
**BEFORE THE MINNESOTA COURT OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East
Suite 350
St. Paul, Minnesota 55101-2147**

**MPUC Docket E-002/GR-24-320; E-002/M-24-321
CAH Docket No. 28-2500-40515**

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

**REPLY BRIEF
OF THE OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION**

February 25, 2026

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INTRODUCTION

Xcel's initial brief fails to establish that its MYRP request is just and reasonable. Instead, it relies on mischaracterizations of the facts in the record and of the OAG's arguments, attempting to muddy the issues rather than prove its case.

This brief is intended to clarify issues for the benefit of the ALJ and the Commission. For any issues raised in Xcel's initial brief that this reply brief does not directly address, the OAG's initial brief explained why Xcel failed to prove its case and the OAG will not restate those positions here. Failure to address an issue in this brief does not constitute the OAG's agreement with Xcel's arguments or in any way alter the positions articulated in the OAG's initial brief.

ARGUMENT

I. THE COMMISSION ACTS IN A LEGISLATIVE CAPACITY WHEN DETERMINING WHO SHOULD BEAR EXPENSES.

Xcel misleadingly argues that “regarding...the recovery of expenses, Minnesota courts have stated that...the Commission acts in its quasi-judicial capacity.”¹ Xcel cites to a passage in a Supreme Court opinion about the standard of review for quasi-judicial and quasi-legislative determinations that does not specify which standard of review applies to expenses.² Xcel then quotes dicta from a court of appeals decision that stated “under normal ratemaking policy, a utility is entitled to recover necessary, ongoing expenses incurred in the business of providing utility service” before going on to state that the cost providing utility service includes expenses.³ The

¹ Xcel Initial Br. at 17.

² *Id.* (citing *St. Paul Area Chamber of Com. v. Minn. Pub. Serv. Comm'n*, 251 N.W.2d 350, 358 (Minn. 1977)).

³ *Id.* (quoting *In re Request of Interstate Power Co. for Auth. to Change Its Rates for Gas Serv. In Minn.*, 559 N.W.2d 130, 134 (Minn. App. 1997), *aff'd on other grounds*, 574 N.W.2d 408 (Minn. 1998)).

implication from Xcel is that if Xcel incurs an expense, it must be entitled to recover the expense through rates. This is not the law.

The Commission acts in its legislative capacity when it is determining whether ratepayers or shareholders should bear an expense. This principle has been articulated repeatedly by the Minnesota Supreme Court.⁴ In 1998, when the Supreme Court reviewed the court of appeals case Xcel cites to in its brief, it discussed this principle extensively. In that case, a gas utility requested recovery of costs associated with the cleanup of manufactured gas plants.⁵ The Commission considered the needs of ratepayers and the needs of shareholders and ultimately determined that the utility should recover the cleanup costs from ratepayers.⁶ The Supreme Court held that including cleanup costs in rates was a legislative act, stating that:

the MPUC's responsibility was to balance the needs of the customers and the shareholders, the risk to the fiscal integrity of the utility, the fairness of current charges for past environmental harm, the prudence and reasonableness of the utility's actions, and the societal goal of environmental remediation—clearly policy determinations to be resolved by the MPUC acting in a legislative capacity.⁷

Thus, Xcel's argument that the Commission acts in a quasi-judicial capacity "regarding...the recovery of expenses" is so vaguely worded that it misstates the legal standard. The actual standard is that the question of *whether an expense is incurred at all* is a quasi-judicial determination because the Commission is making a factual determination,⁸ but resolving the question of *whether ratepayers or shareholders should bear the burden of an expense* is a legislative determination.⁹

⁴ *In re Request of Interstate Power Co.*, 574 N.W.2d 408 (Minn. 1998) (Attachment 1); *In re N. States Power Co.*, 416 N.W.2d 719, 722-723 (Minn. 1987).

⁵ *In re Request of Interstate Power Co.*, 574 N.W.2d at 412.

⁶ *Id.* at 412-413.

⁷ *Id.* at 413.

⁸ *St. Paul Area Chamber of Com. v. Minn. Pub. Serv. Comm'n*, 251 N.W.2d at 358.

⁹ *In re Request of Interstate Power Co.*, 574 N.W.2d at 413. Xcel may argue that the Supreme Court's holding was drawn into question by the Court of Appeals through a nonprecedential opinion in Xcel's appeal of its last rate case. See *In re N. States Power Co.*, 2025 WL 249995, at

This is why many revenue requirement issues require an examination of whether an expense furthers ratepayer interests or shareholder interests, and why legislative requirements such as the requirement that the Commission consider consumers’ “ability to pay” are relevant to revenue requirement disputes.¹⁰

II. FINANCIAL ISSUES¹¹

Xcel’s brief largely attempts to avoid the fact that the utility always bears the burden to prove that inclusion of a cost in rates would be just and reasonable.¹² Instead, Xcel employs various tactics to distract from this core principle. For example, for some issues, it argues that it is simply entitled to recover the costs it has alleged, regardless of the evidentiary record. For others, it attempts to shift the burden of proof to the OAG. In some cases, it relies on mischaracterization or fails to mention operative facts that contradict its positions. All of this is distraction. Whether the determination to be made is quasi-judicial or legislative in nature, the inquiry here is whether Xcel’s evidence is sufficient, and sufficiently credible, given that doubts must be resolved in favor of ratepayers, to sustain a finding that Xcel’s position would be just and reasonable. For the issues taken up by the OAG, Xcel has failed to make that showing.

*4 n.2 (Minn. Ct. App. Jan. 21, 2025). But the Minnesota Court of Appeals has no ability to overrule a holding of the Minnesota Supreme Court. *See, e.g., Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. Ct. App. 2003) (“This court is bound by decision of the Minnesota Supreme Court and the United States Supreme Court.”). And a nonprecedential opinion by the Minnesota Court of Appeals is not binding except as law of the case in which the opinion was released; it only has persuasive authority. *See* Minn. R. Civ. App. P. 136.01. Further, the court of appeals did not cite to *Interstate Power*, which is the Minnesota Supreme Court’s most searching review of the appropriate standard of review for expenses, making any invocation of the court of appeals’ dicta not persuasive. *Id.*

¹⁰ Minn. Stat. § 216B.16, subd. 15; *In re N. States Power Co.*, 416 N.W.2d at 722.

¹¹ In over 300 pages of its brief, Xcel did not address the use of cost causation for indirect wildfire costs proposed by the OAG and Department. The OAG’s recommendation on this issue is discussed in its initial brief. *See* OAG Initial Br. at 50-52.

¹² *In re N. States Power Co.*, 416 N.W.2d 719, 722-723 (Minn. 1987).

A. Xcel Always Bears the Burden of Proof, Even If the Capital True-Up Is Approved.

Xcel repeatedly argues that various capital cost requests should be granted because ratepayers will be protected by its proposed capital true-up mechanism.¹³ This is a distraction, and in any event, the capital true-up would be unlikely to protect ratepayers.

Whether or not Xcel's capital true-up is approved, Xcel bears the burden to prove that including the costs for particular capital projects in rates would be just and reasonable. Xcel's burden is statutory, and the existence of other aspects of its rate request cannot relieve Xcel of a statutory burden.¹⁴ What is at issue regarding the disputed capital costs is that Xcel has not carried its burden to prove that it would be just and reasonable to include the amount claimed by Xcel in rates. Thus, Xcel's argument that its capital true-up would protect ratepayers if the costs are lower than estimated is a red herring—by Xcel's logic, it could just make up numbers for all of its capital expenses and would not need to carry its burden for any of them.

Furthermore, Xcel makes the capital true-up sound more protective than it actually is. Under the mechanism Xcel proposed, Xcel would only refund customers if its *aggregate* actual capital-related revenue requirement falls below the approved revenue requirements in this rate case.¹⁵ This means that if Xcel's actual capital expenditures for a given project are lower than its original request, it can avoid the capital true-up refund by making more capital expenditures in other areas of its business. Thus, even if its capital true-up is approved, Xcel must still prove that each of its claimed capital expenditures are accurate and would be just and reasonable to include in rates.

¹³ Xcel Initial Br. at 182, 186, 215.

¹⁴ Minn. Stat. § 216B.16, subd. 4.

¹⁵ Ex. Xcel-15 at 29 (Liberkowski Direct).

B. The Commission Should Reject the Department’s Recommendation to Accelerate Depreciation for Sherco 3 and King, as Well as Xcel’s Request to Create a Regulatory Asset for These Plants.

Whether to accelerate the depreciation schedules for Sherco 3 and King, as the Department recommends, and whether to authorize a regulatory asset, as Xcel recommends, are some of the largest financial and policy issues in this rate case. Yet, the Department’s initial brief continues to not fully engage with the Commission’s Early Retirement Framework Order, does not show the figures it used to calculate the offsets it claims are correct despite contrasting figures Xcel provided to XLI, and appears to misunderstand the OAG’s intergenerational equity argument. For Xcel’s part, its initial brief continues to recommend the creation of a regulatory asset without explaining what that determination would be based on or why it is prejudiced by waiting until plant retirement to request this extraordinary rate treatment. Xcel similarly provides no explanation for the differing figures provided to the Department and in response to XLI. Continuing the plants’ current depreciation rates and denying, without prejudice, Xcel’s request to create a regulatory asset are the most reasonable determinations on this record.

The Department’s initial brief continues to argue that “[c]onsistently aligning depreciable lives to match operational lives . . . is a principled approach.”¹⁶ But the Commission departed from this routine alignment with respect to early retiring fossil fuel facilities in its decision to adopt the Four Tiered Framework in the early retirement docket.¹⁷ While the Department asserts several times that its recommendation is consistent with the Commission’s early retirement framework,¹⁸

¹⁶ Department Initial Br. at 58.

¹⁷ See generally, *In re Comm’n Inquiry into the Ratemaking Treatment for Early Ret. Generating Facilities Owned by Regul. Elec. Util.*, MPUC Docket No. E002, E015, E017/CI-23-375, ORDER ESTABLISHING FOUR-TIERED APPROACH FOR RATEMAKING TREATMENT OF EARLY RETIRING GENERATING FACILITIES (May 14, 2025) (eDockets No. [20255-218956-01](#)) (EARLY RETIREMENT FRAMEWORK ORDER).

¹⁸ Department Initial Br. at 57-58.

the Department does not provide a response to the OAG's concerns that sufficient data gathering has not yet occurred under Tier 1, particularly regarding whether the utility has prudently operated the plant.¹⁹ Nor has the Department resolved the ongoing concern that there is conflicting data about the actual costs of accelerating depreciation combined with the nuclear plant life extension. As XLI's witness pointed out in rebuttal testimony, the spreadsheets that Xcel provided in an email response to the Department do not line up with the spreadsheets provided to XLI and on which Xcel's recommendations in Docket No. 23-375 were based.²⁰ Neither in surrebuttal nor in the brief has the Department reconciled the doubt raised by XLI that the Department's combined recommendation to "offset" the \$58.8 million in 2025 and \$55.4 million in 2026 may in fact raise Xcel's revenue requirement.²¹ The Department continues to claim that its recommendation results in a "net decrease" without addressing this lingering uncertainty.²²

Further, the Department faults the OAG's intergenerational equity analysis, but in doing so proves the OAG's point that the Department is viewing the issue too narrowly. The Department argues that "it is illogical to commit to engaging in intergenerational inequalities based on the present circumstances because of the possibility that changed circumstances in the future could call for a different outcome."²³ But the OAG's intergenerational equity concern does not depend on changed future circumstances. The OAG explained in rebuttal testimony that, because "part of

¹⁹ EARLY RETIREMENT FRAMEWORK ORDER at 7-8 ("Tier 1: Data Gathering Phase: Is plant used and useful, plant size, original date of retirement, impact on ratepayers and has the utility prudently operated the plant will also be considered. Move to Tier 2."); Ex. OAG-6 at 9 (Lee Rebuttal) ("Tier 1 contemplates data gathering, but it is not clear what data has been reviewed and evaluated to determine what ratemaking options for the undepreciated plant balances of King and Sherco 3 would be "fair and reasonable for both the utility and ratepayers.").

²⁰ Ex. XLI-5 at 5 (LaConte Rebuttal).

²¹ Compare Ex. XLI-5 at 5, Appx. E (LaConte Rebuttal) (Xcel response to XLI IR No. 90) with Ex. DOC-23 at 15, HDL-D-6 (Jones Direct). See also Tr. Vol. 2 at 435 (Jones).

²² Department Initial Br. at 59.

²³ *Id.* at 58-59.

the reason fossil fuel generators are retired early is to benefit future ratepayers by reducing emissions and fuel and maintenance costs,” accelerating depreciation allows future ratepayers to receive these benefits but pay none of the costs.²⁴ As the OAG described, the Commission should consider “a broader range of benefits to both current and future ratepayers that flow from the decision to retire fossil-fuel generators early.”²⁵ While the Department’s concern about intergenerational equity considerations stemming from future ratepayers paying for the *capital costs* of a plant that is not currently used and useful remains important, intergenerational equity considerations are not always so simple—they also include the concerns raised by the OAG.

Xcel’s brief skips tiers in the framework in advocating for a regulatory asset to be created. Xcel does not provide the data contemplated by Tier 1 of the framework.²⁶ This is particularly troubling regarding the Framework’s identification of data regarding whether “the utility prudently operated the plant.”²⁷ The OAG believes it will be difficult to determine final prudent plant operation until the plant is actually closed, but already in this case there is countervailing data that shows that Xcel’s rate base for Sherburne County Unit 3 (Sherco 3) includes imprudently incurred capital costs.²⁸ Xcel jumps straight to Tier 3, arguing not only that it should receive regulatory asset treatment with a “possible return,” but that the Commission should authorize a regulatory asset with a return now.²⁹ Doing so would be premature. Because the plant is still in service, whether it will be prudently operated at the end of its useful life is unknown. Xcel would not be

²⁴ Ex. OAG-6 at 7 (Lee Rebuttal).

²⁵ *Id.* at 8.

²⁶ See EARLY RETIREMENT FRAMEWORK ORDER at 7-8 (“Tier 1: Data Gathering Phase: Is plant used and useful, plant size, original date of retirement, impact on ratepayers and has the utility prudently operated the plant will also be considered.”).

²⁷ EARLY RETIREMENT FRAMEWORK ORDER at 7.

²⁸ See Section II.C, *infra*, discussing Sherco 3 Restoration Costs.

²⁹ See Xcel Initial Br. at 160-161.

prevented from requesting a regulatory asset in the future, provided that it can show that it prudently operated the plant and incurred these remaining costs as the framework appears to contemplate.

The Commission should deny the Department's request to accelerate depreciation and increase the 2025 test year revenue requirement by \$58.8 million and the 2026 plan year revenue requirement by \$55.4 million with minimal record support or analysis under the Commission's Early Retirement Framework. The Commission should also find that Xcel's request to create a regulatory asset and establish a return for an asset that is not yet ripe.

C. Xcel Has No Argument For Why It Should Continue Including Imprudently Incurred Sherco 3 Restoration Costs In Its Rate Base.

Xcel claims that, because it included costs associated with restoration for Sherco 3 in its rate base previously, it should be permitted to recover these costs regardless of whether they were imprudently incurred.³⁰ Xcel's one sentence of analysis in its brief is unsupported by any record citation supporting Xcel's claim that the Commission must keep imprudently incurred capital costs in rate base.³¹ Xcel's inclusion of these costs in rate base predated the Commission's 2024 determination that Xcel's imprudent actions caused the explosion that led to the restoration costs.³² This is Xcel's first electric rate case following that determination. Xcel has no viable argument for why it should be permitted to include imprudently incurred costs in its rate base.³³

³⁰ Xcel Initial Br. at 164.

³¹ While Xcel's brief recounts the facts surrounding the issue, the only argument appears to be as follows: "The Commission approved inclusion of these costs in the Company's 2013 rate case and in every rate case since then." See Xcel Initial Br. at 164.

³² *In re Sherco Prudency Review*, MPUC Docket Nos. E-002/GR-12-961, 13-868, 13-599, 14-579, 16-523, 17-492, 18-373, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED, REQUIRING REFUND OR CERTAIN DISALLOWED REPLACEMENT POWER COSTS, AND REQUIRING FURTHER ACTION at 2-4 (Dec. 24, 2024) (eDockets No. [202412-213317-01](#)).

³³ See *In re Commission Investigation into the Impact of Severe Weather in February 2021 on Impacted Minnesota Natural Gas Utilities and Customers*, MPUC Docket No. G-002/CI-21-610, ORDER DISALLOWING RECOVERY OF CERTAIN NATURAL GAS COSTS AND REQUIRING FURTHER

D. Residential Time-of-Use (TOU) Capital Costs Were Not Approved and Xcel Did Not Testify That Rate Comparison Tool Costs Were Included in Its Initial Request.

This section clarifies three points regarding Xcel’s request for TOU-related capital costs. First, Xcel implied in its brief that the Commission approved the TOU budget in a prior compliance filing, but the Commission explicitly did not approve the budget. Second, Xcel claimed that it testified that all TOU-related capital costs in its rebuttal testimony are not duplicative of costs included in its initial filing, but the record contradicts this. Finally, Xcel should seek deferred accounting for these costs in a separate docket because there is no record to support a grant of deferred accounting in the rate case.

1. The Commission declined to approve the TOU budget in Xcel’s compliance filing and clarified that “accepting” the filing did not constitute a predetermination of prudence.

Xcel repeatedly refers in its brief to the first compliance filing it filed after the Commission approved the residential TOU rate.³⁴ Xcel describes the contents of the filing as including an implementation budget and cost recovery proposal, and then states that the Commission “voted to accept [the compliance filing] with modifications at its January 8, 2026 agenda meeting.”³⁵ Xcel also states that the Commission “verbally approved the Company’s August 14, 2025 Compliance

ACTION at 27 (Oct. 19, 2022) (eDockets No. [202210-189969-01](#)) (noting “When considering a disallowance there is no theoretical limit on how much time may pass between a relevant imprudent action and the unreasonable cost it cause.”); *see also In re Comm’n Investigation into Xcel Energy’s Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, MPUC Docket No. E-002/CI-13-754, ORDER FINDING IMPRUDENCE, DENYING RETURN ON COST OVERRUNS, AND ESTABLISHING LCM/EPU ALLOCATION FOR RATEMAKING PURPOSES at 3 (May 8, 2013) (eDockets No. [20155-110255-01](#)) (denying Xcel any return on an imprudent cost overrun); *Id.* at 6-7 (Disallowing rate recovery of Xcel’s costs of an imprudent action taken in administration of a project).

³⁴ Xcel Initial Br. at 175-176, 180-181.

³⁵ *Id.* at 175.

filing.”³⁶ Xcel’s selective retelling of the Commission’s action obscures that the Commission explicitly did *not* approve Xcel’s budget for the TOU rate or the Rate Comparison Tool.

In fact, at the hearing, the Commission rejected a decision option that would have approved the budget and adopted a decision option clarifying that it was not making a prudency determination on the Rate Comparison Tool. Commenting on Xcel’s August 14, 2025 compliance filing, the Department recommended that the Commission “approve the implementation budget subject to review and approval in Xcel’s current rate case,” which was listed in Staff Briefing Papers as Decision Option 2.³⁷ The Commission chose *not* to adopt Decision Option 2.³⁸ The Commission also included in its recently-issued order that “the Commission notes that it is not making a prudency determination in this docket regarding Xcel’s as-yet-unseen Rate Comparison Tool.”³⁹ Thus the Commission did not approve the implementation budget and clarified that it was not making a prudency determination regarding the Rate Comparison Tool.

2. Xcel did not testify that the Rate Comparison Tool costs are not duplicative.

Xcel argued that when it introduced its rebuttal request, it stated that “the capital costs related to technical implementation” were not included in the initial request.⁴⁰ To be clear, the OAG’s concern that Xcel’s TOU-related capital cost request included duplicative costs pertains

³⁶ *Id.* at 181.

³⁷ *In re Petition of Xcel Energy for Approval of a Residential Time of Use Rate Design*, Docket No. E-002/M-23-524, Staff Briefing Papers at 16 (Dec. 30, 2025).

³⁸ Minnesota Public Utilities Commission Agenda Meeting of January 8, 2026 at 1:49:00 – 1:50:18, available at https://minnesotapuc.granicus.com/player/clip/2620?view_id=2&redirect=true (Jan. 8, 2026).

³⁹ *In re Petition of Xcel Energy for Approval of a Residential Time of Use Rate Design*, Docket E-002/M-23-524, ORDER APPROVING TARIFF MODIFICATIONS, APPROVING COMPLIANCE PLAN, AND SETTING ADDITIONAL REQUIREMENTS FOR RESIDENTIAL TIME-OF-USE RATE IMPLEMENTATION at 6, Order Point 12 (Feb. 23, 2026).

⁴⁰ Xcel Initial Br. at 177.

only to the Rate Comparison Tool portion of the request.⁴¹ Xcel never testified that the costs of the Rate Comparison Tool are incremental to its initial rate request.

Xcel points to its Witness Halama's statement that the initial rate case "did not include the capital costs related to technical implementation."⁴² Witness Halama went on to describe what is included in these "technical implementation" costs.⁴³ However, Witness Halama then separately stated that "[b]eyond these activities, the Company will also...incur development costs for a new Rate Comparison Tool."⁴⁴ In other words, Mr. Halama discusses the Rate Comparison Tool separately from the costs he testified were not included in the initial proposal.

Xcel also pointed to one of its discovery responses to argue that it claimed that the rebuttal request for TOU-related capital costs "are not duplicative of any costs already included in rates."⁴⁵ Xcel is taking liberties with the record. The OAG asked Xcel in discovery to "[d]escribe...all 'necessary programs to support EV [electric vehicle] programs'" included in Xcel's request for TOU-related capital costs, and to "[a]dmit that these costs are duplicative of EV-related costs claimed elsewhere in Xcel's rate case."⁴⁶ Xcel responded to that specific request that "[t]hese are not duplicative costs," and then went on to describe the difference between the TOU-related EV costs and Xcel's other EV costs.⁴⁷ It is disingenuous of Xcel to argue that this statement applies to any costs other than the EV costs that particular discovery request and response referred to.

⁴¹ OAG Initial Br. at 18-19.

⁴² Xcel Initial Br. at 177; Ex. Xcel-19 at 27-28 (Halama Rebuttal).

⁴³ Ex. Xcel-19 at 28 (Halama Rebuttal).

⁴⁴ *Id.* (emphasis added).

⁴⁵ Xcel Initial Br. at 177-178.

⁴⁶ Ex. OAG-3, KH-S-4 at 1 (Hinderlie Surrebuttal).

⁴⁷ *Id.* at 4.

3. There is no record to grant deferred accounting in this rate case.

For TOU-related capital costs not attributable to the Rate Comparison Tool, the OAG recommended that Xcel be allowed to petition for deferred accounting in a separate docket.⁴⁸ Xcel responded that it opposes deferred accounting for TOU-related costs, but if the Commission denies TOU-related capital costs, Xcel believes it should grant deferred accounting in this rate case.⁴⁹

A grant of deferred accounting in this rate case would be improper as there is no record to support deferred accounting. As discussed in the OAG's initial brief, deferred accounting is an exception to standard ratemaking procedures.⁵⁰ The Commission may only grant deferred accounting for "good cause shown," such as when a utility incurs unforeseen and unusual expenses that are large enough to have a significant impact on the utility's financial condition or when a utility has incurred sizeable expenses to meet important public policy mandates.⁵¹ Deferred accounting is considered "highly unusual ratemaking treatment."⁵²

Here, Xcel did not even mention capital costs related to implementing the TOU rate until its rebuttal testimony, nearly a year after it made its initial filing. There is no evidence in this record that any TOU-related capital costs are unforeseen, unusual, or large enough to have a significant impact on Xcel's financial conditions. Similarly, although the Commission did order that the TOU rate be implemented, Xcel has not proven that its costs are likely to be sizeable. Xcel has not shown good cause for deferred accounting, and it should not be granted in this case.

⁴⁸ Ex. OAG-3 at 39-40 (Hinderlie Surrebuttal).

⁴⁹ Xcel Initial Br. at 183.

⁵⁰ OAG Initial Br. at 52.

⁵¹ Minn. R. 7825.0300, subp. 4; *In re Petition by N. States Power Co. d/b/a Xcel Energy for Approval of Deferrals Related to Depreciation O&M and Property Tax for 2022*, MPUC Docket No. G002/M-21-750, ORDER DENYING PETITION at 3 (Feb. 9, 2022) (eDockets No. [20222-182600-01](#)).

⁵² *In re Application of CenterPoint Energy for Auth. To Increase Nat. Gas Rates in Minn.*, MPUC Docket No. G-008/GR-08-1075, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 39 (Jan. 11, 2010) (eDockets No. [20101-45867-01](#)).

The OAG’s primary recommendation is to disallow TOU-related capital costs in this rate case for the reasons discussed above and in the OAG’s initial brief.⁵³ If Xcel believes that it can demonstrate “good cause” for deferred accounting for these costs, it can petition for deferred accounting in a separate docket.

E. Xcel Failed to Prove the Alleged Costs of Its Extreme Heat/Poor Air Quality Reconnection Program.

Xcel introduced a large request for the alleged costs of its new extreme heat and poor air quality reconnection program in rebuttal testimony.⁵⁴ This request included both capital costs and operating expenses,⁵⁵ but absolutely no detail about how Xcel derived the amounts,⁵⁶ which increase its revenue requirement by \$2.445 million in 2026.⁵⁷ The OAG explained in surrebuttal how Xcel’s failure to provide evidentiary support for this request is part of a pattern of Xcel failing to explain its cost estimates for this program.⁵⁸

In its brief, Xcel makes several arguments, none of which rebut the fact that it provided no evidence demonstrating how it arrived at a request for \$28,000 in 2025 and \$2.445 million in 2026. First, Xcel argues that it warned the OAG and the Commission that implementing the program by May 1, 2026 would increase the cost of the program from the costs it estimated in the docket where the program was approved.⁵⁹ Stating that the cost would “increase” is not record evidence supporting the accuracy or reasonableness of its request to increase rate base by \$404,000 in 2025 and \$1,600,000 in 2026, plus \$1,193,000 in “Customer Accounting” expenses and \$700,000 in

⁵³ OAG Initial Br. at 17-22.

⁵⁴ Ex. Xcel-19 at 20 (Halama Rebuttal).

⁵⁵ *Id.*, scheds. 3A and 3B, column 24.

⁵⁶ *Id.* at 20.

⁵⁷ *Id.*, scheds. 3A and 3B, column 24.

⁵⁸ Ex. OAG-3 at 41-48 (Hinderlie Surrebuttal).

⁵⁹ Xcel Initial Br. at 186.

“Administrative and General” expenses.⁶⁰ Similarly, Xcel claims in its brief that the program “cannot be implemented on the timeline ordered without incurring” the costs it requested in rebuttal, but cites no evidence in support of this statement because there is none.⁶¹ Xcel’s unsupported statements at a hearing (that is not even a part of this record) and in its brief are nowhere near sufficient to satisfy Xcel’s burden to prove the costs of this program.

Second, Xcel argues that it explained in the original docket that its cost estimates there were preliminary and uncertain.⁶² Xcel appears to argue that the uncertainty of its prior estimates justifies the lack of evidence it provided in support of the current request. But if anything, Xcel admitting that the costs are uncertain should have resulted in Xcel providing even more evidence in support of its large cost increase, to provide the Commission with some confidence that the request is based on facts and a reasonable methodology. Instead, the Commission is left guessing how Xcel arrived at these new numbers.

Third, Xcel argues that it should recover the amounts it requested because the Commission and OAG approved of the program.⁶³ Here Xcel conflates approval of the program with a determination that Xcel’s capital costs and expenses are accurate. It is true that the OAG supported using Xcel’s Advanced Metering Infrastructure (AMI) to reconnect electric service to protect ratepayers’ health and safety. However, the OAG also expressed concern that Xcel’s preliminary cost estimates in that docket were unsupported.⁶⁴ There is nothing “untenable” about continuing to support the program while opposing Xcel’s request for costs that continue to be unsupported.⁶⁵

⁶⁰ Ex Xcel-19, scheds. 3A and 3B, column 24 (Halama Rebuttal).

⁶¹ Xcel Initial Br. at 185.

⁶² *Id.* at 186-187.

⁶³ *Id.* at 187-188.

⁶⁴ Ex. OAG-3 at 41-44 (Hinderlie Surrebuttal).

⁶⁵ Xcel Initial Br. at 188.

The OAG has attempted to extract a tenable basis for Xcel’s cost estimates, but even after the OAG gave Xcel an opportunity to provide evidence through multiple rounds of discovery in two separate proceedings—including asking Xcel to explain the variances between the costs in the original docket and the costs it claimed in rebuttal testimony—Xcel’s explanation could not be reconciled with the numbers.⁶⁶

Fourth, Xcel argues that its capital true-up protects ratepayers from the risk of it overestimating the costs of this program.⁶⁷ However, the majority of the revenue requirement impact of the reconnection program request is in the form of operations expense, not capital costs, and the capital true-up will have no protective effect for that portion.⁶⁸ Furthermore, as discussed above, the true-up does not relieve Xcel of its burden of proof and is not as protective as claimed.⁶⁹

Finally, Xcel argues that, if the reconnection program costs are disallowed in this rate case, the Commission should create a tracker for these costs rather than requiring Xcel to petition for deferred accounting.⁷⁰ Xcel argues that a tracker should be created because “the costs are sizeable and related to an important public policy mandate.”⁷¹ However, as explained above, Xcel has not proven its costs, much less that they are sizeable. Xcel should therefore petition for deferred accounting in a separate docket, where it should include adequate evidence for the Commission to assess its request under the deferred accounting standard.

⁶⁶ Ex. OAG-3, KH-S-5 at 2-3, subp. G (Hinderlie Surrebuttal); *Id.* at 47.

⁶⁷ Xcel Initial Br. at 186.

⁶⁸ Ex Xcel-19, scheds. 3A and 3B, column 24 (Halama Rebuttal). In 2026, \$1,893,000 of the costs are operating expenses, not capital costs.

⁶⁹ Section II.A, *supra*.

⁷⁰ Xcel Initial Br. at 190.

⁷¹ *Id.* at 190, n. 750.

F. The Commission Should Deny Xcel’s Request for Compensation Paid to Xcel’s Ten Highest-Paid Executives.

Xcel argued that the structure of executive compensation incentivizes activities that benefit ratepayers,⁷² that there is no distinction between ratepayer benefits and shareholder benefits,⁷³ and that its need for sufficient revenue to cover the cost of service requires the Commission to grant recovery of executive compensation.⁷⁴ All of these arguments are incorrect.

1. AIP and LTI prioritize shareholder interests far more than ratepayer interests.

The OAG opposes rate recovery of executive compensation in part because of the clear focus on shareholder interests over ratepayer interests incentivized by Xcel’s Annual Incentive Plan compensation (AIP) and Long-Term Incentive compensation (LTI). Xcel argued in its initial brief that the existence of other AIP performance metrics in addition to Earnings Per Share (EPS) demonstrated ratepayer benefit,⁷⁵ and that only shareholders pay for extra AIP when the Earnings Per Share metric is exceeded.⁷⁶ Regarding LTI, Xcel took issue with the observation that it is paid entirely in the form of stock compensation.⁷⁷ Xcel’s arguments fail to rebut the fact that AIP and LTI compensation incentivize Xcel’s highest-paid executives to focus on shareholder interests.

For AIP, Xcel argues that, while it is true that Xcel must meet the EPS threshold for executives to receive AIP, they could also have their AIP payout reduced if they do not meet Key Performance Indicators (KPI).⁷⁸ KPIs are performance metrics that Xcel says “relate to customer,

⁷² *Id.* at 99-100, 105-106.

⁷³ *Id.* at 111.

⁷⁴ *Id.* at 113.

⁷⁵ *Id.* at 99-100.

⁷⁶ *Id.* at 101.

⁷⁷ *Id.* at 105-106.

⁷⁸ *Id.* at 99-100; Tr. Vol. 1 at 148:2-8; Ex. Xcel-62, sched. 4 at 6-7 (Yen Ly Direct) (showing metric weights and effect on AIP payout).

safety, reliability, affordability, and environmentally focused goals.”⁷⁹ However, KPIs do not carry the same weight as the EPS threshold and they require minimal performance for a payout. Each KPI has a weighted effect on AIP payout for the corporate component of AIP.⁸⁰ The only KPI that could conceivably be related to affordability, wind availability, is tied for the lowest weight.⁸¹ By contrast, the EPS threshold is a predicate to receiving *any* AIP.⁸²

Furthermore, the KPIs require a concerning low level of performance, and because these low levels are so easily achievable, EPS is clearly the prevailing determinant of AIP payout. For employee safety, Xcel’s performance grade is only reduced *to* the threshold in the tragic situation of a workplace fatality, not below the threshold, meaning executives will still receive at least some AIP compensation under that metric.⁸³ If there are no workplace fatalities and there are no serious employee electrocutions or gas explosions, Xcel’s performance grade is increased to the *maximum*, labeled “significant improvement.”⁸⁴ For customer satisfaction, Xcel needs only be in the 30th percentile among utilities in a JD Power Customer Satisfaction Survey to meet the threshold—a badly failing grade in any other context.⁸⁵ For electric system reliability, Xcel appears to only measure its System Average Interruption Duration Index (SAIDI), none of the other reliability metrics Xcel is required to report.⁸⁶ Rather than showing an incentive for executives to prioritize ratepayer needs, as contended by Xcel, the KPIs are a dismissive nod to ratepayer needs at best.

⁷⁹ Ex. Xcel-63 at 33 (Yen Ly Rebuttal).

⁸⁰ Ex. Xcel-62, sched. 4 at 6-7 (Yen Ly Direct)

⁸¹ *Id.* at 6.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*, sched. 4a at 2 (Yen Ly Direct).

⁸⁶ Minn. R. 7826.0500.

For LTI, Xcel says it is “misguided” to argue that paying compensation in stocks aligns executive interests with shareholders.⁸⁷ Xcel does not explain how it is “misguided” to observe that making executives literal shareholders aligns their interests with other shareholders.⁸⁸ Instead, Xcel argues that stock-based compensation is “a standard market practice that helps align employee interests with the success of the company. A healthy and successful company benefits ratepayers by ensuring the company has adequate resources to provide safe and reliable service.”⁸⁹

This argument inadvertently makes the OAG’s point. First, Xcel admits that paying executives in stock “align[s] employee interests with the success of the company.” In this statement, Xcel is equating “success of the company” with stock value. As if to drive the point home, Xcel then *differentiates* between the “health[] and success[]” of the company and “provid[ing] safe and reliable utility service,” suggesting that Xcel views health and success for shareholders as primary executive goals that then help Xcel to provide utility service, rather than the provision of safe and reliable utility service being the primary goal that is supported by Xcel’s financial structure.

2. Xcel’s argument regarding its executive schedules and performance evaluations is an attempt to shift its burden.

Because Xcel provided no evidence regarding the relative benefits to ratepayers and shareholders of executive compensation, the OAG and the Department sent discovery to Xcel to determine how executives use their time and regarding executive performance evaluations.⁹⁰ The discovery was insufficient to show that executives devote time to activities that directly relate to

⁸⁷ Xcel Initial Br. at 105-106.

⁸⁸ *Id.*

⁸⁹ *Id.* at 106.

⁹⁰ ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL at 3-4 (Aug. 29, 2025); Ex. OAG-1 at 16 (Hinderlie Direct).

ratepayer interests.⁹¹ Additionally, the executives who do receive performance evaluations are not evaluated on ratepayer-focused deliverables.⁹²

In response, Xcel tries to shift its burden and flip the legally required presumption. Xcel agrees that executives do not specifically spend time on activities that further ratepayer interests rather than shareholder interests.⁹³ Xcel argues that the conclusion to be drawn from this is that executive activities inextricably benefit both ratepayers and shareholders.⁹⁴ The OAG's witness did not deny that some executive activities may benefit both ratepayers and shareholders, but explained that the evidence lacked sufficient details to justify recovery of executive compensation, particularly when Xcel did not even attempt to quantify ratepayer benefits.⁹⁵ The OAG's witness also gave examples of situations in which ratepayer interests and shareholder interests directly diverge,⁹⁶ disproving Xcel's argument that these interests are the same.⁹⁷

The fact that Xcel failed to show its highest-paid executives work on activities that directly benefit ratepayers, rather than focusing on increasing shareholder returns, weighs in favor of disallowing executive compensation altogether.

3. That the Commission must give due consideration to Xcel's needs does not mean that Xcel is entitled to recovery of executive compensation.

Xcel argues that it should be granted recovery of executive compensation because the Commission must consider both ratepayer needs and the needs of the utility.⁹⁸ Xcel argues that the Commission "cannot focus solely on the needs of the ratepayer and wholly disallow necessary

⁹¹ Ex. OAG-4 at 15 (Hinderlie Surrebuttal).

⁹² *Id.* at 17-22 (Hinderlie Surrebuttal).

⁹³ Xcel Initial Br. at 111.

⁹⁴ *Id.* at 111.

⁹⁵ Ex. OAG-3 at 15-16 (Hinderlie Surrebuttal).

⁹⁶ *Id.* at 4-5 (Hinderlie Surrebuttal).

⁹⁷ Ex. Xcel-63 at 30 (Yen Ly Rebuttal).

⁹⁸ Xcel Initial Br. at 113.

costs of service such as executive compensation,” and quotes the unpublished court of appeals opinion from its prior rate case in support of this assertion.⁹⁹ Xcel thereby implies that the Commission is required to grant at least some rate recovery for every expense that the company incurs, including executive compensation. Xcel’s argument misunderstands the unpublished opinion it quotes, the relevant statute, and the burden of proof.

In Xcel’s previous rate case, the Commission found that Xcel had not carried its burden of proof to justify recovery of executive compensation and then, rather than disallowing recovery entirely, used the governor’s salary as a proxy to limit recovery to \$150,000 per executive.¹⁰⁰ On appeal, two judges of the court of appeals held that using the governor’s salary was arbitrary and capricious because the Commission had not explained why that proxy was just and reasonable.¹⁰¹ This is the portion of the unpublished opinion that Xcel partially quotes; the full quote is “by not describing how or why the governor’s salary was the appropriate measure to meet the needs of the ratepayer *and* the utility, the commission ‘failed to consider an important aspect of the problem.’”¹⁰² The takeaway is not, as Xcel implies, that the Commission is required to grant at least some amount of executive compensation expense. Rather, the holding of the court of appeals is that the Commission must adequately explain how it “gave due consideration” to the needs of ratepayers and the utility in arriving at its decision.¹⁰³

⁹⁹ *Id.*

¹⁰⁰ *In re Application by N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-002/GR-21-630, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 23 (Jul. 17, 2023) (eDockets No. [20237-197559-01](#)) (21-630 ORDER).

¹⁰¹ *In re Application by N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, No. A23-1672, 2025 WL 249995 at *12 (Minn. Ct. App. 2025). One judge dissented as to the use of the governor’s salary as a cap, stating that the Commission adequately explained its decision and did not act arbitrarily and capriciously.

¹⁰² *Id.* at *12 (Minn. Ct. App. 2025) (emphasis original).

¹⁰³ *Id.*

The Commission is not required to grant rate recovery of expenses that would not be just and reasonable to include in rates. Minnesota Statutes section 216B.16, subdivision 6 provides that, in determining just and reasonable rates, the Commission

shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including [the costs of its capital investments].

The plain language of the law does not require the Commission to grant rate recovery of expenses; rather, it is a procedural requirement that the Commission give *due consideration* to both ratepayer needs and the utility's needs. This is the "balancing" of ratepayer and shareholder needs that the Commission conducts in its legislative capacity as discussed by the Supreme Court's 1998 *Interstate* precedent, discussed above.¹⁰⁴ Expenses may be allowed or disallowed from rates entirely if the Commission determines that it is just and reasonable to do so.¹⁰⁵

Notably, even if Xcel's wrong legal interpretation were correct, the record in this case actually demonstrates that rate recovery of executive compensation is not necessary for the utility to obtain "revenue sufficient to enable it to meet the cost of furnishing the service." In Xcel's last rate case, Xcel had requested \$7.05 million for executive compensation in the 2022 test year, \$7.57 million in the 2023 plan year, and \$7.88 million in the 2024 plan year.¹⁰⁶ Because of the executive compensation cap ordered by the Commission, Xcel's revenues for 2022 through 2024 only included \$1.5 million per year for executive compensation. Even with this large disallowance, Xcel met its Earnings Per Share guidance all three years,¹⁰⁷ and enjoyed profits of \$1.736 billion

¹⁰⁴ Section I, *supra*.

¹⁰⁵ *In re Request of Interstate Power Co.*, 574 N.W.2d at 412-413; *In re N. States Power Co.*, 416 N.W.2d at 722-723.

¹⁰⁶ 21-630 ORDER at 20.

¹⁰⁷ Ex. DOC-26 at 7 (Xcel Energy Inc.'s 2024 Form 10-K).

in 2022, \$1.771 billion in 2023, and \$1.936 billion in 2024.¹⁰⁸ Profits are the result of subtracting expenses from revenues, so it is clear that Xcel's need for revenue sufficient to cover the cost of service is accounted for many, many times over, even if rate recovery of executive compensation is disallowed entirely.

Xcel's argument is, at its core, an attempt to offload its burden of proof. The utility always has the burden to demonstrate that including an expense in rates would be just and reasonable.¹⁰⁹ Xcel has only demonstrated that it pays market-competitive compensation to its highest-paid executives and that this is standard practice for large utilities and other corporations. These facts are certainly relevant, and the Commission should give them due consideration. It should also give due consideration to the facts presented by the OAG, discussed in the OAG's initial brief, and to the fact that Xcel had almost \$2 billion in profits in 2024.¹¹⁰

The Commission found in Xcel's last rate case that Xcel had not carried its burden to show that ratepayers should pay for top-ten executive compensation and the court of appeals upheld this finding.¹¹¹ The Commission should again disallow rate recovery of top-ten executive compensation.

G. Xcel's Initial Brief Ignores the Commission's Most Recent Treatment of Organizational Dues.

Xcel's initial brief states that past Commission practice should apply regarding membership dues for Edison Electric Institute (EEI).¹¹² Xcel ignores the Commission's most

¹⁰⁸ Ex. DOC-25 at 26 (PDF page 31) (Xcel Energy Inc.'s 2023 Form 10-K); Ex. DOC-26 at 25 (Xcel Energy Inc.'s 2024 Form 10-K). These citations also show Xcel's ongoing earnings were even higher than its profits.

¹⁰⁹ Minn. Stat. § 216.16, subd. 4.

¹¹⁰ Ex. DOC-26 at 25 (Xcel Energy Inc.'s 2024 Form 10-K).

¹¹¹ 21-630 ORDER at 21; *In re Application by N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, No. A23-1672, 2025 WL 249995 at *11 (Minn. Ct. App. 2025).

¹¹² Xcel Initial Br. at 202.

recent decision on organizational dues. Applying this most recent Commission decision, Xcel has failed to meet its burden to show how \$677,000 in annual EEI dues benefits ratepayers. While Xcel claims the OAG’s requested evidentiary support would be overly burdensome, another Minnesota rate-regulated utility has provided this information. Xcel also attempts to obfuscate the issue by pointing to past OAG’s positions rather than the OAG’s arguments and evidence in this case.¹¹³

First, while Xcel clings to the Commission’s rate case decisions in 2021 and 2015,¹¹⁴ Xcel disregards the Commission’s most recent decision regarding membership dues.¹¹⁵ In the most recent case, the Commission denied Greater Minnesota Gas’s (GMG) American Gas Association dues, finding the utility made only “general assertions” regarding the importance of training and informational resources.¹¹⁶ The Commission noted that GMG did not identify “any specific trainings, conferences, or other educational opportunities that GMG staff had actually utilized.”¹¹⁷

Xcel provides similarly deficient evidence here. Xcel only listed instances in which Company employees engaged with EEI in 2023.¹¹⁸ Xcel also provided a listed with inaccurate information, including vendors with the wrong description or information.¹¹⁹ Xcel’s initial brief claims that its Witness Robinson provided additional details in rebuttal testimony about EEI

¹¹³ *Id.* at 203-204.

¹¹⁴ *Id.* at 202-203.

¹¹⁵ *In re Application of Greater Minnesota Gas, Inc. for Auth. to Increase Rates for Nat. Gas Util. Serv. in Minn.*, MPUC Docket No. G-022/GR-24-350, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 19 (Nov. 26, 2025) (eDockets No. [202511-225331-01](#)).

¹¹⁶ *Id.*

¹¹⁷ *Id.* In the OAG’s initial brief, the OAG explained why the trainings provided by Xcel are insufficient to identify specific trainings and conferences. *See* OAG Initial Br. at 37-38.

¹¹⁸ OAG Initial Br. at 37.

¹¹⁹ *Id.* at 37-38 (citing Xcel’s attribution of EEI as the vendor’s name with the description for another organization).

dues.¹²⁰ But Witness Robinson provides only conclusory statements, not evidence.¹²¹ Instead of providing the relevant information proving that these expenses justify recovery from ratepayers, he disparages the OAG's request to quantify the benefits Xcel receives from membership.¹²² He instead claims the activities of EEI are so apparently beneficial that he need only refer the reader to EEI's homepage. He does not even refer to a specific portion of the website.¹²³

Xcel also does not acknowledge that at least one rate-regulated utility has provided the OAG with the requested information about dues in a rate case. In 2025, Dakota Electric Association (Dakota) provided additional support for its test year dues request.¹²⁴ Dakota provided quantifiable support and compared membership benefits with non-member costs.¹²⁵ Dakota provided lists of workshops for multiple years, and offered descriptions of workshops and trainings, and provided concrete examples of the benefits provided to their members and staff who attend the trainings.¹²⁶ Dakota's inclusion of the information demonstrates that utilities can track and report such information and substantiate ratepayer benefits for membership in some organizations. But Xcel has not done this for EEI.

¹²⁰ Xcel Initial Br. at 201.

¹²¹ Ex. Xcel-28 at 2-9 (Robinson Rebuttal).

¹²² *Id.* at 8-9 (Robinson Rebuttal).

¹²³ *Id.* at 9 (Robinson Rebuttal).

¹²⁴ *In re Application of Dakota Elec. Ass'n. for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-111/GR-24-400, ORDER APPROVING SETTLEMENT AGREEMENT at 5 (Jan. 16, 2026) (eDockets No. [20261-227006-01](#)) (citing Order Point 41)); *In re Application of Dakota Elec. Ass'n. for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-111/GR-24-400, Settlement Agreement, Attach. 4, Attach. A at 5-17 (June 6, 2025) (eDockets No. [20256-219692-01](#)).

¹²⁵ *In re Application of Dakota Elec. Ass'n. for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-111/GR-24-400, Settlement Agreement, Attach. 4, Attach. A at 5-17.

¹²⁶ *Id.*

Last, instead of responding to the OAG’s concern about whether these dues benefit ratepayers, Xcel continues to act like the OAG is focused on lobbying expenses.¹²⁷ While the OAG acknowledges that the Commission in past Xcel rate cases has not agreed with the OAG’s arguments regarding the amount of lobbying expenses included in dues, this does not relieve Xcel of its requirement to show that membership in these organizations is beneficial to ratepayers.

H. Xcel Has Still Not Met Its Burden to Recover 100 Percent of Chamber of Commerce Expenses.

The Commission’s decision in Xcel’s last rate case to treat chambers of commerce dues like economic development expenses, requiring a 50/50 split between ratepayers and shareholders, continues to be appropriate.¹²⁸ The Commission found that “it is reasonable to conclude that at least some of the dues Xcel contributes to these organizations [referring to chambers of commerce] will be used for economic development,” based on the chamber of commerce mission statements in Xcel’s last rate case.¹²⁹ The Commission has repeatedly affirmed that for expenses related to economic development, when “only a portion of the activity’s benefits accrues to customers, it is appropriate for the Company to recover a portion of the total economic development.”¹³⁰ This results in economic development expenses being split equally between ratepayers and shareholders.

Xcel claims in its brief that the record supports treating chamber of commerce dues differently in this case.¹³¹ The Commission has recognized that costs associated with economic

¹²⁷ Ex. Xcel-28 at 4-5 (Robinson Rebuttal).

¹²⁸ 21-630 ORDER at 74-75.

¹²⁹ Ex. OAG-5 at 9 (Lee Direct) (citing 21-630 ORDER at 74-75).

¹³⁰ *In re Application of Otter Tail Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn.*, Docket No. E017/GR-20-719, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 21 (Feb. 2, 2022) (eDockets No. [20222-182349-01](#)).

¹³¹ Xcel Initial Br. at 205.

development activities benefit shareholders as much as ratepayers.¹³² Xcel is disputing that chamber of commerce expenses are, according to the Commission’s past practice,¹³³ treated like economic development expenses.¹³⁴ Xcel’s argument falls flat. Economic development expenses help retain and increase the number of customers on the utility’s system, which increases revenue for the Company.¹³⁵ While there may also be benefits to customers as outlined in Xcel’s initial brief,¹³⁶ that alone does not mean Xcel should receive 100 percent of these costs. Further Xcel has conceded that shareholders also benefit from these expenses because membership provides the Company and its shareholders “opportunities, information, and resources.”¹³⁷ That is another reason why these dues should be split between shareholders and ratepayers as economic development expenses.

Xcel also attempts to shift the burden to the OAG to show the shareholder benefits from chamber membership.¹³⁸ Xcel states that in the last rate case, the OAG included the mission statements for the chambers to show economic development.¹³⁹ Xcel states the “OAG has not introduced any evidence in the record to support its position.”¹⁴⁰ But the burden of proof is unequivocally on Xcel.¹⁴¹ In this rate case, there is a difference of a single chamber of commerce

¹³² *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 36 (Nov. 2, 2010) (eDockets No. [201011-56128-01](#)).

¹³³ Xcel Initial Br. at 204-205.

¹³⁴ *Id.* at 205.

¹³⁵ Ex. OAG-5 at 9 (Lee Direct); 21-630 ORDER at 75.

¹³⁶ Xcel Initial Br. at 205, 206 (citing membership in chambers of commerce having benefits that are also social purposes and networking).

¹³⁷ Ex. Xcel-28 at 13 (Robinson Rebuttal).

¹³⁸ Xcel Initial Br. at 205.

¹³⁹ *Id.* at 206.

¹⁴⁰ *Id.* at 205.

¹⁴¹ *In re N. States Power Co.*, 416 N.W.2d at 726 (stating Minn. Stat. § 216B.16, subd. 4 “unequivocally places the burden of proof to establish the reasonableness of a rate change upon the public utility.”).

compared to the last rate case.¹⁴² The Commission’s decision in Xcel’s last rate case remains reasonable. The Commission should limit recovery to 50 percent by removing \$110,968 from the test year and the plan year.¹⁴³

I. Xcel’s Failure to Analyze Employee Gifts and Awards Should Reduce Its Recovery from Ratepayers.

Xcel’s initial brief misstates Xcel’s burden of proof to support recovery for employee awards and gifts.¹⁴⁴ The OAG opposed recovery of over \$1 million in expenses per year for non-safety related awards. These expenses include Xcel’s recognition programs and the Xcelebrate program, which awards points to employees that “can be used to obtain merchandise or gift cards through an online catalog.”¹⁴⁵ The OAG challenged these expenses because Xcel did not provide evidence or analysis for why awarding “merch” or gift cards is necessary to the provision of utility service and reasonable for ratepayers to pay.¹⁴⁶ Xcel states that “[t]here is no basis for the OAG’s expectation that every expense has to be supported by some sort of analysis.”¹⁴⁷ While that might be true for a non-rate regulated entity operating in the free market, the OAG has a clear basis for requiring a rate-regulated public utility to support and explain its expenses—Minnesota law. Xcel’s attempt to distinguish this case from previous Commission denials of recovery for similar programs is likewise unavailing. Last, while Xcel attempts to justify these costs by pointing to a Minnesota state website, that does not make its case.

¹⁴² Ex. Xcel-28 at 11 (Robinson Rebuttal) (citing 67 different chambers of commerce); 21-630 ORDER at 74 (July 23, 2023) (citing 68 different chambers of commerce).

¹⁴³ Ex. OAG-5 at 9 (Lee Direct).

¹⁴⁴ Xcel Initial Br. at 210.

¹⁴⁵ Ex. Xcel-28 at 14 (Robinson Rebuttal).

¹⁴⁶ Ex. OAG-5 at 11 (Lee Direct).

¹⁴⁷ Xcel Initial Br. at 210.

Xcel at all times bears the burden of proof in rate cases.¹⁴⁸ This burden is not simply for Xcel to show that it will incur expenses but also that it is just and reasonable for ratepayers to bear them.¹⁴⁹ Any doubts as to the reasonableness of the expense must be resolved in ratepayers favor.¹⁵⁰ Far from meeting this high burden, Xcel’s evidence for why these programs are reasonable for ratepayers to bear is limited to unsupported claims that they “support employee retention.”¹⁵¹ Xcel must show how Xcelebrate supports employee retention and that this retention benefits ratepayers. It has failed to do so.

Xcel tries to make up for the lack of evidence in this case by claiming that it provided similar evidence in its 2021 rate case and there have been no changes.¹⁵² Not only is the Commission not bound by its previous orders, this issue was not litigated in the 2021 rate case—the Commission had no reason to consider the propriety of these awards.

Xcel tries to distinguish its program from Commission decisions for Otter Tail and Minnesota Power for similar programs by pointing out minor differences in the programs.¹⁵³ In doing so, Xcel concedes that the Commission’s decision in Minnesota Power’s 2013 rate case provides support for disallowing the Company’s Xcelebrate awards for years of service.¹⁵⁴ Additionally, the Minnesota Power and the Otter Tail decisions stand for the proposition that utilities must carry their burden, on the specific records, to show that these expenses are reasonable

¹⁴⁸ Minn. Stat. § 216B.16, subd. 4.

¹⁴⁹ *In re Petition of N. States Power Co.*, 416 N.W.2d at 722-723 (Minn. 1987) (citing “[b]y merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses.”)

¹⁵⁰ Minn. Stat. § 216B.03.

¹⁵¹ Ex. Xcel-63 at 25 (Yen Ly Rebuttal).

¹⁵² Xcel Initial Br. at 211.

¹⁵³ *Id.* at 210-211.

¹⁵⁴ *Id.* at 211.

and necessary for the provision of utility service.¹⁵⁵ Xcel's reliance on generalized statements that Xcelebrate increases retention and reinforces positive behaviors, supported by no analysis, fails to carry that burden to recover over \$1 million from ratepayers annually.

Last, Xcel's comparison of the Xcelebrate program with a State of Minnesota program falls flat.¹⁵⁶ Xcel did not provide any record of this policy being implemented by Minnesota's state agencies, or how often it is used, only that the policy exists. Furthermore, the State of Minnesota's award policy is not at issue in this case. Instead, Xcel must show that the Xcelebrate program relates to the provision of utility service beyond conclusory claims.¹⁵⁷

J. Xcel Failed to Demonstrate that Shareholders Do Not Benefit from Investor Relations Expense.

Xcel's brief is not persuasive to permit recovery of all investor relations expenses. The Company did not plug the gaps in proving its case,¹⁵⁸ and failed to respond to the OAG's requests for information.¹⁵⁹ Xcel did not articulate how ratepayers benefit from investor relations expenses.¹⁶⁰ Xcel continues to fail to acknowledge that shareholders, not just ratepayers, benefit from investor relations expenses. Xcel also identifies the wrong standard for recovery of these expenses.

¹⁵⁵ *In re the Application of Minnesota Power for Authority to Increase Rates for Elec. Service in Minn.*, MPUC Docket No. E-015/GR-21-335, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 30 (Feb. 28, 2023) (eDockets No. [20232-193486-01](#)) (21-335 ORDER); *In re Application of Otter Tail Power Co. for Auth. to Increase Rates for Elec. Serv. In Minn.*, Docket No. E-017/GR-15-1033, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 47-48 (May 1, 2017) (eDockets No. [20175-131511-01](#)).

¹⁵⁶ Xcel Initial Br. at 210.

¹⁵⁷ Ex. OAG-7 at 9-10 (Lee Surrebuttal) (noting Xcel's failure to articulate how these nominal awards help with employee retention).

¹⁵⁸ *See Id.* at 11-12 (Lee Surrebuttal) (explaining how Xcel did not provide rebuttal testimony to support its recovery for these expenses).

¹⁵⁹ Ex. OAG-5 at 14 (Lee Direct).

¹⁶⁰ *See* Xcel Initial Br. at 212-213.

Xcel's brief only repeats itself that Xcel has obligatory expenses for investor relations activities, including providing shareholders online access to their accounts and hosting an annual shareholder meeting.¹⁶¹ But Xcel misses the point. Xcel must show that it is "just and reasonable for ratepayers to bear the cost of those expenses," not merely that Xcel has incurred expenses.¹⁶² Xcel's own brief, in fact, shows that shareholders benefit from investor relations expenses.¹⁶³ According to Xcel's brief, without investor relations expenses, shareholders would not have shares to purchase, no online access to their accounts, nor an annual shareholder meeting.¹⁶⁴ It is not appropriate for ratepayers to bear the full burden of all investor relations costs when shareholders clearly benefit from these expenses.

The Commission has previously disallowed fifty percent of costs attributed to investor relation expenses.¹⁶⁵ The Commission should do so again here.

K. The Commission Should Reign In Xcel's Rate Case Expenses By Splitting The Cost Between Ratepayers and Shareholders.

Xcel has not provided a sufficient record to recover rate case expenses. Contrary to Xcel's suggestion,¹⁶⁶ splitting rate case expenses between ratepayers and shareholders has *not* previously

¹⁶¹ *Id.* at 212.

¹⁶² *In re Petition of N. States Power Co.*, 416 N.W.2d at 722-723.

¹⁶³ Xcel Initial Br. at 212.

¹⁶⁴ *Id.* at 212.

¹⁶⁵ *See, e.g., In re Application by CenterPoint Energy Minn. Gas, a div. of CenterPoint Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Util. Serv. in Minn.*, MPUC Docket No. G008/GR-13-316, FINDING OF FACT, CONCLUSION AND ORDER at 22 (June 9, 2014) (eDocket No. [20146-100252-01](#)); *In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn.*, MPUC Docket No. E-002/GR-12-961, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 16 (Sep. 3, 2013) (eDocket No. [20139-90902-01](#)) (12-961 RATE CASE ORDER); *In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn.*, MPUC Docket No. E-002/GR-12-961, FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION at 108 (July 5, 2013) (eDocket No. [20137-88857-01](#)) (ALJ Order); 12-961 RATE CASE ORDER at 46, Order Point 2 (Sep. 3, 2013).

¹⁶⁶ Xcel Initial Br. at 170.

been before the Commission when evaluating a multi-year rate plan.¹⁶⁷ Since this issue has not recently been reviewed, the OAG reviews other Commissions' practices before reviewing how Xcel has control of the case it claims rate case expenses for. The OAG recommends dividing these costs equally between ratepayers and shareholders since shareholders also benefit from rate cases.

Despite Xcel's claim in its brief,¹⁶⁸ splitting the cost of rate case expenses has not been extensively developed in the past.¹⁶⁹ The OAG has not raised these costs recently.¹⁷⁰ But the Commission has previously "concur[red] with the RUD-OAG on the importance of controlling rate case costs, and is open to new approaches accomplishing that goal."¹⁷¹ The Commission has also previously suspected that a requested level of rate case expense would "likely be lower than initially projected," and required Xcel to make a filing to track rate case costs.¹⁷²

Although Xcel claims otherwise in its brief, it is not required to file a rate case.¹⁷³ And Xcel is not as helpless as it claims regarding the amount of rate case expenses incurred.¹⁷⁴ In fact, it has done little to contain expenses in this case. The Company has hired three law firms for this

¹⁶⁷ The OAG notes that the Commission has made findings regarding the reasonableness of expenses that are not related to rate case expenses and the rate of amortization of rate case expenses.

¹⁶⁸ Xcel Initial Br. at 172.

¹⁶⁹ *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 37 (Nov. 2, 2010) (eDockets No. [201011-56128-01](#)).

¹⁷⁰ Ex. OAG-5 at 16 (Lee Direct); Ex. OAG-7 at 16 (Lee Surrebuttal) (citing Table 1).

¹⁷¹ *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 37.

¹⁷² *In re the Application of N. States Power Co. for Auth. to Increase Rates for Elec. Serv. in the State of Minn.*, MPUC Docket No. E-002/GR-15-826, FINDINGS OF FACT, CONCLUSION AND ORDER at 36 (June 12, 2017) (eDockets No. [20176-132748-01](#)).

¹⁷³ Xcel Initial Brief at 171.

¹⁷⁴ *Id.*

case.¹⁷⁵ Xcel has decided to relitigate issues recently decided by the Commission.¹⁷⁶ Xcel decides who will offer pre-filed testimony on the Company's behalf. Xcel contracts with consultants and firms. Xcel also lists factors specific to this case.¹⁷⁷ While this case is complex, Xcel engaged in discovery disputes,¹⁷⁸ and provided incomplete or nonresponsive materials.¹⁷⁹ Xcel points to intervenors as a cause of extra rate case expense.¹⁸⁰ But Xcel prides itself in its testimony on working with stakeholder engagement and collaboration.¹⁸¹ And again, Xcel states that expenses were incurred but does not provide a rationale as to why ratepayers should pay the whole bill.¹⁸²

L. Xcel's Wide-Ranging Estimates for Targeted Undergrounding Require a Cost Cap to Protect Ratepayers.

Xcel claims for the first time in its initial brief that the targeted undergrounding project proposed in its rate case is different from the one Xcel proposed in the Company's Annual Safety, Reliability, and Service Quality Report (SQR) it filed in April 2025.¹⁸³ Xcel overstates the differences. Xcel's responses to information requests in the record show that the targeted undergrounding project is the same.¹⁸⁴ The OAG's proposed cost caps are appropriate ratepayer

¹⁷⁵ Ex. OAG-5 at 17 (Lee Direct).

¹⁷⁶ See Xcel Initial Br. at 205 (rehashing Commission decision ordering a 50/50 split between shareholders and ratepayers for chamber of commerce dues); Xcel Initial Br. at 212 (arguing for 100 percent recovery of investor relations costs despite past Commission decisions ordering a 50/50 split between shareholders and ratepayers); Xcel Initial Br. at 244-245 (acknowledging the Commission ordered Xcel to use a 12 CP allocator in the last rate case but proposing a different allocator now).

¹⁷⁷ Xcel Initial Br. at 172.

¹⁷⁸ See, e.g., ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL.

¹⁷⁹ See Ex. OAG-7 at 2, 5, 10, 12, 15, 18, 25 (Lee Surrebuttal).

¹⁸⁰ Xcel Initial Br. at 172.

¹⁸¹ Ex. Xcel-15 at 9 (Liberkowski Direct).

¹⁸² Xcel Initial Br. at 172.

¹⁸³ *Id.* at 213-214.

¹⁸⁴ See Ex. OAG-5, SL-D-15 (Lee Direct); *Id.* at 30 (Lee Direct) ("However, the Company provides additional information beyond what it filed in supplemental direct testimony in response to a Joint Intervenor information request.").

protections.¹⁸⁵ A cost cap remains appropriate because a capital true-up mechanism does not address Xcel’s failure to sufficiently estimate project costs. Per Xcel’s proposal, Xcel would only refund customers if its aggregate actual capital-related revenue requirement falls below the approved revenue requirements in this rate case. If Xcel’s actual capital expenditures for targeted undergrounding are lower than its request, Xcel can move any of the unspent capital originally approved for targeted undergrounding to another capital project.

Xcel designed the targeted undergrounding program to meet its obligations in the 2023 and the 2024 SQR dockets.¹⁸⁶ In April 2025, Xcel stated it proposed the targeted undergrounding to improve its reliability by undergrounding overhead lines with the highest historical outages.¹⁸⁷

Prior to its statements in its initial brief, Xcel affirmed in an information request that Xcel “first identified through the equity analyses filed in Docket No. E002/M-24-27 and further analyzed in Docket No E002/M-25-27,” where the “initial implementation of the targeted undergrounding program” would be focused.¹⁸⁸ Xcel stated that “the Company proposes a phased implementation of targeted undergrounding, beginning with a limited deployment in 2025 and 2026.”¹⁸⁹ Xcel also stated that the targeted undergrounding program is a proposal that “aligns with the analyses and recommendations presented in the Company’s 2024 Service Quality Report filed in Docket No. E002/M-25-27.”¹⁹⁰

¹⁸⁵ Ex. OAG-5 at 33-34 (Lee Direct); Ex. OAG-7 at 25 (Lee Surrebuttal). Xcel also argues that its capital true-up will protect ratepayers. As with similar arguments for Xcel’s TOU capital costs and Hot Weather Rule costs, this argument fails.

¹⁸⁶ Ex. OAG-5 at 31 (Lee Direct).

¹⁸⁷ Xcel Initial Br. at 213.

¹⁸⁸ Ex. OAG-5, SL-D-15 at 3 (Lee Direct) (citing Revised Xcel Energy Response to Joint Intervenors Information Request no. 5).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 5.

Xcel identified the areas for targeted undergrounding using the equity analysis in MPUC docket nos. 24-27 and 25-27.¹⁹¹ Next Xcel admitted that it is “continuing to refine the list of areas for initial implementation,”¹⁹² of the program. Xcel’s brief¹⁹³ appears to suggest that the rate case costs target different geographic areas to implement the program, but Xcel’s testimony points to the same locations discussed in the SQR docket.¹⁹⁴ Xcel has even continued to rely on the importance of the 24-27 and 25-27 dockets in determining where the targeted undergrounding program should be implemented.¹⁹⁵

Despite what Xcel states in its brief, Xcel is not discussing a different targeted undergrounding program in this rate case from that proposed in docket no. 25-27.¹⁹⁶ The OAG’s cost cap recommendations are appropriate.

III. THE OAG’S CCOSSES ARE MORE ROBUST THAN THE OTHER CCOSSES IN THIS RECORD.

Xcel’s initial brief regarding its CCOSS advocates for unreasonable classification and allocation methods and mischaracterizes the OAG’s positions. Xcel argues for an overly narrow and unreasonable measure of peak demand to be used for its production and transmission demand allocation. Xcel’s arguments dismissing the Basic Customer and Peak and Average Method misunderstand customer costs. Xcel’s arguments on economic development cost allocation and AMI meter cost classification mischaracterize the OAG’s arguments. Last, Xcel presents an

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* at 4.

¹⁹³ Xcel Initial Br. at 214 (citing “The undergrounding costs estimates in the 2024 SQR are for a select group of undergrounding projects.”)

¹⁹⁴ Ex. Xcel-35 at 3-4 (Mensen Rebuttal) (discussing CELI-12 locations in St. Paul); Ex. OAG-7 at 24 (Lee Surrebuttal) (citing Xcel’s response to location concerns).

¹⁹⁵ Ex. OAG-5, SL-D-15 at 3-5, Attach. A (Lee Direct) (citing Xcel’s response to part b and list of locations).

¹⁹⁶ Xcel Initial Br. at 213.

incomplete and inaccurate summary of other parties' CCOSS positions, which the Commission and the ALJ should disregard.

A. Xcel's Proposed Use of the 1 CP Allocator as the Only Method to Measure Peak Demand Too Narrowly Defines Peak Demand and Ignores other Commission-Recognized Methodologies.

Xcel's brief on its generation and transmission cost allocation can be summarized as follows: "Peak demand" requires using a single coincident peak "1CP" allocator at a single-hour, such as using Xcel's D10S allocator.¹⁹⁷ This overly narrow view of "peak demand" is not supported by past Commission practice, cost allocation manuals, or common sense. And Xcel's use of a single hour on a weekend day for its D10S allocator in test year and plan year exemplifies the pitfalls of the 1 CP method. Further, Xcel inaccurately describes the Commission's direction in Xcel's last rate case and baselessly faults the Commission-supported 12 coincident peak (12 CP) allocator.¹⁹⁸ The Commission should reject the use of Xcel's D10S allocator in this rate case. Instead, the Commission should use the OAG's improved D10S allocator for production plant and production O&M and continue to use a 12 CP allocator for transmission costs.

Xcel's definition of "peak demand" is overly narrow. Xcel's brief appears to claim that the only acceptable methodology to measure peak demand is the use of a single coincident peak.¹⁹⁹ Xcel criticizes the OAG's peak demand allocator, claiming that most of the hours it uses to estimate peak demand "are not at the time of actual peak demand (which occurs during a single hour of each year)."²⁰⁰ However, as OAG witness Dr. Scharber described at length, and as the Commission, NARUC, and other authorities recognize, measuring peak demand using a single hour in a year is not the only methodology and, in the OAG's view, is rarely the most appropriate.

¹⁹⁷ *Id.* at 240-46.

¹⁹⁸ *Id.* at 244-246.

¹⁹⁹ *Id.* at 240.

²⁰⁰ *Id.* at 241-42.

As Dr. Scharber explains, “costs classified as demand-related are generally allocated based on a class’s contribution to peak demand, though the definition of peak demand may vary by analyst and by function.”²⁰¹ The Commission’s orders in various rate cases manifest various reasonable approaches to measuring peak demand for CCOSS purposes among different utilities and different functions. This includes using a 12 CP method for transmission for Xcel,²⁰² a seasonal coincident peak (4CP) average-and-excess method for Minnesota Power’s fixed production plant,²⁰³ and a “D1-MISO allocator” that uses a single MISO summer peak for Otter Tail Power.²⁰⁴ As the Commission recognized in Xcel’s last rate case, “while utilities have traditionally given exclusive focus to the annual peak demand,” there is a “growing acceptance of relying on a broader concept of peak demand.”²⁰⁵ Similarly, when discussing cost allocation for demand-related costs, the NARUC manual notes that costs may be allocated to “the customer classes on the basis of demands (KW) imposed on the system during specific peak *hours*.”²⁰⁶ In the same section, the NARUC manual emphasizes that “no single costing methodology will be

²⁰¹ Ex. OAG-8 at 4 (Scharber Direct).

²⁰² See 21-630 ORDER at 101-102. The Commission also uses a 12 CP allocator to allocate Minnesota Power’s transmission costs. See 21-335 ORDER at 57.

²⁰³ 21-335 ORDER at 55.

²⁰⁴ See *In the Matter of the Application of Otter Tail Power Co. for Authority to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-17/GR-15-1033, Findings of Fact, Conclusions, and Order, at 75 (May 1, 2017) (eDockets No. [20175-131511-01](#)) (requiring Otter Tail to “revise the method by which it calculates its peak demand allocator—whether based on a single summer peak, or a peak season—to reflect the peak demand as specified in MISO’s policies governing resource adequacy”); *In re Application of Otter Tail Power Co. for Authority to Increase Rates for Elec. Serv. in the State of Minn.*, Docket No. E-017/GR-20-719, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 57 (Feb. 1, 2022) (eDockets No. [20222-182349-01](#)) (affirming the continued use of the MISO resource adequacy peak); *Id.*, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION at ¶¶ 639-640 (Sept. 20, 2021) (eDockets No. [20219-178116-01](#)) (describing the D1-MISO allocator).

²⁰⁵ 21-630 ORDER at 102.

²⁰⁶ Ex. DOC-16, MZ-D-1 at 8 (Zajicek Direct) (NARUC Electric Cost Allocation Manual) (emphasis added).

superior to any other, and the choice of methodology will depend on the unique circumstances of each utility.”²⁰⁷

As the authorities above recognize, determination of the appropriate cost allocation method will depend on the circumstances of the case. In this case, Dr. Scharber described the significant drawbacks to using a single peak hour to allocate demand costs, and showed that Xcel’s method of using a single hour is “very sensitive to the choice of that hour.”²⁰⁸ To illustrate this, Dr. Scharber showed the wide swings in class load shares allocated to the residential class between using Xcel’s allocator, which was calculated based on the 2023 MISO hourly peak, and an allocator calculated with the 2024 MISO hourly peak.²⁰⁹ Using this single hour changed cost allocation to the residential class by approximately 8 percentage points in 2026.²¹⁰ Such a swing shows the unreasonableness of a 1 CP allocator in this case. As Dr. Scharber explained “[c]lass cost responsibilities should not fluctuate dramatically in the absence of underlying structural factors that might cause such fluctuations.”²¹¹ That is, cost responsibilities should only be changing that much if there are real world changes, not simply a change in what data point an individual analyst picks. The NARUC manual recognizes this hazard with the 1 CP method and describes how using “multiple-hour methods [] greatly reduces the possibility of atypical conditions influencing the load data used in the cost allocation.”²¹²

Xcel’s D10S allocator exemplifies and accentuates the pitfalls of the 1 CP allocator by choosing an unrepresentative single hour sample. To construct its D10S allocator, Xcel used a

²⁰⁷ Ex. DOC- 16, MZ-D-1 at 8 (Zajicek Direct) (NARUC Electric Cost Allocation Manual).

²⁰⁸ Ex. OAG-8 at 8 (Scharber Direct).

²⁰⁹ *Id.* at 8-9.

²¹⁰ *Id.*

²¹¹ *Id.* at 9

²¹² *Id.* at 10 (Scharber Direct) (Citing NARUC Manual at 39).

single hour that falls on a weekend day in its forecasted test year and plan year.²¹³ Xcel has chosen a “peak” hour to assign cost responsibility that is almost assured to not be an actual peak hour.²¹⁴ When Dr. Scharber reviewed annual MISO system peaks from 2006 to 2024, a peak has never occurred on a weekend day during that time.²¹⁵ Xcel continues to have no argument or explanation for why it is reasonable to allocate demand costs based on weekend afternoon demand in its test year and plan year, instead faulting the OAG for not using Xcel’s flawed methodology to fix Xcel’s gaffe.²¹⁶

The OAG’s D10S allocator avoids these pitfalls and more robustly complies with the Commission’s direction in the last rate case.²¹⁷ Xcel’s claim that the OAG’s allocator is “out of compliance with the Commission’s order in the Company’s last rate case”²¹⁸ miscommunicates the principles laid down by the Commission in both Xcel’s 2021 rate case and previous cases. The Commission first instructed Xcel to use the MISO peak rather than the NSP system peak in Xcel’s 2013 rate case, but getting accurate data from MISO continues to present a challenge.²¹⁹ In Xcel’s 2021 rate case, the Commission agreed that Xcel did not have the necessary data to forecast periods

²¹³ Ex. Xcel-73 at 20 (Barthol Direct); Ex. OAG-8 at 7 (Scharber Direct) (describing how Xcel’s D10S allocator uses August 23, 2025 at 4:00 p.m., a Saturday, and August 23, 2026 at 4:00 p.m., a Sunday).

²¹⁴ See Ex. OAG-8 at 7 (Scharber Direct).

²¹⁵ *Id.*

²¹⁶ See Xcel Initial Br. at 241-42 (“The OAG argues that this methodology is flawed because August 23 in 2025 and 2026 are weekend days, which typically are not the days of highest demand. Instead of selecting a different peak hour, though, the OAG argues that the D10S allocator should be based on many days and hours.”).

²¹⁷ For a more complete discussion of OAG’s D10S allocator, see OAG’s Initial Brief at 60-61, Ex. OAG-8 at 10-13 (Scharber Direct), and Ex. OAG-10 at 1-7 (Scharber Surrebuttal).

²¹⁸ Xcel Initial Br. at 241.

²¹⁹ *In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Service in the State of Minn.*, Docket No. E-002/GR-13-868, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 67 (May 8, 2015) (eDockets No. [20155-110264-01](#)); *In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Service in Minn.*, Docket No. E-002/GR-15-826, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 46; 21-630 ORDER at 98-99.

of peak demand, but agreed that “the OAG’s proxy—based on MISO’s past system peaks rather than on the peaks in a single MISO zone—better reflects the Commission’s instruction” to use the MISO system peak.²²⁰ The Commission therefore ordered that “for Xcel’s next general rate case, consistent with the suggestions of the utility and the OAG, the Commission will direct Xcel to calculate the D10S allocator based on its system peak coincident with the MISO system peak using historical data.”²²¹ But “using historical data” does not mean using a single hour on a single date. The OAG’s methodology to use “a multiple-hour allocator to improve robustness and including a range of possible MISO peak hours to address the mismatch between the historical MISO peak and forecast load data”²²² achieves the Commission’s direction to use MISO historical data. In doing so, it also better addresses the continuing challenge of designing a robust demand allocator in the absence of forecasting data from MISO.

Further, in pursuit of using only its unreasonable 1 CP allocator for both production and transmission costs, Xcel’s brief misdescribes the 12 CP allocator. Xcel states that the 12 CP allocator “spreads the demand-related cost of the transmission system to customers based on the average of 12 coincident peaks in each month.”²²³ Xcel says that this makes it, in effect, “a measure of average demand.”²²⁴ But what Xcel describes would be a 144 CP allocator with calendar months

²²⁰ 21-630 ORDER at 99.

²²¹ *Id.* at 99.

²²² Ex. OAG-10 at 2 (Scharber Surrebuttal).

²²³ Xcel Initial Br. at 245. Xcel’s initial brief cites to Barthol Direct at page 21 for this proposition, but that section discusses Xcel’s Energy Demand allocator, which appropriately does measure average demand (or energy). The OAG believes Xcel intended to cite to Barthol’s Rebuttal at 21, which discusses the 12 CP method. *See* Ex. Xcel-74 at 21 (Barthol Rebuttal). Mr. Barthol’s rebuttal testimony states more accurately that the “12CP allocator uses 12 coincident peaks from each month of the year.” Ex. Xcel-73 at 21 (Barthol Rebuttal).

²²⁴ Xcel Initial Br. at 245.

each having an equal share of weight regardless of demand within those months. No one is proposing using such an allocator in this case.²²⁵

Far from being “a measure of average demand,” the 12 CP allocator has been recognized by the Commission as the most reasonable demand allocator for transmission costs for both Xcel and Minnesota Power.²²⁶ As the Commission recognized in Xcel’s most recent rate case, the 12 CP allocator is the most appropriate to use for Xcel’s transmission system because it reflects “the manner in which Xcel is compensated for use of its transmission assets.”²²⁷ Because generation plant maintenance schedules and unplanned outages occur even in non-peak times, the Commission described how it is essential to ensure “adequate transmission capacity as the grid’s supply and demand change at all points of the calendar.”²²⁸ The 12 CP method continues to best reflect this need for grid reliability and Xcel, XLI, and the Department’s arguments to relitigate the issue do not provide a basis for the Commission to depart from this well-reasoned decision.

²²⁵ While the OAG’s D10S allocator uses 94 peak hours for 2025 and 96 peak hours for 2026, these hours were chosen to capture probable MISO peak hours, which have historically occurred on weekday afternoons between June 21 and August 26. *See* Ex. OAG-8 at 11-13 (Scharber Direct); Ex. OAG-10 at 1-3 (Scharber Surrebuttal). Xcel’s brief attempts to claim that the OAG uses “190 hours,” but this inaccurately doubles the number because of the test year and plan year. *See* Tr. Vol. 2 at 362 (Scharber). The sum of those numbers is not relevant because the 2025 allocator is only applied to 2025 and the 2026 allocator is only applied to 2026. *Id.* For example, under Xcel’s attorneys doubling argument, Xcel’s D10S allocator would be a 2 CP allocator.

²²⁶ *See* 21-630 ORDER at 102; 21-335 ORDER at 57. Minnesota Power’s most recent rate case was resolved in a settlement that did not endorse any specific CCOSSES. However, it is notable that the 2021 Minnesota Power rate case order agreed with the utility’s recommendation, not OAG’s, to allocate demand-related transmission costs using the 12 CP method. *See* 21-335 ORDER at 57; *In the Matter of the Application of Minn. Power for Authority to Increase Elec. Service Rates in the State of Minn.*, MPUC Docket No. E015/GR-23-155, ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES at 5 (Nov. 25, 2024) (endorsing the ALJ’s finding that the settlement does not endorse any single CCOSSES as “the Commission has considered multiple CCOSSES when setting rates”).

²²⁷ 21-630 ORDER at 102.

²²⁸ *Id.*

The Commission should reject the use of Xcel's D10S allocator and instead use the OAG's improved D10S allocator for production plant and production O&M. For transmission costs, the Commission should continue its sound practice of using a 12 CP allocator. Going forward, the OAG recommends that the Commission use a MISO-coincident 12 CP peak-demand allocator in place of the MISO-coincident D10S allocator for production and transmission costs. But whichever peak-demand allocator is used, Xcel should construct the peak-demand allocator using (1) actual class load shares coincident with the MISO peaks used, adjusted to account for forecasted load changes, or, if actual data are not available, (2) forecasted class load data corresponding to likely MISO peak hours, providing an explanation of how the likely MISO peak hours were selected.²²⁹ Using the OAG's methodology in both this case and going forward will result in more robust allocators that better represent the various classes' contribution to peak demand costs.

B. Distribution Classification – Xcel's Critiques of the Basic Customer and Peak and Average Methods Stem from Misunderstanding the Definition of Customer Costs.

Xcel and XLI's critiques of the Basic Customer and Peak and Average Methods are misplaced and disregard the Commission's rationale for considering these methods.²³⁰ Xcel's claim that these methods are not consistent with cost causation disregards evidence that the OAG introduced in the record and misdescribes the Department's testimony. These arguments also fail to overcome the Commission's sound rationale in several recent cases for considering the Basic Customer and Peak and Average methods in addition to a minimum system method.

Xcel claims that the Basic Customer Method is not consistent with cost causation because “[c]osts that are caused by the number of customers are customer-related, and costs that are caused

²²⁹ Ex. OAG-10 at 48 (Scharber Surrebuttal).

²³⁰ See Xcel Initial Br. at 249-252; XLI Initial Br. at 45.

by peak demand are demand-related.”²³¹ But that is not even what the NARUC Cost Allocation Manual says about customer costs. Instead, the NARUC Manual explains that “[t]he customer component of distribution facilities is that portion of costs which varies with the number of customers.”²³² As Dr. Scharber explained: “The relevant question for classifying a cost as customer-related is not whether the cost is incurred to serve customers. It is whether there is a direct and proportionate relationship between the number of customers and the investment, holding other factors constant.”²³³ Because the Company does not install transformers, conductors, and other non-meter and service line distribution plant for each new customer, the Basic Customer and Peak and Average methods reflect that these costs do not have a direct and proportionate relationship between the number of customers and the investment customer costs.²³⁴

In support of its argument that conductors, transformers, and much of the distribution system does vary with the number of customers, Xcel points to illustrations in the Department’s CCOSS witness’s testimony.²³⁵ But while the Department’s witness’s illustrations are helpful for those new to the field to understand basic principles of incremental costs and CCOSSes, they are simple illustrations only and do not reflect the long recognized understanding that the chief driver of distribution costs is not the number of customers but the geographic footprint of a utility’s distribution system.²³⁶

Moreover, these simple illustrations do not even support Xcel’s argument. Instead, the Department’s witness’s illustrations actually show the limitations of classifying the distribution

²³¹ Xcel Initial Br. at 250.

²³² See Ex. DOC-16, MZ-D-1 at 18 (Zajicek Direct) (page 90 of the NARUC Electricity Cost Allocation Manual).

²³³ Ex. OAG-8 at 17 (Scharber Direct).

²³⁴ *Id.*

²³⁵ Xcel Initial Br. at 250.

²³⁶ See Ex. OAG-8 at 21–22 (Scharber Direct); OAG Initial Br. at 66-67.

system as customer-related.²³⁷ For example, in Figure 3, the Department’s witness provides a scenario where the addition of a new customer does not actually increase the length of a distribution line because the customers are simply increasing the density on an existing line.²³⁸ This shows that distribution lines do not directly vary with the number of customers. The OAG disagrees with the Department’s witness’s conclusion, however, that because “all lines were initially constructed to add then-new customers, the cost of all the lines contains an element of customer-driven costs.” This makes the same mistake as Xcel by failing to assess whether the costs *vary with the number of customers*, instead treating the inquiry as identifying costs of lines which were at one time, however many years ago, built to serve a customer. In reality, over-classifying distribution costs as customer-related penalizes customers in classes that are relatively numerous, such as residential customers served by utilities with densely-populated, urban service territories.

To counter the OAG’s support of the Peak and Average Method, Xcel makes the same arguments about customer costs, but also argues that the OAG “has not identified or quantified any significant cost items that vary based on energy use.”²³⁹ But the OAG did in fact identify examples of cost items that vary based on energy use. In Dr. Scharber’s surrebuttal testimony, the OAG provides examples from the Regulatory Assistance Project Cost Allocation Manual that show various ways that energy use affects distribution investment, including the life of the insulation on lines and in transformers.²⁴⁰ Xcel acknowledges that the OAG’s argument “might be an argument in favor of classifying unique and specialized costs as energy-related, not to change the allocation method for all of the conductors and transformers on the system.”²⁴¹ But the actual

²³⁷ Ex. DOC-16 at 17-18 (Zajicek Direct).

²³⁸ *Id.*

²³⁹ Xcel Initial Br. at 252.

²⁴⁰ Ex. OAG-10 at 20-21 (Scharber Surrebuttal).

²⁴¹ Xcel Initial Br. at 252.

examples of energy-related impacts on equipment outside of the maximum peak hours that OAG provided were in fact for common distribution equipment—transformers and overhead lines.²⁴²

The Commission should continue its practice of using multiple distribution classification methods when considering revenue allocation²⁴³ by giving the Basic Customer Method and Peak and Average Method at least as much weight as the Minimum System Method.

C. The OAG’s Proposed Allocation of Economic Development Discount Costs Would Ensure Customer Classes Pay for their Fair Share of Any Benefits Received from these Discounts.

Xcel’s brief mischaracterizes the OAG’s position on the allocation methodology for economic development costs. Xcel’s brief heavily implies that OAG’s allocation methodology for economic development costs would have residential customers avoid paying for these costs entirely.²⁴⁴ But the OAG’s proposed methodology for allocating Economic Development Discount Costs (either in this case or going forward) does not propose to have residential customers, or any customer classes, avoid paying their fair share for these benefits. The OAG does not disagree that these costs should be allocated to all customers,²⁴⁵ and neither the OAG’s recommendation for this case nor for future rate cases would allow any customer classes, except those customers receiving the discounts, to evade these costs. Instead, the OAG seeks a more sound rationale for allocating these costs than total revenue (whether with or without fuel costs) and believes improvements are

²⁴² Ex. OAG-10 at 20-21 (Scharber Surrebuttal)

²⁴³ See, e.g., *In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Service in Minn.*, Docket No. E-002/GR-15-826, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 44-45; *In re Application of Otter Tail Power Co. for Authority to Increase Rates for Elec. Serv. in the State of Minn.*, Docket No. E-017/GR-20-719, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 62-63; 21-630 ORDER at 105-106.

²⁴⁴ Xcel Initial Br. at 260.

²⁴⁵ See *id.* (citing Ex. DOC-17 at 2-3 (Zajicek Rebuttal)).

imperative given the already increasing and potentially skyrocketing economic development discounts being given to data center customers.²⁴⁶

Further, Xcel's argument against the OAG's position on economic development costs only engages with the OAG's recommendation on the allocator in this case,²⁴⁷ which is simply for Xcel to continue using its current revenue allocator because Xcel has not shown that its proposed change is reasonable or necessary.²⁴⁸ That being said, the OAG does not view the difference of the R01 allocator or the R02 allocator as being a defining issue in this case—and the impact of which allocator parties used on the various CCOSSES is minor. Instead, the OAG urges the Commission to seriously consider a more reasonable cost allocation method for these potentially skyrocketing costs.²⁴⁹

Going forward, Xcel's allocation for these costs must be improved to focus more directly on the purported benefits that these costs provide to other customer classes.²⁵⁰ The most straightforward approach would be to allocate the costs of these discounts by equally weighting Xcel's existing peak demand and energy allocators.²⁵¹ This is appropriate because the purported benefits of the addition of large customers (i.e. spreading out fixed system costs over more sales) would come to fruition through changes in energy and demand allocators.²⁵² That is, these large customers would be allocated a larger share of shared energy- and demand-related costs, thus

²⁴⁶ See Ex. OAG-10 at 25 (Scharber Surrebuttal).

²⁴⁷ Xcel Initial Br. at 259-60.

²⁴⁸ Ex. OAG-10 at 33-35 (discussing the Commission's order for Xcel to explore a more rigorous allocation of these costs in rate cases in the 2010, which Xcel minimally complied with and continued for over a decade in spite of the revenue allocator lacking a sound rationale).

²⁴⁹ Ex. OAG-10 at 32-37 (Scharber Surrebuttal).

²⁵⁰ See *id.*

²⁵¹ Ex. OAG-10 at 33 (Scharber Surrebuttal).

²⁵² *Id.*

benefiting other customers. Using these existing allocators is therefore not only appropriate but relatively straightforward.²⁵³

Given the small impact in this case, the OAG did not implement this recommendation in its CCOSSES in this rate case. But because these costs may significantly increase as Xcel provides these discounts to data centers, the Commission should order a more robust allocator in the future to better reflect the benefits that these discounts are intended to provide to other customer classes. The OAG's recommendation for economic development costs to be used in the next rate case is an important requirement to ensure that residential customers are not unreasonably harmed by the introduction of data centers and instead only pay for the proportion of the benefits that they receive from the introduction of large loads onto Xcel's system.

D. Xcel's Argument on AMI Costs Provides Only Partial Information.

Xcel's claims related to the OAG's recommendation to classify AMI costs in Xcel's next rate case could obfuscate the issue if not clarified.²⁵⁴ First, Xcel selectively describes past Commission decisions on this issue. Second, Xcel attempts to impose a level of precision that does not exist for cost classification. Last, Xcel's insistence that the Commission need not take action on the issue in this case side-steps the fact that CCOS implementation takes significant time and Xcel often opposes making significant changes in response to discovery once its case is filed.

Xcel's claim that the Commission's decision to classify Minnesota Power's AMI costs as 1/3 energy-, 1/3 demand-, and 1/3 customer-related was undisputed and only due to a settlement in Minnesota Power's 2023 rate case does not tell the full story.²⁵⁵ While the Commission's most

²⁵³ *Id.*

²⁵⁴ *See* Xcel Initial Br. at 253-257.

²⁵⁵ *Id.* at 255 & n.1035 (citing *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in the State of Minnesota*, Docket No. E015/GR-23-155, ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES (Nov. 25, 2024)) ("There was no dispute between the parties as to this classification issue, and the entire case was resolved by a settlement.")

recent approval of Minnesota Power’s rates was the result of a settlement, the genesis of the Commission’s decision was in Minnesota Power’s 2021 rate case.²⁵⁶ There, the Commission generally agreed with the OAG, over Minnesota Power’s and the Large Power Intervenors’ objection, that AMI costs should be classified as energy- and demand-related in addition to customer-related.²⁵⁷ As the Commission observed, “the Commission has also recognized that advanced metering also bears an important role in helping to manage energy consumption and customer demand” in addition to their more traditional customer components.²⁵⁸ The Commission desired more record development, however, and gave Minnesota Power a choice in its next rate case “to analyze how AMI meters are associated with customer costs as well as energy costs and demand costs—or, in the alternative, conduct its class cost-of-service study using the premise that AMI costs are allocated equally to customer, demand, and energy factors.”²⁵⁹ Minnesota Power chose the latter option in its 2023 rate case, which resulted in a global settlement on all issues.²⁶⁰ The Commission, therefore, has spoken on this issue, and not simply in the context of settlement. In doing so, it has expressed its clear expectation that utilities move away from the traditional meter customer cost classification that does not match AMI’s meters’ purpose “to benefit the utility’s entire system, and society at large.”²⁶¹

²⁵⁶ 21-335 ORDER at 59-61.

²⁵⁷ *Id.* at 61. The Commission also recognized the energy and demand components of AMI meters in a 2022 decision in Otter Tail Power’s rate case where it ordered Otter Tail to perform an analysis to guide future cost classification for advanced meters in either its next rate case or a subsequent advanced-metering infrastructure proposal. *In re Application of Otter Tail Power Co. for Authority to Increase Rates for Elec. Serv. in the State of Minn.*, Docket No. E017/GR-20-719, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 49-50, 70.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in the State of Minnesota*, Docket No. E015/GR-23-155, ORDER ACCEPTING AND ADOPTING AGREEMENT SETTING RATES (Nov. 25, 2024).

²⁶¹ 21-335 ORDER at 61.

Xcel's claim that the OAG's equal weighting of energy, demand, and customer classifications for AMI meters is unreasonably arbitrary similarly misses the mark. Like the Commission, Dr. Scharber acknowledged that the 1/3 customer-related, 1/3 demand-related, 1/3 energy-related classification was somewhat arbitrary out of necessity.²⁶² But Xcel conveniently takes this statement out of context.²⁶³ To reintroduce that context, Dr. Scharber's testimony is provided more completely below:

The precise division among classification categories is necessarily somewhat arbitrary since Xcel only completed the AMI meter rollout this year, and the full range of benefits to Xcel's customers has not yet been realized or quantified. In coming years, additional analysis from Xcel on the nature and magnitude of AMI-related benefits could help increase the precision of allocation.²⁶⁴

Far from being the damaging admission Xcel claims, Dr. Scharber candidly described that, due to Xcel's continued roll out and AMI meter tools only being recently deployed, there is not currently the data to determine a more precise classification.²⁶⁵ But being new does not mean that classification of these meter costs should revert to the assumption that these costs were incurred only to track monthly electricity usage as if they were traditional meters. Indeed, treating new AMI technologies as traditional meters would itself be arbitrary.

Instead, as with much cost allocation, approximations of appropriate classifications are necessary.²⁶⁶ While simple, the OAG's proposed classification has a sound foundation. To approximate an appropriate level of customer-related costs, Dr. Scharber looked at the incremental

²⁶² Ex. OAG-10 at 26 (Scharber Surrebuttal).

²⁶³ Xcel Initial Br. at 256.

²⁶⁴ Ex. OAG-10 at 26 (Scharber Surrebuttal).

²⁶⁵ *Id.*

²⁶⁶ For example, Xcel allocates expenses related to customer assistance and instructional advertising using an average of the Company's customer allocator and its production plant investment allocator. Ex. Xcel-73, sched. 2, appx. 3 at 1 (Barthol Direct).

costs of AMI meters above traditional meters.²⁶⁷ Dr. Scharber then explained that Xcel's programs that use AMI, such as demand response and load shifting programs, would not only provide capacity-related benefits, but also reduce investments in baseload and transmission plant, providing energy-related benefits.²⁶⁸ Dr. Scharber also discussed how Xcel plans to use AMI for energy savings/benefits by providing real-time information on energy usage, allowing for the connection of smart devices, and enabling theft detection.²⁶⁹ Rather than providing a response to this analysis, Xcel's brief complains that the classification is not exacting enough.²⁷⁰ But Xcel did not attempt to come up with a more detailed analysis. The result of Xcel's position would be that AMI meters must be treated as traditional meters until the Commission forces it to complete an expensive study. But this ignores how cost allocation works in practice.

Last, the Commission should address this issue in this case. Xcel is likely to roll AMI costs into its rate base in the next rate case. As with several other issues and consistent with past practice, the OAG requests that the Commission direct Xcel to implement this classification in its initial filing in its next rate case because Xcel often opposes adjusting its CCOSS to incorporate the changes of other parties during rate cases. If Xcel succeeds in convincing the Commission that it need not make a decision on this issue now,²⁷¹ the Commission should direct Xcel to agree to adjust its CCOSS in the next rate case with the OAG's recommended classification for AMI meters or other classifications for these costs suggested by the parties.

²⁶⁷ Ex. OAG-10 at 27-28 (Scharber Surrebuttal).

²⁶⁸ *Id.* at 28-29.

²⁶⁹ *Id.* at 29.

²⁷⁰ *See* Xcel Initial Br. at 256.

²⁷¹ *Id.* at 253-54.

E. The Fact that Xcel's CCOSS is a Midpoint in Its Selective CCOSS Chart Does Not Make Its CCOSS the Most Reasonable.

Xcel argues that “it is notable that the Company’s CCOSS represents the midpoint between the recommendations of the OAG and XLI, which reflects that it is reasonable and results in the best estimate of cost causation.”²⁷² Xcel’s Table 19, however, provides an inaccurate and incomplete picture of the CCOSSes in the record. And this argument suffers from recognized logical fallacies that the Commission should avoid.

At the outset, Xcel’s Table 19 provides inaccurate percentage increases for 2026 for the OAG’s Peak and Average and Basic Customer CCOSSes. The correct numbers are presented in Table 6 of Dr. Scharber’s Surrebuttal for 2026.²⁷³ Xcel’s brief instead appears to use the table from Mr. Barthol’s surrebuttal, despite the OAG and the Department refining their CCOSSes in surrebuttal.²⁷⁴ Xcel had access to the OAG’s and the Department’s surrebuttal at the time of submitting its initial brief. While these differences are not major, the Commission should not rely on tables that misstate other parties’ positions, even if by a matter of basis points.

While the OAG agrees that it is beneficial for the Commission to consider multiple CCOSSes—and is the only party that based its revenue allocation recommendation on more than one CCOSS, consistent with the Commission’s practice—the fact that Xcel’s CCOSS falls at the midpoint in its selective table is not an indicia of reasonableness. Falling at the midpoint is the result of omitting the OAG’s Minimum System CCOSS from the table and the fact that two of the CCOSSes, the SRA’s CCOSS and the Department’s Minimum System CCOSS, only make minimal changes to Xcel’s methodology. The SRA’s single change to Xcel’s CCOSS was to

²⁷² Xcel Initial Br. at 261.

²⁷³ Ex. OAG-10 at 38 (Scharber Surrebuttal).

²⁷⁴ Ex. Xcel-75 at 8 (Barthol Surrebuttal).

allocate 58% of poles to serve streetlighting rather than allocating 60% of poles to serve streetlighting.²⁷⁵ Xcel even agreed with SRA's recommendation,²⁷⁶ but stated it was not able to fully "rerun" its CCOSS and instead incorporated the change into its revenue apportionment recommendation.²⁷⁷ Differentiating SRA's preferred CCOSS from Xcel's in the table only serves to place Xcel's CCOSS in the middle of Xcel's table, rather than reflecting an actual disagreement between the two parties about the appropriate CCOSS. The differences between Xcel's hybrid CCOSS and the Department's hybrid CCOSS are also extremely limited. Instead of using the 12 CP method to allocate demand-related Transmission costs, as the Commission ordered Xcel to do, the Department's hybrid CCOSS uses Xcel's D10S allocator (as does its Basic Customer CCOSS).²⁷⁸

While the OAG does not believe simply using the median of a table of wide-ranging CCOSS results is an appropriate way to analyze costs, a more accurate table would actually place OAG's Minimum System/Hybrid CCOSS at the median. The OAG continues to include the Department's hybrid CCOSS with the qualifications described above. Because Xcel has agreed with SRA's changes to its CCOSS, but simply did not have time to update it, the OAG represents the alignment between these two parties in the table below:

²⁷⁵ Ex. SRA-2 at 3 (Bride Rebuttal).

²⁷⁶ Ex. Xcel- 75 at 3 (Barthol Surrebuttal).

²⁷⁷ Xcel Initial Br. at 264 (citing Ex. Xcel-78 at 2 (Paluck Surrebuttal)).

²⁷⁸ Ex. DOC-18 at 17 (Zajicek Surrebuttal).

OAG Table 1 - 2026 CCOSS Results Comparison – Deficiency %

Party	Method	Residential	SCI Non-Demand	Demand	Lighting
OAG ²⁷⁹	Peak & Avg	3.47%	-8.87%	15.65%	28.71%
OAG ²⁸⁰	Basic Customer	5.78%	-8.48%	13.91%	31.34%
DOC ²⁸¹	Basic Customer	9.44%	-11.88%	11.54%	26.92%
OAG ²⁸²	Hybrid	11.17%	-3.90%	9.72%	30.51%
Xcel/SRA ²⁸³	Hybrid	13.5%	-6.1%	8.3%	29.3%
DOC ²⁸⁴	Hybrid	14.84%	-7.29%	7.34%	26.09%
XLI ²⁸⁵	Hybrid	16.1%	-2.0%	6.3%	19.9%

The OAG believes that presenting the above table is necessary to clarify its position in the record over Xcel’s selective and inaccurate table. However, the OAG cautions the Commission against simply picking a CCOSS at the midpoint and assuming it is the most reasonable.

Instead, giving CCOSS results that are more reasonable more weight is appropriate. As Dr. Scharber explains, this is important to “help avoid an anchoring-bias error in which the class responsibility is assumed to fall in the middle of the low- and high-end CCOSS estimates submitted in a given rate case.”²⁸⁶ Xcel’s Table 19 seeks to draw the Commission into such an anchoring bias, and the Commission should not fall for this tactic. While the OAG produces the above table

²⁷⁹ See Ex. OAG-10 at 38 (Scharber Surrebuttal). Note that the figures in Dr. Scharber’s surrebuttal are different from the figures that Mr. Barthol represented as the OAG’s position in his surrebuttal testimony, which Xcel appears to have not updated for its initial brief. *Compare id. with Ex. Xcel-75 at 8 (Barthol Surrebuttal).*

²⁸⁰ Ex. OAG-10 at 38 (Scharber Surrebuttal).

²⁸¹ The OAG uses the figures from the Department’s surrebuttal tables, not Xcel’s brief. See Ex. DOC-18 at 14 (Zajicek Surrebuttal).

²⁸² Ex. OAG-10 at 38 (Scharber Surrebuttal).

²⁸³ Ex. Xcel-75 at 8 (Barthol Surrebuttal). As discussed above, because the OAG understands that Xcel agrees with SRA’s proposed change, the line in Mr. Barthol’s surrebuttal testimony for SRA is used. However, the differences between SRA’s and Xcel’s lines appear to only impact the Lighting and SCI Non-Demand classes at the level of granularity that Xcel presents in Table 2. *Id.*

²⁸⁴ Ex. DOC-18 at 14 (Zajicek Surrebuttal).

²⁸⁵ Because XLI witness Johnathan Ly did not update his CCOSS to incorporate Xcel’s rebuttal revenue requirement, the OAG relies on Xcel’s depiction of XLI’s position in Mr. Barthol’s surrebuttal. See Ex. Xcel-75 at 8 (Barthol Surrebuttal).

²⁸⁶ Ex. OAG-8 at 5 (Scharber Direct).

as a necessary correction, the more sound methodology continues to be for the Commission to substantively engage with the CCOSS methodologies and give more weight to the CCOSSes that it believes are most reasonable.

IV. THE CRITIQUES OF THE OAG'S REVENUE ALLOCATION RECOMMENDATIONS ARE CONTRADICTED BY THE FACTS OF THIS CASE.

In initial briefs, Xcel and XLI critique the OAG's revenue allocation recommendations and bolster their own recommendations. Some of these claims do not pass more than a cursory inspection. Specifically, Xcel incorrectly attributes a position of the Department to use the 2025 revenue apportionment in both MYRP years to the OAG, despite the OAG actually agreeing with Xcel on this issue. XLI claims that its revenue allocation recommendation has the most basis in cost-causation, but XLI's revenue allocation is based on CCOSSes that stray farthest from the Commission's most-recent CCOSS requirements. Last, Xcel's critique that the OAG's revenue apportionment would create rate shock ignores that Xcel's own revenue apportionment recommendations simply move different classes by nearly the same amounts.

A. Xcel Incorrectly Claims that OAG's Recommendation Is to Use the 2025 Revenue Apportionment in Both MYRP Years.

Xcel misstates the OAG's position regarding whether to make a change to the revenue apportionment between the 2025 and 2026 MYRP years by equating the OAG's position with the Department's. Although the Department otherwise agrees with Xcel's revenue apportionment, the Department argues that the Commission should only move customers towards costs in the 2025 test year.²⁸⁷ Xcel's brief erroneously attributes this position to both the Department and the

²⁸⁷ Department Initial Br. at 86.

OAG.²⁸⁸ Xcel also goes out of its way to claim that the OAG’s counterargument to the Department on this point is actually support for using the 2026 revenue allocation in both years.²⁸⁹

This whole exercise is puzzling because in surrebuttal testimony, Dr. Scharber *agreed* with Xcel’s witness Mr. Paluck and recommended that “material changes between 2025 and 2026 make separate apportionments most appropriate.”²⁹⁰ While Dr. Scharber initially recommended that the 2025 test year apportionment should be used for the duration of the MYRP in line with Commission past practice,²⁹¹ in surrebuttal Dr. Scharber explained that because “significant changes in the composition of classes are expected between the years in a MYRP, the disadvantages of using uncertain forecast data may be outweighed by the benefits of changing the apportionments.”²⁹² Dr. Scharber then explained that Xcel’s updated forecasts in this case did not show such material changes as to *necessitate* different apportionments, and the Commission could reasonably adopt the 2025 apportionment in both years. But Dr. Scharber did not believe that adopting the 2025 apportionment in both years would be the best approach.²⁹³ Xcel’s failure to comprehend the nuance that a party can observe that there are multiple reasonable options while preferring one over the other is telling. While the OAG does not agree with all of Xcel’s arguments on this issue,²⁹⁴ the OAG continues to believe that using a different apportionment for 2025 and 2026 is most reasonable and this is reflected in the OAG’s surrebuttal revenue apportionment.

²⁸⁸ Xcel Initial Br. at 268-69.

²⁸⁹ *Id.* at 270. A closer reading of Dr. Scharber’s rebuttal testimony shows that this is a counterargument to the Department’s recommendation to use 2025 revenue allocation for both years.

²⁹⁰ Ex. OAG-10 at 43 (Scharber Surrebuttal).

²⁹¹ Ex. OAG-8 at 45 (Scharber Direct).

²⁹² Ex. OAG-10 at 41 (Scharber Surrebuttal).

²⁹³ *Id.* at 43.

²⁹⁴ Particularly, Xcel’s argument that, because rates will be put into effect in 2027, the 2025 revenue allocation would somehow be more outdated misunderstands basic rate case principles of interim rates and the use of representative test years. *See* Xcel Initial Br. at 270.

B. XLI's Revenue Apportionment Does Not Move Classes Towards Costs and Relies on a CCOSS that Uses Methods that Have Been Recently Rejected by the Commission.

XLI's claims that its revenue apportionment addresses "the persistence of interclass subsidies on the Company's system" and "would move customer classes closer to cost" are dependent on the unsupported assumption that XLI's CCOSS is the most accurate in the record.²⁹⁵ Far from being the most reasonable, XLI's CCOSS includes the highest number of methods for cost classification and allocation that have been recently rejected by the Commission.

The Commission has recently and regularly rejected several methodologies that XLI uses in its CCOSS. Notably, the Commission rejected XLI's AED-4CP method to classify Xcel's production costs in Xcel's last rate case.²⁹⁶ The Commission has instead consistently relied on the Stratification Method²⁹⁷ and has continued to recognize its validity even with the increase of renewables on Xcel's system.²⁹⁸ Further, XLI's CCOSS uses Xcel's D10S allocator to allocate demand-related Transmission costs.²⁹⁹ But in Xcel's last rate case, the Commission recognized that the 12 CP method better allocates transmission costs than the D10S allocator that XLI and others recommend.³⁰⁰ And the Commission has often found that using solely a minimum system CCOSS to inform its revenue allocation recommendations is inappropriate.³⁰¹ XLI's proposed

²⁹⁵ XLI Initial Br. at 47.

²⁹⁶ 21-630 ORDER at 97.

²⁹⁷ *See, e.g., In re Application of N. States Power Co. for Auth. to Increase Rates for Elec. Service in the State of Minn.*, Docket No. E-002/GR-13-868, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 64.

²⁹⁸ 21-630 ORDER at 97.

²⁹⁹ Ex. XLI-3 at 19-20 (Jonathan Ly Direct).

³⁰⁰ 21-630 ORDER at 102. The Commission made a similar determination for Minnesota Power. *See* 21-335 ORDER at 57.

³⁰¹ *See, e.g.* 21-630 ORDER at 114 ("[T]he Commission supports the use of multiple CCOSS methods to estimate the cost of service for each class. Xcel, OAG, and the Department based their revenue-apportionment recommendations on multiple CCOSS methods, while XLI used one CCOSS.").

CCOSS strays farther from past Commission decisions than other CCOSSES in the record and is far from the most reflective of cost causation.

C. Xcel’s Claim that the OAG’s Revenue Apportionment Would Significantly Impact Rates for Some Other Customers Applies to Xcel’s Own Revenue Apportionment.

Xcel claims that the OAG’s revenue apportionment would “result in significant changes to rates for some customers.”³⁰² While the OAG does not disagree that if Xcel’s rebuttal revenue requirement were authorized, many customer classes’ rates would significantly increase, the OAG’s recommended apportionment does not increase rates for any class any more than Xcel’s recommended apportionment does. Xcel’s recommended apportionment is presented below,³⁰³ followed by the OAG’s:

Table 2
Cost of Service and Proposed Revenue Apportionment (\$
Thousands)
State of Minnesota Electric Jurisdiction

Class	Present	Cost		Proposed Revenue	
	Revenue	Amount	Increase	Amount	Increase
TY 2025					
Residential	\$1,428.0	\$1,545.1	8.20%	\$1,517.3	6.25%
Non-Demand	\$119.6	\$116.1	-2.95%	\$124.4	4.03%
C&I Demand	\$1,995.7	\$2,081.1	4.28%	\$2,104.9	5.47%
Lighting	\$31.3	\$38.7	23.60%	\$34.2	9.33%
Total Retail	\$3,574.6	\$3,780.9	5.77%	\$3,780.9	5.77%
PY 2026					
Residential	\$1,460.5	\$1,656.2	13.4%	\$1,616.5	10.69%
Non-Demand	\$126.9	\$119.0	-6.20%	\$135.5	6.77%
C&I Demand	\$2,011.8	\$2,177.7	8.25%	\$2,206.1	9.66%
Lighting	\$31.6	\$41.2	30.62%	\$36.0	14.13%
Total Retail	\$3,630.7	\$3,994.1	10.01%	\$3,994.1	10.01%

*Amounts may not total due to rounding.

³⁰² Xcel Initial Br. at 266.

³⁰³ The OAG provides the revenue apportionment from Mr. Paluck’s rebuttal testimony because it shows the percentage increase at Xcel’s rebuttal testimony, which provides a more transparent estimation of customers’ experiences of a rate increase than the class share percentages. *See Ex. Xcel-77 at 10 (Paluck Rebuttal)*. The OAG understands that Mr. Paluck made minor adjustments to lower the revenue allocation to the Lighting class in surrebuttal testimony, but no specific calculations of the percentage increase that change would result in were provided in the record. *See Ex. Xcel-78 at 3 (Paluck Surrebuttal)*.

Table 7
OAG Recommended Apportionment at Xcel's Proposed Revenue Requirement

Customer Class	OAG Proposed Class Shares	Class Revenues at Xcel's Proposed Revenue Requirement (\$000s)	Class Increases at Xcel's Proposed Revenue Requirement Under OAG Apportionment	
			(\$000s)	%
2025: Based on Xcel's proposed revenue requirement of \$3,780,853				
Residential	38.87%	\$1,469,748	\$41,741	2.9%
Small General	3.16%	\$119,617	\$0	0.0%
Large General	57.06%	\$2,157,295	\$161,564	8.1%
Lighting	0.90%	\$34,193	\$2,918	9.3%
Total	100.00%	\$3,780,853	\$206,223	5.8%
2026: Based on Xcel's proposed revenue requirement of \$3,994,095				
Residential	39.01%	\$1,558,246	\$97,783	6.7%
Small General	3.18%	\$126,894	\$0	0.0%
Large General	56.91%	\$2,272,943	\$261,167	13.0%
Lighting	0.90%	\$36,012	\$4,458	14.1%
Total	100.00%	\$3,994,095	\$363,408	10.0%

While the OAG assigned a larger portion of the increase to the Large General Service class because two of the OAG's CCOSSES indicated this was appropriate, the remainder of the increases are within a similar range to Xcel's.

The most notable difference between the OAG's and Xcel's revenue allocations is that Xcel seeks to assign a 6.77% percent *increase* to the Small General Service class in 2026. Xcel's recommendation ignores that its own hybrid CCOSS shows that a 2.95 percent *decrease* would be needed in 2025 and a 6.2 percent *decrease* would be needed in 2026 to bring this class to cost.³⁰⁴ In fact, all CCOSSES in the record show a reduction in rates for the Small General Service would be needed to bring that class to cost in 2026.³⁰⁵ Recognizing this cost difference, as well as other policy considerations surrounding current pressures on small business, the OAG recommends that this class receive, at most, zero increase in either year of the MYRP.³⁰⁶ If the Commission reduces

³⁰⁴ See Ex. OAG-10 at 39 (Scharber Surrebuttal).

³⁰⁵ See Ex. Xcel-75 at 8 (Barthol Surrebuttal). While Barthol's surrebuttal does not incorporate the OAG's adjustments to its CCOSS in surrebuttal, it still provides an approximation of the rate decrease that would be needed to bring small business customers towards cost.

³⁰⁶ See Ex. OAG-10 at 40 (Scharber Surrebuttal).

Xcel's revenue requirement, the Commission should proportionally reduce the OAG's apportionment and provide small businesses with a rate decrease.³⁰⁷

CONCLUSION

Xcel failed to carry its burden to prove its rate request would be just and reasonable. For all of the reasons detailed in the OAG's initial brief and reply brief, the ALJ and the Commission should adopt the OAG's recommendations.

Dated: February 25, 2026

Respectfully submitted,

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³⁰⁷ See *id.* at 49 (Scharber Surrebuttal) (describing that the Commission should apply the proposed class shares to the total revenue approved by the Commission).

574 N.W.2d 408
Supreme Court of Minnesota.

In the Matter of the REQUEST OF INTERSTATE POWER COMPANY FOR
AUTHORITY TO CHANGE ITS RATES FOR GAS SERVICE IN MINNESOTA.

Minnesota DEPARTMENT OF PUBLIC SERVICE, Appellant,
and

Hubert H. Humphrey III, Minnesota Attorney General, Appellant.

v.

MINNESOTA PUBLIC UTILITIES COMMISSION, Respondent,
and

Interstate Power Company, Respondent.

No. C1-96-1558.

|

Jan. 8, 1998.

Synopsis

Minnesota Public Utilities Commission (MPUC) determined that natural gas local distribution company's (LDC) current natural gas ratepayers should contribute to environmental cleanup costs associated with company's previously operating manufactured gas plants. [Department of Public Service, Steve Mihalchick, ALJ, and Office of Attorney General sought certiorari review, and the Court of Appeals, 559 N.W.2d 130](#), affirmed. On review, the Supreme Court, [Stringer, J.](#), held that: (1) Commission did not exceed its statutory authority when it applied “used and useful” standard to time of pollution; (2) Commission did not exceed its statutory authority by concluding that there was sufficient nexus between manufactured gas and natural gas to support cost recovery from current natural gas customers; and (3) Commission's determination that former manufactured gas plant sites were actually “used and useful” at time of pollution was supported by substantial evidence.

Affirmed.

***410** *Syllabus by the Court*

1. The MPUC did not exceed its statutory authority when it applied the “used and useful” standard of [Minn.Stat. § 216B.16, subd. 6 \(1996\)](#), to the time of pollution and thus allowed rate recovery for cleanup costs of former manufactured gas plant sites.
2. The MPUC did not exceed its statutory authority by concluding that there was a sufficient nexus between manufactured gas and natural gas to support cost recovery from the current natural gas customers.
3. The MPUC determination that the manufactured gas plant sites were actually “used and useful” at the time of pollution was supported by substantial evidence in the record.

Attorneys and Law Firms

Brent Vanderlin, Asst. Atty. Gen., for appellant Minn. Dept. of Public Service.

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[Michael Bradley](#), Moss & Barnett, P.A., Minneapolis, [Christopher B. Clark](#), Interstate Power Co., Dubuque, IA, for respondent Interstate Power Co.

Heard, considered, and decided by the court en banc.

OPINION

[STRINGER](#), Justice.

At issue here is whether the Minnesota Public Utilities Commission (MPUC) had the authority to order rate recovery from Interstate Power Company's (Interstate) current natural gas customers for cleanup costs of two former manufactured gas plant sites not currently used or useful for the provision of utility service. The Administrative Law Judge (ALJ) recommended that Interstate be allowed to recover one-half of the cleanup costs from its current natural gas customers. The MPUC affirmed the findings and conclusions of the ALJ, but modified the recommendation to provide full recovery of the cleanup costs for Interstate. The court of appeals affirmed the MPUC order, rejecting appellants' argument that "used and useful" applied to the time of the rate case rather than the time of pollution, and held that the MPUC acted in a legislative capacity and did not exceed its statutory authority when it determined that rate recovery was allowed if the property was used and useful at the time of pollution. The court of appeals also held that the MPUC acted in a quasi-judicial capacity when it determined that the sites at issue were, in fact, used and useful at the time of pollution, and that there was substantial evidence supporting that determination. *In re Request of Interstate Power Co. for Authority to Change its Rates for Gas Service*, 559 N.W.2d 130 (Minn.App.1997). We affirm the court of appeals.

Manufactured gas is a form of energy that was used from the late 1800s until the 1930s, when natural gas became available. It was produced by the incomplete combustion of coal and sometimes oil to produce a synthetic combustible gas that was piped from the plant site to customers for use in heating, cooking, and lighting. The manufacturing process produced residual products, including coal tar, that were frequently deposited in on-site lagoons or underground wells or pits—a method of disposal considered safe at the time. In the early 1980s the Environmental Protection Agency declared this coal tar waste a hazardous substance and began requiring current and former owners of the sites to clean up the contamination. In the early 1990s, the Minnesota Pollution Control Agency (MPCA) determined Interstate to be at least partially responsible for the cleanup of five manufactured gas plant sites in Minnesota, including plant sites in Albert Lea and Rochester, under the Comprehensive and Environmental Response Compensation *411 and Liability Act (CERCLA), 42 U.S.C. § 9601–9675 (1996), the Superfund Amendments and Reauthorization Act (SARA), *id.*, and the Minnesota Environmental Response and Liability Act (MERLA), Minn.Stat. Ch. 115B (1996). At issue here are the cleanup costs of Interstate's former manufactured gas plant sites in Albert Lea and Rochester, Minnesota.

The Albert Lea plant began manufacturing gas in 1903 under a different owner. Interstate acquired the plant in 1925 and manufactured gas at that site until 1933. When natural gas became available, Interstate ceased production of manufactured gas. The site was thereafter used as a vehicle maintenance garage and transformer repair facility until 1950, and then from 1950 to 1978 as a fuel oil storage yard for Interstate's adjacent electric plant. Part of the Albert Lea site where the manufactured gas storage containers were located was sold in 1984, but Interstate continues to own the remaining property and currently uses it as part of its underground gas and utility lines distribution system. In 1992, the MPCA concluded that the soil and groundwater at the Albert Lea site were contaminated and cleanup was required. Interstate is in the early stages of the cleanup. It has incurred investigation costs of \$494,735 through March 1995; future cleanup costs are unknown. Interstate provides natural gas utility service to the Albert Lea area.

The manufactured gas plant in Rochester began operating in 1888 and Interstate purchased the company in 1925. When natural gas became available in Rochester in 1932, Interstate ceased manufacturing gas at the site and leased the gas plant and property to Minnesota Northern Natural Gas. In 1948, Interstate sold the plant and land to Peoples Natural Gas, the current owners of

part of the land; the City of Rochester owns the remaining property. After soil contamination was discovered in the early 1990s and cleanup was ordered, Interstate, Peoples Natural Gas, and the City of Rochester executed a series of agreements to share the costs. Cleanup of the Rochester site is near completion, and Interstate has incurred costs of \$5,422,363 through March 1995. Interstate no longer provides any utility service in Rochester.

As a public utility, Interstate's electric and gas rates are regulated by the MPUC under Minn.Stat. Ch. 216B (1996). In reviewing rate changes, the MPUC's charter is broadly defined in terms of balancing the interests of the utility companies, their shareholders, and their customers to ensure that rates are "just and reasonable." [Minn.Stat. § 216B.16, subd. 6](#).

In July 1994, Interstate filed a petition with the MPUC seeking approval of deferred accounting for the cleanup costs associated with the Rochester and Albert Lea manufactured gas plants. A deferral allows the utility to seek rate recovery of the deferred expenses in its next gas and electric rate cases. The MPUC granted the petition deferring the accounting for the cleanup costs, but denied recovery of the cleanup costs from Interstate's electric customers, stating that the costs "are associated with the provision of gas service [and] [t]here is no nexus between costs of remediation of MGP [manufactured gas plant] sites and the provision of electric service." The MPUC allowed Interstate to defer the cleanup costs and request rate recovery from gas customers in its next general gas rate case.

On May 1, 1995, Interstate filed a general rate case with the MPUC requesting a rate increase of \$2,365,280, 25 percent (\$594,898) attributable to the mandated cleanup of the two former manufactured gas plants. The Department of Public Services and the Office of the Attorney General (Appellants) intervened in the case and argued against rate recovery for the former manufactured gas plant cleanup on two grounds: first, the sites must be used and useful at the time of the rate case, not the time of pollution; second, there was an insufficient nexus between manufactured gas and natural gas to support the cost recovery against the current natural gas customers.

The Administrative Law Judge (ALJ) held hearings on Interstate's general rate case and on January 16, 1996, the ALJ filed his final report and recommended that the MPUC allow Interstate to recover the cleanup *412 costs under [Minn.Stat. § 216B.16, subd. 6](#), which provides:

The commission, in the exercise of its powers under this chapter to determine just and reasonable rates * * * shall give due consideration to the public need for adequate, efficient, and reasonable services, and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility *property used and useful in rendering service to the public*, and to earn a fair and reasonable return upon the investment in such property.

Id. (emphasis added). The ALJ found that the cleanup costs were mandated by the MPCA and they were reasonable and prudent, findings not now contested by appellants. The ALJ concluded however, that the sites need only be "used and useful" in providing utility service *at the time of pollution* and rejected the appellants' argument relating to nexus, stating that a distinction between manufactured gas and natural gas would be "contrary to Commission precedent and * * * common sense," noting that to the customer, gas is gas, whether manufactured or of natural origin. The ALJ recommended splitting the cleanup costs between the shareholders and customers, resulting in \$2,470,087 for each group, to be amortized over 15 years with an 8 percent interest recovery on the future unpaid cost recovery.

The MPUC adopted the findings of the ALJ in its February 29, 1996 order. The MPUC concluded that Interstate had met the standard for recovery of the cleanup costs: the expenses were prudent and reasonable and were required by the MPCA and the property was used and useful in providing utility service at the time of pollution. *See Northern States Power Co.*, Docket No. G-002/GR-85-108 (Dec. 30, 1985); *Minnegasco*, Docket No. G-008/GR-92-400 (May 3, 1993) and Docket No. G-008/GR-93-1090 (Oct. 24, 1994); and *Peoples Natural Gas Co.*, Docket No. G-011/GR-92-132 (June 11, 1993). The MPUC rejected

however, the ALJ's recommendation of cost sharing and held that Interstate could recover 100 percent of the costs from the customers because there was no evidence of imprudence or fault on the part of the company. The MPUC also reduced the amortization period to 10 years and provided for no interest recovery on the unpaid future cost recovery.¹

The court of appeals affirmed the MPUC, holding that the MPUC acted in both a legislative and a quasi-judicial capacity in reaching its determination: when the MPUC determined that rate recovery would be allowed if the property was used and useful at the time of pollution, it was acting in a legislative capacity; when the MPUC determined that the properties at issue were, in fact, used and useful at the time of pollution, it was acting in a quasi-judicial capacity. Applying the standard of review for the legislative action, the court of appeals determined that the MPUC had not exceeded its statutory authority, and applying the standard of review for the quasi-judicial action, the court of appeals reviewed the record and concluded that the MPUC's decision was supported by substantial evidence. *In re Request of Interstate Power Co.*, 559 N.W.2d at 134.

On review here, we must determine whether the MPUC's decision to allow rate recovery for the cleanup costs of former manufactured gas plant sites is within its statutory authority. Our standard of review is set forth in *Minn.Stat. § 14.69 (1996)*, which provides that the reviewing court may reverse or modify an agency decision if the administrative “finding, inferences, conclusion or decisions are: * * * (b) [i]n excess of the statutory authority or jurisdiction of the agency; or * * * (d) [a]ffected by other error of law; or (e) [u]nsupported by substantial evidence in view of the entire record as submitted * * *.” As the court of appeals properly noted, the legislature has granted the MPUC both legislative and quasi-judicial powers to exercise its statutory authority, and thus when the MPUC acts in a legislative capacity, the standard of review is *413 whether the MPUC exceeded its statutory authority; in contrast, when the MPUC acts in a quasi-judicial capacity, the standard of review is the substantial evidence test. *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n.*, 312 Minn. 250, 251 N.W.2d 350, 358 (1977).

The MPUC acts in a legislative capacity when it is “balancing both cost and noncost factors and making choices among public policy alternatives.” *St. Paul Area Chamber of Commerce*, 251 N.W.2d at 358. Here, the MPUC's responsibility was to balance the needs of the customers and the shareholders, the risk to the fiscal integrity of the utility, the fairness of current charges for past environmental harm, the prudence and reasonableness of the utility's actions, and the societal goal of environmental remediation—clearly policy determinations to be resolved by the MPUC acting in a legislative capacity.² Our review is under the standard of review for legislative action, affirming the MPUC's decision “unless shown to be in excess of statutory authority or resulting in unjust, unreasonable, or discriminatory rates by clear and convincing evidence.” *Id.*

We consider first appellants' argument that the MPUC exceeded its statutory authority when it applied the “used and useful” standard to the time the pollution occurred rather than to the time of the rate case. Appellants argue that the MPUC exceeded its statutory authority by failing to apply the “used and useful” standard to the time of the rate case, citing *Senior Citizens Coalition v. Minnesota Public Utilities Commission*, 355 N.W.2d 295 (Minn.1984). In *Senior Citizens*, we held that the MPUC erroneously excluded from Minnesota Power & Light's rate base the cost of recreational facilities that the Federal Energy Regulation Commission required as a condition of issuing permits for hydroelectric projects on navigable waters. *Id.* at 301. In holding that the recreational facilities were used and useful, we examined cases from other jurisdictions and concluded that “[u]nder general principles of utility law, the ‘used and useful’ standard simply requires (1) that the property be ‘in service,’ and (2) that it be ‘reasonably necessary’ to the efficient and reliable provision of utility service.” *Id.* at 300 (citations omitted).

The important distinction between the *Senior Citizens* case and the case at hand however, is that the issue of recovery of operating expenses incurred in connection with the cleanup is based on entirely different principles than those to be considered in determining whether the recreational facilities in *Senior Citizens* should be included in the rate base. Consideration of what property is included in the rate base is an essential step in determining what is an appropriate return on the asset base; on the other hand whether to permit the recovery of an item of expense, while it certainly affects the rate of return, is essentially a policy question of whether the shareholders or the customers should bear the cost. Because of this important difference, *Senior Citizens* is not determinative of the result in this case.³

Here, the MPUC treated Interstate's cleanup costs as an operating expense, and permitted Interstate to recover the cleanup costs from the natural gas customers but did not allow the investors to earn either interest or a return on the costs in the rate base. The MPUC exercised its policymaking authority to examine the facts and circumstances of the coal tar pollution and determined that it was appropriate to allow recovery of the cleanup costs from the natural *414 gas customers if the property was used and useful for utility service at the time of pollution. In doing so, the MPUC considered the importance of environmental cleanup and balanced the needs of the customers for reliable utility service with those of the shareholders for a fair return on their investment—a balancing of interests “the legislature itself might make.” *See supra* n. 2. We conclude that when the MPUC acted in its legislative capacity in making a policy decision that the manufactured gas plant sites need only be used and useful at the time of pollution to meet the statutory requirement of [section 216B.16, subdivision 6](#), it did not exceed its statutory authority.

We turn next to appellants' argument that it is unfair to require Interstate's natural gas customers to pay for cleanup of the manufactured gas plant sites because manufactured gas and natural gas are different products and different services. Certainly, the ideal pool of customers would be the manufactured gas customers, but obviously assessing charges against consumers of a service that ceased to exist over 60 years ago is not possible. As an alternative, Interstate initially proposed charging the cleanup costs to both its gas and electric customers, but the MPUC rejected this allocation because the “factual nexus [was] too strained to support allocating cleanup costs to electric customers.”⁴ The MPUC agreed with the ALJ that both manufactured and natural gas are combustible, gaseous substances delivered to customers through pipes, and the fact that manufactured gas was produced at a plant site and natural gas is piped from natural gas fields is “just a matter of science and economics.”⁵ Moreover, the two sites have been used in connection with natural gas service more than any other use: after Interstate ceased production of manufactured gas, the Albert Lea site was used for a vehicle maintenance garage and underground pipelines for natural gas utility service in that area; likewise, the Rochester site was leased to a natural gas company and used for the provision of natural gas utility service. The MPUC concluded that “both manufactured gas and natural gas are simply gas utility service.”

While there is merit to appellants' argument that it is inequitable to require current natural gas customers to pay the cost of cleaning up environmental damage inflicted in the process of manufacturing gas over 60 years ago, in the absence of the ability to charge these costs to the manufactured gas customers, the MPUC was left with the alternative of rejecting the cost recovery in its entirety—potentially causing a financial crisis for Interstate—or permitting the cost recovery from the natural gas customers over a period of 10 years without interest. We conclude that while its decision to permit the cost recovery through a rate increase was not a perfect solution, it was not unfair or unreasonable, nor did it exceed the MPUC's statutory authority. Manufactured gas and *415 natural gas are not so fundamentally different as to make it illogical to permit cleanup cost recovery from the natural gas customers, and the MPUC did not exceed its statutory authority by concluding that Interstate's current natural gas customers had a sufficient nexus to the former manufactured gas plant sites.

Finally, we turn to appellants' argument as to the adequacy of the evidence in the record to support the MPUC finding that the manufactured gas plants were actually “used and useful” at the time of pollution. We agree with the court of appeals that the MPUC acted in a quasi-judicial capacity as to this issue. The substantial evidence test applies, and it is met when we find “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn.1977). We also consider “whether the agency has adequately explained how it derived its conclusion and whether that conclusion is reasonable on the basis of the record.” *Northern States Power Co.*, 416 N.W.2d 719, 724 (Minn. 87–192) (quoting *Minnesota Power & Light Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 324, 330 (Minn.1983)). Interstate offered uncontradicted evidence that the sites were owned and operated for the production of manufactured gas from 1925 to 1933 as to the Albert Lea site, and from 1925 to 1932 as to the Rochester site. The MPUC's determination that the sites were used and useful at the time of pollution is the only reasonable conclusion from the evidence.

In summary, we conclude that the MPUC acted in a legislative capacity when it allowed rate recovery for the cleanup costs of Interstate's former manufactured gas plant sites as property “used and useful” at the time of pollution, and it did not exceed its statutory authority in doing so; it acted in a quasi-judicial capacity when it determined that the former manufactured gas plants were actually used and useful at the time of pollution, and its conclusion was reasonable based on the record. We therefore

affirm the court of appeals and the MPUC order allowing Interstate to recover cleanup costs for former manufactured gas plant sites from its natural gas customers.

Affirmed.

All Citations

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Footnotes

- 1 Appellants petitioned for reconsideration. On July 2, 1996, the MPUC issued an order affirming the February 29, 1996 order stating that the MPUC “remain[ed] convinced that its decision allowing recovery of MGP [manufactured gas plant] cleanup costs was based on clear precedent, sound reasoning, and consistent Commission policy.”
- 2 The legislature empowered the MPUC to act in a legislative capacity both in its factfinding as well as policymaking responsibilities. The enabling statute provides that the commission “may make such investigations and determinations * * * as the legislature itself might make * * * and thus it has a very broad factfinding as well as policymaking jurisdiction.” [Minn.Stat. § 216A.05, subd. 1 \(1996\)](#).
- 3 The distinction between rate base items and operating expenses was recognized in *Northern States Power Co.*, Docket No. G-002/GR-86-160 (Jan. 27, 1987). The MPUC allowed NSP to amortize as an operating expense its total cleanup costs of a former manufactured gas plant site in Faribault, but disallowed inclusion of any portion as a rate base item, stating that the “customers should not be required to pay a return on cleanup costs which are providing no current benefit to them”—clearly recognizing the distinction between an item of expense and an item to be included in the rate base.
- 4 The MPUC disallowed the allocation in the order approving Interstate's request to defer the cleanup costs and request recovery in its following rate case, stating that electricity uses a “completely different generation, transmission, and distribution system” and “wholly different fixtures and appliances” are required to use electricity instead of manufactured gas. The Department of Public Service also argued that allocation to electric customers is unfair to other gas companies, such as Minnegasco and Peoples, who do not have electric customers who could help pay for cleanup of manufactured gas plant sites. Additionally, treating a utility's gas and electric operations separately enables accurate accounting and cost of service analysis, and advances just and reasonable ratemaking. *In re Request by Interstate Power Co. for Deferral of Expenses Associated with Former Manufactured Gas Plants*, Order Denying Reconsideration, Docket No. G-001/M-94-633 (August 21, 1995).
- 5 There was fragmentary and conflicting evidence presented to the ALJ regarding the transition from manufactured gas to natural gas. Some testimony suggested that natural gas replaced manufactured gas as an energy source, but other testimony suggested that electricity replaced manufactured gas for many uses. One witness testified that manufactured gas was used for heating, cooking, and lighting, and natural gas is now used for the same purposes; another witness testified that natural gas is used primarily for heating, and that before natural gas was available, coal and oil, not manufactured gas, were used for heating. Yet another witness testified that electricity, not natural gas, has supplanted manufactured gas in lighting and cooking.