

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
SUITE 350
121 SEVENTH PLACE EAST
ST. PAUL, MINNESOTA 55101-2147**

**In the Matter of the Petition of Northern
States Power Company for Approval of a
Public Charging Network, and Electric
School Bus Pilot, and Program
Modifications**

OAH File No. 71-2500-38758

MPUC Docket No. E-002/M-22-432

**DEPARTMENT OF COMMERCE'S
RESPONSE TO NORTHERN STATES
POWER COMPANY'S MOTION TO
CERTIFY AND REQUEST TO
WITHDRAW**

The Department of Commerce submits this response to Northern States Power Company, d/b/a Xcel Energy's (Xcel) Motion Requesting Dismissal of Contested Case and Certification of Request to Withdraw Petition for Xcel's Electric Vehicle (EV) programs. The Department supports certification of these questions to the Commission.¹ The Department also generally supports Xcel's request to withdraw its petition. Given recent developments and disclosures that call into question Xcel's prudent operation of its approved EV pilots, the Department encourages Xcel to reassess the ways in which it can be most impactful in supporting the development of EV infrastructure. But to avoid potential confusion with a provision of the 2023 Omnibus Energy, Environment, and Climate

¹ In framing its request, Xcel cited to the ALJ's authority to grant summary disposition under Minn. R. 1400.5500 K. But Xcel did not include any affidavits, exhibits, or any general support for a summary disposition motion. Xcel also requested that the motion be referred back to the Commission, which does not have the ALJ's duties under Minn. R. 1400.5500 K. The Department, therefore, interprets Xcel's request as a motion to certify a request to withdraw (Minn. R. 7829.0430) and Xcel's invocation of Minn. R. 1400.5500 K as an additional argument supporting its withdrawal rather than an independent request for a summary disposition recommendation from the ALJ, which the Department believes would create unnecessary delay.

law,² the Department recommends the Commission condition Xcel's withdrawal on Xcel's commitment to file a Transportation Electrification Plan (TEP) on or before November 1, 2023.

BACKGROUND

In November 2021, Xcel filed a multi-year rate plan (MYRP), requesting to increase electricity rates during the years 2022-2024.³ Included in the budgets for Xcel's MYRP was a pending request for several EV programs, including a request to own and operate 21 direct-current fast charging (DCFC) stations and to provide rebates to Xcel customers for purchasing EVs.⁴ Xcel budgeted approximately \$150 million for its EV rebate proposal alone, which it proposed to earn a return on through inclusion of these rebates in rate base.⁵ While Xcel's MYRP was pending, in April 2022, the Commission approved Xcel's request to own and operate 21 DCFC stations, finding that the program would increase job opportunities and assist Minnesota's economic recovery from the COVID-19 pandemic.⁶ The Commission, however, denied Xcel's request to provide rebates to purchase EVs.⁷

In August 2022, Xcel filed its petition to expand several EV pilots, to start a new vehicle-to-grid electric school bus pilot, and to build own and operate an additional 730 DCFC stations⁸ Xcel proposed to include the budgets for these new EV programs in its budget requests in its

² [2023 Minn. Laws ch. 60, art. 12, § 12, subd. 5](#) (to be codified as Minn. Stat. § 216B.1615).

³ See *In re Appl. of N. States Power Co. for Authority to Increase Rates for Elec. Serv. in Minn. (Xcel MYRP)*, MPUC Docket No. E002/21-630.

⁴ *Xcel MYRP*, MPUC Docket No. E002/21-630, Direct Testimony of Kelly Bloch at 147–50 (Oct. 25, 2021) (eDocket No. [202110-179120-01](#)).

⁵ *In re Xcel Energy's Pet. for Approval of Elec. Vehicle Programs as part of its COVID-19 Pandemic Economic Recovery Investments*, MPUC Docket No. E002/M-20-745, ORDER APPROVING PUBLIC CHARGING STATION PROPOSAL at 5 (Apr. 27, 2022) (eDocket No. [20224-185209-01](#)) (21 DCFC STATION AND EV REBATE ORDER).

⁶ *Id.* at 8.

⁷ *Id.* at 9–10.

⁸ Xcel EV Petition at 4–5 (Aug. 2, 2022) (eDocket No. [20228-188061-09](#)).

pending MYRP.⁹ Over Xcel’s opposition,¹⁰ the Commission denied Xcel’s request to include these new EV programs in Xcel’s MYRP, in which parties had already undertaken “extensive work” to develop a record.¹¹ Instead, the Commission referred Xcel’s proposal for a contested case.¹²

Several parties intervened in the contested case proceeding, including several private charging companies. Xcel’s proposal to own and operate 730 DCFC stations also generated numerous public comments. Many public commenters expressed concern about the impact of Xcel’s proposal both on their electricity rates and on the future of the competitive market for EV charging in Minnesota.¹³

On March 21, 2023, two weeks prior to the evidentiary hearing, Xcel requested to suspend the procedural schedule for 60 days, stating the pause would allow parties to engage in settlement discussions.¹⁴ On May 12, Xcel requested mediation, which all parties agreed to.¹⁵ Parties were scheduled to engage in mediation on June 5 and June 12.

On May 31, a day before its EV Annual Report was due, Xcel filed a letter in several dockets related to its EV pilots, but not this docket.¹⁶ The letter informed the Commission that Xcel would not be filing its EV Annual Report on time, because Xcel discovered “substantial gaps

⁹ *Id.* at 9–11.

¹⁰ Xcel Comments at 1–2 (Sept. 7, 2022) (eDocket No. [20229-188911-02](#)) (advocating for a notice-and-comment process and stating “[w]e are also concerned that using a different process, such as a contested case proceeding, could cause unneeded delays for the Commission—possibly compromising our proposals”).

¹¹ NOTICE OF AND ORDER FOR HEARING at 5 (Oct. 26, 2022) ([202210-190138-02](#)).

¹² *Id.*

¹³ *See, e.g.* Comment of John Baranick (Feb. 15, 2023) (eDocket No. [20232-193230-01](#)); Comment of Maria Slabiak (Mar. 18, 2023), Comment of Steve Sikora (Mar. 18, 2023) (eDocket No. [20233-194120-01](#)).

¹⁴ Motion to Suspend Procedural Schedule at 1 (Mar. 21, 2023) (eDocket No. [20233-194129-02](#)).

¹⁵ Xcel Request for Mediation Services (May 12, 2023) (eDocket No. [20235-195812-01](#)).

¹⁶ MPUC Docket Nos. E002/M-15-111, E002/M-17-817, E002/M-18-643, E002/M-19-186, E002/M-19-559, E002/M-20-711, E002/M-20.745, E002/M-21-101, Xcel Letter – Annual Report (May 31, 2023) (eDocket No. [20235-196277-02](#)).

in the availability of interval data” associated with 60 premises participating in its three Commercial EV Pilots (the Fleet EV Service Pilot, Public Charging Pilot, and the Multi-Dwelling Unit (MDU) EV Service Pilot). Xcel also incorrectly billed 72 premises enrolled in these pilots.¹⁷

On June 6, Xcel filed its EV Annual Report.¹⁸ In the report, Xcel stated that the data gap “is a barrier to comprehensively fulfilling our required reporting obligations to site level kWh consumption, coincident and non-coincident peak demand, and revenues for these 72 sites.”¹⁹ Xcel stated that there were three primary causes for its data gap and failure to provide required information: (1) the installation of the wrong type of meters; (2) incorrectly configured meters where the meter was of the correct type; and (3) the use of the incorrect billing rate.²⁰

In the report, Xcel also acknowledged cost-overruns and the status of its 21 approved DCFC chargers.²¹ Despite Commission approval of 21 DCFC stations in April 2022, Xcel does not have any stations in operation and no sites are beyond the “pre-construction” stage.²² Xcel also disclosed in response to discovery that, as of March 21, 2023, it had no operational DCFC stations in Colorado, Minnesota, or New Mexico, despite receiving approval in Colorado in December 2020 and in New Mexico in September 2021.²³ Although none of the 21 DCFC chargers approved in Minnesota are operational, Xcel reported that its estimated \$5 million capital budget was too

¹⁷ *Id.*

¹⁸ MPUC Docket Nos. E002/M-15-111, E002/M-17-817, E002/M-18-643, E002/M-19-186, E002/M-19-559, E002/M-20-711, E002/M-20.745, E002/M-21-101, Compliance – Annual Report (June 6, 2023) (eDocket No. [20236-196402-12](#)) (2023 EV Annual Report).

¹⁹ *Id.* at 23.

²⁰ *Id.*

²¹ *Id.* at 37–38.

²² *Id.* at 38 (“Currently, the Company’s DCFC projects range from the application stage to the pre-construction stage”); *see also* Hinderlie Decl. Ex. A.

²³ Hinderlie Decl. Ex. B.

low. Xcel now estimates that it will cost “roughly \$7 million to build all 21 sites”—an increase of 40%.²⁴

On June 1, the Commission deliberated on Xcel’s MYRP. The Commission made determinations on several financial issues, Xcel’s rate of return, and revenue allocation and rate design. Within hours of the Commission making these decisions, Xcel filed a motion requesting to withdraw its EV Petition, stating that “During those deliberations, the Commission made several decisions that, *if allowed to go into effect*, will limit the Company’s ability to continue to lead the clean energy transition for our customers.”²⁵

RESPONSE TO MOTIONS TO CERTIFY AND WITHDRAW

1. The Department Supports Xcel’s Request for Certification of Xcel’s Request to Withdraw Its Petition to the Commission.

The Department supports Xcel’s request to certify the question of its request to withdraw to the Commission. Several of the considerations in Minn. R. 1400.7600 support certification to the Commission. First, a final determination by the Commission would materially advance the ultimate termination of the hearing.²⁶ A Commission determination would end the proceeding whereas an Office of Administrative Hearings recommendation would still need to be taken up by the Commission. Similarly, waiting until after the hearing for the Commission to determine the question of withdrawal would render Xcel’s motion moot.²⁷ Last, the question of Xcel’s withdrawal is within the Commission’s expertise.²⁸ The standard for withdrawing a filing is controlled by the Commission’s procedural rules, specifically Minn. R. 7829.0430. This rule

²⁴ 2023 EV Annual Report at 40.

²⁵ Xcel Mot. Certify and Request Withdraw at 1 (June 1, 2023) (eDocket No. [20236-196348-02](#)) (emphasis added).

²⁶ Minn. R. 1400.7600 B.

²⁷ Minn. R. 1400.7600 D.

²⁸ Minn. R. 1400.7600 F.

contemplates that even for uncontested withdrawals a commissioner or commission staff person may identify a reason for the matter not to be withdrawn even in the absence of an official objection.²⁹ In addition, should a person oppose withdrawal, the Commission must make a public interest determination.³⁰ This public interest determination is within the Commission's expertise.³¹ The motion should therefore be certified to the Commission.

2. The Department Supports Xcel's Requested Withdrawal But for Different Reasons than Those Provided by Xcel.

While the Department supports Xcel's request to withdraw its EV Petition,³² the Department is troubled by Xcel's framing of its withdrawal request. Specifically, Xcel appears to be threatening to withdraw its previous commitments to the energy transition unless the Commission capitulates to a likely reconsideration request in Xcel's MYRP.³³ The Commission should ignore these threats. The Commission exercised its judgment and expertise in determining the many discrete issues in Xcel's MYRP. The fact that Xcel is displeased at the results of the Commission's deliberations should not impact the Commission's otherwise sound decisions.

The Department, instead, supports Xcel's request to withdraw because recent developments show that Xcel should reassess how it can best support transportation electrification. In its withdrawal request, Xcel fails to acknowledge recent developments that call into question its aptitude at operating in the EV space. First, Xcel has not shown that it can build, operate, and

²⁹ Minn. R. 7829.0430, subp. 1 C.

³⁰ Minn. R. 7829.0430, subp. 2 A.

³¹ See Minn. R. 1400.7600 F.

³² As explained further in section 3 below, the Department believes that the Commission should condition Xcel's withdrawal on Xcel filing a Transportation Electrification Plan this November to avoid any potential confusion over the application of a provision of Minnesota law.

³³ See Xcel Mot. Certify and Request Withdraw at 1 (“[T]he Commission made several decisions that, if allowed to go into effect, will limit the Company's ability to continue to lead the clean energy transition for our customers.”).

maintain even the limited number of DCFC Stations it has received approval for in Minnesota and in other jurisdictions. None of Xcel's approved DCFC Stations are operational in Minnesota or even in construction, despite Commission approval over a year ago.³⁴ In fact, only four sites have signed site host agreements.³⁵ In Colorado and New Mexico, where Xcel received approval in December 2020 and September 2021, Xcel had no stations in operation as of mid-March.³⁶ Additionally, Xcel now estimates that the capital costs for its 21 chargers in Minnesota will be \$7 million instead of \$5 million—a 40% increase.³⁷

In addition, on May 31, Xcel disclosed major problems in the roll-out of three of its EV pilots, including major gaps in data. Specifically, Xcel's installation of the incorrect meter type, incorrect configuration of meters, and/or application of the incorrect billing code has prevented the collection of important data for evaluating Xcel's Commercial pilots at 72 sites. The missing data prevent analysis not only of energy usage and charging behavior but also of the revenues from the projects (and therefore the costs of the projects that could be offset with additional revenue).³⁸ The Department understands that this issue impacted all but 2 of 12 active fleet EV projects, all public charging pilot sites, and all MDU sites.³⁹

Given these failings in Xcel's currently approved EV offerings, the Department supports Xcel's request to withdraw its EV Petition. Moving forward without more information and lacking important data for all but two sites in Xcel's commercial pilots is not advisable. Nor is authorizing Xcel to build additional DCFC stations, when it has not shown it can bring even a single station to

³⁴ 2023 EV Annual Report at 38–39; Hinderlie Decl. Ex. A.

³⁵ 2023 EV Annual Report at 38–39.

³⁶ Hinderlie Decl. Ex. B.

³⁷ 2023 EV Annual report at 40.

³⁸ *Id.* at 25 & n.49, 27 & n.53, 29–30, 34–35.

³⁹ *Id.*

operation in Minnesota and is already projected to be over budget. Instead, Xcel should reassess the ways in which it can be most impactful in supporting the development of EV infrastructure and bring new proposals forward in-line with the Minnesota Legislature’s recent direction in a Transportation Electrification Plan in November. While Xcel’s proposals may be determined to be prudent in the future, the Department believes a thorough assessment of the issues with Xcel’s currently authorized EV programs is warranted before moving forward.

3. The Commission Should Condition Xcel’s Withdrawal on Xcel’s Commitment to File a Transportation Electrification Plan (TEP) on November 1, 2023.

The Commission may condition the withdrawal of a filing if it determines that withdrawal would contravene the public interest.⁴⁰ While the Department generally supports Xcel’s request to withdraw its EV petition, the Department believes there is potential harm to the public interest if Xcel should invoke a provision of the recently passed 2023 Omnibus Energy, Environment, and Climate law to avoid the requirement that Minnesota utilities file a TEP by November 1, 2023. Therefore, the Commission should condition Xcel’s withdrawal on Xcel’s commitment to file a TEP by November 1.

The need for this commitment from Xcel is due to potential confusion in provisions of the law.⁴¹ In the law, the Legislature directed all public utilities to file TEPs by November 1, 2023.⁴² The law, however, contains a carve out to avoid duplication with pending proceedings (e.g. Xcel’s EV Petition):

This section shall not apply to any proposals designed to satisfy the objectives established in subdivision 2 that are part of a proceeding that is pending before the commission as of April 1, 2023. In those proceedings, the commission shall have full authority and discretion to accept, modify, or reject the utility’s proposals in accordance with the provisions of this chapter extant at the time the public utility’s

⁴⁰ Minn. R. 7829.0430.

⁴¹ 2023 Minn. Laws ch. 60.

⁴² [2023 Minn. Laws ch. 60, art. 12, § 12, subd. 2](#) (to be codified as Minn. Stat. § 216B.1615).

proposals were initially filed in the proceeding. In its filing due November 1, 2023, a public utility that is a party in such a pending proceeding shall not be required under this section to file proposals to satisfy the objectives of subdivision 2 [TEP filing requirement] in addition to those accepted or modified by the commission in the pending proceeding.⁴³

Xcel's EV Petition was the subject of "a proceeding that is pending before the commission as of April 1, 2023."

The Department understands that the Legislature intended to avoid duplication of EV proceedings given Xcel's pending EV related requests at the time of the law's passage. Now that Xcel is seeking to withdraw its EV petition, there is no danger of duplicating proceedings. Not requiring Xcel to file a TEP with other Minnesota utilities, on the other hand, could harm the public interest and evade legislative intent. The Commission should, therefore, avoid any attempt by Xcel to invoke this carve out by conditioning Xcel's withdrawal of its EV Petition on its commitment to file a TEP on November 1.

CONCLUSION

The Department agrees that Xcel's motion to withdraw should be certified to the Commission. The Department generally supports Xcel's request to withdraw its EV Petition and, in light of Xcel's recent disclosures regarding its currently approved EV pilots, encourages Xcel to reassess how best it can support transportation electrification. But the Commission should condition Xcel's withdrawal on Xcel's commitment to file a Transportation Electrification Plan by November 1, 2023.

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⁴³ *Id.*, subd. 5.

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