

**BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, Minnesota 55101**

In the Matter of Xcel Energy’s Petition for
Approval of its 2023 Annual Fuel Forecast
and Monthly Fuel Cost Charges

OAH Docket No. 21-2500-40336
MPUC Docket No. E-002/AA-22-179

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO PROVIDE
RESPONSIVE TESTIMONY TO THE SURREBUTTAL TESTIMONY OF
DEPARTMENT OF COMMERCE WITNESS DR. STEVE RAKOW**

Northern States Power Company d/b/a Xcel Energy (Xcel Energy or Company) moves The Honorable Kimberly Middendorf for an Order allowing Xcel Energy witness Nicholas J. Detmer to provide responsive testimony to address the Surrebuttal Testimony of Department of Commerce witness Dr. Steve Rakow. Specifically, Xcel Energy requests that Mr. Detmer be afforded up to five minutes to address the Surrebuttal Testimony of Dr. Rakow at the contested case hearing in this matter, scheduled to begin September 30, 2025, following the presentation of the summary of Mr. Detmer’s pre-filed testimony.

I. BACKGROUND

This case stems from Xcel Energy filing its Annual Fuel Clause True-Up and Compliance Report for fuel forecast and fuel-cost charges approved for the 2023 calendar year. The Minnesota Public Utilities Commission (the Commission) solicited comments on Xcel Energy’s filing and eventually issued its Order Approving 2023 Fuel-Clause True-Up Report, Requiring Additional Filings, Finding Imprudence, and referring this matter to

the Court of Administrative Hearings for contested case proceedings regarding the impact of an outage at the Prairie Island Nuclear Generating Plant (PINGP) on the costs included in the True-Up filing.

On December 5, 2024, Xcel Energy filed a petition requesting reconsideration of that order and the Minnesota Department of Commerce (the Department) filed a request for clarification of that same order. On January 23, 2025, the Commission met to consider the petition for reconsideration and the request for clarification and on January 31, 2025, the Commission issued its Order Denying Petition for Reconsideration and Granting Request for Clarification (the January 31 Order).¹ In the January 31 Order, the Commission stated that it “will clarify that it expects that the contested case will develop a record related to replacement power costs and the appropriate amount of any refund of costs that flow through the fuel-adjustment mechanism.”²

In accordance with the Administrative Law Judge’s (ALJ) First Prehearing Order, Xcel Energy submitted its Direct Testimony on May 1, 2025.³ The Department, Office of the Attorney General – Residential Utilities Division (OAG) and Xcel Large Industrials (XLI) filed their Direct Testimony on July 2, 2025, responding to the testimony filed by the Company. The Department filed the testimony of a lone witness, Mr. Andrew Golden. In that testimony, Mr. Golden discussed Xcel Energy’s modeling used to develop its estimate of replacement power costs – modeling and estimates accepted by the Department

¹ See ORDER DENYING PETITION FOR RECONSIDERATION AND GRANTING REQUEST FOR CLARIFICATION, Docket No. E-002/AA-22-179.

² *Id.* at pg. 4.

³ First Prehearing Order, ¶6.

in earlier comments in this proceeding.⁴ In his testimony, Mr. Golden stated that he identified that the Company’s “change case” in its modeling assumed “the MISO energy market would have been unchanged from the base case, despite PINGP’s unavailability.”⁵ Mr. Golden further opined that “had PINGP not experienced the outage, as Xcel is attempting to model, *PINGP-generated energy likely would have caused MISO market changes,*”⁶ and asked the Company to respond to that concern.

Also on July 2, 2025, XLI submitted testimony of Mr. Brian Andrews. Mr. Andrews objected to Xcel Energy’s use of a production cost model to estimate replacement power costs and, instead, recommended use of a simpler method referred to in this proceeding as the LMP Calculation Method.

On August 13, 2025, all parties had the opportunity to file Rebuttal Testimony.⁷ Only Xcel Energy filed, with Mr. Detmer responding to Mr. Golden and Mr. Andrews.

As no other party filed Rebuttal Testimony, Xcel Energy did not file Surrebuttal Testimony on September 17, 2025.

II. SURREBUTTAL TESTIMONY OF DR. RAKOW

On September 17, 2025, the Department filed Surrebuttal Testimony not just from Mr. Golden but also from Dr. Rakow. Dr. Rakow’s Surrebuttal Testimony purports to

⁴ See, e.g., August 23, 2024 Response Comments of the Minnesota Department of Commerce at 4-6 stating, in part: “There is no disagreement between the Department and Xcel regarding which method to use to calculate the Total Company refund due to the outage.” (eDocket File No. 20248-209745-01).

⁵ Golden Direct Testimony, p. 7, lines 14-16.

⁶ *Id.* at lines 16-18. (Emphasis added.)

⁷ First Prehearing Order, ¶6.

simply reply to the Rebuttal Testimony of Mr. Detmer.⁸ However, Dr. Rakow then proceeds to summarize and criticize Mr. Detmer's Direct Testimony and to summarize Mr. Andrews' Direct Testimony.⁹ Dr. Rakow then provides criticisms of Xcel Energy's modeling in this proceeding, *conducted in July 2024*,¹⁰ and offers new analysis and testimony regarding the MISO market.¹¹ In all, Dr. Rakow's Surrebuttal Testimony cites to Mr. Detmer's Direct Testimony six times and to Mr. Andrews' Direct Testimony five times. Of course, had the Department and Dr. Rakow wished to provide a more fulsome response to Mr. Detmer's Direct Testimony than that provided by Mr. Golden, the proper procedure would have been to file Direct Testimony on July 2, as Mr. Andrews did. Further, if the Department and Dr. Rakow wished to respond to Mr. Andrews' Direct Testimony, the proper procedure would have been to file Rebuttal Testimony on August 13, as Mr. Detmer did. Had the Department pursued either course, Xcel Energy and Mr. Detmer would then have been afforded the opportunity to respond to Dr. Rakow's criticisms and analysis. By waiting until Surrebuttal Testimony, the Department has effectively denied Xcel Energy the opportunity to respond, absent the ALJ granting this Motion.

III. GOOD CAUSE EXISTS TO ALLOW LIMITED RESPONSIVE TESTIMONY FROM MR. DETMER.

As Xcel Energy could not reasonably have anticipated testimony from a new witness, referring back to earlier rounds of testimony and providing new analysis, good

⁸ Rakow Surrebuttal Testimony at 2, lines 5-12.

⁹ *Id.* at p. 2, l. 14 – p. 4, l. 2.

¹⁰ *Id.* at p. 6, l. 10 – p. 7, l. 13.

¹¹ *Id.* at p. 7, l. 15 – p. 13, l. 6.

cause exists to allow limited responsive testimony from Mr. Detmer at the contested case hearing. In fact, given the impropriety of Dr. Rakow's Surrebuttal Testimony, Xcel Energy considered moving to strike the entirety of this testimony. However, the Company desires the Commission to have a full record before it and believes that will be best accomplished by having Mr. Detmer directly address the criticisms and analysis provided by Dr. Rakow.

CONCLUSION

For the foregoing reasons, the Company respectfully requests that Mr. Detmer be permitted to address Dr. Rakow's Surrebuttal Testimony through up to five minutes of oral testimony, following presentation of his summary of the pre-filed testimony.

Dated: September 23, 2025

Respectfully submitted,

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