BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of 2021 True-up Mechanisms	PUC Docket No. E002/M-20-743
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. E002/GR-20-723 **XLI PETITION FOR RECONSIDERATION AND INITIAL COMMENT**

I. INTRODUCTION

The Xcel Large Industrials ("XLI")[1] are compelled to submit this petition for reconsideration and initial comment ("XLI Petition") pursuant to Minn. R. 7829.3000 and the notice of comment period issued by the Minnesota Public Utilities Commission (the "Commission") in PUC Docket Nos. E002/M-20-743 ("2021 Stay Out") and E002/GR-20-723 ("2021 Rate Case").[2] The Commission should reconsider its approval of Xcel's 2021 Stay Out and instead require Xcel to proceed with its 2021 Rate Case for two principal reasons. First, Xcel's 2021 Stay Out is unlawful as filed and the Commission had no legal authority to approve the 2021 Stay Out. Second, the information contained within Xcel's March 3, 2021, letter[3] (as well as other material confirming that the underlying assumptions of Xcel's stay outs are demonstrably false) constitutes new and relevant evidence that should materially change the Commission's rationale for approving the 2021 Stay Out.

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1 XLI is an *ad hoc* consortium of large industrial customers of Northern States Power Company d/b/a Xcel Energy ("Xcel" or the "Company") consisting for purposes of this filing of Flint Hills Resources Pine Bend, LLC; Marathon Petroleum Corporation; and USG Interiors, Inc.

2 Notice of Comment Period (Apr. 2, 2021) (eDocket No. 20214-172539-02) (the "Notice"). The Notice opens the following for comments by stakeholders:

> (1) Does the information contained in Xcel's March 3, 2021 letter materially change the Commission's rationale for approving Xcel's 2021 True-up Proposal? If so, how?
> (2) Should the Commission reconsider its approval of Xcel's 2021 True-up Proposal and require Xcel to instead proceed with its rate case?
> (3) Are there other issues or concerns related to this matter?

3 Xcel Letter (Mar. 3, 2021) (eDocket No. 20213-171564-01) (the "March 2021 Letter").

II. BACKGROUND

A. Xcel 2020 Stay Out

On November 1, 2019, Xcel filed an application for authority to increase rates in Minnesota.[4] In the 2020 Rate Case, Xcel requested an increase of $201.4 million (6.5%) in 2020, an incremental increase of $146.4 million (4.8%) in 2021, and an incremental increase of $118.3 million (3.9%) in 2022, through a multiyear rate plan ("MYRP").[5] The 2020 Rate Case filing was directly responsive to Xcel's expiring MYRP,[6] which concluded with a Commission-approved settlement for the years 2016-2019.[7] One aspect of the 2015 Settlement Agreement was the Sales-Forecast True-Up and Decoupling (the "Original Sales True-Up").[8] The Original Sales True-Up permitted Xcel to true-up sales based on 2016 weather-normalized sales to account for lost (or gained) sales revenue in years 2016 through 2019, with an assumption that C&I sales revenue would increase.[9] Consistent with the 2015 Settlement Agreement, the Original Sales True-Up was set to expire at the end of 2019, with a 2019 true-up spanning April 1, 2020, to March 31, 2021.[10]

As an alternative to the 2020 Rate Case, Xcel also filed the 2020 Petition on November 1, 2019, seeking the following:

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4 *In the Matter of the Application of Northern States Power Company, dba Xcel Energy, for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-19-564, Initial Filing – Vol. 1 Notice of Change of Rates and Interim Rates Petition (Nov. 1, 2019) ("2020 Rate-Case Petition" or the "2020 Rate Case" when referring to the docket in its entirety).

5 *Id.* at 2.

6 *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of True-Up Mechanisms*, PUC Docket No. E002/M-19-688, Petition for Approval of True-Up Mechanisms at 1 (Nov. 1, 2019) (the "2020 Petition" and the docket shall be referred to generally as the "2020 Stay Out").

7 *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. E002/GR-15-826, Findings of Fact, Conclusions, and Order (June 12, 2017) ("2015 Rate Case Order"); *see also In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-15-826, Stipulation of Settlement (Aug. 16, 2016) (in this comment, the 2015 MYRP shall be referred to as the "2015 Settlement Agreement" or the "2015 Rate Case").

8 2015 Rate Case Order at 9. While there are other true-up proposals at issue here, including capital and property tax true-ups, XLI's primary focus is the proposed sales true-up. Traditionally, Xcel files a compliance filing on or around February 1 each year, detailing the previous year's actual data and revenue calculations. *See, e.g.*, *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. E002/GR-15-826, 2018 Sales Actual Data and Related Revenue Calculations, 2016 Minnesota Electric Rate Case (Feb. 1, 2019).

9 2015 Rate Case Order at 9.

10 2015 Rate Case Order at 36.

> a 2020 sales true-up that would operate similarly to the currently-approved sales true-up established in the 2015 MYRP but would apply to all customer classes;[]
>
> a 2020 capital true-up that would operate consistently with the current capital true-up established in [the] 2015 MYRP;
>
> a 2020 property tax true-up that would operate consistently with the current property tax true-up established in [the] 2015 MYRP; and
>
> Commission approval to delay any increase to the Nuclear Decommissioning Trust ("NDT") accrual until January 1, 2021, or—alternatively—approval of an actual deferral so the Company can fund the increased accrual in 2020 and recover that expense in a future rate case.[11]

Additionally, Xcel committed to withdrawing the 2020 Rate Case and not filing another general rate case until November 2, 2020.[12] At the time the 2020 Petition was filed in November 2019, Xcel claimed that the total increase of the 2020 Stay Out would be $94.3 million or approximately $27.7 million lower than the projected $122 million interim-rate increase contemplated by the 2020 Rate-Case Petition.[13]

On November 18, 2019, stakeholders filed initial comments in response to the 2020 Petition. XLI opposed the 2020 Stay Out for several reasons, the most significant being that Xcel's initial estimates demonstrated that Demand-Billed customers fared worse under the 2020 Stay Out compared to the interim-rate increase in the 2020 Rate Case.[14] Xcel projected that Demand-Billed customers would pay $78.2 million under a 2020 True-Up compared to an interim-rate increase of $66.8 million in the 2020 Rate Case, a roughly $10 million difference.[15] Despite XLI's objections, the Commission approved Xcel's 2020 Stay Out on December 12, 2019, issuing a written order

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[11] 2020 Petition at 2. For purposes of this comment, the "2020 sales true-up that would operate similarly to the currently-approved sales true-up established in the 2015 MYRP but would apply to all customer classes" will be referred to as the "2020 True-Up."

[12] *Id.* at 3; *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*, PUC Docket No. E002/GR-20-723.

[13] 2020 Petition at Ex. 1.

[14] *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of True-Up Mechanisms*, PUC Docket No. E002/M-19-688, XLI Initial Comment at 4, Ex. A (Nov. 18, 2019) ("XLI 2019 Initial Comment").

[15] XLI 2019 Initial Comment at Ex. A. In addition to paying less under an interim-rate increase, XLI also noted that interim rates are subject to refund pursuant to Minn. Stat. § 216B.16, subd. 3, which could further exacerbate the difference between the cost of the 2020 Stay Out compared to the 2020 Rate Case. *See id.* at 5.

on March 13, 2020.[16] In approving the 2020 Stay Out, the Commission acknowledged that there were "shortcomings and risks," but "*based on the information available*," it would approve Xcel's 2020 Petition.[17]

Consistent with historical practice, Xcel submitted a compliance filing on February 1, 2021, providing actual data for the 2020 True-Up.[18] The 2020 Stay Out Compliance Filing updates the total 2020 True-Up to approximately $119.5 million.[19] This amount is over $25 million more than initially projected and only $2.5 million less than the 2020 Rate Case interim-rate increase.[20] Further, the 2020 Stay Out Compliance Filing assigns Demand-Billed customers a true-up value of approximately $157 million while seeking to refund residential customers approximately $44.4 million.[21] Based on these figures, Demand-Billed customers' 2020 True-Up is approximately $78.9 million more than initially projected – an increase of over 100% from the "information available" to the Commission when it first approved the 2020 Stay Out.[22]

XLI submitted comments objecting to Xcel's updated 2020 Sales True-Up projections.[23] The final 2020 True-Up remains a contested matter before the Commission, and Xcel filed its reply comment on March 16, 2021. With the comment period complete, parties await the Commission's formal notice of hearing on the matter.

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16 *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of True-Up Mechanisms*, PUC Docket No. E002/M-19-688, Order Approving True-Ups and Requiring Xcel to Withdraw Its Notice of Change in Rates and Interim Rate Petition (Mar. 13, 2020) ("2020 Stay-Out Order").

17 *Id.* at 9 (emphasis added).

18 *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of True-Up* Mechanisms, PUC Docket No. E002/M-19-688, 2020 Sales and Related Revenue Calculations Compliance – True-Up Mechanisms (Errata) (Feb. 19, 2021) (the "2020 Stay Out Compliance Filing"). Though the original compliance filing was filed in both public and trade secret formats on February 1, 2021, Xcel subsequently filed multiple public errata filings to replace the original public version. For purposes of clarity, XLI's comments refer only to the February 19, 2021 public errata filing.

19 *Id.* at Attach. F, p. 1.

20 *Cf.* XLI 2019 Initial Comment at Ex. A to the 2020 Stay Out Compliance Filing at Attach. F, p. 1.

21 2020 Stay Out Compliance Filing Attach. F, p. 1.

22 *Cf.* XLI 2019 Initial Comment at Ex. A to the 2020 Stay Out Compliance Filing at Attach. F, p. 1.

23 *In the Matter of the Petition of Northern States Power Company, dba Xcel Energy, for Approval of True-Up Mechanisms*, PUC Docket No. E002/M-19-688, XLI Comment (Mar. 1, 2021).

B. Xcel 2021 Stay Out

During the course of Xcel's 2020 Stay Out, the COVID-19 pandemic began. As part of the Commission's response to the pandemic, the Commission opened a docket (PUC Docket No. E,G-999/CI-20-492) seeking proposals from utilities for accelerated investments that would assist in Minnesota's economic recovery.[24] The Commission subsequently requested utility proposals for the first tranche of investments in a notice issued on August 12, 2020.[25] In response to the Commission's request, Xcel filed a petition, including proposed investments, potential rate mitigation opportunities, and its 2021 Stay Out proposal.[26] Xcel's 2021 Stay Out proposal was similar to the 2020 Stay Out and included:

> An annual Sales True-Up that would operate similarly to the sales true-up established in the 2015 [MYRP] and currently approved for 2020 in the Approval of True-ups docket[];
>
> An annual Capital True-Up that would operate consistently with the current capital true-up established in [Xcel's] 2015 MYRP, and that would serve as the mechanism through which [Xcel] would address the costs of [its] Tranche I investment portfolios;
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> An annual Property Tax True-Up that would operate consistently with the current property tax true-up established in [Xcel's] 2015 MYRP; [and]
>
> To postpone any increase to the Nuclear Decommissioning Trust (NDT) accrual until 2022.[27]

The Commission opened a separate docket (PUC Docket No. E002/M-20-743) for the 2021 Stay Out on September 24, 2020.

Prior to Xcel filing its 2021 Rate Case and in response to concerns about significant rate increases and resource planning decisions being made absent normal procedural standards, XLI

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24 *See In the Matter of an Inquiry into Utility Investments that May Assist in Minnesota's Economic Recovery from the COVID-19 Pandemic*, E,G-999/CI-20-492, Notice of Reporting Required by Utilities (May 20, 2020).

25 *In the Matter of an Inquiry into Utility Investments that May Assist in Minnesota's Economic Recovery from the COVID-19 Pandemic*, PUC Docket No. E,G-999/CI-20-492, Notice of Comment Period (Aug. 12, 2020).

26 *In the Matter of an Inquiry into Utility Investments that May Assist in Minnesota's Economic Recovery from the COVID-19 Pandemic*, E,G-999/CI-20-492, Xcel Response and Petition (Sept. 15, 2020).

27 *Id.* at 4.

submitted a motion to consolidate various Xcel dockets to provide stakeholders an opportunity to assess whether Xcel's various proposals result in "just and reasonable rates."[28]

Xcel subsequently provided stakeholders with additional data pertaining to its 2021 Stay Out proposal. Xcel's filings compared 2021 Rate Case interim rates to the cost of the 2021 Stay Out true-up mechanisms ("2021 True-Up").[29] Xcel initially projected an interim-rate increase of \$308.9 million compared to a 2021 True-Up of \$171.1 million.[30] Of that, Demand-Billed customers were initially projected to pay a 2021 True-Up of approximately \$171.4 million, approximately \$10 million more than these customers would pay in interim rates and larger than Xcel's entire 2021 True-Up.[31]

Following comments from parties,[32] the Commission met on December 8, 9, and 17, 2020, to consider Xcel's 2021 Stay Out and XLI's Motion to Consolidate. The Commission denied XLI's Motion to Consolidate, and issued a written order on January 26, 2021.[33] The Commission also approved Xcel's 2021 Stay Out petition, issuing a written order on April 2, 2021.[34]

In the intervening period between the Commission hearings in December 2020 and the issuance of the Order, Xcel submitted the March 2021 Letter notifying parties of an error in its initial projections.[35] The March 2021 Letter details an accounting error, which resulted in Xcel initially overstating the projected 2021 Rate Case interim-rate increase by approximately \$43 million.[36] In reality, the actual 2021 Rate Case interim-rate increase would be \$265.7 million rather than the \$308.9 million initially projected.[37] In response to this filing, XLI submitted a response letter requesting that the Commission re-examine/reconsider its initial approval of the

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28 XLI Motion to Consolidate at 17 (Oct. 14, 2020) (eDocket No. 202010-167317-15) ("XLI Motion to Consolidate").

29 Xcel Updated Reply Comments at Ex. 1 (Nov. 2, 2020) (eDocket No. 202011-167952-01) ("Xcel Reply Comment").

30 *Id.* at Ex. 1, p. 1.

31 *Id.* at Ex. 1, p. 2.

32 Pursuant to the relevant deadlines, and in addition to its Motion to Consolidate, XLI filed comments generally opposing the 2021 Stay Out on November 12, 2020, and November 17, 2020. *See* Initial Comment by XLI (Nov. 12, 2020) (eDocket No. 202011-168281-04); Reply Comment by XLI (Nov. 17, 2020) (eDocket No. 202011-168388-03).

33 Order Denying Request to Consolidate Dockets (Jan. 26, 2021) (eDocket No. 20211-170296-02).

34 Order Approving True-Ups with Modifications and Requiring Xcel to Withdraw Its Notice of Change in Rates and Interim Rate Petition (Apr. 2, 2021) (eDocket No. 20214-172538-01) (the "Order").

35 March 2021 Letter.

36 *Id.* at 1.

37 *Id.* at Attach. A.

2021 Stay Out.[38] Subsequently, XLI understands that Xcel has provided updated 2021 True-Up projections to accompany the error identified in the March 2021 Letter.[39] Xcel now projects a total 2021 True-Up of approximately $135 million, with Demand-Billed customers projected to pay a surcharge of approximately $150 million.[40] XLI notes that Xcel's updated projections appear to coincidentally maintain the $10 million delta between the 2021 True-Up and the updated 2021 Rate Case interim-rate increase for Demand-Billed customers.

The same day the Commission issued the Order it also issued the Notice. Pursuant to the Notice and Minn. R. 7829.3000, and in response to the Commission's Order, the XLI Petition seeks to (1) reiterate why the Commission's approval of the 2021 Stay Out is unlawful regardless of Xcel's accounting error identified in the March 2021 Letter; (2) emphasize that Xcel's accounting error further calls into question any supposed benefits of the 2021 Stay Out; and (3) articulate additional concerns with Xcel's 2021 Stay Out while providing the Commission with potential procedural paths forward.

III. ANALYSIS

"A petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed."[41] The Commission typically reviews petitions to determine whether they (1) raise new issues; (2) point to new and relevant evidence; (3) expose errors or ambiguities in the underlying order, or (4) otherwise persuade the Commission that it should rethink its previous order.[42] XLI is grateful to the Commission for swiftly issuing the Notice soliciting stakeholders' input on whether these elements have been met and acknowledges the Commission's prior efforts to balance the interests of many stakeholders in these complex proceedings. XLI respectfully asserts that the analysis below satisfies each of the four

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[38] XLI Response Letter (Mar. 8, 2021) (eDocket No. 20213-171649-02) ("XLI Response Letter").

[39] Letter by the Office of the Attorney General, Residential Utilities Division ("OAG") (Apr. 22, 2021) (eDocket No. 20214-173243-01) ("OAG Letter"). *See* OAG Letter at Ex. A (showing Xcel response to OAG IR No. 6 and updating the 2021 True-Up projections).

[40] *Id.*

[41] Minn. R. 7829.3000, subd. 2.

[42] *See, e.g.*, *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. E002/GR-13-868, Order Denying Petitions for Reconsideration at 1 (July 13, 2015).

criteria for reconsideration, and urges the Commission to reconsider its previous approval of Xcel's 2021 Stay Out.

A. The Commission's Order Approving the 2021 Stay Out Violates Minnesota Law

1. The Continued Use of True-Up Surcharges Violates Minn. Stat. § 216B.03, Because Demand-Billed Customers Fare Better Under the 2021 Rate Case

As originally filed, the 2021 True-Up facially violates Minn. Stat. § 216B.03 because Demand-Billed customers are projected to pay more under the 2021 Stay Out than under the projected interim-rate increase in the 2021 Rate Case. Xcel initially projected that Demand-Billed customers' 2021 True-Up would be $171.4 million, which is approximately $10 million more than the $161.4 million Xcel initially projected for Demand-Billed customers' interim-rate increase in the 2021 Rate Case.[43] State law mandates that rates shall be "just and reasonable…[and] ***[a]ny*** doubt as to reasonableness should be resolved in favor of the consumer."[44] XLI asserts that the initial $10 million difference creates precisely the doubt contemplated by Minn. Stat. § 216B.03 and surely cannot constitute rates that are just and reasonable. The updated $10 million difference does not rectify this problem. The 2021 Stay Out's detrimental impact on Demand-Billed customers renders the Commission's determination that approval of the 2021 Stay Out "will ensure just and reasonable rates"[45] demonstrably false. As such, the Order incorrectly claims that the 2021 Stay Out complies with Minn. Stat. § 216B.03, and XLI respectfully asserts that this error justifies reconsideration.[46]

Additionally, the March 2021 Letter identifies new and relevant information further justifying reconsideration of the Order.[47] Xcel's March 2021 Letter confirms that the initial 2021 Rate Case interim-rate increase projection was overstated by approximately $43 million.[48] As XLI pointed out in its response letter, reducing the projected interim-rate increase necessarily shrinks the delta between customers' total 2021 True-Up surcharge compared to an interim-rate increase

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43 Xcel Reply Comment at Ex. 1, p. 2.
44 Minn. Stat. § 216B.03 (emphasis added).
45 Order at 13.
46 *See, e.g.*, *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. E002/GR-13-868, Order Denying Petitions for Reconsideration at 1 (July 13, 2015).
47 *Id.*
48 March 2021 Letter at 1.

under the 2021 Rate Case.[49] This diminishing difference, when combined with Xcel's inability to accurately forecast the 2020 True-Up, raises significant doubt as to whether the 2021 True-Up is in the best interest of all ratepayers.

Importantly, Xcel did not break out the impacts of its error by customer class. Therefore, to estimate Demand-Billed customers' updated 2021 interim-rate increase projection, XLI calculated the ratio of the Demand-Billed customers' initial projected interim-rate increase compared to Xcel's overall initial interim-rate increase projection and then applied that ratio to Xcel's updated interim-rate increase projection by solving for "X" using the following equation:

$$\frac{\$161{,}400}{\$308{,}900} = \frac{X}{\$265{,}700}$$ [50]

Applying this ratio, XLI estimates that Demand-Billed customers' updated interim-rate increase projection is $138.8 million, which is approximately $22.4 million less than Xcel's original interim-rate increase projection for Demand-Billed customers (which was $161.4 million) and approximately $32.6 million less than Demand-Billed customers' initial projected 2021 True-Up surcharge (which was $171.4 million) and approximately $10 million less than the recently updated projected 2021 True-Up (which is allegedly now $150.0 million).[51] Regardless of the veracity of this updated information (which cannot be tested now but should be viewed with skepticism given Xcel's admittedly erroneous interim rate calculation), it does not demonstrate that Demand-Billed customers fare better in a 2021 Stay Out than a 2021 Rate Case—it only shows that Demand-Billed customers might fare less worse than initially projected. In addition, if the new projections hold true, Demand-Billed customers will fund about 75% (or roughly $15 million) of the 2021 True-Up Refund to residential customers.[52]

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[49] XLI Response Letter at 2. Based on the 2020 Stay Out Compliance Filing any updates to the projections provided by Xcel should be viewed with skepticism until final numbers are available.

[50] The equation above applies the ratio of Demand-Billed customers' original interim-rate increase compared to Xcel's original total interim-rate increase. *See* Xcel Reply Comment at Ex. 1, pp. 1-2. Then that ratio is applied to Xcel's reduced total interim-rate increase amount of $265.7 million. *See* March 2021 Letter at Attach. A, p. 1.

[51] Xcel Reply Comment at Ex. 1, p. 2; *see* OAG Letter at Ex. A.

[52] Demand-Billed customers are also paying over 86% (or roughly $38 million) of the 2020 True-Up Refund to residential customers. *See* 2020 Stay Out Compliance Filing at Attach. F, p. 1.

With information showing that Demand-Billed customers would pay $10 million to $30 million less under interim rates than a proposed true-up, and funding a rate rebate to Xcel's residential class for the second consecutive year, it is unclear to XLI how approving the 2021 Stay Out results in rates that comply with Minn. Stat. § 216B.03.[53] And Xcel's continually shifting numbers demonstrate the frailty of the alleged benefits of the 2021 True-Up; at a minimum, there is substantial doubt which should be resolved in favor of Demand-Billed customers. The Commission should, therefore, reconsider its approval of the 2021 Stay Out based on the new and relevant evidence demonstrating that the 2021 Stay Out does not lead to just and reasonable rates and bills for Demand-Billed customers.

2. The Commission's Approval of the 2021 Stay Out Exceeds the 5-Year Statutory Limitation Contained Within Minn. Stat. § 216B.16, subd. 19, and Promulgates True-Up Mechanisms Without Statutory Authority

The Commission should also reconsider the Order because it violates Minn. Stat. § 216B.16, subd. 19. Despite the explicit language in Minn. Stat. § 216B.16, subd. 19 (a) stating that multiyear rate plans "cannot exceed five years," approval of the 2021 True-Up represents the sixth year since Xcel's most recently completed MYRP. While the Order implies that the 2021 Stay Out keeps rates consistent with the last year of Xcel's previous MYRP, in reality, the 2021 Stay Out, via the 2021 True-Up, impermissibly alters rates in violation of the unambiguous five-year requirement contained within Minn. Stat. § 216B.16, subd. 19(a).[54] In short, the 2021 Stay Out exceeds the scope of the Commission's authority under Minn. Stat. § 216B.16, subd. 19(a).

Additionally, the 2021 True-Up hijacks Minn. Stat. § 216B.16, subd. 19, to create a perpetual rate rider not contemplated in state law, allowing Xcel to continue to increase its rates and rate base with minimal regulatory oversight.[55] The purpose of multiyear rate plans is to allow utilities to adjust revenue requirements over a period of time, and the legislature purposely imposed a five-year restriction to ensure that the underlying data and assumptions are periodically updated.[56] Here, however, Xcel is employing a true-up mechanism that functions as a de facto

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[53] *See* Order at 13.
[54] Initial Comment by XLI at 5 (Nov. 12, 2020) (eDocket No. 202011-168281-04).
[55] *Id.*
[56] *Id.*

sales revenue rider, based on 2016 weather-normalized sales.[57] The Minnesota Department of Commerce, Division of Energy Resources ("Department") recognizes that "Xcel's sales true-up is no longer working as intended."[58] Indeed, the notion that Xcel's sales true-up was ever working as intended is speculative at best: "[t]o date, the sales true-ups, which compare sales in each year to the sales in 2016, have resulted in surcharges for all years – 2017 ($22.474 million), 2018 ($33.37 million); and 2019 ($37.782 million)."[59] This is not surprising when one of the assumptions still being used from the 2015 Rate Case Settlement Agreement is demonstrably false: that C&I sales growth would continually occur when the evidence is clearly otherwise. In addition to the sales true-ups that were collected as part of the 2015 Rate Case Settlement Agreement, Xcel's 2020 and 2021 True-Ups suggest a more drastic departure from the outdated 2016 baseline. Xcel's 2020 True-Up is projected to be $119.5 million,[60] and the 2021 True-Up was originally projected to be $171.1 million,[61] which the Department characterized as "unprecedented."[62] The results of the Commission's unlawful experiment with Xcel's sales true-up demonstrate exactly what the legislature was guarding against in limiting multiyear rate plans to five years.

The significant increases in Xcel's 2020 and 2021 True-Ups demonstrate that it is no longer appropriate to rely on the outdated 2016 baseline that has proven demonstrably false throughout its use. XLI echoes the Department's sentiment that Xcel's sales true-up does not work.[63] Indeed, XLI struggles to understand how the Commission can conclude that an "unprecedented … shift[] [of] all of Xcel's risk of reduced sales to the Demand Class customers"[64] results in "rates [that] remain just and reasonable."[65] Contrary to the Commission's assertion that the 2021 Stay Out results in just and reasonable rates, Xcel's recent true-up projections result in significant surcharges to Demand-Billed customers. And rather than continue the cycle of awarding Xcel

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57 2015 Rate Case Order at 9; *see also In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-15-826, Stipulation of Settlement at 6 (Aug. 16, 2016).

58 Initial Comment by the Department at 6 (Oct. 16, 2020) (eDocket No. 202010-167436-04).

59 *Id.*

60 2020 Stay Out Compliance Filing at Attach. F, p. 1.

61 Xcel Reply Comment at Ex. 1, p. 2.

62 Initial Comment by the Department at 6 (Oct. 16, 2020) (eDocket No. 202010-167436-04).

63 *Id.*

64 *Id.*

65 Order at 12.

what amounts to an unauthorized sales true-up rider, a better solution is to continue the 2021 Rate Case to ensure just and reasonable rates pursuant to Minn. Stat. § 216B.03.

3. The 2021 True-Up on Demand-Billed Customers Exacerbates Xcel's Continued Noncompliance with Unambiguous State Energy Policy Contained Within Minn. Stat. § 216C.05, subd. 2(4)

Minn. Stat. § 216C.05, subd. 2(4), makes it "the energy policy of the state of Minnesota that: … retail electricity rates for each customer class be at least five percent below the national average." But both the rates and bills for large Demand-Billed customers have increased to unsustainable levels and would be made far worse under the 2021 Stay Out. As filed, the 2021 Stay Out effectively shifts the entirety of Xcel's risk of reduced sales to Demand-Billed customers.[66] Indeed, Xcel's initial projections demonstrate that Demand-Billed customers' 2021 True-Up surcharge was estimated to be $171.4 million, which is slightly larger than the initial estimated 2021 True-Up of $171.1 million.

By foisting the entire 2021 True-Up on Demand-Billed customers, the 2021 Stay Out (and corresponding 2021 True-Up) will continue increasing rates for Demand-Billed customers in violation of unambiguous state energy policy.[67] With respect to rates, the average delivered cost of energy for Xcel's industrial customers was $.0802/kWh in 2019.[68] This rate was roughly 17.8% higher than the 2019 national average for industrial customers, which was $.0681/kWh.[69] Plainly stated: Xcel's 2019 rates did not comply with Minnesota's statutory directive. Absent Commission reconsideration, Demand-Billed customers were initially projected to pay $171.4 million under the 2021 Stay Out,[70] which will lead to even further departure from the statutory goal contained within Minn. Stat. § 216C.05, subd. 2(4). Xcel's late filed information does nothing

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66 *Id.*

67 *See* Minn. Stat. § 216C.05, subd. 2(4).

68 *See* U.S. Energy Information Administration, 2019 Utility Bundled Retail Sales – Industrial, https://www.eia.gov/electricity/sales_revenue_price/pdf/table8.pdf.

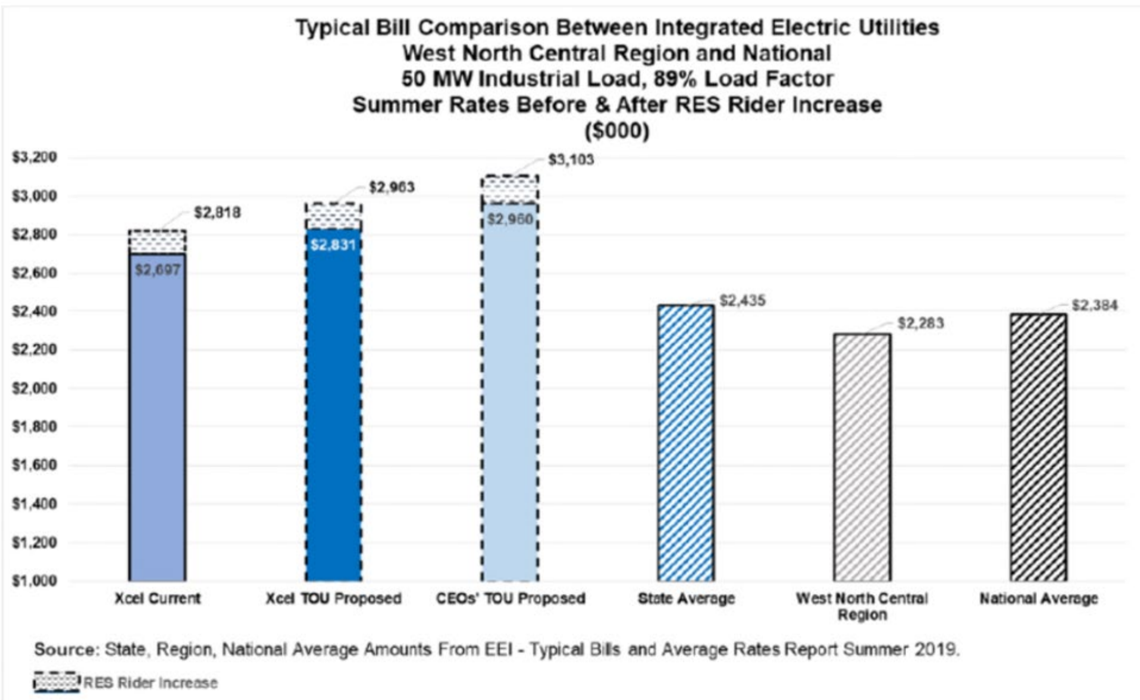
69 *See* U.S. Energy Information Administration, 2019 Average Monthly Bill – Industrial, https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_c.pdf. Deviation above the national average is not consistent for all Minnesota investor-owned utilities. For example, Otter Tail Power Company's 2019 average delivered cost of energy for industrial customers was $.0561/kWh.

70 Xcel Reply Comment at Ex. 1. Xcel's current projections are likely a conservative estimate and, based on the pending 2020 Stay Out, Demand-Billed customers expect that the 2021 True-Up surcharge value could be significantly higher when Xcel submits its final compliance filing on or around February 1, 2022. *See* 2020 Stay Out Compliance Filing.

to address its failure to comply with unambiguous state energy policy set forth in Minn. Stat. § 216C.05, subd. 2(4).[71]

Not only are rates above the national average, so are bills. As demonstrated by the chart below, which was also filed in PUC Docket No. E002/M-20-86, Xcel's industrial bills currently exceed the national average by approximately 13%.

Chart 1



As demonstrated by Chart 1, Xcel's average monthly bill for a 50 MW, 89% Load Factor large industrial customer is $2,697,000, while the national average is $2,384,000,[72] a difference of more than $300,000 per month. Additionally, with the 2020 True-Up, 2021 Stay Out, and other pending dockets,[73] XLI is concerned that Xcel's industrial rates will stray further from the unambiguous state policy goal outlined in Minn. Stat. § 216C.05, with average monthly bills

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71 *See* OAG Letter at Ex. A.

72 *In the Matter of the Petition of Northern States Power Company for Approval of General Time-of-Use Service Tariff*, PUC Docket No. E002/M-20-86, XLI Reply Comment at 2-3, Ex. B (Jan. 13, 2021).

73 *See, e.g., In the Matter of the Petition of Northern States Power Company for Approval of the Renewable Energy Standard Rider Revenue Requirements for 2021, and a Revised Adjustment Factor*, PUC Docket No. E002/M-20-815, Xcel Petition at 2 & Attach. A at 1 (Nov. 5, 2020) (seeking a 9% increase using the 2021 Renewable Energy Standard Rider).

climbing to in excess of $3 million – more than $500,000 above the national average on a monthly basis, or $6 million annually. This would result in large industrial customer bills 30% above the national average.[74] This demonstrates that, contrary to Xcel's untested allegations in its letter submitted to the Commission on December 9, 2020, large industrial bills have not and are not remaining flat.[75]

Though XLI remains concerned that the myriad pending Xcel dockets will continue resulting in Demand-Billed customer rates that do not comply with Minn. Stat. § 216C.05, subd. 2(4),[76] a comprehensive rate-case proceeding will, at the very least, provide stakeholders with a better opportunity to examine/control significant rate and bill increases on Xcel's system. Because it is the energy policy of the state that "rates for each customer class be at least five percent below the national average,"[77] and the 2021 Stay Out exacerbates Xcel's already existing noncompliance with this unambiguous state policy, a renewed examination of Xcel's rates in comparison to the national average should persuade the Commission to reconsider the Order.

B. While Reconsideration of the Order Is Proper Based on Underlying Errors and Relevant New Evidence, the Combined Impact of the 2020 and 2021 Stay Out Should Also Persuade the Commission to Reconsider Its Order

Xcel's continued use of true-up mechanisms results in rates that are not just and reasonable and do not comply with Minnesota law. The combined impact of the 2020 and 2021 Stay Outs egregiously harms Demand-Billed customers. Using current data, under the 2020 Stay Out, Demand-Billed customers are projected to pay a total 2020 True-Up of approximately $157 million,[78] which is approximately $90 million more than Demand-Billed customers would have paid through an interim-rate increase in the 2020 Rate Case.[79] Bringing this to life, consider the hypothetical 50 MW customer with an 89% load factor, that consumes 389,820 MWh annually, or 32,485 MWh per month.[80] Until April 1, 2021, the 2019 True-Up applied, which was

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[74] *In the Matter of the Petition of Northern States Power Company for Approval of General Time-of-Use Service Tariff*, PUC Docket No. E002/M-20-86, XLI Reply Comment at 2-3, Ex. B (Jan. 13, 2021).

[75] *See* Letter Re Stay-Out Proposal, Interim Rates and Department of Commerce Information Request No. 3 – Second Supplement (Dec. 9, 2020) (eDocket No. 202012-168902-05).

[76] *See, e.g.*, XLI Motion to Consolidate.

[77] Minn. Stat. § 216C.05, subd. 2(4).

[78] 2020 Stay Out Compliance Filing at Attach. F, p. 1.

[79] *Cf.* XLI 2019 Initial Comment at Ex. A to the 2020 Stay Out Compliance Filing at Attach. F, p. 1.

[80] (50 MW * 8,760 hrs) * 0.89 = 389,820 MWh; 389,820 MWh/12 mo. = 32,485 MWh/mo.

$.00195/kWh for Demand-Billed customers.[81] For the hypothetical 50 MW customer with an 89% load factor, the 2019 True-Up cost approximately $63,345.75 per month (or $760,149 over the year). As of April 1, 2021, and absent Commission approval of its compliance filing, Xcel is now applying the 2020 True-Up at a rate of $.00878/kWh.[82] The 2020 True-Up costs the hypothetical 50 MW customer with an 89% load factor $285,218.30 per month (or $3,422,619.60 over the year, roughly 25% of which goes toward funding a $44.4 million rebate to the Residential class) – an increase of over $200,000 per month.

Demand-Billed customers fare no better, and arguably worse as a result of the 2021 True-Up, under which they were initially projected to pay $171.4 million.[83] Accounting for the March 2021 Letter and applying XLI's updated Demand-Billed customers' interim-rate increase projection,[84] Demand-Billed customers were originally projected to pay $32.6 million more through the 2021 Stay Out when compared to the projected interim-rate increase in the 2021 Rate Case.[85] When combined, based on current projections, Demand-Billed customers will pay nearly $123 million more under the 2020 and 2021 True-Ups compared to the projected interim-rate increases for the 2020 and 2021 Rate Cases. To put that in perspective, that amount is larger than the entire interim-rate increase Xcel projected for the 2020 Rate Case,[86] and certainly confirms the Department's comment that "the Demand Class would be better off under a 2021 Rate Case rather than a 2021 Sales True-Up."[87] Therefore, based on the combined harm to Demand-Billed customers stemming from the Commission's approval of both the 2020 and 2021 Stay Outs, XLI urges the Commission to reconsider the Order based on the volume of evidence demonstrating that Xcel's stay outs violate Minnesota law.

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81 *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. E002/GR-15-826, 2019 Sales Actual Data and Related Revenue Calculations, 2016 Minnesota Electric Rate Case at 4 (Jan. 31, 2020).

82 2020 Stay Out Compliance Filing at 8, Table 5.

83 Xcel Reply Comment at Ex. 1, p. 2.

84 *Supra* p. 9, Section A, subp. 1.

85 *Id.* With respect to the 2021 Stay Out, XLI believes its projections are a conservative measure of the disparity between an interim-rate increase through the 2021 Rate Case and the 2021 True-Up. *See, e.g.*, 2020 Stay Out Compliance Filing (significantly increasing the 2020 True-Up projections). Again, any reduction based on late filed information is speculative at best. *See* OAG Letter at Ex. A.

86 2020 Petition at Ex. 1, p. 1.

87 Initial Comment by the Department at 8 (Oct. 16, 2020) (eDocket No. 202010-167436-04).

C. Based on the Foregoing, XLI Urges the Commission to Reconsider the Order, and, if this Request Is Granted, XLI Requests the Commission Proceed with a Contested Case Review of the 2021 Rate Case

If the Commission is persuaded to reconsider its Order, XLI believes there are two paths forward beyond merely reaffirming after reconsideration. The first is to simply direct Xcel and the parties to proceed with review of Xcel's 2021 Rate Case filing. Under this alternative, the Commission can notice a hearing as soon as practicable to discuss the implementation of interim rates (allowing Xcel to begin collecting interim rates as soon as legally possible and determining the appropriate amount). Simultaneously, the Commission can refer the 2021 Rate Case to the Office of Administrative Hearings for a contested case proceeding, and the presiding Administrative Law Judge can convene a prehearing status conference for parties to meet and confer to determine an appropriate procedural timeline (which could include supplemental direct testimony from Xcel) for the proceeding. Realistically, XLI suspects that such a prehearing conference would occur no earlier than May 2021, with Xcel implementing interim rates in June or July 2021. Similarly, any supplemental direct testimony on behalf of the Company would likely be due in July or August.

The second procedural path forward would be to assess whether there is a feasible rate mitigation approach that could be deployed to minimize the impact of the 2021 Stay Out on Demand-Billed customers. For example, the Commission could modify the 2021 True-Up to require Xcel's shareholders to share in a percentage of the final true-up value.[88] XLI understands Xcel is opposed to this option.[89] The Commission could also direct implementation of a one-third sharing of the 2021 True-Up between the Demand-Billed customers, all other customers through the use of Non-Protected Accumulated Deferred Income Taxes, and Xcel.[90] XLI understands that the OAG opposes this option.[91] Or the Commission could implement a different rate mitigation approach for Demand-Billed customers.

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[88] *Id.* at 9-10 (suggesting that Xcel (Xcel's shareholders) "share the risks and these costs with its [Demand-Billed] customers by paying 50 percent of the [sales true-up]").

[89] *See* Xcel Reply Comment at 6 (Oct. 30, 2020) (eDocket No. 202010-167871-05).

[90] Alternative Proposal by the Department (Dec. 9, 2020) (eDocket No. 202012-168896-01).

[91] *See, e.g.*, Order at 8 (noting the OAG's position that "revenue loss should not be shifted to Residential and Small C&I" customers).

Unfortunately, the second procedural path has two fundamental problems. First, it assumes the Commission has the legal authority to allow Xcel to continue adjusting rates outside of a multiyear rate plan, which it does not. The Commission's decision to impose hundreds of millions of dollars in surcharges on the Demand-Billed class, to simultaneously de-risk Xcel's capital investments and fund rebates to the Residential class, has absolutely no support under Minnesota law, is in excess of the Commission's authority, and is contrary to the legislature's stated policy. Second, none of the procedural alternatives has unanimous support from stakeholders. XLI therefore believes, on balance, the most equitable path forward is for the Commission to reject the 2021 Stay Out and instruct Xcel to move forward with the 2021 Rate Case. While procedurally complex, continuing the 2021 Rate Case provides stakeholders and the Commission with the opportunity to comprehensively examine Xcel's rates. While the Order cautions against this approach because an "interim rates decision or a final rates decision is speculative,"[92] the continuing damage caused by Xcel's stay outs is not speculative. As noted above, based on current projections, Demand-Billed customers will pay nearly $123 million more under Xcel's 2020 and 2021 Stay Outs compared to the Company's 2020 and 2021 Rate Case interim-rates projections.[93] Additionally, while Xcel will likely claim that it will be prejudiced by a delayed 2021 Rate Case procedural schedule, this was a risk Xcel took on by choosing to forego the immediate implementation of interim rates to instead seek Commission approval of the 2021 Stay Out.

IV. CONCLUSION

Based on the new and relevant evidence contained within the March 2021 Letter and on the underlying clear statutory mandates and policy goals contained within Minn. Stat. §§ 216B.03; 216B.16, subd. 19; and 216C.05, subd. 2(4), which are demonstrably violated by the 2021 Stay Out, XLI urges the Commission to reconsider the Order. In so doing, XLI requests that the Commission reject the 2021 Stay Out, allowing the 2021 Rate Case to proceed. XLI is grateful for the opportunity to submit the XLI Petition and looks forward to continued discussions in these dockets.

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92 *Id.* at 13.
93 *Supra* p. 14, Section B.

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Respectfully submitted,

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