



STATE OF MINNESOTA

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February 17, 2015

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
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RE: In the Matter of a Commission Investigation into Xcel Energy's Monticello Life Cycle Management and Extended Power Uprate Project and Request for Recovery of Cost Overruns
MPUC Docket No. E002/CI-13-754
OAH Docket No. 48-2500-31139

Dear Mr. Wolf:

On behalf of the Minnesota Department of Commerce, Division of Energy Resources (Department), I file the **Reply Exceptions (Public) together with Attachment 1 (Trade Secret version of the EPU Cost History)**. Xcel Energy (Xcel) provided the EPU Cost History in its public form as Attachment D to Xcel's Exceptions in this matter.

Sincerely,

/s/ **Julia E. Anderson**

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AFFIDAVIT OF SERVICE

RE: In the Matter of a Commission Investigation into Xcel Energy’s Monticello Life Cycle Management and Extended Power Uprate Project and Request for Recovery of Cost Overruns
MPUC Docket No. E002/CI-13-754
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STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Peggy Curtis, hereby state that on the 17th day of February, 2015, I filed the attached **Reply Exceptions** and **Trade Secret Attachment 1**, entitled “EPU Cost History,” and/or served the same by United States Mail, upon all parties on the attached service list, postage prepaid, by depositing the same at St. Paul, Minnesota.

See attached service list

/s/ Peggy Curtis
PEGGY CURTIS

Subscribed and sworn to before me on
this 17th day of February, 2015.

/s/ Sarah A. Porter
Notary Public - Minnesota
[My Commission Expires January 31, 2017]

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STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

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Betsy Wergin	Vice Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner

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

MPUC Docket No. E002/CI-13-754
OAH Docket No. 48-2500-31139

REPLY EXCEPTIONS
OF THE
MINNESOTA DEPARTMENT OF COMMERCE

FEBRUARY 17, 2015

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INTRODUCTION

The Minnesota Department of Commerce, Division of Energy Resources, Energy Regulation and Planning Unit (Department or DOC) respectfully submits these Reply Exceptions to the Minnesota Public Utilities Commission (Commission). The Department responds only to the extensive Exceptions filed by Northern States Power Company, d/b/a Xcel Energy (NSP, Xcel, or the Company) that essentially seek complete rejection of the Administrative Law Judge's (ALJ's) recommendation. Xcel essentially re-argues the skewed and inaccurate representation of the record presented in its testimony and post-trial briefs.¹ As the ALJ determined, and as testimony and briefs of the Department and other parties showed, Xcel's story doesn't add up; it simply doesn't make sense. The ALJ Report proposed Findings of Fact, Conclusions, Recommendations and Memorandum is detailed, well-reasoned and well-supported by the evidence in this matter.

Having previously addressed Xcel's claims, which the ALJ reasonably rejected, the Department responds with an abbreviated discussion to highlight several areas of significance out of many that support the ALJ's determination that:

- 1) The Company failed to show that its actions, based on what it knew or should have known at the time of those actions were reasonable and, thus, that Xcel failed to demonstrate that *all* of the \$402 million in cost overruns were reasonably and prudently incurred; and

¹ An example of Xcel's targeted omissions and misfocused arguments is the Company's repeated "value-of-service" claim that Monticello's more than 600 MW of baseload nuclear generation costs about **\$1,000/kW installed**. Xcel Exceptions at 2. The **71 MW EPU** baseload generation **cost alone** would equal about **\$8,026/kW installed**, if Xcel were to recover every dollar of its \$402 million cost overrun from ratepayers, and based on Dr. Jacobs' cost split determination, ($\$569,836,000/71,000\text{kW}=\$8,026/\text{kW}$). DOC Reply Brief at 35 n. 132 citing (Ex. 309 at 32 (Shaw Direct) (Table 20: 87.5% of total EPU = \$569,836,000). Moreover, Xcel is well aware that Minnesota regulatory law is based on cost-of-service, and not value-of-service principles.

- 2) Expert witness testimony of Dr. Jacobs and Mr. Crisp was “very credible” that Xcel’s actions, particularly fast-tracking the project without a reasonable level of pre-planning and design, resulted in substantially higher costs than if Xcel had reasonably managed the project; and
- 3) The percentage of costs Dr. Jacobs attributed to the extended power uprate (EPU) is reasonable.

The Department continues to support its proposed disallowance of a \$71.42 million reduction to the capital costs of the Monticello EPU, as the ALJ also proposes,² and does not address further the partial disallowance issue in these Reply Exceptions other than to oppose Xcel’s argument that it demonstrated that a smaller disallowance is justified. It did not.

The Department provided the following bullet summary noting where the Company did not meet its burden of proof to show its proposed recovery of the cost overruns to be reasonable, including:³

- lack of upfront planning as addressed by Mr. Crisp;
- effects of the “fast-track” approach as addressed by Mr. Crisp;
- inadequate understanding of the true scope of work as addressed by Dr. Jacobs;
- insufficient oversight of contractors and the entire process as addressed by Mr. Crisp;
- start and stop process of contractors addressed by Mr. Crisp;
- poor project management as addressed by Mr. Crisp;
- ineffective use of contingencies as addressed by Mr. Crisp;
- lack of cost controls and tracking concerns as addressed by Ms. Campbell;
- human performance errors raised by NRC as addressed by Ms. Campbell;
- low cost estimates and inadequate information in initial CNs as addressed by Ms. Campbell and Mr. Shaw;
- lack of communication by Xcel with Commission and interested parties regarding cost overruns as addressed by Ms. Campbell; and
- lack of showing that it reasonable to allow recovery from ratepayers of the amount of EPU project that is not cost effective as addressed by Mr. Shaw.

Also, for the Commission’s convenience, the Department provides as Trade Secret Attachment 1, the non-public version of the EPU Cost History document that Xcel provided only in public

² ALJ Report at 33.

³ Ex. 315 at 25-26 (Campbell Surrebuttal).

form as Xcel Exceptions Attachment D.

Moreover, the Department agrees generally with Xcel that facts rather than law are the main focus in this case, as long as the Commission adopts the ALJ's thoughtful and thorough legal analysis presented in his Memorandum.⁴ However, the Department does not support Xcel's continuing proposal that the Commission adopt for the first time in Minnesota a ratemaking standard referred to as the Prudent Investment Standard.⁵ While the name sounds benign, the particulars of Xcel's proposal are concerning. The Prudent Investment Standard does not appear to recognize fully Minnesota's important statutory ratemaking requirements provided in Minn. Stat. § 216B.16. Thus, Xcel's proposal does not recognize the legal requirement that an investment must be used and useful to ratepayers for a utility to earn a return on the investment.⁶ This Minnesota statutory ratepayer protection requirement is significant in this case where the Monticello EPU 71 MW capacity still is not operating at full capacity⁷ and, thus, is still not yet fully used and useful to ratepayers.

Further, the United States Supreme Court in *Duquesne Light Co. v. Barasch*,⁸ affirmed in 1989 the Pennsylvania commission's *rejection* of the Prudent Investment Standard; the *Duquesne* Court upheld the state commission's denial of a return even on prudently incurred

⁴ For this reason, it is important that the Commission adopt the ALJ Report in its entirety and, reject Xcel's proposed Exceptions including No. 124 that would include a statement that "no imprudence has been demonstrated."

⁵ See Xcel Exceptions at 16-18, 52, 81 and 88.

⁶ Minn. Stat. § 216B.16, subd. 6 (2014).

⁷ On page 3 of its Exceptions, Xcel admits that the Monticello plant still is not operating at full 671 MW EPU capacity, but at the pre-EPU capacity of 600 MW, "nearly 80 percent of the way to full uprate conditions."

⁸ *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 109 S. Ct. 609 (1989) (*Duquesne*).

investments that were not used and useful.⁹ The Prudent Investment Standard appears to conflict with Minnesota law, and should not be adopted.

Finally, the Department's Initial and Reply Briefs provide detailed examination and analysis of the record including the claims that Xcel essentially recycles in its Exceptions, and the Department will not repeat all of its presentation in these Reply Exceptions, other than to support the ALJ's Proposed Findings of Fact, Conclusions of Law and Recommendations (including the Memorandum). Consistent with its testimony and briefs, the Department recommends: 1) complete rejection of Xcel's Exceptions, 2) adoption of the ALJ's Report in its entirety, and 3) rejection of Xcel's proposed Prudent Investment Standard. The ALJ Report is reasonable, detailed and supported by substantial evidence, and the Department urges its adoption.¹⁰

I. XCEL'S CRITICISMS OF ALJ MIHALCHICK AND HIS REPORT ARE UNFOUNDED

The Company repeatedly claimed in error that Judge Mihalchick ignored material evidence, failed to understand the importance of other evidence, missed the "context" of Xcel's explanations, and should have not have determined as "very credible" the Department's engineering experts Dr. Jacobs and Mr. Crisp. Xcel basically argued throughout its Exceptions that the Report is substandard and contrary to law. Xcel's criticisms are wholly unfounded and must be rejected.

Not only is Judge Steven Mihalchick highly experienced and knowledgeable, he has

⁹ *Duquesne, id.*, 488 U.S. at 309, 109 S. Ct. at 616. The Department's Reply Brief at 8-11 provides further analysis on this topic.

¹⁰ Xcel argues throughout its Exceptions that the ALJ did not reference various testimonies. The Department observes that the ALJ carefully considered all testimony in this proceeding. Remanding this matter to the ALJ would merely provide even more Findings from the abundant evidence in the record that further support the ALJ's Report.

years of familiarity regarding regulated energy matters, including presiding over both contested case proceedings concerning the Monticello nuclear power plant. The reasonableness of the \$400 million in cost overruns resulting from Xcel's implementation of the 2008 EPU CN, Docket No. E002/CN-08-185 (2008 CN), over which Judge Mihalchick presided, is at issue in this matter. Judge Mihalchick also presided over the contested case proceeding of Xcel's 2005 application for a CN at Monticello, MPUC Docket No. E002/CN-05-123 (2005 CN), for an Independent Spent Fuel Storage Installation (ISFSI) in which Xcel identified the expected costs of the repair and maintenance plan called Life Cycle Management (LCM) for the next decades of licensure. The 2005 CN also is featured in this case.

The ALJ clearly understood the issues and was prepared and engaged at trial. His questions of witnesses showed a clear understanding of the issues.¹¹ Judge Mihalchick's Report is comprehensive and well supported on all material evidence and issues. Review of initial and reply briefs as well as trial transcripts supports the conclusion that the ALJ fully considered the extensive evidence in this matter and that the ALJ Report addresses all matters of significance.

II. THE ALJ REPORT REASONABLY DETERMINED THAT DEPARTMENT WITNESSES WERE MORE CREDIBLE THAN XCEL WITNESSES

Judge Mihalchick's detailed credibility determinations on pages 36 and 37 of his Report are reasonable conclusions based on his observations of witness testimony and the evidence

¹¹ *See, e.g.* Tr.V. 1 at 38-39 (ALJ Mihalchick) (noting that he had read all of the pre-filed testimony and observing that witnesses used terms differently, he questioned Xcel witness Mr. Sparby for the Company's meaning, in this case, of the term "life-cycle management.").

presented. Regarding public agency witnesses and, specifically, Dr. Jacobs and Mr. Crisp, the ALJ was persuaded by their testimony for the following reasons, as follows:¹²

Department witnesses Mr. Crisp and Dr. Jacobs were very credible and their testimony was believable. Obviously they submitted bids for the opportunity to be paid to investigate and provide expert testimony in this matter. But neither of them showed personal prejudice or bias. Their knowledge of the construction and operation of nuclear plants was extensive, their factual findings were believable, and their interpretations and conclusions were based on facts logically drawn and persuasive. They admitted when they had difficulty determining precise facts and did not extend their opinions beyond what they could prove.

Dr. Jacobs and Mr. Crisp have extensive experience in the nuclear utility industry. They were hired by the Department to independently review and evaluate the reasonableness of Xcel's actions and resulting cost overruns in this case, and to assist in determining what portion of the costs are reasonably attributable to the EPU versus the LCM. They were retained at the general direction and approval of the Commission, and tasked with a factual assessment.¹³ They did not testify as to a legal conclusion of prudence. The fact that both witnesses acknowledged limits of their knowledge and did not exaggerate their opinions beyond what the evidence demonstrated not only supports the ALJ's credibility finding, but is illustrated by Xcel's selective citation in its Exceptions to their testimony that Xcel sees as affirmative on various points.¹⁴ Further, the Company's assertions that Dr. Jacobs does not understand Nuclear Regulatory Commission (NRC) requirements is, again, based on taking Dr. Jacobs' testimony out of context.¹⁵

¹² ALJ Report at 37.

¹³ *Findings of Fact, Conclusions of Law and Order* at 46, MPUC Docket No. E002/GR-12-961 (September 3, 2013); *Order Approving Investigation and Notice and Order for Hearing* at 2-3, MPUC Docket No. E002/CI-13-754 (December 18, 2013).

¹⁴ *See, e.g.*, Xcel Exceptions at 3-7, 14-15, 26-27, etc.

¹⁵ In its Exceptions on pages 78-79, Xcel argues again erroneously that Dr. Jacobs does not understand NRC requirements as evidenced by his use of the phrase "like-for-like." The greater (Footnote Continued on Next Page)

As to Xcel's witnesses, the ALJ's finding of lesser credibility as to Mr. Sparby, Mr. O'Connor and others is reasonable and supported. The judge observed the discomfort of Mr. Sparby and noted the witness's lack of direct knowledge on facts central to this matter.¹⁶ The ALJ reasonably recommended that Mr. Sparby's testimony be given little weight.

Regarding Mr. O'Connor, who testified as the Chief Nuclear Officer, the ALJ reasonably discounted this testimony due to Mr. O'Connor's starting date with the Company in 2007, and because he did not succeed his predecessor Mr. Koehls as Chief Nuclear Officer until recently.¹⁷ Certainly not lost on the ALJ was the fact that two better informed individuals regarding direct knowledge about the LCM and EPU work here at issue – Mr. Koehls and Mr. Hammer (the employee/author who prepared the EPU Cost History summary at Mr. Koehls' specific request) – were not presented by Xcel as witnesses.¹⁸ The employee/author of the EPU Cost History continues to be employed as a nuclear engineer by Xcel,¹⁹ and both men apparently were available to Xcel's outside consultants; Mr. Sieracki attempted to minimize and discredit Mr. Hammer and his detailed EPU Cost History

(Footnote Continued from Previous Page)

evidence does not support such a conclusion, and the ALJ reasonably was not persuaded by Xcel. Dr. Jacobs, who has a doctorate, masters and an undergraduate degree in nuclear engineering, and has worked in the nuclear industry for over 40 years in a capacity that requires his intimate knowledge of NRC requirements, testified that, depending on the context, the term "like-for-like replacement" means slightly different things. He said that it refers to a replacement that is "identical" only as to a very technical area of NRC safety-related equipment, while the phrase otherwise has a broader meaning in the nuclear utility industry to require similarly-sized but not necessarily "identical" replacement equipment. Tr.V. 4 at 52-55, 67, 81-82 (Jacobs).

¹⁶ ALJ Report 36-37.

¹⁷ See ALJ Report at 37.

¹⁸ See ALJ Report at 14 para. 52 and footnote 142.

¹⁹ Tr.V. 1 at 45 (Sparby).

summary.²⁰ The ALJ's observations of lesser credibility for Xcel witnesses are well-supported. Moreover, the ALJ reasonably was not persuaded by Xcel's suggestions, which appear again in its Exceptions, that Mr. Sieracki and Mr. Stall served as neutral evaluators of Xcel's decision making.²¹ Their testimony should be given little weight, as the ALJ reasonably concluded.

III. THE ALJ REPORT CORRECTLY FOUND THAT XCEL FAILED TO SHOW THAT THE COST OVERRUNS WERE PRUDENTLY INCURRED AND ARE REASONABLE

Key conclusions of the ALJ Report, based on adoption of Department expert testimony, are well-supported in the record and recognize that Xcel's decision to begin construction on an expedited and "fast-track" schedule, without adequate scoping (planning), contributed to "dramatically increased Project costs that were imprudently incurred by Xcel," as follows:²²

6. Xcel has failed to demonstrate that the cost overruns it seeks to recover were prudently incurred and are reasonable.
7. Xcel's principal failure was that it did a very poor job managing the initial scoping and early Project management up until beginning installation during the 2009 refueling outage. The Company's decision to proceed with the combined LCM/EPU Project in 2009 rather than 2011 created an extremely difficult task that Xcel was not able to manage. From that point forward, additional issues arose that compounded Xcel's difficulties and required unreasonable amounts of time and money to resolve. It was a failure of management and was not prudent. As a result, significantly increased unreasonable costs occurred until the Project was completed.
8. The cost overruns for the feedwater heater, the 13.8 kV distribution system, and the installation costs totaling at least \$261 million were caused by Xcel's imprudent management. They are unreasonable and should be denied.

²⁰ See, e.g., Ex. 11 at 6, 18, 22, 27, 42, 59 (Sieracki Rebuttal); see also Ex. 12 at 27 (Sparby Rebuttal); Ex. 9 at 44, 49, 63-65 (O'Connor Rebuttal).

²¹ See, e.g., Xcel Exceptions at 47, 48, 50, 57-58.

²² ALJ Report at 31. The Department's Initial Brief at 22-47, and its Reply Brief at 17-28 provide extensive discussion of evidence on these and other topics. The DOC Reply Brief at 30-33, for example, challenges the reasonableness of conclusions Xcel claims to draw from Florida proceedings.

9. The Company's failure to recognize problems with spacing, clearances, access, and physical arrangements of the Plant was a direct failure of its LCM/EPU Project management. [FN303 Nothing related to the characteristics of the Plant, including its size, should have surprised Xcel or led to cost overruns.]
10. Xcel's decision to proceed on an aggressive, fast-track schedule by using a parallel process contained unreasonable risks. The fast track schedule required the Company to rely on preliminary scoping, rather than performing the full scoping effort necessary to have a thorough understanding of what needed to be done to finish the Project. The result was dramatically increased Project costs that were imprudently incurred by Xcel.

The ALJ's conclusions are well-grounded and based on the Department's evidence that he accepted in this case.

An EPU is a "massive" undertaking, in the words of Dr. Jacobs.²³ Dr. Jacobs provided general background information regarding refueling outages (RFOs) which served as a helpful context to understand the significance of Xcel's remarkable decision to advance the EPU and maintenance work, and put it on a fast-track, without ensuring an adequate level of critical pre-planning and design.²⁴ For a normal operating nuclear plant, major repair and maintenance work (LCM) is performed when the turbine is not generating electricity (i.e., during a refueling outage). Dr. Jacobs contrasted the level of detailed pre-planning that is and was standard in the nuclear industry for normal repair and maintenance during an RFO with the even higher level of detailed pre-planning that is essential for EPU-related work performed during an RFO.²⁵

In a normal RFO (without EPU work), it is common for utilities to plan only one or two major LCM plant modifications; other major LCM projects are planned and completed over many years rather than doing so at once and over a short period of time and, thus, are performed

²³ Tr.V. 4 at 64-66 (Jacobs).

²⁴ Tr.V. 4 at 62-74 (Jacobs).

²⁵ *Id.*

economically.²⁶ Nonetheless, even the few repair and maintenance modifications during a normal RFO require rigorous pre-planning, pre-measuring and even mock-ups such that the work can be performed efficiently during the outage, and the work results in reasonable costs.²⁷ Dr. Jacobs emphasized the important goal of avoiding “unknowns” during the outage which is why the work is carefully pre-planned prior to the RFO.²⁸ At the end of the RFO, the plant is back in service and generating electricity.

Much greater design specification and planning is required prior to commencing EPU-related work during an RFO. Dr. Jacobs explained that for an EPU there typically are many major, complex modifications – 10 to 15 – that are performed during an EPU-related RFO.²⁹ EPU work is not spread over many years since the EPU will not operate at the higher power level until *all* the EPU work is completed.³⁰ Thus, it is critical that management of EPU projects require even greater detailed pre-planning and execution than is performed for the more routine LCM work, to ensure that costs and timing are reasonably managed.³¹

Dr. Jacobs stressed that, absent reasonable management that insists on highly detailed scoping, design, and implementation, the cost overruns for EPU-related work can be staggering. For instance, he noted that Xcel far exceeded its estimated costs to replace the feed pump motor and pump, and he compared the cost estimate made when there was no EPU planned with the actual installed cost after the work was performed with EPU work. In 2003, Xcel’s cost estimate was less than \$1 million for this work, which at that time the Company expected to be

²⁶ Tr.V. 4 at 61-63 (Jacobs).

²⁷ *Id.* at 62-64.

²⁸ *Id.* at 63.

²⁹ *See id.* at 64-65; Ex. 305 at 13 (Jacobs).

³⁰ Tr.V. 4 at 64-65 (Jacobs).

³¹ *Id.*

completed during a normal RFO³² (*i.e.*, the cost estimate in 2003 was for the LCM’s “extended period of operation” and not for the EPU). However, the actual costs were \$92 million when performed during Xcel’s EPU-related RFOs³³ which is an astronomical increase in cost. Increases of this magnitude were not reasonably explained by Xcel.

Mr. Crisp’s testimony and Dr. Jacobs’ testimony corroborated each other on the necessity of careful pre-planning. Mr. Crisp testified at length and in detail that Xcel’s commencement of work prior to an adequate level of pre-planned scoping and design resulted in costs being significantly higher than they otherwise would have been.³⁴ For example, Mr. Crisp found no reasonable grounds offered by Xcel for not anticipating the “very small footprint” of the existing plant and the resulting difficulties that the small space would create for dismantling and removing existing equipment as well as for installing the new larger equipment such as the feedwater heater.³⁵ He testified, in relevant part:

*Xcel knew the dimensions of the containment “room” for the feedwater heater. However, Xcel’s estimated cost of installing the new, much larger feedwater heater did not take into account the significant difficulty in removing the former feedwater heater, modifying the size of the then-existing concrete “room” and installing the new, larger feedwater heater.*³⁶

* * *

³² Tr.V. 3 at 129 (Jacobs).

³³ Tr.V. 3 at 133 (Jacobs); Tr.V. 4 at 69 (Jacobs) (referring to Xcel Ex. 9 at (TJO-2) Sch. 32 at 26 of 57 (O’Connor Rebuttal) (“capital projects” less than \$1 million) and Xcel Ex. 3 at (TJO-1) Sch. 26 at 2 of 3 (O’Connor Public Direct). *See also* Tr.V. 4 at 53 (Jacobs) (regarding the greater complexity of replacing a pump or feedwater heater as part of an EPU due to the need to increase the capacity of the pumps rather than solely as LCM work on an existing plant: “You have to sometimes reinforce the building, . . . as in the case of Monticello, go down to bedrock for the foundations of the feedwater pumps, so it becomes a much more complicated and expensive proposition at that point.”).

³⁴ ALJ Report at 19-21.

³⁵ Ex. 300 at 18-19 (Crisp Public Direct); Ex. 303 at 13 (Crisp Surrebuttal).

³⁶ Ex. 300 at 19 (Crisp Public Direct) (emphasis added).

[T]here should not have been a case of the project being materially “more difficult than we anticipated” or “costs . . . higher than we expected” to the extent that occurred with Monticello. . . . *Of course, Xcel knew that Monticello had a small footprint* and knew, or certainly should have known, at that time about the layout of Monticello. Taking that knowledge into account with proper scoping of the equipment needed and logistics of installing the equipment would have anticipated many of the difficulties Xcel has pointed to as causing the cost overruns.³⁷

Mr. Crisp found “not credible,” for example, Xcel’s claimed justification for higher costs to include that not anticipating the small footprint resulted in costs for the 13.8 kV distribution system modification; the increase from the pre-work initial estimate of \$20.9 million, which appeared justifiable, to the final cost of \$119.5 million³⁸ was nearly a six fold increase.

The fact that Xcel began the many, many major EPU-related projects without the essential level of detailed pre-planning was a key driver of the cost overruns.³⁹ Mr. Crisp summarized examples of Xcel actions that were unreasonable at the time, based on what Xcel knew or should have known, such as:⁴⁰

...pursuit of a "fast-track" approach, the lack of separate cost tracking for the LCM and the EPU projects, lack of effective cost controls, lack of reasonable planning and design scoping, and the lack of reasonable use of contingencies in the budgeting process and economic justification for the EPU.

Mr. Crisp concluded that Xcel’s project management decisions like these “were responsible for increased costs of the LCM and EPU projects substantially above what reasonably should have

³⁷ Ex. 300 at 13 (Crisp Surrebuttal) (emphasis added).

³⁸ Tr.V. 3 at 90 (Crisp). *See also* Tr.V. 3 at 79-83 (Crisp) (referencing O’Connor Direct Schedules 22-28, to show the very limited initial scope for modifications together with initial cost estimates, and the resulting significantly higher actual installed costs for most of the modifications).

³⁹ Tr.V. 3 at 7-12 (Crisp); Ex. 303 at 31 (Crisp Surrebuttal).

⁴⁰ Ex. 419 at 1-2 (Crisp Opening Statement). *See also*, Ex. 302 at MWC-3 (Crisp Direct Attachment).

been incurred.”⁴¹

The ALJ reasonably found Dr. Jacob’s and Mr. Crisp’s testimony to be credible, and substantial evidence in the record supports his findings and conclusions that Xcel did not show that all of the cost overruns were prudently and reasonably incurred.

IV. THE RECORD DOES NOT SUPPORT XCEL’S CLAIM THAT IT HAD TO TAKE SWIFT ACTION AND ACCELERATE THE EPU AND LCM WORK

In its Exceptions, Xcel repeats a claim made by a number of its witnesses, and in its briefs, that the Company was compelled to move up the timing of the EPU and the maintenance work, and to fast-track all of that work, due a number of factors:⁴²

. . . (1) Commission directives to submit a plan for additional baseload resources including nuclear uprates; (2) forecasted baseload need; (3) high natural gas prices; and (4) the need to upgrade certain Monticello systems to support the Plant’s continued operations over the next 20 years. [citing Ex. 11, Sieracki Rebuttal at 11:11-21; Ex. 3, O’Connor Direct at 3:1-10; Ex. 8, Alders Rebuttal at 8:17-19 & n.17].

Department witness Mr. Shaw, however, identified the inaccuracy of claims 1 through 3,⁴³ above. For example, Mr. Shaw’s testimony regarding Xcel’s troubling mischaracterization of a Commission order supports the Findings of the ALJ regarding Xcel’s lack of credibility, as follows:⁴⁴

Q. What did the Commission’s Order in the 2004 IRP require?

A. The requirements of the Commission’s Order are different than indicated by Xcel. Rather than directing Xcel to “take swift action”[fn omitted] in a manner that did not allow proper planning, design and construction of the EPU, the Commission’s Order after Reconsideration in Xcel’s 2004 resource plan (October 18, 2006) did not require Xcel to pursue an EPU for Monticello. The Commission requested that Xcel file a report on the “nature, costs, and

⁴¹ Ex. 303 at 31 (Crisp Surrebuttal).

⁴² See Xcel Exceptions at 21.

⁴³ Ex. 311 at 9-16 (Shaw Surrebuttal).

⁴⁴ Ex. 311 at 15 (Shaw Surrebuttal).

benefits of the proposed plant upgrades without diverting limited resources to a premature certificate of need proceeding.” [Fn omitted]

Regarding claim 4, that as of 2003 “significant work was needed in a relatively narrow window *just to keep the plant running*,”⁴⁵ appears to be the first time this highlighted level of urgency was made in this case, and again it is a misleading nuance to an earlier, inaccurate claim. This assertion contradicts Xcel’s statements made in 2004 and in 2008, which were discussed in Mr. Shaw’s surrebuttal testimony.

As the ALJ noted with approval, Mr. Shaw testified that the Commission did not order Xcel in 2006 (for the 2004 resource plan or IRP) to pursue an EPU, and that in 2008 the modeling assumptions relied upon for the 2008 CN were those identified in Xcel’s 2007 resource plan, not the 2004 IRP.⁴⁶ Thus, each claim 1, 2 and 3, were included in the modeling for the 2008 CN, and relied upon by the Commission in that matter, as Mr. Shaw explained:⁴⁷

[Xcel witness Mr. Alders] noted that there were “additional resource planning considerations” and “additional context” surrounding the 2003 – 2008 timeframe that he believed were not considered and should have been considered. However, *Mr. Alders did not identify any important considerations that were not included in the 2007 IRP or 2008 CN for the EPU.*

Specifically, Mr. Alders identified factors such as the value of carbon-free generation, coal plant emissions, *the high cost of natural gas, and the Company’s forecast as important considerations.* However, *all of these factors were appropriately considered in both the 2007 IRP and 2008 CN,* and Mr. Alders does not indicate otherwise. [citations omitted]

* * *

While the 2004 IRP may provide additional historical context, the 2007 IRP and 2008 CN were the proceeding relied upon by the Commission in granting the CN for the EPU and included the factors identified by Mr. Alders.

⁴⁵ Xcel Exceptions at 21 (emphasis added).

⁴⁶ ALJ Report at 12, footnote 116 (citing Ex. 311 at 15-17 (Shaw Surrebuttal).

⁴⁷ Ex. 311 at 9-11 (Shaw Surrebuttal) (emphasis added).

Mr. Shaw explained in detail regarding the history of Xcel's 2004 and 2007 IRPs, as well as the Commission's orders in those cases.⁴⁸ There is no reasonable basis to support the claims of Xcel's witnesses that the Commission and other circumstances compelled it to take swift action to rush either the LCM or the EPU work at issue in this case.⁴⁹

Xcel makes a new apparent claim of heightened urgency in its Exceptions that long-delayed repair and maintenance had reached a critical point requiring advancement of the EPU and the maintenance work, and the expediting of all that work, within "a relatively narrow window *just to keep the plant running.*"⁵⁰ Such a claim is alarming and is not a message Xcel provided either to the NRC or the Commission at any time.

Further, in contrast to its Exceptions regarding the time needed to complete the EPU, Xcel's own witness Mr. Sparby on cross-examination retracted his earlier testimony that Xcel did not have "ample time," and agreed that it had "sufficient" time although not more than was needed.⁵¹

The Department discussed this example of Xcel's continual inaccurate nuancing not only of facts and Commission orders from prior proceedings but also of the Company's own statements in this proceeding, and which bolsters the ALJ's determinations that Xcel's witnesses were not credible. The earlier claim in Mr. Sparby's rebuttal testimony stated, unequivocally, that Xcel did not have "ample time to pursue and implement the Monticello

⁴⁸ *Id.* at 12-16.

⁴⁹ Mr. Shaw showed the inaccuracy of Mr. Sparby's testimony that the Commission's 2004 IRP Order directed the Company "to take swift action," and that of Xcel's outside consultant Mr. Sieracki's similar inaccurate claims. Ex. 311 at 11 n. 27 (Shaw Surrebuttal).

⁵⁰ Xcel Exceptions at 21 (emphasis added).

⁵¹ Tr.V. 1 at 30 (Sparby).

initiative.”⁵² When asked at the evidentiary hearing about this statement, Mr. Sparby acknowledged that the Company had sufficient time to do the work that Xcel proposed for Monticello.⁵³

Q. At any time during the certificate of need 08-185 for the EPU, did Xcel present or advise or give notice to the Commission that it may not have ample time to implement the Monticello initiative?

A. Well, we never said the time was generous. We said it was -- always presented it as adequate. But we never said we had more time than we would need.

Q. But you didn't represent that you had less time than you would need, did you?

A. No. We represented we had the time to get the job done.

Further, when asked to explain his own statements referring to the Monticello initiative as representing both an LCM and EPU in 2005 (which conflict with Xcel's communications at that time with the Nuclear Regulatory Commission),⁵⁴ Mr. Sparby could not point to a basis for his own statement and acknowledged that the 2005 CN pertained to the LCM.⁵⁵

Contrary to Xcel's claims in its Exceptions and throughout this proceeding, the EPU was a proposal by Xcel, not a requirement of the Commission. Further, the Commission approved Xcel's proposed EPU based on the Company's representations in the 2008 CN regarding the costs of the EPU relative to other options for meeting the needs of its customers.

⁵² Ex. 12 at 21-22 (Sparby Rebuttal).

⁵³ Tr.V. 1 at 35-36 (Sparby).

⁵⁴ Ex. 300 at 11-13 (Crisp Public Direct).

⁵⁵ Tr.V. 1 at 40-43 (Sparby).

V. THE ALJ REPORT REASONABLY FOUND THAT DR. JACOB'S METHODOLOGY AND ALLOCATION OF 15% OF COSTS TO THE LCM AND 85% OF PROJECT COSTS TO THE EPU IS REASONABLE AND WELL-SUPPORTED

The ALJ reasonably found and concluded that Dr. Jacobs' allocation methodology and result is reasonable; he found it to be reasonable that 15% of costs are likely LCM-related and 85% of costs are likely EPU-related.⁵⁶ The ALJ Report on this issue is detailed and well-supported by the evidence. The Report states, as follows:⁵⁷

11. Xcel's accounting practices made it difficult to separately review the actual costs of the EPU from the costs of the LCM.[fn omitted] The costs were not transparent as required. Identifying these costs for this prudency review was a needless expense.
12. Xcel failed to demonstrate that either of its proposed allocations between LCM costs and EPU costs is reasonable. Xcel's initial allocation was based upon a "rough estimate" of projected costs of the EPU. It did not include some of the very expensive machines and work that were planned and installed later that were clearly related to the EPU. The second allocation, 78 percent to the EPU and 22 percent to the LCM, is not reasonable because it improperly assumes that all costs are LCM costs until proven otherwise, which causes many items to be classified as LCM costs inappropriately.
13. Dr. Jacobs' review and analysis was more thorough and more consistent with the actual cost incurred for the EPU. Dr. Jacobs demonstrated that the appropriate allocation of costs between the LCM and EPU is 15 percent and 85 percent, respectively.

Dr. Jacobs testified at length about his methodology, his reliance on Xcel's sworn statement to the NRC in "Enclosure 8," which identified modifications that were EPU-related versus LCM-related, and his discussions with Xcel employees, including Mr. O'Connor, to confirm his analysis.⁵⁸ He understated the EPU cost allocation by excluding costs of modifications that were identified as being for LCM as well as for EPU work, so that his cost

⁵⁶ ALJ Report at 32-33.

⁵⁷ ALJ Report at 32. The Department's Initial Brief at 48-61 and its Reply Brief at 28-35 discuss this topic at length.

⁵⁸ Tr.V. 4 at 71-72 (Jacobs). *See also*, Ex. 305 at 11 (Jacobs Public Direct).

split analysis included only the costs of EPU-only work.⁵⁹ Dr. Jacobs summarized his methodology, as follows:⁶⁰

In my direct testimony I present a history of the Monticello EPU project from the initial September 2004 estimate of between \$60 million and \$91.5 million to the August 2013 estimate of \$664.9 million, not including financing costs.

Xcel presents the work done at Monticello as a single LCM/EPU project for which LCM costs and EPU costs were not separately tracked in many respects. The primary focus of my testimony – of my direct testimony is to present my analysis to identify costs incurred by Xcel that were necessary for the EPU project and to allocate the remaining costs to the LCM project.

My approach was to utilize Xcel's 2008 letter to the U.S. Nuclear Regulatory Commission, the NRC, in which it identified under oath specific projects required for the EPU information. I also used information gathered by speaking with Xcel employees at the Monticello plant site and my experience with other EPU projects to identify the projects specifically required for the EPU.

I applied a basic criterion that if Monticello could not operate at the higher EPU power level without the particular work or project being evaluated, I considered that particular work or project to be an EPU project. Once I identified the EPU-only projects, I assigned the costs to those projects based on the costs shown on Exhibit TJO-1, Schedule 30, of Mr. O'Connor's direct testimony.

In addition to the projects identified as EPU projects in Xcel's letter to the NRC, I included \$59.3 million for EPU license development as an EPU cost, as this cost is identified on Mr. O'Connor's Schedule 30 as EPU-only work.

Further, I included the \$119.5 million cost that Xcel incurred for the 13.8 kV distribution project as an EPU project because, absent the EPU project, this project would not have been needed to provide electric power to the larger feedwater pump motors required by the EPU.

The results of my analysis are that \$569.5 million, or 85.7 percent, of the LCM/EPU costs were required to support the EPU; and the remaining 95.4 million, or 14.3 percent, were not required to support the EPU. My analysis underestimates the EPU-related costs because I included no costs that were identified by Xcel as needed for both the EPU and LCM projects.

⁵⁹ Tr.V. 3 at 89 (Jacobs).

⁶⁰ Tr.V. 3 at 87-89 (Jacobs).

Xcel devoted nearly 20 pages of its Exceptions to this topic including that its choice not to separately track costs for the EPU and LCM costs was a reasonable accounting practice (apparently for accounting and for regulatory purposes), claims that Dr. Jacobs' allocation by functionality is flawed as an engineering effort rather than an accounting effort, and arguing many different ways that Dr. Jacobs' criteria for determining EPU-related versus LCM-related costs were unreasonable and inconsistent.⁶¹ Dr. Jacobs rebutted each of these criticisms, as the ALJ reasonably found, and as Department testimony and briefs discuss at length.

It is unfortunate that Xcel criticizes Dr. Jacobs' efforts when it is the Company's own failure to properly separately account or track the EPU and LCM costs that required the engineering split. Had Xcel continued separately accounting or tracking via workorders for the costs of the LCM and EPU modifications, which was a reasonable conclusion given that the Company had separately presented such costs to the Commission and received separate regulatory approval in the 2005 CN (ISPSI and LCM) and the 2008 CN (EPU), there may have been no need for Dr. Jacobs' engineering methodology or allocation.⁶²

Department witness Ms. Campbell testified that Xcel's accounting of these costs in a single work order, at least for regulatory purposes, was irregular since the Company had received the Commission's regulatory approval through separately tracked and supported cost presentations.⁶³ Ms. Campbell testified, as follows:⁶⁴

First, I noted that Xcel treated Monticello LCM and EPU projects as two separate projects for purposes of review and approval of the projects in CN

⁶¹ Xcel Exceptions 61-80.

⁶² See, *Order Approving Investigation and Notice and Order for Hearing* at 3, MPUC Docket No. E002/CI-13-754 (December 18, 2013); Tr.V. 4 at 20 (Campbell).

⁶³ Tr.V. 4 at 119-120 (Campbell); Ex. 315 at 11-17 (Campbell Surrebuttal).

⁶⁴ Ex. 315 at 11 (Campbell Surrebuttal).

proceedings before the Commission. Thus, it is not reasonable for Xcel to have tracked these costs for purposes of accounting and regulatory compliance as if they were one project.

Second, Xcel's decision to include all of the costs of the Monticello LCM and EPU projects estimated at \$346 million in a single work order is not reasonable since doing so guarantees that the costs are not transparent.

Third, I noted that Xcel's choice in tracking these costs resulted in needlessly higher costs for this prudency review since it was necessary for the Department to hire a consultant to split apart what Xcel never should have put together.

Fourth, the Company's choice not to track costs separately for the Monticello LCM and EPU projects indicated the Company did not think it was important to track the costs approved by the Commission in the two separate CNs.

Fifth, the Company's child orders for modification are labeled as being EPU, yet the Company claims in this proceeding that most of the costs are for the LCM.

Ratepayers are entitled to the benefit of any doubt as to Xcel's proposed showing of reasonableness and, thus, it is important to note that Xcel's selection of a nontransparent method of tracking costs appears to create significant doubt as to Xcel's claims regarding costs being attributable to one project rather than the other.

Ms. Campbell testified that Xcel's single-work order accounting was not a reasonable accounting method.⁶⁵ The ALJ reasonably rejected Xcel's single-work order accounting argument.

Particular response may be helpful to address Xcel's particular emphasis given to its incorrect claim that Dr. Jacobs' improperly and inconsistently classified the 13.8 kV distribution system modification as an EPU cost.⁶⁶ Dr. Jacobs' reasonably supported his methodology in this regard, as the Department's Initial Brief summarized, as follows:

The fourth modification, the 13.8 kV distribution system addition, was identified in [NRC] Enclosure 8 as an LCM project.⁶⁷ However, to determine whether the

⁶⁵ Tr.V. 4 at 20 (Campbell).

⁶⁶ Xcel Exceptions at 74-75.

⁶⁷ Ex. 305 at Att. B at 13 of 14 (Jacobs Public Direct).

13.8 kV distribution system addition was needed principally to support the EPU as opposed to the LCM, Dr. Jacobs relied on his basic criterion (if the plant could not operate at the higher EPU level without the modification, then it is an EPU project), as well as discussions with Xcel employees. Based on that criterion, Dr. Jacobs had independently determined that the 13.8 kV distribution system would not have been done absent the EPU, and Mr. O'Connor confirmed during Dr. Jacobs' on-site tour that Xcel was not sure what distribution system (4.1 kV, 6.9 k) [but not 13.8 kV] Xcel would have done without an EPU.⁶⁸

Also, as to the 13.8 kV distribution system upgrade, Dr. Jacobs disagreed that Xcel has shown that significant additional distribution capacity was needed without the EPU. On page 10 of his Surrebuttal Testimony, Dr. Jacobs examined the Company's 2005 CN application where Xcel did not mention a needed upgrade to the distribution system (Xcel noted only an "electrical breaker replacement").⁶⁹

For these reasons, and the many others provided in Department testimony and briefs, the ALJ reasonably adopted Dr. Jacobs' methodology and allocation regarding the appropriate cost split for the EPU and LCM costs.

CONCLUSION

The ALJ fully considered the voluminous record in this matter, and the ALJ Report reflects that consideration with detailed findings, conclusions, recommendations and a Memorandum. The Department fully supports adoption of the ALJ's Report in its entirety, and recommends complete rejection of Xcel's Exceptions. The Department further recommends that the Commission not adopt the Prudent Investment Standard because it appears to be contrary to Minnesota law and, for that reason, should be rejected.

⁶⁸ Tr. 4 at 71-72 (Jacobs). *See also*, Ex. 305 at 11 (Jacobs Public Direct).

⁶⁹ Ex. 307 at 10 (Jacobs Surrebuttal).

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Respectfully submitted,

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