

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Petition for Approval of an
Electric Service Agreement between Google
and Northern States Power Co. d/b/a Xcel
Energy

PUC Docket No. E002/M-26-170

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that the Xcel Large Industrials (“XLI”) move the Minnesota Public Utilities Commission (“Commission”) for an order (i) referring the above referenced matter to the Court of Administrative Hearings (“CAH”) for contested case treatment; and (ii) compelling Xcel to remove unlawful references and redactions to “Highly Confidential Trade Secret” information. Minn. R. 7829.0410. Parties wishing to contest this motion have fourteen days to file a written response with the Commission and serve copies on all persons listed on the official service list. Minn. R. 7829.0410 subp. 2.

DATED: September 25, 2026

/s/ Andrew P. Moratzka

Andrew P. Moratzka (#0322131)
Amber S. Lee (#0342178)
Stoel Rives LLP
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Telephone: 612.373.8822
Facsimile: 612.373.8881

ATTORNEYS FOR THE XCEL LARGE
INDUSTRIALS

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**MEMORANDUM OF LAW
IN SUPPORT OF MOTION**

I. INTRODUCTION

An *ad hoc* consortium of large industrial customers of Northern States Power Company d/b/a Xcel Energy (“Xcel”) known as the Xcel Large Industrials (“XLI”)¹ submit this motion under Minn. R. 7829.0410 requesting the Minnesota Public Utilities Commission (“Commission”) to enter an order (i) referring the above referenced matter to the Court of Administrative Hearings (“CAH”) for contested case treatment; and (ii) compelling Xcel to remove unlawful references and redactions to “Highly Confidential Trade Secret” information that have no support under the Minnesota Government Data Practices Act. Consistent with Minn. R. 7829.0410, XLI advises parties that any opposition must be filed within 14-days of service of this motion.

II. ANALYSIS

A. Procedural Background

Xcel submitted its petition (the “Petition”) for approval in this proceeding on April 14, 2026. This timing is important because it predates the Commission’s order establishing tariffs and approving the creation of Xcel’s Very Large Customer Class (“VLC Class”) by roughly two months.² Through the VLC Class Order, the Commission satisfied the statutory directive to “establish by order the definition and appropriate characteristics of a very large customer class or

¹ Flint Hills Resources Pine Bend, LLC; Marathon Petroleum Corporation; and USG Interiors, Inc.

² *In the Matter of Xcel Energy’s Petition for Approval of Large General Time of Day Service Customer and Large Peak Controlled Time of Day Service Tariffs*, PUC Docket No. E-002/M-25-289, Order Approving Tariffs, Creating the Very Large Customer Class, and Establishing Other Requirements (June 12, 2026) (eDocket No. 20266-232841-01) (“VLC Class Order”).

subclass” for Xcel Energy.³ The VLC Class Order also outlines critical elements of transparency for any filing seeking approval of an electric service agreement (“ESA”) between a VLC Class member and Xcel, which Xcel must now follow. XLI urges the Commission to carefully review the Petition for compliance with the VLC Class Order, as well as the Commission’s interpretation and application of Minn. Stat. § 216B.1622.

B. Minnesota Law Mandates Contested Case Review of the Petition

This proceeding could set precedent for decades of cost recovery, billions of dollars of investment, and the state’s achievement of the carbon free standard outlined in Minn. Stat. § 216B.1622. The magnitude of these investments, size of the new VLC Class load, terms of service, and potential impact on Xcel’s ratepayers are not the types of issues that should be resolved in a miscellaneous docket. After reviewing a portion of the Petition and discovery responses,⁴ XLI requests the Commission initiate contested case proceedings to evaluate the Petition. This Petition cannot be resolved through notice and comment as a miscellaneous filing because there are significant material facts in dispute that require contested case treatment. Only in a contested case forum can the detailed rate analysis be determined through sworn testimony and tested through cross-examination.⁵

The term “miscellaneous filing” is defined as “a request or notice that does not require determination of a utility’s revenue requirement.”⁶ The load Xcel proposes to serve via the petition requires a determination of Xcel’s revenue requirement because the projected costs and revenues of the proposed interconnection will significantly impact Xcel’s overall revenue

³ Minn. Stat. § 216B.1622, subd. 1.

⁴ Xcel refuses to provide information it classifies as “highly confidential trade secret” to any party other than government agencies.

⁵ XLI appreciates that one avenue to raise this request is through the comment process. Minn. R. 7829.1400. However, XLI cannot participate in that process absent having information that Xcel refuses to provide to any party other than government agencies. Therefore, XLI brings this motion and a motion to compel to remove the “highly confidential trade secret” designation.

⁶ Minn. R. 7829.0100 subp. 11.

requirement.⁷ Costs incurred by Xcel to serve this load, and revenue received by Xcel in serving this load, cannot be reasonably addressed in isolation, outside of a determination of Xcel's overall revenue requirement. The fact that the parties have been engaged in discovery regarding detailed EnCompass and class cost of service study modeling underscores this point.

Not only does this proceeding require a new determination of the Company's revenue requirement, there are significant issues of material fact that can only be adequately addressed in a contested case process. The Commission shall refer a matter to a contested case if "all significant issues have not been resolved to its satisfaction."⁸ As an example, the Commission referred Minnesota Power's HVDC project to a contested case proceeding to evaluate the feasibility of alternatives. In its Order for Hearing the Commission noted it required "a more robust record before making its ultimate decision ... via contested case proceedings. In an abundance of caution, the Commission also notes that the public interest supports contested case proceedings because contested case proceedings will allow the Commission to make a thorough, informed, and well-reasoned decision."⁹ Similarly, the Commission referred Minnesota Power's July 2018-December 2019 Annual Automatic Adjustment matter to the OAH after finding the existence of "a genuine issue of material fact in dispute."¹⁰ To put this finding in context, the concern there was in regard to approximately \$8 million of forced outage costs.¹¹ Here, \$8 million is not even a rounding error in the proposed data center contracts before the Commission.

⁷ During cross examination in Xcel's last rate case proceeding, Xcel testified that a 100 MW customer with a 95% load factor would increase energy sales to Xcel's C&I Demand Class by roughly 4%-5%; and twice that for a 200 MW customer with a 95% load factor. While the customer's peak demand is redacted in this proceeding, it should be axiomatic that energy sales increases to Xcel's C&I Demand Class of 5%-10% (or more) *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, PUC Docket No. E-002/GR-24-320, Hearing Transcript, Vol. 1 at 277-280 (December 17, 2025).

⁸ Minn. R. 7829.1000.

⁹ *In the Matter of the Application of Minnesota Power for a Certificate of Need for the HVDC Modernization Project in Hermantown, Saint Louis County*, PUC Docket No. E-015/CN-22-607, Order Identifying Alternative Proposal for Environmental Assessment, Scope, Granting Variance, and Notice of and Order for Hearing, p. 6 (November 29, 2023) (eDocket No. 202311-200811-02).

¹⁰ *In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports*, PUC Docket No. E-999/AA-20-171, Order Accepting 2018-2019 Electric AAA Reports; Notice of and Order for Hearing at 4 (Sept. 16, 2020).

¹¹ *In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports*, PUC Docket No. E-999/AA-20-171, Additional Response Comments of the Department of Commerce, Division of Energy Resources at 6 (July 24, 2020).

XLI also disputes Xcel's summary assertion¹² that the Petition satisfies the public interest standard by which the Commission reviews ESAs between customers and utilities. The Commission has historically interpreted this public interest standard to require that (i) ESAs must not negatively impact the utility's ratepayers and (ii) the terms of the ESA must be non-discriminatory and available to any other large customer.¹³ New to the Commission's review of the ESA subject to the Petition is the statutory direction that "all costs attributable" to the VLC Class are assigned to the VLC Class.¹⁴ Moreover, the Commission has flexibility in this proceeding to fashion any approval in a manner consistent with the public interest.¹⁵

The standard for the Commission's review of the Petition, whether the ESA in the Petition satisfies this standard, and what modifications are needed to ensure the ESA is consistent with the public interest, are all contested issues of material fact that can only be developed through a contested case proceeding. For example, the Petition is devoid of reference to the applicable standard of review and interplay Minn. Stat. §§ 216B.05 and 216B.1622, as well as the non-discrimination provisions in Minn. Stat. §§ 216B.03, 216B.06, and 216B.07. XLI respectfully asserts these statutes govern the Commission's review of the Petition and, by their lack of reference in the Petition, Xcel appears to disagree. In addition, XLI respectfully disagrees that Xcel has met its burden to demonstrate ratepayers will not be harmed by the Petition. Not only has there been no demonstration, at least that XLI has been able to review, to support Xcel's claim that its ESA with Google will provide \$1.1 billion in customer benefits, the Petition's focus is on incremental cost and not whether Google will be paying "all costs attributable" to its load. "All costs" necessarily include embedded costs and costs Xcel incurs that may not be fully recovered from

¹² "Public interest" is only referenced in the Petition, in passing, in the conclusion. Petition, pg. 29.

¹³ *In the Matter of Xcel Energy's Petition for Approval of Contracts for Provision of Service to a New Large Customer's Minnesota Data Center Project*, PUC Docket Nos. E-002/M-22-572 and E-002/M-22-579, Order (October 18, 2023) (citing *In the Matter of Minnesota Power's Petition for Approval of an Amendment to an Electric Service Agreement with NewPage Wisconsin System, Inc. and Minnesota Power*, PUC Docket No. E-015/M-14-130, Order (May 6, 2014)).

¹⁴ Minn. Stat § 216B.1622, subd. 2(1).

¹⁵ Minn. Stat § 216B.05, subd. 2a (directing that "[c]ontracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes."); Minn. Stat § 216B.1622, subd. 2(4) (directing the Commission to consider "how best to achieve...any other outcome deemed important by the commission to ensure the tariff or agreement is in the public interest.").

Google when it terminates the contract. The Commission has the statutory directive to ensure these costs are recovered from the VLC Class, including Google.

The Commission should also require thorough evaluation of Xcel's proposal that the ESA terms will govern exclusively. Xcel's ESA with Google states "Where there is any conflict between this Agreement and the Tariff, the terms of the Agreement will control."¹⁶ In other words, the terms of this ESA, if approved by the Commission, could restrict the Commission's ability to exercise its broad authority in the future in setting just and reasonable rates under Minnesota law. Finally, Xcel appears to be using the "highly confidential trade secret" designation as a means of ensuring it can negotiate different ESA terms with different VLC Class members, which violates Minn. Stat. §§ 216B.03, 216B.06, and 216B.07. Xcel's approach and legal interpretations present material facts that will be contested in this proceeding.

In light of these material contested issues, and because the proposed ESA will significantly impact Xcel's revenue requirement and allocation of revenues for all customers, the proposed ESA poses issues of material fact, Minn. R. 7829.1000 requires the Commission to initiate a contested-case proceeding before the CAH, which could be part of Xcel's upcoming general rate case or a separate contested case proceeding.

C. Xcel Has No Legal Basis to Restrict Information in this Docket

In the Petition, Xcel claims without legal citation that certain information is "Highly Confidential Trade Secret" because of its "competitively-sensitive nature" that "relates to load growth projections and certain confidential contractually negotiated terms."¹⁷ Xcel does not explain why this information should be restricted. This type of information is regularly produced in other proceedings (e.g., general rate case dockets and resource planning dockets). It has also been produced by Minnesota Power in its docket seeking approval of an ESA with Google.¹⁸

¹⁶ Petition, Attach. A, pg. 3 of 49.

¹⁷ Petition, pg. 3.

¹⁸ In its petition, Minnesota Power did not seek to redact certain information as "highly confidential trade secret." See *In the Matter of the Petition for Approval of an Electric Service Agreement between Google and Minnesota Power*, PUC Docket No. E-015/M-26-159, Petition (March 26, 2026).

Furthermore, roughly two months after Xcel filed the Petition, the Commission issued its VLC Class Order. There, the Commission stated:

For any data identified as protected data in an Incremental Cost Test or Electric Service Agreement, Xcel must provide specific explanations of why protected status **is necessary and permitted under the Minnesota Government Data Practices Act. Information contained in Electric Service Agreements and Incremental Cost Tests shall be filed publicly to the greatest extent possible.**¹⁹

The VLC Class Order and the MGDPA do not distinguish between “trade secret” and “highly confidential trade secret.” Instead, the Commission directed Xcel to classify as much information as possible as public to facilitate a transparent review of these critically important agreements and filings. Xcel’s multi-layered designations, which started in the Petition and have continued through discovery, do the opposite and limit the information by which to evaluate whether approval of the Petition is consistent with the public interest.

XLI understands that certain information may need to be designated as “not public.” And XLI appreciates that the Petition predates the VLC Class Order. But under state law, “not public” data is defined as “any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.”²⁰ Minnesota law also provides that “trade secret information”²¹ is also classified as non-public data with regard to that data that is not on individuals.²² These definitions, and protections they afford under the MGDPA, are sufficient here and have been found sufficient in other contested cases. As recently recognized in Xcel’s gas rate case, there is no “highly confidential trade secret” designation under state law. In denying Xcel’s request for a protective order, the ALJ stated that the MGDPA “does not recognize a subcategory of trade secret data that is ‘highly confidential.’ Data is either public and

¹⁹ VLC Class Order, pg. 20-21, ordering para. 15 (emphasis added).

²⁰ Minn. Stat. § 13.03, subd. 8a.

²¹ Defined as “government data, including a formula, pattern, compilation, program, device, method, technique or process (1) that was supplied by the affected individual or organization, (2) that is the subject of efforts by the individual or organization that are reasonable under the circumstances to maintain its secrecy, and (3) that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.” Minn. Stat. § 13.37, subd. 1(b).

²² Minn. Stat. § 13.37, subd. 2.

available to everyone, or it is not public.”²³ The ALJ went on to conclude that “[g]iven the significant burdens and lack of benefits, the use of an HCTS order is appropriately limited to the circumstances for which it was originally intended: market competitor participation. Those circumstances are not present here, and [Xcel’s] Motion is denied.”²⁴

Here, Xcel has not sought a protective order, has not explained how its designation of “highly confidential” is necessary or permitted under the MGDPA as required by the VLC Class Order, and is instead unilaterally adding a designation of “highly confidential” to information in violation of the MGDPA. In addition, the apparent intent of Xcel in protecting this information is to skirt the non-discrimination requirements set out under Minn. Stat. §§ 216B.03, 216B.06, and 216B.07, the result is that non-government parties are completely unable to review the topic and substance of certain terms of the ESA.²⁵ There is thus no legal basis to permit the use of Xcel’s “highly confidential” designation. There is also no policy basis for doing so because here there is no market competitor participation that would warrant protection, as acknowledged in the Xcel Gas Case ALJ Order.

Public commenters are also demanding transparency. In a public comment filed this summer, Aubree Derksen stated:

If the ESA is to fulfill its purpose the information must be public and allow for the public to engage fully in public commenting on fully transparent information as to whether we as the public feel it is complying with the intent of the law to protect us from paying the cost of very large customers and to allow for there to be accountability and monitoring long term of the agreement. We need to be able to see the full, transparent terms of the agreement now and see that it’s being complied with as it’s our homes, our lands being ripped out from under us through eminent domain for Google’s transmission lines, our food-producing prime farm lands

²³ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Natural Gas Service in Minnesota*, PUC Docket No. G-002/GR-25-356, Order Denying Motion for Protective Order for Highly Confidential Trade Secret Data, pg. 2 (March 16, 2026) (“Xcel Gas Case ALJ Order”).

²⁴ Xcel Gas Case ALJ Order, pg. 3.

²⁵ For example, Sections 2.3 and 3.6 of the ESA are entirely redacted with no indication of the subject matter. Petition, Attach. A, pg. 2-3, 5-6. In addition, it appears these terms may be summarized in II.A. 5. and 8. in the Petition, again without a heading or description of what is redacted. Petition, pg. 13, 14-15.

not being protected for Google's data center that the community does not want. Transparency is required and transparency is due.²⁶

In a separate public comment, Mariah Seller expressed similar concerns on transparency and, consistent with XLI's request for contested case treatment, also requests a more deliberate pace for review. Ms. Seller stated:

This Agreement is not within the public interest because it is not transparent to the risks versus the rewards facing the community...As a concerned citizen of Southern Minnesota, I want to be confident that decisions are being made with considerations to all outcomes and all parties. I am worried this decision may be rushed to benefit private institutions rather than public interest. I hope this comment opens up more discussion and research into possible effects on our community.²⁷

Limiting review of what could be the most consequential terms of the ESA and associated petition to a very small number of government agencies is inappropriate and could foster mistrust in the regulatory process.

Therefore, good cause exists for the Commission to direct Xcel to reclassify the "highly confidential" information as "trade secret." XLI requests the Commission issue this relief expeditiously so XLI and other stakeholders can see and begin to review the substantive terms of Xcel's proposed service to Google.

²⁶ In the Matter of the Petition for Approval of an Electric Service Agreement between Google and Northern States Power Co. d/b/a Xcel Energy, PUC Docket No. E-002/M-26-170, Public Comment (July 6, 2026) (eDocket No. 20267-233781-01).

²⁷ In the Matter of the Petition for Approval of an Electric Service Agreement between Google and Northern States Power Co. d/b/a Xcel Energy, PUC Docket No. E-002/M-26-170, Public Comment (July 29, 2026) (eDocket No. 20267-234709-01).

III. CONCLUSION

XLI requests the Commission initiate contested case proceedings to determine the contested facts at issue via a judicial process that arbitrates the application of the MGDPA and the transparency necessary to ensure the public interest is served in the evaluation of this Petition.

Dated: September 25, 2026

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka (#0322131)

Amber S. Lee (#0342178)

33 South Sixth Street, Suite 4200

Minneapolis, MN 55402

Tele: 612-373-8800

Fax: 612-373-8881

ATTORNEYS FOR THE XCEL LARGE
INDUSTRIALS

154276779.6 0064590-00003