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

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
Audrey Partridge	Commissioner
John Tuma	Commissioner

In the Matter of Xcel Energy's Competitive  
Resource Acquisition Process for up to 800  
Megawatts of Firm Dispatchable  
Generation

DOCKET NOS.      E-002/CN-23-212  
                          E-002/M-24-195 (HSTS)

In the Matter of Xcel Energy's 2024-2040  
Integrated Resource Plan

DOCKET NO.      E-002/RP-24-67

**SUPPLEMENTAL COMMENTS OF THE  
OFFICE OF THE ATTORNEY GENERAL—  
RESIDENTIAL UTILITIES DIVISION**

**INTRODUCTION**

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits these Supplemental Comments in response to Xcel's November 12 reply comments.

The OAG appreciates Xcel's acknowledgement and agreement on two issues raised in initial comments: (1) that the Right of First Offer (ROFO) will not impact Xcel's need to obtain Commission approval of any future plant purchase; and (2) that the Commission should not make any determination regarding Xcel's actual or ratemaking capital structure in this proceeding.

On two remaining issues, however, the OAG continues to disagree with Xcel. First, the OAG disagrees that an independent auditor will determine whether increased costs above the current Power Purchase Agreement (PPA) prices due to tariffs or other federal actions are just and reasonable. Likewise, the OAG disagrees that an independent auditor should have the authority to make a determination on whether shareholders or ratepayers bear this risk. Instead, the Commission must retain its authority to review any additional cost increases due to the Seller's

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exercise of the New Trade Measure Event provisions of the PPAs. Second, Xcel did not show that it has sufficiently analyzed the *costs* of purchasing necessary renewable energy credits or building additional renewable energy assets to offset the last eight years of the PPA with the Cannon Falls Energy Center. The Commission should therefore make clear that Xcel's shareholders may be required to bear these costs in the future. The OAG emphasizes that neither of its recommendations would delay approving the PPAs.

**ANALYSIS**

**I. THE COMMISSION SHOULD REQUIRE XCEL TO MAKE A FILING SHOWING THAT IT IS REASONABLE FOR RATEPAYERS TO BEAR ADDITIONAL COST INCREASES DUE TO THE OPERATION OF THE NEW TRADE MEASURE EVENT PROVISIONS BEFORE COLLECTING INCREASED COSTS.**

In initial comments, the OAG recommended that the Commission require that, before Xcel can recover any cost increases from the operation of the New Trade Measure Event provisions in the Mankato Energy Center (MEC) BESS and North Star Energy BESS PPAs from ratepayers, Xcel must show that it is just and reasonable for ratepayers, and not its shareholders, to bear an up to 20 percent price increase.<sup>1</sup> Xcel stated in reply comments that it believes the risk to ratepayers of triggering the 20 percent mechanism is low and not automatic because it includes the review of an independent auditor. Xcel states that the independent auditor “will be engaged to ensure that all costs are just and reasonable.”<sup>2</sup> Xcel claims that it is committed to transparency and regulatory oversight but wants timely delivery of the project.

Xcel’s claim that the independent auditor will ensure that all costs are just and reasonable misstates the standard that the independent auditor is tasked with applying under the PPAs. As Xcel described the roll of the independent auditor in its petition, “the Independent Auditor verifies

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<sup>1</sup> OAG Initial Comments at 6-10.

<sup>2</sup> Xcel Reply Comments at 7.

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the new tariff event and also verifies the Seller's calculation of the rate increase."<sup>3</sup> In other words, the auditor would only verify that a tariff or other governmental action was imposed and that the cost calculations were correct; the auditor would not assess the reasonableness of imposing the increased costs on ratepayers.

The terms of the PPAs match Xcel's description:

**[HIGHLY CONFIDENTIAL TRADE SECRET INFORMATION BEGINS]**



**[HIGHLY CONFIDENTIAL TRADE SECRET INFORMATION ENDS].**

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<sup>3</sup> Second Revised Xcel Petition for Approval at 32.

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In both PPAs, the Independent Auditor's determination appears limited to determining whether the broadly defined New Trade Measure Event has occurred, not whether it is just and reasonable for these costs to be incurred or for ratepayers to bear these costs. "Just and reasonable" is not a phrase that appears in either PPA.

Even if the independent auditor were tasked with determining whether a cost increase is "just and reasonable," the Commission cannot and should not delegate its ratemaking authority and statutory duties to an unregulated third party selected by Xcel and the Sellers. It is the Commission who should determine whether the increased costs are just and reasonable for ratepayers to bear. In doing so, the Commission may certainly consider the findings of the independent auditor, but should not be bound by the independent auditor's determination.

The Commission should condition any approval of the PPAs for the North Star BESS and MEC BESS on the addition of stronger ratepayer protections. The Commission should require that, before Xcel can recover costs increases due to a New Trade Measure Event, Xcel must make a filing showing the increased costs are just and reasonable for ratepayers to bear versus Xcel's shareholders. Requiring a filing will allow the Commission and stakeholders to review and monitor the Seller's exercise of these provisions, which can occur multiple times under the PPA.<sup>4</sup> Such a requirement matches Xcel's commitment to transparency and would not delay timely project delivery as it requires no change to the language of the PPAs.

Allowing an up-to-20-percent price increase unreasonably shifts risks from the Sellers' and Xcel's shareholders to ratepayers. The Sellers and Xcel have already increased the price of the PPAs significantly from their bids. While the OAG understands the ongoing economic uncertainty around federal tariffs is being felt throughout the economy, it is unreasonable for Xcel to request

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<sup>4</sup> See Xcel Petition, Attach C at 10-18.

that ratepayers continue to be the sole bearers of this risk and pay all the costs of federal tariffs and other actions that increase prices.

**II. PURCHASING POWER FROM THE CANNON FALLS ENERGY CENTER UNTIL 2048 EXPOSES RATEPAYERS TO RISKS OF ADDITIONAL COSTS TO COMPLY THE CARBON FREE STANDARD.**

In initial comments, the OAG requested that Xcel provide further information to support the 20-year term it requests for purchasing power from the Cannon Falls Energy Center. Because this plant runs on fossil fuels, the OAG was concerned that the potential costs of procuring renewable energy certificates or building additional renewable energy to offset emissions from the plant after 2040 had not been adequately considered or analyzed.<sup>5</sup> The OAG requested that Xcel provide additional information to show that *any additional costs* to procure renewable energy offsets or construct additional renewable energy assets to balance the gas usage after 2040 are reasonable. In the absence of this explanation, the OAG requested the Commission make clear that Xcel's shareholders may be required to bear these costs in the future.

In reply comments, Xcel stated that it modeled a 20-year term for the Cannon Falls Energy Center,<sup>6</sup> but Xcel's response to OAG's discovery acknowledged that this modeling did not include costs to purchase renewable energy offsets or other renewable energy investments to offset the gas-fired power.<sup>7</sup> Xcel's reply comments do not address its statements in discovery that no such modeling was performed. Xcel also provided a comparison out to 2048 of its annual carbon-free generation allocated to Minnesota netted against its forecasted load to show compliance with the carbon free standard.<sup>8</sup> While the OAG appreciates that Xcel forecasts that it will still be able to

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<sup>5</sup> OAG Initial Comments at 11-14.

<sup>6</sup> Xcel Reply Comments at 7.

<sup>7</sup> OAG Initial Comments, Attach 2 (Xcel Response to OAG IR No. 9).

<sup>8</sup> Xcel Reply Comments, Attach. C. The OAG notes that Attachment C is necessarily a forecast of both load and generation, and therefore changes in either actual load or actual generation would impact Xcel's compliance.

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comply with the carbon free standard, the OAG's primary concern with the 20-year PPA term was the lack of analysis of potential additional *costs of compliance*. The information provided in Attachment C provides no information regarding costs.

Xcel has not provided information to show that the 20-year PPA will not result in potentially unreasonable additional *costs* to procure renewable energy credits or construct additional renewable energy assets to offset fossil fuel consumption at the plant after 2040. The OAG recommends the Commission make clear that Xcel's shareholders may be required to bear these costs if they occur.

**III. APPROVING XCEL'S RIGHT OF FIRST OFFER (ROFO) PROVISIONS DOES NOT DICTATE ANY FUTURE DECISIONS ON PLANT ACQUISITIONS.**

In initial comments, the OAG recommended the Commission explicitly clarify that the Right of First Offer (ROFO) provisions in the PPAs does not supplant the statutory requirement for Commission approval of the purchase of any plant of \$1,000,000 or more.<sup>9</sup> In reply comments, Xcel agreed that any exercise of the purchase options would be subject to Commission approval pursuant to Minnesota Statutes section 216B.50.<sup>10</sup> The OAG appreciates Xcel's clear acknowledgment that any plant purchase pursuant to the ROFO will require Commission approval and does not recommend the Commission take any specific action in this docket on this issue.

**IV. THE COMMISSION SHOULD NOT TAKE ACTION ON XCEL'S EQUITY RATIO.**

In initial comments, the OAG recommended that the Commission be clear that it is not endorsing Xcel's claims about imputed debt from the PPAs or pre-authorizing an increased equity ratio for future ratemaking purposes.<sup>11</sup> Xcel agreed that the Commission did not need to take any action regarding imputed debt in this proceeding.<sup>12</sup> The OAG recommends that the Commission

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<sup>9</sup> Minn. Stat. § 216B.50.

<sup>10</sup> Xcel Reply Comments at 8.

<sup>11</sup> OAG Initial Comments at 16.

<sup>12</sup> Xcel Reply Comments at 8.

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take no action regarding Xcel's actual or ratemaking capital structure, and reserve any determination about the reasonableness of Xcel's equity ratios for a future proceeding.

**RECOMMENDATION**

The OAG appreciates the Commission's careful review of the PPAs proposed by Xcel and recommends the Commission:

- Condition approval of the North Star Energy BESS and MEC BESS PPAs on a requirement that before Xcel can recover increased costs from ratepayers due a New Trade Measure Event, Xcel must make a filing showing that the increased costs are just and reasonable for ratepayers to bear versus Xcel's shareholders.
- Make clear that Xcel's shareholders may be required to bear future costs necessary to procure renewable energy credits or construct additional renewable energy assets to offset carbon emissions from the Cannon Falls Energy Center from 2040-2048.

Dated: November 19, 2025

Respectfully submitted,

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