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April 10, 2026

Sasha Bergman  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
Administrative Law Judge  
St. Paul, MN 55101

**Re: *In the Matter of Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges***  
**CAH 21-2500-40336; MPUC Docket No. E-002/AA-22-179**

Dear Ms. Bergman:

The Minnesota Department of Commerce submits this letter in response to Xcel Energy's exceptions to Administrative Law Judge Kimberly Middendorf's Findings of Fact, Conclusions of Law, and Recommendations.<sup>1</sup> The Department appreciates that Xcel has conceded that customers are entitled to a \$40.6 million refund. Still, the Department objects to Xcel's baseless request for the Commission to reject the majority of the ALJ Report's findings, and all of its conclusions, nearly all of which have gone unchallenged by any party to this litigation.

The ALJ Report is exemplary and should be adopted in its entirety. The report thoroughly discusses the parties' positions on relevant issues, and offers well-reasoned and supported explanations for each finding, conclusion, and recommendation. Contrary to Xcel's assertion, its proposal to accept the ALJ's recommendation regarding the amount of the refund in no way "renders many of the ALJ's findings unnecessary."<sup>2</sup> Indeed, the court of appeals recently admonished the Commission for failing to provide reasoned bases for departing from an ALJ report. The court emphasized that Minn. Stat. § 14.62, subd. 1 requires any order that "rejects or modified a finding of fact, conclusion, or recommendation contained in the [ALJ Report] *must* include the reasons for *each* rejection or modification."<sup>3</sup> Aside from Xcel's arguments on internal labor costs, no party has offered any reasons to reject or modify any finding or conclusion.<sup>4</sup> Simply declaring 130 of the report's 203 factual findings and all 18 of its legal conclusions "unnecessary"

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<sup>1</sup> Xcel Letter (Mar. 31, 2026) (eDocket No. [20263-229829-01](#)); FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS at 48 (Mar. 11, 2026) (eDocket No. [20263-229130-01](#)) (ALJ Report).

<sup>2</sup> Xcel Letter at 3.

<sup>3</sup> *In re Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, 12 N.W. 3d 477, 491 (Minn. App. 2024) (quotations omitted) (emphasis and modification in original).

<sup>4</sup> Xcel Letter at 2–3.

as Xcel proposes would be “unsupported by substantial evidence” and “arbitrary and capricious.”<sup>5</sup> Such an order would leave the Commission vulnerable to an appellate challenge.

Xcel objects to the report’s findings, conclusions, and recommendations related to whether it should be allowed to charge ratepayers for litigation expenses incurred fighting the customer refund resulting from its own imprudent conduct.<sup>6</sup> The Department, the Office of the Attorney General—Residential Utilities Division (OAG), and Xcel Large Industrials (XLI) recommended that the Commission require Xcel to exclude its litigation costs from all rate and cost recovery proceedings.<sup>7</sup> In its analysis, the report noted that having Xcel bear its own litigation costs mirrors both traditional legal rules and utility ratemaking principles.<sup>8</sup> The report also observed that requiring ratepayers to pay for Xcel’s attempt to lower the refund would disincentivize prudence and accuracy by utilities.<sup>9</sup>

In exceptions, Xcel begins its attack on the report’s recommendation by arguing that it is based “on a proposal from the OAG made for the first time in its initial brief and without any basis or support.”<sup>10</sup> The argument about the timing is inapposite; the argument about the lack of support is patently incorrect. It is a routine and proper practice for parties to introduce legal arguments in their briefs. Moreover, the Department and OAG cited multiple sources in support of their position in initial briefing, including Commission orders, case law, and treatises.<sup>11</sup> Xcel raised no objection in its reply brief to the parties’ inclusion of a legal argument over the removal of case-related expenses from future rate cases or cost proceedings.<sup>12</sup> Instead, Xcel argued in briefing that its litigation costs should be recoverable from customers because the proceeding was ordered by the Commission. That position was considered and rejected for “mischaracteriz[ing] the automatic adjustment process, Xcel’s role in this process, and the Intervenors’ arguments.”<sup>13</sup> Likewise, Xcel did not question the validity or relevance of the plentiful sources the parties cited.<sup>14</sup>

Beyond its misguided timing complaints, Xcel offers three new arguments for why it should be allowed to charge its customers for the cost of challenging refunds owed for its imprudent conduct. None are persuasive. First, Xcel argues that “the Company’s internal costs of this contested case are not incremental.”<sup>15</sup> But there is no free lunch. This contested case may not have changed Xcel’s headcount. Even so, employee time and attention, and other company resources, dedicated to developing and supporting Xcel’s litigation position could have been put to more productive uses absent this contested case. For example, those resources might have been

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<sup>5</sup> See Minn. Stat. § 14.69(e),(f) (allowing the court of appeals to reverse an agency decision for being “unsupported by substantial evidence in view of the entire record” or “arbitrary and capricious.”).

<sup>6</sup> ALJ Report at 48.

<sup>7</sup> Department Initial Br. at 25; OAG Initial Br. at 35; XLI Reply Br. at 5.

<sup>8</sup> ALJ Report at 48.

<sup>9</sup> *Id.*

<sup>10</sup> Xcel Letter at 2. The Department notes that it joined OAG in making this recommendation in its initial brief. See Department Initial Br. at 24–26.

<sup>11</sup> See Department Initial Br. at 24–26; OAG Initial Br. at 35–36.

<sup>12</sup> See Xcel Reply Br. at 34.

<sup>13</sup> ALJ Report at 48; Xcel Reply Br. at 34.

<sup>14</sup> See *id.*

<sup>15</sup> Xcel Letter at 2.

used to improve Xcel's provision of electrical service, or put to use supporting another subsidiary of Xcel Energy Inc. If, on the other hand, Xcel is able to fully staff and support a contested case proceeding without diverting resources from any other potential productive use, it raises serious questions about whether the relevant budgets have been set at a fair and reasonable level.

Second, Xcel argues that "it is not clear how the Company would 'adjust out' costs from 2025 and 2026 in a future rate case."<sup>16</sup> This concern is easily resolved with a simple explanation. The Company would adjust out these costs by subtracting the costs attributable to this case from the total actual costs for the relevant years before using that data to inform future budgets or conduct analysis related to requested test year expenses, such as comparing prior forecasts to actual spending.

Lastly, Xcel complains that this recommendation was not made in the Company's current rate case and argues that removing these costs in the Company's next rate case would constitute retroactive ratemaking. This argument misrepresents the ALJ's recommendation, mischaracterizes the ban on retroactive ratemaking, and is contrary to Xcel's explanation from its rate cases of how it develops budgets. No one is suggesting that the Commission should set rates in a future proceeding by determining a fair and reasonable revenue requirement and then reducing it by Xcel's expenses in this proceeding. Instead, the ALJ's recommendation would ensure that contested case-related costs—which were not used to provide "adequate, efficient, and reasonable service"—are excluded when using prior year expenses to inform fair and reasonable test year expenses. For example, Xcel has stated that its 2025 and 2026 outside legal services operations and maintenance budgets "were determined using a historical average based on 2017 – 2023."<sup>17</sup> If the Commission adopts the ALJ's recommendation, those historical averages would simply be adjusted to remove the expenses that were not used for the provision of utility service. This approach would be easy to implement, provide transparency, and protect both ratepayers and the utility from setting unreasonable expenses in rate cases.

The Commission should adopt the ALJ Report without rejection or modification. Xcel cannot unilaterally settle with the Commission without the parties' consent. Xcel's proposal is merely a request for the Commission to ignore the statutory mandate to provide an explanation for each rejection or modification of the report in its order. Xcel provided arguments addressing only a single issue in the report, none of which stand up to scrutiny. The Commission should take this opportunity to make ratepayers whole for the costs of Xcel's imprudence and issue an order adopting the ALJ Report's findings of fact, conclusions of law, and recommendations.

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<sup>16</sup> Xcel Letter at 2.

<sup>17</sup> *In re the Appl. of N. States Power Co., d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in the State of Minn.*, MPUC Docket No. 24-320, Golden Direct, ARG-D-4 at 1–2 (Aug. 22, 2025) (eDocket No. [20258-222345-05](#)).

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By copy of this letter, all parties have been served. A declaration of service is also enclosed.

Thank you for your attention to this matter.

Sincerely,

s/ **Richard Dornfeld**

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