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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

In the Matter of the Application of Xcel
Energy for Authority to Increase Rates for
Natural Gas Service in Minnesota

Docket No. G002/GR-23-413

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

INTRODUCTION

In its March notice, the Commission invited parties to address several issues: (a) whether the record should be reopened, (b) whether to authorize the Department to seek technical assistance, and (c) what procedural process should be used to resolve prepaid pension and executive compensation.¹ The Commission also asked whether Docket 21-630 could be remanded to the Office of Administrative Hearings. For the reasons discussed below, the Commission should reopen the record to make additional findings and authorize the Department to seek technical assistance. Rather than remanding, the Commission should establish initial and reply comment deadlines.

BACKGROUND

In November 2021, Xcel Energy filed an electric rate case application with the Commission. The Commission referred the matter to the OAH for a contested case in December

¹ NOTICE OF COMMENT PERIOD (Mar. 6, 2025) (eDocket No. 20253-216139-01).

2021. Following the contested case, the Commission issued a final order in July 2023. As part of its decision, the Commission denied Xcel a return on its asserted prepaid pension asset and limited ratepayer contributions to the salaries of Xcel’s ten highest paid executives. Xcel appealed both issues.

In January 2025, the court of appeals held that the Commission must give “due consideration” to a utility’s mandatory contributions to pension plans in determining the utility’s rate base.² The court then reversed and remanded the matter to the Commission to determine whether any of Xcel’s prepaid pension asset should be included in rate base.³ The court also addressed executive compensation, concluding that the Commission’s order did not adequately explain why the governor’s salary was an appropriate comparison for determining the recoverable compensation for the highest-paid executives of a large public utility.⁴ The court again remanded for further proceedings.⁵ For both issues, the court added that the Commission could reopen the record at its discretion.⁶

Separately, during the pendency of the appeal, the parties to Xcel’s 2023 natural gas rate case reached a comprehensive settlement agreement in June 2024. As part of the settlement, the parties agreed to resolve prepaid pension in a manner consistent with the outcome of the 2021 electric rate case.⁷ The Commission approved the settlement in March 2025.⁸

² *In re Appl. by N. States Power Co.*, No. A23-1672, 2025 WL 249995, at *9 (Minn. Ct. App. Jan. 21, 2025) (citing *In re Appl. by Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 12 N.W.3d 477, 493 (Minn. App. 2024)).

³ *Id.* at *10.

⁴ *Id.* at *12.

⁵ *Id.* at *13.

⁶ *Id.* at *10, *12.

⁷ Settlement Agreement (June 26, 2024) (eDocket No. 20246-207989-01).

⁸ ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES (Mar. 5, 2025) (eDocket No. 20253-216076-01).

In March, the Commission issued this comment period inviting parties to explain how the Commission should address these matters.⁹

ANALYSIS

I. THE COMMISSION SHOULD REOPEN THE RECORD AND AUTHORIZE THE DEPARTMENT TO SEEK SPECIALIZED TECHNICAL ASSISTANCE.

The parties did not develop the underlying contested-case record in Docket 21-630 to address the issues identified by the court of appeals. As a result, the Commission should reopen the record and authorize the Department to seek technical assistance.

The Commission should reopen the record because the parties did not originally address prepaid pension or executive compensation in the manner contemplated by the court of appeals. In the original contested case, the prepaid pension dispute centered around whether prepaid pension was a capital asset for ratemaking purposes at all.¹⁰ As a result, intervenors did not thoroughly evaluate secondary considerations such as the size of such an asset, contributions required by federal law, and possible allocation between ratepayers and shareholders. Although the parties did address compensation-related issues, they did not specifically address executive compensation.

Given these gaps in the record, the Commission should authorize the Department to seek technical assistance to evaluate the prepaid pension issue.¹¹ The Department anticipates the technical consultant could help address, for example, issues such as determining how the prepaid pension asset should be calculated, determining the applicable minimum contribution requirements, or whether Xcel established its prepaid pension asset was funded through investor

⁹ NOTICE OF COMMENT PERIOD (Mar. 6, 2025) (eDocket No. 20253-216139-01).

¹⁰ *See, e.g.*, Ex. DOC-21 at 50 (Campbell Direct) (concluding that Xcel had not established the reasonableness of including prepaid pension in rate base).

¹¹ Minn. Stat. § 216B.62, subd. 8.

capital. If the Commission does authorize technical assistance, the Department would try to retain the same consultant for both the Docket 24-320 rate case and these matters. Since the same methodological and accounting matters likely will be at-issue, retaining the same technical consultant to develop the record in both proceedings will provide the Commission with a uniform basis to make informed prepaid pension decisions.

II. WHILE THE COMMISSION COULD REMAND TO OAH, THE COMMISSION SHOULD RESOLVE PREPAID PENSION AND EXECUTIVE COMPENSATION THROUGH NOTICE AND COMMENT.

Besides these issues, the Commission invited parties to consider whether the *Surveillance & Integrity Review* decision precluded remand to OAH.¹² While the decision does not prohibit the Commission from remanding this matter to OAH, prepaid pension and executive compensation can be adequately addressed through notice and comment.

In *Surveillance & Integrity Review*, the supreme court addressed whether the Department of Human Services exceeded its authority under Minn. Stat. § 14.62 by remanding a case to an ALJ.¹³ In 2019, DHS terminated a service provider for noncompliance with program requirements.¹⁴ As part of the matter, an ALJ held a three-day hearing.¹⁵ The ALJ then issued a report and recommendation.¹⁶ On the deadline to accept, reject, or modify the ALJ's recommendation, DHS remanded the matter to the ALJ to reweigh and reconsider evidence.¹⁷ DHS did not modify or reject the ALJ's recommendation in its order remanding the matter to the ALJ.¹⁸ The provider appealed, claiming that the ALJ's report became the final decision when DHS issued

¹² *In re Surveillance & Integrity Review*, 996 N.W.2d 178 (Minn. 2023) (“*Surveillance & Integrity Review*”).

¹³ *Id.* at 180.

¹⁴ *Id.* at 181.

¹⁵ *Id.* at 182.

¹⁶ *Id.*

¹⁷ *Id.* at 183-84.

¹⁸ *Id.*

a remand. The supreme court agreed, holding under Minn. Stat. § 14.62, subd. 2a, that an ALJ report becomes final after 90 days unless the agency: (1) accepts the ALJ's report as the agency's final decision, (2) modifies the ALJ's report, or (3) rejects the ALJ's report.¹⁹ The upshot is that agencies may not remand matters after receiving the ALJ's report following a contested-case proceeding.²⁰

The procedural posture here is materially different. Unlike in *Surveillance & Integrity Review*, the Commission did make a timely final decision on the ALJ report. Xcel appealed that decision. Now, as the court of appeals instructed, the Commission needs to make additional findings and may reopen the record at its discretion. As a result, the Commission may remand the matter to the ALJ if it determines that is the best way to resolve prepaid pension and executive compensation.

While the Commission could remand this case, notice and comment will be adequate to develop the record. Unlike in a full rate case, there are only two issues before the Commission. The ALJ also lacks the Commission's specialized expertise in utility ratemaking and accounting.²¹ Additionally, remand would likely prolong final resolution. Thus, the Commission should notice a comment period that requires interested parties to file initial and reply comments in a schedule that complements the pending rate case. In Docket 24-320, the ALJ adopted the following schedule:

¹⁹ *Id.* at 187.

²⁰ *See also McNitt v. Minnesota IT Servs.*, 14 N.W.3d 284, 289 (Minn. Ct. App. 2024) (distinguishing between ALJ recommendations for summary disposition and recommendations following a contested-case proceeding).

²¹ Minn. Stat. § 216A.03, subd. 1.

Docket No. 24-320 Rate Case Schedule²²

Milestone	Deadline
Direct Testimony	August 22, 2025
Rebuttal Testimony	October 10, 2025
Surrebuttal Testimony	November 25, 2025
Evidentiary Hearing	December 17-19, 2025
Administrative Law Judge Report	April 30, 2026

Accordingly, in both Dockets 21-630 and 23-413, the Department recommends that the Commission require interested parties to file initial comments addressing the treatment of prepaid pension and executive compensation no earlier than Friday, October 24. Reply comments should, in turn, be due no earlier than Friday, December 5. In general, the Department expects that most parties would reprise the analysis contained in their applicable Docket 24-320 testimony and add any additional analysis specific to the Docket 21-630 test years.

CONCLUSION

In summary, the Commission should reopen the record to make additional prepaid pension and executive compensation findings, authorize the Department to seek technical assistance, and establish initial and reply comment deadlines for Dockets 21-630 and 23-413 that complement the Docket 24-320 rate case schedule.

²² *In re Xcel Energy's Appl. for Auth. to Increase Rates for Elec. Serv.*, Docket No. E-002/GR-24-320, FIRST PREHEARING ORDER at 5-6 (Jan. 31, 2025) (20251-214744-01).

Dated: April 7, 2025

Respectfully submitted,

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