

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

In the Matter of the Application of Xcel
Energy for a Certificate of Need for
Additional Dry Cask Storage at the Prairie
Island Nuclear Generating Plant
Independent Spent Fuel Storage
Installation

FIRST PREHEARING ORDER

This matter came on for a prehearing conference before Administrative Law Judge Megan J. McKenzie held by videoconference on May 13, 2024.

Elizabeth Schmiesing, Winthrop & Weinstine, and Ian Dobson, Xcel Energy, appear on behalf of Northern States Power Company d/b/a Xcel Energy (Xcel Energy);

Katherine Arnold and Richard Dornfeld, Assistant Attorneys General, appear on behalf of the Minnesota Department of Commerce (Department);

Katherine Hinderlie, Assistant Attorney General, appears on behalf of the Minnesota Office of Attorney General - Residential Utilities Division (OAG-RUD);

Bret Eknes and Craig Janezich are participating on behalf of the Minnesota Public Utilities Commission (Commission) Staff.

Based upon the record, the prehearing conference, and the parties' stipulations,

IT IS HEREBY ORDERED:

I. Governing Rules

1. Hearings in this matter will be conducted in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.57–14.62 (2022); the rules of the Office of Administrative Hearings, Minn. R. 1400.5100–1400.8400 (2023); and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. R. 7829.0100–7829.4000 (2023).

2. The contested case proceedings will be conducted in accordance with the Minnesota Rules of Professional Conduct, and the Professionalism Aspirations approved and endorsed by the Minnesota Supreme Court.

II. Parties, Intervention, and Public Participation

3. The Commission's Notice of and Order for Hearing (Order for Hearing) issued in this matter identified the parties as Xcel Energy and the Department.

4. It is not necessary to be an intervenor or party to participate in these proceedings. Under Minn. R. 7829.0900, members of the public may submit written comments during any comment period established by the Commission, and participants may be granted an opportunity for oral presentations. Under Minn. R. 1400.6200, subp. 5, a person may be permitted to note their appearance, provide testimony and exhibits, and question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Such persons offering testimony or exhibits may be questioned by parties to the proceeding. Oral or written testimony provided without benefit of oath or affirmation, and which is not subject to cross-examination, shall be given such weight as the Administrative Law Judge deems appropriate.

5. All persons may be represented by legal counsel, but such representation is not required.

6. The Order for Hearing directed that persons wishing to become formal parties should promptly file Petitions to Intervene pursuant to Minn. R. 1400.6200. If a person wishes to intervene as a party in this proceeding, such a person must file a Petition to Intervene with the Administrative Law Judge not later than **December 2, 2024**. Such Petition to Intervene must comply with Minn. R. 1400.6200. A Notice of Appearance shall be filed with the Petition. Petitioners shall also provide an email address on the Petition or Notice of Appearance. Any objection to a petition shall be filed within seven (7) days of the filing of the Petition. The Petition shall be served upon all existing parties and the Commission.

7. Any attorney wishing to appear on behalf of a party in this proceeding who is not a member of the Minnesota bar must file an application to be admitted pro hac vice. Such application shall be supported by a declaration indicating that the attorney agrees to comply with the Minnesota Rules of Professional Conduct, submits to the jurisdiction of Minnesota's courts with respect to their conduct in this proceeding, and understands that the proceeding will be conducted pursuant to the Minnesota Supreme Court's Professionalism Aspirations. Affiliation with local counsel is not required.

III. Service List

8. A copy of this First Prehearing Order shall be served according to the service list maintained by the Commission. Thereafter, the service list shall be established by the Administrative Law Judge and the Office of Administrative Hearings (OAH List). The OAH List shall include the parties, Commission staff, and the court reporter, and any persons who are granted intervenor status. All documents filed in this contested case proceeding shall be served in accordance with the OAH List.

9. Members of the public may receive notices of all filings and access to all public documents filed in the case by subscribing to these dockets on the Commission's eDockets system: <https://www.edockets.state.mn.us/EFiling/security/login.do?method=showLogin>. To subscribe, enter the docket number for this action, which is found on the first page of this First Prehearing Order. Upon subscribing to a docket, you will be provided with electronic notice of all filings, as well as access to the public documents filed in the case.

IV. Schedule

10. The procedural schedule in this matter shall be as follows:

Deadline for Submission of Proposed Protective Order	July 31, 2025
Deadline for Direct Testimony	February 10, 2025
Deadline for Rebuttal Testimony	Monday, March 17, 2025
Deadline for Surrebuttal Testimony	Monday, March 31, 2025
All Parties File Final Witness List and Exhibit List	Thursday, April 17, 2025
Initial Brief and Applicant's Proposed Findings of Facts	Wednesday, May 7, 2025
Reply Brief and Responding Parties' Proposed Findings of Facts	Wednesday, May 21, 2025
ALJ Report Issued	Tuesday, July 1, 2025

11. Public hearings concerning this matter will be held at locations and times to be negotiated by the parties and Commission Staff. It is anticipated that the public hearings will be held in March 2025. The deadline for submission of public comments shall be **April 10, 2025**.

V. Discovery

12. The deadline for the parties to exchange discovery shall be **April 4, 2025**. Discovery should be completed by that date. Information requests and responses shall **not** be eFiled into the official record or served on the Administrative Law Judge or court reporter unless they are the subject of a formal discovery dispute.

13. A party may serve requests for information on any other party. All requests for information shall be made in writing by email, and the requesting party shall also email a copy of the request to all other parties. To the extent that a request includes material designated as Trade Secret or Not Public under the Minnesota Government Data Practices Act, Minn. Stat. ch. 13 (2022), an email request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by email after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day. The parties may use a

shared site to manage the submission of information requests, so long as the site meets all other requirements of this order.

14. The party responding to the request shall provide the requested information to the requesting party within eight (8) days of receipt of the information request. In accordance with Minn. R. 1400.6100, subp. 1, the day that the information request is received is not counted in the eight-day period.

15. Responses to information requests shall be submitted by email. The Department may use the eService function of the eFiling software system to facilitate email service of public information request responses on any other party. To the extent that a response includes material designated as trade secret or not public, an email response is required only between the requesting party and the responding party. Any response received before 4:30 p.m. is considered to be received on the same day. Any response that is received after 4:30 p.m. is considered to be received the following business day.

16. In the event that the responding party is unable to send the response by email due to the volume or nature of information included in a response, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service so that the requesting party receives the entire response by the date due, including any material designated as trade secret or not public. The responding party will notify the requesting party by email that the remainder of the response follows by a separate delivery method and describe the method it was sent. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

17. In the event the information cannot be supplied within eight (8) days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and shall attempt to work out a schedule of compliance with the requesting party.

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Hearings on such motions may be conducted by telephone conference call.

VI. Prehearing Filings

19. By **4:30 p.m. on April 17, 2025**, parties shall file a Witness List and Proposed Exhibit List identifying all documents that the party intends to offer into the hearing record. The eDocket unique identifier, taken from the eDocket list when the document is electronically filed, shall be inserted into the Exhibit List as a hyperlink. A

courtesy copy of the finalized exhibit list shall be provided to the Administrative Law Judge and court reporter by email.

20. Each party shall provide one paper copy of its testimony and exhibits to the Administrative Law Judge. Copies should be double-sided, three-hole punched, and in binders. The parties are encouraged to submit paper copies of testimony at the time it is filed, rather than waiting until the hearing date.

21. Each party shall mark its pre-filed testimony and offer it for admission into the record at the opening of the hearing. The front page of each exhibit shall be pre-marked, as follows:

- (a) An exhibit number displayed in the lower right-hand corner of the first page of the exhibit. Exhibit numbers are assigned as follows:
 - (1) Xcel beginning at 100;
 - (2) The Department beginning at 200;
 - (3) Commission Staff, if needed, beginning at 300; and
 - (4) Any other parties shall be assigned numbering ranges in a subsequent order.
- (b) The eDocket unique identifier, taken from the eDocket list when the document is electronically filed. The eDocket unique identifier shall be displayed in the upper right-hand corner of the first page of the exhibit.

22. Except for good cause shown, all revisions or corrections to any pre-filed testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than two (2) business days prior to the commencement of the public hearing. Corrections to any pre-filed testimony shall be identified and marked on the copy of the exhibit which is entered into the hearing record.

23. Pre-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony that is offered, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Any new affirmative matter that is not offered in reply to another party's rebuttal testimony and exhibits will not be allowed in surrebuttal testimony and exhibits.

24. Except for good cause shown, objections by any party related to the qualifications of a witness or to that witness' direct, rebuttal, or surrebuttal testimony shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, and serves a copy of such objections on the parties, no later than **4:30 p.m. on April 18, 2025**.

VII. Order of Testimony

25. The tentative order of testimony in the evidentiary hearing shall be: Xcel, any other parties, and the Department. Questioning of the witnesses shall proceed in the same order, followed by Commission Staff and the Administrative Law Judge. This provision is subject to change by agreement of the parties or further order of the Administrative Law Judge. Each party shall advise other parties and the Administrative Law Judge of the order in which it will call witnesses for cross examination with its witness list filed by **April 17, 2025**.

26. If a sponsoring party needs a date certain to offer the testimony of a witness, the sponsoring party should submit a request to the Administrative Law Judge and other parties.

27. The parties are encouraged to stipulate to any facts not in dispute and to admission of the testimony of any witness or receipt of any exhibit related to uncontested facts and issues.

VIII. Subpoenas

28. Requests for subpoenas to compel the attendance of a witness or for the production of documents shall be made in writing to the Administrative Law Judge pursuant to Minn. R. 1400.7000. The subpoena request shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity. The request shall also include the full name and home or business address of each person to be subpoenaed and, to the extent known, the date, time, and place for responding to the subpoena. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at <https://mn.gov/oah/forms-and-filing/forms/>.

IX. Hearing

29. The evidentiary hearing in this matter shall be held on **April 22 and 23, 2025**, in the Commission's Small Hearing Room, Minnesota Public Utilities Commission, 121 7th Place East, St. Paul, Minnesota 55101, subject to availability. Upon request, certain parties or witnesses may be allowed to appear remotely.

30. At the evidentiary hearing, parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through one representative chosen by the party.

31. The Administrative Law Judge may hold a prehearing conference shortly before the evidentiary hearing to address logistics and final details for the hearing. If the parties believe that a prehearing conference at that stage would be helpful, the parties may request that a prehearing be scheduled.

32. Note that some or all of the evidentiary hearing may be conducted remotely, with alternative procedures appropriate to a remote public hearing, depending on the circumstances at that time.

X. Filing of Documents (Excluding Information Requests and Responses)

33. If the parties desire a Protective Order to govern access to information designated as Not Public data or as Highly Sensitive Trade Secret Information, they shall file a proposal promptly but no later than **July 31, 2024**.

34. Documents shall be filed using the Commission's eDockets e-Filing system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3 (2022), and the Commission's standards, but may also be filed by personal delivery or U.S. Mail. Electronic filing is strongly encouraged.

35. Pre-filed testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

36. An oversized exhibit may be received into the hearing record, with approval of the Administrative Law Judge, provided that a duplicate original of the exhibit conforming to the standards of Minn. R. 1400.5275, is submitted into the record and e-Filed.

37. The effective date of filing shall be the date the document is e-Filed or delivered to the Administrative Law Judge. Parties using the e-Filing system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three (3) business days thereafter.

38. The parties agree that e-Filing through the eDockets system shall constitute service in this matter. Any document that cannot be e-Filed shall be served by U.S. mail or delivered to the persons indicated on the official service list by the date the document is required to be served. The service list will be revised as necessary by the Office of Administrative Hearings.

39. A courtesy copy of all post-hearing briefs and proposed findings shall be sent to the Administrative Law Judge and court reporter by electronic mail. Proposed findings and post-hearing briefs should be sent in a Microsoft Word format that permits revision.

XI. Court Reporter

40. The Commission will arrange to have a court reporter present at the hearing. Parties should make arrangements with the court reporter to obtain a copy of the transcripts.

41. The court reporter shall provide the Administrative Law Judge with an electronic copy of all transcripts.

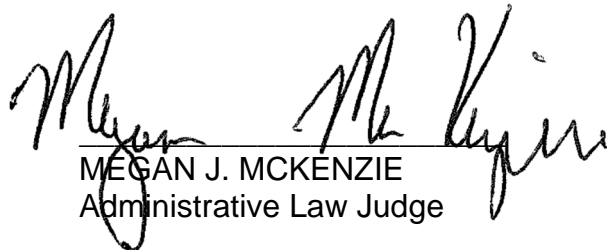
XII. Requests for Accommodation

42. No person has requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed. Requests for accommodation of a disability may be submitted at: <https://mn.gov/oah/lawyers-and-litigants/title-ii.jsp> Title.

XIII. Contacting the Administrative Law Judge

43. The Administrative Law Judge may be contacted by email sent to her Legal Assistant, Nichole Helmueller, Nichole.Helmueller@state.mn.us, For purely procedural or scheduling matters, the parties may contact the Administrative Law Judge directly by email, so long as all other parties are included in the communication.

Dated: June 3, 2024



MEGAN J. MCKENZIE
Administrative Law Judge

June 3, 2024

See Attached Service List

Re: *In the Matter of the Application of Xcel Energy for a Certificate of Need for Additional Dry Cask Storage at the Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation*
OAH 25-2500-39971
MPUC E-002 / CN-24-68

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **FIRST PREHAERING ORDER** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7874, michelle.severson@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,



MICHELLE SEVERSON
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Application of Xcel Energy for a Certificate of Need for Additional Dry Cask Storage at the Prairie Island Nuclear Generating Plant Independent Spent Fuel Storage Installation	OAH Docket No.: 25-2500-39971
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On June 3, 2024, a true and correct copy of the **FIRST PREHAERING ORDER** was served by eService, and United States mail, (in the manner indicated below) to the following individuals:

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