

**BEFORE THE MINNESOTA OFFICE OF  
ADMINISTRATIVE HEARINGS**

600 North Robert Street  
P.O. Box 64620  
St. Paul, MN 55101

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

121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

---

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, et al.

OAH Docket No. 65-2500-38476  
PUC Docket No. E-002/GR-12-961

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota

PUC Docket No. E-002/GR-13-868

In the Matter of the Review of the 2012-2013 Annual Automatic Adjustment Reports for All Electric Utilities

PUC Docket No. E-999/AA-13-599

In the Matter of the Review of the 2013-2014 Annual Automatic Adjustment Reports for All Electric Utilities

PUC Docket No. E-999/AA-14-579

In the Matter of the Review of the 2015-2016 Annual Automatic Adjustment Reports for All Electric Utilities

PUC Docket No. E-999/AA-16-523

In the Matter of the Department's Report on the Electric Utilities' 2016-2017 Annual Automatic Adjustment Reports for All Utilities

PUC Docket No. E-999/AA-17-492

In the Matter of the Review of the 2017-2018 Annual Automatic Adjustment Reports for All Electric Utilities

---

PUC Docket No. E-999/AA-18-373

---

**POST-HEARING REPLY BRIEF OF THE  
XCEL LARGE INDUSTRIALS**

---

STOEL RIVES LLP  
Andrew P. Moratzka  
Amber S. Lee  
33 South Sixth Street, Suite 4200  
Minneapolis, MN 55402  
Tele: (612) 373-8800  
Fax: (612) 373-8881

**TABLE OF CONTENTS**

	<b>PAGE</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. ANALYSIS .....</b>	<b>4</b>
<b>A. Xcel Energy Bears a Heavy Burden to Justify Cost Recovery of the Replacement Power Costs Associated with the Forced Outages.....</b>	<b>4</b>
<b>B. Xcel’s Operation and Maintenance of Sherco 3 Was Imprudent.....</b>	<b>7</b>
<b>1. After Years of Litigation, a Jury Determined Xcel Understood the Risk of SCC Risks in Low Pressure Turbines and Was Negligent in Its Operation of Sherco 3.....</b>	<b>7</b>
<b>2. Xcel Understood the Risk of SCC in Low Pressure Turbines.....</b>	<b>8</b>
<b>3. Xcel Failed to Use the Proper Care to Inspect Sherco 3 for SCC.....</b>	<b>11</b>
<b>4. Xcel Did Not Properly Monitor Steam Chemistry at Sherco 3. ....</b>	<b>13</b>
<b>C. Xcel is Responsible for the Cost of Replacement Power Even Though Sherco 3 Was Removed from Rate Base.....</b>	<b>14</b>
<b>D. Xcel Should Refund \$71.6 Million to Customers, Offset by the Relevant Portion of the GE Settlement.....</b>	<b>16</b>
<b>1. Costs Arising from the Catastrophic Outage Are Significant. ....</b>	<b>16</b>
<b>2. Xcel, and Not Its Customers, Must Bear the Cost of All Consequences Arising from Its Imprudent Actions .....</b>	<b>17</b>
<b>3. Xcel Should Refund the Cost of Replacement Power it Recovered Through the FCA.....</b>	<b>17</b>
<b>4. The ALJ and the Commission Should Reject Xcel’s Claim that No Refund Is Required Because Ratepayers Benefitted from the Catastrophic Failure.....</b>	<b>18</b>
<b>III. CONCLUSION .....</b>	<b>21</b>

Flint Hills Resources Pine Bend, LLC; Marathon Petroleum Corporation; and USG Interiors, Inc. (collectively, the “Xcel Large Industrials” or “XLI”)<sup>1</sup> submit the following brief in reply to Xcel Energy, the Department of Commerce (“Department”), and the Office of the Attorney General, Residential Utility Division (“OAG”). XLI respectfully requests the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) find that the Company failed to meet its burden and that the costs of replacement power were imprudently incurred and should be refunded to customers with interest.

## I. INTRODUCTION

The Minnesota Public Utilities Commission (“Commission”) ordered this proceeding to determine whether Northern States Power Company (“Xcel Energy” or the “Company”) should recover Replacement Power costs incurred during the Catastrophic Outage of the Sherburne County Plant generating unit 3 (“Sherco 3” or “Unit 3”), which lasted from November 2011 to October 2013 and, if not, the amount of overcharges, plus interest, that should be returned to ratepayers.<sup>2</sup> The Commission referred the matter to the Office of Administrative Hearings for a contested-case proceeding in which Xcel bears the burden to establish that any or all of the energy replacement costs were reasonably and prudently incurred, applying good utility practices.<sup>3</sup>

As described in XLI’s initial post-hearing brief, on November 19, 2011, while Xcel was returning Sherco 3 to service after a planned maintenance outage, the rotor of Sherco 3’s low pressure turbines failed. As a result, several turbine blades came loose from the rotor, triggering an explosion and a fire that destroyed the turbine that experienced the failure, and also Sherco’s other low-pressure turbine, its high pressure turbine, its intermediate low pressure turbine, and its generator. Flying debris and fire caused significant damage to the control room and other plant facilities. The damage was disastrous and fortunately no one was injured.<sup>4</sup> An engineering firm

---

<sup>1</sup> XLI is an *ad hoc* consortium of C&I Demand class customers served by Northern States Power Company, d/b/a Xcel Energy (“Xcel” or the “Company”).

<sup>2</sup> *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. E-002/GR-12-961, et al, [Notice and Order for Hearing](#) (July 13, 2022) at 10; Tr. Vol. 1 p. 7: 7-25 (Judge O’Reilly).

<sup>3</sup> *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. E-002/GR-12-961, et al, [Notice and Order for Hearing](#) (July 13, 2022) at 11.

<sup>4</sup> *See* [XLI Initial Brief](#) p. 2-4; *see also* Ex. DOC-6, p. 13-14 ([Polich Rebuttal](#)); Ex. Xcel-1, p. 10-11 ([Krug Direct](#)).

that Xcel retained concluded that the L-1 rotor failed because of a condition called “stress corrosion cracking” or “SCC.”<sup>5</sup> SCC causes a material to crack well below its design strength when placed under stress. Xcel’s expert found that finger pinned attachments at the L-1 turbine end disk had failed due to SCC, most likely resulting from sodium hydroxide contamination of the steam.<sup>6</sup> Xcel’s expert concluded that the SCC that caused the LP rotor to crack had formed some number of years – perhaps more than ten – prior to the accident.<sup>7</sup>

As requested in XLI’s initial brief, XLI respectfully requests that the ALJ find that Xcel Energy has not met its burden to show that its maintenance practices comported with the Good Utility Practice standard and, therefore, ratepayers should receive a refund of the replacement power costs incurred during the Catastrophic Outage of Sherco 3. In short, Xcel Energy, through testimony and briefing, fails to satisfy its affirmative burden to show that it exercised Good Utility Practice in its operation and maintenance of the plant and therefore it should refund ratepayers all of the Replacement Power costs it automatically recovered as a result of the Catastrophic Outage.

To be sure, Xcel Energy bears a heavy burden to demonstrate that its recovery of the costs associated with the Catastrophic Outage will result in just and reasonable rates and any doubt as to the reasonableness of the Company’s cost recovery should be resolved in the favor of ratepayers.<sup>8</sup> Allowing Xcel Energy to keep the millions of dollars it has automatically recovered in Replacement Power costs on top of the maintenance allowance already included in its base rates would be unjust and unreasonable.

XLI submits this reply brief in response to the initial briefs filed by the Company, the Department, and the OAG. In particular, this reply brief addresses and clarifies (1) Xcel’s burden of proof in this proceeding; (2) the relevant facts and circumstances applicable to Xcel’s decision not to conduct the necessary testing to ensure Sherco ran safely and reliably; (3) the Company’s failure to exercise due care in light of the grave risk of rotor failure and its failure to satisfy its burden to demonstrate that it exercised Good Utility Practice with respect to the operation and maintenance of Sherco 3; (4) the prudence of the recovery of Replacement Power costs has not

---

<sup>5</sup> Evid. Hrg. Tr. Vol. 2 at 33-35 (Nov. 2, 2023) (Tipton); Ex. Xcel-26, AAT-D-2 at 3 (Tipton Direct, [Schedule 2](#)).

<sup>6</sup> Ex. Xcel-26, AAT-D-2 at 3 (Tipton Direct, [Schedule 2](#)).

<sup>7</sup> Evid. Hrg. Tr. Vol. 2 at 44 (Nov. 2, 2023) (Tipton).

<sup>8</sup> Minn. Stat. § 216B.03.

yet been addressed in the Commission's prior decisions in this matter; and (5) other than an offset for a portion of the GE settlement, Xcel should not offset the refund due customers for any supposed benefit to ratepayers that arose from the catastrophic failure.

The Replacement Power costs were not reasonably and prudently incurred because Xcel failed to operate and maintain Sherco 3 in a prudent manner. The ALJ and the Minnesota Public Utilities Commission should find that:

- 1) Xcel failed to perform maintenance on the Sherco 3 steam turbine in accordance with good utility practice;
- 2) Xcel personnel had in their possession documentation that identified the potential for steam turbine failure and recommended plant maintenance and inspection practices to avoid such a failure;
- 3) Xcel personnel were well aware of SCC problems in low pressure turbines long before the November 19, 2011, catastrophic failure at Sherco 3;
- 4) Xcel knowingly and unreasonably risked delaying inspections of the Sherco 3 steam turbine even though manufacturer and other utility industry knowledge contained recommendations to perform the inspections earlier and even though it knew that this delay increased the risk of failure;
- 5) Xcel must refund ratepayers the entire balance of replacement energy costs it has automatically recovered through the Fuel Clause Adjustment ("FCA"), plus interest, in the amount of \$71.6 million; and
- 6) Xcel has not supported its claims of ratepayer benefits stemming from Sherco 3's restoration, and the refund due customers for the replacement energy costs should not be offset by these purported benefits.

If Xcel had followed good utility practice, it is likely that it would have discovered the metallurgical condition – SCC – that resulted in the catastrophic steam turbine failure that put Sherco 3 out of service for approximately 23 months. Thus, if Xcel had acted prudently, the November 19, 2011, Sherco 3 accident, and the resulting costs, would have been avoided.

It is undisputed that Minnesota ratepayers did not and could not cause the catastrophic failure of Sherco 3. Xcel bears sole regulatory responsibility for the catastrophe, based on its own negligent operation and maintenance of Sherco 3, and because its investors receive a significant return to compensate them for the risks of their investments. The ALJ and the Commission should determine the costs of replacement power were not prudently incurred and require the Company to refund the millions of dollars it automatically recovered through the fuel clause adjustment, plus interest.

## II. ANALYSIS

### A. Xcel Energy Bears a Heavy Burden to Justify Cost Recovery of the Replacement Power Costs Associated with the Forced Outages.

There is no dispute that Xcel Energy bears the burden of proof in this proceeding.<sup>9</sup> Though there is general agreement about the definition of Good Utility Practice, XLI reemphasizes the general burden placed on a utility when it seeks to change rates. In this case Xcel Energy must prove not only that the facts it presents are accurate, but that the costs it seeks to recover are rate-recoverable, that the rate recovery mechanisms it proposes are permissible, and that the rate design it advocates is equitable under the “just and reasonable” standard.<sup>10</sup>

“Good Utility Practice” is defined as “the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition.”<sup>11</sup> Good utility practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.<sup>12</sup>

---

<sup>9</sup> [Xcel Initial Brief](#) 74-75.

<sup>10</sup> See *In the Matter of the Application of CenterPoint Energy Resources Corp. d/b/a CenterPoint Energy Minnesota Gas for Authority to Increase Natural Gas Rates in Minnesota*, PUC Docket No. G-008/GR-15-424, [Findings of Fact, Conclusions, and Order](#) at 4 (June 3, 2016).

<sup>11</sup> See *In re Review of the July 2018–December 2019 Annual Automatic Adjustment Reports*, E999/AA-20-171, [Findings of Fact, Conclusions of Law, and Recommendation](#) at ¶ 45.

<sup>12</sup> See *In re Review of the July 2018–December 2019 Annual Automatic Adjustment Reports*, E999/AA-20-171, [Findings of Fact, Conclusions of Law, and Recommendation](#) at ¶ 45.

Xcel Energy only meets this burden when it can make an affirmative showing of proof by a preponderance of the evidence.<sup>13</sup> Though a showing of the preponderance of the evidence takes a certain meaning in a civil case, the Minnesota Supreme Court previously distinguished that definition in the context of an administrative proceeding, noting that the Commission:

is not so much concerned with the sufficiency and credibility of the evidence, as it is concerned with 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.<sup>14</sup>

In other words, the utility's burden in a case such as this is a two-step process. First, the Company must establish the amount of a given cost as a judicial fact.<sup>15</sup> Second, the Company must establish that it is just and reasonable for ratepayers (as opposed to the Company's shareholders) to bear those costs.<sup>16</sup> To be sure, the Company cannot shift the burden of proof by creating a rebuttable presumption of reasonableness via its direct testimony. This argument has been raised and rejected by the Minnesota Supreme Court.<sup>17</sup> Furthermore, the Minnesota Supreme Court's interpretation of State law has been subsequently applied in contested case proceedings. For example, in a matter involving Xcel Energy's request for recovery of cost overruns associated with investments in its Monticello nuclear plant (a similar prudence review proceeding), the ALJ in that proceeding concluded, as a matter of law:

The utility—not public agencies, other parties, nor the Commission—bears the burden to demonstrate that the utility's proposed rate increase is just and reasonable.[] *A utility in a rate proceeding does not enjoy at any point a rebuttable presumption of reasonableness that other parties must overcome.*[] Even if the utility presents a *prima facie* case and there is no contrary evidence, “the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses.”[] Minnesota law requires that every rate

---

<sup>13</sup> *In re Minn. Power & Light Co.*, 435 N.W.2d 550, 554 (Minn. App. 1989)).

<sup>14</sup> *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987).

<sup>15</sup> *In re Petition of N. States Power Co.*, 416 N.W.2d at 722.

<sup>16</sup> *In re Petition of N. States Power Co.*, at 722-23 (finding that “by merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses”).

<sup>17</sup> *In re Petition of N. States Power Co.*, 416 N.W.2d at 725-26.



established by the Commission be just and reasonable and that any doubt be resolved in favor of the consumer.[]<sup>18</sup>

The Commission affirmed the ALJ's interpretation in that proceeding. The Commission summarized Xcel Energy's position and concluded as follows:

Xcel argued that it had established a prima facie case of prudence, shifting the burden to the other parties to come forward with evidence tying specific acts of imprudence to specific costs. However, under Minnesota law, *the utility always retains the burden of showing that it would be just and reasonable to include a particular utility expense in rates.*[]<sup>19</sup>

Intervenors have the right to question both whether the Company met its burden of proof in establishing given costs as a judicial fact and whether it would be reasonable for ratepayers to bear those costs. The Commission, in the exercise of its judgment, has the right to conclude based on all of the evidence submitted, that the Company failed to meet its burden of proof and fashion an appropriate remedy that would result in just and reasonable rates.<sup>20</sup>

For forced outage costs recovered through automatic adjustment of charges and fuel clause adjustment mechanisms, the Commission has emphasized that "utilities have a duty to minimize unplanned facility outages through adequate maintenance."<sup>21</sup> As applied to this proceeding, Xcel Energy cannot affirmatively show that its operation and maintenance of Sherco comported with

---

<sup>18</sup> *In the Matter of a Commission Investigation into Xcel Energy's Monticello Life Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Commission Docket No. E-002/CI-13-754, [ALJ's Findings of Fact, Conclusions of Law, and Recommendations](#), p. 30 (Feb. 2, 2015) (citing and quoting MINN. STAT. § 216B.16, subd. 4, *In re Petition of N. States Power Co.*, 416 N.W.2d at 722-26, and MINN. STAT. § 216B.03) (emphasis added).

<sup>19</sup> *In the Matter of a Commission Investigation into Xcel Energy's Monticello Life Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Commission Docket No. E-002/CI-13-754, [Order Finding Imprudence, Denying Return on Cost Overruns, and Establishing LCM/EPU Allocation for Ratemaking Purposes](#), p. 30 (May 8, 2015) (citing MINN. STAT. § 216B.16, subd. 6).

<sup>20</sup> *In re Petition of N. States Power Co.*, 416 N.W.2d at 726 (finding that "[w]hen, in the Commission's judgment, a petitioning utility has failed to establish the reasonableness of costs which it claims justifies a proposed rate increase, the Commission itself may compute a hypothetical capital structure that will afford an ultimate determination of a reasonable and just rate." (citations omitted)).

<sup>21</sup> *In re Review of the 2006 Annual Automatic Adjustment of Charges for All Elec. and Gas Utils.*, E-999/AA-06-1208, [Order Acting on Electric Utilities' Annual Reports, Requiring Further Filings, and Amending Order of December 20, 2006, on Passing MISO Day 2 Costs Through Fuel Clause](#), p. 5 at 5 (Feb. 6, 2008) (eDocket No. 4928266).

good utility practice, and therefore it is not reasonable for ratepayers to pay replacement power costs for electric service received during the extended outage.

**B. Xcel's Operation and Maintenance of Sherco 3 Was Imprudent.**

1. After Years of Litigation, a Jury Determined Xcel Understood the Risk of SCC Risks in Low Pressure Turbines and Was Negligent in Its Operation of Sherco 3.

As discussed in the initial briefs, the catastrophic failure of Sherco 3 was extensively litigated between Xcel, its insurers, and General Electric (“GE”), the Unit 3 turbine manufacturer, and eight of Xcel’s witnesses in this proceeding also participated in the district court litigation.<sup>22</sup> At the close of evidence, the trial court dismissed Xcel’s claim that GE had a post-sale duty to warn, finding that there was no way a jury could find that Xcel was unaware of the risk of harm to the turbine from SCC.<sup>23</sup> The jury found that Xcel was negligent in its operations and maintenance of Sherco 3 and that this negligence was a direct cause of damage to the facility.<sup>24</sup>

The Court of Appeals affirmed and found that the district court had properly determined “there is no basis to establish [post-sale duty to warn] because there’s no way a jury could find that [Xcel] was unaware of the risk of harm.” The Court of Appeals noted as part of its reasoning that [Xcel] had a general awareness of the risks of SCC, as evidenced by the Xcel-prepared “System Health Report” that essentially predicted the catastrophe. That report stated that “[low pressure turbines] also experience dovetail pin cracking problems, erosion damage and may suffer from an industrywide problem with rotor wheel cracking. . . . Risks associated with wheel cracking involve wheel failure and buckets departing the rotor. Resulting collateral damage could be severe (i.e., due to mass imbalance and projectiles).”<sup>25</sup>

Though the jury’s determinations are not dispositive in this proceeding, it is worth noting that much of the evidence in this matter is the same as the evidence reviewed in the district court proceeding and the ALJ and the Commission should be aware of the extensive time and effort that has been devoted to determining the liability for this Catastrophic Event.

---

<sup>22</sup> See [Department Initial Brief](#) p. 8

<sup>23</sup> Ex. DOC-1, p. 31-36 (Polich Direct, [Schedule 8](#)).

<sup>24</sup> Ex. DOC-1 (Polich Direct, [Schedule 9](#))

<sup>25</sup> *Aegis Ins. Servs v. Gen. Elec. Co.*, No. A19-0640, 2020 WL 614775, at \*4 (Minn. Ct. App. Feb. 10, 2020).

2. Xcel Understood the Risk of SCC in Low Pressure Turbines.

Xcel admits that at the time of the failure it was aware of the potential for SCC in low-pressure turbines for several years.<sup>26</sup> It argues, however, that although it was aware of SCC as a risk for tangential-entry type dovetail attachments, it was not aware that SCC was an issue for the finger-pinned type attachments that held the buckets to the L-1 rotor at Sherco 3.<sup>27</sup> Xcel's arguments here, and its arbitrary distinction between the rotor attachments, are not supported by record evidence and should be rejected.

Regarding the risk of SCC in low-pressure turbines, Xcel admits the following:

- 1) The event occurred as a result of SCC in the L-1 finger-pinned attachments in the low-pressure turbine of Unit 3 with a drum boiler;<sup>28</sup>
- 2) At the time of the failure, it was known in the industry that one factor that could contribute to the formation of SCC is the chemistry of the steam that passes through the turbine, and in particular steam that creates a corrosive environment;<sup>29</sup>
- 3) GE recommended a six-year interval between major inspections;<sup>30</sup>
- 4) In 2007 it found cracking in Sherco Unit 1's L-1 tangential entry blade attachments;<sup>31</sup>
- 5) In 2008, GE was aware of instances with SCC on drum boiler units and predicted it was likely to find more instances as the age of the units continued to climb;<sup>32</sup>
- 6) In 2007, GE issued updated inspection recommendations when it issued GEK 111680. According to Xcel, GEK 111680 recommended an approximate timeline

---

<sup>26</sup> [Xcel Initial Brief](#) p. 23.

<sup>27</sup> [Xcel Initial Brief](#) p. 25.

<sup>28</sup> [Xcel Initial Brief](#) p. 31.

<sup>29</sup> [Xcel Initial Brief](#) p. 31.

<sup>30</sup> [Xcel Initial Brief](#) p. 102.

<sup>31</sup> [Xcel Initial Brief](#) p. 87.

<sup>32</sup> [Xcel Initial Brief](#) p. 38.

of six years for inspection intervals, but also placed significant discretion on the operator to decide on the appropriate interval for a given unit;<sup>33</sup>

- 7) Xcel knew that GE had issued Technical Information Letter (TIL) 1121 in 1993.<sup>34</sup> According to Xcel, TIL 1121 identifies the Magnetic Particle Inspection as “the most reliable test” to identify latent and otherwise undetectable SCC of the internal finger-pinned attachments – i.e., the features not visible without removal of the blades;<sup>35</sup>
- 8) TIL 1121 recommends that the buckets of low-pressure turbines be removed to conduct a magnetic particle inspection (MPI) of finger dovetails to detect SCC “whenever the buckets are removed,”<sup>36</sup> and also if the unit experienced certain “abnormal events or operational anomalies that cause concern for the long-term reliability of the unit;”<sup>37</sup>
- 9) GE, through TIL 1121, instructs that removal of the blades for inspection of the rotor wheel finger dovetails is not recommended unless abnormal events or operational anomalies are encountered which may increase the risk of stress corrosion or fatigue;<sup>38</sup>
- 10) TIL 1121 lists the abnormal events or operational anomalies as:
  - Caustic or chemical ingestion or contamination;
  - Carryover from the boiler;
  - Leaking condenser heater tubes;
  - Overspeeds; and
  - Water ingestion;<sup>39</sup>

---

<sup>33</sup> [Xcel Initial Brief](#) p. 102.

<sup>34</sup> [Xcel Initial Brief](#) p. 26.

<sup>35</sup> [Xcel Initial Brief](#) p. 87-88.

<sup>36</sup> [Xcel Initial Brief](#) p. 26, footnote 126.

<sup>37</sup> [Xcel Initial Brief](#) p. 26-27.

<sup>38</sup> [Xcel Initial Brief](#) p. 27.

<sup>39</sup> [Xcel Initial Brief](#) p. 27.

- 11) “GE allowed operators significant discretion in determining when a Magnetic Particle Inspection might be required;”<sup>40</sup>
- 12) It removed the L-1 blades and conducted Magnetic Particle Inspection in 1999 in adherence to TIL 1121 guidance even though there were no abnormal events or operational anomalies that caused concern for the long-term reliability of the Unit;<sup>41</sup> and
- 13) In advance of its planned 2008 outage, the Company asked GE whether it would be issuing any new recommendations pertaining to the Magnetic Particle Inspections of the finger-pinned attachments in units with drum boilers such as Unit 3.<sup>42</sup>

Though Xcel admits all of the facts above, it adamantly and inconsistently disputes the applications of the above facts to its actions and decisions in this matter. For example, Xcel attempts to shift its responsibility for inspection practices at Sherco 3 to GE, but there is no question that it was Xcel (not GE) that had the ultimate authority and responsibility for determining the frequency and scope of inspections in a manner that took into account Sherco 3’s operating conditions, and the operator’s discretion was an important aspect of GE’s recommendations.<sup>43</sup>

Similarly, Xcel states both that the five itemized “abnormal” or “anomalous” incidents in TIL 1121 are actually ordinary occurrences in all operating units,<sup>44</sup> and yet vociferously disputes that any of these “abnormal” events occurred in the years before the 2011 outage.<sup>45</sup> For example, Xcel criticizes the Department witness for identifying “just three such purported events,” including two condenser tube leaks and a turbine rotor wash, that would trigger the need for MPI under TIL 1121.<sup>46</sup> And yet Xcel also criticizes the Department witness because “condenser tube leaks are common.”<sup>47</sup> Essentially Xcel argues that no events occurred to trigger the need to use MPI under

---

<sup>40</sup> [Xcel Initial Brief](#) p. 89.

<sup>41</sup> [Xcel Initial Brief](#) p. 79-80.

<sup>42</sup> [Xcel Initial Brief](#) p. 86.

<sup>43</sup> Evid. Hrg. Tr. Vol. 1 at 159-61 (Nov. 1, 2023) (Kolb).

<sup>44</sup> [Xcel Initial Brief](#) p. 90.

<sup>45</sup> [Xcel Initial Brief](#) p. 92.

<sup>46</sup> [Xcel Initial Brief](#) p. 93.

<sup>47</sup> [Xcel Initial Brief](#) p. 94.

TIL 1121, and also that the events listed in TIL 1121, “as any experienced operator reasonable understands” are common, typical and accepted in the industry.<sup>48</sup>

Finally, regarding the “rotor wash” incident, Xcel states the event was “immediately reported and addressed and did not affect the long-term reliability of the unit; there was therefore no reason to consider Blades-Off and MPI.”<sup>49</sup> Xcel admits the incident occurred but argues the incident did not trigger an MPI under TIL 1121 because it was “immediately reported.” Given the known gravity of the risk of a rotor failure, Xcel’s cavalier dismissiveness regarding this incident was imprudent. Xcel should have known, and in fact did know, of the risk presented by SCC. It nonetheless disregarded that risk when it failed to do the proper inspection to detect SCC before the Catastrophic Failure.

3. Xcel Failed to Use the Proper Care to Inspect Sherco 3 for SCC.

Xcel admits that as the 2011 Unit 3 outage approached, it continued to consider moving Unit 3 to a nine-year inspection interval, and it ultimately rescheduled the Major Inspection of the low-pressure turbines to 2014.<sup>50</sup> It also admits that it is undisputed that latent SCC in the finger-pinned attachments cannot be detected unless an operator performs Blades-Off and Magnetic Particle Inspections.<sup>51</sup> Xcel further claims that there was no independent reason to perform Blades-Off and Magnetic Particle Inspections in 2011, and it was reasonable for Xcel not to have done those Inspections as part of the Company’s planned outage that year.<sup>52</sup>

Because Xcel deferred the major inspection that was scheduled for 2011, and moved from a six-year inspection interval, to a nine-year interval, it lost the opportunity to detect the SCC that resulted in Sherco 3’s destruction. Although Xcel had established a schedule for frequency of major inspections of the Sherco 3 LP turbines, it failed to follow its own schedule in connection

---

<sup>48</sup> See [Xcel Initial Brief](#) p. 94.

<sup>49</sup> [Xcel Initial Brief](#) p. 95-96.

<sup>50</sup> [Xcel Initial Brief](#) p. 39-40.

<sup>51</sup> [Xcel Initial Brief](#) p. 80-81.

<sup>52</sup> [Xcel Initial Brief](#) p. 81.

with the 2011 planned outage.<sup>53</sup> Xcel understood that increasing the inspection interval increased risk to the turbine, as documented by its own employee.<sup>54</sup>

Xcel contemplated a major inspection of Sherco 3 during the planned 2011 outage, six years after the inspection of the low-pressure turbines took place in 2005.<sup>55</sup> But instead Xcel postponed the inspection until 2014, even though Xcel did not conduct the engineering study that Mr. Kolb's report described as necessary prior to extending the interval from six to nine years.<sup>56</sup> Performing only a minor inspection of the Sherco 3 low pressure turbines in 2011 instead of a major inspection unnecessarily and imprudently exposed Sherco 3 to the risk of catastrophic failure.

Xcel's failure to exercise due care is a clear-cut instance of imprudence because the risk of catastrophic failure was so high. Again, the cracking of the rotor wheels was a well-known risk in the industry, within Xcel, and documented by Xcel's own employees. Further, once those cracks occurred, Xcel knew the potential damages could be catastrophic as the buckets departed the wheel, including complete destruction of the plant and loss of life and limb. Xcel claims that Sherco was its most important asset on its system.<sup>57</sup> Yet Xcel went forward with the 2011 outage, deferring the necessary MPI, and then knowingly restarted Sherco 3 using an overspeed restart, which Xcel knew was an event that contributed to risk under GE's TIL 1121 guidance. Because

---

<sup>53</sup> See [XLI Initial Brief](#) p. 12, citing Tr. Vol. 1 p. 112:9-25, p. 113:7-12, p. 119:6-14 (Murray); Tr. Vol. 1 p. 153:17-20 (Kolb).

<sup>54</sup> See [XLI Initial Brief](#) p. 12.

<sup>55</sup> 3 Evid. Hrg. Tr. Vol. 1 at 80-81 (Murray); Ex. DOC-25 ([Sherco 3 Low Pressure Turbine Operation and Inspection History](#)).

<sup>56</sup> Evid. Hrg. Tr. Vol. 1 at 112-13 (Nov. 1, 2023) (Murray); Ex. Xcel-4 at 18-19 ([Murray Direct](#)); Ex. Xcel-7 at 45 ([Kolb Direct](#)).

<sup>57</sup> See *Domagala v. Rolland*, 805 N.W.2d 14, 28 (Minn. 2011) ("The reasonable care standard itself does not vary based on the defendant's conduct, but the degree of care required to satisfy that standard does change based on the circumstances presented to the parties. In other words, because increased danger alters the circumstances, the care that a reasonable person would use to respond to that increased danger will also change. Consequently, a defendant owes a duty to exercise the care commensurate with all known or reasonably foreseeable dangers"); citing *Hanson v. Christensen*, 275 Minn. 204, 205, 145 N.W.2d 868, 870 (1966) ("The standard of care is reasonable care, but reasonable care in this connection calls for a high degree of care – a care commensurate with the risks involved.") and *Lee & Lindahl*, section 3.24 ("The greater the hazard, the greater the care, is an axiom in the law of negligence.").

the risk was so high, and the potential damage so great, Xcel needed to exercise an accordant degree of care.<sup>58</sup>

A reasonable person would consider the possible consequences of their actions when deciding to act in a certain way and in determining the standard of care required – the possible consequences must include the magnitude of risk. This means taking into account not only the likelihood that the action or inaction could cause damage or injury, but also how serious that damage or injury is likely to be. The more serious the potential injury, the greater the standard of care required.<sup>59</sup> Given the seriousness of a rotor failure, including grave bodily injury, Xcel’s decision not to conduct a blades off MPI was negligent, or grossly negligent, and definitively imprudent.

#### 4. Xcel Did Not Properly Monitor Steam Chemistry at Sherco 3.

As Xcel’s expert Mr. Daniels acknowledged, continuous monitoring of the entire steam cycle is critical to equipment reliability.<sup>60</sup> SCC can result from contaminants in the steam cycle and Xcel understood the need for steam purity to minimize the risk of SCC.<sup>61</sup> The root cause analysis performed by Xcel’s retained expert concluded that the SCC that caused the turbine failure at Sherco 3 was most likely the result of sodium hydroxide in the steam cycle.<sup>62</sup>

Xcel has the burden to show the prudence of its steam chemistry practices, including those practices relating to make-up water purity. Make-up water quality data was not sufficient to rule out contamination from make-up water as a contributing cause of the turbine failure.<sup>63</sup> Xcel provided no make-up water quality data from 1999 to March 2004.<sup>64</sup> Subsequent to March 2004, there was no continuous monitoring data, but only data from grab samples taken, on average, once every two to three weeks.<sup>65</sup> This sampling was too infrequent to draw any definitive conclusions

---

<sup>58</sup> *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014) (“Negligence is the failure to exercise the level of care that a person of ordinary prudence would exercise *under the same or similar circumstances*”) citing *Flom v. Flom*, 291 N.W.2d 914, 916 (Minn.1980) (emphasis added).

<sup>59</sup> *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014)

<sup>60</sup> Ex. Xcel-10 at 10 ([Daniels Direct](#)).

<sup>61</sup> Ex. Xcel-62, [GE Litigation Tr.](#), Vol 3, at 594 (Oct. 18, 2018) (Murray).

<sup>62</sup> Evid. Hrg. Tr. Vol. 2, at 34-35 (Nov. 2, 2023) (Tipton); Ex. Xcel-26, AAT-D-2, at 3 (Tipton Direct, [Schedule 2](#)).

<sup>63</sup> Ex. DOC-7 at 10-11 ([Klotz Rebuttal](#)).

<sup>64</sup> Ex. DOC-7 at 10-11 ([Klotz Rebuttal](#)).

<sup>65</sup> Ex. DOC-7 at 10-11 ([Klotz Rebuttal](#)).



regarding make-up water quality at Sherco 3.<sup>66</sup> A lack of reliable data prevents Xcel from carrying its burden of proof with respect to the effectiveness of monitoring practices at Sherco 3.<sup>67</sup> Given the insufficient data on the subject, the Commission cannot conclude that Sherco 3's make-up water did not contribute to the turbine failure.

C. **Xcel is Responsible for the Cost of Replacement Power Even Though Sherco 3 Was Removed from Rate Base.**

Xcel claims it is unreasonable to expect electricity generation from a generation asset that was removed from the Company's rate base.<sup>68</sup> Xcel argues that the Commission's prior decision treats the Company's system "as if Unit 3 did not exist," and Replacement Power costs are more appropriately viewed simply as power costs.<sup>69</sup> Xcel's arguments should be dismissed.

In the Company's 2012 electric rate case, Xcel proposed that substantially increased fuel and purchased energy costs should remain in 2013 operating costs with recovery through the FCA, because it had agreed to suspend and defer depreciation and property taxes and forgo certain O&M expenses related to Sherco 3.<sup>70</sup> In other words, in its 2012 rate case Xcel voluntarily proposed to remove costs from its test year because it acknowledged the significance of Sherco's 3 extended outage. The Commission ultimately agreed and found that Sherco Unit 3 was not "used and useful" during the 2013 test year, and removed Unit 3 from rate base, but the Commission allowed the Company to recover property taxes associated with the unit and defer the unit's 2013 depreciation expense.<sup>71</sup> Essentially, the Commission allowed the Company to recover all of the costs related to Sherco 3, except the return on the unit, and the operations and maintenance costs associated with the facility in the test year. Xcel's claim that the Commission treated Sherco 3 "as if it did not exist" is therefore patently false.

---

<sup>66</sup> Ex. DOC-7 at 10-11 ([Klotz Rebuttal](#)).

<sup>67</sup> Ex. DOC-7 at 12 ([Klotz Rebuttal](#)).

<sup>68</sup> [Xcel Initial](#) Brief p. 120.

<sup>69</sup> [Xcel Initial](#) Brief at p. 121.

<sup>70</sup> *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/GR12-961, [Briefing Papers](#) p. 37 (August 1, 2013).

<sup>71</sup> *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E002/GR12-961, [Findings of Fact, Conclusions of Law, and Order](#), p. 23 (Sept. 3, 2013).

Additionally, Sherco 3's removal from ratebase does not negate Xcel's obligation to provide electric service to its customers. As Xcel recently stated, as "a public utility, Xcel Energy has an obligation to provide electric service to its customers, even if the costs of those investments exceed their quantifiable financial benefits."<sup>72</sup> The outage caused Xcel to lose the ability to sell Sherco 3's capacity and energy (which in turn cost ratepayers asset-based margin profits). But it did not excuse Xcel's obligation to provide power into the grid and to its customers. Xcel's arguments should be dismissed.

Additionally, Xcel claims that when replacement power costs were disallowed because of an imprudent outage at Boswell 4, that unit was kept in rate base, and therefore "the Commission's treatment of Sherco 3 differs from any other plant outage for which a utility has been ordered to refund replacement power costs."<sup>73</sup> This matter is easily distinguishable from the Boswell outage. First, Boswell was out of service for days, not years.<sup>74</sup> While outages are a normal part of generation business, an outage of a duration that is close to two years is not normal. For most forced or overhaul outages, the MISO accredited capacity for the affected unit remains fully intact. In this case, however, Sherco 3 was offline for so long that it lost MISO accredited capacity and did not regain it until it was fully retested and approved.<sup>75</sup> In other words, it is beyond refute that Sherco 3 was not used and useful in providing electric service to Xcel's customers during this extended outage. It is therefore wholly consistent to conclude that the costs of replacement power were properly disallowed for the negligent outage of Boswell, and can be disallowed here for the negligent outage of Sherco 3. The severity of the outage of Sherco 3 is simply independent.

Finally, Xcel's arguments ignore the procedural posture and the Commission's Notice for Hearing in this case. Since this matter first came before the Commission in Xcel's 2012 rate case, all parties and the Commission have agreed the prudence of the fuel costs recovered should be

---

<sup>72</sup> *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, [Proposed Findings of Fact, Conclusions of Law, and Recommendation of Xcel Energy](#), p. 101, January 27, 2023.

<sup>73</sup> [Xcel Initial Brief](#) p. 121, citing *In the Matter of the Review of the July 2019-December 2019 Annual Automatic Adjustment Reports*, MPUC Docket No. E-999/AA-20-171, Order Adopting Administrative Law Judge Report as Modified and Requiring Refund (Feb. 25, 2022).

<sup>74</sup> *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E002/GR12-961, [Findings of Fact, Conclusions of Law, and Order](#), p. 23 (Sept. 3, 2013).

<sup>75</sup> *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/GR12-961, [Schedin Direct](#) p. 9 (February 28, 2013).

evaluated in the fuel cost dockets after the completion of the litigation proceedings. The Commission's inquiry into the prudence of Xcel's automatic fuel cost recovery has been a long time coming and this inquiry evaluates the reasonableness of automatically passing along these costs that arose from the Sherco failure – a matter entirely unrelated to the Commission's previous decisions in this matter, including inclusion in rate base, and the recovery of depreciation, property tax and O&M expenses. For Xcel to claim now, more than ten years later, that it is incongruent with ratemaking principles to contemplate a refund of replacement power costs, flies in the face of the Commission's stated intention to evaluate these costs since the matter first came before it in 2012.

**D. Xcel Should Refund \$71.6 Million to Customers, Offset by the Relevant Portion of the GE Settlement.**

1. Costs Arising from the Catastrophic Outage Are Significant.

Because Sherco 3, Xcel's largest generating unit, was offline for almost two years, the cost of Replacement Power over that time is significant. In deferring power replacement costs to a later proceeding, the Commission observed that "Sherco 3's outage caused Xcel Electric to incur greater energy-related costs than it otherwise would have."<sup>76</sup> During Xcel's 2013 rate case, parties described the situation as resulting in a substantial reduction in asset-based margins and a substantial increase in replacement energy costs over and above the energy related costs otherwise incurred by Sherco 3 (even after the Company's O&M adjustment).<sup>77</sup> The DOC also noted that ratepayers were paying significant amounts for replacement power costs, noting that for the period November 2011 to October 2012, ratepayers paid \$22.7 million in additional fuel costs.<sup>78</sup> In total, Xcel reports that it recovered over \$55 million in Replacement Power costs through the FCA as a result of the Catastrophic Failure.<sup>79</sup>

---

<sup>76</sup> *In re Review of the 2012-2013 Annual Automatic Adjustment Reports for All Elec. Utils.*, E999/AA-13-599, [Order Acting on Electric Utilities' Annual Reports and Requiring Additional Filings](#), p. 5-6 (June 2, 2016).

<sup>77</sup> *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/GR12-961, [Schedin Direct](#) p. 8-11 (February 28, 2013).

<sup>78</sup> *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/GR12-961, [Department Opening Brief](#) p. 71 (May 15, 2013); *see also* [Sherco 3, Minnesota's largest power generating unit, is back in full service \(startribune.com\)](#).

<sup>79</sup> Ex. DOC-4, p. 13 ([King Direct](#)).

2. Xcel, and Not Its Customers, Must Bear the Cost of All Consequences Arising from Its Imprudent Actions

As XLI stated in its initial brief, Xcel should absorb the replacement power costs associated with the Sherco 3 outage for several reasons. Fundamental utility regulation principles hold that Xcel’s investors accepted the risks of providing utility service, including costs arising from an outage, in exchange for a “just and reasonable” rate of return on their investments. Xcel’s own pleadings, along with longstanding precedent, show that Commission-approved rates account for the risks of providing service to customers.<sup>80</sup> Accordingly, utility investors are responsible for any hypothetical risk that is ultimately realized. In this proceeding, these fundamental utility regulation principles mean that investors, not Minnesota ratepayers, should absorb the Replacement Power costs stemming from the extended outage.

3. Xcel Should Refund the Cost of Replacement Power it Recovered Through the FCA.

The replacement energy costs for Sherco 3 are the replacement power and additional fuel for Company-owned generators capable of increasing their output to help replace Sherco 3’s output.<sup>81</sup> In this matter, Xcel’s energy replacement costs have been recovered from Minnesota ratepayers via the FCA from 2013-2018. For the outage period, Xcel used the pass-through FCA to recover, on a monthly basis, actual fuel expenses and purchased power costs, including energy replacement costs due to planned and forced outages.<sup>82</sup> The amount of replacement energy costs is at issue, and the Company has calculated and reported two different values for its replacement energy costs. There are two methodologies because the Company calculated the replacement energy costs in its annual automatic adjustment (“AAA”) filings for the Commission differently from what it calculated in its state district court lawsuit against GE.<sup>83</sup> For the reasons described

---

<sup>80</sup> See, e.g., *Hope*, 320 U.S. at 603; *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm’n of W. Va.*, 262 U.S. 679, 693 (1923); *In the Matter of the Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-21-630, [Petition for Rehearing, Reconsideration and Clarification](#) (Aug. 7, 2023) p. 11-12 (“This clear body of case law calls for the ALJ and the Commission to allow for a cost of capital that...is commensurate with returns on investments having similar risks”).

<sup>81</sup> Ex. OAG-1, p. 3 ([Lee Rebuttal](#)), citing *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E002/GR-13-868, [Findings of Fact, Conclusions and Order](#) (May 8, 2015) p. 47.

<sup>82</sup> Ex. DOC-4, p. 5 ([King Direct](#)).

<sup>83</sup> Ex. DOC-4, p. 10 ([King Direct](#)); Ex. OAG-1, p. 10 ([Lee Rebuttal](#)), citing Docket No. E999/AA-13-599, [Comments of the OAG at Exhibit C](#), Page 5 of 29 (Xcel Response to OAG IR No. 1 at 4) (September 26, 2014).

in our initial brief, the FCA methodology should be used to determine the refund due ratepayers in this proceeding.<sup>84</sup>

4. The ALJ and the Commission Should Reject Xcel's Claim that No Refund Is Required Because Ratepayers Benefitted from the Catastrophic Failure.

In its Initial Brief, Xcel claims that its restoration efforts were so good that, regardless of the cause of the event, customers have been made whole.<sup>85</sup> Xcel boldly claims the “time required for this restoration and the scope of the repaired or replaced equipment enabled the Company to manage the restoration process in a manner that delivered meaningful benefits to the Company and customers.”<sup>86</sup> On its face this statement is nonsensical – the damage arising from the catastrophic failure was so significant that that it affected all of Unit 3 and other facilities at the Plant and required 22 months to fix, while Xcel was forced to procure replacement power for tens of millions of dollars it automatically recovered from customers. It is disingenuous to claim that this extensive damage and resulting outage benefitted ratepayers.<sup>87</sup> Xcel's claims of ratepayer benefits stemming from the catastrophic failure and extended outage of Sherco 3 are unsupported for several reasons.

First, Xcel's claimed benefits would have accrued to ratepayers without the catastrophic failure of Sherco 3. The Company claims it “avoided certain future work, and the associated cost of that work, due to the restoration,”<sup>88</sup> and claims that these are benefits its ratepayers would not have otherwise received.<sup>89</sup> This is misleading, however, because many, if not all, of what the Company refers to as opportunity projects – significant work performed during the restoration period that was not required to return Sherco 3 to service<sup>90</sup> – would have eventually been performed even if Sherco 3 had not suffered catastrophic failure. For example, when discussing the replacement of Sherco 3's cooling towers, Xcel notes that the towers were at the end of their predicted life and scheduled for replacement in 2014, until the lengthy restoration outage allowed

---

<sup>84</sup> See [XLI Initial Brief](#) p. 16-19.

<sup>85</sup> [Xcel Initial Brief](#) p. 79.

<sup>86</sup> [Xcel Initial Brief](#) p. 63.

<sup>87</sup> See [Xcel Initial Brief](#) p. 79 (“Moreover, there is no dispute that the Company prudently handled restoration of the Plant after the Event – so well, in fact, that customers have already been made whole.”)

<sup>88</sup> [Xcel Initial Brief](#) p. 64.

<sup>89</sup> [Xcel Initial Brief](#) p.

<sup>90</sup> [Xcel Initial Brief](#) p. 64.

Xcel to accelerate the replacement of the cooling tower.<sup>91</sup> As the Office of the Attorney General states,

Unironically, Xcel states that this action reduced “the risk of a failure that could force the unit offline at an inopportune time and for an extended period of time.”<sup>92</sup> This claim, of course, implies that Sherco 3 went offline at an opportune time, or for a limited time, neither of which is true.<sup>93</sup>

Though the Company “may have reduced some of the costs of future maintenance by completing projects during the outage period and ahead of its established schedule, these are still costs that the Company would have eventually incurred even if the catastrophic failure had not occurred.”<sup>94</sup> Accordingly, the ALJ and the Commission should deny Xcel’s attempt to offset a ratepayer refund with eventual costs that it accelerated, and passed on to ratepayers ahead of schedule.

Second, the “customer benefits” of the Sherco 3 restoration work did not occur, if at all, during the period Sherco 3 was out of service, and the supposed benefits did not affect the power supply costs in the years when Sherco 3 was out of service. Similarly, the cost benefits Xcel claims are not appropriate with the scope of this fuel cost adjustment proceeding. Maintenance costs are addressed in general rate cases and should not be considered in this proceeding. Maintenance costs are set as part of base rates in general rate cases in which test year maintenance costs are used as the basis for setting maintenance cost in base rates. If any maintenance costs were reduced through the Sherco 3 restoration activities, they flow to Xcel’s customers, not Xcel.<sup>95</sup>

Also, ratepayers pay less in capital costs for older equipment and likely paid more for Xcel’s accelerated plant repairs and replacement. Any costs Xcel may have saved ratepayers by accelerating its maintenance and repair schedule are likely balanced out, if not overwhelmed, by the ongoing costs of including new capital costs in rate base passed on to ratepayers. Even if these costs were relevant to this proceeding, Xcel does not provide data sufficient to determine whether ratepayers received a net benefit under the short-term accelerated maintenance scenario, “or

---

<sup>91</sup> [Xcel Initial Brief](#) p. 64-65.

<sup>92</sup> [OAG Initial Brief](#) p. 8-9, citing Ex. Xcel-31 Schedule 3 at 12 (Schottler Direct Schedule).

<sup>93</sup> [OAG Initial Brief](#) p. 9.

<sup>94</sup> See [OAG Initial Brief](#) p. 9, citing Ex. OAG-2 at 16 (Lee Rebuttal).

<sup>95</sup> [XLI Initial Brief](#) p. 23.

whether ratepayers would have been better off paying for a functional, less expensive plant over the long-term.”<sup>96</sup>

As XLI pointed out in its Initial Brief, Xcel’s own restoration strategy contradicts the contention that ratepayers are better off after the catastrophic failure, extended outage, and restoration of Sherco 3.<sup>97</sup> As the Company previously explained, its “plan was to return Sherco 3 to its pre-event condition, with only minimal improvement [two years] to its life span.”<sup>98</sup> The Company further explained that “this approach was supported by our insurance coverage which obviously would not reimburse the Company for a final product that was better than what we started with.”<sup>99</sup> Considering the uncertainty of which scenario leaves ratepayers better off, the ALJ and the Commission should resolve this doubt in favor of ratepayers and deny offsetting the refund of replacement energy costs with the speculative value of the Company’s “avoided costs” and “opportunity projects.”

Third, insurance reimbursement does not pertain to the calculation and prudence of the replacement power costs and it has no bearing on this matter. Moreover, Xcel should not receive an offset for insurance restoration costs, because ratepayers paid, and may be continuing to pay, Xcel’s insurance. Ratepayers pay the costs of a utility’s insurance through base rates, and ratepayers – not the utility – should receive the benefits provided by insurance.<sup>100</sup> Considering the scale of the Company’s insurance claim any ratepayer benefits which may have arisen from an insurance claim of this size may actually have been offset by substantially increased insurance premiums, such that “[r]atepayers might still be paying for the catastrophic failure of Sherco 3 through increased insurance premiums to this day.”<sup>101</sup> Because ratepayers pay the cost of a utility’s insurance through base rates, and the insurance reimbursement does not pertain to the calculation and prudence of the replacement power costs, the ALJ and the Commission should deny Xcel’s attempt to offset a ratepayer refund of replacement energy costs based on insurance benefits that naturally belong to the ratepayers.

---

<sup>96</sup> [XLI Initial Brief](#) p. 24; [OAG Initial Brief](#) p. 8-9 (citing Ex. OAG-1, p. 15-17 (Lee Rebuttal))

<sup>97</sup> [XLI Initial Brief](#) p. 24.

<sup>98</sup> [XLI Initial Brief](#) p. 24, citing Ex. OAG-1, p. 15 (Lee Rebuttal).

<sup>99</sup> [XLI Initial Brief](#) p. 24, citing Ex. OAG-1, p. 15 (Lee Rebuttal).

<sup>100</sup> [OAG Initial Brief](#) p. 10, citing Ex. OAG-2 at 19 (Lee Rebuttal).

<sup>101</sup> [OAG Initial Brief](#) p. 11, citing Ex. OAG-2 at 18 (Lee Rebuttal)

Last, the Company’s calculation of other labor and materials savings are flawed and unreliable. As the OAG points out, Xcel provides no legitimate foundation for its supposed labor and material savings.<sup>102</sup> Xcel does not compute its cost of providing service on a plant-by-plant basis, and therefore it cannot claim to have avoided overtime and materials expense at Sherco because of the extended outage – there is simply no way to calculate or prove any such conjectural savings and Xcel’s attempts to offset the refund due to ratepayers should be dismissed.

Thus, for the reasons discussed above, the ALJ and the Commission should deny the Company’s attempt to offset the refund of replacement energy costs ratepayers deserve with these unsupported benefits. Xcel’s argument that any refund should be offset by previous disallowances or mitigating factors is flawed and should be rejected at the outset. The previous disallowances or any of the mitigating factors (to the extent they even exist and can be proven) have nothing to do with the replacement power at issue in this case.

### **III. CONCLUSION**

If Xcel had employed good utility practice and reasonably inspected Sherco 3 it could have prevented its catastrophic failure. The replacement power costs were not prudently incurred because Xcel failed to operate and maintain Sherco 3 in a reasonable manner. The ALJ and the Commission should require Xcel to refund customers \$71.6 million in replacement power costs, offset by a portion of the GE settlement. No “netting” of the refund against previous disallowances or theoretical ratepayer benefits arising from the Sherco 3 restoration is warranted or justified, other than the netting of the portion of the GE settlement related to replacement power costs. Fundamental utility regulation principles hold that Xcel’s investors accepted the risks of providing utility service, including costs arising from an outage, in exchange for a “just and reasonable” rate of return on their investments, and the \$71.6 million, minus offset, must be refunded so that ratepayers are unharmed from the Sherco 3 outage. The imposition of replacement energy costs on ratepayers who did not cause the catastrophic and preventable failure of Sherco 3 would be unjust and unreasonable.

---

<sup>102</sup> [XLI Initial Brief](#) p. 24; OAG Initial Brief p. n. 46.



Dated: February 14, 2024

Respectfully submitted,

STOEL RIVES LLP

/s/ Amber S. Lee

Andrew P. Moratzka

Amber S. Lee

33 South Sixth Street, Suite 4200

Minneapolis, MN 55402

Tele: 612-373-8800

Fax: 612-373-8881

ATTORNEYS FOR THE XCEL LARGE  
INDUSTRIALS

122294909.10 0064590-00018