BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
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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

REPLY BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL-ANTITRUST AND UTILITIES DIVISION

October 14, 2014

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INTRODUCTION

The Office of the Attorney General - Antitrust and Utilities Division ("OAG") respectfully submits its Reply Brief in response to the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota. The OAG will not address every issue raised in testimony in this Reply; rather, the OAG will respond to those issues raised by other parties that require a response. The fact that the OAG does not respond to a particular argument in this Reply does not indicate concurrence or waiver by the OAG of a position taken in testimony or briefing.

I. REVENUE REQUIREMENT

A. XCEL HAS NOT JUSTIFIED ITS CORPORATE AVIATION COSTS.

Xcel requested recovery of $954,000 in corporate aviation expenses. According to Minnesota law, each travel expense that Xcel seeks to recover "must be itemized separately," and Xcel must provide the "date of the expense, the amount of the expense, the vendor name, and the business purpose of the expense."[1] To the extent that a utility fails to provide this itemization, the Commission "may not allow" the utility to recover the expenses.[2] In Xcel's last

[1] Minn. Stat. § 216B.16, subd. 17(b).
[2] *Id.* at subd. 17(a).

rate case the Commission made very clear what Xcel needed to do in order to meet its reporting requirements for aviation expenses:

> 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 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.[3]

The Commission's order echoes the requirements of Minnesota law. If Xcel wishes to recover corporate aviation expenses, it must explain the "business purpose" or "primary reason" for each flight.

As the OAG demonstrated in its Initial Brief, Xcel has not met this requirement. The flight logs provided in this case do not provide enough information to determine the business purpose of the flights. Furthermore, the testimony of Xcel's employees demonstrates that Xcel has no system in place to ensure that recovery is only sought for flights with a valid business purpose. In defending its request, Xcel claims that "the flight logs show that the aircraft have the appropriate passengers on board and travel mostly between company locations."[4] But that is exactly the problem: that is *all* that the flight logs show. Rather than explaining what a flight is for and providing the information required by law, the logs contain only generic information indicating, for example, that a flight is for "business area travel" or "executive travel."[5] In fact, Xcel witness Mr. O'Hara testified that the "flight logs are not designed to collect detailed

[3] 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. 12-961, at 53 (Sept. 3, 2013).
[4] Xcel Initial Brief, at 110.
[5] Ex. 371, JJL-13 (Schedules for Lindell Direct).

descriptions on the passengers' business reason,"[6] even though that is exactly what the Commission ordered Xcel to file the last time this issue was raised.

Xcel attempts to further defend its practices by arguing that ratepayers should not be concerned about whether their flights are for a valid purpose because "a valid business purpose is required for use of any of the corporate aircraft."[7] But, once again, Xcel's statement serves only to highlight the problem. Xcel claims, essentially, that the Commission and ratepayers do not need to concern themselves with whether the flights are for a valid reason because Xcel's employees are only allowed to schedule a flight for a valid purpose. But the record in this case shows that Xcel has no system in place, *of any kind*, to either review whether an employee has a valid reason for scheduling a flight *or* to preserve the original justification for the Commission's review.[8] Instead, Xcel records the information only in the flight logs, which "are not designed to collect detailed descriptions on the passengers' business reason."[9]

Xcel's corporate aviation practices do not provide enough information to satisfy the Commission's Order from the 2012 rate case or the requirements established by Minnesota law. They also shift decision-making power from the Commission to Xcel's employees because the Commission is unable to determine what the flights were for or whether they were reasonable and necessary for the provision of utility service.[10] As a result, the OAG recommends that the Commission disallow a portion of Xcel's corporate aircraft expenses as described in the OAG's Initial Brief.

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[6] Ex. 77, at 6 (O'Hara Rebuttal).
[7] Xcel Initial Brief, at 110.
[8] *See generally* OAG Initial Brief, at 26–27; *see also* Tr. Evid. Hearing, Vol. 1, at 254–56 (O'Hara) (Aug. 11, 2014).
[9] Ex. 77, at 6 (O'Hara Rebuttal).
[10] *See* Minn. Stat. § 216B.16, subd. 17(a).

B. THE INTERIM RATE REFUND SHOULD APPLY INTEREST AT XCEL'S RATE OF RETURN.

In its last rate case, Xcel was ordered to return excess interim rates to ratepayers with interest at its rate of return.[11] The Commission concluded that it was necessary to provide interest at the Company's rate of return because it "appropriately balances the interests of ratepayers, the utility, and the public," because it more "equitably compensates ratepayers for foregone opportunities had they not been compelled to lend money to the utility," and because it would "more closely align the Company's interest with the public's interest that interim rates not repeatedly exceed final rates by large margins."[12] The OAG does not believe anything has changed that would make this conclusion inapplicable to the current case.

Xcel raises only two arguments in response. One of the Company's arguments is that Xcel views the interim rates as being similar to short-term debt, so the interest paid on the interim refund should not exceed the short-term debt rate of 0.62 percent.[13] But Xcel raised this argument in the last case,[14] and it was rejected by the Commission in the last case.[15] It should be rejected in this case as well because returning the interim rate refund at the Company's cost of capital strikes the most appropriate balance between ratepayers, the utility, and the public.[16]

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[11] 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. GR-12-961, at 38 (Sept. 3, 2013).
[12] *Id.*
[13] Xcel Initial Brief, at 106.
[14] Xcel Energy Reply Brief, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. GR-12-961, at 65–67 (May 30, 2013).
[15] 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. GR-12-961, at 38–39 (Sept. 3, 2013).
[16] *Id.* at 39.

The Company also argues that this case is distinguishable from the last case because it asked for only half of its requested increase in interim rates in this case.[17] But the fact that Xcel did not request even more in interim rates does not change the fact that there may be a large interim rate refund following this proceeding. The public agencies and intervenors in this matter have found significant issues on which it is unlikely that Xcel can meet its burden of proof, and as a result any final rate increase is likely to be significantly less than Xcel's interim rate increase. For example, accounting only for the recommendations of the Department, Xcel would be required to return approximately $38 million in interim rates to ratepayers.[18] Incorporating the recommendations of the OAG would result in an even larger interim rate refund. Just as in Xcel's last rate case, ratepayers have loaned Xcel vast sums through the over collection of interim rates, and it is necessary to return those funds with interest at the Company's rate of return in order to strike an appropriate balance between the utility and the customers it serves.

C. XCEL SHOULD NOT HAVE ACCRUED AFUDC AFTER THE PRAIRIE ISLAND PROJECT WAS NOT VIABLE AND ONGOING.

Xcel has requested recovery of $78.9 million in costs related to the unsuccessful Extended Power Uprate ("EPU") at the Prairie Island nuclear plant. In its Initial Brief, the OAG recommended that the Commission prohibit Xcel from recovering costs and AFUDC incurred after the Company should have realized the project was no longer viable and ongoing and prevent Xcel from reversing a $10.1 million write-off. In addition, the OAG recommended that Xcel should not be granted a return on any cost recovery for the cancelled project. In this Reply

[17] Xcel Initial Brief, at 106.

[18] Xcel has collected an interim rate increase of $127,406,000 over the course of 2014, as compared to its total request of $291 million. Order Setting Interim Rates, *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. GR-13-868, at 2 (Jan. 2, 2014). The Department, however, recommended an increase of just $89,393,000. Ex. 442, at 1–2, Schedules 2 and 21 (Lusti Surrebuttal).

Brief, the OAG will limit its response to addressing the Company's arguments related to the recovery of AFUDC after the project was in the process of being suspended.

In its Initial Brief, Xcel claims that it should be allowed to recover AFUDC incurred until the project was finally cancelled in late 2012, even though the Company began to suspend the Prairie Island EPU in August, 2011. In making its arguments, Xcel selectively highlights one section of a FERC decision that indicates that AFUDC may continue to accrue when suspensions in construction are reasonable under the circumstances.[19] In doing so, Xcel ignores a statement contained later in the same paragraph that indicates AFUDC should only continue "as long as the project is viable and ongoing."[20] As the OAG outlined in its Initial Brief, by August, 2011, the Prairie Island project was no longer viable or ongoing, and at that point Xcel should have stopped accruing AFUDC.

Throughout its Brief, Xcel has advanced several contradictory arguments. First, Xcel agrees with the OAG that the Company had "effectively suspended the project by the end of 2011."[21] Later in its Brief, however, Xcel claims that the project was still underway through the summer of 2012 because Westinghouse was still completing its contract.[22] But the record in this case establishes that Westinghouse was only allowed to complete the contract because cancelling the contract in 2011 would have led to significant termination fees.[23] As noted by Xcel's own witnesses, the Company began suspending the project following the August 18, 2011 meeting with the NRC,[24] and fully suspended the project by the end of 2011.[25] When that suspension

[19] Xcel Initial Brief, at 94.
[20] Boston Edison Company, 34 F.E.R.C. ¶ 63023, at 65074, 1986 WL 76218 (Jan. 22, 1986)
[21] Xcel Initial Brief, at 80.
[22] Xcel Initial Brief, at 95.
[23] Ex. 100, at 57 (Clark Rebuttal).
[24] *See* Tr. Evid. Hearing, Vol. 1, at 191 (Alders) (Aug. 11, 2014); Tr. Evid. Hearing, Vol. 1, at 213 (McCall) (Aug. 11, 2014).

began, FERC rules and basic ratemaking principles required the Company to stop accruing AFUDC. For that reason, any AFUDC accumulated after August, 2011 should be disallowed.

D. XCEL HAS NOT PROVEN THAT ITS PRACTICES FOR AFUDC AND CWIP STRIKE THE PROPER BALANCE BETWEEN RATEPAYERS AND SHAREHOLDERS.

In its testimony and Initial Brief, the OAG recommended that the Commission order Xcel to make several changes to its practices regarding Constriction Work in Progress ("CWIP") and Allowance for Funds Used during Construction ("AFUDC"). In response, the Company argues that its practices for recording CWIP and calculating AFUDC are consistent with FERC's requirements.[26] But Xcel's arguments focus on the wrong issues; whether Xcel's practices conform with FERC's technical requirements is not the proper inquiry. From the OAG's recommendations on CWIP and AFUDC, the only relevant technical requirement from FERC is one that prohibits the Commission from granting an AFUDC rate *greater* than one allowed by FERC.[27] The remaining issues, such as what mechanism Xcel should use to recover its financing costs, are questions of policy in which the Commission must balance the interests of shareholders and ratepayers regardless of FERC's technical requirement.

The proper balancing point for these policy decisions is the point at which Xcel is able to attract sufficient investment to complete the capital projects necessary to keep the lights on.[28] If Xcel's CWIP and AFUDC practices are not necessary in order for the Company to attract investors, then they represent an unreasonable transfer of wealth from ratepayers to shareholders. Furthermore, Xcel has the burden to prove, and to produce evidence showing, that its CWIP and

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(Footnote Continued From Previous Page.)

[25] Xcel Initial Brief, at 80.

[26] *See* Xcel Initial Brief, at 85–94

[27] *See* Ex. 373, at 3 (Lindell Surrebuttal); 18 C.F.R. 101, Electric Plant Instruction 3(a)(17).

[28] *See Hibbing Taconite Co. v. Minnesota Public Service Commission*, 302 N.W.2d 5, 11 (Minn. 1980) ("The rate of return on the shareholders' equity must be sufficient to attract reasonable prudent investors.").

AFUDC practices are *necessary* in order for the utility to recover its financing costs and attract investors.[29] If there is any doubt about whether Xcel's CWIP and AFUDC practices are required, then those doubts must be resolved in favor of ratepayers.[30]

Xcel argues in its Initial Brief that the Commission should reject the OAG's recommendations because they would reduce the return that the Company earns on its construction projects. But the Company is not entitled to earn a full return on projects that are not yet used and useful unless and until the Company provides evidence that it will be unable to attract the necessary investments without it. Instead of providing such evidence, Xcel attempts to shift the burden of proof on this issue to the OAG. For example, when faced with the OAG's recommendation that investors may view a lower AFUDC rate as reasonable, Xcel argues that the OAG did not produce any evidence supporting such a possibility.[31] But it is not the OAG's burden to do so, just as it is not the OAG's burden to prove that Xcel could still attract enough investment with a lower overall return related to CWIP and AFUDC. Rather, it is Xcel's burden to prove that its current CWIP and AFUDC practices are *necessary* in order for it to attract the investment required to provide utility services.[32] Xcel has failed to meet that burden because it has not produced any evidence showing that the OAG's recommendations would unduly limit its ability to attract investors beyond the testimony of its own employees. Xcel witness Ms. Perkett did not provide any empirical evidence, study, or any other authority demonstrating that the Company's ability to attract investments would be at risk because of a change in CWIP or

[29] Minn. Stat. § 216B.16, subd. 4 ("The burden of proof to show that the rate change is just and reasonable shall be upon the public utility . . . .").
[30] Minn. Stat. § 216B.03.
[31] Xcel Initial Brief, at 90.
[32] Minn. Stat. § 216B.16, subd. 4.

AFUDC practices. Rather, she limited her analysis to ensuring that the Company is permitted to recover its financing costs.[33]

Ms. Perkett's analysis is beside the point because the OAG's primary recommendation would still permit the Company to recover its financing costs. Xcel's current practice allows the Company to both earn a current return on CWIP *and* capitalize its financing costs for future recovery. But the record in this case does not demonstrate that the Company requires *both* of those mechanisms in order to attract the investments necessary to provide electric service. The OAG's recommendation to allow Xcel to continue capitalizing AFUDC, without a current return on CWIP, will strike the proper balance between ratepayers and shareholders by allowing the utility to recover its financing costs without requiring ratepayers to pay a current return on uncompleted construction projects. Because Xcel has not produced evidence on this record showing that it requires *more* in order to attract investors, the OAG recommends that the Commission adopt its recommendation to remove CWIP from rate base and the associated offset from the income statement.

II. REVENUE APPORTIONMENT AND CCOSS

The OAG's recommended revenue apportionment is thoroughly supported in the record by both cost and non-cost factors. The OAG's Initial Brief demonstrated why other parties' CCOSS's overestimate the cost of serving Xcel's residential and Small General Service customers.[34] After correcting for these errors, the OAG's CCOSS shows that these classes currently pay more than their cost of service.[35] But since the CCOSS provides an imprecise tool for determining costs, the OAG did not recommend moving classes toward their cost of service.

[33] *See, e.g.,* Ex. 94, at 24 (Perkett Rebuttal).
[34] *See* OAG's Initial Brief at 44-65.
[35] *See* Ex. 378, at 17 (Nelson Surrebuttal).

Both Xcel and the Department, however, recommended moving classes closer to the cost of service derived from their respective CCOSSs.

While the OAG was the only party that did not recommend moving classes closer to the cost of service reflected in its CCOSS, Xcel implies that the OAG failed to consider non-cost factors.[36] This is not true, and non-cost factors support the OAG's recommended revenue apportionment more than either Xcel's or the Department's. Specifically, the OAG's recommendation to maintain the current revenue apportionment would lead to greater continuity with prior rates, be easier for customers to understand and accept, and account for the ability of many large customers to deflect cost increases through increased productivity of other offsets. Limiting the increase for residential customers also recognizes that many low income families and seniors living on fixed incomes have no ability to pay increased utility costs. These non-cost factors serve to buttress the conclusions drawn from the OAG's CCOSS, which shows that increasing rates for residential and small business customers more than other classes is unfair.

A. OTHER PRODUCTION O&M SHOULD BE CLASSIFIED BASED ON PLANT LOCATION.

The OAG's Initial Brief explained why Xcel's Other Production O&M costs should continue to be classified in the CCOSS based on the "location method" rather than the "predominant nature method." While the location method more precisely classifies costs down to the specific production plant, the predominant nature method broadly classifies all costs based on the assumption that "fixed" costs are related to capacity, and that "variable" costs are related to energy.[37] The Commission has previously rejected this assumption based, in part, on Xcel's own arguments supporting the location method:

[36] *See* Xcel's Initial Brief at 138.
[37] *See* OAG Initial Brief at 59.

> The fixed/variable distinction does not correspond to whether those expenses are attributable to energy or demand; a number of fixed expenses at a nuclear plant, for example, arise in connection with fuel consumption and handling, and so do not fit neatly in this binary distinction. Xcel's method is preferable, because it does not misallocate the costs on the basis of their fixed and variable nature.[38]

Xcel has not presented any evidence justifying its change from the location method to the predominant nature method in this case. Rather, Xcel appears to argue that by examining 117 cost items included in its Other Production O&M expenses, it obtained new information that, somehow, shows that the predominant nature method is now superior.[39] But the only "new" information presented from Xcel's analysis of 117 cost items is which items it considers to be fixed costs and which items it considers variable, not whether they are related to capacity or energy. Xcel then classifies these fixed and variable costs as either capacity or energy using the same assumption that was rejected by the Commission. In other words, Xcel has not provided any new information showing that the predominant nature method it now seeks to use classifies its 117 cost items as either "capacity" or "energy" better than the location method. Nor has Xcel shown that the fixed/variable distinction better aligns with capacity and energy than either Xcel or the Commission previously thought. In short, Xcel's claim that new information allows it to make a more "refined" analysis by using the predominant nature method is nothing more than a red herring.

Moreover, even the examples given by Xcel to demonstrate the supposed problems with the location method show why it provides a better classification of capacity and energy costs than the predominant nature method. Xcel first claims that under the location method, "100

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[38] 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*, at 18, Dkt. No. E-002/GR-10-971 (May 14, 2012).

[39] Xcel Initial Brief at 128 (stating "[t]he new analysis yielded better information regarding the nature of the Other Production O&M costs").

percent of generation and equipment rentals that occur at Peaking plants are treated as capacity-related, even though a significant portion of the costs clearly change with the amount of energy produced."[40] The OAG does not dispute that these costs may vary with the amount of energy produced, but maintains that the costs of producing energy at a peaking plant are appropriately classified as capacity. Xcel also states that, under the location method, "Approximately 80 percent of the licensing fees, permits, and regulatory expenses and association dues that occur at nuclear plants are treated as energy-related, but these costs do not vary with the amount of energy produced."[41] Again, the OAG does not dispute that these specific operational costs of a base load nuclear facility do not vary with the amount of energy produced, but maintains that these costs are appropriately classified as energy. Each of these examples demonstrate why the fixed/variable distinction urged by Xcel in this case is a poor proxy for classifying the capacity and energy portions of its Other Production O&M expenses. The OAG and the Department have each explained why the location method continues to provide a more accurate classification. Xcel has failed to demonstrate otherwise.

B. XCEL'S MINIMUM SYSTEM STUDY OVERSTATES CUSTOMER COSTS.

Xcel also argues that the OAG's recommendation to shift ten percent of the customer costs from its minimum system analysis to capacity costs should be rejected as arbitrary.[42] The OAG supported this moderate adjustment by explaining that (1) Xcel's use of the minimum-size method overestimates the customer-cost portion of the distribution system;[43] (2) removing material costs from Xcel's minimum system study would result in a shift of approximately 33

[40] Xcel Initial Brief at 128.
[41] Xcel Initial Brief at 128.
[42] Xcel Initial Brief at 131.
[43] *See* NARUC Electric Manual at 92.

percent;[44] and (3) in at least one instance, Xcel's minimum-size analysis does not include the smallest equipment it currently uses, which would alone result in a 6.5 percent adjustment.[45] OAG witness Mr. Nelson further explained that he would have preferred to rely on better data from the Company to make his recommendation, but that, "in this case Xcel is clearly overstating customer costs associated with each minimum system analysis."[46] Based on Mr. Nelson's judgment, a ten percent shift "would provide a more reasonable apportionment" of Xcel's minimum system analysis.[47]

Although it criticizes the OAG's recommended adjustment as arbitrary, Xcel has not provided evidence that its minimum system analysis is accurate. In fact, Xcel admits that its minimum system over-estimates the customer-cost portion of its cables account.[48] It claims, however, that if other inaccuracies in its study were corrected, the customer costs would increase.[49] As stated in the OAG's Initial Brief, Xcel has failed to quantify this claim, which, even if true, addresses only one portion of Mr. Nelson's analysis.[50] The overwhelming evidence suggests that Xcel's minimum system study overstates the customer cost portion of its distribution system and that the OAG's recommended adjustment produces a more reasonable result.

[44] Tr. Evidentiary Hearing, Vol. 3, at 228-29 (Nelson) (Aug. 13, 2014).
[45] Ex. 378, at 6 (Nelson Surrebuttal).
[46] Ex. 375 at 26-27 (Nelson Direct).
[47] Ex. 375 at 26-27 (Nelson Direct).
[48] Xcel Initial Brief at 130 ("The OAG is correct that if the Company's minimum system study was updated to reflect the Company's current minimum sized single-phase primary underground conductor, that, all else being equal, the portion of customer-related cost would decrease.")
[49] Xcel Initial Brief at 131.
[50] *See* OAG Initial Brief at 52.

C. XCEL'S NOBLES AND GRAND MEADOW WIND FACILITIES SHOULD BE CLASSIFIED AS ENERGY.

Xcel's Initial Brief dedicates approximately two pages to its argument that the Nobles and Grand Meadow wind facilities should not be classified like other generators into energy and capacity sub-functions using plant stratification.[51] Xcel explains that plant stratification is not appropriate for these facilities since they were acquired to fulfill the company's Renewable Energy Standard ("RES"), rather than to minimize its overall system costs. But, perhaps tellingly, Xcel fails to even mention its recommended alternative to using plant stratification to classify the costs of Nobles and Grand Meadow—to classify 100 percent of these costs as capacity.[52] Rather, the company simply produces a chart of the cost allocations from each party's recommendation, while making the general and unhelpful suggestion that "the Commission's focus should be on the ultimate cost allocations."[53] The company then attempts to support its recommended cost allocation, rather than the basis for the allocation, with the generic statement that it "is more consistent with the policy-based nature of the Nobles and Grand Meadow projects."[54] Xcel provides no explanation for why its specific recommendation to classify these facilities as 100 percent capacity is consistent with the policy underlying these projects.

The OAG agrees with Xcel's general contention that plant stratification does not align with cost causation principles for the company's Nobles and Grand Meadow facilities. The OAG's Initial Brief fully explained why classifying Xcel's Nobles and Grand Meadows facilities as 100 percent energy both aligns with cost causation principles and is consistent with the policy

[51] *See* Xcel Initial Brief at 133-35.
[52] *See id.* Xcel includes its recommended classification in Table 2
[53] Xcel Initial Brief at 135.
[54] *Id.*

objectives of the RES.[55] Xcel has failed to provide any basis for a contrary classification. For these reasons, the OAG's recommendation should be adopted.

III. INCLINING BLOCK RATES

The OAG's Initial Brief provides a detailed discussion of its concerns regarding the Stipulation on Inclining Block Rates ("Stipulation") agreed to by several parties.[56] These concerns are grounded in the Commission's experience with inclining block rates ("IBR") in CenterPoint's 2008 rate case and the Stipulation's unnecessary restrictions on a process for substantive discussion. The OAG explained that the IBR structure implemented in CenterPoint's 2008 rate case caused substantial harm to some ratepayers, and that robust discussions should be held to ensure that similar problems are avoided.[57]

The OAG recognizes that other parties believe the Stipulation outlines a sufficient process to discuss and develop solutions for the potential problems with an IBR structure. While the OAG will not restate its position on these matters, it is compelled to respond to criticisms regarding its "qualifications" and substantive concerns regarding an IBR structure. First, the OAG rejects the ECC's claim that Mr. Nelson's concerns about customer confusion should be dismissed because "he has never administered a low-income assistance program" and "never has engaged in customer outreach programs."[58] Based on this reasoning, the OAG suspects that the five Commissioners, the ALJ, and most of the other parties to the case would be unable to express an opinion on the potential for customer confusion or decide the matter. Mr. Nelson raised many important issues for consideration by the ALJ and the Commission and ECC should not dismiss those concerns on such a superficial level.

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[55] *See* OAG Initial Brief at 56-58.
[56] *See* OAG Initial Brief at 71-75.
[57] OAG Initial Brief at 73-75.
[58] Energy Cents Coalition Brief at 16.

Second, the ECCs attempt to minimize the number of calls received since Minnesota Power implemented a five-tier IBR program by comparing it to the number of bills received by customers should be rejected.[59] Specifically, while the ECC acknowledges that Minnesota Power has received 110 calls related to its IBR program, it claims this is a small percentage of the monthly bills Minnesota Power's customers have received over the past three years.[60] But of course there is no basis to compare the number of customers who have expressed concerns with Minnesota Power's IBR structure against the number of bills received by those customers. By this logic, a customer who was concerned enough with Minnesota Power's IBR structure to contact the company would need to do so following every bill for three years to be fully "counted" in the ECC's contrived analysis. This is an unrealistic and unreasonable expectation. Moreover, the evidence referred by the ECC actually indicates that the IBR structure could generate concerns from a considerable number of Xcel's customers. Specifically, assuming that Minnesota Power's experience is representative, Xcel could receive more than 1,100 calls from its larger customer base.[61] These numbers are speculative, of course, but they provide a better analysis of the record evidence that that of the ECC's Initial Brief. In any event, the OAG continues to believe that the Stipulation contains several unnecessary restrictions that would limit a comprehensive discussion of a potential IBR structure. For that reason, the Stipulation should be rejected.

[59] Energy Cents Coalition Brief at 15-16.
[60] Energy Cents Coalition Brief at 15-16.
[61] *See* Ex. 25 at 5 (Sparby Direct) (stating that Xcel 1.3 million customers).

CONCLUSION

For the reasons set forth in this Reply Brief and in the OAG's Initial Brief, the OAG respectfully requests that the ALJ adopt the OAG's Proposed Findings of Fact and Conclusions accompanying this brief.

Dated: October 14, 2014

Respectfully submitted,

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