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In the Matter of the Application of Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota

Docket No. E-002/GR-21-630

**INITIAL COMMENTS OF THE
MINNESOTA DEPARTMENT OF
COMMERCE**

In response to the Public Utilities Commission’s comment period notice, the Minnesota Department of Commerce concludes that the Commission could deny Northern States Power Company d/b/a Xcel Energy’s recovery of its executive compensation expenses or make an appropriate adjustment.¹ As discussed below, the court of appeals found that the Commission’s denial of Xcel’s proposed executive compensation expense was supported by substantial evidence and in accordance with the agency’s statutory mandate. And when a utility fails to establish the reasonableness of a cost, the Commission may disallow the cost outright or adjust it.

BACKGROUND

In October 2021, Xcel Energy filed a multi-year electric rate case application with the Commission. The Commission referred the matter to the court of administrative hearings for a contested case in December 2021. Following the contested case, the Commission issued a final order in July 2023. As part of its decision, the Commission denied Xcel full recovery of its proposed executive compensation expense by making adjustments of about \$1.6 million for 2022,

¹ NOTICE OF COMMENT PERIOD ON EXECUTIVE COMPENSATION (July 30, 2025) (eDocket no. 20257-221580-01).

\$1.7 million for 2023, and \$1.8 million for 2024.² To calculate these adjustments, the Commission used the governor's salary as a proxy for reasonable compensation.³ The Commission was unpersuaded by Xcel's argument that its executive compensation costs were justified by a market comparison to other firms.⁴ The Commission reasoned that the market comparison that Xcel conducted was based on other corporate officers, all of whom have a fiduciary duty of care to shareholders, but no comparable duty to ratepayers. The Commission also concluded that Xcel's incentive compensation programs showed that the utility's executive compensation package focused on maximizing shareholder value not ratepayer benefits.⁵ Xcel appealed the Commission's determination.

In January 2025, the court of appeals concluded that the Commission's denial of Xcel's proposed expense amount was supported by substantial evidence and not contrary to law.⁶ The court explained that the Commission was not compelled, as Xcel asserted, to conclude that the utility had satisfied its burden to prove that its top-ten executive compensation costs were a reasonable and necessary cost of providing service by offering evidence that it generally pays market rate compensation.⁷ Although the court agreed that Xcel had not established the reasonableness of its proposed costs, the court took issue with the Commission's decision to limit Xcel's cost recovery based on the governor's salary. The court concluded that the Commission's order did not adequately explain why the governor's salary was an appropriate comparison for

² Xcel Compliance Filing – Revised Final Rates, Sch. 1C, 1D, 1E at 6 (Nov. 14, 2023) (eDocket no. 202311-200472-01).

³ FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 20, 22 (July 17, 2023) (eDocket no. 20237-197559-01).

⁴ *Id.* at 22.

⁵ *Id.*

⁶ *In re Appl. by N. States Power Co.*, No. A23-1672, 2025 WL 249995, at *11 (Minn. Ct. App. Jan. 21, 2025).

⁷ *Id.*

determining the recoverable compensation for the highest-paid executives of a large public utility.⁸ The court then remanded the matter to the Commission for further proceedings.⁹

Following its June 26 meeting, the Commission noticed this comment period inviting interested parties to comment on: (1) what, if any, disallowance the Commission should make for top-ten executive compensation expense; and (2) whether there are other issues or concerns that the Commission should consider related to this matter.¹⁰

ANALYSIS

I. THE COMMISSION MAY DENY XCEL'S TOP-TEN EXECUTIVE COMPENSATION EXPENSE IN ITS ENTIRETY OR MAKE AN APPROPRIATE ADJUSTMENT.

Given the court of appeals' decision, the Commission may either deny Xcel recovery of any top-ten executive compensation or make an appropriate adjustment.

If it chooses to do so, the Commission could fully deny Xcel's recovery of executive compensation expense. The court of appeals already found that Xcel did not carry its burden to demonstrate that it would be just and reasonable for ratepayers to bear executive compensation expense.¹¹ When a utility fails to meet its burden of proof, the Commission may "either deny the rate increase or make [an] 'appropriate adjustment' to the utility's proposal."¹²

As shown in the table below, Xcel's total executive compensation expense requests ranged between about \$7.3 million and \$7.9 million between 2022 and 2024. Annual incentive plan and long-term incentive compensation accounted for about 57% of total executive compensation.

⁸ *Id.* at *12.

⁹ *Id.* at *13.

¹⁰ NOTICE OF COMMENT PERIOD ON EXECUTIVE COMPENSATION.

¹¹ *In re Appl. by N. States Power Co.*, No. A23-1672, 2025 WL 249995, at *11 (citing *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987) (providing that a showing that an expense may be incurred does not necessarily demonstrate "that it is just and reasonable that the ratepayers bear the costs of those expenses"))).

¹² *In Appl. of Interstate Power Co.*, 500 N.W.2d 501, 504 (Minn. Ct. App. 1993) (quoting *In re Petition of Continental Tel. Co.*, 389 N.W.2d 910, 914-15 (Minn. 1986)).

Setting incentive compensation aside,¹³ the Commission’s decision to limit executive compensation expense recovery to \$1.5 million essentially cut the remaining amount in half. At this point, the Commission could, in its discretion, deny the remaining \$1.5 million in claimed executive compensation expenses.

Table 1: Xcel’s Top-Ten Executive Compensation (2022-2024)

Test Year	Xcel Requested ¹⁴	AIP and LTI adjustments ¹⁵	Remaining Top Exec. Compensation	Top Ten Exec. Adjustments ¹⁶	Allowed Recovery
2022	\$7.268 million	(\$4.170 million)	\$3.098 million	(\$1.598 million)	\$1.5 million
2023	\$7.566 million	(\$4.376 million)	\$3.190 million	(\$1.690 million)	\$1.5 million
2024	\$7.878 million	(\$4.592 million)	\$3.286 million	(\$1.786 million)	\$1.5 million

In the alternative, the Commission could craft an appropriate adjustment to Xcel’s proposed expense ranging from no recovery to \$3.1 million to \$3.3 million depending on the year. The Commission, for example, has approved 50% recovery in past rate cases for investor relation expenses, board of director expenses, and other expenses where there may be both ratepayer and shareholder benefits. The Commission also could attempt to offer more explanation for the basis of its original decision relying on its “experience, technical competence, and specialized knowledge.”¹⁷

II. THE COMMISSION SHOULD CONSIDER HOW TO IMPLEMENT ITS DECISION.

Besides seeking guidance on the appropriate adjustment to executive compensation, the Commission also asked parties to comment on any related issues.¹⁸ In this case, the Commission

¹³ The Commission separately adjusted AIP and LTI expenses. *See* FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 15, 18-19 (denying Xcel’s request to increase AIP cap and recovery LTI expenses).

¹⁴ Xcel Errata Filing, Sch. 5 at 2-4 (May 24, 2023) (eDocket no. 20235-196081-01)

¹⁵ FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 15, 18-19.

¹⁶ Xcel Compliance Filing – Revised Final Rates, Sch. 1C, 1D, 1E at 6 (Nov. 14, 2023) (eDocket no. 202311-200472-01).

¹⁷ Minn. Stat. §14.60, subd. 4; *cf.* Minn. Stat. § 216A.03, subd. 1

¹⁸ NOTICE OF COMMENT PERIOD ON EXECUTIVE COMPENSATION.

may wish to consider the mechanics of implementing its substantive decision. The Department recommends that the Commission consider a one-time refund or surcharge to implement its final executive compensation decision. Alternatively, the Commission could consider adding the refund or surcharge to Xcel's pending 2024 rate case true-up.¹⁹ In its true-up compliance filing, Xcel describes its proposed electric customer refunds.²⁰ The Commission could add any executive compensation change into this net refund.

CONCLUSION

For the reasons discussed above, the Commission may deny any recovery of Xcel's proposed executive compensation expense or otherwise craft an appropriate adjustment. If the Commission does adjust Xcel's executive compensation expense, the Commission should consider a one-time refund or surcharge, or incorporate the change into the pending rate case true-up.

Dated: August 25, 2025

Respectfully submitted,

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¹⁹ *In re. N States Power Co. d/b/a Xcel Energy 2024 Annual Report of Rate Case Approved True-Up Mechanisms and Proposed Electric Refund and Gas Deferral Plans*, Docket No. E, G002/M-25-277, Compliance Filing at 13 (July 1, 2025) (eDocket no. 20257-220564-01).

²⁰ *Id.*