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January 30, 2023

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, MN 55101

**Re: *In the Matter of Northern States Power Company dba Xcel Energy-Gas 2023 Gas Utility Infrastructure Cost (GUIC) Rider***  
**Docket No. G-002/M-22-578**

Dear Mr. Seuffert:

The Office of the Attorney General—Residential Utilities Division (“OAG”) submits this letter in response to the Commission’s November 15, 2022 Notice of Extended Comment Period on the petition of Xcel Energy (“Xcel” or “the Company”) to establish new adjustment factors for its Gas Utility Infrastructure Cost (“GUIC”) Rider. The purpose of this letter is to demonstrate that rider recovery of these costs should end after June 30, 2023.

Minnesota Statutes section 216B.1635 (“the GUIC Statute”) authorizes the Commission to approve a rider for the automatic adjustment of gas utility infrastructure costs.<sup>1</sup> The statute was originally enacted in 2005 with a sunset date of June 30, 2015.<sup>2</sup> In 2013, the Minnesota Legislature extended the statute by updating the sunset date to June 30, 2023.<sup>3</sup> The Legislature has not acted to further extend the GUIC Statute.

In its petition, Xcel projects a GUIC revenue requirement of \$37.5 million for calendar year 2023 and proposes adjustment factors to recover this revenue requirement from March 1, 2024 through February 28, 2025.<sup>4</sup> This would mean continuing rider recovery until nearly *two years* after the GUIC Statute expires. Xcel contends that, as long as a utility files a GUIC rider request prior to the statute’s sunset date, the Commission can approve it at any time, including after the statute no longer exists.<sup>5</sup> Under Xcel’s interpretation, a utility could, for example, file a GUIC petition on June 29, 2023, forecasting its GUIC revenue requirement for 2024 with rider

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<sup>1</sup> See Minn. Stat. § 216B.1635, subd. 4; *see also id.*, subd. 1(b) (defining “gas utility infrastructure costs”).

<sup>2</sup> 2005 Minn. Laws ch. 97, art. 10, § 3.

<sup>3</sup> 2013 Minn. Laws ch. 85, art. 7, § 9.

<sup>4</sup> Xcel Petition at 33.

<sup>5</sup> *See id.* at 40 (stating that “the Company believes that the Commission is free to consider GUIC requests at any time so long as they are filed before the expiration of the statute”).

factors to be effective March 1, 2025, through February 28, 2026, and the Commission would have authority to approve it.<sup>6</sup>

Xcel's interpretation is unsupported for at least two reasons. First, the GUIC Statute is the source of the Commission's authority to approve a GUIC rider. Once the statute expires, that approval authority no longer exists, and the Commission is no longer empowered to act on GUIC petitions even if they were filed before the statute expired. (And, arguably, the GUIC Rider itself should terminate, and cost recovery cease, after June 30, 2020, since the statutory authority for "a rate schedule for the automatic annual adjustment of charges for gas utility infrastructure costs" will no longer exist.)

Second, the Company's position is unreasonable because it seeks to recover costs incurred in the last half of 2023. But costs incurred after the GUIC Statute expires are not eligible for GUIC rider recovery since they would not be legally cognizable as "gas utility infrastructure costs" under an existing statute. Had the Legislature intended to allow Xcel to recover these costs through the end of 2023, it could have set a sunset date of December 31. It did not. Therefore, assuming the GUIC Statute's sunset date is not extended again, Xcel can only recover through the GUIC Rider its GUIC revenue requirements for the first six months of 2023.<sup>7</sup>

Xcel will no doubt characterize the OAG's interpretation as too restrictive. But the public interest requires a restrictive interpretation of the sunset date set for riders. Riders are disfavored because they involve single-issue ratemaking. Normally, a public utility may not raise rates without first filing a general rate case in which the Commission comprehensively reviews its costs and revenues. Riders, in contrast, allow a utility to reflect specific cost increases in rates without any inquiry into potential offsetting revenue increases or cost decreases in other areas of its operations, creating a risk of overrecovery. For this reason, riders are regarded as an extraordinary ratemaking remedy and depend on specific statutory authorization for their implementation.

The decision to revoke the statutory authorization for GUIC riders represents a legislative judgment that this mode of recovery is no longer in the public interest. There are a number of potential reasons for this judgment. The GUIC Rider likely was a key factor in enabling Xcel to avoid a rate case for more than a decade prior to November 2021. The Legislature may have determined that continued recovery of substantial natural gas investments outside a rate case was no longer in the public interest given the need for society to move away from reliance on natural gas and avoid exacerbating climate change. Regardless, the Legislature's intent to end the GUIC rider would be frustrated if the Commission were to allow rider recovery to continue months beyond the statutory expiration date.

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<sup>6</sup> Nothing in the text of the statute limits how far into the future a utility can project GUIC revenue requirements as long as it files a rider petition "at least 150 days in advance of implementation" and the projected revenue requirement is "for a forecast period of one year." Minn. Stat. § 216B.1635, subd. 2.

<sup>7</sup> Furthermore, the Legislature has shown that it knows how to specify that cost recovery for projects commenced before a sunset date should be able to continue after that date. In the same chapter of the 2013 Minnesota Laws in which the Legislature extended the GUIC Statute's sunset date, it extended the sunset date for the Emissions-Reduction Rider Statute, Minn. Stat. § 216B.1692. The sunset provision for the latter statute expressly states that the statute will continue to apply to "plans, projects, and riders approved before [the sunset] date and modifications made to them after that date." 2013 Minn. Laws ch. 85, art. 7, § 6. The GUIC Statute's sunset provision contains no such language, demonstrating that the statute should not continue to be applied to costs incurred after June 30, 2023.

Xcel argues that there is precedent for allowing a rider to continue beyond the statutory expiration date. Specifically, Xcel argues that the Commission “allowed this type of recovery with the State Energy Policy (SEP) Rider after its repeal.”<sup>8</sup> That case and this one are apples and oranges. The statute that authorized the SEP Rider<sup>9</sup> was repealed the same year the GUIC Statute’s sunset date was extended.<sup>10</sup> In fact, the repeal was proposed as an amendment to a standalone GUIC bill.<sup>11</sup> The GUIC bill’s author characterized the bill as “repeal[ing] the existing rider, replacing it with the new one [i.e., the GUIC Rider].”<sup>12</sup> Unlike when the SEP Rider was repealed, there is no new statute authorizing rider recovery of the costs at issue here. Instead, the law that Xcel cited as a basis for continuing rider recovery of SEP costs in 2017 is now expiring without a replacement.

Furthermore, the Commission’s reasoning in the SEP Rider case undercuts Xcel’s request in this case. The Commission allowed Xcel to “continue to recover approximately \$1.83 million of costs through [the SEP] Rider until all costs are recovered or the Company files a general rate case, with the understanding that no new costs will be added or recovered through the SEP Rider.”<sup>13</sup> The Commission reasoned that, despite the statute’s repeal, the costs it was allowing in the SEP Rider “stem from revenue requirements for projects constructed and costs incurred before the statute was repealed.”<sup>14</sup> The Commission’s reasoning was that SEP Rider recovery could continue only for projects constructed and costs incurred *prior to the statute’s repeal*. Therefore, rather than supporting Xcel’s petition, the SEP Rider case undercuts its request for costs incurred in the last half of 2023.

For the foregoing reasons, the Commission should limit Xcel’s recovery of 2023 gas utility infrastructure costs to those incurred in the first six months of the year. The Commission would also be justified in ordering rider recovery to terminate entirely after June 30, 2021, assuming the Legislature does not act to extend the statute’s sunset date.

Sincerely,

/s/ **Peter G. Scholtz**

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<sup>8</sup> Xcel Petition at 42.

<sup>9</sup> Minn. Stat. § 216B.1637.

<sup>10</sup> See 2013 Minn. Laws ch. 85, art. 13, § 6 (repealing SEP Rider Statute).

<sup>11</sup> See *In the Matter of the Petition of Northern States Power Company for Approval of a Modification to its Natural Gas State Energy Policy (SEP) Tariff, 2017 SEP Rate Factor, and 2016 SEP Compliance Filing*, Docket No. G-002/M-17-174, Xcel Reply Comments at 2 (Apr. 10, 2017) (describing history of SEP Rider statute’s repeal).

<sup>12</sup> *Id.*

<sup>13</sup> Docket No. G-002/M-17-174, Order Continuing Recovery of Costs Through the State Energy Policy Rider and Other Action at 3 (Aug. 24, 2017).

<sup>14</sup> *Id.*

**CERTIFICATE OF SERVICE**

**Re: *In the Matter of Northern States Power Company dba Xcel Energy-Gas 2023 Gas Utility Infrastructure Cost (GUIC) Rider***  
**Docket: G-002/M-22-578**

I, JUDY SIGAL, hereby certify that on the 30th day of January, 2023, I e-filed with eDockets *a Letter of the Minnesota Office of The Attorney General—Residential Utilities Division* and served a true and correct copy of the same upon all parties listed on the attached service list by e-mail, electronic submission, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

*/s/ Judy Sigal*  
\_\_\_\_\_  
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