

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

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Chair
Vice Chair
Commissioner
Commissioner
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In the Matter of an Investigation and Audit of
Service Quality Reporting – Fraudwise Report

DOCKET NO. E, G-002/CI-02-2034

In the Matter of the Petition of Northern States
Power Co. d/b/a Xcel Energy for Approval of
Amendments to its Natural Gas and Electric
Service Quality Tariffs Originally Established
in Docket No. E, G-002/CI-02-2034

DOCKET NO. E, G-002/M-12-383

**REPLY 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 reply comments in response to the initial comments submitted by the Citizens Utility Board of Minnesota (CUB) and the Energy Cents Coalition (ECC) regarding Xcel’s 2024 annual Quality of Service Tariff (QSP) filing. CUB raised the concern that Xcel’s Telephone Response Time reporting hides an alarming drop in the number of customer calls answered within 20 seconds as required by Commission rule, and the OAG recommends tariff changes to accurately record response time in accordance with Commission rule. CUB also explained the history of the underperformance payment and the reasoning behind the level it was set at in 2013. The OAG presents information suggesting that an inflation adjustment may be too small of an adjustment to achieve a similar effect as was achieved in 2013 when the current level was established. Finally, the OAG responds to ECC’s recommendation to launch a Commission-led stakeholder process to reform the QSP tariff and instead recommends that, if the Commission

wishes the parties to develop further changes to the tariff, the Commission refer the parties to mediation at CAH.

I. THE DEFINITION OF TELEPHONE RESPONSE TIME IN XCEL’S TARIFF DOES NOT ACCURATELY REFLECT CUSTOMER HOLD TIMES AND SHOULD BE REVERTED TO BE CONSISTENT WITH MINN. R. 7826.1200, SUBP. 1.

Minnesota utilities are required to answer 80 percent of customer calls within 20 seconds, known as the 80/20 standard. For routine calls during business hours, the 80/20 standard defines an “answer” as follows:

“Answer” means that an operator or representative is ready to render assistance or accept the information to handle the call. Acknowledging that the customer is waiting on the line and will be served in turn is not an answer. If the utility uses an automated call-processing system, the 20-second period begins when the customer has selected a menu option to speak to a live operator or representative. Utilities using automatic call-processing systems must provide that option, and they must not delay connecting the caller to a live operator or representative for purposes of playing promotional announcements.¹

Immediately evident from this language are the Commission’s concerns that utility customers not be left waiting to speak to a live representative and that utilities’ measurement of the 20-second period accurately reflect the customers’ experience without manipulation by announcements or recordings.

For over a decade, it appears that Xcel has only met Minnesota’s 80/20 service quality standard due to a tariff revision that allowed it to massage its reported call response time under its QSP tariff.² Prior to 2013, Xcel’s tariff defined “answer” using the same language as was (and is) found in Rule 7826.1200.³ In 2013, it deleted this language and replaced it with a new “Telephone

¹ Minn. R. 7826.1200, subp. 1.

² Initial Comments of the Citizens Utility Board of Minnesota at 5-7 (Jul. 22, 2025) (CUB Initial Comments).

³ Docket No. E, G-002/CI-02-2034, Petition, Att. A, Elec. tariff redline, sec. 6, 4th rev. sh. no. 7.1 (PDF pages 21-22) (Apr. 16, 2012); *Id.*, Att. A, Gas tariff redline, sec. 6, 2nd rev. sh. no. 7.1 (PDF pages 59-60) (Apr. 16, 2012).

Response Time” term defined as “the time to answer all customer initiated calls directed to the Company’s call center or to its business office, regardless of whether the call is answered by a Company representative or the Company’s Interactive Voice Response (IVR) system.”⁴ As demonstrated by CUB,⁵ this change in definition immediately brought Xcel into compliance with its tariff after consistent failure to comply.

This 2013 change also appears to have hidden from Commission view a nosedive in timely live-representative answers since 2020. Under the Rule 7826.1200, subpart 1 language, IVR answers that do not result in a conversation with a live representative should not be included in the calculation of customer telephone wait times, as an “answer” is specifically defined as having an operator or representative ready to render assistance or accept information. Automatic call processing systems are allowed,⁶ but definitionally should not be included when calculating customer wait times if the caller never gets past the automated system because these calls were never answered by a real person. By contrast, the QSP tariff redefinition allowed Xcel to count every IVR answer as a 0-second wait time, seriously diluting its wait time metrics even as the number of customers waiting longer than 20 seconds (after time spent navigating a phone tree) skyrocketed.

There is no indication that Xcel could not meet the 80/20 standard without using the IVR 0-second answer time to dilute its metrics. CUB’s analysis shows that from 2006 through 2019,

⁴ Docket No. E, G-002/M-12-383, Petition, Att. A, Elec. tariff redline, sec. 6, 3rd rev. sh. no. 7.4 (PDF page 29) (Mar. 27, 2013); *Id.*, Att. A, Gas tariff redline, sec. 6, 2nd rev. sh. No. 7.4 (PDF page 69) (Mar. 27, 2013).

⁵ CUB Initial Comments at 6.

⁶ This makes sense, as a phone tree may be a useful way of triaging customers by the type of assistance they require, but the time spent clicking through a phone tree can hardly be characterized as “rendering assistance.”

Xcel would have either met the threshold or only been out of compliance by a narrow margin.⁷ In fact, had the redefinition not occurred, Xcel would have had a financial incentive to come into compliance. Both state agencies and the Commission likely would have encouraged it to increase its efforts before the 2020 plummet from which Xcel has not recovered. And in 2024, when Xcel's non-IVR 20-second response rate fell below 50 percent, CenterPoint Energy answered 82.7 percent of calls excluding IVR within 20 seconds,⁸ providing real-time evidence that the 80/20 standard is achievable without diluting the metrics.

Xcel's 2013 redefinition was initially challenged due to the OAG's concern that the outcome would be precisely what has happened. As explained in the OAG's comments at the time:

Xcel's proposed tariff allows it to meet its 80/20 standard simply by connecting all incoming calls to an automated system, rather than by connecting callers to representatives ready to render assistance . . . While the Commission's rules recognize that automated systems have a place in utilities' business models, they are not a substitute for personal interaction with a customer representative who can respond to customers' needs.⁹

While there is no record to illustrate why Xcel's redefinition was ultimately preserved, it is now clear that the redefinition enabled a lack of transparency and harm to Xcel's customers that regulators did not intend. It also illustrates the dangers of loosening standards and redefining tariff terms when Xcel is out of compliance with the existing standards and definitions, as Xcel is attempting to do in the current proceeding.¹⁰

The OAG appreciates CUB's analysis of this issue and regrets that we did not uncover it sooner. The language regarding the 80/20 standard in Xcel's QSP tariff should be restored to language consistent with Minnesota Rule 7826.1200, subpart 1 so that whether Xcel meets the

⁷ CUB Initial Comments at 6.

⁸ Docket No. G-008/M-25-33, 2024 Annual Gas Service Quality Report at 1 (May 1, 2025).

⁹ Docket No. E-002/12-383, Reply Comments of the OAG-AUD at 4 (Jun. 29, 2012).

¹⁰ Discussed in further detail in the OAG's initial comments of July 22, 2025.

80/20 standard is calculated excluding solely-IVR calls. For over a decade, the language Xcel inserted into its tariff has masked the extent to which Xcel is falling short of the 80/20 standard, and in the past five years, its “answers”¹¹ within 20 seconds have plummeted to the worst levels in at least nearly two decades. The revisions allowing Xcel’s call answer times to worsen has proven contrary to the public interest and should be reversed.

II. AN INCREASE TO THE UNDERPERFORMANCE PENALTY SHOULD BE PURSUED AND AN INFLATION ADJUSTMENT MAY FALL SHORT OF APPROPRIATELY INCENTIVIZING XCEL.

Given Xcel’s poor performance and lack of transparency, CUB’s observation that, historically, the Commission has “found that penalty thresholds well above \$1,000,000 per metric may be necessary to incentivize performance” raises the question of how best to spur corrective action from Xcel. The point of regulation is to align Xcel’s private actions with the public interest,¹² and the growth in both the number of complaints and in call center wait times clearly contravene the public interest. According to CUB, an inflation adjustment would only result in a penalty of \$1,383,397.¹³ A less-than-\$400,000 increase after 12 years does not appear to be a substantial enough change to incentivize Xcel to improve performance given Xcel’s size. For comparison, Xcel’s current rate increase request for 2025 is \$353.3 million¹⁴—or over 900 times CUB’s estimate for the inflation adjustment.

The likely small impact of a simple inflation adjustment is, in large part, due to Xcel’s profits growing much faster than inflation. The best way to measure the strength of the incentive is to compare it to Xcel’s net income, as the penalty is paid out of net income and preserving its

¹¹ As defined by Minn. R. 7826.1200, subp. 1.

¹² Scott Hempling, *Regulating Public Utility Performance* 4 (2d ed. 2021). Prof. Hempling goes on to explain: “Regulation defines standards for performance, then assigns consequences, positive and negative, for that performance. The common purpose of all regulation is performance.”

¹³ CUB Initial Comments at 9.

¹⁴ See Docket No. E-002/GR-24-320, Supplemental Direct Testimony of Benjamin Halama at 2 (Mar. 17, 2025).

net income is the most immediate motivation Xcel has to avoid the penalty. Comparing the size of the penalty to Xcel's revenues is insufficient because one of the primary ways Xcel's service quality performance could decline enough to trigger a penalty is by cutting costs to increase net income while receiving the same revenues.

Indeed, when the penalty is compared to Xcel's net income, it is immediately evident how much Xcel's incentive to avoid the penalty has shrunk. In 2013, Xcel Minnesota's net income from its regulated electric business was \$486,209,000,¹⁵ and the net income from its regulated gas business was \$38,060,000.¹⁶ The \$1,000,000 underperformance penalty thus amounted to approximately 0.191 percent of Xcel's net income at the time the Commission determined that to be a sufficient incentive.¹⁷ In 2024, Xcel Minnesota's electric net income was \$941,633,000¹⁸ and its gas net income was \$98,823,000,¹⁹ meaning that the \$1,000,000 underperformance penalty has shrunk to a mere 0.096 percent of Xcel's net income.²⁰ The \$1,000,000 penalty is now approximately half as significant to Xcel as in 2013.

Xcel observed that the \$1,000,000 penalty was "set at a level deemed sufficient to motivate improved performance" in 2013²¹ and, in its effort to slacken the complaint threshold, admits that the penalty "is no longer providing an effective incentive for the Company to improve its performance."²² If the Commission wishes to right-size the penalty to maintain the same level of

¹⁵ Docket No. E, G-999/PR-14-04, Xcel EJAR, sh. composite E-1, cell C47.

¹⁶ Docket No. E, G-999/PR-14-04, Xcel GJAR, sh. 2-NARUC, cell J51.

¹⁷ $1,000,000/524,269,000 = .001907$.

¹⁸ Docket No. E, G-999/PR-25-04, Xcel EJAR, sh. composite E-1, C47.

¹⁹ Docket No. E, G-999/PR-25-04, Xcel GJAR, sh. 2-NARUC, J51.

²⁰ $1,000,000/1,040,456,000 = .000961$.

²¹ Annual Report and Tariff Modification Request at 12 (May 15, 2025).

²² *Id.* In other words, Xcel feels that \$1 million to reduce complaints to 2022 levels or better is simply not worth the effort.

performance incentive as Xcel had in 2013, a \$2,000,000 penalty would be appropriate, as it amounts to 0.192 percent of Xcel's 2024 net income.²³

III. REVISIONS TO THE SERVICE QUALITY STANDARDS BEYOND WHAT THE COMMISSION DETERMINES PER THE CURRENT COMMENT PERIOD SHOULD BE REFERRED TO MEDIATION.

The OAG appreciates ECC's observation that the QSP tariff is static, and the tariff may always require updates to ensure Xcel's captive customers receive acceptable service quality.²⁴ The OAG, however, recommends that further changes to service quality standards be referred to mediation rather than the stakeholder process recommended by ECC.²⁵ The Commission already ordered Xcel to meet with the Department and OAG to discuss potential tariff changes²⁶ and no agreement could be reached. Xcel's annual filing demonstrates its unequivocal opposition to updating the underperformance payments to a level that could incentivize it to improve its behavior and proposes to significantly slacken its service quality standards even as it failed to meet them by unprecedented margins. While the OAG supports the spirit underlying ECC's suggested new QSP metrics,²⁷ a stakeholder process is unlikely to be an efficient or effective method of instituting such reforms. Thus, if the Commission wishes to explore further improving and modernizing Xcel's quality of service, the OAG recommends requesting that the Court of Administrative Hearings assign a mediator.

²³ $2,000,000/1,040,456,000 = .001922$. In addition, the \$1,000,000 penalty was set after a period of improved performance on Xcel's part; returning the strength of the incentive to its 2013 level after Xcel's recent significant performance failures would be reasonable and well within the Commission's purview.

²⁴ Initial Comments of the Energy Cents Coalition at 2-3 (Jul. 22, 2025) (ECC Initial Comments).

²⁵ *Id.* at 3.

²⁶ Order on Distribution of Underperformance Penalty at 6 (Oct. 9, 2024).

²⁷ ECC Initial Comments at 3.

CONCLUSION

The OAG understands that other parties may bring forth proposals in reply comments and the OAG may ultimately support some of those proposals once they are made. Subject to that possibility, the OAG's recommendations are currently as follows:

1. The Commission should find that Xcel exceeded the Customer Complaint and Telephone Response Time thresholds for 2024 and order Xcel to pay \$2 million in underperformance penalties.
2. The Commission should approve Xcel's proposal to use at least 50 percent of the customer complaint underperformance penalty for bill credits to past due customers that (1) have a past-due balance greater than \$2,000, (2) have not otherwise received energy assistance, and (3) are working to pay off their bill—as demonstrated by a payment on their account in the last 90 days. Unless Xcel provides a thorough explanation of the reason for requiring customers to have received a notice of potential disconnection to qualify, the OAG does not believe this criterion should apply. The OAG also does not oppose CUB's recommendation to use the full \$1,000,000 customer complaint penalty for arrearage forgiveness.
3. The Commission should deny Xcel's proposal to use 50 percent of the call response time underperformance penalty to accelerate deployment of its live chat pilot. Xcel should either return the \$500,000 to ratepayers as contemplated by the QSP tariff or the Commission should order Xcel to discuss an alternative proposal with stakeholders.²⁸

²⁸ The OAG requested that Xcel provide further analysis of its proposal in reply comments. If Xcel provides a satisfactory response, the OAG may change its position on this point.

4. The Commission should deny Xcel's proposal to dilute the customer complaint threshold. The threshold should remain at 0.2059 complaints per 1,000 customers.
5. The Commission should deny Xcel's proposal to rewrite the definition of "customer complaint" in the QSP tariff.
6. The Commission should order Xcel to restore the pre-2013 definition of "answer" to its QSP tariff and remove the definition of "Telephone Response Time" from its tariff. The Commission's order should also reiterate that calls answered by Xcel's IVR not be included in calculating whether Xcel met the 80/20 standard.
7. The Commission should update the underperformance penalty sufficiently to induce performance. It should consider setting the penalty at \$2 million, equal to approximately 0.192 percent of Xcel's net income as it was in 2013, and should consider a tiered penalty structure for consumer complaints so that Xcel has an incentive to reduce complaints for the full calendar year. At a minimum, the Commission should update the underperformance penalty to account for inflation.
8. If the Commission wishes Xcel and the parties to make further changes to the QSP tariff, the Commission should request that the Court of Administrative Hearings appoint a mediator.

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Respectfully submitted,

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