

## Staff Briefing Papers

**Meeting Date** June 26, 2025

**Agenda Item 6\*\***

**Company** Northern States Power Co. d/b/a Xcel Energy

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

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

**Issues**

1. Should the Commission reopen the record in Docket No. 21-630 on the issue of the Company's claimed prepaid pension asset remanded to the Commission by the Court of Appeals?
2. Should the Commission request that the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services pursuant to Minn. Stat. § 216B.62, subd. 8?
3. What process should the Commission use to make its decision on prepaid pension, and should this process differ for the 2023 rate case vs. the 2021 rate case?
4. Should the Commission reopen the record in Docket No. 21-630 in order to make additional findings on the issue of executive compensation?
6. What process should the Commission use to make its decision on executive compensation?

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

## ✓ Relevant Documents

	Date
Findings of Fact, Conclusions of Law, and Recommendations – State Office of Administrative Hearings	March 31, 2023
Findings of Fact, Conclusions, and Order – Public Utilities Commission of Minnesota	July 17, 2023
Opinion – State of Minnesota Court of Appeals	January 21, 2025
Comments – Xcel Large Industrials	April 7, 2025
Notice of Comment Period – Public Utilities Commission of Minnesota	March 6, 2025
Comments – Office of the Attorney General	April 7, 2025
Comments – Department of Commerce	April 7, 2025
Comments – Xcel Energy	April 7, 2025
Comments – Citizens Utility Board	April 7, 2025
Reply Comments – Xcel Energy	April 15, 2025
Reply Comments – Xcel Large Industrials	April 15, 2025

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## BACKGROUND

On October 25, 2021, Northern States Power Company, d/b/a Xcel Energy (Xcel Energy or Xcel) filed a general rate case seeking three consecutive rate increases under the Multi-Year Rate Plan Statute. Xcel's filing included the following in rate base: prepaid pension asset, related FAS 106 retiree medical benefits, and FAS 112 Long-Term Disability (LTD) benefits. Xcel also requested recovery of a schedule of executive compensation, including salary, stock and stock options, and other benefits, for its highest compensation employees.

On December 23, 2021, the Public Utilities Commission of Minnesota (PUC or Commission) referred this matter for hearing to Administrative Law Judge (ALJ) Christa L. Moseng.

On March 31, 2023, ALJ Moseng issued her Findings of Fact, Conclusions of Law, and Recommendations (ALJ Report).

On July 17, 2023, the Commission issued its Findings of Fact, Conclusions, and Order (Order).

On June 14, 2024, Xcel Energy appealed the Commission's Order.

On January 21, 2025, the Court of Appeals filed its decision reversing and remanding the Commission's Order on Prepaid Pension Asset, and partly upholding and partly reversing the Commission on executive compensation.

On March 6, 2025, the Commission issued a Notice of Comment asking how the Commission should procedurally handle the Court of Appeals' remand.

On April 7, 2025, Xcel, the Department of Commerce (Department), the Office of the Attorney General (OAG) and Citizens Utility Board (CUB) filed comments.

On April 15, 2025, Xcel and Xcel Large Industrials (XLI) filed reply comments.

On November 1, 2023, Xcel Energy filed a rate case for its gas utility in Docket No. G-002/GR-23-413. On June 26, 2024, all parties memorialized a settlement in that case, with the proviso that, should the pending appeal in the 2021 rate case result in a reversal or modification of the Commission Order regarding the prepaid pension asset, the revenue requirement in the new rate case should be adjusted. The settlement has a provision for Executive Compensation that is not limited based on the outcome of the appeal.

## DISCUSSION

### I. Background

#### A. Prepaid Pension Asset

In several recent rate cases, Xcel Energy has its prepaid pension asset in rate base and has

requested to recover a return of the associated revenue requirement. A return on prepaid pension asset was not questioned by any party in Xcel's 2010 rate case.<sup>1</sup>

The earliest PUC cases related to prepaid pension asset were two Minnesota Energy Resources Corporation (MERC) rate cases. In MERC's 2010 rate case, the OAG objected to approximately \$71,000 in prepaid pension asset recovery<sup>2</sup> and, in MERC's 2013 rate case the Department objected to inclusion of prepaid pension asset in rate base, a position which the ALJ and Commission both agreed with in their respective Orders.<sup>3</sup>

In its 2013 rate case,<sup>4</sup> Xcel requested a return on approximately \$90.8 million in prepaid pension assets. No party presented any challenge to this recovery during the rate case, and the ALJ made no ruling on the issue. However, Staff Briefing Papers for the March 19 and 26, 2015 agenda meetings provided a brief analysis, and recommendations related to the then-new Prepaid Pension Asset issue.<sup>5</sup> It was in this context, where no party had opposed recovery, that the Commission approved recovery of the prepaid pension asset in Docket E-002/GR-13-868.<sup>6</sup>

Docket E-002/G-15-826 was a multi-year rate plan that reached a settlement of rate-related issues. Xcel has filed two electric rate cases which were withdrawn in favor of stay-out proposals during the Covid era,<sup>7</sup> leading to the instant docket, E-002/GR-21-630.

In this docket, the Department of Commerce and Xcel Large Industrials (XLI) opposed recovery of a return on Prepaid Pension Asset. Staff Briefing Papers<sup>8</sup> for the agenda meeting of May 23-24, 2023 amply summarize the record to that date, so staff will not rehash that record here. In addition to the record, as noted on Page 40 of the briefing papers, new additions to the record on this issue included:

Xcel Petition for Reconsideration at 72-81 & Attachment 8.

XLI Answer to Xcel Petition for Reconsideration at 12.

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<sup>1</sup> PUC Dockets E-002/GR-10-971

<sup>2</sup> PUC Docket G-007,011/GR-10-977

<sup>3</sup> *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-011/GR-13-617, Commission Findings of Fact, Conclusions, and Order, pp. 22-24 (October 28, 2014)

<sup>4</sup> *In the Matter of a Petition by Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-13-868.

<sup>5</sup> *Ibid.*, Briefing Papers, Vol. II, pp. 28-34 (March 11, 2015)

<sup>6</sup> Department Witness Nancy Campbell noted that she "missed" this issue in the 2013 rate case during oral arguments for Docket E-002/GR-21-630 (Tuesday, May 23, 2023 at approximately 4:22:20-4:22:40 of the video) and continues to provide further explanation of that case.

<sup>7</sup> Docket No. GR-19-564 & GR-20-723

<sup>8</sup> Staff Briefing Papers (Volume II) pp. 25-41. (May 12, 2023)

Court of Appeals Order of January 21, 2025 and related briefs.<sup>9</sup>

On January 21, 2025, the Court of Appeals (Court) found that “The Commission’s categorical exclusion of Xcel’s prepaid pension asset from rate base is not supported by substantial evidence and is arbitrary and capricious, and the Commission must revisit the prepaid pension asset on remand.”<sup>10</sup> The Court further found “a utility’s mandatory contributions to pension plans are an expense of a capital nature to which the Commission must give due consideration in determining the utility’s rate base under Minn Stat. §216B.16, subd. 6.”<sup>11</sup> This decision directly followed the Court’s similar decision in Minnesota Power’s rate case, PUC Docket E-015/GR-21-335, Court of Appeals Docket A23-0867 et al. of September 9, 2024. This case is distinct from Minnesota Power in that, in this case, the Court also rejected the ALJ’s finding excluding the prepaid pension asset.

## B. Executive Compensation

As part of their initial rate filings, all utilities are required to report total compensation for the top ten compensated executives. In Docket 21-630, Xcel errantly failed to report this information - an oversight missed by all parties and Commission Staff until just prior to the Commission hearing. Moreover, no party commented specifically on top-ten executive compensation prior to the Commission hearing, and the ALJ did not directly address top-ten compensation in her report. The Commission ultimately determined that Xcel had not provided a persuasive argument for why ratepayers should bear the full executive compensation request and concluded that, for each top ten executives, it would be reasonable for ratepayers to pay an amount comparable to the amount they pay for their top executive in state government—the Governor (approximately \$150,000 annually). Although top-ten executive compensation had not been capped at the Governor’s salary in prior rate cases, the Commission has routinely limited recovery of executive compensation components when the Commission determined that the compensation incentivizes executives to advance shareholders’ interests over ratepayers’.

## II. Parties’ Comments

In response to the March 6, 2025 notice, Xcel Energy, the Department of Commerce, the Office of the Attorney General, and the Citizens Utility Board filed Initial Comments, and Xcel Large Industrials and Xcel Energy filed Reply Comments in this Docket. These Briefing Papers will summarize parties’ comments organized by topic.

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<sup>9</sup> Court of Appeals Docket No. A23-1672, *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*, January 21, 2025.

<sup>10</sup> Order of January 21, 2025, Docket No. A23-1672, p. 16.

<sup>11</sup> Xcel Reply Comments, citing the Court of Appeals Order in this Docket, which was quoting *Minnesota Power*, 12 N.W.2d 477 (Minn. Ct. App. 2024).

### **A. Referral to State Office of Administrative Hearings (OAH)**

On both issues, all parties generally agreed that the Commission should not refer the matter to the OAH. The Office of the Attorney General and Department did distinguish this case from *Surveillance and Integrity Review*.<sup>12</sup> The OAG and Department argued that, in this case, the Commission did make a timely final decision on the ALJ Report, and Xcel appealed that ruling. Now, as the Court of Appeals instructed, the Commission needs to make additional findings and may reopen the record at its discretion. As a result, the Commission, if it determines that the best way to resolve either or both matter is through a contested case, may remand to the ALJ.

Xcel Energy did not attempt to distinguish this case from *Surveillance and Integrity Review* and stated that the Commission “may not” have authority to send this matter back to the ALJ,<sup>13</sup> and noted that, if the Commission did so, it would extend the process by many additional months.

CUB, though noting the facts of this case and *Surveillance and Integrity Review* can be distinguished, argued that Minnesota Law grants agencies three options in response to an ALJ report – accept, modify, or reject the ALJ report. CUB argued that *Surveillance and Integrity Review* makes abundantly clear that the option to remand is not permitted.<sup>14</sup>

XLI opposed referral to OAH and did not address the issue of *Surveillance and Integrity Review*. XLI generally believed that as simple a process as possible is best, preferring to improve the original order to comply with the Court Order rather than to reopen the record and reconsider the decision.

### **B. Prepaid Pension Asset**

#### **1. Should the Commission reopen the record in Docket 21-630 on the Issue of Prepaid Pension Asset?**

The Department asked that the record be reopened because parties did not initially address the prepaid pension asset issue in the manner contemplated by the Court of Appeals. The original contested case centered around whether prepaid pension asset was a capital asset for ratemaking purposes and parties did not thoroughly evaluate secondary considerations such as the size of the asset, contributions required by federal law, and possible allocation between ratepayers and shareholders.

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<sup>12</sup> Note that in the 2025 legislative session a bill passed that authorizes administrative agencies to request a remand to OAH (now known as the Office of Administrative Courts). 2025 Minn. Laws ch. 39, section 21. <https://www.revisor.mn.gov/laws/2025/0/Session+Law/Chapter/39/>.

<sup>13</sup> Xcel Initial Comments, p. 4.

<sup>14</sup> CUB Initial Comments, p. 4, referring to *Surveillance and Integrity Review*, at 187.

Xcel Energy and XLI argued that the record should not be reopened. Xcel argued that this issue has already been heavily litigated and recommended a relatively short schedule with comments in July and reply comments 30 days later. In the alternative, if outside expertise is required, Xcel recommended that, rather than delaying the matter further, comments in this case be made concurrent with testimony in the 2024 rate case<sup>15</sup> where this issue is also present, currently scheduled for August 22, 2025. XLI alternatively noted that issue has been litigated and opposed allowing Xcel opportunity to introduce further evidence into the record and recommended that the Commission's Order be bolstered in a way that is consistent with the Court of Appeals order, an approach that did not require either an extended comment period or opening the record.

**2. Should a different process be used for Docket 23-413, the Xcel's Gas rate case?**

All parties generally agreed that the process identified in this case could be applied to Docket 23-413.

**3. Should the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services pursuant to Minnesota Stat §216B.62, subd. 8?**

Similar to authority already granted for the 2024 rate case for the same issue, the Department requested authority to incur costs for specialized technical services in this case. The Department anticipated that the technical consultant would help with the following issues:

- How the prepaid asset should be calculated.
- Determining the applicable minimum contribution requirements.
- Whether Xcel established its prepaid pension asset was funded through investor capital.

To maintain a uniform basis for informed decision-making, the Department stated that it would try to retain the same consultant for both dockets.

XLI and Xcel did not believe a technical expert is necessary. XLI did not believe the issues that a technical expert would address need be reached in this proceeding. Xcel argued that this case has already been fully litigated and that further delays – past the date for testimony in the 2024 rate case – would be inappropriate. If an expert is required, Xcel argued that an expedited process, with comments due contemporaneous with the 2024 rate case would be sufficient to allow adequate review of the existing evidence.

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<sup>15</sup> Docket No. E-002/GR-24-320.

## **C. Executive Compensation**

### **1. Should the Commission reopen the record for Executive Compensation?**

The Department suggested that the record be reopened for executive compensation. The Department noted that, although certain compensation-related issues were addressed by parties during this case, no parties specifically addressed executive compensation. The Citizens Utility Board (CUB) suggested that, if the Commission chooses to either completely disallow executive compensation recovery, or to clarify and expand on its existing ruling, the Commission could rule based on the existing record. If the Commission determines the evidence is insufficient to fully deny recovery or to fully justify its \$1.5 million annual threshold, CUB argued that the Commission could reopen the record. CUB suggested use of the informal notice and comment process in that case, and that the Commission narrowly tailor comments specifically to 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.

Similar to its position on prepaid pension asset, XLI opposed reopening the record for Executive Compensation because the Commission's underlying reasoning on executive compensation was correct and, to substitute an appropriate salary proxy, the Commission may remedy its own findings with record evidence.

The Office of the Attorney General argued that it is unnecessary to reopen the record and recommended disallowing all executive compensation expenses rather than attempting to use a proxy, or alternatively improving the justification around the \$1.5 million allowance related to the Governor's salary proxy. Neither requires additional record evidence. The OAG cited Xcel's decision to drop the appeal of the Return on Equity as evidence allowing a finding that Xcel has adequate funding.

Xcel recommended using the same notice and comment process for executive compensation as for pension. Xcel does not explicitly state whether it believes additional record development is needed, though it did state it believes the existing record is inadequate to flatly deny recovery of all executive compensation costs and asserted that executive compensation is a reasonable and necessary cost of providing utility service. Xcel did disagree with XLI's approach to executive compensation and also rejected CUB and OAG's approaches.

## **D. Legal Issues**

If the record is reopened, the OAG argued that the process should allow for robust discovery regarding the activities engaged in by executives and the benefit they provide to ratepayers. The purpose of reopening the record would be to examine how much time these executives devote to activities that benefit ratepayers versus those that benefit shareholders. This would require Xcel's cooperation in a robust discovery process, especially if that discovery process is an informal notice and comment period, with the introduction of unvetted evidence. The OAG argued that the Commission is less well-positioned to resolve discovery disputes than the OAH; therefore, the Commission should take steps to ensure that all parties have the opportunity to



build their case. The OAG recommended the following:

- Xcel be ordered to respond to discovery requests from all parties to the 2021 rate case, not just governmental intervenors.
- Xcel not be allowed to introduce evidence if another party demonstrates that Xcel failed to engage in discovery in good faith.
- If Xcel fails to produce sufficient discovery responses on a matter, the Commission will consider that matter established in favor of the requesting party.

## **DECISION OPTIONS**

### **Referral to Office of Administrative Hearings**

1. Refer Docket 21-630 to the Office of Administrative Hearings for a Contested Case Hearing for additional record development on:

A. Prepaid pension asset.

AND/OR

B. Executive compensation.

### **Other Procedural Alternatives**

2. Authorize the Executive Secretary to set schedules for Comment, Reply Comment and Response Comment on the issues of prepaid pension asset and executive compensation. (All parties)
3. Require Xcel to respond to discovery requests from all parties to the 2021 rate case, not just governmental intervenors. (OAG)
4. Determine that, if a party demonstrates that Xcel failed to engage in discovery in good faith on any matter, the Commission may reject evidence introduced by Xcel on that matter. (OAG)
5. Determine that if, in response to a party's request, Xcel fails to produce sufficient discovery responses, the Commission may consider that matter established in favor of the requesting party. (OAG)

### **Prepaid Pension Asset**

6. Reopen the record to address whether the Company has met its burden to prove the size and source of the prepaid pension asset, contributions required by federal law, and possible allocation between ratepayers and shareholders. (Department)

Or

7. Do not reopen the record and decide the issue of prepaid pension asset based on the existing record and direction from the Court of Appeals. (Xcel, XLI)

*If the Commission reopens the record on prepaid pension asset (Decision Option 6), it should also consider the following:*

8. Pursuant to Minn. Stat. § 216B.62, subd. 8, request that the Commissioner of the Department of Commerce seek authority from the Commissioner of Management and Budget to incur costs for specialized technical professional investigative services to assist with evaluating the prepaid pension issue. (Department)

Or

9. Do not request the Department seek authority to incur costs for specialized technical professional investigative services to assist with evaluating the prepaid pension issue. (Xcel)

### **Executive Compensation**

10. Reopen the record to address the executive compensation issue. (Department)

Or

11. Do not reopen the record and decide the issue of executive compensation based on the existing record and direction from the Court of Appeals. (Xcel, OAG, XLI, CUB)

*If the Commission reopens the record on executive compensation (Decision Option 6), it should also consider the following:*

12. Identify the following executive compensation issues for record development:

- A. What, if any, alternative proxy or proxies should the Commission consider, other than the Governor's salary? Would any of the following be reasonable proxies, and if so, is the data reasonably available for comparison? (Staff)

- 1) Governor's total comparable compensation, inclusive of benefits similar to those included in the calculation for executive compensation. (OAG Alternative, XLI)
- 2) Compensation for similar positions with municipal or cooperative utilities. (Staff)
- 3) Any other appropriate proxy. (Staff)

- B. A division of compensation for the position between 'ratepayer' focused and

‘shareholder’ focused activities. (OAG)

- C. Is the Governor’s salary an appropriate benchmark for capping compensation when capping rate recovery of Xcel’s executive compensation? (CUB)