BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East, Suite 350
Saint Paul, Minnesota 55101-2147

In The Matter Of An Application Of Northern States Power Company For Authority To Increase Rates For Electric Service In The State Of Minnesota

In the Matter of the Review of the Annual Automatic Adjustment Reports for All Electric Utilities

OAH Docket No. 65-2500-38746

MPUC Docket Nos. E002/GR-12-961, E002/GR-13-868, E999/AA-13-599, E999/AA-16-523, E999/AA-17-492, E999/AA-18-373

NORTHERN STATES POWER COMPANY D/B/A XCEL ENERGY REPLY TO EXCEPTIONS

June 17, 2024

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INTRODUCTION

Xcel Energy respectfully files this Reply to the Exceptions to the ALJ Report filed by the Department, OAG and XLI (collectively, "Intervenors") in this matter.[1] This Reply addresses: (1) the Intervenors' misrepresentations and mischaracterizations of the record of this proceeding, (2) their exceptions to the ALJ Report's recommendation to require the Company to refund 48 percent of the replacement power costs incurred in the event the Commission finds Xcel Energy failed to prudently operate and maintain Sherco Unit 3—contradicting positions taken by both the Department and OAG earlier in these dockets, and (3) their failure to acknowledge the need to recognize prior rate mitigations or other benefits already passed on to customers following the Event (and again contradicting a prior Department position) and that have already made customers whole for any replacement power costs incurred during the Unit 3 outage. In addition, the Company addresses XLI's comments regarding the appropriate replacement power cost estimate to use if the Commission finds the Company acted imprudently.

Contrary to the Intervenors' claims, the record of this proceeding establishes that, based on the information the Company had or reasonably should have had prior to the Event, it prudently operated and maintained Unit 3. Therefore, the Company respectfully requests that the Commission find the Company prudently incurred the "replacement power" costs at issue.

[1] Unless otherwise indicated, capitalized defined terms have the same meaning in this Reply to Exceptions as they do in Xcel Energy's June 6, 2014 Exceptions. As in the Company's Exceptions, individual Findings in the ALJ Report are cited below as "Report at ¶ xx."

Should the Commission instead find that the Company acted imprudently in any way, the Commission must then carefully consider the appropriate refund amount, if any. That consideration should first recognize the unrebutted testimony regarding the most accurate estimate of replacement power costs. It should also account for the prior disallowance ordered by the Commission and previously supported by the Department, which removed Unit 3 from rate base and provided a $21.6 million rate reduction for customers in 2013, more than offsetting the replacement power costs incurred during that year. The Commission should also properly recognize the GE Settlement proceeds credited to customers in February 2019. Finally, the Commission should account for the additional cost-mitigating actions taken and benefits obtained by the Company for its customers as it worked to return Unit 3 to service. Collectively, these prior rate reductions and other customer benefits exceed the replacement power costs, and the record does not support any additional refund to customers, regardless of the Commission's determination on prudence.

I. XCEL ENERGY PRUDENTLY OPERATED, MAINTAINED, AND INSPECTED SHERCO UNIT 3

Intervenors' respective Exceptions each endorse the ALJ's erroneous findings supporting the Company's alleged imprudence in operating and maintaining Unit 3, repeating a number of the mischaracterizations or misunderstandings of the record evidence included in the Report. The Company's June 6, 2024 Exceptions detailed why the record cannot support these ALJ findings regarding prudence, and those arguments will not be unnecessarily repeated here. One intervenor argument, however, warrants a brief response.

The OAG unreasonably and baselessly analogizes the Company's 2011 operation and maintenance decisions regarding Unit 3 to an automobile owner deciding to defer an oil change at the time it was deemed "necessary per the owner's manual," to accommodate "discretionary upgrades."[2] This simplistic analogy, however, is fundamentally flawed and demonstrates both the Intervenors' and ALJ's basic misunderstanding (or mischaracterization) of the overwhelming record evidence reflecting the state of industry knowledge and inspection guidance at the time of the Event related to stress corrosion cracking *in the specific components* present in Unit 3.

As an initial matter, automobile manufacturer recommendations for oil-change timing are generally based upon one of two *objective* factors: mileage or time. Most drivers are familiar with the reminder sticker that is placed in their vehicle at the time an oil change is completed, which indicates that their next oil change should be accomplished either by a certain mileage or date—whichever comes first. The Company agrees that if an owner deferred an oil change that, pursuant to one or both of those objective factors was necessary, that could be considered imprudent maintenance. Yet, this over-simplified analogy has no place in this analysis as it is undisputed that at the time of the Event there were neither time-based nor years-in-service formal or informal[3] recommendations for

[2] OAG Exceptions at p. 4-5.

[3] The Company is using "formal" and "informal" related to manufacturer guidance to distinguish between "formal" recommendations—*i.e.*, recommendations issued to utilities in the form of a GEK or TIL—and "informal" recommendations—*i.e.*, recommendations conveyed through any other means to a utility.

when the Blades-Off inspection—*i.e., the only inspection that could have detected the latent stress corrosion cracking in the finger-pinned attachments*—should be performed.[4]

Directly contradicting the Intervenor's example is the *actual industry guidance* that existed prior to and then after the Event, which clearly reflect the different standards applied and concerns understood in the industry between tangential attachments (not involved in the Event) and finger-pinned attachments (involved in the Event)[5]:

- **TIL 1227 (issued pre-Event):** Formal guidance recommending time-based, phased array ultrasonic inspections of *tangential-entry* attachments (which can be inspected with the blades still attached to the rotor). In addition to the different blade attachment type, this *formal* guidance applies only to turbines with steam supplied by once-through boilers (as opposed to Unit 3's drum boilers) and was never issued to Unit 3. In 2001, GE *informally* recommended the phased array ultrasonic inspections of tangential-entry attachments (but not finger-pinned attachments) in units with drum boiler units as well.[6]

- **TIL 1121 (issued pre-Event):** Formal guidance recommending Blades-Off and Magnetic Particle Inspections of finger-pinned attachments be performed only under very limited circumstances.[7] In the cover letter, GE emphasized: "this TIL DOES NOT recommend removal of the [blades] for inspection of the rotor wheel finger dovetails, unless" specific circumstances exist.[8] No informal guidance

[4] The Company's Exceptions explained why the ALJ's Findings wrongly assumed that a 2011 major inspection would have detected evidence of the latent stress corrosion cracking of the internal finger-pinned attachments. *See* Xcel Energy Exceptions at 19-21.

[5] In addition to the industry-known differences between stress corrosion cracking susceptibility concerns associated with finger-pinned attachments (involved in the Event) and tangential attachments (not involved in the Event), there were additional industry-known differences about stress corrosion cracking susceptibility concerns between units with once-through boilers (not involved in the Event) and units with drum boilers (involved in the Event). It is undisputed that there is a much higher incidence of stress corrosion cracking in low-pressure turbines of units with once-through boilers when compared to those operating with drum boilers. Report at ¶56.

[6] *See* Ex. Xcel-4 at 15-16 (Murray Direct).

[7] Ex. Xcel-21 at 12 (Sirois Direct – Part 1); Ex. Xcel-23, Sched. 7 (Sirois Direct – Part 3).

[8] Ex. Xcel-21, Sched. 4 at 1 (Sirois Direct – Part 1) (solid caps emphasis in original).

was ever issued by GE that changed or affected application of this TIL. This is the only pre-Event guidance GE issued related to the inspection of the blades at issue for Unit 3.

- **TIL 1886 (issued post-Event):** Formal guidance re-affirming the specific, *limited* circumstances that would trigger the Blades-Off and Magnetic Particle Inspections from TIL 1121, and, for the first time, adding a time-based recommendation that those inspections otherwise occur after 22 years of operation.[9]

In other words, it was only *after* the Event—which was the ***very first*** utility steam turbine generator with a *drum boiler* to fail as a result of stress corrosion cracking in the *finger-pinned* blade attachments—that GE updated its guidance. This new guidance not only reinforced the manufacturer's pre-Event recommendations about the judicious performance of the Blades-Off inspection, but also—for the first time—set a time frame for such inspections as a matter of course: after 22 years of operation. Unlike the oil-change analogy, prior to the Event there was no formal or informal guidance—or objective evidence—that indicated that a Blades-Off inspection was "necessary" in 2011.[10] To the contrary, GE's formal guidance in TIL 1121 emphatically advised that the finger-pinned blades "NOT" be removed for inspection absent special circumstances that the evidence in this case shows—and the ALJ acknowledged—did not occur in Unit 3.[11]

[9] Ex. Xcel-21, Sched. 16 (Sirois Direct – Part 3).
[10] OAG Exceptions at 4.
[11] *See* Ex. Xcel-21, Sched. 4 at 1 (Sirois Direct – Part 1); Report at ¶ 305 ("[T]here is no evidence that these events actually resulted in water or steam contamination, caused chemical makeups to exceed EPRI limits for any length of time, or even caused the SCC that resulted in the blade liberation. Thus, it is more likely than not that these events where, as Xcel [Energy] witnesses explained, immediately discovered and swiftly corrected without damage to Unit 3.")

As detailed in the Company's prior submission, the Company's maintenance and inspection decisions were prudent: they conformed with industry standards, manufacturer guidance, and information reasonably known at the time about Unit 3's specific components' susceptibility to stress corrosion cracking. Accordingly, the Company incorporates by reference the Exceptions previously submitted and recommends that the Commission reject the ALJ's maintenance and inspection conclusions. Xcel Energy made reasonable decisions and took reasonable actions in establishing the scope of the 2011 outage and inspection of Unit 3.

II. THE DEPARTMENT AND OAG PREVIOUSLY SUPPORTED THE ALJ'S RECOMMENDED 48 PERCENT APPORTIONMENT

The Report recognizes multiple failings by GE prior to the Event, supporting that GE had knowledge of a higher risk of SCC in facilities like Unit 3 but did *not* share that knowledge with the Company or the industry before the Event. For example, the Report notes that: (1) the Company specifically advised GE of SCC found in the *tangential* attachments of Sherco's Unit 1 low pressure turbines, (2) and the Company then asked if GE planned to issue new inspection guidance that would have covered units with drum boilers and finger-pinned attachments (such as Unit 3), and (3) GE replied it did not intend to do so.[12] The Report also recognizes that, during the time the Company sought guidance from GE regarding proper inspection protocols, GE was working on and receiving a new

[12] Report at ¶ 192. Notably, though, the Report did not *also* recognize that the Company subsequently became aware of contemporaneous internal GE communications demonstrating that, *contrary to GE's communications to the Company*, GE was aware of the need to update this guidance. *See* Ex. Xcel-21 at 15, 18 and Sched. 2 at 10-12 (Sirois Direct).

patent that specifically addressed design issues in its finger-pinned attachments (involved in the Event) "to reduce stress concentrations and to avoid [SCC] in steam turbine applications."[13] And the Report recognizes that despite GE's knowledge of the risk of SCC in units with drum boilers and finger-pinned attachments—knowledge the Company and industry generally did *not* have at the time—GE continued to recommend a Blades-Off inspection of finger-pinned attachments in units such as Unit 3 only if the unit had experienced abnormal events or operational anomalies.[14] Finally, the Report recognizes that only *after* the Event did GE finally update its inspection guidance for units such as Unit 3.[15]

The Report attempts to recognize GE's failings, not by following the substantial weight of the evidence demonstrating that GE's defective design was the root cause of the Event,[16] but by adopting a jury determination from the Aegis Litigation.[17] Specifically, the Report recommends the Commission find that, while GE bore greater responsibility than the Company for the Event, the Company should still bear 48 percent of the replacement

[13] Report at ¶¶ 193-195, quoting from Ex. Xcel-29, Sched. 3, pp. 450-456 (Tipton Direct – Part 4). However, the Report did *not* recognize that GE failed to inform the Company of its work on this patent. Ex. Xcel-25 at 16 (Sirois Rebuttal) ("GE, however, never disclosed that it had re-designed the finger dovetail attachment to reduce susceptibility for stress corrosion cracking—which would have informed Xcel Energy that its existing design was, in fact, susceptible to such issues.").
[14] Report at ¶¶ 193-195, 202.
[15] Report at ¶¶ 196-199.
[16] *See, e.g.*, Ex. Xcel-26 at Sched. 2 (Tipton Direct).
[17] The trial was conducted (and verdict rendered) after the Company and GE entered into the GE Settlement, resolving all claims the Company continued to have against GE at the time of settlement. *See, e.g.*, Report at ¶ 206.

power costs incurred and should refund that amount (partially adjusted for the GE Settlement) to customers.[18]

The Intervenors recommend the Commission reject this apportionment recommendation, with the Department calling this recommendation "plainly incorrect"[19] and the OAG labeling it "unjust and unreasonable."[20] However, *both the Department and OAG previously endorsed the exact same apportionment approach now recommended by the ALJ*. Earlier in these dockets, the Department stated it: "recommends that the Commission require the Company to credit Xcel [Energy]'s 48 percent share of fault of the Minnesota jurisdictional portion of the incremental energy cost resulting from the Sherco 3 outage . . . to its customers through the monthly fuel clause adjustment."[21] The OAG subsequently stated that it supported the Department recommendation to apply this percentage allocation approach in determining any refund or credit amount due to customers.[22]

Like the Department and OAG before, the Report seeks to recognize GE's role in the Event. The record of this proceeding demonstrates, however, that the Event occurred, not due to any failure of the Company, but due to GE's faulty design and failure to apprise the Company of its knowledge of the risk of SCC in the finger-pinned attachments used in the Unit 3 low-pressure turbines. The record further demonstrates that, based on the

[18] *See* Report at ¶ 365.
[19] Department Exceptions at 1.
[20] OAG Exceptions at 1.
[21] DOC Comments at 8, 10 (Jan. 14, 2019) (eDocket No. 20191-149180-02).
[22] OAG Letter at 2 (Jan. 31, 2019) (eDocket No. 20191-149871-01).

knowledge it had or reasonably should have had prior to the Event, the Company acted reasonably and consistent with industry practices at the time, in its operation, maintenance and inspection practices at Unit 3. Therefore, the Company prudently incurred the replacement power costs and should not be required to refund nearly half of those costs plus over a decade of interest to customers.

III. THE INTERVENORS FAIL TO APPROPRIATELY RECOGNIZE THE RATE RELIEF ALREADY PROVIDED TO CUSTOMERS

If the Commission determines that Xcel Energy imprudently incurred the replacement power costs at issue, the Department states that "the purpose of this case is to make ratepayers whole for the costs they were charged."[23] The Company agrees. However, neither the Department nor the Report recognize that, due to Commission decisions and the Company's prudent actions *after* the Event, *customers have already been made whole*. Therefore, regardless of the Commission's determination on prudence, and regardless of any apportionment of responsibility for replacement power costs to the Company, no "refund" of replacement power costs is warranted or appropriate.

A. The Intervenors Fail to Recognize That Customers Received Rate Relief of Over $21 Million as a Result of the 2012 Rate Case Order

The Report explains, and no party disputed, that the Commission's decision in the Company's 2012 rate case resulted in a total disallowance of $21.6 million for the 2013 test year due to its finding that Unit 3 was not used and useful that year.[24] In other words, customers paid $21.6 million less for Unit 3 in 2013, due to the Event. However, neither

[23] Department Exceptions at 13.
[24] Report at ¶¶ 346, 349; *see also* Ex. Xcel-1 at 17-18 (Krug Direct).

the Report nor the Intervenors recognize this undisputed fact in their respective positions regarding the refund of replacement power costs.

Earlier in this proceeding, the Department agreed that this prior rate reduction must be factored into any possible rate relief to customers related to the cost of replacement power. In discussing whether customers should receive a refund of any size, the Department discussed what it referred to as "remaining ratepayer harm," stating:

> To determine the ratepayer harm, the Department examined the Sherco 3 outage costs and the counteracting payments; specifically, the reimbursements by insurers and the settlement with the turbine manufacturer. Further in its Compliance Filing, Xcel [Energy] states that the Commission previously disallowed $21.6 million in costs associated with the Sherco outage in 2012, and that it would be unreasonable to count these costs again to determine the remaining replacement power costs. *The Department agrees and, therefore, subtracts the previously denied costs from the total calculated damages* to determine the remaining damage to ratepayers due to the outage.[25]

The Department's prior recommendation of an offset is appropriate. If the Commission ultimately determines that a refund may be appropriate due to the Event, it must then determine how the Event impacted customers, to determine the proper refund amount. For example, of the total $33.7 million in replacement power costs during the Unit 3 outage, $20.7 million was incurred during calendar year 2013.[26] Customers paid those costs through the fuel clause adjustment. At the same time, because Unit 3 was not available, customers paid $21.6 million less in base rates. Thus, the *net* impact to customers

[25] Comments of the Minnesota Department of Commerce, Division of Energy Resources (Jan. 15, 2021) at 19 (eDocket No. 20211-169851-14) (emphasis added).
[26] *See* Ex. DOC-2, Sched. 7 at 8 (King Direct) (listing the month-by-month Minnesota jurisdictional replacement power costs for January through October 2013 when Unit 3 returned to service, as determined in the GE Litigation).

in 2013 of Unit 3 being unavailable was to pay approximately *$900,000 less* than they would have had Unit 3 been available and included in base rates.[27] Both the Report and Intervenors fail to recognize this fact, and this error must be corrected in determining whether any refund is necessary or appropriate.

B. The Intervenors Fail to Fully Recognize the Impact to Customers of the GE Settlement

As the Company discussed in its Exceptions, there can be no dispute that at the time of the GE Settlement, the Company had already received substantial insurance recoveries from its insurers (that the Company directly credited to customers), meaning the overwhelming majority of its remaining claims against GE were for replacement power costs.[28] While the Report and the Intervenors attempt to account for the GE Settlement proceeds that the Company credited to customers as an offset to any refund now due to customers, they only partially account for this prior relief. The Report, to which the Intervenors did not take exception, allows less than one-quarter of the prior customer credit to be used as an offset against replacement power costs,[29] despite those costs accounting for nearly 90 percent of the Company's remaining claims against GE at the time of settlement.[30] In doing so, the Report and the Intervenors would apportion the majority of the GE Settlement to property loss, despite the fact that the Company had recovered those

[27] The replacement power costs were incurred until October 2013 when Unit 3 was placed back in service. However, the rate case disallowance continued until the start of the Company's next rate case test year, January 1, 2014.
[28] *See* Ex. Xcel-1 at 14 (Krug Direct); Xcel Energy Sherco Litigation Update (Nov. 2, 2018) (eDocket No. 201811-147564-11).
[29] *See* Report at ¶¶ 340, 341.
[30] *See* Xcel Energy Exceptions at 43-45.

losses from its insurers and credited the recoveries to its customers as a credit to rate base – effectively providing customers double recovery of these costs. This error must be corrected before the Commission determines whether any additional customer credit is required.

In addition, the ALJ Report and Intervenors fail to recognize the *timing* of the GE Settlement. Again, it is undisputed that the Company returned the settlement proceeds to customers in their entirety through its monthly fuel clause adjustment in *February 2019*.[31] Customers, not the Company, have had the benefit of the settlement proceeds since that time, and the Company cannot be required to pay interests on money it did not have. This error, too, must be corrected.

C. The 2012 Rate Case Disallowance, GE Settlement and Cost Savings Resulting From the Company's Restoration Efforts Have Already Made Customers Whole

The record demonstrates the Company's prudent actions after the Event to return Unit 3 to service as expeditiously as possible. The record further demonstrates that the Company used the restoration period to inspect, repair, and replace necessary components with insurance proceeds, avoiding future direct costs and reducing future planned outages. Moreover, the Company acted prudently in its efforts to recover costs associated with the Event from insurers and from GE, returning those recoveries to customers. These efforts, in addition to the Commission's disallowance of the inclusion of Unit 3 in the Company's rate base in its 2012 rate case, have already provided significant rate relief to Xcel Energy

[31] Ex. Xcel-1 at 14 (Krug Direct).

customers that more than outweigh the replacement power costs incurred.[32] As a result, *customers have not paid more for power than they would have had the Event not occurred*. Therefore, even if the Commission determines that the Company did not act prudently *before* the Event, which the Company vigorously disputes, no further refund is appropriate or warranted.

IV. THE XLI RECOMMENDATION ON REPLACEMENT POWER COSTS HAS NO RECORD SUPPORT

As the Company noted in its Exceptions, two witnesses analyzed the cost of any replacement power that may have been incurred during the time Unit 3 was out of service – Company witness Mr. Detmer and Department witness Mr. King. These two witnesses, who provided the exclusive testimony on this topic, agreed on the reasonable estimate of any such costs: the GE Litigation Estimate.[33] Moreover, in its Initial Brief, OAG agreed with the Company and the Department on this issue.[34] Nonetheless, the Report rejected this agreed-upon estimate in favor of an earlier, less rigorous estimate prepared years earlier (the AAA Estimate) but not supported by any witness in the current proceeding.

In its Exceptions, XLI supports the Report on this matter and claims that "the amount of energy replacement costs incurred by Xcel [Energy] for Unit 3 from November 2011 to October 2013 is *best represented* by the [AAA Estimate]."[35] There is *no* record

[32] *See* Xcel Energy Exceptions at 52-53 (Total Replacement Power Costs and Offsets Table).
[33] *See* Evid. Hrg. Tr. Vol. 2 (Nov. 2, 2023) at 142 (Detmer); Ex. DOC-10 at 15 (King Rebuttal).
[34] OAG Initial Brief ("Br.") at 5-6.
[35] XLI Exceptions at 1. (Emphasis added.)

support for this claim. Again, XLI provided no witness on this issue, and the two witnesses who did testify regarding replacement power costs agreed that the AAA Estimate is *not* the best representation of these costs, due to its use of a number of simplifying assumptions that are "not realistic" when estimating costs incurred during a long-duration outage such as the Unit 3 outage.[36] Rather, the Litigation Estimate best reflects the cost of replacement power during the Unit 3 outage.

As the Company explained in its Exceptions, the Report recommended use of the AAA Estimate due to the ALJ's misunderstanding of the fuel clause process and what was "actually paid" by customers as a result of that process.[37] In contrast, XLI understands the fuel clause adjustment process and its support of the AAA Estimate, unsupported by any testimony, can only be described as a hunt for a higher number. The Company firmly believes the record of this proceeding demonstrates the Company prudently operated and maintained Unit 3, such that any replacement power costs were prudently incurred. However, should the Commission disagree, the record *unequivocally establishes that the best estimate of any replacement power costs incurred due to the Event were $33.7 million on a Minnesota jurisdictional basis.* Indeed, the Department and OAG continue to support this Litigation Estimate of replacement power costs.[38] Use of the earlier, less accurate AAA Estimate cannot be justified, and the ALJ Findings on this issue must be rejected.

[36] *See* Ex. Xcel-33 at 18-19 (Detmer Direct); Ex. DOC-10 at 15 (King Rebuttal).
[37] Xcel Energy Exceptions at 41.
[38] Department Exceptions at 17-19; OAG Exceptions at 8-9.

CONCLUSION

The record of this proceeding establishes that, based on the information the Company had or reasonably should have had prior to the Event, it made reasonable decisions and took reasonable actions with respect to the operation, maintenance, and inspections of Unit 3. GE, not the Company or the industry generally, had knowledge that may have averted the Event had it been communicated to the Company when the Company specifically sought GE's guidance. However, without the benefit of that knowledge, the Company's decisions and actions were reasonable and consistent with industry standards at that time. Therefore, the Company respectfully requests that the Commission find the Company prudently incurred the "replacement power" costs at issue.

Should the Commission instead find that the Company acted imprudently in any way, the record conclusively demonstrates the replacement power costs are best represented by the Litigation Estimate. When also fully recognizing the rate reduction customers have already received due to the prior disallowance ordered by the Commission in the Company's 2012 rate case, the rate relief provided by the GE Settlement, and the customer impact of the cost-mitigating actions taken by the Company after the Event, the Commission should determine that customers have not paid more for power than they would have had the Event not occurred. Therefore, no customer refund is necessary or appropriate.

Dated: June 17, 2024

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