

**BEFORE THE MINNESOTA OFFICE OF
ADMINISTRATIVE HEARINGS**
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**FOR THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA**
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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 PUC Docket No. E-002/GR-13-754
OAH Docket No. 48-2500-31139

POST-HEARING BRIEF OF THE XCEL LARGE INDUSTRIALS

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Flint Hills Resources, LP; Gerdau Ameristeel US Inc.; Unimin Corporation; and USG Interiors, Inc. (collectively, the “Xcel Large Industrials” or “XLI”) submit the following brief in support of these suggestions.

I. INTRODUCTION

At the conclusion of NSP’s last rate case, the Commission expressed concern about the Monticello Life Cycle Management/Extended Power Uprate (the “Monticello Project” or the “Project”) cost overruns.¹ Based on that concern, the Commission opened a separate docket (the “Monticello Prudence Review”) to investigate 1) whether the handling of the Monticello Project was prudent and 2) whether NSP’s request for recovery of Monticello Project cost overruns is reasonable. In its order referring the Monticello Prudence Review to contested case proceeding, the Commission added a third issue to be address. Namely, which project cost increases were due solely to the Extended Power Uprate (“EPU”), solely to the Life Cycle Management (“LCM”), or attributable to both projects.² The Commission also approved retention of an expert to assist the Minnesota Department of Commerce - Division of Energy Resources (the “Department”) in conducting the investigation into these matters on the Commission’s behalf.³

Under Minnesota law, NSP bears the burden of demonstrating that its proposed rate increase is just and reasonable. Any doubt as to the reasonableness of its proposal should be resolved in favor of the ratepayer. Therefore, in the Monticello Prudence Review, NSP bears the burden of showing that its handling of the Monticello Project was prudent, that its request for recovery of the cost overruns is reasonable, and that its proposal for allocating costs between the EPU and LCM is appropriate. The experts retained by the Department of Commerce to assist with investigating these issues identified significant problems with NSP’s handling of the

¹ *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, Findings of Fact, Conclusions, and Order, at 19 (Sept. 3, 2013).

² *In the Matter of the Application of a Commission Investigation into Xcel Energy’s Monticello Life Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Docket No. E-002/CI-13-754, Order Approving Investigation and Notice and Order for Hearing, at 4 (Dec. 18, 2013).

³ *In the Matter of the Application of a Commission Investigation into Xcel Energy’s Monticello Life Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Docket No. E-002/CI-13-754, Order Approving Investigation and Notice and Order for Hearing, at 7 (Dec. 18, 2013).

Monticello Project, which lead the Department to conclude that NSP had not met its burden to show that recovery of the full amount of the cost overrun is reasonable.⁴

XLI appreciates the Department's efforts in conducting this investigation and, as will be explained further in this Brief, share in its conclusion that NSP has not met its burden to show that its handling of the Monticello Project was prudent and that fully recovery of the cost overrun is reasonable. As the Department noted, the record in this proceeding can support significant disallowance of these costs.⁵ For the reasons explained further below, XLI recommends a disallowance of any return on the \$402.1 million cost overrun. The Department's investigation found substantial evidence that NSP's handling of various aspects of the Project was imprudent. That conclusion is also supported by the sheer size of the cost overrun. The final cost is projected to be more than double NSP's original estimate and, to XLI's knowledge, is the largest cost overrun a public utility in Minnesota has ever incurred.⁶ Yet NSP has the chutzpah to request recovery of and a return on every penny. XLI respectfully requests that the Administrative Law Judge ("ALJ") recommend that the Commission deny NSP's request and adopt XLI's position.

II. ANALYSIS

A. NSP Bears the Burden of Proof to Demonstrate that its Proposal is Just and Reasonable.

It is NSP's burden to demonstrate its proposal is just and reasonable.⁷ "Every rate made, demanded, or received by any public utility ... shall be just and reasonable.... Any doubt as to reasonableness should be resolved in favor of the consumer."⁸ The Supreme Court described the Commission's role in determining just and reasonable rates in a rate proceeding by stating:

⁴ Ex. 436, Campbell Opening Statement at 1.

⁵ Ex. 315, Campbell Surrebuttal at 39:14-16.

⁶ Ex. 315, Campbell Direct at 27:6-9.

⁷ MINN. STAT. § 216B.16, subd. 4 ("The burden of proof to show that the rate change is just and reasonable shall be upon the public utility seeking the change.").

⁸ MINN. STAT. § 216B.03.

[I]n the exercise of the statutorily imposed duty to determine whether the inclusion of the item generating the claimed cost is appropriate, or whether the ratepayers or the shareholders should sustain the burden generated by the claimed cost, the MPUC acts in both a quasi-judicial and a partially legislative capacity. To state it differently, in evaluating the ... case the accent is more on the inferences and conclusions to be drawn from the basic facts (i.e., amount of claimed costs) rather than on the reliability of the facts themselves. Thus, by merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating that it is just and reasonable that the ratepayers bear the costs of those expenses.^{9]}

That the proposed rates meet this “just and reasonable” standard is a burden imposed on the utility, which it must establish by a preponderance of the evidence.¹⁰ This evidentiary standard is defined as “whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission’s statutory responsibility to enforce the state’s public policy that retail consumers of utility services shall be furnished such services at reasonable rates.”¹¹

In the Monticello Prudence Review, it is NSP’s burden to show that its proposal to recover all of the costs it incurred for the Monticello Project were prudent and that its request to fully recover those costs is reasonable.

B. The Department’s Prudence Review Investigation Revealed Significant Concerns about NSP’s Planning and Management of the Monticello Project.

1. The Department Articulated and Applied the Correct Standard of Review in Its Investigation.

In its initial filing, NSP requested that this prudence review focus on whether NSP’s actions and decisions were reasonable at the time they were made.¹² Department staff and consultants applied this standard in the course of their investigation. As Department witness Christopher Shaw described in his direct testimony, “[p]rudency asks whether [NSP] has shown it acted in a reasonable manner, based on information it knew or reasonably should have known at the

⁹ *In re N. States Power Co.*, 416 N.W.2d 719, 722-23 (Minn. 1987).

¹⁰ *N. States Power Co.*, 416 N.W.2d at 722.

¹¹ *Id.*

¹² Ex. 1, Xcel Energy’s Report on Monticello LCM/EPU Prudence, at 22.

time.”¹³ Mr. Shaw further explained that prudence analysis in this case includes consideration of information NSP provided to the Commission during the certificate of need proceedings, whether NSP kept regulators reasonably informed about cost increases, and whether NSP has shown that it managed costs appropriately.¹⁴ XLI agrees that the standard set forth by Mr. Shaw is the appropriate standard of review for this proceeding, while the burden of proof lies with NSP to show that its proposed cost recovery is reasonable and prudent under this standard.

In rebuttal testimony, NSP criticized the Department for applying a hindsight analysis by comparing NSP’s 2008 cost estimates with actual costs.¹⁵ However, as Mr. Shaw explained in his surrebuttal testimony, NSP’s criticism appears to conflate the Department’s overall investigation and conclusion that NSP failed to show that full cost recovery is reasonable with the cost-effectiveness analysis performed by Mr. Shaw in support of the Department’s proposed remedy (i.e. disallowance of costs above a cost-effectiveness threshold).¹⁶ The Department further clarified that its cost effectiveness analysis was not intended to be substituted for the prudence standard.¹⁷ The Department’s overall investigation focused on the prudence of NSP’s decisions at the time they were made, but then reasonably reviewed actual costs when considering an appropriate remedy. In fact, since the Monticello Prudence Review is an investigation of cost overruns, any proposed remedy in this proceeding necessitates consideration of the initial cost estimates versus actual costs.

In his rebuttal testimony, NSP President David Sparby also criticized the Department for not relying on the Company’s original estimate of a reasonable split of costs between the LCM and the EPU.¹⁸ However, in the case of splitting the costs between the LCM and EPU portions of the Project, the primary issue is not whether NSP’s estimate of the split was reasonable at the time. Instead, the split now is only relevant for purposes of (1) determining the percentage of costs that will be affected by the Commission’s decision in the parallel rate case proceeding as to when the EPU portion of the Project will be in-service, and (2) calculating the appropriate cost-effectiveness threshold for implementing the Department’s proposed remedy. With respect to the first issue, the

¹³ Ex. 309, Shaw Direct at 8:16-17.

¹⁴ Ex. 309, Shaw Direct at 8:18-20.

¹⁵ Ex. 12, Sparby Rebuttal at 11-12 & 34-35; Ex. ___, Alders Rebuttal at 2.

¹⁶ Ex. 309, Shaw at 3:20-21

¹⁷ Ex. 435, Shaw Opening Statement at 2.

¹⁸ Ex. 12, Sparby Rebuttal at 12:7-8 & 32:12-14. See also O’Connor Rebuttal at 122-123.

Commission specifically directed the Department to investigate the appropriate split of actual costs.¹⁹ As for the second issue, the cost-effectiveness question can be avoided by applying XLI's no return proposal.

2. The Department's Investigation Revealed Substantial Evidence of Imprudent Management.

The Department's investigation revealed significant problems with NSP's management of the Monticello Project, including human performance problems identified by the NRC, muddled cost tracking mechanisms, poor communication regarding spiraling cost increases, delays, poor upfront planning, and inadequate project scoping.

For example, Mark E. Crisp's direct and surrebuttal testimony provides a technical review of NSP's project management decisions and how those decisions impacted the Monticello Project's costs.²⁰ He described an array of management problems, including lack of upfront planning, the negative effects of NSP's fast track approach, insufficient oversight of contractors, ineffective use of contingencies, and other project management problems. With respect to upfront planning, Mr. Crisp explained that "any multidiscipline project requires extensive and accurate pre-project definition" and that failure to establish the scope at the outset for a project like the LCM/EPU, all but guarantees schedule delays and cost overruns.²¹ Mr. Crisp concluded that NSP's initial scope definition and project planning contributed significantly to the cost overruns.²² Similarly, in his direct testimony, William R. Jacobs concluded that, based on his examination of costs attributable to the LCM and EPU portions of the Project, a significant contributor to the cost overrun was NSP's initial lack of understanding of the scope of the work and resulting inadequacy of its costs estimates.²³ Nancy Campbell's direct and surrebuttal testimony identifies a lack of cost controls, inadequate and opaque cost tracking, poor communication with regulators, and human performance errors. In her surrebuttal testimony and opening statement, Ms. Campbell also provided a summary of the factors that lead the Department to conclude that NSP failed to show that recovery of the cost overruns is reasonable:

¹⁹ *In the Matter of the Application of a Commission Investigation into Xcel Energy's Monticello Life Cycle Management/Extended Power Uprate Project and Request for Recovery of Cost Overruns*, Docket No. E-002/CI-13-754, Order Approving Investigation and Notice and Order for Hearing, at 4 (Dec. 18, 2013).

²⁰ Ex. 300, Crisp Direct at 3:15-19.

²¹ Ex. 300, Crisp Direct at 6:21-7:2.

²² Ex. 300, Crisp Direct at 8:9-11.

²³ Ex. 305, Jacobs Direct at 16:1-17; Ex. 421, Jacobs Opening Statement at 3-4.

- 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 Mr. 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 and in this case regarding necessary capital costs 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;
- lack of showing that it is reasonable to allow recovery from ratepayers of the amount of EPU project that is not cost effective as addressed by Mr. Shaw.²⁴

XLI will not repeat and summarize the Department’s full analysis. It should be evident from review of this record that there is substantial evidence that NSP management decisions in both the initial planning of the Project and in its implementation contributed to the cost overruns. NSP has criticized the Department for not showing, item-by-item, how NSP’s decisions increased costs.²⁵ However, as Ms. Campbell responded in her surrebuttal testimony, the nature of many of the concerns the Department identified, such as inadequate controls and scoping, impacted many aspects of the project, making an item-by-item accounting impossible.²⁶ She also pointed out that NSP’s opaque cost accounting further precluded such an analysis.²⁷ Despite not being able to provide a complete item-by-item analysis, the Department did provide

²⁴ Ex. 315, Campbell Surrebuttal at 25-26; Ex. 436, Campbell Opening Statement at 3.

²⁵ Ex. 12, Sparby Rebuttal at 6:7-11.

²⁶ Ex. 313, Campbell Direct at 26:13-14.

²⁷ Ex. 313, Campbell Direct at 26:14-15.

various examples of items that should have better planned for, such as the distribution system upgrade needed to accommodate higher output from the plant.²⁸

Most importantly, it is not the Department's burden to show that the costs NSP seeks to recover are reasonable. Instead, the Department has raised substantial doubts about NSP's management that NSP has not been able to adequately rebut with its own attempts at item-by-item analysis. In Mr. O'Connor's rebuttal testimony, he attempts to justify in detail the reasons for cost increases for various aspects of the Project.²⁹ But this effort does not address the fundamental problems related to planning, scoping, and cost tracking identified by the Department. The final Project cost is estimated to be more than double NSP's initial estimates, even though the overall goals and nature of the Project never changed. The enormous size of the cost overrun indicates that, whatever the explanation for cost increases for individual items, the initial plans and scope were inadequate. Furthermore, NSP should not be able to shield itself from disallowance by hiding behind opaque cost accounting.

3. The OAG's Analysis also Found that NSP's Cost Recovery Proposal is Not Reasonable and that NSP Incurred Costs Imprudently.

In the rebuttal testimony of John Lindell, the Office of the Attorney General - Antitrust and Utilities Division (the "OAG") provided its own analysis of the reasonableness of NSP's cost overruns. Mr. Lindell reviewed the record in this proceeding, including both the Department and NSP's testimony, and concluded that a significant portion of the cost overruns for the Monticello Project were the direct result of NSP's mismanagement.³⁰ Based on this conclusion, Mr. Lindell recommended that NSP not be allowed any return on the cost overruns.³¹ He also recommended that several specific cost overruns identified by the Department's consultants be disallowed completely along with an additional percentage to account for the overall impact of poor management.³²

²⁸ Ex. 300, Crisp Direct at 10.

²⁹ See Ex. 9, O'Connor Rebuttal at 36-80.

³⁰ Ex. 200, Lindell Rebuttal at 12:15-22.

³¹ Ex. 200, Lindell Rebuttal at 27:8-28:2

³² Ex. 200, Lindell Rebuttal at 28:2-29:16.

C. The ALJ Should Recommend That NSP Receive No Return on the Cost Overrun.

1. XLI Concur with the Overall Conclusions of the Department and OAG and Proposes that NSP Receive No Return on the Cost Overrun.

As described above in the introduction, NSP has argued for full recovery of the Monticello cost overruns. But as the Department’s investigation demonstrated, NSP has failed to demonstrate that its handling of the Monticello Project was prudent and that its request for full recovery is reasonable. For these reasons, both the Department and the OAG recommended significant disallowances. XLI concurs with the Department and the OAG that in the record of this proceeding, NSP failed to demonstrate that its handling of the Monticello Project was prudent and that its request for full recovery is reasonable. XLI also agrees that because NSP did not demonstrate that the cost overruns it incurred were reasonable and prudent, that a significant disallowance is justified and necessary to protect ratepayers from the current project’s mismanagement and set precedent to encourage utilities to prudently bid and manage future projects.

The record in this proceeding is sufficiently robust to support either the Department or the OAG’s recommended remedy. However, due to certain policy concerns and considerations about precedent explained below, XLI recommends a third approach—disallowance of any return on the entire cost overrun. Department witness Nancy Campbell suggested this alternative in her surrebuttal testimony and calculated that no return on the \$402.1 million³³ cost overrun would result in a \$25.796 million downward revenue adjustment for 2015 on a Minnesota jurisdictional basis (and then stepped down every year during the life of the plant).³⁴

³³ XLI did not perform independent analysis or calculations, but generally supports the Department’s calculation, which determined the cost overrun amount to be \$402.1 million. In particular, XLI supports the Department’s inclusion of allowance for funds used during construction (“AFUDC”) costs in the calculation. AFUDC is the “net cost of financing funds used for construction purposes for the period of construction and a reasonable rate on other funds when so used.” (Ex. 313, Campbell Direct at 12:18-21) As Department witness Nancy Campbell pointed out in her surrebuttal testimony, AFUDC is a cost of the plan in-service amount for which NSP is requesting rate recovery. And therefore, any denial of cost recovery of the Monticello Project should also include denial of AFUDC costs. (Ex. 315, Campbell Surrebuttal at 38:9-16.).

³⁴ Ex. 315, Campbell Surrebuttal at 37:15-19 & Attachment A. Ms. Campbell also described a similar alternative that would allow NSP to earn only a weighted short-term and long-term debt return of the \$402.1 million, the effect of which would be a downward revenue requirement adjustment of \$20.507 million for 2015 on a Minnesota jurisdictional basis. Ex. 315, Campbell Surrebuttal at 37:20-38:3 & Attachment B.

2. The Department Proposes a Disallowance of Costs Above a Cost-Effectiveness Threshold.

The Department proposed disallowing recovery of costs above a cost-effectiveness threshold of the next least-cost alternative considered in the certificate of need (“CN”) proceedings. Specifically, the Department recommended a \$71.42 million reduction to the capital costs of the EPU, resulting in a \$10.237 million downward adjustment to the revenue requirement for 2015 on Minnesota jurisdictional basis and ongoing adjustment for the life of the plant stepped down for accumulated depreciation.³⁵ Although the Department has consistently stood by this recommendation, it noted that the record could support higher disallowances and described XLI’s proposal of disallowing any return on the cost overrun as a potential alternative.³⁶

The Department’s cost-effectiveness threshold is based on its analysis of the alternatives considered in the 2008 proceeding in which NSP was granted a CN for the EPU portion of the Project. Its recommendation to disallow \$71.42 million reflects the difference between the estimated actual cost of the EPU and the next least-cost alternative available in 2008.³⁷

3. The OAG Recommends Denying Any Return on the Cost Overrun and Disallowing 75% of the Cost Overrun.

The OAG proposed going further than the Department, finding that the record supported disallowing 75% of the cost overrun (or \$321 million based on the OAG’s calculation that the cost overrun amount is \$428.1 million) and no return on the remaining 25%.³⁸ The Department roughly estimated that the OAG’s proposal would amount to a downward revenue requirement adjustment of \$58 million for 2015 and stepping down for the accumulated depreciation over the life of the plant.³⁹

³⁵ Ex. 313, Campbell Direct at 31:6-11; Ex. 315, Campbell Surrebuttal at 39:8-16.

³⁶ Ex. 315, Campbell Surrebuttal at 39:14-16.

³⁷ See generally, Ex. 309, Shaw Direct at 20-33.

³⁸ Ex. 200, Lindell Rebuttal at 29-30.

³⁹ Ex. 315, Campbell Surrebuttal at 37:5-12.

4. Based on Policy Considerations, the ALJ Should Recommend XLI's Proposal.

As noted above, XLI believes the record in this proceeding supports disallowing a significant amount of the cost overrun. However, there are two potential policy concerns with the approaches recommended by the Department. First, the Department's cost-effectiveness proposal relies too heavily on its analysis of the split of costs between the LCM and EPU portions of the Project. Second, as the Department itself described in its testimony,⁴⁰ Commission review of cost overruns has usually focused on disallowing all costs or a return on costs above levels approved in a CN proceeding.

The Department's proposal relies heavily on its proposed split of the costs between the LCM and the EPU. XLI has no objection to Mr. Jacobs' testimony on this issue or the Department's conclusion that 85.7% of the LCM/EPU costs should be attributed to the EPU.⁴¹ However, as the Department also argued, NSP did not track LCM and EPU costs separately, despite treating them as two separate projects in its initial cost estimates and CN proceedings.⁴² XLI agrees that NSP's approach to cost tracking contributed to the lack of transparency and communication that the Department concluded contributed to the cost overruns. However, it also undermines the degree to which costs can be precisely allocated between the LCM and EPU. XLI believes the Department's proposed disallowance of \$71.42 million is a remedy that reflects the minimum harm to ratepayers caused by the cost overrun. That amount is only 12.9% of the total plant cost when the overrun was 116%.⁴³ If the ALJ or the Commission determines that a different split is appropriate such that a lower percentage of costs is attributed to the EPU, then this remedy is further diminished and would not be proportional to the level of concerns the Department's own investigation identified.

Second, XLI is concerned that the Department's cost-effectiveness proposal potentially sets a bad precedent for the future. As Mr. Shaw explained in his testimony, reasonably accurate cost estimates in CN proceedings are critical for good decision-making:

⁴⁰ Ex. 315, Campbell Surrebuttal at 27:1-16.

⁴¹ Ex. 305, Jacobs Direct at 8:1-4.

⁴² Ex. 436, Campbell Opening Statement at 2.

⁴³ Ex. 313, Campbell Direct at 32:18-20.

As the Department has stated in past proceedings, cost estimates are used extensively in CN proceedings and relied upon by the [Minnesota Public Utilities Commission] Commission in comparing proposed projects to alternatives. Thus, this comparative analysis requires reasonable cost estimates to ensure that this cost comparison is valid. Since comparisons of proposed projects to alternatives based on relative costs is a critical part of any CN analysis, it is important for utilities to provide accurate estimates of project costs; not doing so adversely affects the integrity of the CN process and could harm ratepayers.⁴⁴

Limiting the disallowance of cost overruns to the amount above the next least-cost alternative provides no incentive to control costs above the estimate, but below the next least-cost alternative. Depending on the alternatives considered in any given proceeding, there could be a lot of room for cost overruns. Further, if precedent is set for capping costs at a cost-effectiveness threshold rather than at the level approved in a CN proceeding, a perverse incentive is established to offer low estimates, especially when potential alternatives are of significantly higher cost.

Establishing these perverse incentives is expressly not the Department's intention in this proceeding or in previous cost overrun reviews. As Mr. Shaw explained, the cost effectiveness-based remedy the Department proposes in this case is not intended to replace the prudence standard.⁴⁵ Further, in cost overrun reviews, the Department usually recommends limitations on recovery based on the CN-approved cost. Mr. Shaw further explained in his direct testimony:

Further, approval of utility projects in CNs and similar proceedings is not a blank check for any utility to recover from ratepayers all costs that are incurred to construct a project. In rider filings for example, the Department has routinely recommended that cost recovery be capped in the rider rates at the level of costs approved in the CN to ensure that utilities have the appropriate incentives to provide reasonably accurate cost estimates of proposed projects in CNs and to minimize those costs in practice. The integrity of CN proceedings depends on utilities providing reasonably accurate information, such as cost estimates.

Even though rider recovery is typically limited to the cost estimates in a utility's CN, a utility is free to try to demonstrate to

⁴⁴ Ex. 309, Shaw Direct at 12.

⁴⁵ Ex. 435, Shaw Opening Statement at 2.

the Commission in its subsequent rate case, or in a proceeding such as this, that costs in excess of the CN-approved levels are reasonable to charge to ratepayers; however, the burden is on the utility to make such a showing if it wants to recover cost overruns from ratepayers.⁴⁶

In her direct testimony, Ms. Campbell also cited a series of Minnesota cases that resulted in caps of costs or denial of returns above the CN-approved amount, often based on the Department's recommendations.⁴⁷ For example, in the 2012 rate cases, the Department challenged NSP's recovery of \$5.6 million above its competitive bid for the Nobles Wind project.⁴⁸ In that case, the Commission decided to allow recovery of the above-bid costs, but denied a return.⁴⁹

Even though the Department has been careful to cite the specific circumstances in this case as the reason for deviating from past recommendations based on CN-estimated costs, the Commission would still be setting a significant precedent if it adopts the Department's proposal. The special circumstances for this case cited by the Department are largely based on the unprecedented size of the cost overrun.⁵⁰ However, the unintended precedent may be two-fold. First, it could establish that large cost overruns, which have the greatest potential impact on ratepayers, are subject to lower disallowances. Second, it could incentivize utilities to underbid third-party owned projects in a resource acquisition proceeding based on an understanding that the utility would be allowed to recover its investments up to the next cheapest alternative.

The no-return option supported by XLI is the best remedy to address the significant cost overrun in this docket. Again, Xcel bears the burden of demonstrating it should be allowed to recover and earn a return on the \$402.1 million cost overrun by a preponderance of the evidence.⁵¹ This evidentiary standard is defined as "whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission's statutory responsibility to enforce the state's public policy that retail consumers of

⁴⁶ Ex. 309, Shaw Direct at 12-13.

⁴⁷ Ex. 313, Campbell Direct at 22-27.

⁴⁸ Ex. 313, Campbell Direct at 23:19-24:20.

⁴⁹ Ex. 313, Campbell Direct at 24:12-20 (referring to *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, Findings of Fact, Conclusions, and Order, at 25 (Sept. 3, 2013)).

⁵⁰ Ex. 313, Campbell Direct at 27:1-16.

⁵¹ *N. States Power Co.*, 416 N.W.2d at 722.

utility services shall be furnished such services at reasonable rates.”⁵² In other words, even if all of NSP’s claims regarding prudence were true, the ALJ (and ultimately the Commission) are required to enforce the reasonable rate standard. Given the doubling of the initial cost estimate and potential policy concerns with the other parties’ proposals, XLI believes its no-return proposal strikes the best balance of utility recovery with ratepayer protection.

III. CONCLUSION

XLI has carefully reviewed the results of the Department’s investigation and the testimony of other parties, and is greatly concerned about the issues of inadequate planning, scoping, and management of the Monticello Project that were identified in the course of this proceeding. Based on these results, NSP has not met its burden to show that its handling of the Project was prudent and that its proposal to obtain full recovery of and return on its investment is reasonable. To the extent there are any doubts about the reasonableness of the cost overrun, they must be resolved in favor of the ratepayer. The amount of the cost overrun—\$402 million—is staggering compared to NSP’s initial cost estimate for this Project and any cost overrun on a Minnesota utility project of which XLI is aware. Allowing full recovery of these costs plus a return would not only allow a very large amount of unreasonable costs to be recovered, it would also establish a bad precedent that would reduce incentives for utilities to control costs in the future. In order to protect both current ratepayers from bearing these unreasonable costs and future ratepayers from the effects of bad precedent, XLI respectfully requests that the ALJ recommend that NSP be denied any return on the full amount of the cost overrun.

⁵² *Id.*

Respectfully submitted,

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