

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

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

Docket No. E002/GR-21-630

Reply Comments of the Citizens Utility Board of Minnesota

The Citizens Utility Board of Minnesota respectfully submits these reply comments in response to the Minnesota Public Utilities Commission's (the "Commission") Notice of Comment issued in the above-referenced docket on July 30, 2025.

I. Introduction

On October 25, 2021, Northern States Power Company d/b/a Xcel Energy ("Xcel" or the "Company") filed a multi-year rate plan seeking to raise gross revenues by approximately \$677 million between 2022 and 2024.¹ As part of its application, Xcel sought to recover from Minnesota ratepayers \$22.5 million in compensation paid to the Company's top ten executives.²

In rejecting Xcel's request, the Commission determined the Company had not met its burden to show full recovery of such compensation would produce just and reasonable rates. Instead, the Commission set an annual recovery threshold for each executive based on the salary of Minnesota's governor. This annual cap of \$150,000, or \$1.5 million across the top ten executives, effectively disallowed recovery of \$18 million over the course of the MYRP.³ To be clear, the Commission's order did not prevent Xcel from continuing to pay its top ten executives the same salaries; it just limited the amount of those salaries that are recoverable from Minnesota ratepayers.⁴

Xcel appealed the Commission's decision to cap recovery of executive compensation.⁵ Ultimately, the Court of Appeals affirmed that the Commission acted properly in determining that Xcel had not met its burden to justify full recovery of the compensation paid to its executives; however, the Court overturned the Commission's use of the governor's salary as providing the benchmark at which to set

¹ *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E002/GR-21-630, Vol. 1 Notice of Change in Rates and Interim Rate Petition at 1-2 (Oct. 25, 2021).

² See *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Findings of Fact, Conclusions, and Order at 20 (Jul. 17, 2023) (hereinafter "Findings of Fact, Conclusions, and Order").

³ *Id.* at 23.

⁴ *Id.*

⁵ See *In re N. States Power Co.*, No. A-23-1672, slip op. at 6 (Minn. App. Jan. 21, 2025) (hereinafter "Court of Appeals Decision").

a recovery cap.⁶ The Court determined the Commission failed to adequately describe its reasons for establishing that cap and that, on that narrow issue, the Commission acted arbitrarily and capriciously.⁷

II. Analysis

A. Xcel Bears the Burden of Establishing the Reasonableness of the Compensation Paid to Its Top-Ten Highest Paid Executives and Justifying Ratepayer Recovery of Those Expenses.

In its Findings of Fact, Conclusion, and Order, the Commission described Xcel's burden of proof in this rate case. We repeat the Commission's explanation, with its original citations below.⁸

Under the Public Utilities Act, utilities seeking a rate increase have the burden of proof to show that the proposed rate change is just and reasonable.⁹ Any doubt as to reasonableness is to be resolved in favor of the consumer.¹⁰ On purely factual issues, the Commission acts in its quasi-judicial capacity and weighs evidence in the same manner as a district court in a civil case, requiring that facts be proved by a preponderance of the evidence. On issues involving policy judgments, the Commission acts in its quasi-legislative capacity, balancing competing interests and policy goals to arrive at the resolution most consistent with the broad public interest.

Utilities seeking rate changes must therefore prove not only that the facts they present are accurate, but that the costs they seek to recover are rate-recoverable, that the rate recovery mechanisms they propose are permissible, and that the rate design they advocate is equitable, under the "just and reasonable" standard set by statute. As the Supreme Court has explained:

A utility seeking to change its rates has the burden of proving by a preponderance of the evidence that its proposed rate change is just and reasonable. "Preponderance of the evidence" is defined for ratemaking proceedings as "whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission's statutory responsibility to enforce the state's public policy that retail consumers of utility services shall be furnished such services at reasonable rates."¹¹

The burden of proof described above applies to all costs and expenses Xcel seeks to recover through rates, including employee expenses. Minn. Stat. § 216B.16, Subd. 17(5) expressly requires utilities to provide in any rate case application those "expenses for the ten highest paid officers and employees, including and separately itemizing all compensation and expense reimbursements[.]" As we noted in

⁶ *Id.* at 24-26.

⁷ *Id.* at 26-27.

⁸ Findings of Fact, Conclusions, and Order at 5-6.

⁹ Minn. Stat. § 216B.16, subd. 4.

¹⁰ Minn. Stat. § 216B.03.

¹¹ *In the Matter of the Petition of Minnesota Power & Light Company, d.b.a. Minnesota Power, for Authority to Change its Schedule of Rates for Electric Utility Service Within the State of Minnesota*, 435 N.W.2d 550, 554 (Minn. App. 1989) (internal citation omitted).

our initial comments, Xcel did not provide this information to the Commission or stakeholders until the second day of the Commission’s hearing on the matter, after Commission staff identified the omission.¹² The Company confirmed that the missing information “had been inadvertently omitted during the upload of the Initial Filing on October 25, 2021.”¹³ Specifically, the Company omitted EER Schedules 3 through 12 from its initial Filing on October 25, 2021.¹⁴

In its initial comments, the Company identified areas in its rate case filings that referred to the omitted EER Schedules 3 through 12.¹⁵ The Company further observed that, despite these references, it “received no information requests or other inquiries regarding these Schedules from parties or anyone else.”¹⁶ To be clear, other parties’ purported failure to request information Xcel was statutorily required to provide does not excuse Xcel from that requirement. Suggesting otherwise improperly shifts the burden of proof from Xcel to other parties.

B. Xcel has Failed to Meet its Burden to Show that Recovery of Top-Ten Executive Compensation is Just and Reasonable.

1. The Court of Appeals Affirmed the Commission’s Decision to Deny Xcel’s Proposed Expense Amount.

Xcel argues the Commission previously determined the “Company met its burden to recover a portion of its executive compensation, a finding that was not challenged at the Court of Appeals or disturbed by the Court’s decision.”¹⁷ The Company further describes the Court of Appeals’ Opinion as “revers[ing] the Commission decision to limit rate recoverability of compensation for its ten highest paid executives to a total of \$1.5 million, based on the Commission-created comparison to the Governor’s salary.”¹⁸ These descriptions confound the record and mischaracterize the decisions rendered by the Commission and the Court.

In no way did the Commission hold that Xcel met its burden to prove that partial recovery of top-ten executive compensation was warranted. On the contrary, the Commission consistently stated that Xcel did “not demonstrate[] that full recovery . . . would result in just and reasonable rates.”¹⁹ It is this finding—that Xcel *failed* to meet its burden—that led the Commission to establish an alternative level of recovery in accordance with statutory and legal directives. Minnesota law explicitly provides that if the “commission finds the rates to be unjust or unreasonable . . . [it] shall determine the rates to be charged or applied.”²⁰ The Minnesota Supreme Court has likewise held that if a “petitioning utility has failed to establish the reasonableness of costs . . . the Commission itself may compute” a hypothetical

¹² See *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, CUB Initial Comments at 1-2 (Aug. 25, 2025) (hereinafter “CUB Initial Comments”); Xcel Errata Filing (May 24, 2023) (hereinafter “Executive Pay Errata”).

¹³ See *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Xcel Initial Comments at 6, citing Executive Pay Errata (hereinafter “Xcel Initial Comments”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 21.

¹⁸ *Id.* at 14.

¹⁹ Findings of Fact, Conclusions, and Order at 22-23.

²⁰ Minn. Stat. § 216B.16, Subd. 5.

structure that balances competing interests to arrive at a just rate.²¹ The decision to allow partial recovery of top-ten executive compensation was arrived at through an exercise of this authority, and not as a result of the Company supposedly meeting its burden as to that portion of the expense sought.

The Court of Appeals agreed that denial of Xcel's requested executive compensation expense generally "accorded with the Commission's statutory mandate and was not contrary to law."²² In other words, the Court did *not* find that the Commission acted arbitrarily or capriciously by imposing limitations on rate recovery of Xcel's executive compensation. Rather, the Court more narrowly concluded that the Commission did not adequately explain why the Minnesota Governors' salary is an appropriate proxy for limiting Xcel's executive compensation recovery.²³ As further discussed below, the Commission retains substantial authority on remand to balance the interests of ratepayers and the utility for the purpose of establishing just and reasonable rates.

2. The Commission is Entitled to Depart from Past Practice.

Despite failing to timely provide vital—and statutorily required—information on the compensation paid to its top-ten utility executives, Xcel suggests that the record in this case is "substantially similar" to the record in prior rate cases.²⁴ Based on this apparent similarity, the Company recommends the Commission conform to past practice and allow full recovery of the portion of executive compensation now at issue.²⁵ CUB disagrees. Major differences exist between the instant proceeding and past rate cases, but even if such deviation were not present, the Commission is entitled to depart from prior norms upon "setting forth a reasoned analysis for the change."²⁶ As further discussed below, the Commission has a strong basis to change course and disallow rate recovery of top-ten executive compensation.

i. A Meaningful Distinction Exists Between this Case and Prior Utility Rate Cases.

In addition to the Company failing to meet its burden, there are economic and social considerations that set the instant proceeding apart from past rate cases considered by the Commission. In particular, Xcel filed its application to increase rates in October 2021, mere months after the COVID-19 peacetime emergency was lifted in Minnesota and while the Company was still transitioning back to normal operational practices.²⁷ As the Commission recognized in its Order Setting Interim Rates, the pandemic impacted Minnesotans' ability to participate in the labor force, eroded households' purchasing power, and introduced numerous challenges related to the affordability of housing and

²¹ *Petition of Northern States Power Co.*, 416 N.W.2d 719, 726 (Minn. 1987) (external citations omitted).

²² Court of Appeals Decision at 24.

²³ *Id.* at 26.

²⁴ Xcel Initial Comments at 18.

²⁵ *Id.* at 18-19.

²⁶ *Id.* at 18 (quoting *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))).

²⁷ See Minn. Leg., 2021 1st Special Session, Session Laws, Ch. 12, Art. 2, Sec. 23; see also *In the Matter of an Inquiry into Actions by Electric and Natural Gas Utilities in Light of the COVID-19 Peacetime Emergency*, Docket No. E,G-999/CI-20-375, Order Adopting Broad Transition Plan Proposal, Suspending Negative Reporting, and Establishing Notice and Communication Requirements at 9-10 (extending certain ratepayer protections through April 30, 2022 as a condition of utilities' transition back to normal practices).

energy services.²⁸ Even Xcel acknowledged that its “customers and communities continue[d] to feel the impact of the COVID-19 pandemic and that a rate increase [could] be challenging at [that] time.”²⁹ Under these conditions, the Commission found that exigent circumstances justified lowering interim rates to “provide needed, immediate relief” to residential customers.³⁰ When faced with such a major economic downturn, it is only logical that the Commission would apply an increased level of scrutiny to the compensation paid to the Company’s top-ten executives.

The Commission also detailed several additional factors that warranted a “closer examination” of “costs related to [the] utility’s highest-paid executives.”³¹ Despite the devastating impacts of the COVID-19 pandemic on customers’ livelihoods and ability to pay, the Commission noted Xcel’s “final request [was] still one of the largest rate-increase proposals . . . ever considered.”³² Further, the Commission explained that over the past decade, the Company’s efforts to increase rates have resulted in a compounding effect, with “ratepayers . . . paying hundreds of millions in increased rates compared to 10 years ago.”³³ Lastly, numerous public comments called attention to the issue of executive compensation, and questioned the reasonableness of permitting ratepayer recovery of those costs in light of the financial difficulties faced by Minnesotans.³⁴

Xcel’s claim that the record in this case is “substantially similar to prior cases”³⁵ discounts the Company’s failure to meet the burden of proof, the severity and magnitude of pandemic impacts, the scale of the utility’s rate request, and the importance of public comments calling attention to the financial dichotomy between Xcel’s top-ten executives and the ratepayers it serves.

ii. *The Commission is Not Bound by Prior Decisions.*

Even if the instant case were not substantially different from prior proceedings, the Commission is not required to blindly follow its past decisions. As recognized by Xcel, the Supreme Court of Minnesota has held that “[w]hen an agency seeks to deviate from its prior decisions, the agency is charged with setting forth a reasoned analysis for the change.”³⁶ In reaching that conclusion, the Court found persuasive the rulings of the Eleventh Circuit in *McHenry* and the United States Supreme Court in *Atchinson*, both of which provide additional context for the issue now before the Commission.

In *McHenry v. Bond*, the Eleventh Circuit articulated a concise version of the standard ultimately applied in Minnesota. The Court explained that “[a]n administrative agency concerned with furtherance of the public interest is not bound to rigid adherence to precedent.”³⁷ Rather, the agency must “explain its departure from precedent, and adequately explain the rationale of its decision,” both of which are

²⁸ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Order Setting Interim Rates at 6-7 (Dec. 23, 2021) (hereinafter “Order Setting Interim Rates”).

²⁹ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Notice and Petition for Interim Rates at 9 (Oct. 25, 2021).

³⁰ Order Setting Interim Rates at 7-8.

³¹ Findings of Fact, Conclusions, and Order at 21.

³² *Id.*

³³ *Id.* (external citations omitted).

³⁴ *See, e.g., id.* at 22.

³⁵ Xcel Initial Comments at 18.

³⁶ *Id.* (quoting *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009)).

³⁷ *McHenry v. Bond*, 668 F.2d 1185, 1192 (11th Cir. 1982).

prerequisites to a finding that the agency's action is not arbitrary and capricious.³⁸ In announcing this standard, the 11th Circuit relied on the Supreme Court's ruling in *Atchinson*, which was further detailed by the Supreme Court of Minnesota:

In 1973, the United States Supreme Court held that an agency had a "duty to explain its departure from prior norms." This conclusion was derived from the Court's opinion that "[a] settled course of behavior embodies the agency's informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. The Court proceeded to explain that an agency may "flatly repudiate" prior norms based on changed circumstances. Or the agency may "narrow the zone" in which the rule is applied because "a more discriminating invocation of the rule will best serve congressional policy." The Court said that an agency may also find that "although the rule in general serves useful purposes, peculiarities of the case before it suggest that the rule not be applied in that case."³⁹

The Supreme Court of Minnesota likewise cited as persuasive the explanation that it "is enough to satisfy the requirements of judicial oversight of administrative action if the agency asserts distinctions that, when fairly and sympathetically read in the context of the entire opinion of the agency, reveal policies it is pursuing."⁴⁰

Against this background, it is clear the Commission has broad authority to depart from past practice so long as a well-reasoned explanation and rationale is provided for why it changed course. While its previous actions may carry a presumption of validity, that does not prevent the Commission from reevaluating the facts presented, nor does it forbid an outcome that is materially different from past practice. As detailed above, there were changed circumstances in this rate case that justify "flat repudiation" of prior norms. But even in the absence of those differences, the Commission can invoke a "more discriminating" weighing of ratepayer and utility interests to best serve the legislative priority of setting just and reasonable rates. As Xcel itself has acknowledged, ratemaking is a "balancing act" that necessitates careful consideration of ratepayer and utility interests.⁴¹ If the Commission reasonably determines that full or partial recovery of top-ten executive compensation would tip the scales in the utility's favor, then it is warranted and necessary to balance those interests by disallowing all or part of the requested expense. That such an outcome is different from what was previously permitted is not grounds for maintaining the status quo. The Commission simply must describe the reason for departure and adequately explain its rationale.

C. The Commission Should Fully Deny Recovery of Top-Ten Executive Compensation Expenses.

1. Denying Rate Recovery is Consistent with the Court of Appeals Order to Consider the Impact on the Utility of Disallowing Compensation Expenses.

In initial comments, CUB, the Minnesota Department of Commerce ("Department"), and the Office of the Attorney General – Residential Utilities Division ("OAG") all recommended that the Commission

³⁸ *Id.* at 1192-93.

³⁹ *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 119 (Minn. 2009) (quoting *Atchinson, Topeka Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973)) (internal citations omitted).

⁴⁰ *Id.* at 120.

⁴¹ Xcel Initial Comments at 22.

deny ratepayer recovery of top-ten executive compensation in its entirety.⁴² In anticipation of those arguments, Xcel argued that “denying recovery of [those] costs . . . [would] fail to align with either the Commission’s statutory requirements or the Court of Appeals’ direction in this matter.”⁴³ Unsurprisingly, CUB views the record in a different light than the Company, and finds full disallowance would directly accord both with the Commission’s statutory directives and the Court of Appeals’ ruling.

- i. *The Court of Appeals’ holding affords the Commission an opportunity to reconsider how recovery of top-ten executive compensation expenses would impact both ratepayers and the utility and determine an appropriate balance between those interests.*

When the Company appealed this issue, it undoubtedly sought to recover a higher percentage of top-ten executive compensation expenses from ratepayers than originally allowed by the Commission. However, the Court of Appeals’ ruling does not endorse such an outcome. The Court did not strike down the Commission’s decision because the \$150,000 threshold was, itself, improper. Rather, the Court determined the Commission did not provide an adequate explanation for “*why* the governor’s salary was the appropriate measure to meet the needs of the ratepayer *and* the utility.”⁴⁴ In other words, the Court did not suggest that \$150,000 in ratepayer recovery was inadequate, nor did it suggest imposing a lower threshold would be unreasonable. It simply directed the Commission to explain its decision.⁴⁵

Xcel argues that we and others suggest the Commission has “essentially no choice here but to deny any recovery.”⁴⁶ This overstates our position. In CUB’s view, the Court’s decision requires the Commission to view the record in its entirety, weigh competing interests, identify an appropriate level of ratepayer recovery, and explain why that threshold is just, reasonable, and consistent with the public interest. CUB recognizes that the Commission retains substantial authority and discretion within this remand framework to balance competing interests and arrive at a reasoned, well-explained conclusion that either accords with, or differs from, its original ruling. Our recommendation to deny recovery is the result of CUB’s analysis of the record and its informed perspective on how to reasonably weigh ratepayer and utility interests. However, we recognize and respect that the Commission has other choices available to it. Those choices include capping recovery at a certain level, with additional explanation as to why and how the Commission arrived at that threshold.

- ii. *The Company has failed to show that ratepayer recovery of top-ten executive compensation is necessary for the provision of adequate, efficient, and reasonable electric service in Minnesota.*

The Company argues the Commission “can[not] simply ignore undisputed evidence regarding the necessary costs of service in the course of determining just and reasonable rates.”⁴⁷ That is not what

⁴² CUB Initial Comments at 5, 9; *see also In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Minnesota Department of Commerce Initial Comments at 3, 5 (Aug. 25, 2025) (hereinafter “Department Initial Comments”); OAG Initial Comments at 1, 4-6, 8 (Aug. 25, 2025) (hereinafter “OAG Initial Comments”).

⁴³ Xcel Initial Comments at 25.

⁴⁴ Court of Appeals Decision at 26.

⁴⁵ *Id.* at 27.

⁴⁶ Xcel Initial Comments at 23.

⁴⁷ *Id.* at 24 (citing *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987)).

is happening here. No party is disputing that Xcel paid its top-ten executives. Instead, we question whether those expenses are actually “necessary costs of service” that ratepayers should bear.

Xcel makes broad statements that its high-level executives “drive the Company’s direction, strategy, and innovation” in a way that impacts customers but relies on a total of two sentences in thousands of pages of testimony to make that claim.⁴⁸ No testimonial evidence was cited to draw a direct relationship between those executives’ roles and the provision of adequate, efficient, and reasonable electric service in Minnesota. The Company has made abundantly clear in other testimony that Northern States Power (“NSP”) is an operating subsidiary of Xcel Energy Inc. (“XEI”) that must be treated as a “standalone” entity for regulatory purposes.⁴⁹ Indeed, Witness D’Ascendis suggests that, from the parent company’s perspective, each of its subsidiaries is pitted against each other to compete for capital.⁵⁰ While Witness Kihm refutes this assumption—as such action calls into question the integrity of utility executives⁵¹—the underlying premise remains true: NSP is not XEI, and XEI’s executives do not have as their sole focus the provision of safe and reliable electricity service in Minnesota.

As further detailed below, the attention of the Company’s top-ten executives is not only split across jurisdictions, but between ratepayers and shareholders. Witness Kihm describes the job of an executive in part as “mak[ing] their existing shareholders wealthier,” which adversely affects customers by increasing costs and making rates less affordable.⁵² Against this background, the United States Supreme Court’s ruling in *FPC v. Natural Gas Pipeline Co.* holds significant weight:

The requirements of “just and reasonable” embrace among other factors two phases of the public interest: (1) the investor interest; (2) the consumer interest. The investor interest is adequately served if the utility is allowed the *opportunity* to earn the cost of service. . . . One caveat, however, should be entered. The consumer interest cannot be disregarded in determining what is a “just and reasonable” rate. Conceivably, a return to the company of the cost of the service might not be “just and reasonable” to the public. . . . The investor and consumer interests may so collide as to warrant the ratemaking body in concluding that a return on historical cost or prudent investment though fair to investors would be grossly unfair to consumers.⁵³

Xcel appears to acknowledge that Minnesota Statutes do not grant automatic recovery of the cost of service, but instead “afford[] [the Company] the *opportunity* to meet its financial and economic requirements.”⁵⁴ The utility must still meet its burden to show that any costs incurred are

⁴⁸ *Id.* at 21 (citing Ex. Xcel-53 at 44 (Lowenthal Direct) (stating “[t]he employees who typically receive LTI tend to have a higher level of influence on the Company’s direction, strategy, and innovation. The leadership and decisions made by the employees who receive LTI, and the direction and policies that they put in place, have greater potential to have a significant impact on customers”).

⁴⁹ Ex. Xcel 18 at 8, 15 (D’Ascendis Direct).

⁵⁰ *Id.* at 9.

⁵¹ Ex. CUB-2 at 37-38 (Kihm Direct).

⁵² *Id.* at 43-44.

⁵³ *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 606-08 (1942) (emphasis added).

⁵⁴ Xcel Initial Comments at 22 (emphasis added).

appropriately borne by ratepayers.⁵⁵ The Commission determined this burden was unmet, and the Court of Appeals upheld that decision.⁵⁶

The Company has not demonstrated that its top-ten executive costs are necessary for the provision of adequate, efficient, and reasonable electric service in Minnesota, and the Commission should therefore deny recovery based on the record before it.

2. Full Disallowance of Top-Ten Executive Compensation Expenses Will Not Have a Negative Impact on the Company's Ability to Attract and Retain Qualified Personnel.

The Commission is tasked with considering the impacts on both the ratepayer and the utility when setting a recovery threshold for top-ten executive compensation.⁵⁷ As discussed extensively throughout these reply comments, the Company has failed to meet its burden to show that these expenses are reasonably borne by ratepayers. Nonetheless, the Commission must consider how the utility might be impacted if ratepayer recovery is disallowed. CUB does not believe Xcel will be materially disadvantaged if it is not permitted to recover these costs from customers.

The evidence presented in the record establishes a close relationship between top-ten executive leadership and the Company's shareholders. The Company's own proxy statements assert that "performance-based executive compensation is an important element in driving long-term shareholder value."⁵⁸ And as the Commission acknowledged in its Order, Xcel's approach to compensating executives has a "shareholder focus" which is tied to increased earnings for the Company—and increased costs for ratepayers.⁵⁹ This is evidenced throughout the structure of Xcel's AIP and LTI programs, and is further reflected in the market comparison used by Xcel to try and justify those expenses.⁶⁰ Additionally, a significant portion of executive compensation can be taken in the form of XEI stock, such that the Company's top-ten executives "financially benefit from increased earnings and higher [returns on equity], which produce value for existing shareholders at the expense of customers."⁶¹ Altogether, these factors "focus[] the executive team on shareholder benefits, which are not necessarily aligned with the interests of ratepayers."⁶²

With this in mind, it is essential to understand whether partially or fully disallowing ratepayer recovery of top-ten executive compensation would have an adverse effect on the Company's needs to attract

⁵⁵ *Petition of Northern States Power Co.*, 416 N.W.2d 719, 722-23 (Minn. 1987) (holding that "by merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating it is just and reasonable that the ratepayers bear the costs of those expenses").

⁵⁶ Findings of Fact, Conclusions, and Order at 21; Court of Appeals Decision at 24-25.

⁵⁷ Court of Appeals Decision at 26.

⁵⁸ See *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E002/GR-21-630, Vol. 3 Part 2 of 25 Required Information (Oct. 25, 2021) (incorporating by reference Xcel, 2021 Schedule 14A Proxy Statements at 35, <https://www.sec.gov/Archives/edgar/data/72903/000007290321000021/a2021xcelproxycombined.htm> (Apr. 6, 2021) (hereinafter "Xcel 2021 Proxy Statements").

⁵⁹ Findings of Fact, Conclusions, and Order at 22.

⁶⁰ *Id.* (stating that Xcel's "market comparison . . . is based on other corporate officers, all of whom have a fiduciary duty of care to shareholders—but no comparable duty to ratepayers").

⁶¹ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Citizens Utility Board of Minnesota Answer to Xcel's Petition for Rehearing, Reconsideration, and Clarification at 20 (Aug. 14, 2023).

⁶² Findings of Fact, Conclusions, and Order at 22.

and retain capital or employ qualified individuals. We do not believe it would. As detailed above, shareholders derive substantial benefit from having executives whose interests align with theirs. Indeed, Xcel “seek[s] [its] shareholders’ views on the compensation of named executive officers” and allows them to take an active role in that process by providing an advisory vote on whether to approve or deny the executive compensation structure.⁶³ It is advantageous for shareholders to provide sufficient compensation to enable the continuation of those benefits, even if ratepayers—for whom no similar voting opportunity is provided—are not required to bear the costs.

If the entirety of top-ten executive compensation were to be disallowed, then the estimated net income attributable to the Company’s Minnesota operations would be reduced by approximately 1.4 percent in 2022, 1.7 percent in 2023, and 2.0 percent in 2024.⁶⁴ These reductions in no way rise to the level of “jeopardiz[ing] the financial integrity of the company.”⁶⁵ Instead, these adjustments are relatively minimal when considered within the broader context of the Commission’s rate case determination, such that the “total effect of the rate order” cannot be said to be unreasonable.⁶⁶

Lastly, the Commission’s decision in this proceeding only applies to the years of 2022-2024, for which Xcel failed to meet its burden of proof as to executive compensation. The Company has a pending rate case where the issue will be addressed again, and where it will have yet another opportunity to provide record evidence justifying recovery.

On this record, and based on the arguments set forth above, CUB recommends that the Commission fully disallow ratepayer recovery of the Company’s top-ten executive compensation expense.

3. If the Commission Nonetheless Permits Partial Recovery of Top-Ten Executive Compensation, it Should Strictly Limit Ratepayer Contributions to Those Expenses.

As exhaustively discussed throughout these reply comments, the Court of Appeals’ decision does not limit the Commission’s authority to determine an appropriate balance between ratepayer and utility interests. Instead, it directs the Commission to fully articulate its reasoning for why any given outcome on executive compensation is just and reasonable. Within this framework, we believe there is sufficient basis to fully disallow ratepayer recovery of those expenses, but we recognize the Commission could—should it so choose—arrive at a different decision so long as a well-reasoned and supported explanation is provided.

If the Commission chooses to retain the recovery threshold of \$150,000 per executive—or \$1.5 million per year—it could overcome the shortcomings of its original Order by further explaining the reasonableness of that amount. For example, the Department points to the Commission’s past practice of “approv[ing] 50% recovery . . . for investor relation expenses, board of director expenses, and other expenses where there may be both ratepayer and shareholder benefits.”⁶⁷ In the instant

⁶³ Xcel 2021 Proxy Statements at 35.

⁶⁴ CUB Initial Comments at 9.

⁶⁵ *Duquesne Light Co. v. Barash*, 488 U.S. 299, 310 (1989).

⁶⁶ *In re Application of Minn. Power*, No. A23-0867, A23-0871, A23-1957, slip op at 15 (Minn. App. Sep. 9, 2024) (quoting *Duquesne*, 488 U.S. at 310).

⁶⁷ Department Initial Comments at 4; *see also* Ex. OAG-2 at 4 (Lee Direct) (explaining that the Commission has limited ratepayer recovery of economic development costs because such activities “generally benefit shareholders as much as ratepayers,” and merely “demonstrat[ing] that . . . economic development investments provide some benefit to ratepayers is not sufficient to ensure 100% rate recovery”) (citing *In the Matter of the Application of Minnesota Power for Authority to Increase*

case, this methodology was used to limit ratepayer recovery of chamber of commerce dues, with the Commission specifically noting that such action was proper in the absence of record evidence to support designating a more specific percentage as related to economic development.⁶⁸ Applying this approach to top-ten executive compensation would roughly coincide with the \$1.5 million threshold originally approved by the Commission, as represented below:

Table 1: Xcel's Top-Ten Executive Compensation⁶⁹

Test Year	Xcel Requested⁷⁰	AIP and LTI Adjustments⁷¹	Remaining Top-Ten Executive Compensation	50% of Remaining Compensation
2022	\$7.268 million	(\$4.170 million)	\$3.098 million	\$1.549 million
2023	\$7.566 million	(\$4.376 million)	\$3.190 million	\$1.595 million
2024	\$7.878 million	(\$4.592 million)	\$3.286 million	\$1.643 million

Another option available to the Commission is to set recovery for Xcel's highest-paid executives at the Company's median employee compensation of \$120,597.⁷² As detailed above, Xcel has failed to adequately support why, or how, its top-ten executives are so necessary for the provision of safe and reliable utility service in Minnesota that ratepayer recovery of their full compensation packages is appropriate. If the Commission nonetheless sees their role within the Company as being worthy of some level of recovery, then median employee compensation could be a reasonable threshold. This figure is reflective of the entirety of the Company's employees, including those that provide fundamental engineering, planning, and customer care services in Minnesota—employees that undoubtedly contribute to the adequacy, efficiency, and reasonableness of utility service across the state. Limiting ratepayer recovery at this level would not be arbitrary, but instead would recognize that while utility executives play a role in Xcel's operations, the Company has not shown that they contribute any more to the provision of utility services in Minnesota than other employees.

Rates for Electric Service in Minnesota, Docket No. E-015/GR-09-1151, Findings of Fact, Conclusions, and Order at 36 (Nov. 2, 2010)).

⁶⁸ Findings of Fact, Conclusions, and Order at 75-76.

⁶⁹ See Department Initial Comments at 4, Table 1 (presenting data on executive compensation requests and adjustments, which is partially recreated and modified here).

⁷⁰ Executive Pay Errata at 2-4.

⁷¹ Findings of Fact, Conclusions, and Order at 15, 18-19.

⁷² Xcel 2021 Proxy Statements at 63.

III. Conclusion

CUB appreciates the opportunity to provide comments on this issue and recommends the Commission take the following actions:

1. Fully deny Xcel's request to recover top-ten executive compensation from Minnesota ratepayers.

If the Commission nonetheless believes partial recovery is warranted on the record before it, we recommend limiting recovery based on one of the following approaches:

2. Limit ratepayer recovery of top-ten executive compensation expenses to \$150,000 per executive, or \$1.5 million per year.
3. Limit ratepayer recovery of top-ten executive compensation expenses to 50 percent after AIP and LTI adjustments are made.⁷³
4. Limit ratepayer recovery of top-ten executive compensation expenses to the median Company-wide employee compensation amount of \$120,547 per executive, or \$1,205,470 per year.

Sincerely,

September 9, 2025

/s/ Brandon Crawford

Brandon Crawford
Regulatory Advocate
Citizens Utility Board of Minnesota
332 Minnesota St., Suite W1360
brandonc@cubminnesota.org
651-300-4701, ext. 7

/s/ Brian Edstrom

Brian Edstrom
Senior Regulatory Advocate
Citizens Utility Board of Minnesota
332 Minnesota St., Suite W1360
briane@cubminnesota.org
651-300-4701, ext. 6

⁷³ As reflected in Table 1, this would result in ratepayer recovery of \$1.549 million in 2022, \$1.595 million in 2023, and \$1.643 million in 2024.