

PUBLIC VERSION

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

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East
Suite 350
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. E-002/CI-13-754
OAH Docket No. 48-2500-31139**

*In the Matter of a Commission Investigation into Xcel Energy's Monticello Life Cycle
Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*

**INITIAL BRIEF OF THE OFFICE OF THE
ATTORNEY GENERAL-ANTITRUST AND UTILITIES DIVISION**

October 31, 2014

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STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS FOR THE PUBLIC UTILITIES COMMISSION

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REPLY BRIEF OF THE OFFICE OF THE ATTORNEY GENERAL

INTRODUCTION

The Office of the Attorney General - Antitrust and Utilities Division ("OAG") respectfully submits its Initial Brief regarding the Commission's Investigation into Northern States Power Company's ("Xcel" or "the Company") request for recovery of the cost overruns from the Monticello Life Cycle Management/Extended Power Uprate Project ("Monticello Project" or "the Project").

The Monticello Project was supposed to cost approximately \$320 million and be finished in 2011. At the time of the evidentiary hearing conducted pursuant to the Commission's Investigation, the cost of the project had soared to approximately \$748.1 million, exceeding the original budget by nearly 135 percent. In addition, the Project is many years behind schedule - as of the most recent update, the additional 71 MWs the Project is supposed to produce will not be online until 2015 at the earliest.¹ The Project is years late, significantly over-budget, and still not finished; it has been a bad deal for ratepayers all around.

Despite the numerous problems with the Monticello Project, Xcel requests recovery of more than \$420 million in cost overruns, as well as the costs to finance the project as the budget

¹ Tr. Evid. Hearing, Volume 1, at 135 (Sept. 29, 2014) (O'Connor).

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spiraled out of control. The Commission should deny Xcel's request because the record in this case shows that Xcel has not met its burden of proof. Xcel has not proven that the cost overruns were incurred prudently or that recovery would be reasonable. Instead, the record shows that the cost overruns were caused, in large part, by Xcel's mismanagement of the project. The Commission should deny recovery of the costs that were not prudent, and should limit Xcel's return on the Monticello Project because the cost overruns caused by Xcel's poor management were avoidable.

BACKGROUND

The Monticello Nuclear Generating Plant ("Monticello" or "Monticello Plant") is a nuclear reactor owned and operated by Xcel. Monticello, which was designed to generate 564 MW of electricity, came online in 1971 and was originally licensed to operate until 2010.² Monticello initially operated at 564 MW. But in 1998, Xcel conducted an Extended Power Uprate project ("EPU") to increase the plant's generating capacity from 564 MW to 600 MW.³ During the course of the 1998 EPU, Xcel increased the capacity of the plant by using the "margins in the existing equipment to uprate the electronic output" of the plant.⁴ Following the 1998 EPU, Xcel planned to operate the plant at 600 MWs until its license expired in 2010, and then expected to begin decommissioning.

In 2003, the legislature changed Minnesota law in a way that made it possible to extend the operation of nuclear power plants beyond the initial 40 year period.⁵ Throughout 2004, Xcel began to consider whether it would be cost-effective to extend the life of Monticello and how to

² Ex. 3, at 43 (O'Connor Direct).

³ Ex. 305, at 3 (Jacobs Direct).

⁴ Ex. 300, at 4 (Crisp Direct).

⁵ Ex. 2, at 14 (Alders Direct)

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go about getting regulatory approval.⁶ Xcel refers to the process of extending the life of the plant as the Life Cycle Management project (“LCM”). To accomplish the LCM, Xcel began several regulatory proceedings in parallel.

The first step in preparing the plant for further operation was to request authorization from the Commission to store spent nuclear fuel on-site so that the plant could continue to operate past its original lifetime. Xcel filed a Certificate of Need (“CON”) for the spent fuel storage in 2005,⁷ in which the Company estimated that the LCM necessary to extend the life of the plant would cost \$135 million.⁸ Xcel also needed regulatory approval from the Nuclear Regulatory Commission (“NRC”) in order to extend the operation of the Monticello Plant, so Xcel filed a license renewal application with the NRC on March 24, 2005.⁹ The NRC approved the license renewal on November 8, 2006.¹⁰

In addition to the LCM, Xcel believed that it would be beneficial to increase the capacity of the Monticello Plant. In Xcel’s 2004 Resource Plan Docket, the Company informed the Commission that it may be possible to increase the capacity of the Monticello Plant and that upgrading the plant could help provide baseload generation that Xcel perceived would be necessary in the future. The Commission ordered Xcel to “file any required Commission review or approval of these upgrades by the end of [2006].”¹¹ The Commission later extended the

⁶ Ex. 12, at 19 (Sparby Rebuttal).

⁷ Application, *In the Matter of the Application of Northern States Power Company for a Certificate of Need to Establish an Independent Spent Fuel Storage Installation at the Monticello Generating Plant*, Docket No. E-002/CN-05-123 (Jan. 18, 2006).

⁸ Ex. 310, at CJS 2 (Attachments to Shaw Direct).

⁹ Ex. 2, at 18 (Alders Direct).

¹⁰ *Id.*

¹¹ Order Approving Resource Plan as Modified, Finding Compliance with Renewable Energy Objectives Statute, and Setting Reporting Requirements, Docket No. E-002/RP-04-1752, at 9 (July 28, 2006).

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deadline to December 2007,¹² and then to January 2008.¹³ On February 14, 2008, Xcel filed a CON requesting permission to increase the generating capacity of the Monticello plant by 71 MW. In its initial filing, Xcel estimated that the cost of the new EPU would be \$133 million,¹⁴ and on January 8, 2009 the Commission granted approval of the CON and directed Xcel to complete the uprate.¹⁵

In order to perform an EPU, however, Xcel also had to get regulatory approval from the NRC in the form of a license amendment.¹⁶ Even though it had been unable to file with the Commission until 2008, Xcel filed a license amendment request for the EPU with the NRC on November 8, 2006.¹⁷ Action on the license amendment request was delayed, however, because the Company had given the NRC contradictory information about its plans for the Monticello Plant. When it filed its license renewal request with the NRC, Xcel told the NRC that it was not considering any change in the generation capability of the facility and that the plant would be maintained at its then-current operating level throughout the entire extended licensing period.¹⁸ But, contrary to the information it gave the NRC, Xcel had been conducting studies about the viability of an EPU since at least 2004.¹⁹ Partly as a result of these conflicting statements, the

¹² Order Suspending Contested Case Proceeding, Delaying Filing Dates, And Advancing Date For Filing Next Resource Plan, October 22, 2007, Docket Nos. E002/RP-04-1752, E002/M-07-2, E002/CN-06-1518.

¹³ Proposed Schedule For Suspended Proceedings, December 14, 2007, Docket Nos. E002/RP-04-1752, E002/M-07-2, E002/CN-06-1518.

¹⁴ Petition, *In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Monticello Nuclear Generating Plant Extended Power Uprate*, Docket No. E-002/CN-08-185, at 1–6 (Feb. 14, 2008).

¹⁵ Order Granting Certificate of Need and Accepting Environmental Assessment, *In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Monticello Nuclear Generating Plant Extended Power Uprate*, Docket No. E-002/CN-08-185 (Jan. 8, 2009).

¹⁶ The license amendment is different from the license renewal that Xcel received approval for in 2006.

¹⁷ Ex. 3, at 51 (O'Connor).

¹⁸ Ex. 300, at 13 (Crisp).

¹⁹ *Id.*

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NRC recommended that Xcel withdraw its EPU amendment request,²⁰ and Xcel was unable to file an updated request until November 5, 2008. After this delayed filing, Xcel did not receive approval for the NRC EPU license until December, 2013.²¹

Before Xcel had even obtained regulatory approval for the EPU, it executed contracts with General Electric in the fall of 2006 to “engineer, design, and procure the necessary components and modifications to implement” the Monticello project,²² and with Day Zimmerman in late 2007 to “implement” the work planning and installation necessary to complete the Project.²³ When the work got underway, the on-site team at Monticello recommended completing the Project during the 2011 and 2013 nuclear refueling outages.²⁴ Xcel’s Board of Directors ignored the recommendation of the Company’s EPU Project Team and implemented an aggressive strategy to finish the project entirely during the 2009 and 2011 outages.²⁵

During the outages, however, the Company discovered that its haphazard planning and design had failed to uncover the need for a series of significant modifications that were necessary to complete the Project. As a result, the Company had to delay some of the installation work until the 2013 outage, several years after the Project was supposed to be finished.²⁶

That delay was significant enough by 2011 to require the Company to file a Notice of Changed Circumstances in the 2008 CON docket.²⁷ While the Company provided information

²⁰ *Id.* at 14.

²¹ Ex. 305, at 6 (Jacobs Direct).

²² Ex. 3, at 46 (O’Connor Direct).

²³ *Id.* at 47.

²⁴ *See* Ex. 301, at 23–25 (Crisp Trade Secret Direct).

²⁵ *Id.*

²⁶ Ex. 3, at 76–77 (O’Connor Direct).

²⁷ Notice of Changed Circumstances, *In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Monticello Nuclear Generating Plant Extended Power Uprate*, Docket No. E-002/CN-08-185 (Nov. 22, 2011).

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about the scheduling change, it failed to mention that the project was running about \$180 million over budget.²⁸ Xcel did not provide the Commission with further information until its 2012 rate case, when it requested full recovery of the project costs.²⁹ The ALJ and the Commission, however, determined that only the LCM had been completed, while the EPU was not used and useful because the additional 71 MW were not operating.³⁰ The Commission also stated that it was concerned with the project's significant cost overruns, and opened this docket to "investigate whether the Company's handling of the LCM/EPU project was prudent, and whether the Company's request for recovery of the Monticello LCM/EPU cost overruns is reasonable."³¹

ANALYSIS

I. LEGAL STANDARD

Xcel, like every other public utility in Minnesota, has the burden to prove that its rates are "just and reasonable."³² Minnesota law unequivocally requires that the "burden of proof to show that the rate change is just and reasonable shall be upon the public utility."³³ In order to make entirely clear where the burden lies, Minnesota law also requires that any doubt as to the reasonableness of rates "should be resolved in favor of the consumer."³⁴ In this particular matter, the Commission stated in its Request for Proposals that the purpose of this investigation is to determine "whether Xcel Energy's handling of the [Monticello Project] was prudent and whether the Company's request for recovery of [Monticello Project] cost overruns is

²⁸ See Ex. 305, at 5 (Jacobs Direct).

²⁹ 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-022/GR-12-961, at 17–22 (Sept. 3, 2013).

³⁰ *Id.*

³¹ *Id.*

³² Minn. Stat. § 216B.03.

³³ Minn. Stat. § 216B.16, subd. 4.

³⁴ Minn. Stat. § 216B.03.

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reasonable.”³⁵ In order to satisfy its burden with regard to the Commission’s investigation, Xcel must present evidence that proves it handled the Monticello Project prudently and that the costs it seeks to recover are reasonable.

To satisfy that burden, Xcel must do more than produce evidence showing that it acted prudently in making the initial decision to begin the Monticello Project. Xcel must also produce evidence showing that all of the subsequent decisions were prudent, and that the costs resulting from those decisions were reasonable; such a showing could be referred to as “implementation prudence.”³⁶ Xcel witness Mr. Alders framed the issue of implementation prudence by asking, “As we encountered new circumstances along the way, did the company properly think through what its options were and to what extent did the company respond to those changed circumstances in a prudent fashion?”³⁷ The OAG submits that the Company has failed to carry its burden of proof on both of these questions.

It is not enough for Xcel to simply present the final costs of the project and request recovery: The Minnesota Supreme Court has stated that a utility “does not necessarily meet its burden of demonstrating that [its costs are] just and reasonable” by “merely showing that it has incurred, or may hypothetically incur, expenses.”³⁸ Rather, to satisfy its burden, Xcel must produce affirmative evidence showing that the costs of the project were both prudent and reasonable, and that Xcel acted reasonably at every step of the way.

³⁵ Order Approving Investigation and Notice and Order for Hearing, Docket No. E-002/CI-13-754 (Dec. 18, 2013). The DOC published the final RFP in the State Register on November 25, 2013. 38 Minn. Reg. 740. It is available at <http://mn.gov/commerce/topics/request-for-proposals>.

³⁶ Tr. Evid. Hearing, Volume 2, at 13:9 (Sept. 30, 2014) (Alders).

³⁷ *Id.* at 13:8–13 (Alders).

³⁸ *In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Rates for Electric Service in Minnesota*, 416 N.W.2d 719, 723 (Minn. 1987).

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It is also important to recognize that the burden of proof applied in utility proceedings before the Commission is different from traditional civil lawsuits. During the evidentiary hearing,³⁹ and in its currently pending rate case,⁴⁰ Xcel has attempted to manufacture legal authority to allow it to shift the burden of proof to the OAG, the Department, and other parties. But Xcel has raised this argument before, and it has been rejected before by both the Commission and the Minnesota Supreme Court.

In its 1985 rate case, Xcel⁴¹ argued that once it produced evidence on a particular issue, it had created a “rebuttable presumption of reasonableness” that could only be overcome by competent evidence in rebuttal.”⁴² As noted by the Minnesota Supreme Court, the Commission “rejected that contention” because “the company had at all times the burden of proving the proposed rate change.”⁴³ The Supreme Court agreed with the Commission, and stated:

If there ever existed in this state a presumption to be applied in ratemaking, enactment of Minn. Stat. § 216B.16, subd. 4 (1986) effectively removed any presumption, and placed on the petitioning utility the burden of proving the proposed rate is fair and reasonable⁴⁴

In Minnesota, a utility does not create a presumption of recovery merely by producing evidence because enacted statutes clearly place the burden of proof on the utility, and *only* on the utility.⁴⁵

Neither is a utility guaranteed recovery simply because public agencies or other interveners are unable to identify the precise costs that should be disallowed. For example, in Xcel’s 2008 rate case the OAG and the Department challenged Xcel’s method of allocating costs

³⁹ Tr. Evid. Hearing, Volume 3, at 132:20-131:22 (Oct. 1, 2014) (Campbell).

⁴⁰ See Xcel Reply Brief, at 8–11, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. 13-868.

⁴¹ In 1985, the entity currently doing business as Xcel Energy was known only as Northern States Power.

⁴² *In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Rates for Electric Service in Minnesota*, 416 N.W.2d 719, 725 (Minn. 1987).

⁴³ *Id.*

⁴⁴ *Id.* at 726.

⁴⁵ Minn. Stat. § 216B.16, subd. 4.

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from its service company.⁴⁶ The public agencies determined that Xcel’s general allocator was inaccurate and unreasonable, and that its application had resulted in excess costs being allocated to Minnesota ratepayers.⁴⁷ The Department was unable to review each work order individually, so instead recommended a proxy reduction of one-half of the costs.⁴⁸ In response, Xcel argued that the public agencies had not met their burden because the Department had recommended a proxy adjustment to hundreds of work orders after it had identified problems in only two or three.⁴⁹ The Commission disagreed.⁵⁰

The Commission specifically rejected Xcel’s argument that the Department, or other public agencies, had to produce evidence after demonstrating that the Company’s request was unreasonable.⁵¹ The Commission recognized that the Department and OAG had demonstrated a “significant incidence of over-allocation,” even though they had been unable to precisely determine the total amount.⁵² Rather than allowing the Company to be shielded by the lack of precision, the Commission found that it was necessary to accept the Department’s proxy recommendation because “setting rates that overcharge ratepayers,” in the absence of detailed information, “[was] not an acceptable alternative.” The Commission further stated:

[U]ncertainty about how much the ratepayers are being overcharged in cost allocation does not trump the Commission’s duty to do something about it. And the burden of proof lies with the Company – under Minn. Stat. § 216B.03, any doubt as to the reasonableness of any rate must be resolved in favor of the consumer.

⁴⁶ See *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-002/GR-08-1065, at 18 (Oct. 23, 2009).

⁴⁷ *Id.* at 18–20.

⁴⁸ *Id.*

⁴⁹ *Id.* at 19.

⁵⁰ *Id.* at 20.

⁵¹ *Id.* at 20–21.

⁵² *Id.* at 20.

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For that reason, the Commission cannot concur in the ALJ's observation that "[t]he ALJ cannot conclude based on the record that the recommended disallowances are either necessary or more reasonable than the costs proposed by Xcel." The OES is not obligated to prove that the disallowances are necessary or reasonable; Xcel is obligated to prove that it has adequately remedied the cost misallocations that the OES has demonstrated both exist and harm Minnesota ratepayers.⁵³

The same burden of proof applies in every rate proceeding before the Commission. A utility is not protected by any presumption of recovery simply by filing a request to increase rates. In order to recover any costs, the utility must produce sufficient evidence to prove that the rates it has requested are just and reasonable. If the utility fails to do so, then the costs must be disallowed; equally, if a public agency or other intervener demonstrates that costs are unreasonable or imprudent, then they must be disallowed as well.

Xcel has failed in both respects in this case. The evidence produced by Xcel in this matter is not sufficient to demonstrate that the Company handled the Monticello Project prudently or that the costs of the Project were reasonable; furthermore, the evidence that is in the record demonstrates that a significant amount of the cost overruns for the Project were caused by Xcel's poor management and should not be recovered from ratepayers.

II. XCEL HAS NOT PRODUCED EVIDENCE TO SHOW THAT COSTS OF THE MONTICELLO PROJECT WERE PRUDENT AND REASONABLE.

A. The Testimony Provided by Xcel's Witnesses is Not Reliable.

As a threshold issue, before considering whether Xcel has made a sufficient evidentiary showing, the ALJ and the Commission should keep in mind that the witnesses provided by Xcel were generally unreliable. Each of the witnesses that Xcel presented to establish its prudence

⁵³ *Id.* at 21.

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was flawed in some way, and the combination of those flaws indicates that Xcel's witnesses, as a group, did not provide reliable testimony in this matter.

Initially, Mr. Sparby's testimony should be considered in light of Mr. Sparby's direct financial interest in the outcome of this case. While Mr. Sparby would not directly admit that he is paid a bonus,⁵⁴ he did agree that some portion of his compensation is tied directly to the performance of Xcel Energy. In fact, Xcel's publicly available SEC filings indicate that Xcel awarded Mr. Sparby more than \$300,000 in "annual incentive pay,"⁵⁵ which is intended to "motivate achievement of Xcel Energy's short-term operational and financial goals."⁵⁶ Mr. Sparby agreed during the evidentiary hearing that his compensation package from Xcel may be affected by the outcome of this case.⁵⁷

In addition to the incentive pay Mr. Sparby receives from his "executive compensation program," he owns more than 120,000 shares of Xcel stock, and likely a significant number of unexercised options.⁵⁸ In fact, SEC filings indicate that half of Mr. Sparby's annual compensation, like that of other Xcel executives, is made up of performance shares and units of common stock.⁵⁹ As Mr. Sparby noted during the evidentiary hearing, "a significant disallowance," like the ones recommended by the OAG and the Department, "could affect Xcel Energy's financial performance," and, therefore, Mr. Sparby's personal finances.⁶⁰ With all due

⁵⁴ When asked if he was "paid a bonus," Mr. Sparby responded that he regarded his executive compensation program as "something different than a bonus," even though it is directly tied to the performance of the Company and is called "incentive pay." Tr. Evid. Hearing, Volume 1, at 22:21–23:6 (Sept. 29, 2014) (Sparby).

⁵⁵ Mr. Sparby did not clarify why he refused to agree that his incentive pay was a bonus.

⁵⁶ This information is drawn from Xcel Energy's most recent proxy filing which is publicly available on Xcel's website. The relevant portions of the proxy statement have been attached as Attachment A.

⁵⁷ Tr. Evid. Hearing, Volume 1, at 24:7 (Sept. 29, 2014) (Sparby).

⁵⁸ Attachment A, at 31; *see also* Tr. Evid. Hearing, Volume 1, at 20:22–25 (Sept. 29, 2014) (Sparby).

⁵⁹ Attachment A, at 37.

⁶⁰ Tr. Evid. Hearing, Volume 1, at 24:2–3 (Sept. 29, 2014) (Sparby).

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respect to Mr. Sparby, his financial interest in the outcome of this matter indicates that his testimony may be biased.

On top of Mr. Sparby's financial interest in the outcome of this matter, the testimony that he provided is of even less evidentiary value given the fact that he was not directly responsible for or involved in the Monticello Project for a significant period of time during implementation. As Mr. O'Connor noted, the "majority [of the work] was done during the refueling outages" in 2009, 2011 and 2013.⁶¹ But from 2009 to 2011, Mr. Sparby was the Chief Financial Officer of the parent company Xcel Energy.⁶² As CFO, Mr. Sparby was "responsible for the financial group, the auditing group, the risk function, [and] forecasting" for Xcel Energy's operations in Colorado, New Mexico, Texas, North Dakota, South Dakota, Wisconsin, and Michigan, in addition to its Minnesota operations.⁶³ In other words, while he was CFO, Mr. Sparby was not directly managing or overseeing the Monticello Project. Because he was not directly involved in the implementation of the project while he was the CFO of the parent company, Mr. Sparby's testimony about the Company's prudence or the reasonableness of the costs is of only limited value.

Similar to Mr. Sparby, Mr. O'Connor presented testimony in this matter as the Chief Nuclear Officer.⁶⁴ But Mr. O'Connor did not join Xcel Energy until 2007, well into the planning process for the Monticello Project.⁶⁵ And Mr. O'Connor did not become the Chief Nuclear Officer until recently.⁶⁶ Before he became Chief Nuclear Officer, Mr. O'Connor may have been involved in the Monticello Project but was not the ultimate decision maker; instead, that

⁶¹ Tr. Evid. Hearing, Volume 1, at 109:11–16 (Sept. 29, 2014) (O'Connor).

⁶² See Tr. Evid. Hearing, Volume 1, at 17–19 (Sept. 29, 2014) (Sparby).

⁶³ *Id.* at 19:19–22 (Sparby).

⁶⁴ See Ex. 3, at 1 (O'Connor Direct).

⁶⁵ *Id.*

⁶⁶ Tr. Evid. Hearing, Volume 2, at 20–21 (Sept. 30, 2014) (Alders).

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responsibility rested with the Company's then-Chief Nuclear Officer, Mr. Koehl.⁶⁷ As the Chief Nuclear Officer during the period when most of the planning and implementation work was done for the Monticello project, Mr. Koehl, rather than Mr. O'Connor, would have been the person best suited to provide testimony about whether the project was conducted prudently. Unfortunately, though, Mr. Koehl did not provide testimony in this matter and Xcel did not make him available to the Commission or other parties.

Xcel's other witnesses are also of limited value in determining whether Monticello Project was conducted prudently. While Mr. Alders provided testimony about the forecasting and modeling done to support the Monticello Project, he did not actually perform the modeling himself; rather, he was available to "address the questions" of the people who actually did the modeling.⁶⁸ Mr. Weatherby did not provide any testimony about the prudence of the Project; instead, "the focus of [Mr. Weatherby's] testimony was on the costs [Xcel] actually recorded."⁶⁹ Mr. Stall and Mr. Sieracki were consultants hired by Xcel to provide testimony beneficial to the company.⁷⁰ In fact, Mr. Stall's most recent experience in the nuclear field was with Turkey Point and St. Lucie power plants in Florida,⁷¹ which are currently about \$2 billion dollars over-budget for their own extended power uprates.⁷² Each of Xcel's witnesses is flawed, and as a group their testimony is unreliable. The Commission should keep that unreliability in mind when determining whether Xcel has met its burden of proof in this matter.

⁶⁷ *Id.* at 21.

⁶⁸ Tr. Evid. Hearing, Volume 2, at 19:24–20:7 (Sept. 30, 2014) (Alders).

⁶⁹ Tr. Evid. Hearing, Volume 2, at 48:1–16 (Sept. 30, 2014) (Weatherby).

⁷⁰ See Ex. 4, at 1 (Stall Direct); Ex. 11, at 1 (Sieracki Rebuttal).

⁷¹ Ex. 4, at 1–2 (Stall Direct).

⁷² In 2007, Mr. Stall's previous employer estimated that the Turkey Point and St. Lucie EPU project would cost approximately \$1.4 billion, but by 2013 the estimated costs had grown to approximately \$3.4 billion, for a total cost increase of \$2 billion dollars. Prehearing Order, *In re: Nuclear Cost Recovery Clause*, Docket No. 130009-EI, 2013 WL 3866104, at *10 (Fla. Pub. Svc. Comm. July 23, 2013).

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B. Xcel Has Not Proven That the Costs of the Monticello Project Are Reasonable and Prudent.

Xcel has produced a wealth of documents and testimony in this matter, but the volume of information produced does not make up for the fact that Xcel has not demonstrated that it acted reasonably based on what it knew or should have known, or that the final costs for the Monticello Project were incurred reasonably. Xcel introduced a mountain of information to explain why it decided to undertake the Monticello Project initially, how it discovered significant sub-projects that it did not initially anticipate, and why it was necessary to complete those projects in order to finish the Project. But in focusing on the decisions it made to begin and continue the project, Xcel has failed to address whether it acted prudently and incurred reasonable costs in actually doing the work once the decision to attempt new scope modifications was made.

The Company had ample opportunities both in pre-filed testimony and during the evidentiary hearing to remedy this lack of production. During the evidentiary hearing, Commission Staff repeatedly asked Xcel witnesses where in the record the Company had produced “any written documentation . . . beyond the resource planning documents that refer to the decision-making process undertaken by Xcel in changing the work scope from the original EPU plan.”⁷³ Commission Staff also asked whether “when the company was looking at any particular item, there’s a discussion of the various options it considered and why it made the decision to proceed as it did as opposed to just a general recap of what the company did?”⁷⁴

⁷³ Tr. Evid. Hearing, Volume 2, at 16:20–17:20 (Sept. 30, 2014) (Alders).

⁷⁴ *Id.* at 16:20–17:20 (Alders); *see also* Tr. Evid. Hearing, Volume 1, at 63–66 (Sept. 29, 2014) (Sparby); Tr. Evid. Hearing, Volume 1, at 139–40 (Sept. 30, 2014) (O’Connor).

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Xcel witnesses James Alders and David Sparby told the Staff that they should ask Mr. Tim O'Connor about those issues, or review Mr. O'Connor's testimony.⁷⁵ But when he was on the stand, Mr. O'Connor told the Staff that he was not sure where that information could be found, and they should ask Xcel witness Mr. Scott Weatherby. In a continuing theme, when Mr. Weatherby was asked where the information could be found, he told the Staff to ask Mr. O'Connor.⁷⁶

With the assistance of his counsel, Mr. O'Connor claimed on redirect that some portions of his direct testimony provided the information that Staff was looking for.⁷⁷ But a review of the pre-filed testimony reveals that it simply does not contain the information Staff was seeking. In the pages referenced, Mr. O'Connor provides a description of ten major scope modifications that led to "95 percent of the total Program costs."⁷⁸ But for the vast majority of the modifications, Mr. O'Connor does not provide discussion of the Company's decision-making process once it decided to undertake the modifications, or of what alternatives it considered.

For each of the modifications, Mr. O'Connor provides a description of what the modification was, how the plan changed from the initial scope, why the modification was necessary, and how much the modification cost; essentially, Mr. O'Connor simply summarizes what the project was for, and how much it cost.⁷⁹ The only exception, as noted by Staff, was Mr. O'Connor's discussion of why the Company decided to install a 13.8 kV electric distribution

⁷⁵ Tr. Evid. Hearing, Volume 2, at 17 (Sept. 30, 2014) (Alders); Tr. Evid. Hearing, Volume 1, at 65 (Sept. 29, 2014) (Sparby).

⁷⁶ Tr. Evid. Hearing, Volume 2, at 48 (Sept. 30, 2014) (Weatherby).

⁷⁷ Tr. Evid. Hearing, Volume 1, at 143 (Sept. 29, 2014) (O'Connor).

⁷⁸ Ex. 3, at 93 (O'Connor Direct).

⁷⁹ *See id.* at 93–145.

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system instead of a 4 kV electric distribution system.⁸⁰ For the rest of the major modifications, Mr. O'Connor did not provide a discussion of the Company's decision-making process for increasing the scope of the Project or what alternatives the Company considered once that decision was made. Similarly, in his rebuttal testimony Mr. O'Connor devoted several pages to establish that the scope changes were "necessary," but in doing so largely misses the point.⁸¹ Even assuming Mr. O'Connor is correct and all of the scope changes were "necessary," Xcel still bears the burden of proving that it acted prudently in implementing the scope changes,⁸² and that the costs of doing so were reasonable.

The testimony that Mr. O'Connor provided when he was recalled during the evidentiary hearing indicates that the Company *could* have provided such information if it had wanted to do so. In response to a series of questions asked by the ALJ, Xcel recalled Mr. O'Connor on the second day of the evidentiary hearing.⁸³ The ALJ asked Mr. O'Connor, "My question is somewhere in the process and apparently in your testimony, it didn't jump out to me as to where – what is the process where flags jumped up and the alternatives were discussed? . . . How do I and the Commission know that you're keeping costs down . . . for the individual items?"⁸⁴

At this point, Mr. O'Connor described the process the Company used for determining how to complete the reactor feedwater subproject. According to Mr. O'Connor, when the project started showing cost variances, the Company assembled "revised estimates" and considered

⁸⁰ *Id.* at 131–32. In one other instance, Mr. O'Connor's direct indicates that it will discuss alternatives considered for the condensate demineralizer system, but then proceeds to discuss only whether the Company could have delayed the installation of the system rather than providing a discussion of alternatives. *See id.* at 111.

⁸¹ Ex. 9, at 57–60 (O'Connor Rebuttal).

⁸² Xcel witness Mr. Alders described this as "implementation prudence." Tr. Evid. Hearing, Volume 2, at 13:9 (Sept. 30, 2014) (Alders).

⁸³ Tr. Evid. Hearing, Volume 2, at 47–49 (Sept. 30, 2014) (Weatherby).

⁸⁴ Tr. Evid. Hearing, Volume 2, at 54:4–12 (Sept. 30, 2014) (O'Connor).

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“what options were available for us to do something different.”⁸⁵ Mr. O’Connor provided an example of how the Company challenged the original design made by General Electric for the piping in the reactor feedwater system.⁸⁶ Mr. O’Connor stated that Xcel’s “internal governance counsels” asked General Electric whether there was an alternative way to do the piping that could be smaller or cost less.⁸⁷ When General Electric told Xcel that its plan was the most efficient option, Xcel went to a third-party architect to find out if there were better alternatives.⁸⁸

Even with the information that Mr. O’Connor provided, however, the Company has still not fully explained the process for the reactor feedwater piping, much less the entire reactor feedwater subproject. While Mr. O’Connor provided a lot of information about the piping during the evidentiary hearing, Xcel never described what the options for the piping were, how much they cost, which options the Company selected, or how it made that decision. And Xcel has not produced any documents related to either the issues that Mr. O’Connor discussed or the issues that were not discussed.

Furthermore, the fact that Mr. O’Connor was able to provide this information about a single aspect of one subproject only highlights the fact that the Company *could* have produced similar information about the other subprojects, but chose not to. For example, Mr. O’Connor referred to Xcel’s “internal governance counsels,” but other than this brief reference the Company has never explained who the internal governance counsels are, what they do, or why it is reasonable to rely on their decisions to ensure that subprojects were completed in a prudent fashion. As a further example, when Mr. O’Connor was recalled he provided information about the process for considering alternatives for the reactor feedwater piping; but he did not provide

⁸⁵ Tr. Evid. Hearing, Volume 2, at 56 (Sept. 30, 2014) (O’Connor).

⁸⁶ *Id.* at 57.

⁸⁷ *Id.*

⁸⁸ *Id.* at 57–58.

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information about alternatives for the reactor feedwater pumps, or for the condensate demineralizer, or for how the company ran cabling for the 13.8 kV electric distribution system, or the turbines that were replaced, or for any of the significant changes that were made during the Monticello subproject. It appears, based on the amount of information contained in Mr. O'Connor's off-the-cuff description of the process for the reactor feedwater piping, that Xcel chose not to provide a significant amount of information that would have been helpful in analyzing whether Xcel acted prudently in implementing the scope modifications.

Mr. O'Connor's statement during the evidentiary hearing succinctly captures the problem with Xcel's case. When Staff asked Mr. O'Connor where in the record the Commission could find information about Xcel's decision-making process, Mr. O'Connor stated, "I can assure you that – I think what you're asking is did we do, you know, cost benefit evaluations and look at alternatives, and the answer is absolutely."⁸⁹ Rather than producing any evidence of its processes or what alternatives it considered, Xcel states simply that it "absolutely" considered cost benefit evaluations, considered alternatives, and has some kind of process in place. But by failing to produce any evidence to support its claims, Xcel essentially asks the ALJ, the Commission, and other parties, to take Xcel's claim that it acted prudently on faith. In doing so, Xcel has clearly failed to meet its burden to prove that the costs of the Monticello Project were reasonable and incurred prudently.

III. THE RECORD DEMONSTRATES THAT A SIGNIFICANT PORTION OF THE COST OVERRUNS WERE CAUSED BY XCEL'S POOR MANAGEMENT OF THE MONTICELLO PROJECT.

In the previous section, the OAG demonstrated that the evidence Xcel has produced in this case does not prove that the costs for the Monticello Project were prudently incurred and that

⁸⁹ Tr. Evid. Hearing, Volume 1, at 141 (Sept. 29, 2014) (O'Connor).

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recovery of the costs is reasonable. What the record does show, however, is that many of Xcel's decisions in planning, designing, and implementing the Monticello project were endemic of poor project management. As described by Department witness Mr. Crisp:

As with every major project and most minor projects the overall execution of the project is directly attributed to thorough and exhaustive project management. Success is defined by the schedule, cost, and operational benefits the project is able to accrue to the plant and to the ratepayers. Each attribute of overall project management, including proper staffing, scope definition, scheduling, design, procurement, and construction is linked together to form a synergistic approach to the overall execution of the project. A project cannot expect to be completely successful if any one or more of the attributes fails to meet its goal.⁹⁰

Xcel failed to follow these basic steps in a multitude of ways; the Company decided to fast-track the project, and to proceed with design and construction in parallel; the Company failed to support these decisions properly defining the scope of the Project; the Company also failed to properly manage its contractors. Each of these decisions independently contributed to cost overruns; but they also exacerbated the other, related problems. These cumulative failures led to a final cost for the Monticello Project that exceeded the Company's initial estimate by nearly 135 percent. Those portions of the \$428.1 million in cost overruns that were caused by Xcel's poor management were not incurred prudently, and Xcel's request to recover those costs is unreasonable and should be denied.

A. Xcel's Decision to Proceed on a "Fast Track" Contributed to Increased Costs.

In planning the Monticello project, Xcel considered two possible schedules for the work: the Company could do the work during the 2011 and 2013 outages, or the Company could move

⁹⁰ Ex. 300, at 5 (Crisp Direct).

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quickly and try to do the work during the 2009 and 2011 outages.⁹¹ Xcel's EPU Project Team recommended installing the EPU during the 2011 and 2013 refueling outages, but the Board ignored their recommendation.⁹² Instead, the Board decided to order a schedule that required the project to be completed during the 2009 and 2001 outages.⁹³ As a result, "all work activities [were] 'fast track' with little ability to meet outage milestones."⁹⁴ Because the work was on a "fast track," the planning for the project "never caught up to work load."⁹⁵ As a result, the employees actually doing the work never had the time to plan appropriately, which led to increased costs.

Xcel witness Mr. Sparby admits that the fast track schedule was "aggressive."⁹⁶ Mr. Sparby attests that the Company's fast track schedule was necessary because the Company had been ordered to meet customer baseload requirements in its 2004 Resource Plan.⁹⁷ But Mr. Sparby also acknowledges that the Company did not have "ample time to pursue and implement" the project.⁹⁸ Mr. Sparby fails to recognize, perhaps because he was intimately involved in making the decision to begin the Project, that the reason the Company did not have ample time to pursue and implement the Project was that the Board disregarded the recommendation of Xcel's EPU Project Team and pushed to complete the project on an "aggressive" schedule. As noted by Department witness Mr. Crisp, "the expedited approach caused delays and budget

⁹¹ Ex. 12, at 14:20–15:15 (Sparby Rebuttal).

⁹² Ex. 300, MWC-2, at 3 (Crisp Direct).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Ex. 12, at 15 (Sparby Direct).

⁹⁷ *Id.* at 24.

⁹⁸ *Id.* at 21.

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increases that could have been avoided.”⁹⁹ Mr. Crisp’s conclusion is supported by Xcel’s internal documents, which recognized that the fast track schedule contributed to the Project’s significant cost overruns.¹⁰⁰

The Board’s decision to proceed on an expedited, fast track schedule was not reasonable. If the Company’s employees and contractors had been able to spend the time to effectively scope out the project and do design work, it is likely that a significant portion of the cost overruns could have been avoided. Instead, the Board pushed to have the Project completed as fast as possible in the hopes that the Company would be able to maximize its profits from the Monticello Plant.¹⁰¹ As a result, the Project is hundreds of millions of dollars over budget and years late. In deciding to fast track the Project, the Board took unacceptable risks with the project at the expense of ratepayers, as it is ratepayers, rather than the Board, who are now being asked to pay for the cost overruns. The Project would have cost less if it had not been conducted on a fast track schedule.¹⁰² If Xcel is permitted to recover all of the cost overruns in this case, Xcel’s Board, and the directors of other Minnesota utilities, will continue to take unacceptable risks with the assumption that ratepayers will be required to bear the costs of any mistakes on the part of the Company. The Board’s decision was not prudent because it led to increased Project costs, and it would not be reasonable for Xcel to recover those costs from ratepayers.

⁹⁹ Ex. 300, at 29:14–16 (Crisp Direct).

¹⁰⁰ *Id.* MWC-2, at 3.

¹⁰¹ Because the Plant can only operate until its license expires, its profitable life is a finite period. If the Project had been completed in 2011, the Company could have enjoyed the financial benefits of the Project for 19 years based on the end of the license in 2030. If the schedule had planned for an in-service date in 2013, the costs of the project may have been lower but Xcel would only enjoy the financial benefits of the Project for 17 years.

¹⁰² Tr. Evid. Hearing, Volume 3, at 61:12–15 (Oct. 1, 2014) (Crisp).

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B. Xcel's Decision to Design and Build in Parallel Led to Increased Costs.

Especially when considered in light of its decision to proceed on an “aggressive,”¹⁰³ fast track schedule, Xcel’s decision to do design and construction work in parallel was not prudent. Doing design and construction at the same time, rather than completing a thorough design before proceeding to construction, led to increased costs for the Project.

While some construction projects can be completed effectively by doing design work and construction at the same time, “the most successful projects proceed from engineering to procurement to construction.”¹⁰⁴ One reason that it is better to design, and then build, is that “it is likely some construction and engineering work [will be] duplicated or made unnecessary by later changes in scope and design.”¹⁰⁵ This concern was borne out by the Company’s experience with the Monticello Project: the Company acknowledged that it had to “modify [its] construction and design plans on an expedited basis to maintain the outage schedule.”¹⁰⁶ The Company also acknowledged that the “emergent work” resulted in increased installation costs, although the Company did not bother to track the costs in any way.¹⁰⁷ Completing all of the design work first would have avoided these problems and led to a “more accurate cost estimate and a better managed project.”¹⁰⁸

A reasonable utility would have known that the decision to design and build in parallel could lead to increased costs that could have been avoided by a more measured approach. Department witness Dr. Jacobs testified that Xcel should have known that a parallel design/build

¹⁰³ Ex. 12, at 15 (Sparby Direct).

¹⁰⁴ Ex. 305, at 17 (Jacobs Direct).

¹⁰⁵ Ex. 200, at 19 (Lindell Rebuttal).

¹⁰⁶ Ex. 3, at 39:22–23 (O’Connor Direct).

¹⁰⁷ *Id.* at 39:22–26.

¹⁰⁸ *Id.*

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approach would lead to problems because “performing project design in parallel with procurement and construction has been problematic in EPU projects” for other utilities around the country.”¹⁰⁹ Additionally, Xcel’s own witnesses acknowledge that the Company’s decision to design and build in parallel led to increased costs. Xcel witness Mr. O’Connor testified that “the nature of a parallel path of design and construction results in the need to adjust more frequently to changed conditions than under a more linear construction sequence.”¹¹⁰ Mr. O’Connor also noted that the Company had to proceed with design and construction in parallel in order to meet the Board’s target of completing the Project by 2011.¹¹¹ If the Company had proceeded at a more reasoned pace, and completed its design before beginning construction, the Project could have been completed with less cost overrun.

The challenges caused by the Company’s decision to design and build in parallel were made worse by the Company’s failure to produce as-built drawings of the Monticello plant. Xcel’s consultant Mr. Stall noted that the drawings of the Monticello plant that were used to perform the design work “did not completely match the actual as-found conditions.”¹¹² Mr. Stall discovered “many instances where field design changes were required as a result of drawing discrepancies.”¹¹³ For example, the Company discovered during the 2009 outage that the “as-built designs for the feedwater heater piping were incorrect.”¹¹⁴ As a result, the Company had to do design work during the outage, rather than preparing for it by doing thorough design work beforehand. If the Company had used accurate as-built drawings, the rush to do design

¹⁰⁹ *Id.*

¹¹⁰ Ex. 3, at 111 (O’Connor Direct).

¹¹¹ *Id.* at 64.

¹¹² Ex. 4, at 62:11 (Stall Direct).

¹¹³ *Id.* 62:12–14.

¹¹⁴ Ex. 3, at 39:14–16 (O’Connor Direct).

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work during the outage could have been avoided. The as-built drawings were essential in order to properly design the work that would be done in the plant, but the Company either did not have them or had failed to ensure they were kept accurately.

Mr. Crisp described how important as-built drawings are for power plant upgrades:

As-built drawings, summaries, conditions, procedures and policies are the life blood of an operating power plant . . . particularly plants that have been in operation for a number of years such as Monticello. Over the years in the due course of normal operation and maintenance and capital initiatives, “things” change; new cabling, wiring, updated instrument and controls, old equipment is removed and new equipment is added. If “as-builts” are not maintain[ed] in an updated conditions, everyone in the Plant runs the risk of making a serious mistake while carrying out normal everyday operational functions.¹¹⁵

Mr. Crisp noted that he found it very unusual that the Company did not have as-built designs of the Plant, since “the storage and maintenance of as-built drawings is a critical process” throughout the industry.¹¹⁶

It is even more unusual that the Company did not have as-built designs because it performed a similar EPU in 1998; the NRC classified both the 1998 power uprate and the current power uprate as an “extended” power uprate.¹¹⁷ Despite the fact that the NRC classified it as an “extended” power uprate, Mr. O’Connor prefers to call the 1998 uprate a “rerate.”¹¹⁸ Mr. O’Connor’s use of non-standard vocabulary should not distract from the fact that Xcel conducted a full “extended” power uprate at the Monticello Plant in 1998, and that experience should have both informed the Company’s planning and caused the Company to create as-built designs that

¹¹⁵ Ex. 303, at 15 (Crisp Surrebuttal).

¹¹⁶ *Id.*

¹¹⁷ NRC Backgrounder on Power Uprates for Nuclear Plants, Ex. 410. Mr. O’Connor’s use of non-standard vocabulary should not distract from the fact that Xcel conducted a full “extended” power uprate at the Monticello Plant in 1998, and that experience should have both informed the Company’s planning and caused the Company to create as-built designs that could have been used in this plant.

¹¹⁸ Tr. Evid. Hearing, Volume 1, at 116–117 (Sept. 29, 2014) (O’Connor).

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could have been used in preparing designs for the current EPU. Without as-built drawings to inform the design of the work, Xcel's employees regularly had to deviate from the design. This uncertainty led to increased costs for the project overall and made Xcel's decision to design and build in parallel even more costly.

Xcel attempted to quantify the costs of these design inefficiencies by reviewing payments for design and abandoned work. Xcel first examined whether it could have avoided "field changes" if it had done better design and scoping work.¹¹⁹ The total cost of the field changes was between \$25 and \$30 million.¹²⁰ If Xcel had been able to prepare more accurate designs, some expenses caused by these field changes could have been avoided.¹²¹ Mr. O'Connor believes that the Company could only have achieved "nominal" savings of only \$1 million, but does not provide *any* analysis for that conclusion other than his personal opinion.¹²² Given that Mr. O'Connor did not explain the basis for his conclusion, it appears likely that some additional savings could have been achieved had the Company acted with reasonable prudence in preparing its designs.

Xcel also attempted to measure duplicative design costs. Xcel determined that it paid at least \$13 million for subsequent design work that was part of the original scope contract with GE.¹²³ Mr. O'Connor claims that the company was "exercising good judgment" in paying \$13

¹¹⁹ Ex. 9, at 77 (O'Connor Rebuttal).

¹²⁰ *Id.*

¹²¹ *Id.* at 77–78.

¹²² *Id.*

¹²³ *Id.* at 79.

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million for work that was duplicative, but that claim is absurd. The Company paid at least \$13 million for design work that was duplicative, and those expenses were imprudently incurred.¹²⁴

Finally, Xcel attempted to measure costs related to abandoned subprojects. The Company determined that it spent \$11 million for projects that were ultimately not completed.¹²⁵ If the company had acted reasonably in preparing its designs, it is likely that some of these expenses could have been avoided.

The Company measured \$25 to \$30 million in expenses for field changes; \$13 million for duplicative design; and \$11 million for abandoned work. If the Company had acted reasonably in preparing its designs, some portion of these costs could have been avoided. To the extent that Xcel's decision to proceed with poor designs led to avoidable costs, Xcel acted imprudently and any resulting costs should not be recovered from ratepayers.

C. Xcel's Initial Scoping of the Monticello Project Was Inadequate.

When Xcel filed the CON for the Monticello EPU, the Company outlined all of the major modifications it believed would be necessary to finish the project.¹²⁶ In that filing, Xcel told the Commission that it had "comprehensively evaluated the effects of the extended power uprate at Monticello,"¹²⁷ and that only "smaller scope modifications [would] be identified during the detailed engineering phase of the project."¹²⁸ Unfortunately for the Company, and for ratepayers, this has not been the case.

¹²⁴ To the extent that the Company recovers any of those expenses through settlements or claims made against contractors, the Company has agreed that the recovery will be used to offset the costs of the Project. *Id.*

¹²⁵ *Id.* at 80.

¹²⁶ Petition, *In the Matter of the Application of Northern States Power Company for a Certificate of Need for the Monticello Nuclear Generating Plant Extended Power Uprate*, Docket No. E-002/CN-08-185, at 3-13 (Feb. 14, 2008).

¹²⁷ *Id.* at 3-16.

¹²⁸ *Id.* at 3-13.

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After Xcel began construction for the Monticello Project, the Company discovered that it needed to make “significant design modifications to [its] high-level conceptual designs” used in the CON proceeding.¹²⁹ After initial design work was completed, the Company “substantially expanded” the scope of four major modifications.¹³⁰ The four major modifications included the feedwater heaters, the reactor feed pumps and motors, the condensate demineralizer, and the 13.8 kV electric distribution system.¹³¹ While the Company had initially estimated that the total cost of these modifications would be \$103.7 million, by the time the Company had finished installing them the costs had ballooned to \$406.4 million.¹³² The cost overrun for these four projects alone makes up approximately 70 percent of the total cost overruns.

This incredible cost escalation is representative of Xcel’s failure to properly scope the project. As noted by Mr. Crisp, “In the case of Monticello, a fully functioning and operating nuclear plant, it is . . . critical to establish the scope in great detail. Failure to establish the scope at the outset all but guarantees schedule delays and cost overruns.”¹³³ According to Mr. Crisp,

[B]efore any design is initiated, a fully integrated team representing operations and designers must be assembled for the purpose of determining the existing conditions of plant equipment, whether the existing equipment has adequate capacity to be used in the future plans or whether the existing equipment does not have the remaining life or capacity to work within the new scheme.

At this point in the scoping process the goals of the project must be specifically identified in order for the design team to begin the process of establishing the requirements for new and replacement equipment.

¹²⁹ Ex. 3, at 4:13–15 (O’Connor Direct).

¹³⁰ *Id.* at 32:9–11.

¹³¹ *Id.*

¹³² *Id.* at 5.

¹³³ Ex. 300, at 6–7 (Crisp Direct).

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In a parallel [design and build] effort, the design team along with the plant operational team must be physically evaluating the logistics required to dismantle any retired existing equipment and remove those components from their specific installation sites within the plant while determining the physical size and installation requirements of the new equipment.¹³⁴

Unfortunately, Xcel did not take these steps to ensure that costs would be controlled. Instead, Xcel began the project on the basis of a “preliminary level of detail” that “failed to capture the true costs necessary to implement the overall Program.”¹³⁵ Xcel’s decision to proceed without a fully defined scope for the Project “almost guarantee[d] schedule delays and cost overruns during the actual process of constructing the project.”¹³⁶

In fact, when discussing the need to expand the scope of the project, Mr. O’Connor admitted that the Company’s project management was not up to par. Mr. O’Connor testified, “I may have scheduled a more robust project management in advance of the increased scope. The need for additional project management was not clear to us in 2009”¹³⁷ When asked to expand on that statement during the evidentiary hearing, Mr. O’Connor said that “he might have put more effort in the early conceptual designs.”¹³⁸

“More effort” for the early conceptual designs would have reduced the total cost of the project. Mr. O’Connor testified during the evidentiary hearing that the Company decided to increase the scope of the four major modifications in 2007.¹³⁹ Mr. O’Connor also testified that some of the design work for those modifications had been done before the Company decided on

¹³⁴ Ex. 300 at, 7:14–8:3 (Crisp Direct).

¹³⁵ Ex. 3, at 30:6–7, 30:20–22 (O’Connor Direct).

¹³⁶ Ex. 300, at 8:3–5 (Crisp Direct).

¹³⁷ Ex. 3, at 63 (O’Connor Direct).

¹³⁸ Tr. Evid. Hearing, Volume 1, at 96:5–13 (Sept. 29, 2014) (O’Connor).

¹³⁹ *Id.* at 93:5–18 (O’Connor).

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an increased scope.¹⁴⁰ Performing design work before fully establishing the scope of the project led to inefficiencies; based on the scale of the scope additions Mr. O'Connor discussed, it is likely that some of the design work had to be redone or modified significantly after the Company decided to expand the scope.¹⁴¹ For example, Mr. O'Connor indicated that the design for the condensate demineralizer, one of the major modifications, "spanned three years and required multiple iterations due to changes in project scope."¹⁴² The need to perform multiple iterations increased the cost of the Project. That cost, and likely other costs, could have been avoided if Xcel had put "more effort" into defining the Project scope.

The Company attributes the cost increase to "the fact that we substantially underestimated the complexity and difficulty of completing the installation work."¹⁴³ But this excuse makes little sense because, as noted by Mr. Crisp, installation was the area where the Company and its contractors had the most control *and* the area where effective scoping and project management should have been able to control cost overruns.¹⁴⁴ Xcel's failure to properly estimate the "complexity and difficulty" of the work is not a reasonable defense for the Company's decision to proceed with a "preliminary" scope; it is a symptom of beginning the Project without sufficient preparatory work.

The Company also points to the "small footprint" of the plant as a challenge, including problems with spacing, clearances, access, and physical arrangements of the Plant. But, again, the "failure to recognize these conflicts is a direct failure of Project Management."¹⁴⁵ The size

¹⁴⁰ *Id.* at 93:19 (O'Connor).

¹⁴¹ *Id.* at 95:9-13 (O'Connor).

¹⁴² Ex. 3, at 108 (O'Connor Direct).

¹⁴³ *Id.* at 34.

¹⁴⁴ Ex. 300, at 16 (Crisp Direct).

¹⁴⁵ *Id.* at 17.

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of the plant, or any of the details of its current design, should not have contributed to any cost overruns because the Company should have had complete knowledge of the Plant. Xcel has been operating the plant for more than 40 years, and is obligated under NRC regulations to have full documentation of the design of the plant.¹⁴⁶ Nothing related to the characteristics of the plant, including its size, should have surprised the Company or led to cost overruns.

The Company also argues that the increased scope modifications were prudent and reasonable because all of the work was necessary to complete the EPU and would have to be performed regardless of when they were discovered.¹⁴⁷ This argument is misleading, because the question at hand is not whether the modifications needed to be completed; rather, the question that must be answered is whether the scope modifications could have been completed for less if the Company had identified them during the initial scoping of the Project. Based on the inefficiencies described above, expending enough “effort” to properly define the scope of the Project would have reduced Project costs: in the expert opinion of Mr. Crisp, “establishing the scope of the project before beginning the design and construction phases of the project would have resulted in lower costs.”¹⁴⁸ The Company’s failure to properly define the scope of the Project led to increased costs; those costs were not incurred prudently and recovering them from ratepayers would not be reasonable.

D. Xcel’s Failure to Manage Contractors Led to Increased Costs.

Xcel relied heavily on contractors to perform the work needed to complete the Monticello Project. In reviewing the record, it appears that Xcel relied on contractors for virtually every

¹⁴⁶ Ex. 300, at 18–19 (Crisp Direct).

¹⁴⁷ O’Connor Opening Statement, Ex. 407, at 4.

¹⁴⁸ Ex. 200, at 23 (Lindell Rebuttal); *see also* Ex. 300, at 8 (Crisp Direct) (noting that “initial scope definition and project planning appeared to contribute significantly to the cost overruns”).

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action taken to finish the project, other than the decision to start the project and hire contractors. Given Xcel's dependence on contractors, it was important for Xcel to have a robust system in place to manage the contractors and ensure that work was performed efficiently. Xcel failed to do so.

Xcel initially retained General Electric ("GE") to "prepare the license amendment request, and to engineer, design and procure the necessary components and modifications to implement" the Project.¹⁴⁹ Xcel did not, however, select GE because it determined that GE would be the best company for the job; rather, Xcel was forced to select GE because "GE was the original designer of Monticello" and "holds proprietary rights to aspects of the design basis at Monticello."¹⁵⁰ As Xcel witness Mr. Stall noted, GE held enormous leverage over the Company as a result of those proprietary designs;¹⁵¹ the contract with GE likely cost the Company, and ratepayers, more than it would have if there had been effective competition for the design work.

It is also unclear exactly what work GE performed. GE did not do the design work, despite being retained as the "design contractor,"¹⁵² because GE retained Shaw as subcontractor, to do the engineering and design of the LCM/EPU modifications.¹⁵³ GE also did not do any of the installation work, because GE's contract did not include any provision to actually install any components of the Project. According to Mr. O'Connor, GE did not want to do the installation because it is not good at that kind of "stuff."¹⁵⁴

¹⁴⁹ Ex. 3, at 46 (O'Connor Direct).

¹⁵⁰ *Id.* at 46-47.

¹⁵¹ Tr. Evid. Hearing, Volume 2, at 74-75 (Sept. 30, 2014) (Stall).

¹⁵² Tr. Evid. Hearing, Volume 1, at 108:13-21 (Sept. 29, 2014) (O'Connor).

¹⁵³ Ex. 3, at 49 (O'Connor Direct).

¹⁵⁴ Tr. Evid. Hearing, Volume 1, at 107:15-23 (Sept. 29, 2014) (O'Connor).

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The work that GE and its subcontractors did do suffered because Xcel did not provide them with accurate information. For example, the Company discovered during the 2009 outage that the design drawings it had given to GE were “incorrect.”¹⁵⁵ Because GE and its subcontractors had based its designs on incorrect drawings, GE and the Company had to re-do the design plan during the outage. The Company also failed to provide GE with accurate information about the physical condition of the plant, such as the condition of the wiring and the receiving tanks in the condensate demineralizer.¹⁵⁶ Problems with the wiring and receiving tanks were discovered only after GE had begun its design work. If the Company had avoided these mistakes, GE and its subcontractors could have been more efficient and provided a superior design. More effective engagement and preparation from the Company could have led to better performance from all of its contractors.

Because GE would not do the installation work, Xcel sent out an RFP in 2007 to find a contractor to complete the installation.¹⁵⁷ Although GE had declined to contract for the work previously, it apparently changed its mind and responded to the RFP.¹⁵⁸ The only other response was from a consortium led by Day Zimmerman.¹⁵⁹ In late 2007, Xcel selected Day Zimmerman for “work planning and installation services.”¹⁶⁰ Unfortunately for Xcel, and for ratepayers, “Day Zimmerman’s performance . . . was not as strong as [Xcel] had hoped or expected.”¹⁶¹ As a

¹⁵⁵ Ex. 3, at 39 (O’Connor Direct).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 49.

¹⁵⁸ *Id.* at 50.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 75.

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result, Xcel had to transfer some portion of Day Zimmerman’s responsibilities to itself and other contractors.¹⁶²

Xcel was not done hiring contractors to try and get the Project back on track. In 2011, Xcel hired Bechtel Power Corporation to “provide comprehensive project management to ensure successful completion of the final LCM/EPU modifications.”¹⁶³ Given that Xcel had been actively pursuing the project since, at the latest, 2008, it seems relatively late in the process to be seeking assistance with project management. Even with Bechtel, though, the 2013 outage went over budget.¹⁶⁴

Xcel did not actually negotiate the agreements with all of these contractors itself. Xcel relied on yet another contractor, Nuclear Management Company (“NMC”), to actually enter into the contract with GE.¹⁶⁵ It is not clear from the record whether any Xcel employee actually participated in negotiating the GE contract. In fact, the NMC, rather than Xcel, was the “manager” of the entire Monticello Project.¹⁶⁶ Xcel witness Mr. Sieracki indicated that it was unusual to see a contractor used as a general manager in the nuclear industry, and that the typical procedure was to have a vice president from the utility act as the general manager of such a large construction project.¹⁶⁷ When the NMC dissolved half-way through the Monticello Project, Xcel was forced to take up the responsibility to manage the Project itself.¹⁶⁸ At that point, Xcel created a new vice president position, and named Al Williams general manager of the Monticello

¹⁶² Ex. 300, at 20 (Crisp Direct).

¹⁶³ Ex. 3, at 83 (O’Connor Direct).

¹⁶⁴ *Id.* at 84.

¹⁶⁵ The NMC had been retained by Xcel to operate the Monticello Plant. Tr. Evid. Hearing, Volume 2, 24 (Sept. 30, 2014) (Sieracki).

¹⁶⁶ Tr. Evid. Hearing, Volume 2, at 24 (Sept. 30, 2014) (Sieracki).

¹⁶⁷ *Id.* at 28 (Sieracki).

¹⁶⁸ *Id.* at 26 (Sieracki).

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Project.¹⁶⁹ Given the fact that he was the “general manager” of the project, it is likely that Mr. Williams would have useful information about the Project, but, like Chief Nuclear Officer Mr. Koehl, Mr. Williams did not provide any testimony in this case and Xcel did not make him available to the Commission or other parties.¹⁷⁰

The overlapping involvement of contractors led to increased costs for the Project. While there are many valid reasons to replace a contractor, “there are serious risk management issues that must be addressed by not only the Company but also the new contractor.”¹⁷¹ For example, when Day Zimmerman’s responsibilities were passed to new contractors, those contractors could not assume that Day Zimmerman had performed admirably.¹⁷² The new contractors must review a significant amount of work, or be “at extreme risk of liability claims throughout the life of the project.”¹⁷³ Xcel could have avoided the costs of redistributing Day Zimmerman’s responsibilities by applying a more rigorous selection process or providing better oversight.

Additionally, Xcel has not produced any evidence that it managed its contractors reasonably given all of the challenges it faced during the Project. Xcel did not provide any explanation in its written testimony; and when provided an opportunity to do so during the evidentiary hearing, Mr. O’Connor provided only vague descriptions of how the Company kept track of the many contractors working on the project. Mr. O’Connor indicated that the company had legal oversight, operational oversight, project oversight, and oversight by engineering.¹⁷⁴ While Mr. O’Connor described several different groups that had “oversight” of contractors, Mr.

¹⁶⁹ *Id.* at 33 (Sieracki).

¹⁷⁰ *Id.*

¹⁷¹ Ex. 300, at 21 (Crisp Direct).

¹⁷² Especially since Day Zimmerman was replaced due to the quality of its work.

¹⁷³ Ex. 300, at 21 (Crisp Direct).

¹⁷⁴ Tr. Evid. Hearing, Volume 1, at 109:3–10 (Sept. 29, 2014) (O’Connor).

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O'Connor did not explain what those groups did to ensure the contractors performed well, or how Xcel came to have so many problems with its contractors given all of the "oversight" it had.

Xcel had numerous problems with the contractors who completed the Monticello project in addition to its internal management problems. GE was not provided enough information to do a good job in its design work; poor performance on the part of Day Zimmerman led to transferring the work to other contractors; and Xcel ultimately had to turn to yet another major contractor just to get the Project even close to being finished. As noted by Mr. Crisp, "[T]hese failures are indicators that something within the project management execution program was ill, and that does cause cost . . . increases."¹⁷⁵ Xcel's inability to properly manage its contractors led to increased costs due to inefficient work and considerable delays.¹⁷⁶

E. The Ultimate Impact of Poor Management was Increased Costs.

Xcel's decision to proceed on an aggressive, fast track schedule, and to use a parallel design/build process, was not prudent. It was especially unwise given the Company's decision to rely on "preliminary" scoping work, rather than putting in the time and effort necessary to have a thorough understanding of what needed to be done to finish the Project. Xcel's inability to determine the true scope of the project led to major scope modifications, which led to inefficiencies in both the design and installation process. All of this, combined with Xcel's failure to manage its contractors, led to dramatically increased project costs. These cost overruns were the direct result of Xcel's multifaceted, wide-ranging failure to properly manage the Monticello Project.

¹⁷⁵ Tr. Evid. Hearing, Volume 3, at 63:11-14 (Oct. 1, 2014) (Crisp).

¹⁷⁶ Ex. 300, at 22 (Crisp Direct).

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It is possible that the Company's decision to proceed with design and construction in parallel would not have been such a problem, except that the Company also decided to proceed on an aggressive, fast track schedule and failed to provide for an acceptable initial scope. The Company may have been able to better define the scope of the Project if the Board had not pushed a fast track schedule. It is also possible that the Company's poor scoping could have been controlled if the Company had hired competent contractors and managed them closely. Each of these problems independently contributed to cost overruns. But in combination, they reveal an interrelated web of mismanagement by Xcel.

Xcel knew that its management of the Project was unsound. In 2011, then-Chief Nuclear Officer Mr. Koehl directed his subordinates to document the "problems" that had occurred with the Monticello Project.¹⁷⁷ In that Cost History document, which was sent to four Company Vice Presidents and the CFO, Mr. Koehl's group indicated that problems began as early as the Board's initial decision to begin the project.¹⁷⁸ The Cost History indicated that the Company's initial cost estimate "had high uncertainty since little engineering was done on the design concepts suggested," and the "EPU project team position was that each project should have a more detailed review to define final scope and cost."¹⁷⁹ Instead, the Board approved a budget that was \$90 million below the EPU Project Team's recommendation.¹⁸⁰

The Project Team recommended that the Project should be installed during the 2011 and 2013 outages, but the Board ignored that recommendation and ordered the Company to get the

¹⁷⁷ Tr. Evid. Hearing, Volume 3, at 65–66 (Oct. 1, 2014) (Crisp). The employee who prepared this document would, like Mr. Koehl, have been able to provide useful information to the Commission; unfortunately, he did not provide testimony in this case.

¹⁷⁸ Ex. 300, MCW-2 (Crisp Direct).

¹⁷⁹ *Id.* at 3.

¹⁸⁰ *Id.*

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work done during the 2009 and 2011 outages.¹⁸¹ The Board’s decision meant that all of the work had to be done on a “fast track,” which the Company was “not successful” in implementing.¹⁸²

The Cost History document also indicated that [TRADE SECRET BEGINS] [REDACTED] [REDACTED] [TRADE SECRET ENDS] meant that the boots-on-the-ground from the EPU Project Team had little input in scoping the project and no ability to ensure that the scope included any detailed engineering.¹⁸³ When the Project Team did provide input, they were ignored; this led to “the need for the site to create many modifications around the base scope in the GE contract.”¹⁸⁴ In order to work around the GE contract, the Company had to add “significant design engineering and project management resources beyond original project staffing.”¹⁸⁵

The boots-on-the-ground were also unable to “obtain scope change decisions that balanced scope and cost.”¹⁸⁶ The most significant scope changes “did not appear to be approved by management in any detail.”¹⁸⁷ When the scope had to be changed, it was done without “an appropriate consideration of cost” because of the fast-track schedule.¹⁸⁸ The “expected cost impact was not reviewed by appropriate management,” even when the costs were large.¹⁸⁹ When management did give approval to increase the scope of the project, it was done “without

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 3–4.

¹⁸⁵ *Id.* at 4.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 5.

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the cost impact of the changes being known.”¹⁹⁰ Those approvals ended up being very expensive, because “schedule restraints forced parallel work and required significant cost commitments to be made to achieve goals.”¹⁹¹ To make it even more difficult for regulators to determine whether the Company acted prudently, “projects did not have separate cost tracking.”¹⁹² The Company’s review process was “insufficient to allow early identification of cost issues,” and this resulted in “a challenge to project managers to be able to control and forecast cost.”¹⁹³

Xcel badly mismanaged the scoping, design, and implementation of the Monticello Project. As a result, the costs of the project skyrocketed nearly 135 percent above the Company’s initial estimate. Xcel’s poor management has resulted in approximately \$428.1 million in cost overruns, which Xcel now expects to recover from its captive customers. Minnesota ratepayers deserve better. They deserve the opportunity to be served by a utility that can effectively manage its construction projects and provide utility service at a reasonable cost. And when the utility fails to act prudently, Minnesota ratepayers should not be expected to shoulder the burden of unreasonable costs.

IV. THE COMMISSION SHOULD DISALLOW ALL COSTS THAT RESULTED FROM XCEL’S POOR MANAGEMENT AND ALLOW NO RETURN ON COST OVERRUNS.

Xcel “did a poor job with initial scoping, project management, contractor selection, and, essentially every aspect that would contribute to proper management of the Monticello

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 5.

¹⁹³ *Id.*

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Project.”¹⁹⁴ Xcel’s management “was not in keeping with . . . industry standards, and . . . as a result of that, there were increased costs incurred.”¹⁹⁵ Xcel now expects ratepayers to pay for cost overruns that could have been avoided if Xcel had managed the project well: if Xcel’s projected management had been acceptable, Mr. Crisp testified that there was “every probability that it could have been completed for less money.”¹⁹⁶ Any cost overruns caused by Xcel’s mismanagement were imprudent and unreasonable, and should not be collected from ratepayers. In order to protect the interests of ratepayers, the Commission should disallow all costs that are the result of Xcel’s poor management.

Due to the nature of Xcel’s management failure, there is some uncertainty about the exact amount of cost overruns that were caused by poor management. But as the Commission stated in Xcel’s 2008 rate case, “[U]ncertainty about how much the ratepayers are being overcharged . . . does not trump the Commission’s duty to do something about it.”¹⁹⁷ The burden of proof in this case lies with the Company, and *only* with the Company.¹⁹⁸ As a result, it is not the responsibility of the OAG, or the Department, or any other party, to identify specific unreasonable costs. Once the OAG, the Department, or any other parties demonstrate that the Company’s request would result in overcharging ratepayers, the Company’s proposal is no longer “an acceptable alternative.”¹⁹⁹ And to the extent that there is any doubt about the

¹⁹⁴ Ex. 200, at 18 (Lindell Rebuttal).

¹⁹⁵ Tr. Evid. Hearing, Volume 3, at 60:13–18 (Oct. 1, 2014) (Crisp).

¹⁹⁶ *Id.* at 60:24–25 (Crisp).

¹⁹⁷ See *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-002/GR-08-1065, at 21 (Oct. 23, 2009).

¹⁹⁸ Minn. Stat. § 216B.16, subd. 4; see also Minn. Stat. § 216B.03; *In the Matter of the Petition of Northern States Power Company for Authority to Change its Schedule of Rates for Electric Service in Minnesota*, 416 N.W.2d 719, 725 (Minn. 1987) (noting that the Company “had at all times the burden of proving the proposed rate change”).

¹⁹⁹ See *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-002/GR-08-1065, at 21 (Oct. 23, 2009).

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reasonableness of a proposed remedy, Minnesota law requires the Commission to decide the issue in favor of ratepayers.²⁰⁰

A. The Commission Should Disallow All Costs Caused by Xcel's Poor Management.

At minimum, the Commission should disallow all cost overruns that were the result of Xcel's poor management.²⁰¹ The analysis of the OAG and the Department's consultants demonstrates that at least three specifically identifiable costs were the result of Xcel's poor management.

First, Xcel's installation costs escalated from an estimated cost of \$27.5 million to a final cost of \$288.6 million, "an increase of more than ten times the original estimate."²⁰² There is no justifiable reason that the Company was unable to properly understand what it would take to install modifications in a plant that it had been operating for more than 40 years. The installation cost overruns were the result of Xcel's failure to properly scope, design, and manage the project.²⁰³ As a result, the costs were imprudent,²⁰⁴ and should be denied.

Second, the cost of the 13.8 kV electric distribution system escalated from \$20.9 million to \$119.5 million. According to Department witness Dr. Jacobs, "There is no reasonable basis for Xcel incurring a 5-fold increase in costs of a distribution system in the Company's own

²⁰⁰ Minn. Stat § 216B.03.

²⁰¹ As discussed above, the record in this case demonstrates that Xcel has not met its burden to prove that *any* of the cost overruns were incurred prudently or that it would be reasonable to recover them from ratepayers. On that basis, the Commission could justifiably deny recovery of *all* cost overruns. At minimum, the Commission should deny all of the costs that the record indicates were directly caused by Xcel's poor management, regardless of Xcel's failure to meet the burden of proof.

²⁰² Ex. 304, at 16 (Jacobs Direct).

²⁰³ Ex. 305, at 13–17 (Jacobs Direct).

²⁰⁴ Ex. 200, at 28 (Lindell Rebuttal).

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generation plant.”²⁰⁵ Dr. Jacobs, an expert in nuclear engineering, testified that this cost increase was not reasonable,²⁰⁶ and it should be disallowed.

Third, the costs for the feedwater heater increased from an estimated \$37 million to \$114.9 million. Xcel argued that this cost increase was reasonable because “the feedwater heater would not fit into the room it was intended to be located in.”²⁰⁷ Department witness Mr. Crisp testified that Xcel should have known that the feedwater heater would not fit in its designated location, and that cost overruns on that basis were not reasonable.²⁰⁸ Mr. Crisp’s conclusion is also supported by common sense: Xcel should know the lay-out of its own nuclear plant well enough to determine if a piece of equipment will fit. The cost overruns for the feedwater heater, the 13.8 kV distribution system, and the installation costs total at least \$261.1 million, given that some costs from the 13.8 kV system and the feedwater heater overlap with the installation costs. These costs can be specifically identified as being caused by Xcel’s poor management; as a result, they are unreasonable and should be denied.

Fourth, Mr. O’Connor’s rebuttal testimony identified significant costs that were the result of the Company’s poor design and scoping work. The Company measured \$25 to \$30 million in expenses for field changes; \$13 million for duplicative design; and \$11 million for abandoned work. Some of these costs would have been avoidable if the Company had acted prudently in preparing its design and scoping. It is difficult to measure the total amount of avoidable costs because Mr. O’Connor claimed, unreasonably, that only \$1 million in field changes were avoidable. But it is clear that expenses for duplicative designs and abandoned costs could have

²⁰⁵ Ex. 305, at 16 (Jacobs Direct).

²⁰⁶ Tr. Evid. Hearing, Volume 4, at 60:9–15 (Oct. 1, 2014) (Jacobs).

²⁰⁷ Ex. 200, at 15 (Lindell Rebuttal).

²⁰⁸ Ex. 300, at 19 (Crisp Direct).

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been reduced with proper design and scoping. The OAG recommends that the Commission disallow 50 percent of the duplicative design and abandoned costs, as well as 25 percent of the expenses for field changes, for a total disallowance of \$19.5 million.

In addition to the items that can be specifically identified as unreasonable, the record clearly establishes that a significant portion of the additional cost overruns were the result of Xcel's poor management. Because of Xcel's poor accounting practices,²⁰⁹ the expert consultants retained by the Department were unable to determine the exact amount of costs that were attributable to the poor management.²¹⁰ The cost overruns that were specifically identified above make up at least 65.5 percent of the total cost overruns of \$428.1 million. The record establishes that additional costs were caused by Xcel's mismanagement, but cannot be identified due to Xcel's unreasonable accounting practices. Because this uncertainty is caused in part by Xcel's unreasonable accounting, the OAG recommends that the Commission apply a percentage based proxy to determine which costs were caused by poor management. Based on the vast amount of evidence indicating that the cost overruns were the result of Xcel's poor management, there is evidentiary support for denying at least 75 percent of the cost overruns.

Denying at least 75 percent of the cost overruns is reasonable given the difficulty with directly tying cost overruns to mismanagement. The Commission's precedent establishes that uncertainty over the amount of overcharges to ratepayers is not an acceptable reason to ignore unreasonable costs that are identified by public agencies or other parties.²¹¹ Alternatively, if the Commission is still concerned with the difficulty of measuring the cost overruns caused by

²⁰⁹ Ex. 313, at 34 (Campbell Direct).

²¹⁰ Ex. 200, at 29 (Lindell Rebuttal).

²¹¹ See *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-002/GR-08-1065, at 21 (Oct. 23, 2009).

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Xcel's poor management, the OAG recommends that the Commission order a forensic accounting analysis to provide further analysis.

Mr. Sparby claims that the disallowance proposed by the Department, and presumably the larger disallowance recommended by the OAG, was inappropriate because it could impact "the financial health of the utility," and, likely, the value of Mr. Sparby's shares of Xcel stock.²¹² When the Department asked Mr. Sparby to provide the justification for his "concerns," however, it became clear that Mr. Sparby had no basis for his statements.²¹³ Mr. Sparby's statements are also baseless because Xcel's annual operating revenues were more than \$4.5 billion in 2013;²¹⁴ the operating revenues of Xcel's parent company were more than \$10 billion in 2013.²¹⁵ While the Company would obviously prefer that the Commission grant it full recovery of the Monticello cost overruns, the OAG's recommendation would result in no material effect on the overall financial health of the utility. It will, however, make clear to the utility that the Commission will continue to hold the utility accountable for its prudence and the reasonableness of its expenses. This is a reasonable expectation for a utility and the operator of the nuclear power plant at issue in this case.

B. The Commission Should Deny Any Return on the Cost Overruns.

In addition to disallowing those specific costs that were caused by Xcel's poor management, the Commission should deny a return on any cost overruns that are allowed. Xcel knew even before it filed the original CON that its projections underestimated the total cost of

²¹² Ex. 12, at 33–34 (Sparby Rebuttal).

²¹³ See Ex. 315, at 34–35 (Campbell Surrebuttal).

²¹⁴ This information is available in Northern States Power Company's most recent 10-K, which is publicly available on the Company's website. The relevant portions of the 10-K are attached as Attachment B.

²¹⁵ This information is also available in Xcel Energy's most recent 10-K, which is also publicly available on the Company's website in the form of the Annual Report. The Annual Report was also provided as Volume III, Part 7.A of the Required Information in Xcel's pending rate case, Docket No. E-002/13-868. The relevant portion of Xcel Energy's 10-K is attached as Attachment C.

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the Project.²¹⁶ As discussed by Department witness Ms. Campbell, from that point on, Xcel failed to inform the Commission and other parties about the magnitude of the cost overruns in a timely fashion; furthermore, when Xcel did raise the issue it chose not to provide full information about the cost overruns.²¹⁷ These concerns, compounded with Xcel's gross mismanagement of the Monticello Project, indicate that Xcel should not be allowed to earn a return on any cost overruns in excess of its original estimate.

Denying a return on the cost overruns is sound public policy. Utilities earn a significant portion of their profit margin from returns on investments like the Monticello Project. Because that return is a guaranteed rate, utilities have every incentive to invest to the maximum possible extent. In this instance, the interests of utilities are not aligned with the public interests. Ratepayers want to receive reliable electric service for the lowest possible cost; utilities like Xcel, however, want to provide electric service at the highest level of investment that they can justify to the Commission. Xcel has little incentive to invest in the management necessary to keep cost overruns to a minimum because, due to the byzantine nature of a project like Monticello, it can be very difficult for regulators to determine whether costs are prudent and reasonable. As noted by Mr. Lindell:

If utilities can earn a return on significant cost overruns, especially when their accounting methods make it difficult or impossible to track whether individual expenses were reasonable, then utilities will have an incentive to incur additional cost overruns in order to increase additions to rate base and recover greater concerns. This is not acceptable.²¹⁸

²¹⁶ See Ex. 200, MWC-2.

²¹⁷ Ex. 313, at 11–12 (Campbell Direct).

²¹⁸ Ex. 200, at 27 (Lindell Rebuttal).

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Further, both the Department and OAG's witnesses recognized that "granting a return on the cost overruns would also undercut the purpose of a CON docket."²¹⁹ Regularly awarding a return on cost overruns will not incentivize utilities to provide accurate estimates during CON proceedings; instead, it will give utilities an incentive to produce only the information that will allow the utility to proceed with the most financially rewarding investment for the utility. This problem cannot be understated; "it is very important that the Commission is presented with accurate estimates in CON dockets because the Commission relies on the estimates to make important decisions to incur costs for recovery from ratepayers."²²⁰

Other parties in this case, including the Department, have discussed the eliminating or reducing the Company's return on the cost overruns.²²¹ In fact, the Company also discussed such an adjustment in the surrebuttal testimony of Mr. Alders.²²² The Commission should deny a return on the cost overruns as discussed by the OAG and the Department. Granting a return on cost overruns would allow the Company to profit on costs that resulted from poor management and imprudence; such an arrangement would be unsound public policy and would result in unreasonable costs for ratepayers.

CONCLUSION

When Xcel proposed the Monticello Project, it informed the Commission and other parties that it would cost \$320 million and provide increased baseload generation for ratepayers starting in 2011. Neither of those promises has come true. As a result of Xcel's mismanagement of the Project, Xcel now seeks to recover \$428.1 million in cost overruns from ratepayers, and

²¹⁹ *Id.*; see also Ex. 309, at 12–13 (Shaw Direct).

²²⁰ Ex. 200, at 27–28 (Lindell Rebuttal).

²²¹ Ex. 313, at 37–38 (Campbell Surrebuttal).

²²² Ex. 15, at 26 (Alders Surrebuttal).

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the incremental generation provided by the EPU is still not available. Ratepayers deserved to have the advantages of a Monticello Project completed in a reasonable time frame, for a reasonable cost. They have received neither.

To protect the interests of ratepayers, the OAG recommends that the Commission deny at least 75 percent of the cost overruns as imprudent and unreasonable, and that the Commission deny a return on any cost overruns that are allowed.

Dated: October 31, 2014

Respectfully submitted,

LORI SWANSON
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State of Minnesota

s/Ryan P. Barlow

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ATTORNEYS FOR OFFICE OF THE
ATTORNEY GENERAL-ANTITRUST AND
UTILITIES DIVISION

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Governance

BENEFICIAL OWNERSHIP OF CERTAIN SHAREHOLDERS

Share Ownership of Directors and Officers

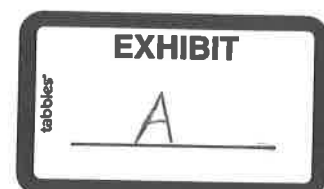
The following table sets forth information concerning beneficial ownership of our common stock as of March 25, 2014 for: (a) each director and nominee for director; (b) the executive officers set forth in the Summary Compensation Table; and (c) the directors and current executive officers as a group. Unless otherwise indicated, each person has sole investment and voting power (or shares such powers with his or her spouse) with respect to the shares set forth in the following table. None of the individual directors or officers or the nominees for director listed in the table below beneficially owned more than one percent of our common stock. The directors and executive officers as a group beneficially owned less than one percent of our common stock on March 25, 2014.

Name and Principal Position of Beneficial Owner	Common Stock ⁽¹⁾	Restricted Stock	Total Shares Beneficially Owned	Stock Equivalents ⁽²⁾
Gail Koziara Boudreaux Director	1,780	—	1,780	17,686
Fredric W. Corrigan Director	20,000	—	20,000	41,133
Richard K. Davis Director	7,697	—	7,697	41,133
Albert F. Moreno Director	2,325	—	2,325	122,432
Richard T. O'Brien Director	2,000	—	2,000	13,137
Christopher J. Policinski Director	2,000	—	2,000	40,863
A. Patricia Sampson Director	2,174	—	2,174	104,806
James J. Sheppard Director	1,000	—	1,000	19,352
David A. Westerlund Director	7,750	—	7,750	72,680
Kim Williams Director	1,188	—	1,188	42,375
Timothy V. Wolf Director	4,300 ⁽³⁾	—	4,300	37,325
Ben Fowke Chairman, President and Chief Executive Officer	254,618	5,954	260,572	11,031
Teresa Madden Senior Vice President and Chief Financial Officer	76,604	382	76,987	12,286
David Sparby Senior Vice President, Group President	122,461	1,781	124,242	—
Kent Larson Senior Vice President, Operations	38,925	12,516	51,441	1,235
Marvin McDaniel, Jr. Senior Vice President and Chief Administrative Officer	66,421	14,543	80,964	1,664
Directors and Executive Officers as a group (25 persons)	903,651	59,503	963,154	582,682

(1) On March 25, 2014, the closing price of our common stock on the NYSE was \$30.02.

(2) Common stock equivalents represent (i) the share equivalents of our common stock held under our deferred compensation plan as of March 25, 2014, and (ii) stock equivalent units held under the directors' SEP as of March 25, 2014. For information on common stock equivalents granted during 2013 and holdings at December 31, 2013, see page 30.

(3) Mr. Wolf's son owns 300 of these shares. Mr. Wolf disclaims beneficial ownership of these shares.



Executive Compensation

COMPENSATION DISCUSSION AND ANALYSIS OVERVIEW

This Compensation Discussion and Analysis ("CD&A") describes the philosophy of our executive compensation program and how we apply it when compensating our NEOs for 2013. Our NEOs are listed in the Summary Compensation Table on page 45.

Xcel Energy's Compensation Philosophy

Our executive compensation programs are designed to align the interests of our executives with the interests of our shareholders, customers and employees. Our compensation philosophy is based on the following principles:

- ; **Performance-based.** A majority of executive pay is at risk and designed to motivate achievement of Company financial, operational, and stock price performance.
- ; **Equity-based incentives.** Our plans encourage executives to focus on the long-term shareholder value and to be stewards of the Company and its stakeholders as any owner would.
- ; **Market competitive.** We work to ensure that our compensation plans attract and retain talented leaders who are important to the long-term success of the business.

Executive officers are rewarded at levels that reflect their individual responsibilities and contributions to the Company. Significant emphasis is placed on both pay-for-performance and internal equity to ensure that executive compensation is tiered within the Company based on scope of responsibilities, experience, and contributions to Company results.

Executive Compensation Practices

Our compensation practices for NEOs are highlighted below. These reflect our pay-for-performance philosophy as demonstrated through our design, risk management and governance practices.

Design

- ; We tie pay to performance by making a large majority of compensation "at risk" and linking it to shareholders' interests.
- ; We monitor market data to target opportunity at median (50th percentile) for all elements of direct compensation.
- ; We balance multiple metrics for short- and long-term incentives.
- ; The committee reviews tally sheets on an annual basis.
- ; We do not have any employment contracts.
- ; We do not have individually negotiated change-in-control agreements.
- ; We provide very limited perquisites.

Risk Management

- ; We have a Stock Ownership Policy.
- ; We require executive officers to hold, for at least one year, the net shares acquired upon vesting of equity awards.
- ; We prohibit hedging of Company securities.
- ; None of our executive officers or directors has pledged any shares of Xcel Energy common stock.
- ; We have a clawback policy that allows recovery of annual or long-term awards if the company has a restatement due to material noncompliance, as well as in the event an eligible plan participant is terminated for fraud or misconduct.

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Executive Compensation

Overview of Target Total Compensation for 2013

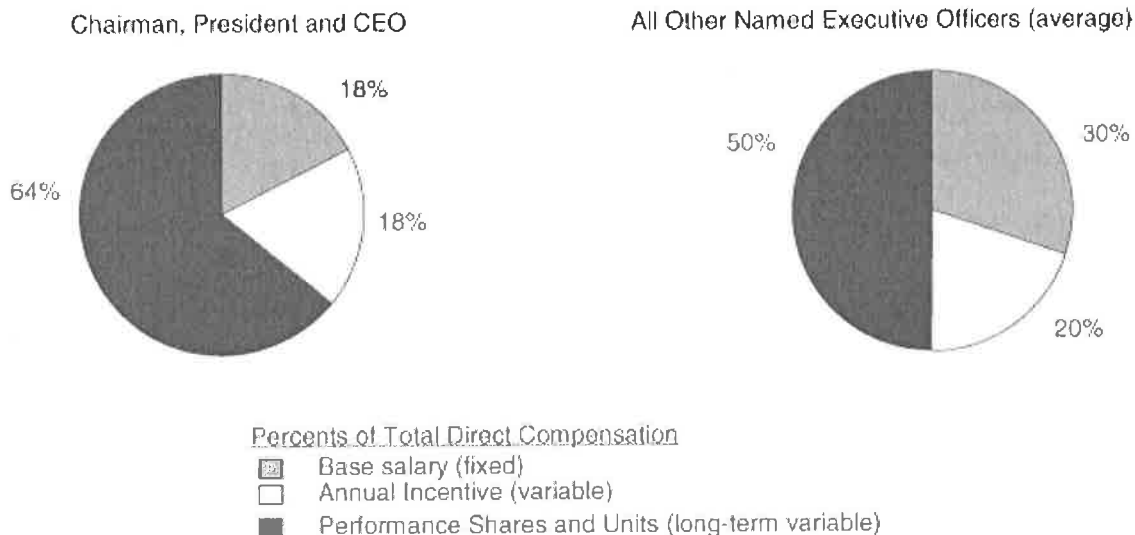
The committee set 2013 base salary, target annual incentive awards and target long-term incentive awards for all Xcel Energy officers, including the NEOs. The committee believes these compensation levels align and are competitive with the market for the utility industry. The table below shows the base salary and target awards for short-term and long-term incentives for each NEO in 2013. The annual incentive target is expressed as a percentage of base salary.

Named Executive Officer	Base Salary (as of 1/1/13) (\$)	Annual Incentive Target (%)	Long-term Incentive Targets	
			Performance Shares (\$)	Performance Units (\$)
Ben Fowke, Chairman, President and CEO	1,150,000	105	1,680,000	2,520,000
Teresa Madden, Senior Vice President, CFO	530,000	65	400,000	600,000
Kent Larson, Senior Vice President, Operations	475,000	65	310,000	465,000
Marvin McDaniel, Jr., Senior Vice President, Chief Administrative Officer	475,000	65	310,000	465,000
David Sparby, Senior Vice President, Group President and President and CEO, NSP-Minnesota	540,000	65	314,000	471,000

Mix of Total Compensation

We balance the mix of compensation by delivering a blend of short- and long-term incentives that are consistent with prevailing market practice. This approach has effectively resulted in 18 percent of total direct compensation for the CEO and 30 percent of total direct compensation for other NEOs to be in the form of fixed compensation, the remaining being variable compensation. The committee and board believes this design aligns the NEOs' interests with Company performance and encourages a balance of short and long-range strategic thinking, which is important given the long-term nature of utility operations and the capital investment necessary for such operations.

The following chart illustrates the mix of direct compensation for the CEO and other NEOs. The chart assumes target performance, so they may not match the amounts reported in the compensation tables as the compensation tables may reflect amounts earned, reflecting the level of achievement of the performance goals.



Executive Compensation

TABLES RELATED TO EXECUTIVE COMPENSATION

SUMMARY COMPENSATION TABLE

The following table summarizes the primary elements of compensation paid or granted to our CEO, our CFO and our three other most highly compensated executive officers. See "Compensation Discussion and Analysis" above for a description of our executive compensation program to gain an understanding of the information disclosed in this and the following tables.

Name and Principal Position	Year	Salary (\$) ⁽²⁾	Bonus (\$) ⁽³⁾	Stock Awards (\$) ⁽⁴⁾	Non-Equity Incentive Plan Compensation (\$) ⁽⁵⁾	Change in Pension Value and Non-qualified Deferred Compensation Earnings (\$) ⁽⁶⁾	All Other Compensation (\$) ⁽⁷⁾	Total (\$)
Ben Fowke Chairman, President and CEO	2013	1,150,000	—	8,959,525	1,690,500	3,870,519	73,018	15,743,562 ⁽¹⁾
	2012	1,100,000	350,000	3,641,207	1,650,000	4,154,682	69,897	10,965,786
	2011	986,979	500,000	4,696,943	850,696	2,583,660	58,142	9,676,420
Teresa Madden Senior Vice President, CFO	2013	530,000	—	1,000,000	689,000	470,284	29,843	2,719,127
	2012	460,000	—	681,814	448,500	384,251	26,580	2,001,145
	2011	349,545	—	686,391	265,525	174,092	20,971	1,496,524
Kent Larson Senior Vice President, Operations	2013	475,000	—	997,291	432,250	540,664	29,562	2,474,767
	2012	425,000	225,000	779,094	290,063	581,785	26,521	2,327,463
	2011	353,182	200,000	721,594	197,207	246,597	20,832	1,739,412
Marvin McDaniel, Jr. Senior Vice President, Chief Administrative Officer	2013	475,000	—	997,291	432,250	373,169	29,396	2,307,106
	2012	425,000	150,000	878,544	207,188	456,020	26,690	2,143,442
	2011	400,000	175,000	996,163	205,493	292,704	27,292	2,096,652
David Sparby Senior Vice President, Group President & President and CEO, NSP-Minnesota	2013	540,000	—	821,840	666,900	1,624,219	14,390	3,667,349
	2012	530,000	—	847,561	465,075	1,403,830	15,779	3,262,245
	2011	530,000	—	1,249,089	364,428	1,224,544	18,282	3,386,343

- (1) This total includes a one-time award of Retention Units with a grant date fair value of \$3,998,790. Actual realized compensation for Mr. Fowke for 2013 was \$6,845,683, for 2012 it was \$4,334,843 and for 2011 it was \$6,481,239. Actual realized compensation includes salary, annual incentive, bonus, the value of performance-based stock awards that vested and all other compensation.
- (2) Amounts in this column reflect base salary earned for the corresponding year regardless of whether or not any portions were deferred under the 401(k) Savings Plan or otherwise.
- (3) Amounts in this column reflect discretionary Leadership Awards attributable to exemplary performance and were granted under the 2010 Executive Annual Discretionary Award Plan. No Leadership Awards were paid in 2013.
- (4) Amounts in this column reflect the aggregate grant date fair value of long term incentive awards granted. The majority of the amounts in this column do not represent earned or paid compensation as awards are still subject to performance and/or vesting conditions. The remaining amounts include awards earned under the Annual Plan that the executive officer elected to receive in shares of unrestricted and restricted common stock, in lieu of a portion of the cash payment. In each instance, the grant date fair value was computed in accordance with FASB ASC Topic 718, excluding the effect of estimated forfeitures, as described below:
 - i Restricted and unrestricted shares granted under the Annual Plan are valued based on the fair market value of our common stock at the time the shares were issued following the close of the performance year, and includes the premium (5% for unrestricted stock or 20% for restricted stock) payable for the election to receive shares of stock in lieu of cash.
 - i The long-term incentive grants are valued based on the market price of our common stock on the grant date of the award, based on the assumption that target performance will be achieved and the units and future credited dividend equivalents will vest and will not be forfeited.
 - i The Retention Unit grant awarded to Mr. Fowke is valued based on the market price of our common stock on the grant date of the award, based on the assumption Mr. Fowke maintains continuous employment based on the conditions within the agreement.

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Executive Compensation

For a discussion of the assumptions and methodologies used to calculate the amounts reported, see Note 8, Share-Based Compensation, to Xcel Energy's Consolidated Financial Statements, included as part of Xcel Energy's 2013 Annual Report on Form 10-K. The aggregate grant date fair value of awards granted in 2013 that have a variable vesting value, assuming the maximum performance conditions are achieved is reflected in the table below:

	Ben Fowke	Teresa Madden	Kent Larson	Marvin McDaniel, Jr.	David Sparby
Performance Units	\$3,780,001	\$900,008	\$697,492	\$ 697,492	\$706,486
Performance Shares	3,360,019	799,989	619,993	619,993	627,988

- (5) Amounts in this column reflect awards earned under our Annual Plan regardless of whether any portion was deferred under the Deferred Compensation Plan. These amounts do not include amounts that the executive elected to receive in shares of unrestricted and restricted shares in lieu of a portion of the cash payment. The value of stock received in lieu of the cash payment plus associated premiums are reflected in the Stock Awards column for the respective years.
- (6) Amounts in this column reflect the increase in the present value of the executive officer's benefits under all pension plans established by the Company, using methods that are consistent with those used in our financial statements. The increase from the prior year is generally due to (a) the additional years of service earned by the executive officer under the plans, (b) the increase in the final average salary from the prior year used to determine plan benefits, (c) the interest earned on accumulated benefits during the year (that is, the decrease in the deferral period until benefits commence as the executive officer approaches retirement), and (d) changes in actuarial assumptions. For Mr. Sparby, this amount also includes preferential earnings of approximately \$1,804, under a grandfathered non-qualified deferred compensation plan.
- (7) Amounts included in All Other Compensation include the Company match under the 401(k) Savings Plan, Company contributions to the non-qualified savings plan, imputed income on life insurance paid by the Company, forfeited vacation pay and; for 2013, amounts related to our executive physical program. None of these amounts exceed \$10,000 except the following:
- i Contributions to the non-qualified savings plan: Mr. Fowke \$37,250; Ms Madden \$12,450; and Messers. Larson and McDaniel \$10,250.
 - i Forfeited vacation: Mr. Fowke \$22,116 and Mr. Sparby \$10,385.

Except for the executive physical imputed amount, programs included in the "All Other Compensation" column were available to all eligible and qualifying employees of Xcel Energy.

The Company provides very limited perquisites to its NEOs. Under corporate policy, the corporate aircraft may not be scheduled for personal use. Executive officers and their families may use the corporate aircraft for personal travel only when the aircraft is already scheduled to fly to the same destination on Company business. Because the aircraft may only be used for personal travel if the aircraft already is scheduled to fly to the same destination, there is no incremental cost to the Company for such personal use. We have significant corporate operations in Minneapolis, Minnesota, and Denver, Colorado, and some executive officers, including several of the NEOs, split time between those offices and use the corporate aircraft to travel between Minneapolis and Denver. Executive officers may also have the occasional personal use of event tickets when such tickets are not being used for business purposes, for which we have no incremental costs.

NSP-MINNESOTA AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(amounts in thousands)

	Year Ended Dec. 31		
	2013	2012	2011
Operating revenues			
Electric, non-affiliates	\$ 3,603,807	\$ 3,392,571	\$ 3,332,109
Electric, affiliates	458,633	449,958	440,519
Natural gas	591,017	471,765	604,723
Other	26,153	23,045	21,170
Total operating revenues	4,679,610	4,337,339	4,398,521
Operating expenses			
Electric fuel and purchased power	1,683,977	1,562,286	1,542,760
Cost of natural gas sold and transported	380,058	287,152	393,672
Cost of sales — other	16,154	13,505	12,737
Operating and maintenance expenses	1,171,855	1,102,302	1,064,665
Conservation program expenses	96,635	109,989	138,001
Depreciation and amortization	414,588	399,432	381,025
Taxes (other than income taxes)	206,741	204,387	172,726
Total operating expenses	3,970,008	3,679,053	3,705,586
Operating income	709,602	658,286	692,935
Other (expense) income, net	(653)	979	1,717
Allowance for funds used during construction — equity	40,064	37,109	37,164
Interest charges and financing costs			
Interest charges — includes other financing costs of \$6,337, \$5,972 and \$6,264 respectively	191,889	201,158	208,003
Allowance for funds used during construction — debt	(18,079)	(20,449)	(20,817)
Total interest charges and financing costs	173,810	180,709	187,186
Income before income taxes	575,203	515,665	544,630
Income taxes	181,857	175,524	191,649
Net income	\$ 393,346	\$ 340,141	\$ 352,981

See Notes to Consolidated Financial Statements



XCEL ENERGY INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(amounts in thousands, except per share data)

	Year Ended Dec. 31		
	2013	2012	2011
Operating revenues			
Electric	\$ 9,034,045	\$ 8,517,296	\$ 8,766,593
Natural gas	1,804,679	1,537,374	1,811,926
Other	76,198	73,553	76,251
Total operating revenues	<u>10,914,922</u>	<u>10,128,223</u>	<u>10,654,770</u>
Operating expenses			
Electric fuel and purchased power	4,018,672	3,623,935	3,991,786
Cost of natural gas sold and transported	1,082,751	880,939	1,163,890
Cost of sales — other	33,323	29,067	30,391
Operating and maintenance expenses	2,273,532	2,176,095	2,140,289
Conservation and demand side management program expenses	260,726	260,527	281,378
Depreciation and amortization	977,863	926,053	890,619
Taxes (other than income taxes)	420,500	408,924	374,815
Total operating expenses	<u>9,067,367</u>	<u>8,305,540</u>	<u>8,873,168</u>
Operating income	1,847,555	1,822,683	1,781,602
Other income, net	2,972	6,175	9,255
Equity earnings of unconsolidated subsidiaries	30,020	29,971	30,527
Allowance for funds used during construction — equity	87,683	62,840	51,223
Interest charges and financing costs			
Interest charges — includes other financing costs of \$30,135, \$24,087 and \$24,019, respectively	575,199	601,552	591,300
Allowance for funds used during construction — debt	(39,179)	(35,315)	(28,181)
Total interest charges and financing costs	<u>536,020</u>	<u>566,237</u>	<u>563,119</u>
Income before income taxes	1,432,210	1,355,432	1,309,488
Income taxes	483,976	450,203	468,316
Net income	<u>948,234</u>	<u>905,229</u>	<u>841,172</u>
Dividend requirements on preferred stock	—	—	3,534
Premium on redemption of preferred stock	—	—	3,260
Earnings available to common shareholders	<u>\$ 948,234</u>	<u>\$ 905,229</u>	<u>\$ 834,378</u>
Weighted average common shares outstanding:			
Basic	496,073	487,899	485,039
Diluted	496,532	488,434	485,615
Earnings per average common share:			
Basic	\$ 1.91	\$ 1.86	\$ 1.72
Diluted	1.91	1.85	1.72
Cash dividends declared per common share	\$ 1.11	\$ 1.07	\$ 1.03

See Notes to Consolidated Financial Statements

