



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

November 10, 2021

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

Re: *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy's Petition for Authority to Increase Natural Gas Rates in Minnesota*
MPUC Docket No. G-002/GR-21-678

In the Matter of Northern States Power Company d/b/a Xcel Energy's Petition for Approval of Deferrals Related to Depreciation, Distribution O&M, and Property Tax for 2022
MPUC Docket No. G-002/M-21-750

Dear Mr. Seuffert:

The Office of the Attorney General—Residential Utilities Division (“OAG”) respectfully submits the following Initial Comments in response to the Minnesota Public Utility Commission’s (“Commission”) Notices of Comment Periods issued on November 3, 2021. The OAG’s Initial Comments respond to the Notices pertaining to both Northern States Power Company, doing business as Xcel Energy’s (“Xcel” or “Company”) application for authority to increase rates for natural gas service in Minnesota (“Rate Case”) and, as an alternative to litigating the Rate Case, the Company’s petition for approval of a deferral of depreciation expense, distribution O&M expenses, and property tax expenses for calendar year 2022 (“Petition”).

On November 1, 2021, Xcel filed its Rate Case with the Commission seeking authority to increase rates for natural gas service in Minnesota.¹ Through the Company’s Rate Case request, it seeks a final increase in gas rates of \$35.6 million, or 6.6 percent, effective January 1, 2022, without suspension.² If the Commission suspends the Company’s proposed Rate Case increase,

¹ See generally *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy's Petition for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-002/GR-21-678 (Nov. 1, 2021) (hereinafter “Rate Case Docket”).

² See *id.*; see also *In the Matter of Northern States Power Company d/b/a Xcel Energy's Petition for Approval of Deferrals Related to Depreciation, Distribution O&M, and Property Tax for 2022*, Docket No. G-002/M-21-750, Petition at 1 (Nov. 1, 2021) (hereinafter “Petition Docket”).

Xcel requests an interim rate increase of \$24.9 million, or 4.9 percent, effective January 1, 2022, until final rates become effective within 10 months of initiating the Rate Case.³

Concurrently with its Rate Case filing, on November 1, 2021, Xcel also filed its Petition, through which the Company effectively proposes to settle its Rate Case by “leav[ing] base rates at approved 2010 test year levels, with a deferral of certain depreciation, distribution O&M, and property tax expenses” for calendar year 2022.⁴ Specifically, the Petition seeks Commission approval to defer, without carrying charges, roughly \$31.6 million—\$14.7 million in depreciation expense, \$15 million in distribution O&M expense, and \$1.9 in property tax expense—which Xcel would then seek to amortize and recover in the Company’s next general rate case upon a showing that the expenses were actually incurred and were reasonable and prudent.⁵

The Commission Should Not Approve the Petition Without Allowing Stakeholders Adequate Opportunity to Scrutinize that Proposal

At this time, the OAG cannot support the Petition. In addition to the inherent disparity of information present between utilities and stakeholders, the timing of the comments on the Petition has prevented stakeholders from the opportunity to engage in discovery. Although, at face value, the Petition may have the appearance of benefitting ratepayers in the short term—by providing a seemingly “better deal” than compared to the Company’s interim rate proposal—the longer-term effects of settlement are opaque. The public interest will not be furthered by the Commission “approving” a stayout without meaningful analysis conducted by staff, consumer advocates, and other stakeholders.

If Xcel’s Petition is Denied and the Company Proceeds with its Rate Case, the Commission Should Deny Interim Rates so that Ratepayers are no Worse off than if the Company’s Petition had been Approved

Interim rates are normally calculated to reflect the return on equity authorized in a utility’s most recent rate case, as well as rate base and expense items similar in nature and kind to previously approved items.⁶ If “exigent circumstances” exist, however, the Commission may depart from this statutory formula and set interim rates using some other method that it deems just and reasonable under those circumstances.⁷ Dictionaries define “exigent” as “[r]equiring immediate aid or action” and “exigent circumstances” as “[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures.”⁸

³ See generally Rate Case Docket; see also Petition Docket, Petition at 1 (Nov. 1, 2021) (citing Minn. Stat. § 216B.16, subds. 2 & 3).

⁴ Petition Docket, Petition at 6 (Nov. 1, 2021).

⁵ *Id.* at 6-7.

⁶ Minn. Stat. § 216B.16, subd. 3(b).

⁷ *Id.*; see also Docket No. E-015/GR-09-1151, Order Setting Interim Rates at 3-4 (Dec. 30, 2009) (setting interim rates based on historic outcomes).

⁸ *In re Application of Minn. Power*, 838 N.W.2d 747, 757 (Minn. 2013) (quoting Merriam-Webster’s Collegiate Dictionary and Black’s Law Dictionary).

If the Commission opts to suspend Xcel's Rate Case increase, the Company proposes a \$24.9 million interim increase based on the statutory formula.⁹ But there are exigent circumstances in this case that justify setting interim rates at a much lower level. Xcel's customers are already facing a dual burden: They are paying for the extraordinary gas costs the Company incurred in February 2021,¹⁰ which are being layered on top of ongoing gas commodity costs that have nearly doubled since this time last year.¹¹ Xcel's Petition was filed in direct response to these exigent circumstances given the Company's acknowledgment that its "customers are facing rising commodity costs and the impacts of Winter Storm Uri."¹² Taken together, these circumstances justify the Commission in departing from the Interim Rate Statute's default formula if the Commission decides to deny the Petition and move forward with Xcel's Rate Case.

The only remaining question is on what basis interim rates should be set. And, in this case, Xcel's Petition provides a reasonable basis to set the Company's interim revenue deficiency. By filing its Petition, Xcel has conceded that "no new revenues in 2022" is an adequate amount of new revenue for the Company under the circumstances.¹³ The Commission should therefore limit the Company's interim rate increase to the same level if its Rate Case goes forward.

The Commission should limit any interim increase to this level for a further reason: It would be contrary to public policy for a utility to use its right to interim rates as leverage to get deferred accounting approved through a "stayout" proposal like the Company's Petition. Xcel's Petition attempts to capitalize on regulators' current heavy workload and the urgency created by the 60-day deadline for the Commission to determine interim rates. This situation creates artificial pressure to accept a stayout offer that is a "decrease" compared to the utility's interim-rate proposal. If the Commission exercises its authority to set interim rates at the "stayout" level, however, a utility can no longer use the threat of a higher interim increase as a bargaining chip to push through deferred accounting on an accelerated timeline.

For these reasons, if Xcel's Petition is denied and the Company's Rate Case goes forward, the Commission should find exigent circumstances, depart from the statutory formula, and deny imposition of interim rates.

⁹ Petition Docket, Petition at 1 (Nov. 1, 2021).

¹⁰ See Docket No. G-002/CI-21-610, Compliance Filing-Quarterly Tracker (Oct. 1, 2021) (noting that Xcel "implemented surcharge factors to recover extraordinary costs on October 1, 2021.").

¹¹ Compare Docket No. G-002/AA-21-759, Initial Filing—November 2021 Purchased Gas Adjustment, sched. C p. 2 (Oct. 28, 2021) (showing November 2021 weighted gas cost of \$5.5858) with Docket No. G-002/AA-20-802, Initial Filing—November 2020 Purchased Gas Adjustment, sched. C p. 2 (Oct. 29, 2020) (showing November 2020 weighted gas cost of \$3.1957).

¹² Petition Docket, Petition at 2 (Nov. 1, 2021).

¹³ *Id.* at 6. See also *id.* at 2 (noting that Xcel "will not seek a carrying charge" related to the deferrals set forth in the Petition).

Mr. Will Seuffert
Executive Secretary
November 10, 2021
Page 4

Sincerely,

/s/ Max Kieley

MAX KIELEY

Assistant Attorney General

(651) 757-1244 (Voice)

(651) 296-9663 (Fax)

max.kieley@ag.state.mn.us

*On Behalf of the Office of the Attorney
General—Residential Utilities Division*

CERTIFICATE OF SERVICE

Re: *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy's Petition for Authority to Increase Natural Gas Rates in Minnesota*
MPUC Docket No. G-002/GR-21-678

In the Matter of Northern States Power Company d/b/a Xcel Energy's Petition for Approval of Deferrals Related to Depreciation, Distribution O&M, and Property Tax for 2022
MPUC Docket No. G-002/M-21-750

I, DEBORAH POOLE, hereby certify that on the 10th day of November, 2021, I e-filed with eDockets *Initial Comments 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/ Deborah Poole

DEBORAH POOLE