

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben  
Hwikwon Ham  
Valerie Means  
Joseph K. Sullivan  
John A. Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of Xcel  
Energy for a Certificate of Need for  
Additional Dry Cask Storage at the Prairie  
Island Nuclear Generating Plant Independent  
Spent Fuel Storage Installation

ISSUE DATE: May 2, 2024

DOCKET NO. E-002/CN-24-68

ORDER ACCEPTING APPLICATION  
AS COMPLETE AND NOTICE OF AND  
ORDER FOR HEARING

**PROCEDURAL HISTORY**

On February 1, 2024, Northern States Power Company, doing business as Xcel Energy (Xcel Energy), filed its 2024-2040 Upper Midwest Integrated Resource Plan (IRP).<sup>1</sup>

On February 7, 2024, Xcel Energy applied for a certificate of need for additional spent fuel storage capacity at the existing independent spent fuel storage installation at the Prairie Island nuclear power generating plant.

By March 8, 2024, the Commission received comments from the following:

- Department of Commerce, Energy, Environmental Review and Analysis (DOC-EERA)<sup>2</sup>
- Department of Commerce, Division of Energy Resources (DOC-DER)
- Communities United for Responsible Energy (CURE)

By April 8, 2024, the Commission received responsive comments from the following:

- DOC-DER
- Xcel Energy
- CURE

On April 18, 2024, this matter came before the Commission.

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<sup>1</sup> See Docket No. E-002/RP-24-67.

<sup>2</sup> DOC-EERA is the responsible government unit for preparing the environmental impact statement that needs to be developed in this certificate of need proceeding. See Minn. Stat. § 116C.83, subd. 6(b). DOC-EERA has begun the scoping process for the environmental impact statement.

## **FINDINGS AND CONCLUSIONS**

### **I. Summary of Commission Action**

The Commission will accept Xcel Energy's certificate of need application as substantially complete and refer this matter to the Office of Administrative Hearings (OAH) for contested case proceedings. The Commission will indefinitely extend statutory and rule-based time periods in this matter and, relatedly, will approve the recommendation that direct testimony not occur before February 1, 2025. Lastly, the Commission will delegate authority to the Executive Secretary to authorize applicant consultation with the Minnesota State Historic Preservation Office (SHPO).

### **II. Completeness of Xcel Energy's Applications**

Xcel Energy currently stores nuclear waste at the independent spent fuel storage installation located at its Prairie Island nuclear generating plant. The storage installation is a secured outdoor facility where spent nuclear fuel is stored in casks. Xcel Energy proposed adding additional nuclear waste storage at the installation by developing unused space within the security perimeter to hold additional casks. Xcel Energy explained it intends to seek approval from the Nuclear Regulatory Commission to operate the two Prairie Island generating units for an additional 20 years, to 2053/2054, and this additional storage will be necessary to continue operations through that period. Xcel Energy included this discussion in its most recent IRP.

Before Xcel Energy may construct or expand a nuclear waste storage facility, the Commission must approve a certificate of need.<sup>3</sup> Xcel Energy's application for a certificate of need must satisfy the requirements outlined in Minn. Stat. § 216B.243, Minn. R. 7855.0200-0280, and Minn. R. 7855.0600-0670.

#### **A. Commenters' Positions**

Xcel Energy provided additional clarification and information in its responsive comments after DOC-DER's and CURE's initial comments indicated that they were unable to locate information responding to certain rule requirements, including contact information for the engineer and firm that would be responsible for designing and constructing the facility. Thereafter, both Xcel Energy and DOC-DER recommended the Commission find the application complete. CURE continued to argue that the application was incomplete because the application lacked 1) the full extent of waste that will have to be accommodated if the generating plant life is extended; and 2) the costs of indefinite storage.

#### **B. Commission Action**

The Commission will find that Xcel Energy's application for a certificate of need for additional nuclear waste storage, as supplemented by Xcel Energy's March 15, 2024 comments, is substantially complete. Xcel Energy has provided the information required under Minn. R.

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<sup>3</sup> Minn. Stat. § 116C.83, subd. 2. The Commission's decision on a certificate of need is stayed until June 1 following the next regular annual session of the legislature that begins after the date of the Commission decision. Minn. Stat. § 116C.83, subd. 3.

7855.0200-0280 and Minn. R. 7855.0600-0670. Although CURE argued that the application was incomplete because it lacked information on the full extent of waste that will have to be accommodated if the generating plant life is extended and the costs of indefinite storage, CURE did not identify a rule explicitly requiring this specific information and the Commission is not persuaded that information is necessary at this time. The Commission is satisfied that Xcel Energy provided the information required under the rules and that no additional information is needed to find the application complete. The Commission notes that it is only addressing the completeness of Xcel Energy's application at this stage. This is a decision as to form only and implies no judgment on the merits of the application.

Additionally, the Commission will extend the time for determining the completeness of Xcel Energy's application. Decisions on the completeness of an application must be made within 15 days.<sup>4</sup> The Commission may vary its rules when it determines that 1) enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; 2) granting the variance would not adversely affect the public interest; and 3) granting the variance would not conflict with standards imposed by law.<sup>5</sup>

Here, enforcing the rule would impose an excessive burden upon others affected by the rule, including DOC-DER, because 15 days is inadequate to review Xcel Energy's application, particularly considering the overlap between this matter and Xcel Energy's pending IRP, which includes planning related to the Prairie Island nuclear power generating plant. Relatedly, granting the variance promotes the public interest because it provides the Commission and interested parties the opportunity to review the certificate of need application more closely. Such a variance does not conflict with any standards imposed by law.

### **III. Contested Case Proceedings**

A public hearing must be held on Xcel Energy's certificate of need application.<sup>6</sup> The hearing will be before an Administrative Law Judge (ALJ) and conducted under the Office of Administrative Hearings' (OAH) rules for a contested case proceeding.

#### **A. Commenters' Positions**

Xcel Energy, DOC-DER, and CURE all agreed that the matter should be referred to OAH for contested case proceedings.

#### **B. Commission Action**

##### **1. Referral to the Office of Administrative Hearings**

The Commission will refer the matter to OAH for contested case proceedings. Neither Xcel Energy nor DOC-DER identified any contested issues to be addressed during the proceedings. Nonetheless, the Commission believes that having a fuller record will help resolve questions

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<sup>4</sup> See Minn. R. 7855.0200, subp. 7.

<sup>5</sup> Minn. R. 7829.3200, subp. 1.

<sup>6</sup> Minn. R. 7855.0200, subp. 5.

regarding the certificate of need. This record may include the issues identified in CURE's initial comments, including whether there is a more reasonable and prudent alternative.

The Commission will also vary Minn. R. 7855.0200, subp. 5, which requires a public hearing within 80 days of the application filing. Enforcement of this timeframe would impose an excessive burden on the parties because the Commission will not have adequately developed or discussed Xcel Energy's IRP before this deadline passes. The lack of a discussion on the IRP could cause unnecessary confusion and complication during a public hearing in this matter as the parties will be uncertain whether the Commission will approve Xcel Energy's plan to extend the Prairie Island nuclear generating units. Extending the time for consideration would benefit the public interest for the same reasons. Granting the variance will not conflict with standards imposed by law.

## **2. Issues to Be Addressed**

In the course of this case, the Commission expects the parties will thoroughly develop a full record addressing the applicable issues. The Commission requests that the ALJ produce a report by July 1, 2025.

## **IV. Timeframe for Commission Decision**

Under Minn. Stat. § 216B.243, a certificate of need should be processed within 12 months of the application's submission. In this matter, that deadline is February 7, 2025. The Commission's rules set a shorter, 6-month timeframe for issuing a decision.<sup>7</sup> Neither timeframe is reasonable for the present application because the Commission is presently considering Xcel Energy's IRP, which was filed shortly before this application, and which includes planning related to the Prairie Island nuclear generating plant. It would be unreasonable for the Commission to consider this application for additional storage at the facility before the extension of operations at the plant are examined in the resource plan.

The Commission may extend the time for issuing a decision under Minn. Stat. § 216B.243 upon receiving the parties' consent or on its own motion for good cause. Here, good cause exists to extend the 12-month deadline because of Xcel Energy's pending IRP. Although the Commission intends to hear the IRP by February 1, 2025,<sup>8</sup> this deadline provides insufficient time for the Commission to issue a decision on this application by February 7, 2025. Six days is not enough time for contested case proceedings and for the Commission to issue its decision in this matter. Accordingly, the Commission will indefinitely extend the timeframe for issuing its decision on Xcel Energy's application. For the same reasons, the Commission will vary Minn. R. 7855.0200, subp. 6 and extend the deadline contained therein.

The Commission notes that both Xcel Energy and DOC-DER recommended that no direct testimony or comments be filed in this matter prior to February 1, 2025. As such, both parties ostensibly consent to this extension. The Commission agrees that no testimony or comments be

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<sup>7</sup> Minn. R. 7855.0200, subp. 6.

<sup>8</sup> See February 22, 2024 order, Docket No. E-002/RP-24-67, *In the Matter of Xcel Energy's 2024-2040 Upper Midwest Integrated Resource Plan*.

filed in this matter prior to February 1, 2025, because the Commission should process Xcel Energy's IRP before the parties pursue the merits of this application.

## **V. Procedural Outline for Contested Case Proceedings**

### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Megan McKenzie. Her address is as follows: Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101. Her mailing address is P.O. Box 64620, St. Paul, Minnesota 55164-0620. She can be reached through her legal assistant, Nichole Helmueller, at 651-361-7857 or Nichole.Helmueller@state.mn.us.

### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62; the rules of the Minn. R. 1400.5010-8400; and to the extent they are not superseded by those rules, the Commission's rules of Practice and Procedure, Minn. R. 7829.0100-4000. Hearings may be recessed and reset by the ALJ pursuant to Minn. R. 1405.1400 to 1405.2300.

These rules and statutes can be accessed free of charge through the State of Minnesota's website at [www.revisor.mn.gov/pubs](http://www.revisor.mn.gov/pubs). Hardbound copies of Minnesota's statutes or rules are available from the Office of the Revisor of Statutes at 651-645-1224, ext. 107, or <https://www.mn.govpublications.com/home.asp>.

The OAH conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700 to 1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Craig Janezich (651) 201-2203, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the ALJ if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified neutral interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the ALJ after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the ALJ within 20 days of the date of this notice and order for hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the ALJ, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Xcel Energy and DOC-DER. Other persons wishing to become formal parties shall promptly file petitions to intervene with the ALJ. They shall serve copies of such petitions on all current parties and on the Commission consistent with Minn. R. 1400.6200.

### **D. Prehearing Conference**

A prehearing telephone conference will be held on Monday, May 13, 2024, at 10:00 a.m. using the following call-in information:

Call-in Number: 651-395-7448  
Conference Code: 101 028 399#

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

## **VI. Ex Parte Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this order. Those restrictions and reporting requirements are set forth in Minn. R. 7845.7300 to 7845.7400, which all parties are urged to consult.

## **VII. Delegation of Authority**

Minn. Stat. § 138.665 requires consultation with the State Historic Preservation Office (SHPO) before carrying out any undertaking that will affect certain designated or listed properties. To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary to authorize the Applicants to initiate consultation with SHPO in order to determine appropriate treatments and to seek ways to avoid and mitigate any adverse effects on designated or listed properties.

## ORDER

1. The Commission accepts the certificate of need application as substantially complete.
2. The Commission refers the matter to the Office of Administration Hearings for a contested case, and requests that the administrative law judge produce a report by July 1, 2025.
3. The Commission extends the time period under Minn. Stat. § 216B.243, subd. 5, for approval or denial of a certificate of need for the Prairie Island nuclear facility expansion indefinitely.
4. The Commission grants a variance extending the time periods in Minn. R. 7855.0200, subp. 5-7, indefinitely for purposes of this proceeding.
5. The Commission approves the recommendation that direct testimony on this matter will not occur before February 1, 2025.
6. The Commission delegates authority to the Executive Secretary to issue an authorization to the Applicants to initiate consultation with the Minnesota State Historic Preservation Office (SHPO).
7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing or speech impairment may call using their preferred Telecommunications Relay Service or email [consumer.puc@state.mn.us](mailto:consumer.puc@state.mn.us) for assistance.



**Attachment A**

OAH Docket Number: 25-2500-39971

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Xcel Energy for a Certificate  
of Need for Additional Dry Cask Storage at the Prairie Island  
Nuclear Generating Plant Independent Spent Fuel Storage  
Installation

**NOTICE OF APPEARANCE**

**PLEASE TAKE NOTICE that:**

1. The party/agency named below (Party/Agency) will appear at the prehearing conference and all subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the Party/Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.<sup>9</sup>**

3. The Party/Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

**Party's/Agency's Name:** \_\_\_\_\_  
**Email:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_

**Party's/Agency's Attorney:** \_\_\_\_\_  
**Firm Name:** \_\_\_\_\_  
**Email:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_

**Respondent's/Opposing Party's Name:** \_\_\_\_\_  
**Email:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_  
**Mailing Address:** \_\_\_\_\_

**Dated:** \_\_\_\_\_  
**Signature of Party/Agency or Attorney**

<sup>9</sup> In order to opt in to electronic notice, this form must be emailed to [OAH.efiling.support@state.mn.us](mailto:OAH.efiling.support@state.mn.us). If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. *See* Minn. Stat. § 14.58, Minn. R. 1400.5550, subps. 2-5.

## **CERTIFICATE OF SERVICE**

I, Mai Choua Xiong, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission**

**ORDER ACCEPTING APPLICATION AS COMPLETE AND NOTICE OF AND  
ORDER FOR HEARING**

Docket Number **E-002/CN-24-68**

Dated this 2<sup>nd</sup> day of May, 2024

/s/ Mai Choua Xiong

[illegible]

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
John	Coffman	john@johncoffman.net	AARP	871 Tuxedo Blvd.  St. Louis, MO 63119-2044	Electronic Service	No	OFF_SL_24-68_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_24-68_Official
Jean	Comstock	jean.comstock.dbcc@gmail.com	St. Paul 350	729 6th St E  St. Paul, MN 55106	Electronic Service	No	OFF_SL_24-68_Official
George	Crocker	gwillc@nawo.org	North American Water Office	5093 Keats Avenue  Lake Elmo, MN 55042	Electronic Service	No	OFF_SL_24-68_Official
James	Denniston	james.r.denniston@xcelenergy.com	Xcel Energy Services, Inc.	414 Nicollet Mall, 401-8  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_24-68_Official
Ian M.	Dobson	ian.m.dobson@xcelenergy.com	Xcel Energy	414 Nicollet Mall, 401-8  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_24-68_Official
J.	Drake Hamilton	hamilton@fresh-energy.org	Fresh Energy	408 St Peter St Ste 350  Saint Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Christopher	Droske	christopher.droske@minneapolismn.gov	City of Minneapolis	661 5th Ave N  Minneapolis, MN 55405	Electronic Service	No	OFF_SL_24-68_Official
Adam	Duininck	aduininck@ncsrcc.org	North Central States Regional Council of Carpenters	700 Olive Street  St. Paul, MN 55130	Electronic Service	No	OFF_SL_24-68_Official
Brian	Edstrom	briane@cubminnesota.org	Citizens Utility Board of Minnesota	332 Minnesota St Ste W1360 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
John	Farrell	jfarrell@ilsr.org	Institute for Local Self-Reliance	2720 E. 22nd St Institute for Local Self-Reliance Minneapolis, MN 55406	Electronic Service	No	OFF_SL_24-68_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_24-68_Official
Mike	Fiterman	mikefiterman@libertydiversified.com	Liberty Diversified International	5600 N Highway 169  Minneapolis, MN 55428-3096	Electronic Service	No	OFF_SL_24-68_Official
Lucas	Franco	lfranco@liunagroc.com	LIUNA	81 Little Canada Rd E  Little Canada, MN 55117	Electronic Service	No	OFF_SL_24-68_Official
Amy	Fredregill	afredregill@environmental-initiative.org	Environmental Initiative, MN Sustainable Growth Coalition	211 First St N Ste 250  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_24-68_Official
Edward	Garvey	edward.garvey@AESLconsulting.com	AESL Consulting	32 Lawton St  Saint Paul, MN 55102-2617	Electronic Service	No	OFF_SL_24-68_Official
Todd J.	Guerrero	todd.guerrero@kutakrock.com	Kutak Rock LLP	Suite 1750 220 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No	OFF_SL_24-68_Official
Kim	Havey	kim.havey@minneapolismn.gov	City of Minneapolis	350 South 5th Street, Suite 315M Minneapolis, MN 55415	Electronic Service	No	OFF_SL_24-68_Official
Philip	Hayet	phayet@jkenn.com	J. Kennedy and Associates, Inc.	570 Colonial Park Drive Suite 305 Roswell, GA 30075-3770	Electronic Service	No	OFF_SL_24-68_Official
Adam	Heinen	aheinen@dakotaelectric.com	Dakota Electric Association	4300 220th St W  Farmington, MN 55024	Electronic Service	No	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Annete	Henkel	mui@mnuutilityinvestors.org	Minnesota Utility Investors	413 Wacouta Street #230 St. Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Kristin	Henry	kristin.henry@sierraclub.org	Sierra Club	2101 Webster St Ste 1300  Oakland, CA 94612	Electronic Service	No	OFF_SL_24-68_Official
Michael	Hoppe	lu23@ibew23.org	Local Union 23, I.B.E.W.	445 Etna Street Ste. 61 St. Paul, MN 55106	Electronic Service	No	OFF_SL_24-68_Official
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2950 Yellowtail Ave.  Marathon, FL 33050	Electronic Service	No	OFF_SL_24-68_Official
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Sarah	Johnson Phillips	sarah.phillips@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
William D	Kenworthy	will@votesolar.org	Vote Solar	332 S Michigan Ave FL 9  Chicago, IL 60604	Electronic Service	No	OFF_SL_24-68_Official
Samuel B.	Ketchum	sketchum@kennedy-graven.com	Kennedy & Graven, Chartered	150 S 5th St Ste 700 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Frank	Kohlasch	frank.kohlasch@state.mn.us	MN Pollution Control Agency	520 Lafayette Rd N.  St. Paul, MN 55155	Electronic Service	No	OFF_SL_24-68_Official
Brian	Kolbinger	brian@beckertownship.org	Becker Township Board	PO Box 248 12165 Hancock St Becker, MN 55308	Electronic Service	No	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kay	Kuhlmann	Teri.Swanson@ci.red-wing.mn.us	City Of Red Wing	315 West Fourth Street Red Wing, MN 55066	Electronic Service	No	OFF_SL_24-68_Official
Brenda	Kyle	bkyle@stpaulchamber.com	St. Paul Area Chamber of Commerce	401 N Robert Street Suite 150 St Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Carmel	Laney	carmel.laney@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Peder	Larson	plarson@larkinhoffman.com	Larkin Hoffman Daly & Lindgren, Ltd.	8300 Norman Center Drive Suite 1000 Bloomington, MN 55437	Electronic Service	No	OFF_SL_24-68_Official
Rachel	Leonard	rachel.leonard@ci.monticello.mn.us	City of Monticello	505 Walnut St Ste 1 Monticello, MN 55362	Electronic Service	No	OFF_SL_24-68_Official
Annie	Levenson Falk	annief@cupminnesota.org	Citizens Utility Board of Minnesota	332 Minnesota Street, Suite W1360 St. Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Alice	Madden	alice@communitypowermn.org	Community Power	2720 E 22nd St Minneapolis, MN 55406	Electronic Service	No	OFF_SL_24-68_Official
Kavita	Maini	kmairi@wi.rr.com	KM Energy Consulting, LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Electronic Service	No	OFF_SL_24-68_Official
Emily	Marshall	emarshall@mojlaw.com	Miller O'Brien Jensen, PA	120 S. 6th Street Suite 2400 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Mary	Martinka	mary.a.martinka@xcelenergy.com	Xcel Energy Inc	414 Nicollet Mall 7th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gregg	Mast	gmast@cleanenergyecon mymn.org	Clean Energy Economy Minnesota	4808 10th Avenue S  Minneapolis, MN 55417	Electronic Service	No	OFF_SL_24-68_Official
Daryl	Maxwell	dmaxwell@hydro.mb.ca	Manitoba Hydro	360 Portage Ave FL 16 PO Box 815, Station Main Winnipeg, MB R3C 2P4  CANADA	Electronic Service	No	OFF_SL_24-68_Official
Megan	McKenzie	megan.mckenzie@state.m n.us	Office of Administrative Hearings	PO Box 64620  St Paul, MN 55164	Electronic Service	Yes	OFF_SL_24-68_Official
Taylor	McNair	taylor@gridlab.org		668 Capp Street  San Francisco, CA 94110	Electronic Service	No	OFF_SL_24-68_Official
Melanie	Mesko Lee	Melanie.Lee@burnsvillemn .gov	City of Burnsville	100 Civic Center Parkway  Burnsville, MN 55337-3867	Electronic Service	No	OFF_SL_24-68_Official
Joseph	Meyer	joseph.meyer@ag.state.mn .us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_24-68_Official
Stacy	Miller	stacy.miller@minneapolis n.gov	City of Minneapolis	350 S. 5th Street Room M 301 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_24-68_Official
David	Moeller	dmoeller@allte.com	Minnesota Power	30 W Superior St  Duluth, MN 558022093	Electronic Service	No	OFF_SL_24-68_Official
Andrew	Moratzka	andrew.moratzka@stoel.co m	Stoel Rives LLP	33 South Sixth St Ste 4200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Evan	Mulholland	emulholland@mncenter.org	Minnesota Center for Environmental Advocacy	1919 University Ave W Ste 515  Saint Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Alan	Muller	alan@greendel.org	Energy & Environmental Consulting	1110 West Avenue  Red Wing, MN 55066	Electronic Service	No	OFF_SL_24-68_Official
Carl	Nelson	cnelson@mncee.org	Center for Energy and Environment	212 3rd Ave N Ste 560  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_24-68_Official
David	Niles	david.niles@avantenergy.com	Minnesota Municipal Power Agency	220 South Sixth Street Suite 1300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
M. William	O'Brien	bobrien@mojlaw.com	Miller O'Brien Jensen, P.A.	120 S 6th St Ste 2400  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Ric	O'Connell	ric@gridlab.org	GridLab	2120 University Ave  Berkeley, CA 94704	Electronic Service	No	OFF_SL_24-68_Official
Carol A.	Overland	overland@legalelectric.org	Legalelectric - Overland Law Office	1110 West Avenue  Red Wing, MN 55066	Electronic Service	No	OFF_SL_24-68_Official
J. Gregory	Porter	greg.porter@nngco.com	Northern Natural Gas Company	1111 South 103rd St  Omaha, NE 68124	Electronic Service	No	OFF_SL_24-68_Official
Greg	Pruszinske	gpruszinske@ci.becker.mn.us	City of Becker	PO Box 250 12060 Sherburne Ave Becker, MN 55308	Electronic Service	No	OFF_SL_24-68_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kevin	Reuther	kreuther@mncenter.org	MN Center for Environmental Advocacy	26 E Exchange St, Ste 206  St. Paul, MN 551011667	Electronic Service	No	OFF_SL_24-68_Official
Nathaniel	Runke	nrunke@local49.org	International Union of Operating Engineers Local 49	611 28th St. NW  Rochester, MN 55901	Electronic Service	No	OFF_SL_24-68_Official
Joseph L	Sathe	jsathe@kennedy-graven.com	Kennedy & Graven, Chartered	150 S 5th St Ste 700  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Jeff	Schneider	jeff.schneider@ci.red-wing.mn.us	City of Red Wing	315 West 4th Street  Red Wing, MN 55066	Electronic Service	No	OFF_SL_24-68_Official
Mark	Schoennauer	markwsch@hotmail.com		607 19th St NW Apt 17  Rochester, MN 55901	Electronic Service	No	OFF_SL_24-68_Official
Christine	Schwartz	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7  Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_24-68_Official
Douglas	Seaton	doug.seaton@umwlc.org	Upper Midwest Law Center	8421 Wayzata Blvd Ste 300  Golden Valley, MN 55426	Electronic Service	No	OFF_SL_24-68_Official
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_24-68_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190  Richfield, MN 55423	Electronic Service	Yes	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Andrew R.	Shedlock	Andrew.Shedlock@KutakRock.com	Kutak Rock LLP	60 South Sixth St Ste 3400  Minneapolis, MN 55402-4018	Electronic Service	No	OFF_SL_24-68_Official
Edyta	Sitko	esitko@ucsusa.org	Union of Concerned Scientists	1 N Lasalle Ave  CHICAGO, IL 60602	Electronic Service	No	OFF_SL_24-68_Official
Ken	Smith	ken.smith@districtenergy.com	District Energy St. Paul Inc.	76 W Kellogg Blvd  St. Paul, MN 55102	Electronic Service	No	OFF_SL_24-68_Official
Beth	Smith	bsmith@gretermankato.com	Greater Mankato Growth	1961 Premier Dr Ste 100  Mankato, MN 56001	Electronic Service	No	OFF_SL_24-68_Official
Joshua	Smith	joshua.smith@sierraclub.org		85 Second St FL 2  San Francisco, CA 94105	Electronic Service	No	OFF_SL_24-68_Official
Beth	Soholt	bsoholt@cleangridalliance.org	Clean Grid Alliance	570 Asbury Street Suite 201  St. Paul, MN 55104	Electronic Service	No	OFF_SL_24-68_Official
Anna	Sommer	ASommer@energyfuturesgroup.com	Energy Futures Group	PO Box 692  Canton, NY 13617	Electronic Service	No	OFF_SL_24-68_Official
Mark	Spurr	mspurr@fvbenergy.com	International District Energy Association	222 South Ninth St., Suite 825  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Byron E.	Starns	byron.starns@stinson.com	STINSON LLP	50 S 6th St Ste 2600  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official

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James M	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	150 S 5th St Ste 700 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_24-68_Official
Carla	Vita	carla.vita@state.mn.us	MN DEED	Great Northern Building 12th Floor 180 East Fifth Street St. Paul, MN 55101	Electronic Service	No	OFF_SL_24-68_Official
Julie	Voeck	julie.voeck@nee.com	NextEra Energy Resources, LLC	700 Universe Blvd Juno Beach, FL 33408	Electronic Service	No	OFF_SL_24-68_Official
Laurie	Williams	laurie.williams@sierraclub.org	Sierra Club	Environmental Law Program 1536 Wynkoop St Ste 200 Denver, CO 80202	Electronic Service	No	OFF_SL_24-68_Official
Joseph	Windler	jwindler@winthrop.com	Winthrop & Weinstine	225 South Sixth Street, Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official
Tim	Wulling	t.wulling@earthlink.net		1495 Raymond Ave. Saint Paul, MN 55108	Electronic Service	No	OFF_SL_24-68_Official
Kurt	Zimmerman	kwz@ibew160.org	Local Union #160, IBEW	2909 Anthony Ln St Anthony Village, MN 55418-3238	Electronic Service	No	OFF_SL_24-68_Official
Emily	Ziring	eziring@stlouispark.org	City of St. Louis Park	5005 Minnetonka Blvd St. Louis Park, MN 55416	Electronic Service	No	OFF_SL_24-68_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Patrick	Zomer	Pat.Zomer@lawmoss.com	Moss & Barnett PA	150 S 5th St #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_24-68_Official