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

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
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MPUC Docket No. E-002/GR-13-868
OAH Docket No. 68-2500-31182

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota

EXCEPTIONS OF THE OFFICE OF THE MINNESOTA ATTORNEY GENERAL— RESIDENTIAL UTILITIES AND ANTITRUST DIVISION TO THE FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGE

January 20, 2015

TABLE OF CONTENTS

I. INTRODUCTION

Pursuant to Minnesota Statutes section 14.61 and Minnesota Rules, part 7829.2700, the Office of the Attorney General – Residential Utilities and Antitrust Division ("OAG") hereby files Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations ("Report") dated December 26, 2014.[1]

As the OAG noted in its Initial Brief, this matter is likely the most complicated rate case permitted by Minnesota law. The issues contested in this case are highly varied and complex, and the Administrative Law Judge ("ALJ") did an admirable job in summarizing the record and providing a comprehensive analysis of all the issues. The OAG continues to take the positions it recommended in its Initial Brief and Reply Brief. Where the OAG's recommendations conflict with the recommendations of the ALJ, the OAG asks that the Commission thoroughly review the issues before accepting the ALJ's recommendation. The OAG's Exceptions will be limited to those areas that require additional comment. The failure to identify an issue or finding in these Exceptions does not indicate a waiver of the issue on the part of the OAG.

II. REVENUE REQUIREMENT

A. PRAIRIE ISLAND.

Xcel has requested recovery of $78.9 million in costs for the abandoned Extended Power Uprate ("EPU") at its Prairie Island nuclear generating plant. The ALJ recommended that Xcel be permitted to recover all of the costs, including allowance for funds used during construction ("AFUDC"), amortized over 20.3 years with a debt-only return of 2.24 percent.[2] While the

[1] Findings of Fact, Conclusions of Law, and Recommendations, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, MPUC Docket No. E-002/GR-13-868; OAH Docket No. 68-2500-31182 (December 26, 2014).
[2] Report ¶ 467.

OAG disagrees with several of the ALJ's conclusions, the OAG specifically takes exception to Findings 465 and 467.

1. Xcel Should Have Stopped Accruing AFUDC When the Prairie Island EPU Was No Longer Both Viable and Ongoing.

In Finding 465, the ALJ recommended that Xcel be permitted to recover all AFUDC that was accrued until the Commission's oral cancellation of the project in December 2012.[3] The OAG takes exception to this recommendation because the ALJ did not properly analyze the recovery of AFUDC under FERC accounting rules.

The Commission is required to follow all of FERC's accounting rules.[4] The Commission is also required to follow all of FERC's decisions "affecting" FERC's accounting rules.[5] As the OAG described in its Initial Brief,[6] FERC's long-standing precedent makes clear that utilities may continue to accrue AFUDC on construction projects only "as long as the project is viable and ongoing."[7] According to these mandatory rules, Xcel is only permitted to accrue AFUDC when the Prairie Island EPU was *both* "viable" and "ongoing." Any AFUDC accrued when the EPU project was either not viable or not ongoing *must* be disallowed under mandatory FERC accounting rules.[8]

The OAG takes exception to the ALJ's recommendation on this issue because the ALJ limited her analysis to whether the Prairie Island EPU was "viable," and did not analyze whether the Prairie Island EPU was "ongoing." The record in this matter, and the ALJ's prior Findings,

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[3] Report ¶ 465.
[4] Minn. Rules part 7825.0330, subp. 2 ("All public utilities shall conform to the appropriate [FERC] uniform system of accounts . . . .").
[5] *Id.* (requiring the Commission to follow all FERC "orders, pronouncements, or changes affecting" FERC's accounting rules).
[6] OAG Initial Brief, at 8, 14–16.
[7] *Boston Edison Company*, 34 F.E.R.C. ¶ 63023, at 65074 1986 WL 76218 (Jan. 22, 1986).
[8] *Id. See also* 7 C.F.R. 1767.16(c)(17); Ex. 94, LHP-2, Schedule 8 (Perkett Rebuttal).

make clear that the Prairie Island EPU was not "ongoing" by, at the latest, the fourth quarter of 2011. Multiple Company witnesses testified that Xcel suspended work on the EPU after a meeting with the NRC on August 18, 2011. According to Xcel witness Mr. McCall, Xcel began to "decreas[e] the amount of resources dedicated to the Project in approximately the third quarter of 2011."[9] Mr. McCall continued:

> **Q. How long did the Company take to stop the spend on this project?**
>
> **A.** Our review began in earnest after our discussion with the NRC in August of 2011. The Company conducted additional modeling during this period, and made a decision in the fourth quarter to suspend the project except for the remaining work of Westinghouse due to the termination provisions in that contract. By the end of 2011, the Company had suspended all other work on the Project and allowed Westinghouse to complete its work and end that contract by the second quarter of 2012.[10]

Mr. McCall clearly states that the Company suspended all work by the fourth quarter of 2011 at the latest. Xcel witness Mr. Alders confirmed that Xcel began to "ramp down" the EPU project at the time of Xcel's "changed circumstances reassessment,"[11] which Mr. Alders clarified began following the August 18, 2011 meeting with the NRC.[12] The ALJ's Findings reflect these facts: the ALJ concluded that, "By the end of 2011, the Company suspended all work on the EPU Project."[13]

When Xcel began to suspend work on the EPU following the August 18, 2011, it was no longer "ongoing."[14] The work was *certainly* no longer "ongoing" after 2011; as Mr. McCall

[9] Ex. 49, at 33 (McCall Direct).
[10] Ex. 49, at 33 (McCall Direct).
[11] Ex. 48, at 15 (Alders Direct).
[12] Tr. Evid. Hearing, Vol. 1, at 191 (Alders) (Aug. 11, 2014).
[13] Report ¶ 439.
[14] "Ongoing" is defined as "being actually in process" or "continually moving forward." Webster's New Collegiate Dictionary 795 (1979).

stated, "By the end of 2011, the Company had suspended all other work on the [EPU]."[15] The fact that Xcel allowed Westinghouse to complete its contract does not change the fact that the project was not ongoing, because Xcel admitted that the primary reason Westinghouse was allowed to complete the contract was that the contract included significant termination penalties.[16] For that matter, regardless of whether Westinghouse was still completing its contract, the Project was no longer "in progress" or "ongoing" because Xcel had suspended all of its work and was no longer actively trying to complete the project. By August 18, 2011, or at the latest the end of 2011, FERC accounting rules, which the Commission must follow, required Xcel to stop accruing AFUDC because the project was no longer "ongoing."

The OAG also takes exception because the ALJ's conclusion that the EPU was "viable" is not supported by the record. As the OAG indicated in its Initial Brief,

> By August 2011, Xcel knew that it could not achieve the generation that it had promised; that NRC delays would require tens of millions of dollars in additional regulatory expenses; that even if the project was completed it would have only fifteen years of useful life instead of twenty; and that, based on Xcel's disastrous handling of the Monticello project, there was a real possibility of major cost overruns.[17]

During the summer of 2011, Xcel also learned that there was a significant reduction in energy demand and a significant decrease in the price of natural gas.[18] These facts formed the basis for the Commission's decision to cancel the project in December 2012, even though Xcel's cost-benefit analysis showed some benefit. Few circumstances, if any, changed between August 2011

[15] Ex. 49, at 33 (McCall Direct).
[16] Ex. 100, at 57 (Clark Rebuttal).
[17] OAG Initial Brief, at 13.
[18] Ex. 48, at 15 (Alders Direct).

and when the Commission decided to cancel the project in December 2012.[19] Given that the Commission ultimately decided to cancel the EPU regardless of Xcel's cost/benefit analysis, the facts make clear that the project was not viable, in large part as a result of regulatory delays that Xcel learned of on August 18, 2011.

The OAG takes exception to Findings 465 and 466, and recommends that they be removed and replaced with the following language:

> 465. FERC accounting rules, which the Commission is required to follow, indicate that a utility may only accrue AFUDC while a project is both "viable" and "ongoing."[20] Xcel began to suspend the EPU Project following its meeting with the NRC on August 18, 2011. Once Xcel began to suspend the EPU Project, it was no longer "ongoing" and Xcel should have stopped accruing AFUDC.
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> 466. After August 18, 2011, the information available to Xcel indicated that the EPU Project was no longer "viable." At that time, Xcel was aware that it could not produce the full power uprate it had initially proposed, that federal licensing would be delayed and more expensive, that the regulatory delay would limit the lifespan of the uprate, that there was a possibility of significant cost overruns, that there had been a measurable reduction in demand, and that the price of natural gas had dropped dramatically. Based on this information, a reasonably prudent utility would have concluded that the EPU Project was no longer "viable." This conclusion is supported by Xcel's decision to suspend the Project; if Xcel had believed the Project was still viable, it would not have been reasonable to suspend work. Because the EPU Project was no longer "viable," Xcel should have stopped accruing AFUDC.

2. Xcel Should Not Recover a Return on Canceled Project Costs.

In Finding 467, the ALJ concluded that Xcel should be permitted to recover the costs of the Prairie Island EPU over a period of 20.3 years with a debt only return of 2.24 percent.[21] The

[19] Order Terminating Certificate of Need Prospectively, *Application to the Minnesota Public Utilities Commission for Certificates of Need for the Prairie Island Nuclear Generating Plant*, Docket No. CN-08-509 (Feb. 27, 2013).
[20] *Boston Edison Company*, 34 F.E.R.C. ¶ 63023, at 65074 1986 WL 76218 (Jan. 22, 1986).
[21] Report ¶ 467.

OAG does not object to the length of the recovery, but takes exception to the ALJ's recommendation to allow Xcel a return on cancelled project costs.

The Commission's previous cases establish a clear precedent for allowing a utility to recover the costs of a cancelled project without a return. The two most recent analogous cases were Interstate Power and Light's ("IPL") Sutherland plant and Otter Tail Power Company's Big Stone II plant. In 2009, IPL decided to cancel the construction of the 630 MW coal-fired Sutherland plant.[22] In its 2010 rate case, IPL requested recovery of the costs it had incurred before the Sutherland plant was cancelled.[23] The Commission agreed that IPL could recover the costs over the expected life of the plant, but with no return.[24] In a similar situation in 2009, Otter Tail Power Company withdrew from an agreement to construct the Big Stone II coal-fired plant in South Dakota.[25] Otter Tail Power Company requested recovery of the expenses it had incurred before the cancellation in its 2010 rate case.[26] The ALJ and the Commission agreed that Otter Tail should be permitted to recover the costs, but explicitly ruled that Otter Tail should not be allowed a return on the costs.[27] The Commission stated,

> [R]ejecting a return on the Big Stone II costs . . . represents the best public-interest balancing of ratepayer and shareholder interests. Granting a return on these costs would place the entire burden of this failed project on ratepayers; it is appropriate that shareholders share in this burden, just as they would have shared in the benefit of a completed plant.[28]

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[22] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Interstate Power and Light Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. GR-10-276, at 31 (Aug. 12, 2011).
[23] *Id.*
[24] *Id.* at 32–33.
[25] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. GR-10-239, at 12 (Apr. 25, 2011).
[26] *Id.*
[27] *Id.* at 12.
[28] *Id.*

In these two recent analogous cases, the Commission established a clear precedent that utilities can request recovery of costs for cancelled projects that were "prudently incurred in good-faith to meet future need," but that any recovery will be with no return on the costs. According to the Minnesota Supreme Court, "an agency [like the Commission] must generally conform to its prior norms and decisions or, to the extent that it departs from its prior norms and decisions, the agency must set forth a reasoned analysis for the departure that is not arbitrary and capricious."[29] In its previous analogous cases, the Commission has concluded that allowing a utility to recover prudently incurred costs for cancelled projects, but with no return, strikes the appropriate balance between shareholder and ratepayers. The ALJ's Report did not identify, and the record does not reflect, any justification to act differently in this case.

Accordingly, the OAG takes exception to Finding 467, and recommends that it be modified to reflect that any recovery of cancelled project costs for the Prairie Island EPU will be with no return.

B. CORPORATE AVIATION EXPENSES.

The OAG takes exception to the ALJ's recommendation to allow Xcel to recover $954,000 in corporate aviation expenses. While the OAG disagrees with several of the ALJ's conclusions, the OAG specifically takes exception to Findings 558, 559, 562, 563, 564, 565, and 566 because Xcel did not provide a valid business purpose for thousands of flights marked as "Business Area Travel," "Director Travel," "Manager Travel," or "Xcel Executive Business Travel."

[29] *In re Review of 2005 Annual Automatic Adjustment of Charges for All Electric and Gas Utilities*, 768 N.W.2d 112, 119 (Minn. 2009).

Minnesota law requires Xcel to separately itemize all travel expenses, including travel expenses related to corporate aircraft.[30] In order to "comply" with the reporting requirement, Xcel is required to itemize each expense separately, and provide the "date of the expense, the amount of the expense, the vendor name, and the *business purpose of the expense*."[31] The Commission provided even clearer instruction in Xcel's last rate case:

> In the initial filing of its next rate case, the Company shall include more detailed flight data reports (preferably in live Microsoft Excel electronic format) of its corporate jet trip logs for its most recent 12-month operational period. The report, by flight, must identify the charged employee, each employee passenger and his/her assigned operating company, the other passengers on the flight and reason for use, and *primary purpose for scheduling the flight*.[32]

Xcel has not met these requirements, and for that reason Xcel has failed to comply with both Minnesota law and the Commission's direct order. Moreover, as a result of its failure, Xcel has made it impossible for any third party to review whether its corporate aviation expenses are reasonable.

The flight logs that Xcel produced in its attempt to satisfy these requirements are deficient because they do not describe the business purpose of the flights as required by Minnesota law and the Commission's order.[33] The flight logs purport to provide the "business purpose" of the flights, but even a cursory review makes clear that the information provided in the flight logs is insufficient to determine the actual purpose for any of Xcel's flights. For

[30] Minn. Stat. § 216B.16, subd. 17.
[31] *Id.* subd. (b).
[32] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of* Minnesota, Docket No. E-002/GR-12-961, at 53 (Sept. 3, 2013).
[33] The flight logs, which were provided as Schedule 13 to the direct testimony of Xcel witness Mr. O'Hara, provide the date, origin and destination, passenger name, and company for more than 3600 seats on Xcel's corporate aircraft. *See* Ex. 75, GJO-01, Schedule 12 (O'Hara Direct).

example, a sample of the flight logs provide the following "business purpose" for flights 150 to 170:[34]

Line No.	Business Purpose
150	BAT-Business Area Travel
151	BAT-Business Area Travel
152	BAT-Business Area Travel
153	BAT-Business Area Travel
154	BAT-Business Area Travel
155	DIR-Director Travel
156	DIR-Director Travel
157	BAT-Business Area Travel
158	MGR-Manager Travel
159	DIR-Director Travel
160	BAT-Business Area Travel
161	BAT-Business Area Travel
162	DIR-Director Travel
163	BAT-Business Area Travel
164	PER-Personal Travel
165	BAT-Business Area Travel
166	CNF-Conference/Convention
167	EXE-Xcel Executive Business Travel
168	BAT-Business Area Travel
169	DIR-Director Travel
170	PER-Personal Travel

The problem with this attempt at reporting is that Xcel's "business purpose" categories do not actually provide any information about *why* an employee is on a flight. To cite a specific example, the flight log indicates that the employee reported on line 158 flew for "manager travel," but all that really indicates is that the person of the flight was a manager, and the manager was travelling. Similarly, the flight logs provide insufficient information for many

[34] Ex. 75, GJO-01, Schedule 12 (O'Hara Direct).

trips, listing only "business area travel," "director travel," and "Xcel executive business travel." In fact, more than 3100 of the approximately 3600 reported flights were for "business area travel," "manager travel," "director travel," and "Xcel executive business travel." The "business purpose" in the flight logs provide information only about *who* was on the flight, rather than *why* the employee was on the flight, what the flight was for, or whether the flight was necessary for the provision of utility services.

This problem is compounded by Xcel's policies for scheduling corporate flights, or lack thereof. During the evidentiary hearing, Xcel witness Mr. O'Hara confirmed that Xcel's flight logs are not designed to collect an explanation of the business reason for a flight.[35] In fact, in the words of Mr. O'Hara, there is "[no] process that reviews [an employee's] request and validates that that's a valid business purpose."[36] Instead, Xcel's policy is simply that anyone at the vice president-level or above may schedule a flight at any time.[37] The employee who decides to schedule the flight is also the employee who indicates what the business purpose of the flight is.[38] When asked whether Xcel reviews requests to schedule a flight, Mr. O'Hara stated,

> But is there a systematic process – if you're asking me is there a systematic process to review the requests that vice presidents use for scheduling the plane, the answer is no.[39]

When describing how Xcel ensures that its flights are only for a valid business purpose, Mr. O'Hara claimed that the reason he knew all the flights were for a valid purpose because "the flights don't get scheduled . . . unless it's a valid business purpose."[40] That statement is a

[35] Tr. Evid. Hearing, Vol. 1, at 253:17–254:2 (O'Hara) (Aug. 11, 2014).
[36] Tr. Evid. Hearing, Vol. 1, at 254:23–25 (O'Hara) (Aug. 11, 2014).
[37] *See id.*
[38] *Id.* at 256:9–13.
[39] *Id.* at 255:21–24.
[40] *Id.* at 255:3–5.

tautology— stating that something is so does not make it true. Xcel *assumes*, without any oversight or controls, that all of its flights are for a valid business purpose. Ratepayers require more than assurances; so does Minnesota law.[41]

Despite these facts, the ALJ concluded that the business descriptions at issue were sufficient to demonstrate that the flights were for a valid business purpose for two primary reasons, neither of which are supported by the record. First, the ALJ concluded that "flights on Company aircraft can only be scheduled for valid business reasons."[42] As discussed above, Xcel cannot show that its flights were for a valid business purpose by simply stating assurances that the flights were for a valid business purpose. The record indicates that the flight logs are not intended to record the true business purpose of a flight, and it is clear that what information *was* provided by the flight logs is insufficient to determine whether a flight is for a valid business purpose.

Second, the ALJ concluded that the fact that the vast majority of flights were between Company locations indicated that they had a valid business purpose.[43] But it is not clear why that is relevant. Simply assuming that all flights between Company locations are for a valid business purpose, without any more information documenting the purpose of the travel, requires a leap in logic that is unreasonable and unsupported by the record. There are many conceivable reasons that an Xcel employee might wish to fly from one Company location to another, and not all of those reasons are necessary for the provision of utility service. Just because the a flight was between Company locations does not mean that it is reasonable for ratepayers to pay for it.

[41] Minn. Stat. § 216B.16, subd. 17.
[42] Report ¶ 562.
[43] *Id.*

Minnesota law requires Xcel to itemize the business purpose of each travel expense, including aviation expenses.[44] The Commission's Order from Xcel's last rate case also specifically requires Xcel to provide flight logs that identify the "primary purpose for scheduling" each flight.[45] The flight logs that Xcel provided do not meet these requirements because the "business purpose" recorded in the flight logs is so vague as to lack meaning entirely. Moreover, Xcel's employees confirmed that the "flight logs are not designed to collect detailed descriptions on the passengers' business reason."[46] Because the flight logs do not report this information, they are not sufficient to satisfy the Commission's direct order or the requirements of Minnesota law. Xcel's internal policies for scheduling flights serve only to confirm why it is necessary for Xcel to provide the required information. Xcel has no system in place, of any kind, to ensure that its flights are necessary for the provision of utility service. That makes it even more important that the Commission and other parties review Xcel's corporate expenses to make sure that ratepayers are not being required to pay for unnecessary corporate flights. Because Xcel's logs are insufficient, this review is impossible; and as a result, the Commission should deny all expenses related to flights for which Xcel did not provide a sufficient business purpose.

Accordingly, the OAG takes exception to Findings 558, 559, 562, 563, 564, 565, and 566. The OAG recommends that Finding 558 be modified as follows:

> 558. Based on the record in this case, the ~~Administrative Law Judge~~Commission concludes that the Company has not demonstrated that it is reasonable to include $954,425, or 50 percent of the approximately $1.9 million that the Company has

[44] Minn. Stat. § 216B.16, subd. 17.
[45] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, at 53 (Sept. 3, 2013).
[46] Ex. 77, at 6 (O'Hara Rebuttal).

budgeted in 2014 for corporate aviation costs on a Minnesota electric jurisdictional basis. ~~The Company's request is based on a detailed analysis of its costs, and properly considers increased productivity and employee time savings. The Company's request is also consistent with Commission precedent.~~

The OAG recommends that Finding 559 be deleted.

~~559. Further, the OAG's proposed adjustments to the Company's test year expense are not supported by the record (e.g. cost per flight) or are already covered by the 50 percent reduction in Minnesota jurisdictional aviation expenses (e.g. personal travel).~~

The OAG recommends that Finding 562 be deleted and replaced with the following language:

~~562. Third, the record supports recovery for travel coded as: Executive Business Travel; Director Travel; Manager Travel; or Business Area Travel. The OAG argued that these Business Purpose descriptions, which account for about 86 percent of all passenger trips from September 2012 to August 2013, are insufficient to demonstrate that this travel is needed to provide utility service. The OAG maintains the descriptions are vague and not subject to internal review. The record, however, shows that flights on Company aircraft can only be scheduled for valid business reasons. In addition, approximately 97 percent of all corporate aircraft flights from September 2012 to August 2013 were between Company locations. These facts confirm that the flights coded as Executive Business Travel, Director Travel, Manager Travel and Business Area Travel were taken for valid business purposes.~~

562. Minnesota law requires Xcel to provide information about the "business purpose" of each flight before recovery is permissible. Xcel did not meet this requirement because the "business purpose" descriptions in Xcel's flight log do not provide any information to determine the true business purpose of the flights. Moreover, the testimony of Xcel's employees demonstrates that Xcel has no oversight ensuring that flights are for a valid purpose. Because Xcel has not demonstrated that the flights coded as Executive Business Travel, Director Travel, Manager Travel and Business Area Travel have a "business purpose" that indicates they are necessary for the provision of utility service, they must be disallowed.

The OAG recommends that Finding 563 be deleted.

~~563. Furthermore, the Commission has previously approved corporate aviation expenses for NSP and other utilities without requiring the level of detail sought by the OAG. While the Commission did require the Company to provide certain flight log information with its initial filing in this rate case, the Commission's Order did not require the level of detail regarding the passenger's Business Purpose that the OAG argues should be required. Moreover, because the Commission's Order was issued in September 2013 and the Company made its filing initial filing [sic] in this rate case in November 2013, the Company did not have time to change its software to include the level of detail sought by the OAG for the applicable time period – flight logs from September 2012 to August 2013. Thus, while the Company could improve the level of detail in its Business Purpose descriptions, the Administrative Law judge concludes that the Company has provided sufficient evidence in this case to demonstrate that flights for Executive Business Travel, Director Travel, Manager Travel and Business Area Travel are reasonable and necessary for the provision of utility service.~~

The OAG recommends that Finding 564 be modified as follows:

564. The Commission orders the Company to provide more detailed information about the business purpose of its flights ~~may want to consider whether more specific Business Purpose codes should be implemented by the Company for use~~ in future rate cases. ~~To the extent that the Commission believes additional detail regarding the Business Purpose for each passenger trip should be provided in future rate case filings, the~~ The Administrative Law Judge respectfully recommends that the Commission specify the level of detail that must be provided. ~~and ensure that the Company has sufficient time to change its data systems to comply in a timely manner.~~ The Commission also orders the Company to create internal systems to review flight requests so that flights are only scheduled for reasons that are necessary for the provision of utility service. The Commission further orders the Company to keep accurate records of the actual business purpose for flights that are scheduled, rather than reducing all flights to a generic "code."

The OAG recommends that Finding 565 be deleted.

~~565. Finally, the Administrative Law Judge concludes that the Company has substantially complied with Order Point 48 in the 2013 Rate Case Order [sic]. In that Order, the Commission provided in relevant part:~~

~~In the initial filing of its next rate case, the Company shall include more detailed flight data reports (preferably in line Microsoft Excel electronic format) of its corporate jet trip logs for its most recent 12-month operational period. The report, by flight, must identify the charged employee, each employee passenger and his/her assigned operating company, the other passengers on flight and reason for use, and primary purpose for scheduling the flight. The Company shall include information for the calculation of the requested recovery amount of corporate aviation.~~

The OAG recommends that Finding 566 be deleted.

~~566. As discussed above, the Company provided flight reports in live Microsoft Excel electronic format with its November 2013 initial filing in this rate case. The reports cover the 12-month period from September 1, 2012 to August 31, 2013. The reports include all of the information required by Order Point 48 except the data on the individual employee to whom the flight is "charged" and "the primary purpose for scheduling the flight." The Company explained that it did not include this data because the Company's software does not track these two categories of data. The Company also stated that flights are not charged to individual employees, but rather total corporate aviation costs are allocated to NSP and all other affiliates using a three-digit work order number. In addition, with regard to the primary purpose of the flight, the flight logs do include a "Business Purpose" for each passenger as discussed above. In sum, the Company complied with Order Point 48 to the best of its ability given the timing of the initial filing in this rate case.~~

C. NUCLEAR REFUELING OUTAGE 2015 STEP.

The OAG takes exception to the ALJ's recommendation that the Commission ignore the reduction to nuclear refueling expenses in the 2015 step year. Xcel included $89.3 million in test year 2014 amortization for the costs of refueling its nuclear reactors.[47] In the 2015 step year, however, Xcel's nuclear refueling amortization expenses decreased by $5.5 million.[48] The ALJ recommended that the Commission ignore the reduction in expenses because the expenses "are

[47] Ex. 51, at 119, Schedule 16 (O'Connor Direct).
[48] Ex. 431, at 63, Schedule 12 (Campbell Direct).

not capital-related expenses, but are refueling O&M expenses."[49] The ALJ also concluded that, if nuclear refueling expenses were updated for the 2015 step year, "then similar adjustments would also need to be made to all other non-capital related O&M expenses."[50] Both of these conclusions are incorrect, and, as a result, the ALJ's recommendation is unreasonable.

The ALJ's conclusion that the expenses should not be updated because they are "not capital-related expenses" is misplaced.[51] As a threshold matter, the ALJ incorrectly stated that step year adjustments are limited to capital-related expenses; in fact, in its MYRP Order, the Commission indicated that the types of costs that should be updated were both "costs related to specific, clearly identified capital projects" *and* "appropriate non-capital costs."[52]

The ALJ's statement that the nuclear expenses are not capital-related is conclusory. Rather than being based on a thorough analysis of whether the expenses are related to capital projects, the ALJ's conclusion was based only on Xcel's statement that the costs are not related to capital projects.[53] Whether an expense is related to capital projects is a fact; it cannot be resolved based only on how Xcel prefers the expense to be classified. And the facts in this case indicate that the nuclear refueling expenses that Xcel seeks to recover are related to capital projects. Xcel's nuclear refueling expenses have increased dramatically as Xcel conducts major

[49] Report ¶ 521.
[50] Report ¶ 522.
[51] Report ¶ 521.
[52] Order Establishing Terms, Conditions, and Procedures for Multiyear Rate Plans, *In the Matter of the Minnesota Office of the Attorney General – Antitrust and Utilities Division's Petition for a Commission Investigation Regarding Criteria and Standards for Multiyear Rate Plans under Minn. Stat. § 216B.16, subd. 19*, E,G-999/M-12-587, at 12 (June 7, 2013).
[53] To support her conclusion that the expenses were not related to capital projects, the ALJ cited only to the testimony of Xcel witness Mr. Clark. Report ¶ 521, n. 765. Mr. Clark did not provide any analysis of whether the expenses at issue were related to capital projects; instead, Mr. Clark simply made a conclusory statement. Ex. 100, at 35 (Clark Rebuttal).

construction projects at both the Monticello and the Prairie Island reactors; those refueling expenses are directly related to the capital projects being performed at those sites.

Moreover, even if the Commission concludes that the nuclear refueling expenses are not directly related to capital projects, they should still be updated for the 2015 step year because they are "appropriate non-capital costs."[54] The Commission did not define "appropriate non-capital costs" in its MYRP Order; as a result, whether non-capital costs are "appropriate" to update in a step year is an important question of first impression that the ALJ did not even try to address. It is appropriate to adjust for nuclear refueling expenses because they are very different from other types of expenses. They are so different, in fact, that Xcel is permitted to defer recovery and amortize the expenses, unlike almost every other category of expenses.[55] Xcel is also allowed to earn its full weighted cost of capital return on the nuclear refueling expenses, also unlike almost every other type of expenses. Further, the fact that Xcel earns a return on the expenses would further compound the unreasonable impact of failing to make an adjustment. Not only would Xcel be recovering millions in amortized expenses that do not exist; Xcel would also be earning a return on expenses that do not exist. Because of these differences, nuclear refueling expenses are "appropriate non-capital costs" that should be updated for a step-year.

Further, the ALJ's conclusion that updating this one expense would require updating all other expenses is also unreasonable. The Commission's MYRP Order specifically limits which expenses can be updated for a step year. Whether adjustments should be made is determined by whether the facts in the case demonstrate that an expense is related to specific capital projects or

[54] Order Establishing Terms, Conditions, and Procedures for Multiyear Rate Plans, *In the Matter of the Minnesota Office of the Attorney General – Antitrust and Utilities Division's Petition for a Commission Investigation Regarding Criteria and Standards for Multiyear Rate Plans under Minn. Stat. § 216B.16, subd. 19*, E,G-999/M-12-587, at 12 (June 7, 2013).

[55] *See* OAG Initial Brief, at 29. Nuclear refueling expenses are also different from other types of expenses because Xcel records them as part of rate base. Tr. Evidentiary Hearing, Vol. 2, at 101:10–13.

is an "appropriate" non-capital cost. It would be entirely unreasonable to tie an adjustment to one expense to whether an adjustment is made for a different expense. Instead, the decision about whether to make an adjustment for a particular expense should be a fact based inquiry; if an expense fits into either of these two categories, then there should be an adjustment for a step year. Conducting that inquiry for nuclear refueling expenses indicates that the expenses should be adjusted for the 2015 step in this case.

Accordingly, the OAG takes exception to Findings 520, 521, 522, and 523.

Regardless of whether the Commission determines that nuclear refueling expenses should be updated for the 2015 step, the Commission should modify the language of Finding 520 because the ALJ did not correctly state the Commission's MYRP Order. The OAG recommends that Finding 520 be modified as follows:

> 520. In the MYRP Order, the Commission determined that requiring an examination of all expenses in each step year would defeat the goal of promoting administrative efficiency through a MYRP. For that reason, the Commission limited the adjustments in the test year revenue requirement to ~~capital-related expenses.~~ "costs related to specific, clearly identified capital projects" and "appropriate non-capital costs."

The OAG recommends the following modifications to Finding 521:

> 521. The record in this case demonstrates that the nuclear amortization expenses at issue are related to "specific, clearly identified capital projects"~~not capital-related expenses, but a refueling O&M expenses~~. Pursuant to the MYRP Order, these expenses are ~~not~~ subject to adjustment in the 2015 Step revenue requirement. Even if the nuclear amortization expenses were not related to capital projects, they are "appropriate non-capital costs" because they are closely related to capital projects, because they were collected using a deferral and amortization method, and because Xcel earns its full weighted cost of capital return on the expenses. These facts indicate that it is reasonable to make an adjustment for nuclear refueling expenses in the 2015 Step.

The OAG recommends that Finding 522 be deleted entirely.

~~522. In addition, even if an adjustment were made to reflect the decrease in this O&M expense as the OAG recommends, then similar adjustments would also need to be made to all other non-capital related O&M expenses; some of which likely will go up in 2015. Such symmetry is necessary to ensure a fair and reasonable representation of the Company's O&M costs. Adjusting only this one item in isolation will not result in just and reasonable rates.~~

D. INTERIM RATE REFUND.

In its testimony and briefs, the OAG recommended that the Commission require Xcel to return any interim rate refund with interest calculated at Xcel's approved rate of return, rather than the prime rate. The ALJ determined that which interest rate to apply "depends largely on the magnitude of the over-collection of interim rates, if any, in this case."[56] The OAG does not take exception to the ALJ's Report on this issue, because the ALJ did not make a final recommendation, but believes that it is important for the Commission to consider several issues in making its decision.

First, there may be some timing challenges in implementing the interim rate refund. As stated by the ALJ, whether the interim refund interest rate should be modified is directly tied to the magnitude of the interim rate refund. It is relatively unlikely, however, that the Commission will know the magnitude of the interim rate refund at the time of deliberations. Because of the complexity of many of the Commission's decisions, it is likely that the true impact of the Commission's decisions on the remaining issues will be unknown until the Company makes a compliance filing following the Commission's Order. Because the Commission is unlikely to have accurate information about the magnitude of interim rates during deliberations, it may be difficult to apply the analysis that the ALJ has recommended.

[56] Report ¶ 984.

Second, the ALJ correctly noted that, in the last rate case, the Commission found that the first prong of Rule 7829.3200 was met, in part, because of the magnitude of the interim rate refund. But the Commission did not rely on the magnitude of the interim refund alone; in addition to the magnitude of the refund, the Commission considered several additional factors:

> The utility has much greater control than ratepayers over whether, when, and how much ratepayers must borrow from or lend to the utility. The Company acknowledges that the interest required by the rules is paid in recognition that the Company had use of funds while interim rates were in effect. The ALJ . . . identified one circumstance where, when the positions are reversed, the Company imposes a substantially higher rate of interest on ratepayers; the Commission commonly sets carrying charges at the Company's authorized rate of return. Additionally, the prime rate is at historically low levels to accommodate a federal monetary policy that was not anticipated when the interim rate refund rule was adopted.
>
> Not only does it serve the public interest to recognize this disparity in borrowing costs, but in this case, the rule's low interest rate relative to the Company's authorized rate of return constitutes an excessive burden on ratepayers as captive lenders. Low-income households may particularly suffer hardship when interim rates are over-recovered, and ratepayers generally cannot replace the money the Company borrows at near the prime rate. To impose this hardship in light of the magnitude of this and other recent interim rate over-collections would be an excessive burden.[57]

To the extent the Commission uses the same process and applies the same reasoning that it did in the last Xcel rate case, it is important for the Commission recall that it considered these factors, and that many of the same factors are present and relevant in this case. In fact, everything quoted above from the Commission's September, 2013 Order remains true today. The Commission should require Xcel to return any interim rate refund with interest calculated at Xcel's approved rate of return, rather than the prime rate.

[57] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, at 38 (Sept. 3, 2013).

III. RATE DESIGN

A. CLASS COST OF SERVICE STUDY.

The parties in this case disputed numerous issues regarding the appropriate method to calculate the class cost of service study ("CCOSS"). It is well recognized that the purpose of the CCOSS is to determine cost-causation: "[t]he goal of the class cost of service study is to allocate responsibility for a particular cost to the customer class that caused that class to be incurred."[58] For the majority of CCOSS issues, the ALJ made appropriate decisions that reflected cost-causation principles. But on two issues—the classification of the costs of Xcel's Nobles and Grand Meadow wind facilities, and the allocation of economic development credits—the ALJ's findings did not reflect cost causation. The OAG takes exception to these findings.

1. Nobles and Grand Meadow.

In Findings 706, 708, and 709 the ALJ concluded that Xcel's Nobles and Grand Meadow wind generation facilities should be classified using the company's Plant Stratification method. The OAG takes exception to these findings because they fail to consider the reason that the costs for these facilities were incurred.

In determining the allocation of production plant costs between capacity and energy, the Commission described the question as follows: "Does the amount that a utility must invest in production plant – electric generators and transmission lines – depend upon the amount of energy customers consume, or the maximum rate at which they consume it, or both?"[59] Xcel's Nobles and Grand Meadow production facilities were added to comply with Minnesota's Renewable

[58] Findings of Fact, Conclusions, and Order, *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-011/GR-13-617, at 43 (Oct. 28, 2014).
[59] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Dockt No. E-015/GR-0901151, at 47 (Nov. 2, 2010).

Energy Standard ("RES"), which requires Xcel to generate or procure at least eighteen percent of its energy from renewable technologies.[60] Because they were explicitly added to comply with the RES, Xcel's investment in these resources corresponds directly with the energy consumption of its customers; it was not impacted by the company's peak demand requirement. In other words, if the amount of energy consumed by Xcel's customers increased, Xcel would need to procure more renewable energy to comply with the RES, and vice-versa. On the other hand, a change in the company's peak demand would not impact its RES mandate. For this reason, the cost of these facilities should be allocated based on the energy consumption of each class.

The Plant Stratification method recommended by the ALJ, however, classifies different portions of Xcel's production plants as capacity and energy based on the assumption that different types of generation are procured to minimize the overall cost of the system over time—not because the utility was attempting to meet a statutory mandate.[61] This method is used to classify the appropriate portions of energy and capacity for Xcel's other wind facilities—Pleasant Valley and Border Winds. [62] These facilities, however, are unlike the Nobles and Grand Meadow facilities because they were not acquired to meet Xcel's RES. Rather, they were acquired to minimize overall system costs.[63]

Despite the fact that Xcel's Nobles and Grand Meadow facilities were acquired for a different purpose than its Pleasant Valley and Border Winds facilities, the ALJ determined that they should be classified based on the same methodology. The ALJ reasoned that, since these facilities have the same "operational characteristics," they contribute similarly to the company's

[60] Report ¶ 695; Minn. Stat. § 216B.1691, subd. 2a(b). The percentage of electricity Xcel must generate from renewable technologies will increase to 25% in 2016 and to 30% in 2020. *Id.*
[61] Ex. 102, at 27 (Peppin Direct) (explaining that plant stratification recognizes that "[b]y selecting an optimal mix of these resources, we are able to minimize total system costs over time.")
[62] *See* Report ¶ 694.
[63] Report ¶ 696.

energy and capacity needs.[64] This reasoning, however, explicitly ignores cost causation principles and the different reasons these plants were acquired. In addition, as the OAG pointed out, the NARUC Electric Manual suggests that costs incurred to reduce fuel consumption, such as the acquisition of renewable energy, should be classified as energy: "capital costs that reduce fuel costs may be classified as energy related rather than demand related."[65] This makes sense since the largest energy consumers will receive the largest savings by any reduction in fuel consumption. Accordingly, the OAG recommends the following modifications to Finding 706:

> 706. The Administrative Law Judge concludes that the Company has not demonstrated that it is reasonable to classify the Grand Meadow and Nobles generation facilities as 100 percent capacity-related. As the Commission noted in its 10-971 ORDER, wind facilities generally replace other energy resources, and "contribute very little to capacity" because they are only available when the wind blows. The Company has failed to provide any evidence that Nobles and Grand Meadow have any different operational characteristics than other wind facilities that would justify classifying them as 100 percent capacity-related. ~~The fact that these facilities were built to satisfy a legislative renewable energy policy does not change their operational characteristics, and therefore does not provide a rational basis for classifying these facilities as 100 percent capacity-related.~~

The OAG recommends that Finding 708 should be deleted entirely and replaced with the following:

> 708. ~~Just as classifying wind generation as 100 percent capacity-related is not reasonable, neither is the alternative of classifying~~

[64] *See* Report ¶¶ 706, 708. In addition, the ALJ noted that the Commission ordered Xcel to use the Plant Stratification method to classify its Nobles and Grand Meadow facilities in the company's 2010 rate case. Report ¶ 701. In that case, however, the issue was whether the Plant Stratification method resulted in an over-classification of *energy* for these facilities. Findings of Fact, Conclusions, and Order, *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 Minnesota*, Docket No. E=--2/GR-10-971, at 20 (May 14, 2012). Moreover, in its 2010 case, Xcel defended the use of its Plant Stratification method for these facilities. *Id.* In this case, however, Xcel has changed its position, and claims that Plant Stratification is not an appropriate method to classify facilities that were not constructed to minimize overall system cost. *See* Finding ¶ 696. Accordingly, the Commission should consider whether its reasoning in Xcel's 2010 rate case still applies and best reflects cost-causation.

[65] NARUC Electric Manual, at 21.

~~wind generation as 100 percent energy-related as suggested by the OAG. Such a classification is inconsistent with the Commission's determination in the 10-971 rate case that wind generation provides some limited capacity value.~~
The OAG has demonstrated that it is most reasonable to classify the company's Nobles and Grand Meadow facilities as energy. These facilities were built to comply with the company's RES mandate, which is measured by the company's energy sales. Moreover, the NARUC Electric Manual suggests that capital costs incurred to reduce fuel consumption should be classified as energy.

The OAG recommends the following modifications to Finding 709:

709. The Commission has ~~repeatedly confirmed~~ previously ordered the Company's use of the Plant Stratification method ~~for the proper classification and allocation of~~ to classify and allocate the Company's production plant, including costs of Company-owned wind generation. The application of the Plant Stratification method to wind generation ~~continues to be~~ is not the most reasonable alternative shown in ~~the~~ this record. Accordingly, ~~the Administrative Law Judge recommends that~~ the Commission require~~s~~ the Company to modify its 2014 and 2015 Step CCOSSs to classify the costs of the Grand Meadow and Nobles wind farms as energy ~~on the sam basis as its other fixed production plant costs using the Plant Stratification method.~~

2. Allocation of Economic Development Credits.

In Finding 753, the ALJ recommended allocating the costs of providing discounts to large energy customers based on the company's present revenue allocator. The ALJ claimed that "[r]ecovering the costs based on present revenues recognizes that keeping these large customers on the system provides an overall benefit to customers."[66] In support of this statement, the ALJ cited to testimony of XLI witness Jeffrey Pollock, who speculated that "[i]f a customer were to cease purchasing electricity from NSP, NSP would experience a revenue shortfall."[67] Mr. Pollock, however, provided no quantitative analysis of this claim. Specifically, Mr. Pollock failed to even mention any cost savings that Xcel would realize if it no longer had to provide

[66] Report ¶ 753.
[67] Report ¶ 750; Ex. 262 at 23 (Pollock Rebuttal).

service to this hypothetical customer, or whether the discounted rates received by large customers are currently sufficient to recover their cost of service. Regardless, the ALJ's reasoning is flawed because it attempts to allocate these credits based on their perceived *benefit* to customer classes, rather than their cost. Since these discounts are provided exclusively to the large customer classes, and because the amount of the discounts vary with energy consumption, the costs of lost revenues are attributable to energy.

For these reasons, the OAG takes exception to Finding 753, and recommends the following modifications:

> 753. ~~The Administrative Law Judge concludes that the Company's use of the present revenue allocator in its CCOSS~~ The proposal of the OAG and the DOC to allocate the cost of economic discounts on the basis of a straight kWh energy allocator is the most reasonable of the proposals for allocating the cost of economic discounts ~~because the discounts benefit all customers~~. ~~In the view of the Administrative Law Judge, neither the straight energy method nor the present base revenue method better reflect the benefit of the retention of large customers.~~ This proposal recognizes that the costs of providing these economic discounts are caused by the amount of energy consumed by large customers.

B. REVENUE APPORTIONMENT.

In Findings 775 and 776, the ALJ recommended that the Commission adopt the Department's suggested revenue apportionment for all customer classes except the lighting class. This decision was based on the ALJ's recommendation "that the Commission adopt largely the Department's proposed CCOSS methodology."[68] The OAG takes exception to the ALJ's recommended revenue apportionment because it relies too heavily on an imprecise CCOSS and because it fails to adequately consider non-cost factors.

[68] Report ¶ 775.

As a preliminary matter, it appears the ALJ may have misunderstood the OAG's position regarding the appropriate basis for determining revenue apportionment. In Finding 768, the ALJ stated that the "OAG did not agree that the CCOSS results . . . should be the basis for revenue apportionment" and that the OAG's recommendation to maintain Xcel's current revenue apportionment is based "on its view that the CCOSS is an imprecise tool and on the importance of non-cost factors such as customers' ability to pay." The ALJ's discussion makes it appear that the OAG recommended not considering the CCOSS at all. This is not the case. Rather, the OAG provided extensive testimony and briefing on the CCOSS in order to improve its accuracy for Commission consideration. The OAG determined that, after its suggested improvements are implemented, the CCOSS demonstrates that residents and small businesses are currently paying their cost of service, if not more.[69] Therefore, the OAG's recommendation that the Commission adopt Xcel's existing revenue apportionment in this case was based on three over-arching factors: (1) the most reasonable CCOSS demonstrates that residents and small businesses are currently paying approximately their cost of service or more; (2) the CCOSS is an imprecise tool, so "perfect" cost apportionment is not possible; and (3) non-cost factors weigh in favor of limiting increases for the residential and small business classes. Considering each of these factors here supports the OAG's recommended revenue apportionment.

First, as detailed above, the ALJ did not adopt all of the OAG's suggested improvements to the CCOSS. By failing to adopt these improvements, the ALJ relied on a less accurate CCOSS that allocated excessive costs to residents and small businesses.

Second, the ALJ's report demonstrates that, in at least one instance, the imprecision inherent in the CCOSS likely harms residential customers. Specifically, the ALJ concluded that

[69] *See* OAG Initial Brief at 65.

the OAG raised a "noteworthy issue," regarding Xcel's D10S allocator.[70] The OAG's testimony explained that, by using Xcel's own system peak rather than MISO's coincident peak in this allocator, the CCOSS adopted by Xcel and the Department significantly overestimates the costs of serving those customer groups that contribute more to peak demand, such as residents.[71] Xcel agreed with the OAG's critique, but claimed it could not calculate a capacity allocator using MISO's system peak.[72] Without this data, both the OAG and the ALJ could not recommend a specific adjustment to the CCOSS.[73] But the ALJ's revenue apportionment recommendation should still have considered this imprecision in the CCOSS. It did not.

Finally, the ALJ appears to have considered only one non-cost factor in determining revenue apportionment: that rate changes should be gradual to avoid rate shock.[74] Other non-cost factors considered by the Commission include the customers' ability to pay, customer acceptance of rates, historical continuity of rates, and the ability of some customer classes to pass costs on to others.[75] The OAG explained that these non-cost factors also support its recommended revenue apportionment.[76] For these reasons, the OAG recommends that Findings 775 and 776 should be deleted entirely and replaced as follows:

> 775. ~~Because the Administrative Law Judge has recommended that the Commission adopt what is largely the Department's proposed CCOSS methodology, the Administrative Law Judge concludes that the Department's proposed revenue apportionments for 2014 and 2015 should be adopted but modified for the Lighting class in 2015. The Department's proposed revenue apportionments are reasonable because they are closely aligned~~

[70] Report ¶ 717.
[71] *See* Ex. 375 at 11-12 (Nelson Direct).
[72] Report ¶ 716.
[73] Report ¶ 717.
[74] Report ¶ 761.
[75] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. GR-09-175, at 14 (May 24, 2010).
[76] OAG's Initial Brief at 66.

~~with the costs determined by the Department's CCOSS and also avoid rate shock. As such, they properly balance the rate design principles of promoting efficient use of resources and ensuring that rate changes are gradual.~~

776. ~~The Department's proposed 2015 revenue apportionment should be modified, however, to exclude any increase for the Lighting Class in 2015. As shown above in Table 17, the Department has proposed no increase for the Lighting Class in 2014; the same should be done in 2015. To avoid this result, the Administrative Law Judge recommends that the increase in revenue that would have been attributable to the Lighting Class in 2015 be spread equally among the other classes.~~

775. The Commission adopts the OAG's recommendation to maintain Xcel's existing revenue apportionment. The OAG has demonstrated that the CCOSS is an imprecise tool and that the results produced by the company and Department likely over-state the costs attributable to residents and small businesses. The OAG further showed that, after several refinements are made to the CCOSS, residents and small businesses are paying approximately their cost of service. These results, coupled with non-cost factors such as ability to pay, customer acceptance of rates, historical continuity of rates, and the ability of some customer classes to pass costs on to others, supports the result that residents and small businesses should not receive a larger increase than other classes.

C. INCLINING BLOCK RATES.

Xcel and several intervening parties in this case—the Suburban Rate Authority, the Clean Energy Intervenors, and the Energy Cents Coalition—executed a stipulation outlining a process to discuss implementing an inclining block rate ("IBR") for the residential class ("Stipulation").[77] The Stipulation was not executed by the OAG, the Department, or several other parties in the rate case. The OAG objected to the Stipulation because its procedures are insufficient to ensure that any rate design changes are the best available options, and it does not agree that the changes are reasonable or necessary.[78] Instead of allowing a complete and

[77] Ex. 135 (Stipulation on Inverted Block Rates).
[78] OAG Initial Brief, at 72.

thorough analysis of all possible rate design changes,[79] the Stipulation of these parties, and the process subsequently recommended by the ALJ, unreasonably limit the discussion of alternative rate designs to IBR. For that reason, the OAG takes exception to the ALJ's recommendation. While the OAG does support the modifications recommended by the ALJ to permit all parties to submit IBR proposals and to require the parties discussing IBR to "specifically address the issue of potential impacts on high-use, low-income customers, and require the parties to identify possible means of addressing the impacts," the ALJ's recommendations did not go far enough.[80] The OAG recommends that the Commission open a broad general docket to investigate all possible alternative rate design structures in order to ensure that any rate design changes are the best option for both ratepayers and utilities.

One of the OAG's greatest concerns with the Stipulation is that it limits the rate design discussion to only one possible rate design system—IBR.[81] But other rate designs could potentially provide benefits for both ratepayers and utilities. For example, time of use rates and critical peak pricing (which Xcel has indicated it is reviewing) are two other rate design structures that should be considered, among others.[82] All options should be considered, along with both IBR and the rebates included in Xcel's current rate design, in order to evaluate the benefits, and potential problems, of each system. In his testimony, OAG witness Mr. Nelson stated, in order to complete this analysis, "it would be more appropriate to move the IBR issue into another docket where alternative rate design proposals can be compared and contrasted."[83]

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[79] Report ¶ 841.
[80] Report ¶ 841.
[81] Ex. 135, at ¶ 2.
[82] Ex. 378, at 19–20 (Nelson Surrebuttal); Ex. 107, at 12 (Huso Rebuttal).
[83] Ex. ____, at 21 (Nelson Surrebuttal); *see also* Ex. ___, at 36 (Nelson Rebuttal) ("[I]f the Commission chooses to move forward with the consideration of an IBR, it may be more appropriate to consider an IBR program in a future proceeding, when multiple proposals can be fully presented and analyzed.").

The procedures outlined by the Stipulation and recommended by the ALJ would not allow this type of comparative analysis because it will artificially limit the topic of discussion to only an IBR structure. The Stipulation would also impede a complete analysis of the alternatives because it only allows the stakeholder group 90 days of analysis before requiring the Department to issue a report.[84] Requiring the process to move quickly, rather than wisely, would increase the likelihood of the unintended consequences that can occur with alternative rate designs (such as those that resulted when CenterPoint implemented an IBR following a stipulation that was not thoroughly analyzed).[85] Experience has shown that it is essential that IBR and other alternative rate design programs be thoroughly investigated before they are implemented; for that reason, it is unreasonable for the Stipulation to place any conditions on the process for considering a change of rate design. Rather than placing limits on exploring alternative rate design structures, the OAG recommends that the Commission instead open a generic docket to discuss all possible rate design programs for Xcel.

In addition to ensuring that the most balanced rate design structure is selected, a broader generic docket would promote efficiency. Xcel indicated in its filed testimony that it was considering both time of use rates and critical peak pricing rate design structures.[86] Xcel also provided information about time of use rates and critical peak pricing rates in its recently filed

[84] Report ¶ 5. Practically speaking, it will likely take the Department several weeks to prepare any report; in order to allow the Department to issue a report within 90 days the actual time for stakeholder discussions will likely be significantly less than 90 days.

[85] *See* Order Terminating Inverted Block Rate Structure, Accepting Evaluation and Workgroup Reports, and Requiring Compliance Filings, *In the Matter of an Application by CenterPoint Energy for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-008/GR-08-1075. While there are some differences between this case and the CenterPoint case, one lesson from the CenterPoint IBR was that an IBR program can result in significant unintended consequences.

[86] Ex. 107, at 12 (Huso Rebuttal).

resource plan.[87] The OAG is still reviewing Xcel's resource plan, but the fact that Xcel has provided information about possible rate design structures indicates that the conversation about IBR should take place in the context of all rate design possibilities, rather than in isolation. It would be a misuse of resources to have a discussion about IBR in one docket and a different conversation about other rate designs Xcel may proposes, such as time of use and critical peak pricing, in another docket.

Further, given Xcel's interest in time of use and critical peak pricing rates, it is possible that Xcel is preparing to or may decide to request a new rate structure through its resource plan or in its next rate case. Approving an IBR rate when Xcel may request a time of use rate or critical peak pricing rate in the next few years would be an inefficient use of the Commission's resources, and would likely lead to unnecessary administrative costs for Xcel. Implementing a dramatic change like IBR, and then changing to a very different system like time of use only a few years later, could also be very confusing for ratepayers. It is important to avoid unnecessary confusion for ratepayers; all of the alternative rate design systems require ratepayers to understand the pricing structure in order to be successful. Changing customers rapidly between rate design structures creates a possibility that the price signals the structures are designed to create may be lost.

A broad generic docket would also mirror the process used by other state commissions. Before Xcel was ordered to implement an IBR in Colorado, the Colorado Public Utilities Commission opened an investigation docket to discuss the possibility.[88] After several workgroups, the Colorado PUC concluded that alternate rate design proposals were worth

[87] 2015 Upper Midwest Resource Plan, Appendix O, Docket No. E-002/RP-15-21.
[88] Decision No. C09-0172, Docket No. C081-420EG (Colo. PUC).

considering and ordered utilities to include them in future rate cases.[89] Instead of discussing IBR in one docket, and other rate design proposals in a resource plan docket, the OAG recommends that the Commission review all possible rate design possibilities for Xcel in a single generic docket to allow a complete discussion and ensure that any changes to rate design changes are the best possible changes from the many options available.[90]

Opening a broad generic inquiry will also allow all interested parties the opportunity to address several issues that the Stipulation did not sufficiently address. For example, the Stipulation mentions in a casual fashion that Xcel may address issues related to an IBR in its proposal.[91] Implementing an IBR for Xcel would be a significant undertaking, especially in light of the ALJ's recommendation to implement a decoupling program. The change would not be as simple as changing a few pages in the tariff book. The parties who have proposed the IBR in this case claim that the purpose of the program is to encourage conservation;[92] therefore, if the IBR is successful, those parties believe there will be a reduction in sales to the residential class. A measurable reduction in sales would require a reevaluation of Xcel's sales projections, a significant undertaking. A reduction in sales would also cause other changes that would need to be addressed. For example, a reduction in sales for the residential class would change how energy and demand costs are allocated within the CCOSS—incorporating this change would lead to allocating less costs to the residential class than the CCOSS that was recommended by the ALJ. If the change in costs allocated to the residential class were significant, the revenue apportionment and rate design would also be impacted. Ignoring these collateral changes would

[89] Ex. ___, REN-25 (Nelson Rebuttal).
[90] In order to create efficiency, the Commission may wish to consider broadening any rate design structure discussion to include *all* utilities, rather than only Xcel.
[91] Ex. 135, ¶ 3 (Stipulation on Inverted Block Rates).
[92] Ex. 280, at 3 (Chernick Direct) ("The basic motivation of an IBR is to encourage and reward conservation . . . .").

be inequitable and unreasonable, and it may require more than the 90 days provided by the stipulation to deal with them in a reasoned fashion.

The Stipulation's discussion of *how* the IBR may be implemented is also concerning. The Stipulation appears to assume that the Xcel will immediately implement an IBR, if one is approved. But it is far from clear that the Commission has the authority to implement an IBR program outside of a rate case,[93] or that it would be reasonable to do so. As discussed above, implementing a change to rate design will require many other changes of the type that are normally resolved during a rate case proceeding. Whether and how the Commission may implement an IBR outside of a rate case, and how to go about accomplishing such a feat in an efficient and equitable manner, is an important question, and one that the Stipulation makes no attempt to answer. These questions must be resolved in order for the Commission to take action on any alternative rate design, and it may be difficult to do so under the process provided in the Stipulation.

For these reasons, the OAG takes exception to Finding 841, and recommends the following modifications:

> 841. The Administrative Law Judge ~~concludes~~ concluded that the record demonstrates IBR is an effective tool for promoting conservation, and ~~agrees~~ agreed with the parties to the stipulation that the proposed IBR warrants further review. ~~The stipulation appears to set forth an appropriate process for review and resolution of the IBR issue, with two suggested modifications~~The stipulation, however, imposes unnecessary and unreasonable conditions on the process for investigating a possible alternative rate design, and for that reason the the Commission rejects the procedural conditions included in the Stipulation. Instead of limiting the process, the Commission will open a broad generic docket to investigate all possible alternative rate designs. In establishing the procedures for the generic docket, ~~First, to address~~

[93] The Commission has only the authority given to it by the legislature. *See Minnegasco, a Division of Noram Energy Corp. v. Minnesota Public Utilities Commission*, 549 N.W.2d 904, 907 (Minn. 1996).

~~the OAG's concern,~~ the Administrative Law Judge suggests that the Commission allow all parties the opportunity to submit alternative proposed ~~IBR~~ pricing structures for consideration in the new docket. It would be unfair to the other parties to limit consideration only to the CEI proposal and a Company proposal. Such a limitation could result in exclusion of a more reasonable ~~IBR~~ rate structure. Second, the Commission should require the parties to the ~~IBR~~ stakeholder meetings to specifically address the issue of potential impacts on high-use, low-income customers, and require the parties to identify possible means of addressing the impacts. In the current docket, the Department, the OAG, and the Company all raised concerns about the potential impact of an ~~IBR pricing structure~~ rate design changes on high-use, low-income customers. The Administrative Law Judge agrees that these concerns should be addressed in more depth if the Commission opens a new docket ~~to address IBR~~. Third, the Commission will ensure that the generic docket permits enough time to thoroughly examine all possible alternative rate designs.

D. DECOUPLING.

In Finding 944, the ALJ summarized several recommendations for a possible decoupling pilot program. Specifically, the ALJ recommended that the Commission implement a full decoupling pilot[94] program that includes a three percent "hard cap" on upward adjustments. The OAG believes that a decoupling program is unnecessary because the record does not support that it will result in increased conservation efforts, and because it will likely be detrimental to ratepayers. Accordingly, the OAG takes exception to the ALJ's recommendation to implement a decoupling program. Further, if a decoupling program is authorized, the OAG takes exception to the ALJ's recommendation to allow Xcel to surcharge customers up to three percent more on their bills.

The record does not support the conclusion that decoupling will lead to greater conservation. In Finding 891, the ALJ determined that "[p]roperly implemented, revenue

[94] While the ALJ's report does not explicitly state that the program would be a three-year pilot, the ALJ's Report refers to the parties' agreement that the pilot be in effect for three years. *See* Report ¶ 894; Ex. 417 at 39 (Davis Direct); Ex. 109 at 2 (Hansen Direct).

decoupling can balance the Company's obligation to promote energy efficiency and conservation without adversely affecting ratepayers." In this case, however, there is no basis to conclude that decoupling will have any effect on encouraging conservation beyond Xcel's current statutorily-mandated targets. The OAG explained in briefing that Xcel indicated that it will not track or otherwise quantify how its decoupling program affects conservation or energy consumption.[95] It is not possible, therefore, to know if any decoupling program authorized by the Commission will be "properly implemented" or if it will achieve the results that it seeks to achieve. Xcel also stated that, regardless of whether the Commission grants decoupling, it intends to meet its mandated conservation goals.[96] Xcel's support for decoupling was based on its claim that meeting its conservation goals is becoming increasingly challenging.[97] But nothing in the record suggests that decoupling makes conservation less challenging. Rather, Xcel's claim is that decoupling eliminates the utility's natural disincentive to promote conservation.[98] If Xcel admits that it will promote conservation, despite this disincentive, decoupling is unnecessary.

In addition, the record indicates that decoupling will likely detrimentally affect ratepayers. The Department's analysis concluded that, if Xcel's customers had been decoupled between 2009 and 2013, they would have paid surcharges of more than $50 million—even with a "hard cap" of 2.5 percent. The company also claimed that it proposed decoupling because it has been experiencing declining sales from its residential and small C&I classes, a trend that it

[95] OAG's Initial Brief at 68; Xcel Response to OAG IR 1002, Ex. 376, REN-16, at 1–2 (Nelson Direct Schedules).
[96] Tr. Evid. Hearing, Vol. 3, at 94-95 (Hansen) (Aug. 13, 2014).
[97] *See* Report ¶ 845.
[98] Ex. 109, at 2 (Hansen Direct).

expects to continue.[99] Therefore, decoupling would allow Xcel to surcharge ratepayers for continuing to decrease their energy consumption.

For these reasons, the OAG recommends that the Commission not authorize a decoupling program. In the alternative, the OAG recommends that any decoupling program authorized by the Commission include a hard cap of one percent on surcharges to mitigate any negative impacts on ratepayers. Specifically, the OAG recommends that Finding 892 be entirely deleted and replaced with the following:

> 892. ~~For these reasons, the Administrative Law Judge concludes that it is reasonable to implement decoupling for the Company.~~ The record does not support the conclusion that decoupling will lead to conservation levels greater than those promoted through Minnesota's conservation mandates. Moreover, the record demonstrates that decoupling will likely have detrimental effects on ratepayers. For these reasons, Xcel's proposal to implement a decoupling pilot program is rejected.

In the event that the Commission elects to implement a decoupling program, the OAG recommends that Finding 934 be modified as follows:

> 934. ~~Therefore, the Administrative Law Judge recommends that the Commission adopt the Department's 3~~ The Commission will adopt a 1 percent hard cap on all revenues, including fuel and applicable riders, as part of the Company's RDM. This recommendation balances the need for the Company to earn its full authorized revenue with the requirement that ratepayers not be adversely affected, and is reasonable given that this electric RDM program would be the first for an electric utility in Minnesota.

Based on the Commission's decision, the OAG further recommends that Finding 944 be modified consistently.

[99] Report ¶ 845.

IV. CONCLUSION

For the foregoing reasons, the OAG recommends that the Commission make the specific modifications to the ALJ's Findings as described above, and that it make other changes it deems necessary to the ALJ's report that are consistent with these modifications.

Dated: January 20, 2015

Respectfully submitted,

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January 20, 2015

The Honorable Jeanne Cochran
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

RE: ***In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota***
MPUC DOCKET NO. E-002/GR-13-868

Dear Judge Cochran:

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

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

Sincerely,

s/ Ryan Barlow

RYAN BARLOW
Assistant Attorney General

(651) 757-1473 (Voice)
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Enclosures
cc: Service List

RE: ***In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota***
MPUC DOCKET NO. E-002/GR-13-868

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I hereby state that on the 20th day of January, 2015, I e-filed with eDockets the *Exceptions of the Office of the Minnesota Attorney General—Residential Utilities and Antitrust Division to the Findings of Fact, Conclusions, and Recommendations of the Administrative Law Judge* and served the same upon all parties listed on the attached service list via electronic submission and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

See Attached Service List

s/ Judy Sigal
Judy Sigal

Subscribed and sworn to before me
this 20th day of January, 2015.

s/ Patricia Jotblad
Notary Public
My Commission expires: January 31, 2015.

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