

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**

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**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 Seventh Place East Suite 350  
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<b>In the Matter of the Application of</b>	)	
<b>Northern States Power Company, a</b>	)	<b>MPUC DOCKET NO. E-002/GR-13-868</b>
<b>Minnesota Corporation, for Authority to</b>	)	<b>OAH DOCKET NO. 68-2500-31182</b>
<b>Increase Rates for Electric</b>	)	
<b>Service in Minnesota</b>	)	

**REPLY BRIEF OF THE MINNESOTA CHAMBER OF COMMERCE**

October 14, 2014

**MARTIN & SQUIRES, P.A.**

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## **I. INTRODUCTION**

The Chamber<sup>1</sup> respectfully submits this Reply Brief in response to the Initial Briefs of Xcel, the OAG, and the DOC. On the disputed issues, the Chamber has demonstrated why, through a preponderance of the evidence when required, the Chamber's position is the most just and reasonable for ratepayers and the Company. The Chamber maintains the positions contained in its Initial Brief and, if necessary, provides supplemental analysis in this Reply with respect to the issues set forth herein.

## **II. CONTESTED ISSUES**

### **A. REVENUE REQUIREMENT ISSUES**

#### **1. Sherco 3 Fuel**

The Chamber recommends Xcel refund excess fuel and purchased energy costs associated with the Sherco 3 outage and collect the funds over the life of the improvement that caused the outage.<sup>2</sup> Ratepayers should not pay capital costs for a resource and also pay for the replacement power when the outage is related to a capital investment intended to benefit future ratepayers.

The Chamber does not challenge that the costs were prudently incurred. Rather the issue is one of intergenerational allocations. The capital improvement that caused the outage and increased costs is intended to benefit future ratepayers for years to come. Those future ratepayers must pay for the costs that go into completion of the improvement; including the outage costs.<sup>3</sup>

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<sup>1</sup> In the interest of brevity, all defined terms and phrases, including citations, utilized in the Chamber's Initial Brief are incorporated in this Reply Brief unless otherwise defined herein.

<sup>2</sup> Chamber Brief at 5-6 (identifying the adjustment at not less than \$50 million).

<sup>3</sup> Ex. 340, Schedin Direct, at 14:11-17.

Xcel's desire is to push this issue off to the Company's AAA docket and fails to address the merits of the issue.<sup>4</sup> As identified by the Chamber, this rate case is the first since Sherco 3 has been up and running, so final capital costs that are being sought (net of unrecovered insurance) and the first case in which the increased fuel and purchased power cost can be measured.<sup>5</sup> The fuel and purchased power costs should be measured and dealt with now.

Rate cases are intended to be comprehensive reviews of a utility's rates and are an appropriate place to address all costs related to any project that recovery is being requested for. The Chamber and other intervenors do not have the resources to participate in every proceeding that a utility chooses to bring. If an issue can be addressed in a rate case and sufficient facts are known on that issue, it should be addressed, not deferred for the convenience of the utility... at the expense of the intervenor.

## **2. Transmission**

The Chamber addresses the need for additional cost controls related to transmission cost in its initial brief.<sup>6</sup> The magnitude of this issue is undisputed and the wide range of project costs illustrates the need for additional PUC oversight.<sup>7</sup> Simply relying on another regulatory venue (MISO) as a place to intervene and challenge Company costs is not sufficient, nor is giving lower level personnel a budget that could swing over 17% or \$284 million sufficient control.<sup>8</sup>

Xcel states that there are significant uncertainties related to these projects at the time of CON application.<sup>9</sup> This is exactly why additional controls are appropriate. The CON costs are a

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<sup>4</sup> Xcel Brief at 108.

<sup>5</sup> Ex. 341, Schedin Direct at 14:11 to 15:9.

<sup>6</sup> Chamber Brief at 7-8.

<sup>7</sup> Ex. 340, Schedin Direct at 17:26 to 18:16 (identifying the cost of Xcel's transmission involvement on four projects to range from \$1.603 to 1.887 billion – a range of \$284 million dollars or swing in cost of over 17.7%).

<sup>8</sup> Xcel Brief at 122.

<sup>9</sup> Xcel Brief at 123.

benchmark which to measure performance against, if adjustments upward are appropriate because of unknown costs or contingencies at the time of CON approval the Company could appropriately seek and obtain recovery. The Chamber is simply seeking to avoid a blank check being written for these costs.

The Chamber's recommendation is for Xcel to create a Key Performance Incentive for the Transmission Vice President, which would drive appropriate management of costs at a high level for the Company and ratepayers.<sup>10</sup>

### **3. Wind Recovery in Base Rates or Rider**

The Chamber in its initial brief addressed the appropriateness of rider recovery, of Pleasant Valley and Boarder Winds, and identified the impact difference to ratepayers as \$5.538 million for 2015.<sup>11</sup> When considering multiple methods of recovery and more than one can be found to be appropriate the most favorable one for ratepayers must be the method used.<sup>12</sup> The Department does not oppose this rider recovery.<sup>13</sup> Xcel does not squarely address the issue in its' brief.

### **B. CLASS COST OF SERVICE STUDY (CCOSS)**

The Chamber addressed non-cost factors including lack of competitiveness and process of allocation and was largely consistent or not disputed by others.<sup>14</sup>

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<sup>10</sup> Ex. 342, Schedin Surrebuttal, at 11:21-24.

<sup>11</sup> Chamber Brief at 8-10.

<sup>12</sup> Minn. Stat. § 216B.03, ("doubt as to reasonableness must be resolved in favor of the consumer"... so where equally valid methods are available, Commission must choose the one that favors the consumer).

<sup>13</sup> Department Brief at 226.

<sup>14</sup> Chamber Brief at 10-14.

## 1. Allocation of Production Plant

Xcel and the Department oppose the Chamber's recommendation to use Straight Fixed Variable method (SFV). The Department's position is largely a restatement of prior cases and decisions, but fails to explain a response to the Chamber's explanation of why SFV appropriately recognizes the dual nature of the SFV method.<sup>15</sup> As explained by witness Maini:

...ultimately, the theory behind assessing the dual nature of base load plants is the issue of minimizing total system costs. The SFV method is also consistent with the notion of least cost planning and minimizing total costs. The straight fixed variable method takes the perspective that the plant capacity (and therefore, the capital investment) is built to serve demand and reserve margin requirements and is all demand related, and the throughput derived from it (and therefore, the fuel and other variable costs) is to serve energy needs and is energy related...

The peak demand or straight fixed variable method classifies all fixed production plant as demand related since the plant capacity is required to meet peak demand and reserve margin requirements. Therefore, the cost of the plant capacity is assigned to customers on the basis of their demand. These are costs incurred in direct relationship to the MWs of demand that customers place on the system. These costs do not vary with the amount of energy consumed. Variable costs such as fuel on the other hand, do vary with energy consumption and are appropriately classified as energy related and allocated on that basis.<sup>16</sup>

Further, the Department asserts that "if Xcel were to select generators solely to provide capacity to meet peak customer demand, Xcel would select only generators that have the lowest cost per unit of capacity, the so-called peaking generators. The fact that Xcel has actually acquired a variety of generator types undermines MCC's assertion."<sup>17</sup> This was rebutted by MCC witness Maini who provide Duke Energy in North and South Carolina that utilizes this method and similar to Xcel, its supply side resources include a diverse mix of coal, nuclear, natural gas and renewable resources.<sup>18</sup>

Indeed, witness Ouanes' approach is not consistent with least cost planning. As explained by witness Maini:

.... witness Ouanes' recommendations to stratify Grand Meadows and Nobles is not consistent with least cost planning because this generation was not built to reliably serve

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<sup>15</sup> Department Brief at 276-277.

<sup>16</sup> Ex. 343, Maini Direct, at 19:3 to 20:2.

<sup>17</sup> Department Brief at 276-277.

<sup>18</sup> Ex. 345, Maini Surrebuttal, at 14.

energy or demand in a least cost manner but rather to fulfill RES. Furthermore, classifying such costs as well as Other Production O&M costs as energy related on the basis of Stratification when Xcel's analysis indicates otherwise will further result in pricing signals to lower energy usage which ultimately means a higher potential for rate increases as Xcel will seek recovery of these fixed costs due to lower usage – this outcome is not least cost for current customers.<sup>19</sup>

For the reasons stated herein and in the Chamber's initial brief, the SFV method an appropriate method for classifying fixed production plant, and more so now, given Xcel's changing generation mix and flat to declining energy.<sup>20</sup>

### (a) **D10S allocator for Fixed Production Plant Capacity**

While the OAG opposes the D10S allocator, the OAG fails to address the Chamber's arguments.<sup>21</sup> As recognized by the Chamber, Xcel's peak has a high coincidence factor with MISO's peak and is appropriate and reasonable.<sup>22</sup>

### **2. Allocation of Other Production O&M**

The Department does not agree that Xcel was ordered to analyze allocation Other Production O&M for this rate case.<sup>23</sup> The precise language is "*provide a more detailed analysis of the issue in its next rate case.*"<sup>24</sup> As the Chamber has argued that the Company's previous method was inappropriate, it is not surprising that when analysis was done another method – the predominant nature method was deemed more appropriate. The predominant nature method is the most commonly used method and consistent with allocations by Xcel in other jurisdictions.

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<sup>19</sup> Ex. 345, Maini Surrebuttal, at 14.

<sup>20</sup> Chamber Brief at 14-16.

<sup>21</sup> Attorney General Brief at 63-65.

<sup>22</sup> Chamber Brief at 17.

<sup>23</sup> Department Brief at 272-273.

<sup>24</sup> FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, *In the Matter of the Application of Northern States Power for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961 ("2012 Xcel Order") (September 3, 2013) at 15.

Chamber observed “*the NARUC manual characterizes the Predominant Nature method as a commonly used method and the Location method as not standard practice.*”<sup>25</sup> Maini also observed that “*the FERC method is consistent with the Predominant Nature method*” and “*Xcel classifies Other Production O&M at a jurisdictional level on this basis.*”<sup>26</sup>

The Department did not analyze why the predominant nature method was not more accurate, or why their favored location method is more precise, rather it was simply that predominant nature method was not used previously.<sup>27</sup> This is not sufficient reason to use a less precise method of allocation. As discussed by the Chamber, the detailed analyses performed by Xcel and reasoning behind use of the predominant nature method are appropriate for this case.<sup>28</sup>

### **3. Treatment of Nobles and Grand Meadow Wind Generation**

The Department opposes Xcel’s proposed allocation of wind resources that were not added to meet resource needs, rather to meet policy needs. Xcel proposes to allocate 100% to demand. The Chamber proposes to use the same method as is used in the wind rider – the percent of base revenue method.

The Department contends that any switch based on least cost is inconsistent with past classification positions the Company took on allocation.<sup>29</sup> But as discussed in the Chamber’s initial brief this is just wrong – the change is merely recognition of using the wrong method in the past, not a change in position on these purchases not being least cost resources.<sup>30</sup> Neither Xcel, nor the Commission took a position on least cost in past cases.<sup>31</sup> This is simply a

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<sup>25</sup> Ex. 345, Maini Surrebuttal at 17:29-30.

<sup>26</sup> Ex. 345, Maini Surrebuttal at 18:1-3.

<sup>27</sup> Department Brief at 272-274.

<sup>28</sup> Chamber Brief at 17-18.

<sup>29</sup> Ex. 408, Ouanes Direct, at 22-23.

<sup>30</sup> Chamber Brief at 18-21.

<sup>31</sup> Chamber Brief at 19-21 (discussing IRP’s forcing selection of these wind resources rather than selection based on least cost, distinguishing least cost renewable resource, and noting that no



refinement of the CCOSS, like the Department proposed in the last rate case on CIP costs (despite the Department's inconsistent CIP positions in several prior rate cases).<sup>32</sup> This refinement is being proposed to more accurately reflect costs that do not appropriately fit into Stratification, because they are not least cost.<sup>33</sup>

The next issue the Chamber has concerns with is the Department's use of testimony from Xcel's 2008 and 2012 rate cases that is used out of context, when testifying on another issue and without the benefit of appropriate examination.<sup>34</sup> The Department's use is in direct conflict with the Judge's direction on this exact point and this reference must be disregarded. This information is not in the record for this case.<sup>35</sup> Furthermore, it should be noted that in 2008 Xcel had not been addressing least cost issue, rather simplicity of allocation and even the 2012 case quotation used by the Department noted the policy concern that it now is advocating for.<sup>36</sup> In keeping with the Judge's direction for this rate case, the Chamber does not include additional arguments or citations from past proceedings' testimony that is not in the record for this case.

Lastly, the Department challenges the Chamber's proposed percentage of base revenue largely on cost causation basis, but fails to acknowledge that Xcel did not acquire these resources based on least cost.<sup>37</sup> Because Xcel did not acquire these resources based on least cost – cost was not the cause of its purchase and stratification is not appropriate.

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order found Nobles or Grand Meadow least cost (merely that the Chamber was not able prove that it was not least cost)).

<sup>32</sup> FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, *In the Matter of the Application of Northern States Power for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961 ("2012 Xcel Order") (September 3, 2013) at 41-42.

<sup>33</sup> Chamber Brief at 20-21.

<sup>34</sup> Department Brief at 269.

<sup>35</sup> Transcript Judge Cochran, Vol. 5 at 90:5-9.

<sup>36</sup> Department Brief at 269.

<sup>37</sup> Department Brief at 271.

Percent of base revenue allocation is appropriate because it has ratepayers pay for cost-inefficient, policy purchases in a way that is proportionate to their responsibility for Xcel's system.<sup>38</sup>

#### **4. Allocation of Economic Development Discounts**

The Chamber discussed that cost causer of the economic development discounts is to retain base revenue customers, so the percent of base revenue method is most appropriate.<sup>39</sup> The Department proposes to depart from its principal of following cost causation and prefers to follow energy only allocation.<sup>40</sup> At hearing witness Ouanes agreed that the objective of the discounts is retaining customers and retaining customers would reduce fixed and variable costs.<sup>41</sup> This departure for the Department is inappropriate and as demonstrated by the Chamber the percent of base revenue method is appropriate.<sup>42</sup>

#### **C. REVENUE APPORTIONMENT**

The Chamber's position with respect to revenue allocation is that the Commission should not deviate far from the CCOSS when apportioning revenue responsibility. As discussed in the Chamber brief it is important and consistent Commission policy to start with cost when determining apportionment.<sup>43</sup> The Chamber appropriately weighed non-cost factors in its analysis and appropriately found that the final CCOSS as ordered by the Commission should be the starting point for allocation purposes and that the inappropriately high commercial and

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<sup>38</sup> Chamber Brief at 21, (discussing lack of guidance on policy purchases and reasoning of fairness of percent of base revenue method).

<sup>39</sup> Chamber Brief at 21-22.

<sup>40</sup> Department Brief at 274-275.

<sup>41</sup> Transcript Ouanes, Vol. 4 at 83:24 to 84:6.

<sup>42</sup> Chamber Brief at 21-22.

<sup>43</sup> Chamber Brief at 22-23.

industrial rates (due to use of the stratification method) cannot afford even higher rates.<sup>44</sup> The only parties to analyze non-cost factors that impact commercial and industrial customers, which therefore impacts residential ratepayers, are the Chamber, XLI and Xcel.<sup>45</sup> No other party does a thorough analysis of non-cost factors.

No party has presented persuasive arguments to deviate from the final CCOSS in this case.

### **1. Apportionment if Department CCOSS is not Accepted.**

The Chamber continues to support allocation from the final ordered CCOSS which is consistent with the Chamber's position discussed above, that non-cost factors support commercial and industrial rates being set at cost.

### **2. Apportionment for 2015.**

For 2015 to follow Commission policy, that classes are to move closer to cost, any deviation from CCOSS in 2014 should be eliminated.

## **D. RATE DESIGN**

### **1. Interruptible Rates**

The Chamber notes that the relative value of interruptible credits has not been maintained in recent cases and there has been a significant drop of participation in the interruptible program.<sup>46</sup> While the Chamber identifies the value as high as that of replacement generation, the Chamber proposal does not go near that far and uses a proposal which benefits both participating

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<sup>44</sup> Chamber Brief at 22-23 and 10-13 (noting the competitive disadvantage Minnesota companies are in relative to other states, impact of losing large employers that have left Xcel's system).

<sup>45</sup> Chamber Brief at 22-23, See also Xcel Brief at 140 (discussion of uncompetitive rates that have a negative impact to all ratepayers).

<sup>46</sup> Chamber Brief at 23-27.

interruptible ratepayers and all ratepayers, by restoring the relative value of the credit to what it has been in the past.<sup>47</sup>

As noted by Chamber, the Department's position on increases in the credit was based on inaccurate information that was corrected by Xcel prior to and at hearing.<sup>48</sup> In briefing on the issue, the Department fails to incorporate this information in analyzing the issue.<sup>49</sup> Interruptible customers have actual costs which are incurred regardless of interruption and have dropped off because the credit has not kept up with rates.<sup>50</sup> Not having the appropriate credit will cost all ratepayers more for the replacement resources that will be necessary.<sup>51</sup>

Late in the case Xcel noted that there has been drop off of interruptible customers and a rate should be set to maintain the current level of interruption<sup>52</sup>, but fails to keep parity with where rates have been in the past cases. Furthermore, Xcel makes no effort to expand this important demand response asset as directed in their most recent Integrated Resource Plan.<sup>53</sup> Finally, Xcel misstates the Chamber's position as set rates at the value of replacement generation<sup>54</sup>, which would be \$127.56/KW-year.

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<sup>47</sup> Chamber Brief at 23-27.

<sup>48</sup> Chamber Brief at 23-27.

<sup>49</sup> Department Brief at 297-298.

<sup>50</sup> Chamber Brief at 26-27.

<sup>51</sup> Chamber Brief at 26-27.

<sup>52</sup> Xcel Brief at 144.

<sup>53</sup> ORDER ESTABLISHING PROCEDURAL SCHEDULES AND FILING REQUIREMENTS, *In the Matter of Xcel Energy's 2011-2025 Integrated Resource plan*, Docket No. E-002/RP-10-825 ("2010 Xcel IRP ORDER") (November 30, 2012) at 12 ("achieving participation rates in for demand response programs in the top 25 percent" and "evaluate higher levels of cost-effective and feasible demand response").

<sup>54</sup> Xcel Brief at 145.

As proposed by the Chamber, the increase should be \$77.24/KW year for Tier 1, Performance Factor C, interruptible ratepayers and the relationships with other performance factors and tiers be accordingly adjusted.<sup>55</sup>

## **2. Definition of Contiguous**

For the reasons discussed the Chamber's initial brief, providing an accurate definition of contiguous is consistent with established Commission policy and necessary to allow customers appropriately plan for their campuses.<sup>56</sup> Xcel argues that an accurate description is not needed and that they provided a definition in an Information Request response.<sup>57</sup> Notably the response is not incorporated into the Company tariffs nor does it provide any clarity that is necessary. The "definition" referred to in Xcel's brief defines contiguous as a "single physical customer site or location, as distinct from customer accounts at different geographical locations".<sup>58</sup> It does not provide any clarity as to property lines, easements, roads or utility easements that may run through a ratepayer's campus.

The legislature agreed that Xcel did not have a well enough defined definition of contiguous in its tariffs, as it provided one with clarity that allows ratepayers to plan their energy systems, with clarity, in the Solar law. The legislature was not addressing more broad issues in ratemaking at that time. The Commission should take this opportunity and use the same clear definition for all ratepayers.

The definition in Solar law is what is appropriate and clear:

(e) "Contiguous property" means property owned or leased by the customer sharing a common border, without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, or utility rights-of-way.<sup>59</sup>

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<sup>55</sup> Ex. 345, Maini Surrebuttal, at 25:19-27.

<sup>56</sup> Chamber Brief at 27-28.

<sup>57</sup> Xcel Brief at 145-146.

<sup>58</sup> Ex. 136, Information Request MCC 251.

<sup>59</sup> Minn. Stat. § 216B.164, Subd. 2a, (e) (2014).

The above definition should be incorporated in Xcel's tariffs.

### **3. Coincident Peak Billing**

While Xcel continues to oppose coincident peak billing, the Company fails to propose any reasonable alternative for customers that bring this benefit.<sup>60</sup> At the same time Xcel suggests the Chamber proposal is inconsistent with ratemaking policy, the Company acknowledges it is theoretically correct with respect to billing generation costs.<sup>61</sup> Thus we can recognize that Xcel's current rates (and as proposed in this case) are not consistent with established ratemaking policy.

Xcel appears to throw out a red herring issue of inability to recover these billing process changes, but fails to articulate what they are. The Chamber has not opposed to a reasonable meter charge to recover the billing process changes or offset of redundant distribution charges, if appropriate. Xcel currently has coincident peak billing customers, so should be able to easily estimate these costs. Xcel chose not to provide the cost information, so such an excuse should not prevent ratepayers from benefiting with respect to their own diversity, as proposed by the Chamber.

The Chamber's proposal to create a tariff with a threshold of two or more service points above the aggregate amount of 500KW, limits the diversity savings allocated to other customers while allowing the coincident billing customers to capture the diversity which they create.

## **E. OTHER ISSUES**

### **1. Fuel Cost Recovery Reform**

Xcel summarily addresses the issue of FCA reform in its initial brief and simply proposes to address it in another proceeding.<sup>62</sup> While the Chamber prefers to resolve issues in rate cases,

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<sup>60</sup> Xcel Brief at 145.

<sup>61</sup> Ex. 107, Huso Rebuttal at 44.

<sup>62</sup> Xcel Brief at 108.

the Chamber does not oppose this approach, and simply proposes to add a deadline to resolution. If resolution is not gained in the AAA proceeding by the time the next rate case is filed, Xcel must file a plan in the rate case proceeding.<sup>63</sup>

## **2. Peer Benchmarking**

Xcel opposes any additional KPI development and use of additional benchmarking, preferring to limit analysis to those areas measured currently.<sup>64</sup> Xcel maintains that the higher level analysis on cost does not give them enough feedback on why or how to improve and that these metrics therefore do not address appropriate signals. The difference in Xcel's approach and the overall interest of ratepayers is Xcel's approach ignores the most important issue to ratepayers – overall costs. As discussed in the Chamber's initial brief, Xcel and Minnesota's lack of competitiveness on rates is a significant problem.<sup>65</sup> The metrics identified by the Chamber are examples and not the final measurement tools to be used. The important issue for Xcel's ratepayers is that we do not lose sight of overall costs – we cannot lose sight of the forest for the trees.

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<sup>63</sup> Ex. 345, Maini Surrebuttal at 27:7-13.

<sup>64</sup> Xcel Brief at 108.

<sup>65</sup> Chamber Brief at 10-13 and at 23 (discussion regarding competitiveness CCOSS analysis and on Revenue Apportionment).

**III. CONCLUSION.**

Based on the foregoing discussions, the Chamber urges the Administrative Law Judge to make findings and conclusions consistent with the Chamber's arguments.

Respectfully submitted,

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