STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF NORTHERN STATES POWER COMPANY FOR AUTHORITY TO INCREASE RATES FOR ELECTRIC SERVICE IN MINNESOTA	DOCKET NO. E-002/GR-13-868

POST-HEARING BRIEF OF THE COMMERCIAL GROUP

Pursuant to the First Prehearing Order dated February 14, 2014, the Commercial Group, composed of some of the largest commercial customers of Northern States Power Company ("NSP" or the "Company"),[1] hereby respectfully files its Post-Hearing Brief in the above-captioned matter. Following the outline format contained within NSP's Issues List, the Commercial Group shall address herein Issues 1 (Return on Equity), 34 (Use of DOE Settlement Funds), 50 (Decoupling Mechanism), 53 (Revenue Apportionment), 63 (CWIP/AFUDC), and 66 (Interest Rate on Interim Rate Refund). In support thereof, the Commercial Group respectfully shows the following.

I. ARGUMENT

A. Background

The companies in the Commercial Group have a significant positive impact on the Minnesota economy directly employing tens of thousands of Minnesota citizens while supporting the employment of over 100,000 other Minnesota workers through the billions of dollars members of the Commercial Group spend for merchandise and services in the state each year. Exh. 225 (Chriss Direct), p.2. Electricity represents a significant portion of retailers' operating costs and any increase in cost to retailers puts pressure on consumer prices and on the

[1] JC Penney Corporation, Inc., Macy's Inc., Sam's East, Inc. and Wal-Mart Stores East, LP.

other expenses required by a business to operate, which impacts retailers' customers and employees. *Id.* at 3. Given that members of the Commercial Group have retail facilities throughout the United States, the Commercial Group provides a unique national perspective on issues involved in this rate case and appreciates the opportunity to participate in this rate case and to present this initial post-hearing brief for consideration.

B. Argument on Enumerated Issues

1. <u>Return on Equity</u> – NSP's Proposed ROE Is Unreasonably High

a. Overview of ROE Record Evidence

Three witnesses have conducted detailed ROE analyses and provided ROE recommendations that range from 9.0 percent to 10.25 percent, with a mid-point of 9.63 percent. In addition, significant evidence has been presented of objective yardsticks that the Commission can use to measure how reasonable are these ROE analyses and recommendations. These yardsticks indicate that a reasonable range for NSP's ROE is from 9.21 to 9.91 percent with a mid-point of 9.57 percent.

b. Overview of Detailed ROE Recommendations

Mr. Hevert has proposed an ROE for NSP of 10.25 percent, which is near the lower third of his range of 10.00 to 10.70 percent. Mr. Amit for the Department recommends an ROE of 9.64 percent, 61 basis points below Mr. Hevert's recommendation. Mr. Glahn recommends an ROE of 9.00 percent, 125 basis points below Mr. Hevert's recommendation. As explored in more detail in Section I.B.1.e below, according to Exhibit 228, during the one-year period preceding Mr. Hevert's testimony in this rate case Mr. Hevert's ROE recommendations (comprising 16 electric ROE cases) have on average soared a whopping 100 basis points above the ROE mark the respective utility commissions ultimately authorized. According to Exhibit 85 of Docket No. 12-961, over the 17 cases preceding his testimony in that docket, Mr. Hevert's ROE recommendations on average similarly soared 106 basis points above the ROE mark the respective utility commissions ultimately authorized. Given that Mr. Hevert provides testimony in up to half of the major electric utility rate cases nationwide (Tr. Vol. I, 76:12-18 [Hevert]), the consistent results would naturally direct investors to expect an outcome in this rate case that is generally in line with the results in those cases. Based on these past results, investors would expect a result in this case generally in the range of the recommendations of Mr. Amit and Mr. Glahn.

c. Overview of Available ROE Yardsticks

It is well-settled that a fundamental aspect of establishing a utility's return on equity is to set ROE at a level commensurate with the returns achieved on similar investments. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). NSP witnesses Hevert and Tyson testified at length on investor expectations and the importance of Minnesota's utility regulatory environment compared to the regulatory environment of other states. Exh. 27 (Hevert Direct), pp.16-18, 48; Exh. 30 (Tyson Direct), pp.31-37. As Mr. Hevert put it:

> ROEs awarded by regulatory commissions are important to the financial community's view of the regulatory environment and, therefore, a utility's risk profile…. The regulatory environment … (including authorized returns) is one of the most important issues considered by both debt and equity investors in assessing the risks and prospects of utility companies.

Exh. 27 (Hevert Direct), 16:13-15, 18:5-8. Mr. Chriss testified that comparisons to returns other utilities have been receiving provide an unbiased reference point for the Commission to use to evaluate the other ROE evidence. Exh. 225 (Chriss Direct), 9:7-9. There are two main ways that investor expectations can be measured in this regulatory context: 1) applying the yardstick of actual (authorized) returns over a significant recent period to evaluate the ROE recommendations in a given rate case; and 2) where one ROE witness has provided ROE testimony in a significant percentage of reported cases, comparing the recommendations of that witness to actual ROEs authorized in those same cases (and over a significant period). Both of these yardstick comparisons show that NSP's proposed ROE is unreasonably high and that the reasonable range ofr ROEs in this case is from 9.21 percent to 9.91 percent, with a midpoint of 9.57 percent. The Commercial Group will now explain in more detail how these yardsticks are developed in the record in this proceeding.

d. The Yardstick of Average Authorized ROEs for Electric Utilities

First, the average ROE authorized for electric utilities by the various utility commissions in 2012, 2013 and the first five months of 2014 is 9.91 percent. Exh. 225 (Chriss Direct), 8:21-9:1. Importantly, the trend has been steadily downward. With respect to vertically integrated utilities like NSP, the average of awarded ROEs has dropped from 10.10 percent in 2012 to 9.95 percent in 2013 to 9.84 percent through the first five months of 2014. *Id.* at 9:2-4; SWC-3, p.2. As Mr. Hevert pointed out, "changes in the cost of equity are directionally related to changes in the levels of interest rates" and the "effect of changing market conditions is of particular significance in this proceeding." Exh. 27 (Hevert Direct), 13:16-17; Exh. 115 (Hevert Summary), 2:20. Mr. Amit added that the most recent data should be used for the best ROE analysis. Exh. 400 (Amit Direct), pp.29-30; Exh. 403 (Amit Surrebuttal), 1:17-19. Without question, interest rates have dropped steadily in the one-year period since Mr. Hevert performed his analysis for this case, and even since May 2014. *See* Exh. 226 (30-year treasury yield has dropped nearly 20 percent from September 2013 to August 2014). At the time of the evidentiary hearing, these interest rates stood at their lowest levels in that 12-month period. Tr. Vol. I, 65:2-5 (Hevert). Thus, the 9.84 percent figure for 2014 ROEs is a significant yardstick data point and given the steady drop in interest rates this past year, that figure may need to be adjusted downward.

e. The Yardstick of Utility Commission Decisions Involving Mr. Hevert's Recommendations for Electric Utilities

Second, the record in this proceeding contains evidence concerning ROE awards approved by state commissions through May 2014, a significant portion of which involved recommendations by Mr. Hevert. Table 1 below covers the 42-month period from December 2011 through May 2014.[2] Table 1 shows that Mr. Hevert testified on ROE in 34 proceedings in which the utility commissions have issued final orders during this period authorizing ROEs for the respective electric utility. The first thing that is apparent from Table 1 is that <u>without exception</u> no state commission has authorized an ROE that has come even close even to the <u>low</u> end of Mr. Hevert's recommended range.

Table 1

<u>Comparison of Hevert Proposed ROEs with Authorized ROEs</u>

(State commission decisions in electric rate cases from December 2011 through May 2014)

Case (Utility)	**Jurisdiction**	**Authorized ROE** (decision month/year)	**Basis Points Authorized ROE Exceeded Low Point of Hevert ROE Range**	**Basis Points Authorized ROE Exceeded Hevert Recommended ROE**
Xcel	Colorado	10.00 (04/12)	50	75
Delmarva Power	Delaware	9.70, (04/14)	55	55
Delmarva Power	Delaware	9.75 (11/12)	75	100
PEPCO	DC	9.40, (03/14)	85	85
PEPCO	DC	9.50 (09/12)	100	125
Tampa Electric	Florida	10.25 (09/13)	25	100
Hawaiian Electric	Hawaii	10.0 (03/13)	75	125
Ameren	Illinois	9.08 (12/13)	92	132
Delmarva Power	Maryland	9.81 (09/13)	44	69
PEPCO	Maryland	9.36 (07/13)	89	114

[2] Table 1 summarizes the record evidence from Exhibits 225 (Regulatory Research Associates report information at SWC-3), Exhibit 227 (data response sponsored by Mr. Hevert) and Exhibit 228 (summary of cases comparing awarded ROEs from June 2013 through May 2014 with Mr. Hevert's recommendations in those cases).

Delmarva Power	Maryland	9.81 (07/12)	69	94
PEPCO	Maryland	9.31 (07/12)	119	144
Fitchburg	Massachusetts	9.70 (05/14)	55	55
Xcel (NSP)	Minnesota	9.83 (08/13)	42	77
Ameren	Missouri	9.80 (02/12)	70	95
Nevada Power	Nevada	10.19 (12/11)	56	106
Liberty Utilities	N Hampshire	9.55 (03/14)	70	95
Atlantic City Electric	New Jersey	9.75 (06/13)	50	75
Atlantic City Electric	New Jersey	9.75 (10/12)	75	100
Consolidated Edison	New York	9.20 (02/14)	Not specified	115
Niagara Mohawk	New York	9.30 (03/13)	120	125
Orange & Rockland	New York	9.40 (06/12)	120	135
Duke Energy	N. Carolina	10.20 (09/13)	75	105
Progress Energy	N. Carolina	10.20 (05/13)	30	105
Virginia Electric	N. Carolina	10.20 (12/12)	30	105
Duke Energy	N. Carolina	10.50 (01/12)	50	100
Oklahoma G&E	Oklahoma	10.20 (07/12)	55	80
National Grid	Rhode Isl.	9.50 (12/12)	100	125
Duke Energy	S. Carolina	10.20 (09/13)	75	105
SCE&G	S. Carolina	10.25 (12/12)	50	100
Duke Energy	S. Carolina	10.50 (01/12)	50	100
Sharyland Utilities	Texas	9.70 (01/14)	80	105
Southwestern Electric	Texas	9.65 (10/13)	85	160
Virginia Electric	Virginia	10.00 (11/13)	50	150
Average		**9.98**	**68.7**	**104.0**

Table 1 also shows that these respective utility commissions authorized ROEs that on average fell 104.0 basis points below Mr. Hevert's recommended ROEs. A similar decision in this NSP case would put ROE at 9.21 percent (10.25 less 1.04). Notably, the closest Mr. Hevert's recommended ROE got to any authorized ROE was 55 basis points above the authorized ROE (which in this case would be 9.70 percent, very close to Mr. Amit's 9.64 percent recommendation). With respect to the range of Mr. Hevert's recommended ROEs, the authorized ROE in the 33 electric cases for which he provided a range fell an average of 68.7 basis points below the low point of Mr. Hevert's recommended ROE range. A similar decision in this NSP case would put ROE at 9.31 percent (10.00 less 0.69).

Mr. Amit questions why authorized ROE results are relevant to an ROE analysis for this rate case. Exh. 402 (Amit Rebuttal), p.15. But as mentioned above, investor expectations are a fundamental aspect of setting utility returns. These investors are sophisticated and well-informed concerning the procedure and outcomes of rate cases. Tr. Vol. I, 66:15-18, 66:23-67:9 (Hevert). Exhibit 114 is an example of the type of detailed information that investors receive from Xcel, and includes information concerning the ROEs recommended by parties in this rate case. *E.g.*, *id.* at slide 30. Notably, Mr. Hevert provides ROE testimony in a substantial portion of electric utility cases across the country. For 2012, 2013 and decisions through May 2014, Mr. Hevert testified in 33 cases, roughly one-third of the 98 decisions RRA reported during that period. *Compare* Exhibit 227 (or Table 1) with Exh. 225 (SWC-3). During the more recent 12-month period from June 2013 through May 2014, Mr. Hevert provided ROE testimony in nearly half of the reported electric utility rate cases. Tr. Vol. I, 76:12-18 (Hevert). Not surprisingly, Mr. Hevert employs a relatively consistent method of analysis in order to provide state utility commissions with a dependable methodology to which he then applies his expert judgment to make his recommendations in individual cases. Tr. Vol. I, 69:19 – 70:4 (Hevert). The important point is that however he adjusts his analysis in a given case and whether the cases are for electric-only or vertically-integrated or distribution-only utilities in "supportive" "more supportive" or "less supportive" jurisdictions, the actual results are remarkably consistent - with each and every utility commission authorizing an ROE that is significantly below Mr. Hevert's recommended ROE and the low point of his ROE range. Sophisticated investors certainly understand this rate case process and expect an outcome in this NSP rate case that is generally consistent with these past results. As Mr. Hevert put it: "Decisions in other regulatory jurisdictions also provide an observable and relevant benchmark for investors to assess their return expectations …." Exh. 115 (Hevert Summary), 4:3-4. These sophisticated investors likewise understand that utility witnesses routinely warn in testimony that if their ROE recommendations are not accepted, the utility's credit ratings will be significantly harmed, and yet the consistent actual v. recommended results speak for themselves. So while the yardsticks based on actual authorized ROEs do not dictate any result in this proceeding, they certainly provide relevant objective information against which the various ROE analyses and recommendations presented in this proceeding can be measured.

Table 2 below summarizes the yardsticks the Commission could use as reference points of investor expectations.

Table 2 - Yardsticks to Apply

	ROE
Average authorized returns for vertically integrated electric utilities from 2012 – May 2014	9.91
Average of authorized returns for vertically integrated electric utilities from 2014	9.84
Applying average of authorized ROEs compared to Hevert recommendations from December 2011 – May 2014 (p.6 *supra*)	9.21
Applying average of authorized ROEs compared to low point of Hevert range from December 2011 – May 2014 (p.6 *supra*)	9.31
Average of yardstick range of 9.21 to 9.91	**9.57**

Thus, investors reasonably expect NSP to be awarded an ROE of between 9.21 to 9.91 percent, with a mid-point of 9.57 percent. And given that no state commission has authorized an ROE in the past 3½ years that has come closer than within 25 basis points of the low end of Mr. Hevert's range, no investor could reasonably expect an ROE in this case of above 9.75 percent.

f. The Impact on ROE of Multiple Risk-mitigation Measures

As shown above, even a high altitude "reality check" shows that the Company's proposed 10.25 percent ROE is unreasonably high. Further, once the Commission determines the reasonable range of ROE for NSP (or the initial ROE to be set), any move within that range (or to that initial ROE) should be downward - to reflect the specific risk-mitigation measures that

NSP has in place (or proposes) and the financial stress ratepayers are facing. Those risk mitigation measures include:

1) the use of a future test year (Exh. 225 - Chriss Direct, p.6, lines 10-12);
2) the ability of the Company to implement an interim rate increase prior to the full examination of the rate filing (*id.* at lines 13-16);
3) the inclusion of large amounts of CWIP in rate base – in this case, NSP proposed that CWIP constitute 8.6 percent of its entire rate base (*id.* at lines 11:6-7; (SWC-4));
4) the multi-year nature of this current rate case, which would allow NSP to increase rates for costs it incurs beyond the 2014 test year (*id.* at 6:7); and
5) the proposed revenue decoupling mechanism that would allow NSP to collect an additional $62 million above rates approved in this proceeding (*id.* at 7:4-7; (SWC-2)).

Mr. Hevert's "additional factors" analysis shifts his recommended ROE in any given case toward the higher or lower ends of his range based not on one isolated factor but a combination of additional factors. Tr. Vol. I, 71:2-7 (Hevert). In this case, Mr. Hevert concluded that his recommended ROE (of 10.25 percent) should fall near the lower third of his ROE range (of 10.00 percent to 10.70 percent) for NSP. *Id.* at 71:8-18. This indicates that NSP has a lower risk profile when considering all the additional risk factors under consideration, an observation consistent with the testimony of Mr. Chriss concerning the impact of the large number of NSP risk-mitigation measures. Therefore, NSP's ROE should be adjusted downward toward the low end of any reasonable ROE range determined by the Commission.

g. Conclusion on ROE

In sum, the record evidence in this proceeding demonstrates that the 9.64 percent ROE recommendation of Mr. Amit is generally consistent with investor expectations, and may in fact be overly generous toward NSP.

34. DOE Settlement Funds

NSP has been receiving settlement payments from the DOE as a result of litigation regarding spent nuclear fuel and indicated it will receive payments in 2013 and 2014 that will exceed actual decommissioning requirements by approximately $35.8 million. Exh. 95 (Robinson Direct), 33:23. NSP proposes to use these funds to moderate the Company's proposed 2015 step increase. *See id.* at 33:6-17. Instead, if the Commission approves a 2015 step increase, the Commission should approve the use of the funds received in 2013 (approximately $17.6 million) to reduce any approved rate change for the 2014 test year, and funds received in 2014 (approximately $18.2 million) toward any 2015 step increase. Exh. 225 (Chriss Direct), 12:14-19. If the Commission does not approve the use of a step increase, the entire amount of excess DOE funds should be used to offset any approved rate change for the 2014 test year. *Id.* at lines 19-21. This approach would balance any need for rate moderation with the need of ratepayers to receive their funds on a timely basis.

NSP later adjusted downward its estimate of excess DOE settlement funds from $35.8 million to $25.7 million and the Department agreed with this adjustment. Exh. 97 (Robinson Rebuttal), pp. 13-14. To the extent that the Commission adopts this lower figure, the Commercial Group recommends that actual excess funds received in 2013 be applied to decrease 2014 revenue requirements and excess funds received in 2014 be applied to decrease 2015 revenue requirements. Alternatively, if the Commission does not approve the use of a step increase, the entire amount of DOE refunds should be used to offset any approved rate change for the 2014 test year. Finally, the Commercial Group supports NSP's agreement to true-up and refund to customers any DOE payments received in excess of the amount reflected in the Commission's final order.

50. Revenue Decoupling Mechanism

The Commercial Group agrees with NSP that any revenue decoupling mechanism should not apply to demand customers. Exh. 25 (Sparby Direct), 30:20-22. And because the proposed decoupling mechanism would not apply to demand customers, the Commercial Group has not taken a position on whether a revenue decoupling mechanism should be approved. *See also,* the discussion under Issue 1 *supra* of the impact of revenue decoupling as an additional factor that impacts ROE.

53. Revenue Apportionment – the Revenue Requirement Should be Apportioned as Closely as Possible Based on the Costs Caused by Each Class and an Updated CCOSS Should be the Starting Place

Although the Commercial Group has not taken a position on the class cost of service study issues presented in this proceeding, it agrees with Department witness Peirce that the correct starting place for any class revenue allocation is the class cost of service study adopted in this proceeding. Tr. Vol. IV, 149:21 – 150:6 (recommending that her proposed class revenue apportionment be adjusted for the new revenue requirement and the new class cost of service study adopted by the Commission in its final decision). To the extent that the Commission approves the updates and improvements that NSP has made to its class cost of service study, this would mean an adjustment to the relative costs that NSP incurs to serve the various rate classes and on this basis the Commercial Group has not opposed NSP's proposed 75 percent movement to cost. Exh. 225 (Chriss Direct), 14:7-8. However, to the extent the Commission does not approve these CCOSS updates and improvements (and hence, relatively little cost shift occurs) there is no reason not to move class rates to cost, which the Commercial Group recommends.

63. <u>CWIP/AFUDC</u> – To the Extent Substantial Amounts of CWIP is Included in Rate Base, ROE Should be Reduced Accordingly

Including CWIP in rate base shifts the risks traditionally assumed by utility investors (for which investors are compensated through the rate of return elements once the plant is in service) to ratepayers (who are not compensated for the use of their money). Exh. 225 (Chriss Direct), 10:15-19. Additionally, should the Company encounter problems during construction of the plant resulting in stoppage of the construction, non-completion of the project and/or substantial delay in the completion of the project, consumers have no recourse for recovering the money they have paid for the inclusion of CWIP in rate base. *Id.* at lines 19-22. Including CWIP in rate base also creates intergenerational issues whereby ratepayers may go off the NSP system before they receive any benefit for the construction projects for which they paid. *Id.* at lines 3-12. The situations involving the delayed and/or then eliminated Prairie Island EPU project and the Monticello project simply prove the point. For these reasons, the Commission should closely scrutinize the inclusion of CWIP in rate base.

In this proceeding, NSP initially proposed to include approximately $570 million in CWIP, which would constitute approximately 8.6 percent of NSP's entire rate base. Exh. 225 (SWC-4). The Commercial Group stated in direct testimony that it is opposed to the inclusion of CWIP in rate base but that if it is included, the Commission should reduce NSP's ROE to reflect the corresponding transfer of risk from NSP shareholders to ratepayers (and for the other factors identified in this testimony). Exh. 225 (Chriss Direct), 11:14-19. The Office of the Attorney General has also been troubled by the continued inclusion of large amounts of CWIP in NSP rate base and has presented the ALJ and Commission with additional proposals concerning CWIP that should be closely examined. *See* Exh. 370 (Lindell Direct), pp.16-29; Exh. 373 (Lindell Surrebuttal), pp.1-17.

66. Interest Rate on Interim Rate Refund

In the last rate case, the Commission corrected an unfairness whereby NSP had over-projected its revenue requirement for interim rates at least seven straight times while paying low interest on such over-collections. Thus, the Commission set the interim refund rate at NSP's overall cost of capital. Docket No. 12-961 Final Order (Sept. 3, 2013), p.39. In doing so, the Commission determined that the utility has greater control over the refund level, NSP consistently collects interim revenue levels that exceed final authorized revenue levels, and this imposes an excessive burden on ratepayers, as does the disparity between artificially low interest rates in the current economic environment and the return that NSP is authorized to earn on its utility investments. *Id.* at 38-40. The Commission also found that setting a higher refund rate equitably serves the public interest and does not conflict with any other legal standard. *Id.* at 38. There is no reason for the Commission to alter this conclusion. *See* Exh. 370 (Lindell Direct), 59:7-12 (higher refund rate "is justified in these circumstances just as they were in NSP's last rate case").

Further, as Mr. Chriss pointed out (Ex. 225, pp.7-8), NSP has timed its rate filings to allow it to minimize the impact of the Commission's rate decisions:

> The final rates that were determined to be just and reasonable by this Commission in Docket No. E-002/GR-12-961 were only effectively in place for 33 days before NSPM, through the interim rates in this docket, was able to reclaim $127 million of the approximately $182 removed by the Commission from NSPM's revenue requirement request. As such, NSPM benefits from its ability to time rate cases to minimize the time in which they have to operate at rates deemed just and reasonable through a full rate case examination.

The Commercial Group agrees with the Office of the Attorney General that the Commission should order that any interim rate refunds accrue interest at the overall cost of capital set in this proceeding in order to protect ratepayers and to continue to remove any incentive to overstate an interim revenue requirement.

II. CONCLUSION

WHEREFORE, the Commercial Group respectfully requests that the Administrative Law Judge recommend and the Commission adopt the relief requested herein.

This 23rd day of September, 2014.

Respectfully submitted,

/S/ Alan R. Jenkins
Alan R. Jenkins
Attorney for the Commercial Group

CERTIFICATE OF SERVICE

I, Alan R. Jenkins, hereby certify that I have this day served copies of the foregoing document in, MPUC DOCKET NO. E002/GR-13-868 on the attached list of persons.

xx by depositing a true and correct copy thereof, with sufficient postage paid in the United States mail;

xx by email; or

xx by electronic filing.

Dated this 23rd day of September, 2014.

/S/ Alan R. Jenkins_________________
Alan R. Jenkins