BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
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FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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In the Matter of Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges	CAH File No. 21-2500-40336 MPUC Docket No. E-002/AA-22-179

INITIAL BRIEF OF THE MINNESOTA DEPARTMENT OF COMMERCE

November 25, 2025

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INTRODUCTION

While digging a trench in October 2023, Xcel Energy imprudently bored through the Prairie Island Nuclear Generating Plant's direct-current control cables. As a result, Prairie Island experienced a three-month outage. During the outage, Xcel bought replacement power to serve customers. Because the Minnesota Public Utilities Commission has already found Xcel imprudently caused the outage and owes customers a refund for the replacement power costs, the only issue here is the refund amount. Xcel attempts to reduce the refund by relying on flawed modeling, and speculative, unsupported, and prohibited "offsets." The Commission should order Xcel to refund at least $40.1 million plus interest at the prime rate to its Minnesota customers.

FACTS

Prairie Island's Control Cables

In October 2023, Xcel began replacing power cables between Prairie Island and a nearby substation. During the project, Xcel drilled through Prairie Island's control cables.[1] The control cables provide power to assets necessary for Prairie Island's operations, including transformers supplying offsite electricity to the plant and output breakers used to transmit electricity generated by the plant to the grid.[2] The damage control-cables forced Xcel to shut down Prairie Island's Unit No. 1. As required by federal law, Xcel filed a report with the Nuclear Regulatory Commission ("NRC") detailing the accident. Xcel's report identified several accident causes:

- Xcel failed to adequately oversee its workers.
- Xcel failed to use ground-penetrating radar to locate cables.
- Xcel failed to provide up-to-date work plans and construction drawings.

[1] ORDER APPROVING 2023 FUEL CLAUSE TRUE-UP REPORT, REQUIRING ADDITIONAL FILINGS, FINDING IMPRUDENCE, & NOTICE OF & ORDER FOR HEARING at 3 (Nov. 15, 2024) (eDocket No. 202411-211999-01) ("Referral Order").
[2] Ex. XCEL-5, NJD-D-2 at 2 (Detmer Direct) (eDocket No. 20255-218509-02)

- Xcel failed to provide maps fully depicting all other underground cables near the excavation path.[3]

To fix the outage, Xcel considered both repairing and fully replacing the control cables.[4] Xcel concluded that repairs were not feasible. Because Xcel buried the cables in the early 1970s without any protective enclosures, the cables were cracked and corroded.[5] The cables also were water damaged.[6] Given these conditions, Xcel concluded that, even if it could splice-in replacement cable, the repair would create more locations for degradation and potential cable failure.[7] Based on this analysis, Xcel decided "the cabling [could] not be repaired and need[ed] to be replaced."[8] Xcel explained that replacing the cables was the only feasible way to fix the damage consistent with the "best interest[s] of the Prairie Island plant" and "customers."[9]

Replacement Power Cost Calculations

Due to the outage, Prairie Island was shut down for 103 days.[10] Xcel purchased replacement power to serve customers during the outage.[11] It then charged customers for it.[12] The Commission found that Xcel's imprudence caused the outage.[13] As a result, the Commission decided that Xcel must reimburse customers for the replacement power costs.[14]

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[3] *Id.* at 3.
[4] Ex. XCEL-10, CRB-D-2 at 2 (Bible Report) (eDocket No. 20255-218509-01).
[5] Ex. XCEL-13, ALH-D-2 at 4-5, 15 (Hiser Report) (eDocket No. 20255-218509-04).
[6] Referral Order at 3.
[7] *Id.* at 16.
[8] Ex. DOC-6, Attach. C (eDocket no. 202510-223480-04).
[9] Ex. DOC-5, Attach. G at 43-44 (eDocket no. 202510-223480-02); Ex. DOC-8 at 2 (eDocket no. 202510-223480-06); *see also* Evid. Hrg. Tr. at 96:23-97:8, 97:9-19 (Hiser).
[10] Referral Order at 3.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

To calculate the replacement-power refund, Xcel proposes that the Commission rely on the utility's PLEXOS modeling-derived estimate. PLEXOS is software that models production costs. Here, Xcel used PLEXOS to estimate the cost difference between serving customers with and without Prairie Island during the outage period.[15] To develop this estimate, PLEXOS attempted to match generation with demand in a way that minimizes the overall system cost.[16] PLEXOS accounts for variables such as operating costs, operating characteristics, renewable generation forecasts, and market price forecasts.[17] In its base case, Xcel used PLEXOS to create a model that Xcel claims represents actual operations during the outage (i.e., without Prairie Island).[18] For the change case, Xcel modified the base case by making Prairie Island available.[19]

Total system costs with Prairie Island during the outage period	–	Total system costs without Prairie Island during the outage period[20]

In its analysis, Xcel made contradictory assumptions. In designing its PLEXOS inputs, Xcel assumed Prairie Island's availability would have little Locational Marginal Price ("LMP") impact.[21] The term LMP refers to the wholesale market price for electricity set by the Midcontinent Independent System Operator ("MISO") for a particular area.[22] LMPs are based on marginal unit of production energy costs, transmission congestion at a particular location, and line-loss costs at a particular location.[23] In contrast to its assumption that Prairie Island would not impact LMPS,

[15] Ex. XCEL-5 at 16 (Detmer Direct).
[16] *Id.* at 11.
[17] *Id.* at 12, 15.
[18] *Id.* at 16.
[19] *Id.*
[20] *Id.*
[21] Ex. XCEL-9 at 4 (Detmer Rebuttal) (eDocket no. 20258-222042-04).
[22] Ex. XCEL-5 at 3 (Detmer Direct).
[23] *Id.* at 10. When the transmission system is nearing capacity, the market may disfavor generation located within the transmission constrained area. The loss of energy during the transmission process, referred to as line loss, increases the further a generator is from the load it is serving. Put

Xcel did assume that Prairie Island's unavailability would cause Xcel's other generation facilities to increase output.[24] These two statements contradict each other because generators are dispatched based upon LMPs. If Prairie Island's availability has little impact on LMPs, then its availability also would have little effect on the output of Xcel's other power generation facilities. According to Xcel, the difference between its base and change case scenarios–about $34.3 million–represents the incremental replacement power costs attributable to Xcel's imprudence.[25]

An intervening party, Xcel Large Industrials ("XLI"), in contrast, used the LMP-method to develop an alternative replacement power cost estimate. Rather than modeling Xcel's system with access to the MISO markets like Xcel's PLEXOS method, the LMP-method focuses on Prairie Island's generation. The LMP-method multiplies Prairie Island's expected electricity generation by the wholesale market price minus Prairie Island's expected costs as shown:

Prairie Island's expected generation absent the outage	X	Actual LMPs paid during the outage	–	Prairie Island's expected fuel and operating costs during the outage[26]

Unlike Xcel's PLEXOS model, the LMP-method assumes that other generation facility outputs would have been largely unchanged regardless of Prairie Island's availability.[27] Relying on this assumption, it determines replacement power costs by calculating the net revenue that Prairie Island would have earned had it been operating as usual.[28]

XLI asserts that the LMP-method produces a reasonable estimate because the Prairie Island outage was too small to meaningfully impact the LMP market price set by MISO and, in turn,

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together, these two factors create differences in prices based on location while other variables are held constant. *Id.*

[24] *Id.* at 5, 10.

[25] *Id.* at 14-17.

[26] Ex. XLI-1 at 12-13 (Andrews Direct) (eDocket no. 20257-220621-02).

[27] Ex. DOC-3 at 14-15 (Rakow Surrebuttal) (eDocket no. 20259-223100-03).

[28] *Id.*

impact other generator output.[29] Using the LMP-method, customers are entitled to a replacement power cost refund of $40.6 million.[30]

Reviewing the competing Xcel and XLI models, the Department compared LMPs across the MISO region and with Minnesota's nearest MISO neighbor, Illinois.[31] The Department found based on this comparison that real world LMP data does not support Xcel's assumption that Prairie Island would have to be replaced by Xcel's own generation due to congestion limiting MISO energy imports.[32]

Xcel's Claimed Refund Offsets

Although it imprudently drilled through its own control cables, Xcel asserts it should not have to fully refund replacement power costs. Instead, Xcel claims that three "offset" categories entitle the utility to retain almost all the replacement power costs.

(1) Avoided 2029 Costs. Xcel claims that the control cables would have inevitably required replacement had the October 2023 outage not occurred. To justify that assertion, Xcel reasoned that the NRC might have required cable replacement during or following a relicensing process.[33] Alternatively, Xcel claimed that the cables almost certainly would have failed in the future given their age and degradation.[34] Either way, Xcel asserts it avoided future outage days and associated replacement power costs by fully replacing the control cables following the October 2023 outage.

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[29] *Id.* at 10-11.
[30] Ex. XLI-3 at 13 (Andrews Surrebuttal) (eDocket no. 20259-223127-02). Although this figure is marked as trade secret in Mr. Andrews' testimony, counsel for XLI and Xcel respectively stipulated to make it public on November 13 and November 18, 2025.
[31] Ex. DOC-3 at 14-15 (Rakow Surrebuttal).
[32] *Id.* at 13.
[33] Ex. XCEL-13 at 3 (Hiser Direct).
[34] *Id.*

After asserting that the control cables would have certainly required replacement, Xcel concocted three counterfactual scenarios to imagine how it might happen. In the first hypothetical, Xcel assumed the degrading cables would be identified during future inspections, allowing it to schedule a planned, dual-unit outage to replace them.[35] In the second hypothetical, Xcel assumed the cables would fail unexpectedly while one unit was already offline for a planned refueling outage, causing the online unit to trip.[36] In the third hypothetical, Xcel assumed the cables would fail unexpectedly while both units were running, causing a dual-unit trip.[37] For its claimed offset, Xcel relied on the first hypothetical, concluding that by replacing the control cables rather than repairing them, it reduced a 2029 planned outage by 93 days.[38] Xcel asserts that avoiding these future outage dates saved customers $21.0 million in replacement-power costs.[39]

(2) Supplemental "Pulled Forward" Work. Once Xcel opted to replace the cables, Xcel rescheduled other near-term planned maintenance to occur during the cable replacement-related outage. These maintenance tasks included inspecting cooling water pump strainers, adjusting control valve packing leaks, and cleaning condensers.[40] Xcel asserts that pulling forward this maintenance avoided 8.1 future outage days. Xcel originally claimed that this "pulled forward" work saved customers $1.8 million in replacement-power costs but now concedes the value does not exceed $500,000.[41]

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[35] Ex. XCEL-5 at 18 (Detmer Direct).
[36] *Id.* at 18-19.
[37] *Id.* at 18.
[38] *Id.* at 18.
[39] Ex. XCEL-5 at 18 (Detmer Direct). Xcel provided revised dollar amounts and outage length estimates in an errata filing. *See* XCEL-6 (Detmer Direct Errata) (June 27, 2025) (eDocket No. 20256-220369-01).
[40] Ex. XCEL-5 at 20 (Detmer Direct).
[41] *Id.* In direct testimony, Xcel asserted that the "pulled forward" work was worth $1.8 million. *Id.* In rebuttal testimony, Xcel agreed with the Department that the value did not exceed $500,000. Ex. XCEL-3 at 6 (Krug Rebuttal) (eDocket no. 20258-222042-07).

(3) Performance Adjustment. After reducing the refund to account for avoided future replacement-power costs, Xcel asserts that any remaining refund should be reduced based on Prairie Island's reliability compared to the industry median.[42] From 2018 through 2022, Xcel claims Prairie Island's capacity factor, a measure of plant availability, exceeded the industry median by 51%. As a result, Xcel asserts the Commission should reduce any refund by 49%.[43]

Given these claimed offsets, as shown in the table below, Xcel asserts it should refund customers only a fraction of the total replacement power costs.[44]

Xcel's Proposed Customer Refund[45]

Replacement Power Costs	$34.3 million
- Avoided 2029 Costs	$21.0 million
- Supplemental Work	$500,000
Total Before Performance Adjustment	$12.8 million
x Performance Adjustment	51%
Customer Refund	$6.5 million

[42] Ex. XCEL-5 at 21-22 (Detmer Direct).
[43] *Id*.
[44] Ex. XCEL-3 at 9 (Krug Rebuttal). Xcel originally asserted that customers were entitled to no more than $5.8 million but adding back $1.3 million in connection with the "pulled forward" work before or after applying the Xcel's 51% performance adjustment results in ambiguity between the Krug rebuttal testimony and the Detmer direct testimony.
[45] Ex. XCEL-5 at 24 (Detmer Direct).

ARGUMENT

The Commission should order Xcel to refund at least $40.1 million plus interest to its Minnesota customers. [46] Given the defects with Xcel's modeling, a preponderance of the evidence establishes that XLI's replacement power cost estimate is more reliable.[47] The Commission should further reject Xcel's purported "avoided 2029 costs" and "performance adjustment" offsets. Both offsets are inconsistent with the Commission's prohibition on offsets that accrue from actions necessary to fix prior imprudent conduct.[48] Even if they were permitted, Xcel has not met its burden to establish by a preponderance of the evidence that the claimed benefits are sufficiently definite and supported, as the Commission has previously required.[49] Finally, the Commission should require Xcel to exclude its litigation costs incurred in connection with this proceeding from all rate and cost recovery proceedings. Seeking to deny customers a refund accruing from the utility's imprudent conduct is neither a "cost of service" nor consistent with the traditional presumption that parties should bear their own litigation expenses.

I. THE COMMISSION SHOULD CALCULATE THE REPLACEMENT POWER REFUND USING THE LMP-METHOD.

Xcel's modeling in this case contained serious flaws as identified by the Department's expert, while the LMP-method calculation produces a reliable estimate. While the PLEXOS

[46] This amount is the $40.6 million replacement power cost amount calculated by XLI witness Brian Andrews minus the $500,000 "pulled-forward" work offset. Ex. XLI-3 at 13 (Andrews Surrebuttal) (eDocket no. 20259-223127-02); Ex. XCEL-3 at 6 (Krug Rebuttal) (eDocket no. 20258-222042-07).

[47] Minn. R. 1400.7300, subp. 5; *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004) (explaining that the preponderance of the evidence standard requires that to establish a fact, it must be more likely than not that it exists.)

[48] *In re Appl. of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn. ("Sherco 3 Forced Outage")*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36 (Dec. 24, 2024) (eDocket No. 202412-213317-01).

[49] *Id.* (rejecting offsets that are "too speculative" or "unsupported").

modeling software used by Xcel may normally produce an accurate estimate, Xcel's flawed assumptions negate the software's reliability.[50] Xcel's model inaccurately assumes that Prairie Island's availability would meaningfully impact the output of Xcel's other power generation facilities. Xcel's assumption is inconsistent with its other claims and contrary to record evidence. Given these flaws, the Commission should instead rely on XLI's estimate derived using the LMP-method.

A. Xcel's PLEXOS Model Relies on Assumptions Rendering the Results Unreliable.

Xcel's PLEXOS model is unsound because it reflects two conflicting assumptions. First, Xcel assumes that Prairie Island's availability would have little impact on LMP prices. Second, Xcel assumes that Prairie Island's availability would meaningfully impact the output of Xcel's other generation facilities.[51] But these claims are internally inconsistent. Because generators are selected to run based on price signals, if LMPs do not change meaningfully, then the output of Xcel's other generators would also be largely unchanged. And as a result, Xcel's other generators would be unlikely to change production in response to unchanged pricing signals.[52] Because Prairie Island's availability would have little impact on LMP prices, it would not meaningfully impact the output of Xcel's other facilities.[53]

Xcel attempts to justify these contradictory assumptions by claiming that transmission congestion would force its other generation facilities to increase output. Xcel claims that transmission congestion would prevent Xcel from importing low-cost energy from elsewhere in MISO to replace Prairie Island.[54] As a result, even though it would be uneconomic, Xcel would be

[50] Ex. DOC-3 at 19 (Rakow Surrebuttal) (eDocket no. 20259-223100-03).
[51] Ex. XCEL-9 at 5, 10 (Detmer Rebuttal) (eDocket no. 20258-222042-04).
[52] Ex. DOC-3 at 5-6 (Rakow Surrebuttal).
[53] *Id.*
[54] Ex. XCEL-9 at 10 (Detmer Rebuttal).

forced to rely on its own higher-cost generation units.[55] Xcel's congestion assumptions, however, lack support. Reviewing actual market data from the outage period, the Department's expert established that Minnesota only experienced the highest LMPs (indicative of congestion) within MISO a fraction of the time. In any given month, Minnesota never accounted for more than half of the highest LMPs.[56] When Minnesota did have the highest LMPs, it was rare for those LMPs to be materially higher than those experienced in other MISO states.[57] In short, market data establishes that Minnesota does not experience materially more periods of congestion than other MISO states. And when Minnesota does experience congestion, it is not as severe as Xcel's PLEXOS model assumes.[58]

Given these flaws, the Department's expert concluded that Xcel's PLEXOS outputs conflict with what is known in the real world.[59] Xcel's model reflects significant congestion, forcing Xcel's generators to do most of the reacting to changes, but Xcel's congestion assumptions are not supported by real-time LMP data.[60]

B. XLI's LMP-Derived Replacement Power Cost Estimate is Reasonable.

Rather than using Xcel's PLEXOS model results, the Commission should use XLI's LMP-derived results as the starting place for calculating the replacement power refund. XLI's model results are more reliable because they are not afflicted with the same modeling flaws.

XLI's replacement power costs estimate is reasonable. The LMP-method assumes the generation output of Xcel's other generators would have been largely unchanged regardless of

[55] *Id.*
[56] DOC-3 at 8 (Rakow Surrebuttal).
[57] *Id.* at 9.
[58] *Id.*
[59] *Id.* at 13.
[60] *Id.*

Prairie Island's availability.[61] Relying on this reasonable assumption, replacement power costs can be determined by calculating the net revenue that would have been earned had Prairie Island been operating as usual.[62] In this case, the assumption that generation output of Xcel's other generators would have been largely unchanged is supported by several factors. First, it is undisputed that Prairie Island's availability had little impact on LMPs.[63] Indeed, Prairie Island represented only 0.5% of MISO's 191 gigawatts of installed capacity during the outage period and, as a result, only impacted prices by about $0.01 per megawatt-hour.[64] Second, given that the LMPs should have been largely unchanged, the economic dispatch of Xcel's other power plants should not have changed.[65] Third, given that Xcel's other plants would have run as normal, the only real financial change is Prairie Island's lost sales revenue.[66] And this is precisely what the LMP-method calculates: the market value of Prairie Island's generation minus its saved fuel and operating costs.[67]

C. Xcel's Criticisms Should Not Deter the Commission from Relying Upon XLI's LMP-Method Estimate.

Xcel raises two criticisms of XLI's LMP-derived model results. Xcel asserts that the LMP-method is inappropriate. Xcel claims that Prairie Island's unavailability impacted other generator output, rendering the LMP-method's central assumption inapplicable. But this argument relies on the same flawed congestion claims that render Xcel's PLEXOS modeling unreliable. The utility

[61] *Id.* at 14-15.
[62] *Id.*
[63] Ex. XLI-1 at 7 (Andrews Direct); Ex. XCEL-9 at 5 (Detmer Rebuttal); Ex. DOC-3 at 5 (Rakow Surrebuttal).
[64] Ex. XLI-1 at 8, 10-11 (Andrews Direct)
[65] *Id.* at 11; Ex. DOC-3 at 5-6 (Rakow Surrebuttal)
[66] Ex. XLI-1 at 7-8, 11-12 (Andrews Direct).
[67] *Id.*

also claims that XLI inappropriately relies on analysis from the *Sherco 3 Force Outage* proceeding. But this criticism overstates the limited purpose for which XLI invoked it.

First, Xcel concedes the LMP-method is appropriate where the facility is small relative to the market, like Prairie Island. Xcel, however, asserts that the LMP-method is unreasonable here because XLI compared Prairie Island to the entire MISO market instead of the smaller MISO north region.[68] Compared to the smaller MISO north region, Xcel claims Prairie Island would have impacted the output of other generation facilities.[69] But Xcel's argument relies on its debunked market congestion claims. As discussed above, Minnesota rarely experiences persistent, material market congestion that impedes MISO energy imports.[70] And absent meaningful market congestion, the appropriate basis for comparison is the entire MISO market, not the smaller MISO north region.[71]

Second, Xcel asserts that XLI improperly relies on Xcel's own LMP-method analysis from the *Sherco 3 Forced Outage* proceeding.[72] But this criticism is misplaced. XLI relies on this older analysis for limited purpose: establishing that the lost net revenues typically represent most replacement power costs, consistent with the assumption underpinning the LMP-method. In the *Sherco 3 Forced Outage*, for example, Xcel's analysis showed that lost revenues accounted for 88% of the total replacement cost, while the complex, offsetting impacts from other units were minimal.[73] And this analysis establishes the LMP-method provides a reasonable refund estimate in this case too.

[68] Ex. XCEL-9 at 9-10 (Detmer Rebuttal).
[69] *Id.* at 10.
[70] Ex. DOC-3 at 16 (Rakow Surrebuttal).
[71] *Id.*
[72] Ex. XCEL-9 at 10-11 (Detmer Rebuttal).
[73] Ex. XLI-1 at 13-14 (Andrews Direct).

In sum, Xcel has failed to establish by a preponderance of evidence that its PLEXOS modeling results are reliable. The Department's expert identified serious flaws with Xcel's modeling assumptions. In contrast, XLI relied on a reasonable method to develop an estimate. Xcel's superficial criticisms should not cause the Commission to question the reliability of the LMP-method results.

II. THE COMMISSION SHOULD REJECT XCEL'S "AVOIDED 2029 COSTS" AND "PERFORMANCE ADJUSTMENT" OFFSETS.

The Commission should reject Xcel's "avoided 2029 costs" and "performance adjustment" offsets. The offsets are inconsistent with prior Commission decisions and are speculative. Adopting these offsets also would create a slippery slope. These offsets are inconsistent with the Commission's recent *Sherco 3 Forced Outage* decision that precludes offsets arising from remedial action.[74] There, the Commission explained "Xcel's prudent management of the restoration process—including efforts to mitigate costs—[is] the expectation and does not offset or mitigate Xcel's prior imprudence."[75] Even if permissible, Xcel has not established, and cannot establish, that these offsets are not "too speculative or unsupported to justify."[76] Finally, if the Commission does consider adopting Xcel's offsets, it must also consider the Department's "unspent maintenance expense" offset and the pandora's box that "offsets" will present in future prudence reviews.

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[74] *In re Appl. of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn. ("Sherco 3 Forced Outage")*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36 (Dec. 24, 2024) (eDocket No. 202412-213317-01) (explaining that Xcel may not offset a customer refund based on other benefits that may have accrued from resolving the consequences of imprudent behavior).

[75] *Id.*

[76] *Sherco Forced Outage 3*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36 (Dec. 24, 2024).

A. Xcel's "Avoided 2029 Costs" Offset Must Be Rejected Because It Flows from Remedial Action and Is Speculative.

Xcel's "avoided 2029 costs" offset results from remedying its own imprudent conduct. Xcel has not proved, and cannot prove, otherwise by a preponderance of the evidence. The only way to resolve Xcel's own imprudent actions was to fully replace the control cables. Even assuming Xcel could have remediated its imprudence without full cable replacement, the asserted "avoided 2029 costs" are far "too speculative or unsupported" to justify an offset of the real costs borne by customers.[77]

1. Xcel's "Avoided 2029 Costs" Offset Accrued from Fixing Its Own Imprudent Acts.

Xcel is not entitled to its "avoided 2029 costs" offset. As the Commission explained only eleven months ago, Xcel may not offset a customer refund based on other benefits that may have accrued from resolving the consequences of imprudent behavior.[78] Here, the "avoided 2029 costs" offset undisputedly accrued from replacing the control cables. And replacing the cables was Xcel's only option for fixing the October 2023 outage.

Xcel concluded that the cables could not be repaired and needed to be replaced to remedy the outage.[79] Xcel's retained engineers, moreover, conceded that repairing or using temporary cables would not have been appropriate; leaving full replacement as the only option.[80] In short, Xcel is seeking Commission approval of an offset arising from actions its internal records show and its witnesses concede were necessary to remediate the utility's own imprudence. Because the

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[77] *Id.*
[78] *In re Appl. of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn. ("Sherco 3 Forced Outage")*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36 (Dec. 24, 2024) (eDocket No. 202412-213317-01).
[79] Ex. DOC-6, Attach. C.
[80] Evid. Hrg. Tr. at 96:23-97:8, 97:9-19 (Hiser).

claimed benefit – the avoided outage days in 2029 – accrues from resolving its own imprudent behavior, Xcel may not use it to offset the customer refund.

2. Xcel's "Avoided 2029 Costs" Offset Is "Too Speculative or Unsupported" To Justify.

Beyond the fact that Xcel's "avoided 2029 costs" offset stems from remedial action, Xcel's "avoided 2029 costs" offset is "too speculative or unsupported" to justify.[81] To support its "avoided 2029 costs" offset scenarios, Xcel relies on two expert reports. Neither is reliable. The first report relies on numerous caveats and assumptions that establish Xcel's "avoided 2029 costs" offset is too speculative. The second report is worse. It is conclusory and was prepared by a witness with a checkered professional history.

Xcel's first engineering witness, Hiser, addresses the probability that a future outage or cable replacement would have occurred following the subsequent relicensing ("SLR") process. Hiser claims that replacement of the cables would be inevitable during the SLR operating period, either in a planned shutdown due to identified degradation or following an unplanned outage after a cable failure.[82] Rather than establishing that Xcel's proposed offset would have provided customer benefits absent the cable cut, Hiser's heavily caveated report demonstrates that the offset is too speculative or unsupported to justify.

First, Hiser predicted there would be an up to 20% chance that the cables would be identified for replacement during the SLR operating period. But this prediction relies on numerous assumptions. Hiser assumed that:

- The control cables would have been part of a specific NRC commodity group;[83]

[81] *Sherco 3 Forced Outage*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36.
[82] Ex. XCEL-14 at 1 (Hiser Rebuttal).
[83] *Id.* at 101:1-3 (Hiser).

- The commodity group would be subject to a particular aging management program;[84]
- The particular aging-management program, including the 20 percent sampling requirement, would not change; and[85]
- There are, in fact, no more than 125 cables in that commodity group.[86]

If any of Hiser's assumptions prove wrong in the coming decades, his prediction will necessarily be wrong.

Second, Hiser speculated that absent replacement through the SLR process, cable failure was inevitable. But this claim, too, is conjecture. Hiser conceded what would have happened to the cables involves "speculation."[87] Hiser conceded that he did not have a "crystal ball" or "time machine" that allowed him to predict with engineering certainty what would have happened to the cables absent the October 2023 outage.[88] In fact, contrary to the claim that cable failure was inevitable, Hiser volunteered it is possible for "a cable buried in the ground" to last a thousand years with "no degradation."[89] In short, neither Hiser nor anyone else knows with sufficient certainty what would have happened to Prairie Island's control cables or when a cable failure might have otherwise occurred absent the outage.

Xcel's second engineering witness, Bible, is completely unreliable. Bible addresses the reasonableness of Xcel's three "avoided 2029 costs" scenarios. Bible's report, however, contains

[84] *Id.* at 101:4-7 (Hiser).
[85] *Id.* at 101:8-11 (Hiser).
[86] *Id.* at 101:12-15 (Hiser).
[87] Evid. Hrg. Tr. at 103:13-16 (Hiser).
[88] *Id.* at 103:18-20, 104:2-4 (Hiser).
[89] *Id.* at 95:15-19 (Hiser).

none of the customary components.[90] Bible did not develop the hypothetical scenarios.[91] His report does not identify any facts or data that were relied upon in assessing the reasonableness of Xcel's scenarios.[92] And Bible did not perform any independent calculations to assess the reasonableness of Xcel's scenarios.[93] Instead, Bible baldly asserted that they seemed reasonable based on his "decades of experience" with Florida Power & Light ("FPL").[94]

Bible's actual experience, however, shows that FPL's nuclear fleet performed poorly under his leadership. While Bible served as engineering director for FPL's Turkey Point nuclear plant and as nuclear fleet technical engineering manager for all of FPL's nuclear plants, the plants repeatedly underperformed and violated regulatory requirements:

- In 2006, FPL's Turkey Point nuclear plant experienced an extended outage when a contractor drilled through a pressurized pipe.[95] The Florida Public Service Commission held FPL responsible for the incident, concluding that the utility had failed to demonstrate that it had prudently managed and exercised oversight over its contractors.[96] And Bible acknowledged he "was actually leading the team" involved in the incident.[97]

- The NRC imposed a $232,000 civil penalty on FPL for firing a nuclear contractor who raised safety concerns in 2017.[98] In 2019, the NRC fined FPL an additional $150,000 after determining that FPL employees, including three supervisors, attempted to falsify nuclear maintenance records and then tried to cover up their actions.[99]

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[90] *See* Minn. R. Civ. P. 26.02(b)(2)(A), (B) (requiring the report to contain the facts or data considered by the witness, and a complete statement of the witness's opinions and the basis and reasons for them).
[91] Evid. Hrg. Tr. at 71:20-21, 73:20-74:7, 74:8-14 (Bible).
[92] *Id.* at 73:2-9, 73:20-74:7, 74:8-14 (Bible).
[93] *Id.* at 73:10-21 (Bible).
[94] Ex. XCEL-10, CRB-D-2 at 5-6 (Bible Report).
[95] Ex. DOC-9 at 17 (eDocket no. 202510-223480-07).
[96] *Id.*
[97] Evid. Hrg. Tr. at 76:21-22 (Bible).
[98] Ex. DOC-10 at 3 (eDocket no. 202510-223480-08).
[99] *Id.*

- FPL's Turkey Point and St. Lucie nuclear plants suffered 12 forced outages in 2019, 20 forced outages in 2020, and 22 forced outages in 2021.[100] In comparison, the industry average was 0.45 annual outages per unit between 2018 and 2022.[101]

- Given these deficiencies, an FPL internal review board concluded that, during the period Bible held nuclear leadership positions, the utility's nuclear management was inadequately engaged, allowed standards to erode, failed to model adequate behavior, and failed to deliver acceptable operational results.[102]

Because Bible cites only his experience as the basis of his conclusions, FPL's past performance is particularly relevant to assessing his credibility and fitness to opine on Xcel's decision-making. These events over a fifteen-year period with FPL demonstrate Bible lacks fitness as nuclear engineering expert. The Judge should find that Bible is not a credible witness. And the Commission should place no weight on Bible's conclusory and unsupported assessments of Xcel's "avoided 2029 costs" offset scenarios.

The Commission should not permit Xcel to avoid refunding real expenses incurred by customers arising from the utility's own established imprudence by entertaining speculative alternate history scenarios and unsupported expert testimony.

B. Xcel's "Performance Adjustment" Offset Is Inconsistent with the Prudence Standard and Is Unsupported by the Record.

Xcel claims that the Commission should further reduce the refund that would otherwise be owed to customers by applying a "performance adjustment" that credits Prairie Island's reliability compared to the industry median.[103] From 2018 through 2022, Xcel asserts Prairie Island's capacity factor exceeded the industry median by 51%. As a result, Xcel urges the Commission to

[100] *Id.* at 2.
[101] Ex. XCEL-10, CRB-D-2 at 5-6 (Bible Report); Evid. Hrg. Tr. at 80:16-20 (Bible). During the relevant time period, Turkey Point and St. Lucie were each operating two units. Ex. DOC-10 at 1 (eDocket no. 202510-223480-08).
[102] Ex. DOC-10 at 6.
[103] Ex. XCEL-5 at 21-22 (Detmer Direct).

reduce any refund by 49%.[104] Xcel's proposal misapplies the prudence standard. And even if the offset were permissible under the prudence standard, it is "too speculative or unsupported."[105] Further, even if it were supported, customers are already compensating Xcel for Prairie Island's performance.

1. Xcel May Not "Bank" Prudence to Offset Its Imprudent Conduct.

Xcel may not offset its imprudence by claiming its past performance exceeded the prudence standard. The prudence standard requires that Xcel take "reasonable action . . . in good faith based on knowledge available at the time of the action or decision. Actions taken in good faith are those taken . . . exercising the care that a reasonable person would exercise under the same circumstances at the time the decision was made."[106] It is undisputed that any action that falls within a "range of reasonable is by definition considered prudent."[107] Given that prudence encompasses a range, Xcel conceded that the prudence standard sets a minimum threshold for conduct and anything that exceeds that standard is equally prudent.[108] In short, the prudence standard sets a floor for utility conduct. There is no "excess" prudence to be banked to mitigate future imprudent conduct. And, in similar situations, the Commission has rejected utilities' attempts to bank and redistribute regulatory compliance, explaining that meeting regulatory standards for one action does not grant the utility authority to violate those standards for another action.[109]

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[104] *Id*.
[105] *Sherco 3 Forced Outage*, Docket No. E-002/GR-12-961, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED at 36.
[106] Ex. XCEL-2 at 10 (Krug Direct) (eDocket no. 20255-218509-05); *see also In re Review of the July 2018–December 2019 Annual Automatic Adjustment Reports*, Docket No. E-999/AA-20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED & REQUIRING REFUND at 5 (Feb. 25, 2022) (eDocket no. 20222-183172-01).
[107] Evid. Hrg. Tr. at 47:15-18 (Krug).
[108] *Id.* at 47:19-22 (Krug).
[109] *Cf. In re Peoples Nat. Gas Co.*, Docket No. G-007/GR-00-951, 2001 WL 797465, at *12, ORDER MODIFYING & ACCEPTING SETTLEMENT (May 11, 2001) (rejecting an attempt to offset noncompliance and compliance with an applicable standard in the aggregate).

Xcel's proposal to credit what it claims is superior past performance violates Minnesota's prudence standard. Assuming for argument that Prairie Island's 2018-2022 capacity factor establishes prudent operation,[110] Xcel's operation of Prairie Island during that period is all equally prudent regardless of year-to-year capacity factor fluctuations.[111] And in attempting to "bank" prudence, Xcel's proposal is further inconsistent with the Commission's *Sherco 3 Forced Outage* decision.[112] In that case, Xcel claimed that future prudency should compensate for its imprudent actions.[113] Here, Xcel is functionally seeking the opposite – claiming that alleged past prudency should compensate for its imprudent actions.[114] But applied in either direction, "banking" prudency is improper.[115] Prudence is the expectation, and it should not offset costs to ratepayers resulting from Xcel's imprudent actions.

Other states have rejected prudence "banking." Applying a similar standard, the Texas commission rejected a utility's attempt to offset imprudently incurred costs with savings achieved by superior performance elsewhere. That commission explained that "any activity that exceeded [the] standard would fit within it. The prudence standard contains a floor but not a ceiling."[116] Noting the perverse incentives the arrangement would create, the New Hampshire commission commented that "such a mechanism . . . would send distorted economic signals by negating any

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[110] Xcel asserts that Prairie Island's capacity factor relative to the industry demonstrates its 2018 to 2022 conduct was prudent. Ex. XCEL-5 at 21 (Detmer Direct). The Department takes no position on whether Xcel's operation of Prairie Island was generally prudent during that period. The Commission did not refer that issue for contested case proceeding. The Department reserves the right to challenge whether Xcel prudently operated Prairie Island in other instances at the appropriate time.
[111] Ex. DOC-2, ARG-S-1 at 1 (Golden Surrebuttal) (eDocket no. 20259-223100-01).
[112] Ex. DOC-2 at 8 (Golden Surrebuttal).
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] *In re Appl. of El Paso Elec. Co. for Auth. to Change Rates*, Docket No. 9945, 1991 WL 426626, Final Order (Tex. P.U.C. Nov. 12, 1991).

financial disallowance imposed upon a utility whose actions are found imprudent."[117] Put differently, once a utility achieves the prudence standard, its conduct is simply prudent. It cannot claim excess prudence to offset deficiencies elsewhere.

2. Xcel's "Performance Adjustment" is Unsupported and Relies on a Cherry-Picked Data Set.

Even if Xcel could bank prudence, it has not established that its proposed performance adjustment offset is justifiable. Xcel has failed to establish that Prairie Island's prior operations were "excessively" prudent between 2018 and 2022. Instead, Xcel posits that Prairie Island's performance during this five-year period was strong.[118] But Xcel has not offered testimony explaining how that performance arises from "actions taken in good faith" or resulted from "exercising the care that a reasonable person would exercise under the same circumstances."[119] Assuming that Prairie Island's performance was strong does not answer whether that performance was excessively prudent above and beyond what would be expected of any utility operating a nuclear generating plant. A utility that enjoys good luck for a few years is not the same as a prudent one.

A broader look at Xcel's performance, in fact, suggests that Prairie Island's performance between 2018 and 2022 was providential as opposed to prudent. To support its claim that Prairie Island's performance was superior, Xcel states that Prairie Island's capacity factor was 2.18% higher than the industry average from 2018 to 2022.[120] But in the preceding five-year period,

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[117] *In re Pub. Serv. Co. of New Hampshire*, DR 96-077, 1996 WL 1068496, at *2, Order No. 22,399 (N.H. P.U.C. Nov. 5, 1996).
[118] Ex. XCEL-2 at 12 (Krug Direct) (eDocket no. 20255-218509-05).
[119] Ex. XCEL-2 at 10 (Krug Direct); *see also In re Review of the July 2018–December 2019 Annual Automatic Adjustment Reports*, Docket No. E-999/AA20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED & REQUIRING REFUND at 5 (Feb. 25, 2022) (eDocket no. 20222-183172-01).
[120] Ex. DOC-2 at 5 (Golden Surrebuttal).

Prairie Island's capacity factor lagged the industry average by more than three times that amount.[121] And since 2005, as shown in the table below, Prairie Island's performance has underperformed the industry average by nearly 5%.[122]

Years	Prairie Island	Industry-Wide	Difference
2018-2022	94.94%	92.76%	2.18%
2013-2017	84.56%	91.88%	-7.32%
2008-2012	85.08%	89.64%	-4.56%
2005-2022	88.35%	91.23%	-2.88%
2005-2024	86.39%	91.37%	-4.98%

Even if it were appropriate to consider Xcel's performance since 2018, ratepayers are already compensating Xcel for it. Commission filings establish recent capital improvements are driving Prairie Island's enhanced performance.[123] And ratepayers already compensate Xcel, including its investors, for making these improvements through higher rates.[124] Xcel's "performance adjustment" would functionally allow the utility to charge customers for capital improvements a second time.

The Commission should reject Xcel's attempt to shortchange customers using a "performance adjustment." It is inconsistent with the prudence standard and recent *Sherco 3 Forced Outage* decision. And it relies on an arbitrary timeframe selected to cherry-pick data favorable to the utility and would double-charge customers for the same performance.

[121] *Id.*
[122] *Id.*
[123] Ex. DOC-1 at 17 (Golden Direct) (eDocket No. 20257-220600-02).
[124] Minn. Stat. § 216B.16, subd. 6 (requiring the Commission to give "due consideration" to the cost of the property when first devoted to public use in setting rates).

C. If the Commission Considers Xcel's Offsets, It Should Apply An "Underspent Maintenance Expense" Offset Too.

If the Commission considers Xcel's offsets, it should inflate the proposed refund by $51.8 million to reflect Xcel's underspent nuclear generation maintenance expense between 2018 and 2022. The Commission also should be prepared to endure increasingly creative offset proposals from utilities and intervenors alike in future cases.

If the Commission considers Xcel's offsets, it should inflate the replacement power refund by $51.8 million to reflect Xcel's underspent nuclear generation maintenance expense between 2018 and 2022.[125] This offset is justified by Xcel's established failure to adequately oversee its workers, use ground-penetrating radar to locate cables, provide up-to-date work plans and construction drawings, and provide maps fully depicting all other underground cables near the excavation path.[126] In short, Xcel imprudently attempted to cut corners in the maintenance of Prairie Island to save time and money. Utilities, including Xcel, have incentives to minimize maintenance expenses because operations and maintenance budgets are set in rate cases and collected from customers regardless of the utility's actual spending.[127] Ratepayers also pay replacement power costs through a pass through fuel forecast and true-up process unless the utility is shown to be imprudent in a proceeding such as this one.[128] Xcel's choice to pocket tens of millions of maintenance expense dollars rather than using it to maintain its nuclear plants should be reflected in the replacement power refund.

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[125] Ex. DOC-2, ARG-S-2 at 1 (Golden Surrebuttal).
[126] Referral Order at 3.
[127] *In re Review of the July 2018–December 2019 Annual Automatic Adjustment Reports ("Boswell 4 Forced Outage")*, Docket No. E999/AA-20-171, FINDINGS OF FACT, CONCLUSIONS OF LAW, & RECOMMENDATION ¶¶ 48-50 (eDocket no. 20218-177011-01).
[128] *Id.*

The Commission cannot reasonably consider Xcel's proposed offsets without also addressing an "underspent maintenance expense" offset. An "underspent maintenance expense" offset is the intellectual equivalent of Xcel's proposals in this case. It relates to Xcel's operations of Prairie Island like the utility's "performance adjustment" offset, but it is more definite and better supported than the speculative "avoided 2029 costs" offset. Generation maintenance annual budgets and expenditures are undisputed and reflected in routine filings submitted by the utility.[129]

Above all else, this exercise should highlight the folly of considering offsets. Entertaining offset arguments here opens the door to increasingly "creative" proposals in the future. Offset arguments distract from a prudence review proceeding's primary purpose: making customers whole and incentivizing utilities to engage in responsible decision-making. The Commission's best route is to reject offsets in this case and not start down a slippery slope.[130]

III. THE COMMISSION SHOULD REQUIRE XCEL TO TRACK EXPENSES ARISING FROM THIS MATTER AND REMOVE THEM FROM ALL FUTURE RATE REQUESTS.

Beyond refunding at least $40.1 million plus interest, Xcel should not be permitted to recover its litigation expenses from this matter in rates paid by Minnesota customers. This outcome is both consistent with the traditional presumption that parties pay their own litigation expenses and cost-of-service ratemaking principles. The Commission should exercise its quasi-legislative authority to ensure that these costs are excluded from all applicable rate case test year filings and cost recovery petitions. The Commission has already determined that Xcel's actions were imprudent; customers should not have to fund Xcel's efforts to deny or delay them the associated refund.

[129] Ex. DOC-2, ARG-S-2 at 1 (Golden Surrebuttal).
[130] Although the Commission could reject it as a matter of utility ratemaking policy, the Department does not object to consideration of the supplemental pulled forward work offset.

Denying Xcel cost recovery of its litigation expense is consistent with the "American rule." This rule creates a presumption that parties pay their own litigation costs. Minnesota follows the American rule and bars parties from shifting attorney fees to an adversary unless there is specific statutory or contractual authorization.[131] This rule has been applied throughout the United States for centuries.[132] It recognizes that parties should not be penalized for merely defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel.[133]

Beyond being consistent with the American rule, denying Xcel cost recovery of its litigation expenses is consistent with "cost-of-service" ratemaking. Utilities are only permitted to recover from customers the costs of furnishing service.[134] The costs of furnishing utility service typically include labor, materials and supplies, taxes, insurance, and depreciation.[135] But even when a utility establishes it has incurred an expense, it does not necessarily make that cost a "cost of service."[136] The Commission must first determine, in its quasi-legislative authority, that it "is just and reasonable that the ratepayers bear the costs of those expenses."[137] Allowing Xcel an opportunity to justify why customers should pay costs that Xcel imprudently incurred is not a cost of providing utility service. Xcel's litigation expenses in this matter have no bearing on its core

[131] *Buckner v. Robichaud*, 992 N.W.2d 686, 689 (Minn. 2023).
[132] Robert L. Rossi, *General Rule of No Recovery*, Attorneys' Fees § 6:1 (3d ed.) (May 2025).
[133] *Id.*
[134] Minn. Stat. § 216B.16, subd. 6; *Minnegasco. v. Minn. Pub. Utils. Comm'n*, 549 N.W.2d 904, 909 (Minn. 1996).
[135] *Id.*
[136] *In re Pet. of N. States Power Co. for Auth. to Change its Sch. of Rates for Elec. Serv. in Minn.*, 416 N.W.2d 719, 722-723 (Minn. 1987); *see also In re Xcel Energy's Appl. for Auth. to Increase Elec. Serv. Rates in Minn.*, Docket No. E-002/GR-21-630, Findings of Fact, Conclusions, & Order at 4 (July 17, 2023) (eDocket no. 20237-197559-01).
[137] *Id.*

obligations to provide "adequate, efficient, and reasonable service"[138] nor would it be "just and reasonable" for customers to bear these expenses.[139]

Although the Commission permits recovery of other litigation costs from customers, such as those incurred in rate case proceedings, it should not allow costs in this circumstance as it will encourage utilities to litigate every refund, whether warranted or not. There is no constitutional requirement that states permit utilities to recover regulatory expenses for customers. In fact, some states deny recovery entirely or in part.[140] And rate cases and permitting proceedings are distinguishable. Those proceedings are often necessary to ensure that utility has sufficient resources to provide service or to permit the utility to construct facilities needed to serve customers.[141] That logic is not present here. Xcel is not seeking approval of an action needed to ensure continued service. Instead, Xcel is seeking to deprive or delay a refund arising from its own established imprudence. That is not a component utility service. There is no "just or reasonable" reason that customers should pay for Xcel's defense.

In sum, there is no legal or policy reason to require customers to fund Xcel's continued litigation here. Neither traditional litigation rules nor utility ratemaking principles warrant it. And it only rewards Xcel's efforts to delay and deny a refund.

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[138] Minn. Stat. § 216B.16, subd. 6.
[139] *In re Pet. of N. States Power Co.*, 416 N.W.2d at 722-23.
[140] *See, e.g.*, Conn. Gen. Stat. § 16-243p(b) ("[N]o electric distribution company . . . shall recover through rates its direct or indirect costs associated with . . . [any] rate proceeding."); Colo. Rev. Stat. § 40-3-102.5 (requiring the Colorado commission to establish rules limiting rate case expense recovery); *In re Jersey Central Power and Light Co.*, BPU Docket No. 841-55, 1985 WL 1213309, Order § II(H) (N.J. B.P.U. Feb. 11, 1985) (noting that "[t]he 50 /50 sharing of rate case expense remains accepted board policy.").
[141] *See, e.g.,* Minn. Stat. §§ 216B.16 (rate proceedings), .243 (certificates of need), 216I.06-.08 (energy facility permitting).

CONCLUSION

The Commission should not offset the real and significant expenses borne by customers based on speculative counterfactual scenarios and arbitrary performance adjustments that run contrary to recent Commission decisions. Allowing Xcel to offset a customer refund with benefits arising from its own imprudence is like "claiming that a homeowner actually benefits from their home burning down because insurance pays for a new kitchen floor."[142] In short, it is senseless. The Commission should hold Xcel accountable for its imprudence and make its captive customers whole without further delay.

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[142] *Sherco 3 Forced Outage*, Docket No. E-002/GR-12-961, CAH File No. 65-2500-38476, ALJ FINDINGS OF FACT, CONCLUSIONS OF LAW, & RECOMMENDATION at 82 (May 14, 2024) (eDocket No. 20245-206869-10).