

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of Northern
States Power Company d/b/a Xcel Energy for
Authority to Increase Rates for Electric
Service in the State of Minnesota

MPUC Docket Nos. E002/GR-21-630,
G-002/GR-23-413
OAH Docket No. 22-2500-37994

INITIAL COMMENT

Pursuant to the Minnesota Public Utilities Commission’s (“MPUC” or “Commission”) March 6, 2025, Notice of Comment Period (“Notice”),¹ the Xcel Large Industrials (“XLI”)² submit this comment (“XLI Initial Comment”) to respectfully urge the Commission to supplement its decisions to (1) exclude prepaid pension asset (“PPA”) from Xcel Energy, Inc.’s (“Xcel” or “the Company”) rate base; and (2) reduce Xcel’s proposed expense for executive compensation, without reopening the record, via the informal Notice and Comment process. The Commission’s determinations to exclude recovery of PPA and the proposed expense for executive compensation should not be disturbed other than to supplement each finding with record evidence that already exists.

I. INTRODUCTION

The instant comment period stems from Xcel’s 2022-2024 multi-year rate proceeding (“MYRP”). The Company filed its MYRP on October 25, 2021, seeking incremental revenue requirement increases totaling approximately \$677 million. As part of its rate request, Xcel sought recovery of a prepaid pension asset through rate base and executive compensation expense for its

¹ *In the Matter of the Application of Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket Nos. E-002/GR-21-630, G-002/GR-23-413, Notice of Comment Period (March 6, 2025) (eDocket No. 20253-216139-01) (establishing an April 7, 2025, due date for initial comments).

² XLI is an ad hoc consortium of Commercial and Industrial Demand (“C&I” or “C&I Demand”) customers served by Northern States Power Company d/b/a Xcel Energy.

top ten highest paid executives. In its July 17, 2023, Findings of Fact, Conclusions, and Order (“July 17 Order”), the Commission determined that (1) Xcel had not justified its rate-base treatment of prepaid pension asset, requiring removal of the PPA from rate base,³ and (2) Xcel should not be allowed to fully recover executive compensation expenditures for its ten highest paid executives, instead applying a proxy salary based on the Minnesota governor’s salary. Xcel appealed both determinations to the Minnesota Court of Appeals, whereinafter the Court reversed and remanded the July 17 Order on the issue of PPA, and partly upheld and reversed the Commission on the executive compensation issue.

The instant Notice puts forth seven questions to be addressed in initial comments:

1. Should the Commission reopen the record in Docket No. 21-630 on the issue of the Company’s claimed prepaid pension asset remanded to the Commission by the Court of Appeals?
2. Should the Commission request that the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8?
3. What process should the Commission use to make its decision on prepaid pension? Parties should comment on the applicability of Matter of Surveillance and Integrity Review, 996 N.W.2d 178 (Minn. 2023).
4. Should any different process be used to determine the Company’s claimed prepaid pension asset in the 2021 rate case vs. the 2023 rate case?
5. Should the Commission reopen the record in Docket No. 21-630 in order to make additional findings on the issue of executive compensation?
6. What process should the Commission use to make its decision on executive compensation? Parties should comment on the applicability of Matter of Surveillance and Integrity Review, 996 N.W.2d 178 (Minn. 2023).

³ The Commission determined that Xcel had “not justified rate-base treatment of its prepaid pension asset,” on the basis that it had previously rejected inclusion of PPA in rate base due to it being distinct from assets typically included in rate base. It explained that PPA “already earns a return in the form of investment returns, it fluctuates in value, and it is misleading in that it does not account for the funding status of the entire pension plan,” therefore distinguishing PPA from other assets frequently included in rate base.

7. Are there any other issues to be addressed in these dockets?

XLI's Initial Comment addresses each relevant question in turn.

II. ANALYSIS

Minnesota Statute § 216.27 states that following judicial appeals taken from a Commission order, if a Commission order is reversed, "it shall proceed to determine the reasonableness of the rates, fares, charges, and classification on the merits." The statute includes no explicit requirement to reopen the record, nor does it mandate additional record development – it simply vests in the Commission authority to review the matter.

A. The Commission Should Supplement Its Order Regarding the PPA Without Reopening the Record.

XLI believes the Commission should modify its Order to expand on its reasoning to reject Xcel's request to recover PPA through rate base, using evidence established in the record.

a) Xcel's PPA is Not a Regulatory Asset

The Commission's underlying determination was proper that Xcel did not justify rate-based treatment of its PPA, and abundant evidence exists in the record to support that determination. In its pleadings made prior to this docket being closed, XLI opposed Xcel's request to earn a return on its prepaid pension asset, emphasizing it would be impossible to reliably determine the funding sources of the PPA and noting the statutory standard that any doubt as to reasonableness should be resolved in favor of the consumer.⁴ XLI's expert witness Billie LaConte explained that:

[u]nlike the pension expense, the PPA is not an operating cost. Furthermore, if [Xcel] should earn a return on its PPA, then it must first be deemed a regulatory asset by the Commission. The Commission may approve a regulatory asset, which reflects deferrals of operating costs for certain non-recurring expenses, if the

⁴ E.g., *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*, Docket No. E-002/GR-21-630, Post-Hearing Reply Brief of the Xcel Large Industrials (January 27, 2023) (eDocket No. 20231-192660-02).

Commission finds it appropriate for ratemaking purposes. However, the PPA has not been approved as a regulatory asset by the Commission.⁵

Xcel determines its PPA using Generally Accepted Accounting Practice (“GAAP”), rather than on a ratemaking basis. As previously stated, the Commission has not approved the PPA as a regulatory asset. Further, it should not make such a designation, because “a regulatory asset typically represents a non-recurring operating expense and a prepaid pension asset is not an operating expense.”⁶ Therefore, Xcel should not be allowed recovery of PPA in rate base.

b) Xcel Cannot Demonstrate Its PPA is Investor-Funded

Additionally, Xcel has not demonstrated that its PPA was funded by investor capital, a prerequisite to earn return on it through rate base. Evidence placed in the record by XLI highlights instances where the Commission has previously rejected proposals for utilities to earn a return on PPA, particularly because a utility must demonstrate, in relevant part, that the PPA was funded by investor capital rather than by either pension trust returns or the funding recovered from ratepayers – a demonstration Xcel repeatedly failed to make.⁷ The Commission itself recognized that “it is nearly impossible to distinguish PPA funding from utility cash contributions, ratepayers’ contributions, and market returns on the trust,” and therefore that “identifying the amount of any proposed PPA is not possible.”⁸ As explained by Ms. LaConte:

A prepaid pension asset may also be created when the utility makes zero cash contributions and the pension expense is negative. In this case, the payments to the pension exceed the negative pension expense, which results in a PPA. If a PPA is created by zero cash contributions from shareholders and negative pension expense, this is the result of excess earnings on the pension trust and not due to investor contributions to the plan. A PPA created via excess returns on the pension asset does not benefit customers through reduced pension expense and customers are

⁵ XLI Ex. ____ (BSL-D) at 45 :1-7 (LaConte Direct).

⁶ LaConte Surrebuttal at 13:19-20.

⁷ LaConte Direct at 45:12-15.

⁸ LaConte Direct at 47:2-5.

entitled to those benefits because they incurred the cost of the funding the pension trust.⁹

Without a demonstration that shareholders constitute the PPA's funding source, Xcel's PPA should not be recoverable through rate base. Sufficient evidence exists to support that the source of Xcel's PPA is too nebulous to appropriately attribute contributions to shareholders. Upon additional clarification and explanation of how that evidence applies to Xcel's request for inclusion of PPA in rate base, the Commission's decision should remain unchanged.

b) The Minnesota Power 2024 Opinion Does Not Necessitate Changing the Commission's Underlying Determination

The Court of Appeals' reversal and remand in this matter refers to the reasoning in *Minnesota Power 2024*,¹⁰ wherein the Commission declined to adopt the findings of the ALJ and the ALJ's recommendation to include a utility's PPA in rate base, "reasoning that a prepaid pension asset is different from other typical rate-base assets because it is temporary and its value fluctuates," and that such characteristics "make a prepaid pension asset materially different in character from other assets in rate base."¹¹ The Commission itself conceded that *Minnesota Power 2024* invalidated some of the reasoning underscoring its decision.¹² However, that case does not necessitate a divergence from the Commission's underlying reasoning and decision here.

The Commission explained that prior to application of the reasoning in *Minnesota Power 2024*, the Commission must make a threshold finding regarding how a PPA is funded (particularly, that it is funded by shareholders).¹³ In *Minnesota Power 2024*, the court found the source of the

⁹ LaConte Direct at 45:19-46:5.

¹⁰ *In re Application by Minn. Power for Auth. to Increase Rates for Elec. Serv. in MN*, 12 N.W.3d 477 (Minn. App. 2024) ("Minnesota Power 2024").

¹¹ *In the Matter of the Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, 2025 Minn. App. Unpub. Lexis 52, Case No. A23-1672, Nonprecedential Opinion at 18 (Minn. App. 2025) ("Order on 21-630").

¹² Order on 21-630 at 19.

¹³ *Id.* at 19-20.

funding could be attributed to shareholders, thus making it eligible for recovery in rate base.¹⁴ The Commission differentiates the instant case by highlighting the ALJ's finding, which is "supported by the record and not rejected by the commission," that "Xcel failed to meet its burden to show the extent to which its prepaid asset is shareholder-funded."¹⁵ Because Xcel's failure to meet its burden remains unchanged, *Minnesota Power 2024* need not disturb the Commission's decision to exclude PPA from Xcel's rate base. Without finding the Commission's reasoning wrong, the Court of Appeals noted the Commission's "finding includes little explanation."¹⁶ Therefore, the Commission need only provide a more thorough explanation for its decision using evidence already provided in the record. XLI requests the Commission supplement and support its underlying determination regarding PPA based on existing evidence.

B. XLI Takes No Position at This Time Regarding the Department of Commerce's Request for Authorization to Incur Costs for Expert Services

At this time, XLI takes no position as to the question of whether the Department of Commerce should be authorized to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8. XLI intends to respond to this question in Reply Comments when it better understands the Department of Commerce's position and whether a consultant would necessitate reopening the record.

C. The Commission Should Maintain Its Current Decision Process Regarding Prepaid Pension Asset

The Commission should maintain its current process and decision regarding prepaid pension asset and further explain why its determination regarding PPA is proper. The Commission

¹⁴ *Minnesota Power 2024* at 490.

¹⁵ Order on 21-630 at 20.

¹⁶ Order on 21-630 did not attack the Commission's reasoning as to the threshold determination, but stated "[a]s we recognized in *Minnesota Power 2024*, 'the evaluation of prepaid pension assets involves technical and complicated accounting issues in ratemaking proceedings.' *Id.* Given this complexity, and in light of our decision in *Minnesota Power 2024*, we conclude that the commission has not made sufficient findings and we reverse its decision." Order on 21-630 at 20.

applied the proper reasoning in this case, making a threshold determination as to the funding source of Xcel's PPA to determine its suitability for recovery via rate base. While the Commission applied the proper reasoning to make that threshold determination, it failed to provide a full, reasoned explanation, and may supplement its decision using evidence already in the record.¹⁷

If the Commission determines this issue requires further record development, it must consider the applicability of *Matter of Surveillance and Integrity Review*, which restricts the agencies' ability to remand issues to Administrative Law Judges for further review and reconsideration.¹⁸ In that case, the court differentiates between an agency's ability to remand to the ALJ, which it does not allow, with the agency's ability to reopen a proceeding.¹⁹ Furthermore, pursuant to Minnesota Statute § 216.27, the Commission has the ability to review the matter "to determine the reasonableness of the rates, fares, charges, and classification on the merits," following reversal of its order from a judicial appeal. As such, XLI believes remand of this issue to the ALJ would be improper, and asserts that while the Commission has authority to reopen the record on this issue, it can support and supplement its underlying decision to reject PPA in Xcel's rate base without doing so.

D. The Commission Should Maintain the Process Used to Determine Xcel's Claimed Prepaid Pension Asset in the 2021 Rate Case in the 2023 Rate Case.

XLI does not believe a different process should be used to determine the Company's claimed prepaid pension asset in the 2023 rate case. In the 2021 rate case, Xcel failed to meet its burden to demonstrate shareholders fund its PPA. For that reason, it was properly excluded from rate base. The threshold analysis of a PPA's funding source to determine appropriate recovery through rate base need not change. If Xcel wants to recover PPA from rate base, it must properly

¹⁷ *Id.*

¹⁸ *Matter of Surveillance and Integrity Review*, 996 N.W.2d 178, 183 (Minn. 2023).

¹⁹ *Id.* at 190.

demonstrate such funding comes from shareholders. Until it can appropriately demonstrate that, the Commission should continue to find recovery of PPA through Xcel's rate base inappropriate.

E. The Commission Should Clarify and Make Additional Findings Regarding Executive Compensation Based on Evidence Included in the Record.

Regarding the recoverability of executive compensation, the Commission should clarify its decision and make additional findings as to the appropriate salary proxy for rate recovery purposes. The Court of Appeals found that the Commission's decision to deny Xcel's proposed expense for executive compensation for its ten highest-paid executives supported by substantial evidence and not contrary to law.²⁰ However, the Court of Appeals concluded that the Commission's substitution of a comparative salary based on that of Minnesota's governor was arbitrary and capricious. While the Commission does not need to alter its reasoning regarding treatment of Xcel's proposed expense for executive compensation, the Commission should explain why the governor's salary is an appropriate proxy for determining the recoverable executive compensation. In doing so, the Commission can rely on substantial record evidence to maintain denial of recovery of Xcel's proposed expense for executive compensation.

F. The Commission Should Maintain Its Current Decision Process Regarding Executive Compensation.

Much like XLI's argument above, the Commission should maintain its current decision process regarding executive compensation. The Commission's underlying reasoning regarding executive compensation remains correct. In finding Xcel's proposed expense for executive compensation improper, the Commission determined Xcel failed to meet its burden to demonstrate recovery of \$7 million annually from ratepayers for compensation of its ten highest-paid executives was reasonable. It relied on three reasons to make its decision: (1) Xcel based its

²⁰ Order on 21-630 at 21.

executive compensation market comparison on the compensation of corporate officers with a fiduciary duty to shareholders rather than ratepayers, (2) Xcel's compensation structure "focuses the executive team on shareholder benefits, which are not necessarily aligned with the interests of ratepayers," and (3) Xcel's failure to "meaningfully consider[]" how the costs would impact ratepayers or explore reducing a component of the executive compensation packages to shoulder inflation costs alongside customers.²¹ In pursuit of its obligation to verify the accuracy of Xcel's proposed executive compensation costs and evaluate whether recovery of those costs would produce just and reasonable rates, the Commission found Xcel had not met its burden.²² The Commission does not need to change its process for deciding the appropriateness of Xcel's proposed expense for executive compensation. The Commission may simply remedy its own findings with record evidence to substitute an appropriate salary proxy and continue to deny inclusion of Xcel's proposed expense for executive compensation in rate base. However, if the Commission determines this matter necessitates reopening of the record, it must consider the applicability of *Matter of Surveillance and Integrity Review*, as described herein above.²³

III. CONCLUSION

For the reasons provided herein above, XLI respectfully requests the Commission: (1) supplement its decision to clarify its exclusion of the PPA from Xcel's rate base, (2) and clarify its disallowance of Xcel's proposed expense for executive compensation, via the informal Notice and Comment process. XLI believes the record supports the Commission's determinations to exclude recovery of PPA and the proposed expense for executive compensation, and therefore the Commission should not reopen the record for additional evidence.

²¹ *Id.* at 22.

²² *Id.*

²³ *Matter of Surveillance and Integrity Review*, 996 N.W.2d at 183.

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Respectfully submitted,

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