

Staff Briefing Papers

Meeting Date January 23, 2025

Agenda Item 2**

Company Northern States Power Co. d/b/a Xcel Energy

Docket No. E-002/AA-22-179

In the Matter of Xcel Energy's Petition for Approval of its 2023 Annual Fuel Forecast and Monthly Fuel Cost Charges

Issues Should the Commission reconsider or clarify its November 15, 2024 Order?

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✓ **Relevant Documents**

Date

Minnesota Public Utilities Commission – Order Approving 2023 Fuel Clause True-Up Report, Requiring Additional Filings, Finding Imprudence and Notice of and Order for Hearing	November 15, 2024
Xcel Energy – Petition for Reconsideration	December 5, 2024
Department of Commerce – Request for Clarification	December 5, 2024
Department of Commerce – Answer to Xcel Energy's Petition for Reconsideration	December 16, 2024
Xcel Energy – Answer to Petition for Clarification	December 16, 2024
Office of the Attorney General – Answer to Petition for Reconsideration	December 16, 2024
Citizens Utility Board – Answer to Xcel Reconsideration Request	December 16, 2024

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BACKGROUND

On November 15, 2024, the Minnesota Public Utilities Commission (Commission) issued its Order Approving 2023 Fuel Clause True-Up Report, Requiring Additional Filings, Finding Imprudence and Notice of and Order for Hearing. This order determined that Northern States Power Company d/b/a Xcel Energy (Xcel) acted imprudently regarding the October 2023 outage at the Prairie Island Nuclear Generating Plant (Prairie Island, PINGP) and referred the case to the Minnesota Office of Administrative Hearing (OAH) for a contested case to determine the appropriate refund, including interest, to ratepayers related to the outage.

On December 5, 2024, Xcel requested reconsideration of the Commission's determination in its November 15, 2024 Order that Xcel's operation and maintenance of Prairie Island leading up to the October 2023 outage was imprudent.

On December 5, 2024, the Minnesota Department of Commerce – Division of Energy Resources (Department) requested a limited amendment to the Commission's November 15 Order to provide clarity regarding the scope of the contested case proceedings. Specifically, the Department asked that the November 15 Order be amended to state the contested case is limited to the refund owed to ratepayers for costs that flow through the fuel-clause adjustment report. Alternatively, if the Commission would like the contested case to address all costs owed to ratepayers because of Xcel's imprudence, the Department requested the November 15 Order to be amended to explicitly note the intended scope of the case.

On December 16, 2024, the Department, the Minnesota Office of the Attorney General – Residential Utility Division (OAG), and the Citizens Utility Board of Minnesota (CUB) requested the Commission deny Xcel's Petition for Reconsideration. The OAG recommended approval of the Department clarification request.

On December 16, 2024, Xcel proposed modification to the Department's clarification request.

DISCUSSION

In its 2023 fuel clause adjustment (FCA) true-up filing, Xcel identified an outage on October 19, 2023 at Prairie Island Unit 1 that lasted 103 days. The outage was the result of an excavation team striking buried cables that were not depicted in the excavation maps. The outage impacted a planned outage at Prairie Island Unit 2 causing it to be offline longer than planned. Xcel requested recovery of the replacement power during the outage. Xcel's Licensee Event Report to the United States Nuclear Regulatory Commission (NRC) describing the incident stated:¹

The root cause of this human performance issue was weakness in the Excavation Permit approval process as well as the inadequate oversight of the non-nuclear supplemental workers performing HDD work.

¹ OAG Reply Comments Attachment A, Page 5 (May 15, 2024).

Weaknesses were identified in the Excavation Permit approval process for the planned HDD work. Site personnel reviewing and approving the permit were not adequately intrusive to ensure that all interferences had been properly identified prior to approving the permit. Specifically, the use of Ground Penetrating Radar (GPR) had only been completed for some areas and had not been performed in the area that would have identified the interference with the DC cables.

Additionally, procedural weaknesses and poor communication between site departments allowed the HDD work to continue without a clear understanding of which site department was responsible for providing oversight to the HDD crew. This resulted in work progressing in the field without all controls in place that would be expected for work at a nuclear plant. Specifically, approved work plans were not always available at the work site and approved construction drawings for HDD work were not updated when changes were made in the field.

The Commission determined that Xcel acted imprudently regarding the October 2023 outage at Prairie Island and referred the case to the OAH for a contested case to determine the appropriate refund, including interest, to ratepayers related to the outage. The Commission stated:²

Xcel's own assessment of the situation stated the incident occurred because of deficient oversight and inadequate processes that fell below the standard expected for excavation work at a nuclear facility. 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.

Xcel knew or should have known that critical cables could be buried in the vicinity of the planned excavation site at a nuclear power plant. Despite this knowledge, the Company failed to implement appropriate safeguards or provide reasonable oversight of the workers that struck the underground cable causing the outage. Had Xcel prudently implemented oversight and procedural safeguards that met the standards expected for excavation work at the nuclear facility, the excavation team would have been aware of the existence of the buried cable it struck, and the incident and resulting outage would not have occurred as it did.

I. Legal Standard

Minnesota (Minn.) Statutes (Stat.) Section (§) 216B.27 and Minn. Rule (R.) part 7829.3000 govern how petitions for Reconsideration are handled. Pursuant to Minn. Stat. § 216B.27, subdivision 3 provides that the Commission may “reverse, change, modify, or suspend the

² Docket No. E-002/AA-22-179 Order Approving 2023 Fuel Clause True-Up Report, Requiring Additional Filings, Finding Imprudence, and Notice of and Order for Hearing at 5 (November 15, 2024).

original action,” “if in the commission’s judgment . . . it shall appear that the original decision . . . is in any respect unlawful or unreasonable.”

When Petitions for Reconsideration are filed, the petitioner must “set forth specifically the grounds relied upon or errors claimed.”³ The Commission traditionally reviews petitions for reconsideration “to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its decision.”⁴

Petitions for reconsideration are denied by operation of law unless the Commission acts within sixty days of the request.⁵ If the Commission takes no action on a reconsideration petition within the 60-day period the request will be deemed denied. The Commission may also take specific action to deny the requests.

If the Commission takes up a party’s request for reconsideration, the Commission can either deny reconsideration or modify its prior decision. If the Commission modifies its prior decision, it can do so as requested by a petitioner or on its own motion.

II. Xcel Energy – Reconsideration Request

Xcel stated that the Commission did not consider its record of exemplary performance in the operation and management of Prairie Island and focused on an NRC report to make its determination of imprudence related to the October 2023 outage. Xcel argued that this decision was inconsistent with the Commission’s rules and arbitrarily deprived Xcel of its right to due process. Xcel stated it is entitled to a hearing pursuant to the rules for contested case proceedings for thorough record development of the issues underlying the prudence decision, pursuant to Minn. Stat. § 216B.16 and Minn. R. 7829.1000 and 7825.2920, and requested reconsideration. Minn. R. 7829.1000 state:

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.⁶

Xcel argued that, if a party has the right to a hearing by statute or rule and contests material facts, the rule does not allow for Commission discretion and the matter must be referred to a contested case. Alternatively, the Commission may elect to refer a matter to the OAH when there are issues warranting further record development but there either are no contested

³ Minn. R. 7829.3000, subp. 2.

⁴ *In the Matter of Xcel Energy’s Petition for Approval of Electric Vehicle Pilot Programs*, Docket No. E-002/M-18-643, Order Denying Reconsideration, Denying Stay, and Approving Compliance Filing at 3 (Oct. 7, 2019).

⁵ Minn. Stat. § 216B.27, subd. 4.

⁶ Minn. R. 7829.1000 and Xcel Reconsideration request at 7.

issues of material fact or a right to a hearing. Xcel stated the prudence decision must be referred to a contested case and it has a statutory right to a hearing for its 2023 FCA. Additionally, Minn. R. 7825.2920, subpart (subp.) 3 states that “[t]he Commission... after appropriate investigation, notice, and hearing, may issue an order to fix at current levels, discontinue, or modify an automatic adjustment.”⁷ Xcel noted that this language grants the right to a hearing if there are contested material facts. Xcel disputed the factual basis of the prudence decision. The Commission and Intervenors relied heavily on the NRC report, which is a brief after the fact description of the incident. Xcel acknowledged that the NRC report is relevant evidence, but it is not a comprehensive assessment of Xcel’s actions and decisions. Xcel stated it is entitled to fully develop the record regarding prudence in a contested case proceeding related to the October 2023 outage.

III. Department of Commerce

A. Clarification Request

The Department requested clarification regarding the limited scope of the issues to be addressed in the contested case proceedings. Specifically, the Department requested the November 15 Order be amended to state the contested case is limited to the refund owed to ratepayers for costs that flow through the fuel-clause adjustment report. Alternatively, if the Commission would like the contested case to address all costs owed to ratepayers because of Xcel’s imprudence, the Department requested the November 15 Order to be amended to explicitly note the intended scope of the case. In either case, such clarification will allow the parties to focus on developing the appropriate factual record and avoid the unnecessary expenditure of resources on procedural matters. The Department requested the following amendments, in red, to the Commission’s November 15 Order:⁸

V. Issues to be Addressed

Over the course of this case, the Commission expects the parties will thoroughly develop a full record, addressing ~~at a minimum,~~ the appropriate refund amount due to ratepayers for replacement power costs in 2023 and 2024 stemming from the lack of prudence regarding the October 2023 outage at PINGP.

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ORDER

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6. The Commission refers this matter to the Minnesota Office of Administrative Hearings for a contested case to determine the appropriate refund amount due to customers for replacement power costs in 2023 and 2024 due to Xcel’s lack of prudence regarding the October 2023 outage at Prairie Island.

⁷ Minnesota Rule 7825.2920, subp. 3 and Xcel Reconsideration Request at 7-8.

⁸ Department Clarification Request at 5-6.

7. The Commission will address other appropriate cost adjustments related to the October 2023 outage at Prairie Island, such as the impact of de-rating on capacity costs and insurance costs, in Xcel's currently pending general rate case for electric service, Docket 24-320.

B. Response to Xcel's Reconsideration Request

The Department noted that the Commission's decision that Xcel acted imprudently in its operation of Prairie Island leading to the October 2023 outage was both lawful and supported by the record. Xcel did not offer new evidence or issues, expose errors, or provide a persuasive reason for the Commission to rethink its decision. The Department stated:⁹

Xcel argues that the November 15 Order was in error because Xcel is entitled to a contested case hearing on prudence. A referral to the Office of Administrative Hearings for contested case proceedings is required when a proceeding involves "contested material facts" and there is "a right to a hearing under statute or rule."¹⁰ Although Xcel asserts that there are contested material facts, it neither acknowledges nor meets the legal standard for showing that there are disputed material facts entitling it to a contested case hearing on the issue of prudence. To show that it is entitled to a contested case, Xcel must demonstrate material facts that would aid the agency in making a decision and must do so by identifying the with specificity of the evidence to be offered.¹¹ In the absence of disputed material facts, the investigation, notice, and hearing provided in this docket satisfy Minn. R. 7825.2920, subp. 3, which authorizes the Commission to modify Xcel's automatic fuel adjustment provision.

The Department noted that Xcel's description of the incident established that the outage was caused by deficient oversight and inadequate processes that did not meet the standard expected for excavation work at a nuclear facility. There was an appropriate investigation, notice, and Commission hearing regarding prudence. The Department noted that the only remaining issues regarding the October 2023 outage is the ratepayer refund amount and recommended the request for a contested case on prudence be denied.

IV. Xcel Energy – Clarification and Reconsideration

Xcel stated it is generally supportive of the Department's request for clarification of the contested case issues. Xcel agreed the contested case should focus on ratepayer refunds, if any, for replacement power costs associated with the October 2023 outage. Xcel stated the contested case would not include replacement capacity or insurance impacts because these

⁹ Department of Commerce Answer to Reconsideration at 2.

¹⁰ Minn. R. 7829.1000.

¹¹ See, e.g., *In re N. States Power Co.*, 676 N.W.2d 326, 335 (Minn. Ct. App. 2004) (holding that Minn. R. 7829.1000 places burden in on the party requesting the contested case "to demonstrate the existence of material facts that would aid the agency in making a decision."); *Matter of Decision to Deny Petitions for a Contested Case Hearing*, 924 N.W.2d 638, 649 (Minn. Ct. App. 2019) (holding that a party challenging a denial of their request for a contested case hearing must identify evidence they would like to offer with specificity).

costs are more appropriately addressed in its rate case. However, Xcel would like customer benefits and other offsets to be considered. Xcel organized its revisions to the November 15 Order to note (1) the Department's proposed revisions (red text); (2) Xcel's revisions to the November 15 Order and Department's revisions, excluding revisions associated with the Commission's prudence determination (blue text); and (3) Xcel's incorporation of the relief sought in its prudence reconsideration request (black underlined text). Xcel requested the following amendments to the November 15 Order:¹²

V. Issues to be Addressed

Over the course of this case, the Commission expects the parties will thoroughly develop a full record, addressing: ~~at a minimum,~~ (1) whether Xcel Energy acted prudently in its operation and maintenance of the Prairie Island Nuclear Generating Plant prior to an outage which began in October 2023; and (2) if any imprudence is found, the appropriate refund amount due to ratepayers for replacement power costs in 2023 and 2024 stemming from ~~the~~ any lack of prudence determination regarding the October 2023 outage at PINGP.

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ORDER

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6. The Commission refers this matter to the Minnesota Office of Administrative Hearings for a contested case to determine: (1) whether Xcel Energy acted prudently in its operation and maintenance of the Prairie Island Nuclear Generating Plant prior to an outage which began in October 2023; (2) if not, whether the Company's lack of prudence resulted in customers paying more for power the appropriate refund amount due to customers for replacement power costs than they otherwise would have paid, such that a refund of power costs is appropriate; and (3) the appropriate amount of any such refund. ~~due to Xcel's lack of prudence regarding the October 2023 outage at Prairie Island.~~

7. The Commission will address whether any other appropriate cost adjustments related to the October 2023 outage at Prairie Island are appropriate, such as the impact of de-rating on capacity costs and insurance costs, in Xcel's currently pending general rate case for electric service, Docket 24-320.

Xcel requested, pursuant to Minn. R. 7829.3000, the Commission adopt its proposed language which modifies the Department's proposed amendments for the November 15 Order and incorporates its reconsideration request.

V. Office of the Attorney General – Clarification and Reconsideration

The OAG noted that the cause of the October 2023 outage at Prairie Island is not disputed. Xcel

¹² Xcel Energy Answer to Clarification at 3-4.

provided inaccurate maps to the drilling contractors, which caused the drillers to strike buried cables resulting in the outage. Xcel admitted to the facts necessary to establish its imprudence. Simply contesting the Commission's decision is not grounds for reconsideration. Xcel did not point to any evidence to dispute its imprudence and Xcel's request for a contested case for a prudence determination should be denied.

The OAG supports the Department's request for clarification of the contested case issues.

VI. Citizens Utility Board – Reconsideration

CUB also noted that the material facts are not disputed. Xcel suggested that prudence should be evaluated on the overall operation of Prairie Island rather than considering the actions and decisions surrounding the drilling incident. CUB stated that the Commission's decision is grounded by undisputed facts. Xcel did not raise new issues, point to new relevant evidence, expose errors or ambiguities in the Commission's Order, or otherwise raise reasonable arguments justifying reconsideration of the Order. CUB recommended denial of Xcel's reconsideration request.

CUB did not comment on the Department's clarification request.

VII. Staff Comments

Staff concurs with the various commenters' assessment that Xcel Energy did not identify a new issue, point to new relevant evidence, or discover errors or ambiguities in the Commission's Order.

Staff supports the Department's clarification request of the November 15 Order to specify the scope of the contested case proceedings to minimize disputes, provide focus to record development and promote an efficient use of resources.

DECISION OPTIONS

Reconsideration

1. Grant Xcel Energy's petition for reconsideration. Rescind the imprudence determination in ordering paragraph 5 of the November 15, 2024 Order, and adopt the amended order language shown on pages 3–4 of Xcel Energy's December 16, 2024 filing. Refer the additional issues of (1) whether Xcel Energy acted prudently in its operation and maintenance of the Prairie Island Nuclear Generating Plant prior to the October 2023 outage and (2) if so, whether Xcel Energy's lack of prudence resulted in customers paying more for power than they otherwise would have, such that a refund of power costs is appropriate, to the OAH for a contested case. (Xcel Energy)

Or

2. Deny Xcel Energy's petition for reconsideration. (Department, OAG, CUB)

Clarification

3. Grant the Department's clarification request, and adopt the amendments to the November 15, 2024 Order shown on pages 5–6 of the Department's December 5, 2024 filing, clarifying that the contested case issues are limited to the refund owed to ratepayers for costs that flow through the fuel-clause adjustment report. (Department, OAG; Xcel supports if paired with Decision Option 4)

And/or

4. Clarify that the contested case shall also consider any benefits and offsets in determining the appropriate refund and consider whether imprudence by Xcel Energy resulted in customers paying more for power than they otherwise would have paid such that a refund of power costs is appropriate. (Xcel Energy)

Or, the following may be selected if Decision Option 3 is not selected:

5. Clarify that the contested case shall address all costs owed to ratepayers as a result of Xcel's imprudence leading to the October 2023 outage at Prairie Island Nuclear Generating Plant, not only costs that flow through the fuel-clause adjustment report. (Department Alternative)