasonableness of the portion of the Company's overall executive compensation included in its request. In other words, no party disputed that the Company had met its burden to establish the recovery of this expense.

³⁹ ALJ FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION (ALJ Findings) at Finding 44 (Mar. 31, 2023).

⁴⁰ Commission Order at 22.

⁴¹ *See*, Comment of James and Katherine Anderson (Oct. 27, 2022) (eDocket No. 202210-190261-01); Comment of Nannette Echols (Nov. 14, 2022) (eDocket No. 202211-190588-01); Comment of Joan Pasiuk (Nov. 27, 2022) (eDocket No. 202211-190889-01); Comment of Janet Pope (Jan. 5, 2023) (eDocket No. 20231-191856-01).

Therefore, the evidentiary hearing did not include any discussion of the issue, nor did the parties brief it. Similarly, the ALJ Findings did not address the issue.

The ALJ did address the Company's AIP and LTI programs, recommending the Commission adopt the recommendations of the Department and XLI regarding LTI, but agreeing with the Company's request to increase the AIP cap to 20 percent.⁴² The ALJ recommendation removed \$7.9 million from the Company's request in 2022, increasing to \$8.5 million in 2024, in addition to the TSR LTI adjustment and 20 percent AIP cap adjustment already made by the Company.⁴³

The Commission adopted the ALJ recommendation regarding LTI, but disagreed with the ALJ recommendation to increase the AIP cap, instead retaining that cap at 15 percent of base pay.⁴⁴ Adopting the Department and XLI position on that matter removed an additional \$1.1 million from the 2022 test year.⁴⁵

The Commission denied the Company's request for reconsideration of both the LTI and AIP decisions,⁴⁶ and the Company did not include those issues in its appeal. Therefore, for the compensation issues in this matter that have now fully resolved, the test year 2022 Minnesota electric jurisdictional executive and employee compensation has been reduced by the following:

- Total Shareholder Return LTI (executives only) - \$6.7 million

⁴² ALJ Findings, Findings 261-294.

⁴³ *Id.*, Finding 276.

⁴⁴ Commission Order at 18-19.

⁴⁵ *Id.* at 16.

⁴⁶ Order Denying Reconsideration (Oct. 6, 2023).

- Environmental and Time Based LTI (Environmental executives only, Time-Based executives and certain non-executives) - \$7.9 million
- AIP - \$1.1 million in addition to the Company’s prior limitation of its AIP request to 100 percent of target and a 20 percent cap

During oral argument the Commission expressed interest in “exploring” the topic of top ten executive compensation and suggested for the first time a “cap” on the amount of executive compensation the Company could recover from customers, regardless of whether that compensation came in the form of base pay or incentive pay.⁴⁷ The Company was not asked to respond to the notion of such a cap or the possibility of tying that cap to the Governor’s salary, an idea offered during oral argument.⁴⁸

The topic of executive compensation was not revisited during deliberations other than to move and approve a new decision option capping the recovery of executive compensation for the “top ten” at \$150,000 per employee per year.⁴⁹

In its Order, the Commission stated that the Company “has not demonstrated that *full recovery* of its proposed top-10 executive compensation would result in just and reasonable rates.”⁵⁰ The Commission determined to limit recovery of “top ten” executive compensation to a total of \$1.5 million per year, using the Governor’s salary as a benchmark, finding that this level of recovery “reasonably reflects the level of expense that should be borne by ratepayers.”⁵¹ That decision precluded the Company from recovery *any*

⁴⁷ Oral Argument Transcript at 143-148 (May 23, 2023).

⁴⁸ *Id.*

⁴⁹ Deliberations Transcript at 25-27 (June 1, 2023).

⁵⁰ *Id.* (Emphasis added.)

⁵¹ *Id.* at 23.

AIP compensation costs for those executives.⁵² The Company appealed this aspect of the Commission Order and the Court of Appeals reversed and remanded.

B. The Court of Appeals Opinion

The Court of Appeals filed its decision on January 21, 2025 as a nonprecedential opinion (Slip Op.). Regarding executive compensation, the Court of Appeals reversed the Commission’s decision to limit rate recoverability of compensation for its ten highest paid executives to a total of \$1.5 million, based on a Commission-created comparison to the Governor’s salary. Specifically, the Court stated:

By not describing how or why the governor’s salary was the appropriate measure to meet the needs of the ratepayer and the utility, the commission “failed to consider an important aspect of the problem.” As a result, we conclude that the commission’s decision is arbitrary and capricious.⁵³

As the Court noted, by limiting the Company’s recovery of executive compensation in this manner,

[T]he Commission’s reasoning focuses exclusively on the interests of ratepayers without explaining why the Minnesota governor is a reasonable proxy for a utility executive or why the governor’s salary is an amount that is “sufficient to enable [Xcel] to meet the cost of furnishing service.” Minn. Stat. § 216B.16, subd. 6. Apart from identifying the governor as the state’s “highest executive officer,” the order does not explain why the governor is an appropriate comparison for determining the recoverable compensation for the highest-paid executives of a large public utility. By not describing how or why the governor’s salary was the appropriate measure to meet the needs of the ratepayer *and* the utility, the commission “failed to consider an important aspect of the problem.” (citation omitted).⁵⁴

⁵² *Id.*

⁵³ Slip Op. at 25.

⁵⁴ *Id.* at 26. (Emphasis in original.)

The Court noted that the Company also challenged the Commission decision regarding executive compensation as arbitrary and capricious due to the process used by the Commission in reaching its decision.⁵⁵ However, because the Court had already found the decision arbitrary and capricious on other grounds, it did not address this aspect of the Company's challenge.⁵⁶

Finally, the Court noted that the Commission may, in its discretion, reopen the record on this topic.⁵⁷

II. ANALYSIS

As discussed below, a full analysis of the record conducted consistent with the legal analysis in the Court of Appeals opinion supports recovery of the remaining executive compensation—after exclusion of LTI and substantial amounts of AIP—included in the Company's request.

A. The Record Includes All Required Information Regarding Executive Compensation

As an initial matter, it cannot be disputed that all required information regarding executive compensation is in the record.⁵⁸ The Company acknowledges that it inadvertently failed to upload that information, along with several other EER Schedules,

⁵⁵ The Company argued that the decision was arbitrary and capricious due to the fact that the possibility of limiting previously recovered executive compensation was never raised in the evidentiary record but was mentioned for the first time during oral argument, by the Commission itself. During neither oral argument nor deliberations was the Company provided an opportunity to respond to the limitation on recovery adopted by the Commission.

⁵⁶ *Id.* at fn. 9.

⁵⁷ *Id.* at 27.

⁵⁸ *See* Errata Filing at EER-Schedule 5 Top Ten.

on October 25, 2021, the time of its Initial Filing.⁵⁹ However, the Company certainly did not intend to conceal that information. Indeed, as discussed above, multiple places in the Company's Initial Filing identified where that information should have been found and Company witness Mr. Husen specifically addressed the executive compensation materials in his testimony.⁶⁰ In addition, all of the required EER information was provided the day of the Initial Filing to the Department, OAG, XLI and Commission Staff via secure file transfer.⁶¹ Throughout the contested case and public hearing process, the Company received no questions or inquiries regarding the "top ten" compensation. Upon being notified the day of oral argument that the information did not appear to have been uploaded, the Company investigated, confirmed the inadvertent omission, and uploaded those Schedules to eDockets prior to the close of the record and they became part of the record transmitted to the Court of Appeals.⁶²

B. The Record In This Case Regarding Compensation Is Consistent With That Developed In All Prior Xcel Energy Rate Cases

Neither employee compensation nor executive compensation are new issues in Xcel Energy rate cases.⁶³ In the current proceeding, the Company's testimony on employee

⁵⁹ See Errata Filing Cover Letter; Oral Argument Transcript at 255 (May 23, 2023).

⁶⁰ See Ex. Xcel-22, Sched. 2, p. 8 of 56 (Chamberlain/Liberkowski Direct); (Oct. 25, 2021) (eDocket No. 202110-179148-04) (Volume 3 Part 5 of 25); Ex. Xcel-71 at 41 and Sched. 7 (Husen/Cash Direct).

⁶¹ See Errata Filing Cover Letter; Oral Argument Transcript at 255 (May 23, 2023). As noted above, the full EER Schedules were also uploaded to eDockets in the Company's natural gas rate case filed six days later.

⁶² *Id.* The record closed on June 1, 2023. Commission Order at 3.

⁶³ As the ALJ noted in the Company's 2012 rate case, at least some portion of the Company's AIP costs have been reviewed and approved for recovery in every rate case

compensation tracked its testimony in its past several rate cases. In this case and in those prior cases, the Company supported its overall request for recovery of employee compensation with market-based comparisons and presented its incentive compensation programs, seeking recovery of a portion of their costs.⁶⁴ Similarly, intervenor testimony in those cases generally did not question whether the Company was providing market-level compensation, but focused on the AIP and LTI programs and whether they emphasized financial performance such that some or all of that compensation should be denied.⁶⁵ Finally, public commenters have often expressed concerns about executive compensation, not just in prior Company rate cases, but in the rate cases of other utilities as well.⁶⁶

In each of those cases, with the exceptions of a portion of AIP and LTI, the Commission allowed the Company to recover its compensation costs, including the remaining market-based cost of its executive compensation. For example, the 2012 ALJ Findings, adopted by the Commission, approved recovery of a portion of AIP costs, stating:

The only specific evidence in the record regarding employee compensation is the Tower Watson study, which shows that the Company needs to provide the AIP compensation, or an equivalent increase in base pay, in order to attract and retain qualified employees. In addition, in the Company's last rate case, the Department acceded to a 15 percent cap on AIP, recognizing that

since 1993. MPUC Docket No. E002/GR-12-961, FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS (2012 ALJ Findings) at Findings 205-206 (July 3, 2013).

⁶⁴ See, e.g., MPUC Docket Nos. E002/GR-15-826; E002/GR-13-868; E002/GR-12-961.

⁶⁵ *Id.*

⁶⁶ See, e.g., MPUC Docket No. E002/GR-13-868; FINDINGS OF FACT, CONCLUSIONS AND ORDER at 3 (May 8, 2015); 2012 ALJ Findings at Finding 208; MPUC Docket No. E002/GR-10-971, ALJ FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS Finding 51 and Attachment B (Feb. 22, 2012); MPUC Docket No. G008/GR-21-435, ALJ FINDING OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION at Finding 28 (May 12, 2022); MPUC Docket No. G008/GR-17-285, ALJ FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION at Findings 32, 41 (Mar. 23, 2018).

AIP compensation at such a level provides incentives for Company employees without placing an undue burden on ratepayers.⁶⁷

In contrast, denying all AIP recovery:

would not be reasonable because eliminating the AIP would put future service levels at risk. The Tower Watson study shows that the Company would not be able to hire the workforce that it needs to provide safe and reliable electric service without offering the AIP or an equivalent base pay increase.⁶⁸

In other words, the Commission has found in previous cases that the Company met its burden to demonstrating the reasonableness of this adjusted level of compensation for all of its employees, including its “top ten” employees.

Despite the substantially similar record to prior cases, in this case the Commission initially and on its own initiative charted a new course. However, as Minnesota Courts have held:

When an agency seeks to deviate from its prior decisions, the agency is charged with setting forth a reasoned analysis for the change. If a reasoned explanation is provided, the courts then review that explanation to determine whether the explanation was arbitrary and capricious. Accordingly, we conclude that an agency must generally conform to its prior norms and decisions or, to the extent that it departs from its prior norms and decisions, the agency must set forth a reasoned analysis for the departure that is not arbitrary and capricious.⁶⁹

There is no meaningful distinction between the record in this case and that in prior cases in which the Commission has considered employee compensation. Therefore, as

⁶⁷ 2012 ALJ Findings at Finding 208.

⁶⁸ *Id.* at Finding 209.

⁶⁹ *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009) (citing *Sierra Club v. Clark*, 755 F.2d 608, 619 (8th Cir. 1985)).

discussed further, below, on the basis of this record the Commission should conform its decision here to its prior decisions and order no further denial of recovery for executive compensation beyond the precedential adjustments to AIP and LTI.

C. The Record Demonstrates Unequivocally That The Company Did Not Seek And Will Not Recover Anything Close To The Full Cost Of Its Market-Based Executive Compensation

The record of this proceeding establishes that the total compensation for the Company's executives, employee, which includes base pay, target-level AIP and LTI, is compared to the 50th percentile of compensation for comparable positions throughout the market in order to determine the appropriate pay range for each position and total compensation is then targeted at the market median.⁷⁰ These ranges were also benchmarked in the WTW Report.⁷¹ That study demonstrates that absent target-level AIP, the median total cash compensation provided by the Company would be *well* below market.⁷² The study also shows that the Company's compensation would be below market for executive and non-executive leadership without the LTI component of total compensation.⁷³

No party to this proceeding offered any evidence that the total compensation paid to Company employees, including its top ten executives, was unreasonable or above prevailing market wages. Similarly, no party disputed that the Company needs to pay market level wages to attract and retain executive level leadership and talent – leadership and talent required to run a cost-effective, safe, efficient, reliable and environmentally-

⁷⁰ Ex. Xcel-53 at 14-15 (Lowenthal Direct).

⁷¹ Ex. Xcel-54 at 51-55, Sched. 2 (Lowenthal Direct (Trade Secret)).

⁷² Ex. Xcel-53 at 53 (Lowenthal Direct); Sched. 2 at 17.

⁷³ Ex. Xcel-53 at 53 (Lowenthal Direct); Sched. 2 at 18.

conscious electric utility. Likewise, no party disputed that absent the AIP and LTI components of the total compensation package, Xcel Energy's executive compensation would be far below market.

The record similarly establishes without question that the Company did not request and will not recover the full, market-based compensation of its top ten executives. In fact, the Company will recover far less. As discussed above, with the additional adjustments to AIP and LTI ordered by the Commission and prior to any further adjustment targeted exclusively at the top ten executives, shareholders may already be required to cover over 60 percent of these executives' total market-based compensation.⁷⁴ In short, the Commission has already effectively assigned the majority of the cost of executive compensation to shareholders rather than to customers, and no further adjustment is warranted or supported by any evidence in the record.

D. Denying Recovery Of Any Executive Compensation Is Inconsistent With Prior Commission Decisions, With Minnesota Statutes And With The Court Of Appeals Decision

In procedural comments earlier this year, some parties urged the Commission to entirely eliminate recovery of any executive compensation,⁷⁵ and the Company anticipates parties will do so again. However, the Commission cannot ignore statutes or case law and it cannot simply "zero out" expenses that no party disputed and that the record establishes

⁷⁴ See Errata Filing at EER-Schedule 5 Top Ten, showing that in 2020 the impact of the 2015 rate case, which held AIP to 15 percent of base pay and disallowed all AIP resulted in shareholders providing \$23.2 million of the total top ten compensation in that year.

⁷⁵ See, e.g., Initial Comments of the Citizens Utility Board of Minnesota (Apr. 7, 2025) (eDocket No. 20254-217316-02); OAG Comments (Apr. 7, 2025) (eDocket No. 20254-217338-02).

are necessary for the provision of cost-effective, safe, efficient, reliable and environmentally-conscious electric service. Indeed, such a decision would depart from the Commission’s previous finding that the Company met its burden to recover a portion of its executive compensation, a finding that was not challenged at the Court of Appeals or disturbed by the Court’s decision.

Having a strong company that cost-effectively provides safe, efficient, and reliable power, while meeting ambitious state environmental goals (despite diverging policies across its footprint) requires strong leadership. Undisputed testimony in this record discusses how the Company’s executives drive the Company’s direction, strategy and innovation.⁷⁶ The decisions, direction and policies these executives put in place have a significant impact on customers.⁷⁷ And the Commission itself recognized during deliberations that the Company is “financially well managed” and is “pointed in the right direction.”⁷⁸ Attracting and retaining experienced and talented leadership is critical to continue this direction and maintaining focus to serve the needs of the Company’s customers.⁷⁹ It is not optional for the Company to compensate these executives. Compensating the Company’s executives at an appropriate, market-based level—as with compensation for any other employee—is an inescapable and necessary part of the cost of providing electric service. No party has, or could, suggest anything to the contrary.

⁷⁶ See Ex. Xcel-53 at 44 (Lowenthal Direct).

⁷⁷ *Id.*

⁷⁸ Deliberations Transcript at 89 (June 1, 2023).

⁷⁹ *Id.* at 44-45.

Minnesota Statutes recognize the need for the utility to be afforded the opportunity to meet its financial and economic requirements, including recovery of the cost of service, at the same time that they recognize the need for utilities to provide adequate and reliable service at reasonable rates.⁸⁰ Ratemaking is a balancing act. As the Court of Appeals stated, Minnesota Statutes require the Commission to give due consideration to *both* “the public need to have adequate, efficient and reasonable service and the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service.”⁸¹ The Court of Appeals further noted that focusing “exclusively on the interests of ratepayers” can fail to provide a utility with revenues sufficient to enable it to meet the cost of furnishing service.⁸² The Court found that the Commission’s initial decision failed to describe how it provided a result that would “meet the needs of the ratepayer *and* the utility,”⁸³ when it denied recovery of an additional substantial portion of executive compensation, including all executive AIP and LTI. By not accounting for the need of the utility, “the Commission ‘failed to consider an important aspect of the problem’” of setting just and reasonable rates.⁸⁴

⁸⁰ See Minn. Stat. § 216B.01; Minn. Stat. § 216B.16, subd. 6.

⁸¹ Slip Op. at 25, citing Minn. Stat. § 216B.16, subd. 6.

⁸² Slip Op at 26. (“As Xcel argues, the Commission’s reasoning focuses exclusively on the interests of ratepayers without explaining why the Minnesota governor is a reasonable proxy for a utility executive or why the governor’s salary is an amount that is ‘sufficient to enable [Xcel] to meet the cost of furnishing service.’ Minn. Stat. § 216B.16, subd. 6.”)

⁸³ *Id.* (Emphasis in original.)

⁸⁴ *Id.*, citing *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 929 N.W.2d 1, 9 (Minn. App. 2019) (Minn. Power 2019).

Nonetheless, other parties may argue the Commission has essentially no choice here but to deny any recovery for executive compensation. They may argue that the Court of Appeals endorsed the Commission's finding that the Company failed to meet its burden of proof and that, therefore, all executive compensation costs must be denied. Such an argument misreads the Court of Appeals opinion. Had the Court believed Minnesota law dictated such a result, it could have said so. It did not. Instead, it remanded this matter to the Commission to re-examine this issue, considering the needs of not only customers but also the utility.

The Company acknowledges that the Court of Appeals disagreed with the argument that "because it provided evidence that it generally pays employee compensation at median market rates, the Commission was compelled by statute to conclude that Xcel had satisfied its burden to prove" that it should recover its requested top ten compensation.⁸⁵ However, the Company provided more evidence than simply that it "generally pays employee compensation at median market rates." The record also establishes that eliminating all executive AIP and LTI would put the Company far below those median market rates.⁸⁶ Moreover, the record establishes that due to the denial of AIP above 15 percent of base pay and denial of all LTI, the Company will recover only a portion of its executive compensation.⁸⁷ Shareholders will already bear the majority of these costs.⁸⁸

⁸⁵ Slip Op. at 24.

⁸⁶ Ex. Xcel-53 at 53-54 and Table 6 (Lowenthal Direct).

⁸⁷ *Id.* at 41-46; Errata Filing at EER-Schedule 5.

⁸⁸ *See* Errata Filing at EER-Schedule 5.

Parties may also seize on language from a Northern States Power case referred to in the Court of Appeals opinion for the proposition that providing evidence that an expense may be incurred does not necessarily demonstrate that it is just and reasonable for customers to bear those costs.⁸⁹ However, *NSP* does not stand for the proposition that the Commission can simply ignore undisputed evidence regarding the necessary costs of service in the course of determining just and reasonable rates. In *NSP*, the Court upheld a Commission order finding the utility had not met its burden to prove the reasonableness of its capital structure, but also finding that an opposing witness failed to demonstrate the reasonableness of his recommended lower capital structure.⁹⁰ As the Court observed, the Commission then established a hypothetical capital structure *between* those two proposed capital structures (although closer to the utility's proposal), even though no witness had supported that particular capital structure.⁹¹ The Court upheld the Commission's decision, stating "our independent examination of the Commission's orders leads us to the conclusion that the Commissioner has adequately articulated its reasoning employed to reach its conclusion that NSP had failed to establish the proposed rate as being 'just and reasonable,' *and that the Commission's conclusion itself was reasonable.*"⁹² That conclusion, of course, provided for substantial recovery to the utility of its cost of capital.

⁸⁹ *Id.* at 24-25, citing *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987) (*NSP*).

⁹⁰ *NSP*, 416 N.W.2d at 724-725.

⁹¹ *Id.*

⁹² *Id.* at 727.

In the present case, the Court of Appeals specifically noted the statutory requirement that the Commission “determine ‘just and reasonable’ rates by giving ‘due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to meet the cost of furnishing the service.’”⁹³ Moreover, the Court noted that the Commission cannot focus exclusively on ratepayer interests or it is failing to consider an important aspect of setting just and reasonable rates – the need to recover the cost of service. Simply denying recovery of these costs for which the Commission previously granted partial recovery fails to align with either the Commission’s statutory requirements or the Court of Appeals’ direction in this matter.

E. Based On *This* Record And Applying Minnesota Law, The Company Should Recover The Portion Of Executive Compensation Remaining From Its Original Request

The Commission must provide for just and reasonable rates and must do so on the basis of the record before it. As set forth above, on the basis of the record in *this* case, the following facts cannot be disputed:

- Having a strong company that cost-effectively provides safe, efficient, and reliable power, while meeting ambitious state environmental goals requires strong leadership.
- Xcel Energy’s executives drive the Company’s direction, strategy and innovation and the decisions, direction and policies these executives put in place have a significant impact on customers.
- The Commission itself has recognized that the Company is financially well managed and “pointed in the right direction.”

⁹³ Slip Op. at 25, citing Minn. Stat. § 216B.16, subd. 6.

- As with compensation of any employees, compensation of executives is not optional, it is a necessary business expense, and Xcel Energy competes with other utilities and businesses to attract and retain executive talent.
- When full AIP and LTI compensation is included, the Company pays its executives market-average wages; if those are excluded, executive compensation falls well below market.
- No party challenged the base pay levels of the top ten executives as being unreasonable or unnecessary for the provision of service to Minnesota customers.
- For this rate case, the Company has foregone recovery of AIP above 15 percent of base pay and has foregone all recovery of LTI – compensation that goes solely to executives and other high-level employees.
- With the AIP cap in place and no recovery of LTI, in 2020 the Company recovered less than 40 percent of the Minnesota-allocated portion of its “top ten” executive compensation from customers; shareholders covered more than 60 percent of these costs.

On the basis of *this* record Xcel Energy should recover the remaining executive compensation, after adjustments for the AIP cap and removal of LTI. Future cases may have different records developed that may justify different results. However, in the current case, recovery of this remaining portion of the Company’s executive compensation results in just and reasonable rates for customers while providing the Company the opportunity to recover these necessary expenses.

CONCLUSION

For all of the reasons discussed above, Xcel Energy respectfully requests the Commission find that no further adjustment of executive compensation is appropriate in this proceeding.

Dated: August 25, 2025

WINTHROP & WEINSTINE, P.A.

By: /s/ Eric F. Swanson

Eric F. Swanson, #0188128

WINTHROP & WEINSTINE, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400

Ian M. Dobson
Lead Assistant General Counsel
NORTHERN STATES POWER COMPANY
D/B/A XCEL ENERGY
414 Nicollet Mall
Minneapolis, Minnesota 55401

**ATTORNEYS FOR NORTHERN STATES
POWER COMPANY D/B/A XCEL
ENERGY**