

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

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Xcel Energy for a Certificate of Need for the Lyon County Generating Station in Lyon County, Minnesota

DOCKET NO. E-002/CN-25-145

**SUPPLEMENTAL COMMENTS OF THE
OFFICE OF THE ATTORNEY GENERAL
— RESIDENTIAL UTILITIES DIVISION**

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits the following Supplemental Comments in response to Xcel’s Reply Comments filed on February 18, 2026 regarding the Certificate of Need (CN) for the Lyon County Generating Station (Lyon County). Xcel opposes the OAG’s recommendations to assign the incremental costs of Lyon County to very large customers and to condition the CN on either a hard cost cap at the cost estimate in Xcel’s May 2025 CN filing or on allowing recovery of a return only of the cost of debt for costs above Xcel’s October 2024 Stipulation cost estimate. Xcel argues that the OAG’s recommendations are inappropriate for a CN proceeding and takes issue with the OAG’s observations regarding Xcel’s sales forecast. The OAG’s recommendations are necessary to protect ratepayers from the perverse incentive of utilities to increase rate base above budgeted estimates and to ensure that very large customers pay for the costs to serve them.

I. THE COMMISSION HAS BROAD AUTHORITY TO IMPOSE CONDITIONS ON THE GRANT OF A CERTIFICATE OF NEED.

Xcel asserts that the OAG’s recommendation for a hard cost cap is outside the scope of a CN proceeding, that the alternative recommendation to limit Xcel’s return on equity is an

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“arbitrary” request to use a CN for ratemaking, and that the recommendation to assign incremental costs to very large customers is an issue for a rate case rather than a CN proceeding.¹ In support of the first two pronouncements, Xcel provides nothing.² In arguing against the assignment of incremental costs to very large customers, Xcel makes general mention of the rate case statute and CN statute, but does not actually explain their application.³ Xcel misconstrues the Commission’s authority.

A. The Commission Can Impose Either of the OAG’s Proposed Limits on Rate Recovery on the Lyon County CN.

The Commission can impose a cap on cost recovery in its grant of a CN. The Commission has the power both to set rates and to grant CNs.⁴ Minnesota Statutes section 216B.243, subdivision 5 provides that “[i]ssuance of the certificate may be made contingent upon modifications required by the commission,”⁵ and the cost of the facility seeking a CN is a significant part of the Commission’s inquiry in a CN proceeding. A CN can only be granted if the “applicant can show that demand for electricity cannot be met more cost effectively through energy conservation and load-management measures and unless the applicant has otherwise justified its need.”⁶ An application for a CN must include extensive information regarding costs of both the proposed facility and of alternatives,⁷ and to grant a CN, the Commission must consider the costs of the proposed facility compared to the costs of reasonable alternatives.⁸ Given that the Commission must thoroughly examine costs in a CN proceeding and has the power to make the

¹ Xcel Reply Comments at 9.

² *Id.*

³ *Id.*

⁴ Minn. Stat. § 216A.05, subd. 2, clauses 2 and 4; Minn. Stat. §§ 216B.03, .16.

⁵ *See also* Minn. R. 7849.0400.

⁶ Minn. Stat. § 216B.243.

⁷ Minn. R. 7849.0250.

⁸ Minn. R. 7849.0120(B)(2).

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grant of a CN contingent upon modifications, it follows that the Commission can make the grant of the Lyon County CN contingent upon a cost cap.

Xcel argues that a hard cap in a CN would amount to the Commission “conclud[ing] that a project is needed and then arbitrarily limit[ing] cost recovery.”⁹ There is nothing arbitrary about the OAG’s proposal. To grant a CN, the Commission must examine the costs and determine whether there is actually a need for the facility after considering the accuracy of the forecast, whether utility solicitations have contributed to the need, how expensive it will be, and how expensive alternatives would be, among other considerations.¹⁰ There are concerning inconsistencies in Xcel’s forecast that suggest that Xcel’s pursuit of new data center customers may be driving the need for more generation.¹¹ Costs have increased for Lyon County by [NOT PUBLIC DATA BEGINS ██████ NOT PUBLIC DATA ENDS] percent,¹² compared to a far smaller increase for the Cannon Falls Energy Center PPA, another CT resource that was selected as part of the same stipulation that Lyon County was in.¹³ Xcel’s latest capital cost for 420 MW Lyon County with AFUDC is [NOT PUBLIC DATA BEGINS ██████████ NOT PUBLIC DATA ENDS]¹⁴ compared to [NOT PUBLIC DATA BEGINS ██████████ NOT PUBLIC DATA ENDS]¹⁵ for Xcel’s 300 MW self-build Nobles battery energy storage system (BESS) and [NOT PUBLIC DATA BEGINS ██████████ NOT PUBLIC DATA ENDS]¹⁶ for Xcel’s 300

⁹ Xcel Reply Comments at 9.

¹⁰ Minn. R. 7849.0120.

¹¹ OAG Initial Br. at 3-5, 17-20.

¹² Xcel Feb. 4 Comments at 7; Docket No. E-002/CN-24-195, Xcel Lyon County Generating Station Proposal, App. B (May 24, 2024).

¹³ Docket No. E-002/CN-24-195, OAG Initial Comments at 4 (Oct. 31, 2025).

¹⁴ Xcel Reply Comments, Attach. B, Feb. 2026 Summary and Cash Flow (Feb. 18, 2026).

¹⁵ Docket No. E-002/RP-24-67, Petition for Proposed Generator Projects for MISO ERAS at 9 (Feb. 20, 2026). This information is provided for comparison only; the OAG is not taking a position here on whether the prices of Xcel’s self-build BESS projects are accurate or reasonable.

¹⁶ *Id.* at 10.

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MW self-build Sherco BESS. Given the Commission's authority to impose conditions on a CN, the Commission could conclude that a CN is only appropriate for a new natural gas combustion turbine if Xcel bears some of the costs itself rather than passing those costs onto ratepayers.

All of the same analysis applies to the OAG's alternative ratepayer protection recommendation, whereby Xcel would only receive its full return up to the cost it estimated in the Stipulation, which is the cost upon which Lyon County's approval was predicated. Furthermore, contrary to Xcel's argument that this recommendation is arbitrary, it is actually very thoughtfully tailored to the nature of the regulatory construct and the facts of this proceeding. Xcel has an incentive to make its capital expenditures as expensive as possible because of its return on equity. Lyon County was approved based on a much lower estimated cost, and Xcel has increased its estimated costs twice since then. The OAG's recommendation to only allow recovery of a return set at the cost of debt for costs in excess of Xcel's Stipulation estimate removes Xcel's perverse incentive to allow costs to spiral further while still giving Xcel assurance that it can recover necessary costs.

Both of these proposals are a valid exercise of the Commission's CN and ratemaking authority. In fact, either one would give Xcel a level of regulatory certainty regarding the costs it is likely to recover that it should be grateful for.

B. The Commission Can Assign Costs to Protect Ratepayers from the Potential Harms Caused by Data Centers.

Xcel also opposes the OAG's recommendation that the Commission order that the incremental costs of Lyon County be assigned to very large customers. According to Xcel, "the determination of how rate recovery is assigned across customer classes is an issue for a rate case,

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not a Certificate of Need proceeding.”¹⁷ This argument is not supported by the CN statute and contradicts the intent of the legislature regarding data centers.

Ensuring the cost of a new large energy facility is paid by the customers driving the need for it is an appropriate modification that a CN can be made contingent upon.¹⁸ If a new large energy facility was built to serve only a single customer, the Commission could very well modify the CN to require that no other ratepayers pay for such a facility. By extension, if Lyon County is being built primarily to serve a single class of customers, the Commission has the ability to modify the CN to require that Xcel assign the costs to very large customers. This is both appropriate and more efficient than allowing Xcel to allocate costs in a rate case according to its self-interest, resulting in more rate case disputes.

The legislature has demonstrated a clear concern about the risks associated with very large customers such as data centers. It has tasked the Commission with establishing a very large customer tariff to ensure that “all costs attributable to the utility’s very large customers...are assigned to the very large customer class or subclass” and that “other customers of the public utility are not placed at risk for paying stranded costs associated with the utility serving the very large customer.”¹⁹ Without assigning the incremental costs of Lyon County to very large customers, there is a real risk that Lyon County is being built to serve data centers but that Xcel’s residential and small business ratepayers will subsidize them. And if the data centers ultimately do not appear, Xcel’s existing ratepayers will be stuck with a shocking bill for what will be duplicative facilities that should have been avoided.²⁰

¹⁷ Xcel Reply Comments at 9.

¹⁸ Minn. Stat. § 216B.243, subd. 5; Minn. R. 7849.0400.

¹⁹ Minn. Stat. § 216B.1622.

²⁰ See Minn. Stat. § 216B.01.

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The Commission should therefore adopt the OAG’s recommendation that the CN be modified to require that the incremental costs of Lyon County be assigned to very large customers.

II. XCEL BEARS THE BURDEN TO DEMONSTRATE ITS FORECAST IS ACCURATE.

Xcel’s argument that the OAG did not provide an alternative forecast has no bearing on Xcel’s responsibility to prove the reliability of its own forecast. Minnesota Rule 7849.1200 states that the Commission must evaluate “the accuracy of the *applicant’s* forecast of demand for the type of energy that would be supplied by the proposed facility.” Placing the burden on Xcel is a conscious policy choice, as only Xcel has free access to its forecasts. Notably, Xcel did not provide any additional data or an up-to-date forecast to rebut the inconsistencies discussed in the OAG’s initial comments.²¹ Nor did it explain why it has stopped attributing the need for Lyon County to anything other than data centers.²²

Instead, Xcel made the significantly flawed argument that the need for Lyon County “stems from the 2019 IRP (before the recent data center boom)” (parentheses in original).²³ It is true that the need found in the 2019 IRP came before the data center boom. But as the OAG explained in initial comments, the 2019 IRP need appears to have been filled.²⁴ In that IRP, the Commission declined to find a specific need for Lyon County and instead ordered a competitive acquisition process for up to 800 MW, into which Xcel would need to bid Lyon County.²⁵ Xcel has already acquired 1143 MW of firm dispatchable PPAs through the settlement of that docket.²⁶ It has also recently petitioned for another 80 MW of BESS capacity in that docket to replace a resource that

²¹ OAG Initial Comments at 3-5, 17-20.

²² *Id.*

²³ Xcel Reply Comments at 3.

²⁴ OAG Initial Comments at 18-19.

²⁵ Docket No. E002/RP-19-368, Order Approving Plan with Modifications and Establishing requirements for Future Filings at 14 (Apr. 15, 2022).

²⁶ Docket No. E-002/CN-23-212, Order Approving Power Purchase Agreements (Feb. 17, 2026).

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dropped out after being selected.²⁷ Because Xcel has already filled the need from the 2019 IRP, its focus on the 2019 IRP as justification for Lyon County raises concern that Lyon County is being built in anticipation of data centers.

The Commission is tasked with considering the accuracy of Xcel’s forecast and the extent to which Xcel’s promotional practices may have given rise to the need Xcel is forecasting.²⁸ The OAG has highlighted inconsistencies in Xcel’s justifications for Lyon County that suggest that Xcel may be building Lyon County to serve data centers that Xcel has been in talks with. This will help the Commission to fully assess the accuracy and reliability of Xcel’s claims and determine whether Xcel has carried its burden of proof.

III. IF THE COMMISSION DOES NOT ADOPT THE OAG’S RATEPAYER PROTECTIONS, IT SHOULD CLARIFY THAT GRANTING THE CN DOES NOT SUPERSEDE PRIOR ORDERS.

The OAG urges the Commission to adopt at least one of its ratepayer protections as a condition of granting the Lyon County CN. However, if the Commission declines to do so, the Commission should clarify in its order that granting the CN does not supersede the order points relating to Lyon County in its order in Docket No. 24-67. This will reduce disputes over what evidence Xcel needs to provide in any future cost recovery proceeding for Lyon County.

CONCLUSION

The OAG recommends that the Commission protect residential and small business ratepayers from Lyon County’s out-of-control costs using the following measures:

1. The Commission should order one of the following Ratepayer Protection Options:

²⁷ Docket No. E-002/CN-23-212, Petition Supplement—Cottage Grove BESS (Dec. 5, 2025).

²⁸ Minn. R. 7849.0120(A).

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- a. Condition the Lyon County CN on a hard cost cap of **[NOT PUBLIC DATA BEGINS ██████████ NOT PUBLIC DATA ENDS]**. Any costs above that level will not be recoverable from ratepayers; or
 - b. Condition the Lyon County CN on Xcel recovering its return on equity only for the costs up to **[NOT PUBLIC DATA BEGINS ██████████ NOT PUBLIC DATA ENDS]**. Xcel's return on any costs above that level will only be recoverable using Xcel's cost of debt; and
2. The Commission should condition the CN on Xcel assigning the incremental costs of Lyon County to very large customers in any cost recovery proceedings.
 3. If the Commission does not adopt the OAG's recommendations, it should clarify that granting the CN does not supersede its order in Docket No. 24-67.

Dated: February 23, 2026

Respectfully submitted,

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