

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**

**600 North Robert Street**

**St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

**121 7th Place East Suite 350**

**St. Paul, Minnesota 55101-2147**

**MPUC Docket No. E002/GR-24-320**

**CAH Docket No. 28-2500-40515**

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**IN THE MATTER OF THE APPLICATION OF NORTHERN STATES POWER COMPANY,**

**D/B/A XCEL ENERGY,**

**FOR AUTHORITY TO INCREASE RATES**

**FOR ELECTRIC UTILITY SERVICE IN MINNESOTA**

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**EXCEPTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**

**RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE**

**MAY 15, 2026**

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## I. INTRODUCTION

The Citizens Utility Board of Minnesota (“CUB”) respectfully submits to the Minnesota Public Utilities Commission (“Commission”) the following arguments and exceptions to the Administrative Law Judge’s (“ALJ” or “Judge”) Findings of Fact, Conclusions of Law, and Recommendations<sup>1</sup> (“Report” or “ALJ Report”) filed in response to the application by Northern States Power Company d/b/a Xcel Energy (“NSPM” or the “Company”) for authority to increase rates for electric service in Minnesota.

For the reasons discussed below, we respectfully disagree and take exception to certain conclusions and recommendations reached by the Judge in the instant case. The ALJ Report excludes relevant evidence related to the Company’s return on equity (“ROE”) and relies too heavily on Witness Nowak’s analysis without adequately explaining his consideration of other parties’ ROE analyses and recommendations. Furthermore, the Judge fails to acknowledge the procedural history and facts surrounding the Company’s proposal for a Residential Arrears Management Program, the assessment of late payment fees, and the imposition of reconnection fees against residential customers.

Importantly, the Commission need not solely rely on or adopt the Judge’s recommendations. The ALJ Report is “merely one part of [the] record”<sup>2</sup> and the Commission is “not bound by [its] findings and recommendations.”<sup>3</sup> The Commission must make its own determination as to the justness and reasonableness of the Company’s petition, and should consider the entirety of the record—including these exceptions, the testimony of CUB’s witnesses, and material evidence excluded from the ALJ Report—when rendering its decisions.

CUB recommends that the Commission modify the ALJ Report consistent with the Exceptions and suggestions described herein.

## II. LEGAL STANDARD

CUB generally agrees with the Judge’s characterization of the legal standards governing the instant proceeding. Minnesota Law requires that “every rate made, demanded, or received by any public utility . . . shall be just and reasonable.”<sup>4</sup> This fundamental underpinning of utility regulation is essential to the Commission’s analysis of the instant petition and requires “balancing the interests of the utility companies, their shareholders, and their customers.”<sup>5</sup> Any doubt as to the reasonableness of the proposed rates must be resolved in favor of the consumer.<sup>6</sup>

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<sup>1</sup> *In the Matter of the Application of Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E-002/GR-24-320, CAH Docket No. 28-2500-40515, Findings of Fact, Conclusions of Law, and Recommendations (Apr. 29, 2026) (hereinafter “ALJ Report”).

<sup>2</sup> *Moorhead v. Minn. Pub. Utils. Comm’n*, 343 N.W. 843, 846 (Minn. 1984) (citing *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951)).

<sup>3</sup> *Moorhead v. Minn. Pub. Utils. Comm’n*, 343 N.W. 843, 846 (Minn. 1984) (quoting *Hymanson v. City of St. Paul*, 329 N.W.2d 324, 326-27 (Minn. 1983)).

<sup>4</sup> Minn. Stat. § 216B.03.

<sup>5</sup> ALJ Report at 20 (citing *In re Request of Interstate Power Co. for Auth. to Change its Rates for Gas Serv. In Minn.*, 574 N.W.2d 408, 411 (Minn. 1998)).

<sup>6</sup> ALJ Report at 21 (citing Minn. Stat. § 216B.03).

As captured in the ALJ Report, the “utility seeking an increase in its rates has the burden of proving by a preponderance of the evidence that its proposed change is just and reasonable.”<sup>7</sup> This requires analyzing “whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission’s statutory duty to enforce the state’s public policy that retail consumers of utility services shall be furnished such services at reasonable rates.”<sup>8</sup> This burden is not met by “merely showing that [the utility] has incurred, or may hypothetically incur, expenses.”<sup>9</sup> Instead, the Commission has previously held that utilities must prove “not only that the facts they present are accurate, but that the costs they seek to recover are rate-recoverable, that the rate recovery mechanisms they propose are permissible, and that the rate design they advocate is equitable.”<sup>10</sup>

Apart from these overarching legal principles, the ALJ Report unfortunately excludes standards relevant to the setting of just and reasonable rates. Foremost among the missing legal standards is the requirement that the Commission “consider ability to pay as a factor in setting utility rates.”<sup>11</sup> This requires the Commission to “assess the requirements of the broad public interests entrusted to its protection” at each step of the balancing process to reach a reasoned and well-supported outcome.<sup>12</sup> As the United States Supreme Court has long recognized, this public interest analysis requires consideration of both cost and non-cost factors that “may be reflected only imperfectly by producers costs; a regulatory method that exclude[s] as immaterial all but current or projected costs [can] not properly serve the consumer interests placed under the Commission’s protection.”<sup>13</sup>

A successful end result of this balancing process both protects consumer interests and effectively allows the utility to maintain credit and attract capital.<sup>14</sup> To achieve this outcome, the Commission “must be free within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests.”<sup>15</sup> The Commission is “not bound to the service of any single regulatory formula,” and is entitled to make “pragmatic adjustments which may be called for by particular circumstances.”<sup>16</sup> When the Commission exercises this authority, it acts in a quasi-legislative capacity by “balancing both cost and noncost factors and making choices among public policy alternatives.”<sup>17</sup>

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<sup>7</sup> ALJ Report at 20 (citing *In re Request of Interstate Power Co. for Auth. to Change its Rates for Gas Serv. In Minn.*, 574 N.W.2d 408, 411 (Minn. 1998)).

<sup>8</sup> ALJ Report at 20 (quoting *In re Northern States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987)).

<sup>9</sup> ALJ Report at 20 (quoting *In re Northern States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987)).

<sup>10</sup> *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. In Minn.*, Docket No. E-002/GR-10-971, Findings of Fact, Conclusions, and Order at 5 (May 14, 2012).

<sup>11</sup> Minn. Stat. § 216B.16, Subd. 15.

<sup>12</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968).

<sup>13</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 815 (1968).

<sup>14</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 791 (1968).

<sup>15</sup> *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*, 312 Minn. 250, 262 (1977) (quoting and adopting the standard set in *Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968)).

<sup>16</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 777 (1968) (quoting *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942)).

<sup>17</sup> *Hibbing Taconite Co. v. Minn. Pub. Serv. Comm’n*, 302 N.W.2d 5, 9 (Minn. 1980).

Considering customers' ability to pay, weighing cost and noncost factors, and making pragmatic adjustments as necessary to protect the public interest is essential to reaching an end result that appropriately and reasonably balances shareholder and consumer interests. For these reasons, we find the ALJ Report to be deficient in its explanation of the legal standards governing the instant proceeding, and recommend the Commission reintroduce these standards in its Order.<sup>18</sup>

### III. ANALYSIS

#### A. Return on Equity

One of the primary issues the Commissions asked the ALJ to address was whether the Company's proposed capital structure and return on equity are reasonable.<sup>19</sup> In its initial filings, NSPM proposed to increase its authorized Return on Equity ("ROE") from 9.25 to 10.3 percent—a 105 basis point increase that, alone, adds around \$100 million to the Company's revenue requirement.<sup>20</sup> Four parties—the Minnesota Department of Commerce ("Department"), Xcel Large Industrials ("XLI"), CUB, and Walmart, Inc. ("Walmart")—argued the Company's request should be soundly rejected and recommended that NSPM's ROE either remain flat at 9.25 percent or decrease. *Thousands* of Minnesotans filed public comments expressing anger and frustration about paying higher rates to support higher corporate profits for the Company. Finally, CUB and other parties introduced substantial evidence showing NSPM's ratepayers are increasingly struggling to afford their electric bills.<sup>21</sup> Despite considerable record support for the Commission holding flat or decreasing NSPM's authorized ROE, the ALJ determined "none of the recommendations made by the parties have sufficient support in the record to warrant adoption by the Commission" and now unilaterally recommends that the Commission increase NSPM's ROE to 9.8 percent.<sup>22</sup>

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<sup>18</sup> For a full description of the applicable legal standards, see *In the Matter of the Application of Northern States Power Co., d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. In Minn.*, MPUC Docket No. E-002/GR-24-320, CAH Docket No. 28-2500-40515, Proposed Findings of Fact, Conclusions of Law, and Recommendations of the Citizens Utility Board of Minnesota at 14-19 (Feb. 25, 2026).

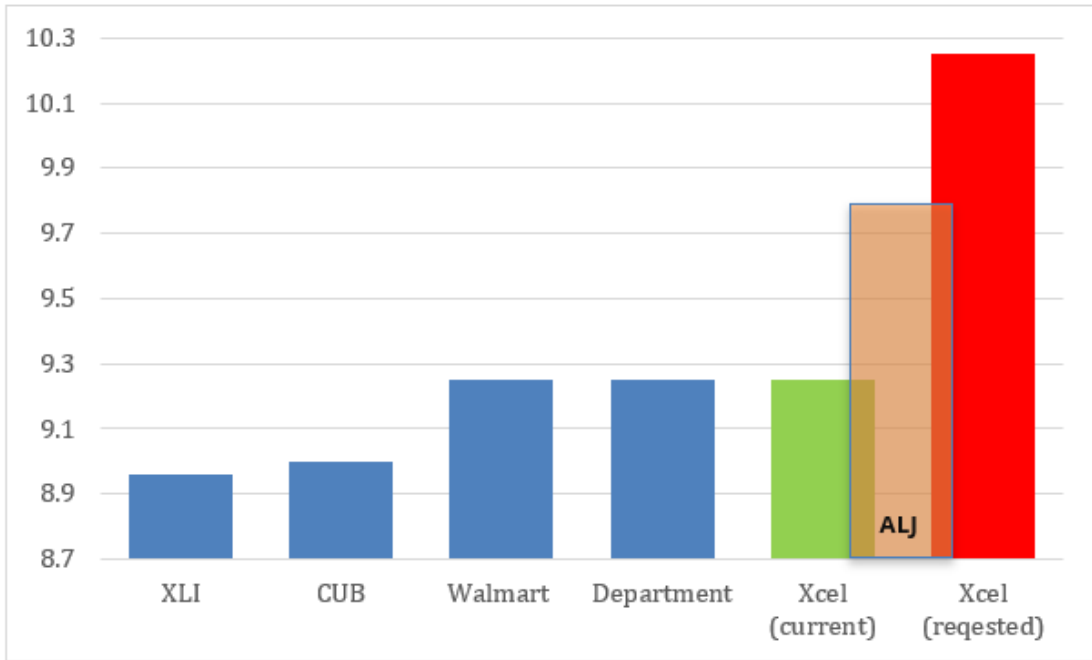
<sup>19</sup> ALJ Report at 7.

<sup>20</sup> Ex. CUB-6 at 9 (Kihm Surrebuttal).

<sup>21</sup> See, e.g., Ex. CUB-3 at 18 (Levenson-Falk Direct).

<sup>22</sup> ALJ Report at 158.

**Figure 1**  
**Current and Proposed Returns on Equity**



The ALJ's recommendation to significantly increase NSPM's ROE is based on an incomplete analysis of the evidentiary record, an inadequate assessment of the applicable legal standard, a misapplication of finance theory, and an inadequate consideration of how the "end result" of his recommendation balances shareholder vs. ratepayer interests. The Commission should soundly reject it.

**1. The ALJ Report includes an incomplete description of the legal standard applicable to ROE determinations.**

In his Report, the Judge introduced the legal standard applicable to ROE determinations primarily by citing Minn. Stat. § 216B.16, subd. 6, the U.S. Supreme Court's *Bluefield* and *Hope* decisions, and the Minnesota Supreme Court's *Hibbing Taconite Co.* decision.<sup>23</sup> No party to this case, including CUB, disputes that "[t]he United States Supreme Court established the hallmarks of a reasonable return on capital, including a reasonable rate of return on common equity, in the landmark cases of *Bluefield* and *Hope*."<sup>24</sup> However, the ALJ Report continues a frustrating pattern of ignoring key aspects of the *Bluefield*, *Hope* and other precedential decisions, leaving an incomplete description of the legal standard applicable to ROE determinations.

<sup>23</sup> ALJ Report at 139-140.

<sup>24</sup> ALJ Report at 139 (citing *Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, (1923)); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

The *Hope* and *Bluefield* decisions do not require ratepayers to write blank checks to support whatever ROE figure is produced by an analytical model that contains no variable accounting for ratepayers' interests. Rather, those decisions articulate parameters that guide the Commission's ratemaking decisions so that shareholders are allowed the opportunity to earn a reasonable return without disregarding ratepayers' protected interest in paying just and reasonable rates. Importantly, the *Hope* Court upheld a Federal Power Commission order that *lowered* a utility's return after finding record evidence supported that action.<sup>25</sup> Though that latter aspect of the *Hope* case is not typically cited in the Commission's orders resolving rate cases, it should not be ignored or forgotten.

CUB and Witness Kihm also highlighted language from U.S. Supreme Court decisions (including, but not limited to, *Hope* and *Bluefield*) that add to the legal standard applicable to the Commission's ROE determination in this case. For ease of reference, we repeat below key language from decisions we previously cited on the record, in chronological order of when the cases were decided. Most of these quotes and citations were omitted from the ALJ Report. We include them again here to recommend that the Commission expand its articulation of the legal standard applicable to an ROE determination when issuing a final order in this case.

Case Name	Quote
<i>Bluefield</i>	A utility's return should be: (1) "reasonably sufficient to assure confidence in the financial soundness of the utility;" and (2) "adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." However, an investor-owned utility "has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures." <sup>26</sup>
<i>FPC v. Natural Gas Pipeline Co.</i>	<p>"The requirements of 'just and reasonable' embrace, among other factors, two phases of the public interest: (1) the investor interest; (2) the consumer interest" and that "[t]he consumer interest cannot be disregarded in determining what is a 'just and reasonable' rate."</p> <p>"By long standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory in the constitutional sense."</p>

<sup>25</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) ("[W]e are of the view that the end result in this case cannot be condemned under the Act as unjust and unreasonable from the investor or company viewpoint.").

<sup>26</sup> *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. 679, 693 (1923).

	<p>Ratemaking bodies are "free to fix a rate varying in amount and higher than a confiscatory rate . . . [or] to decrease any rate which is not the 'lowest reasonable rate.'"<sup>27</sup></p>
<p><i>Hope</i></p>	<p>"The rate-making process [...] i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests" and "regulation does not insure that the business shall produce net revenues."</p> <p>"The fixing of 'just and reasonable' rates with the powers attendant thereto was the heart of the new regulatory system . . . [whose] provisions were plainly designed to protect the consumer interests against exploitation at the hands of private . . . companies."<sup>28</sup></p>
<p><i>Permian Basin Area Rate Cases</i></p>	<p>"Regulation may, consistently with the United States Constitution, limit stringently the return recovered on investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness."</p> <p>A ratemaking body "cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obligated at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection[.]"</p> <p>"Cost and noncost factors do not . . . race one against the other; they must be . . . harnessed side by side. The Commission's responsibilities necessarily oblige it to give continuing attention to values that may be reflected only imperfectly by producers' costs; a regulatory method that excluded as immaterial all but current or projected costs could not properly serve the consumer interests placed under the Commission's protection."</p> <p>Accordingly, "the 'end result' of the [ratemaking body]'s orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they 'maintain . . . credit and . . . attract capital.'"<sup>29</sup></p>

<sup>27</sup> *Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-586; 606-610 (1942).

<sup>28</sup> *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603, 611-612 (1944).

<sup>29</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 791, 815 (1968).

## **2. The ALJ Report omits key factual evidence CUB has introduced into this case.**

The ALJ correctly found that establishing an authorized ROE is “a fact-intensive and record-specific judgment.”<sup>30</sup> We agree. However, we take exception to the ALJ Report’s omission of significant ROE-related factual evidence CUB, other parties, and public commenters introduced into the record.

In our briefs, CUB cited evidence—most of which is derived from NSPM’s own discovery responses and Securities and Exchange Commission (“SEC”) reports—to show NSPM has had no trouble attracting capital, maintaining financial integrity and credit worthiness, and competing with its peers since the Commission last issued a final order establishing a 9.25 percent authorized ROE for the Company. For example:

- The Company directly acknowledged that “NSPM has not experienced difficulties accessing capital markets since its last litigated base rate case.”<sup>31</sup> Record evidence corroborating this statement includes the following:
  - From January 1, 2023 through July 9, 2025, Xcel Energy, Inc. raised \$1.48 billion in public securities issuances and \$64.18 million in nonpublic securities issuances.<sup>32</sup>
  - NSPM successfully issued \$700 million in bonds in February of 2024 under favorable terms because of its financial strength and credit rating.<sup>33</sup> Fitch Ratings assigned an A+ rating to this NSPM issuance.<sup>34</sup>
  - NSPM issued another \$1.1 billion in long-term debt in April of 2025.<sup>35</sup>
  - In both its 2023 and 2024 Annual Reports (Forms 10-K) Xcel Energy, Inc. informed its shareholders and prospective investors that “Xcel Energy expects to have adequate amounts of cash from operating and financing activities to meet both its short-term and long-term cash requirements.”<sup>36</sup>

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<sup>30</sup> ALJ Report at 140 (citing MERC 2017 Rate Case Order at 26).

<sup>31</sup> Ex. XLI-7 at 9-10 (LaConte Surrebuttal) (citing NSPM Response to XLI-40).

<sup>32</sup> Ex. CUB-2 at SK-D-25 (Kihm Direct Schedules).

<sup>33</sup> Tr. Vol. 1 at 42 (Wehner).

<sup>34</sup> Tr. Vol. 1 at 43 (Wehner).

<sup>35</sup> Tr. Vol. 1 at 44 (Wehner).

<sup>36</sup> Tr. Vol. 1 at 50-51 (Wehner) (citing Ex. DOC-26 (Xcel Energy Inc. 2024 Form 10-K) and Ex. DOC-25 (Xcel Energy Inc. 2023 Form 10-K)).

- Xcel Energy, Inc. reported \$1.94 billion in 2024 GAAP earnings<sup>37</sup> and \$1.77 billion in 2023 GAAP earnings.<sup>38</sup> These same reports show that NSPM's diluted earnings per share have increased in recent years, just as the earnings of most of Xcel's other utility subsidiaries have not.<sup>39</sup>
- In October 2025, Xcel Energy, Inc.'s stock price hit an *all-time* record high—well above the stock price that NSPM claims went down following the Commission's 2023 hearing where it last set Xcel's final rates.<sup>40</sup>
- In October of 2025, Fitch revised Xcel's rating outlook from negative to stable.<sup>41</sup>

If nothing else, this evidence helps the Commission assess the reasonableness of its ROE decision in NSPM's last electric rate case (Docket No. E002/GR-21-630), which in turn, helps inform its actions in this one. In its last electric rate case, NSPM proposed that its ROE be increased from 9.06 percent to 10.2 percent.<sup>42</sup> Despite the ALJ recommending that the Commission authorize a 9.87 percent ROE, the Commission ultimately approved a 9.25 percent ROE. The Commission explained this position by noting “no party recommended a return higher than 9.25% other than the Company,” and that the Commission was “unpersuaded by [NSPM's] claims that a 9.25% return is insufficient to enable the Company to attract capital at reasonable rates, maintain its credit rating and financial integrity, and provide returns commensurate with those earned on other investments with equivalent risk.”<sup>43</sup> In other words, the Commission was previously unpersuaded that it must approve an ROE higher than 9.25 percent to meet the *Hope* and *Bluefield* standards. The evidence cited above shows the Commission was right to be skeptical then—and would be right to remain skeptical now—of the assertion that a 9.25 percent return is insufficient to enable the Company to meet the *Hope* and *Bluefield* standards moving forward.

Further, though the ALJ Report notes “Witness Kihm recommended that the Commission consider analysis of affordability-related issues to inform its ROE decision,” the Judge did not discuss any findings on energy burden, historic disconnection levels, historic levels of arrears, and the ratepayer-impact of persistent inflation when arriving at a recommendation to increase the Company's ROE.<sup>44</sup> Reasonable minds might disagree over *the extent* to which this evidence should drive the Company's authorized ROE up or down. However, the Judge's failure to explain how—or even *whether*—he considered this evidence when recommending a significant ROE increase is a glaring omission. We continue to strongly recommend that the Commission closely consider ratepayers' interests when

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<sup>37</sup> Ex. DOC-26 (Xcel Energy Inc. 2024 Form 10-K).

<sup>38</sup> Ex. DOC-25 (Xcel Energy Inc. 2023 Form 10-K).

<sup>39</sup> Ex. DOC-26 at 26 (Xcel Energy Inc. 2024 Form 10-K); Ex. DOC-25 at 27 (Xcel Energy Inc. 2023 Form 10-K); *see also* Tr. Vol. 1 at 52 (Wehner).

<sup>40</sup> Tr. Vol. 1 at 54-55 (Wehner).

<sup>41</sup> Tr. Vol. 1 at 44-45 (Wehner).

<sup>42</sup> *In the Matter of the Application of Northern States Power Company, d/b/a Xcel Energy, for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-21-630, Findings of Fact, Conclusions, and Order at 82 (July 17, 2023) (hereinafter “Docket 21-630 Order”).

<sup>43</sup> Docket 21-630 Order at 88-92.

<sup>44</sup> ALJ Report at 153.

deciding whether a change to NSPM's authorized ROE is warranted. "The 'end result' of the [Commission]'s orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they 'maintain . . . credit and . . . attract capital.'"<sup>45</sup>

Finally, while the Judge correctly observed that "[m]any commenters specifically objected to [NSPM] citing shareholder profits, ROE, or overall rate of return as a basis for the rate increases," he understates the volume of comments expressing those objections.<sup>46</sup> CUB directly reviewed and categorized about 4,000 of the over 7,500 public comments filed before the December 30, 2025 public comment deadline. Of those 4,000 we reviewed, *over half* mentioned frustration with rate increases used to increase corporate profits.<sup>47</sup> The sheer volume of public commenters that took the time to comment on this rate case—and on the Company's profits, in particular—is noteworthy.<sup>48</sup> One of those public commenters, Richard Kolkmann, was the former Managing Director of Investor Relations at Xcel Energy, Inc. and a previous expert witness for the Company in past NSPM rate cases.<sup>49</sup> While the ALJ Report cites to Mr. Kolkmann's testimony at a public hearing, it does not mention his former title or role, which we find relevant to assessing the credibility and weight of Mr. Kolkmann's comments. Mr. Kolkmann testified that he found Witness Nowak's testimony to contain "significant inaccuracies and [to be] misleading" and urged the Commission "not to take Nowak's recommendations at face value."<sup>50</sup> This evidence corroborates similar criticisms of Mr. Nowak's testimony offered by the other finance experts that testified in this case.

### **3. The ALJ suggests the Commission perpetuate "the circle game."**

CUB takes strong exception to the ALJ's reliance on the following finding to justify an increase to the Company's authorized ROE:

At the time of the Company's last rate case filing in October 2021, the 18-month trailing average authorized ROE for vertically integrated electric utilities was 9.52 percent. By the time of the Initial Filing in the current case, the average authorized ROEs increased by approximately 30 basis points to 9.83 percent and average returns have remained at that level through 2025. This implies that, all else being equal, an increase in the Company's ROE from its current level is appropriate.

According to the Judge, the above finding helps "establish that the Company is *entitled* to an increase of some level to its existing 9.25 percent ROE."<sup>51</sup> CUB emphatically recommends that the Commission reject this finding. Setting one utility's authorized ROE based on its comparison to the national average authorized ROE is an overly simplistic method that might have superficial appeal but is not supported

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<sup>45</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 791, 815 (1968).

<sup>46</sup> ALJ Report at 207.

<sup>47</sup> CUB Initial Brief at 14.

<sup>48</sup> By comparison, fewer than 600 people, total, filed public comments in Xcel's last electric rate case filed in Docket 21-630.

<sup>49</sup> Edina 6:00 p.m. Tr. at 20-21 (Sep. 23, 2025) (Richard J. Kolkmann).

<sup>50</sup> Edina 6:00 p.m. Tr. at 20-21 (Sep. 23, 2025) (Richard J. Kolkmann).

<sup>51</sup> ALJ Report at 156 (emphasis added).

by finance theory or applicable law. Making ROE determinations in this way perpetuates an illogical “circle game,” where an increase to one utility’s ROE raises the national average, which then justifies increasing another utility’s ROE, which again raises the national average, and so on. Dr. Kihm draws an analogy to explain why adopting this type of finding would set a dangerous and illogical precedent:

Consider the following medical analogy. Assume that a U.S. man weighs himself and his scale reads 195 pounds. He finds a chart that shows the average weight for U.S. males of his height and body type is 200 pounds. The man concludes that he is at a healthy weight, or even slightly underweight.

But of course we know this to be an illogical conclusion. Assume that medical researchers have shown that the optimal or healthy weight for a man of his body type is 165 pounds. Rather than being fit, the man in question is 30 pounds overweight. But he cannot determine that by looking at what other men weigh. He must look outside the narrow confines of actual weight comparison to find the scientific answer. To conduct a proper assessment, he needs a different reference variable, not what men *actually* weigh, but what they *should* weigh. And certainly no traditionally trained medical professional would tell the man in this analogy he should *gain* additional weight to be healthy. ‘

Looking at recently authorized ROEs to determine the reasonableness of an ROE recommendation suffers from the same analytical defect. The analysis is improperly framed. All that approach does is reinforce the status quo even if it represents an undesirable position. That approach encourages groupthink, missing the very essence of what is needed to make a proper evaluation.<sup>52</sup>

Allowing that circle game to continue leads to rates that are not just or reasonable. The Commission should make clear that an ROE recommendation based on this type of finding has no place in Minnesota and should amend the ALJ Report to strike finding 982.

**4. While the ALJ’s reliance on finance models may appeal to common practice, finance models, cannot, alone, produce or justify a “fair” return.**

We take exception to the ALJ’s conclusion that “[t]he Two-Growth DCF analysis presented by the Company is the most reasonable estimate of the Company’s ROE in the record [and that] the results of this model imply an ROE of 10.34 percent.”<sup>53</sup> This is a faulty conclusion for several reasons: (1) it conflates the Company’s *cost* of equity with the Company’s authorized ROE; (2) it dismisses with minimal explanation record evidence and comments offered by four separate finance experts who

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<sup>52</sup> Ex. CUB-6 at 3 (Kihm Surrebuttal).

<sup>53</sup> ALJ Report at 157.

question the reliability of Mr. Nowak's analysis, and (3) it defaults to common practice without meaningfully considering the "end result" of the ALJ's recommendation.

Both Department Witness Addonizio and CUB Witness Kihm testify that that cost of equity and return on equity are distinct variables. A utility's cost of equity is the return investors require in order to invest in the utility.<sup>54</sup> A utility's authorized return on equity is a variable established by the Commission based on its informed judgment. Importantly, Witnesses Kihm and Addonizio are far from the only experts to distinguish these variables. The ALJ Report omits record evidence of other independent and credible legal and financial scholars who similarly distinguish a utility's cost of equity from its authorized return on equity.<sup>55</sup> Other utility regulators, too, have recognized this distinction.<sup>56</sup> We recommend that the Commission more precisely distinguish a utility's cost of equity from its authorized return on equity when establishing an ROE in this proceeding.

Record evidence also shows that Witness Nowak (along with his colleagues at Concentric) rely on modeling results to *always* recommend ROEs above 10 percent, regardless of the underlying circumstances.<sup>57</sup> In its Initial Brief, the Department provides considerable evidentiary support showing Mr. Nowak's quantitative modeling results "are not the product of reasoned judgment, but outcome determinative exercise, using unrealistic inputs, to produce a desired result – consistent with the client's preference."<sup>58</sup> Department Witness Addonizio, who has worked as a Public Utilities Analyst for 25 years, testified that Witness Nowak's analytical methods produced results that are "unreasonably high."<sup>59</sup> XLI Witness LaConte, who has worked in utility consulting for 31 years, testified that "Mr. Nowak's CAPM and Risk Premium analyses overstate NSPM ROE."<sup>60</sup> CUB Witness Kihm, who has worked in utility regulation and consulting for 45 years, cites numerous finance scholars to show that Mr. Nowak's analysis is inconsistent with widely accepted finance principles.<sup>61</sup> And (as mentioned above), NSPM's own former Managing Director of Investor Relations, Mr. Kolkmann, testified that he found Mr. Nowak's analysis to contain "significant inaccuracies and [to be] misleading."<sup>62</sup> The substantial evidence introduced via the testimonies of Witnesses Addonizio, LaConte, and Kihm (further bolstered by the public comments of Mr. Kolkmann) weighs heavily *against* finding Witness Nowak's Two-Growth DCF analysis to be "the most reasonable estimate of the Company's ROE in the record."

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<sup>54</sup> See e.g., Ex. DOC-12 at 77-80 (Addonizio Direct) (citing *In the Matter of the Application of Rocky Mountain Power for Authority to Increase its Retail Electric Utility Service Rates in Utah and for Approval of its Proposed Electric Service Schedules and Electric Service Regulations*, PSCU Docket No. 24-035-04, ORDER at 28 (Apr. 25, 2025)) ("utility authorized ROEs between 1980 and 2022 consistently overstated the actual cost of equity capital."). See also Ex. CUB-6 at 2 (Kihm Surrebuttal) ("The ROE and the cost of equity are distinct variables.")

<sup>55</sup> See Ex. DOC-12 at 78 (Addonizio Direct) (citing 1) THE ECONOMICS OF REGULATION, by Alfred Kahn; 2) THE REGULATION OF PUBLIC UTILITIES, by Charles F. Phillips, Jr.; and 3) PRINCIPLES OF PUBLIC UTILITY RATES, by James C. Bonbright).

<sup>56</sup> Ex. CUB-1 at 20 (Kihm Direct) (citing *In re Madison Gas and Elec. Co.*, 2007 WL 4632120 (2007)).

<sup>57</sup> Department Initial Brief at 35.

<sup>58</sup> Department Initial Brief at 32-35.

<sup>59</sup> Ex. DOC-12 at 100 (Addonizio Direct).

<sup>60</sup> Ex. XLI-1 at 42, Appendix A (LaConte Direct).

<sup>61</sup> See generally Ex. CUB-1 at 20 (Kihm Direct).

<sup>62</sup> Edina 6:00 p.m. Tr. at 20-21 (Sep. 23, 2025) (Richard J. Kolkmann).

In part because model results can be manipulated to support inflated returns, Dr. Kihm suggests that, while the Commission need not “jettison the models completely,” it should “adjust the role they play, moving them from center stage to the sidelines.”<sup>63</sup> We understand that the Commission has “historically placed its heaviest reliance” on the Discounted Cash Flow (DCF) analytical model when making ROE determinations.<sup>64</sup> However, the Commission also recognizes “that relying too heavily on a single set of results from one model could inadvertently narrow the range of reasonable returns considered, needlessly eliminating relevant data from close examination.”<sup>65</sup> Indeed, this recognition is consistent with Supreme Court’s warnings *against* overreliance on one or more analytical models. In both the *Natural Gas Pipeline Co.* and *Hope* decisions, the Court noted that the Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas.<sup>66</sup> Rather, “[u]nder the statutory standard of ‘just and reasonable’ it is the result reached, not the method employed, which is controlling.”<sup>67</sup>

Rather than accept the ALJ’s conclusions and recommendations on ROE, we recommend that the Commission directly consider the robust analyses introduced by multiple, highly experienced finance experts. We specifically recommend that the Commission’s analysis include consideration of cost and non-cost factors, including the impact any increase to the Company’s ROE will have on ratepayers already struggling to afford their utility bills.

## **5. The Commission should modify the ALJ Report.**

For the foregoing reasons, we recommend that the Commission reject in its entirety the ALJ’s “ROE: Summary Conclusion, and Recommendation” found on pages 157 – 159 of the ALJ Report.

We also recommend that the Commission adopt, at minimum,<sup>68</sup> the below revisions to the ALJ’s recommended findings related to the Company’s authorized ROE.

CUB NEW 886a. The Court also reiterated that “[t]he rate-making process [...] i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and the consumer interests” and that “regulation does not insure that the business shall produce net revenues.”<sup>69</sup> The primary purpose of requiring just and reasonable rates is to “protect consumers against exploitation” at the hands of utilities.<sup>70</sup> The Court also

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<sup>63</sup> Ex. CUB-1 at 38 (Kihm Direct).

<sup>64</sup> Docket 21-630 Order at 80; 88-90.

<sup>65</sup> Docket 21-630 Order at 89.

<sup>66</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (citing *FPC v. Nat. Gas Pipeline*, 315 U.S. at 586).

<sup>67</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (emphasis added).

<sup>68</sup> The ALJ’s findings and recommendations on ROE differ significantly from CUB’s ROE analysis and recommendations. The modifications to the ALJ Report we recommend here, while hopefully helpful to the Commission, do not comprehensively address all findings that would require modification should the Commission’s ROE decision depart significantly from the ALJ’s recommendation.

<sup>69</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (citing *FPC v. Nat. Gas Pipeline*, 315 U.S. at 590).

<sup>70</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 610.

clarified that “under the statutory standard of just and reasonable it is the result reached not the method employed which is controlling.”<sup>71</sup>

CUB NEW 886b. In its *Federal Power Commission v. Natural Gas Pipeline Co.* decision, the Court said “[t]he requirements of ‘just and reasonable’ embrace, among other factors, two phases of the public interest: (1) the investor interest; [and] (2) the consumer interest”<sup>72</sup> and that “[t]he consumer interest cannot be disregarded[.]”<sup>73</sup> “By long standing usage in the field of rate regulation, the ‘lowest reasonable rate’ is one which is not confiscatory in the constitutional sense”<sup>74</sup> and “[i]f the rate permits the company to operate successfully and to attract capital all questions as to ‘just and reasonable’ are at an end so far as the investor interest is concerned.”<sup>75</sup> The Court also clarified that regulators should use their judgment, not just formulas, to set a reasonable return.<sup>76</sup>

CUB NEW 886c. In its *Permian Basin Area Rate Cases* decision, the Court specified:

The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress. Accordingly, the “end result” of the Commission’s orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they “maintain . . . credit and . . . attract capital.”<sup>77</sup>

CUB NEW 888a. The U.S. Supreme Court and Minnesota Supreme Court have clearly established that, when establishing a fair return, the Commission must also: (1) balance the interests of a utility and its ratepayers;<sup>78</sup> (2) use its judgment to consider cost and non-cost factors, not all of which are reflected in finance models;<sup>79</sup> and (3) focus on the “end result” of its decision, rather than the methods employed to get there, to determine whether an authorized return is fair and results in just and reasonable rates.<sup>80</sup>

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<sup>71</sup> *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602.

<sup>72</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 606-607 (1942).

<sup>73</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. at 608.

<sup>74</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. at 607, 585.

<sup>75</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. at 607.

<sup>76</sup> *FPC v. Natural Gas Pipeline Co.*, 315 U.S. at 585-86.

<sup>77</sup> *Permian Basin Area Rate Cases*, 390 U.S. at 791.

<sup>78</sup> See also *Hibbing* 302 N.W.2d at 11.

<sup>79</sup> *Fed. Power Comm’n v. Natural Gas Pipeline Co.*, 315 U.S. at 607 (“The decision in each case must turn on considerations of justness and fairness which cannot be cast into a legalistic formula. The rate of return to be allowed in any given case calls for a highly expert judgment. That judgment has been entrusted to the Commission.”).

<sup>80</sup> *Permian Basin Area Rate Cases*, 390 U.S. at 791 (“The Commission cannot confine its inquiries either to the computation of costs of service or to conjectures about the prospective responses of the capital market; it is instead obliged at each step of its regulatory process to assess the requirements of the broad public interests entrusted to its protection by Congress.”).

Modified 891. Xcel's most recently approved ROE is 9.25 percent. This ROE was established in a July 17, 2023 Order after a after a fully litigated rate case.<sup>81</sup>

CUB NEW 891a. Xcel acknowledges it "has not experienced difficulties accessing capital markets since its last litigated base rate case."<sup>82</sup> From January 1, 2023 through July 9, 2025, Xcel Energy, Inc. raised \$1.48 billion in public securities issuances and \$64.18 million in nonpublic securities issuances.<sup>83</sup> Northern States Power Company ("NSPM"), itself, successfully issued \$700 million in bonds in February of 2024<sup>84</sup> and another \$1.1 billion in long-term debt in April of 2025.<sup>85</sup>

CUB NEW 891b. The Company has recently been able to attract debt investment at reasonable terms due to its strong credit rating.<sup>86</sup> Fitch Ratings assigned an A+ rating to NSPM's \$700 million debt issuance in 2024.<sup>87</sup> Fitch Ratings concluded NSPM's long-term issuer rating remains stable at an A- Rating.<sup>88</sup> And in October 2025, Fitch adjusted Xcel Energy, Inc.'s credit outlook from negative to stable.<sup>89</sup>

CUB NEW 891c. In its 2024 Form 10-K, Xcel Energy, Inc. reported \$1.94 billion in net earnings, which is \$170 million more than the net earnings it reported in 2023<sup>90</sup> and \$190 million more than the net earnings it reported in 2022.<sup>91</sup> Xcel Energy, Inc. also reports it has been able to meet or exceed its earnings per share (EPS) guidance every year for the past 22 years, supporting uninterrupted quarterly dividend payments over that time period.<sup>92</sup> Xcel Energy, Inc.'s EPS attributable to NSPM has increased 135% from 2010 to 2024.<sup>93</sup> XEI's stock achieved an all-time record high in October 2024.<sup>94</sup>

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Accordingly, the 'end result' of the Commission's orders must be measured as much by the success with which they protect those interests as by the effectiveness with which they 'maintain . . . credit and . . . attract capital.'")

<sup>81</sup> Xcel 2021 Rate Case Order at 92.

<sup>82</sup> Ex. XLI-7 at 9-10 (LaConte Surrebuttal) (citing NSPM Response to XLI-40).

<sup>83</sup> Ex. CUB-2 at SK-D-25 (Kihm Direct Schedules).

<sup>84</sup> Tr. Vol. 1 at 42 (Wehner).

<sup>85</sup> Tr. Vol. 1 at 44 (Wehner).

<sup>86</sup> Tr. Vol. 1 at 44 (Wehner); *see also* Ex. XLI-2 at 8 (LaConte Direct) ("the Company's "credit metrics exceed, or are well within the range, required by S&P to maintain an A/A- credit rating which is the rating that NSPM wishes to continue to support and maintain.")

<sup>87</sup> Dep't Initial Brief at 8 (citing Tr. Vol. 1 at 43 (Wehner)).

<sup>88</sup> Dep't Initial Brief at 8 (citing Tr. Vol. 1 at 43 (Wehner)).

<sup>89</sup> Dep't Initial Brief at 8 (citing Tr. Vol. 1 at 43 (Wehner)).

<sup>90</sup> Ex. DOC-26 at 25 (2024 Form 10-K) (showing that Xcel's net income was \$1.94 billion in 2024 compared with \$1.77 billion in 2023).

<sup>91</sup> Ex. DOC-25 at 26 (2023 Form 10-K) (showing that Xcel's net income was \$1.77 billion in 2023 compared with \$1.74 billion in 2023).

<sup>92</sup> Ex. DOC-26 at 7 (2024 Form 10-K).

<sup>93</sup> Ex. DOC-1 at 25 (Johnson Direct).

<sup>94</sup> Ex. CUB-6 at SK-SR-26 (Kihm Surrebuttal Schedules).

~~896. CUB recommended an ROE of 9.0 percent. CUB's recommendation is not derived from a specific model and falls within a range from 7.7 percent to 9.3 percent that CUB's witness believes reflects a reasonable cost of equity for Xcel.~~

CUB NEW 896a. CUB recommends an ROE of 9.0 percent. This is derived from DCF and CAPM model results estimating the Company's cost of equity to be 7.7 percent.<sup>95</sup> After estimating the Company's cost of equity, CUB encouraged the Commission to weigh other record evidence—including evidence of ratepayers' growing affordability challenges—and make pragmatic adjustments to arrive at a rate of return that appropriately balances the competing interests of ratepayers and shareholders.<sup>96</sup>

Modified. 920. According to the Department and CUB, the cost of equity is not synonymous with ROE. The Department and CUB refers to empirical evidence that allowed ROEs typically exceed the cost of equity.<sup>97</sup> Several other independent legal and financial scholars also distinguish a utility's cost of equity and authorized return on equity.<sup>98</sup> Some state utility regulators, too, have recognized this distinction.<sup>99</sup>

CUB NEW 920a. The difference between cost of equity and return on equity is apparent when comparing the book value and market value of the Company's equity. If investors expect a company's return on equity to be roughly equal to its cost of equity, the market and book values of its equity will be roughly equal.<sup>100</sup> However, utility stock often trades at about twice book value.<sup>101</sup> This shows that investors are willing to pay a substantial premium to acquire the stock of utilities that produce high returns.<sup>102</sup>

Modified. 970. ~~Having already determined that the ROE should be set based on consideration of some kind of financial modeling,~~ It is necessary to assess which model or models should be relied on and, ultimately, how to use the model or models to determine the appropriate ROE in this proceeding. While models can be helpful in determining the Company's cost of equity, they do not, alone, produce a "fair" return on equity.

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<sup>95</sup> Ex. CUB-1 at 4, 21 (Kihm Direct).

<sup>96</sup> Ex. CUB-1 at 43-44 (Kihm Direct); *see also FPC v. Natural Gas Pipeline Co.*, 315 U.S. at 586 (stating utility regulators should "make the pragmatic adjustments which may be called for by particular circumstances" when establishing an authorized return.)

<sup>97</sup> Ex. DOC-12 at 70-71 (Addonizio Direct); Ex. CUB-1 at 37 (Kihm Direct); Ex. CUB-6 at 2 (Kihm Surrebuttal).

<sup>98</sup> *See* Ex. DOC-12 at 78 (Addonizio Direct) (citing 1) THE ECONOMICS OF REGULATION, by Alfred Kahn; 2) THE REGULATION OF PUBLIC UTILITIES, by Charles F. Phillips, Jr.; and 3) PRINCIPLES OF PUBLIC UTILITY RATES, by James C. Bonbright).

<sup>99</sup> Ex. CUB-1 at 20 (Kihm Direct) (citing *In re Madison Gas and Elec. Co.*, 2007 WL 4632120 (2007)).

<sup>100</sup> Ex. DOC-12 at 44 (Addonizio Direct).

<sup>101</sup> Ex. CUB-1 at 37 (Kihm Direct).

<sup>102</sup> Ex. CUB-1 at 9 (Kihm Direct).

Modified. 973. For these reasons, the Commission should rely primarily on the Two-Growth DCF model ~~when setting to determine~~ Xcel's cost of equity ROE in this proceeding.

~~982. At the time of the Company's last rate case filing in October 2021, the 18-month trailing average authorized ROE for vertically integrated electric utilities was 9.52 percent. By the time of the Initial Filing in the current case, the average authorized ROEs increased by approximately 30 basis points to 9.83 percent and average returns have remained at that level through 2025.1060 This implies that, all else being equal, an increase in the Company's ROE from its current level is appropriate.~~

~~984. These factors establish that the Company is entitled to an increase of some level to its existing 9.25 percent ROE. This reduces the range of supportable ROE figures to 9.25 percent to 10.34 percent.~~

### SUMMARY OF PUBLIC COMMENTS

Modified. 23. Many commenters specifically objected to Xcel citing shareholder profits, ROE, or overall rate of return as a basis for the rate increases. The vast majority of these commenters stated customer rates should not contribute to shareholder profits and found Xcel's focus on the issue inappropriate or concerning.<sup>103</sup> Richard J. Kolkmann, who previously held the role of Managing Director of Investor Relations at Xcel Energy, Inc., believes Xcel's requested ROE to be excessive and explained that he found testimony in favor of the requested ROE to contain "significant inaccuracies" and to be misleading after analyzing the numbers presented.<sup>104</sup>

#### B. Late Payment Fees and the Residential Arrears Management Program

CUB also takes exception to the Judge's recommendation to permit the continued assessment of late payment fees at annual rates of 18 percent and allow the associated revenues to be used for NSPM's proposed Residential Arrears Management Program ("RAMP").<sup>105</sup> While the ALJ Report provides a cursory analysis of these issues, the Judge largely fails to address the concerns and arguments raised by Witness Levenson-Falk in her testimony and by CUB in its briefs. Because the evidence offered in this proceeding supports the reduction or elimination of late payment fees, we recommend the Commission decline to adopt the Judge's findings and recommendations on these issues.

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<sup>103</sup> See, e.g., Minneapolis 1:30 p.m. Tr. at 24-26 (Sep. 24, 2025) (Elis Bradshaw); Minneapolis 1:30 p.m. Tr. at 26-28 (Sep. 24, 2025) (Josh Zimmerman); Comment by Alexander Roth (Sep. 24, 2025) (eDocket No. 20259-223296-02).

<sup>104</sup> Edina 6:00 p.m. Tr. at 20-25, 50-55 (Sep. 23, 2025) (Richard J. Kolkmann).

<sup>105</sup> ALJ Report at 137, 185.

**1. The Company's RAMP proposal constitutes a "rate" for which the utility bears the burden of proof.**

NSPM's RAMP proposal is designed to utilize late payment fee revenues to provide "a pre-determined benefit to eligible customers with past due balances to mitigate credit activity and potential disconnection of service."<sup>106</sup> In this way, the program is directly tied to and dependent upon the assessment of late payment fees against residential customers. For this reason, it is essential to contemplate these issues simultaneously and appropriately assign the burden of proof. The ALJ Report does not discuss the burden of proof as it applies to RAMP. Nonetheless, Minn. Stat. § 216B.16, Subd. 4 states clearly that the "burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change." Because RAMP constitutes a "rate" as that term is defined by Minnesota law, NSPM bears this burden.

As explained in CUB's Reply Brief, Minn. Stat. § 216B.02 "defines rates in such a broad manner that it captures the whole gamut of potential expenses, charges, and determinants that factor into customers' utility bills:"<sup>107</sup>

Subd. 5. **Rate.** "Rate" means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.

NSPM's RAMP proposal fundamentally alters how late payment fee revenues will be utilized, thereby affecting the rates to be charged to residential customers. Rather than using those fees to offset 2025 test year and 2026 plan year revenue requirements,<sup>108</sup> the Company proposes to use such funds to "assist customers in payment of past due amounts."<sup>109</sup> In essence, this "remov[es] . . . late payment revenues from the cost of service" and increases the revenue requirement that will need to be collected from all customers.<sup>110</sup> While CUB does not take issue with this specifically,<sup>111</sup> we recognize that the resulting change means RAMP must be considered a "rate" for the purposes of regulatory review. Regardless of whether the program is instituted through tariffs or is considered a utility "practice," the result is the same: modifying the treatment of how late payment fee revenues are allocated alters the Company's revenue requirement and the amounts ultimately collected from customers. As a result, the Company bears the burden to prove that its proposed rate change is just and reasonable.<sup>112</sup>

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<sup>106</sup> Ex. Xcel-39 at 3 (Lindgren Supplemental Direct).

<sup>107</sup> *In the Matter of the Application of Northern States Power Co., d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. In Minn.*, MPUC Docket No. E-002/GR-24-320, CAH Docket No. 28-2500-40515, Reply Brief of the Citizens Utility Board of Minnesota at 2 (Feb. 25, 2026) (hereinafter "CUB Reply Brief").

<sup>108</sup> See Ex. Xcel-18 at 7 (Halama Supplemental Direct).

<sup>109</sup> Ex. Xcel-39 at 2 (Lindgren Supplemental Direct).

<sup>110</sup> Ex. Xcel-18 at 7 (Halama Supplemental Direct); see also Ex. Xcel-81 at 13-14 (Howard Rebuttal).

<sup>111</sup> See, e.g., Ex. CUB-8 at 20 (Levenson-Falk Surrebuttal) (explaining that no longer collecting late payment fees would have a similar impact on the Company's revenue requirement).

<sup>112</sup> Minn. Stat. § 216B.16, Subd. 4.

## **2. The Judge improperly shifts the burden of proof to CUB.**

The ALJ suggests that the late payment fee issue is entirely outside the burden of proof standard established by Minn. Stat. § 216B.16, Subd. 4 because the Company is not seeking to modify the monthly 1.5 percent fee assessed against customers.<sup>113</sup> Rather than placing the burden of proof on the utility, the Judge suggests CUB bears that burden, as Witness Levenson-Falk recommended the elimination or reduction of late payment fees.<sup>114</sup> This perspective fails to acknowledge the procedural history surrounding late payment fees and how NSPM's own proposal constitutes a change in rates. When these factors are reintroduced into the analysis, the burden of proof remains soundly with the Company.

In January 2025, the Commission ordered NSPM to propose in supplemental direct testimony the "elimination of late fees and interest" or a "program similar to its offering in Colorado where interest payments and fees from late bill payments are donated to low-income customer assistance programs."<sup>115</sup> The Company thereafter advanced its recommendation for RAMP, thereby altering how the revenues from late payment fee assessments would be utilized.<sup>116</sup>

Despite the clear directive to consider the "elimination of late fees and interest," the Company did *not* address this possibility, nor did it initially consider any other changes to the late payment fee structure currently in place. In responding to NSPM's RAMP proposal, Witness Levenson-Falk introduced evidence supporting the elimination or reduction of late payment fees as previously contemplated by the Commission.<sup>117</sup> Witness Levenson-Falk's testimony thus cannot be considered in a vacuum. It must be analyzed in relation to the Commission's previous order and the Company's proposal to modify the use of late payment fees to fund RAMP.

As previously detailed, NSPM's RAMP proposal constitutes a "rate" under Minnesota law and is therefore subject to the burden of proof requirement contained in Minn. Stat. § 216B.16, Subd. 4. In analyzing the justness and reasonableness of that proposal, the Commission must consider whether "the rate design [the Company] advocate[s] is equitable."<sup>118</sup> By necessity, this entails analyzing each element of RAMP and the context in which the proposal was brought forward. In particular, the Commission should consider (1) whether it is appropriate to utilize late payment fee revenues to fund RAMP; and (2) whether other rate design options would result in more just, more reasonable, or more equitable outcomes for the utility's customers. It is against this background that CUB Witness Levenson-Falk's testimony securely rests. It does not alter the burden of proof the Company bears.

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<sup>113</sup> ALJ Report at 136.

<sup>114</sup> Ex. CUB-3 at 20 (Levenson-Falk Direct); Ex. CUB-8 at 18 (Levenson-Falk Surrebuttal).

<sup>115</sup> *In the Matter of Xcel Energy's 2023 Annual Safety, Reliability, and Service Quality Report*, Docket No. E-002/M-24-27, Order Accepting Reports and Setting Additional Requirements at 13 (Jan. 13, 2025).

<sup>116</sup> Ex. Xcel-39 (Lindgren Supplemental Direct).

<sup>117</sup> See generally Ex. CUB-3 (Levenson-Falk Direct); Ex. CUB-8 (Levenson-Falk Surrebuttal).

<sup>118</sup> *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-002/GR-10-971, Findings of Fact, Conclusions, and Order at 5 (May 14, 2012).

Unfortunately, this procedural history—together with the interrelationship between the Company's RAMP proposal and Witness Levenson-Falk's testimony—was lost in the Judge's analysis of the case. Late payment fees were considered separately from RAMP and decisions were independently rendered on each issue. This shortcoming resulted in an inappropriate shifting of the burden of proof to which CUB now takes exception.

**3. The Company fails to meet its burden to show that funding RAMP through the continued assessment of late payment fees is reasonable.**

CUB takes exception to the conclusions reached in the ALJ Report regarding both the RAMP program and the continued assessment of late payment fees. As detailed above, these issues should be considered simultaneously, as funding for RAMP is entirely dependent on the Company continuing to charge customer late payment fees at an annualized rate of 18 percent. This framework “improperly incentivizes the assessment of late payment fees by directly tying [RAMP] efficacy to these charges.”<sup>119</sup>

Throughout the entirety of this proceeding, the Company has provided little to no record support for its claim that late payment fees incentivize timely payment.<sup>120</sup> In contrast, Witness Levenson-Falk—together with other stakeholders and thousands of public commenters—has extensively portrayed the affordability challenges facing NSPM's residential customers and clearly articulated how late payment fees serve to exacerbate those issues. Minnesota households are setting their thermostats at unsafe temperatures and foregoing food or medicine in order to pay utility bills.<sup>121</sup> The application of predatory late payment fees accentuates these concerns by compounding customer debts and increasing the likelihood of service termination.<sup>122</sup> In both 2024 and 2025, NSPM disconnected approximately twice as many customers than any other year in recent history.<sup>123</sup>

Against this background, CUB finds the reduction or elimination of late payment fees to be in the public interest and reflective of just, reasonable, and equitable ratemaking. For the foregoing reasons, we take exception to the Judge's recommendation to approve RAMP and allow late payment fees to continue.

*a. The Judge excludes materially relevant evidence from his analysis of late payment fee assessments.*

Throughout his analysis of late payment fees and the Company's RAMP proposal, the Judge disregards or attaches no significance to evidence presented by Witness Levenson-Falk that is essential to determining the reasonableness of these issues.

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<sup>119</sup> CUB Initial Brief at 33.

<sup>120</sup> CUB Initial Brief at 28.

<sup>121</sup> Ex. CUB-3 at 6-7 (Levenson-Falk Direct); Ex. CUB-8 at 10-12 (Levenson-Falk Surrebuttal); CUB Initial Brief at 12-13; CUB Reply Brief at 4-5.

<sup>122</sup> Ex. CUB-3 at 20-23 (Levenson-Falk Direct); Ex. CUB-8 at 19 (Levenson-Falk Surrebuttal).

<sup>123</sup> Ex. CUB-3 at 11 (Levenson-Falk Direct); Ex. CUB-8 at 7-9 (Levenson-Falk Surrebuttal).

First, and perhaps most importantly, the Judge only makes a passing reference to the interest rates paid by the Company to service residential past due balances.<sup>124</sup> As extensively detailed in Witness Levenson-Falk's testimony, NSPM charges customers an annualized 18 percent late payment fee, even though the Company pays a substantially lower annual interest rate of 5.3935 percent (0.45 percent monthly) on residential arrears.<sup>125</sup> The Judge's lack of discussion and analysis on this issue is particularly concerning, as it forms the basis for Witness Levenson-Falk's recommendation to reduce residential late payment fees to align with the rates paid by NSPM. It also provides pivotal context for understanding why the late fee percentage charged by the Company is particularly egregious.

As explained in CUB's Reply Brief, it is "fundamentally inequitable" to charge customers late payment fees that are 3.337 times more than the costs incurred by the Company.<sup>126</sup> Because such fees have historically been used to offset NSPM's revenue requirement, "customers struggling with their ability to pay [have been] charged more than necessary to artificially lower" costs recovered from other customers.<sup>127</sup> The Company neglects to address this issue in testimony. The Judge likewise fails to grapple with the unreasonableness of this cross-subsidy, or to even address Witness Levenson-Falk's recommendation to correct the practice by reducing late payment fee assessments to the interest rate incurred by NSPM on past-due balances. For this reason, we take exception to the conclusions reached by the Judge and strongly encourage the Commission to reduce late payment fees to 0.45 percent per month if such charges are not eliminated in their entirety.

Second, CUB takes exception to the Judge's framing of the evidence surrounding late payment fees and arrears during the COVID-19 pandemic. In particular, he asserts that despite "methodological limitations," the increase in arrears during the COVID-19 late fee moratorium is "strongly suggestive" of a correlation between the two data points.<sup>128</sup> We appreciate that the Judge recognizes the incomplete and imperfect nature of this data, and that it fails to account for the "economic disruption and employment conditions flowing from the pandemic."<sup>129</sup> However, we believe it is necessary to consider additional information to put this supposed "correlation" into context.

The Kentucky Public Service Commission previously acknowledged that while late payment fees do not alter customer behavior, the prospect of utility disconnection often does prompt payment, albeit late.<sup>130</sup> Importantly, the temporary pause on late payment fees in Minnesota coincided with a moratorium on disconnections. This, alone, complicates the analysis surrounding late payments and arrears. The existence of such confounding variables renders it impossible to draw a line directly between the absence of late payment fees and rising arrears. This relationship becomes even more tenuous when additional data is considered. As correctly noted in the ALJ Report, residential past-due

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<sup>124</sup> See ALJ Report at 135 (stating only that "the Company pays an interest rate of 5.3935 percent annually—or approximately 0.45 percent monthly—on residential past due balances").

<sup>125</sup> Ex. CUB-3 at 20-21 (Levenson-Falk Direct); Ex. CUB-5 at ALF-D-21, ALF-D-22 (Levenson-Falk Direct Schedules).

<sup>126</sup> CUB Reply Brief at 6.

<sup>127</sup> CUB Reply Brief at 6.

<sup>128</sup> ALJ Report at 137.

<sup>129</sup> ALJ Report at 136-37.

<sup>130</sup> Ex. CUB-5, ALF-D-12 at 3-4 (Levenson-Falk Direct Schedules).

balances grew from \$44 million at the end of 2019 to \$85 million by the beginning of 2022.<sup>131</sup> However, those balances remain elevated well *after* the late payment fee moratorium ended and involuntary disconnections were resumed by the Company.<sup>132</sup> In fact, residential arrears reached over \$116 million by March of 2023 and have stubbornly refused to drop to pre-COVID levels despite late payment fees being reinstated for multiple years.<sup>133</sup> This additional longitudinal analysis calls into question the Judge's conclusion that late payment fees are likely to lower arrears.

b. *That a cap on late payment fees exists does not mean it is reasonable or equitable for the Company to charge that percentage to customers.*

CUB takes exception to the Judge's conclusion that the 1.5 percent cap set by Minnesota Rule is determinative in establishing the reasonableness of the Company's late payment fees:

The Company assesses late fees at a level explicitly authorized by Minn. R 7820.5000, subp. 3. While Xcel charges the maximum late fees permitted by the rule, the rule provides no standard to assess whether the Company should be required to charge a lower rate. This presumptively, if not conclusively, establishes the reasonableness of Xcel's late fees.

Undoubtedly, late payment fees set above the 1.5 percent threshold would be inconsistent with duly promulgated Commission rules and *per se* impermissible. However, this does not mean that any fees set within the bounds of Minn. R. 7820.5000 are necessarily reasonable. The Commission's authority and jurisdiction over the rates charged to customers extends to late payment fees assessed by the Company. Pursuant to legislative mandate, the Commission must ensure that "[e]very rate made, demanded or received by any public utility . . . shall be just and reasonable. . . . [with a]ny doubt as to reasonableness . . . resolved in favor of the consumer."<sup>134</sup> For this reason, CUB takes exception to the claim that there is "no standard to assess" whether a lower rate should be charged to customers for late payment. The standard of justness and reasonableness serves as the foundation of the Commission's regulatory authority and applies with equal force to the determination of late payment fees.

Furthermore, the Judge's analysis conveniently excludes reference to Minn. R. 7820.5400 which states, in part, that utilities "*may* impose a late payment charge" that is supported by "substantiating documents and exhibits."<sup>135</sup> As CUB detailed in Initial Briefs, the Minnesota Supreme Court has "held that 'may' indicates permissive, rather than mandatory, conduct."<sup>136</sup> Similarly, the Kentucky Public

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<sup>131</sup> ALJ Report at 136.

<sup>132</sup> *In the Matter of an Inquiry into Actions by Electric and Natural Gas Utilities in Light of the COVID-19 Pandemic Emergency*, Docket No. E,G-999/CI-20-375, Order Adopting Broad Transition Plan Proposal, Suspending Negative Reporting, and Establishing Notice and Communication Requirements at 10 (May 26, 2021) (disallowing the imposition of late payment fees until April 30, 2022 if customers enter into, or are complying with, a payment agreement); Ex. CUB- 9 at ALF-SR-23 (ALF Surrebuttal Schedules).

<sup>133</sup> *See generally* Ex. CUB-9 at ALF-SR-23 (Levenson-Falk Surrebuttal Schedules).

<sup>134</sup> Minn. Stat. § 216B.03.

<sup>135</sup> Minn. R. 7820.5400, Subp. 2.

<sup>136</sup> CUB Initial Brief at 28 (citing *Minn. Voter's Alliance v. Co. of Ramsey*, 971 N.W.2d 269, 280 (Minn. 2022)).

Service Commission (“KPSC”) interpreted an analogous rule as “allow[ing] the Commission discretion to determine whether the fee is fair, just and reasonable.”<sup>137</sup> Within this regulatory framework, the Commission has the authority—and indeed the duty—to determine whether the late payment fees charged by the Company are just, reasonable, and appropriately assessed against customers.

Witness Levenson-Falk presented compelling evidence that such fees do not alter customers’ payment behaviors but instead impose a financial burden on those households that are least able to afford an additional charge.<sup>138</sup> Apart from the general lack of effectiveness associated with these fees, the 18 percent annual rate assessed by NSPM is 3.337 times greater than the costs incurred by the Company.<sup>139</sup> While CUB agrees that utilities are “entitled to recover necessary, ongoing expenses incurred in the business of providing utility service,”<sup>140</sup> these charges far exceed that level. For these reasons, CUB urges the Commission to reject the ALJ’s findings on this matter and hold that the continued assessment of late payment fees at 18 percent annualized interest rates would be unjust and unreasonable on a forward-looking basis. We respectfully recommend the Commission exercise its discretion by either reducing those fees to the 0.45 percent monthly rate paid by the Company or eliminating them altogether.

- c. *The Judge erroneously concludes that NSPM’s commitment to waive late payment fees for RAMP-enrolled customers resolves CUB’s concerns.*

Witness Levenson-Falk expressed concern in her testimony that, as designed, RAMP “places the burden of funding the program on the same customers that are likely to receive benefits.”<sup>141</sup> In response to similar concerns raised by Department Witness Bahn, the Company agreed to waive late payment fees for RAMP-enrolled customers.<sup>142</sup> The Judge suggests this “agreement to waive late fees” for RAMP participants “adequately addresses CUB’s concerns about customers needing to pay late fees in order to remain eligible for the program.”<sup>143</sup> CUB takes exception to this characterization and disagrees with the conclusion reached, as it only partially captures the issues inherent to the Company’s proposal.

To qualify for RAMP, customers must be at least \$300 in arrears, meaning that late payment fees have already been assessed prior to the customer becoming eligible for the program.<sup>144</sup> Even if those fees are subsequently forgiven, they contribute to the accumulation of arrears and make it more difficult to pay down past-due balances. Ideally, customers will endeavor to *avoid* being eligible for RAMP, as program enrollment is dependent on arrears reaching a threshold at which the household is

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<sup>137</sup> CUB Initial Brief at 28 (quoting Ex. CUB-5, ALF-D-13 at 22 (Levenson-Falk Direct Schedules)).

<sup>138</sup> See generally Ex. CUB-3 at 17-23 (Levenson-Falk Direct); Ex. CUB-8 at 18-22 (Levenson-Falk Surrebuttal).

<sup>139</sup> CUB Initial Brief at 29; see also Ex. CUB-3 at 20 (Levenson-Falk Direct), Ex. CUB-8 at 20 (Levenson-Falk Surrebuttal).

<sup>140</sup> ALJ Report at 21 (quoting *In re Request of Interstate Power Co. for Auth. to Change its Rates for Gas Serv. in Minn.*, 559 N.W.2d 130, 134 (Minn. App. 1997), *aff’d* 574 N.W.2d 408 (Minn. 1998)).

<sup>141</sup> Ex. CUB-3 at 19 (Levenson-Falk Direct).

<sup>142</sup> Ex. Xcel-81 at 11 (Howard Rebuttal).

<sup>143</sup> ALJ Report at 185.

<sup>144</sup> Ex. Xcel-39 at 3 (Lindgren Supplemental Direct).

potentially subject to disconnection.<sup>145</sup> However, as Department Witness Bahn noted, the RAMP framework may discourage such action:

Under the RAMP proposal, customers who are charged a late fee, but pay their bill before reaching a past due balance of \$300, or for another reason are ineligible for the RAMP program, will essentially be subsidizing the customers who are eligible and enrolled in RAMP. This dynamic creates a perverse incentive to reach the \$300 past due balance to be eligible for RAMP and not to be caught on the wrong side of the subsidy.<sup>146</sup>

This issue persists even if late payment fees are waived for RAMP-enrolled customers. Furthermore, the program specifically excludes from eligibility those households that have received benefits from the Energy Assistance Program (“Energy Assistance” or “EAP”).<sup>147</sup> While households enrolled in the Company’s PowerOn program are not assessed late payment fees, customers who receive EAP could still be subject to those charges. In essence, this means that if EAP-enrolled households are assessed late fees, they would be contributing to the funding of RAMP but would be unable to access the assistance resources available through the program. This reinforces the reasonableness of Witness Levenson-Falk’s recommendation to waive late payment fees for low-income households should the Commission not eliminate such charges entirely.<sup>148</sup> Although NSPM indicated there may be “practical challenges” with implementing this revision, Company Witness Martin suggested the recommendation was “defensible.”<sup>149</sup> The Judge does not acknowledge NSPM’s apparent support for this limited fee waiver or take a position on it in the ALJ Report. Should the Commission choose to retain late payment fees—either at their current level or the lower monthly rate of 0.45 percent discussed below—we respectfully recommend such charges not be assessed against low-income households.

For the foregoing reasons, CUB takes exception to the Judge’s findings related to the RAMP program and the waiver of late payment fees.

d. *The Commission is not bound to permit the continued assessment of late payment fees at an annual rate of 18 percent solely because it has allowed such fees to be charged in the past.*

Should the Commission agree with CUB that late payment fees should be reduced or eliminated, it is entitled to depart from past practice.<sup>150</sup> We therefore take exception to the Judge’s position that

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<sup>145</sup> See, e.g., Ex. Xcel-38 at 34-25 (Lindgren Direct); Ex. CUB-3 at 13 (Levenson-Falk Direct).

<sup>146</sup> Ex. DOC-19 at 67-68 (Bahn Direct).

<sup>147</sup> Ex. Xcel-39 at 3 (Lindgren Supplemental Direct).

<sup>148</sup> Ex. CUB-8 at 21 (Levenson-Falk Surrebuttal).

<sup>149</sup> Ex. Xcel-71 at 30-31 (Martin Rebuttal).

<sup>150</sup> See, e.g., *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (citing *Sierra Club v. Clark*, 755 F.2d 608, 619 (8th Cir. 1985)).

because the “Commission has previously approved these fees,” it necessarily leads to a conclusion that their continued assessment is just and reasonable.<sup>151</sup>

CUB is not aware of any recent challenges to the Company’s late payment fees. As a result, the Commission has not been presented with evidence about the unreasonableness of such charges until now. Between the testimony of Witness Levenson-Falk and CUB’s Initial and Reply Briefs, the record is replete with evidence should the Commission wish to move forward with CUB’s recommendations. We do not revisit the breadth of that evidence here, but offer instead an analysis of the legal framework through which the Commission can reduce or eliminate the late payment fees assessed against residential customers.

The Supreme Court of Minnesota has held that “[w]hen an agency seeks to deviate from its prior decisions, the agency is charged with setting forth a reasoned analysis for the change.”<sup>152</sup> In reaching this conclusion, the Court found persuasive the Eleventh Circuit’s ruling in *McHenry* and the United States Supreme Court’s ruling in *Atchinson*. Both cases provide relevant context for the Commission should it move forward with reducing or eliminating late payment fees.

In *McHenry v. Bond*, the 11th Circuit explained that administrative agencies “concerned with furtherance of the public interest [are] not bound to rigid adherence to precedent.”<sup>153</sup> Rather, to avoid arbitrary and capricious actions, the Commission “must explain its departure from precedent, and adequately explain the rationale of its decision.”<sup>154</sup> Here, Witness Levenson-Falk has provided extensive testimony indicating that late payment fees do not contribute to on-time payments, and that the annualized 18 percent rate charged to customers far exceeds the costs incurred by the Company.<sup>155</sup> Such fees increase affordability challenges for struggling Minnesotans, contributing to the accumulation of arrears and a greater likelihood of involuntary disconnection.<sup>156</sup> These concerns are especially profound now, with the residential rate class bearing more than \$89 million in arrears and the Company conducting nearly 54,000 disconnections as of October 2025.<sup>157</sup>

This evidence—together with the numerous affordability concerns raised by Witness Levenson-Falk, public commenters, and other parties—provides the Commission with a sufficient basis to explain its departure from past practice and justify its reasoning for modifying late payment fee assessments.

Furthermore, the Minnesota Supreme Court favorably cited *Atchinson* when describing the standard set forth by the federal courts:

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<sup>151</sup> ALJ Report at 136.

<sup>152</sup> *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utils.*, 768 N.W.2d 112, 120 (Minn. 2009) (citing *Sierra Club v. Clark*, 755 F.2d 608, 619 (8th Cir. 1985)).

<sup>153</sup> *McHenry v. Bond*, 668 F.2d 1185, 1192 (11th Cir. 1982).

<sup>154</sup> *McHenry v. Bond*, 668 F.2d 1185, 1192-93 (11th Cir. 1982).

<sup>155</sup> See generally Ex. CUB-3 at 17-23 (Levenson-Falk Direct); Ex. CUB-8 at 18-22 (Levenson-Falk Surrebuttal).

<sup>156</sup> Ex. CUB-3 at 20-21 (Levenson-Falk Direct); Ex. CUB-8 at 19 (Levenson-Falk Surrebuttal); CUB Initial Brief at 27, 29-31; CUB Reply Brief at 5, 7.

<sup>157</sup> Ex. CUB-8 at 8 (Levenson-Falk Surrebuttal).

The Court proceeded to explain that an agency may “flatly repudiate” prior norms based on changed circumstances. Or the agency may “narrow the zone” in which the rule is applied because a “more discriminate invocation of the rule will best serve congressional policy.” The Court said that an agency may also find that “although the rule in general serves useful purposes, peculiarities of the case before it suggest that the rule not be applied in that case.”<sup>158</sup>

Within this framework, CUB’s recommendation to eliminate late payment fees constitutes a “flat repudiation” of prior norms and is justified by the changed circumstances surrounding the affordability of utility service, the increase in residential disconnections and utility arrears, and the presentation of evidence on the unreasonableness of late payment fees. In the alternative, the Commission could apply a “more discriminate invocation of the rule” whereby late payment fees would be allowed, but only at the 5.3935 percent annual interest rate incurred by the Company to service past due balances. Under either approach, it would be “enough to satisfy the requirements of judicial oversight of administrative action [so long as] the agency asserts distinctions that, when fairly and sympathetically read in the context of the entire opinion of the agency, reveal policies it is pursuing.”<sup>159</sup> At its core, Witness Levenson-Falk’s recommendation is grounded in the policy effort to increase the affordability of utility service. This includes incorporating “ability to pay” into decision-making processes, reducing residential arrears balances, mitigating the likelihood of utility disconnection, and arriving at a more equitable outcome that “mitigate[s] disparities in benefits and burdens.”<sup>160</sup> Any—or all—of these policies could be relied on by the Commission to justify its departure from past practice and explain its revisions to the Company’s late payment fee structure.

- e. *If the Commission reduces or eliminates late payment fees, it should use late payment fee revenues already collected during the MYRP to offset the Company’s revenue requirement.*

To the extent the Commission approves RAMP or reduces or eliminates late payment fees, such action would be prospective in nature and not apply to those charges already assessed against residential households during the 2025 test year or part of the 2026 plan year. In recognition of this situation, the Company agreed with the proposal from the Department to use late payment fees collected in 2025 to offset NSPM’s revenue requirement for the test year.<sup>161</sup> However, the Judge rejected the Department’s position that 50 percent of late payment fee revenues for the 2026 plan year be used for the same purpose.<sup>162</sup> Instead, the ALJ Report recommended adoption of the Company’s proposal to use the entirety of 2026 late payment fee revenues to fund the RAMP program.<sup>163</sup> If the Commission

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<sup>158</sup> *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 119 (Minn. 2009) (quoting *Atchinson, Topeka Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973)) (internal citations omitted).

<sup>159</sup> *In re Rev. of 2005 Ann. Automatic Adjustment of Charges for All Elec. & Gas Utilities*, 768 N.W.2d 112, 120 (Minn. 2009).

<sup>160</sup> See Ex. CUB-8 at 20 (Levenson-Falk Surrebuttal) (explaining that reducing or eliminating late payment fees is the “definition of equitable ratemaking”).

<sup>161</sup> Ex. Xcel-81 at 11-12 (Howard Rebuttal); ALJ Report at 185.

<sup>162</sup> ALJ Report at 137; 184-185.

<sup>163</sup> ALJ Report at 137.

rejects RAMP in favor of reducing or eliminating late payment fees, this finding will need to be adjusted.

CUB recommends the Commission adopt the Department's proposal to use the late payment fees collected in the test year to offset the Company's revenue requirement. However, whether the Commission eliminates or reduces late payment fees could alter how those revenues are used in the 2026 test year. If such fees are eliminated in their entirety, the Department's proposal to use such fees as an offset to the revenue requirement makes sense, as no RAMP program will be established. If the Commission instead reduces late payment fees, then the entirety of 2026 late payment fees could be used to fund the RAMP program, even if the amount of revenue collected in the second half of the year is significantly reduced.

*f. The Commission should modify the ALJ Report.*

As extensively detailed throughout this proceeding, CUB recommends that the Commission eliminate late payment fees and, by extension, reject the Company's RAMP proposal. If the Commission nonetheless chooses to permit the continued assessment of late payment fees, we recommend such fees be reduced to the interest rate paid by NSPM and be waived for low-income customers. Under this alternative, the Commission could still allow the RAMP program to move forward to provide arrearage forgiveness to eligible customers, although the amount of funding would be significantly reduced.

For the foregoing reasons, we recommend that the Commission adopt the following revisions to the ALJ's recommended findings related to late payment fees and the Company's RAMP proposal:

Modified 853. CUB recommended that late payment charges be waived for all customers, or alternatively waived for low-income customers and lowered to the actual cost of interest paid by the Company for all other customers.<sup>164</sup> CUB noted that the Company pays an interest rate of 5.3935 percent annually—or approximately 0.45 percent monthly—on residential past-due balances.<sup>165</sup> If the Commission were to adopt CUB's alternative recommendation, CUB indicated it would support using late payment fee revenues to fund RAMP at a lower budget or offset PowerOn program costs.<sup>166</sup> ECC supported CUB's alternative recommendation.<sup>167</sup>

CUB NEW 853a. Xcel provided no testimony or substantiating exhibits addressing why it would be reasonable for ratepayers to pay late payment charges of 1.5 per month when the Company pays a much lower interest rate of approximately 0.45 percent.

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<sup>164</sup> Ex. CUB-3 at 23 (Levenson-Falk Direct); Ex. CUB-8 at 21-22 (Levenson-Falk Surrebuttal).

<sup>165</sup> Ex. CUB-3 at 20-21 (Levenson-Falk Direct); Ex. CUB-5, Schedules 21-22 (Levenson-Falk Direct Schedules); Ex. CUB-8 at 20 (Levenson-Falk Surrebuttal). CUB also recommends that the RAMP program not be approved. This recommendation is separately addressed in the appropriation Section of this Report.

<sup>166</sup> Ex. CUB-8 at 21-22 (Levenson-Falk Surrebuttal).

<sup>167</sup> Ex. ECC-2 at 3, 5 (Shardlow Surrebuttal).

However, the Company indicated that it would be open to waiving late payment fees for low-income customers.<sup>168</sup>

Modified 857. The Company disputes that it bears the burden to prove the reasonableness of its late fee charges and argued that it provided record evidence that the absence of late fees disincentivizes customers from paying bills on time. The Company ~~argued provided evidence~~ that, as a result of a late payment fee and disconnection moratorium, arrearages nearly doubled, from roughly \$44 million at the end of 2019 to \$85 million at the beginning of 2022. During the COVID-19 disconnection moratorium from March 2020 through July 2021, past-due balances grew from \$57 million to \$81 million.<sup>169</sup>

CUB NEW 857a. Since the end of the COVID-19 disconnection and late payment fee moratorium, arrearage balances have remain elevated. Residential arrears reached over \$116 million by March of 2023 and have not dropped to pre-COVID levels.<sup>170</sup>

Modified 859. Taking first the question of whether the late fees should be allowed or reduced, CUB and the Company dispute who bears the burden on this issue. Minn. Stat. § 216B.16, subd. 4 provides that the burden of proof “to show that [a] rate change is just and reasonable shall be upon the public utility seeking the change.” Here, the late payment fee issue must be considered together with the Company’s RAMP proposal because the program is dependent on the continued assessment of late payment fees. however, Xcel is not a public utility seeking a change. Unlike a forecasted increase to an expense item that would result in a rate increase, Xcel merely seeks to continue assessing a previously approved late fee schedule. Thus, CUB bears the burden to prove its proposed change is just and reasonable.

CUB NEW 859a. As further detailed in later sections of this report, the Commission directed the Company in Docket No. E-002/M-24-27 to file supplemental testimony proposing the “elimination of late fees and interest” or a method whereby “interest payments and fees from late bill payments are donated to low-income customer assistance programs.”<sup>171</sup> The Company bears the burden of proving the reasonableness of its RAMP proposal and, by extension, whether it is reasonable to utilize late payment fees for the program funding mechanism. Thus, despite the Company not recommending any changes to the amount, terms, or conditions of late payment fees, it nonetheless must show that not eliminating such charges—and instead using them for RAMP—would result in a just and reasonable outcome.

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<sup>168</sup> Ex. Xcel-71 at 30-31 (Martin Rebuttal).

<sup>169</sup> Ex. Xcel-71 at 49 (Martin Rebuttal).

<sup>170</sup> Ex. CUB- 9 at ALF-SR-23 (ALF Surrebuttal Schedules).

<sup>171</sup> *In the Matter of Xcel Energy’s 2023 Annual Safety, Reliability, and Service Quality Report*, Docket No. E-002/M-24-27, Order Accepting Reports and Setting Additional Requirements at 13 (Jan. 13, 2025).

Modified 860. Which party bears the burden of proof is not outcome determinative on this issue. Whether CUB or the Company bears the burden, the record establishes that continuing to charge late fees at an annualized rate of 18 percent is not reasonable. ~~The Company assesses late fees at a level explicitly authorized by Minn. R 7820.5000, subp. 3. While Xcel charges the maximum late fees permitted by the rule, the rule provides no standard to assess whether the Company should be required to charge a lower rate. This presumptively, if not conclusively, establishes the reasonableness of Xcel's late fees.~~

CUB NEW 860a. Minnesota Rules 7820.5100 – 7820.5600 establish requirements for imposing late payment charges. These rules suggest the act of charging late payment fees is not, in and of itself, an unreasonable practice, so long as the amount being charged remains below identified thresholds and is supported by substantiating documents and exhibits.<sup>172</sup>

Modified 861. Further, that the Commission has previously approved these fees, ~~thereby does not foreclose the finding concluding that they are it would be unjust and unreasonable to continue assessing such charges on a forward-looking basis.~~

Modified 862. CUB's evidence of the number of customers paying multiple late payment fees strongly suggests ~~balances does not persuasively establish~~ that late fees are not a deterrent to falling into arrearage. ~~This is an oversimplified analysis that fails to control for rate increases or economic conditions. This evidence is supported by KPSC's determination that late fees have "little discernible effect on the timeliness of residential customer payments for utility service."<sup>173</sup> While KPSC's analysis is neither precedential nor dispositive, it is relevant and persuasive in the context of assessing the reasonableness of the Company's fees.~~

Modified 863. Xcel's evidence of increasing arrearages during the late fee moratorium imposed during the COVID-19 pandemic also paints an incomplete picture, as it fails to account for the economic disruption and employment conditions flowing from the pandemic. Nor does it account for the impacts of the disconnection moratorium on past-due balances or the fact that arrears have remained elevated long after late fee assessments resumed.

Modified 864. Faced with two imperfect pieces of data, CUB's ~~the Company's~~ evidence is more persuasive. ~~Notwithstanding the methodological limitations, ballooning arrearage balances during a late fee moratorium is strongly suggestive that there is at least some correlation between the two data points. If customers are unable to pay~~

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<sup>172</sup> See, e.g., Minn. R. 7820.5400 (requiring any late payment charge tariffs to be supported by "substantiating documents and exhibits"); Minn. R. 7820.5500 (capping late payment charges at 1.5 percent).

<sup>173</sup> Ex. CUB-3 at 22 (Levenson-Falk Direct) (quoting Ex. CUB-5, ALF-D-12 at 3 (Levenson-Falk Direct Schedules); CUB Initial Brief at 29; see also Ex. CUB-5 at ALF-D-11, ALF-D-12, ALF-D-13 (Levenson-Falk Direct Schedules).

their bill in its entirety, the assessment of late payment fees is unlikely to alter payment behavior, and instead will aggravate affordability challenges.

Modified 865. For these reasons, the Commission should require Xcel to eliminate residential late payment fees, approve Xcel's continued use of late fees as proposed by the Company.

CUB NEW 865a. If the Commission nonetheless retains late payment charges, CUB's alternative recommendation is the most reasonable of those offered by parties.

CUB NEW 865b. Waiving late payment charges for low-income customers is supported by CUB, the Company, and ECC. It is also a practice employed across multiple states and jurisdictions as a means of lessening energy burdens.

CUB NEW 865c. Currently, the fees charged to customers are over three times greater than the costs incurred by the Company on past-due balances. Setting the late payment charge at 0.45 percent per month would align those fees with the costs incurred by the Company. Except for the expenses associated with waiving fees for low-income households, interest costs paid on past-due balances would not be passed onto customers who remain current on their bills, thereby mitigating any potential concerns about cross-subsidization.

Modified 866. Turning to the issue of how to treat late fee revenue in the 2026 plan year, an estimated \$2.9 million will be collected from customers prior to the issuance of the Order in this proceeding.<sup>174</sup> The record does not contain evidence of estimated late payment revenues for the second half of 2026 if fees are set at 0.45 percent, the Company's proposal to dedicate the entire 2026 late fee revenue to the RAMP program is reasonable.

Modified 867. Nothing about mid-year approval of the RAMP program precludes the Company from using the entire 2026 late fee revenue to fund the program. The record supports a determination that the Company intends to and should do so. Accordingly, rates should reflect this proposal, as well as the anticipated reduction in revenues for the second half of the plan year.

Modified 868. The Commission should reject the Department's proposal to reduce the 2026 plan year revenue requirement by including 50 percent of the Company's late fee revenue for that year. These funds should instead be devoted to funding the RAMP program.

Modified 1137. CUB opposed RAMP and instead recommended that the Commission require the Company to waive late payment fees for all residential customers, as addressed previously. As it relates to RAMP, CUB argued that customers must have

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<sup>174</sup> See, e.g., Ex. DOC-19 at 67 (Bahn Direct).

arrears of \$300 or more to qualify for RAMP, and thus those customers must pay late fees before they receive RAMP assistance, harming the customers the program proposes to support. In the alternative, CUB recommended that late payment fees be waived for low-income households and reduced for all other customers. Under this alternative, CUB supported using the resulting revenues to either offset PowerOn program costs or fund RAMP at a lower budget level, applied to PowerOn instead of being used to create RAMP.

Modified 1141. The Company's proposal to implement the RAMP program, ~~along with the accepted Department modifications,~~ is dependent on the ongoing assessment of late payment fees. As previously discussed, continuing to charge late payment fees at an annualized rate of 18 percent would be unreasonable and comports with the requirements set forth in the Company's 2023 Safety, Reliability and Service Quality Annual Report docket. Further, the Company's agreement to waive late fees for customers once they are enrolled in RAMP does not adequately addresses CUB's concerns about customers needing to pay late fees in order to ~~remain~~ become eligible for the program. These fees are still assessed prior to customers reaching RAMP's \$300 eligibility threshold and contribute to the growth of arrearage balances.

Modified 1142. The Commission should decline to adopt the Company's proposal and the Department's modifications, and instead eliminate late payment fees as discussed earlier in this Report except that the Commission should allow the Company to fund the RAMP program with all 2026 late payment fee revenue.

CUB NEW 1142a. To the extent the Commission does not fully eliminate late payment fees, it should adopt CUB's recommendation to reduce late payment fees and use the resulting revenues to fund RAMP. Although this would reduce the program budget for the second half of 2026, approximately \$2.9 million from the first half of the year would be available to provide arrearage forgiveness to customers with incomes up to 80 percent of area median income and not already receiving energy assistance.<sup>175</sup>

CUB NEW 1142b. Funding RAMP at a minimum of \$2.9 million for 2026 will provide meaningful benefits to customers. The Commission has approved similar methods for distributing Company underperformance payments ranging from \$500,000 to \$2,000,000, whereby arrearage forgiveness credits were applied to customers' accounts.<sup>176</sup>

CUB NEW 1142c. Beyond 2026, it is unclear whether the amount of revenue collected under a 0.45 percent late payment fee will be sufficient, by itself, to maintain the

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<sup>175</sup> Ex. DOC-19 at 67 (Bahn Direct); Ex. Xcel-39 at 3 (Lindgren Supplemental Direct).

<sup>176</sup> *In the Matter of the Petition of Northern States Power Co. d/b/a Xcel Energy for Approval of Amendments to its Natural Gas and Electric Service Quality Tariffs*, Docket No. E,G-002/M-12-383, Order on Distribution of Underperformance Penalty at 5-6 (Oct. 9, 2024); Notice Granting Revised Distribution of Underperformance Penalty Bill Credits at 1-2 (Dec. 13, 2024); Order Distributing Underperformance Payments and Opening New Docket at 10 (Jan. 9, 2026).

effectiveness of the RAMP program. The reporting requirements recommended by the Company, the Department, and ECC are therefore relevant to understanding program results and informing future decisions about program funding and should be approved by the Commission.<sup>177</sup> Such approval should include ECC's recommendation to consider supplemental funding streams for the program and the Company's proposal to map participant data in its interactive electric service quality map.<sup>178</sup>

### C. Reconnection Fees

CUB takes exception to the Judge's recommendation that NSPM be permitted to continue charging customers reconnection fees, and to not allow reconnection fee waivers for low-income households.<sup>179</sup> This finding is based solely on the fact that Minnesota Rule 7820.2600 states that utilities may charge reconnection fees based on the actual cost of reconnection,<sup>180</sup> and the inaccurate representation that "no party disputes that Xcel's reconnection fees are based on the actual cost of reconnection."<sup>181</sup> In making that determination, the Judge failed to consider: (1) that the Commission specifically requested NSPM evaluate the potential elimination of reconnection fees; (2) that Minnesota Rule 7820.2600 renders reconnection fees a permissible but not mandatory charge; (3) CUB's concern that the utility may be double collecting the costs necessary for the actual cost of reconnection; and (4) that the Commission has the obligation to determine the justness and reasonableness of rates charged to customers.

#### 1. **The Judge's interpretation of Minnesota Rule 7820.2600 does not comport with the Rule's plain language or consider past Commission directive.**

Minnesota Rule 7820.2600 states in relevant part: "In the event service has been disconnected for valid cause by the utility, the utility may charge a reconnect fee based on the cost of reconnection as stated in the utility's tariff on file with the commission."<sup>182</sup> This language provides the Commission with discretionary authority to determine whether residential customers should be required to pay reconnection fees. Minn. R. 7820.2600 does not establish a specific cap on the reconnection fee but indicates that *if* such a charge is assessed it must be "based on the cost of reconnection as stated in the utility's tariff on file with the commission."<sup>183</sup> The Judge found that it was unnecessary to weigh whether or not eliminating reconnection fees was in the public interest because "Minn. R. 7820.2600 unambiguously provides that a utility may charge a reconnection fee based on the cost of reconnection as stated in the utility's filed tariff."<sup>184</sup> However, this reading is contrary to the plain

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<sup>177</sup> Ex. DOC-19 at 68-69 (Bahn Direct); Ex. DOC-20 at 22-23, 28-30 (Bahn Surrebuttal); Ex. ECC-02 at 4-5 (Shardlow Surrebuttal).

<sup>178</sup> Ex. ECC-02 at 5 (Shardlow Surrebuttal); Ex. Xcel-81 (Howard Rebuttal).

<sup>179</sup> ALJ Report at 139.

<sup>180</sup> ALJ Report at 139 ("It is not necessary to weigh these competing concerns to resolve this issue. Minn. R. 7820.2600 unambiguously provides that a utility may charge a reconnection fee based on the cost of reconnection as stated in the utility's filed tariff.").

<sup>181</sup> ALJ Report at 139.

<sup>182</sup> Minn. R. 7820.2600 (emphasis added).

<sup>183</sup> Minn. R. 7820.2600.

<sup>184</sup> ALJ Report at 139.

language of the rule, which uses the term “may” to indicate reconnection fees are permitted rather than required. Had the Commission’s intention in adopting Minn. R. 7820.2600 been to mandate the assessment of reconnection fees, the rule would have reflected that intention by stating “the utility must charge a reconnect fee based on the cost of reconnection as stated in the utility’s tariff on file with the commission.” The Minnesota Supreme Court has made the distinction between “must” and “may” clear, holding that “may” indicates permissive, rather than mandatory, conduct.”<sup>185</sup>

The Commission’s own recent requirement for NSPM to consider eliminating reconnection fees further evidences that the Commission has discretionary authority to disallow the application of such charges.<sup>186</sup> In its Order on the Company’s 2023 Annual Safety, Reliability, and Service Quality (“SRSQ”) Report, the Commission required NSPM to evaluate setting reconnection fees at \$0, including an estimate of the costs of waiving reconnection fees and how the Company would otherwise propose to recover those costs.<sup>187</sup> Moreover, although not included in the Judge’s findings, CUB identified examples of past Commission action consistent with adjusting reconnection fees for public policy purposes.<sup>188</sup> In NSPM’s 2004 gas rate case, the Commission rejected the Company’s request to raise reconnection fees from \$15 to \$45, stating that such a revision was “inconsistent with [the] statutory concern” to ensure “affordable, reliable, and continuous service to low-income customers.”<sup>189</sup> In reaching that conclusion, the Commission considered the potential benefits of bringing charges closer to the cost of service against the impact on residential households seeking reconnection. It determined “[w]hatever advantages moving rates to cost may hold, [they] are outweighed . . . by potential harm to low-income households, to publicly and charitably funded energy assistance programs, and to the public interest.”<sup>190</sup> That the Judge’s analysis ended upon the determination that NSPM’s reconnection fee aligns with actual reconnection costs fails to recognize that the Commission may reasonably determine no reconnection fee should be charged if it is in the public interest to do so.

**2. The Judge’s recommendation failed to treat the issues surrounding potential double recovery of reconnection-related labor costs as a challenge to the reasonableness of those expenses.**

The second part of the Judge’s analysis relies on the finding that “[n]o party disputes that Xcel’s reconnection fees are based on the actual cost of reconnection or that they are provided for in Xcel’s

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<sup>185</sup> See, e.g., *Minn. Voter’s Alliance v. Co. of Ramsey*, 971 N.W.2d 269, 280 (Minn. 2022) (“‘Must’ is mandatory, while ‘may’ is permissive.”) (citing Minn. Stat. § 645.44, Subds. 15-15a (2020)).

<sup>186</sup> *In the Matter of Xcel Energy’s 2023 Annual Safety, Reliability, and Service Quality Report*, Docket No. E-002/M-24-27, Order Accepting Reports and Setting Additional Requirements at 13 (Jan. 13, 2025).

<sup>187</sup> *In the Matter of Xcel Energy’s 2023 Annual Safety, Reliability, and Service Quality Report*, Docket No. E-002/M-24-27, Order Accepting Reports and Setting Additional Requirements at 13 (Jan. 13, 2025).

<sup>188</sup> See CUB Initial Brief at 36.

<sup>189</sup> *In the Matter of an Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Natural Gas Service in the State of Minnesota*, Docket No. G002/GR-04-1511, Order Accepting and Modifying Settlement and Requiring Compliance Filings at 8 (Aug. 11, 2005) (citing Minn. Stat. § 216B.16, Subd. 15).

<sup>190</sup> *In the Matter of an Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Natural Gas Service in the State of Minnesota*, Docket No. G002/GR-04-1511, Order Accepting and Modifying Settlement and Requiring Compliance Filings at 9 (Aug. 11, 2005) (citing Minn. Stat. § 216B.16, Subd. 15).

tariff.”<sup>191</sup> However, this conclusion fails to consider CUB’s concern regarding potential double recovery of labor costs as a challenge to whether NSPM’s reconnection fees are based on the actual costs the Company must recover to carry out a reconnection. In its Initial Brief, CUB highlighted the fact that labor costs appear to be included in NSPM’s calculation of reconnection fees, despite the fact that customer care and meter reading expenses are generally already recovered through base rates.<sup>192</sup> Such practice “not only raises questions about the potential for double recovery, but also about the reasonableness of utilizing reconnection fees to recover those costs.”<sup>193</sup> In response, rather than disputing that the Company does not double recover those costs, NSPM merely reiterated that Minnesota regulation permits charging of reconnection fees based on the cost of reconnection under Minnesota regulation.<sup>194</sup>

The Company has not shown that reconnection-related labor costs are not already recovered through base rates. When setting the proposed reconnection charge in tariff, NSPM explained that the fee was based on: (1) costs associated with calls to its customer service representatives, (2) costs associated with dispatching field agents, (3) average pay rates, (4) estimated volumes, and (5) estimated times to complete tasks.<sup>195</sup> Simultaneously, NSPM is seeking to recover \$27.3 million and \$27.1 million for 2025 and 2026 Customer Care O&M expenses, respectively.<sup>196</sup> In describing the various business functions that comprise the Customer Care operation, Company Witness Lindgren explains they are “[r]esponsible for interacting with [NSPM’s] customers through [the] customer contact centers,”<sup>197</sup> “for reading customer meters,” and for “performing field disconnection and collection activities.”<sup>198</sup> Given the significant overlap between the tasks needed to reconnect service and those covered by the Company’s Customer Care organization budget, it remains unclear whether the utility is actually incurring the additional labor costs used to justify the reconnection fee.

Although the Judge regarded CUB’s concern as an alternative recommendation to requiring complete reconnection fee elimination, he ultimately found no party disputed the costs.<sup>199</sup> CUB takes exception to this finding, as we do not believe the Company has met its burden to prove the reasonableness of those charges in light of the significant overlap with base rate recovery.

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<sup>191</sup> ALJ Report at 139.

<sup>192</sup> CUB Initial Brief at 38 (citing see, e.g., Ex. Xcel-38 at Sch. 2 (Lindgren Direct)).

<sup>193</sup> CUB Initial Brief at 38.

<sup>194</sup> Xcel Reply Brief at 39.

<sup>195</sup> *In the Matter of a Petition by Northern States Power Company Requesting Approval of Changes to its Tariff and an Indefinite Variance to Commission Rules Regarding Disconnection of Service*, Docket No. E002/M-22-233, Staff Briefing Papers at 8-9 (Feb. 8, 2023).

<sup>196</sup> Ex. Xcel-38 at 14 (Lindgren Direct).

<sup>197</sup> Ex. Xcel-38 at 5 (Lindgren Direct).

<sup>198</sup> Ex. Xcel-38 at 6 (Lindgren Direct).

<sup>199</sup> ALJ Report at 138 (“As another alternative, CUB recommended the Commission excluding labor costs from reconnection fees, arguing that such fees could lead to double recovery”); ALJ Report at 139 (“No party disputes that Xcel’s reconnection fees are based on the actual cost of reconnection or that they are provided for in Xcel’s tariff.”).

**3. Eliminating reconnection fees is in the public interest when weighed against the cost to other ratepayers.**

Minnesota Statute § 216B.03 requires the Commission to ensure that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.”<sup>200</sup> Under Chapter 216B, “rate” is defined broadly to include in part “every compensation” and “charge . . . collected by any public utility for any service.”<sup>201</sup> Because reconnection fees fall within this definition, the Commission has the authority and obligation to ensure such charges are just and reasonable. This requires considering not only the utility costs of facilitating reconnection, but also customers’ ability to pay and the general public interest.<sup>202</sup> Because the Judge erred when finding the language of Minn. R. 7820.2600 was dispositive of this issue, he failed to weigh the competing concerns raised by parties or consider how eliminating reconnection fees would serve the public interest.

NSPM’s current reconnection fee is \$13.50 for customers with AMI and \$95 for customers who opted out of AMI and receive manual meter readings.<sup>203</sup> CUB Witness Levenson-Falk’s testimony discussed in detail how the imposition of these charges creates a barrier for customers to regain electricity service, thereby prolonging the negative effects associated with utility disconnection.<sup>204</sup> Such impacts are wide-ranging, and could include being unable to run refrigerators or electric cooking appliances, dealing with unsafe living conditions due to inadequate home heating and cooling, or even suffering from the potential onset of respiratory conditions or mental health conditions.<sup>205</sup> Waiving reconnection fees would provide targeted assistance to customers that have been disconnected and streamline the process for regaining service. As the ALJ Report notes, the Energy CENTS Coalition also supported eliminating reconnection fees.<sup>206</sup>

NSPM opposed waiving reconnection fees, primarily arguing that those costs would instead be collected from all ratepayers. As the ALJ Report summarizes:

[W]aiving these fees shifts the reconnection costs that the Company incurs to other ratepayers because those costs would be recovered uniformly from all customers. The Company posits that, although the immediate cost shift was likely to be small, the estimates that CUB relies on are based on an assumption of 36,000 reconnections per year, which could increase depending on the number of actual disconnections and reconnections.<sup>207</sup>

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<sup>200</sup> Minn. Stat. § 216B.03.

<sup>201</sup> Minn. Stat. § 216B.02, Subd. 5.

<sup>202</sup> Minn. Stat. § 216B.16, Subd. 15.

<sup>203</sup> *In the Matter of a Petition by Northern States Power Company Requesting Approval of Changes to its Tariff and an Indefinite Variance to Commission Rules Regarding Disconnection of Service*, Docket No. E002/M-22-233, Order Approving Petition as Modified and Requiring Filings at 3-4, 10 (Mar. 22, 2023).

<sup>204</sup> Ex. CUB-3 at 15 (Levenson-Falk Direct).

<sup>205</sup> Ex. CUB-3 at 11-12 (citing CUB-5, ALF-D-6 at 16-17).

<sup>206</sup> ALJ Report at 138 (citing Ex. ECC-2 at 5 (Shardlow Surrebuttal)).

<sup>207</sup> ALJ Report at 138.

NSPM previously estimated that spreading reconnection expenses across the residential rate class would cost the average customer \$0.40 per year, or \$0.03 per month.<sup>208</sup> This minimal impact is a reasonable compromise for ensuring the Company's most payment-burdened customers have equitable access to electricity service. And while CUB does not disagree that this estimate is based on the assumption of 36,000 reconnections per year, we take exception to the ALJ's assertion that such numbers could *increase* depending on actual disconnections and reconnections without also acknowledging that such numbers could likewise *decrease*. The Company itself made such qualification when previously characterizing the estimate, stating, "[a]s with any estimate, that cost could be higher *or lower* depending on the actual number of disconnections and reconnections."<sup>209</sup> CUB also believes it is more likely that future disconnection rates will decrease rather than increase. As Company Witness Martin explained in testimony, 2024 and 2025 disconnection rates were relatively high compared to previous years,<sup>210</sup> but "[d]isconnections began to come down in July 2025."<sup>211</sup> Further changes to the Company's disconnection practices could accelerate this process, driving down reconnection costs. Although CUB agrees no party can know for certain what future trends will ultimately show, it is inappropriate to dismiss the possibility that disconnection rates—and therefore potential reconnection costs—could be lower than the Company's estimate.

The ALJ Report also failed to consider potential avoided costs to other ratepayers, should bad debt decrease if customers are able to reconnect and begin paying down arrears balances more expeditiously. As Witness Levenson-Falk acknowledges, it is reasonable to assume that "any customer who has fallen far enough behind on utility bills for a long enough period to face service disconnection" has exhibited an inability to pay for utility expenses.<sup>212</sup> Each time disconnection occurs, that burden grows. The assessment of late payment charges and reconnection fees accentuates these challenges, making it "less likely customers who have already failed to timely pay will be able to do so at all."<sup>213</sup> If these debts ultimately go unpaid, they can result in additional costs being carried by other residential ratepayers.

**4. The ALJ Report failed to adequately consider CUB's alternative proposal to require NSPM to waive reconnection fees for low-income households and those indicating they are unable to pay.**

The Judge also recommends rejecting CUB's alternative proposal to waive reconnection fees for certain low-income households and those indicating they are unable to pay.<sup>214</sup> The ALJ does not provide any additional analysis or reasoning to support this rejection, ostensibly relying on the interpretation that Minn. R. 7820.2600 means NSPM *must* be allowed to recover reconnection fees.

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<sup>208</sup> Ex. CUB-3 at 15 (Levenson-Falk Direct).

<sup>209</sup> Xcel Initial Brief at 61 (emphasis added).

<sup>210</sup> See Ex. Xcel-71 at 22 (Martin Rebuttal) ("Through 2022, the monthly and annual totals remained roughly in line with pre-pandemic years, but have been higher since, reaching 24,722 in 2023 and 52,549 in 2024."); See Ex. Xcel-71 at 23 (Martin Rebuttal) (noting a "spike" in 2025 disconnections).

<sup>211</sup> Ex. Xcel-71 at 24 (Martin Rebuttal).

<sup>212</sup> Ex. CUB-3 at 16 (Levenson-Falk Direct).

<sup>213</sup> Ex. CUB-3 at 15, 22-23; Ex. CUB-5, ALF-D-11 at 7 (Levenson-Falk Direct Schedules).

<sup>214</sup> ALJ Report at 139.

CUB maintains it is in the public interest to, at minimum, waive reconnection fees for low-income customers and those indicating they are unable to pay. Although NSPM opposes waiving reconnection fees for any customers, the Company also admits that waiving fees for only low-income customers “would recognize those customers are facing societal disparities in benefits and burdens” and recommends the Commission adopt that approach if it were to approve any waiver of reconnection fees.<sup>215</sup>

CUB appreciates NSPM’s acknowledgment that low-income customers are burdened by reconnection fees. However, instituting a limited fee waiver as contemplated by the Company would be underinclusive of ratepayers who are truly unable to pay those charges. As Witness Levenson-Falk notes, the Company does not have income information for all its ratepayers.<sup>216</sup> Consequently, reconnection fee waivers would likely only be provided to customers already designated as “income-qualified,” namely those enrolled in LIHEAP or the Company’s affordability programs.<sup>217</sup> This represents a small portion of the customers that might otherwise qualify to receive reconnection fee waivers. Thus, if the Commission chooses to adopt this more limited approach, it should also include fee waivers for customers who indicate they are unable to pay, even if they are not enrolled in energy assistance offerings.

Despite recognizing that “reconnection fees represent another barrier to restoring electrical service for Minnesotans who struggle to afford their electric bills,”<sup>218</sup> the ALJ refused to accept CUB’s alternative recommendation for limited reconnection fee waivers. For the reasons articulated above, CUB takes exception to the Judge’s finding that Minn. R. 7820.2600 means that a utility can charge reconnection fees so long as they are based on the actual cost of reconnection, as well as the finding that no party challenged the actual costs NSPM recovers for reconnections. Therefore, if the Commission does not eliminate reconnection fees for all residential customers, it should at minimum allow for reconnection fee waivers for low-income customers and those who indicate an inability to pay.

The Commission should adopt the following revisions to the ALJ’s recommended findings regarding reconnection fees:

**Modified** 874. The Company opposes waiving disconnection fees and argued that eliminating reconnection fees for disconnected customers would result in an increase in the Company’s revenue requirement. As a result, waiving these fees shifts the reconnection costs that the Company incurs to other ratepayers because those costs would be recovered uniformly from all customers. The Company posits that, although the immediate cost shift was likely to be small, the estimates that CUB relies on are

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<sup>215</sup> Ex. Xcel-71 at 27 (Martin Rebuttal).

<sup>216</sup> Ex. CUB-8 at 17-19 (Levenson-Falk Surrebuttal); *see also* Ex. Xcel-71 at 12 (Martin Rebuttal) (stating that the Company “do[es] not even know the income of most of [its] customers, save those who enroll in federal LIHEAP energy assistance and/or the Company’s own affordability programs. Even for those programs, income data is used only at the eligibility determination stage and is not retained by the Company”).

<sup>217</sup> Ex. CUB-3 at 16-17, 23 (Levenson-Falk Direct); Ex. CUB-8 at 17-19 (Levenson-Falk Surrebuttal).

<sup>218</sup> ALJ Report at 138.

based on an assumption of 36,000 reconnections per year, which could increase or decrease depending on the number of actual disconnections and reconnections.

Modified 878. It is not necessary to weigh these competing concerns to resolve this issue.—Minn. R. 7820.2600 unambiguously provides that a utility may charge a reconnection fee based on the cost of reconnection as stated in the utility's filed tariff. However, the Commission maintains discretion over whether any reconnection fee is charged to customers or waived.

Modified 879. No party disputes that Xcel's reconnection fees are based on the actual cost of reconnection or that they are provided for in Xcel's tariff. However, CUB questions whether Xcel already recovers some of the labor costs associated with reconnections through base rates.

Modified 880. Thus, Xcel has established that its reconnection fees are permissible pursuant to Minn. R. 7820.2600. Reconnection fees are "rates" as that term is defined by Minnesota Statute § 216B.02, Subd. 5. Reconnection fees must therefore be "just and reasonable," with any doubt as to reasonableness being resolved in favor of the consumer. In setting rates, including reconnection fees, the Commission must consider customers' "ability to pay."

Modified 881. Further, as labor costs are part of the actual cost of reconnection, the Commission should not require Xcel to exclude labor costs from its reconnection fees. It is in the public interest for residential utility customers to be connected to electricity services to the maximum extent possible. Disconnection from service creates health and safety issues, and can compound existing affordability challenges. Mitigating these impacts is of significant benefit to disconnected customers and the general public.

CUB NEW 881a. Xcel's estimated \$0.40 per year burden for customers who remain current on their bills is a reasonable cost when weighed against the benefit provided to disconnected customers.

Modified 882. The Commission should ~~reject the~~ adopt CUB's proposal to require Xcel to waive reconnection fees for all customers, ~~as well as its~~ In the alternative, the Commission should approve CUB's proposal to waive these fees for certain customers.

#### **IV. CONCLUSION**

CUB appreciates the opportunity to provide exceptions to the ALJ Report and reiterate the importance of weighing both ratepayer and utility interests when setting rates. As detailed in the testimony, briefs, and exceptions submitted by CUB throughout this proceeding, balancing these interests requires the Commission to give due consideration to the affordability of service and customers' ability to pay the proposed rate increase. At a time when utility arrears and involuntary disconnections are at historic highs, the importance of attributing proper weight to these factors and resolving all doubts as to

reasonableness in favor of the consumer cannot be understated. For the reasons described above, we respectfully make the following recommendations with respect to the ALJ Report and the Company's rate case application:

Based on a full review of the record evidence, CUB recommends the following

- The Commission should deny the Company's request to raise its authorized return on equity ("ROE").
- The Commission should set the Company's authorized ROE at 9.0 percent.
- The Commission should prohibit the Company from recovering more than 50 percent of its investor relations costs.
- The Commission should prohibit the Company from charging late payment fees to residential customers.
- If the Commission prohibits late payment fees, then it should also deny the Company's proposal for a Residential Arrears Management Program.
- If the Commission does not prohibit late payment fees, then it should (1) lower the fee amount to be reflective of costs borne by the Company; and (2) require fee waivers for low-income customers.
- The Commission should eliminate the imposition of reconnection fees for residential customers.
- If the Commission does not fully eliminate reconnection fees, it should (1) waive such fees for low-income households and those indicating they are unable to pay; and (2) consider excluding labor costs from future fee calculations.
- The Commission should reject the ALJ's recommendations that are inconsistent with the above positions and modify the ALJ Report, as described further in these Exceptions.

Dated: May 15, 2026

Respectfully submitted,

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