

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Joseph Sullivan	Vice-Chair
Audrey Partridge	Commissioner
Hwikwon Ham	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Northern  
States Power Company, dba Xcel Energy, for  
Authority to Increase Rates for Electric Service in  
the State of Minnesota

Docket No. E002/GR-21-630

**Initial Comments of the Citizens Utility Board of Minnesota**

The Citizens Utility Board of Minnesota (“CUB”) respectfully submits these comments in response to the Minnesota Public Utilities Commission’s (“Commission”) Notice of Comment issued on March 6, 2025 in the above-referenced matter.

**I. Background**

Northern States Power Company d/b/a Xcel Energy (“Xcel” or the “Company”) filed a multi-year rate plan (“MYRP”) on October 25, 2021 seeking to raise gross revenues by \$396.0 million (12.2 percent) in 2022, followed by incremental increases of \$150.2 million (4.8 percent) and \$131.2 million (4.2 percent) in 2023 and 2024, respectively.<sup>1</sup> Included in Xcel’s Application was a request to recover compensation paid to the Company’s top-ten executives, with the Minnesota jurisdictional amount totaling \$7.05 million in 2022, \$7.57 million in 2023, and \$7.88 million in 2024.<sup>2</sup>

When submitting its Application, Xcel neglected to file statutorily required information separately itemizing the compensation paid and expenses reimbursed for the Company’s ten highest paid officers and employees.<sup>3</sup> This information was not provided to the Commission or stakeholders until the second day of the Commission’s hearing on the matter, after the Commission identified the omission and directed Xcel to correct it.<sup>4</sup> Nonetheless, numerous members of the public filed

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<sup>1</sup> *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Xcel Application Vol. 1, Notice of Change in Rates at 3 (Oct. 25, 2021).

<sup>2</sup> *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Findings of Fact, Conclusions, and Order at 20 (Jul. 17, 2023) (hereinafter “Xcel Rate Case Order”).

<sup>3</sup> Minn. Stat. § 216B.16, Subd. 17(5).

<sup>4</sup> *See In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Errata Filing (May 24, 2023).

comments “expressing dissatisfaction with the high level of compensation paid to Xcel’s executives.”<sup>5</sup> Based on the record then before it, the Commission concluded Xcel had not met its burden to show full recovery of executive compensation would result in just and reasonable rates. The Commission thereafter set a \$150,000 recovery threshold for each of the Company’s top-ten executives based on the salary paid to “Minnesota’s highest executive officer—its Governor.”<sup>6</sup> In setting a \$1.5 million cap each year, the Commission effectively disallowed \$18 million in ratepayer recovery of executive compensation over the term of the MYRP.<sup>7</sup>

On August 7, 2023 Xcel filed a petition seeking, in part, reconsideration of the Commission’s treatment of executive compensation, which was subsequently denied.<sup>8</sup> The Company appealed this decision with the Minnesota Court of Appeals on June 14, 2024. On January 21, 2025, the Court of Appeals released its decision affirming the treatment of executive compensation in part, reversing in part, and remanding the issue back to the Commission for further proceedings.<sup>9</sup>

The instant Notice of Comment seeks to identify the procedural process by which the Commission should make decisions on the remanded issues of prepaid pension and executive compensation, and whether the record should be reopened to allow for additional findings to be made. CUB did not comment on the issue of prepaid pension in the original proceeding. We therefore only address the Commission’s notice as it relates to executive compensation, below.

## **II. Analysis**

The Court of Appeals was clear in its holding that the Commission “lawfully rejected” Xcel’s proposed recovery of executive compensation.<sup>10</sup> However, the Court concluded the Commission did “not explain why the governor is an appropriate comparison for determining the recoverable compensation for the highest-paid executives of a large public utility.”<sup>11</sup> In reaching this conclusion, the Court determined the Commission’s explanation of its reasoning did not adequately consider the utility impacts of setting the cap on executive compensation recovery.<sup>12</sup> The issue on remand is therefore not whether disallowances are warranted, but whether the governor’s \$150,000 salary is the appropriate measure by which to calculate ratepayer recovery.

Minnesota Statute § 216.27 describes the process related to judicial appeals taken from a Commission order. Following such appeals, “[i]f the order of the commission is reversed . . . it shall proceed to determine the reasonableness of the rates, fares, charges, and classification on the

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<sup>5</sup> Xcel Rate Case Order at 22.

<sup>6</sup> Xcel Rate Case Order at 23.

<sup>7</sup> Xcel Rate Case Order at 23.

<sup>8</sup> *In the Matter of the Application of Northern States Power Company dba Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E002/GR-21-630, Petition for Reconsideration (Aug. 7, 2023); Order Denying Petition for Reconsideration, Denying Petition for Clarification, and Granting Clarification (Oct. 6, 2023).

<sup>9</sup> *In the Matter of the Application by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, No. A23-1672 (Minn. App. 2025) (hereinafter “Court of Appeals Decision”).

<sup>10</sup> *Id.* at 21

<sup>11</sup> *Id.* at 26.

<sup>12</sup> *Id.*

merits.” Following the court’s decision to remand, the Commission retains authority to review the matter, with no explicit requirement for additional record development.

As explained in more detail below, CUB envisions two potential procedural processes by which the Commission could consider this issue on remand: 1) the Commission could amend its prior order based on evidence already included in the record; or 2) the Commission could reopen the record to collect additional evidence on whether the Governor’s salary is an appropriate benchmark to use when capping rate recovery of executive salaries.

***A. The Commission may choose not to re-open the record and justify the reasonableness of its decision based on information already filed.***

In remanding the issue of executive compensation, the Court of Appeals determined the Commission’s denial of Xcel’s proposed expense for executive compensation was supported by substantial evidence and was not contrary to law.<sup>13</sup> However, the court found the Commission’s decision to limit Xcel’s recovery based on a comparison to the governor’s salary lacked sufficient justification. Under the court’s ruling, the Commission is not required to reopen the record or make additional findings on the matter before issuing a new decision.

Based on the existing record, CUB believes the Commission could fully disallow rate recovery of these costs. Minnesota Statute § 216B.16, subd. 17(a)(5) requires Xcel to file a schedule itemizing expenses for its ten highest-paid executives with its initial case, which Xcel failed to do until *after* the contested-case proceedings, when the matter was before the Commission. Xcel did not provide any additional justification regarding the reasonableness of those expenses after they were finally admitted into the record. As the court observed, “by merely showing that [the utility] has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses.”<sup>14</sup>

By enacting Subdivision 17, the Minnesota legislature recognized there are certain employee expenses that may be unreasonable or unnecessary for the provision of utility service. Part of that consideration specifically highlights “expenses for the ten highest paid officers and employees, including and separately itemizing all compensation and expense reimbursements.”<sup>15</sup> The legislature intended for the onus to be on the utility to prove these expenses were reasonable to recover from customers. In failing to timely provide statutorily required information during its rate case, Xcel failed to justify why any degree of recovery was appropriate.

Alternatively, the Commission could issue a new order maintaining the \$1.5 million annual limit on ratepayer recovery of executive compensation. Such an approach would require the Commission to provide additional analysis justifying its decision in accordance with the Court of Appeal’s Order.

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<sup>13</sup> Court of Appeals Decision at 21.

<sup>14</sup> *Id.* at 7 (citing *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 723 (Minn. 1987)).

<sup>15</sup> Minn. Stat. § 216B.16, Subd. 17(a)(5).

Such analysis should explain why the governor is a reasonable proxy for a utility executive, and why such an amount is sufficient to enable Xcel to meet the cost of furnishing service.<sup>16</sup>

***B. The Commission may choose to re-open the record for the narrow purpose of determining executive compensation disallowances and setting the appropriate threshold for ratepayer recovery.***

If the Commission determines the evidence currently available on the record is insufficient to fully deny recovery or to more fully justify its \$1.5 million annual threshold, then it could reopen the record for further development.

Should the Commission allow additional information to be submitted into the record, we recommend this evidence be collected through the informal notice-and-comment process. Minnesota Statute § 216B.16, Subd. 2(b) typically necessitates referral to the Office of Administrative Hearings for a contested case if significant general rate change issues have not been resolved to the satisfaction of the Commission. However, a contested case has already been conducted and a recommendation issued by the Administrative Law Judge. The Commission has rendered a decision on the matter, and the Court of Appeals has remanded the issue of executive compensation. This is procedurally unique from the contested case process envisioned by statute, and enables alternative pathways for review that might not have been available when the Company originally petitioned for a general rate increase. We also note that Xcel has since filed an additional rate case where future rate recovery of Xcel's executive compensation will again be addressed through a contested case proceeding.<sup>17</sup>

In selecting a procedural process for further evidence gathering, the Commission must consider the Minnesota Supreme Court's decision in *Matter of Surveillance and Integrity Review*, 996 N.W.2d 178 (Minn. 2023) and determine its applicability. While the facts of *Integrity Review* are somewhat distinguishable from the instant case,<sup>18</sup> the Court's holding restricts agencies' ability to remand issues to Administrative Law Judges for further review and reconsideration. There, as here, the ALJ's report served as a recommendation to the agency, which "has . . . final decision-making authority."<sup>19</sup> Upon receiving such recommendation and report, Minnesota Statutes present the agency with three options: it may "accept the ALJ's report as the agency's final decision; [it may] 'modif[y]' the ALJ's report; or [it may] 'reject' the ALJ's report." The Court makes abundantly clear that "[t]he option to remand is not permitted."<sup>20</sup>

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<sup>16</sup> Court of Appeals Decision at 26.

<sup>17</sup> See generally, *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-24-320.

<sup>18</sup> *Integrity Review* involved the Department of Human Services remanding a case to the ALJ prior to any appeal of the agency's decision to the courts. In this way, the procedural likenesses between *Integrity Review* and the instant case are distinguishable. However, these dissimilarities do not alter the Court's holding that agencies lack authority to remand cases back to the ALJ after a final recommendation has been issued.

<sup>19</sup> *Matter of Surveillance and Integrity Review*, 996 N.W.2d 178, 183 (Minn. 2023).

<sup>20</sup> *Id.* at 187.

Notably, the Court distinguishes the ability to remand to the ALJ from the agency's own authority to reopen a proceeding or set aside its original order.<sup>21</sup> Indeed, Minnesota law explicitly contemplates the Commission's ability to "reopen any case following the issuance of an order therein," and to "rescind, alter, or amend" its decision.<sup>22</sup> Minnesota Statute § 216B.27 further provides the Commission with broad authority to "determine the reasonableness of the rates, fares, charges, and classification on the merits" in the event of judicial reversal or remand. No process is laid out for how evidence gathering must proceed upon reopening of the record.

For these reasons, we find it would be inappropriate to remand the issue of executive compensation back to the ALJ for record development. Instead—should the Commission deem the taking of further evidence necessary for a decision on executive compensation—the record should be reopened and new evidence should be developed through the notice-and-comment process. That notice-and-comment process should be narrowly tailored to specifically solicit comments on whether it is appropriate to use the Governor's salary as a benchmark when capping rate recovery of Xcel's executive compensation.

### **III. Conclusion**

CUB appreciates the opportunity to provide comments on the procedural process for determining the appropriate level of executive compensation recovery on remand. To reiterate, we recommend the Commission either (1) render a new decision based on currently available record evidence; or (2) reopen the record through the notice-and-comment process to address the narrow issue of whether the Governor's salary is an appropriate benchmark for ratepayer recovery of utility executive compensation.

Respectfully submitted,

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<sup>21</sup> *Id.* at 190.

<sup>22</sup> Minn. Stat. § 216B.25.