

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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In the Matter of Xcel Energy’s Integrated  
Distribution Plan and Advanced Grid  
Intelligence and Security Certification  
Request

PUC Docket No. E-002/M-19-666

**XLI SUPPLEMENTAL COMMENT**

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The following companies—an ad hoc consortium of large industrial customers of Northern States Power Company d/b/a Xcel Energy (“Xcel” or the “Company”) known as the Xcel Large Industrials (“XLI”)—consisting of Flint Hills Resources Pine Bend, LLC; Marathon Petroleum Corporation; and USG Interiors, Inc., submit this Supplemental Comment in response to the Minnesota Public Utilities Commission’s (the “Commission”) Notice of Extended Comment Period dated April 1, 2020, regarding Xcel’s Integrated Distribution Plan (“IDP”).<sup>1</sup>

**I. INTRODUCTION**

XLI appreciates the substantial amount of stakeholder participation in this docket and submits this Supplemental Comment to reiterate the concerns it outlined in its Initial Comment<sup>2</sup> as well as responding to Xcel’s continued request for certification of the proposed distribution investments.<sup>3</sup>

On November 1, 2019, Xcel filed its IDP in the above-titled docket.<sup>4</sup> On March 17, 2020, XLI and other parties filed initial comments in response to Xcel’s Initial Filing. Following initial

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<sup>1</sup> Notice of Extended Comment Period (Apr. 1, 2020) (eDocket No. 20204-161730-01). The original Notice of Comment Period sought comments on several different topics. *See* Notice of Comment Period (Dec. 31, 2019) (eDocket No. 201912-158693-02).

<sup>2</sup> Initial Comments by XLI (Mar. 17, 2020) (eDocket No. 20203-161329-02) (“XLI Initial Comment”).

<sup>3</sup> Reply Comments by Xcel Energy (April 10, 2020) (eDocket No. 20204-162030-01) (“Xcel Reply Comment”).

<sup>4</sup> Initial Filing – Integrated Distribution Plan – 01 Cover Letter IDP Report and Attachments A1-C (Nov. 1, 2019) (eDocket No. 201911-157133-01) (the “Initial Filing”). Simultaneously, Xcel filed a rate case seeking approval of a new multi-year rate plan (“MYRP”) as well as a petition to avoid a new MYRP via various True-Up Mechanisms. *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*, MPUC Docket No. E-002/GR-19-564, Initial Filing (Nov. 1, 2019) (“Xcel 2019 Rate-Case Filing”); *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of True-Up Mechanisms*, MPUC Docket No. E-002/M-19-688, Petition for Approval of True-Up Mechanisms (Nov. 1, 2019) (“Stay-Out Petition”). Ultimately, and despite XLI’s objections, the Stay-Out Petition was approved, and Xcel is no longer operating under a MYRP. *In the Matter of Northern States Power Company*

comments, various parties filed reply comments on April 10, 2020. Through initial and reply comments, multiple parties expressed concerns with Xcel's request for certification of the Advanced Grid Intelligence and Security ("AGIS") investments.<sup>5</sup> Specifically, the Department recommends that the Commission refer Xcel's request for certification of the AGIS investments to the Office of Administrative Hearings ("OAH") for a contested-case hearing,<sup>6</sup> CUB and the OAG recommend denying certification of the AGIS investments and cost-recovery consideration in a rate case or other contested-case proceeding,<sup>7</sup> and XLI's Initial Comment maintains that certification of the AGIS investments is outside the scope of statutory authority now that Xcel is no longer operating under a MYRP.<sup>8</sup> Despite the concerns outlined by the various parties, Xcel maintains that certification of the proposed investments is still proper, and requests that the Commission accept the IDP and "certify [the] proposed advanced grid investments."<sup>9</sup>

XLI remains extremely concerned that certification would promote negative policies and utility incentives and is appreciative to the various parties for articulating concerns about the standards Xcel must meet to achieve certification. Though these topics certainly warrant further discussion, Xcel's certification request is not authorized by statute, and, therefore, it is unnecessary for the Commission to further examine that issue in this docket. XLI appreciates the robust comments provided by the various stakeholders and Xcel's responses in its Reply Comment;

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*d/b/a Xcel Energy for Approval of True-Up Mechanisms*, MPUC Docket No. E-002/M-19-688, Order Approving True-Ups and Requiring Xcel to Withdraw Its Notice of Change in Rates and Interim Rate Petition (Mar. 13, 2020) (the "Stay-Out Order"); *see* XLI Initial Comment at 1-4 (providing additional details of Xcel's November 1, 2019, filings and subsequent Commission decisions).

<sup>5</sup> *See* XLI Initial Comment; Initial Comments by the Minnesota Department of Commerce, Division of Energy Resources (the "Department") at 18-26 (Mar. 17, 2020) (eDocket No. 20203-161327-01) ("Department Initial Comment"); Initial Comments by the City of Minneapolis at 8-10 (Mar. 17, 2020) (eDocket No. 20203-161319-01) ("Minneapolis Initial Comment"); Initial Comments by Citizens Utility Board of Minnesota ("CUB") at 2, 18 (Mar. 17, 2020) (eDocket No. 20203-161296-02) ("CUB Initial Comment"); Initial Comments by Fresh Energy at 4-7 (Mar. 17, 2020) (eDocket No. 20203-161328-01) ("Fresh Energy Initial Comment"); Reply Comments by the Minnesota Office of the Attorney General—Residential Utilities and Antitrust Division (the "OAG") at 2-6 (Apr. 10, 2020) (eDocket No. 20204-161976-01) ("OAG Reply Comment"); Reply Comments by the Institute for Local Self-Reliance ("ILSR") at 3-5 (Apr. 10, 2020) (eDocket No. 20204-161975-01) ("ILSR Reply Comment"); and Reply Comments by the Department at 13-18 (Apr. 10, 2020) (eDocket No. 20204-162026-01) ("Department Reply Comment").

<sup>6</sup> Department Initial Comment at 21; Department Reply Comment at 24 (both comments outlining specific areas requiring additional record development).

<sup>7</sup> CUB Initial Comment at 2, 18; OAG Reply Comment at 2-6.

<sup>8</sup> XLI Initial Comment at 4-8. This recommendation was also adopted by the OAG in its Reply Comment. *See* OAG Reply Comment at 3.

<sup>9</sup> Xcel Reply Comment at 30.

however, XLI is not persuaded by the information provided by Xcel and maintains the recommendations it outlined in its Initial Comment.

## II. ANALYSIS

### A. **Xcel's Reply Comment Does Not Persuasively Demonstrate That Certification of the IDP Investments Is Appropriate Beyond the MYRP Context**

XLI explained in its Initial Comment that certification of the IDP investments is inappropriate because Xcel is no longer operating under a MYRP. In its Reply Comment, Xcel notes that, on the date of filing the IDP, it was under a MYRP and was therefore required to file its IDP. Second, Xcel argues that “nothing within [Minn. Stat. § 216B.2425, subd. 2(e)] states that utilities not operating under multiyear rate plans are prohibited from identifying investments necessary to modernize the grid. . . . Put simply, because the Company was operating under a multiyear rate plan in November 2019, it was required . . . to include these investments in its biennial distribution grid modernization report[.]”<sup>10</sup> The Commission should ignore these arguments and decline to consider Xcel's certification requests.

Although Xcel properly states that it was required to file its IDP on November 1, 2019, pursuant to Minn. Stat. § 216B.2425, subd. 2(e), Xcel's MYRP expired at the end of 2019.<sup>11</sup> The investments outlined in the Initial Filing address investments beyond the MYRP: 2020-2029.<sup>12</sup> Because the investments contemplated in Xcel's Petition are not within a MYRP, Commission approval under Minn. Stat. § 216B.2425, subd. 3 is inappropriate.<sup>13</sup> Further, the structure of § 216B.2425 makes clear that it is not intended to apply in this context. Distribution investments are only mentioned in § 216B.2425, subd. 2(e), addressing grid modernization for utilities operating under a MYRP; § 216B.2425, subd. 8, addressing distribution upgrades for distributed generation for utilities operating under a MYRP; and in the provision in § 216B.2425, subd. 3 requiring the Commission to “certify, certify as modified, or deny certification of the transmission

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<sup>10</sup> Xcel Reply Comment at 28-29.

<sup>11</sup> *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. E-002/GR-15-826, Findings of Fact, Conclusions, and Order at 8-16 (June 12, 2017); *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. E-002/GR-15-826, Stipulation of Settlement at 4 (Aug. 16, 2016) (confirming that Xcel's MYRP ran through 2019).

<sup>12</sup> Initial Filing at Cover Letter, 1-2.

<sup>13</sup> See XLI Initial Comment at 5-6.

and distribution projects proposed under subdivision 2.” Certification of distribution investments is simply not contemplated outside of a MYRP. Xcel’s argument that the text of § 216B.2425 does not prohibit utilities outside of multi-year rate plans from identifying such investments (and that, therefore, it should be able to request certification for such investments) would read the MYRP-limitation out of the statute. As outlined in XLI’s Initial Comment,<sup>14</sup> Xcel intentionally avoided a contested-case proceeding and ended its MYRP by withdrawing its 2019 Rate-Case Filing.

**B. Despite Xcel’s Contention That Certification Is Not a Substantial Step Toward Cost Recovery, the Company’s Reply Comment Demonstrates Otherwise<sup>15</sup>**

Though Xcel claims certification does not impact cost-recovery determinations, aspects of the IDP filing and Xcel’s Reply Comment demonstrate that certification will improperly shift the cost-recovery-determination burden to ratepayers. In its Reply Comment, Xcel states that cost recovery and other related issues “are more appropriately addressed in a cost-recovery proceeding,”<sup>16</sup> describing certification as a general “gating function,” and that the Company continues to bear the burden of demonstrating that cost recovery is appropriate.<sup>17</sup> While Commission orders may state as much, Xcel’s statements demonstrate otherwise. In its Reply Comment, Xcel notes that “[w]ithout a timely and *clear signal* from the Commission *certifying* our AMI investments, we may need to shift directions and pursue an alternative path . . . .”<sup>18</sup> To be sure, this demonstrates that certification must be viewed as a form of pre-determination of cost recovery, because Xcel is unwilling to proceed without it. Any additional assurance given to the utility necessarily shifts the burden to ratepayers.

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<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> In comments, other stakeholders outline the need for more clarity in the certification process and suggest various avenues for the Commission’s consideration. XLI does not opine on the formalization of the certification process under Minn. Stat. § 216B.2425; however, to the extent the Commission adopts other stakeholders’ recommendations to create a formal standard for certification in this docket, XLI does not waive its right to participate in any supplemental comment period or rulemaking. *See e.g.*, ILSR Reply Comment at 3. Until a clear understanding of certification and subsequent cost recovery is created, it is reasonable to view certification as a strong indicator of eventual cost-recovery approval.

<sup>16</sup> Xcel Reply Comment at 27. To be sure, XLI agrees that cost recovery must be addressed in a cost-recovery setting; however, without clearer guidelines for the meaning of certification, XLI fears that certification in this docket will diminish the value and fairness of any future cost-recovery determination.

<sup>17</sup> *Id.* at 25.

<sup>18</sup> *Id.* at 15-16 (emphasis added).

As described in the comments in this docket, Xcel's plan to recover costs via a rider is particularly concerning. Rider recovery limits the ability of stakeholders to gain cost certainty or adequately vet Xcel's projections and does not incentivize the utility to contain costs. Therefore, XLI respectfully urges the Commission to be mindful of certifying investments that are nearly unanimously questioned by the participating stakeholders.

**C. An Additional Contested Case Is Not Warranted and Would Unnecessarily Burden Stakeholders**

The Department maintains that the AGIS investment certification request should be referred to the OAH for a contested-case hearing.<sup>19</sup> For the reasons addressed above, XLI believes that the certification request is not properly before the Commission. To the extent the Commission determines that a contested-case proceeding is necessary to consider the investments, the appropriate venue is Xcel's next rate case. XLI does not believe it is appropriate to add additional administrative burdens to ratepayers by creating an additional contested-case proceeding.<sup>20</sup> In fact, the AGIS investment was initially included in Xcel's 2019 Rate-Case Filing and the opposite consideration was purportedly a consideration in the Commission's decision to grant Xcel's Stay-Out Petition, where the Commission noted that "ratepayers and the public will be better served by allowing stakeholders to focus their limited resources on other significant proceedings pending with the Commission this year."<sup>21</sup> XLI notes that it would appear hypocritical to allow Xcel to avoid a rate case, where this issue would have been analyzed along with various others, and then refer a new contested-case proceeding on the very same issues that would have been in the rate case to the OAH. XLI fears this piecemeal approach will substantially burden ratepayers moving forward. Because Xcel consciously and intentionally avoided a rate case, it should not now be provided the opportunity to litigate issues it passed on before and avoid comprehensive rate review. XLI respectfully requests the Commission find that Xcel's certification requests are not properly before the Commission and the investments should instead be considered in a cost-recovery request in Xcel's next rate case.

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<sup>19</sup> Department Initial Comment at 27-28; Department Reply Comment at 24-25.

<sup>20</sup> See XLI Initial Comment at 7.

<sup>21</sup> Stay-Out Order at 8-9. Accompanying that statement, the Commission listed various pending dockets; however, Xcel's IDP was not included as a "significant proceeding[.]" *Id.* at n.16.

### III. CONCLUSION

XLI appreciates the insights of the Company and various parties as well as the opportunity to participate in this docket. Because Xcel's significant distribution investment certification requests are not within the scope of a MYRP, the certification provisions of Minn. Stat. § 216B.2425 are inapplicable.

Dated: April 22, 2020

Respectfully submitted,

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