

STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

IN THE MATTER OF A COMMISSION  
INVESTIGATION INTO XCEL ENERGY'S  
MONTICELLO LIFE-CYCLE MANAGEMENT/  
EXTENDED POWER UPRATE PROJECT AND  
REQUEST FOR RECOVERY OF COST  
OVERRUNS

Docket No. E002/CI-13-754  
RESPONSE TO PETITIONS FOR  
RECONSIDERATION AND  
CLARIFICATION

Northern States Power Company, doing business as Xcel Energy, respectfully submits this Response to the Office of the Attorney General's and Department of Commerce's May 28, 2015 petitions for reconsideration and clarification of the Minnesota Public Utilities Commission's May 8, 2015 Order regarding the Monticello LCM/EPU Program.<sup>1</sup>

For the reasons discussed below, we respectfully ask that the Commission grant the Department's Request for Clarification and deny the OAG's Petition for Reconsideration. The Company and the Department appear to have a common understanding that the established escalated initial cost estimate for the Program was stated in Staff's Addendum to Briefing Papers filed May 7, 2015. In contrast, the OAG misstates the nature of the Commission's authority and presents no new information. As such, we believe the OAG's Petition does not warrant

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<sup>1</sup> *In the Matter of a Commission Investigation Into Xcel Energy's Monticello Life-Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost OVERRUNS*, ORDER FINDINGS IMPRUDENCE, DENYING RETURN OF COST OVERRUNS, AND ESTABLISHING LCM/EPU ALLOCATION FOR RATEMAKING PURPOSES, Docket No. E-002/CI-13-754 (May 8, 2015) ("Order").

reconsideration or an even greater impairment of Monticello as a cornerstone and carbon free baseload resource on our system.

**A. Clarification of Initial Estimate (Department)**

The Company agrees with the Department’s request for clarification of the appropriate initial cost estimate for the Monticello LCM/EPU Program, consistent with the Company’s own Petition for Reconsideration in this proceeding. We recognize that the Department takes a different view in its rate case Petition for Reconsideration regarding the appropriate manner of applying past depreciation to the Monticello asset. We address those differences in the rate case docket, as they do not change the initial cost estimate clarification both the Department and the Company seek in this prudence docket.

**B. Disallowance Argument (OAG)**

The OAG argues that that because the Commission found that Xcel Energy did not meet its burden of proof, the Monticello LCM/EPU cost increases were not prudently incurred and the Commission should have directly disallowed some or all of the overruns. As such, the OAG’s request for reconsideration is largely a legal argument.

The OAG’s argument that the Commission must deploy a particular disallowance<sup>2</sup> relies on case law pertaining to judicial bodies in civil and criminal cases, rather than to a regulatory body with quasi-judicial as well as quasi-legislative authority.<sup>3</sup>

However, the OAG itself argued earlier in this proceeding that the Minnesota Supreme Court has “specifically noted that the Commission does not follow the

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<sup>2</sup> OAG Petition for Reconsideration at n.2-3, 9.

<sup>3</sup> *In re Application of N. States Power Co. d/b/a Xcel Energy for Auth. to Increase Rates for Elec. Serv. in Minn.*, Docket No. E002/GR-08-1065, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER at 4 (Oct. 23, 2009) (“In ratemaking the Commission acts in both its quasi-judicial and quasi-legislative capacities...”).

standard civil burden of proof”<sup>4</sup> and that “the burden of proof applied in utility proceedings before the Commission is different from traditional civil lawsuits.”<sup>5</sup>

In addition, the OAG conflates the standard for *liability* in civil and criminal cases with the standard for determining an appropriate ratemaking *remedy* in a regulatory proceeding. Although the Company has expressed concerns with the manner in which the parties and ALJ proposed to apply certain precedent in this case, the standard for rate recovery is well-established and involves a balancing of interests by the Commission:

The commission, in the exercise of its powers under this chapter to determine just and reasonable rates for public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable service and to the need of the public utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provision for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property.<sup>6</sup>

Thus the Commission has broad discretion to give effect to “the thrust of the statute,” which “is a balancing of interests.”<sup>7</sup> In light of this standard, it is incorrect to argue that the Commission must disallow some or all of a project’s costs if the Commission concludes the Company did not meet its burden in all respects.

Further, as the OAG concedes,<sup>8</sup> the Commission provided several policy considerations in support of its finding that full recovery of Program cost was reasonable, including (1) the Monticello LCM/EPU project will indeed benefit ratepayers’ interests by providing another 20 years of service and an additional 71 MW

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<sup>4</sup> OAG Reply Br. at 7.

<sup>5</sup> OAG Initial Br. at 7.

<sup>6</sup> Minn. Stat. § 216B.16, subd. 6.

<sup>7</sup> *Application of Peoples Natural Gas Co.*, 389 N.W.2d 903, 909 (Minn. 1986).

<sup>8</sup> OAG Petition for Reconsideration at 4.

of reliable, carbon-free baseload power; (2) even the Department’s analysis confirmed that the project remains a cost-effective resource as a whole; (3) recovery of the Company’s actual costs recognizes that some of the cost increases were caused by uncontrollable factors such as a challenging labor market, new NRC safety requirements, and other difficulties; and (4) similar cost increases experienced at other plants undergoing uprates.<sup>9</sup> There also were additional reasons for unavoidable cost increases in the record that were uncontested or ultimately viewed as having substantial merit. As an example, our NRC licensing period was several years longer and more intensive than we anticipated – or than any prior nuclear uprate had experienced – due to evolving NRC regulation.<sup>10</sup> In addition, we appropriately identified the need to undertake an innovative and ultimately highly beneficial update to the 13.8 kV distribution system.<sup>11</sup> Accordingly, it is not correct to argue, as the OAG suggests, that the Commission found simply “that the cost overruns were not prudently incurred” or that a significant disallowance is required.<sup>12</sup>

Nor does the Commission’s decision to reduce the Company’s return rather than disallow specific costs constitute, as the OAG contends, an improper shifting of the burden of proof. The Commission was clear in its Order that “the burden to establish the reasonableness of the requested recovery rests at all times with the Company, not on the Department or other parties.”<sup>13</sup> The OAG has likewise noted in briefing that in the Company’s 2008 rate case, where the specific amount of costs at issue in a particular area were not clear, the Commission was permitted to exercise

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<sup>9</sup> Order at 10, 22.

<sup>10</sup> Staff Briefing Papers at 2; Ex. 3, O’Connor Direct at 136:14-139:23; Ex. 9, O’Connor Rebuttal at 23:19-28:10.

<sup>11</sup> Staff Briefing Papers at 44; Ex. 3, O’Connor Direct at 131:3-132:2; Ex. 16, O’Connor Surrebuttal at 11:4-12:24.

<sup>12</sup> OAG Petition for Reconsideration at 5.

<sup>13</sup> Order at 22-23, 12-13 (“Under Minnesota law, the utility always retains the burden of showing that it would be just and reasonable to include a particular utility expense in rates.”).

discretion in identifying a remedy.<sup>14</sup> The selected remedy is required solely to strike a balance between the competing interests of customers and the utility, resulting in rates that are ultimately just and reasonable for both the Company and customers.<sup>15</sup> As a result, undertaking a balancing in the current case is not in itself indicative of a shifting of the burden of proof.

As noted in our Petition for Reconsideration in this docket, the Company has continuing concerns about the Commission's decision to prohibit any return on the cost increases for the Monticello Program. Despite the OAG's characterization, this outcome has a significant impact on the Company and the Monticello asset. We continue to believe that the Commission should consider allowing us to recover the debt component of our return as an element of cost recovery, consistent with the underlying policy judgment of the Commission's decision. However, at the very least, it is clear that the applicable legal standard does not require an even greater impairment of our investment in Monticello.

## CONCLUSION

The Company respectfully requests that the Commission deny the OAG's request for reconsideration on the grounds that it raises no new factual considerations and misstates the applicable law regarding Commission authority. For the reasons stated

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<sup>14</sup> OAG Initial Br. at 8-9 (citing *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*, Docket No. E-002/GR-08-1065, at 18 (Oct. 23, 2009)).

<sup>15</sup> See, e.g., *Petition of N. States Power Co.*, 416 N.W.2d 719, 729 (Minn. 1987) ("By denying NSP's request to recover a carrying charge, the Commission struck a balance between the competing interest of the ratepayers and the investors... The Commission's holding ... involves a judgmental call, is not without precedent in Minnesota ratemaking, is a reasonable exercise of balancing, and is not arbitrary."); *Nw. Bell Tel. Co. v. State*, 253 N.W.2d 815, 822 (Minn. 1977) ("In determining the extent of the allowable adjustment, it appears that the [Commission] was acting in both a judicial and a legislative capacity... [T]he [Commission] determined as a matter of public policy that changes occurring more than one year beyond the test year would best be considered in proceedings taking into account all of the facts necessary to accurately set Bell's rates. This determination cannot be said to be arbitrary or unjust.").

in our initial Petition for Reconsideration, the Company respectfully requests recovery of the Company's cost of debt for the Program and clarification of the Commission's Order with respect to calculation of the initial cost estimate.

Dated: June 8, 2015

Respectfully submitted,

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