

**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 Petition for
Approval of its 2023 Annual Fuel Forecast
and Monthly Fuel Cost Charges

DOCKET NO. E-002/AA-22-179

**REPLY TO EXCEPTIONS OF THE OFFICE
OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

The Office of the Attorney General – Residential Utilities Division (OAG) submits this reply to Xcel Energy’s March 31, 2026 letter taking exception to the Findings of Fact, Conclusions of Law, and Recommendation of Administrative Law Judge Kimberly Middendorf (ALJ Report). Xcel proposes that the Commission accept the ALJ Report’s main recommendation—to refund \$40.6 million for replacement-power costs—while simultaneously striking nearly two thirds of the ALJ Report’s findings of fact, and all its conclusions of law. Xcel fails to explain why any of these findings or conclusions are erroneous.

The Commission should adopt the ALJ’s findings and conclusions on all material issues. Xcel’s modifications would leave the \$40.6 million refund without factual or legal support and would waste the parties’ efforts to the develop a robust record on replacement-power costs and Xcel’s “offset” arguments that it reprises whenever it is required to make a replacement-power refund. In addition, the Commission should reject Xcel’s challenge to the ALJ’s recommendation that it fund its own litigation costs for this case. Finally, the Commission should disregard Xcel’s self-serving discussion of the parties’ settlement efforts, which may give the false impression that the OAG was the obstacle to a settlement.

I. THE COMMISSION SHOULD ADOPT THE ALJ REPORT IN FULL.

Xcel styles its proposal as a “resolution” that avoids further litigation. Up until now, Xcel has been perfectly happy to litigate—dragging the parties through a 17-month contested case that, at Xcel’s insistence, included consideration of “benefits and offsets” in computing any refund.¹ Xcel put forward several offsets that, together, would have reduced ratepayers’ refund by more than \$26 million.² Now that Xcel’s litigation has resulted in detailed findings roundly rejecting its offsets, however, Xcel is eager to bury those findings under the guise of “avoid[ing] continued dispute and controversy.”³

While Xcel’s proposal to “resolve” the case by leaving ALJ findings unadopted may have superficial appeal, doing so would be a mistake. When an agency rejects an ALJ’s findings or conclusions, it must explain why it did not adopt each finding or conclusion,⁴ yet Xcel’s exceptions give the Commission no basis to undertake this particularized analysis. And without findings, the Commission would have no factual or legal basis for the \$40.6 million refund.

Accepting Xcel’s “resolution” would also throw away a substantial record that comprehensively addresses offset arguments that Xcel persists in raising as a defense to liability for its imprudent conduct.⁵ The Commission should take advantage of this robust record by seeing this contested case, which Xcel initially insisted on, to the full conclusion contemplated by the

¹ Order Denying Petition for Reconsideration and Granting Request for Clarification at 3 (Jan. 31, 2025).

² ALJ Report at 28.

³ Xcel Letter at 1 (Mar. 31, 2026).

⁴ Minn. Stat. § 14.62, subd. 1.

⁵ *See, e.g., Sherco 3 Forced Outage Case*, Docket Nos. E-002/GR-12-961 *et al.*, Initial Br. of N. States Power Co. at 122–35 (Dec. 22, 2023) (arguing that various “disallowances, offsets, recoveries, and avoided costs” should result in Xcel not being required to refund costs for replacement power during two-year plant outage).

Minnesota Administrative Procedure Act. Two examples will help to illustrate why the ALJ's findings on specific issues should be adopted.

Xcel's largest offset was based on the theory that the October 2023 outage avoided a future outage to replace the same cable that Xcel imprudently severed.⁶ The ALJ, however, found that this offset was speculative and inconsistent with the Commission's decision in the Sherco 3 forced-outage case, where the Commission rejected a similar "avoided cost" offset.⁷ A decision by the Commission expressly rejecting this offset would help deter similar arguments in the future, saving the Commission, intervenors, and the utility significant time that could be devoted to other, more pressing matters. Conversely, if the Commission declines to adopt findings on this offset, it would leave uncertainty as to whether such arguments are fair game in the future, leading to more, costly litigation.

Another of Xcel's offsets relied on the baseless claim that the refund should be reduced to recognize alleged benefits that ratepayers received from Prairie Island over the five years preceding the outage. The ALJ found that this so-called "historic performance adjustment" was antithetical to the regulatory compact because ratepayers have fully compensated Xcel for Prairie Island's past operation, and Xcel cannot "bank" past prudence to reduce its liability for future imprudence.⁸ The Commission should adopt the ALJ's findings and strongly reject Xcel's historic performance adjustment. Failing to do so could send a signal that utilities are welcome to advance similar unfounded arguments in the future, causing unnecessary regulatory expenses.

⁶ See ALJ Report at 28 (discussing "avoided 2029 costs" offset).

⁷ See *id.* at 29.

⁸ See *id.* at 46.

II. THE COMMISSION SHOULD ORDER XCEL TO ADJUST ALL INTERNAL AND EXTERNAL LITIGATION COSTS FROM THIS CASE OUT OF FUTURE RATE CASES.

Xcel objects to only one part of the ALJ’s recommended relief—that Xcel be required to bear its own costs for the contested-case litigation. Xcel does not oppose bearing its outside expert and legal costs but opposes the ALJ’s recommendation to also adjust its internal litigation costs out of any future rate case. The Commission should adopt this recommendation for the reasons explained by the ALJ: it is not just or reasonable to require ratepayers to underwrite litigation expenses that have no relationship to Xcel’s core obligations to provide “adequate, efficient, and reasonable service.”⁹ As the ALJ observed, this case is different from rate cases or permitting proceedings, which can help ensure that the utility has sufficient resources to provide adequate, efficient, and reasonable service.¹⁰ In this case, by contrast, Xcel insisted on an extended proceeding to explore ways to avoid refunding ratepayers for the costs of its imprudent management of a nuclear power plant. The ALJ’s rationale for denying litigation costs is sound and applies regardless of whether an expense is for external litigation services or internal litigation services.

Xcel makes three arguments for why ratepayers must pay its internal costs for the contested case. First, Xcel argues that the internal costs would have been incurred even if there had been no contested case. Second, Xcel argues that it is not clear how it would adjust out costs from 2025 and 2026 in a future rate case that would have a test year of 2027 at the earliest. Finally, Xcel argues that the recommendation is procedurally improper because it was not made in Xcel’s pending rate case, which “would have been would have been the appropriate venue to do so since

⁹ *Id.* at 51.

¹⁰ *Id.* at 47.

it seeks to deny a portion of the Company’s internal costs from the 2025–2026 time-period.”¹¹ Each of these arguments should be rejected.

First, Xcel has not shown that its employees’ time was an unavoidable cost to the Minnesota jurisdiction. Xcel’s employees work for a variety of divisions and subsidiaries that support operations in several states. If there had been no contested case, the employees who worked on it could instead have spent time working on matters related to other jurisdictions, avoiding costs to Minnesota. And even if their salaries were a “sunk” cost to Minnesota, this would not mean that ratepayers should pay that full cost, since ratepayers received no benefit for any time the employees spent on this case. In other words, if these employees had not had to spend time justifying questionable offsets, they could have used that time to support the provision of reliable utility service. Spending time on this case deprived ratepayers of that benefit.

As to Xcel’s second argument, adjusting the internal litigation costs out of Xcel’s next rate case would work the same way as for external litigation costs: Xcel could file testimony or other evidence demonstrating that it is not requesting recovery of the internal costs, as it proposes doing for external costs. Both the external and internal costs have been largely incurred in 2025 and 2026, so Xcel’s attempt to distinguish the internal costs based on the timing of their incurrence is puzzling. As the Commission is aware, test-year budgets are often informed by a “base” year reflecting the utility’s actual costs from a prior year. If Xcel’s next rate case relies on 2025 or 2026 as the base year, then an adjustment to remove a representative amount of internal costs for the contested case would be appropriate, just as it would for the external costs. This type of adjustment is a common regulatory practice and is not “retroactive ratemaking,” as Xcel suggests.

¹¹ Xcel Letter at 3.

Finally, Xcel argues that its *current* rate case would have been the appropriate forum to challenge internal costs for the contested case. But if that is so, the appropriate course of action is to make an adjustment in that case, not for the Commission to just throw up its hands. The adjustment could be a reduction in the 2025 and 2026 revenue requirements or a one-time credit as part of the interim-rate refund, and there would be no due-process issue because Xcel is a party to both cases. To be clear, the OAG is not advocating for an adjustment to be made in Xcel's current rate case but pointing out a logical conclusion of Xcel's admission that these internal litigation costs are included in that case. The OAG continues to recommend that the Commission adopt the ALJ's recommendation to "show that the internal and external costs for this contested case have been adjusted out of the test year(s) or otherwise removed" in any future rate case.¹²

III. XCEL'S LETTER GIVES THE FALSE IMPRESSION THAT THE OAG WAS THE OBSTACLE TO A SETTLEMENT.

The OAG wishes to dispel any misconception that the OAG stood in the way of a settlement in this case. Xcel's letter begins by announcing that it "attempted to resolve this matter with parties" but was "unable to come to a resolution that all parties would accept."¹³ Xcel then singles out the OAG as the source of the ALJ's recommendation to disallow litigation expenses¹⁴ even though the same recommendation appears in the Department's initial brief¹⁵ and in XLI's reply brief.¹⁶ Xcel's letter may leave the impression that the OAG was unwilling to settle under reasonable terms, or that the litigation-costs issue was the sole obstacle to settlement. Neither of these inferences would be correct. The OAG will not comment further on confidential settlement discussions.

¹² ALJ Report at 52.

¹³ Xcel Letter at 1.

¹⁴ *See id.* at 2–3.

¹⁵ Department Br. at 24–26 (Nov. 25, 2025).

¹⁶ XLI Reply Br. at 5 (Jan. 8, 2026).

IV. CONCLUSION

After getting a bad result in the contested case it demanded, Xcel seeks to bury most of the ALJ's findings and all her conclusions through a "resolution" that no other party supports. But the Commission cannot disturb the ALJ Report without a reason, and Xcel provides no basis for rejecting any of the ALJ's well-reasoned findings, conclusions, and recommendations. Accordingly, the Commission should adopt the ALJ Report in full.

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Respectfully submitted,

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