

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Petition of Northern
States Power Company, d/b/a Xcel Energy,
for Approval of True-Up Mechanisms

PUC Docket No. E002/M-20-743

XLI COMMENT

The Xcel Large Industrials (“XLI”)¹ submit this comment pursuant to the notice of comment period issued by the Minnesota Public Utilities Commission (“Commission”) in PUC Docket No. E002/M-20-743.² In response to the Notice, XLI requests that the Commission equitably modify Xcel’s 2021 Stay Out, by abolishing the 2021 True-Up or modifying it consistent with XLI’s alternative recommendation described below.³

I. INTRODUCTION/BACKGROUND

On November 2, 2020, Xcel filed an application for authority to increase rates in Minnesota using a forecast 2021 test year.⁴ In the 2021 Rate Case, Xcel requested an increase of \$405.8 million (13.2%) in 2021, an incremental increase of \$98.5 million (3.3%) in 2022, and an incremental increase of \$93.1 million (3.2%) in 2023 through a multi-year rate plan (“MYRP”).⁵

¹ XLI is an *ad hoc* consortium of large industrial customers of Northern States Power Company d/b/a Xcel Energy (“Xcel”) consisting for purposes of this filing of Flint Hills Resources Pine Bend, LLC; Marathon Petroleum Corporation; and USG Interiors, Inc.

² Notice of Comment Period (Feb. 9, 2022) (eDocket No. 20222-182577-01) (the “Notice”). The Notice seeks comments on whether the Commission should approve Xcel’s 2021 sales true-up compliance filing, allowing Xcel to implement recovery factors by April 1, 2022 and whether Xcel should be allowed to implement the associated recovery factors by class. More specifically, (1) “Does Xcel’s filing comply with the Commission’s April 2, 2021 Order and should it be accepted?”; (2) “Should Xcel be allowed [to] begin recovery of its 2021 sales true-up on April 1, 2022?”; (3) “How does Xcel’s 2021 conservation savings compare with prior years?”; and (4) “Are there other issues or concerns related to this matter?”

³ This comment is responsive to the Commission’s solicitation of comments on whether Xcel should be allowed to begin recovery on its 2021 sales true-up and whether there are other issues or concerns related to this matter. With regard to its recommendation that Xcel should not be permitted to implement the 2021 sales true-up, XLI looks forward to engaging with other stakeholders throughout this process and reserves the right to supplement this comment via a reply comment on the March 16, 2022, deadline or supplement the record upon further review of other stakeholders’ reply comments.

⁴ *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*, MPUC Docket No. E002/GR-20-723, Initial Filing – Vol. 1 Notice of Change of Rates and Interim Rates Petition (Nov. 2, 2020) (“2021 Rate-Case Petition” or the “2021 Rate Case” when referring to the docket in its entirety).

⁵ *Id.* at 2.

The 2021 Rate Case filing was responsive to Xcel's expired MYRP, which was resolved via a Commission-approved settlement for the years 2016 through 2019.⁶ An important aspect of the 2015 Settlement Agreement was the Sales-Forecast True-Up and Decoupling (the "Original Sales True-Up").⁷ The Original Sales True-Up permitted Xcel to true up sales based on 2016 weather-normalized sales to account for lost (or gained) sales revenue in years 2016 through 2019.⁸ Consistent with the 2015 Settlement Agreement, the Original Sales True-Up was set to expire at the end of 2019;⁹ however, Xcel, despite objections by settling parties, was permitted to continue the use of various true-up mechanisms to avoid litigating a new MYRP in 2020.¹⁰

In the instant docket, as an alternative to the 2021 Rate Case, Xcel filed another request to avoid a rate case on October 1, 2020, seeking continued use of similar true-ups, without legal basis and outside the scope of the 2015 Settlement Agreement.¹¹ As directly applicable here, Xcel sought an "annual Sales True-Up that would operate similarly to the sales true-up established in the 2015 Multi-year Rate Plan (MYRP) and currently approved for 2020 in the Approval of True-ups Docket."¹² At the time the Petition was pending, Xcel claimed that the total increase of the 2021 Stay Out would be \$171.1 million or approximately \$137.8 million lower than the projected \$308.9 million interim rate increase contemplated by the 2021 Rate-Case Petition.¹³

Like the previous stay out, XLI opposed the Petition for several reasons, the most significant being that Xcel's initial estimates demonstrated that demand-billed customers fared

⁶ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-15-826, Findings of Fact, Conclusions, and Order (June 12, 2017) ("2015 Rate Case Order" and when referred to generally the "2015 MYRP"); *see also In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-15-826, Stipulation of Settlement (Aug. 16, 2016) (in this comment, the 2015 MYRP shall also be referred to as the "2015 Settlement Agreement").

⁷ 2015 Rate Case Order at 9. Traditionally, Xcel files a compliance filing on or around February 1 each year, detailing the previous year's actual data and revenue calculations. *See, e.g., In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E002/GR-15-826, 2018 Sales Actual Data and Related Revenue Calculations, 2016 Minnesota Electric Rate Case (Feb. 1, 2019).

⁸ 2015 Rate Case Order at 9.

⁹ *Id.* at 36.

¹⁰ *See generally In the Matter of Northern States Power Company dba Xcel Energy for Approval of True-Up Mechanisms*, PUC Docket No. E002/M-19-688 ("2020 Stay Out").

¹¹ Petition at 4 (Oct. 1, 2020) (eDocket No. 202010-166988-01) ("Petition" or "2021 Stay Out" when referring to the proceeding generally). The Petition is dated September 15, 2020; however, the docket dates the filing as October 1, 2020.

¹² *Id.* For purposes of this comment, Xcel's proposed surcharges will be referred to as the "2021 True-Up."

¹³ Xcel Reply Comments at Ex. 1 (Nov. 2, 2020) (eDocket No. 202011-167952-01).

worse under the Petition compared to the interim rate increase in the 2021 Rate Case.¹⁴ Xcel projected that demand-billed customers would pay \$171.4 million under a 2021 Sales True-Up (*i.e.*, an amount larger than the total revenue Xcel would collect from the True-Up) compared to an interim rate increase of \$161.2 million in the 2021 Rate Case.¹⁵ Unlike the previous 2020 Stay Out, however, other stakeholders such as the Minnesota Department of Commerce, Division of Energy Resources (“Department”) also questioned the Petition.¹⁶ Despite these objections, as well as the fact that the Commission lacked the legal authority to continue the true-up process, the Commission approved the Petition during agenda meetings on December 8-9, 17, 2020, issuing a written order on April 2, 2021.¹⁷ In approving the Petition, the Commission did, however, “recognize[] the potential risks that the proposal carries for some customers.”¹⁸ As a result, the Commission also required various rate mitigation measures in an attempt to limit impacts to the demand class.¹⁹

Subsequently, on October 25, 2021, Xcel filed a new MYRP, using a forecast 2022 test year, in which it seeks increases of \$396 million in 2022, an incremental \$150.2 million in 2023, and an incremental \$131.2 million in 2024 for a total increase of \$677.4 million in three years.²⁰ Xcel also provided informational forecasts for 2025 and 2026, which are estimated to be an incremental \$70 million and \$118 million, respectively.²¹ As noted by the Department, if approved, “the total 2022-2026 rate increase would be \$865 million, or approximately 27.4

¹⁴ *Id.*

¹⁵ *Id.* at Ex. 1.

¹⁶ *See, e.g.*, Initial Comments by the Department at 28-29 (Oct. 16, 2020) (eDocket No. 202010-167436-04). In its initial comment, the Department recommended various mitigation measures in an effort to limit the disproportionate impact on demand-billed customers.

¹⁷ Order Approving True-Ups with Modifications and Requiring Xcel to Withdraw Its Notice of Change in Rates and Interim Rate Petition (Apr. 2, 2021) (eDocket No. 20214-172538-01) (“2021 Stay-Out Order”).

¹⁸ *Id.* at 13.

¹⁹ *Id.* at 13-14. During the intervening period between the Commission’s oral decision in December 2020 and its written order in April 2021, Xcel filed a letter admitting that it had mistakenly overstated the interim rate increase for the 2021 Rate Case by \$43 million. At the time, XLI raised this concern and filed a petition for reconsideration; however, the Commission ultimately denied this petition. *See* Order Denying Reconsideration (June 14, 2021) (eDocket No. 20216-175016-01). XLI does not wish to re-litigate this matter here and provides this information in the interest of transparency. To be sure, should comments by other parties necessitate renewed discussion of this matter, XLI reserves the right to partake in that discussion.

²⁰ *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*, PUC Docket No. E002/GR-21-630, Xcel Notice of Change in Rates – Vol. 1 at 2 (Oct. 25, 2021).

²¹ *See 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*, PUC Docket No. E002/GR-21-630, Vol. 3, Sec. 2, Sched. A-1 (Oct. 25, 2021) (the “2022 Rate Case”).

percent, over present revenues.”²² As part of the 2022 Rate Case, Xcel sought an interim rate increase of approximately \$288 million or 13.52% across all customer classes.²³ The Commission, however, declined to accept Xcel’s full interim rates request and, based upon its judicial notice of various factors, found exigent circumstances for the residential customer class.²⁴ The Commission then ordered a reduction of the interim rate increase for residential customers only, capping Xcel’s incremental increase at \$79.85 million for that class.²⁵ As a result, residential customers will pay a 2022 interim rate increase of approximately 8.92%, while Xcel’s remaining customers will incur an interim rate increase of 13.52%.²⁶ Though the Commission’s interim rates decision is not immediately appealable,²⁷ both XLI and Xcel filed letters flagging concerns with the Commission’s decision to unilaterally lower interim rates for one class, including the potential for an inequitable distribution of an interim rate refund.²⁸ Notwithstanding concerns about the interim rates decision, Xcel was permitted to begin collecting the interim rate increase on January 1, 2022.²⁹

After implementation of interim rates, Xcel submitted a compliance filing on February 1, 2022, providing actual data for the 2021 True-Up.³⁰ The Compliance Filing updates the total 2021

²² *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*, PUC Docket No. E002/GR-21-630, Department Comments at 1 (Nov. 8, 2021).

²³ *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*, PUC Docket No. E002/GR-21-630, Xcel Compliance Filing at Attach. B, Sched. 1 (Dec. 14, 2021).

²⁴ *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*, PUC Docket No. E002/GR-21-630, Order Setting Interim Rates at 9-10 (Dec. 23, 2021).

²⁵ *Id.* at 7.

²⁶ *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*, PUC Docket No. E002/GR-21-630, Xcel Compliance Filing at Attach. B, Sched. 1 (Dec. 30, 2021).

²⁷ Minn. Stat. § 216B.16, subd. 3(a).

²⁸ *See 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*, PUC Docket No. E002/GR-21-630, Letter by Xcel (Jan. 11, 2022); *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*, PUC Docket No. E002/GR-21-630, Letter by XLI (Jan. 12, 2022).

²⁹ *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*, PUC Docket No. E002/GR-21-630, Order Setting Interim Rates at 6-7, 9-10 (Dec. 23, 2021).

³⁰ 2021 Sales and Related Revenue Calculations Compliance – True-Up Mechanisms (Feb. 1, 2022) (eDocket No. 20222-182320-02) (the “Compliance Filing”).

True-Up to approximately \$59.4 million.³¹ While the overall amounts are less than initially projected, demand-billed customers are still allocated a true-up value of approximately \$118.4 million while residential customers are allocated a refund of approximately \$63.7 million.³² In other words, the claimed charge to demand-billed customers is roughly double Xcel's alleged true-up need in order to fund a refund to the residential class that is the size of Xcel's claimed revenue deficiency.

In response to the Compliance Filing, the Commission issued the Notice on February 9, 2022.³³ XLI appreciates the Commission's willingness to engage with stakeholders on this matter. And, after review of the Compliance Filing, pursuant to the Notice, and given the context of other recent Commission determinations, XLI respectfully requests that the Commission disallow implementation of the associated recovery factors. Alternatively, XLI respectfully suggests an additional opportunity to mitigate the impact of the 2021 Stay Out on demand-billed customers, and looks forward to engaging with stakeholders on this matter.

II. ANALYSIS

A. The Commission Should Exercise Its Authority to Modify the 2021 Stay Out

1. Minnesota Statutes § 216B.25 Permits the Commission to Modify or Abolish the 2021 True-Up

The Commission has authority to amend or modify its previous approval of the 2021 Stay Out. Minnesota Statutes § 216B.25 states that “[t]he commission may *at any time*, on its own motion or upon motion of an interested party, and upon notice to the public utility ... rescind, alter, or amend any order fixing rates, tolls, charges, or schedules, or any other order made by the commission.” (Emphasis added.) The Commission previously exercised this authority in a matter related to Minnesota Energy Resources Corporation's (“MERC”) Gas Utility Infrastructure Cost rider.³⁴ The MERC Matter came before the Commission after certain customers and MERC

³¹ *Id.* at Attach. F, p. 1. Customers are allocated larger surcharges than the total revenue needed by Xcel based on projected refunds to other customer classes.

³² *Id.*

³³ Notice.

³⁴ *See In the Matter of Minnesota Energy Resources Corporation's Request for Approval of a Gas Utility Infrastructure Cost (GUIC) Rider*, PUC Docket No. G011/M-18-281, Order Suspending GUIC Rider Surcharge for Direct Connect Customers, and Declining to Reopen NGEP Cost Rider Docket (Aug. 26, 2019) (the “MERC Order” and when referring to the matter generally the “MERC Matter”). The MERC Order was also filed in PUC Docket Nos. G011/M-18-182, G011/M-19-282, and G011/GR-17-563.

notified the Commission of concerns related to implementation of certain rider surcharges.³⁵ Specifically, MERC and these customers argued that the application of the surcharges significantly increased the possibility of entities bypassing MERC's system to contract directly with the interstate pipeline for natural gas service.³⁶ Acknowledging its authority under Minn. Stat. § 216B.25 and the potential for detrimental impacts to MERC's system, the Commission reconsidered and reopened some of its previous orders, suspending application of specific surcharges to bypass-eligible customers.³⁷

To be sure, similar detrimental ratepayer impacts exist here, justifying Commission action pursuant to Minn. Stat. § 216B.25. Absent Commission modification, demand-billed customers will incur two significant rate surcharges in 2022. Xcel is already collecting an additional 13.52% or \$152.9 million from these customers through the interim rate increase in the 2022 Rate Case, and the 2021 True-Up adds an unjust and unreasonable \$118.4 million to demand-billed customers for the 20 months after implementation.³⁸ The aggregate impact of these increases results in rates that do not comply with the statutory requirement that rates be just and reasonable³⁹ and most certainly constitutes rate shock for demand-billed customers. Importantly, Minn. Stat. § 216B.03 also requires that “[a]ny doubt as to reasonableness [in terms of rates] should be resolved in favor of the consumer.” Even assuming there is a statutory basis to surcharge demand-billed customers in this fashion (there is not), if paying approximately double the \$59.4 million Xcel requires to be made whole in this proceeding, in addition to a 13.52% interim rate increase, does not raise a “doubt as to reasonableness,” it is hard to imagine a scenario where this clause within Minn. Stat. § 216B.03 will apply.

The net impact to different customer classes casts further doubt as to the reasonableness of Xcel's 2021 Stay Out scheme. The Compliance Filing establishes that demand-billed customers, including XLI members, will pay a \$118.4 million 2021 True-Up surcharge while residential customers will receive an approximately \$63.7 million refund. In isolation, this is not significantly different than the 2020 Stay Out in terms of demand-billed customers funding a refund to

³⁵ *Id.* at 1.

³⁶ *Id.*

³⁷ *Id.* at 6-8. Though bypass is not an issue on the electric system, the Commission's concern with losing those entities was tied to the potential harm it could have on other ratepayers.

³⁸ *See* 2021 Stay-Out Order.

³⁹ Minn. Stat. § 216B.03.

residential customers;⁴⁰ however, considering this result in conjunction with the rate case underscores the absurdity of the 2021 Stay Out. In Xcel's 2022 Rate Case, demand-billed customers are currently paying an interim rate increase of \$152.9 million or 13.52%, while residential customers, who solely benefited from the Commission's finding of exigent circumstances, are paying an increase of \$79.9 million or only 8.92%.⁴¹ The 2021 True-Up will provide residential customers a refund of approximately \$63.7 million, which will effectively reduce residential customers' total interim rate increase to \$16.2 million. Alternatively, demand-billed customers will feel a cumulative impact of a 2021 True-Up of \$118.4 million and an interim rate increase of \$152.9 million.⁴² This disparity highlights the unreasonableness of the 2021 Stay Out. XLI, therefore, urges the Commission to exercise its authority pursuant to Minn. Stat. § 216B.25 to reject implementation of the 2021 True-Up, which will result in rates with a semblance of compliance with Minn. Stat. § 216B.03.

2. Modifying Xcel's 2021 True-Up Is Not Retroactive Ratemaking

If the Commission exercises its authority under Minn. Stat. § 216B.25 and modifies Xcel's 2021 True-Up, its actions will not violate retroactive ratemaking principles. On December 3, 2020, the Commission issued an order approving Minnesota Power's 2019 Transmission Cost Recovery Rider ("TCRR").⁴³ Relevant here, Minnesota Power sought recovery of specific transmission expenses incurred between 2015 and 2018 through its 2019 TCRR.⁴⁴ The Department recommended denial of Minnesota Power's request, because recovery of 2015 to 2018 costs would constitute retroactive ratemaking.⁴⁵ Specifically, the Department argued that "[a]llowing MP to add additional projects and costs retroactively to past years' revenue requirements in subsequent rider filings diminishes the relevance of past Commission orders in rider filings ... and related

⁴⁰ XLI maintains its objections to this practice generally.

⁴¹ *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*, PUC Docket No. E002/GR-21-630, Xcel Compliance Filing at Attach. B, Sched. 2 (Dec. 30, 2021).

⁴² XLI acknowledges that the timing and implementation of these surcharges does not perfectly align; however, the description of the cumulative impacts remains accurate.

⁴³ *In the Matter of Minnesota Power's Request for Approval of its 2019 Transmission Cost Recovery Rider*, PUC Docket No. E015/M-19-440, Order Approving Transmission Cost Recovery, Clarifying Prior Order, and Requiring Filings (Dec. 3, 2020) (the "MP Order" or the "Transmission Docket" when referring to the entire docket).

⁴⁴ *Id.* at 4.

⁴⁵ *In the Matter of Minnesota Power's Request for Approval of its 2019 Transmission Cost Recovery Rider*, PUC Docket No. E015/M-19-440, Comments of the Minnesota Department of Commerce – Division of Energy Resources at 15 (Oct. 9, 2019).

annual revenue requirements for a specified timeframe.”⁴⁶ Citing the public interest and the fact that Minnesota Power’s accounting treatment saved ratepayers money, the Commission approved Minnesota Power’s petition.⁴⁷ The MP Order does not directly address parties’ retroactive ratemaking concerns. Instead, the Commission’s approval was grounded in the public interest and perceived ratepayer benefits. Despite not mentioning retroactive ratemaking, the MP Order demonstrates that the Commission did not consider modifications to Minnesota Power’s historical revenue requirements to be retroactive ratemaking.

Similarly, any modification to the 2021 True-Up does not constitute retroactive ratemaking. Like the MP Order, modification is in the public interest because it will lessen the burden on nonresidential customers, and it is consistent with the unambiguous energy policy of the state outlined in Minn. Stat. §§ 216B.03 and 216C.05, subd. 2(4). As demonstrated below, rates and bills for demand-billed customers have deviated from explicit state policy, and abolishing (or at the very least modifying) the 2021 True-Up is necessary to control further deviation.

B. Demand-Billed Customer Rates and Bills Do Not Comply with Minnesota Energy Policy and the 2021 True-Up Expands That Noncompliance

Minnesota Statutes § 216C.05, subd. 2(4) makes it “the energy policy of the state of Minnesota that: ... retail electricity rates for each customer class be at least five percent below the national average.” But both rates and bills for large demand-billed customers have increased to unsustainable levels. With respect to rates, the average delivered cost of energy for Xcel’s industrial customers was \$.0798/kWh in 2020.⁴⁸ This rate was roughly 19.6% higher than the 2020 national average for industrial customers, which was \$.0667/kWh.⁴⁹ Plainly stated: Xcel’s 2020 industrial rates did not comply with Minnesota’s statutory directive.⁵⁰ Absent Commission

⁴⁶ *In the Matter of Minnesota Power’s Request for Approval of its 2019 Transmission Cost Recovery Rider*, MPUC Docket No. E015/M-19-440, Response to Reply Comments by the Minnesota Department of Commerce – Division of Energy Resources at 9 (Jan. 23, 2020).

⁴⁷ MP Order at 4-7.

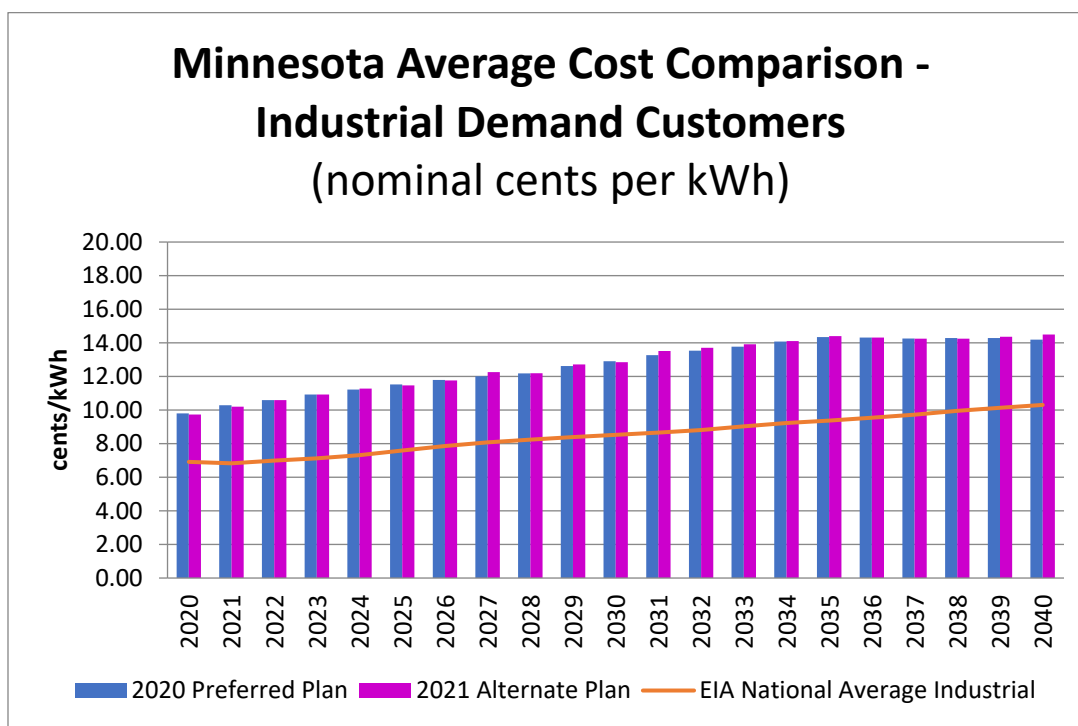
⁴⁸ See U.S. Energy Information Administration, 2020 Utility Bundled Retail Sales – Industrial, https://www.eia.gov/electricity/sales_revenue_price/pdf/table8.pdf.

⁴⁹ See U.S. Energy Information Administration, 2020 Average Monthly Bill – Industrial, https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_c.pdf.

⁵⁰ Minn. Stat. § 216C.05, subd. 2(4). Minn. Stat. § 216B.03 further requires that “[t]o the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164, 216B.241, and 216C.05.” (Emphasis added.) The Commission has recognized the “maximum reasonable extent” language as a “statutory directive” as it relates to energy conservation. See *In the Matter of a Petition of Northern States Power, dba Xcel Energy, for Approval of General Time-Of-Use Service Tariff*,

intervention, demand-billed customers stand to pay a surcharge of \$118.4 million for the 2021 True-Up and an interim rate increase of approximately \$152.9 million for 2022,⁵¹ which will lead to even further departure from the statutory priority contained within Minn. Stat. § 216C.05, subd. 2(4).

As Xcel’s projections show, continued and significant rate increases for demand-billed customers are the forecasted norm for the next 20 years, and rates will be above the national average through 2040. In response to an XLI information request in its recent integrated resource plan, Xcel produced the following data:⁵²



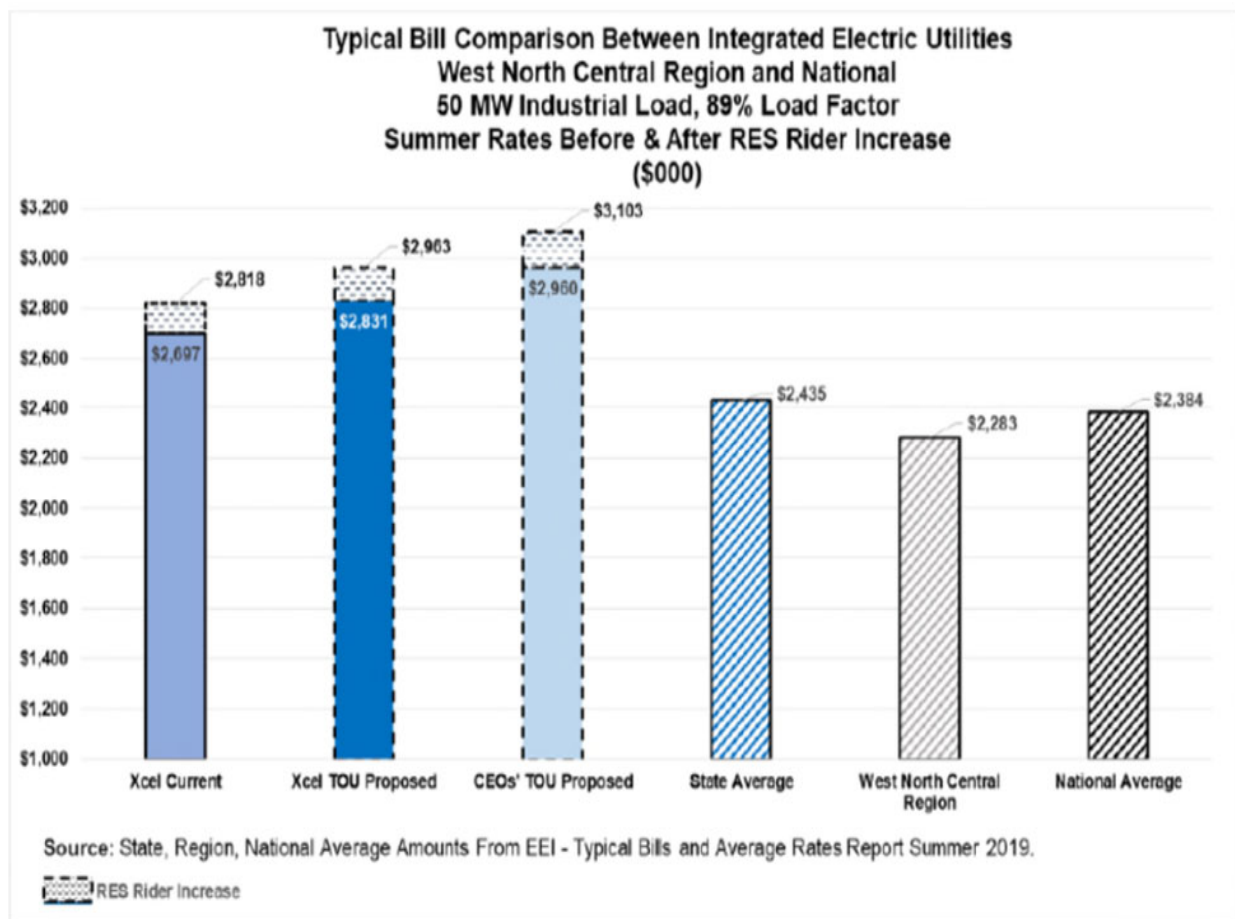
PUC Docket No. E002/M-20-86, Order to Conduct Pilot Programs for General Service Time-of-Use Rates, and Setting Procedural Schedule at 11 (July 16, 2021). XLI respectfully asserts that this “statutory directive” also applies to Minn. Stat. § 216C.05 as well.

⁵¹ *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*, PUC Docket No. E002/GR-21-630, Xcel Compliance Filing at Attach. B, Sched. 2 (Dec. 30, 2021). This amount could further increase in 2023 as customers are still subject to the 20-month recovery period for the 2021 True-Up and Xcel could seek an additional interim rate increase for 2023.

⁵² *In the Matter of Xcel Energy’s 2020-2034 Upper Midwest Integrated Resource Plan*, PUC Docket No. E002/RP-19-368, Supplemental Comment by XLI at 6 (Oct. 15, 2021) (citing Xcel Response to XLI Information Request No. 154) (“Chart 1”).

As demonstrated by Chart 1, industrial customers may pay over \$100/MWh in the near future with rates climbing to over \$114/MWh in the 2030s. Chart 1 also shows that demand-billed customers could pay \$5 or more than the national average by 2040. XLI respectfully asserts that this trajectory is both unsustainable and contrary to ratemaking principles explicitly directed by Minnesota law.⁵³

The logical implication of increased rates is larger customer bills, and demand-billed customers are seeing increasingly high bills. As XLI has continually demonstrated using the chart below, which was also filed in PUC Docket No. E002/M-20-86, Xcel's industrial bills are already above the national average by approximately 13%, and XLI has no reason to believe that this delta has materially changed.



⁵³ See Minn. Stat. §§ 216B.03 & 216C.05, subd. 2(4).

As demonstrated by Chart 2, Xcel's average monthly bill for a 50 MW, 89% Load Factor large industrial customer was \$2,697,000 while the national average was \$2,384,000,⁵⁴ a difference of more than \$300,000 per month. Additionally, with the 2021 True-Up and other pending dockets,⁵⁵ XLI is concerned that Xcel's industrial rates will stray further from the unambiguous state policy goal outlined in Minn. Stat. § 216C.05, subd. 2(4), with average monthly bills climbing to over \$3 million – more than \$500,000 above the national average on a monthly basis, or \$6 million annually. This would result in large industrial customer bills 30% above the national average.⁵⁶ At some point, these increases extend beyond merely unequitable and become unsustainable for demand-billed customers, and XLI respectfully urges the Commission to act in accordance with its suggested remedies outlined below.

C. XLI's Proposed Modifications to the 2021 True-Up

XLI continues to assert that the Commission lacks legal authority to implement a sales true-up during the year 2022. In addition to detrimental ratepayer impacts that are contrary to Minn. Stat. § 216B.03, XLI previously raised other legal arguments in opposition to the Petition.⁵⁷ As is still relevant here, approval of the 2021 Stay Out violates the five-year MYRP limit imposed by Minn. Stat. § 216B.16, subd. 19(a), which states that MYRPs “cannot exceed five years.”⁵⁸ Xcel's 2015 MYRP was resolved via the 2015 Settlement Agreement, covering 2016 to 2019, and the Commission subsequently approved Xcel's 2020 Stay Out, which covered the fifth year of rates based upon forecasts and other data from the 2015 MYRP.⁵⁹ The 2021 Stay Out represents the sixth year of customer rates based upon the 2015 MYRP, which is contrary to the explicit five-

⁵⁴ *In the Matter of the Petition of Northern States Power Company for Approval of General Time-of-Use Service Tariff*, XLI Reply Comment at 2-3, Ex. B (Jan. 13, 2021) (“Chart 2”).

⁵⁵ *See, e.g., In the Matter of Xcel Energy's Renewable Energy Standard Rider Petition*, PUC Docket No. E002/M-20-815, Xcel Petition at 2 & Attach. A at 1 (Nov. 5, 2020) (seeking a 9% increase using the 2021 Renewable Energy Standard Rider); *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*, PUC Docket No. E002/GR-21-630, Xcel Notice of Change in Rates – Vol. 1 at 2 (Oct. 25, 2021).

⁵⁶ *In the Matter of the Petition of Northern States Power Company for Approval of General Time-of-Use Service Tariff*, XLI Reply Comment at 2-3, Ex. B (Jan. 13, 2021).

⁵⁷ Initial Comment by XLI (Nov. 12, 2020) (eDocket No. 202011-168281-04).

⁵⁸ *See also id.* at 5. XLI also argued that approval of Xcel's request to withdraw its 2021 Rate Case violated Minn. R. 7829.0430, because approval of the 2021 Stay Out would contravene the public interest. With Xcel now in the process of litigating its 2022 Rate Case, XLI understands that this argument is less relevant. XLI, however, maintains the legal arguments set forth in its various pleadings in this docket, and continues its opposition to Xcel's stay outs.

⁵⁹ *Id.*

year limitation set forth in Minn. Stat. § 216B.16, subd. 19(a). By capping multi-year rate plans at five years, the legislature recognized that the assumptions and forecasts used to justify the rate increases must be updated to ensure accuracy.⁶⁰ XLI suggests that massive demand-billed customer true-ups that, when combined with other surcharges, finance full true-up refunds to other classes demonstrate the legislature’s wisdom in explicitly capping MYRPs at five years. To be sure, these surcharges are proof that the underlying assumptions in the 2015 MYRP were then outdated and required a full update via Xcel’s now withdrawn 2021 Rate Case. Looking forward to the currently pending 2022 Rate Case, interim rates have been set based on a new set of assumptions and forecasts that drive the 2022 test year (and impact interim rates accordingly), which entirely depart from the assumptions in the 2015 MYRP. XLI maintains that allowing Xcel to implement rates based on this 2015 MYRP for a sixth year has no statutory basis, is specifically contrary to both Minn. Stat. §§ 216B.03 and 216B.16, subd. 19(a), and runs afoul of traditional notions of regulatory oversight.

Without waiving these arguments, XLI respectfully asserts that the Commission must implement changes to any sales true-up in order to comply with Minnesota law. Section 216B.03 of the Minnesota Statutes requires that all rates charged to customers must be “just and reasonable” with all doubt “resolved in favor of the consumer.” Xcel’s Minnesota ratepayers could experience cumulative rate increases of nearly \$1 billion over the next five years.⁶¹ And Xcel’s nonresidential ratepayers are already beginning to feel this burden via a 13.52% rate increase through the interim rate increase ordered in Xcel’s 2022 Rate Case.⁶² Regardless of the Commission’s decision to extend the surcharge recovery time to 20 months, the double increase from both the 2021 True-Up and interim rates will result in substantial increases for demand-billed customers. As articulated throughout, XLI respectfully asserts that neither the Commission nor Xcel can demonstrate that these increases, which result in even further deviation above the national average and are contrary to state law, are “just and reasonable” pursuant to Minn. Stat. § 216B.03. Xcel is already collecting an additional \$152.9 million from demand-billed customers via interim rates, and adding another

⁶⁰ *Id.*

⁶¹ *See 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*, PUC Docket No. E002/GR-21-630, Department Comments at 1 (Nov. 8, 2021).

⁶² *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*, PUC Docket No. E002/GR-21-630, Xcel Compliance Filing at Attach. B, Sched. 1 (Dec. 30, 2021).

\$118.3 million will certainly result in rate shock for this class. Therefore, based on the preceding facts and analysis, XLI proposes the following modifications to the 2021 True-Up, listed by order of preference.

1. The Commission Should Reject Implementation of the 2021 True-Up in Favor of Pursuing the Setting of Just and Reasonable Rates

To be sure, the Minnesota Supreme Court has explained that this just and reasonable standard cannot be ignored in setting rates:

The “weighing” by court in a civil case applying the “fair preponderance” standard involves a determination by the court whether the proponent of the conclusion has produced sufficient credible evidence to sustain that conclusion. In contrast, the task of the MPUC is not so much concerned with the sufficiency and credibility of the evidence, as it is concerned with whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission’s statutory responsibility to enforce the state’s public policy that retail consumers of utility services shall be furnished such services at reasonable rates.^[63]

In other words, the utility’s burden in obtaining rate recovery is a two-step process. First, the utility must establish the amount of a given cost as a judicial fact. Second, the utility must establish that it is just and reasonable for ratepayers (as opposed to the Company’s shareholders) to bear those costs. Xcel has not met this heavy, but not insurmountable, burden.

XLI respectfully requests that the Commission abolish and reject implementation of the 2021 True-Up because Xcel has failed to meet its burden of demonstrating it is just and reasonable to recover twice the amount allegedly necessary from one customer class in order to fund a refund to another customer class. Furthermore, if Xcel was ordered to forgo the 2021 True-Up, nonresidential ratepayers would be spared the double impact of both an interim rate increase and a 2021 True-Up surcharge. As articulated above, Xcel’s rates for demand-billed customers are already significantly out of compliance with explicit state energy policy, and continued surcharges will only exacerbate Xcel’s deviation. XLI acknowledges that this outcome will erase potential refunds owed to other classes and deny Xcel recovery of the 2021 True-Up; however, XLI

⁶³ *In re Petition of N. States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987).

contends that this result is necessary to achieve “just and reasonable” rates in compliance with state law.

2. The Commission Should Cap Surcharges at Xcel’s Stated Deficiency

Alternatively, XLI suggests that the 2021 True-Up be capped at Xcel’s stated revenue deficiency of \$59.4 million.⁶⁴ Rather than saddle certain ratepayer classes with funding refunds for other customers, XLI suggests that capping the 2021 True-Up at Xcel’s stated revenue deficiency creates a more equitable result. This approach would reduce surcharges to relevant customer classes, resulting in surcharge-eligible classes paying their proportionate share of Xcel’s deficiency. Though this will eliminate refunds for certain customer classes, XLI contends that all parties are still treated equitably. Xcel, as opposed to its shareholders, will still be permitted to recover its alleged revenue deficiency in full, residential customers still receive the benefit of a reduced interim rate increase in Xcel’s 2022 Rate Case, and nonresidential customers will be saved from the prospect of paying a full 2021 True-Up surcharge pancaked on top of a 13.52% interim rate increase. Though XLI prefers no surcharge at all, capping the 2021 True-Up surcharge at Xcel’s stated deficiency provides surcharge-eligible customers with some form of mitigation by shielding them from also simultaneously funding rate rebates to other classes.

III. CONCLUSION

XLI is grateful for the opportunity to submit an initial comment on Xcel’s Compliance Filing; however, after review of the updated 2021 True-Up, XLI cannot support Commission approval of the as-filed Compliance Filing. Instead, to protect ratepayers, encourage compliance with unambiguous state energy policy, and encourage equitable ratemaking practices, XLI urges the Commission to reject implementation of Xcel’s 2021 True-Up in its entirety. Alternatively, XLI also respectfully suggests mitigating the impact on surcharge-eligible customers by capping the 2021 True-Up surcharge at \$59.4 million. XLI is willing and available to engage with the Commission, Xcel, and other stakeholders on this matter and looks forward to furthering Minnesota’s unambiguous energy policies in a proactive manner.

⁶⁴ Compliance Filing at Attach. F, p. 1.

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Respectfully submitted,

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