COMMERCE DEPARTMENT

February 2, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E002/M-17-851

Dear Mr. Wolf:

Attached are the comments of the Division of Energy Resources of the Minnesota Department of Commerce (DOC or the Department) in the following matter:

> A Petition by Northern States Power Company d/b/a Xcel Energy for Approval of a Master Utility Agreement with the Metropolitan Council for the Southwest Light Rail Transit Project.

The Petition was filed on December 4, 2017 by:

> Bria E. Shea
> Director, Regulatory and Strategic Analysis
> Xcel Energy
> 414 Nicollet Mall
> Minneapolis, Minnesota 55401

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve** the Petition, and is available to answer any questions the Commission may have.

Sincerely,

/s/SAMIR OUANES
Rates Analyst

SO/lt
Attachment

COMMERCE DEPARTMENT

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E002/M-17-851

I. SUMMARY

On December 4, 2017, Northern States Power Company d/b/a Xcel Energy (NSP, Xcel or the Company) submitted to the Minnesota Public Utilities Commission (Commission) a Petition for approval of a Master Utility Agreement (MUA) with the Metropolitan Council (Met Council or Council).

The proposed MUA addresses how the removal and relocation of utility facilities in conjunction with the construction of the Southwest Light Rail Transit Project (Project) will be conducted and specifies terms for payments.

II. BACKGROUND

In response to discovery from the Department, Xcel provided the following background on the Project, including an explanation as to why it is in the public interest:

> The Company has been provided with the following information from the Met Council to explain why this is in the public interest:
>
> The Project itself is in the public interest for the following reasons. Created in 1967, the Met Council is the regional governmental agency and Metropolitan Planning Organization (MPO) in Minnesota serving the Twin Cities seven-county metropolitan area. The Met Council is granted regional authority powers in state statutes by the Minnesota Legislature and is a political subdivision of the state (Minn. Stat. §473.123). These powers are unique in that unlike the Regional Development Commissions they can supersede decisions and actions of local governments. The legislature created the Met Council to maintain public services, oversee growth of the state's largest metro area and to act as the regional planning organization. The Council's role in the Twin Cities metro area is defined by the necessary regional services it provides and manages. These include public transportation, sewage treatment, regional

planning, urban planning for municipalities, forecasting population growth, ensuring adequate affordable housing, maintaining a regional park and trails system, and provides a framework for regional systems including aviation, transportation, parks and open space, water quality and water management.

On November 9, 2016, the Met Council passed resolution 2016-18 formally declaring the Green Line Extension Light Rail Project (also referred to as the Southwest Light Rail Line) a valid public purpose under Minnesota Statutes §§117.012 and 473.405 to 473.449.

In addition, Minn. Stat. §473.3994 also requires a process of local review and approval of the physical design component of the preliminary design plans (Municipal Consent Plans) for the METRO Green Line Extension Project. This is commonly referred to as the Municipal Consent Process. During Municipal Consent, the public is afforded the opportunity to review the Plans and provide comments directly to local governments or the Council.

The Met Council, Hennepin County Regional Railroad Authority (HCRRA), Hennepin County and the cities along the Green Line Extension route (Minneapolis, St. Louis Park, Hopkins, Minnetonka and Eden Prairie) are required to hold public hearings and receive comments on the Municipal Consent Plans for the portion of the route located within their respective jurisdictions. Hennepin County and the Project Cities are required to review and approve or disapprove the Plans based on specific technical comments. If the governing body seeks to disapprove the Municipal Consent Plans, it must describe specific amendments to the Plans that, if adopted by the Council, would cause the governing body to withdraw its disapproval. The Metro Green Line Extension Municipal Consent Process began July 23, 2015, with the distribution of the Municipal Consent Plans and concluded September 25, 2015 with all five cities and Hennepin County approving project plans and granting Municipal Consent.[1]

…

In March 2017, the Minnesota Department of Transportation issued its initial Commissioner's Notice and Orders in support of the

[1] Source: Xcel's response to DOC information request No. 2, Attachment 1 of these comments.

> Southwest Light Rail Transit project and in consultation with the Met Council to cause utility removal or relocation within the public right-of-way. In this context, the Minnesota Department of Transportation is not a customer of Xcel Energy pertaining to the facilities in the public right-of-way as these facilities are in the public right-of-way to serve other Xcel Energy customers.[2]

In its December 4, 2017 filing at pages 2-3 of 51, Xcel provided the following summary of the Project:

> The Council is designing and preparing to construct the Project, which will run from downtown Minneapolis through the cities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie. The Project requires that the Company remove and relocate its facilities that would conflict with the path of the Project. The Council will reimburse the Company for a portion of the costs (approximately $3 million of the roughly estimated $36 million in Company relocation work) that will be necessary to remove and relocate our facilities and those reimbursable costs are addressed by the proposed MUA for which we request approval.
>
> In most cases, when the Company receives a request from a customer to remove or install distribution facilities, the parties enter into one of two existing Statement of Work Requested agreements in our existing tariffs. However, given *the unique nature of this Project*, and the substantial work to be performed by the Company, the Company's standard tariffs are not adequate to address the requirements associated with the Project. The proposed MUA addresses how the utility relocation work will be conducted and specifies terms for payments. A portion of the $3 million of the Council's costs is anticipated to be received by the Council from the Federal Transit Administration (FTA). The FTA requires a written agreement between the Council and the Company to set forth the terms and conditions for the design, construction, and payment of any required utility work.
> (*emphasis added*)

[2] Source: Xcel's response to DOC information request No. 1, Attachment 2 of these comments.

According to the Petition, the $3 million compensable amount corresponds to removal work "when existing facilities are located within NSP property, a Company easement, or public drainage or other utility easement." (Petition at page 5.)

III. DEPARTMENT ANALYSIS

The Department notes that "the two existing Statement of Work Requested agreements in our [Xcel's] existing tariffs" provide for the Customer's payment of Xcel's cost of the performed work, while section VIII.A of the proposed MUA provides for a maximum Met Council payment of $3 million out of the expected total $36 million cost of the "Company relocation work."

In response to discovery from the Department, Xcel provided the following explanation of "the unique nature of this Project" that prevents the proposed MUA from reflecting the entire relocation cost, excluding the cost of any betterment:[3]

> a. The unique nature of this Project relates to the requirement of the Federal Transit Administration (FTA) that we enter into an MUA regarding distribution relocation work. The unique nature of the Project does not impact or alter the reimbursement/nonreimbursement treatment of relocation costs, which is the same as that applied to the Hiawatha Light Rail project and the Central Corridor Light Rail project. In regard to all three projects, the Company is responsible for the relocation costs within a public right-of-way. Although an MUA was not required for the Hiawatha and Central Corridor projects, we had about $26 million in relocation costs for the Hiawatha project and about $30 million in relocation costs for the Central Corridor project. All such costs were nonreimbursable. We note the cost responsibility for the relocation work on all three projects is dictated by Minn. Stat. 161.45 and Minn. Rules 8810.3300, Subpart 1. (See response to Part b. for further detail.)
>
> The Company had considered using a tariffed Statement of Work form (Section 7, Sheets No. 52-53, and Sheet Nos. 53.1-53.3) for the work reimbursable from the Met Council for this Project. However, unique to the Southwest Light Rail project, we were informed by the Met Council that the FTA required an MUA rather

[3] Source: Xcel's response to DOC information request No. 1, Attachment 2 of these comments.

than the tariffed Statements of Work. Since the Project is receiving federal funds, the FTA required very specific provisions to be included in the MUA, most notably the Buy America provision. Subsequently, the Met Council also determined a need to include additional provisions such as Insurance and Indemnification.

In March 2017, the Minnesota Department of Transportation issued its initial Commissioner's Notice and Orders in support of the Southwest Light Rail Transit project and in consultation with the Met Council to cause utility removal or relocation within the public right-of-way. In this context, the Minnesota Department of Transportation is not a customer of Xcel Energy pertaining to the facilities in the public right-of-way as these facilities are in the public right-of-way to serve other Xcel Energy customers. Further, as detailed in the response to DOC IR-2, part b., based on prior judicial precedent, Xcel Energy cannot seek reimbursement of its costs from the Met Council or the Minnesota Department of Transportation for the ordered relocations from the public right of way pertaining to light rail transit work. Accordingly, Xcel Energy is precluded from seeking from the Met Council or the Minnesota Department of Transportation the costs associated with relocation work from the public right- of-way.

b. Please see the response to Information Request DOC-002, part b., that explains, based on prior judicial precedent, why Xcel Energy is not able to seek reimbursement of its distribution system relocation costs from the Met Council or the Minnesota Department of Transportation for the ordered relocations from the public right-of-way pertaining to light rail transit work.

Further, the assignment of costs for utility relocation work in public right- of-way areas is set forth in MN Rules 8810.3300, Subpart 1, which states:

Subpart 1. **Requirement.** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the local government unit, in connection with: (1) a present or future local government use of the right-of-way for a

> public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.
>
> Subp. 2. **Exception.** Notwithstanding subpart 1, a right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.
>
> Thus, given the prior case law and cost assignment provisions of administrative rules, we are not able to seek reimbursement from Met Council or the Minnesota Department of Transportation for light rail relocation work unless such work is within a private easement or permit area, or other private, non-public right-of-way property.
>
> For background purposes, we note that the Company has completed distribution relocation work for two light rail projects in the Twin Cities metropolitan area:
>
> - The Hiawatha Corridor Project (aka Blue Line), constructed between 2001 – 2004; and
> - The Central Corridor Project (aka Green Line), constructed between 2010 – 2014).
>
> We did not need a Master Utility Agreement and consequently did not submit a regulatory filing for the relocation work on the Hiawatha Corridor and Central Corridor projects. Instead, we received a Notice and Orders from the Minnesota Department of Transportation to relocate distribution facilities for both projects. The relocation work for these projects was included within previous electric rate case capital expenditure budgets.

As explained below, the Eight Circuit Court of Appeals ruled against Xcel's challenge in federal court of its required relocation of underground facilities in the public right of way at Xcel's own expense in order to accommodate the Hiawatha project by the Minnesota Department of Transportation:[4]

[4] Source: Xcel's response to DOC information request No. 2, Attachment 1 of these comments.

The recovery of distribution system relocation costs from Xcel Energy ratepayers for light rail projects regardless of whether or not our customers caused such work to be done is a matter of state law. See response to Information Request DOC-001, part b. This requirement was reaffirmed during the construction of the Hiawatha project – the original 11.6 mile light rail segment connecting downtown Minneapolis, the Minneapolis-St. Paul International Airport, and the Mall of America.

During the Hiawatha project, the Minnesota Department of Transportation ordered Xcel Energy to relocate underground facilities in the public right of way at its own expense in order to accommodate the LRT [Light Rail Transit] project. Xcel Energy challenged this in federal court. The Eighth Circuit Court of Appeals in *Northern States Power Company v. Federal Transit Administrator, Minnesota Department of Transportation, et al*, 358 F.3d 1050 (8th Cir. 2004) ruled against Xcel Energy and stated in part as follows:

The Supreme Court has clearly stated that "[u]nder the traditional common-law rule, utilities have been required to bear the entire cost of relocating from a public right-of-way whenever requested to do so by state or local authorities." *Norfolk Redevelopment and Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.,* 464 U.S. 30, 35, 104 S.Ct. 304, 78 L.Ed.2d 29 (1983) (citing *New Orleans Gas Light Co. v. Drainage Comm'n of New Orleans,* 197 U.S. 453, 462, 25 S.Ct. 471, 49 L.Ed. 831 (1905)). Minnesota courts recognize the same rule. *See Stillwater Co. v. City of Stillwater,* 50 Minn. 498, 52 N.W. 893, 894 (1892); *N. States Power Co. v. City of Oakdale* 588 N.W.2d 534, 542 (Minn.Ct.App.1999) (holding that no compensation was due to the utility company in light of "the long-held view that a city may regulate a utility without compensation in valid exercise of its police power").

The Court then addressed Minn. Stat. §174.35 that provides as follows:

The commissioner of transportation may exercise the powers granted in this chapter and chapter 473, as necessary, to plan, design, acquire, construct, and equip light rail transit facilities in the

> metropolitan area as defined in section 473.121, subdivision 2. The commissioner shall not spend state funds to study light rail transit unless the funds are appropriated in legislation that identifies the route, including the origin and destination.
>
> The Court then stated as follows:
> Instead, we agree with the district court that:
> The legislature is free to extend the application of existing rules by statute, and that is precisely what it did when authorizing LRT under Minn.Stat. § 174.35.
> ....
> ... The Court is persuaded that the Minnesota legislature expressly granted authority and police power to MnDOT to create the LRT project, and that this authority sufficiently empowered the department to order relocation of the Fifth Street utilities at Xcel's own expense.
> *N. States Power Co. v. Fed. Transit Admin*., 2002 WL 31026530 at *9, 10 (D.Minn. Sept.10, 2002) (unpublished).

Given the prior case law and administrative rules described above, the Department recommends approval of the proposed MUA.

IV. RECOMMENDATION

The Department recommends that the Commission approve the Petition.

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Xcel Energy
Docket No.: E002/M-17-851
Response To: Department of Commerce Information Request No. 2

Requestor: Samir Ouanes
Date Received: January 2, 2018

Question:
In its December 4, 2017 filing at page 11 of 51, Xcel provided the following public interest support for the proposed Master Utility Agreement (MUA):

> We believe the public interest supports our proposed MUA because the Project itself is in the public interest and the MUA balances the need of the Council to have a contract with more specific provisions than found in our tariffed Statements of Work while still providing reasonable protection to the Company aligned with pertinent provisions in the Commission approved contract for construction and relocation in the Street Lighting Docket.

a. Please provide support for your statement that "the Project itself is in the public interest."

b. The proposed MUA (section VIII.A) provides for a maximum Customer payment of $3 million out of the expected total $36 million cost of the "Company relocation work." Please explain why it is in the public interest for Xcel's ratepayers to pay for costs ($33 million out of $36 million) that they did not cause.

Response:

a. The Company has been provided with the following information from the Met Council to explain why this is in the public interest:

The Project itself is in the public interest for the following reasons. Created in 1967, the Met Council is the regional governmental agency and Metropolitan Planning Organization (MPO) in Minnesota serving the Twin Cities seven-

county metropolitan area. The Met Council is granted regional authority powers in state statutes by the Minnesota Legislature and is a political subdivision of the state (Minn. Stat. §473.123). These powers are unique in that unlike the Regional Development Commissions they can supersede decisions and actions of local governments. The legislature created the Met Council to maintain public services, oversee growth of the state's largest metro area and to act as the regional planning organization. The Council's role in the Twin Cities metro area is defined by the necessary regional services it provides and manages. These include public transportation, sewage treatment, regional planning, urban planning for municipalities, forecasting population growth, ensuring adequate affordable housing, maintaining a regional park and trails system, and provides a framework for regional systems including aviation, transportation, parks and open space, water quality and water management.

On November 9, 2016, the Met Council passed resolution 2016-18 formally declaring the Green Line Extension Light Rail Project (also referred to as the Southwest Light Rail Line) a valid public purpose under Minnesota Statutes §§117.012 and 473.405 to 473.449.

In addition, Minn. Stat. §473.3994 also requires a process of local review and approval of the physical design component of the preliminary design plans (Municipal Consent Plans) for the METRO Green Line Extension Project. This is commonly referred to as the Municipal Consent Process. During Municipal Consent, the public is afforded the opportunity to review the Plans and provide comments directly to local governments or the Council.

The Met Council, Hennepin County Regional Railroad Authority (HCRRA), Hennepin County and the cities along the Green Line Extension route (Minneapolis, St. Louis Park, Hopkins, Minnetonka and Eden Prairie) are required to hold public hearings and receive comments on the Municipal Consent Plans for the portion of the route located within their respective jurisdictions. Hennepin County and the Project Cities are required to review and approve or disapprove the Plans based on specific technical comments. If the governing body seeks to disapprove the Municipal Consent Plans, it must describe specific amendments to the Plans that, if adopted by the Council, would cause the governing body to withdraw its disapproval. The Metro Green Line Extension Municipal Consent Process began July 23, 2015, with the distribution of the Municipal Consent Plans and concluded September 25, 2015 with all five cities and Hennepin County approving project plans and granting Municipal Consent.

b. The recovery of distribution system relocation costs from Xcel Energy ratepayers for light rail projects regardless of whether or not our customers caused such work to be done is a matter of state law. See response to Information Request DOC-001, part b. This requirement was reaffirmed during the construction of the Hiawatha project – the original 11.6 mile light rail segment connecting downtown Minneapolis, the Minneapolis-St. Paul International Airport, and the Mall of America.

During the Hiawatha project, the Minnesota Department of Transportation ordered Xcel Energy to relocate underground facilities in the public right of way at its own expense in order to accommodate the LRT project. Xcel Energy challenged this in federal court. The Eighth Circuit Court of Appeals in *Northern States Power Company v. Federal Transit Administrator, Minnesota Department of Transportation, et al*, 358 F.3d 1050 (8th Cir. 2004) ruled against Xcel Energy and stated in part as follows:

> The Supreme Court has clearly stated that "[u]nder the traditional common-law rule, utilities have been required to bear the entire cost of relocating from a public right-of-way whenever requested to do so by state or local authorities." *Norfolk Redevelopment and Hous. Auth. v. Chesapeake & Potomac Tel. Co. of Va.,* 464 U.S. 30, 35, 104 S.Ct. 304, 78 L.Ed.2d 29 (1983) (citing *New Orleans Gas Light Co. v. Drainage Comm'n of New Orleans,* 197 U.S. 453, 462, 25 S.Ct. 471, 49 L.Ed. 831 (1905)). Minnesota courts recognize the same rule. *See Stillwater Co. v. City of Stillwater,* 50 Minn. 498, 52 N.W. 893, 894 (1892); *N. States Power Co. v. City of Oakdale* 588 N.W.2d 534, 542 (Minn.Ct.App.1999) (holding that no compensation was due to the utility company in light of "the long-held view that a city may regulate a utility without compensation in valid exercise of its police power").

The Court then addressed Minn. Stat. §174.35 that provides as follows:

> The commissioner of transportation may exercise the powers granted in this chapter and chapter 473, as necessary, to plan, design, acquire, construct, and equip light rail transit facilities in the metropolitan area as defined in section 473.121, subdivision 2. The commissioner shall not spend state funds to study light rail transit unless the funds are appropriated in legislation that identifies the route, including the origin and destination.

The Court then stated as follows:

> Instead, we agree with the district court that:
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> > The legislature is free to extend the application of existing rules by statute, and that is precisely what it did when authorizing LRT under Minn.Stat. § 174.35.
> > ....
> > ... The Court is persuaded that the Minnesota legislature expressly granted authority and police power to MnDOT to create the LRT project, and that this authority sufficiently empowered the department to order relocation of the Fifth Street utilities at Xcel's own expense.
>
> *N. States Power Co. v. Fed. Transit Admin.*, 2002 WL 31026530 at *9, 10 (D.Minn. Sept.10, 2002) (unpublished).

Preparer:	Barb Jerhoff (Part a.) /James Denniston (Part b.)
Title:	Team Lead/Assistant General Counsel
Department:	Account Management/Team Lead/Legal
Telephone:	651-229-5565/612-215-4656
Date:	January 19, 2018

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☒ **Public Document**

Xcel Energy
Docket No.: E002/M-17-851
Response To: Department of Commerce Information Request No. 1

Requestor: Samir Ouanes
Date Received: January 2, 2018

Question:
In its December 4, 2017 filing at pages 2-3 of 51, Xcel provided the following summary of the Project:

> The Council is designing and preparing to construct the Project, which will run from downtown Minneapolis through the cities of St. Louis Park, Hopkins, Minnetonka, and Eden Prairie. The Project requires that the Company remove and relocate its facilities that would conflict with the path of the Project. The Council will reimburse the Company for a portion of the costs (approximately $3 million of the roughly estimated $36 million in Company relocation work) that will be necessary to remove and relocate our facilities and those reimbursable costs are addressed by the proposed MUA for which we request approval.
>
> In most cases, when the Company receives a request from a customer to remove or install distribution facilities, the parties enter into one of two existing Statement of Work Requested agreements in our existing tariffs. However, given the unique nature of this Project, and the substantial work to be performed by the Company, the Company's standard tariffs are not adequate to address the requirements associated with the Project. The proposed MUA addresses how the utility relocation work will be conducted and specifies terms for payments. A portion of the $3 million of the Council's costs is anticipated to be received by the Council from the Federal Transit Administration (FTA). The FTA requires a written agreement between the Council and the Company to set forth the terms and conditions for the design, construction, and payment of any required utility work.

The Department notes that "the two existing Statement of Work Requested agreements in our [Xcel's] existing tariffs" provide for the Customer's payment of

Xcel's cost of the performed work, while the proposed MUA (section VIII.A) provides for a maximum Customer payment of $3 million out of the expected total $36 million cost of the "Company relocation work."

a. Please fully discuss and explain "the unique nature of this Project" that prevents the proposed Master Utility Agreement (MUA) from reflecting the following similar cost reimbursement mechanism, while still addressing "the requirements associated with the Project:" the Customer pays the full amount of the Company relocation work, excluding the cost of any betterment.

b. At page 5 of 51 of its December 4, 2017 filing, Xcel states that "[t]he capitalized costs of removing, relocating and installing utility facilities, off-set by Council reimbursement, will go into the Company's cost of service in future rate cases." Please fully explain and justify why it is reasonable for Xcel's ratepayers to pay more than 90 percent or $33 million ($36 million - $3 million) for costs that they did not cause.

c. Please identify all Commission Orders approving similar MUAs for "Company relocation work" requested by a Customer, with Xcel's ratepayers being charged at least 90 percent of the costs of the Company relocation work that they did not cause. For each such Order, please provide a short comparative description of the Commission-approved MUA and identify the actual amount paid by the Customer, the actual amount paid by Xcel's ratepayers and any regulation (if any) requiring recovery of the costs of the Company relocation work from Xcel's ratepayers.

Response:

a. The unique nature of this Project relates to the requirement of the Federal Transit Administration (FTA) that we enter into an MUA regarding distribution relocation work. The unique nature of the Project does not impact or alter the reimbursement/nonreimbursement treatment of relocation costs, which is the same as that applied to the Hiawatha Light Rail project and the Central Corridor Light Rail project. In regard to all three projects, the Company is responsible for the relocation costs within a public right-of-way. Although an MUA was not required for the Hiawatha and Central Corridor projects, we had about $26 million in relocation costs for the Hiawatha project and about $30 million in relocation costs for the Central Corridor project. All such costs were nonreimbursable. We note the cost responsibility for the relocation work on all three projects is

dictated by Minn. Stat. 161.45 and Minn. Rules 8810.3300, Subpart 1. (See response to Part b. for further detail.)

The Company had considered using a tariffed Statement of Work form (Section 7, Sheets No. 52-53, and Sheet Nos. 53.1-53.3) for the work reimbursable from the Met Council for this Project. However, unique to the Southwest Light Rail project, we were informed by the Met Council that the FTA required an MUA rather than the tariffed Statements of Work. Since the Project is receiving federal funds, the FTA required very specific provisions to be included in the MUA, most notably the Buy America provision. Subsequently, the Met Council also determined a need to include additional provisions such as Insurance and Indemnification.

In March 2017, the Minnesota Department of Transportation issued its initial Commissioner's Notice and Orders in support of the Southwest Light Rail Transit project and in consultation with the Met Council to cause utility removal or relocation within the public right-of-way. In this context, the Minnesota Department of Transportation is not a customer of Xcel Energy pertaining to the facilities in the public right-of-way as these facilities are in the public right-of-way to serve other Xcel Energy customers. Further, as detailed in the response to DOC IR-2, part b., based on prior judicial precedent, Xcel Energy cannot seek reimbursement of its costs from the Met Council or the Minnesota Department of Transportation for the ordered relocations from the public right of way pertaining to light rail transit work. Accordingly, Xcel Energy is precluded from seeking from the Met Council or the Minnesota Department of Transportation the costs associated with relocation work from the public right- of-way.

b. Please see the response to Information Request DOC-002, part b., that explains, based on prior judicial precedent, why Xcel Energy is not able to seek reimbursement of its distribution system relocation costs from the Met Council or the Minnesota Department of Transportation for the ordered relocations from the public right-of-way pertaining to light rail transit work.

Further, the assignment of costs for utility relocation work in public right-of-way areas is set forth in MN Rules 8810.3300, Subpart 1, which states:

> Subpart 1. **Requirement.** A right-of-way user shall promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its facilities in the right-of-way when it is necessary to prevent interference, and not merely for convenience of the local government unit, in connection with: (1) a present or future local

> government use of the right-of-way for a public project; (2) the public health or safety; or (3) the safety and convenience of travel over the right-of-way.
>
> Subp. 2. **Exception.** Notwithstanding subpart 1, a right-of-way user is not required to remove or relocate its facilities from a right-of-way that has been vacated in favor of a nongovernmental entity unless and until the reasonable costs to do so are first paid to the right-of-way user.

Thus, given the prior case law and cost assignment provisions of administrative rules, we are not able to seek reimbursement from Met Council or the Minnesota Department of Transportation for light rail relocation work unless such work is within a private easement or permit area, or other private, non-public right-of-way property.

For background purposes, we note that the Company has completed distribution relocation work for two light rail projects in the Twin Cities metropolitan area:

- The Hiawatha Corridor Project (aka Blue Line), constructed between 2001 – 2004; and
- The Central Corridor Project (aka Green Line), constructed between 2010 – 2014).

We did not need a Master Utility Agreement and consequently did not submit a regulatory filing for the relocation work on the Hiawatha Corridor and Central Corridor projects. Instead, we received a Notice and Orders from the Minnesota Department of Transportation to relocate distribution facilities for both projects. The relocation work for these projects was included within previous electric rate case capital expenditure budgets.

However, there may be some special facilities of a light rail project where we do seek and obtain reimbursement from the customer under our Section 6 tariff (Sheet Nos. 27-29.5). For example, multiple traction power stations are constructed in conjunction with a light rail project. The traction power station is essentially a substation that converts electric power from the electrical power delivered to the appropriate voltage, current type and frequency to supply the light rail system with traction current. The addition of such stations is addressed through the use of an Electric Service Agreement and a Statement of Work Requested. We articulate the work that will be done in the Statement of Work and the cost of such work. We then enter into an agreement with the project sponsor prior to such work. If the traction power station is revenue justified, then there is no up-front

payment for our work. If the traction power station does not revenue justify, then we recover our costs in accordance with the Statement of Work Requested.

c. Since an MUA was not needed for the Hiawatha and Central Corridor light rail projects, a regulatory filing was not required. Thus, we are not aware of any prior Commission Order approving a similar MUA.

Preparer: Barb Jerhoff/Dave Madigan
Title: Team Lead/Project Manager
Department: Account Management/Design & Engineering
Telephone: 651-229-5565/952-380-2643
Date: January 19, 2018