

**STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION**

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In the Matter of Northern States Power Co., d/b/a  
Xcel Energy's Petition for Approval of its 2023  
Annual Fuel Forecast and Monthly Fuel Cost Charges

Docket No. E002/AA-22-179

**Answer of the Citizens Utility Board of Minnesota**

The Citizens Utility Board of Minnesota ("CUB") respectfully submits this Answer to the Petition for Rehearing and Reconsideration dated December 5, 2024 (the "Petition") filed by Northern States Power Company d/b/a Xcel Energy ("Xcel" or the "Company").<sup>1</sup> In its Petition, Xcel asks the Commission to reconsider decisions included in its November 15, 2024 Order (the "Order") filed in this docket.<sup>2</sup> For the reasons discussed below, the Commission should deny the Company's request.

**I. APPLICABLE LEGAL STANDARDS**

A. Reconsideration

Petitions for Reconsideration are governed by Minn. Stat. § 216B.27 and Minn. R. 7829.3000. Pursuant to Minn. Stat. § 216B.27, the Commission "may grant and hold a rehearing on the matters . . . if in its judgment sufficient reason therefor exists."<sup>3</sup>

When Petitions for Reconsideration are filed, the petitioner must "set forth specifically the grounds relied upon or errors claimed."<sup>4</sup> Other parties to the proceeding are required to file answers within ten days of service of the petition.<sup>5</sup> The Commission then "reviews such petitions to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors

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<sup>1</sup> *In the Matter of Northern States Power Co., d/b/a Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges*, Xcel Petition for Reconsideration, Docket No. E002/AA-22-179 (Dec. 5, 2024) ("Petition").

<sup>2</sup> *In the Matter of Northern States Power Co., d/b/a Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges*, Order Approving 2023 Fuel-Clause True-Up Report, Requiring Additional Filings, Finding Imprudence, and Notice of and Order for Hearing, Docket No. E-002/AA-22-179 (Nov. 15, 2024) ("Nov. 15, 2024 Order").

<sup>3</sup> Minn. Stat. § 216B.27, subd. 1.

<sup>4</sup> Minn. R. 7829.3000, subp. 2.

<sup>5</sup> Minn. Rule 7829.300 Subp 4.

or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.”<sup>6</sup>

The Commission may “reverse, change, modify, or suspend [its] original action” if, based on the Commission’s judgment, “it shall appear that the original decision, order, or determination is in any respect unlawful or unreasonable.”<sup>7</sup>

B. Xcel’s right to a contested case.

Minn. R. 7829.1000 provides:

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the commission finds that all significant issues have not been resolved to its satisfaction, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings, unless: A. all parties waive their rights to contested case proceedings and instead request informal or expedited proceedings, and the commission finds that informal or expedited proceedings would be in the public interest; or B. a different procedural treatment is required by statute.

C. FCA True Up Mechanism.

Minn. Stat. § 216B.16, subd. 7 authorizes the Commission to allow a public utility to automatically adjust charges for the cost of fuel. Under the existing fuel clause adjustment (“FCA”) mechanism, Minnesota’s rate-regulated electric utilities adjust their rates monthly and subsequently file monthly and annual reports, which are reviewed for accuracy and prudence.<sup>8</sup> Such reports must be filed in compliance with various orders issued in Docket No. E999/CI-03-802, including those dated December 19, 2017, December 12, 2018, and June 12, 2019.

D. Prudence.

As described in the Petition:

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

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<sup>6</sup> *In the Matter of Xcel Energy’s Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E002/M-18-643, Order Denying Reconsideration, Denying Stay, and Approving Compliance Filing at 3 (Oct. 7, 2019).

<sup>7</sup> Minn. Stat. § 216B.27, subd. 3.

<sup>8</sup> *In the Matter of an Investigation into the Appropriateness of Continuing to Permit Electric Energy Cost Adjustments*, Order Approving New Annual Fuel Clause Adjustment Requirements and Setting Filing Requirements, Docket No. E-999/CI-03-802 (Dec. 19, 2017).

appeared to be available for action.

Prudence may not be evaluated on the basis of hindsight. Instead, Xcel Energy's actions and decisions must be judged on the basis of whether each action and decision was reasonable at the time, under all the circumstances, and based on the information that was or reasonably should have been known. Further, a determination of prudence must recognize that a utility may take a range of actions or decisions that may be prudent. There is not one singular prudent action. As the Minnesota Supreme Court has held, "[r]easonableness is a concept of some flexibility and moderation, *not exclusivity*; a determination that one course of conduct is reasonable is not a determination that any other course is unreasonable." The utility need not *disprove* the reasonableness of alternative actions it could have taken.<sup>9</sup>

#### E. Burden of Proof.

Every rate made, demanded, or received by a public utility must be just and reasonable. In incurring costs necessary to provide service, utilities are expected to act prudently to protect ratepayers from unreasonable risks. The burden to prove a rate is just and reasonable is on the utility, and any doubt as to reasonableness will be resolved in favor of the consumer.<sup>10</sup>

## II. ANALYSIS

Xcel contends that the Commission erred in determining Xcel acted imprudently because the Commission made this decision before Xcel could exercise its right to a contested case proceeding.<sup>11</sup> To support this argument, Xcel cites Minn. R. 7829.1000, claiming it required the Commission to refer this matter to the Office of Administrative Hearings because it "involves contested material facts."<sup>12</sup> Xcel "does not dispute that [the Licensee Event Report ("LER Report")] is a relevant piece of evidence" but disagrees that "it is dispositive of the central factual question underlying a prudence determination."<sup>13</sup> Further, Xcel claims that review of the LER report "does not itself resolve the central factual question underlying a prudence determination: whether the Company's overall operation of the plant was outside the range of action that similar operators exercising reasonable care could have taken under the circumstances without the benefit of hindsight."<sup>14</sup> There are numerous problems with this argument.

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<sup>9</sup> Petition at 9-10, citing, *In the Matter of the Petition of Xcel Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, Docket No. G-002/CI-21-610 (Oct. 19, 2022) (other internal citations omitted).

<sup>10</sup> *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota, et al.*, Notice of And Order for Hearing, Docket No. E-002/GR-12-961 (July 13, 2022), p. 4; Minn. Stat. §§ 216B.03, 216B.16, subd. 4.

<sup>11</sup> Petition at 7.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 8.

<sup>14</sup> *Id.* at 11-12.

A. The material facts the Commission relied upon are not in dispute.

Xcel “acknowledge[d] that the outage of Unit 1 was initially caused by damage to control cables during work that was being performed on a different cable replacement project.”<sup>15</sup> Xcel also acknowledged the damage “was caused by weakness in the Excavation Permit approval process as well as inadequate oversight of the personnel performing the work.”<sup>16</sup> No party disagreed with the accuracy of these facts, which the Commission then relied upon to determine Xcel acted imprudently:

[T]he Commission relies on facts that Xcel does not dispute showing that Xcel’s imprudence enabled workers at PINGP to unintentionally strike the buried cables and cause the outage at PINGP.

[. . .]

The Commission’s determination of imprudence is not based on any of Xcel’s lessons learned with the benefit of hindsight or the fact that the Company has taken remedial measures based on these lessons learned. Rather, the Commission’s conclusion is based on a finding that the outage occurred because Xcel allowed work to progress in the field without all controls in place that would be expected for work at a nuclear plant.<sup>17</sup>

Because the Commission based its prudency determination on material “facts that Xcel does not dispute,” the Commission had no obligation under Minn. R. 7829.1000 to first refer this matter to the OAH for further record development on those facts.

B. The Commission already considered and found unpersuasive Xcel’s legal argument about the scope of a prudence determination.

Xcel suggests the Commission should have evaluated prudence based on Xcel’s *overall* operation of the Prairie Island Nuclear Generating Plant (“PINGP”) rather than by considering whether each action and decision surrounding the drilling incident was reasonable at the time. This is a legal—not a factual—argument about *how* prudence is evaluated. Therefore, the permissive prong of Minn. R. 7829.1000 applies: the Commission must refer an issue to the OAG only if it is not “resolved to [the Commission’s] satisfaction.”<sup>18</sup>

Xcel’s argument about the scope of facts material to the Commission’s prudency determination was already resolved to the Commission’s satisfaction, as noted in the Order:

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<sup>15</sup> See, *In the Matter of Northern States Power Co., d/b/a Xcel Energy’s Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges*, CUB Reply Comments, Docket No. E002/AA-22-179 (July 30, 2024), p.3 (citing Xcel response to Department Information Request No. 13)

<sup>16</sup> *Id.* (citing Prairie Island Nuclear Generating Plant Unit 1 Licensee Event Report, Docket No. 24-26 (March 21, 2024)).

<sup>17</sup> Nov. 15, 2024 Order at 5, including footnote 2.

<sup>18</sup> Minn. Rule 7829.100

In evaluating prudence, Xcel urged the Commission to consider operational history and industry best practices.

[. . .]

The Commission is unpersuaded that a contested case is required to resolve any disputed material facts necessary to inform a prudence determination.

[. . .]

While Xcel asserted that its actions before and after the incident were prudent, the Company failed to provide any explanation how its oversight of the excavation project was prudent in light of the deficiencies highlighted by the commenters and identified by Xcel.<sup>19</sup>

C. Xcel's argument about how prudence should be determined is inconsistent with recent Commission practice.

Xcel cites the Commission's October 19, 2022 Order in Docket 21-610 (the Winter Storm Uri investigation) as explaining how the Commission has historically evaluated prudence.<sup>20</sup> We agree this Order provides a useful and relevant example of the Commission's recent approach to prudence determinations.

In its October 19, 2022 Order, the Commission stated that the prudence of a utility's "actions and decisions are evaluated based on whether *each action and decision* was reasonable at the time, under all the circumstances, and based on the information that was or should have been known."<sup>21</sup> After reviewing Xcel's actions during Winter Storm Uri under this standard, the Commission determined that "for February 17 only" Xcel did not meet its burden to prove it acted prudently with respect to its load forecasting and peaking plants.<sup>22</sup> In other words, the Commission found that Xcel failed to prove the prudence of its load forecasting and peaking plant operations on one day of the storm, despite finding that Xcel had operated those resources prudently on other days. The Commission disallowed recovery of over \$19 million in costs based on that finding.<sup>23</sup> Xcel's suggestion that the Commission should now excuse Xcel from accountability for its role in the PINGP drilling incident because Xcel operated PINGP prudently at other times is clearly inconsistent with the Commission's prior understanding and application of the prudence standard.

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<sup>19</sup> Order at 4, 5.

<sup>20</sup> See, e.g., Petition at 9, citing *In the Matter of the Petition of Xcel Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, Docket No. G-002/CI-21-610 (Oct. 19, 2022) ("Gas Order").

<sup>21</sup> *In the Matter of the Petition of Xcel Northern States Power Company d/b/a Xcel Energy to Recover February 2021 Natural Gas Costs*, Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action, Docket No. G-002/CI-21-610 (Oct. 19, 2022), p. 5 (emphasis added).

<sup>22</sup> Gas Order at 5, 45 (emphasis added) (also noting a utility's "actions and decisions are evaluated based on whether each action and decision was reasonable at the time, under all the circumstances, and based on the information that was or should have been known.").

<sup>23</sup> Id.

Xcel also cites a Minnesota Supreme Court decision holding that “[r]easonableness is a concept of some flexibility and moderation, *not exclusivity*; a determination that one course of conduct is reasonable is not a determination that any other course is unreasonable.” Applying this holding, Xcel argues it “need not *disprove* the reasonableness of alternative actions it could have taken.”<sup>24</sup> This holding and argument is irrelevant here. Xcel acted imprudently by inadvertently providing workers with maps that did not fully depict all the other underground cables near the excavation path. Regardless of whether Xcel disproved the reasonableness of an alternative action (such as providing the workers with correct maps), “the Company failed to provide any explanation how its oversight of the excavation project was prudent in light of the deficiencies highlighted by the commenters and identified by Xcel.”<sup>25</sup>

D. Xcel has not met its burden of proof.

Finally, Xcel bears the burden to prove its actions surrounding the PINGP outage were prudent.<sup>26</sup> This is a high burden, and Xcel is not relieved of it when recovering costs via the FCA mechanism. As CUB and others discussed in prior comments, Xcel’s annual FCA compliance filing contained very little factual information about the drilling incident, let alone justifying the prudence of Xcel’s actions that led to that incident. Xcel had ample opportunity to bolster its compliance filing with additional information through the comment period noticed in this docket. It is unreasonable for Xcel to now argue the Commission “arbitrarily deprived the Company of its right to due process” when Xcel had ample opportunity to justify the prudence of its actions and failed to do so.

### III. CONCLUSION

After reviewing the record developed in this docket, the Commission appropriately determined Xcel acted imprudently regarding the October 2023 outage at Xcel’s Prairie Island facility. The Commission’s determination is grounded in undisputed facts derived from Xcel’s own regulatory filings and responses to discovery requests. Xcel’s Petition does not raise new issues, point to new and relevant evidence, expose errors or ambiguities in the Commission’s Order, or otherwise raise reasonable arguments justifying reconsideration of the Order. Therefore, the Commission should deny Xcel’s request.

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<sup>24</sup> Petition at 10.

<sup>25</sup> Nov. 15, 2024 Order at 5.

<sup>26</sup> Minn. Stat. § 216B.16, subd. 4.

Thank you for considering our comments.

Sincerely,

December 16, 2024

/s/ Brian Edstrom

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cc: Service List