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

Docket No. E-002/GR-21-630

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

Docket No. G-002/GR-23-413

**REPLY COMMENTS OF THE
MINNESOTA DEPARTMENT
OF COMMERCE**

INTRODUCTION

The court of appeals directed the Minnesota Public Utilities Commission to give “due consideration” to Xcel Energy’s mandatory pension trust contributions in assessing the utility’s rate base.¹ As a result, Xcel is generally entitled to a return on the prepaid pension asset. But “due consideration” does not require the Commission to accept Xcel’s claim that it is entitled to a weighted average cost of capital return on the entire cumulative difference between pension trust contributions and pension expense. Before Xcel can earn a return, the Commission must determine the nature and value of Xcel’s prepaid pension asset interest. And as a matter of law, Xcel has a limited interest with only nominal value.²

¹ *In re Appl. by N. States Power Co.*, No. A23-1672, 2025 WL 249995, at *9 (Minn. Ct. App. Jan. 21, 2025) (citing *In re Appl. by Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 12 N.W.3d 477, 493 (Minn. Ct. App. 2024)).

² DOC Initial Cmts. at 7–10 (Mar. 10, 2026) (eDocket no. [20263-229106-01](#)).

Despite asserting it is entitled to a return on the entire prepaid pension asset's value, Xcel makes no attempt to establish that it has a fee simple interest. Instead, Xcel misstates the effect of the court of appeals' holding and makes arguments about whether Xcel should be entitled to any return at all.³ But these arguments neither establish the nature of Xcel's legal interest nor address the appropriate return. The Commission should not let Xcel's misplaced arguments distract from the remaining tasks: ascertaining the nature of Xcel's prepaid pension asset interest and the appropriate rate of return on it.

ANALYSIS

The Commission should reject Xcel's flawed arguments. Contrary to Xcel's claims, the court of appeals' decision does not dictate a particular prepaid pension asset rate treatment. Nor do Xcel's arguments about why prepaid pension can be included in rate base limit the Commission's discretion to determine Xcel's legal interest and the appropriate rate of return.

I. XCEL MISSTATES THE COURT OF APPEALS' HOLDING AND THIS PROCEEDING'S PURPOSE.

In its initial comments, Xcel correctly identifies the court of appeals' holding that the Commission must give "due consideration" to a utility's mandatory pension trust contributions as an "expense of a capital nature."⁴ As Xcel notes, the court first adopted this holding in the related *Minnesota Power* appeal.⁵ In that case, the court rejected arguments that prepaid pension may be categorically excluded from rate base because it lacks capital asset characteristics under Minn. Stat. § 216B.16, subd. 6.⁶ Although prepaid pension could not be categorically rejected from rate base, the court observed that a factual dispute remained about whether Minnesota Power's claimed

³ *Id.* at 7–15.

⁴ Xcel Initial Cmts. at 7 (Mar. 10, 2026) (eDocket no. [20263-229114-01](#)); *In re Appl. by N. States Power Co.*, 2025 WL 249995, at *9.

⁵ Xcel Initial Cmts. at 7.

⁶ *In re Appl. by Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 12 N.W.3d at 494.

asset was solely attributable to investor contributions.⁷ Here, Xcel claims that the court of appeals' decisions in *Minnesota Power* and its own appeal dictate that unless the Commission finds prepaid pension is not solely funded by investors, it is entitled to a return on the entire prepaid pension balance at the weighted average cost of capital ("WACC").⁸ Xcel is wrong.

The prepaid pension asset's source determines only whether the asset may be included in rate base at all—not the appropriate rate treatment.⁹ In both appeals, the court addressed whether the Commission could exclude prepaid pension from rate base on the grounds that prepaid pension lacks rate base asset characteristics. In both cases, the court concluded that the Commission could not.¹⁰ After making this determination in Xcel's appeal, the court remanded the matter to the Commission to determine whether any prepaid pension asset should be included in Xcel's rate base.¹¹ Put another way, the court instructed the Commission to accept that prepaid pension can be a capital asset under Minn. Stat. § 216B.16, subd. 6. The asset's exact dimensions and Xcel's interest in the asset, however, still need to be resolved.

In sum, the Commission should not rely on Xcel's appeal decision interpretations. On remand, the Commission must determine (1) the nature and scope of any prepaid pension interest and (2) the appropriate return on that interest. The court did not mandate WACC or approve a return on the trust's full cumulative excess; it required "due consideration" in rate-base determinations consistent with Minnesota law. Thus, even if Xcel demonstrates that prepaid

⁷ *Id.*

⁸ Xcel Initial Cmts. at 2–3, 7–8.

⁹ *In re Appl. by N. States Power Co.*, No. A23-1672, 2025 WL 249995, at *10 (characterizing the extent to which the asset is shareholder-funded as a "threshold question.").

¹⁰ *In re Appl. by Minn. Power for Auth. to Increase Rates for Elec. Serv.*, 12 N.W.3d at 493; *In re Appl. by N. States Power Co.*, 2025 WL 249995, at *10.

¹¹ *In re Appl. by N. States Power Co.*, 2025 WL 249995, at *10.

pension belongs in rate base, the Commission still must exercise discretion and expertise in determining the asset's dimensions.¹²

II. XCEL'S ARGUMENTS ARE IRRELEVANT TO DETERMINING THE PREPAID PENSION ASSET'S SIZE AND APPROPRIATE RATE OF RETURN.

Rather than establishing a property interest in the entire prepaid pension balance, Xcel presumes that because prepaid pension can be included in rate base that the entire amount must be added. But mere expectations do not create a property interest.¹³ Contrary to Xcel's presumption, Xcel does not own the prepaid pension asset. Instead, the Xcel Energy Inc. Master Pension Trust's trustee owns it.¹⁴ And Xcel is only entitled to residual assets (i.e., the leftovers) following trust termination.¹⁵ And because Xcel's future interest is uncertain to ever vest, the interest has – at most – nominal value for ratemaking purposes.¹⁶ But even if shareholder contributions were dispositive as Xcel claims, actuarial principles establish that numerous independent factors affect the prepaid pension asset's size. And decisions from other jurisdictions that Xcel cites as support for its position are neither binding on the Commission nor persuasive.

A. Numerous Factors Beyond Shareholder Contributions Impact the Prepaid Pension Asset's Size.

Even if the only remaining question, as Xcel contends, is whether the prepaid pension asset is solely the result of shareholder contributions, investors are not the only source. The asset also is the product of changing actuarial assumptions.

¹² Minn. Stat. § 216A.03; DOC Initial Cmts. at 12; Hunt Aff. ¶¶ 10–11 (Mar. 10, 2026) (eDocket no. [20263-229106-03](#)).

¹³ *Batra v. Bd. of Regents of the Univ. of Neb.*, 79 F.3d 717, 720 (8th Cir. 1996) (holding for a property interest to arise, a plaintiff must have more than a “mere subjective expectancy.”).

¹⁴ Dornfeld Aff., Ex. 3 – Attach. C § 1.1 (p. 3 of 30) (eDocket no. [20263-229106-02](#)); Ex. 4 at 2.

¹⁵ DOC Initial Cmts. at 7–8.

¹⁶ *Id.* at 9–10.

While the prepaid pension asset is defined as cumulative contributions in excess of cumulative expense, both components are materially shaped by actuarial assumptions and by minimum contribution requirements governed by federal law.¹⁷ Employers must make pension trust contributions to cover benefits accrued during the plan year plus eliminate unexpected shortfalls.¹⁸ But just as certain conditions can create shortfalls, other conditions can generate a windfall. Under strong market conditions, for example, a plan may record an actuarial gain lowering pension expenses even as contributions are unchanged.¹⁹ Likewise, when interest rates rise, the future pension benefits' present value falls, lowering the annual service cost.²⁰ Under both scenarios, the prepaid pension asset's value increases independently of shareholder contributions.²¹ In short, a pension trust asset's size can change year-to-year due solely to unexpected differences between actuarial assumptions and actual economic conditions. Given these mathematical facts, shareholder contributions are but one factor affecting the prepaid pension asset's size. Thus, even if the Commission accepted Xcel's claims about the remaining issue's scope, these actuarial dynamics make a blanket WACC return on the entire balance inappropriate.

B. The Commission's Discretion to Determine the Prepaid Pension Asset's Dimensions is Not Limited by FERC Order or Other Decisions.

Xcel also asserts that it is entitled to a WACC return on the prepaid pension asset's full balance because other regulators have permitted such returns. But the Commission is not bound by decisions in other jurisdictions. Xcel, moreover, ignores that at least some of these decisions involved materially different circumstances. Last, Xcel wrongly claims that the Commission routinely permitted the inclusion of prepaid pension assets in rate base before this case.

¹⁷ DOC Initial Cmts. at 5.

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ Dornfeld Aff., Ex. 1 at 7 (p. 12 of 29).

²¹ Hunt Second Aff. ¶¶ 4–5.

The Commission has broad discretion to determine the dimensions of Xcel’s prepaid pension asset interest. As the Department previously explained, regulatory property rights arise from regulatory agency decisions taking into consideration factors such as state laws, past decisions, and accounting rules.²² Exercising its authority and expertise, the Commission should not permit Xcel’s regulatory asset to exceed its real-world property interest. Such a decision is appropriate because it comports with both the “you cannot earn on more than you own” rule and the traditional treatment of property rights.²³

The Commission’s discretion is unaffected by the various decisions cited by Xcel from other jurisdictions.²⁴ In at least several cases, those decisions involved materially different circumstances. The Federal Energy Regulatory Commission (“FERC”) decisions, for example, generally involved formal challenges to formula rates.²⁵ But formula ratemaking limits FERC’s discretion to modifying or removing costs from rates.²⁶ In the underlying *Delmarva* proceeding, FERC rejected a ratepayer challenge “as inconsistent with the formula rate,” explaining that assertions “that expenses should be treated differently from how the formula prescribes, are outside the scope of a formal challenge.”²⁷ In the *Potomac Electric* matter, FERC again rejected a formal challenge, in part, because challenges are “limited to whether costs are reasonable, prudent, and properly recorded, and whether the formula rate has been applied according to its terms.”²⁸ The upshot is that FERC had to either approve a full return or deny recovery entirely as incompatible

²² DOC Initial Cmts. at 11.

²³ *Id.* at 12.

²⁴ Xcel Initial Cmts. at 13.

²⁵ *Delmarva Power & Light Company*, 169 FERC ¶ 61,171, at ¶¶ 13, 48 (2019); *Potomac Electric Power Company*, 169 FERC ¶ 61,172, at ¶ 53 (2019)

²⁶ Hunt Second Aff. ¶¶ 8–10.

²⁷ *Delmarva Power & Light Co.*, 160 FERC 61,102 ¶ 19 (2017).

²⁸ *Potomac Electric Power Company*, 169 FERC ¶ 61,172, at ¶ 51 (2019).

with the formula rate. The Commission, in contrast, does not engage in formula ratemaking, retaining considerable discretion to arrive at a reasonable decision.²⁹ Given the differences, the Commission should put little weight on these cases.

Xcel also claims that the Commission’s 2023 decision to exclude prepaid pension from rate base was a departure from long-standing practice.³⁰ This claim is both inaccurate and irrelevant. Contrary to Xcel’s claim, the Commission’s 2013 decision was an outlier. In that case, prepaid pension was not specifically litigated by the parties.³¹ To that end, the Commission observed in a 2018 decision that “in all recent rate cases where rate-base treatment of prepaid pension assets has been a contested issue, the Commission has ruled that these costs should not be included in rate base.”³² But even if it were a long-standing practice to include prepaid pension in rate base, the Commission would not be bound to return to it.³³ And here, basic property law and ratemaking principles dictate a different result.

In sum, these prior decisions – both from other jurisdictions and prior Minnesota proceedings – do not curb the Commission’s legal authority to determine Xcel’s property interest and appropriate rate of return. And given the materially different circumstances, these decisions provide little guidance for this proceeding.

²⁹ Hunt Second Aff. ¶¶ 10–11.

³⁰ Xcel Initial Cmts. at 5.

³¹ *In re Appl. of Minn. Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Serv. in Minn.*, Docket No. G011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS, & ORDER at 11–12 (Oct. 31, 2016) (eDocket no. [201610-126124-01](#)).

³² *In re Appl. of Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.*, MPUC Docket No. E-015/GR-16-664, FINDINGS OF FACT, CONCLUSIONS, & ORDER at 33 (Mar. 12, 2018) (eDocket no. [20183-140963-01](#)).

³³ *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009) (“An administrative agency concerned with furtherance of the public interest is not bound to rigid adherence to precedent.”).

CONCLUSION

The Commission should reject Xcel’s unsupported claim to a WACC return on the entire prepaid pension balance. The court of appeals required consideration of mandatory pension contributions—not acceptance of Xcel’s expansive view of its property rights. Exercising its broad discretion, the Commission should only allow Xcel to earn a return on \$1,000 of rate base.

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Respectfully submitted,

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