STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Joe Sullivan	Vice-Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

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

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

PETITION FOR REHEARING, RECONSIDERATION AND CLARIFICATION

Pursuant to Minnesota Statutes Section 216B.27 and Minnesota Rules 7829.3000, Northern States Power Company, doing business as Xcel Energy (Xcel Energy or the Company), submits this Petition for Rehearing and Reconsideration (Petition) of the Minnesota Public Utilities Commission's (Commission) July 17, 2023 Findings of Fact, Conclusions of Law and Order (Order) in the above-referenced matter.

INTRODUCTION

Over the past several years, Xcel Energy has successfully worked with a wide array of stakeholders to advance critical state policy objectives, including adopting an industry-leading position in providing cost-effective carbon-free energy. That work has been possible because of the constructive relationship between the Company, its regulators and other stakeholders. The Company appreciates the comments of Commissioners, during deliberations of this case, that recognized this constructive relationship and were supportive of the Company's overall direction and sound financial management.

Throughout this case, Xcel Energy has worked to build on these past successes by advancing - and balancing - its three key strategic priorities: (1) leading the clean energy transition; (2) enhancing customers' experience; and (3) providing affordable, equitable and reliable electric service. And as Commissioners also noted during deliberations, substantial work lies ahead with regard to both the clean energy transition and the customer experience, requiring substantial investments in infrastructure.

While this rate case has discussed many of these necessary investments, the Company also understands the importance of keeping customer bills affordable. Therefore, the Company looked for opportunities to mitigate the impact of its rate increase request on customers, and those efforts are reflected throughout the record of this proceeding. Specifically, the Company's rebuttal filing *reduced its 2022 rate increase request by over 40 percent and its overall request for the three years of the multi-year rate plan (MYRP) by over 25 percent*. The Company also withdrew its request for a second interim rate increase, despite also agreeing to an extremely long schedule for this case, to accommodate the Commission's and parties' workloads. The Company supported these rate mitigation efforts, even as it was managing the cost impacts of significant inflation and market unrest which have led the Federal Reserve to raise interest rates to their highest level in over two decades, increasing the Company's cost of capital.

After a thorough review of the record and applicable law, the Administrative Law Judge (ALJ) issued detailed Findings of Fact (Findings), Conclusions of Law and Recommendations (collectively, Report). The Report accurately set forth the legal standards governing this proceeding and applied those standards throughout the over 1,000

specific findings on disputed issues - on many issues finding in the Company's favor, while on others finding the Company failed to meet its burden of proof. The result was a *further* substantial reduction in revenues to the Company, lowering the overall revenue increase for the Company in 2022 by approximately $66 million, or approximately 28 percent, and lowering revenues through 2024 by another $113 million, or over 20 percent, compared to the Company's rebuttal request. While the Company disagreed with several of the ALJ's Findings, the Report generally provided the Company a reasonable opportunity to recover its costs of service and followed Commission precedent in recommending a 9.87 percent rate of return on equity.

The Order adopted many of the ALJ Findings. However, the Order also reverses or modifies the ALJ Findings on several critical issues, negatively impacting the Company, including a substantial reduction in the ALJ recommended return on equity (ROE). In fact, as discussed below, excluding jurisdictions using formula returns on equity, the Order's 9.25 percent return on equity is the *lowest authorized return on equity in the country since January 1, 2022 for a vertically integrated electric utility*. The Company felt the impact of the Commission's decisions immediately, seeing its stock price and relative market capitalization drop dramatically. Investment analysts reacted as well, with JPMorgan noting in a report issued June 2, 2023: "This week, the [Commission] approved new electric rates for [Xcel Energy], authorizing a below average 9.25% ROE in a surprise outcome. . . . We see the ROE as disappointing relative to [Minnesota] peers and reasonable assumptions from [Xcel Energy, Inc.] into the rate case amid higher interest rates.

Additionally, this outcome may drive new questions into the overall constructiveness of [Minnesota] regulation given inconsistency across ROEs."

The Order also denies recovery of reasonable and necessary costs of doing business, including the costs of its insurance premiums and of compensating employees at market-based rates, as well as costs properly allocated to Minnesota. In addition, the Order erroneously denies the Company a return on prepaid pension assets paid for by Company shareholders. When combined with the Order's lower return on equity, the Order further reduces the Company's 2022 revenue requirement by over $66 million, or 40 percent, compared to the Report.

Finally, the Order unnecessarily increases the financial burden on certain customers by lowering the Company's monthly fixed charge, creates new disincentives to the Company's aggressive pursuit of energy conservation, and creates new risks related to sales revenue.

On these matters, the Order is inconsistent with the law, the facts and public policy. Moreover, despite Commissioner statements that the Company is headed in the right direction, the Order sends the opposite message and suggests the Commission does not see the value of the Company's sound financial management and its efforts across the range of policy issues discussed by the Company's witnesses.[1] If not revisited, the decisions

[1] The Company notes that the sound financial management and the generally constructive regulatory relationship in Minnesota over the past several years, have provided a number of benefits to customers and other stakeholders, including by keeping the Company's cost of debt reasonable while also allowing the Company to consistently meet investor expectations of reasonable earnings growth. In fact, looking at this sound track record, together with its views of how the Company is insulated from risks that may arise in other

memorialized in the Order will require significant action to reduce costs, squeezing the resources available for the important work ahead. Xcel Energy respectfully asserts that this Petition presents an opportunity to chart a more constructive course for Minnesota's energy future, and requests that the Commission reconsider and revise its Order, as set forth below.

I. STANDARD FOR RECONSIDERATION

Petitions for reconsideration provide the Commission an opportunity to correct an order prior to any appellate review. Such petitions are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000, which require, among other things, that the petition must be brought within 20 days of the date of the order and must set forth specifically the grounds relied upon or errors claimed. Once a petition is filed, Minn. Stat. § 216B.27, subd. 3 provides that: "If in the Commission's judgment . . . it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly." In determining whether to reverse or modify an order, the Commission has consistently indicated that it reviews any petition for reconsideration to determine whether it: (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.[2]

Xcel Energy, Inc. subsidiaries, recently led Standard and Poor's to upgrade the Company's debt, despite the negative revenue impact of the Order.

[2] *See, e.g., In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Docket No. E-002/CI-21-610,

This Petition discusses errors of law in the Order, provides new and relevant evidence demonstrating the unreasonableness of the Commission decisions on certain issues discussed in the Order and identifies errors or ambiguities in the Order that merit the Commission's reconsideration of certain decisions. Indeed, these errors must be corrected for the Commission's decision to comply with Minnesota law. Therefore, Xcel Energy respectfully requests that the Commission reconsider and reverse or modify its decisions on the following issues, as discussed below:

- The determination of a fair and reasonable return on equity for the Company;
- Recovery of the reasonable and necessary costs of providing electric service, including recovery of its insurance premium and market-based employee compensation expenses;
- The Company's shareholder-funded prepaid pension asset; and
- The decision to both reduce the Residential customer charge by 25 percent and impose a three percent "hard cap" on the Company's sales true-up.

ORDER DENYING PETITION FOR RECONSIDERATION AND CLARIFYING PRIOR ORDER at 2 (Jan. 6, 2023); *In the Matter of Xcel Energy's Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E-002/M-18-643, ORDER DENYING RECONSIDERATION, DENYING STAY AND APPROVING COMPLIANCE FILING at 3 (Oct. 7, 2019); *In the Matter of the Petition of Northern States Power Co., d/b/a Xcel Energy, for Approval of Its Proposed Community Solar Garden Program*, Docket No. E-002/M-13-867, ORDER DENYING RECONSIDERATION at 1 (Nov. 21, 2016); *In the Matter of Xcel Energy's Petition for a Determination of Entitlement to Renewable Attributes of Energy Purchases Pursuant to Renewable Energy Requirements*, Docket No. E-002/M-08-440, ORDER DENYING RECONSIDERATION at 1 (Sept. 19, 2011).

II. THE ORDER CONTRADICTS DECADES OF COURT AND COMMISSION PRECEDENT AND FAILS TO PROVIDE AN APPROPRIATE RETURN ON EQUITY

Minnesota law requires the Commission to establish "a fair and reasonable return" on its investments to serve Minnesota customers.[3] Establishing such a fair and reasonable return provides significant benefits - for the Company, for customers and for other stakeholders. Further, establishing a reasonable ROE signals to the Company and others that the significant work Xcel Energy has undertaken and continues to pursue is recognized and valued. Conversely, a low ROE sends the opposite message - to the Company and to the capital markets.[4]

The Order fails to establish a fair and reasonable return, by setting the Company's return on equity at 9.25 percent for each of the three years of the MYRP. In reaching that decision on a three-to-two vote, the Commission erred in several ways, including ignoring its duty to act solely in its quasi-judicial capacity and failing to apply the appropriate standards, as set by decades of precedent. As a result, the Order fails to provide Xcel Energy a return commensurate with the returns being earned by enterprises of comparable risk. Moreover, new and relevant information demonstrates the inadequate nature of a 9.25 percent allowed return on equity and overall rate of return, and that the Company's requested return on equity of 10.20 percent continues to be consistent with current market analysis. For all of these reasons, at minimum, the Commission should approve a 9.87 percent return on equity as recommended by the ALJ.

---

[3] Minn. Stat. § 216B.16, subd. 6.

[4] Exhibit (Ex.) Xcel-22 at 10 (Chamberlain/Liberkowski Direct).

A. Minnesota Law Requires The Commission To Act In Its Quasi-Judicial Capacity to Establish A Fair And Reasonable Return For the Company

As discussed below, both the United States Supreme Court and Minnesota Supreme Court have clearly articulated the standards to be applied in determining a "fair and reasonable return." In addition, in *Hibbing Taconite Co. v. Minnesota Public Service Commission*, and in a consistent string of cases following *Hibbing*, the Minnesota Supreme Court has addressed the *process* by which the Commission must make this determination. As the *Hibbing* Court explained, determining an appropriate return on equity *requires the Commission to exercise its quasi-judicial function*, acting as a fact-finder and weighing the evidence as would a judge in a court trial.[5] The Court specifically clarified that:

> The single term "ratemaking" has been used to describe what is really two separate functions - (1) *the establishment of a rate of return, which is a quasi-judicial function*, and (2) the allocation of rates among various classes of utility customers, which is a legislative function. The court's failure to be more precise when discussing the two phases of ratemaking has led to the *inappropriate statement that "ratemaking is a legislative process*."[6]

---

[5] *Hibbing Taconite Co. v. Minnesota Public Service Commission*, 302 N.W.2d 5, 9-10 (Minn. 1980).

[6] *Id.* at 9. *See also Petition of Northern States Power Gas Utility*, 519 N.W.2d 921, 924 (Minn. Ct. App. 1994) ("The establishment of a rate of return is a quasi-judicial function that involves a factual determination which is reviewed under the substantial evidence test."); *Petition of Minnesota Power & Light Co.*, 435 N.W.2d 550, 560 (Minn. Ct. App. 1989) ("[T]he establishment of a rate of return involves a factual determination which the courts will review under the substantial evidence standard."); *Application of Peoples Natural Gas Go., a Div. of UtiliCorp United, Inc.*, 413 N.W.2d 607, 614 (Minn. Ct. App. 1987) ("In the rate-making context, the establishment of a rate of return is a quasi-judicial function . . . ."); *In re Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, 838 N.W.2d 747, 760 (Minn. 2013) ("When the Commission establishes a reasonable rate of return, it is engaging in a quasi-judicial function that we review under the substantial evidence standard.").

This distinction between the Commission's judicial and legislative functions, as applied to rate cases, makes sense. Setting a reasonable rate of return and determining the other necessary and reasonable costs incurred to provide safe, reliable electric service require factual determinations, as the Courts have recognized. As discussed in detail below, the United States Supreme Court, the Minnesota Supreme Court and approximately 100 years of regulatory precedent have established that the Commission's task in a rate case is to set a rate of return for a utility commensurate with the returns expected elsewhere for investments of equivalent risk - a quasi-judicial determination, based on facts, and subject to judicial review under the substantial evidence test.

In contrast, when designing rates or allocating revenue responsibility among the various classes of customers, in order to provide the utility the revenues necessary to provide service, the Commission weighs both cost and non-cost factors and makes policy judgments - classic quasi-legislative duties.[7]

The Order ignores this clear distinction and claims that determining an appropriate return on equity requires the Commission to "analyze the facts in the record, exercising its quasi-judicial authority, and apply its judgment, *exercising its quasi-legislative authority*."[8]

---

[7] *St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission*, 251 N.W.2d 350, 358 (Minn. 1977). *See also Anderson v. County of Lyon*, 784 N.W.2d 77, 81 (Minn. Ct. App. 2010) ("Quasi-legislative acts of an administrative agency affect the rights of the public generally."); *Hernandez v. Minnesota Board of Teaching*, No. A16-0065, 2016 WL 4162877 at *3 (Minn. Ct. App. Aug. 8, 2016) (citing *Kmart Corp. v. County of Stearns*, 710 N.W.2d 761, 770 (Minn. 2006)) ("Quasi-legislative actions involve the [agency]'s administrative power to 'make policy, including rules or regulations, within the framework of an enabling statute.'").

[8] Order at 88 (emphasis added).

But the Minnesota Supreme Court has held that setting a return on equity is not a legislative function.[9] Accordingly, setting a return on equity is not "a subjective judgment call," as the Commission was encouraged to see its task by CUB witness Dr. Kihm.[10] Rather, determining a fair and reasonable return on equity is at its core a fact-finding process, to determine a return commensurate with returns being earned by other companies of similar risk. Moreover, the distinction between the Commission's quasi-judicial decision making and its quasi-legislative decision making is not trivial, as the Commission's quasi-legislative function allows it to consider a broad range of public policy issues. In this case, the Order states that, as part of its consideration of the appropriate return on equity for the Company, the Commission went beyond a fact-based consideration of returns earned by companies of similar risk and also "meaningfully consider[ed] the impacts of high inflation" on customers (that is, the impact of increasing costs of *other* goods and services)[11] - a factor not relevant to determining a fair and reasonable return. Therefore, to comply with Minnesota law, the Commission's determination of the appropriate return on equity must be reconsidered and decided squarely under the Commission's quasi-judicial function and based on the relevant facts reflected in the record.

[9] *Hibbing*, 302 N.W.2d at 10 (Minn. 1980).
[10] Ex. CUB-2 at 17 (Kihm Direct).
[11] Order at 91.

B. The Order Fails To Provide A Return Commensurate With Returns Earned By Other Enterprises Of Comparable Risk

The United States Supreme Court established the hallmarks of a reasonable return on capital, including a reasonable rate of return on common equity, in the landmark cases of *Bluefield* and *Hope*. The Court stated:

> What annual rate will constitute just compensation depends upon many circumstances and *must be determined by the exercise of a fair and enlightened judgment*, having regard to all relevant facts.[12]

The Court also stated that:

> From the investor or company point of view, it is important that there be enough revenue not only for operating expenses, but also for the capital costs of the business. These include service on the debt and dividends on the stock. (Citation omitted.) By this standard the return to the equity owner should be *commensurate with returns on investments in other enterprises having corresponding risks*. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.[13]

In cases such as *Hibbing*, the Minnesota Supreme Court has noted and adopted the *Bluefield* and *Hope* requirements, including *Bluefield's* command that:

> Rates which are not sufficient to yield a reasonable return on the value of the property used, at the time it is being used to render the service, are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.[14]

This clear body of case law calls for the ALJ and Commission to allow for a cost of capital that:

---

[12] *Bluefield Water Works & Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 692, 43 S. Ct. 675, 679 (1923).
[13] *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603, 64 S. Ct. 281, 288 (1944).
[14] *Hibbing*, 302 N.W.2d at 10 (Minn. 1980), citing *Bluefield*, 262 U.S. at 690, 43 S. Ct. at 678.

- Is sufficient to allow the Company to attract capital at reasonable terms, so that it can continue to provide safe, reliable and environmentally responsible electric gas service to its customers;
- Allows the Company to maintain its credit rating and financial integrity; and
- Is commensurate with returns on investments having similar risks.[15]

Although the Order recites the basic *Bluefield* and *Hope* standards,[16] it fails to apply those standards to the record evidence and thereby fails to provide the Company a reasonable return.

1. The Order Relies On Stale Market Data To Inappropriately Lower The Two-Growth Discounted Cash Flow Model Result

The cost of capital witnesses in this proceeding employed a number of models to inform their rate of return recommendations, and the Company continues to support applying multiple analytical models to the proxy groups, since even a carefully selected proxy group may show a wide range of potential reasonable returns. As the Company explained, determining where within such a range to set the ROE "will be best informed by employing a variety of sound analyses."[17] In addition, "the prudence of using multiple cost of common equity models [is] supported in both the financial literature and regulatory precedent."[18] The multiple models employed by the Company established a reasonable

[15] Ex. Xcel-18 at 7-8 (D'Ascendis Direct); Ex. DOC-1 at 5 (Addonizio Direct); Ex. XLI-4 at 13-14 (LaConte Direct).
[16] Order at 79-80.
[17] Ex. Xcel-27 at 14, 24-25 (D'Ascendis Direct).
[18] Ex. Xcel-27 at 60 (D'Ascendis Direct).

range of returns and demonstrated the reasonableness of its recommended 10.20 percent return on equity for the Company – at the lower end of the Company's range.[19]

The ALJ did not look to these multiple models to inform her return on equity recommendation. Rather, based on consistent Commission precedent, the ALJ relied on the Company's updated two-growth discounted cash flow (DCF) analysis (using market data as of September 30, 2022) to recommend a 9.87 percent return on equity. In support of this recommendation, the ALJ also noted the close correlation of this result to the Department's updated two-growth DCF result of 9.88 percent (using data as of November 18, 2022).[20]

The Commission Order also relies on the two-growth DCF Model for its return on equity determination, although the Commission's June 1, 2023 deliberations included little discussion of, or reliance on, either the Company's or Department's updated two-growth DCF analyses relied on by the ALJ. The Order states:

> The Commission concurs with the ALJ that there is no convincing basis on this record for departing from reliance on the two-growth DCF model.
>
> The two-growth DCF model provides a fundamentally sound framework through which to analyze the Company's relative risk *in relation to comparable companies*, and through which to evaluate the Company's financial integrity and ability to attract investors in light of *current as well as expected market conditions*. This model is based on the financial theory that the *current* price of a stock equals the present value of all expected *future*

[19] *See* Xcel Energy Initial Brief (Br.) at 12-19.

[20] ALJ Report at 144. While the Company has explained the ALJ's recommended return on equity of 9.87 percent is a conservative estimate of the Company's required return, Xcel Energy acknowledges the Commission has long-relied on updated two-growth DCF analyses to provide a reliable estimate of a return commensurate with the returns for companies of comparable risk.

> dividends in perpetuity discounted by the appropriate cost of equity (i.e., the compensation for the risks associated with owning the stock).
>
> . . .
>
> The Commission therefore finds that *the two-growth DCF analysis provided by the Company provides a reasonable basis for setting a return in this case.* No party showed that the utility proxy group criteria used by Xcel were unreasonable, that the Company's DCF analyses inaccurately reflect the results of the inputs of the model, or that the data the Company used in its DCF models misrepresented market conditions at the time the Company's studies were conducted.[21]

Had the Commission actually followed this course during its deliberations, it would presumably have approved approximately a 9.87 or 9.88 percent return on equity. Instead, without any reference to the two most current two-growth DCF analyses in the record and on a three-to-two vote, the Commission approved a 9.25 percent return on equity for the Company.[22]

To support such a dramatically lower return, the Order relies on stale and irrelevant market data to reduce the ALJ recommendation by 62 basis points - averaging the Company's direct and rebuttal two-growth DCF results.[23] This averaging gives equal weight to both (a) two-growth DCF results using *August 31, 2021* market data and (b) far more current two-growth DCF results presented in the Company's rebuttal testimony.[24] No witness in this proceeding supported such an averaging, nor did any witness support

---

[21] Order at 89 (emphasis added).
[22] Deliberations Transcript (Tr.) at 90-97 (June 1, 2023).
[23] Order at 90-91.
[24] Due to the unprecedent extension of the statutory timeline agreed to by the Company in this proceeding, the Company is aware of no rate case in Minnesota history with such a significant time span between the filing of a utility's direct and rebuttal testimonies.

relying on over one year old market data to reach an informed judgment on the appropriate return on equity. Importantly, no Commissioner suggested averaging the Company's direct and rebuttal two-growth results during oral arguments, either. Rather, this approach first appeared in the Order, denying the Company the ability to address the inappropriateness of using such an approach.

The Order attempts to justify averaging the results from stale and current data, in part, by claiming that the Company must still find its 13-month old two-growth DCF analysis reasonable, since it did not update its final return on equity recommendation.[25] There is no support for this supposition. The Company chose to continue supporting its original 10.20 percent return on equity for a variety of reasons, including the fact that this original recommendation still fell within the overall range of reasonable returns developed by all of the Company's updated analyses, to be consistent with its overall effort to moderate its rate increase request in its rebuttal case, and to be conservative and avoid any potential notice issues of an increased request.[26]

In contrast to the Order's reliance on over one year old market data, the Commission has consistently stated that sound return on equity analysis requires use of the most recent market information. For example, in Minnesota Energy Resources Corporation's (MERC) 2015 rate case, the Commission relied exclusively on the Department's surrebuttal two-growth DCF analysis to set MERC's return on equity at 9.11 percent, despite a *drop*

[25] Order at 91.
[26] *See* Ex. Xcel-28 at 7-8 (D'Ascendis Rebuttal); Ex. Xcel-23 at 5 (Liberkowski Rebuttal).

of 56 basis points in the two months between the Department's direct and surrebuttal analyses.[27] The Commission noted that relying on the most current data available:

> is based on the *fundamental financial principle* that the most recent market data encompasses all publicly available information and therefore captures current market conditions and investors' expectations *more reliably than any other resource*.[28]

The Commission has applied this same "fundamental financial principle" in Xcel Energy's past rate cases. In the Company's 2013 rate case, the Commission explicitly rejected an ALJ recommendation to average the DCF results in the Department's direct testimony, the Company's rebuttal testimony, and the Department's surrebuttal testimony - each representing a different 30-day trading period - yielding a cost of equity of 9.77 percent, finding no record support for such averaging.[29] Instead, the Commission relied on the most recent market data available, used in the Department's surrebuttal analysis, to set a lower return on equity and noted that its decision:

> leaves in place the ALJ's finding that the most recent information is normally the most reliable indicator of the current market expectations on which the cost of equity is based. This finding is a restatement of the basic financial principle, followed by the Department, that *financial markets are efficient such that the current stock prices fully reflect all publicly available information and are therefore the most reliable source of information on investor expectations. This finding is also consistent with longstanding Minnesota practice*.[30]

---

[27] *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 27 (Oct. 31, 2016).
[28] *Id*. (emphasis added).
[29] *In the Matter of the Application of Northern States Power Co. for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 58 (May 8, 2015).
[30] *Id.* at 59 (emphasis added).

The Commission similarly relied only on the most recent available market data in deciding the appropriate return in the Company's 2012 rate case. In that proceeding, the Department originally recommended a return on equity of 10.24 percent, based on its DCF analyses, but updated its analyses in surrebuttal testimony two and a half months later, using the most recent market data, which resulted in a *41 basis point drop* and a final recommendation of 9.83 percent.[31] The ALJ found the Department's surrebuttal analysis appropriate for setting the Company's return and the Commission agreed:

> After careful consideration, the Administrative Law Judge recommends that the Commission adopt the Department's recommended ROE of 9.83 percent, including flotation costs. The Company has not shown that it is reasonable to use average prices over a 90-day or 180-day period *or that such outdated market information is relevant to the forward-looking DCF analysis*. The Administrative Law Judge is persuaded that the Department's use of a 30-day period to calculate the dividend yield is *consistent with the basic financial principle that current stock prices fully reflect all publicly available information*. Moreover, the Department's updated DCF and [two-growth] DCF analyses are a *better reflection of current market expectations because they are based on more recent information*.[32]

Abandoning the approach consistently taken in these prior decisions, including rejecting the use of 90-day old and 180 day-old market information, the Order charts a different course and attempts to justify using what is now *nearly two year old* market

---

[31] *Cf.* Docket No E-002/GR-12-961, Direct Testimony of Dr. Eilon Amit at 55 (Feb. 28, 2013), eDocket File No. 20132-84291-03; Surrebuttal Testimony of Dr. Eilon Amit at 1-2 (Apr. 12, 2013), eDocket File No. 20134-85655-02.

[32] *In the Matter of the Application of Northern States Power Co. for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS at ¶385 (July 3, 2013) (adopted by the Commission its FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 12 (Sept. 3, 2013)) (emphasis added).

information to inform the Commission's return on equity decision.[33] The Order downplays the importance of using the current market expectations demonstrated in the record by pointing to alleged "changes in market conditions" since rebuttal and surrebuttal testimony was filed. Specifically, the Order states that inflation levels have declined since the Company filed its rebuttal testimony, citing data from the U.S. Bureau of Labor Statistics (BLS), and opining that "the economic outlook is now considerably better than it was in 2022."[34] The BLS data does not and cannot support relying on old market data to set the Company's return on equity for several reasons.

First, the Commission's task in this proceeding was to set an appropriate return for the test year, 2022, and then consider whether to allow for adjustments for the 2023 and 2024 plan years. The Commission cannot simply wish away the 2022 market data. second, while the Company does not dispute the BLS statistics, those statistics in isolation cannot inform a reasonable return on equity determination. That determination must be made after a full review of *all* relevant market data and with the aim of setting a return commensurate with the returns being earned by other companies of comparable risk. For example, while inflation levels may now be lower than they were in late 2022, the federal funds rate is at its highest level in two decades, continuing to impact cost of capital. Finally, while pointing to lower inflation to justify a lower return for the Company, the Order then states

---

[33] The Company's direct testimony two growth DCF analysis used market data as of August 31, 2021. Ex. Xcel-27 at 26 (D'Ascendis Direct).

[34] Order at 90. This view of lower inflation levels and a brighter economic outlook compared to when testimony was filed went unmentioned during oral argument and deliberations.

that "the Commission appreciates CUB's recommendation to meaningfully consider the impacts of *high* inflation on both the utility and consumers when setting the return."[35] The Commission cannot have it both ways, using both lower and higher inflation to justify lowering the Company's return on equity from the ALJ recommendation.

2. The Order Demonstrates That The Commission Has Looked Backwards, Not Forwards, In Setting The Appropriate Return

In addition to relying on 2021 market data to inform its return on equity decision, the Order, and the Commission's deliberations, demonstrate that the Commission also relied on one piece of far older data - the Company's previously authorized return on equity, which stemmed from the Company's 2015 rate case.[36] However, determining an appropriate return on equity is a *forward* looking process.[37] The Company must compete with both its affiliates and other enterprises for capital today and going forward, rendering past return determinations for the Company of no relevance, since "what investors require in the future may not correlate to what they required and/or received in the past.[38] As to determining the appropriate return as part of that rate setting process, Courts have

[35] *Id*. at 91 (emphasis added).
[36] Apparently referring to Xcel Energy, Inc. and the Company interchangeably, the Order states: "The Department noted that Xcel's financial performance has been successful with a return on equity of 9.06%. While Xcel correctly notes that the stock price and dividends are those of its parent company, and not its regulated Minnesota utility, it is clear that the Minnesota utility contributes to the success of the parent company. The fact that its enterprise has been financially strong while earning (sic) a return of 9.06% is an indication, in light of the facts on this record, that increasing its rate of return by nearly 20 basis points, to 9.25%, will not jeopardize Xcel's financial integrity." *Id*. at 91-92.
[37] Ex. Xcel-28 at 55, 99 (D'Ascendis Rebuttal); Ex. DOC-1 at 7 (Addonizio Direct) ("[E]xpected future dividends and price appreciation must provide a return that is at least equal to the best alternative investment opportunity with a similar level of risk.").
[38] Ex. Xcel-28 at 99 (D'Ascendis Rebuttal).

established that "the return to the equity owner should be *commensurate with returns on investments in other enterprises having corresponding risks*,"[39] and the Commission has repeatedly emphasized that this requires an analysis of *current* market conditions and investor *expectations*."[40] By anchoring the Commission's analysis in a return on equity stemming from the Company's 2015 rate case, the Order violates that standard and must be reconsidered.

3. The Order Errs In Suggesting Xcel Energy Has "Lower Levels Of Risk," Justifying A Lower Return

In another attempt to justify a lower return for the Company, the Order states that the Commission "finds value in XLI's arguments that Xcel's investors face lower levels of risk because of the regulatory tools used by the Company."[41] The Order does not identify either the utilities or the "regulatory tools" the Commission considered in making this statement regarding comparative risk. However, by grounding its analysis in the Company's two-growth DCF analyses, the Order implicitly relies on the Company's vertically integrated utility proxy group. That proxy group was established using eight

---

[39] *Hope*, 320 U.S. at 603.

[40] *See, e.g., In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 27 (Oct. 31, 2016); *In the Matter of the Application of Northern States Power Co. for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 59 (May 8, 2015); *In the Matter of the Application of Northern States Power Co. for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS at ¶385 (July 3, 2013) (adopted by the Commission its FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 12 (Sept. 3, 2013)).

[41] Order at 91.

different screening criteria to develop a group of vertically integrated electric utilities that are *fundamentally risk-comparable to the Company*.[42]

In determining an allowed ROE, it is this proxy group comparison that matters. If similar mechanisms are common throughout the proxy group companies, the comparative risk is zero, because any impact of the perceived reduced risk of the mechanisms by investors would be reflected in the market data of the proxy group.[43] The record of this proceeding demonstrates that the proxy group companies all have similar "regulatory tools" as the Company with most of those tools serving as revenue stabilization, not risk mitigation, mechanisms.[44] Finally, studies of "regulatory tools" such as rate stabilization mechanisms have shown that such mechanisms do not have a statistically significant effect on investor perceived risk and, therefore, should have no effect on ROE.[45] Taken together, these facts refute any notion the Xcel Energy investors face a "lower level of risk" than the comparable companies analyzed in this record.

In fact, in contrast to the Order's suggestion that Xcel Energy may have "lower risk" than other companies, the Company bears significant business risk through the ownership

---

[42] Ex. Xcel-27 at 13-18 (D'Ascendis Direct).
[43] Ex. Xcel-28 at 116-117 (D'Ascendis Rebuttal).
[44] *See* Ex. Xcel-28 at Schedule 10; Evidentiary Hearing (Evid. Hrg.) Tr. Volume (Vol.) 1 (Dec. 13, 2022) at 51 (D'Ascendis).
[45] Ex. Xcel-28 at 117-118 (D'Ascendis Rebuttal) (citing Richard A. Michelfelder, Pauline M. Ahern, Dylan W. D'Ascendis, *Decoupling Impact and Public Utility Conservation Investment*, Energy Policy 130 (2019), at 311-319; The Brattle Group, *The Impact of Revenue Decoupling on the Cost of Capital for Electric Utilities: An Empirical Investigation*, Prepared for the Energy Foundation, March 20, 2014; Michael J. Vilbert, Joseph B. Wharton, Shirley Zhang and James Hall, *Effect on the Cost of Capital of Innovative Ratemaking that Relaxes the Linkage between Revenue and kWh Sales – An Updated Empirical Investigation*, November 2016).

and operation of its nuclear power plants – unlike most of the vertically integrated utility proxy group.[46] Similarly, the Company's high level of capital expenditures as it leads the clean energy transition in Minnesota increases the Company's business risk, particularly in an inflationary environment.[47] Finally, the Order's requirement of an unprecedented reduction in customer charges, together with its imposition of a three percent "hard cap" on the Company's sales true-up, discussed in Section V, below, creates a unique risk of under-recovery of the Company's required revenues by simultaneously making more revenues dependent on sales, while limiting the ability to recover those revenues if sales are reduced. The record simply does not and cannot support a lower return on equity for Xcel Energy on the basis of any "lower level of risk," when compared to the vertically-integrated utility proxy group.

4. Additional Information Demonstrates The Unreasonableness Of The Order's Return On Equity Determination

As discussed above, a fundamental task in rate setting is to develop rates that provide the utility a reasonable opportunity to earn returns commensurate with those earned on investments of similar risk. The Order fails to meet this standard by setting a lower than appropriate allowed return - a failure exacerbated by the Order also disallowing recovery of reasonable and necessary expenses, such as insurance premium expenses, and disallowing a return on certain shareholder funded assets, as discussed in Sections III and

---

[46] *See* https://www.eia.gov/nuclear/reactors/ownership.php.

[47] Ex. Xcel-28 at 78 (D'Ascendis Rebuttal). The Company would note that certain of these large upcoming capital expenditures are subject to cost caps and the Company's overall capital expenditures are subject to a one-way capital true-up, putting the risk of cost increases entirely on shareholders.

IV, below. Multiple different sources of information demonstrate the failure of a 9.25 percent return on equity to be commensurate with returns earned on investments of similar risk, including recently authorized returns for other rate regulated electric utilities, the authorized returns for the Company's subsidiaries, investor and investment analyst reactions to the Commission's rate of return decision, further increases in the Company's cost of debt, and updated two-growth DCF analyses which demonstrate the inappropriateness of the Commission's reliance on a 2021 analysis.

First, as Company witness Paul Johnson explained during oral arguments, investors do not have to invest in Xcel Energy. If an investor wants to invest in a utility, that investor can pick the utility or utilities in which to invest.[48] Therefore, it is a reasonable "check on reasonableness" to compare the Order's authorized return on equity with those authorized for other electric utilities. Excluding jurisdictions using formula returns on equity, *the Order's 9.25 percent return on equity is the lowest authorized return on equity in the country* since January 1, 2022 for a vertically integrated electric utility.[49] Of the 30 non-formula ROE rate case decisions over that time period, the average authorized return on equity was 9.74 percent.[50] For the eleven of those utilities that also own nuclear assets, the average rises to 9.98 percent.[51] In short, the Order sets Xcel Energy's return on equity well below the average returns recently authorized for similar electric utilities.

---

[48] Oral Argument Tr. at 98-99 (Johnson) (May 24, 2023).
[49] Affidavit of Dylan D'Ascendis, ¶6 and Exhibit 3.
[50] *Id*.
[51] *Id*.

Second, not only do *investors* have the ability to choose where to invest, so does Xcel Energy, Inc., the Company's parent.[52] The Order's setting of the return on equity at 9.25 percent, and its resulting weighted cost of equity of 4.86 percent for 2022 through 2024, is not commensurate with the returns authorized (or pending, in the case of Colorado and New Mexico) for the Company's subsidiaries, as shown in the following table:

Return on Equity, Equity Ratio and Weighted Cost of Equity
Xcel Energy, Inc. Electric Utilities[53]

Company/Jurisdiction	Return on Equity	Equity Ratio	Weighted Cost of Equity
NSPM/Minnesota	9.25%	52.50%	4.86%
NSPM/North Dakota	9.50%	52.50%	4.99%
NSPM/South Dakota[54]	N/A	N/A	N/A
NSPW/Wisconsin	9.80%	52.50%	5.15%
NSPW/Michigan	9.70%	52.50%	5.09%
PSCo/Colorado (Settlement pending)	9.30%	55.69%	5.18%
SPS/Texas	9.35%	54.70%	5.11%
SPS/New Mexico (Settlement pending)	9.50%	54.70%	5.20%

As this table demonstrates, the weighted cost of equity provided by the Order is well below the average of Xcel Energy, Inc.'s (XEI) other electric utility subsidiaries, making

---

[52] Ex. Xcel-27 at 8 (D'Ascendis Direct).
[53] *See* Affidavit of Paul Johnson at ¶9.
[54] The financial issues in the South Dakota rate case, including return on equity and capital structure, were resolved in a "black box" settlement.

investments in those jurisdictions more attractive by comparison. In contrast, the ALJ recommendation of a 9.87 percent return on equity, together with the agreed upon 52.5 percent equity ratio, would result in a weighted cost of capital of 5.18 percent - in line with other jurisdictions and equal to that recently agreed to in the PSCo settlement.

Third, the Order's 9.25 percent return on equity led to a dramatic drop in XEI's stock price and market capitalization, demonstrating the disconnect between that decision and market expectations. In fact, as the Commission deliberated and decided on the 9.25 percent return on equity, XEI's stock price dropped dramatically, ultimately falling approximately 2.7 percent on June 1, 2023 alone, and leading to an approximately $1.4 billion drop in relative market capitalization over June 1 and 2, 2023.[55] On June 2, 2023 financial research reports summarized the decision and its impacts, with UBS characterizing the decision as "light on revenue and ROE," stating investors would react negatively, and noting that XEI stock underperformed the Utility Index (UTY) by two percent on the day of the Commission oral decision.[56] Also on June 2, 2023, JPMorgan noted: "This week, the [Commission] approved new electric rates for [Xcel Energy], authorizing a below average 9.25% ROE in a surprise outcome. . . . We see the ROE as

---

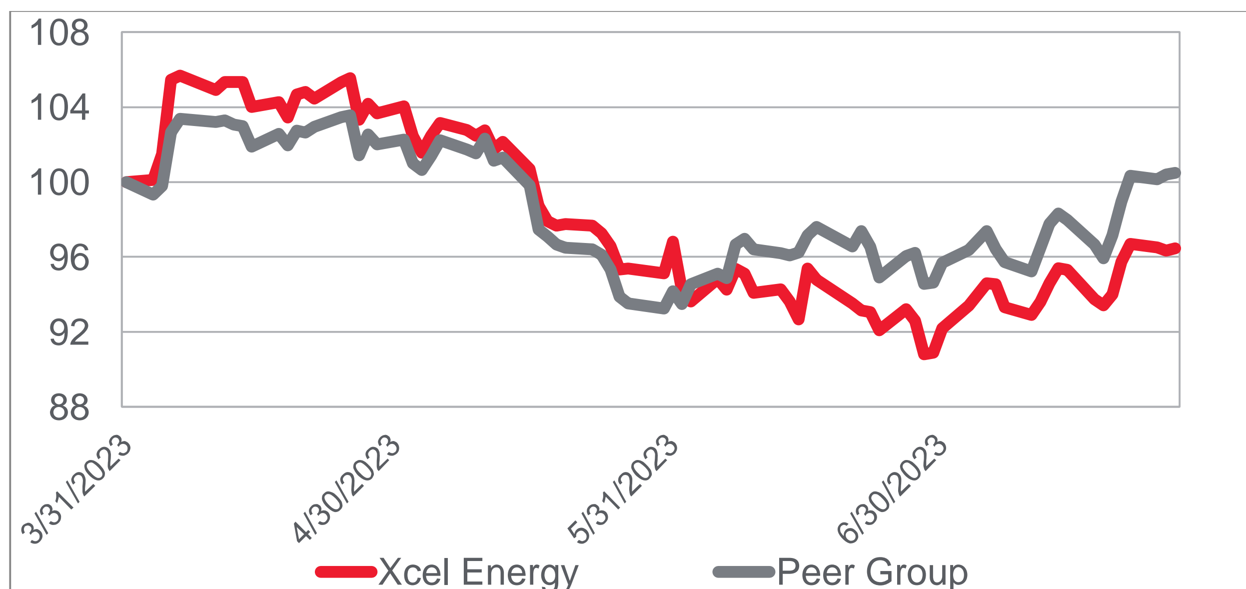
[55] Affidavit of Paul Johnson at ¶¶4-5 and Exhibit 1.

[56] Affidavit of Paul Johnson at ¶6 and Exhibit 2. Regarding JPMorgan's reference to the Company's Minnesota peers, the Order's discussion of return on equity for the Company stands in contrast to its most recent prior return on equity. In the Minnesota Power rate case, filed contemporaneously with the Company's case – and in stark contrast to its decision in this case - the Commission looked to updated two-growth DCF analyses and the national average return of vertically integrated utilities. To set a return on equity of 9.65 percent. *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-21-335, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 45-46 (Feb. 28, 2023).

disappointing relative to [Minnesota] peers and reasonable assumptions from [Xcel Energy, Inc.] into the rate case amid higher interest rates. Additionally, this outcome may drive new questions into the overall constructiveness of [Minnesota] regulation given inconsistency across ROEs."[57]

Comparing XEI's stock price to the utility index before and after the Commission's June 1, 2023 vote setting the 9.25 percent return on equity demonstrates both the immediate and the lasting negative impact of that decision on the Company.[58]

Stock Price Performance – XEI vs. Peer Group



As this chart shows, XEI's stock price closely tracked the utility index in the weeks prior to the decision date. Then, as UBS noted, XEI under-performed UTY by two percent on June 1, 2023 and that gap has persisted, demonstrating the lasting negative impact of the Commission's return on equity decision.

---

[57] *Id.*
[58] Affidavit of Paul Johnson at ¶7, Exhibit 3.

Fourth, as the Company noted during oral arguments, a fair and reasonable return on equity is critical since the Company is *already* under-recovering its cost of debt.[59] Comparing the costs of long-term and short term debt provided for in the Order, with the actual costs for 2022 and the current forecasted costs for 2023 and 2024 demonstrates this under-recovery.[60]

	Year	Rate Case Cost	Actual (2022) or Current Forecasted Cost
Short-Term Debt	2022	3.73%	6.92%
	2023	3.50%	5.50%
	2024	4.17%	4.83%
Long-Term Debt	2022	4.19%	4.18%
	2023	4.33%	4.36%
	2024	4.40%	4.46%

The Company does not request reconsideration to approve these actual (2022) and currently forecasted (2023 and 2024) costs in setting rates in this proceeding. However, the Company does recommend that the Commission consider these increased costs, for which the Company does not seek recovery, as it reconsiders the appropriate return on equity.

[59] Oral Argument Tr. at 8-9 (May 24, 2023).
[60] Affidavit of Paul Johnson at ¶3.

Finally, while the Order hypothesizes that recently lowered inflation numbers suggest that the returns developed by updated analyses in late 2022 may have been overstated, updated two-growth DCF analyses do *not* support that hypothesis. As shown in the Affidavit of Mr. D'Ascendis, using the identical two-growth DCF analysis as relied on by the Commission in the Order, but updated with market data as of July 14, 2023 results in a return on equity of 9.93 percent when applying the Company's two-growth analysis and including flotation costs.[61] In addition, applying the Department's two-growth analysis but updated with this same current information results in a return on equity of 10.48 percent[62] - both *higher* than the ALJ recommended return.

Each of these pieces of new information demonstrates that the Order's 9.25 percent ROE, resulting in overall rates of return for 2022 through 2024 of 6.84, 6.90 and 6.95 percent, fails to provide the Company a return comparable to those being earned by enterprises of comparable risk, violating the *Hope* and *Bluefield* standards.

C. The Record Of This Proceeding And Controlling Case Law Demonstrate The Need To Reconsider The Return On Equity Provided For In The Order

For all of the reasons discussed above, the Company respectfully asserts that the Commission must reconsider and modify its decision with respect to the appropriate return on equity to conform to controlling law and to accurately reflect the record of this proceeding. Multiple data points demonstrate the inadequacy of the Order's 9.25 percent return on equity, including: (1) the returns authorized for other utilities since January 1,

---

[61] Affidavit of Dylan D'Ascendis, ¶4 and Exhibit 1.
[62] *Id.* ¶5 and Exhibit 2.

2022; (2) the returns authorized for XEI utilities operating in other jurisdictions; (3) the significant and lasting negative investor reaction to the Order; (4) the Company's increasing costs of debt, which are not reflected in the Order; and (5) updated two-growth DCF analyses. As discussed in the Company's Initial and Reply Briefs, and in consideration of the additional evidence presented in this Petition, the Company's requested 10.20 percent return on equity (at the lower end of its range of reasonable returns), continues to be reasonable and commensurate with the returns earned by companies of comparable risk. At minimum, however, the Commission should approve the ALJ recommendation of 9.87 percent as consistent with the facts in the record, including the new and relevant evidence presented in this Petition, past Commission practice, and returns recently authorized for other vertically integrated electric utilities. In fact, this evidence demonstrates that the ALJ's recommended return on equity represents a conservative estimate of the appropriate return for the Company, as confirmed by the updated two-growth DCF analyses.

III. THE LAW REQUIRES THE COMMISSION TO ALLOW RECOVERY OF REASONABLE AND NECESSARY COSTS OF PROVIDING ELECTRIC SERVICE IN THE STATE

The essence of the regulatory compact between the State of Minnesota and a regulated electric utility is that in exchange for assuming the obligation to provide safe, adequate, efficient and reasonable service to its Minnesota customers, the State allows the utility "revenue sufficient to enable it to meet the cost of furnishing the service."[63] In

[63] Minn. Stat. § 216B.16, subd. 6 (emphasis added).

deciding such "revenue requirements" issues, as with deciding a rate of return, the Minnesota Supreme Court has held that the Commission acts in its quasi-judicial capacity.[64] While the utility bears the burden of proof to demonstrate the facts at issue by a preponderance of the evidence,[65] Minnesota courts have explained that on issues such as recovery of operating expenses, "under normal ratemaking policy, *a utility is entitled to recover necessary, ongoing expenses incurred in the business of providing utility service*."[66] The cost of furnishing utility service includes items such as labor-related costs, materials and supplies, taxes, insurance, and depreciation.[67] On the issues discussed below, the Order fails to provide Xcel Energy recovery of its necessary, ongoing expenses.

A. Insurance Premium Expense.

The Company sought recovery of the following amounts in connection with its insurance premium expense, based on forecasted premium costs for each year:

2022: $20.7 million

2023: $22.35 million

2024: $25.24 million

---

[64] *See, e.g., St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission*, 251 N.W.2d 350, 358 (Minn. 1977).

[65] Minn. R. 1400.7300, subp. 5; *In the Matter of the Petition of Minnesota Power and Light Company, d/b/a Minnesota Power, for Authority to Change its Schedule of Rates in Minnesota*, 435 N.W.2d 550, 554 (Minn. Ct. App. 1989) (review denied).

[66] *In the Matter of a Request of Interstate Power Company For Authority To Change Its Rates For Gas Service In Minnesota*, 559 N.W.2d 130, 134 (Minn. App. 1997), *affirmed* 574 N.W.2d 408 (Minn. 1998) (emphasis added).

[67] *See Minnegasco v. Minnesota Public Utilities Commission*, 549 N.W.2d 904, 909 (Minn. 1996).

No witness to this proceeding, nor the Commission, has taken the position that the acquisition of any of the lines of insurance that the Company currently holds is imprudent, or not necessary for the Company's business. The Commission did, however, in reliance on testimony and argument by the Department, substantially reduce the amount recoverable for these necessary and prudently-incurred expenses. The Commission's basis for this reduction was its disagreement with the Company's forecast as to the cost of that insurance in 2022, 2023, and 2024. The Order disallows recovery of millions of dollars of actual and forecasted insurance premium expenses, allowing recovery of the following amounts and leading to the associated substantial disallowances from the Company's rate case request:

2022: $11.42 million allowed; *$9.274 million disallowed*

2023: $12.34 million allowed; *$10.017 million disallowed*

2024: $13.93 million allowed; *$11.311 million disallowed*[68]

The Company requests that the Commission reconsider its Order and allow the Company to recover the entirety of its requested expenses for insurance premiums.

The Commission's determination was based on concerns regarding the forecasting method used by the Company, and its belief that the record supporting that forecast was insufficiently robust. The Commission appeared to be particularly concerned about the disparity between the Company's 2021 forecast and 2021 actual expenses, and the significant increase from 2021 actuals to the 2022 forecast.

[68] Order at 69.

In support of its request for reconsideration, the Company provides updated information as to its actual 2022 insurance premium expenses that was not available at the time the Company submitted its rebuttal testimony.[69] As now known, the Company's actual 2022 insurance premium expenses *exceeded* the amount requested in this case, with $22.1 million of insurance premium expenses incurred in 2022 compared to the rate case request of $20.7 million.[70] These final, actual 2022 numbers demonstrate again the reasonableness of the Company's insurance premium forecasts in this case. As the ALJ found:

> The Company has met its burden to establish the reasonableness of its proposed insurance premium expenses in the MYRP. The record in this proceeding demonstrates the accuracy and thoroughness of the Company's insurance premium expense forecasting methodology. The validity of the Company's forecasting method is supported by the small variance between the forecast and actual expenses in 2022. Company witness Mr. Miller credibly explained the reasons for the predicted upward trend in the Company's insurance premiums.[71]

1. The Company's 2022 Actual Insurance Premium Expense Supports Recovery Of The Amounts Requested In The Company's Initial Filing

The Commission's concerns about the accuracy of the Company's insurance premium forecasts should be addressed by the fact that the Company's actual 2022 expenses turned out to be *higher* than the 2022 forecast amount set forth in the Company's initial petition. The Company's 2022 actual insurance premium expense was $22.11 million, approximately *$1.4 million over* the amount forecast for 2022. The Commission

[69] Affidavit of Christopher Haworth, ¶5 and Exhibit 1.
[70] *Id.*
[71] ALJ Report at Finding 612.

can and should look to this information to judge the accuracy of the Company's forecasted expenses. As the Department itself noted on a different issue, it is a "commonsense principle that updated, accurate information is superior to stale projections."[72] Should the Commission not reconsider its decision on insurance premium recovery, *the Company will be denied recovery of nearly $10.7 million (almost 50%) of prudently-incurred insurance expenses for 2022 alone*.

The Commission's decision will also lead to significant under-recovery of insurance premiums in 2023 and 2024. As noted above, the Commission reduced the Company's requested 2023 amount of $22.35 million by over $10 million and the Company's requested 2024 amount of $25.24 million by over $11 million.

These significant reductions in 2023 and 2024 flow from the Commission's decision with respect to 2022. The Commission ordered that 2023 and 2024 insurance expense be calculated based on the Commission-ordered recalculation of 2022 test year expenses, with the increase percentages for 2023 and 2024 proposed by the Company – approximately 8 percent and 12.5 percent respectively.[73] Given that 2022 actual expenses were higher than the amount forecasted for 2022, the Commission should, in addition to granting the Company the entirety of the 2022 insurance premiums sought in the rate case, also grant the Company recovery of the entirety of its requested 2023 and 2024 amounts for insurance premiums. No party disputed the insurance premium escalation percentages forecasted by

---

[72] DOC Exceptions at 6 (discussing the interchange agreement allocator, discussed further, below).

[73] Order at 69.

the Company and, in fact, the Department used those percentages in arriving at its recommendation.[74] If 2023 and 2024 insurance premium expenses actually increase by those percentages, using the known 2022 actual expenses as the base, the Company would under-recover its insurance premium expenses by over $35 million over the three year MYRP, unless the Order is reconsidered.[75]

Actual and Potential Insurance Under-Recovery
(using the percentage increases for 2023 and 2024 approved in the Order; $$ in millions)

Test or plan year	Allowed insurance premium expense	Actual expense (2022)	Requested expense	Actual 2022 escalated	Actual/Potential under-recovery
2022	$11.42	$22.11	$20.7	N/A	$10.69
2023	$12.34	N/A	$22.35	$23.88	$11.54
2024	$13.93	N/A	$25.24	$26.96	$13.03
Total			$68.29	$72.95	$35.26

2. The Company's Forecasting Methodology Was Sound And Produced Accurate Results And The Company Provided Adequate Record Support For Its Forecast

As demonstrated by the Company's actual results for 2022, the Company's methodology for predicting insurance premium expense is comprehensive and produces valid results. As Company witness Robert Miller, Director of Hazardous insurance for Xcel Energy, Inc. testified, the Company developed its insurance expense forecast amount

[74] Ex. DOC-3 at 29 (Soderbeck Direct).
[75] And even if the Company is allowed to recover the full amount requested in this case, it will still likely recover less than the total amount of expenses that will be incurred during 2022-2024.

for the 2022 test year through consultation with the Company's insurance brokers to assess general insurance market trends, and reflected Company-specific exposure metrics such as number of employees, miles of pipes and wires, or the insurable value of the Company's assets.[76] For the plan years, the Company then analyzed these general trends and adjusted the premium expense budgets accordingly.[77]

The Company carries many lines of insurance, and develops the budget for each line on an individual basis.[78] Mr. Miller further testified that the Company anticipated that market hardening for 2022 would abate in 2023 and 2024, with premium increases returning to levels more consistent with those seen prior to 2022.[79] In his rebuttal testimony, filed in November, 2022, Mr. Miller testified that the Company's adjusted 2022 forecast was $289,000 below budget, a variance of less than 0.4 percent.[80] As discussed above, the Company's actual insurance premium costs for 2022 and updated forecast for 2023 bear out the accuracy of the Company's methodology, and have proved to be consistent with the updated forecast information provided in Mr. Miller's rebuttal testimony.

The Order raises concerns regarding the alleged "overly generalized" nature of the Company's response on the topic of the reasons for the increase in premium expenses between 2021 and 2022, stating that the Company should have included evidence providing

---

[76] Ex. Xcel-62 at 18 (Miller Direct).
[77] *Id*.
[78] *Id.* at 18, 21-47.
[79] *Id*. at 25; Ex. Xcel-63 at 4 (Miller Rebuttal).
[80] Ex. Xcel-63 at 4 (Miller Rebuttal).

an individualized analysis of the reason for premium increases for every separate line of insurance carried by the Company, as well as including testimony from insurance brokers regarding market conditions so that those brokers could be subject to cross-examination.[81] The Company has not submitted testimony from insurance brokers in its past rate cases, and the idea of submitting direct testimony from insurance brokers was first raised in the Department's surrebuttal testimony, at a point in time when the Company did not have an opportunity to respond.

The best proof of the validity of the Company's insurance premium expense forecasts is the 2022 actual insurance premiums. In light of this updated information, the Order's reliance on a Department witness who admitted that she had no basis to dispute any of the evidence provided by the Company's witness on this topic, Mr. Miller (who has almost 40 years of experience in risk management), is arbitrary. At the evidentiary hearing on this matter, the Department witness on this topic testified that she had no reason to disagree with Mr. Miller's testimony regarding the state of the insurance market, and that she agreed that the Company's 2022 forecast was proving to be accurate.[82] The ALJ, who presided over the evidentiary hearing and had the opportunity to assess the witness' credibility, made the following finding:

> The Department did not identify specific concerns with the Company's process of forecasting its insurance premiums. Department witness Ms. Soderbeck did not dispute during the evidentiary hearing that the Company's 2022 forecast was "quite accurate," that she had no basis to disagree with Mr. Miller's statements regarding the hardening of the insurance market, that she had no basis to disagree with Mr. Miller's

---

[81] Order at 68.
[82] Evid. Hrg. Tr. Vol. 2 at 90, 92 (Soderbeck).

statement regarding the upward trend of industry losses, that she had not undertaken an investigation of her own into insurance trends, and that the Department's recommendation results in a reduction of over $9 million for 2022 alone.[83]

In light of this finding, as well as the overwhelming evidence demonstrating the accuracy of the Company's forecast, it is not reasonable for the Commission to deny the Company's requested recovery of insurance premium expenses. The Company respectfully requests that the Commission reconsider its decision and allow Xcel Energy recovery of its insurance premium expenses as originally requested.

B. Employee Compensation

The Company requests reconsideration of Commission decisions regarding its employee compensation, including decisions on the rate recoverability of portions of its Annual Incentive Plan (AIP), the environmental component of its Long-Term Incentive (LTI) and its executive compensation. Notably, no party to this proceeding offered any evidence that the total compensation paid to Company employees, including its top ten executives, was unreasonable or above prevailing market wages. In fact, the testimony of Company witness Ruth Lowenthal, a compensation professional with decades of experience, established that the total compensation for each employee, which includes that employee's base pay, target-level AIP and LTI, is compared to the 50th percentile of compensation for comparable positions throughout the market in order to determine the appropriate pay range for each position.[84] Each employee's total compensation is targeted

[83] ALJ Report at Finding 611.
[84] Ex. Xcel-53 at 14 (Lowenthal Direct).

at the market median.[85] These ranges are further benchmarked through a December 2020 study prepared by Willis Towers Watson entitled "Competitive Total Direct Compensation Analysis" ("2020 WTW Report").[86] That study demonstrates that absent target-level AIP, the median total cash compensation provided by the Company would be well below market.[87] The study also shows that the Company's compensation would be below market for executive and non-executive leadership without the LTI component of total compensation.[88]

The study, provided at the time the rate case was filed, was prepared at the end of 2020. The Company has since received a more recent Willis Towers Watson "Competitive Total Direct Compensation Analysis (Including Nuclear)" dated January 2023 ("2023 WTW Study"). This more recent study, based on 2022 data, shows that the Company continues to provide total compensation that is between 4.1 percent below to exactly aligned with the average and median of the markets for all Company positions.[89] The Company's employee compensation expenses are just, reasonable and necessary to provide service to customers and should be included in rates.

1. AIP And LTI

There can be no dispute that the Company needs qualified individuals in all roles at the Company - call center specialists who are available to assist customers with questions

[85] Ex. Xcel-53 at 15 (Lowenthal Direct).
[86] Ex. Xcel-54 at 51-55, Sched. 2 (Lowenthal Direct (Trade Secret)).
[87] Ex. Xcel-53 at 53 (Lowenthal Direct); Sched. 2 at 17.
[88] Ex. Xcel-53 at 53 (Lowenthal Direct)*;* Sched. 2 at 18.
[89] 2023 WTW Study at 16. This study, which is considered TRADE SECRET information, is provided as Attachment 1 to this Petition.

about their service and their bills; compliance specialists that ensure that the Company's operations are in compliance with regulatory requirements, including environmental and workplace safety requirements; repair specialists that ensure that problems with service are addressed promptly and correctly, line workers that ensure that the distribution system is in good working order, generation plant personnel that produce the energy for the Company's customers, and executives to manage the Company and set strategic direction. This is especially true given the Company's leadership in transitioning the state's energy mix away from carbon-emitting resources.

As set forth in the testimony of Company witness Ruth Lowenthal, non-bargaining employees[90] receive their total compensation via one or more components of compensation, depending on that employee's role in the Company. Those components include base pay, and may include AIP and one or more types of LTI. Put another way, if the Company were to offer only base pay as compensation to its employees, and did not include the full target-level opportunity of either AIP or LTI, it would be at a competitive disadvantage with respect to other employers, both in the utility sector and in the general marketplace.[91] It is important to keep in mind that even if the Commission approved all of the Company's requests for recovery related to its employee compensation (base pay, AIP

[90]The compensation paid by the Company to its union employees is, of course, subject to contracts that are bi-laterally negotiated between the bargaining units and the Company. Ex. Xcel-53 at 13-14 (Lowenthal Direct).

[91] Ex. Xcel-55 at 7 (Lowenthal Rebuttal); Ex. Xcel-53 at 53 (Lowenthal Direct); Sched. 2 at 17-18; 2023 WTW Report at 17, 20 and 21.

limited to a 20 percent cap, and Environmental LTI, and time-based LTI[92]), the Company would still not be recovering the entirety of its compensation expenses. Specifically the Company would not recover any AIP expenses in excess of 20 percent and would not recover any of the funds expended on TSR-based LTI. Even if the Commission approves all of the Company's requests, shareholders will still be making a substantial contribution to these necessary costs.

In limiting the Company's recovery of employee compensation expenses, the Commission continues to rely on its analysis of incentive compensation dating from over 30 years ago. The Commission does so despite uncontroverted evidence showing that best practices in compensation have changed over that time, and that incentives currently make up a much higher percentage of an employee's overall compensation than was typical in the early 1990s – evidence recognized by the ALJ.[93] As Ms. Lowenthal testified:

> Over the past two decades, incentive compensation, both AIP and LTI have become critical components of total compensation, and in that time, incentive compensation has become a significant percentage of many employees' compensation throughout the market. The practice of offering these components of compensation is not a bonus . . . but is a widely-accepted component of market-based total compensation. The expense related to incentive compensation, when market-based and at the target level of opportunity in relation to an employee's respective job and level, is both necessary and reasonable in order to maintain a productive workforce. While the use of current market-based compensation design best practices may result in a percentage of incentive compensation that may seem large in comparison to base pay for certain higher-level positions, the proportion of

---

[92] While the Company believes that recovery of time-based LTI is appropriate here, it is not seeking reconsideration of the Commission's decision with respect to time-based LTI as part of this Petition.

[93] *See* ALJ Report at ¶286.

incentive pay to base pay is far less important in a reasonableness review than how total compensation compares to the market.[94]

Ms. Lowenthal's testimony is backed up by both the 2020 WTW and 2023 WTW Studies.

Despite the uncontradicted evidence that both AIP and LTI are components of an employee's total market-based compensation, as opposed to a bonus or extra payment paid out on top of the employee's compensation,[95] the Commission persists in treating AIP and LTI as though they are separate from the total employee compensation paid to employees for their level of experience, responsibility and accountability,[96] and applies a different and more stringent standard to evaluating AIP and LTI. Because the compensation paid by the Company to its employees is just and reasonable overall, there is no basis for the Commission's treatment of the AIP and LTI components of pay as something other than components of the Company's reasonable employee compensation costs. There is also no support in law for applying a separate standard for considering the Company's requests for recovery of AIP and LTI.

Therefore, the Company asks the Commission to reconsider the following decisions related to AIP: denial of the Company's request for an increase to the AIP cap from 15 percent to 20 percent, as recommended by the ALJ, and denial of the Company's request to calculate the difference between the amount of AIP approved in rates versus the amount

---

[94] Ex. Xcel-55 at 8-9 (Lowenthal Rebuttal).
[95] Ex. Xcel-53 at 27 (Lowenthal Direct).
[96] *See* Order at 15 (characterizing the Company's request for Environmental LTI as a request for "separate" rate recovery and finding that Xcel Energy did not demonstrate that time-based LTI provides "additional" customer benefits to justify "additional" cost); Order at 18 (Company did not justify increasing AIP cap from 15% to 20% where customers would be paying "more" for incentive compensation).

paid out based on aggregate payout rather than individual payout. In addition, the Company requests reconsideration of the Commission's denial of recovery of Environmental LTI.

a. The AIP Cap Should Be Set At 20 Percent, Not 15 Percent

The Company requests that the Commission reconsider its rejection of the ALJ's recommendation that the cap on the Company's recoverable AIP be increased from 15 percent to 20 percent. As found by the ALJ, the record demonstrates that "Xcel has met its burden to demonstrate increasing the cap on AIP compensation to 20% would be just and reasonable."[97] The ALJ premised this finding on a determination that employee compensation structures have changed since 1992, with a larger share of total market-rate compensation being performance-based.[98] Importantly, the ALJ also found that the Company had under-recovered its approved amount due to the 15 percent cap.[99] The 2023 WTW Study confirms that the Company sets its AIP salary targets at market level.[100] Notably, the 2023 WTW Study did not consider any cap in making this determination, but instead considered the targets as set by the Company. It follows, therefore, that if the Company capped its actual payment of AIP to employees at either 15 or 20 percent of salary across the board, the Company's AIP would be below market.

The Commission's basis for denying this request are not consistent with ratemaking standards. The Commission has subjected its consideration of AIP recoverability to a test

[97] ALJ Report at ¶289.
[98] ALJ Report at ¶286.
[99] ALJ Report at ¶287.
[100] 2023 WTW Report at 14.

that is not found in 216B.16 or elsewhere, premised on its determination that AIP is driven in part by shareholder interests. The Commission contends that it is denying the request to increase the AIP cap by five percent, which would still leave the Company recovering less than its market-based compensation expenses, because "the Company did not persuasively show that it is unable to adequately compensate and incentivize its employees by supplementing the rate-recoverable portion of AIP with other options available outside of rates."[101]

In other words, the standard set forth by the Commission's Order appears to be that in order to recover a higher percentage of AIP, the Company must show that it is unable to pay for that percentage with shareholder funds. Such a standard is found nowhere in law, is inconsistent with cost-of-service ratemaking, and could be used to deny recovery of literally any expense. Simply put, if an expense is a reasonable cost of providing service, it is recoverable. The record here shows that AIP, as part of total compensation, is a reasonable cost of service and is therefore recoverable. The Company is not required to demonstrate that it is unable to fund this cost of service via "other options available outside of rates" in order to recover a cost of providing service.

The Commission also attempts to distinguish its determination in Minnesota Power's (MP) 2018 rate case that 20 percent is an appropriate AIP cap by contending that MP's AIP plan differs from Xcel Energy's plan because Xcel Energy's plan is subject to an earnings-per-share (EPS) threshold that prevents payout of AIP if that threshold is not

[101] Order at 19.

met, while MP's plan has no such threshold. This, however, is a distinction without a meaningful difference as to whether the recovery of AIP costs up to 20 percent is reasonable. In the MP case, the Commission reiterated its finding from an earlier rate case that:

> [B]arring excessive compensation levels, skewed incentives, or other public policy concerns, the Company has the discretion to structure its compensation packages in accordance with its best business judgment.[102]

The Commission particularly noted that:

> The evidence in this case establishes that AIP continues to play an important role in delivering reliable electric service at a reasonable cost. *Particularly important is the fact that, without AIP, Minnesota Power's total cash compensation for eligible employees would be below the market rate. This fact provides further assurance that the total compensation paid to AIP-eligible employees is reasonable*.[103]

The Commission made this determination despite arguments from parties opposing recovery of AIP that financial targets related to utility net income (the functional equivalent of an EPS target), operating cash and strategic goals skewed the metrics used in allocating AIP towards shareholder interests.[104] The Company's use of an EPS threshold is similar to the inclusion of such goals in MP's AIP plan. The Company's EPS threshold for AIP payout actually helps to align shareholder and ratepayer interests, as it is used as an affordability check on whether the Company should pay out AIP. The Commission's

---

[102] Findings of Fact, Conclusions and Order, *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664 at 33 (Mar. 12, 2018).
[103] *Id*. (emphasis added).
[104] *Id*. at 32.

rationale for approving a 20 percent AIP cap for MP are equally in play with respect to the Company.

Here, the ALJ appropriately balanced the Commission's past concern regarding the EPS threshold requirement as directed to shareholder benefit with the need for the Company to recover just and reasonable costs by maintaining a cap on AIP while allowing a reasonable increase on that cap in light of changing compensation practices over the past 30 years.[105] The Company requests that the Commission apply the standard of whether the Company's AIP costs capped at 20 percent are a just and reasonable cost of providing electric service and reconsider its determination on this point.

b. The Company's AIP Payout Should Be Assessed At The Aggregate Level Rather Than The Individual Level

The under-recovery of AIP caused by the imposition of a 15 percent cap is exacerbated by the requirement that the 15 percent cap be measured at the individual level rather than the aggregate level.[106] As Company witness Ms. Lowenthal testified, incentive-based compensation is used to motivate employees to superior performance.[107] As discussed above, incentive compensation is a component of each eligible employee's total compensation, targeted at the market median.[108] The calculation of the cap on an individual, rather than aggregate basis, discourages the Company from using its incentive compensation as it was intended to be used, because it discourages the Company from

[105] ALJ Report at 288.
[106] Ex. Xcel-53 at 41-42 (Lowenthal Direct).
[107] Ex. Xcel-53 at 22 (Lowenthal Direct).
[108] Ex. Xcel-53 at 3 (Lowenthal Direct).

effectively differentiating between performance that exceeds expectations, meets expectations, or is below expectations.[109] Under the individual cap calculation methodology, the Company is incented to simply pay out AIP to each employee at the target level, regardless of performance.[110]

The Commission based its rejection of this request because it found persuasive the Department's argument that:

> aggregating the cap could allow the Company to concentrate the total AIP budget on a small number of employees, a result that might inadvertently misalign employee incentives, potentially incentivizing those who earn AIP to prioritize shareholder interests and compromising their duty to exercise independent judgment on behalf of the Company to provide safe and reliable service at reasonable cost to customers.[111]

This is, quite frankly, at best a *highly* speculative scenario and one that could easily be addressed by minimal reporting on how the Company has paid out AIP in a given year.[112] The Department's hypothesized scenario would be completely inconsistent with pay-for-performance market standards and the Company's AIP plan, and would certainly put the Company at a disadvantage in attracting and retaining employees. While the Company understands that it bears the burden to demonstrate that the costs it intends to recover are just and reasonable, this does not require the Company to anticipate and address all potential scenarios that could arise, no matter how remote the possibility of those

[109] Ex. Xcel-55 at 19-20 (Lowenthal Surrebuttal).
[110] Ex. Xcel-55 at 20 (Lowenthal Rebuttal)
[111] Order at 19.
[112] The Commission has directed Xcel to provide support for requested changes to reporting in its next annual incentive compensation compliance filing. Order at 20. Reporting sufficient to ensure that the Company is not paying out AIP in the manner hypothesized by the Department could be included in such a proposal.

scenarios - especially without a whiff of evidence that such a practice has occurred or would occur.

The Company has, in fact, demonstrated that a move from accounting for its AIP payout on an aggregate rather than individual basis is just and reasonable, as it has already demonstrated that it significantly under-recovers its compensation expenses, in part due to this particular reporting requirement. Because the Company's total compensation is just and reasonable, this additional impediment to achieving recovery closer to the amount paid out to the Company's employees should be removed.

2. Environmental LTI

As discussed in the testimony of Company witness Lowenthal, the Company offers three types of LTI to its upper level management and executive team. In its initial filing, the Company sought recover of two types of LTI, time-based and Environmental LTI.[113] While the Company continues to believe that including time-based LTI in rates would be appropriate, in this Petition, the Company seeks only the Commission's reconsideration of its decision with respect to Environmental LTI.

As with AIP, there is no dispute that LTI is an expected part of total compensation for high-level employees and managers. As noted in a 2023 article entitled "A total rewards approach to executive compensation" by RSM, "[a] well-balanced executive compensation package generally includes base salary, short- and long-term incentive pay, and various

[113] The Company did not seek recovery of that portion of LTI based on Total Shareholder Return in light of the Commission's expressed concerns around incentive compensation tied to shareholder interests.

benefits and perks . . . ."[114] The article continues to note that LTI is "a core component of executive compensation planning."[115] This is consistent with the evidence cited in Ms. Lowenthal's testimony that LTI is commonly used in the utility industry, and that absent LTI, the total compensation for this group falls far short of market level.[116] This conclusion is further supported by the 2020 and 2023 WTW Studies.[117]

Further, the Company has designed Environmental LTI in a manner that has been endorsed by the market. As noted in the RSM article cited above, "Long-term incentives should focus on and align your executives with your company's and owner's long term goals" and "[t]ailoring the metrics [of LTI] to important measures for your company and areas that can be affected by the individual executive can focus your executives' time and effort on meeting your company's unique needs."[118] This is precisely the approach the Company has taken with respect to Environmental LTI, which is awarded only if the reduction in carbon dioxide emissions below 2005 levels associated with the Company's electric service meets certain targets.[119] If the Company does not meet its environmental goals, the Environmental LTI is not paid out and the employee does not receive their full amount of market-based compensation.[120]

---

[114] RSM, *A total reward approach to executive compensation*, at 1 (February 16, 2023) ("RSM Compensation Article") available at [A total rewards approach to executive compensation (rsmus.com)](https://rsmus.com).
[115] *Id.* at 3.
[116] Ex. Xcel-53 at 45 (Lowenthal Direct).
[117] Ex. Xcel-53 Sched. 2 at 21; 2023 WTW Study at 21.
[118] RSM Compensation Article at 4.
[119] Ex. Xcel-53 at 47 (Lowenthal Direct).
[120] Ex. Xcel-55 at 30 (Lowenthal Rebuttal).

The ALJ recommended denial of Environmental LTI because the Company's expressed goals did not exceed the decarbonization goals set forth in Minnesota Statutes, as of 2023, and it would be unreasonable to ask ratepayers to pay to incentivize what the law already requires.[121] The ALJ also acknowledged, however, that the goals Xcel Energy set forth did exceed the decarbonization goals required by the state at the time the rate case was filed.[122] For its part, the Commission denied recovery of Environmental LTI because "Xcel did not justify its environmental LTI costs with an adequate showing that the program offers unique benefits that justify separate rate recovery,"[123] again, as it did with respect to AIP, holding the utility to a heightened standard that is inconsistent with established law. The structure of Environmental LTI penalizes the Company's employees eligible to receive that component of LTI in the event the Company does not achieve the Company's carbon dioxide reduction goals - if those goals are not achieved, those employees receive less than their target amount of compensation. This goal is squarely aligned with state objectives, and the Commission's requirement to demonstrate "unique benefits" in connection with this component of compensation, apparently beyond that alignment, is therefore especially out of line with the standards for recovery established by law.

The ALJ's and the Commission's analyses do not address whether the Company's overall compensation, including Environmental LTI, is a reasonable cost of providing

---

[121] ALJ Report at ¶¶ 272, 273.
[122] ALJ Report at ¶ 271.
[123] Order at 15.

service. The record developed in this matter, however, demonstrates that it is. Because the Company is not seeking to recover the entirety of its LTI expense, the Company will still be under-recovering its LTI expenses, as well as its overall compensation expenses, even with the recovery of Environmental LTI. The Commission's reference to "separate" rate recovery incorrectly treats LTI as something other than a component of total compensation. Because Environmental LTI is simply a component of total compensation, and because it is not designed to solely further shareholder interests, the Company did not need to demonstrate the existence of "unique benefits" in order to recover these expenses.

3. Executive Compensation

On top of the foregoing compensation issues litigated throughout this proceeding, and despite no party providing any testimony on the issue, the Commission Order limits rate recovery of the compensation of Xcel Energy's top ten highest paid employees to an aggregate level of $1.5 million per year.[124] The Commission chose this level of recovery based on the salary paid to Minnesota's "highest executive officer," Governor Tim Walz, who will be paid approximately $150,000 per year beginning in 2024. However, the record of this proceeding cannot support this disallowance. To the contrary, the record demonstrates the Company's executive compensation costs are reasonable and necessary costs of providing utility service and under Minnesota law, the Company must be allowed an opportunity to recovery these reasonable and necessary costs.[125]

---

[124] Order at 23.
[125] Minn. Stat. § 216B.16, subd. 6 ("The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the

Company witness Ms. Lowenthal testified that the Company's compensation, including its executive compensation, targets the median of the market for each position at the Company.[126] This is borne out by the 2020 Willis Towers Watson Study attached as Schedule 2 to Ms. Lowenthal's testimony, which demonstrates that overall, Xcel Energy is between 3.2 percent below and 1.9 percent above the median for all positions.[127] The 2023 WTW Study similarly demonstrates that the Company is between exactly aligned with the median or 2.3 percent below the median.[128]

Neither of the WTW studies focus precisely on compensation of the Company's top ten highly-compensated employees. However, publicly-available proxy data from many of the utilities identified in the WTW studies shows that the Company's Chief Executive Officer compensation, as well as the total compensation paid to the top five highly-paid executives at those companies, places Xcel at or close to the median with respect to that group of employees.[129] According to the proxy data, based on total compensation, Xcel's CEO compensation ranked 10th out of the 19 companies reviewed and its total compensation for the top five most highly-compensated executives ranked 9th out of those companies.[130]

---

need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service.")

[126] Ex. Xcel-53 at 15 (Lowenthal Direct).

[127] Ex. Xcel-53 at Sched. 2 p. 19 (Lowenthal Direct).

[128] 2023 WTW Study at 16.

[129] *See* Spreadsheet collecting proxy information, provided as Attachment 2.

[130] *Id.*

With respect to Xcel's executive compensation in the context of the State of Minnesota, according to the Star Tribune, Xcel Energy, Inc.'s CEO's compensation ranked 21st in the state.[131] And this is despite the fact that the Star Tribune also ranked Xcel Energy, Inc. the 9th largest company in the state by revenue.[132] The median compensation of the top 50 CEOs in the state was $7.2 million, with the Star Tribune assessing Xcel Energy CEO's compensation at $7.6 million. According to this article, top CEO compensation in the state ranged from $1.3 million to $54.2 million.[133]

The high quality of the work being done by the Company, including its top ten highest paid executives, is relevant here. The Commission itself praised the Company's leadership and financial management during deliberations of this case. Xcel Energy is at the forefront of decarbonizing the generation of electricity, and its parent company, Xcel Energy, Inc. has been named a "most admired company" by Fortune magazine for the last ten years. In 2022, Xcel Energy, Inc. was also named one of the world's most ethical companies by Ethisphere, one of five utility companies in the United States recognized in this manner.

It is also important for the Commission to take into account Xcel Energy's substantial presence in Minnesota, both with respect to its employees residing here and its economic support of the state, and to the number of customers it serves here. Xcel Energy

---

[131] *See* Minnesota's top paid executives at public companies in 2022 fiscal year (startribune.com).

[132] *See* With $324.2 billion in revenue, UnitedHealth again tops list of Minnesota public companies (startribune.com).

[133] *See* Minnesota's top paid executives at public companies in 2022 fiscal year (startribune.com).

is one of fewer than 20 Fortune 500 companies headquartered in Minnesota. Xcel Energy serves approximately 1.3 million electrical customers in the state, which makes the Company's electric business one of Minnesota's larger businesses.

There are also substantial procedural concerns with this decision. As the Commission is well aware, rate case decisions are generally made only after the fulsome development of an evidentiary record, with all parties highlighting issues of concern through testimony and evidentiary submissions, with input from public hearings as well.[134] In most rate cases, this record is developed through the conduct of a contested case overseen by an ALJ, and the ALJ makes their recommendations based on that record. After the ALJ issues their report, PUC Staff reviews the entirety of the record and prepares briefing papers with decision options related to each issue. The parties and the Commission use these briefing papers to settle on preferred decision options and develop questions and arguments. None of these steps were followed, however, with respect to the Commission's decision to impose an unprecedented cap on recovery of executive compensation.

The notion of capping executive compensation on the basis of the Governor's salary was raised for the first time during oral argument before the Commission. During the limited colloquy regarding the issue of the appropriate level of executive compensation

---

[134] *See* Minn. Stat. § 216B.16, subd. 2(b) (providing that if all significant issues related to the reasonableness of the proposed rate increase cannot be resolved to the satisfaction of the Commission, it shall refer the matter to the Office of Administrative Hearings); ORDER FOR HEARING, *In the Matter of the Application of Northern States Power Co. d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota,* Docket No. E-002/GR-21-630 at 2-3 (Dec. 23, 2021) (stating that the Commission expects the parties will thoroughly develop a full record addressing, a number of specific issues including the overall reasonableness of the proposed rate increase).

that was held at that time, the Company was given no opportunity to respond to this cap proposal, let alone build an appropriate record for sound decision making. The written decision option setting forth the cap proposal was not filed in this docket until the night before deliberations, days after the parties had submitted letters setting forth their preferred decision options, and the Company was not asked any questions about the decision option or otherwise presented an opportunity to address it.

There is absolutely nothing in the record suggesting that $1.5 million is a reasonable amount to recover for the compensation paid to the Company's top ten executives. The only basis provided for the Commission's choice of this "cap" is the comparison to the Governor's salary. Of course, the Governor is nowhere near the highest paid state employee. In fact, based on 2021 data, approximately 900 State of Minnesota employees earn in excess of the Governor's salary.[135] In 2022, that number increased to over a thousand.[136] Notably, this data does not include employees of the University of Minnesota,[137] which would increase the number of employees making over $150,000 per year. According to the Star Tribune, a number of psychiatrists employed by the state make in excess of $400,000, with some making over $500,000, while the Executive Director of the state board of investment commands a salary of $452,000.[138]

---

[135] *See* Table entitled "State of MN Fiscal Year 2021" (data available at payrolldata / Minnesota Management and Budget (MMB) (mn.gov)). Please note that the column entitled "Annual" was calculated by the Company based on pay rate and frequency data.
[136] *See* Table entitled "State of MN Fiscal Year 2022" (data available at payrolldata / Minnesota Management and Budget (MMB) (mn.gov)). Please note that the column entitled "Annual" was calculated by the Company based on pay rate and frequency data.
[137] *See* payrolldata / Minnesota Management and Budget (MMB) (mn.gov).
[138] *See* 14 of Minnesota's 20 top-paid state workers are psychiatrists (startribune.com).

The impetus for the Commission's decision to implement a cap on executive compensation were public comments. The Order notes that "the Commission received more than 20 public comments expressing dissatisfaction with the high level of executive compensation paid to Company executives.[139] While public comments should be considered, these commentors represent an incredibly small fraction of Xcel Energy's approximately 1.3 million customers in Minnesota. Moreover, the "dissatisfaction" of a minute subset of the Company's customers cannot provide a reasonable basis on which to deny the necessary costs of providing electric service in the state, including the cost of paying market-based executive compensation.

The Company requests that the Commission reconsider its denial of the Company's requests to increase of the AIP cap from 15 percent to 20 percent; calculate the AIP refund due to customers based on an aggregate rather than individual employee basis; and recover its Environmental LTI Expense. The Company also requests that the Commission reconsider its imposition of a cap on recovery of compensation for the Company's top ten highly-compensated executives of $1.5 million in aggregate.

C. Cost Allocations

The Company further seeks reconsideration of two issues related to the allocation of revenues and costs to the Minnesota electric jurisdiction: (a) application of the Interchange Agreement demand allocators for 2023 to 2024; and (b) application of the appropriate General Allocator to properly reflect the allocation of employee costs.

---

[139] Order at 22.

1. Interchange Agreement Allocations

The Company recommends that the Commission reconsider its Order to apply the actual 2023 FERC demand allocator to the Company's 2023 and 2024 Interchange Billings and therefore its Minnesota electric revenue requirement.[140] The Company seeks reconsideration of the Commission's decision on this issue on the grounds that: (1) the Order contains material errors; (2) additional information has become available that warrants a different outcome; and (3) reconsideration is otherwise warranted.

In direct testimony, the Company included MYRP Forecast Interchange Revenue and Interchange Expenses based on 2022-2024 budget information for NSPM and NSP-Wisconsin, consistent with the treatment of Interchange Revenue and Expenses in the Company's last three rate cases.[141] In response, Department witness Ms. Campbell recommended updating Interchange Billings in the revenue requirement solely to reflect the updated Interchange demand allocator (a single component of Interchange Billing amounts) approved by FERC in May of 2022 in FERC Docket ER22-1234, which would decrease the 2022 revenue requirement by approximately $1.5 million on a total Company basis.[142]

[140] For purposes of Reconsideration, the Company does not contest use of the actual 2022 demand allocators for purposes of the 2022 test year revenue requirement.
[141] Ex. Xcel-82 at 43 (Halama Rebuttal).
[142] Ex. Xcel-82 at 43 (Halama Rebuttal). The Company inadvertently applied the Demand Allocator change to the total Northern States Power – Minnesota company revenue requirement, rather than the Minnesota electric portion. While this correction would reduce the adjustment from approximately $1.5 million to $1.3 million, the Company is foregoing this small correction in this request for reconsideration.

The Department initially also recommended reducing the 2023 and 2024 revenue requirement by the same approximately $1.5 million amount, apparently based on the mistaken understanding that applying the actual 2022 demand allocators to 2023 and 2024 would lead to similar revenue requirement reductions.[143] Indeed, the Department argued multiple times that the 2022 demand allocators should be applied to all years of the MYRP:

- "Xcel's rates should account for FERC-approved demand allocators."[144]
- "The Department recommends that Xcel's rates be set to incorporate updated demand allocators between its Minnesota and Wisconsin entities approved by FERC in March 2022."[145]
- "The Commission should require use of the new allocators in setting rates."[146]

In fact, rather than lowering the Interchange Billings by $1.5 million in each year, as the Department argued, applying the *actual* 2022 demand allocator to 2023 and 2024 actually *increases* Interchange Billings for those years. Specifically, the actual demand allocator for 2022 (83.6779 percent for Minnesota) is lower than the Company's forecasted 2022 demand allocator (83.7474 percent) included in the Initial Filing of this case, leading to the Department's recommended revenue requirement reduction in 2022. However, this actual 2022 demand allocator is *higher* than the Company's forecasted demand allocators for either 2023 or 2024 (83.6077 percent and 83.4708 percent, respectively).[147] Thus, while applying the actual 2022 demand allocator to 2022 reduces the Company's 2022 revenue

---

[143] DOC Initial Post-Hearing Br. at 75.
[144] DOC Initial Post-Hearing Br. at 75.
[145] DOC Initial Post-Hearing Br. at 75.
[146] DOC Initial Post-Hearing Br. at 76.
[147] *See* Attachment 5 to this Petition.

requirement by approximately $1.5 million, applying the actual 2022 demand allocator to 2023 and 2024 *increases* interchange costs and decreases interchange revenues compared to the Company's initial forecast by $1.4 million and $4.1 million, respectively.[148] It also *increases* the Company's revenue requirement by approximately $2.8 million in 2023 and $5.6 million in 2024 as compared to the Department's position (which was not jurisdictionalized but decreased Interchange Billings by the same amount each year compared to the Company's original forecast).[149]

Prior to the ALJ Report, the Company objected to the Department's overall approach, primarily on the grounds that adjusting a single component of the Interchange Billings (the demand allocator) is not a principled or accurate way to make updates for 2022 that are representative of overall likely outcomes, and that there were no facts available to suggest the actual 2022 demand allocator would have any bearing on 2023 or 2024 demand allocators or overall Interchange Billings.[150]

The ALJ agreed with the Company, finding that the Company's forecast demand allocators should be used for all years of the MYRP:

> [T]he Department has not offered evidence that adjusting Interchange Billing amounts in the revenue requirement solely for the 2022 Demand Allocator change is likely to produce a reasonable estimate of total Interchange Billings for 2022, let alone 2023-2024 (or 2025 and 2026). For example, the Department does not provide evidence of the historical or typical relationship between Demand Allocators and total Interchange Billings, or about the degree to which the remaining components of the calculation are likely to change. . . . The Company has met its burden to demonstrate that its MYRP Interchange Agreement revenues and expenses are reasonable, while the

[148] *Id.*
[149] *Id*.
[150] Ex. Xcel-82 at 43-44 (Halama Rebuttal).

> Department has not shown adequate support for its recommended adjustment.[151]

Accordingly, the ALJ recommended that the Department's adjustments to the 2022 through 2024 Interchange Billings should not be accepted.

The Department filed Exceptions to the ALJ Report with respect to the 2022 application of the demand allocators, but stated as a "concession" that it did not seek application of the 2022 demand allocators to 2023 and 2024.[152] Overall, the Department's briefing on this issue has been inconsistent and unclear. First the Department argued (prior to the ALJ Report) that the *revenue requirement dollar reduction* it proposed for 2022, based on the updated 2022 allocator, was most appropriate for 2023 and 2024, even though the impact of applying the actual 2022 demand allocators to 2023 and 2024 revenue requirements had the opposite effect. Subsequently, the Department's Exceptions characterized the decision not to contest use of the Company's 2023 and 2024 allocators as a concession to narrow the issues in the case (because "the Department continues to believe its adjustments are likely to be more accurate") and stating that the 2023 and 2024 allocators were a separate issue from the 2022 allocator, but not explaining the revenue requirement impact of its "concession" or explaining why only this one aspect of the 2022 allocator should be changed.[153]

Against this background, the Commission ultimately decided to adopt the 2022 actual demand allocator for 2022 and make the Department's adjustment accordingly, and

---

[151] ALJ Report at ¶¶258-260. p. 45.
[152] DOC Exceptions at 6-7 and n. 23.
[153] DOC Exceptions at 48.

then to also use the actual 2022 demand allocator for 2023 and 2024, stating that this was "the Department's filed position,"[154] as also characterized in the decision options provided by Staff.[155] Specifically, the Commission directed the Company to: "Use the actual 2022 demand allocator for the interchange agreement as approved by FERC, rather than the 2022 demand allocator as filed in this rate case, thereby increasing Minnesota jurisdictional revenue for generation and transmission by $149,983 and reducing Minnesota jurisdictional costs by $1,332,358."[156] The Commission also directed the Company to "*use the 2022 allocators in 2023 and 2024* as well."[157] The application of the actual 2022 demand allocator to 2022, 2023, and 2024 is reflected in the Company's compliance filing resulting from the Order and filed on July 28, 2023.

For purposes of Reconsideration, the Company does not contest the use of the 2022 demand allocator for 2022 (although it does not agree with the principle), but does suggest that any update for 2023 and 2024 should reflect the most current, actual, FERC-approved allocator for 2023. Doing so is entirely consistent with the update for the 2022 demand allocator proposed by the Department and adopted by the Commission. It simply relies on updated evidence from 2023 with equal probative value as that previously relied upon by the Department and Commission.

---

[154] Order at 109.
[155] Decision Option 1129 stated: "Order Xcel to use its updated 2022 allocators in 2023 and 2024. (Department Initial Position)".
[156] Order at 109.
[157] Order at 109 (emphasis added).

In support of the request for Reconsideration, however, it is first important to clarify the errors in the Commission's Order that warrant reconsideration.[158] First, the Commission addressed the Interchange Allocators issue as if the Company had agreed to use the actual 2022 demand allocators for purposes of the 2022 revenue requirement,[159] even though the Company continued to argue throughout the case that the demand allocators were one piece of the overall Interchange Billing determination and making an isolated change to apply 2022 actual allocators to 2022, 2023, or 2024 was not warranted.[160] Second, the Order suggests that the Department continued to advocate after the ALJ Report for the use of forecasted allocators for 2023 and 2024,[161] although the Department chose not to take exception with respect to 2023 and 2024 Interchange Billings as discussed above. Third, the Order characterizes the ALJ as recommending use of the forecasted allocators because the ALJ found that Xcel Energy had made good faith

---

[158] *In re Application of Minn. Power for Auth. to Increase Rates for Elec. Serv. in Minn.,* Docket No. E-015/GR-16-664, ORDER GRANTING RECONSIDERATION IN PART, REVISING MARCH 12 2018 ORDER, AND OTHERWISE DENYING RECONSIDERATION PETITIONS at 2, 5 (May 29, 2018) (noting that the Commission has granted reconsideration when a motion for reconsideration (1) raises new issues; (2) points to new and relevant evidence; (3) exposes errors or ambiguities in the prior decision; (4) persuades the Commission to reconsider; or (5) where the prior decision was inconsistent with the facts, the law, or the public interest).

[159] Order at 109.

[160] The Order is incorrect to the extent it states that "In response to the Department's recommendations, Xcel agreed to use the revised demand allocations for 2022 that the utility had filed with FERC." Order at 109. *See* Issues Matrix at 15 ("Forecasted Interchange Agreement billings (revenues and expenses) should not be changed solely due to change in Demand Allocator. In addition, any adjustment for change in 2022 allocators should not be carried forward to 2023 and 2024."). The Company did not take exception to the ALJ Report on this issue because the ALJ concluded that the Company's forecasts should be used for all years, consistent with the Company's position in the underlying case.

[161] Order at 108.

estimates, and that the difference between later data and earlier data did not justify modifying the Interchange Billings.[162] However, as noted above, the ALJ did not base her recommendation solely on Company intent (which was indeed in good faith), but rather on the fact that the Department's proposed update applied to only one component of overall Interchange Billings; absent more complete updated information that simply did not exist, the Department did not properly show that its recommended piecemeal adjustment was warranted.[163] These errors pertain both to 2022 and 2023/2024 demand allocator issues, and underscore that the foundation of the Order with respect to this issue is inconsistent with the record and warrants reconsideration.

Additionally, and perhaps most importantly, new, equally reliable information is now available and warrants reconsideration of the outcome with respect to 2023 and 2024 Interchange Billings. On the demand allocator issue specifically, the Department argued that "[t]he ALJ's conclusion also ignores consistent Commission practice, using the ALJ's own findings, that *actual or updated figures should be used over outdated estimates*. Using forecasted figures rather than the actual updated 2022 Interchange Agreement impacts goes against *the commonsense principle that updated, accurate information is superior to stale projections*."[164] Similarly, in adopting the Department's position the Commission noted multiple times that the actual 2022 demand allocator was "FERC-approved," implying that

---

[162] Order at 109.
[163] *See* ALJ Report at 45.
[164] DOC Exceptions at 6 (emphasis added).

this factor further underscored the validity of using the 2022 actual demand allocator for 2022 as well as 2023 and 2024.

Since the evidentiary hearing and ALJ Report in this proceeding, the Company's 2023 demand allocator has likewise been placed on file with FERC and is in use with FERC approval. Attachment 6 to this Reconsideration Petition sets forth the 2023 demand allocator as filed with FERC, which illustrates that the actual 2023 demand allocator is 83.8765 percent to Minnesota.[165] This demand allocator is higher than to the 2023 and 2024 estimates of 83.6077 percent and 83.4708 percent, respectively as discussed above and illustrated in Attachment 7 to this Petition. Further, using the actual 2023 demand allocator increases the 2023 Company's revenue requirement by approximately $5.2 million as compared to the Company's forecast, and increases the 2024 revenue requirement by approximately $8.1 million as compared to the Company's forecast.[166]

Consistent with the determination that the most current, applicable data with FERC should be used to establish 2023 and 2024 Interchange Billings, the Company recommends that the Commission utilize the actual 2023 demand allocator for 2023 and 2024, which is the most current, accepted data available. Such an outcome is most fair and equitable to the Company, and aligns with the Department's argument and Commission result (both discussed above) that actual, current data is more reliable than stale or forecasted data.

---

[165] *See* Attachment 6 to this Petition.
[166] *See* Attachment 7 to this Petition.

2. General Allocator

The Company's General Allocator is used to allocate common costs when direct or indirect measures of cost assignment cannot be used by Xcel Energy Services' (XES) employees supporting operating companies or affiliates.[167] The General Allocator formula uses either Full-Time Equivalent Employees (FTE) (for NSPM) or Number of Employees (for all other jurisdictions) as one factor, along with Total Assets and Revenues, to allocate these common costs. In its Order, the Commission rejected the Company's proposed Number of Employees method and ordered the Company to continue to use the FTE Hours method. The Commission's Order relies solely on the rationale provided by its prior March 15, 2011 Order Requiring Change in General Allocator and Requiring Filings in Docket No. E,G-002/AI-10-690 (2011 General Allocator Order) to support its decision.[168] The Commission decision ignores the evidence presented by the Company that demonstrates that the concerns expressed in the 2011 General Allocator Order are no longer valid reasons to reject the Number of Employees method. By relying exclusively on this prior order, the Commission ignored the evidence presented in this case demonstrating that the Number of Employees method better ensures that all costs necessary to support regulated utility operations are assigned to each jurisdiction for which those costs are

[167] Ex. Xcel-60 at 16 (Baumgarten/Doyle Direct); Ex. Xcel-61 at 4 (Doyle Rebuttal). The General Allocator cannot be used by employees of NSPM. Ex. Xcel-61 at 4-5 (Doyle Rebuttal).
[168] Order at 107-108.

incurred.[169] The Commission should therefore reconsider its decision and allow the Company to use the Number of Employees methodology in its General Allocator.[170]

In its 2011 General Allocator Order that the Commission relies on in this case, the Commission expressed concern with using the Number of Employees method. First, the Commission found that this method does not allow labor-related costs to be allocated to unregulated subsidiaries that do not have their own payrolls.[171] Second, the Commission found that allocating the full cost of each employee to the subsidiary on whose payroll the employee appears overstates the labor costs of that subsidiary and understates the labor costs of any other subsidiary for whose benefit the employee occasionally performs work.[172] Both of the Commission's prior concerns were addressed in the record in this case and, contrary to the Commission's findings, these concerns are no longer valid reasons to reject the Number of Employees method.

With regard to the Commission's first concern, the Company presented evidence that under the Number of Employees method, labor-related costs are assigned to unregulated subsidiaries.[173] Specifically, the Number of Employees method assigns common officers to Xcel Energy, Inc. as though they were employees of Xcel Energy, Inc., and then allocates costs for nonregulated companies to Xcel Energy, Inc. based on this number of employees.[174] Doing so ensures that nonregulated companies receive a

---

[169] Ex. Xcel-61 at 5 (Doyle Rebuttal).
[170] Order at 106-108.
[171] Order at 107-108.
[172] Order at 107-108.
[173] Ex. Xcel-60 at 19 (Baumgarten/Doyle Direct).
[174] Ex. Xcel 60 at 19 (Baumgarten/Doyle Direct).

reasonable portion of allocated costs.[175] The Department created confusion in this regard (where there should not be any) by stating that only "some of these officers' costs will be assigned to non-regulated affiliates using the Company's proposed General Allocator" and that the Number of Employees method does not allocate any of the remaining 99.8334[176] percent of operating company employees (aside from the common officers) to non-regulated entities.[177] The Department's concerns are inaccurate and create unnecessary confusion because none of these operating company employees use the General Allocator as their time is directly assigned to regulated or non-regulated activities based on the task.[178] Further, it is not correct to state that the Company only assigns some of the included officers' costs to non-regulated entities when it assigns them to Xcel Energy. Rather, a portion of all indirect costs allocated using the Employee Ratio with number of common officers assigned to Xcel Energy, are assigned to non-regulated entities.[179] That is, under the Number of Employees methodology, the assignment of common officers to Xcel Energy increases the ratio of all indirect costs, not just some of the common officers' costs, that are allocated by the General Allocator to non-regulated entities using the Employee Ratio with number of common officers assigned to Xcel Energy. The Department's testimony therefore causes confusion about the impact of assigning the common officers to Xcel Energy. Overall, the Company provided evidence that showed that this approach

---

[175] *Id.*
[176] In direct testimony, the Department stated this percentage as 98.8334, but the correct amount is 99.8334 percent. Ex. Xcel-61 at 9 (Doyle Rebuttal).
[177] Ex. DOC-21 at 56-57 (Campbell Direct).
[178] Ex. Xcel-61 at 8-9 (Doyle Rebuttal).
[179] Ex. Xcel-61 at 8-9 (Doyle Rebuttal).

under the Number of Employees method resulted in a *larger* allocation of costs to Xcel Energy's nonregulated companies than the FTE Hours method.[180]

The Company demonstrated this by calculating the FTE Hours adjustment using labor hours charged for 2021 for allocation ratios effective April 1, 2022 through March 31, 2023. This calculation resulted in an FTE Hours allocation of 0.0399 percent to non-regulated affiliates. In contrast, using the Number of Employees method resulted in a higher allocation of 0.1799 percent to non-regulated affiliates. That is, the ratio is 451 percent more under the Number of Employees method than under the FTE Hours method, as shown in the following table, which was included in Company witness Ms. Doyle's rebuttal testimony.[181]

Number of Employees and FTE Hours
Allocation Ratios Effective April 1, 2022 Through March 31, 2023
Xcel Energy Operating Companies[182]

Entity	Employees as of 12/31/2021	Ratio	FTE Hours as of 12/31/2021	Ratio	Change in Ratio
NSPM	3,786	48.6508%	9,754,984	44.2675%	(4.3833%)
NSPW	533	6.8491%	1,657,993	7.5239%	0.6748%
PSCo	2,338	30.0437%	7,396,461	33.5647%	3.5210%
SPS	1,111	14.2765%	3,218,212	14.6040%	0.3275%
Other	14	0.1799%	8,788	0.0399%	(0.1400%)
Total	7,782	100.0000%	22,036,438	100.0000%	

[180] *Id.*; Ex. Xcel-61 at 10-11 (Doyle Rebuttal).
[181] Ex. Xcel-61 at 11 (Doyle Rebuttal).
[182] The "Other" row in the table represents all non-regulated affiliates, including Xcel Energy Inc. where the common officers are assigned.

Therefore, the Number of Employees methodology allocates more costs than the FTE Hours methodology to nonregulated entities. Accordingly, the Commission's concern that the Number of Employees method does not assign labor-related costs to unregulated subsidiaries was directly refuted by the evidence presented in this proceeding.

The Commission's second concern with the Number of Employees method was that it believed this method resulted in allocating nonregulated operations costs to the regulated utility. The record shows that the Number of Employees methodology, unlike the FTE Hours methodology, ensures that neither non-regulated affiliates nor other jurisdictions are subsidizing the cost to support the Company's Minnesota customers.[183] This is consistent with the discussion above that the Number of Employees methodology allocates more costs to non-regulated affiliates than the FTE Hours methodology allocates.

By relying exclusively on this prior order, the Commission did not consider the evidence presented in this case that shows that the Number of Employees methodology ensures that all costs necessary to support Minnesota regulated operations are reflected in the ratio calculation, which results in costs being accurately allocated to Minnesota customers. Since being required by the Commission to use the FTE Hours methodology in the General Allocator, the Company's experience is that it does not accurately calculate labor hours associated with costs of indirect hours that are required to support Minnesota regulated operations.[184] Because NSPM has the largest number of employees, the costs to support these employees through Human Resources, Payroll, Employee Communications,

[183] Ex. Xcel-61 at 5 (Doyle Rebuttal).
[184] Ex. Xcel-61 at 8, 12, 14 (Doyle Rebuttal).

and other employee-focused business areas are not sufficiently captured by the FTE Hours method.[185] This is because this method excludes indirect hours charged by business areas that primarily support employees from the FTE Hours calculation.[186] Therefore, Minnesota customers are not paying the full cost of NSPM to furnish service to customers under the FTE Hours methodology. The Department did not refute the Company's evidence and expressed surprise that it was the Company's experience that indirect hours for employee support services are excluded from the FTE Hours methodology, stating: "To my recollection, I have not heard the Company make this argument before . . . ."[187] The Department's witness further ignored the fact that this was a fundamental flaw in how the FTE method works by stating, "I do not understand why the Company could not fix this problem of not including indirect hours as part of its FTE methodology."[188] The Department's testimony in this regard dismissed the Company's concern and the fact that the Company is seeking to correct this flaw by proposing use of the Number of Employees methodology that allows these indirect hours to be included in the calculation of the allocator.

Correctly allocating indirect hours to the Minnesota regulated jurisdiction would result in an increase in costs to the Company's Minnesota customers,[189] but the Department mischaracterizes this change as an "over allocation" of costs to the Company's Minnesota

---

[185] Ex. Xcel-61 at 8 (Doyle Rebuttal).
[186] Ex. Xcel-61 at 8 (Doyle Rebuttal).
[187] Ex. DOC-23 at 39 (Campbell Surrebuttal).
[188] Ex. DOC-23 at 39-40 (Campbell Surrebuttal).
[189] Ex. Xcel-60 at Sched. 5(b) at 2 (Baumgarten/Doyle Direct); Ex. Xcel-61 at 12 (Doyle Rebuttal).

customers that results in “under-allocating costs to non-regulated affiliates.”[190] The request to use the Number of Employees methodology is not an “over-allocation” to the Company’s Minnesota customers; it is correcting the calculation to eliminate the current under-allocation to the Company’s Minnesota customers that occurs because of the use of the FTE Hours methodology.[191] Therefore, using the Number of Employees methodology will better ensure that Minnesota customers pay for the Company’s cost to furnish service to the Minnesota regulated electric utility.

As the record evidence demonstrates, the concerns that led to the Commission in 2011 to select the FTE Hours methodology are no longer valid and the Commission should reconsider its decision in this case to deny the Company’s request to use the Number of Employees methodology in lieu of the FTE Hours methodology. The Number of Employees method is appropriate to ensure (1) proper allocation of employee time to support the regulated Minnesota operating company and (2) that neither the non-regulated affiliates nor other operating companies are subsidizing the costs to support the regulated Minnesota operating company.

D. Income Tax Tracker

The Order unreasonably denies Xcel Energy’s request to amortize its income tax tracker and recover costs arising from past income tax audits. In doing so, the Order mischaracterizes the Company’s request and misstates the Company’s and Commission’s past practice. In denying the Company’s request, the Order refers generally to a

---

[190] Ex. DOC-21 at 57-58 (Campbell Direct).
[191] Ex. Xcel-61 at 7 (Doyle Rebuttal).

Commission concern with "the equity of utilities generally using deferred accounting to track increases but not decreases in costs outside of a rate case (thus likely benefiting the utility over ratepayers)."[192] However, the record of this proceeding demonstrates the relatively long-standing practice of Xcel Energy in its general rate cases to *either* return to customers *or* recover in rates, income tax amounts resulting from IRS and Minnesota Department of Revenue audits.[193] The Company acknowledges that allowing amortization of the impacts of these audits in this case would result in a net increase in the Company's revenue requirement. However, whether the Company collects or returns funds to its customers through this amortization process varies from case to case. For example, in Docket No. E-002/GR-10-971, the Company provided a net benefit to customers of approximately $3.6 million, and in Docket No. E-002/GR-12-961, the Company collected a net amount of approximately $1.3 million. In this case, the Company proposed to amortize and recover net audit tax credits and debits over the three-year 2022-2024 MYRP.[194] That request is reasonable, fully supported in the record and should be approved.[195]

The Order also implies that the Company needed to request deferred accounting, in order to preserve this issue for the rate case. Again, that requirement does not comport with past practice. Moreover, to the extent deferred accounting approval is needed anew in each case, factors supporting deferred accounting are applicable here. The amounts at

---

[192] Order at 35.
[193] Ex. Xcel-79 at 90 (Halama Direct).
[194] Ex. Xcel-79 at 90 (Halama Direct).
[195] Ex. Xcel-82 at 51 (Halama Rebuttal).

issue are undisputed. Additionally, income tax audits are outside the Company's control, and both the timing and outcomes of audits are necessarily unpredictable.[196] Moreover, public policy supports permitting the deferral. Allowing the Company to true-up income tax amounts supports the Company's utilization of tax interpretations that minimize tax liability for customers; if the Company were not allowed to recover audit differences, it would be better off being less aggressive on tax policy to ensure it did not under-recover income tax amounts from customers.[197] Therefore, the Company requests the Commission reconsider this issue and approve the amortization and recovery of these undisputed income tax expenses.

IV. THE LAW DOES NOT PERMIT THE COMMISSION TO DENY XCEL ENERGY RECOVERY OF THE COSTS ASSOCIATED WITH FINANCIAL BENEFITS PROVIDED BY THE COMPANY TO ITS MINNESOTA CUSTOMERS

Xcel Energy also respectfully requests that the Commission reconsider its decision regarding the Company's prepaid pension asset and include the value of that asset in its rate base. Alternatively, the Company requests the Commission adopt the ALJ recommendation to require the Company to recalculate its qualified pension expense without applying the expected return to the prepayment portion of the pension trust.[198]

---

[196] Ex. Xcel-82 at 52 (Halama Rebuttal).
[197] Ex. Xcel-82 at 52 (Halama Rebuttal).
[198] ALJ Report at Findings 316-317 (emphasis added).

Under standard ratemaking practice, a utility is allowed to earn a fair and reasonable return on its investments made to provide utility service to its customers.[199] Xcel Energy has made such investments in its qualified pension trust, as required by federal law.[200] The record of this proceeding establishes conclusively that, over the life of Xcel Energy's qualified pension plan, the Company has contributed more dollars to the plan than it has recognized in its actuarially calculated pension expense (which is what it has recovered from customers).[201] This has created a prepaid pension asset - an asset funded by Company shareholders, that provides significant benefits to customers in the form of reduced pension expense,[202] increases the Company's ability to attract and retain both bargaining and non-bargaining employees by providing a better funded pension trust,[203] and that federal law dictates can only be used for the payment of benefits and plan expenses.[204] Denial of a return on this significant shareholder-provided asset (over $200 million on a total company basis for each year of the MYRP[205]), violates the *Hope* and *Bluefield* standards, adopted by the Minnesota Supreme Court in *Hibbing*, and must be reconsidered.

The Order's denial of any recovery for the prepaid pension asset also stands in contrast to the treatment provided to the Company and its parent company utility affiliates

[199] Minn. Stat. § 216B.16, subd. 6; *see also Bluefield*, 262 U.S. at 692 (stating that a "public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public.").
[200] *See* Ex. Xcel-57 at 62, 66-67 (Schrubbe Direct).
[201] *See* Ex. Xcel-57 at Schedule 13 (Schrubbe Direct).
[202] Ex. Xcel-57 at 72-75 (Schrubbe Direct).
[203] *Id.* at 68.
[204] Ex. Xcel-57 at 63, 97 (Schrubbe Direct).
[205] Ex. Xcel-57 at Schedule 13 (Schrubbe Direct).

in every other state jurisdiction in which they provide utility service.[206] In each of these states, the prepaid pension asset is included in rate setting.[207] While the Colorado Public Utilities Commission (CPUC) denied the Company's affiliated company PSCo rate base treatment for this asset in a 2018 decision, PSCo appealed the decision and was joined on the prepaid pension asset issue by the International Brotherhood of Electrical Workers, Local #111 (IBEW). The court overturned CPUC on this issue, stating that it agreed with PSCo and IBEW that denial of rate base treatment for this asset "will deprive [PSCo] and its shareholders of their constitutional right to earn a reasonable return on their investment," and citing *Hope* and *Bluefield*.[208]

In its attempt to justify exclusion of the prepaid pension asset from rate base, the Order relies largely on rationale from past Commission decisions, stating:

> In previous rate cases, the Commission has rejected the inclusion of prepaid pension asset in rate base because it is distinct from assets typically included in rate base. It already earns a return in the form of investment returns, it fluctuates in value, and it is misleading in that it does not account for the funding status of the entire pension plan. Pension-plan assets and benefit obligations fluctuate up and down depending on funding, market conditions, and amendments to the plan. The balances in the prepaid pension asset are temporary and fundamentally different from typical rate-base assets on which the Company earns a return. The Commission concludes that this reasoning is still sound.[209]

---

[206] Affidavit of Christopher Haworth, ¶7.
[207] *Id.*
[208] *Public Service Company of Colorado v. Public Utilities Commission of the State of Colorado,* Case No. 19CV31427, District Court, City and County of Denver, Order at 11-12 (Mar. 12, 2020) (Order attached as Attachment 8).
[209] Order at 26.

These past rationales find no support in the record of this proceeding and cannot justify exclusion of the Company's prepaid pension asset from rate base. First, in asserting that the prepaid pension asset is "distinct" from the kind of assets the Commission has included in rate base, the Order states that the prepaid pension asset "already earns a return in the form of investment returns." However, the Company's undisputed testimony in this proceeding demonstrated that *every dollar of return generated by the prepaid pension asset is provided to customers in the form of reduced pension expense and shareholders have no access* to these returns.[210] The accounting standards governing pension costs require the application of an Expected Return on Assets (EROA) to the value of the assets in the pension trust, which is then *subtracted from the annual pension cost* borne by customers.[211] Therefore, while it is true that this asset earns investment returns, the implication that such investment returns appropriately benefit the Company's shareholders who are funding the prepaid pension asset is plainly false.

Second, the Order claims that the prepaid pension asset balance is "temporary" and "fluctuates in value." Certainly, the prepaid pension asset balance fluctuates in that contributions are made, increasing the value of the asset and pension expense is recognized, decreasing the value. However, *every* asset balance is "temporary" and "fluctuates in value," in that every asset balance rises and falls as new investments are made (increasing

---

[210] Ex. Xcel-57 at 63, 68-73, 97 (Schrubbe Direct); Ex. Xcel-58 at 6-8 (Schrubbe Rebuttal).
[211] Ex. Xcel-57 at 68-73 (Schrubbe Direct). The prepaid pension asset further benefits customers by reducing the Company's required Pension Benefit Guarantee Corporation (PBGC) premiums. *Id.* at 73-76.

the balance) and depreciation expense is recognized (decreasing the balance).[212] Additionally, the record establishes that the Company accounts for its prepaid pension asset balance by using a 13-month average, as it does for other assets included in rate base.[213] Finally, the record demonstrates that during the term of the MYRP, the value of the prepaid pension asset is not randomly fluctuating up and down (as the Department's testimony suggests), but growing from approximately $120 million for the Minnesota electric jurisdictional operations in 2022, to approximately $137 million in 2024.[214]

Third, the Order states that the prepaid pension asset "is misleading in that it does not account for the funding status of the entire pension plan." The Order does not explain this statement in any way, but the record demonstrates that the funded status of the pension trust and the prepaid pension asset are *two separate and distinct things*. The funded status of the pension trust measures whether the pension trust has enough assets to pay all of its accumulated obligations to plan beneficiaries. If the pension trust does not presently have sufficient assets to pay all accumulated obligations to plan beneficiaries, the plan is underfunded; if it presently has more than enough assets to pay all of its accumulated obligations to plan beneficiaries, the plan is overfunded.[215] But whether the plan is over- or underfunded has *no bearing* on whether or not shareholders have provided funds in the form of a prepaid pension asset. As the Company explained:

> Changes in the market value of the pension-plan assets and changes in the benefit obligations affect the funded status of the pension plan, but they have

---

[212] Ex. Xcel-57 at 79 (Schrubbe Direct); Ex. Xcel-58 at 14 (Schrubbe Rebuttal).
[213] Ex. Xcel-57 at 79 (Schrubbe Direct); Ex. Xcel-58 at 14 (Schrubbe Rebuttal).
[214] Ex. Xcel-57 at Schedule 13 (Schrubbe Direct).
[215] Ex. Xcel-58 at 16-18 (Schrubbe Rebuttal).

> *no effect* on the amount of the prepaid pension asset. . . . [T]he prepaid pension asset measures the difference between the cumulative pension contributions and the cumulative recognized pension expense. The fact that the plan's funded status changes periodically has *no logical connection* to amount of the prepaid pension asset or the issue of whether the prepaid pension asset should be included in rate base.[216]

In addition to restating past rationale for denying rate base treatment of this asset, the Order states, without explanation, that the Commission believes "the Department has raised valid concerns about whether Xcel's accounting proposal would be consistent with Generally Accepted Accounting Principles."[217] The Company vigorously objects to this insinuation that it is not following Generally Accepted Accounting Principles in its accounting of the prepaid pension asset.

Presumably, the Order is relying on arguments made by the Department, and thoroughly refuted by the Company, that attempted to cast doubt on the existence of the prepaid pension asset because "the term 'prepaid pension asset' is not promulgated under Generally Accepted Accounting Principles (GAAP), is not defined by or a component of any current accounting standard and is not an account that Xcel [Energy] is required to track or disclose in its financial statements."[218] However, as Xcel Energy Area Vice President of Financial Analysis and Planning, Mr. Richard Schrubbe, explained:

> To the extent that [the Department] is suggesting that the recording of a prepaid pension asset on a company's balance sheet is somehow inconsistent with GAAP, I disagree. The Company's prepaid pension asset is the result of a calculation involving GAAP. . . .

---

[216] Ex. Xcel-57 at 79 (Schrubbe Direct); Ex. Xcel-58 at 16-18 (Schrubbe Rebuttal).
[217] Order at 26.
[218] DOC Initial Br. at 48-48, fn. 235, citing Ex. DOC-23 at 28-29 (Campbell Direct).

> [T]he prepaid pension asset represents the difference between the cumulative recognized pension expense and the Company's cumulative contributions to the pension trust. The Company has calculated its pension expense in accordance with FAS 87, which is one of the Generally Accepted Accounting Principles. In addition, the Company has made contributions in compliance with ERISA and the Pension Protection Act, as required by federal law. Thus, the Company's prepaid pension asset results from compliance with both GAAP and federal law.[219]

Mr. Schrubbe further explained that Xcel Energy's prepaid pension asset appears on the balance sheet, as the sum of: (1) the Company's total unrecognized asset or liability gains or losses, and (2) the funded status of the pension trust. He also explained that it is possible to quantify the prepaid pension asset of *any* company that has a defined benefit pension plan by adding those two numbers from the balance sheet. The Company discloses its prepaid pension asset in its annual 10-K filing, as required of every company with a defined benefit plan.[220] Finally, the Company's financial statements are audited annually by Deloitte, the entity responsible for ensuring the Company is complying with GAAP, and Deloitte has never questioned the Company's statements showing its prepaid pension asset.[221] In short, the Department's concerns lack any merit.

The record of this proceeding establishes:

1. Shareholders have funded a prepaid pension asset for the Company;[222]
2. This prepaid pension asset arose due to factors outside the Company's control;[223]

---

[219] Ex. Xcel-58 at 26 (Schrubbe Rebuttal).
[220] Ex. Xcel-58 at 22-23 (Schrubbe Rebuttal).
[221] Ex. Xcel-58 at 24 (Schrubbe Rebuttal).
[222] Ex. Xcel-57 at 80-84 (Schrubbe Direct).
[223] *Id.* at 66.

3. Standard ratemaking treatment provides for rate base treatment of shareholder prepayments such as the prepaid pension asset, consistent with the *Hope* and *Bluefield* standards and consistent with the treatment provided by other Xcel Energy Inc. jurisdictions and this Commission in the Company's 2013 rate case;[224]

4. The prepaid pension asset benefits both the Company and customers by helping the Company attract and retain employees;[225]

5. Recovery of operating costs related to pension expenses does not compensate the Company in any way for the prepayments that have created the prepaid pension asset;[226] and

6. Xcel Energy's prepaid pension asset provides significant financial benefits to customers, far exceeding the value to shareholders of including the net prepaid asset in rate base.[227]

On these facts, Xcel Energy has demonstrated the reasonableness of including the net prepaid pension asset in the Company's rate base, for the purposes of setting rates in this proceeding. Providing this rate base treatment is not only consistent with the law, but with sound public policy. As the Company explained, the plan is currently 97 percent funded - significantly higher than its past funding status - in part due to the prepaid pension asset.[228] Allowing a return on the prepaid pension asset provides an incentive for the Company to maintain a strong funded status.[229] In contrast, if the Company chose to satisfy only the minimum funding requirements set forth in law, the funded status could suffer, meaning benefit restrictions and other adverse effects such as Pension Benefit Guaranty

---

[224] *Id.* at 63; Ex. Xcel-58 at 7-8 (Schrubbe Rebuttal); Affidavit of Christopher Haworth, ¶7.
[225] Ex. Xcel-57 at 67 (Schrubbe Direct); Ex. Xcel-58 at 8 (Schrubbe Rebuttal).
[226] *Id.* at 78.
[227] *Id.* at 70-73; Ex. Xcel-58 at 8-9 (Schrubbe Rebuttal).
[228] Ex. Xcel-58 at 18-20 (Schrubbe Rebuttal).
[229] Ex. Xcel-58 at 19 (Schrubbe Rebuttal).

Corporation premiums.[230] For all of these reasons, the Company asks that the Commission reconsider the Order and provide for inclusion of its net prepaid pension asset in rate base.[231]

In the alternative, the Company requests the Commission reconsider the Order and adopt the ALJ recommendation to require the Company to recalculate its qualified pension expense without applying the expected return to the prepayment portion of the pension trust.[232] This treatment would at least recognize that the Company has provided contributions to the pension trust in excess of its annual pension expenses, providing substantial financial benefits to customers but no recognition of this shareholder contribution.[233] To address this disparity, the Company recommended that:

> if the Commission grants the [Department's] and XLI's request to exclude the prepaid pension asset from rate base, the Commission should also *direct the Company to recalculate qualified pension expense without applying the expected return to the prepayment portion of the pension trust*. That will increase the amount of pension expense included in rates, but it will avoid the inequity of customers earning a return on the Company's cash investment without paying a corresponding return on it.[234]

[230] Ex. Xcel-58 at 19-20 (Schrubbe).
[231] The Company has also recognized (i.e. recovered from customers) more retiree medical, non-qualified pension and post-retirement benefits expense than it has contributed to those plans, resulting in unfunded liabilities – essentially a customer prepayment. As the Company originally proposed, this unfunded liability should also be included for rate setting purposes, decreasing rate base. *See* Ex. Xcel-57 at 59-60, 65 (Schrubbe Direct).
[232] ALJ Report at Findings 316-317 (emphasis added).
[233] *See* Ex. Xcel-57 at 68-76 (Schrubbe Direct); Ex. Xcel-58 at 7-9 (Schrubbe Rebuttal).
[234] Ex. Xcel-58 at 32 (Schrubbe Rebuttal).

Adopting this alternative ratemaking treatment, as recommended by the ALJ, would put customers in the exact position they would be otherwise be in, had the Company's shareholders not made the additional contributions to the trust fund.

V. THE ORDER RUNS COUNTER TO SOUND PUBLIC POLICY IN ITS TREATMENT OF CUSTOMER CHARGES AND THE SALES TRUE-UP

Rate design decisions invoke the Commission's quasi-legislative authority and allow for consideration of a variety of non-cost and public policy factors.[235] However, the Commission's consideration of rate design issues is not without constraints. Minnesota law requires that rates shall not "be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of customers."[236] By requiring unprecedented reductions in Xcel Energy's residential and small business customer charges, the Order leads to unreasonable rates and, when combined with the imposition of a three percent "hard cap" on the Company's sales true-up,[237] runs counter to sound public policy and may deny the Company the ability to recovery its necessary revenues. The Company requests the Commission reconsider both of these decisions.

---

[235] *St. Paul Area Chamber of Commerce*, 251 N.W.2d at 358.
[236] Minn. Stat. § 216B.03.
[237] The sales true-up is not a rate design issue, but a revenue recovery issue requiring the Commission to act in its quasi-judicial capacity. However, the Petition discusses it here, given its connection to the Commission's decisions on customer charges.

A. The Commission's Reduction Of The Residential And Small General Service Customer Charges

The Commission's Order accurately acknowledges that the fixed monthly charge billed to each customer in the class, or the "customer charge," is "an important component of the Company's Residential and Small General Service rates by *facilitating recovery of the costs caused by each customer that do not vary with the amount of energy used*."[238] Yet, if these costs are not fully recovered through the fixed customer charge, then the costs will be incorporated into the variable energy charge.[239] In this way, any decrease to the customer charge is offset by a direct and necessary increase in the variable energy charge that will adversely impact certain customers within the class. The Commission's Order setting the customer charge for Residential and Small General Service customers at $6.00 per month will result in unreasonably preferential, unreasonably prejudicial, and discriminatory rates that are not applied consistently among a class of customers due to this corresponding increase in the variable demand charge. Furthermore, the Company asserts that such a reduction in the customer charge is not consistent with sound public policy and the Company is not aware of a single instance in the Commission's near 50 year history where the Commission has reduced the basic residential customer charge for any utility.

1. The Company's Hybrid Class Cost Of Service Study And Marginal Cost Study Of Customer And Local Distribution Costs Are The Best

---

[238] Order at 116.
[239] *See* Order at 116-17.

Indicators In The Record Of The Appropriate Residential And Small General Service Customer Charge

The Company's initial proposal of a $1.50 increase to the customer charge, and subsequent reduction to a $1.00 increase in light of the proposals of the intervenor parties, is supported by the record and takes into account important policy considerations. First, the Company's proposal remains substantially below customer-related costs. The Company's hybrid class cost of service study (CCOSS) determined that customer-related costs per month are $19.28.[240] Additionally, and absent from consideration in the Commission's Order, the Company-commissioned Marginal Cost Study of Customer and Local Distribution Costs determined that the marginal customer-related costs per month for the residential class are $22.10.[241] These results show that Xcel Energy's recommended monthly customer charge of $9.00 remains substantially lower than the fixed costs of serving the Residential and Small General Service customer classes, while moving the class closer to the cost of service. The Company's proposed customer charge appropriately strikes a balance between the results of these studies and other rate design objectives, such as rate stability, gradualism, and providing a conservation incentive.

The Commission instead relied on the Department's recommendation to focus exclusively on the Basic Customer CCOSS in setting customer charges.[242] However, reliance on the Basic Customer Method ignores the value of considering multiple CCOSS results, a course of action the Commission adopted when considering the classification and

---

[240] Ex. Xcel-91 at 2 (Paluck/Peterson Rebuttal).
[241] Ex. Xcel-89 at 21, Sched. 7 (Paluck/Peterson Direct).
[242] Order at 117.

allocation of distribution costs.[243] In fact, not only did the Commission consider multiple CCOSS results, it further directed the Company to file multiple CCOSSs classifying and allocating distribution system costs in its next rate case.[244] By considering only the Basic Customer Method for one aspect of this case, the Commission excluded consideration of certain fixed costs that other CCOSSs and marginal costs studies demonstrate are necessary for providing service to Residential and Small General Service customers. In turn, because the Basic Customer Method cost projections do not adequately capture all relevant fixed costs, those costs must be recovered through the variable energy rate. This causes higher energy use customers (many of whom are also lower-income customers) to bear a greater share of costs that are more appropriately recovered uniformly from all customers in the class.

2. Minnesota Law And Sound Public Policy Support Do Not Support A Reduction Of The Residential And Small General Service Customer Charge

Minnesota law requires that, "[t]o the maximum *reasonable* extent, the commission shall set rates to encourage energy conservation and renewable energy use."[245] The Commission asserts that this statutory mandate supports its decision to lower the customer charge for Residential and Small General Service customers to $6.00. However, setting the customer charge at $6.00 is not reasonable in light of the mandate that rates not "be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be

[243] Order at 105.
[244] Order at 105.
[245] Minn. Stat. § 216B.03 (emphasis added).

sufficient, equitable, and consistent in application to a class of customers."[246] The Commission's unprecedented decision to lower the customer charge does not appropriately balance the goal of energy conservation with the mandate for equitable and consistent application of rates among the customer class.

As discussed above, by lowering the customer charge, the fixed monthly costs of serving each customer in the class are instead recovered through an increase in the variable energy charge. The result is that customers with higher than average monthly electric usage - such as customers who live in households with large families, customers who rent and thereby cannot invest in energy efficiency or other energy savings upgrades to their residences, customers who operate home medical equipment, and customers who work from home - are disproportionately impacted by the variable energy charge increase. The result is an inequitable and inconsistent rate that unreasonably prefers customers who can reduce energy consumption and discriminates against those customers who cannot. As such, the Commission's decision creates unreasonably preferential, unreasonably prejudicial, and discriminatory rates.

Further, the Commission's assertion that higher fixed charges discourage energy conservation is undermined by the likelihood that lowering the customer charge may actually increase the costs of conserving energy and renewable energy usage.[247] The Commission's position only considers encouraging energy conservation from the lens of causing less electricity usage. However, when considering energy conservation from a

---

[246] *Id.*
[247] Order at 116-17.

broader perspective, the Commission's decision may discourage actions that have a greater effect on overall energy conservation, such as the adoption of beneficial electrification. Higher variable energy charges may prevent customers from switching to electric stoves, water heaters, dryers, space heating, and vehicles. Not only does switching to beneficial electrification result in an overall lower energy usage when viewed from this broader perspective, it also increases the amount of necessary technologies that can be powered by renewable energy resources. The Commission's decision to lower the customer charge does not maximize energy conservation as required by Minnesota law, and is contrary to Minnesota state policies promoting renewable energy.

The Company requests that the Commission reconsider its decision to lower the customer charge to $6.00, and asks the Commission to approve the Company's proposal of a $9.00 customer charge in order to properly allocate the fixed costs of service for Residential and Small General Service customers among the respective customer classes.

B. Sales True-Up

Decoupling mechanisms such as a sales true-up are "designed to separate a utility's revenue from changes in energy sales" in order to "reduce a utility's disincentive to promote energy efficiency."[248] The Commission correctly acknowledges, as it has in the past, that "the imperfect nature of [sales] forecasts can justify a sales true-up that corrects for inaccurate sales forecasts through refunds and surcharges to account for the difference

[248] Minn. Stat. § 216B.2412; Order at 131.

in forecasted and actual revenues."[249] The Company's proposed sales true-up for the 2023 and 2024 plan years, modeled on the previously Commission-approved 2021 sales true-up mechanism, achieves this goal.[250] The Company's proposal provides an offset between the annual differences in actual base rate revenue from the revenue level approved by the Commission.[251] Xcel Energy's proposal would treat the final authorized base revenues in each year of the current rate case as a baseline, and the authorized base revenues for 2024 would serve as the baseline for years beyond the 2024 plan year.[252]

The Company's proposed sales-true up appropriately serves a two-fold function that protects ratepayers and the Company alike. If the Company sees increased sales over and above the Commission-approved sales forecasts, ratepayers will receive a refund.[253] On the other hand, if the Company's pursuit of conservation initiatives achieves a decrease in sales compared to the Commission-approved forecasts, the Company continues to receive the recognized and approved revenue requirement to ensure it meets the cost of providing service and receives the Commission-approved rate of return.[254] The Company's proposal is further supported by the reality that a MYRP increases the risk that the impact of future events - both known and unknowable - will impact sales in unforeseen ways. The Company's sales true-up balances these risks over the term of the MYRP, and

---

[249] Order at 134; *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of 2021 True-Up Mechanisms*, Docket No. E-002/M-20-743, ORDER APPROVING TRUE-UP ADJUSTMENTS at 3 (Aug. 5, 2022).
[250] Ex. Xcel-89 at 12 (Paluck/Peterson Direct); *see* Docket No. E-002/M-20-743.
[251] Ex. Xcel-89 at 12 (Paluck/Peterson Direct).
[252] Ex. Xcel-89 at 14 (Paluck/Peterson Direct).
[253] Ex. Xcel-23 at 15 (Liberkowski Rebuttal).
[254] Ex. Xcel-23 at 15 (Liberkowski Rebuttal).

appropriately allocates those risks between ratepayers and the Company. Ratepayers will experience both short-term and long-term benefits if the Company's conservation initiatives are successful, the Company will experience the benefit of having sufficient revenue for the duration of the MYRP to implement these initiatives, and both ratepayers and the Company will experience rate stability and predictability.

1. Minnesota Law And Sound Public Policy Support Do Not Support A Three Percent "Hard Cap" On The Company's Sales True-Up

As recognized by the Commission, the purpose of a sales true-up mechanism is in line with the statutory goal of "separate[ing] a utility's revenue from changes in energy sales" in order to reduce a utility's disincentive to promote energy efficiency.[255] Yet, the Commission's decision to impose a three percent "hard cap," as proposed by the Department, is contrary to this statutory purpose. The Commission's decision bars the Company from recovering amounts in excess of three percent of the Commission-approved sales forecasts, while simultaneously imposing no such bar on refunds to ratepayers in the event of higher-than-expected sales.[256] The result is that the Commission's decision does not fully decouple sales from revenues. In turn, this acts as a disincentive to the Company to aggressively pursue energy conservation, thus defeating the statutory goal that permits such mechanisms in the first place.[257]

---

[255] Order at 131 ("'The purpose of decoupling is to reduce a utility's disincentive to promote energy efficiency.' A sales true-up similarly allows a utility to surcharge or refund customers to the extent that actual sales differ from forecasted sales.") (quoting Minn. Stat. § 216B.2412).
[256] Order at 132.
[257] Ex. CEO-1 at 33 (Nelson Direct); Minn. Stat. § 216B.2412.

Decoupling and sales true-up mechanisms are inherently designed to provide short-term revenue stabilization to the benefit of both ratepayers and utilities to allow utilities to pursue grid stabilizing and conservation efforts. This policy recognizes that ratepayers will realize long-term benefits - in this case well beyond the MYRP term - by providing a utility with Commission-approved revenues to enact efforts that, by their very nature, reduce sales. The Commission's decision to adopt the Department's proposed "hard cap" penalizes the Company if its efforts to increase conservation, promote demand response, and pursue other customer benefiting measures succeed in reducing energy consumption. The result is that the Company is barred from recovering revenues that the Commission determined are just and reasonable *in the same order*, if the Company succeeds in reducing revenues by more than three percent.

The Commission's assertion that, "absent a hard cap," the risk of any unforeseen drop in sales "is borne entirely by ratepayers" misconstrues the risk sharing function of a decoupling or sales true-up mechanism.[258] As discussed, the sales true-up requires the Company to refund any sales in excess of the approved sales forecast. The Company bears the risk of foregoing potential recovery in excess of the approved forecast if the forecast was too low, in exchange for the opportunity to receive the Commission-approved sales revenue when sales fall below the forecast.[259] In this way, the sales true-up effectively *balances* the risk between the Company and the ratepayer. The Commission's decision not only reframes the risk sharing as one in which the risk of sales lower than approved

---

[258] Order at 134.
[259] Ex. Xcel-23 at 15 (Liberkowski Rebuttal).

forecasts must be borne by the Company, but also asserts that this is appropriate to mitigate against "an unforeseen drop in sales."[260] Yet, achieving reductions in sales through pursuit of conservation is the entire point of a decoupling or a sales true-up mechanism.

As an alternative, Intervenor Clean Energy Organizations (CEOs) proposed a "soft cap" that would limit annual surcharges to three percent to protect ratepayers from a significant year-over-year increase, but that would still permit the Company to recover Commission-approved revenues by rolling over any surcharges in excess of three percent into the following year's adjustment.[261] As the CEOs correctly recognized, the Commission's decision to adopt a "hard cap" only limits rate increases, but does not promote the statutory policy of promoting energy conservation.[262]

The Company urges the Commission to reconsider its decision to impose a three percent "hard cap" on the Company's sale true-up mechanism, as the decision disincentivizes the company to pursue energy conservation goals by forcing the Company to realize losses when these efforts succeed in reducing volumetric sales.

2. The Substantial Reduction In The Company's Residential And Small General Service Customer Charge And Adoption Of A Three Percent "Hard Cap" Unreasonably Increases The Company's Risk Of Under-Recovery

The Commission's decision to reduce the Residential and Small General Service customer charge, when combined with decision to adopt a three percent "hard cap," unreasonably compounds the Company's risk of under-recovery of its

[260] Order at 134-35.
[261] Ex. CEO-1 at 33 (Nelson Direct).
[262] CEO Initial Br. at 23.

Commission-approved revenues. Indeed, no utility in Minnesota faces the scenario now faced by the Company - an unprecedented and substantially reduced customer charge, together with a "hard cap" on its decoupling mechanism or sales true-up. As discussed, the reduction in the fixed customer charge results in a greater percentage of the Company's required revenues dependent on variable volumetric sales. Although the Company makes every effort to ensure that its sales forecasts are reliable and accurate, no sales forecast can be perfectly accurate. Variations between the forecasts and actual sales are inevitable. With the Commission's unprecedented reduction in the customer charge, *these variations will necessarily become larger*. This is further compounded by the MYRP term and the increased difficulty in forecasting future events the more removed in time. The one-sided "hard cap" ensures that only the Company bears the risk of lower than forecasted sales. The Commission's decisions unreasonably decrease revenue stability, decrease ratepayer bill stability, and increase the Company's risk of failing to recover the Commission-approved revenues.

The Commission acknowledges that it is a regulatory principle that a utility be permitted "a reasonable opportunity-not a guarantee-to recover its revenue requirement."[263] Yet, the Commission's decisions on these two issues creates an *unreasonable* risk that the Company will not even have the *opportunity* to recover revenue at the Commission-approved level. The Company requests that the Commission reconsider

[263] Order at 135.

its decision to impose a three percent “hard cap” on the Company’s sales true-up mechanism due this unreasonable risk.

VI. REQUEST FOR CLARIFICATION

In its Initial Filing, the Company recommended waiving the credit card fee for customers, beginning in 2024.[264] The Company noted this would align credit card customers’ experience with the Company with their experience in countless other transactions, where the credit card processing fee is invisible to the customer and is incorporated into the merchant’s pricing.[265] The Company forecast the cost of this program for 2024 and incorporated that cost into its revenue increase request.[266] No other party filed testimony on this topic and, since it was never contested, the ALJ did not address it in the Report and the Company’s forecasted 2024 cost has been included in the revenue requirements provided by the Company in response to the Report and in response to the Order. To avoid any potential confusion, the Company requests that the Commission clarify that the Company’s proposal to begin waiving credit card fees for its customers in 2024 is approved.

---

[264] Ex. Xcel-52 at 7, 15-16 (Cardenas Direct); Ex. Xcel-79 at 78-79, Schedules 11 and 12 (Halama Direct); Ex. Xcel-8, Section VIII Adjustments, Tab A19 Credit Card Auto Pay.
[265] Ex. Xcel-52 at 15 (Cardenas Direct).
[266] Ex. Xcel-52 at 7, 15-16 (Cardenas Direct); Ex. Xcel-79 at 78-79, Schedules 11 and 12 (Halama Direct); Ex. Xcel-8, Section VIII Adjustments, Tab A19 Credit Card Auto Pay.

CONCLUSION

Xcel Energy respectfully requests that the Commission reconsider and reverse or modify its Order, regarding the issues discussed in this Petition.

Dated: August 7, 2023

WINTHROP & WEINSTINE, P.A.

By: */s/ Eric F. Swanson*

Eric F. Swanson
Elizabeth H. Schmiesing
Christopher J. Cerny

Winthrop & Weinstine, P. A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400

ATTORNEYS FOR NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY

26942806v2