

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

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota

DOCKET NO. E-002/GR-21-630

In the Matter of the Application of Xcel Energy for Authority to Increase Rates for Natural Gas Service in Minnesota

DOCKET NO. G-002/GR-23-413

**REPLY COMMENTS OF THE OFFICE  
OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION**

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits the following reply comments in response to the Public Utilities Commission’s Notice of Comment Period issued on December 23, 2025. The OAG supports the recommendations of the Minnesota Department of Commerce. Xcel has not shown that it should earn more than a nominal return on its “prepaid pension asset.” The vast majority of the prepaid pension asset is not “utility property” upon which Xcel may earn a return. Xcel’s property interest is only in potential residual pension trust funds. Such a property interest is of unascertainable and nominal value. Should the Commission create a property interest where there is currently none, and determine that Xcel is owed a return on its full “prepaid pension asset,” the return should be limited to no more than the long-term cost of debt.

**I. XCEL ENERGY CANNOT EARN A RETURN ON PROPERTY IT DOES NOT OWN.**

As the Department’s initial comments explain, Xcel should only earn a return on assets in which it has a property interest and it should only earn a return commensurate with the interest it

owns.<sup>1</sup> Xcel’s initial comments do not rebut this common sense proposition that is grounded in property law, principles of public utilities regulation, and, as explained further below, and the Minnesota Statutes.

The OAG agrees that Xcel only has a speculative future interest, specifically a contingent reversionary interest, in the prepaid pension asset. The prepaid pension asset, as Xcel calculates it, is largely the property of the Xcel Energy Inc. Master Pension Trust, and Xcel has neither legal nor equitable title to these assets unless specific circumstances occur.<sup>2</sup> Specifically, Xcel is only entitled to any assets in the trust if the trust is terminated and all obligations to beneficiaries are fulfilled, then Xcel gets the residual trust assets.<sup>3</sup>

As the Department aptly explains, “unless the utility owns it—even property connected to utility service—no return on it is required.”<sup>4</sup> The Department references proceedings from Pennsylvania and Rhode Island to support this common-sense proposition.<sup>5</sup> But the Department’s position also comports with Minnesota law.

Minnesota Statutes subdivision 6 requires that the Commission give “due consideration” to “the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including . . . adequate provision for depreciation of *its utility property* used and useful in rendering service to the public, and to earn a fair and reasonable return upon the *investment in such property.*”<sup>6</sup> As the emphasized portions of the statute show, “such property” upon which the utility’s investment is due a return refers back to “utility property” referenced in the previous

---

<sup>1</sup> See Department Initial Comments at 7-11.

<sup>2</sup> *Id.* at 7

<sup>3</sup> *Id.* at 7-8.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* (citing *Popowsky v. Pa. Pub. Util. Comm’n*, 674 A.2d 1149, 1155–56 (Pa. Commw. Ct. 1996), *S. Cnty. Gas Co. v. Burke*, 486 A.2d 606, 608 (R.I. 1985)).

<sup>6</sup> Minn. Stat. § 216B.16, subd. 6 (emphasis added).

clause. Further, the statute continues that “[f]or the purposes of determining rate base, the commission shall consider the original cost of *utility* property included in the base.”<sup>7</sup> Property in rate base must therefore be “utility property.” While the statute requires the Commission to give “due consideration” to several items including, “other expenses of a capital nature,” the referenced other expenses should be read in context of the statute.<sup>8</sup> “[O]ther expenses of a capital nature” must still involve “utility property.”<sup>9</sup>

Similarly, the Minnesota Court of Appeals recognized decades ago that when property used in service is not owned by the utility, a utility cannot claim it is entitled to a reasonable return.<sup>10</sup> The Minnesota Statutes and Minnesota caselaw therefore comport with the common understanding of “rate base” as the total value of property *owned* by a utility on which it may earn a fair return.<sup>11</sup>

As discussed in the Department’s comments, the utility property involved in Xcel’s prepaid pension asset is at most a contingent future interest. Any argument by Xcel that it must earn a return on property it does not own, such as the pension trust, is not based in Minnesota law and is contrary to the fundamentals of public utilities regulation. While Xcel may not be attempting to

---

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Application of Peoples Nat. Gas Co., a Div. of UtiliCorp United, Inc.*, 413 N.W.2d 607, 615 (Minn. Ct. App. 1987) (“The pipelines are not Peoples’ utility property, and it may not claim it is entitled to a reasonable return under the “used and useful” theory.”)

<sup>11</sup> *See, e.g., Nw. Bell Tel. Co. v. State*, 253 N.W.2d 815, 818 (Minn. 1977) (“In the context of public utility regulation, “rate base” represents the total investment in, or fair value of, the facilities of a utility employed in providing its service. Not all of the property owned by a utility is necessarily includable in its rate base; the property generally must be used to help provide the service offered by the utility.”). Francis Joseph Demet and Margadette Moffatt Demat, *Legal Aspects of Rate Base and Rate of Return in Public Utility Regulation*, 42 *Marquette Law Rev.* 331, 331 (1959) (“*Rate base* as herein referred to is the valuation placed on utility property for purposes of arriving at a fair return.”) (emphasis in original), available at <https://scholarship.law.marquette.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2915&context=mulr>.

earn a return on the *full* amount of its pension trust, it cannot reasonably dispute that the expenses that it claims are a capital asset are included in the pension trust. Further, it cannot reasonably claim that it owns those trust funds or that those trust funds are “utility property” on which it must earn a return.

## **II. THE COMMISSION HAS NOT AUTHORIZED XCEL TO RECORD THE PREPAID PENSION TRUST AS A REGULATORY ASSET.**

In the absence of utility ownership of the legal title to property, a regulatory agency may create a fictitious, or regulatory, ownership of assets through order.<sup>12</sup> But the Commission has not exercised its authority to create a regulatory asset for Xcel’s prepaid pension asset.<sup>13</sup> Xcel points to no order authorizing it to record its prepaid pension asset as a regulatory asset in its initial comments.<sup>14</sup>

While Xcel claims that the “prepaid pension asset” is different than the “pension trust fund,”<sup>15</sup> Xcel does not have Commission approval for a regulatory asset of this type. As Mr. Hunt explains in his affidavit attached to the Department’s comments, Financial Accounting Standards No. 71 (FAS 71) provides that “a regulatory asset may be recorded by a utility when it incurs a cost, will probably obtain future revenues at least equal to that cost, and those future revenues are meant to pay back that specific cost, not just cover similar costs that may occur in the future.”<sup>16</sup>

---

<sup>12</sup> Similarly, the Legislature may create the expectation of a similar property interests such as it has done for Construction Work in Progress (CWIP), subject to the Commission’s determination of several factors. *See* Minn. Stat. § 216B.16, subd. 6a.

<sup>13</sup> In fact, the Commission has denied deferred accounting petitions for another utility related to prepaid pension. *See In re Minn. Power’s Pet. for Approval of Deferred Accounting Relating to Pension Plan Contributions and Expenses*, MPUC Docket No. E015/M-11-1264, ORDER DENYING PETITION (Mar. 11, 2013).

<sup>14</sup> Even if Xcel could point to an order, the Commission has authority to adjust or even eliminate a regulatory asset. *See* Department Initial Comments at 12, Hunt Aff. ¶ 10.

<sup>15</sup> Xcel Initial Comments at 11.

<sup>16</sup> Department Initial Comments, Hunt Aff. ¶ 6, Ex. 1 ¶ 9.

As Mr. Hunt explains, while FAS 71 does not dictate the regulator’s behavior, it does caution that if a regulator’s decision make future cost recovery unlikely, the utility must write down the regulatory asset.<sup>17</sup> Xcel has had no reasonable expectation of such future cost recovery. Here the Commission has not yet given Xcel approval to create a regulatory asset to stand in for its lack of ownership of the prepaid pension asset. Xcel is not entitled to earn a return on such an asset in the absence of the creation of such a property interest by the Commission.

### **III. SHOULD THE COMMISSION CREATE A REGULATORY ASSET, IT SHOULD LIMIT THE RETURN TO THE LONG-TERM COST OF DEBT.**

While Xcel claims in initial comments that it is entitled “to earn a return on [its prepaid pension asset] at the Company’s WACC,” it provides little to no explanation as to why WACC is the appropriate return. Instead, Xcel’s comments on this topic are conclusory or discuss utilities right to “a return,” on “rate base” but do not support the specific level of return.<sup>18</sup> Indeed, from reading Xcel’s comments one could mistake Xcel’s position and believe that it was requesting that the pension asset should earn Xcel’s return on equity, because “[i]f not for funding the pension trust, these funds could be retained by investors, invested elsewhere, or allocated to other assets that earn a return.”<sup>19</sup>

The law does not require that utilities earn a return at the WACC for all property and instead requires that the risk level of the investment must be matched with the appropriate rate of return. A fair rate of return is one that “will provide earnings to investors comparable to those realized in other businesses which are attended by similar risks.”<sup>20</sup> The prepaid pension asset, as Xcel

---

<sup>17</sup> Department Initial Comments, Hunt Aff. ¶ 6.

<sup>18</sup> See Xcel Initial Comments at 13.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> *Northwestern Bell Telephone Co. v. State of Minn.*, 216 N.W.2d 841, 846 (1974); see also *Bluefield Waterworks & Improvement Co. v. Public Service Comm’n of W. Va.*, 262 U.S. 679, 693 (1923); *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

calculates it, has significantly less risk than more traditional rate base assets that Xcel likens it to.<sup>21</sup> Unlike Xcel's example of transmission lines and gas pipelines, there is little risk of loss that the asset would not become used and useful because, according to Xcel, determination of the asset is simply a mathematical exercise.<sup>22</sup> Further, because Xcel does not propose to depreciate the prepaid pension asset, its value will only be impacted by the extent to which Xcel does not recover payments through pension expense, not by the passage of time. These risks are much different than say a gas pipeline which could, for example, suffer a catastrophic failure and not be fully covered by insurance, be retired early due to changing safety standards, or have depreciation extended beyond the initial assumed useful life.

The Commission's counterparts in other jurisdictions have recognized that when the risk of an investment is dissimilar to those generally attended to utility property, a return at the cost of debt is appropriate. This is particularly true for regulatory assets and rate riders. For example, the Florida Administrative Code limits the return recovered for Storm Protection Plan costs that are afforded deferred accounting treatment to the 30-day commercial paper rate.<sup>23</sup> Likewise, the Iowa Utilities Board has found it appropriate to limit recovery of return in certain riders to the cost of debt citing the reduced risk to the utility by using a rider mechanism.<sup>24</sup>

---

<sup>21</sup> See Xcel Initial Comments at 10.

<sup>22</sup> See *id.* at 11.

<sup>23</sup> Fla. Admin. Code Ann. r. 25-6.031

<sup>24</sup> *In Re Rate-Regulated Nat. Gas Utilities*, Iowa Util. Bd. Docket No. RMU-2011-0002, 2011 WL 5026183, Order Adopting Rule at sec. 3 (Oct. 13, 2011). In this decision, the board chose the cost of debt to reflect the reduced risk of under recovery for all utilities through a rulemaking "rather than try and establish what the actual reduced risk would be for each utility and each investment." *Id.* Although this proceeding was a rulemaking involving many utilities, the OAG believes that the efficiencies of using the long-term cost of debt is reasonable given the unwieldiness of establishing a rate of return specifically for Xcel's prepaid pension asset.

If any property interests is awarded beyond Xcel’s current contingent reversionary interest in the pension trust, that property interest must be created by the Commission or the Legislature. While the Commission is not compelled to create a regulatory asset, should it choose to do so, it should be guided by the determination of returns on deferred assets in other jurisdictions and it should limit recovery to the long-term cost of debt.

### CONCLUSION

The OAG supports the recommendation of the Department. The record shows that the only “utility property” within the prepaid pension asset is a future interest in the residual assets of the pension trust. This interest is contingent and uncertain and has at most nominal value. As such, any return on this property would be of lesser and still nominal value. Xcel has not received permission to treat its larger claimed interest as a regulatory asset. Should the Commission choose to create a larger property interest for Xcel by allowing it to record a regulatory asset, any return on that asset should be limited to the long-term cost of debt.

Dated: April 7, 2026

Respectfully submitted,

KEITH ELLISON  
State of Minnesota  
Attorney General

/s/ Katherine Hinderlie  
KATHERINE HINDERLIE  
Assistant Attorney General  
Atty. Reg. No. 0397325

445 Minnesota Street, Suite 600  
St. Paul, Minnesota 55101-2125  
(651) 757-1468 (Voice)  
(651) 296-9663 (Fax)  
katherine.hinderlie@ag.state.mn.us

ATTORNEYS FOR MINNESOTA  
OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION