
**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East
Suite 350
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. E-002/CI-13-754
OAH Docket No. 48-2500-31139**

*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*

**EXCEPTIONS OF THE OFFICE OF THE MINNESOTA ATTORNEY GENERAL TO
THE FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF THE
ADMINISTRATIVE LAW JUDGE**

February 12, 2015

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I. INTRODUCTION

Pursuant to Minnesota Statutes section 14.61 and Minnesota Rules, part 1829.2700, the Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) respectfully files Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations (“Report”) dated February 2, 2015.¹

The Administrative Law Judge (“ALJ”) provided a thorough, thoughtful review of the record in this case. The ALJ’s findings indicate that the vast majority of more than \$400 million in cost overruns were the result of Xcel’s poor management of the Monticello Life Cycle Management/Extended Power Uprate Project (“Monticello Project” or “the Project”). Requiring ratepayers to pay for costs that were the result of Xcel’s poor management would be unreasonable; for that reason, the ALJ’s recommendation to adopt the Department’s recommendation does not go far enough to ensure that rates are just and reasonable. The OAG takes exception to the ALJ’s final recommendation and requests that the Commission accept the OAG’s recommendation to disallow at least 75 percent of the cost overruns and allow no return on any cost overruns that are recovered.

II. EXCEPTIONS

A. THE ALJ DID NOT ACCURATELY REPRESENT THE OAG’S RECOMMENDATIONS.

As a threshold matter, the OAG asks that the Commission adopt new language to accurately reflect the complete recommendation of the OAG. In Findings 107 through 110, the ALJ summarized the OAG’s recommendation to disallow cost overruns. In presenting his

¹ Findings of Fact, Conclusions of Law, and Recommendations, *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. E-002/CI-13-754 (Feb. 2, 2015).

summary, however, the ALJ did not accurately summarize all the portions of the OAG's recommendation. For that reason, the OAG takes exception.

The OAG specifically takes exception to Finding 109, and recommends that the Commission include the precise amount that the OAG recommended be disallowed as a result of field changes, and inadequate design and scoping work. The OAG recommends that the Commission make the following change to Finding 109:

109. The OAG points to four specifically identifiable costs as the result of Xcel's imprudent management: installation costs that escalated from an estimated cost of \$27.5 million to a final cost of \$288.5 million; the cost of the 13.8 kV electric distribution system that escalated from \$20.9 million to \$119.5 million; the costs for the feedwater heater that increased from an estimated \$37 million to \$114.9 million; and \$19.5 million in costs that the Company testified were the result of the Company's inadequate design and scoping work.

Additionally, in explaining the OAG's recommendation, the ALJ failed to include that the OAG recommended that the Commission deny a return on any cost overruns that are recovered. The OAG recommends that the Commission include a new Finding immediately after Finding 110:

[110a]. The OAG also recommended that the Commission deny a return on any cost overruns that are allowed for recovery. The OAG argued that disallowing a return on the cost overruns was sound public policy. Because utilities earn a return on the total amount they spend for capital investments, utilities have an incentive to provide electric service at the highest possible level of investment. According to the OAG, Xcel has little incentive to invest in effective project management because allowing cost overruns increases the total investment on which Xcel can request a return. The OAG also noted that allowing a return on significant cost overruns will not incentivize utilities to provide accurate information during Certificate of Need proceedings. Instead, utilities may produce information that will allow the utility to proceed with the most financially rewarding investment for the utility, rather than the investment that is best for ratepayers. Finally, the OAG noted that Xcel's failure to keep the Commission

informed about the rising cost of the Project supported disallowing a return on the investment.

B. THE COMMISSION SHOULD ADOPT THE OAG’S PROPOSED REMEDY.

The OAG recommended that the Commission disallow at least 75 percent of the \$428 million in cost overruns, and deny a return on any cost overruns that are disallowed. The direct disallowance includes several parts: disallowing at least \$261 million in cost overruns related to installation costs, the 13.8 kV electric distribution system, and the feedwater heaters; \$19.5 million related to duplicative design, abandoned projects, and field changes; and approximately 10 percent of total cost overruns that could not be specifically identified as a result of Xcel’s improper accounting practices. The record in this matter, and the ALJ’s own findings, demonstrate that Xcel has failed to meet its burden of proof on each of these specific items, and on Xcel’s request to earn its full rate of return on cost overruns.

In particular, the ALJ specifically concluded that “at least \$261 million [in cost overruns] were caused by Xcel’s imprudent management,” and that those costs were “unreasonable and should be denied.”² For that reason, the OAG takes exception to the ALJ’s recommendation and asks that the Commission adopt the OAG’s proposed remedy in order to protect ratepayers and ensure that rates are just and reasonable. At the very least, the Commission *must* take action on the ALJ’s conclusion that at least \$261 million in cost overruns should be denied because they were caused by Xcel’s imprudent management.

1. The Commission Should Disallow at Least \$261 Million for Installation Costs, the 13.8 kV Electric Distribution System, and the Feedwater Heaters.

The OAG recommended disallowing the cost overruns from three specific projects that were the direct result of Xcel’s poor management. As the OAG demonstrated in its briefs, the

² Report, Conclusions of Law ¶ 8 (emphasis added).

\$261 million in cost overruns for the 13.8 kV electric distribution system, the feedwater heater, and the installation costs were all caused by Xcel's poor management and should be disallowed.

The ALJ agreed, and specifically concluded:

The cost overruns for the feedwater heater, the 13.8 kV distribution system, and the installation costs totaling at least \$261 million were caused by Xcel's imprudent management. *They are unreasonable and should be denied.*³

Despite this conclusion, the ALJ did not incorporate the \$261 million disallowance into his final recommendation. The OAG takes exception and asks that the Commission take action to disallow \$261 million in costs that the ALJ identified were caused by Xcel's imprudent management.

The ALJ supported his conclusion that \$261 million in cost overruns were caused by Xcel's imprudent management with several additional findings and conclusions. In particular, the ALJ found that the primary cause of cost overruns was Xcel's poor management of the initial design and scoping process in combination with Xcel's decision to proceed on a fast track schedule:

Xcel's principal failure was that it did a very poor job managing the initial scoping and early Project management up until beginning installation during the 2009 refueling outage. The Company's decision to proceed with the combined LCM/EPU Project in 2009 rather than 2011 created an extremely difficult task that Xcel was not able to manage. From that point forward, additional issues arose that compounded Xcel's difficulties and required unreasonable amounts of time and money to resolve. It was a failure of management and was not prudent. As a result, significantly increased unreasonable costs occurred until the Project was completed.

...

³ Report, Conclusions of Law ¶ 8 (emphasis added).

Xcel's decision to proceed on an aggressive, fast-track schedule by using a parallel process contained unreasonable risks. The fast track schedule required the Company to rely on preliminary scoping, rather than performing the full scoping effort necessary to have a thorough understanding of what needed to be done to finish the Project. The result was dramatically increased project costs that were imprudently incurred by Xcel.⁴

The cost overruns associated with the installation costs, the 13.8 kV system, and the feedwater heater were directly related to these failures. If Xcel had taken more care, and allowed more time, in its initial planning, Xcel could have avoided many of the problems that arose during the design and implementation of these projects.

For example, some of the problems with the feedwater heater were related to the size of the components when compared to the size of the plant.⁵ Xcel claims that some of the cost overruns were the result of unavoidable "complexity and difficulty of the completing the installation work" and the small footprint of the plant.⁶ But, after a thorough review of the record, the ALJ concluded that Xcel's problems with the "size" of the plant were not excusable:

The Company's failure to recognize problems with spacing, clearances, access, and physical arrangements of the Plant was a direct failure of its LCM/EPU Project management. Nothing related to the characteristics of the Plant, including its size, should have surprised Xcel or led to cost overruns.⁷

If Xcel had exercised proper project management, it would have been able to identify all possible problems with the size of the feedwater heater or access to electrical systems for the 13.8 kV distribution upgrade. Without proper management, Xcel was continually surprised by new problems that led to cost overruns. If Xcel had taken the time to prepare on the front end of the project, cost overruns related to these projects could have been avoided.

⁴ Report, Conclusions of Law ¶ 7, 10.

⁵ Ex. 3, at 109 (O'Connor Direct).

⁶ *Id.* at 108.

⁷ Report, Conclusions of Law ¶ 9.

These findings led to the ALJ's conclusion that the cost overruns for these three identifiable costs were the direct result of Xcel's imprudent management. The ALJ stated,

The cost overruns for the feedwater heater, the 13.8 kV distribution system, and the installation costs totaling at least \$261 million were caused by Xcel's imprudent management. *They are unreasonable and should be denied.*⁸

The meaning of this Conclusion could not be more clear: based on the ALJ's thorough review of the record, the ALJ concluded that at least \$261 million in costs related to the 13.8 kV distribution system, the feedwater heater, and the installation costs were unreasonable; for that reason, the ALJ found that they must be disallowed.

Given the clarity of the ALJ's conclusion, the OAG takes exception to the fact that the \$261 million disallowance was not included in the ALJ's final recommendation. The ALJ made a conclusion of law that "at least \$261 million" for the feedwater heater, the 13.9 kV distribution system, and the installation costs "were caused by Xcel's imprudent management," and stated that the costs "are unreasonable and should be denied."⁹ Following this conclusion, the Commission *must* disallow at least \$261 million because rates cannot be just and reasonable if they include costs that were caused by Xcel's imprudent management. Furthermore, to the extent that there is *any* doubt about whether allowing recovery of costs caused by imprudent management is just and reasonable, Minnesota law *requires* the Commission to resolve "any doubt as to reasonableness . . . in favor of the consumer."¹⁰

The ALJ's conclusion that \$261 million in cost overruns was the direct result of Xcel's imprudent management was reasoned and well supported by the record. Following that conclusion, and looking only at this issue, Minnesota law requires that at least \$261 million be

⁸ Report, Conclusions of Law ¶ 8 (emphasis added).

⁹ *Id.*

¹⁰ Minn. Stat. § 216B.03; Report, Conclusions of Law ¶ 4.

disallowed. The OAG recommends that the Commission remove Conclusions 15 and 16 and include a new Conclusion immediately preceding Conclusion 17:

Because the \$261 million in cost overruns for the installation costs, 13.8 kV electric distribution system, and feedwater heaters were caused by Xcel's imprudent management, the costs must be disallowed.

2. The Commission Should Disallow \$19.5 Million for Duplicative Design, Abandoned Projects, and Field Changes.

The OAG also recommended that costs related to poor scoping, duplicative work, and abandoned designs were caused by Xcel's poor management and should be disallowed. Xcel identified between \$25 and \$30 million of field changes, and *admitted* that at least \$1 million in field changes could have been avoided.¹¹ Xcel also identified that it had paid \$13 million for design work that was duplicative,¹² and \$11 million for design work on subprojects that were abandoned.¹³ For example, because Xcel did not have accurate as-built drawings of the plant, original design documents for feedwater heating piping were incorrect and had to be re-designed.¹⁴ The ALJ found that the incorrect as-built drawings often required field changes,¹⁵ which led to increased costs. As with the installation cost overruns, field changes, duplicative design, and abandoned projects could have been reduced or avoided entirely with proper planning and project management. Instead, Xcel imprudently proceeded on a "preliminary scope" and on a fast-track schedule. As the ALJ noted, this resulted in "significantly increased unreasonable costs."¹⁶ The Commission should adopt the OAG's recommendation that half the duplicative and abandoned costs be disallowed, along with 25 percent of the field change costs,

¹¹ Ex. 9, at 77–80 (O'Connor Rebuttal).

¹² *Id.*

¹³ *Id.*

¹⁴ Ex. 3, at 39:14–16 (O'Connor Direct).

¹⁵ Report, Findings of Fact ¶ 75.

¹⁶ Report, Conclusions of Law ¶ 7.

for a total disallowance of \$19.5 million. At the very least, the Commission must disallow the \$1 million in field changes that even Xcel witness Mr. O'Connor admits were avoidable.¹⁷ The OAG recommends that the Commission include a new Conclusion immediately preceding Conclusion 17:

The Commission will also disallow costs related to duplicative design, abandoned designs, and unnecessary field changes. If Xcel had properly managed the project, some of these costs could have been avoided. Xcel instead proceeded on the basis of preliminary plans on an accelerated schedule, and this decision directly led to increased and imprudent costs for duplicative design, abandoned projects, and field changes. The Commission will disallow 50 percent of the duplicative and abandoned costs, and 25 percent of the field change costs, for a total of \$19.5 million.

3. The Commission Should Disallow an Additional 10 Percent of Total Cost Overruns.

In addition to those specifically identified costs, the ALJ's findings support a conclusion that additional costs were caused by Xcel's poor management, but could not be identified because of Xcel's questionable accounting practices. Specifically, the ALJ noted that "Xcel's accounting practices made it difficult to separately review the actual costs of the EPU from the LCM."¹⁸ The ALJ ultimately concluded that "the costs were not as transparent as required."¹⁹ Xcel's questionable accounting demonstrates that Xcel has not met its burden to prove that all of the cost overruns are just and reasonable. Xcel attempted to circumvent this requirement by arguing that it had a rebuttable presumption of reasonableness, but the ALJ made very clear that "a utility in a rate proceeding does not enjoy at any point a rebuttable presumption of reasonableness that other parties must overcome."²⁰ As a result, the Commission should adopt

¹⁷ Ex. 9, at 77-78 (O'Connor Rebuttal).

¹⁸ Report, Conclusions of Law ¶ 11.

¹⁹ *Id.*

²⁰ Report, Conclusions of Law ¶ 4.

the OAG's recommendation to disallow approximately 10 percent of the total cost overruns as a proxy for costs that were caused by Xcel's mismanagement but could not be identified due to Xcel's questionable accounting practices. The OAG recommends that the Commission include a new Conclusion²¹ immediately preceding Conclusion 17:

In addition to those costs that are specifically identified as unreasonable and imprudent, Xcel's mismanagement led to additional cost overruns that cannot be specifically identified because of Xcel's improper accounting practices. The Commission will disallow a further ten percent of the total cost overruns as a proxy for these unidentified costs.

4. The Commission Should Deny a Return on Any Cost Overruns that are Recovered.

The OAG recommended that the Commission deny a return on any cost overruns that are recovered. The OAG asks that the Commission, unlike the ALJ, make a specific finding on the issue of the rate of return for cost overruns.

The OAG will not restate all of the arguments provided in its briefs regarding this topic, but the Commission should deny a return on cost overruns because it is necessary to protect the interests of ratepayers and to ensure that rates are just and reasonable. As discussed in the OAG's Initial Brief, allowing Xcel to earn a return on cost overruns would create an incentive for Xcel and other utilities to permit cost overruns in future.²² Furthermore, denying a return on cost overruns is consistent with past Commission decisions and with the Department's recommendations in other cases.²³ The OAG's recommendation has wide support among the

²¹ Because the OAG seeks a percentage reduction to Xcel's cost overruns, it is important for the Commission to clarify the total amount of Xcel's cost overruns. The OAG calculates the cost overruns to be \$428 million. *See supra* Part II.

²² OAG Initial Brief, at 43–45.

²³ *See* Ex. 313, at 22–27 (Campbell Direct).

parties in this case: XLI also recommended that Xcel earn no return on cost overruns,²⁴ and the Department indicated that reducing or eliminating the return on cost overruns would be a reasonable step.²⁵ The Commission should reduce or eliminate Xcel's return on cost overruns to protect the interests of ratepayers and ensure that the Commission does not unintentionally incentivize utilities to allow cost overruns in other large capital projects. The OAG recommends that the Commission adopt the following language immediately preceding Conclusions 17:

The Commission will adopt the recommendations of the OAG and XLI to prohibit Xcel from earning a return on cost overruns. The record and the conclusions of the ALJ clearly establish that a significant portion of the cost overruns were the direct result of Xcel's poor management of the project, and that if Xcel had conversely used effective project management, a large amount of the cost overruns could have been avoided. Permitting Xcel to earn a return on cost overruns caused by its imprudent management would not result in just and reasonable rates. As a result, the Commission will deny a return on the cost overruns for the Monticello project.

C. THE COMMISSION SHOULD CLARIFY ITS DETERMINATION OF THE TOTAL AMOUNT OF COST OVERRUNS.

The OAG respectfully requests that the Commission clarify its resolution of inconsistencies in the record about the total amount of cost overruns by Xcel. Throughout their testimony, Xcel's witnesses have introduced uncertainty into the record about whether the initial estimate for the Monticello Project was \$320 million or \$346 million. Based on the final cost for the Project of \$748 million, and depending on which original cost estimate is used in the calculation, the amount of total cost overruns will be either \$402 million or \$428 million. Despite this lack of clarity, the ALJ stated that the total cost overruns for the Project were \$402

²⁴ XLI Brief, at 10–13.

²⁵ Ex. 315, at 37–38 (Campbell Surrebuttal).

million.²⁶ The ALJ did not acknowledge, however, that the amount of cost overruns in this case is calculated differently by several parties; similarly, the ALJ did not explain why one cost overrun amount was selected over another.

It is important to clarify the total amount of cost overruns because the OAG and XLI recommended that the Commission deny a return on any cost overruns that are allowed,²⁷ and the Department indicated that such a recommendation may be a reasonable step.²⁸ The OAG also recommended directly disallowing a percentage of cost overruns.²⁹ The impact of these recommendations could change depending on the total amount of cost overruns. For that reason, rather than simply adopting the ALJ's unsupported conclusion on the issue, the Commission should clarify the total amount of cost overruns based on all the facts in the record.

The lack of clarity in the record is the result of inconsistencies in the record produced by Xcel. In his direct testimony, Xcel witness Mr. Alders testified that, in the original Certificate of Need docket, Xcel informed the Commission that the total cost of the LCM/EPU project “would be approximately \$320 million [] including a replacement steam dryer.”³⁰ In his rebuttal testimony, Mr. Alders referred to an estimate of \$346 million.³¹ Xcel witnesses Mr. Stall and Mr. O'Connor also testified that the initial estimate was \$320 million.³² But, in that same testimony, Mr. O'Connor also testified that Xcel had an “initial cost range of \$320-\$346” million only a few paragraphs before Mr. O'Connor testified that the initial estimate was \$320 million.³³

²⁶ Report, Conclusions of Law ¶ 5.

²⁷ OAG Brief, at 43–45; XLI Brief, at 10–13.

²⁸ Ex. 315, at 37–38 (Campbell Surrebuttal).

²⁹ OAG Initial Brief, at 40–43.

³⁰ Ex. 2, at 21 (Alders Direct).

³¹ Ex. 8, at 12 (Alders Rebuttal).

³² Ex. 4, at 65 (Stall Direct); Ex. 3, at 30, 32, 35 (O'Connor Direct).

³³ Ex. 3, at 29 (O'Connor Direct).

Xcel has never explained the difference between the \$320 million and \$346 million claims. To try and clear up the inconsistency, the OAG raised the issue with several of Xcel's witnesses during the evidentiary hearing. In response to questioning from the OAG, Mr. Alders confirmed that the Company originally estimated that the project would cost \$320 million in 2008 dollars.³⁴ Xcel's expert financial witness Mr. Weatherby also testified that the original estimate was \$320 million.³⁵ Mr. Weatherby also clarified that the difference between the \$320 million and \$346 million claims was not related to whether a steam dryer was included in the estimate, because the \$320 million estimate already included the steam dryer.³⁶

Mr. Weatherby was the only Xcel witness to attempt any explanation about the difference between the \$320 and \$346 estimates, but even Mr. Weatherby's description does not make sense. According to Mr. Weatherby, the difference between the \$320 million and \$346 million estimates was related to "taking earlier estimates and rolling them forward for some escalation," and using different assumptions led to the \$320 million and the \$346 million estimates.³⁷ But Mr. Weatherby could not provide any details about the escalation or the assumptions that had been used.³⁸ Furthermore, Mr. Weatherby's testimony appears to conflict with the testimony of Xcel's other witnesses. Mr. Weatherby's statement about rolling forward estimates for escalation appears to assume that the \$320 million and \$346 million estimates are based on 2014 dollars. But Mr. Alders testified during the evidentiary hearing that the Company's original

³⁴ Tr. Evid. Hearing, Volume 2, at 13–14 (Sept. 30, 2014) (Alders).

³⁵ Tr. Evid. Hearing, Volume 2, at 49–50 (Sept. 30, 2014) (Weatherby).

³⁶ Tr. Evid. Hearing, Volume 2, at 50–51 (Sept. 30, 2014) (Weatherby).

³⁷ *Id.*

³⁸ *Id.*

estimate was in 2007 or 2008 dollars.³⁹ Mr. Alders statement is incompatible with Mr. Weatherby's explanation of the estimates.

At the close of the evidentiary hearing, it was still unclear whether Xcel's initial estimate was \$320 million or \$346 million. The OAG based its disallowance recommendations on a \$320 million estimate because several of Xcel's witnesses confirmed, under oath, that the Company's initial estimate was \$320 million.⁴⁰ Both the OAG and XLI recommend that the Commission deny a return on cost overruns that are recovered, and those recommendations are impacted by the method for calculating the total amount of cost overruns. Xcel has not produced a record that is sufficiently clear on this issue; as a result, it is necessary for the Commission to clarify in its Order the total amount of cost overruns after a thorough review of the relevant facts. The OAG asks for a determination that Xcel's initial estimate was \$320 million. There is no reasonable basis to adopt the \$346 million estimate, and artificially lower the cost overruns by \$26 million, in the face of testimony from multiple Company witnesses. Accordingly, the Commission should find that, based on Xcel's initial estimate of \$320 million, Xcel's total cost overruns for the Monticello Project were \$428 million.

D. THE COMMISSION SHOULD EXERCISE CAUTION REGARDING THE DEPARTMENT'S RECOMMENDATION.

The Commission should adopt the OAG's proposed remedy rather than the remedy proposed by the Department because the record in this case, and the ALJ's findings and conclusions, make clear that the Commission must go further in order to fairly protect the interests of ratepayers. In addition, though, the Commission should adopt the OAG's proposed remedy because adopting the Department's recommendation would set a dangerous precedent.

³⁹ Tr. Evid. Hearing, Volume 2, at 13–14 (Sept. 30, 2014) (Alders).

⁴⁰ In contrast, the Department's recommendations are based on the \$346 million estimate.

In its testimony,⁴¹ the OAG raised a series of concerns about the Department's recommendation to disallow \$71.42 million on the basis that it was not cost effective.⁴² First, the record in this case, and the conclusions of the ALJ, identified several specific costs that were the result of imprudent project management. Any rates including costs that were the result of imprudent management would not be just and reasonable. Because the Department's recommendation does not incorporate an analysis of any of these unreasonable costs, it does not go far enough to protect the interests of ratepayers.

Second, the Department's recommendation would reduce the incentives that utilities have to control cost overruns. Resource planning decisions are intended to secure ratepayers the benefits of least-cost generation. But the Department's recommendation would allow Xcel, and presumably other utilities, to recover cost overruns up to the *second-best* cost alternative. Instead of incentivizing utilities to control costs and attempt to complete projects at the originally estimated cost, utilities will have a clear financial incentive to allow cost overruns to escalate until they reach the level of the second-best option. Effectively, ratepayers system-wide would lose the social benefits provided by the least-cost alternative as compared to the second-best option.

Third, the Department's recommendation would incentivize utilities to offer low estimates for their preferred investments in Certificate of Need proceedings, with the understanding that they will be allowed to request recovery of cost overruns up to the cost of the second-best option. As noted by the OAG,⁴³ the Department,⁴⁴ and XLI,⁴⁵ the Certificate of

⁴¹ Ex. 200, at 4–11 (Lindell Rebuttal).

⁴² XLI provided a similar discussion in its Brief. XLI Brief, at 10–13.

⁴³ Ex. 200, at 7–8 (Lindell Rebuttal).

⁴⁴ Ex. 309, at 12 (Shaw Direct).

⁴⁵ XLI Brief, at 10–13.

Need process is an important tool that relies heavily on accurate estimates of different project alternatives. Any decision that reduces the incentives of utilities to provide accurate estimations in Certificate of Need proceedings could have significant and far-reaching consequences.⁴⁶

Fourth, the Commission's recent decisions on cost overruns, and the Department's recommendations in those cases, indicate a trend towards capping recovery or denying returns at Certificate of Need levels.⁴⁷ The Department distinguished its recommendation in this case only on the basis of an unfounded and unreasonable claim that a large disallowance could impact whether Xcel operates the Monticello plant safely.⁴⁸ The OAG has previously explained why this position is unsupported, unreasonable, and potentially dangerous. Beyond this unsupported justification, the only distinction between this case and other cases in which cost overruns have been addressed appears to be the size of the cost overruns. But such a distinction would be inappropriate;⁴⁹ if anything, larger cost overruns, and their comparatively greater impact on whether rates are just and reasonable, require closer scrutiny in order to ensure that ratepayers are not required to pay for costs that are the result of imprudent management. Changing the Commission's policy on cost overruns based on the size of the cost overruns would be unreasonable and inequitable for ratepayers.

The Commission should adopt the OAG's recommendation, rather than the Department's, because the record and the ALJ's findings demonstrate that a greater disallowance is necessary to protect the interest of ratepayers. But in addition, the Department's proposed remedy could create incentives for utilities to permit cost overruns for large projects in the

⁴⁶ For example, XLI noted that the Department's recommendation could incentivize utilities to underbid third-party projects in resource acquisition proceedings, with the understanding that they will be allowed to recover cost overruns until they reach the second-best option. *Id.* at 12.

⁴⁷ Ex. 313, at 22–27 (Campbell Direct).

⁴⁸ *Id.* at 27.

⁴⁹ See XLI Brief, at 12.

future, and would certainly *reduce* the incentives of utilities to control cost overruns until they reach the level of the second-best alternative. Establishing such a precedent would be bad for ratepayers, and could lead to windfalls for utility investors. Because of these concerns, and the far reaching consequences that could result, the Commission should adopt the OAG's proposed remedy, rather than the Department's. If the Commission declines to adopt the OAG's recommendation and adopts the Department's proposed remedy, the Commission's order should clearly reflect that the Commission's decision is limited to the facts of this case alone and does not establish a precedent to be used in future cases.

III. CONCLUSION

The ALJ concluded that, "Xcel has failed to demonstrate that the cost overruns it seeks to recover were prudently incurred and are reasonable."⁵⁰ For the reasons noted above, the ALJ's own Findings and Conclusions, along with the entire record in this case, demonstrate that the ALJ should have adopted the recommendation of the OAG. The Commission must go further than the ALJ's recommendation to protect the interests of ratepayers and ensure that Xcel's rates are just and reasonable. At the very least, the Commission must take action on the ALJ's explicit finding that "at least \$261 million [in cost overruns] *were caused by Xcel's imprudent management,*" and that those costs "were unreasonable and *should be denied.*"⁵¹ The Commission should adopt the OAG's recommendation to disallow at least 75 percent of the cost overruns for the Monticello Project, and to deny a return on any cost overruns that are recovered. The OAG recommends that the Commission make the specific modifications to the ALJ's

⁵⁰ Report, Conclusions of Law ¶ 6.

⁵¹ Report, Conclusions of Law 8.

Report as described above, and that it make other changes that are necessary to be consistent with the OAG's recommendation.

Dated: February 12, 2015

Respectfully submitted,

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February 12, 2015

The Honorable Judge Steve M. Mihalchick
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RE: *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*
MPUC Docket No. E-002/CI-13-754
OAH Docket No. 48-2500-31139

Dear Judge Mihalchick:

Enclosed and e-filed in the above-referenced matter please find the *Exceptions and Clarifications to the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge* of the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

s/ Ryan Barlow

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Enclosures

RE: *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*

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)

) ss.

COUNTY OF RAMSEY)

I hereby state that on the 12th day of February, 2015, I efiled with eDockets the *Exceptions and Clarifications to the Findings of Fact, Conclusions of Law and Recommendation of the Administrative Law Judge* of the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division and served the same upon all parties, as indicated on the attached Service List via electronic submission and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

See Attached Service List

s/ Judy Sigal

Judy Sigal

Subscribed and sworn to before me
this 12th day of February 2015.

s/ Patricia Jotblad

Notary Public

My Commission expires: January 31, 2020.

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