

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for a Certificate of Need for Additional Dry Cask Storage at the Monticello Nuclear Generating Plant Independent Spent Fuel Storage Installation in Wright County

ISSUE DATE: February 15, 2022

DOCKET NO. E-002/CN-21-668

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

PROCEDURAL HISTORY

On September 1, 2021, Northern States Power Company d/b/a Xcel Energy (Xcel Energy) filed a petition for a certificate of need for additional spent fuel storage at an existing site at the Monticello Nuclear Power Generating Plant (Monticello Plant).

By October 5, 2021, comments were received from the following:

- Minnesota Department of Commerce, Division of Energy Resources (DOC-DER);
- Minnesota Department of Commerce, Energy, Environmental Review and Analysis unit (DOC-EERA); and
- Minnesota Building & Construction Trades Council, Pipefitters Local 539, and Construction & General Laborers Local 563 (collectively, Monticello Labor Coalition).

By October 14, 2021, reply comments were received from the following:

- Xcel Energy and
- DOC-DER.

On December 22, 2021, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order, the Commission finds Xcel Energy’s application is substantially complete and refers the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding.

II. Completeness of Xcel Energy's Application

Xcel Energy currently stores nuclear waste at the Independent Spent Fuel Storage Installation (ISFSI) located at its Monticello Plant. The ISFSI is a secured outdoor facility where spent nuclear fuel is stored in casks.¹ Xcel Energy proposes to add additional nuclear waste storage at the ISFSI by developing unused space to hold additional casks. Xcel explained it intends to seek approval from the Nuclear Regulatory Commission to operate the 671-megawatt capacity nuclear reactor at the Monticello Plant until 2040, and this additional storage will be necessary to continue operations through that period.²

Under Minn. Stat. § 116C.83, subd. 2, the construction or expansion of a nuclear waste storage facility requires Commission approval of a certificate of need.³ 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 7855.0600-0670.

A. Positions of the Parties

1. DOC-DER

DOC-DER reviewed the completeness of Xcel Energy's petition but did not evaluate the substance or merits of Xcel Energy's petition. Although it found deficiencies in Xcel Energy's initial filing, these were remedied by Xcel Energy in its reply comments, and DOC-DER recommended the Commission determine the application was complete.

2. Other Parties

The Monticello Labor Coalition deferred to the determination of DOC-DER.

B. Commission Action

The Commission will find that Xcel Energy's application for a certificate of need for additional nuclear waste storage is substantially complete. Xcel Energy has provided the information required under Minn. R. 7855.0200-0280 and 7855.0600-0670.

In finding that the application is substantially complete, the Commission, like DOC-DER, is not evaluating the substance of Xcel Energy's petition, and if there are any issues with the petition, Minnesota Rules specify that they should be developed during a public hearing before the OAH in a contested case proceeding.⁴

¹ Under the Nuclear Waste Policy Act, the federal government is required to take possession and permanently dispose of spent nuclear fuel generated at civilian nuclear reactors in the United States. The federal government, however, has not met this obligation, and civilian nuclear reactor operators have had to manage alternatives to store spent nuclear fuel.

² Xcel Energy has emphasized that the Monticello Plant produces carbon free energy, and the continued operation of the plant is an essential part of its plan for a more carbon-free generation portfolio.

³ Minn. Stat. § 116C.83, subd. 3, stays a decision by the Commission until June 1 following the next regular annual session of the legislature that begins after the date of the commission decision.

⁴ See Minn. R. 7855.0200, subp. 5.

Decisions on the completeness of an application must be made in 15 days.⁵ Under Minn. R. 7829.3200, the Commission may vary the time limits when:

- A. [E]nforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. [G]ranteeing the variance would not adversely affect the public interest; and
- C. [G]ranteeing the variance would not conflict with standards imposed by law.

The Commission will extend the time for determining the completeness of Xcel Energy's application. Given the challenges of addressing various other dockets with statutory deadlines—including Xcel Energy's own requests to increase rates for electric and natural gas service—the parties and the Commission would be excessively burdened, notably DOC-DER.⁶ The issues in this matter, however, deserve careful consideration, which is possible with an extension of the time for consideration beyond 15 days.

Further, granting the variance would not frustrate review of the application. Extending the time for consideration would not affect the public interest, given Xcel Energy's own timeline for various milestones before the Commission's final order. In addition, the extension will not interfere with any other statutes or rules.

For similar reasons, the Commission will extend the time for making a final determination on Xcel Energy's application.⁷ The Commission, however, is mindful of the deadlines for developing the additional ISFSI storage outlined by Xcel Energy and will issue a final decision on or before December 15, 2023.

III. Contested Case Proceeding

A public hearing must be held on Xcel Energy's certificate of need application.⁸ 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.

⁵ See Minn. R. 7855.0200, subp. 7.

⁶ See *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-21-630; *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy's Petition for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-002/GR-21-678.

⁷ See Minn. R. 7855, subp. 6.

⁸ Minn. R. 7855.0200, subp. 5.

A. Positions of the Parties

1. Xcel Energy

At the hearing, Xcel Energy agreed that the matter should be referred to OAH for a contested case proceeding.

2. DOC-DER

DOC-DER did not raise any contested issues regarding Xcel Energy's application. However, it still recommended proceeding with a contested case proceeding because of the proposed early retirement of the nuclear reactor at the Monticello Plant, as raised in *In the Matter of Xcel Energy's 2020-2034 Integrated Resource Plan (IRP)*, Docket No. E-002/RP-19-368.

3. Other Parties

The Monticello Labor Coalition was not aware of any disputed issues of fact but believed it was prudent to refer the matter to OAH because such issues could emerge in the future.

B. Commission Action

1. Referral to Office of Administrative Hearings

The Commission will refer the matter to OAH for a contested case proceeding. Although no party raised any contested issue before or at the hearing, the Commission believes that having a fuller record will help resolve any questions regarding the certificate of need.

The Commission will also grant variances to Minn. R. 7855.0200, subp. 5, which requires a public hearing within 80 days of the application filing. Enforcement of this timeframe would unreasonably limit parties' participation and full development and consideration of issues raised. Extending the time for consideration would not adversely affect the public interest, and would, in fact, benefit the public interest by facilitating full record development. Granting the variance will also 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.

IV. Procedural Outline for Contested Case Proceeding

A. Administrative Law Judge

The Administrative Law Judge (ALJ) assigned to this case is Eric Lipman. The ALJ's address is as follows:

Administrative Law Judge Eric Lipman
Office of Administrative Hearings
600 North Robert Street
St. Paul, Minnesota

His mailing address is as follows:

Administrative Law Judge Eric Lipman
P.O. Box 64620
St. Paul, Minnesota 55164-0620

He can be reached through his legal assistant, Michelle Severson, at 651-361-7874 or michelle.severson@state.mn.us.

B. Hearing Procedure

3. 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 OAH, 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. 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.mngovpublications.com/home.asp>.

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

4. 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. 1400.7000, 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.

5. Discovery and Informal Disposition

Any questions regarding discovery under Minn. R. 1400.6700-1400.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Mike Kaluzniak at 651-201-2257, mike.kaluzniak@state.mn.us, or

Mike Kaluzniak
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147.

6. 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.

7. 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 interpreter if necessary. Persons must promptly notify the ALJ if an interpreter is needed.

8. Scheduling Issues

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

9. 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 of and Order for Hearing.

10. 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.⁹

D. Prehearing Conference

A prehearing conference will be held on March 8, 2022, at 1:30 PM, via telephone, using the following call-in information:

Call-in Number: 651-395-7448
Conference Code: 678 254 986#

⁹ Minn. R. 1400.6200.

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 pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission therefore asks OAH to conduct a contested case proceeding in light of these time constraints and requests that the ALJ submit the final report on or before July 1, 2023, to permit adequate consideration of the case by the Commission.

F. *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 at Minn. R. 7845.7300-7400, which all parties are urged to consult.

V. Notices Required; Delegation of Authority

To ensure proper development of the record, the Commission will delegate administrative authority to the Executive Secretary and will establish related notification and procedural requirements as described below.

The Commission will also direct the Executive Secretary to notify the House of Representatives and Senate committees with jurisdiction over energy and environmental policy issues that an application for a certificate of need pursuant to Minn Stat. §116C.83 has been filed.

ORDER

1. The Commission accepts the application for a certificate of need by Northern States Power Company d/b/a Xcel Energy (Xcel Energy) as complete.
2. The Commission refers the matter to the Office of Administrative Hearings for a contested case proceeding and requests that the Administrative Law Judge issue their final report by July 1, 2023.
3. The Commission delegates administrative authority to the Executive Secretary regarding the following items:
 - a. Provide the name, telephone number, and email address of the staff person designated as Public Advisor to facilitate citizen participation in the process;
 - b. Request that the Minnesota Department of Commerce, Division of Energy Resources continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need;

- c. Require the applicant to facilitate in every reasonable way the continued examination of the issues by the staff of the Department of Commerce and Commission;
 - d. Require Xcel Energy to place a copy of the application (printed or compact disc) for review in at least one government center or public library in each county where the proposed storage facility project is located;
 - e. Direct Commission staff to work with the Administrative Law Judge and Department staff to select a suitable location for the public hearings on the application; and
 - f. Direct the Executive Secretary to notify the House of Representatives and Senate committees with jurisdiction over energy and environmental policy issues that an application for a certificate of need pursuant to Minn Stat. §116C.83 has been filed.
4. The Commission varies the following rules related to Xcel Energy's application for a certificate of need as follows:
- a. Minn. R. 7855.0200, subp. 5 and 7, to extend the timeframe for a public hearing and completeness determination; and
 - b. Minn. R. 7855.0200, subp. 6, to establish that a decision on the application for the certificate of need will be made no later than December 15, 2023.
5. 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 for assistance.

ATTACHMENT A

OAH Docket Number: 8-2500-38129

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for a Certificate of Need for Additional Dry Cask Storage at the Monticello Nuclear Generating Plant Independent Spent Fuel Storage Installation in Wright County

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.ⁱ**

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

ⁱ In order to opt in to electronic notice, this form must be emailed to 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.

Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

CERTIFICATE OF SERVICE

I, Chrishna Beard, 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 **E002/CN-21-668**

Dated this 15th day of February, 2022

/s/ Chrishna Beard

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John	Coffman	john@johncoffman.net	AARP	871 Tuxedo Blvd. St. Louis, MO 63119-2044	Electronic Service	No	OFF_SL_21-668_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_21-668_Official
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