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December 5, 2024

—Via Electronic Filing—

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: PETITION FOR RECONSIDERATION
IN THE MATTER OF XCEL ENERGY'S PETITION FOR APPROVAL OF ITS 2023
ANNUAL FUEL FORECAST AND MONTHLY FUEL COST CHARGES
DOCKET NO. E002/AA-22-179

Dear Mr. Seuffert:

Northern States Power Company, doing business as Xcel Energy, submits the enclosed Petition for Reconsideration brought pursuant to Minn. Stat. §216B.27, Subd. 3, and Minn. R. 7829.3000 requesting the Minnesota Public Utilities Commission reconsider its November 15, 2024 ORDER APPROVING 2023 FUEL-CLAUSE TRUE-UP REPORT, REQUIRING ADDITIONAL FILINGS, FINDING IMPRUDENCE, AND NOTICE OF AND ORDER FOR HEARING in the above-referenced matter.

We have electronically filed this document with the Minnesota Public Utilities Commission, and served copies have been served on the parties on the attached service list. A Certificate of Service is also attached.

Please contact Rebecca Eilers at (612) 330-5570 or Rebecca.D.Eilers@xcelenergy.com or me at (612) 370-3578 or Ian.m.dobson@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

IAN M. DOBSON
LEAD ASSISTANT GENERAL COUNSEL

Enclosures
cc: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Hwikwon Ham
Valerie Means
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

IN THE MATTER OF XCEL ENERGY'S
PETITION FOR APPROVAL OF ITS 2023
ANNUAL FUEL FORECAST AND
MONTHLY FUEL COST CHARGES

DOCKET NO. E002/AA-22-179

PETITION FOR RECONSIDERATION

Pursuant to Minnesota Statutes Section 216B.27 and Minnesota Rules 7829.3000, Northern States Power Company, doing business as Xcel Energy (Xcel Energy or the Company), submits this Petition for Rehearing and Reconsideration (Petition) of the Minnesota Public Utilities Commission's (Commission) November 15, 2024, ORDER APPROVING 2023 FUEL-CLAUSe TRUE-UP REPORT, REQUIRING ADDITIONAL FILINGS, FINDING IMPRUDENCE, AND NOTICE OF AND ORDER FOR HEARING in the above-referenced matter.¹ The Petition seeks reconsideration of the Commission's decision and relevant aspects of the Order relating to the outage at Prairie Island Nuclear Generating Plant (PINGP) in October 2023 (Outage), namely the Commission's determination, without an evidentiary hearing, that the Company's operation of PINGP leading up to the Outage was imprudent (the Prudence Decision).

INTRODUCTION

Over the past five years and beyond, Xcel Energy has successfully operated PINGP at a high level, operating with processes and efficiencies that consistently create

¹ ORDER APPROVING 2023 FUEL-CLAUSe TRUE-UP REPORT, REQUIRING ADDITIONAL FILINGS, FINDING IMPRUDENCE, AND NOTICE OF AND ORDER FOR HEARING (Nov. 15, 2024) (eDocket No. 202411-211999-01) (Order).

benefits for customers. The Company's exemplary performance over this period consistently exceeded that of other utilities and nuclear operators, demonstrating overall operations and management of PINGP that align with and even exceed good utility practice. However, rather than receive and consider evidence of the Company's prudent operation of the plant, the Commission found—apparently based on a four-page post-incident report filed by the Company with a different agency for a different purpose—that a single operational mistake at the plant must have been imprudent.

This decision was inconsistent with the Commission's rules, and therefore arbitrarily deprived the Company of its right to due process. The record demonstrates that, pursuant to Minnesota Statutes Section 216B.16, as well as Minn. R. 7829.1000 and 7825.2920, Xcel Energy is entitled to a hearing pursuant to the rules for contested case proceedings for thorough record development of the issues underlying the Prudence Decision. Because of this error, the Company respectfully seeks further review of the Prudence Decision.

BACKGROUND

Like most states, Minnesota law provides for the automatic adjustment of fuel and purchased power costs in utility rates. Specifically, Minnesota Statutes Section 216B.16, Subd. 7 states:

Notwithstanding any other provision of this chapter, the commission may permit a public utility to file rate schedules containing provisions for the automatic adjustment of charges for public utility service in direct relation to changes in:

- (1) federally regulated wholesale rates for energy delivered through interstate facilities;
- (2) direct costs for natural gas delivered;
- (3) costs for fuel used in generation of electricity or the manufacture of gas; or

(4) prudent costs incurred by a public utility for sorbents, reagents, or chemicals used to control emissions from an electric generation facility, provided that these costs are not recovered elsewhere in rates. The utility must track and report annually the volumes and costs of sorbents, reagents, or chemicals using separate accounts by generating plant.

Pursuant to this statute, the Commission enacted Minn. R. 7825.2390, *et seq.* to “enable regulated gas and electric utilities to adjust rates to reflect changes in the cost of energy delivered to customers from those costs authorized by the commission in the utility’s most recent general rate case.”² Automatic adjustment clauses (also referred to as fuel clause adjustments or FCAs), such as those authorized by Minnesota law, benefit customers by removing the need for utilities to finance the risk associated with certain production costs:

By reflecting production cost changes in utility rates on a dollar-for-dollar basis as they are incurred, automatic cost adjustment clauses end the risk that utility prices will not reflect the full costs of production. Assuming temporarily that all other costs are held constant, the adoption of an automatic cost adjustment clause does not raise consumer costs over the long run. The customer pays the actual cost incurred and pays relatively less for capital that no longer bears the risk that regulatory pricing will not reflect full costs.³

To effectuate this policy, the Commission’s rules provide that “[w]hen a utility proposes new or revised electric energy or purchased gas adjustment provisions, the proposal is considered a change in rates and must be reviewed according to commission rules and practices relating to utility rate changes.”⁴ And the rules further set forth how automatic adjustments are to be placed into effect:

² Minn. R. 7825.2390.

³ Elizabeth Warren, *Regulated Industries’ Automatic Cost of Service Adjustment Clauses: Do They Increase or Decrease Cost to the Consumer*, 55 Notre Dame L. Rev. 333, 346 (1980).

⁴ Minn. R. 7825.2390.

Subpart 1. Approval. Automatic adjustment of charges filed under parts 7825.2900 and 7825.2910 are provisionally approved and may be placed into effect without commission action, but subject to the conditions in subparts 2 and 3.

Subp. 2. Errors. Errors made in adjustment must be refunded by check or credits to bills to the consumer in an amount not to exceed the amount of the error plus interest computed at the prime rate upon the order of the commission if (1) the order is served within 90 days after the receipt of the filing defined in part 7825.2900 or 7825.2910 or at the end of the next major rate proceeding, whichever is later, and (2) the amount of the error is greater than five percent of the corrected adjustment charge.

Subp. 3. Commission action. The commission, on complaint or on its own motion, **and after appropriate investigation, notice, and hearing**, may issue an order to fix at current levels, discontinue, or modify an automatic adjustment provision for an individual utility.⁵

Put simply, electric energy adjustment provisions, like the Company's fuel clause rider, are to be provisionally approved, subject to change only if errors are identified or following a Commission investigation and evidentiary hearing.

In developing its fuel clause rider, Xcel Energy uses a five-year historical analysis to create its fuel forecast. During the timespan relevant to 2023 fuel costs, PINGP ran at over a 90 percent capacity factor without the need for extensive outages and was an exceedingly reliable and cost-effective energy resource for our customers. PINGP achieved a combined average capacity factor of 95 percent between 2018 and 2022.⁶ During this time, the Company also experienced some of the longest runs of uninterrupted operation in the history of its nuclear fleet, including a record-setting 670 days at PINGP Unit 1 from 2018 to 2020, and a record-setting run of 704 days on Unit 2 from 2019 to 2021.

⁵ Minn. R. 7825.2920 (emphasis added).

⁶ This includes a 99.8 percent capacity factor for Unit 1 in 2021 and a 99.9 percent capacity factor in 2022.

Over that same period, PINGP's capacity factor was consistently in the top quartile in the industry.⁷ And Xcel Energy's customers have benefitted from the Company's consistent and reliable operation of our nuclear fleet. Based on Xcel Energy's prudent operations of PINGP, the Company estimates it generated approximately 2,577 GWh above its previously forecasted amount, resulting in benefits of approximately \$50.6 million compared to normal operating performance between 2018-2022.⁸

Notwithstanding the Company's overall exemplary operation of PINGP, the Company had to unexpectedly shut down the PINGP this past October when workers boring a path for a new cable being installed during a refueling outage inadvertently struck control cables needed for plant operation. The Company identified this outage in its annual fuel clause report, and several parties argued that customers should not pay for replacement power costs because the Company's actions leading up to the Outage were purportedly not prudent.⁹ Xcel Energy and other parties filed comments during the summer of 2024, and the Commission reviewed this matter at its September 19, 2024 agenda meeting. During that meeting, rather than referring the contested issue of prudence to the Office of Administrative Hearings (OAH) for an evidentiary hearing, as required by its rules, the Commission simply determined that Xcel Energy's actions surrounding the Outage were imprudent and denied the Company's request for replacement power costs through the FCA. The Commission then referred the matter to the OAH on the limited issue of the specific amount of replacement power costs that the Company should refund to customers. Due to underlying errors within the Order, Xcel Energy now respectfully seeks reconsideration of the Prudence Decision.

⁷ Xcel Energy Reply Comments at 3-4 (July 30, 2024) (eDocket No. 20247-209117-03).

⁸ Xcel Energy Reply Comments at 5 (July 30, 2024) (eDocket No. 20247-209117-03).

⁹ Xcel Energy disagrees with any assertion that its initial filing provided insufficient information to allow interested parties to adequately scrutinize costs associated with the Outage. The initial filing was consistent with previous FCA filings filed by the Company. *See* Order at 4.

ANALYSIS

I. Standard for Reconsideration.

Petitions for reconsideration are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. R. 7829.3000, “[a] petition for rehearing, amendment, vacation, reconsideration, or reargument must set forth specifically the grounds relied upon or errors claimed.”¹⁰ Upon review of a petition for rehearing and reconsideration, “[i]f in the Commission’s judgment ... it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable, the Commission may reverse, change, modify, or suspend the original action accordingly.”¹¹ In making that determination, the Commission typically reviews petitions to determine whether they (1) raise new issues, (2) point to new and relevant evidence, (3) expose errors or ambiguities in the underlying order, or (4) otherwise persuade the Commission that it should rethink its previous order.¹²

This Petition discusses the underlying errors contained within the Order. Namely, that Xcel Energy is entitled to a hearing via a contested case proceeding to further develop the record surrounding the Prudence Decision. Based on this analysis, Xcel Energy respectfully requests the Commission reopen, reconsider, and reverse or modify the Prudence Decision and refer the matter to the OAH for a contested case as to whether or not the Company acted prudently in its operation of PINGP and, if not, whether customers should receive a refund of any power costs incurred as a result of that imprudence.

II. The Commission’s Rules Require That It Refer Disputes Over Whether the Company Acted Prudently to the Office of Administrative Hearings for a Contested Case.

¹⁰ Minn. R. 7829.3000, subd. 2.

¹¹ Minn. Stat. § 216B.27, subd. 3.

¹² See, e.g., *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, PUC Docket No. E002/GR-13-868, ORDER DENYING PETITIONS FOR RECONSIDERATION at 1 (July 13, 2015).

Xcel Energy is entitled to a contested case to determine whether the Company acted prudently with respect to the Outage. Minn. R. 7829.1000 outlines when matters must be referred to the OAH for a contested case. The rule states:

If a proceeding involves **contested material facts** and there is a **right to a hearing under statute or rule**, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission **shall** refer the matter to the Office of Administrative Hearings for contested case proceedings.¹³

The rule creates a two-pronged approach for determining whether a contested case is appropriate: One is mandatory and one is permissive. The first prong *requires* that the Commission refer matters to the OAH when there are “contested material facts and there is a right to a hearing under statute or rule.” In other words, if a party has the right to a hearing by statute or rule and contests material facts, the rule does not allow for Commission discretion and the matter must be referred to a contested case. Alternatively, the Commission may elect to refer a matter to the OAH when there are issues warranting further record development but there either are no contested issues of material fact or a right to a hearing.¹⁴

This case involves the first prong of the test set forth in Minn. R. 7829.1000, and therefore the Prudence Decision must be referred to a contested case. Xcel Energy has a statutory right to a hearing for its 2023 fuel-clause adjustment (FCA). The annual FCA is authorized by Minn. Stat. § 216B.16, subd. 7. Minn. Stat. § 216B.16 sets forth the general right to a hearing on a rate change proceeding.¹⁵ Additionally, the Commission’s rules regarding approval of FCAs expressly grant the right to a hearing. Minn. R. 7825.2920, subp. 3 states “[t]he Commission...after appropriate investigation, notice, and *hearing*, may issue an order to fix at current levels, discontinue, or modify an

¹³ Minn. R. 7829.1000 (Emphasis added).

¹⁴ See Minn. R. 7829.1000.

¹⁵ See, e.g., Minn. Stat. § 216B.16, subd. 2.

automatic adjustment.”¹⁶ This language unambiguously grants Xcel Energy the right to a hearing if there are contested material facts. In this case, the Company contests the Commission’s fundamental and implicit factual finding—based on the advocacy of other parties—that the Company’s overall operation of the plant was outside the range of action that similar operators exercising reasonable care could have taken under the circumstances without the benefit of hindsight.

III. The Company Contests the Factual Basis for the Prudence Decision.

The record in this matter reflects the existence of contested material facts that require a contested case to resolve. To reach the Prudence Decision, the Order relies on statements from the Licensee Event Report (LER Report) that the Company filed with the United States Nuclear Regulatory Commission (NRC). The LER Report was referred to by the Minnesota Office of the Attorney General – Residential Utilities Division, Minnesota Department of Commerce, Division of Energy Resources (Department), and Citizens Utility Board of Minnesota to support a finding of imprudence. These parties claimed that the language in the report demonstrated, on its own, that the Company’s conduct related to the Outage was imprudent. Although the Company does not dispute that this is a relevant piece of evidence, the Company does dispute that it is dispositive of the central factual question underlying a prudence determination. As the Company has previously noted, the LER report is an after-the-fact, intentionally self-critical assessment for process improvement that does not attempt to assess, much less resolve, the issue of whether the Company’s actions and decisions at the time of the Outage were prudent or not. More fundamentally, the LER does not provide a comprehensive assessment of the Company’s actions and decisions before, during, and after the Outage, or how those actions and decisions compare to those of other reasonable nuclear operators. That is evidence necessary for a prudence

¹⁶ Minn. R. 7825.2920, subp. 3 (emphasis added).

determination, and a contested case proceeding is the necessary procedural vehicle to develop such evidence.

A. Prudence Standard.

Because it is undisputed that Xcel Energy incurred the power costs it seeks to recover, the central issue in this proceeding becomes whether Xcel Energy acted prudently with respect to its nuclear operations leading up to and during the Outage, so that it should recover the power costs from its customers.¹⁷

Prudence has generally been defined as reasonable action taken in good faith and based on knowledge known or reasonably knowable at the time of the action or decision.¹⁸ Actions taken in good faith are those taken without malicious intent, exercising the care that a reasonable utility would exercise under the same circumstances at the time the decision was made.¹⁹ Prudence is shown if the utility “exercised the care that a reasonable person would exercise under the same circumstances at the time the decision was made.”²⁰ Reasonable care must be viewed in context. “The judgment, however, must be one which a reasonable [person] acting in good faith might have made under the circumstances then known and within the time which appeared to be available for action.”²¹

Prudence may not be evaluated on the basis of hindsight.²² Instead, Xcel Energy’s actions and decisions must be judged on the basis of whether each action and decision was reasonable at the time, under all the circumstances, and based on the

¹⁷ Order at 11.

¹⁸ See, e.g., *In re Pet. of N. States Power Co. d/b/a Xcel Energy to Recover February 2021 Nat. Gas Costs*, MPUC Docket No. G002/CI-21-610, ORDER DISALLOWING RECOVERY OF CERTAIN NATURAL GAS COSTS AND REQUIRING FURTHER ACTION at 5 (Oct. 19, 2022) (hereinafter Gas Cost Order).

¹⁹ Gas Cost Order at 5 (Oct. 19, 2022).

²⁰ *Re Interstate Power Co.*, MPUC Docket No. E001/GR-91-605, 136 P.U.R.4th 21, 32 (June 12, 1992).

²¹ *New England Power Co.*, 31 FERC ¶ 61,047 at 61,083 (1985) (quoting *Mun. Light Boards v. Boston Edison Co.*, 53 F.P.C. 1545, 1565 (1975), *aff’d sub nom. Norwood v. F.P.C.*, 546 F.2d 1036 (D.C. Cir. 1976)); see also Gas Cost Order at 5 (Oct. 19, 2022).

²² Gas Cost Order at 5 (Oct. 19, 2022).

information that was or reasonably should have been known.²³ Further, a determination of prudence must recognize that a utility may take a range of actions or decisions that may be prudent.²⁴ There is not one singular prudent action. As the Minnesota Supreme Court has held, “[r]easonableness is a concept of some flexibility and moderation, *not exclusivity*; a determination that one course of conduct is reasonable is not a determination that any other course is unreasonable.”²⁵ The utility need not *disprove* the reasonableness of alternative actions it could have taken.

In making prudence determinations in similar contexts, the Commission has applied the good utility practice standard.²⁶ Historically, parties and the Commission have agreed that “good utility practice” means:

[A]ny of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition.²⁷

“Good Utility Practice” is not intended to be limited to the optimum practice, method, or act, to the exclusion of all

²³ *Id.*

²⁴ *See, e.g., id.* at 19 (“The Commission finds that Xcel’s load-forecasting and reserve-margin decisions for February 14 fell *within the range of reasonable conduct* under the circumstances Xcel knew of or should have known on the morning of February 12.”); *id.* at 20 (emphasis added).

²⁵ *Minnegasco, a Div. of NorAm Energy Corp. v. Minnesota Pub. Utilities Comm’n*, 549 N.W.2d 904, 908 (Minn. 1996); *In Re Utilicorp United Inc.*, No. CI-01-295, 2002 WL 31256364, at *5–6 (Aug. 12, 2002).

²⁶ *In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports*, MPUC Docket No. E999/AA-20-171, ORDER ACCEPTING 2018-2019 ELECTRIC AAA REPORTS; NOTICE OF AND ORDER FOR HEARING at 4 (Sept. 16, 2020).

²⁷ *In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports*, MPUC Docket No. E999/AA-20-171, Minnesota Department of Commerce, Division of Energy Resources (Department) Initial Br. at 7 (June 28, 2021) (citations omitted); *In re Formal Complaint and Pet. for Expedited Relief by Sunrise Energy Ventures LLC Against N. States Power Co. d/b/a Xcel Energy*, MPUC Docket No. E002/C-20-892, ORDER DISMISSING COMPLAINT, BUT REQUIRING FOLLOW-UP DISCUSSIONS AND REPORTING at 6 (Apr. 16, 2021) (citing MN DIP Glossary of Terms, at 2).

others, but rather to refer to acceptable practices, methods, or acts generally accepted.²⁸

Prudence review scrutinizes decisions, not outcomes.²⁹ Even reasonable and prudent decision making can sometimes result in an undesirable outcome. “If the company has exercised prudence in reaching a decision, the fact that external factors outside the company’s control later produce an adverse result do not make the decision extravagant or imprudent.”³⁰ In sum, the question is one of reasonableness, not perfection. As other commissions have acknowledged, “perfect performance is not possible nor required.... For example, the occurrence of a human error, does not, in and of itself, mean that a utility has failed to exercise a high standard of care in the maintenance of a base load generating unit.”³¹

B. The LER Report does not Resolve the Issue of Whether the Company Acted Prudently in Operating the PINGP.

In determining that the Company did not act prudently, the Commission stated that “Xcel’s own assessment of the situation stated the incident occurred because of deficient oversight and inadequate processes that fell below the standard expected for excavation work at a nuclear facility.”³² The Commission reached this conclusion by relying upon a handful of statements included in the LER Report the Company filed with the NRC; statements that were misinterpreted by other parties to claim that the Company acted imprudently.³³ Although the LER Report is, of course, a relevant piece

²⁸ See *In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustment Reports*, MPUC Docket No. E999/AA-20-171, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS at 10 (Aug. 11, 2021) (citing Direct Testimony of Department witness Richard Polich); see also *In re Formal Complaint and Pet. for Expedited Relief by Sunrise Energy Ventures LLC Against N. States Power Co. d/b/a Xcel Energy*, MPUC Docket No. E002/C-20-892, ORDER DISMISSING COMPLAINT, BUT REQUIRING FOLLOW-UP DISCUSSIONS AND REPORTING at 6 (Apr. 16, 2021).

²⁹ See, e.g., Gas Cost Order at 5 (“[A]ctions and decisions are evaluated based on whether each action or decision was reasonable at the time, under all the circumstances”) (emphasis added).

³⁰ *In the Matter of the Third Prudence Review of Costs Subject to the Comm’n-Approved Fuel Adjustment Clause of KCP&L Greater Missouri Operations Co.*, Mo. PUC Docket No. EO-2011-0390, 2012 WL 4056581 (Sept. 4, 2012) (quoting *State ex rel. Mo. Power & Light Co. v. Public Service Comm’n*, 669 S.W.2d 941, 947-48 (Mo. Ct. App. 1984)).

³¹ *Re Baltimore Gas & Electric Co.*, 76 Md. P.S.C. 181 (May 3, 1985).

³² Order at 5.

³³ Order at 4-5.

of evidence in this inquiry, it does not itself resolve the central factual question underlying a prudence determination: whether the Company's overall operation of the plant was outside the range of action that similar operators exercising reasonable care could have taken under the circumstances without the benefit of hindsight. The Company and other parties clearly contest this question, and therefore a contested case is required by law.

The LER Report is not a comprehensive explanation or analysis of the Outage that can—without more—substitute for the full evidentiary predicate required to resolve the factual questions underlying a prudence determination, which is required for the Commission to modify the Company's fuel clause like it did here. Rather, the LER Report is a brief summary of the incident and the Company's response that totals four pages, much of which is background, technical explanation, and a description of corrective actions that were taken when the Outage occurred. It does not provide a detailed explanation of the decisions or actions that led to the Outage or an assessment of whether the Outage occurred despite the good faith of the Company's employees and the exercise of reasonable care. It also does not assess whether the Outage resulted from normal human error or from the Company's general failure to exercise a reasonable standard of care. Finally, it does not speak to the overall operation of PINGP and the impact of the Company's operation of PINGP to customers. Those are material factual questions that are plainly contested by the parties, and they are why a contested case is necessary here.

In a contested case, the Company and other parties could present expert testimony to address these open questions and explain how the Commission should consider the LER Report. Parties could also present other relevant evidence relating to a prudence determination. For instance, the Company could present witness testimony explaining exactly how the outage occurred; what specific mistake was made, the cause of that mistake, and whether that mistake was reasonably foreseeable and preventable

with the information that the Company had at the time and despite the use of good utility practice. It could also present evidence about the operation of the PINGP holistically, showing the level of performance over time and the level of service our customers have received. This would allow the Commission to assess this single operational mistake in the context of the overall exemplary performance of the plant and the impact of the plant's operation on the Company's customers.

Without having had the opportunity for record development through a contested case, moreover, the Commission's reliance on the LER Report as a stand-in for the Company's "own assessment of the situation" misinterprets the report and its purpose. The LER Report was filed with the NRC as part of that agency's oversight of plant safety and operations. As the Company noted, it represented an after-the-fact, intentionally self-critical assessment of the Outage that can be used to improve plant operations on a going-forward basis. The Company was not provided the appropriate opportunity to explain the few statements in the LER Report relied on by other parties and the Commission and place the report in its appropriate context. In other words, by relying solely on the language in LER Report without the record of a contested case, the Commission failed to provide the opportunity for the development—much less consideration—of evidence of the probative value about the LER Report. Rather, the only information the Commission had regarding the LER Report, beyond the language in the report itself, is Company's explanation of its nature as an after-the-fact, self-critical analysis, and critically not an assessment of how the Company's operations compared to other industry operators.

Because the criteria set forth in Minn. R. 7829.1000 are satisfied, Xcel Energy is entitled to a contested case on the Prudence Decision.³⁴ Therefore, Xcel Energy

³⁴ In addition to the fact that a contested case is required under Minn. R. 7829.1000, the Commission has previously referred similar matters for other utilities to contested cases. The Commission treated this matter differently than similar matters it has had for other utilities and other prudence disputes. For example, the

requests the Commission reconsider and amend the Order to refer the Prudence Decision to the OAH to be consolidated with the ongoing cost proceeding.

CONCLUSION

The Commission's rules require that modifications of the Company's automatic fuel adjustments be subject to a contested case proceeding when there are material facts in dispute. The Prudence Decision improperly denies the Company this procural right by incorrectly claiming that the Company did not contest material facts. The Commission's basis for this assertion was a four-page report filed with the NRC for a different purpose. The Company disputes the factual basis of the Commission's decision and is entitled to a contested case procedure. Therefore, Xcel Energy respectfully requests the Commission reopen, reconsider, and amend its Order and refer the matter to the OAH for a contested case, as is required by the Minnesota Rule 7829.1000.

Dated: December 5, 2024

Northern States Power Company

By: /s/Ian M. Dobson
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Commission referred Minnesota Power's 2018-2019 FCA to a contested case. Like this matter, Minnesota Power's contested case related to specific forced outages at Boswell Energy Center. Among other things, the contested case focused on Minnesota Power's operation, maintenance, and inspection practices at the plant. *See In the Matter of the Review of the July 2018-December 2019 Annual Automatic Adjustments Reports*, MPUC Docket No. E999/AA-20-171, ORDER ADOPTING ADMINISTRATIVE LAW JUDGE REPORT AS MODIFIED AND REQUIRING REFUND (Feb. 25, 2022). Similarly, the Commission ordered a contested case to determine whether the replacement power costs at Sherburne County Generating Station (Sherco) were prudently incurred. *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, et al.*, MPUC Docket No. E002/GR-12-961 et al, NOTICE OF AND ORDER FOR HEARING at 7-8 (July 13, 2022). The Commission's prior referral of these matters to the OAH demonstrates the value of record development pertaining to plant operations and maintenance practices in FCA matters. To maintain consistency across similar cases and different utilities, the Prudence Decision should also be referred to the OAH for a contested case.

CERTIFICATE OF SERVICE

I, Marie Horner, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

Docket No. E002/AA-22-179

Dated this 5th day of December, 2024.

/s/

Marie Horner
Regulatory Administrator

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