CAH 21-2500-40336
MPUC E-002/AA-22-179

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges	**ORDER DENYING MOTION FOR PARTIAL SUMMARY DISPOSITION**

TO: All Persons on the Official Service List:

This matter came before Administrative Law Judge Kimberly Middendorf upon a motion for partial summary disposition (Motion).[1]

Eric Swanson, Winthrop & Weinstine, P.A., appeared on behalf of Northern States Power Company, d/b/a Xcel Energy (Xcel).

Katherine Arnold and Greg Merz, Assistant Attorneys General, appeared on behalf of the Minnesota Department of Commerce's Division of Energy Resources (DOC-DER).

Peter Scholtz, Assistant Attorney General, appeared on behalf of the Minnesota Office of the Attorney General, Residential Utilities Division (OAG).

Brian Edstrom, Senior Regulatory Advocate, appeared on behalf of Citizens Utility Board of Minnesota (CUB).

Amber Lee, Stoel Rives, LLP, appeared on behalf of Xcel Large Industrials (XLI).

Jorge Alonso appeared on behalf of the Public Utilities Commission (PUC or Commission).

DOC-DER, OAG, CUB, and XLI (Joint Intervenors) filed the Motion on July 2, 2025. On July 17, 2025, Xcel filed its response opposing the Motion, and the Motion record closed.[2]

Based upon the submissions of the parties and the motion record, and for the reasons explained in the attached memorandum,

---

[1] *See* Joint Intervenors' Notice of Motion and Motion for Partial Summary Disposition (Jul. 2, 2025) (eDocket No. 20257-220598-02).
[2] *See* Xcel Energy Memorandum in Opposition to Joint Intervenors' Motion for Partial Summary Disposition (Jul. 17, 2025) (eDocket No. 20257-221097-01) (Xcel Mem.).

IT IS HEREBY ORDERED THAT:

1. The Joint Intervenors' Motion is **DENIED.**

2. This matter shall proceed to hearing as set forth in the November 27, 2024 First Prehearing Order.

August 13, 2025

KIMBERLY MIDDENDORF
Administrative Law Judge

MEMORANDUM

I. Procedural Background and Scope

On March 1, 2024, Xcel or the Company filed its Annual Fuel Clause True-Up and Compliance Report for fuel forecast and fuel-cost charges approved for the 2023 calendar year, which also included information to comply with the requirements for annual automatic adjustment of charges reports.[3] The Commission approved the Report, except as to fuel replacement costs Xcel incurred as a result of an unplanned outage at the Prairie Island Nuclear Generating Plant (PINGP) in 2023.[4]

The outage occurred when Xcel's workers struck and damaged an underground cable while excavating for an unrelated project.[5] In October 2023, Xcel began replacing power cables between the PINGP and a nearby substation.[6] While performing excavation, Xcel's workers drilled through the Plant's control cables.[7] The control-cable damage caused the PINGP to shut down.[8] As required by law, Xcel filed a report with the Nuclear Regulatory Commission (NRC) explaining the incident.[9] Xcel's report identified several causes: Xcel failed to adequately oversee its workers; Xcel failed to use ground-penetrating radar to locate cables; Xcel failed to provide up-to-date work plans and construction drawings; and Xcel failed to provide maps depicting all other underground cables near the excavation path.[10]

To remedy the damage, Xcel considered the options of repairing and fully replacing the control cables.[11] For a host of reasons, Xcel concluded that repairing the cables was not feasible.[12] According to Xcel, replacing the cables was the only feasible way to fix the damage consistent with the "best interest[s] of the Prairie Island plant" and "customers."[13] The PINGP was shut down for 103 days for the cable replacement.[14] During the outage, Xcel purchased replacement power to continue supplying electricity to its customers. Xcel passed these replacement power costs to customers.[15]

---

[3] ORDER APPROVING 2023 FUEL CLAUSE TRUE-UP REPORT, REQUIRING ADDITIONAL FILINGS, FINDING IMPRUDENCE, & NOTICE OF AND ORDER FOR HEARING at 4-5 (Nov. 15, 2024) (eDocket No. 202411-211999-01) (Referral Order) at 3.
[4] Referral Order at 11.
[5] Referral Order at 2.
[6] Referral Order at 3.
[7] Referral Order at 3; Exhibit (Ex.) XCEL-___ at 5 (Krug Direct) (eDocket No. 20255-218509-05).
[8] Referral Order at 3; Ex. XCEL-___ at 5 (Krug Direct) (eDocket No. 20255-218509-05).
[9] Referral Order at 3; *see* 10 C.F.R. § 50.73.
[10] Referral Order at 3.
[11] Ex. XCEL-___ at 5-6 (Krug Direct) (eDocket No. 20255-218509-05).
[12] Exs. XCEL-___ at 5 (Krug Direct) (eDocket No. 20255-218509-05), XCEL-____ (Hiser Direct) (eDocket No. 20255-218509-04).
[13] Declaration of Richard Dornfeld (Dornfeld Decl.), Ex. B at 4; Ex. C at 3 (eDocket No. 20257-220598-04).
[14] Referral Order at 3.
[15] Referral Order at 3; Ex. XCEL-____ (Detmer Direct) (eDocket No. 20255-218509-02).

The Commission determined Xcel acted imprudently regarding the October 2023 outage at PINGP.[16] The outage occurred because Xcel allowed work to progress in the field without all controls in place that are expected for work at a nuclear plant.[17] The Commission referred the matter to the Court of Administrative Hearings with the expectation that "the parties will thoroughly develop a full record, addressing, at a minimum, the appropriate refund amount due to ratepayers stemming from the lack of prudence regarding the October 2023 outage at PINGP."[18]

To calculate replacement-power costs, Xcel used modeling software to estimate the cost difference between serving customers with and without Prairie Island during the outage period.[19] According to Xcel, the difference between these two models – about $34.3 million – represents the incremental replacement power costs attributable to the outage.[20] Xcel claims that three "offset" categories entitle it to retain almost all the replacement power costs: Avoided 2029 Costs; Supplemental Work; and Performance Adjustment.[21] Xcel calculates the refund as follows:[22]

Replacement Power Costs	$34.3 million
- Avoided 2029 Costs	$21.0 million
- Supplemental Work	$1.8 million
Total Before Performance Adjustment	$11.4 million
x Performance Adjustment	51%
Customer Refund	$5.8 million

The Joint Intervenors oppose Xcel's attempt to shift most of the cost of its imprudence to ratepayers.[23] Each of the parties has a differing position of the appropriate refund amount based upon the party's particular method of calculation.[24]

II. Summary Disposition Standard

[16] Referral Order at 11.
[17] Referral Order at 4-5.
[18] Referral Order at 9; *see also* ORDER DENYING PETITION FOR RECONSIDERATION AND GRANTING REQUEST FOR CLARIFICATION (Jan. 31, 2025) (eDocket No. 20251-214793-01) (Clarification Order) at 4.
[19] *See* Ex. XCEL-___ (Detmer Direct) (eDocket No. 20255-218509-02).
[20] Ex. XCEL-___ at 14-17 (Detmer Direct) (eDocket No. 20255-218509-02).
[21] Xcel Mem. at 5.
[22] Ex. XCEL-___ at 24 (Detmer Direct) (eDocket No. 20255-218509-02).
[23] Joint Intervenor's Memorandum Supporting Partial Summary Disposition (Joint Intervenors' Mem.) (Jul. 2, 2025) (eDocket No. 20257-220598-03).
[24] Referral Order at 6-8; *see, e.g.,* Exs. DOC-____ (Golden Direct) (eDocket No. 20257-220600-02), XLI-___ (Andrews Direct) (eDocket No. 20257-220621-02), OAG-___ (Lee Direct) (eDocket No. 20257-220613-04), XCEL-____ (Krug Direct) (eDocket No. 20255-218509-05).

Summary disposition is the administrative law equivalent of summary judgment.[25] A motion for summary disposition may be granted when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law.[26] Administrative law judges generally follow the summary judgment standards developed in the state district courts when considering motions for summary disposition of contested case matters.[27]

The function of an administrative law judge on a motion for summary disposition, like a trial court's function on a motion for summary judgment, is not to decide issues of fact, but to determine whether genuine factual issues exist.[28] The judge does not weigh the evidence; instead, the judge views the facts and evidence in a light most favorable to the non-moving party.[29]

The moving party has the initial burden to show the absence of any genuine issue regarding any material fact.[30] A fact is material if its resolution will affect the outcome of the case.[31] If the moving party meets the initial burden, then the burden shifts to the non-moving party to prove the existence of any genuine issue of any material fact.[32] A genuine issue is not a "sham or frivolous" one, and it cannot rely on mere allegations or denials.[33]

A genuine issue requires presentation of specific facts demonstrating a need for resolution in a hearing or trial.[34] Summary disposition cannot be used as a substitute for a hearing or trial on the facts of a case.[35] Thus, summary disposition is only proper when no factual issues need to be resolved.[36]

III. Analysis

The Joint Intervenors contend that they are entitled to summary disposition as to two of Xcel's claimed bases for declining to refund the fuel replacement costs incurred due to its imprudence. As the Joint Intervenors observe, the Commission has previously determined avoided costs and performance adjustments are not allowable categories of offsets.[37] This, in their view, supports summary disposition as a matter of law.

---

[25] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2025).
[26] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).
[27] Minn. R. 1400.6600 (2025).
[28] *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).
[29] *Ostendorf v. Kenyon*, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984).
[30] *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).
[31] *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).
[32] *Thiele,* 425 N.W.2d at 583.
[33] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984).
[34] *See* Minn. R. Civ. P. 56.05.
[35] *Sauter*, 70 N.W.2d at 353.
[36] *Id.*
[37] Joint Intervenors' Mem. at 5-8.

Xcel argues that it must be allowed to attempt to prove it is entitled to recover from ratepayers the costs of replacement power it purchased following its imprudence in October 2023. According to Xcel, its testimony is evidence that (i) the restoration work performed reduced future outage time that may occur in 2029 for anticipated repairs (Avoided 2029 Costs), (ii) supplemental work performed during the outage reduced future outage time, again reducing the need for future replacement power costs (Supplemental Work), and (iii) the historical performance of the PINGP was strong compared to industry standards, allegedly saving Xcel customers millions of dollars in power costs (Performance Adjustment).[38]

The Joint Intervenors' arguments are persuasive but cannot overcome the Commission's charge to build a full record. Notably, the Commission could have excluded Avoided 2029 Costs and Performance Adjustments as categorically disallowed as a matter of law, when it ordered a contested case hearing on the broader question of the appropriate amount to be refunded to ratepayers. For example, Xcel asked the Commission to conclude that "[t]o the extent the Commission determines that some refund is warranted, the amount should reflect the units' overall performance compared to other industry participants."[39] Thus, Performance Adjustment was put in issue before the Commission. Instead of excluding this basis as a matter of law, the Commission ordered the parties to "thoroughly develop a full record, addressing, at a minimum, the appropriate refund amount due to ratepayers" without limiting any basis for offsets.[40] In response to DOC-DER's motion for clarification, the Commission underscored its interest in considering "any benefits and offsets" in determining the appropriate amount of any refund.[41]

Moreover, Xcel is correct that despite the Commission's historical disallowance of such costs, the Commission is not bound by its prior decisions.[42] The Minnesota Court of Appeals observed the importance of the evidentiary record in an agency's departure from its prior decisions, noting that "where evidence in the record differs from previous cases, results may differ as well[.]"[43] Although past precedent can predict future outcome, the Commission could determine that Xcel's imprudence somehow benefits customers under the particular facts of the case. Prematurely truncating the record as the Joint Interventors propose limits the Commission's ability to exercise its discretion.

---

[38] Xcel Mem. at 5.
[39] Referral Order at 7.
[40] Referral Order at 8-9.
[41] Clarification Order at 4.
[42] *Petition of N. States Power Gas Utility*, 519 N.W.2d 921, 925 (Minn. Ct. App. 1994) ("[T]he agency is not bound to a rigid adherence to precedent[.]"); *Central Tele. Co. v. Minn. Pub. Util. Comm'n*, 356 N.W.2d 696, 702 (Minn. Ct. App. 1984) ("The Commission is not bound to strict adherence to its precedents . . . [and] may, in fact, believe its findings in [prior cases] were erroneous."); *Peoples Natural Gas Co., a Div. of InterNorth, Inc. v. Minn. Pub. Util. Comm'n*, 342 N.W.2d 348, 352 (Minn. Ct. App. 1983) ("An administrative agency concerned with the furtherance of the public interest is not bound to rigid adherence to precedent.") (internal quotations omitted).
[43] *N. States Power Gas Utility*, 519 N.W.2d at 925.

The Judge appreciates the Joint Intervenors' interest in limiting the squandering of resources. However, it is not clear that the goals of judicial economy and efficient use of the parties' resources would be furthered by granting the Motion. Even if the Motion were granted, an evidentiary hearing still will be needed to determine the Supplemental Work issue. The merits of the Joint Intervenors' arguments are more appropriately considered upon a fully developed record.

For these reasons, the Motion is denied.

K. J. M.