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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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**MPUC Docket Nos. E-002/GR-12-961; E-0002/GR-13-868; E-999/AA-13-599;
E-999/AA-14-579; E-999/AA-16-523; E-999/AA-17-492; E-999/AA-18-373;
OAH Docket No. 65-2500-38476**

*In the Matter of Sherco Unit 3
Energy Replacement Costs*

**OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION'S
REPLY TO EXCEPTIONS**

June 17, 2024

I. INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits its Reply¹ to the Exceptions filed by Northern States Power Company d/b/a Xcel Energy (Xcel).

In its Exceptions, Xcel brazenly accuses the Administrative Law Judge of “mischaracterizing” and “disregarding” the record.² As Xcel noted in comments prior to the initiation of these contested case proceedings, “prudence reviews undertaken by utilities commissions are some of the most complicated and technically challenging issues that come before them.”³ Rather than “mischaracterize” or “disregard” the record, the Administrative Law Judge dug into the extensive and complex evidence, assessed the credibility and persuasiveness of the expert witnesses, and exercised reasoned judgment in determining that Xcel acted imprudently. The Commission should adopt the ALJ’s conclusion that Xcel did not act prudently and must refund the imprudently incurred replacement power costs to ratepayers.

II. DISCUSSION

Xcel’s Exceptions illustrate its ongoing denial of the true gravity of the catastrophic explosion of Sherburne County Generating Station Unit 3 (Sherco 3). By continuing to rely on GE as a scapegoat for its own bad decisions, Xcel refuses to accept responsibility for its own imprudent decision to defer 2011 maintenance. This was a decision that could have cost lives; it did cost Minnesota ratepayers tens of millions of dollars in replacement energy costs they should never have shouldered and should be refunded for.

¹ The fact that these Reply Exceptions do not address a particular issue should not be interpreted as a waiver of the OAG’s recommendations or arguments on that issue. The OAG continues to support all of the positions advanced in its initial and reply briefs.

² Xcel Exceptions at 6, 14, 17, 22,

³ Xcel Comments at 9 (Jan. 27, 2021).

This Reply focuses on four substantial flaws in Xcel's continued arguments supporting the claims that it prudently operated and maintained Sherco 3 leading up to the catastrophic explosion, and that ratepayers are thus not entitled to a refund of replacement energy costs. First, despite Xcel's claims that an inspection capable of detecting SCC was cost prohibitive, Xcel's authorized revenue requirement at the time indicates it would have been a very reasonable cost. Second, the Commission has already recognized that utilities have an incentive to shift costs at ratepayer expense, as Xcel has done here. Third, despite its claims otherwise, Xcel's engineers and management clearly experienced some conflict that contributed to the decision to defer the 2011 inspection. Fourth, Xcel's claim that GE's design is the sole cause of the disaster at Sherco 3 suffers multiple key flaws.

Additionally, Xcel's claims of ratepayer benefits remain as unjustified and inappropriate as they have been since their inception, and the Commission should not approve these unreasonable and unsupported claims.

Finally, the OAG reaffirms why the Commission should adopt the GE Litigation calculation of replacement energy costs, instead of the 2012-2013 AAA calculation, as the underlying method for calculating replacement energy costs.

A. Xcel Cannot Reasonably Say the Cost of the 2011 Major Inspection was a Burden so Substantial it Overwhelmed Good Utility Practice, or Its Own Engineers' Safety Concerns.

Xcel argues that the ALJ Report "concludes that Xcel Energy's experienced engineers acted unreasonably prior to the Event by not recommending and conducting an atypical, costly, time-consuming, and potentially destructive turbine-blade removal and inspection procedure."⁴ This argument continues Xcel's protracted history of arguing against the inspection that could have

⁴ Xcel Exceptions at 3.

detected stress corrosion cracking (SCC), or at minimum suggested the need for Magnetic Particle Inspection (MPI) which could have detected SCC, because it was too expensive.⁵ However, good utility practice, and Xcel's financial condition at the time of the catastrophic explosion of Sherco 3, suggest that Xcel could have prudently expended the costs for such an inspection without experiencing any adverse consequences.

Throughout this proceeding, Xcel has argued that the major inspection intervenors point to that could have detected SCC and prevented the catastrophic explosion—one that included magnetic particle inspection (MPI)—would have been too costly. For example, Xcel witnesses testified that MPI would have cost between \$1 to \$2 million, plus unspecified additional costs for repair of damage to the dovetails caused by their removal for the inspection, whereas the replacement power costs totaled tens of millions of dollars and property loss totaled almost 200 million dollars.⁶ An Xcel engineer stated “that’s the shame of it. We wanted to do the inspection but we weren’t given the documents from [GE] that we required to expend that kind of dollars and time to do that inspection” because “we are ultimately accountable to upper management, the PUC.”⁷

While \$1 to \$2 million remains a significant amount, in the context of the \$2.67 billion revenue requirement authorized for Xcel's Minnesota electric operation at the time,⁸ the cost of performing MPI seems entirely reasonable. Put differently, if the process of preparing for and conducting MPI cost the full \$2 million as estimated, the full inspection would have consumed

⁵ See, e.g., *Sirois Direct* at 21 (“...it would not be prudent for an operator such as the Company to conduct a costly blade removal and inspection...”).

⁶ *Sirois Direct* at 20; *Murray Rebuttal* at 7; *Detmer Direct*, sched. 5 at 4.

⁷ *Ex. Xcel-58 Part 1* at 196 (*Kolb Deposition Transcript*).

⁸ *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-08-1065, Findings of Fact, Conclusions of Law, and Order at 69, Order Point 1 (Oct. 23, 2009).

just a little more than half of one tenth of one percent of Xcel’s authorized 2009 revenue requirement. Even assuming that the inspection process would have necessitated an additional \$2 million to “repair any damage to the dovetails caused by removal of the blade dovetail pins,”⁹ thus doubling the cost, this \$4 million inspection would still only have occupied just a little more than one tenth of one percent of Xcel’s 2009 Minnesota electric retail jurisdiction revenue requirement.

It is unreasonable to suggest, knowing as much as Xcel knew or should have known in 2011 about SCC, that a decision to spend a little more than one tenth of one percent of its revenue requirement on a safety inspection it had not performed in over a decade¹⁰—one that had no lower-cost equivalent¹¹—would itself have been deemed unreasonable.¹² Xcel knew about the potential for catastrophic failure,¹³ and it could not reasonably suggest it believed the cost of MPI could come anywhere close to what it would cost to restore a plant back to service after catastrophic failure—or what it cost to restore Sherco 3¹⁴— especially acknowledging how much higher such costs could have been in the event of serious injury or loss of life. The strong implication made by such a suggestion is that the Commission would not authorize any expenditure on a suspected critical safety issue without an exact directive tailored to the exact circumstances, which is inconsistent with Commission decisions.¹⁵

⁹ Murray Rebuttal at 7; (Note that this example uses an extreme additional cost of \$2 million for repairs that Xcel has never suggested, and does so only to illustrate the minimal impact MPI would have had on Xcel’s authorized revenue requirement in 2009).

¹⁰ ALJ Report Finding 129; Ex. DOC-25 (Unit 3 Inspection History).

¹¹ Sirois Direct at 21.

¹² Xcel Exceptions to ALJ Report at 22 and 23 n. 50.

¹³ ALJ Report Findings 138, 146, 147.

¹⁴ Detmer Direct, sched. 5 at 4.

¹⁵ If Xcel had initially sought to justify MPI costs to the Commission instead of the costs of replacement energy, Xcel could have used exactly the same arguments it now uses—i.e, the technically challenging nature of the inspection—to justify its cost. But that, of course, is a determination made with the benefit of hindsight and outside the scope of consideration here.

Xcel had the money, and it could have performed MPI. Performing MPI would have avoided the drastic property loss and replacement power costs Xcel incurred when Sherco 3 failed. Xcel just chose to spend the money elsewhere, which raises another concern: where that money went instead.

B. The Commission Recognizes That Utilities Have an Incentive to Shift Costs from Maintenance at Ratepayer Expense, Just as Xcel Did at Sherco 3.

Xcel argues that the ALJ improperly “suggests Xcel Energy’s maintenance and inspection decisions were driven primarily by financial considerations—i.e., that economic decisions won out over engineering.”¹⁶ Xcel also argues that “the Findings failed to consider the potentially imprudent action of performing costly inspections that were not technically justified.”¹⁷ These assertions are demonstrably false and disconcerting. Instead, the ALJ’s findings reflect the long-recognized utility incentives to shift costs from shareholders to ratepayers, by reducing maintenance outside of test-years due in part to reduced risk from pass-through fuel clause mechanisms.

The Commission has recognized that utilities have an incentive to shift costs from maintenance in such a way that ratepayers are left footing an inappropriate bill.¹⁸ The Commission has also recognized that when utilities shift risk to ratepayers and incur imprudent replacement power costs, the utility must bear the cost.¹⁹

¹⁶ Xcel Exceptions to ALJ Report at 26.

¹⁷ Xcel Exceptions to ALJ Report at 27.

¹⁸ *In the Matter of the Review of the July 2018–December 2019 Annual Automatic Adjustments Reports*, Docket No. E-999/AA-20-171, ORDER ACCEPTING 2018-2019 ELECTRIC AAA REPORTS; NOTICE OF AND ORDER FOR HEARING at 3 (Sep. 16, 2020).

¹⁹ Docket No. E-999/AA-20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED AND REQUIRING REFUND at 5 (Feb. 25, 2022).

As the Commission has stated, “[w]hen a utility’s plant cannot operate, the utility may need to buy replacement energy from the wholesale market—and the cost of replacement energy is charged to ratepayers through the FCA. To guard against the possibility that a utility would seek to increase profits by skimping on maintenance—with the expectation that ratepayers would bear any financial consequences—the Commission monitors utility expenditures related to maintenance and forced outages.”²⁰ Put simply, the Commission emphasizes that prudent maintenance of facilities is the utilities’ responsibility, and that ratepayers are not available as a backstop for imprudently occurred costs. The Commission has accordingly ordered utilities to refund imprudently incurred replacement energy costs to ratepayers.²¹

An Xcel witness confirmed that Xcel’s 2011 upgrades to Sherco 3’s intermediate and high pressure turbines were efficiency upgrades and not safety upgrades.²² The ALJ’s finding accurately states that the “upgrade to the HP and IP turbines was not a safety-related upgrade, but rather, an upgrade to increase the energy output of those units.”²³ Given the confirmation stated on the record by its own witness, it is hard to understand how Xcel disputes the ALJ’s finding. But also, Xcel’s actions are arguably more egregious than cost-shifting behavior the Commission is already on alert for.

Here, Xcel didn’t just skimp on maintenance that could have prevented an extraordinarily prolonged unplanned outage: Xcel instead invested its money in efficiency upgrades that would benefit the company’s shareholders at least as much, if not more, than its ratepayers.²⁴

²⁰ *Id.* at 2-3.

²¹ *Id.* at 5.

²² Evidentiary Hearing Transcript Volume 1 at 84-85 (Murray).

²³ ALJ Report Finding 176.

²⁴ Given that ratepayers pay for the capital costs of these efficiency upgrades, it is arguable whether they experience any net benefits resulting from increased efficiency reflected in rates. Compare (Footnote Continued on Next Page)

Accordingly, the Commission should reject Xcel’s argument that the decision to improve turbine efficiency did not take precedence over engineering concerns.²⁵

The Commission should continue its practice of safeguarding ratepayers from utilities’ incentives to skimp reduce maintenance costs to collect that money from ratepayers while simultaneously collecting any resulting replacement power costs from ratepayers through the pass-through fuel clause. Because Xcel deferred vital maintenance and spent money that could have paid for that maintenance on non-vital projects, the Commission should adopt the ALJ’s recommendation that Xcel acted imprudently.

C. Xcel Engineers’ Deferral to Xcel Management Does Not Mean There was No Internal Conflict and Continues to Show the Imprudence of Xcel’s Deferral of 2011 Maintenance.

Xcel contends that the “ALJ Report goes to great lengths to suggest that there was a conflict between the Company’s experienced engineers ... and ‘Xcel management.’”²⁶ Xcel also claims that because the ALJ’s narrative was extrapolated from one witness’s deposition statement,²⁷ and because that witness never testified that he “tried to convince Xcel Energy’s management to invest the time and money on such intrusive testing,”²⁸ that there was no conflict. But these arguments cannot hide the fact that there was conflict between what Xcel’s engineers wanted to do—and why—and what Xcel’s management was willing to do. Ratepayers should not pay for the consequences of Xcel’s internal conflicts.

to Xcel’s novel and unjustified arguments that improvements made to Sherco 3 during the outage conveyed net benefits on ratepayers.

²⁵ Xcel Exceptions at 26.

²⁶ Xcel Exceptions at 22.

²⁷ Xcel Exceptions at 22.

²⁸ Xcel Exceptions at 26.

During the evidentiary hearing, a former Xcel system engineer went to great lengths to describe the positive operating condition of Sherco 3's turbine and qualify why he wanted to do an inspection.²⁹ Nonetheless, in a deposition taken much closer in time to the catastrophic failure of Sherco 3, this former system engineer did testify that he and another Xcel engineer wanted to do the inspection, but GE did not give them the exact documentation they needed to justify the inspection to Xcel management and the Commission.³⁰ On cross examination, the former systems engineer confirmed that the inspection he wanted to perform was a Blades-Off MPI as recommended by TIL 1121.³¹ Xcel's argument that TIL 1121 gave Xcel discretion as an operator to determine whether a Blades-Off inspection was needed³² only reinforces what the systems engineer also confirmed: that it was ultimately Xcel's final decision, not GE's, whether to conduct the inspection.³³

There was enough industry knowledge regarding SCC as a developing problem that Xcel's engineers wanted to be able to justify the Blades-Off MPI, such that they "went to GE to say, 'Does this TIL apply to our unit specifically such that I have the horsepower to go to my management and recommend that we look [for SCC]?'"³⁴ Notably, this sentence comes immediately after the end of what Xcel identified as this engineer's full deposition testimony.³⁵

If these engineers did not see any cause for concern emerging at Sherco 3, there is no reason for them to have contacted GE as they did. The fact that GE did not give them the answer they

²⁹ Xcel Exceptions at 24.

³⁰ Xcel Exceptions at 23.

³¹ Evidentiary Hearing Transcript Volume 1 at 204-207 (Kolb); DOC Exceptions at 16.

³² Xcel Exceptions at 30.

³³ Evidentiary Hearing Transcript Volume 1 at 207 (Kolb).

³⁴ Kolb Deposition Transcript Volume 1 at 196; *compare with* Evidentiary Hearing Transcript Volume 1 at 209-210 (Kolb).

³⁵ Xcel Exceptions at 23.

sought is irrelevant: At least one of Xcel's engineers believed not only that SCC would be found, but that the stress corrosion cracks present were likely big enough they would have been found by visual inspection.³⁶ So, concerned about SCC at Sherco 3, Xcel's engineers pursued a document from GE that they believed could justify a costly safety inspection to management; Xcel's engineers did not obtain the needed document; thus, Xcel's engineers could not justify the inspection to management. And still Xcel claims that the Report "concludes that Xcel Energy's experienced engineers acted unreasonably"³⁷—but this is a claim that no party has made, a claim that was not made by the ALJ, and a claim Xcel cites no record evidence to support. Quite the opposite is true, in fact: the Report clearly recognized that Xcel's engineers tried to push for an inspection,³⁸ but Xcel's management still decided to defer the 2011 major inspection.³⁹ This was a conflict between what the engineers wanted to do—what they saw cause to do—and what Xcel's management was willing to do.

The fact that Xcel's engineers ultimately yielded to Xcel management is not evidence there was no conflict, but is instead a timeless example of how conflict between employees and management often resolves. Here, it was a conflict between engineering prudence and misplaced management priorities. Xcel's management made the call to disregard the repeated warnings and recommendation of Xcel's engineers. Ratepayers should not pay for Xcel's internal conflicts.

D. If GE's Design Was the Real Cause of Sherco 3's Catastrophic Failure, There Would Likely Have Been an Epidemic of Similar Failures. There Hasn't Been.

Xcel took exception to the ALJ Report's failure to acknowledge that Sherco 3's catastrophic explosion resulted from the "first time a turbine with Unit 3's design features failed

³⁶ Kolb Deposition Transcript Volume 1 at 196-197.

³⁷ Xcel Exceptions at 3.

³⁸ See, e.g., ALJ Report Findings 185, 186.

³⁹ ALJ Report Finding 187.

as a result of SCC in the liberated turbine blade attachments.”⁴⁰ Xcel further specifies that “Unit 3 was the *first* utility steam turbine generator with a *drum boiler* to fail as a result of SCC in *finger-pinned* blade attachments.”⁴¹ Underlying these complaints is a point Xcel has clung to: GE’s design was so deficient that SCC would inevitably occur, even in a pure water environment,⁴² and that GE’s design was the root cause of Sherco 3’s catastrophic failure.⁴³

If GE’s design was actually so deficient that SCC was inevitable, Xcel should have been able to show an epidemic of similar failures nationwide. Especially, as Xcel laments, because GE did not issue TIL 1886 for two years after Sherco 3’s catastrophic explosion.⁴⁴ TIL 1886 effectively revised TIL 1121, as Xcel’s engineers had sought when they contacted GE,⁴⁵ such that as modified it specifically applied to Sherco 3’s configuration.⁴⁶ Without GE’s explicit mandate, as expressed in TIL 1886, other plant operators would have been nearly as powerless to prevent similar failures as Xcel claims it was.⁴⁷ But this was not the case. DOC Witness Polich references the report of Stuart B. Brown, an expert retained by GE during the GE Litigation, and who conducted a review of SCC in steam turbines similar to Sherco 3. Mr. Brown’s review found an extraordinarily low occurrence of SCC in similar facilities, so low it is arguably beneath a margin of error.⁴⁸

⁴⁰ Xcel Exceptions at 1.

⁴¹ Xcel Exceptions at 12 (Emphasis original).

⁴² Evidentiary Hearing Transcript Volume 1 at 49 (Tipton)

⁴³ Ex. Xcel-30 at 7 (Tipton Rebuttal); Ex Xcel- at 13 (Daniels Direct).

⁴⁴ Ex. Xcel-23 at Sched. 16 (Sirois Direct, Part 3, pdf page 103/108).

⁴⁵ Kolb Deposition Transcript at 196-197;

⁴⁶ Xcel Exceptions at 14.

⁴⁷ See, e.g., Evidentiary Hearing Transcript Volume 1 at 49: “It’s a design matter. Once it was designed, manufactured, and shipped, that was it.” (Tipton).

⁴⁸ Ex. DOC-5 at 16 (Polich Rebuttal).

Additionally, even Xcel's expert witness (who concluded that GE's design was the sole cause of the catastrophic failure) admitted that if Xcel had conducted MPI in 2011, the inspection would have avoided the disaster.⁴⁹ And while Xcel has touted the fact that this expert's report is the only analysis of physical data and evidence in the record,⁵⁰ it is disconcerting at best that this expert did not know, until the evidentiary hearing in 2013, that Xcel had performed a minor inspection instead of a major inspection—or fully understand the difference between the two.⁵¹

The fact that there was no epidemic of Sherco 3-type catastrophic failures following the explosion—especially in the years before GE issued TIL 1886—and the fact that Xcel's own root cause analysis witness admitted that an inspection would have prevented the catastrophic failure, strongly refute Xcel's claim that GE's design was the sole cause of Sherco 3's catastrophic failure, and that claim is one the Commission should completely reject.

E. Xcel's Claims of Ratepayer Benefits That Should Offset Any Refund Ordered Are Inappropriate on Their Lack of Merit in a Prudency Proceeding, Not Because the ALJ Refused to Consider Them.

Xcel argues that the ALJ's refusal to consider offsets to the actual replacement energy costs—*i.e.*, benefits it argues ratepayers received due to Sherco 3's restoration—stems from an overly-narrow reading of the Commission's referral of the matter to the Office of Administrative Hearings.⁵² However, the ALJ did discuss these issues⁵³ and substantively found that Xcel had not carried its burden of proof to support any of its claimed avoided costs and collateral benefits⁵⁴ before finding that such issues were outside the scope of this proceeding.⁵⁵ That said, if the

⁴⁹ Evidentiary Hearing Transcript Volume 1 at 45 (Tipton).

⁵⁰ Xcel Initial Brief at 13.

⁵¹ Evidentiary Hearing Transcript Volume 1 at 45 (Tipton).

⁵² Xcel Exceptions at 47, 48.

⁵³ ALJ Report at 81-83 (Findings 351-359)

⁵⁴ ALJ Report Finding 353.

⁵⁵ ALJ Report Finding 354.

Commission believes that the Report is too narrow, the Commission should still reject all of Xcel's proposed offsets and credits because they are unsupported, vague, and have no merit in these proceedings.

The OAG and other parties extensively addressed Xcel's offset arguments in testimony, at trial, and in briefing.⁵⁶ To any extent the Commission entertains Xcel's baseless arguments, then, there is a fully developed record refuting them. As one of many examples, Xcel continues to claim that ratepayers significantly benefitted because the costs to acquire and install new equipment at Sherco 3 were almost entirely covered by insurance proceeds.⁵⁷ But as OAG witness Lee testified, ratepayers pay the costs of Xcel's insurance and therefore rightfully deserve any benefits stemming from it.⁵⁸ In other words, Xcel paying for equipment to replace what was destroyed at Sherco 3 was not some magnanimous gesture it deserves credit for.

Additionally, Xcel itself has stated that its "restoration strategy was to restore the Unit to its pre-event condition. This approach was supported by our insurance coverage which obviously would not reimburse the Company for a final product that was better than what we started with."⁵⁹ It is plainly inconsistent for Xcel to argue its ratepayers are better off than they were when Xcel's own ratepayer-paid and insurance-based restoration strategy would not pay for anything better than what was already there.

As the Department has observed, in acting prudently to mitigate costs during the restoration process, Xcel was not conveying upon its ratepayers a special benefit, but instead it was merely

⁵⁶ Lee Rebuttal at 14-20; OAG Initial Brief at 7-12; DOC Initial Brief at 46-56; XLI Initial Brief at 20-25

⁵⁷ Xcel Exceptions at 49.

⁵⁸ Ex. OAG-2 at 19 (Lee Rebuttal).

⁵⁹ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-13-868, Brevig Direct at 3 (Nov. 4, 2013).

holding up its end of the regulatory compact⁶⁰—the end that it dropped in failing to prevent the catastrophic explosion of Sherco 3.

For these reasons and for all those argued in testimony and briefing by the OAG, the Department, and XLI, the Commission should reject any offsets to that refund beyond the portion of the GE Litigation settlement attributable to replacement power costs.

F. The Commission Should Adopt the GE Litigation Calculation of Replacement Energy Costs Because It Accounts For Nuances of the Energy Market in Ways the AAA Calculation Does Not.

Xcel Large Industrials (XLI) argue that the Commission should adopt the ALJ's Finding that the 2012-2013 AAA calculation of replacement energy costs instead of the GE Litigation calculation as recommended by the OAG, the Department, and Xcel.⁶¹ The OAG explained the reasons for the superior accuracy of the GE Litigation calculation in testimony, briefing, and exceptions and continues to recommend that the Commission adopt the GE Litigation calculation as the underlying method for determining replacement energy costs because it is the most accurate calculation.

CONCLUSION

As demonstrated by the OAG, the Department, and XLI, and determined by the ALJ, Xcel acted imprudently in the operation and maintenance of Sherco 3 prior to the plant's catastrophic explosion on November 11, 2011. Accordingly, the Commission should find that all replacement energy costs incurred as a result are by default unreasonable and cannot be recovered from ratepayers. But because these costs already have been recovered from ratepayers, the Commission should order a refund of all replacement energy costs as calculated based on the GE Litigation

⁶⁰ DOC Initial Brief at 26.

⁶¹ XLI Exceptions at 1.

calculation with interest, minus the appropriate offset from the GE Litigation settlement all parties agreed to. The Commission should disregard Xcel's irrelevant, novel, and unjustified ratepayer benefits or offsets.

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Respectfully submitted,

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