

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Northern  
States Power Company, d/b/a Xcel, for  
Authority to Increase Rates for Electric Service  
in the State of Minnesota

PUC Docket No. E-002/GR-21-630  
OAH Docket No. 22-2500-37994

**REPLY BRIEF OF THE JUST SOLAR COALITION**

January 27, 2023

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## I. INTRODUCTION

In this rate case, Northern States Power Company (“Xcel” or “the Company”) seeks a revenue increase of \$498 million to fund its proposed rates, programs, and investments.<sup>1</sup> With hundreds of pages of briefs supported by thousands of pages of testimony, this case presents a complicated set of interrelated issues for the Commission to consider and decide, and its decisions here will have substantial and long-lasting, intergenerational impacts on all Minnesotans—both Xcel customers and those beyond its service territory. The Commission does not make these decisions, or any of its decisions, divorced from context or history. In fact, the Commission must consider the nuanced concept of the public interest, which it is charged to protect, in only approving rates and charges that are equitable, just, and reasonable. Today the public faces record-high inflation, with many Minnesotans continuing to struggle financially. The record in this case highlights significant energy insecurity and energy burdens, particularly for those who are low-wealth and Black, Indigenous, and People of Color (BIPOC)—a persistent situation rooted in a long history of intergenerational, intersecting, and institutional decisions. The Commission must consider and balance these consumer interests to ensure equitable, just, and reasonable rates. With this flexible balancing framework, the Commission is well equipped to navigate changing circumstances, new technologies, better data, and evolving social policies.

Energy Justice offers the Commission a comprehensive lens through which to understand and apply its “just and reasonable” authority to the evidence of inequities and injustice presented in this case. Put simply, it is not possible for rates to be “equitable” or “just” without considering the inequities and injustices present within the energy system, and how they

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<sup>1</sup> Initial Brief of Northern States Power Company d/b/a Xcel Energy, Docket No. 21-630, at 5 (Jan. 11, 2023) (“Xcel Initial Brief”). Xcel decreased its revenue increase request in rebuttal testimony from its initial approximately \$677 million request, which the JSC cited in its initial brief.

affect, and have historically affected, customers and communities, particularly those who are low-wealth and BIPOC. Given its core responsibility to protect the interests of Xcel's customers, the Commission has a fundamental duty to ensure that all of Xcel's rates, programs, and investments move the utility towards a more just and equitable energy system.

Xcel would have the Commission sideline Energy Justice as an "additional issue" better addressed elsewhere. The Company's position that Energy Justice should be excluded from this proceeding asks the Commission to act in a manner that is inconsistent with its fundamental obligations under Minnesota law. Unlike cost recovery for particular investments or specific rate design proposals, Energy Justice is not an "issue" that can be "decided" in this rate case or any one proceeding. Rather its principles should inform the Commission's and Xcel's decision-making about all of the issues in this case and in all related proceedings. In other words, Energy Justice is not an "additional issue"; it is integral to equitable, just, and reasonable rates.

This rate case will affect the financial health and energy security of Xcel's customers, which in turn impact physical and mental health, safety, and access to other basic necessities in Minnesota communities. The Just Solar Coalition (JSC) has offered specific recommendations designed to promote Energy Justice by bolstering affordability and access to local clean energy and associated decision-making and wealth-building opportunities. The JSC urges the Commission to adopt its recommendations in order to meet its statutory obligations to ensure equitable, just, and reasonable rates for all Minnesotans.

With this framing in mind, and consistent with its positions in its initial brief, the JSC responds to the initial briefs of Xcel and other intervenors.

## II. ENERGY JUSTICE IN THIS RATE CASE

### A. Energy Justice Must Be Incorporated into This Rate Case and All Commission Proceedings, and Should Not Be Considered Separately and in Isolation as Xcel Has Argued.

As the JSC and other intervenors emphasized in their initial briefs, Xcel bears the burden of proof to show that its rate and investment proposals meet Minnesota’s “just and reasonable” standard.<sup>2</sup> The JSC further explained that, to fulfill its statutory duty to set rates that are equitable, just, reasonable, and in the public interest, the Commission should review Xcel’s proposals with an Energy Justice lens.<sup>3</sup> The Commission has considerable discretion to balance social policy factors in determining whether Xcel’s proposals are equitable, just, and reasonable, and that they address the substantial inequities and injustices embedded in the electricity system, as discussed in the JSC’s initial brief and testimony.<sup>4</sup> By recognizing and incorporating these factors into its evaluation, the Commission can build toward a future that aligns with Energy Justice principles. As stated in the JSC’s initial brief, the fundamental goal of Energy Justice is “achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those historically harmed by the energy system,” including low-income and BIPOC communities.<sup>5</sup> To move closer to this vision, it is critical for the Commission to consider Energy Justice in making its decisions in this rate case and all of its proceedings.

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<sup>2</sup> Minn. Stat. § 216B.16; Initial Brief of the Just Solar Coalition, Docket No. 21-630, at 5-6 (Jan. 11, 2023) (“JSC Initial Brief”); Initial Brief of the Minnesota Department of Commerce, Docket No. 21-630, at 7-9 (Jan. 11, 2023) (“DOC Initial Brief”); Initial Brief of the Office of the Attorney General – Residential Utilities Division, Docket No. 21-630, at 8-9 (Jan. 11, 2023) (“OAG Initial Brief”); Initial Brief of the Citizens Utility Board, Docket No. 21-630, at 4-7 (Jan. 11, 2023) (“CUB Initial Brief”); Post-Hearing Brief of the Xcel Large Industrials, Docket No. 21-630, at 7-9 (Jan. 11, 2023) (“XLI Initial Brief”); Initial Brief of the Suburban Rate Authority, Docket No. 21-630, at 3-4 (Jan. 11, 2023).

<sup>3</sup> JSC Initial Brief at 6-13.

<sup>4</sup> *Id.* at 6-7; Ex. JSC-3 at 38-50 (Chan Direct); Ex. JSC-6 at 1-9 (Chan Surrebuttal).

<sup>5</sup> JSC Initial Brief at 1, 11.

Relying on longstanding U.S. Supreme Court precedent, the Citizens Utility Board (CUB) similarly explained that the Commission must balance the interests of the utility, its shareholders, and consumers, and it has broad latitude in doing so.<sup>6</sup> As CUB noted, in *Federal Power Commission v. Hope Natural Gas Co.*, “the Court emphasized that the primary purpose of requiring just and reasonable rates was to ‘protect consumers against exploitation’ at the hands of utilities.”<sup>7</sup> Indeed, Minnesota law explicitly prioritizes consumer interests for the purposes of this balancing test.<sup>8</sup> The Department of Commerce (DOC) similarly highlighted this balancing requirement and, along with CUB and the Office of the Attorney General (OAG), argued that affordability is a critical consumer interest for the Commission to consider in ratemaking.<sup>9</sup>

The JSC strongly agrees. Indeed, the JSC stressed in its initial brief the racial and income disparities in energy insecurity and energy burden in Minnesota, and the role for Xcel and the Commission in addressing these inequities.<sup>10</sup> Energy Justice captures a host of other consumer interests in addition to affordability, including remediating past environmental harms, avoiding future environmental harms, and benefiting from customer- and community-owned clean energy, including through associated local wealth-building opportunities. For all of these issues, utility investments, utility policy, and utility ratemaking are intrinsically linked to whether the economic outcomes, quality of service, and community impacts of our energy system are just and equitable. Conversely, the utility cannot make investments, develop policy, or set rates that

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<sup>6</sup> CUB Initial Brief at 7, 9-12 (citing *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968), *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944), *Fed. Power Comm’n v. Natural Gas Pipeline Co.*, 315 U.S. 575 (1942), and *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. 679 (1923)).

<sup>7</sup> *Id.* at 10 (quoting *Hope Nat. Gas Co.*, 320 U.S. at 610).

<sup>8</sup> *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in Minnesota*, 838 N.W.2d 747, 762 (Minn. 2013), as modified on denial of reh’g (Oct. 31, 2013) (citing Minn. Stat. § 216B.03 in upholding the Commission’s decision to “place[] greater weight” on consumer interests when considering a utility’s request for “a large rate increase”).

<sup>9</sup> DOC Initial Brief at 4-5, 9-11; OAG Initial Brief at 3-5, 72-73; CUB Initial Brief at 7-25.

<sup>10</sup> JSC Initial Brief at 7-14.

are “just and reasonable” without considering the social impact of its proposals. The JSC appreciates CUB’s agreement that “[t]his rate case is an important opportunity for Xcel and the Commission to promote energy justice.”<sup>11</sup>

In contrast, Xcel characterized Energy Justice as an “additional issue,” which it discussed only at the end of its brief and argued should be addressed in other proceedings.<sup>12</sup> Xcel emphasized its ongoing work to “advance energy equity and environmental justices concerns,” particularly within the Energy Equity Docket (No. 22-266) and the Equity Stakeholder Advisory Group (ESAG).<sup>13</sup> Although Xcel acknowledged the “stark racial disparities in income, wealth, health, educational opportunity, employment, home ownership, pollution, and many other variables” that its customers experience, it stated that “the energy system is not responsible for, and cannot remedy, all of these deeply entrenched disparities and inequities.”<sup>14</sup> Xcel pointed to the ESAG as the appropriate forum to explore ways to “reduce disparities” in the energy system and “design more equitable approaches to provide access to renewable energy and energy efficiency for its low-income and BIPOC customers.”<sup>15</sup> Xcel also stated that the ESAG would be the best forum to discuss the JSC’s procedural justice concerns.<sup>16</sup> Regarding the reliability issues that the JSC raised, Xcel pointed to the Resilient Minneapolis Project.<sup>17</sup> In each instance, Xcel has tried to remove Energy Justice from this rate case and isolate it within other energy-related proceedings or forums.

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<sup>11</sup> CUB Initial Brief at 22.

<sup>12</sup> Xcel Initial Brief at 232-39.

<sup>13</sup> *Id.* at 233-34.

<sup>14</sup> *Id.* at 235.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 236.

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



The JSC strongly object to Xcel’s position that “a general rate case provides a poor vehicle for addressing such broad, societal and systemic matters.”<sup>18</sup> Minnesota courts provide the Commission with “wide latitude” in rate cases specifically *because* the Court recognizes that “social policies must be weighed in the balance.”<sup>19</sup> It is thus *essential* for the Commission to weigh and balance the evidence in this case with the principles of Energy Justice in mind. The Commission will approve hundreds of millions of dollars of utility investments that will impact critical infrastructure and the quality of an essential service, the affordability of that service, the relative burdens that should be borne by different customers, and the financial health of a private company that has one of the greatest economic impacts in the state.<sup>20</sup> In other words, this rate case, by its nature, involves “broad, societal and systemic matters.” To ensure outcomes that are equitable, just, reasonable, and in the public interest, given the historic and ongoing injustices and inequities in the electric system, the Commission must consider Energy Justice when deciding this case.

The JSC acknowledges that the Commission cannot remedy all of the inequities in today’s energy system in one fell swoop, and certainly not in a single rate case. But those limitations do not excuse Xcel and the Commission from addressing the inequities that *can* be addressed in this rate case. And while the JSC appreciates and supports Xcel’s efforts in the ESAG, the Energy Equity Docket, and elsewhere—and indeed JSC members are contributing to these efforts by participating in the ESAG and engaging in other relevant forums—those efforts do not relieve Xcel and the Commission of their obligation to address Energy Justice as it relates

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<sup>18</sup> *Id.* at 238.

<sup>19</sup> *St. Paul Area Chamber of Com. v. Minnesota Pub. Serv. Comm’n*, 312 Minn. 250, 261 (1977); *see also* JSC Initial Brief at 7 (citing *St. Paul Area Chamber of Com.* and making the same argument).

<sup>20</sup> JSC Initial Brief at 11 (citing Ex. JSC-6 at 7 (Chan Surrebuttal)); *see also* CUB Initial Brief at 22-23 (also citing JSC witness Chan, Ex. JSC-3 at 8 (Chan Direct), and other JSC witnesses).

to the decisions involved in its rate case.<sup>21</sup> As JSC witness, and Community Power Staff and JSC member, Alice Madden stated:

Delaying and separating out consideration of equity and Energy Justice issues from proceedings like this rate case process—which will determine whether Xcel investments are equitable or inequitable, and how to justly and equitably distribute costs to customers—relegates these issues to the margins and ensures they do not influence crucial utility planning and regulatory decision-making.<sup>22</sup>

Energy Justice cannot be distinguished as an “additional issue,” separate from the JSC’s other specific recommendations in this rate case, as Xcel has suggested. Rather, as Ms. Madden put it, “this rate case is an appropriate and necessary place to implement Energy Justice principles in a concrete way.”<sup>23</sup> Energy Justice informs *all* of the JSC’s recommendations and should be the lens through which the Commission evaluates Xcel’s proposals in this case. For this reason, Energy Justice cannot be excised from this case and considered in isolation in the ESAG and Energy Equity Docket. As discussed further below, doing so would also raise significant procedural justice and due process concerns.

**B. Removing Energy Justice from This Rate Case Would Raise Due Process and Procedural Justice Concerns.**

The goal of procedural justice is to promote “meaningful and equitable participation and representation in energy decision making.”<sup>24</sup> Rate cases like this one are a quintessential exercise in energy decision-making. Not only do they involve evaluation and approval of hundreds of millions of dollars of investments in critical energy infrastructure and allocation of those costs to

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<sup>21</sup> JSC Initial Brief at 17-18; *see also* Ex. JSC-9 at 2-3, 5 (Madden Surrebuttal) (discussing Ms. Madden’s participation in the ESAG and the IDP, IRP, Equity Docket, and other rate cases, on behalf of Community Power, a JSC member).

<sup>22</sup> Ex. JSC-9 at 11 (Madden Surrebuttal).

<sup>23</sup> *Id.* at 12-14 (also listing several of the specific JSC recommendations rooted in Energy Justice principles).

<sup>24</sup> Ex. JSC-3 at 9 (Chan Direct).

customers in rates, but rate cases also have clear processes and enforcement mechanisms, in contrast to the ESAG and the Energy Equity Docket.<sup>25</sup> As JSC witness Dr. Gabriel Chan stated:

The work of the Company, ESAG, and other parties to advance Energy Justice is important, and I believe that their collective work has tremendous potential. But ESAG is also a process that is outside of this proceeding, that is still evolving, and that requires significant resources to meaningfully participate. It is also unreasonable to expect ESAG to be able to provide a forum for building approaches to integrating equity across all proceedings when it is not yet linked to any formal processes and still siloed from the accountability structures and authorities of the Commission. Ultimately, the Commission has the authority to make decisions about how Energy Justice is integrated into the energy system and it is the Commission that is accountable to the public. ... As of right now, this rate case proceeding remains the critical venue for the Commission to hear from all parties that are able to participate about the context and data of Energy Justice in the communities served by the Company.<sup>26</sup>

At the same time, addressing Energy Justice in this rate case will not be sufficient. As Dr. Chan went on to state, “incorporating Energy Justice principles is not a one-time decision, it is a continual process of adaptive change management, a process that will unfold over multiple dockets, actions outside of the Commission, and over many years.”<sup>27</sup>

In other words, considering the JSC’s Energy Justice arguments and recommendations in this rate case is essential to advance procedural justice, in that this rate case is a critical venue to promote “meaningful and equitable participation and representation in energy decision making.” Continuing to address these core issues in the ESAG and other proceedings is important as well, but removing them from this case would undermine procedural justice. As JSC witness Madden stated:

Multiple under-resourced, community-based ESAG and non-ESAG members have fought hard to be heard in IRPs, IDPs, and now this rate case, and raise the issue of

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<sup>25</sup> JSC Initial Brief at 17 (quoting JSC witness Chan, Ex. JSC-6 at 7 (Chan Surrebuttal): “Addressing equity in the future in a yet-to-be-defined way through the newly created ESAG or through work by the Company in the Energy Equity Docket (M-22-266) and in other dockets is insufficient. Energy Justice should be integrated into the Commission’s core understanding of its just and reasonable authority.”).

<sup>26</sup> Ex. JSC-6 at 7-8 (Chan Surrebuttal).

<sup>27</sup> *Id.* at 9.

equity and provide detailed research and experiences to back up our positions. It is concerning to see the ESAG process—a process only in existence because community groups raised equity up in comments through a formal IRP process to the Commission—used to dismiss integration of equity in established processes like this rate case, with hundreds of millions of dollars of ratepayer money at stake.<sup>28</sup>

The JSC notes that CUB shares the JSC’s concerns on this front, stating in its initial brief:

...we are troubled by Xcel’s comments on how it considers energy justice within the context of this rate case, and how it considers this rate case in conversations about energy justice held with the ESAG (of which CUB is a member).

First, despite energy affordability emerging as a “key issue” to be addressed in the ESAG, Xcel did not initiate any discussion of this rate case or the Company’s proposal to increase its profits—which obviously has an immediate, enormous effect on energy affordability for Xcel’s customers—until community participants brought it up in the third ESAG meeting. Second, this rate case has commenced, and will conclude, while the “work of the ESAG is still in very early stages[.]” That means that if Xcel waits for the ESAG process to conclude, any lessons ultimately learned through the ESAG will have no influence on the highly-impactful rate increase the Company has proposed, including the Company’s request for an inflated ROE and additional profits. All told, while we appreciate Xcel’s efforts to consider concepts of energy justice in other dockets and forums, we agree with JSC Witness Chan that the present rate case “is not a proceeding that can fail to integrate Energy Justice as a core principle if Energy Justice is to be embedded in the Commission’s proceedings and in the Company’s plans and programs” moving forward.<sup>29</sup>

The JSC underscores CUB’s point regarding Xcel’s failure to discuss the rate case in the ESAG, which Ms. Madden discussed in her testimony, along with other procedural justice issues *within* the ESAG.<sup>30</sup> Specifically, Ms. Madden highlighted three categories of concerns related to the management of the ESAG and its meetings: (1) lack of compensation for non-Xcel participants, many of whom are thinly-resourced BIPOC-led and/or community-based organizations; (2) dominance by Xcel in controlling the agenda, process, and opportunities for engagement by other organizations, and lack of clear decision-making or consensus-building

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<sup>28</sup> Ex. JSC-9 at 6 (Madden Surrebuttal).

<sup>29</sup> CUB Initial Brief at 23.

<sup>30</sup> Ex. JSC-9 at 5-10 (Madden Surrebuttal).

processes; and (3) lack of discussion regarding accountability for Xcel to the group's recommendations or any collective decisions.<sup>31</sup> Ms. Madden also emphasized that "Xcel's position that the rate case is a "poor vehicle" for equity is not a consensus position of ESAG."<sup>32</sup> In sum, not only would shifting consideration of Energy Justice to the ESAG raise procedural justice concerns, but the ESAG itself has ongoing procedural issues that the Commission should direct Xcel to address, working together with stakeholders.

Removing Energy Justice from this rate case would also raise basic due process issues. As JSC witness Karl R. Rábago, an attorney and former regulator, explained, it "would diminish the participation rights of the JSC members that have intervened in this case. Xcel did not oppose the JSC's intervention, but it now seeks to divert the JSC's issues into a secondary docket that lacks oversight and accountability. This violates the JSC's due process rights to a fair hearing in this case and treats the JSC as second-class citizens as compared to the other industry parties that regularly appear before the Commission."<sup>33</sup> As the U.S. Supreme Court has held: "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"<sup>34</sup> The JSC has shown that this rate case is one of the most "meaningful" forums to address Energy Justice, given the financially significant and long-lasting decisions that the Commission will make. Shifting consideration of the JSC's arguments and

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<sup>31</sup> *Id.* at 9-10.

<sup>32</sup> *Id.* at 7 (citing comments from various ESAG members: "One member described the rate case as an 'elephant in the room' and that Xcel can address equity in multiple venues 'at the same time'; Multiple members expressed afterwards that the rate case proposal was not something they had been aware of, and one person explicitly expressed shock at the scale of the proposal; One member proposed that Xcel should suspend the rate case indefinitely until the ESAG has been able to set parameters on equity for Rate Cases; One member described a concern that the ESAG would be used as something to point to without any more substance or accountability behind it while key issues are being decided elsewhere.").

<sup>33</sup> Ex. JSC-10 at 5 (Rábago Surrebuttal).

<sup>34</sup> *Mathews v. Eldridge*, 424 U.S. 319, 333 (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *see also* *State v. Rey*, 905 N.W.2d 490, 493-94 (Minn. 2018) (stating that the Minnesota Constitution has an identical due process provision to the U.S. Constitution, and citing *Mathews*, 424 U.S. at 335, and *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 632 (Minn. 2012), which also cites *Mathews*, 424 U.S. at 333, 335).

recommendations out of this proceeding would deprive the JSC of its right to be heard and have the Commission consider its positions in such a meaningful time and manner.

Xcel has attempted to argue the opposite position—that the JSC has triggered procedural and recognition justice concerns by bringing Energy Justice into this case via intervenor direct testimony, claiming that “other potentially interested parties have already missed the opportunity to be part of the discussion.”<sup>35</sup> As JSC witness Madden put it, “[d]escribing the timing of JSC testimony as procedurally problematic given the context of this docket is jaw-dropping....”<sup>36</sup> In the first place, “JSC was explicit in its intervention in this proceeding about its intentions to address equity in this rate case, and there was no opposition.”<sup>37</sup> Moreover, “Energy Justice is not a ‘new’ subject—though it may feel that way to institutional newcomers like Xcel—nor is it an ‘issue’ that can be addressed in a single docket. Equity and Energy Justice are lenses, as we have said before, through which to evaluate all decisions.”<sup>38</sup>

In addition, by Xcel’s logic “intervenors would have no ability to bring up concerns and perspectives in a rate case that the utility itself did not already present in its initial application. This completely misses the goal of procedural justice, which is to ensure meaningful and equitable participation and representation in decision-making processes.”<sup>39</sup> The JSC properly raised its Energy Justice arguments and recommendations issues in direct testimony, the first opportunity for intervenors to “meaningfully participate.” Xcel and other intervenors had an

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<sup>35</sup> Xcel Initial Brief at 238-39.

<sup>36</sup> Ex. JSC-9 at 15 (Madden Surrebuttal).

<sup>37</sup> *Id.* at 14; *see also* Petition to Intervene of the Just Solar Coalition, Docket No. 21-630 (April 29, 2022) (stating, for example: “Coalition members believe that equity and access must become key criteria on which all investments are evaluated, and that Xcel should prioritize distribution and—where necessary and cost-effective—new transmission investments that most effectively empower low-income and BIPOC communities to gain access to DERs in ways that reduce costs, build assets, and create diverse workforces.”).

<sup>38</sup> Ex. JSC-9 at 14-15 (Madden Surrebuttal).

<sup>39</sup> *Id.* at 15.

opportunity to respond in rebuttal testimony, and the JSC had an opportunity to respond in turn in surrebuttal testimony. As Ms. Madden stated:

... it is the absence of more diverse perspectives and voices in this rate case that is problematic. That absence is a primary driver for the JSC's intervention in this proceeding, as JSC witness Porter explained in her direct testimony. I agree that many other stakeholders, including a broader base of low-income communities and communities of color, should be involved in this proceeding than the JSC alone can represent. This does not mean, however, that our Energy Justice-focused perspective, and our representation of specific low-income communities and people of color, should be dismissed simply because any single stakeholder cannot be reflective of all possible equity-focused stakeholders. Nor can it mean that proceedings should not address equity until adequate access has been achieved for all possible equity-focused stakeholders; an argument that suggests that we cannot start addressing the problem until we have finished resolving it.<sup>40</sup>

Given these challenges highlighted by Ms. Madden and other JSC witnesses, the JSC has made recommendations intended to make processes like this rate case more accessible to other equity-focused stakeholders and impacted communities, as discussed in the JSC's initial brief.<sup>41</sup>

**C. Xcel Has Repeatedly Mischaracterized the JSC's Vision for the Integration of Customer- and Community-Owned DERs, Which Is Critical to Promoting Energy Justice.**

The JSC explained in its initial brief how Energy Justice requires equitable access to customer- and community-owned DERs.<sup>42</sup> As the JSC emphasized, achieving this goal requires a "coherent, practical vision of a high-DER future power system," so that the Commission can consider whether or not particular proposals support that vision and move towards that goal.<sup>43</sup> Conversely, without conscious Commission decision-making to enable equitable DER adoption and integration, DERs will still proliferate through adoption by financially-resourced customers,

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<sup>40</sup> *Id.* at 16.

<sup>41</sup> JSC Initial Brief at 70-72.

<sup>42</sup> *Id.* at 14-16.

<sup>43</sup> *Id.* at 15-16 (citing JSC-2 at 6, 30-42 (Kristov Direct)).

but their benefits will not be fully realized, particularly for low-wealth customers, thereby exacerbating existing inequities.<sup>44</sup>

In both its rebuttal testimony and initial brief, Xcel mischaracterized the substance and purpose of the JSC’s high-DER vision. For example, Xcel stated: “Underlying much of the JSC testimony is the theme that distributed energy resources (DERs) are the key and perhaps exclusive means to creating both a deeply decarbonized and equitable energy system.”<sup>45</sup> In support of its position that poorly designed DER programs can be harmful to equity, Xcel primarily criticized the Community Solar Gardens (CSG) program.<sup>46</sup> In addition, Xcel described the regulatory and operational changes that the JSC suggested to enable a high-DER future as “jettisoning the vertically-integrated utility business model, and replacing it with an ‘open access’ Distribution System Operator (DSO) model.”<sup>47</sup>

In the first place, the JSC never argued that DERs would be the “exclusive means” to a decarbonized equitable future energy system. In his testimony, Dr. Kristov was “quite clear that this vision of a high-DER future power system does not exclude utility-scale transmission-connected resources. [He] describes a future power system in which the distribution side and the bulk power system (i.e., the transmission system and transmission-connected generation) are complementary partners in constituting the whole system.”<sup>48</sup> Moreover, Xcel’s criticism of the CSG program is not a valid criticism of DERs writ large nor does it disprove that DER programs,

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<sup>44</sup> *Id.* at 15-16 (citing JSC-8 at 7-8, 14 (Kristov Surrebuttal)).

<sup>45</sup> Xcel Initial Brief at 236 (citing Ex. Xcel-83 at 26 (Martin Rebuttal)).

<sup>46</sup> Xcel Initial Brief at 236-37; Ex. Xcel-83 at 27-34 (Martin Rebuttal). JSC witness Chan responded to Xcel’s arguments regarding the CSG program in his surrebuttal testimony. Ex. JSC-6 at 26-32 (Chan Surrebuttal). However, the JSC does not suggest the Commission take any action related to CSGs in this proceeding. *Id.* at 32.

<sup>47</sup> Xcel Initial Brief at 237; *see also* Ex. Xcel-83 at 35-37 (Martin Rebuttal) (making similar arguments).

<sup>48</sup> Ex. JSC-8 at 2 (Kristov Surrebuttal); *see also* Ex. JSC-2 at 8 (Kristov Direct) (“This does not mean that the bulk system is becoming obsolete and can be dispensed with. To the contrary, the bulk system is as relevant as ever, but it must evolve to more of an equal partnership with the distribution side.”).



properly designed, are essential to Energy Justice. Dr. Kristov was equally clear that “[t]here is nothing automatic about the linkage from DER growth to Energy Justice.”<sup>49</sup> Dr. Kristov emphasized “the need for careful design at all levels—from specific programs and rates up to more comprehensive regulations and policies—to ensure that implementation delivers the intended outcomes for people and communities, with specific attention to Energy Justice.”<sup>50</sup>

Similarly, the JSC has never argued that the Commission should “jettison the vertically-integrated utility business model.” Rather, as Dr. Kristov stated: “The proposed open-access DSO focuses on the roles and responsibilities of the electricity distribution utility, which ... could be formed from the distribution department of an existing vertically-integrated utility. It says nothing about precluding the utility from owning transmission or transmission-connected generation or deregulating those components.”<sup>51</sup> The open-access framework described by Dr. Kristov focuses on the utility’s obligation “to provide distribution service to all distribution network customers under non-discriminatory rates, terms, and conditions of service,” such that if the utility were to own and operate DERs, it would be treated like other users on the system.<sup>52</sup> Without such an open-access structure, “it will tip the market playing field in favor of utility-owned DERs and more network infrastructure investment, and will constrain the financial viability of locally-owned DERs....”<sup>53</sup> Therefore, such an open-access framework is foundational to a high-DER future that not only maximizes the benefits of DERs but also realizes them in the most just and equitable manner. In contrast to Xcel’s assertion, the open-access DSO

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<sup>49</sup> JSC-8 at 4 (Kristov Surrebuttal); *see also* JSC-2 at 9 (Kristov Direct) (“The practical question, then, is: How can policy makers and regulators leverage DER growth to achieve the greatest benefits for the power system as a whole and for the major policy goals of the state, while enhancing the benefits of DERs for the customers motivated to adopt them?”).

<sup>50</sup> JSC-8 at 4 (Kristov Surrebuttal).

<sup>51</sup> *Id.* at 16.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 17.

is a proposal to modernize the distribution side of the utility for the proliferation of DERs, not a jettisoning of the entire vertically-integrated utility structure.

The JSC does not propose that the Commission adopt or even make any specific decisions about an open-access DSO model in this proceeding. The JSC's vision of a high-DER, open-access future, as described by Dr. Kristov, is intended to inform the Commission's consideration of the role of the distribution utility in ensuring equitable access to the benefits of DERs, which in turn should guide the Commission's decisions in this rate case, particularly around how to evaluate distribution system investments from the perspective of Energy Justice. In other words, the JSC presents Dr. Kristov's testimony as a guidepost to help the Commission assess whether or not Xcel's rate case proposals are reasonable and prudent in moving to a future in which all customers can receive the greatest benefits from DERs. Contrary to Xcel's assertions, the JSC does not suggest overturning Minnesota's regulatory structure in this proceeding; Xcel's argument to this effect is a red herring.

Ultimately, the JSC agrees with Xcel's position that "DERs have a significant role to play in a sustainable and just energy future .... However, large scale renewable resources have a critical role to play as well."<sup>54</sup> Nevertheless, as Dr. Kristov stated, the JSC does not agree that "the Company's rate case proposals will facilitate DER growth in a manner that advances Energy Justice and achieves the greatest value from DERs."<sup>55</sup> The Commission should review Xcel's proposals with an Energy Justice lens and a high-DER, open-access future in mind in order to ensure Xcel's rates and investments are equitable, just, reasonable, and in the public interest. As Dr. Kristov described it:

... consider a time, sometime in the next decade, when widespread electrification is well under way and electricity is produced almost entirely by renewable

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<sup>54</sup> Xcel Initial Brief at 237.

<sup>55</sup> JSC-8 at 3 (Kristov Surrebuttal).

generation. Consider a time when all neighborhoods — not just affluent gated communities — have a community microgrid that maintains local electric service when a major storm, blizzard, flood, or wildfire disrupts a large swath of the state. Consider a time when electricity production is a local business that generates revenues for many communities and can supply municipal electrification projects without requiring major transmission investment. The Commission should consider all the benefits of such a future and ask what industry structure is best suited to achieving that future, and then consider how its immediate decisions in this rate case would move towards or away from that desired future.<sup>56</sup>

### **III. AFFORDABILITY, RETURN ON EQUITY, AND COST RECOVERY**

#### **A. Intervenor Show That Xcel’s Proposed Return on Equity Is Unreasonable and Unjustified, and Results in Unaffordable Rates for Customers.**

Intervenors, including the JSC, CUB, DOC, OAG, and Xcel Large Industrials (XLI), made a clear and compelling case against Xcel’s proposed return on equity (ROE).<sup>57</sup> The OAG described Xcel’s proposal of a 10.20% ROE as “a staggering 114-basis-point increase from its currently authorized 9.06 percent ROE.”<sup>58</sup> As the DOC stated, “Xcel’s ‘good fortune’ in the past several years contrasts sharply with that of many of its ratepayers who have struggled with the COVID-19 pandemic, inflation not seen in generations, and now another looming recession. In setting just and reasonable rates, the Commission must balance investor and ratepayer concerns. Xcel’s ratepayers, across customer classes, are struggling, and the requested increases would exacerbate these struggles.”<sup>59</sup> Like the DOC, CUB also emphasized the importance of balancing

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<sup>56</sup> *Id.* at 11.

<sup>57</sup> JSC Initial Brief at 18-20; DOC Initial Brief at 2-11; OAG Initial Brief at 40-43; CUB Initial Brief at 8-27; XLI Brief at 11-15; *see also* Post-Hearing Brief of the Commercial Group, Docket No. 21-630, at 2-5 (Jan. 11, 2023) (arguing that Xcel’s proposed ROE is too high and, relying on other parties’ analyses, suggesting a range of 9.35% – 9.58%, with a mid-point of 9.46%).

<sup>58</sup> OAG Initial Brief at 40.

<sup>59</sup> DOC Initial Brief at 4-5.

Xcel's and its shareholders' interests with customers' interests, particularly regarding affordability, as required by the relevant law.<sup>60</sup>

In contrast, in supporting its ROE proposal, Xcel focused exclusively on its own interests, barely acknowledging the affordability and inflationary challenges its customers face.<sup>61</sup>

Although Xcel highlighted that it reduced its overall cost recovery request from its initial filing in rebuttal testimony in part in an effort to mitigate the rate impact on customers,<sup>62</sup> it continues to seek an unreasonably and excessively high ROE. Instead of responding to the effect on its customers of “dramatic change to the marketplace, including the highest inflation levels in forty years,”<sup>63</sup> Xcel primarily recognized the impact of inflation on itself. It noted that inflation and other market factors led to an *increase* in Xcel's ROE witness Mr. D'Ascendis' analytical results, but that Mr. D'Ascendis “conservatively” maintained his ROE recommendation of 10.20%.<sup>64</sup> In reality, Xcel's proposal is not at all conservative, but rather is dramatically higher than the proposals of all four intervenors, as demonstrated effectively in the chart provided by the OAG, reproduced below.<sup>65</sup>

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<sup>60</sup> *Id.* at 4-7, 9-11; CUB Initial Brief at 9-12.

<sup>61</sup> Xcel Initial Brief at 13 (stating that Xcel's ROE appropriately balances Xcel's “(1) adequate to attract capital at reasonable cost and terms; (2) sufficient to ensure its financial integrity; and (3) commensurate with returns on investments in enterprises having corresponding risks.”); *see also id.* at 20-33 (addressing intervenors' ROE testimony without addressing customer impact and affordability concerns).

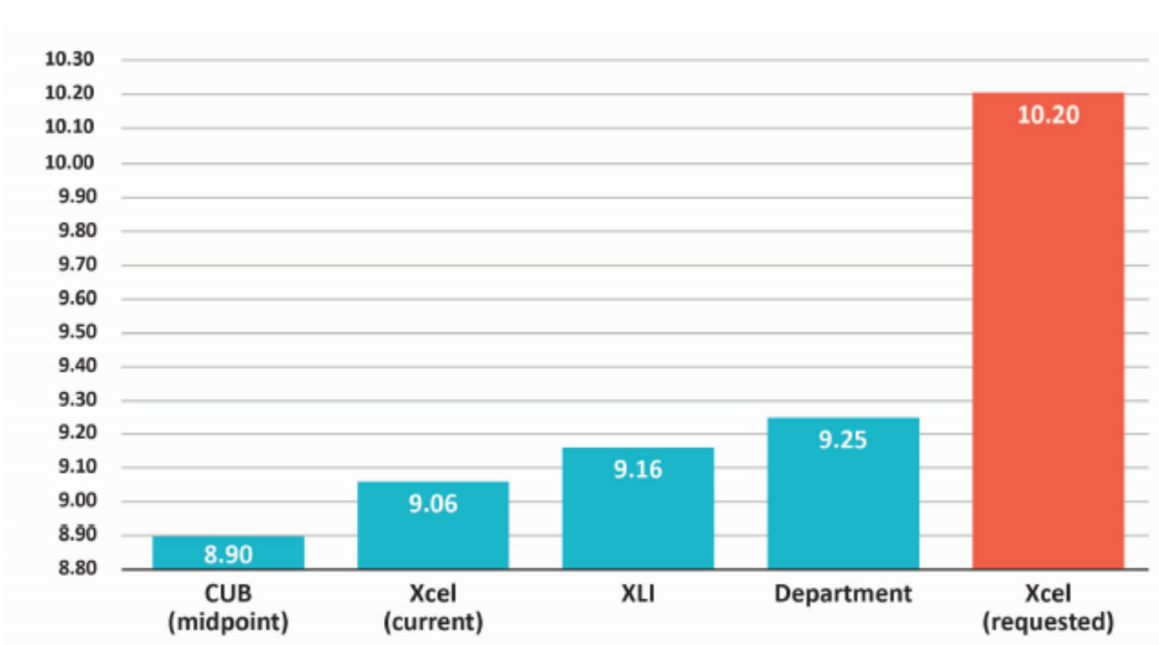
<sup>62</sup> *Id.* at 2, 5.

<sup>63</sup> *Id.* at 19.

<sup>64</sup> *Id.* at 18-20.

<sup>65</sup> OAG Initial Brief at 43.

**Figure 3**  
**Current and Proposed Returns on Equity**



The JSC agrees with CUB and the DOC that determining a just and reasonable ROE requires balancing utility, shareholder, and ratepayer interests.<sup>66</sup> The JSC specifically agrees with the DOC that “[a]ffordability of utility rates must be high on the list of pragmatic concerns guiding the Commission. Energy affordability is a critical public concern, especially in light of current conditions in the national economy.”<sup>67</sup> And the JSC agrees with CUB that “Xcel’s response to Just Solar Coalition (JSC) witness testimony is further indicative of Xcel’s failure to consider how its proposal to increase profits affects its customers.”<sup>68</sup> Together, intervenors have demonstrated that Xcel failed to account for consumer interests and affordability concerns, and thus failed to meet its burden to show that its ROE request is just and reasonable. Minnesota law is clear that any doubt as to the reasonableness of Xcel’s proposal must be resolved in

<sup>66</sup> See DOC Initial Brief at 4-7, 9-11; CUB Initial Brief at 9-12.

<sup>67</sup> DOC Initial Brief at 11.

<sup>68</sup> CUB Initial Brief at 22.

consumers' favor.<sup>69</sup> Accordingly, and consistent with the JSC's initial brief, the Commission should reject Xcel's proposed ROE.

**B. The JSC Supports CUB's Proposed ROE Range of 8.8% to 9.0%, Which Appropriately Addresses the Affordability Concerns Raised by the JSC, CUB, Other Intervenors, and the Public.**

CUB presented a particularly compelling case against Xcel's proposed 10.20% ROE, including a thorough discussion of relevant U.S. Supreme Court precedent and its application to this case.<sup>70</sup> Likewise, CUB effectively argued, in its initial brief and in extensive testimony from its expert witness Steve Kihm, that its own ROE range of 8.8% - 9.0% more appropriately balances utility and consumer interests. As CUB stated: "When it comes to the customer interest, Witness Kihm notes that 'current macroeconomic conditions, especially high short-run inflation rates, hurt customers more than shareholders' and 'because customers are struggling under current conditions, balancing investor and consumer interests as the Court requires, calls for a reduction in the authorized return on equity.' Other experts, along with several public commenters, also raise strong concerns over inflation and current economic conditions that are challenging consumers—particularly low income and BIPOC consumers."<sup>71</sup> In support of its position, CUB pointed to JSC witness Rábago, as well as public comments.<sup>72</sup> Notably the OAG and DOC also quoted public comments to support pervasive public concern regarding affordability and Xcel's proposed rate increase.<sup>73</sup>

The JSC shares CUB's concerns and finds that CUB's proposed ROE is well supported analytically and most appropriately accounts for affordability impacts on customers, especially

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<sup>69</sup> Minn. Stat. § 216B.03.

<sup>70</sup> CUB Initial Brief at 8-25.

<sup>71</sup> *Id.* at 24.

<sup>72</sup> *Id.* at 24-25.

<sup>73</sup> DOC Initial Brief at 5; OAG Initial Brief at 3-4.

low-wealth and BIPOC customers. Therefore, the JSC believes that CUB's ROE proposal best advances Energy Justice and encourages the Commission to adopt it.

**C. The OAG Persuasively Argues Against Cost Recovery for Certain Industry Organization Dues and Recent Supreme Court Precedent Further Supports Its Argument.**

In its initial brief, the OAG argued that Xcel should not recover costs associated with dues for industry organizations “that provide them no material benefit and are not necessary to furnish electric service.”<sup>74</sup> Specifically, the OAG argued that Xcel has not proven that its memberships in the Edison Electric Institute (EEI) and the American Gas Association (AGA) materially benefit ratepayers or that electric service would be impaired without these memberships.<sup>75</sup> In support of its argument, the OAG pointed to the Commission's recent affirmation that “where a utility has not clearly established how membership dues connect to the provision of utility service or that service would be impaired without those dues, dues are not recoverable from ratepayers.”<sup>76</sup> In addition, the OAG cited a Kentucky Public Service Commission decision and federal regulatory efforts that underscore the importance of closely scrutinizing such industry organization costs.<sup>77</sup>

The JSC finds the OAG's arguments on this issue persuasive and agrees that the Commission should disallow cost recovery for EEI and AGA dues. In addition, the U.S. Supreme Court stated in *Janus v. American Federation of State, County, and Municipal Employees, Council 31* that private citizens cannot be compelled to subsidize the speech of other private actors, and requiring them to do so would violate the First Amendment.<sup>78</sup> Applying *Janus*

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<sup>74</sup> OAG Initial Brief at 29-35.

<sup>75</sup> *Id.* at 29-35.

<sup>76</sup> *Id.* at 30 (citing *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E-017/GR-20-719, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 24–25 (Feb. 1, 2022)).

<sup>77</sup> *Id.* at 31-33.

<sup>78</sup> 138 S.Ct. 2448, 2460 (2020).

here, it is clear that ratepayers cannot be forced to pay for Xcel's EEI and AGA dues and thereby subsidize the speech of those organizations and Xcel.

In *Janus*, the Court examined an Illinois law that required a state employee to pay a portion of union dues, even if the employee chose not to join the union and strongly objected to its positions.<sup>79</sup> The Court concluded that this arrangement “violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern,” and determined that a nonmember cannot be forced to pay any portion of union dues.<sup>80</sup> In doing so, the Court overturned precedent that had held that “nonmembers may be charged for the portion of union dues attributable to activities that are ‘germane to [the union’s] duties as collective-bargaining representative,’ but nonmembers may not be required to fund the union’s political and ideological project.”<sup>81</sup> The Court held that the First Amendment protects “both the right to speak freely and the right to refrain from speaking at all,” as well as the “right to eschew association for expressive purposes.”<sup>82</sup> “Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned.”<sup>83</sup> And furthermore, “[c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.”<sup>84</sup> As the Court put it: “Suppose that a particular group lobbies or speaks out on behalf of what it thinks are the needs of senior citizens or veterans or physicians, to take just a few examples. Could the

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<sup>79</sup> *Id.* at 2459-60.

<sup>80</sup> *Id.* at 2460.

<sup>81</sup> *Id.* at 2460-61, 2486.

<sup>82</sup> *Id.* at 2463 (internal citations omitted).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 2464.



government require that all seniors, veterans, or doctors pay for that service even if they object? It has never been thought that this is permissible.”<sup>85</sup>

It is well established that utility trade associations like EEI and AGA engage in controversial political activity using “dues” passed through to utility ratepayers.<sup>86</sup> EEI, for example, has targeted state policies that promote rooftop solar power,<sup>87</sup> while AGA has attempted to sway local and state debates about electrification.<sup>88</sup> Both organizations wield power through direct lobbying and through more clandestine efforts to influence regulatory outcomes.<sup>89</sup>

Requiring Xcel’s captive ratepayers to fund a portion of its membership in EEI and AGA is analogous to the situation in *Janus*, where employees were required to pay at least a portion of union dues, whether or not they were union members or agreed with the union’s position. In *Janus*, the Court clearly held that such an arrangement violated the First Amendment, regardless of whether or not the dues could be tied specifically to lobbying or other political advocacy. Likewise, Xcel’s ratepayers cannot be compelled to subsidize the commercial speech of Xcel, EEI, or AGA, and therefore Xcel should not be able to recover any portion of its dues to these organizations without demonstrating that the speech of those organizations is aligned with the interests of and supported by *all* of the customers paying for it.

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<sup>85</sup> *Id.* at 2466.

<sup>86</sup> Ex. OAG-2 at 11–12 (Lee Direct); FERC Docket No. RM21-15-000, Petition for Rulemaking to Amend the Uniform System of Accounts’ Treatment of Industry Association Dues, at 9-15 (March 17, 2021), *available at* [https://www.biologicaldiversity.org/programs/energy-justice/pdfs/FERC\\_Petition\\_Trade\\_Group\\_Dues\\_031721.pdf](https://www.biologicaldiversity.org/programs/energy-justice/pdfs/FERC_Petition_Trade_Group_Dues_031721.pdf) (explaining and citing, in detail, the political activities of leading industry associations such as EEI and AGA).

<sup>87</sup> *See, e.g., Rooftop Solar Dims Under Pressure From Utility Lobbyists*, The New York Times (July 9, 2017), *available at* <https://www.nytimes.com/2017/07/08/climate/rooftop-solar-panels-tax-credits-utility-companies-lobbying.html>.

<sup>88</sup> *As Cities Grapple with Climate Change, Gas Utilities Fight to Stay in Business*, National Public Radio (Feb. 22, 2021), *available at* <https://www.npr.org/2021/02/22/967439914/as-cities-grapple-with-climate-change-gas-utilities-fight-to-stay-in-business>

<sup>89</sup> Ex. OAG-2 at 12–13 (Lee Direct).

#### IV. RATE DESIGN

##### A. **Intervenors Have Demonstrated That Xcel's Customer Charge Proposal Is Unreasonable, and a Reduced Single-Family Residential Customer Charge and Differentiated, Lower Multifamily Charge Are More Equitable and Just.**

In initial briefs, intervenors continued to recommend rejection of Xcel's proposed customer charge, and to align around a reduced single-family customer charge and a differentiated, lower multifamily customer charge.<sup>90</sup> As the OAG stated: "The ALJ and the Commission should reject the Company's proposal. Xcel's existing customer charges for these classes are already well above cost, and increasing them would aggravate intraclass subsidies, contravene state policy in favor of conservation and renewable energy, and disproportionately harm low-income customers and people of color."<sup>91</sup> Like the JSC, the OAG recommended decreasing the single-family residential customer charge by \$3 and the multifamily residential customer charge by \$4.<sup>92</sup> For similar reasons, the DOC proposed a consistent \$6 charge for single-family residential customers and a \$5 consistent charge for multifamily residential customers, which would be more consistent with applicable rate design principles, including cost causation, and better promote energy conservation.<sup>93</sup> Intervenors recognized the need for multifamily customer data.<sup>94</sup> However, they agreed that Xcel should nonetheless offer a lower customer charge to the multifamily customers that it can identify.<sup>95</sup> Like the JSC, the DOC emphasized the need to obtain better multifamily data.<sup>96</sup>

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<sup>90</sup> JSC Initial Brief at 20-30; DOC Initial Brief at 121-26; OAG Initial Brief 65-72; *see also* Ex. CEO-5 at 12-16 (Nelson Rebuttal) (indicating CEOs' support for the same).

<sup>91</sup> OAG Initial Brief at 66.

<sup>92</sup> *Id.* at 66, 72; JSC Initial Brief at 22.

<sup>93</sup> DOC Initial Brief at 121-26.

<sup>94</sup> JSC Initial Brief at 25-26, 67; DOC Initial Brief at 124-26; OAG Initial Brief at 71-72.

<sup>95</sup> JSC Initial Brief at 25-26; DOC Initial Brief at 124-26; OAG Initial Brief at 71-72.

<sup>96</sup> JSC Initial Brief at 67; DOC Initial Brief at 125.

Xcel continued to advocate for a “simplified” \$9 customer charge for residential customers.<sup>97</sup> In support, Xcel posited that decreasing the customer charge, thereby increasing variable charges, could adversely impact households with large families or higher than average usage, households that switch to electric appliances, renters, who cannot implement many conservation and efficiency measures, and customers that cannot switch to gas.<sup>98</sup> JSC witness Karl R. Rábago addressed this argument in surrebuttal testimony, describing it as “misleading and logically flawed.”<sup>99</sup> Mr. Rábago explained that the argument is “only valid if the demand-related costs that the Company includes in customer charges are renamed, through use of the minimum system and zero-intercept methods, as ‘customer-related.’ Demand-related costs are not costs that vary entirely or almost entirely based on customer count. They are not customer-related in any reasonable sense, and indeed they vary with the customer’s level of use. Sound rate making requires that these usage-driven costs be recovered through volumetric charges as opposed to fixed customer charges.”<sup>100</sup>

Xcel also pushed back on the JSC’s and other intervenors’ recommendation that the Commission adopt the basic customer method to functionalize customer costs, which supports the recommendation to lower the customer charge.<sup>101</sup> According to Xcel, this method “over-classifies demand-related costs and under-classifies customer-related costs resulting in a significant shift in distribution costs away from the Residential customer class.”<sup>102</sup> The JSC made an affirmative argument for the basic customer method in its initial brief, which effectively

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<sup>97</sup> Xcel Initial Brief at 193-94.

<sup>98</sup> *Id.* at 196-97.

<sup>99</sup> Ex. JSC-10 at 7 (Rábago Surrebuttal).

<sup>100</sup> *Id.*

<sup>101</sup> Xcel Initial Brief at 184-86.

<sup>102</sup> *Id.* at 186.

rebutts Xcel's claims, and does not repeat it here.<sup>103</sup> The JSC also appreciates the OAG's compelling argument for the basic customer method as the most reasonable basis for determining customer-related distribution costs.<sup>104</sup> Both the JSC and the OAG pointed to the Regulatory Assistance Project cost-allocation manual in support of their position, which describes the basic customer method as "by far the most equitable solution for the vast majority of utilities."<sup>105</sup> The JSC continues to recommend that the Commission adopt the basic customer method.

Regarding intervenors' proposed multifamily customer charge specifically, Xcel stated that it requires further study before Xcel can implement it.<sup>106</sup> Xcel raised logistical issues, primarily that it does not currently have complete data to identify multifamily customers and that the data it does have is insufficient.<sup>107</sup> In addition, Xcel claimed that implementing a lower multifamily charge would result in a revenue reduction and impair the Company's cost recovery, and therefore it would have to raise the charge for single-family customers to offset its impact.<sup>108</sup>

On Xcel's logistical concerns, as the JSC and other intervenors have pointed out, Xcel stated in testimony that it can identify at least 270,000 of its multifamily customers.<sup>109</sup> Xcel argued in its initial brief that it may end up over-counting multifamily customers because, for example, some single-family homes, such as townhomes, have numbers/letters similar to multifamily apartments.<sup>110</sup> First of all, since Xcel is apparently aware of this issue, it could remove at least some misidentified customers from multifamily category. Furthermore, by not

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<sup>103</sup> JSC Initial Brief at 23-25 (referring to Ex. JSC-5 at 52-74 (Rábago Direct)).

<sup>104</sup> OAG Initial Brief at 50-52.

<sup>105</sup> *Id.* at 51; JSC Initial Brief at 24-25.

<sup>106</sup> Xcel Initial Brief at 197-200.

<sup>107</sup> *Id.* at 197-99.

<sup>108</sup> *Id.* at 199-200.

<sup>109</sup> JSC Initial Brief at 26 (citing Ex. DOC-20 at 22-23 (Bahn Surrebuttal) and Ex. OAG-6 at 12-13 (Twite Surebuttal)); DOC Initial Brief at 125 (citing Ex. Xcel-89 at 22 (Paluck/Peterson Direct)); OAG Initial Brief at 70-71.

<sup>110</sup> Xcel Initial Brief at 198-99.

even attempting to identify multifamily customers, Xcel is overcharging a significant number of its residential customers, contrary to the accepted ratemaking principle of cost-causation, as well as the principle of equity—and it has been doing so for many years. Rather than let the perfect be the enemy of the good, the Commission should require Xcel to start offering the multifamily customer charge to the multifamily customer that it can identify, as Xcel works to obtain the necessary data through the avenues suggested by the DOC and JSC.<sup>111</sup> As Mr. Rábago put it, “[t]he problem of overcharging customers should be solvable with the application of a reasonable level of effort and expense—at least the level of effort the Company uses when it believes it is undercharging them.”<sup>112</sup>

On the issue of cost recovery, as JSC witness Rábago explained, decreasing the multifamily charge without raising the single-family charge is ultimately a policy choice for the Commission.<sup>113</sup> Contrary to its claims, Xcel is not entitled to recover a set amount via fixed charges, such that it must shift costs onto single-family customers if its multifamily customer charge decreases. As Mr. Rábago put it: “It is important to start with the reminder that the only fixed and variable costs included in the customer charge should be those true customer costs that would go away in the absence of the customer. Then, the decision on how to treat minimum system costs that are not customer or demand costs should be informed by policy.”<sup>114</sup> The Commission can choose whether to allow to recover those costs via increased fixed charges or volumetrically. “On the one hand, recovering these costs on a per-customer basis enriches shareholders with more certain revenue recovery; increases the incentive for profit-generating infrastructure investments even if not cost-effective; decreases the incentive for energy

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<sup>111</sup> JSC Initial Brief at 67; DOC Initial Brief at 125-26.

<sup>112</sup> Ex. JSC-10 at 7-8 (Rábago Surrebuttal).

<sup>113</sup> Ex. JSC-5 at 73-74 (Rábago Direct).

<sup>114</sup> *Id.* at 73.

efficiency, conservation, and distributed generation investment; and weakens price signals relating to fixed costs creation in general. The alternative is recovering these costs on a volumetric basis, as is done in the majority of states. This alternative provides incentives to customers to become more efficient and to invest in clean distributed generation, sends stronger price signals to the utility to manage and reduce infrastructure costs, aligns bill impacts with customer cost-causation, and aligns with the energy policy goals established in Minnesota law.”<sup>115</sup> In other words, the treatment of cost recovery for any non-customer costs no longer captured by a lower multifamily customer charge comes back to the underlying questions of which methodology to use to functionalize customer costs, and whether fixed customer charges should reflect only customer costs or additional costs, as well. The JSC continues to recommend that the Commission require Xcel to use the basic customer method to identify customer costs and set its customer charges. Under this approach, lowering the multifamily customer charge to reflect actual multifamily customer costs has no impact on the single-family customer charge; Xcel would recover any costs no longer covered by the multifamily customer charge via volumetric rates.

Finally, Xcel highlighted the relationship between its proposed “simplified” \$9 residential customer charge and ECC’s agreement to a \$1 decrease in Xcel’s proposed customer charge in exchange for approval of its low-income, low-usage discount rate proposal.<sup>116</sup> As Xcel recognized, the JSC and OAG both objected to conflating these two issues.<sup>117</sup> The JSC agrees with OAG witness Andrew Twite’s explanation: “The low-income, low-usage discount should be approved on its own merits. Low-income programs do not benefit just low-income customers,

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<sup>115</sup> *Id.* at 73-74.

<sup>116</sup> Xcel Initial Brief at 206.

<sup>117</sup> *Id.*; Ex. OAG-6 at 7-8 (Twite Rebuttal); Ex. JSC-10 at 10 (Rábago Surrebuttal).

they also benefit utilities by reducing arrearages, which in turn reduce the utility's collection costs, disconnection costs, and bad debt. Further, Xcel would not forego the lost revenues from the discounts: they would simply be recovered from other customers. Thus, the low-income, low-usage discount proposal will benefit both Xcel and low-income customers, and so should not be treated as a *quid pro quo*, in which customers are forced to accept a bad outcome (a customer charge increase) in exchange for the benefit of the low-income customer protection. Similarly, the appropriate customer charges should be based on cost and policy considerations.... These two issues are unrelated and should not be entwined.”<sup>118</sup>

**B. No Party Opposes Energy CENTS Coalition's Low-Income, Low-Usage Discount Rate Proposal and the JSC's Proposed Modification Would Extend Its Relief.**

Energy CENTS Coalition (ECC) reiterated its low-income, low-usage discount rate proposal in its initial brief, and Xcel, OAG, and the JSC supported it.<sup>119</sup> The JSC continues to support ECC's proposal and encourages the Commission to adopt it.

Likewise, the JSC continues to recommend that the Commission also adopt its proposed modification Option 2 to ECC's rate, which would remove the low-usage qualification and thereby extend its relief to more cost-burdened Minnesotans. Only Xcel commented on the JSC's proposed modification, opposing it.<sup>120</sup> Xcel incorrectly claimed that JSC did not provide any cost estimate for the proposed modification. In fact, as described in JSC's initial brief, JSC witness

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<sup>118</sup> Ex. OAG-6 at 7-8 (Twite Rebuttal); *see also* Ex. JSC-10 at 10 (Rábago Surrebuttal) (explicitly supporting Mr. Twite's position).

<sup>119</sup> ECC Initial Brief at 1-9; Xcel Initial Brief at 201-206; OAG Initial Brief at 72-73; JSC Initial Brief at 30-42.

<sup>120</sup> Xcel Initial Brief at 204-05. Xcel correctly stated in a footnote that JSC witness Dr. Chan proposed modifications to ECC's proposal in surrebuttal testimony and, as a result, parties did not have an opportunity to respond to the JSC's proposals in testimony. The JSC notes that no party cross-examined Dr. Chan or any of the JSC's witnesses, including regarding this proposal. Dr. Chan provided ample evidence and analysis in support of the proposed modification Option 2, which, together with the data supporting ECC's underlying proposal, provide sufficient justification for the Commission to adopt it.

Chan estimated that the JSC’s proposal would cost non-participating customers \$1.47 - \$2.48 per month, depending on the program participation rate.<sup>121</sup> This impact is not “obvious and dramatic” as Xcel has claimed—particularly in comparison to the total \$18.56 per month average bill increase Xcel initially proposed in this case—but rather reasonable in light of its benefits, at least some of which Xcel itself has recognized.<sup>122</sup> As JSC witness Chan explained, in addition to direct participant benefits, the Commission regularly considers utility-system and societal benefits, such as employment opportunities, environmental and public health benefits, and improved community stability, when setting rates that deviate from strict cost-causation principles.<sup>123</sup> As an example, Dr. Chan pointed to the Commission’s decision to approve Xcel’s economic development rate for the Google data center.<sup>124</sup> As Dr. Chan stated: “Expanding energy services for low-income customers through low-income rate discounts would provide qualitatively similar benefits as growing load for C&I economic development. Both actions incentivize additional consumption that helps pay down some of the fixed costs of providing service to all customers.”<sup>125</sup> In addition, an expanded low-income rate would provide further “spillover benefits” as customers become more financially secure and can spend and invest their money in other ways.<sup>126</sup> It is contradictory for Xcel to portray the modest costs of an expanded low-income rate as unreasonable while at the same time continuing to offer big-business discounts to some of its wealthiest customers.

Xcel stated that it supports the ECC proposal for three principal reasons: “First, it helps to address the housing and energy burdens challenges faced by the Company’s low-income

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<sup>121</sup> JSC Initial Brief at 33-34 (citing Chan).

<sup>122</sup> Xcel Initial Brief at 203-05; Ex. Xcel-3, Summary of Filing at 2 (Application – Volume 1).

<sup>123</sup> Ex. JSC-3 at 44-45 (Chan Direct).

<sup>124</sup> *Id.* at 45.

<sup>125</sup> *Id.* at 46.

<sup>126</sup> *Id.* at 48.



customers during a time of high inflation and ongoing instability from the pandemic. Second, it offers a practical way to address the barriers to participation that exist in energy assistance programs by leveraging enrollment in other assistance programs or through self-declaration of income. Third, the proposal provides a way to counteract the potentially regressive impacts of a uniform customer service charge, which imposes a larger percentage bill increase on low-usage customers, as the proposed discount would largely offset a limited customer service charge for such customers.”<sup>127</sup> The JSC appreciates Xcel’s recognition of these challenges for customers and agrees that ECC’s proposed low-income rate would help to address them, especially if modified as the JSC has suggested to reach more cost-burdened Minnesotans, particularly those that may be the most energy-insecure, such as those living together with many other people, those with electric heating, those with electric medical devices, and those in older, less-efficient buildings.<sup>128</sup>

However, the JSC finds it troubling that Xcel recognizes these concerns only with respect to ECC’s proposal, and does not extend its consideration of these issues to other aspects of its rate case. While the ECC proposal is an important step, it is not enough to address these concerns, as the JSC and other parties, including CUB, OAG, and DOC, have argued. The JSC urges the Commission to incorporate consideration of these issues into its evaluation of Xcel’s other proposals, including in particular its proposed ROE and customer charge, as well as any ongoing efforts to improve energy assistance programs and other efforts to meet the needs of low-wealth customers.

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<sup>127</sup> Xcel Initial Brief at 203-04.

<sup>128</sup> JSC Initial Brief at 31-32 (citing Ex. JSC-6 at 49 (Chan Surrebuttal)).

**C. The DOC's Argument for Additional Business Incentive and Sustainability Rider Oversight Highlights the Need to Suspend the Rider Until Xcel Has Shown Its Benefits Outweigh Its Costs.**

JSC argued in its initial brief that Xcel should suspend its Business Incentive and Sustainability (BIS) Rider until Xcel can demonstrate that its benefits outweigh its costs and it is not regressive.<sup>129</sup> Somewhat related, the DOC argued that Xcel should not receive cost recovery for already-spent BIS Rider discounts “because it failed to show that it has not already recovered these amounts through its sales true-up or that recovery is otherwise reasonable.”<sup>130</sup> In addition, although the DOC does not suggest suspension of the BIS Rider, it “recommends that the Commission require the company to obtain express Commission approval before any contracts with prospective data center customers take effect,” to give parties and the Commission a greater opportunity for review and analysis to determine if the agreement is in public interest.<sup>131</sup>

Although the JSC's and DOC's recommendations differ, the JSC points out that they share underlying rationales. That is, both the JSC and the DOC suggest the Commission should exercise greater oversight over the BIS Rider and its associated costs, to ensure that they meet the just and reasonable standard. To achieve this goal, the JSC continues to recommend that the Commission should require the suspension of the BIS Rider until Xcel has provided appropriate benefit-cost justification for it, as discussed in the JSC's initial brief.

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<sup>129</sup> *Id.* at 40-42.

<sup>130</sup> DOC Initial Brief at 79-82.

<sup>131</sup> *Id.* at 127-28.

## V. DISTRIBUTION INVESTMENTS

### A. The Commission Should Address Hosting Capacity and Other DER Issues as They Relate to Xcel's Rate Case Proposals in This Proceeding, and Continue to Evaluate Them in Xcel's Integrated Distribution Plan and Other Proceedings as Well.

Similar to its framing of Energy Justice, Xcel has attempted to sideline and dismiss the JSC's recommendations related to DERs "because there are other dockets more suited to evaluation of these topics or because they are outside the scope of this rate case."<sup>132</sup> Specifically, Xcel stated that DER impacts on load forecasts and capacity projects, smart inverters, hosting capacity, and EV charging studies should all be addressed elsewhere, including in particular in the Company's Integrated Distribution Plan (IDP) (Docket No. 21-694).<sup>133</sup> However, Xcel failed to explain why a topic's relevance to the IDP or another proceeding means the Commission should ignore it in this rate case, where relevant investments are contemplated. Indeed, the entire purpose of the IDP is to enable greater Commission understanding and oversight of Xcel's distribution planning process, and to inform its evaluation of the associated costs—which are approved for recovery *in rate cases*.<sup>134</sup> In other words, Xcel's current and future rate cases are where it actualizes its IDP and the Commission's related directives through investments and associated cost recovery. If Xcel does not implement its IDP in its rate cases, then the IDP—a resource-intensive proceeding for the Commission and many stakeholders, including several JSC members—would be a waste of time and money. Similar logic applies to other proceedings addressing Xcel's planning, operation, and future investments—its rate cases are where Xcel recovers its associated costs, and thus where these ideas and processes developed in those

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<sup>132</sup> Xcel Initial Brief at 239-41.

<sup>133</sup> *Id.* at 240-41.

<sup>134</sup> Order Accepting 2021 Integrated Distribution System Plan and Certifying the Resilient Minneapolis Project, Docket No. 21-694, at 2-3 (July 26, 2022) ("IDP Order").

proceedings are actualized. If Xcel fails to implement its IDP or other planning proceedings in rate cases, then the planning dockets have little value.

The DER and hosting capacity recommendations that the JSC (and the CEOs) made in their initial briefs are much more than “tangentially related to the core issues of cost recovery in this rate case,” as Xcel has claimed.<sup>135</sup> As the JSC explained, equitable access to customer- and community-owned DERs is central to Energy Justice, and thus to ensuring rates and programs that are equitable, just, reasonable, and in the public interest.<sup>136</sup> Moreover, in its IDP Order, the Commission expressed its intent that Xcel be “[p]roactively planning investments in hosting capacity and other necessary system capacity to allow distributed generation and electric vehicle additions consistent with the forecast for distributed energy resources.”<sup>137</sup> The Commission’s IDP Order recognizes Xcel’s fundamental role in enabling DER adoption and integration through its distribution investments, including those proposed in this rate case. Xcel’s decisions about how it analyzes and proposes its investments, and how it operates its system—including how it treats DERs on its system—have a direct and significant impact on these investment proposals. And these investments make up a significant portion of Xcel’s proposed cost recovery in this case.<sup>138</sup>

The JSC reaffirms its DER and hosting capacity recommendations from its initial brief and does not reiterate them here. In addition, the JSC recognizes here and in its initial brief that many, if not all, of these topics are being or will be addressed in other proceedings, including Xcel’s IDP. The JSC supports such further exploration and discussion, in part to inform Xcel’s

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<sup>135</sup> Xcel Initial Brief at 240.

<sup>136</sup> JSC Initial Brief at 14-16.

<sup>137</sup> IDP Order at Order Point 4.

<sup>138</sup> See Xcel-40 at 34 (Bloch Direct, adopted by Mensen) (indicating a total 2022-24 distribution capital expenditure budget of approximately \$1.6 billion).

future rate case investment proposals. Nonetheless, the JSC emphasizes that merely continuing discussion of these issues in the IDP and elsewhere does not mean that Xcel can then ignore them in its rate case. Doing so would contravene the Commission's and stakeholders' significant efforts in those other forums and would discourage stakeholder participation future proceedings.

**B. The JSC and OAG Agree That the Commission Should Reject Xcel's Costly Grid Reinforcement Program Proposal, and Xcel's Counterarguments Are Not Persuasive.**

In initial briefs, the JSC and OAG argued that the Commission should reject Xcel's proposed Grid Reinforcement Program.<sup>139</sup> Xcel claimed that the JSC and OAG have ignored the "significant benefits" provided by the program, but still did not provide evidence that these benefits are more than speculative.<sup>140</sup> Xcel downplayed the fact that the Grid Reinforcement Program does not result in the reduction in the Routine Capacity Replacement program budget, emphasizing the separate goals of the two programs, and that the Grid Reinforcement Program is new and limited in scope.<sup>141</sup> As JSC witness Cody Davis stated in response to the same argument in testimony, "the Company has 14,268 transformers that meet its criteria for replacement within the Grid Reinforcement Program, of which the Company proposes to replace 1,400 within the MYRP timeframe. These replacements come at a proposed cost of \$12.08 Million, which is higher than the Company's entire \$9.73 Million budget for routine capacity reinforcements, which the Company identifies as including undersized transformers and conductors. [Xcel witness] Mr. Mensen does not provide a compelling explanation for why a relatively large magnitude of spending on proactive replacements of the assets the Company identifies as having the highest risk of failure does not result in any appreciable reduction in future spending within

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<sup>139</sup> JSC Initial Brief at 57-61; OAG Initial Brief at 21-24.

<sup>140</sup> Xcel Initial Brief at 137-42.

<sup>141</sup> *Id.* at 138-39.

the MYRP.”<sup>142</sup> In its initial brief, Xcel stated that the Grid Reinforcement program may “at some point in the future” result in Routine Capacity Reinforcement project reductions,<sup>143</sup> but does not effectively explain why it does not do so today.

Xcel also highlighted the potential hosting capacity benefits of the program because it is replacing undersized transformers with larger transformers.<sup>144</sup> However, as the JSC argued in its initial brief, Xcel could achieve these transformer replacements and associated hosting capacity benefits through its existing Routine Capacity Reinforcement and New Business programs, without a new \$12 million program.<sup>145</sup> The JSC continues to recommend that the Commission reject the Grid Reinforcement Program.

Although the OAG agreed with the JSC regarding the rejection of the Grid Reinforcement Program, it disagreed with the JSC’s alternative proposal to waive upgrade costs associated with EVs; Xcel made a similar argument.<sup>146</sup> The OAG went further and suggested that the Commission should direct Xcel to stop its current practice of exempting EV owners participating in Xcel programs from such costs.<sup>147</sup> The JSC disagrees with the OAG that such a cost-exemption would unduly burden other customers with EV-related costs.<sup>148</sup> As explained in the JSC’s initial brief, socializing necessary system upgrade costs, like other incentives for EVs, help to make them more affordable for all customers, including lower-wealth customers.<sup>149</sup> Therefore, the JSC continues to recommend the treatment of EV-associated upgrade costs described in its initial brief.

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<sup>142</sup> Ex. JSC-7 at 20-21 (Davis Surrebuttal).

<sup>143</sup> Xcel Initial Brief at 138-39.

<sup>144</sup> *Id.* at 139-40.

<sup>145</sup> JSC Initial Brief at 58-59.

<sup>146</sup> OAG Initial Brief at 73-75; Xcel Initial Brief at 141-42.

<sup>147</sup> *Id.* at 73-75.

<sup>148</sup> *See id.*

<sup>149</sup> JSC Initial Brief at 60-61 (citing Ex. JSC-4 at 37-38 (Davis Direct)).

**C. To Promote Transparency, Affordability, and Equity, the Commission Should Adopt the CEOs' Recommendation That the Commission Require Xcel to Conduct Benefit-Cost Analyses for Its Discretionary Asset Health and Reliability Investments and the JSC's Similar Recommendations Related to Xcel's Cable Replacement Program.**

The JSC supports the CEOs' recommendation that the Commission require Xcel to perform benefit-cost analyses for discretionary Asset Health and Reliability investments.<sup>150</sup> In addition, the JSC specifically recommends requiring a reliability-driven benefit-cost analysis for the proactive portion of Xcel's Cable Replacement Program budget, which falls within the Asset Health and Reliability program.<sup>151</sup> In response to the broader recommendation, Xcel argued that such benefit-cost analyses would be both inappropriate and impractical, and the Commission should reject this idea.<sup>152</sup>

The JSC disagrees with Xcel and continues to agree with the CEOs that benefit-cost principles should be "applied where practical to discretionary investments within the program," namely to non-reactive investments.<sup>153</sup> As JSC witness Davis explained, while the JSC appreciates that "assigning benefit magnitudes can be challenging for some types of benefits, it is also important that the Company be able to demonstrate the level of and types of benefits that will result from their proposed investments, describing any difficulty in quantification where it exists and explaining why such investments are necessary even if they score poorly."<sup>154</sup> Moreover, as the JSC underscored in its initial brief, the benefit-cost framework can incorporate Energy Justice benefits as appropriate.<sup>155</sup> Mr. Davis pointed out that other utilities, in particular Duke Energy Indiana, have applied such benefit-cost principles to similar applications for asset

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<sup>150</sup> CEOs Initial Brief at 31-32; JSC Initial Brief at 61-64.

<sup>151</sup> JSC Initial Brief at 61-64.

<sup>152</sup> Xcel Initial Brief at 129-33.

<sup>153</sup> JSC Initial Brief at 64 (citing Ex. JSC-7 at 7-10 (Davis Surrebuttal)).

<sup>154</sup> Ex. JSC-7 at 8 (Davis Surrebuttal).

<sup>155</sup> *Id.* at 9-10.

replacement.<sup>156</sup> Furthermore, as emphasized in the JSC’s initial brief, Asset Health and Reliability makes up the largest percentage of the Company’s proposed distribution capital additions in this rate case, and are significantly higher than previous years.<sup>157</sup> “Given the level of spending within this category and the speed at which it has increased, it is reasonable for the Commission to require the Company to provide a more analytical justification for its proposed level of spending in this investment category.”<sup>158</sup> Finally, Xcel’s claim that it would be impractical to perform such benefit-cost analyses is inherently flawed. As Mr. Davis explained: “The fact that the category makes up such a large percentage of the budget provides greater reason for why it should be more scrutinized for reasonableness, not less. The Commission should require Xcel to provide specific justifications for individual program items in order to demonstrate the value and necessity of the individual programs and the associated level of capital investment. Otherwise, the Commission runs the risk of approving imprudent investments that generate greater utility profits without commensurate public benefit.”<sup>159</sup>

Xcel similarly pushed back on the JSC’s argument for a benefit-cost analysis applied to Xcel’s proactive cable replacements specifically.<sup>160</sup> For the reasons discussed above and in the JSC’s initial brief, the JSC disagrees and continues to recommend such an analysis.<sup>161</sup> In addition, Xcel disagreed with the JSC’s recommendation that it separate its budgets for reactive and proactive cable replacements because it requires budget flexibility to account for uncertainty around how many reactive replacements will be necessary in a given year.<sup>162</sup> As stated in its

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<sup>156</sup> *Id.* at 8.

<sup>157</sup> JSC Initial Brief at 62 (citing Ex. Xcel-40 at 49 (Bloch Direct, adopted by Mensen) and Ex. JSC-4 at 39 (Davis Direct)).

<sup>158</sup> Ex. JSC-7 at 9 (Davis Surrebuttal).

<sup>159</sup> *Id.*

<sup>160</sup> Xcel Initial Brief at 133-37.

<sup>161</sup> JSC Initial Brief at 61-64.

<sup>162</sup> Xcel Initial Brief at 134-37.



initial brief, the JSC acknowledges Xcel's need for some flexibility, but suggests this must be balanced with transparency such that the Commission can have some oversight over Xcel's proactive expenditures.<sup>163</sup> Therefore, the JSC continues to suggest that the Commission should require Xcel to track its planned and actual spending on each sub-category (reactive and proactive), and conduct a benefit-cost analysis only for the proactive portion of its spending.<sup>164</sup>

## **VI. CONCLUSION**

In this rate case, the Commission has a thorough record to support its use of Energy Justice as a lens to understand and execute its "just and reasonable" obligation. The JSC has reviewed Xcel's proposals and provided specific recommendations to better promote Energy Justice through Xcel's rates, programs, operations, and investments. The JSC urge the Commission to adopt these recommendations to help ensure a more just and equitable energy system for Xcel customers.

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<sup>163</sup> JSC Initial Brief at 63.

<sup>164</sup> *Id.*