MINNESOTA
PUBLIC UTILITIES COMMISSION

Staff Briefing Papers

Meeting Date	**July 16, 2026**	**Agenda Item 4****
Company	Northern States Power Co. d/b/a Xcel Energy	
Docket No.	E-002/GR-21-630 G-002/GR-23-413 **In the Matter of the Application of Xcel Energy to Increase rates for Electric Service in the State of Minnesota** **In the Matter of the Application of Xcel Energy to Increase Rates for Gas Service in the State of Minnesota**	
Issues	Following the Court of Appeals remand, how should the Commission resolve Xcel's request to include in rate base the amount claimed as a prepaid pension asset and earn a return at the Commission-authorized weighted average cost of capital? Should the prepaid pension asset be recovered through rate base, or by another method, and if so, how much of Xcel's claimed prepaid pension asset should be included in rate base, and what rate of return?	

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✓ **Relevant Documents**	**Date**
Public Utilities Commission – Briefing Papers, Volume 1	May 12, 2023
Public Utilities Commission – Findings of Fact, Conclusions of Law, and Order (GR-21-630)	July 17, 2023
State of Minnesota Court of Appeals Opinion (A23-1672)	January 21, 2025
Public Utilities Commission – Order Accepting and Adopting Agreement Setting Rates (GR-24-413)	March 5, 2025

✓ **Relevant Documents**	**Date**
Public Utilities Commission - Order Authorizing Notice and Comment Period After Remand	July 23, 2025
Xcel Energy – Initial Comments	March 10, 2026
Department of Commerce – Initial Comments and Exhibits	March 10, 2026
Xcel Large Industrials – Initial Comments	March 10, 2026
Xcel Energy - Reply Comment	April 7, 2026
Xcel Large Industrials – Reply Comment	April 7, 2026
Office of the Attorney General – Reply Comment	April 7, 2026
Department of Commerce – Reply Comments	April 7, 2026
Xcel Energy – Response to Reply Comments	May 5, 2026

BACKGROUND

On October 25, 2021, Northern States Power Company, d/b/a Xcel Energy (Xcel Energy or Xcel) filed a general rate case seeking three consecutive rate increases under the Multi-Year Rate Plan Statute. As part of this request, Xcel requested recovery of a prepaid pension asset.

The Public Utilities Commission of Minnesota (PUC or Commission) referred this matter for hearing to Administrative Law Judge (ALJ) Christa L. Moseng on December 23, 2021. On March 31, 2023, ALJ Moseng issued her Findings of Fact, Conclusions of Law, and Recommendations (ALJ Report), finding that recovery of the prepaid pension asset as proposed by Xcel was not appropriate, consistent with Commission precedent. On July 17, 2023, the Commission issued its Findings of Fact, Conclusions, and Order (Order). As part of its Order decisions, the Commission found that Xcel had not met its burden of proof on prepaid pension asset, and disallowed recovery.

On November 3, 2023 Xcel Energy appealed the Commission's Order to the Minnesota Court of Appeals. This appeal was consolidated with others as Docket A23-1672 by the Court of Appeals.

On January 21, 2025, the Minnesota Court of Appeals issued an opinion that reversed the Commission's decisions expressed in the Commission's Order of July 17, 2023, on the issues of prepaid pension asset and executive compensation. On the issue of the prepaid pension asset the Court found that the Commission's categorical exclusion of the prepaid pension asset from rate base was not supported by substantial evidence and was arbitrary and capricious. The Court required the Commission to revisit the prepaid pension asset on remand.

On June 24, 2024, all parties to Docket G-002/GR-23-413, In the Matter of the Application of Xcel Energy to Increase Rates for Gas Service in the State of Minnesota, agreed to implement the decision in this docket on prepaid pension asset for the purposes setting rates under the settlement of that rate case. This agreement was memorialized on March 5, 2025 in the Commission's Order Accepting and Adopting Agreement Setting Rates.

On July 23, 2025, the Commission issued an order stating its intention to reopen the record on prepaid pension asset and authorized the Executive Secretary to issue a Notice of Comment. This Comment Period was established by Notice on December 23, 2025.

On March 10, 2026, Xcel Energy, The Department of Commerce Division of Energy Regulation (Department or DOC), and Xcel Large Industrials (XLI) filed comments. On April 7, 2026, Xcel, XLI, Department, and the Office of the Attorney General Residential Utilities Division (OAG) filed Reply Comments, and on May 5, 2026, Xcel Energy filed a Response to the Reply Comments.

DISCUSSION[1]

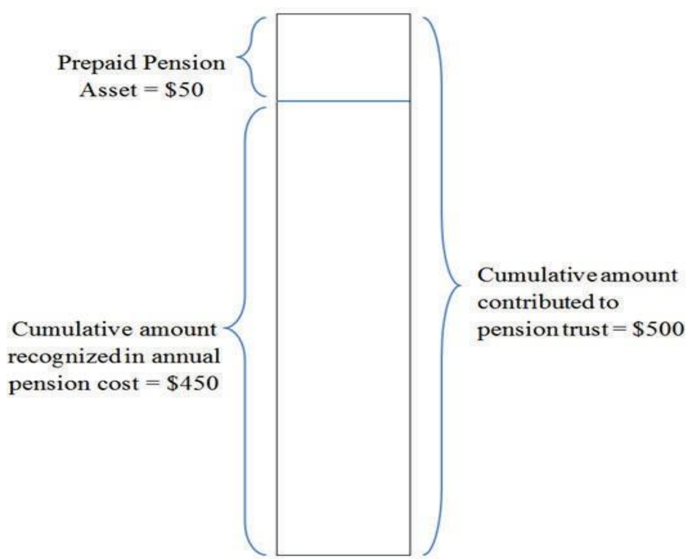
A. Party Initial Positions

1. Xcel Energy

Xcel stated that the prepaid pension asset arises in connection with the Company's qualified pension plan. Over the life of the plan, if the cumulative expense amount is less than the cumulative contributions made by the Company, the Company has a prepaid pension asset. If the cumulative recognized expense exceeds the cumulative contributions to the plan, there is an unfunded liability. Based on the Company's accounting records, the Company asserted that it can quantify the total amount of actuarially calculated expense for each of those benefits over the entire period that the Company has offered that benefit.[2]

The Company also noted that, over the long run, pension contributions and pension expense will even out, but over the short and intermediate run there will almost certainly be differences, which are recorded as prepaid pension assets or pension liabilities.[3] Figure 9 depicts the prepaid pension asset as the excess contributions over the recognized pension expense.

Figure 1[4]



The Company noted that the contributions and expense are different in any given year due to the fact that the qualified pension expense calculation is governed by the Aggregate Cost

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[1] See Also Briefing Papers, Docket 21-630, Volume 1. pp. 25-41 and Briefing Papers, Docket 23-413, pp. 7-8.

[2] Schrubbe Direct, at 60, 18-20.

[3] *Id*, at 61, 20-23.

[4] Schrubbe Direct, at page 62.

Method (ACM) and FAS 87. These set forth the rules that, in order to have them comply with GAAP, companies must follow in determining their pension costs. In contrast, the contributions are driven by federal law requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (IRC).[5] Although the expense and contribution calculations both use accrual methodologies, the assumptions, attribution methods, and periods of time over which the costs are required to be recognized are different and thus can often result in different annual amounts.[6] The Company pointed out that, except for the payment of benefits and plan expenses, federal law prohibits the withdrawal of any amounts from the pension trust fund.

a. Ratemaking Treatment of Prepaid Pension Asset

Xcel asserted that prepayments by the utility are generally treated as an addition to rate base, whereas prepayments by customers are generally treated as a reduction to rate base.[7] Hence, the Company proposed to include its prepayments of pension expense as an addition to rate base and to treat the customers' prepayments as a reduction to rate base. Xcel asserted that, since the prepaid pension asset is larger than the unfunded liability, the Company has a net asset and therefore has an increase to rate base (net of ADIT). The Company proposed to earn a return on the asset at the Company's weighted average cost of capital (WACC).[8]

With regard to the rise of the Accumulated Deferred Income Taxes (ADIT) in connection with the prepaid pension asset or accrued unfunded liability, when the Company makes a contribution, it is allowed to deduct the contribution amount (up to IRS-imposed limits). That deduction shields income from taxes, which gives rise to deferred taxes. Thus, the amount by which the contributions in a particular year exceed the annual recognized cost for that year gives rise to a deferred tax liability. The opposite situation occurs when the annual cost recognized for a particular benefit exceeds the contribution, which give rise to a deferred tax asset.[9] Table 10 The Company shows the amount of benefit assets and liabilities included in the test year rate base and the amounts that must be offset by the ADIT. On a Minnesota electric jurisdictional basis, the net balance is approximately $95.4 million.

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[5] *Id*, at 62, 14-18.

[6] *Id*, at 62, 18-22.

[7] *Id*, at 63, 12-14.

[8] *Id*, at 63, 21-24.

[9] Schrubbe Direct, at 64, 13-17

Table 1			
Pension and Benefits Assets and Liabilities ($)			
Rate Base Benefit (Short and Long-Term)	**Non-Plant Rate Base Asset/(Liability)**	**Associated Accumulated Deferred Tax Asset/(Liability)**	**Net Rate Base Impact Asset/(Liability)**
Prepaid Pension Asset	167,257,722	(46,834,002)	120,423,720
Retiree Medical - FAS 106	(25,472,046)	7,132,453	(18,339,593)
Post-Employment Benefits FAS 112	(9,283,712)	2,599,542	(6,684,171)
Total	**132,501,964**	**(37,102,007)**	**95,399,957**

The Company asserted that, because it represents shareholder capital held for future use and because it will reduce ratepayer costs in those years, the $95.4 million should be added to the Company's rate base.[10]

The Company noted that the prepaid pension asset's growth was driven by two factors: First, the enactment by Congress of the Pension Protection Act of 2006. The Pension Protection Act also created penalties for plans that are underfunded, including an increase in Pension Benefit Guaranty Corporation (PBGC) premiums. Xcel further stated that the PBGC was established by Congress to insure pension benefits in the private sector. The second factor was the reduction in interest rates, which were caused by the Federal Reserve's efforts to stimulate the national economy in the wake of the 2008 recession.[11] The resulting drop in discount rates caused the Company's pension liabilities to become larger, which increased the amount of underfunding. The Company argued that it can have an underfunded pension plan at the same time it has a prepaid pension asset, because they measure different things. Xcel pointed out that underfunded pension plan occurs when the projected benefit obligation exceeds the fair value of the pension plan assets. A prepaid pension asset occurs when the cumulative cash contributions to the trust exceed the cumulative pension expense recognized under FAS 87, since the inception of the pension plan.

The Company stated that the net asset should be included in rate base for three separate and independent reasons. First, that it is a well-established regulatory principle for prepayments to be included in rate base, regardless of whether they are prepayments by the utility or by its customers. Second, having an adequately funded pension plan helps attract and retain the employees who provide safe and reliable electric service to customers. Third, customers are receiving the benefit of a return on the prepaid pension asset and; therefore, it is appropriate that the Company earn a return on its prepayment as well.[12]

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[10] *Id*, at pages 64-65, 26-27 and 1-2.

[11] Schrubbe Direct, at 66, 2-17.

[12] *Id*, at pages 67-68, 22-27 and 1-9.

Customers receive benefits through the annual pension cost determined under both the ACM (Xcel Plan) and FAS 87 (XES Plan), which includes an expected return on asset (EROA). The EROA percentage is multiplied by the value of the assets in the pension trust, and the product of that calculation is subtracted from the annual pension cost. Thus, the return on the prepaid pension asset reduces the annual qualified pension cost passed on to ratepayers on a dollar-for-dollar basis.[13] The pension trust fund balance that is multiplied by the EROA includes the prepaid pension asset. The Company pointed out that customers receive the benefit of the earnings on the entire amount of assets in the pension trust, not just the amount that has been recognized in annual pension cost. The return is reflected as a decrease in annual pension cost. Table 2 quantifies the reduction in annual pension expense that customers experienced as a result of the prepaid assets.

Table 2			
Amounts are NSPM Electric State of MN (2022 13-month Average)			
Pension Plan	**Prepaid Pension Asset Balance**	**EROA**	**Rate Reduction from Prepaid Pension Asset**
NSPM	167,257,722	6.60%	11,039,010
XES	32,364,435	6.60%	2,136,053
Total			**$13,175,062**

The Company observed that the earnings on the prepaid pension asset will reduce the Company's revenue requirement by nearly $13.2 million in 2022 and are expected to reduce the revenue requirement by a similar amount through 2024. Given that the reduction is passed through to customers on a dollar-for-dollar basis, Xcel asserted that its Minnesota retail customers realize a substantial benefit as a result of the prepaid pension asset.

Xcel noted that the disparity between the WACC (7.31%) and the EROA (6.60 %) does not disadvantage customers by the use of the WACC as the return on the prepaid pension asset for the following reasons: First, the Xcel pension plan balance on which customers earn a return is much larger than the balance on which they pay a return. Second, customers earn a return on the XES prepaid pension asset, but do not pay a return on that asset because it is not included in rate base for ratemaking purposes. Third, the prepaid pension asset allows the Company to avoid paying incremental PBGC premiums that would be added to the pension expense paid by customers in the absence of the prepaid pension asset.

The Company noted that the 6.60% EROA is applied to the full amount of the Xcel prepaid pension asset, which totals approximately $167.3 million. As shown in Table 2 above, that reduces the pension expense included in rates by more than $11 million per year. In contrast,

[13] *Id*, at page 68, 13-19.

customers pay a 7.31% return on only $95.4 million because the amount included in rate base reflects reductions for ADIT and the unfunded FAS 106 and FAS 112 liabilities. Thus, the balance on which customers earn a return is far larger than the balance on which they pay a return.[14] Furthermore, the Company stated that the thirteen-month average balance of the XES Plan net prepaid pension asset for Xcel's electric retail jurisdiction will be approximately $32.3 million in 2021. With an EROA of 6.60%, Xcel's electric retail customers will receive the benefit of approximately $2.1 million (electric retail) of return on an asset on which they pay no return. The Company noted that, in contrast, multiplying the Xcel prepaid pension asset of $95.4 million by the 7.31% WACC requested by the Company, results in a return of approximately $7.0 million on an electric O&M basis. Even when that amount is grossed up for taxes, the total amount paid by customers is $9.8 million, resulting to a net benefit of approximately $3.4 million, after payment of the WACC return on the net prepaid pension asset.[15]

Xcel attested that its pension plan is currently underfunded, but that it would be further underfunded by $167 million without the prepaid pension asset. Additionally, the Company stated that, absent the prepaid pension asset, the PBGC premiums would increase to $3.3 million, on a Minnesota basis. As such, the Company repeated that the prepaid pension asset should be included in rate base; consistent with how other prepayments are treated, including prepayments by customers.

b. Commission Precedent on Prepaid Pension Asset

Xcel noted that in recent Minnesota Power, Minnesota Energy Resources Corp. (MERC), and Otter Tail Power Company (Otter Tail) rate cases, the Commission has excluded the utilities' prepaid pension assets from rate base and disallowed any return on those assets.[16] The Company submitted that the reasoning employed by the Commission in those cases is either mistaken or does not apply to Xcel. Xcel stated that the Commission rejected requests to include the utilities' pension and benefit-related assets and liabilities in rate base because:[17]

- The utility "recovers its allowable pension expense from ratepayers, and is not being denied recovery of this operating cost;"
- The pension-plan assets and benefit obligations "go up and down depending on funding, market conditions, or amendments to the plan;"
- The balances in the prepaid pension asset are "temporary, and fundamentally different

[14] Schrubbe Direct, at 71, 12-18.

[15] *Id*, at page 72, 8-20.

[16] In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota, Docket No. E-015/GR-16-664, Findings of Fact, Conclusions and Order at 16 (Mar.12, 2018) (Minnesota Power Order); In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota, Docket No. G-011/GR-15-736, Findings of Fact, Conclusions, and Order at 11 (Oct. 31, 2016) (MERC Order); In the Matter of Otter Tail Power Company for Authority to Increase Rates for Electric Service in Minnesota, Docket No. E-017/GR-15-1033, Findings of Fact, Conclusions, and Order at 25 (May 1, 2017) (Otter Tail Order).

[17] Schrubbe Direct, at page 77

than typical rate-based assets on which the Company earns a return on investment;"
- The asset already earns a return in the form of investment returns; and
- It would be "impractical, if not impossible, to equitably separate the prepaid amount attributable solely to [the utility's] contributions from that attributable to ratepayer contributions and market returns."

The Company added that, as a matter of precedent, regulatory Commissions in Colorado, New Mexico, and Texas allow the Xcel Energy operating companies in those jurisdictions to include their prepaid pension assets in rate base and to earn a return on them.[18]

2. Department of Commerce

In testimony, the Department disagreed with the Company that all prepayments must be included in rate base, citing the Commission disallowing prepaid pension assets in the MERC 2015 and Otter Tail 2015 rate case.[19] In the MERC rate case, the Commission stated:

> MERC recovers its allowable pension expense from ratepayers and is not being denied recovery of this operating cost. Further, as noted by the Department, pension-plan assets and benefit obligations go up and down depending on funding, market conditions, or amendments to the plan. The balances in the prepaid pension asset are temporary, and fundamentally different than typical rate-base assets on which the Company earns a return on investment.
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> Nor does the Commission find the 2013 Xcel Energy rate case treatment of pension and other post-employment regulatory assets to be persuasive or precedential. As noted by the Administrative Law Judge, in the Xcel rate case the question of whether a company's pension asset is properly included in rate base was not specifically litigated by the parties.[20]

The Department did agree that the pension, itself, helped to attract and retain employees. The Department noted, however, that the Company's plan was underfunded by $240 million in December, 2021.[21] Moreover, as explained by Xcel, the Department noted that the Employee Retirement Income Security Act (ERISA), the Pension Protection Act, and the Internal Revenue Code determine the minimum funding requirements for pension plans, not the Company or its shareholders.[22]

The Department questioned Xcel's disagreement with the Commission's rationale for denying

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[18] *Id*, at 84, 15-17.

[19] *Id*, at page 42, 3-6.

[20] In re Appl. of Minn. Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Serv. in Minn., Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS, & ORDER at 11–12 (Oct. 31, 2016).

[21] Campbell Direct, at page 43, 9-12.

[22] Ex. Xcel-___ at 32, 79-80 (Schrubbe Direct).

pension assets and liabilities in rate base and argued that, unlike normal O&M expenses, pension expense is an actuarially determined expense where changes in things such as expected return rates, discount rates, and amortization of previous gains and losses can significantly impact pension expense in any given year. Similarly, unlike normal capital investments in tangible things, like transmission lines, the Company's prepaid pension asset is comprised of two components – actuarially determined pension expense and pension contributions. Both components can vary significantly year-over-year, depending on the assumptions used to calculate pension expense and the Company's decisions regarding pension contributions.

The Department also noted that the Company may choose to contribute more to its pension fund than required under the minimum funding requirements by ERISA, PPA, and IRS regulations, which can also have a significant impact on the prepaid pension balance in any given year.[23] Further, the Department agreed that changes in market value of pension plan assets and benefit obligations affect the funded status of the pension. The Department disagreed with Xcel's statement that changes in the market value of the pension plan assets and benefit obligations do not impact the prepaid pension asset.[24] The Department pointed out that the difference between market value of plan assets and the Present Value of Future Benefits (PVFB) determines pension expense. Since pension expense is used to determine the prepaid asset (i.e., the difference between pension expense and contributions), changes in market value can impact the prepaid asset. As such, the changes in the market value of pension assets and the PVFB can impact pension expense and the resulting prepaid pension asset.[25] As a result, the Department concluded that Xcel has not demonstrated the reasonableness of including a prepaid pension asset in rate base and recommended removal from rate base.

3. XLI

XLI argued that Xcel should not earn a return on its proposed prepaid pension asset, because the PPA is determined using Generally Accepted Accounting Principal (GAAP), not on a ratemaking basis.[26] XLI asserted that, from a ratemaking perspective, customers' rates include Xcel's pension costs. Unlike the pension expense, the PPA is not an operating cost. As such, if Xcel should earn a return on it, then it must first be deemed a regulatory asset by the Commission. If it finds it appropriate for ratemaking purposes, the Commission may approve a regulatory asset, which reflects deferrals of operating costs for certain non-recurring expenses.[27] However, the Commission has not approved the PPA as a regulatory asset. As such, Xcel should not include it in rate base or use it to determine regulatory ratemaking recovery.[28]

[23] Campbell Direct, at 47, 7-10.

[24] *Id*, at 47, 16-19.

[25] *Id*, at 48, 7-12.

[26] *Id,* pages 44-45, 19 and 1.

[27] *Id*, at 45, 3-6.

[28] *Id*, at 45, 7-9.

XLI also stated that, in previous findings, the Commission rejected proposals to earn a return on the PPA because a utility must demonstrate that, among other requirements, the PPA was funded by investor capital rather than by either pension trust returns, or the funding recovered from ratepayers.

4. Xcel Reply

In response to the Department's quotes regarding the language from the MERC order justifying exclusion of the prepaid pension asset from rate base on the ground that "pension plan assets and benefit obligations go up and down depending on funding, market conditions, or amendments to the plan," the Company countered that the rationale conflates two entirely separate things – the funded status of the pension trust and the prepaid pension asset. The funded status of the plan measures the difference between: (1) the pension plan's accrued benefit obligations to plan beneficiaries and (2) the market value of the assets held by the pension trust. The prepaid pension asset is the difference between (1) the cumulative dollars that investors have contributed to the pension trust and (2) the cumulative annual pension expense included in rates on which the Company is proposing to include in rate base for investors to receive a return.[29]

Regarding the Department's reference to quote in the MERC's Order, that "balances in the prepaid pension asset are "temporary, and fundamentally different than typical rate-based assets on which the company earns an investment," the Company argued that all assets are "temporary" in the sense that they rise and fall as new investments are made and depreciation expense is recognized. The Company asserted further that it accounted for the changes in the prepaid pension asset balance by using a 13-month average, as it does for other balances that vary over the course of a year, such as materials and supplies.[30] The Company further disagreed with the Department's assertion that the prepaid pension asset is somehow different than other utility assets. Xcel asserted that it is required by ERISA and the Pension Protection Act to make contributions to the pension trust, just as it is required to make investments in physical assets to provide electric service. As such, the dollars contributed to the pension trust by investors are real out-of-pocket dollars as the dollars spent on physical assets and investors should receive a return on those dollars.

Furthermore, the Department's rationale that customers' rates already include pension costs and that the prepaid pension asset is not an operating cost is contrary to Minnesota statute section 216B.16, subdivision 6, which allows a utility and its investors to recover both the O&M expenses and a return on their capital investment.[31] Xcel contended that disallowance is contrary to the standard ratemaking practice in which the party making a prepayment is entitled to a return on that prepaid balance.

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[29] *Id,* at 12, 12-23.

[30] *Id,* at 14, 6-10.

[31] *Id*, at 27, 5-13.

B. ALJ Order

The ALJ found that Xcel should be required to remove its Prepaid Pension Asset from rate base. The ALJ noted, however, that ratepayers benefit from the existence of the prepaid pension asset,[32] and so recommended that the pension expense be recalculated to credit the return on the prepaid pension benefit (approximately 6.6% of the PPA) back to the utility.[33]

C. Public Utilities Commission Findings of Fact, Conclusions and Order of July 7, 2023

In its Order of July 7th, the Commission required Xcel Energy to remove its Prepaid Pension Asset from rate base. The Commission found that Xcel had not justified rate-base treatment of its prepaid pension asset. The Commission found that the prepaid pension asset was distinct from assets ordinarily included in rate base. The Commission decision noted that the prepaid pension asset fluctuated in value, unlike more traditional forms of rate base, and was misleading, in that it did not account for the funding status of the entire pension plan. The asset and related obligations fluctuate based on funding, market conditions, and amendments to the plan. The balances are temporary and fundamentally different from capital assets ordinarily included in rate base. These findings, consistent with prior Commission precedent on this issue,[34] led to the conclusion that recovery should not be allowed.

The Commission decision relied on the statutory language regarding rate base, which states:

> In determining the rate base upon which the utility is to be allowed a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first devoted to public use, to product acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital

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[32] According to Schrubbe Direct, pp. 72-73, the amount of benefit is approximately $13,175,063, while the cost to ratepayers is $9,786,601. Schrubbe included adjustments for ADIT, FAS 106 and FAS 112 liabilities in calculation of that cost but did not show the effect those FAS 106 or FAS 112 liabilities have on revenue requirement for 2022-2024, so it isn't clear that the difference (approximately $3.4 million) actually reflects a net-benefit to ratepayers.

[33] ALJ Report, p. 53-54.

[34] See, for example, *In the Matter of the Appl. of Minn. Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Serv. in Minn*., MPUC Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS, ORDER at 11–12 (Oct. 31, 2016), *In the Matter of Minn. Power's Pet. for Approval of Deferred Accounting Relating to Pension Plan Contributions and Expenses*, MPUC Docket No. E015/M-11-1264, ORDER DENYING PETITION (Mar. 11, 2013)

nature.[35]

The Commission found that when evaluating what type of costs should be allowed to earn a return, this statutory language directs the Commission's attention to capital property that is acquired by the utility, which depreciates over time, and which is constructed. "Other expenses of a capital nature" likewise reflects a focus on longer-term investments as distinct from operating expenses. This led the Commission to the conclusion that it would not be reasonable to include the prepaid pension asset, as this asset is of a fundamentally different nature from capital expenditures and other allowed rate base categories, and Xcel had not demonstrated that it would be just and reasonable to include it in rates.

The Commission found the testimony of the Department witness that the two components of the prepaid pension amount—actuarially determined pension expense and pension contributions—can vary significantly from year to year depending on actuarial assumptions and the Company's decisions in any given year about whether to contribute more than the legally required minimum amount. The Commission ruled that the testimony and arguments raise doubts about the amount and permanence of the prepaid pension asset and resolved these doubts in favor of ratepayers.

In addition, the Commission found that Xcel's alternate proposal – to recalculate prepaid pension expense – was filed too late for proper review and comment by parties and so should be denied as well.

D. Court of Appeals Order

The Court of Appeals reviewed this issue, as well as several others, in a ruling dated January 21, 2025. The Court found that the Commission's categorical exclusion of Xcel's prepaid pension asset from rate base was not supported by substantial evidence and is arbitrary and capricious, and ordered the Commission to revisit the prepaid pension asset on remand. The Order followed a similar order in the Minnesota Power Rate Case of 2021 in Docket 21-335.

In that order, the Court rejected the commission's reasoning that the asset must be excluded because it fluctuates in value, is temporary, and is distinct from other assets included in rate base. The court further held that "a utility's mandatory contributions to pension plans are an expense of a capital nature to which the commission must give due consideration in determining the utility's rate base under Minn. Stat. § 216B.16, subd. 6.[36] Though certain facts distinguish between the two cases, the Court ruled that the logic of its ruling in that case also applied here. The Order specifically noted that the

[35] Minn. Stat. § 216B.16, subd. 6

[36] State of Minnesota in Court of Appeals, Docket A23-1672, *Affirmed in part, reversed in part, and remanded*, January 21, 2025, p. 18.

Commission's ruling, as well as the Administrative Law Judge's recommendations, did not include adequate explanation of the ruling. Moreover, the order's references to "market returns" and "market conditions" do not sufficiently address the extent to which Xcel's prepaid pension asset is attributable to shareholder contributions. Based on the lack of detail in the Order, the Court found the Commission's decision to deny recovery to be arbitrary and capricious, and remanded to the Commission for further ruling.

The Court noted the technical and accounting issues related to prepaid pension asset, and noted that the Commission did not have the benefit of the ruling in the Minnesota Power case at the time it made its decision, and so its remand included instructions that the Commission make additional findings to determine whether any of Xcel's prepaid pension asset should be included in rate base, with the allowance that the Commission may reopen the record.

II. Comments on Remand

The Commission ordered that the record be reopened and then issued a notice of comment on the prepaid pension asset. The Commission also authorized the Department to engage a technical expert. Xcel, the Department, the OAG, and XLI filed comments during this phase.

A. Initial Comments

1. Xcel Energy

Xcel Energy defined the prepaid pension asset as cumulative investor contributions to the pension fund that exceed cumulative pension expense. Xcel specified that the only topic to be addressed is whether Xcel receives a return on its prepaid pension asset, not whether Xcel earns recovery "of" its prepaid pension asset. Similar to depreciation expense, Xcel recovers annual pension expense through rates and is not seeking additional expense recovery. Instead, Xcel is seeking to recover its authorized rate of return on the balance of the Electric (21-630) and Gas (23-413) Minnesota jurisdictional prepaid pension asset, net of accumulated deferred income tax (ADIT) and accrued liabilities related to retiree medical and other post-employment benefits (which reduce rate base) at its weighted average cost of capital (WACC). Xcel asserted that this recovery would be consistent with recent court decisions in its own rate case and Minnesota Power's rate case (Docket E-015/GR-21-335), which found that contributions to pension plans are expenses "of a capital nature" as described in statute[37] and should be

[37] Minn. Stat. §216B.16 subd. 6 - In determining the rate base upon which the utility is to be allowed to earn a fair rate of return, the commission shall give due consideration to evidence of the cost of the property when first

considered for inclusion in rate base to the extent the prepaid pension asset is attributable to investor (i.e. shareholder) contributions. The only open question, according to Xcel, is whether the prepaid pension asset is investor-funded.

Xcel argued that the pension payments that exceed annual pension expense prefund pension benefits for employees, in so doing creating a utility service-producing asset of a capital nature, ultimately reduces annual pension expense for customers. As such, it should receive a return under basic ratemaking principles.

Xcel identified pension contributions in excess of cumulative pension expense in its electric case of $120.4 million for 2022, $124.4 million for 2023, and $137.3 million for 2024. After netting out accrued liabilities, the prepaid pension asset would earn a return of $8.4 million for 2022, $9.1 million for 2023, and $10.4 million for 2024.

For the gas case, Xcel identified excess expense of 10.5 million, leading to an $800,000 revenue requirement to reflect a WACC on the prepaid pension asset net of ADIT and accrued liabilities for the 2024 test year.

Table 3, below, shows the revenue requirement calculation for Xcel Minnesota electric and Xcel Minnesota gas for the prepaid pension asset net of FAS 106 and FAS 112 liabilities, and accumulated deferred income tax.

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devoted to public use, to prudent acquisition cost to the public utility less appropriate depreciation on each, to construction work in progress, to offsets in the nature of capital provided by sources other than the investors, and to other expenses of a capital nature.

Table 3 – Xcel Requested Prepaid Pension Asset Revenue Requirement

	Minnesota Electric (21-630)				Minnesota Gas (23-413)	
	2022	**2023**	**2024**		**2024**	**2025**
Non-Plant Rate Base Asset/(Liability)						
Prepaid Pension Asset	167,257,722	172,802,494	190,683,064		14,608,157	14,608,157
Retiree Medical - FAS 106	(25,532,351)	(22,132,077)	(20,035,631)		(1,904,088)	(1,904,088)
Post-Employment Benefits - FAS 112	(9,315,299)	(8,700,768)	(8,121,421)		(618,498)	(618,498)
Total Non-Plant Rate Base Asset	**132,410,072**	**141,969,649**	**162,526,012**		**12,085,571**	**12,085,571**
Associated Acc. Deferred Income Tax (ADIT) Asset/(Liability)						
Prepaid Pension Asset	(46,834,002)	(48,386,599)	(53,393,355)		(4,086,164)	(4,086,164)
Retiree Medical - FAS 106	7,149,339	6,197,225	5,610,197		532,608	532,608
Post-Employment Benefits - FAS 112	2,608,386	2,436,311	2,274,087		173,005	173,005
Total ADIT Asset	(37,076,277)	(39,753,063)	(45,509,071)		(3,380,551)	(3,380,551)
Net Rate Base Impact Asset						
Prepaid Pension Asset	120,423,720	124,415,895	137,289,709		10,521,993	10,521,993
Retiree Medical - FAS 106	(18,383,012)	(15,934,852)	(14,425,434)		(1,371,480)	(1,371,480)
Post-Employment Benefits - FAS 112	(6,706,913)	(6,264,457)	(5,847,334)		(445,493)	(445,493)
Total Net Rate Base	95,333,795	102,216,586	117,016,941		8,705,020	8,705,020
Xcel Requested WACC	8.80%	8.87%	8.91%		9.19%	9.19%
Revenue Requirement	**8,389,647**	**9,066,904**	**10,426,545**		**800,243**	**800,243**

In order to justify its request, Xcel drew an analogy. When Xcel constructs a transmission line or gas pipeline, it eventually recovers the cost of that line through depreciation expense. That recovery, however, is done over a number of years. During the years between going into service and recovery of depreciation, the Company is also allowed to recover a return on the difference between invested capital and accumulated depreciation. In addition, Xcel is allowed to recover the day-to-day expenses of maintaining that facility (Operations and Maintenance Expense). Xcel asserted that there is an equivalent in pension accounting. The Pension Expense Xcel recovers through rates is the equivalent of the depreciation expense, according to Xcel. The Prepaid Pension Asset is the equivalent of recovering a return on the difference between what it actually pays in and that prepaid pension expense. Xcel is allowed to recover its pension expense, but also asserted that it should be allowed to recover a return on its prepayments, which is statutorily required to be in excess of the expense, net of those payments and accrued ADIT.

Over time, the company 'recovers' the excess prepayments through reduced pension expense. As this happens, the Prepaid Pension Asset reduces in value, similar to depreciation.

Xcel made the argument that the prepaid pension asset is funded solely by investor-supplied funds. Customer pension expense reflects the annual pension expense, which is by definition subtracted out of the calculation of the prepaid pension asset. Xcel, due to its pension expense calculation method, will never have a pension expense of less than zero. Xcel's pension expense attributed to customers are the pension plan expense, there is no prepayment by customers in the prepaid pension asset. All prepayments come from Xcel's investors.

Xcel also stated that market returns on the pension fund cannot be a component of the prepaid pension asset. The prepaid pension asset is the difference between cash paid into the pension fund and the pension expense. The asset exists outside the pension fund, it does not consist in any way of the invested assets in the pension fund. It is instead a calculation of the balance of total contributions less total pension expense. Inside the pension fund, those excess contributions earn market returns for the pension fund, but as the asset itself represents 'overpayments' by the company required by law, and not the stocks and bonds purchased inside the pension fund with those overpayments (any market gains from which goes to fund future benefits for employees, and thus in future years reducing pension expense) - it does not exist as marketable securities or earn returns outside the pension fund.

Xcel quoted the ALJ as stating that "the Department has…demonstrated that because the value of the asset is determined in part by market gains and losses, there is doubt with respect to the source of the funds" and resolved that doubt in favor of ratepayers. The Court of Appeals found that logic insufficient, according to Xcel, in its Opinion. Xcel asserted that it is not reasonable to attribute the Prepaid Pension Asset to market returns when the asset does not contain any securities to earn market returns in the first place. It is simply the sum of contributions less expenses.

Xcel then drew the conclusion that, as the prepaid pension asset is funded by shareholders (as any amount by which contributions exceed pension expense – which is the amount attributed to ratepayers – must logically come from shareholders), investors should be allowed to earn a return on that investment of funds. Xcel cited several recent cases where FERC or other states attributed the Prepaid Pension Asset to shareholders and thus allowed a return on that investment.[38]

[38] Recent precedents are listed in footnote 48 on page 13 of Xcel's Initial Comments.

Xcel stated that it is reasonable for shareholders to earn a return on assets when there is a timing difference between when the company funds it and when ratepayers pay for it, whether that is through annual Depreciation Expense (for a power line or gas main), or through pension expense (for the Prepaid Pension Asset). Xcel also argued that ratepayers benefit from the asset, as market returns from the excess contributions reduce pension expense in future years.

Xcel made a few other arguments, noting that the pension funds allow for a more orderly transition to retirement for late-career employees, allowing Xcel to pre-plan transitions and reduce costs. Xcel also noted that, as the company reduces its asset by ADIT and accrued liabilities for deferred benefits (i.e. the pension), ratepayers gain more in reduced pension expense long-term than they would pay in return on capital on the net prepaid pension asset.

Xcel thus requested that the Commission allow it to earn a return on the prepaid pension asset, net of ADIT and outstanding liabilities, at the weighted average cost of capital.

2. Department of Commerce

The Department of Commerce, in this phase, took a different approach to the prepaid pension asset than it did in earlier phases of the rate case. In this phase, the Department argued that contributions to the pension trust reflect a fiduciary relationship between Xcel and its employees. The trustee (Xcel, in this case) holds legal title to the property, but the benefits must flow to the beneficiaries. The Employee Retirement Income Security Act (ERISA), governing pensions, relies on this concept, and makes them more explicit. ERISA specifically bans employers from benefiting from plan assets. Only once the pension plan is terminated, and all plan liabilities are satisfied, may the employer gain the benefit of the residual trust.

The Department noted that there are two methods for calculating pension expense. The Aggregate Cost Method (used by Xcel) determines the amount of pension expense as a constant percentage of payroll that would be needed to be paid into the pension fund each year to pay all future benefits. Financial Accounting Standard 87, in contrast, calculates pension expense by summing distinct components including service costs, interest costs, and expected returns on assets.

The Department noted that the actual required contributions mandated by ERISA and the Internal Revenue Code (IRC) take into account these issues but also account for amortization of shortfalls due to low market returns over seven years. The Department defined the prepaid pension asset as cumulative contributions to a qualified pension plan in excess of cumulative pension expense. Similarly, an “accrued Pension liability” occurs when pension expense exceeds cumulative contributions. The Department provided historical prepaid pension asset balances in a Table on page 6 of its Comments:

Table 4 – Prepaid Pension Asset – Historical Balances (Total Company)

Year	Beginning Asset Balance	Pension Expense	Pension Trust Contributions	Other	Ending Asset Balance
2009	0	0	0	0	-20,181,500
2010	-20,181,500	-6,481,000	20,182,000	0	-6,480,500
2011	-6,480,500	-12,728,000	41,375,000	0	22,166,500
2012	22,166,500	-28,981,000	79,584,333	-1,080,000	71,689,833
2013	71,689,833	-41,706,000	72,411,729	0	102,395,562
2014	102,395,562	-38,911,000	52,114,844	0	115,599,406
2015	115,599,406	-34,213,000	32,734,611	0	114,121,017
2016	114,121,017	-33,981,000	49,429,675	0	129,569,692
2017	129,569,692	-34,862,000	60,740,655	-620,000	154,828,347
2018	154,828,347	-34,465,000	63,147,000	0	183,510,347
2019	183,510,347	-34,707,000	46,817,855	0	195,621,202
2020	195,621,202	-31,384,000	43,959,000	0	208,196,202
2021	208,196,202	-31,811,000	34,109,000	-369,000	210,125,202
2022	210,125,202	-27,379,000	4,907,000	0	187,653,202
2023	187,653,202	-30,377,000	23,279,000	0	180,555,202
2024	180,555,202	-28,798,000	20,623,000	0	172,380,202

The Department argued that the correct valuation of Xcel's legal interest in the prepaid pension asset is nominal. The Department asserted that Xcel only has a speculative future interest in the value of the trust, and that the prepaid pension asset is held in the pension trust. The Department's position was that Xcel has a "contingent reversionary interest" in the prepaid pension asset, which means that it would only hold value for Xcel if the trust were fully closed out, with the pension discontinued and all liabilities - future benefits to current and former employees fully paid. Under the rules of the plan, all trust funds are held separate and apart from Xcel's assets, and the funds in the trust may not be used other than for the exclusive benefit of Beneficiaries – the employees of Xcel who are members of the pension plan. Under ERISA and the plan, Xcel has only residual asset entitlements.

The Department then stated several legal precedents for assets not owned by the utility not earning returns.[39] The Department recommended that the Commission find that this residual trust value be determined to be de minimis - $1000, and that Xcel be allowed to earn a return on $1,000 at the weighted average cost of capital.

The Department countered the idea that the Prepaid Pension Asset is distinct from the trust fund, by claiming that Xcel called it a "regulatory asset." The Commission, not Xcel, determines the dimensions of a regulatory asset, and Xcel has never been approved to recover the Prepaid Pension Asset as a regulatory asset. Under Minnesota law and precedent, the Department noted that the Commission may permit the utility to book a regulatory asset when the company incurs and expense that is unforeseeable, unusual, and large enough to transform the utility's

39 Citations at page 8 and 9 of Department's Initial Comments

financial condition, or when necessary to meet important public policy mandates. The Department argued that the regulator may adjust or eliminate the claimed value of the regulatory asset, with a lot of discretion reserved to the regulator, citing other regulators, including FERC, as rejecting attempts to treat the prepaid pension as an asset for ratemaking.

The Department noted that Xcel never requested permission to record the prepaid pension asset. Even if Xcel does belatedly seek that approval, the Commission should adjust it to reflect the utility's real-world property interest in the trust, stating that "you cannot earn on more than you own."

In the alternative, if the Commission approves recovery of a return on the prepaid pension asset, the Department recommended limiting that return to the long-term cost of debt. Because Xcel's interest in the asset is limited, it is appropriate to limit its return. The prepaid pension asset is materially distinct from other utility assets which earn WACC. The assets in rate base represent up-front payments for capital of fixed return, that declines in value over time via depreciation. The prepaid pension asset fluctuates in value based on timing differences. The Department argued that the long-term cost of debt best reflects the actual cost to Xcel of servicing the asset. A return at the long-term cost of debt would allow Xcel to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its duties, but would not pay extra to grant utility shareholders a return on the asset. The Department calculated that this return would be:

Table 5: Long Term Cost of Debt[40]

	2022	2023	2024
Electric	$5,529,229	$5,746,660	$6,443,735
Gas	-	-	$544,842

3. Xcel Large Industrials

Xcel Large Industrials (XLI) argued that the burden of proof in this case lies with the company, with any doubt resolved in favor of ratepayers. Xcel must establish by a preponderance of the evidence:

1) the amount of a given cost as a judicial fact, and
2) that it is just and reasonable for ratepayers to bear such costs, rather than the Company's shareholders.

XLI argued that Xcel has failed to make such a showing. The company has made no meaningful offer of evidence to alter the Commission's precedent of denying a return on prepaid pension asset.

[40] Hunt Exhibit 4, page 12-13.

XLI argued that nothing on the record proves that investors fund the PPA. XLI noted that it is extremely difficult to distinguish PPA funding from utility cash contributions, ratepayer contributions, and market returns on the trust, and thus it is not possible to identify the amount of the PPA attributable to shareholders. XLI noted that Commission precedent draws a distinction between utility cash contributions, collections from ratepayers, and market returns of the pension trust, and that the PPA may earn a return only to the degree that it is isolated from market returns or ratepayer contributions.

XLI further argued that Xcel has failed to prove that the prepaid pension asset didn't come into being in years where the contribution was below the amount attributed to ratepayers in rate base. Potentially, the PPA can come about because of returns in the pension trust, leading to negative pension expense. In that situation, a zero contribution from the company would create a pension asset. Alternatively, if the utility fully recovered its cash contribution through the pension expense included in rates, ratepayers, not investors, would have funded at least those amounts of cash contributions which exceed the amount collected in rates, regardless of the accounting entry for pension expense for that year.

If the utility recovered all pension cash contributions to its pension trust via pension expense, then the utility would not be entitled to a return on the asset. According to XLI, it is impossible to reliably determine the funding sources of the PPA based on the evidence in the record, and thus Xcel has not met its burden to prove the asset as a judicial fact.

XLI argued that Xcel's attempts to offer evidence that it differs from other Minnesota utilities were inadequate. Due to this Xcel has failed to meet its burden of proof.

XLI cited prior Commission precedent, a lack of sufficient record development distinguishing the current case from those precedents, and an accounting of the difficulties of identifying ratepayer vs. shareholder contributions to the PPA – impossible on this record – in arguing that the Commission should continue its precedent of denying a return on the Prepaid Pension Asset.

XLI recommended that the Commission find that Xcel has failed to meet its burden of proof to establish the PPA as a judicial fact and failed to meet its burden to prove that recovery of the expense from ratepayers would be just and reasonable. Therefore, XLI recommended that the Commission reiterate and confirm its prior decisions using the evidence developed by itself and other parties to deny recovery of PPA through rate base. Further, absent new evidence, XLI requested that the Commission determine that no amount of PPA can be appropriately recovered through rate base.

B. Reply Comments

1. Xcel Energy

Xcel reiterated its argument that the only issue remaining after the Court of Appeals ruling is to determine the extent to which the Company's prepaid pension asset is attributable to shareholder contributions as opposed to any other source, such as market returns. Xcel argued that the Department and XLI did not address the central question on remand and their arguments should be rejected because they are contrary to Minnesota statute and case law, including the Minnesota Court of Appeals' decisions in Minnesota Power and Northern States Power that the Department and XLI did not address this question directly and made irrelevant arguments.

Xcel noted that neither the Department nor XLI showed any evidence contrary to that provided by Xcel that shareholder contributions funded the PPA. The Department appeared to accept Xcel's calculation of the asset as accurate and did not dispute that it was funded by shareholders, instead making what Xcel described as an 'irrelevant' argument relating to money in the trust fund.

XLI showed how, theoretically, a prepaid pension asset could be funded without shareholder contributions, it provided no evidence that this occurred here. There is no real dispute among parties regarding shareholder funding.

Xcel argued that, whether the Department is correct or not regarding its theories on arcane property law pertaining to the pension trust, its argument that the Company's investments are effectively valueless is in direct contravention of the Minnesota Court of Appeals' decisions in Minnesota Power and Northern States Power Company. In Minnesota Power, the court held "that a utility's mandatory contributions to pension plans are an 'expense[ ] of a capital nature' to which the [C]ommission must give 'due consideration' in determining the utility's rate base under Minn. Stat. § 216B.16, subd. 6."[41] The court further stated that "[t]his conclusion is consistent with persuasive authority from other jurisdictions holding that 'some or all of a prepaid pension asset should be included in the rate base to the extent that the evidence evinces that the asset was investor-funded, as opposed to ratepayer-funded.' The Department did not engage with this language, nor dispute inclusion of the asset in rate base.

Xcel argued that the Department's position failed to engage with statute, which states:

> For purposes of determining rate base, the [C]ommission shall consider the original cost of utility property included in the base and shall make no allowance for its estimated current replacement value.[42]

This statute rendered the Department's arguments illegal, in Xcel's view. First, the value of the prepaid pension asset is determined by its cost, not its future value, under the statute. Second, the reference to "positive net book value" in statute is also telling, as it underscores that there could be zero, negative, or positive net book value at the time of an asset's retirement. Absent

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[41] Xcel Energy Reply Comments at 5, Minnesota Power, 12 N.W.3d at 493; *see also Northern States Power Company*, 2025 WL 249995 at *9.

[42] Minn. Stat. §216B.16 subdivision 6

early retirement for state policy reasons, the return afforded an asset is not dependent on its end-of-life value. At end of life, a gas pipeline may have negligible or scrap value. This does not mean, contrary to the Department's position, that no return should be earned. The utility is entitled to earn a return on the then-current book value net of depreciation for as long as the asset is in rate base.

Xcel provided arguments that none of the citations provided by the Department were on point, as they related to assets not created under legal requirement, related to situations where it was factually true that the utility had no rate base, or the allocation of shared facilities, none of which questions are relevant here. None of these cases had anything to do with the Department's argument that the utility must have legal ownership interest to include it in rate base. Xcel drew the analogy to capital leases, which it counts as rate base, but does not own. Xcel also cited Accrued Deferred Income Tax, which it has no ownership interest in, and costs associated with removing physical plant in rate base, despite no ownership interest.

Xcel summarized the Department's position as being that shareholders should not be compensated for the opportunity cost associated with investing in the prepaid pension asset precisely because shareholders contributed to a trust in accordance with applicable federal law under the Pension Protection Act of 2006 and the Employee Retirement Income Security Act and therefore has no current access to the funds. Xcel noted that being compelled to invest money without a return is, by definition, confiscation of property, and is contrary to fundamental property interests and the regulatory compact.

In response to the Department's suggestion of paying long-term cost of debt, Xcel noted that either the prepaid pension asset is an asset or not. If it is, it should earn WACC. Xcel argued that shareholders are foregoing investment opportunities when contributing funds to the pension plan over and above the amount of cumulative pension expense and such funds carry an opportunity cost and therefore merit a return. If not for financing the pension trust, those funds could have been invested elsewhere at a return greater than the cost of debt, or in utility assets which would then return the WACC. This makes investment in the prepaid pension asset no different from any other utility asset.

Xcel also noted that nowhere does Minn Stat. § 216B.16 provide for different rates of return for different assets. From the investor point of view, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. This includes service of debt and dividends on stock. No evidence is provided for a return other than cost of capital. Establishing such a low rate of return here would be contrary to the concept that the Commission approved the Company's overall rate of return in each rate case consistent with determinations of comparable utility returns at the time and what was a "fair and reasonable return upon the investment in…property" used and useful in rendering service to the public under Minn. Stat. § 216B.16, subd. 6, according to Xcel.

Xcel noted that all assets of the utility are funded by a mix of debt and capital and so return should reflect both. Return at the cost of debt doesn't compensate Xcel for the mix of capital and debt used to finance all capital investment, including the PPA. Thus, Xcel argued that the Department's methodology should be rejected.

Xcel argued that XLI has provided no evidence rebutting the evidence provided by the Company that the prepaid pension asset is attributable to shareholder funds. Xcel specifically noted that XLI's theoretical argument regarding prepaid pension asset funding was dependent on negative pension expense and market returns. Xcel provided clear evidence of its cash contributions creating the prepaid pension asset. Second, by definition, the prepaid pension asset contains no trust assets, and thus no returns on the pension trust. Third, the theoretical argument relating to negative pension expense does not hold, as Xcel's accounting methodology does not allow for negative pension expense. The ACM method used by Xcel has a minimum pension expense of zero.

Consistent with Minnesota law, the prepaid pension asset should be included in rate base and earn a return at the authorized weighted average cost of capital (WACC) like any other Company investments included in rate base.

2. Department of Commerce

The Department took issue with Xcel's characterization of the Court of Appeals' decision. The Department interpreted the decisions more narrowly than Xcel, noting that only issue the Court decided was that the prepaid pension asset is 'an asset of a capital nature.' Xcel argued that this indicates the only open question is who funded the asset. The Department disagreed. The Department argued that the Court only determined whether the PPA could be included in rate base. The instructions from the Court for remand were to determine whether any of the asset should be included in rate base. Determination of the source of funding is only one of the issues that need to be resolved in Xcel's favor before such an inclusion is approved. The size of the asset, Xcel's financial interest in the asset, and the return on that asset, need to be determined.

The Department also argued that Xcel has failed to establish a property interest in the prepaid pension balance. The Department asserted that the prepaid pension asset is owned by the Master Pension Trust.

The Department also asserted that the prepaid pension asset has other sources other than investor contributions. The Department explained that it also is the product of actuarial assumptions. Both the prepaid pension expense and the prepaid pension asset – which is the accumulation of contributions in excess of that prepaid pension expense – are shaped by the actuarial assumptions and federal law. Employers must make pension trust contributions to cover accrued benefits each year. Strong market conditions may result in an actuarial gain, which lowers pension expense even as contributions are unchanged. When interest rates rise, the pension benefits' value falls, lowering annual service cost. Under both scenarios the prepaid pension asset is increasing independently of shareholder contributions. The Department argued that this fact – that the prepaid pension asset gains its value from changing actuarial assumptions as much as it does from investor contributions – means that WACC is not necessarily the correct return on investment for the PPA.

The Department noted that the Commission is not bound by decisions in other jurisdictions which allowed a return on the PPA. Many of these decisions came with materially different circumstances. The Department also denied Xcel's claims that the Commission formerly 'routinely' permitted inclusion of the PPA in rate base.

The Commission has broad discretion to determine the dimensions of Xcel's interest in the prepaid pension asset. The Department argued that the Commission should not permit Xcel's regulatory asset to exceed its real world interest. This would comport with traditional treatment of property rights for regulatory purposes, in the view of the Department.

The Department noted that FERC's formula rate structure provides a poor precedent for Minnesota rates, as the formula structure limits FERC's discretion. The Department also noted that the 2013 Xcel rate case is a poor precedent, as no party challenged inclusion of the PPA in that case.

The Department recommended that the Commission set a nominal value of $1000 for the prepaid pension asset, to be included in rate base.

3. Office of the Attorney General

The Office of the Attorney General supported the Department's recommendation of paying a nominal return on the PPA, or in the alternative, allowing return at the long-term cost of debt. The OAG provided additional support by citing Minnesota statute, noting that Minn. Stat. 216B.16 subdivision 6 holds that the Commission must give "due consideration" 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 rending service to the public, and to earn a fair and reasonable return upon the investment in such property.

Only utility property is eligible to earn a fair and reasonable return. "[O]ther expenses of a capital nature" referenced in the same statute must still involve "utility property." Precedent in Minnesota[43] establishes that when a utility uses property in service which it does not own, it may not earn a return. The OAG argued that, as Xcel's interest in the trust underlying the prepaid pension asset is at best contingent, it would be contrary to the fundamentals of utility regulation for Xcel to earn a return. Though Xcel isn't asking to earn a return on the entire

[43] *Application of Peoples Nat. Gas Co., a Div. of UtiliCorp United, Inc*., 413 N.W.2d 607, 615 (Minn. Ct. App. 1987) ("The pipelines are not Peoples' utility property, and it may not claim it is entitled to a reasonable return under the "used and useful" theory.")

pension trust, it is, in OAG's view, not in reasonable dispute that the expenses that it claims are a capital asset are included in the pension trust. Xcel therefore should not be allowed to earn a return.

In the absence of utility ownership of legal title to a property, a regulatory agency may create a 'regulatory asset' through order. The Commission has never authorized Xcel to create such a regulatory asset for the prepaid pension asset. The OAG quoted the Department's witness as stating

> Financial Accounting Standards No. 71 (FAS 71) provides that "a regulatory asset may be recorded by a utility when it incurs a cost, will probably obtain future revenues at least equal to that cost, and those future revenues are meant to pay back that specific cost, not just cover similar costs that may occur in the future."[44]

FAS 71 does not dictate the regulator's behavior, it does caution that if a regulator's decision make future cost recovery unlikely, the utility must write down the regulatory asset.[45] The OAG noted that Xcel has had no reasonable expectation of future cost recovery, and so, lacking Commission authorization to create a regulatory asset, Xcel is not entitled to a return on such an asset, in the absence of a property interest created by the Commission.

The OAG argued that the law does not require that utilities earn a return equivalent to the weighted average cost of capital on all assets. Instead, the risk level of the investment must be matched to the appropriate rate of return. The OAG cited a precedent that a fair rate of return is one that "will provide earnings to investors comparable to those realized in other businesses which are attended by similar risks."[46] Thus, similar to the Department, the OAG as a secondary option recommends a return at the long-term cost of debt rather than the WACC for the PPA. The OAG cited statutes in Florida and a Iowa Utilities Board ruling specifically allowing that treatment in those states.

The OAG agreed with the Department regarding its primary and its secondary recommendations.

4. Xcel Large Industrials

In reply, XLI took issue with the way Xcel framed MN. Stat. 216B.03, arguing that Xcel's

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[44] Department Initial Comments, Hunt Affadavit ¶ 6, Ex. 1 ¶ 9.

[45] *Ibid* ¶ 6.

[46] *Northwestern Bell Telephone Co. v. State of Minn.,* 216 N.W.2d 841, 846 (1974); see also *Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of W. Va*., 262 U.S. 679, 693 (1923); *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591, 603 (1944).

language that "any 'doubts' to be resolved in the favor of the consumer must still be based on substantial evidence in the record and logical conclusions," is not rooted in statute. XLI noted that statute states "should be resolved in favor of the consumer," and does not place a burden of proof on a disallowance. If the record creates doubt regarding the appropriateness of recovery of a cost, it should be disallowed, there is no need for additional findings of supporting facts or logic.

XLI argued that Xcel has provided no new evidence that the PPA is investor funded. If doubt existed prior to these comments regarding that, and XLI argued that it does, then it continues to exist, in XLI's view.

Even if Xcel could show that investors funded the PPA, XLI argued that the Prepaid Pension Asset is "the result of a GAAP accounting function," and not an ordinary capital investment. XLI argued that the PPA does not benefit customers, so it should not be recovered from customers. Xcel continued to fail to provide evidence regarding what percentage of the prepaid pension assets were funded by investors. Without that evidence, recovery should not be allowed.

XLI also noted that Xcel's argument that pension expense cannot be below zero under its accounting doesn't as fully support Xcel's argument as Xcel suggested. XLI argued that a negative pension expense can exist any time pension contributions exceed pension expense, whether that excess is caused by additional contributions by the company, or excess returns on the investments in the trust fund. XLI noted that Xcel provided a report showing how it could be proved that the PPA is investor-funded but failed to provide the actual evidence showing this fact. XLI argued that Xcel has failed to meet its burden of proof regarding funding of the PPA, and so the doubt should be resolved in favor of ratepayers, and, contrary to Xcel's apparent argument, other parties do not need to prove the negative. XLI thus recommended that the Commission confirm its prior decisions and not allow a return on the PPA based on doubt regarding the source of funding of the asset.

5. Xcel Reply to Response

Xcel stated that the parties' reply comments continued to reflect misunderstanding of the key issues in the case. Xcel reiterated its argument that the only issue on remand is whether, and to what extent, the Prepaid Pension Asset is funded by shareholders. No party disputed Xcel's calculation of the prepaid pension asset, net of ADIT and other liabilities. No party disputed the pension expense or cash contributions that underlay the calculation of the asset.

Xcel cited the Opinion from the Court of Appeals, in turn citing the Opinion from the MP case[47] as establishing fully that the prepaid pension asset is "an asset of a capital nature."

In support of its argument that the PPA is fully shareholder funded, Xcel noted that XLI's

[47] *Northern States Power Company,* 2025 WL 249995 at *9 (citing *Minnesota Power,* 12 N.W.3d at 492-93).

argument was reliant on negative pension expense, which has never existed for Xcel, and that no party disputed that ratepayers paid pension expense, and that the PPA is the difference between cash contributions and that pension expense. There are no market returns in the PPA. Xcel fully showed the cash contributions, the booked pension expense, and showed that the PPA represented the difference between the two. This should be sufficient proof, in Xcel's view, that shareholders, not ratepayers, funded the PPA, and so a return should be paid at the weighted average cost of capital approved in the docket.

Xcel argued that the Department's approach to the issue improperly expanded the scope of the proceeding, from the issue on remand. The Department's recommendation to pay other than the WACC would not allow Xcel to earn a return on a service producing asset, which is counter to *Hope* and *Bluefield*. A weighted average cost of capital return best reflects the actual cost of capital to the company. The Department's argument is simply a repackaging of its original argument that the PPA is different because it 'fluctuates in value', an approach that the Court of Appeals rejected. Xcel also argued that the Department conflated two concepts – the funded status of the pension, and the Prepaid Pension Asset.

The Department's suggestion that Xcel may be making excess contributions is not supported by the record, in Xcel's view. The Department's argument is merely a hypothetical, backed by no real evidence. Any payments to the trust above the minimum required are reasonable and prudent, justified as avoiding the need to pay premiums to the Pension Benefit Guaranty Corporation, which insures pensions. Xcel also noted that it made these 'excess' payments even without a return on the PPA. Xcel noted that the Department's position suggested that Xcel should make even smaller contributions to its already-underfunded pension.

Xcel disputed the Department's contrast of FERC formula rates to the ratemaking in Minnesota. Xcel noted that the allowance of a return on PPA by FERC reflected ratemaking principles held in common by Minnesota and FERC, not merely the application of a rate formula.

In Xcel's view, the OAG's arguments are fundamentally identical to the Department's, and should be rejected for the same reasons stated above. Xcel specifically criticized the OAG's argument that return on the PPA requires establishment of a regulatory asset first. The prepaid pension asset is not the sort of extraordinary operating cost that is reflected in a regulatory asset – it is, indeed, a capital expenditure.

III. Staff Analysis

1. Prepayments in rate base

Staff notes that rate base includes several forms of prepayments and a working capital adjustment, so on the face including the Prepaid pension asset in rate base is not unreasonable. The question is, is the prepaid pension asset truly a prepayment? After all, as noted by the

Department, and not disputed by Xcel, the pension trust is underfunded by $240 million.[48] This $240 million liability for the company reflects, in essence, a negative prepayment – it reflects benefits promised, but not yet funded, by the utility. If the prepaid pension asset, which is at heart an accounting entry, not a real asset, should count towards rate base, could the underfunded status be regarded as a liability that offsets rate base?

In rate base, liabilities are usually handled in a separate manner –debt is not offset against the rate base, but the cost of capital is calculated as a weighted average of cost of debt and cost of equity, reflecting a capital structure defined for the utility in the rate case. However, the liability for the pension is not a formal debt, with a formal cost of debt. Instead, the formulae for GAAP and ERISA take this underfunding into account and require pension expense (and cash contributions) over time to 'catch up' the pension to a fully funded state. Nothing is removed from rate base. An argument could be made – and indeed the Department alluded to this argument in testimony – that ratepayers do not owe the utility a return on the prepaid pension asset, unless its pension liability is also 'recognized' as an offsetting factor. Since the amount owed by Xcel to future pensioners ($240 million) is greater than the amount in the prepaid pension asset (Approximately $132.4 million), an argument could be made that, at minimum, the pension liability should offset the pension asset, and so long that Xcel is underfunded, there is little reason to pay a return on the pension asset. If Xcel were fully or overfunded, then paying a return on the prepaid pension asset would truly be paying a return on a prepayment, specifically a prepayment that exists due to factors outside Xcel's control (Federal statute, in this case). In that circumstance, paying a return on the PPA would at least potentially be reasonable. Though the Department abandoned that line of objection in its Comments more recently, the line of thought is sound, and it would be reasonable, in staff's view, to consider the funding status of the pension when reviewing the recoverability of the prepaid pension asset.

A second note is that the company is asking that the Commission approve a return on the prepaid pension which is significantly greater than the return that money is earning in the Pension Trust. The pension trust has an expected return of about 6.6%. That figure could be a useful benchmark regarding the return that the company should expect to receive on what is in essence a payment into that trust in excess of pension expense. Xcel suggested this option in its 2024 rate case.

2. Shareholder funding of the Prepaid Pension Asset

Xcel asserts that the primary open question is whether the prepaid pension asset is shareholder-funded or ratepayer funded. XLI argued that Xcel has failed to prove its case that the asset is shareholder funded. Staff notes that the exact amount of ratepayer funding is not on the record – the pension expense calculation is included, but no calculation of ratepayer contributions is included. The pension expense included in rates assumes a future rate of return. The pension expense booked and the cash contribution under ERISA represent two

48 Campbell Direct at 43, citing Xcel response to DOC IR No. 1007 (Campbell Direct Exhibit

different methods of adjusting pension costs to reflect higher or lower returns on the assets in the trust, among other causes. Xcel has not demonstrated that the prepaid pension asset does not come into effect entirely or mostly in years where its actual pension expense is lower than the amount included in rates, in which case it could be argued that ratepayers are, in whole or in part, funding the prepaid pension asset. Ordinarily, this would not be an issue – the ratemaking process assumes that over-recovery due to variation in expenses in one area will be offset by under-recovery in others. Higher than forecast expense for customer service would be offset by lower expenses in, say, vegetation management. However, ordinary expenses do not include an offset where cash spending in excess of the booked expense is capitalized. Without a full record of pension expense, including the actual amount recovered annually through rates, it is difficult to say with certainty that shareholders, rather than ratepayers, have funded the PPA.

3. Returns on the PPA

A second question when looking at whether a utility should earn a return on an 'asset of the capital nature' is whether they earn a return on that asset elsewhere. If plant in service is used to, say, produce heated steam which is sold to another entity, the revenue from that is removed from the revenue requirement. So the question arises – does the utility earn a return on the prepaid pension asset? This looks like an easy 'no' – the asset is an accounting entry on the utility's books, reflecting the difference between cash contributions and GAAP pension expense. There is nothing to earn a return. However, as Xcel noted, the prepaid pension asset reduces prepaid pension expense in future years. Xcel has not shown that the difference between cash contributions in future years and pension expense in future years will add to the same $120 million. If it does not, the prior balance of zero[49] is called into question.

Staff also notes that this calculation includes outstanding ADIT and FAS 106/112 liabilities as reducing the 'cost' of the PPA. The question of whether Prepaid Pension Asset (if contributed by shareholders) should be included in rate base, and whether the FAS 106/112 liabilities (representing contributions to future FAS 106/112 expenses by employees) should be deducted from rate base are not necessarily identical questions.

There is one change that would guarantee that, in future years, the PPA would indisputably 'belong' to ratepayers. The Commission will essentially implement this approach in Docket 24-320 (Order pending), effective next year. That would be by including the expected cash contribution, rather than the ACM pension expense, in rates. There would be adjustments required, notably to handle the effect of pension expense for XES. However, this does not address the outstanding balance of the Prepaid Pension Asset and whether it should be allowed for rate base treatment. As the Department noted, however, the prepaid pension asset was actually more than offset by Xcel's outstanding underfunding of its pension fund.

This does not concede that a return would be due if the pension were fully funded – that would still require the utility to prove, based on documentation of ERISA-required funding level, actual

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pension expense, and pension expense recovered through rates, that the pension asset is prudent and funded by shareholders rather than the pension expense recovered through rates.

4. Statutory basis for cash contribution

Xcel asserted that the amount of the cash contribution varied from the Pension Expense based on the ERISA statute. Staff cannot find on the record documentation that the cash contribution is the minimum allowed by ERISA statute. Xcel provided a great deal of evidence regarding the pension expense amount but did not prove the cash contribution was statutorily necessary. If the pension contribution exceeded the minimum under ERISA, it would, indeed, reduce the amount of the pension expense in future years (and reduce the outstanding liability due to under-funding), but it would also increase rate base in the short run. If the Commission allows recovery of a return on the PPA, without restriction of the recovery to contributions required by ERISA, a utility could conceivably use the Pension Trust as a sort of 'savings account' earning interest at the Weighted Average Cost of Capital. Thus, a minimum standard for allowing a return on the PPA could include filing evidence showing that the cash contribution is equal to the minimum requirement under ERISA.

5. Recovery of revenue requirement

If the Commission allows Xcel any form of revenue requirement increase, either through a return on the prepaid pension asset or any adjustment to pension expense, the Commission should consider an order that Xcel file a plan to recover those costs, including a calculation of revenue requirement, an allocation to customer class, and a method of recovery, whether that is through a surcharge, netting the additional revenue requirement against an existing balance, or creation of a regulatory asset. Options include creating a regulatory asset for recovery in Xcel's next rate case, adding or netting the revenue requirement against Xcel's refund in Docket 24-320, or adding or netting the revenue requirement against a future fuel surcharge.

DECISION OPTIONS

1. Approve Xcel's request to earn a return on the prepaid pension asset, based on the Company's WACC. (Xcel)

OR

2. Approve Xcel's request to earn a return on the prepaid pension asset, based on the Company's WACC, to the extent that Xcel can show that its cash contributions were equal to the minimum required contribution under ERISA. (Staff modification of Xcel)

OR

3. Deny Xcel's request to earn a return on the prepaid pension asset. (XLI)

4. Require Xcel to recalculate return on the prepaid pension asset at the Expected Return on Assets (EROA), for 2022, 2023, and 2024. (Xcel Alternative)

OR

5. Permit Xcel to earn a return on $1,000 of rate base reflecting the Company's nominal future interest in the prepaid pension asset. (Department Primary, OAG Primary)

   OR

6. Approve Xcel's request to earn a return on the prepaid pension asset based on the Company's long-term debt rate. (Department Alternative, OAG Alternative)

   (If the Commission either allows recovery of a rate of return on the Prepaid Pension Asset or orders an adjustment to Pension Expense)

7. (Staff) Require Xcel to file a compliance filing on the prepaid pension asset for the period 2022 through 2024 in dockets 21-630 (for electric) and 23-413 (for gas), including but not limited to:
   A. The minimum ERISA contribution for each year for which a positive prepaid pension balance exists.
   B. A calculation of the change of revenue requirement from that reflected in rates for 2022-2024, including documentation of the value of the prepaid pension asset for those years consistent with the order.
   C. A plan to recover from customers the difference in revenue requirement.
      1) Order Xcel to reduce the refund in Docket 24-320, its 2025-2026 Multi-Year Rate Plan, by the amount of the additional revenues for 2022-2024. If the amount to be surcharged exceeds the refund for any class, Xcel shall file a plan to recover the excess revenue requirement.

OR

      2) Order Xcel to add the additional revenue requirement to its Fuel Reconciliation for 2026 for recovery through the fuel surcharge/refund.

OR

      3) Order Xcel to create a regulatory asset in the amount of the increased revenue requirement, for which Xcel may propose a method of recovery in a future rate case.