

Staff Briefing Papers

Meeting Date **March 12, 2026** Agenda Item 1**

Company Northern States Power Co. d/b/a Xcel Energy

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

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

Issues What disallowance, if any, should the Commission make for Top 10 Executive Compensation in the 2021 Xcel Electric Rate Case?

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✓ Relevant Documents

Date

Findings of Fact, Conclusions, and Order - Public Utilities Commission of Minnesota	July 17, 2023
Non-Precedential Opinion - Court of Appeals of the State of Minnesota	January 21, 2025
Briefing Papers - Public Utilities Commission of Minnesota	June 26, 2025
Order Authorizing Notice and Comment Period after Remand – Public Utilities Commission of Minnesota	July 23, 2025
Xcel Comments - Xcel Energy	August 25, 2025
Comments – Office of the Attorney General Residential Utilities Division	August 25, 2025

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

	Date
Comments - Citizens Utility Board of Minnesota	August 25, 2025
Comments - Department of Commerce Division of Energy Resources	August 25, 2025
Reply Comments - Northern States Power Co. dba Xcel Energy	September 9, 2025
Reply Comments - Office of the Attorney General Residential Utilities Division	September 9, 2025
Reply Comments - Citizens Utility Board of Minnesota	September 9, 2025

BACKGROUND

On October 25, 2021, Northern States Power Company, d/b/a Xcel Energy (Xcel Energy or Xcel) filed a general rate case seeking three consecutive rate increases under the Multi-Year Rate Plan Statute. Xcel's filing included the following in rate base: prepaid pension asset, related FAS 106 retiree medical benefits, and FAS 112 Long-Term Disability (LTD) benefits. Xcel also requested recovery of a schedule of executive compensation, including salary, stock and stock options, and other benefits, for its highest compensated employees.

On December 23, 2021, the Minnesota Public Utilities Commission (PUC or Commission) referred this matter for hearing to Administrative Law Judge (ALJ) Christa L. Moseng.

On March 31, 2023, ALJ Moseng issued her Findings of Fact, Conclusions of Law, and Recommendations (ALJ Report).

On July 17, 2023, the Commission issued its Findings of Fact, Conclusions, and Order (Order).

On June 14, 2024, Xcel Energy appealed the Commission's Order.

On January 21, 2025, the Court of Appeals filed its decision reversing and remanding the Commission's Order on Prepaid Pension Asset and partly upholding and partly reversing the Commission on executive compensation.

On July 23, 2025, the Commission ordered that a comment period on executive compensation be opened without reopening the record.

On August 25, 2025, Xcel Energy, the Department of Commerce, Division of Energy Resources (Department), the Citizens Utility Board of Minnesota (CUB), and the Office of the Attorney General Residential Utilities Division (OAG) filed comments on executive compensation. On September 9, 2025, Xcel Energy, the OAG, and CUB filed reply comments.

On November 1, 2023, Xcel Energy filed a rate case for its gas utility in Docket No. G-002/GR-23-413. On June 26, 2024, all parties memorialized a settlement in that case, with the proviso that, should the pending appeal in the 2021 rate case result in a reversal or modification of the Commission Order regarding the prepaid pension asset, the revenue requirement in the new rate case should be adjusted. The settlement has a provision for Executive Compensation that is not limited based on the outcome of the appeal.

DISCUSSION

I. Initial Case and Appeal

As part of their initial rate filings, all utilities are required to report total compensation for the ten highest (top ten) compensated executives. In Docket 21-630, Xcel errantly failed to report this information - an oversight missed by all parties and Commission Staff until just prior to the Commission hearing. Moreover, no party commented specifically on top ten executive compensation prior to the Commission hearing, and the ALJ did not directly address top ten compensation in her report. The Commission ultimately determined that Xcel had not provided a persuasive argument for why ratepayers should bear the full executive compensation request and concluded that, for each top ten executives, it would be reasonable for ratepayers to pay an amount comparable to the amount they pay for their top executive in state government—the Governor (approximately \$150,000 annually). Although top-ten executive compensation had not been capped at the Governor’s salary in prior rate cases, the Commission has routinely limited recovery of executive compensation components when the Commission determined that the compensation incentivizes executives to advance shareholders’ interests over ratepayers’.

After requesting reconsideration, which the Commission denied, Xcel Energy appealed the Commission’s ruling on Executive Compensation to the Court of Appeals. In addition, Xcel appealed Commission decisions on forecast insurance premiums and exclusion of the prepaid pension asset. The Court of Appeals ruled¹ that the Commission’s denial of Xcel’s proposed expense for executive compensation was supported by substantial evidence and not contrary to law, but that substitution of comparative salary was arbitrary and capricious.

In finding that comparative salary was arbitrary and capricious, the Appeals Court used the definition of arbitrary and capricious

A decision will be deemed arbitrary and capricious if the agency . . . entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.²

The Court found that the reasoning used by the Commission to use the Governor’s salary

¹ A-23-1672 Order of January 21, 2025, p.21

² 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) (quotation omitted), rev. denied (Minn. Aug. 6, 2019).

focused entirely on the needs of ratepayers, without considering the needs of the utility.³ Thus the Commission failed to consider an important aspect of the ruling – the need of the utility. The Court remanded to the Commission to make additional findings, with discretion to reopen the record.

In its Order Authorizing Notice and Comment Period after Remand on July 23, 2025, the Commission decided to make its decision based on the existing record and authorized a comment period for Parties to make their case based on the existing record.

II. Comments from Parties

A. Xcel Energy

In its comments, Xcel cited that Xcel shareholders already bear the load of some executive compensation, in the form of limiting recovery of the Annual Incentive Plan (AIP) to 20% of base salary (15% in prior cases) and 100% of target. Xcel also does not receive full recovery for costs related to the Long-Term Incentive (LTI) Plan under existing Commission orders and precedent. Xcel calculated that AIP and LTI limits meant that, in existing rates, approximately 23% of AIP compensation for all employees, including the top 10, was already disallowed for recovery, or \$16.7 million. Xcel argued that its testimony showed that these costs were necessary to attract talent, and so shareholders are already absorbing a significant share of costs. Similarly, Xcel noted that limitations on LTI meant that 54% of LTI spending, or \$6.7 million, were already disallowed.

In response to the question of filing the top 10 executive compensation late, Xcel stated that the paper copies of the rate filing provided to the Commission, Department, and AG's office contained the proper schedules, but that it had inadvertently excluded several tables, including the summary table of top 10 executive compensation, from the e-Dockets filing. Xcel noted testimony referring to these tables as evidence that they had been placed in the record and argued that no party recommended disallowances or even noted the absence of the schedules prior to Commission evidentiary hearing. Once the absence of the schedules had been noted, Xcel promptly filed the missing schedules.

Xcel cited the testimony of Ruth Lowenthal and a study done for Xcel by Willis Towers Watson (WTW) to argue that executive compensation levels were justified by market requirements. In that testimony, Xcel discussed the components of AIP and LTI and noted that certain of both costs had been removed by Xcel consistent with Commission precedent.

Xcel summarized intervenor testimony on the issue. The Department and Xcel Large Industrials (XLI) recommended decreasing the cap on AIP payments to 15% of the base cap, consistent with prior years. The Department also recommended disallowing all LTI compensation. No party

³ Ibid, p. 26

recommended a dollar cap on executive compensation or made any note of the missing schedules. In response to this testimony, Xcel provided a witness in rebuttal⁴ to address the recommendations of parties. No party contested the WTW report on the overall market need for the spending.

The ALJ found in favor of the Department on the issue of LTI, disallowing an additional \$7.9 million in compensation. The ALJ supported Xcel on the issue of AIP, recommending a base cap of 20%.

In hearing, the Commission reduced the base cap to 15% and otherwise adopted the ALJ report on executive compensation for AIP and LTI, resulting in total disallowances of \$15.7 million in AIP and LTI. In addition, the Commission reviewed the issue of top 10 Executive Compensation in aggregate, an issue raised in public comments but not addressed by parties and found that no more than \$150,000 per executive should be allowed for recovery from ratepayers. Xcel argued that this prevented Xcel from recovering any AIP costs, inconsistent with the ruling elsewhere in the same order allowing it to recover AIP up to a 15% cap.

Prior to the disallowance of executive compensation above \$1.5 million for top ten executives, Xcel noted that in the test year 2022 revenues were reduced by \$15.4 million from actual:

- \$6.7 million in Total Shareholder Return Long-term incentive compensation for executives. (Removed by Xcel prior to filing)
- \$7.9 million in environmental and Time-Based Long-term incentive compensation (removed by ALJ and confirmed by Commission)
- \$1.1 million in Annual Incentive Plan payments (reduction of cap on AIP from 20% to 15%)

Xcel Energy noted that its original proposal for executive compensation and the overall record was consistent with prior Commission ruling, other than the increase from 15% to 20% for the AIP cap, a disallowance that Xcel did not appeal. Xcel cited that, in the absence of meaningful distinctions between prior cases and this one, they should be allowed to recover these expenses.

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

⁴ Rebuttal Testimony of Ruth Lowenthal

departure that is not arbitrary and capricious.⁵

Xcel argued that there was no meaningful difference in the record between this case and prior Xcel rate cases where recovery was approved, and thus, on that record, recovery should be approved here as well.

Xcel specifically noted that the language of the appeal noted that the Commission failed to account for the needs of the utility:

[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."⁶

Xcel argued that the Commission itself had found that the company is well-managed and headed in the right direction. Xcel noted that, under statute, the need for the utility to meet its financial and economic requirements is protected, and no party has argued that executive leadership is unnecessary, nor has any party argued that the compensation paid is excessive.

Xcel specifically noted that certain parties had advocated for a 100% disallowance. Xcel argued that this is not consistent with the Court of Appeals ruling, which specifically held that the Commission failed to account for the needs of the utility. The finding that Xcel had not met its burden of proof does not justify a 100% disallowance, as that also would not be consistent with balancing the needs of the utility and ratepayers.

Xcel argued that this record and Minnesota Law support the company recover the portion of executive compensation remaining from its original requests after the specific disallowances. Xcel argued that the record showed:

⁵ 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))

⁶ Court of Appeals at 26

- Xcel cost-effectively provided safe, efficient, and reliable power while meeting state environmental goals;
- Xcel executives drive its direction, strategy, and innovation and the decisions these executives make have a significant impact on customers;
- The Commission noted that Xcel is financially well managed and pointed in the right direction;
- Compensation of executives is not optional;
- Inclusive of the full AIP and LTI compensation, Xcel executives are compensated at market rates – after the disallowances already accepted, executive compensation as recovered from ratepayers is below market;
- No party challenged top 10 compensation;
- Given the removal of AIP above 15% and no LTI, Xcel is already recovering less than 40% of its Minnesota jurisdictional executive compensation for top 10 executives.

B. Department of Commerce

The Department of Commerce stated its position on the legal issues related to disallowance. The Department stated that, in its opinion, the Commission could disallow all recovery of executive compensation or make an appropriate adjustment that is justified in the order. The Department cited *In re Appl by Northern States Power Company (1987)* as stating that, when the utility fails to meet burden of proof, the Commission may “either deny the rate increase or make (an) appropriate adjustment to the utility’s proposal.”⁷

The Department noted that the original disallowance, to \$150k per executive, in essence cut recovery in half, from between \$3.1 to \$3.3 million to \$1.5 million. At this point, disallowing entire amount would remove only the other half. In the alternative, the Commission could craft an appropriate adjustment ranging from no recovery to fully recover the approximately \$3.1 to 3.3 million remaining after earlier disallowances. The Commission has, for example, previously approved 50% recovery in past rate cases for investor relations, board expenses, and other expenses with both ratepayer and shareholder benefits. This would result in an outcome very similar to that reached in the original decision based on an allocation the Commission has historically used.

The Department also noted that more thorough justification of its original decision is an option, based on the Commission’s experience, technical competence, and specialized knowledge.

The Department also noted that, mechanically, any modification from the original decision

⁷ In re Appl. By Northern States Power Co. No. A23-1672 2025 WL 249995 at 11 (citing In re Petition of N. States Power Co., 416 NW 2d 719, 723 (Minn. 1987).

would require either a refund or surcharge to customers. The Department suggested adding this amount to any true-up needed from the ongoing 2024 rate case in Docket 24-320.

C. Office of the Attorney General

The Office of the Attorney General (OAG) recommended a full 100% disallowance of executive compensation expenses, or in the alternate, affirm its existing disallowance above \$1.5 million through a clarification of its original order. The OAG noted that the Appeals Court held that the Commission acted within its authority in denying recovery of executive compensation. In that situation, the Commission has authority to disallow all or part of recovery. The Appeals Court held that the specific disallowance chosen was found to be arbitrary and capricious because the Commission did not explain why basing the recovery on the Governor's salary was reasonable. It would be consistent with this ruling to provide this explanation now and continue to maintain the same disallowance. The OAG noted that this option was provided to the Commission in the Court of Appeals ruling.⁸

Given this broad authority, the OAG recommended full disallowance of top 10 executive compensation recovery. The burden of proof is on the utility, and all doubt must be resolved in favor of the consumer. As such, given that the Commission held that Xcel failed to meet its burden of proof, a full 100% disallowance would be resolving the doubts about the disallowance in favor of the consumer.

In the alternative, the OAG suggested more fully explaining the original disallowance. The court's ruling held that the Commission failed to demonstrate that it took due consideration of the utility's need for sufficient revenue to provide service. However, it also explicitly held that the original disallowance could be justified, and so the Commission need only fully explain how that original disallowance is both legally justified and takes due consideration of the utility's need. The OAG suggested methods of making this justification, drawing analogies between the governor's role in serving the public interest being a reasonable proxy for the value ratepayers receive from executives. The OAG also suggested that there is a parallel between the responsibility of the state to keep the Governor's compensation affordable for taxpayers who have no option other than paying their taxes, and the responsibility of the Commission to keep executive compensation affordable for retail customers who have no other alternative for electric service. The Commission only needs to provide a reasonable basis for its choice of cap, in the OAG's view.

The OAG noted that Xcel did not pursue an appeal of the Commission's approved return on equity, suggesting that Xcel's needs have been met even with the reduction of executive compensation. The OAG also argued that the Commission is deciding whether shareholders or ratepayers should bear the cost of executive compensation. The explanation of the governor's salary as a proxy inherently gives due consideration to the utility, so long as it is fully explained

⁸ Order of the Court of Appeals at 27 n.6.

as reflecting a balance between public and utility interests, especially given the Commission's broad discretion in determining who should bear costs.

The OAG concluded that Xcel failed to meet its burden, as originally ordered by the Commission and upheld by the Court. Therefore, the Commission should disallow recovery in its entirety because Xcel failed to meet its burden of proof, or in the alternate the Commission should more fully explain why using the governor's salary as a proxy is reasonable.

D. Citizens Utility Board of Minnesota

The Citizens Utility Board (CUB) based its analysis on its reading of the burden of proof. CUB noted that Minn Stat. §216B.16 Subd. 17 holds that the Commission "may not allow" certain employee expenses that the Commission deems unreasonable and unnecessary for the provision of utility service. The legislature specifically listed executive compensation as an area for scrutiny and itemization as part of a rate case. CUB argued that disallowance of the entire amount would not have an impact on Xcel's ability to furnish electric service, and so a 100% disallowance is justified.

CUB noted that Xcel failed to meet its burden of proof in this case. Xcel failed to provide the statutorily required information on executive compensation in a timely and appropriate manner and thus failed to meet its burden, in fact filing this information 19 months late. Any doubt should be resolved in favor of ratepayers. This material deficiency persisted for almost the entire period the case was in pendency. When costs are inaccurate, invalid, imprudent, or unreasonable, or inconsistent with the public interest, the Commission may disallow rate recovery. The fact that Xcel did provide this statutorily required information – at the last minute under order from the Chair – does not alone justify the expenditures.

CUB noted that no testimony from Xcel specifically justified top 10 executive compensation. The testimony provided generally justified employee compensation, but no testimony specifically addressed the top 10. No focused analysis from the Company exists in the record regarding the top 10 executives. Xcel testimony did not address alignment of executive goals with ratepayers, and never sought to justify why ratepayers, rather than shareholders, should cover the millions in executive compensation requested. CUB noted that the Long-Term Incentives, which inform the work and objectives of executives, focus on shareholder concerns rather than ratepayer concerns. Similarly, the stock awards to top 10 executives align the executive's interests with shareholders, not ratepayers. Thus, the company did not show that executive compensation works to ratepayers' interest, even if the market rate of compensation had been fully justified.

CUB also cited the many public comments opposing cost recovery for executive compensation as suggestive that ratepayer interests are not aligned with executive compensation. Many commenters argued that executive compensation is unduly burdensome on ratepayers. The comments on this issue, reflected in the method of participation most available to ratepayers,

should be given due weight by the Commission, regardless of the fact that these commenters were not parties. CUB noted that the ALJ directly invited public comment, up to and including public-provided oral and written exhibits and testimony.

CUB specifically argued that a disallowance of recovery of executive compensation will not impact Xcel's ability to furnish electric service. CUB disagreed with Xcel testimony regarding the necessity of recovery of these costs to attracting talent. Xcel is free to compensate its employees at levels in excess of authorized levels of recovery. Xcel in fact did request recovery of only a portion of executive salaries, noting that Minnesota ratepayers paid less than \$2 million of the Xcel CEO's \$16.8 million pay package in 2020. Given that such a large portion of executive salary is already not recovered from ratepayers, CUB argued that there is no evidence that recovery of executive salary at any level will attract or deter talent from joining Xcel. CUB noted that the \$7 million in executive compensation requested by Xcel is less than 1.4% of net income for 2022, and less than 2% for the entire period of the rate case. Given the negligible effect of non-recovery on shareholders, CUB does not believe denial of ratepayer recovery will impact Xcel's ability to attract talent or capital.

CUB also emphasized that the decision in this case does not impact Xcel's opportunity to recover costs in future rate cases. This determination, that on this record Xcel failed to meet its burden of proof, does not prevent Xcel from seeking to meet that burden in future cases.

CUB thus recommended a 100% disallowance of executive compensation in this case, based on the failure by Xcel to meet its burden of proof.

III. Reply Comments

A. Xcel Energy

In reply, Xcel continued to advocate for full recovery of its Executive compensation expense, less the deductions and disallowances previously made for LTI and AIP. Xcel described the exclusion of the top 10 Executive Compensation Schedule as a 'paperwork error' and noted that it had been included in Docket 21-678, Xcel's gas rate case. Xcel also noted that Parties and Commission Staff did not identify the missing sheet at the time of the original filing, and in fact no party questioned the missing Schedule until the Commission hearing in October 2023. The Schedule was also included in the paper copies of the rate case provided to many parties; it just was inadvertently excluded from e-Dockets.

In response to CUB and OAG arguments that no record evidence supported recovery of executive compensation, Xcel noted that the record included evidence related to several of the points noted above (page 5 and 6 of the Briefing Paper). Based on this record, Xcel argued that it should be allowed to recover remaining executive compensation, after adjustments for AIP cap and LTI removal.

Xcel also noted that the level of proof provided in this case was similar to that provided in prior

cases, with no disallowance in those prior cases. It argued that parties demanding additional proof in this case, without having provided testimony themselves to this point, amounts to unfairly changing the burden of proof without notice.

Xcel requested that the Commission find that no further adjustment of executive compensation is appropriate in this proceeding.

B. Office of the Attorney General

The OAG replied to Xcel's arguments by arguing that Xcel failed to identify any basis for the Commission to 'reverse course' and find that Xcel had met its burden of proof after all. The OAG noted that the Court of Appeals found that the Commission was within its power and had acted reasonably when it found that Xcel had failed to meet its burden of proof – the question referred to the Commission was the structure of the disallowance, not the finding itself. The OAG noted that Xcel had not 'tempered' its request, citing that Xcel had requested a higher AIP percentage (20%) and recovery of two of three long-term incentives which had been disallowed in prior rate cases. The Commission disallowed recovery above 15% and of those two LTI's, but in OAG's view, Xcel's argument that its request had already been reduced is overstated.

OAG acknowledged that Xcel proved that it paid its executives at market value, but neither discussed top 10 compensation specifically nor why ratepayers should pay the salaries. The OAG noted that the Court found that the Commission acted reasonably in its finding that Xcel didn't meet its burden of proof. The OAG also noted that the Commission's findings that AIP and LTI specifically needed to be limited or removed were not also a finding that ratepayers should bear the burden of the entirety of the balance. It simply was a finding that those items were not justified.

The OAG argued that the fact that parties did not raise these issues – that it was raised by comments – does not change the burden of proof. The OAG specifically noted that Xcel arguing that executives' decisions 'have a significant impact on customers' does not contain any assumption that those effects are positive – if executives are operating in shareholder's interest, it potentially would be negative. The fact that Xcel was denied recovery of LTI and the increased AIP – it did not forego recovery, the Commission ordered it – does not mean the rest of executive compensation should be paid by ratepayers. The mere fact that Xcel pays its executives – even at market rates – doesn't mean ratepayers should pay for it.

The OAG noted that the issues Xcel is arguing have already been decided against Xcel at the Court of Appeals. The Commission is under no obligation to reverse itself on that finding.

The OAG stated its opinion that, so long that the Commission explains its rationale, whatever disallowance it decides on will not be "Arbitrary and Capricious". The Commission explained its reasoning for the finding of failure to meet burden of proof, and it is in line with Court precedent that the Commission can depart from its decisions in prior cases so long that it

adequately explains its reasoning. The standard cited from the decision in *"In re Review of 2005 Annual Automatic Adjustment Charges for All Electric and Gas Utilities"*⁹ was that, so long that the Commission articulates a "rational connection between the facts found and the choice made," the Commission's decisions are not arbitrary and capricious. Context matters, and a decision in a prior case does not determine the result in the current one. The OAG also distinguished the situations, noting that in that case, the Commission was making a decision specifically opposite that made in prior cases – in this case, the Commission is taking up an issue it has not explicitly previously addressed, though it was authorized to do so had it chosen to. Had the Commission made a different decision on AIP, that would have required an explanation that would withstand review. In this situation, however, the Commission's only burden was to support its decision with substantial evidence, which the Court found that it did for the original burden of proof finding.

The OAG noted that, if the Commission is concerned about this question, it simply needs to articulate in its forthcoming order why it is disallowing executive compensation now and did not do so previously. So long that the explanation is reasonable, the Commission decision will stand, even if there is room for different opinions.

The OAG noted that the context of the 2021 case, by which time Xcel had raised rates almost every year since 2011, makes it easily distinguishable from the 2012 case, where rates had been raised three times in a decade. The context was simply different, and so the findings can be different. The Commission could also cite policy considerations, and OAG noted that the utility's burden of proof, and the Commission's role in determining just and reasonable rates, are not changed by the choices parties make regarding testimony topics.

Based on this, the OAG's recommendations from initial comments stand. First, the Commission should disallow Xcel's request for recovery of Top 10 executive compensation because it failed to meet the burden of proof. Second, if the Commission chooses not to disallow all recovery, it could provide additional explanation for why using the governor's salary is a reasonable proxy for limiting rate recovery of executive compensation.

C. Citizens Utility Board of Minnesota

CUB noted in reply that the burden of proof lies with Xcel. CUB noted that the statutory requirement that the Schedule of Executive Compensation be submitted to e-Dockets as part of its filing was not waived by the fact that parties did not request that it be filed – the burden was the company's, not on parties. The Court of Appeals affirmed the Commission decision that Xcel had failed to meet the burden of proof. CUB also noted that the Commission has the authority to depart from past practice, upon setting for a reasoned analysis for the change. The Commission has done so here, in CUB's view.

CUB argued that full denial of recovery of top 10 executive compensation would be consistent

⁹ *In re Review of 2005 Annual Automatic Adjustment Charges for All Electric and Gas Utilities*, 416 NW 2d at 120

with the Court of Appeals ruling, so long that the Commission justifies that decision. Specifically, CUB argued that the Court of Appeals ruling would allow the Commission to reconsider how recovery of compensation would impact both the ratepayers and the utility and determine the appropriate balance between those interests. Given that Xcel failed to meet its burden of proof that top ten compensation is a 'necessary cost of service' that ratepayers should bear, the Commission should disallow all recovery. This finding would not affect Xcel's ability to attract talent, as the level of compensation that Xcel pays is not determined by rate recovery. Xcel would be choosing the level of compensation for executives based on the value they provide for shareholders, above and beyond whatever allowance the Commission makes for ratepayer recovery.

If the Commission finds that the Governor's salary is a good proxy, it can still do so under the Court of Appeals Order by articulating its reasoning why that, or any other level of recovery that it deems appropriate, is just and reasonable and balances ratepayer and utility interests. CUB cited the findings related to economic development in this case, which split those costs 50% to ratepayers and 50% to the utility, in the absence of evidence showing a better split. CUB suggested this as an alternative to 100% disallowance or use of the governor's salary. CUB also suggested Xcel's median compensation of \$120,597 as a potential option for a reasonable threshold of ratepayer value from executives.

IV. Staff Analysis

Staff does not take a position on the appropriate disallowance, but provides the following table for reference:

Table 1: Proposed Disallowances

All amounts in millions			2022	2023	2024	2022	2023	2024
	Xcel Request		7.268	7.566	7.878			
	AIP/LTI Adjustments		(4.170)	(4.376)	(4.592)			
	Remaining Top 10		3.098	3.190	3.286			
Decision Option	Description	Party	Disallowance			Total Recovery		
1	No Add'l Disallowance	Xcel				3.098	3.190	3.286
2	Governor's Salary	OAG Alt CUB Alt	(1.598)	(1.690)	(1.786)	1.500	1.500	1.500
3	Median Salary	CUB 4th	(1.892)	(1.984)	(2.080)	1.206	1.206	1.206
4	100% Disallowance	OAG Pri CUB Pri	(3.098)	(3.190)	(3.286)	-	-	-
5	50% Disallowance	Dept. CUB 3rd	(1.549)	(1.595)	(1.643)	1.549	1.595	1.643

In a decision to make an allowance for top 10 executive compensation, other than the Governor's salary, the Commission should consider, as noted by the Department, how to return, either to ratepayers or to Xcel, the difference between the disallowance for costs in excess Governor's salary and the final disallowance decision of the Commission. The Department's recommendation for adding the balance to the final rate true-up in Docket 24-320 is a plausible one, as that refund will occur sometime late this year or early next year, if the Commission sets rates below interim rates for any class. Staff does note that it is likely that the class allocation of this refund would be different from that in the final rate true-up, and so it adds complexity to whichever refunds or surcharges it is combined with.

DECISION OPTIONS

1. Find that no further adjustment of executive compensation is appropriate in this proceeding beyond the disallowances for AIP and LTI. (Xcel)
2. Find that the Governor's salary of \$150,000 per executive is a reasonable allowance for recovery of executive compensation. (OAG Alternative, CUB Alternative)
 - A. Find that factors justifying this level of recovery include: (OAG)
 - 1) The Governor's salary acts as an approximate proxy for reasonable compensation for actions in the public interest, and that salary above this level benefits shareholders primarily, rather than ratepayers.
 - 2) The Commission has a responsibility to keep utility expenses affordable for customers who have no choice but to pay electric rates, analogous to the government's responsibility to limit the cost of the governor's compensation on behalf of taxpayers.
3. Find that Xcel's median compensation of \$120,597 is a reasonable allowance for recovery of executive compensation. (CUB Alternative)
4. Find that all costs for top 10 executive compensation should be excluded from rate recovery, as Xcel has failed to meet their burden of proof regarding recovery of these costs from ratepayers. (Department Primary, OAG Primary, CUB Primary)
5. Find that 50% of remaining Top ten executive Compensation should be paid by ratepayers, and 50% by shareholders (Department Proposed, CUB Alternative)
6. Order any difference between the decision in this Order and the original finding allowing recovery of \$1.5 million be added to or subtracted from the balance to be recovered during true-up of interim rates to final rates in Xcel's outstanding rate case, Docket 24-320. (Department)