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January 31, 2014

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**VIA E-FILING AND U.S. MAIL**

Dr. Burl W. Haar  
Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

**Re: In the Matter of the Petition of Northern States Power Company to  
Initiate a Competitive Resource Acquisition Process  
PUC Docket No. E-002/CN-12-1240  
OAH Docket No. 8-2500-30760**

Dear Dr. Haar:

Enclosed for filing is the Xcel Large Industrials' Reply to Exceptions to Administrative Law Judge Findings of Fact.

Very truly yours,

Stoel Rives LLP

*/s/ Andrew P. Moratzka*

Andrew P. Moratzka

APM/kap

Enclosures

cc: Service List (**via electronic service**)

**BEFORE THE MINNESOTA OFFICE OF  
ADMINISTRATIVE HEARINGS**  
100 Washington Square, Suite 1700  
Minneapolis, MN 55401-2138

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**  
121 7th Place East, Suite 350  
St. Paul, MN 55101-2147

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In the Matter of the Petition of Northern States  
Power Company to Initiate a Competitive  
Resource Acquisition Process

PUC Docket No. E-002/CN-12-1240  
OAH Docket No. 08-2500-30760

**REPLY TO EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE  
FINDINGS OF FACT**

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The following constitutes the reply of Flint Hills Resources, LP; Gerdau Ameristeel US Inc.; Unimin Corporation; and USG Interiors LLC (collectively, the “Xcel Large Industrials” or “XLI”) to the exceptions filed to the Administrative Law Judge’s Findings of Fact, Conclusions of Law and Recommendation dated December 31, 2013.

**I. INTRODUCTION**

On December 31, 2013, Administrative Law Judge Eric Lipman issued his Findings of Fact, Conclusions of Law and Recommendation in Xcel’s Competitive Resource Acquisition Process Docket (“ALJ’s Conclusions”).<sup>1</sup> All of the bidding Parties to the proceeding and the Department of Commerce - Division of Energy Resources (“Department”) filed exceptions to the ALJ’s Conclusions. Both the ALJ’s Conclusions and many of the filed exceptions discuss issues concerning Xcel’s uncertain capacity needs in the relevant timeframe, a subject that XLI weighed in extensively on in its Post-Hearing Public Comment (“Public Comment”). XLI does not intend to make here the same arguments regarding Xcel’s capacity needs as it did in its Public Comment - XLI continues to believe that it is prudent to select only the smallest and most

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<sup>1</sup> OAH Docket No. 8-2500-30760; Minn. Pub. Util. Comm’n Docket No. E-002/CN-12-1240.

flexible resources today that can be fully supported by the record and postpone more significant investment choices to its upcoming resource planning process. XLI submits this reply comment for the limited purpose of responding to the Department's assertion that the Minnesota Public Utilities Commission's (the "Commission's") March 2013 estimation of the size, type and timing of Xcel's capacity needs is now infallible.

## II. ANALYSIS

On March 5, 2013, the Commission issued its order approving Xcel Energy's 2011-2025 integrated resource plan, finding a need, and closing the resource plan docket.<sup>2</sup> In that Resource Plan Order, based upon a 2011 forecast, the Commission estimated that Xcel Energy's capacity needs ranged from 150 MW in 2017 to 500 MW in 2019.<sup>3</sup> Circumstances have since changed dramatically. The ALJ's Conclusions account for these facts. Contrary to the Department's assertions, the Commission can and should deviate from its estimations in the Resource Plan Order.

### A. Xcel Energy's Capacity Deficit has Changed

In its Public Comment, XLI argued that the changing circumstances and evermore uncertain need on Xcel's system called into question the prudence of making any resource selection in the current docket.<sup>4</sup> XLI's preference was to have such decisions made as part of Xcel's forthcoming resource planning process, where the decision would benefit from more accurate data and other closely related resource decisions.<sup>5</sup> The ALJ weighed XLI's assertions with other parties' arguments in reaching his conclusion.

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<sup>2</sup> *In the Matter of Xcel Energy's 2011-2025 Integrated Resource Plan*, Docket No. E-002/RP-10-825, ORDER APPROVING PLAN, FINDING NEED, ESTABLISHING FILING REQUIREMENTS, AND CLOSING DOCKET (March 5, 2013) ("Resource Plan Order").

<sup>3</sup> *Id.* at Ordering Para. 2

<sup>4</sup> *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240, POST-HEARING PUBLIC COMMENT OF THE XCEL LARGE INDUSTRIALS (Nov. 21, 2013) ("XLI Comment").

<sup>5</sup> *XLI Comment* at 19 ("Preserving flexibility now will allow the Commission to make more substantial investment choices based on better information fleshed out in the forthcoming Resource Planning process, something that will certainly be in the ratepayers' interests. Xcel's next resource plan will not only include more current and accurate forecasting data for the relevant time period but also include analysis of the comprehensive impact of EPA regulations on Xcel's generating units and system, best management strategies for Xcel's two oldest generators (Sherco Units 1 and 2), and best approaches for adding significantly more distributed generation on its system.")

## 1. The ALJ Closely Evaluated Xcel Energy's Capacity Needs

Section II of the Findings of Fact in the ALJ's Recommendations carefully consider the events and circumstances that transpired since the size, type and timing was estimated to initiate the competitive bidding process - many of which may significantly alter Xcel's capacity needs in the relevant timeframe.<sup>6</sup> These items include: the Minnesota Legislature's passage of a solar energy standard, Xcel's petitions for approval of a total of 750 MW of new wind generation, changes to the Midcontinent Independent System Operator ("MISO") planning reserve margin methodology, and continued downward projections of sales forecasts.<sup>7</sup> In light of these events, the ALJ found that Xcel's needs for additional capacity are "undergoing significant change" and that the 2017 shortfall may be non-existent or as high as 93 MW depending on what factors are included. Likewise the 2019 shortfall may be anywhere from 26 MW to 307 MW.<sup>8</sup> In light of these changes, the ALJ determined the most efficient solution to be "scalable projects that meet Xcel's near-term shortfalls" and for the Commission "to conduct a second procurement for needs which may occur after 2019."<sup>9</sup> Judge Lipman went on to explain that "[i]t is not efficient to procure one or more gas turbines when the projected needs through 2019 are modest - and may be getting smaller."<sup>10</sup>

Although the ALJ did not postpone all resource selections, he carefully assessed the changed circumstances and limited his selection to the most immediate and certain needs he believed could be supported on the record, while preserving the flexibility to make more substantial resource decisions as part of the upcoming resource planning process. As some of Xcel's largest consumers of energy, XLI appreciates the Judge's cautionary approach to avoid dramatically over or under building.

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<sup>6</sup> *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240, FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION (Dec. 31, 2013) ("ALJ Recommendations").

<sup>7</sup> *ALJ Recommendations*, Findings of Fact ¶12-26.

<sup>8</sup> *ALJ Recommendations*, Findings of Fact ¶237-239.

<sup>9</sup> *ALJ Recommendations*, Findings of Fact ¶249.

<sup>10</sup> *ALJ Recommendations*, Findings of Fact ¶250.

## **2. The Department's Exceptions Question any Deviation from Xcel's Estimated Need in the 2017-2019 Timeframe**

By contrast, the Department took sharp aim at the ALJ's Recommendations, arguing that because they fall short of the Commission's Resource Plan Order finding of 150 MW -500 MW of need in the relevant timeframe, they are "inconsistent with the Commission's Order" and "risk the State's energy reliability and ratepayer impacts."<sup>11</sup> Without addressing all of the Department's assertions, the ultimate take-away appears to be that the Department believes the Resource Plan Order estimating the size, type and timing in this process to have been written in stone. To this end, the Department finds the ALJ's selection of a minimum of 71 MW, rising to potentially 271 MW (including the GRE proposal), "inconsistent" with the Commission's Order. In no uncertain terms, the Department states: "Since the Commission already determined Xcel's resource planning needs in its March 5, 2013 Resource Plan Order, it is not appropriate for the ALJ Recommendations to reach a different conclusion about Xcel's capacity needs."<sup>12</sup> Because the ALJ Recommendations "contradict" the Commission's Resource Order, the Department asserts that the Commission base its decisions in this proceeding on the need set out in the Commission's Resource Plan Order.<sup>13</sup> The Department goes on to recommend that the Commission discard the ALJ's Recommendations wholesale in favor of its own.<sup>14</sup>

## **3. The Department's Exceptions Ignore Changed Circumstances**

The Department's exceptions make no mention of the fact that the Commission ordered Xcel to file a Notice of Changed Circumstance ("NoCC") in this docket.<sup>15</sup> As part of its decision on whether to order additional administrative proceedings associated with the NoCC, the

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<sup>11</sup> *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240, EXCEPTIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE, DIVISION OF ENERGY RESOURCES (Jan. 21, 2014) ("Department Exceptions").

<sup>12</sup> *Department Exceptions* at 11.

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

<sup>14</sup> *Id.* at 18 ("The Department recommends that, due to extensive errors in the ALJ's assumptions and the state's overriding need for reliable energy capacity and the stability of long-term affordable rates, the Commission adopt the Department's exceptions to the ALJ Recommendations, as discussed above. Due to the extensive revisions needed to the ALJ Recommendations, the Department attaches our proposed Findings of Fact from the contested case proceeding to provide the Commission the ability to adopt the Department's original findings of Fact rather than attempt to edit the ALJ Recommendation.")

<sup>15</sup> *In the Matter of the Petition of Northern States Power Company to Initiate a Competitive Resource Acquisition Process*, Docket No. E-002/CN-12-1240, ORDER REQUIRING NOTICE OF CHANGED CIRCUMSTANCES AND GRANTING INTERVENTION (Oct. 4, 2013) ("NoCC Order").

Commission explained that “[t]he Department and Xcel have represented that the record in the competitive resource acquisition and wind acquisition dockets will reflect updated modeling and analysis of Xcel’s resource needs in light of the proposed acquisitions. If the development in the existing dockets does not meet Commission expectations in that regard, the Commission may consider additional proceedings at that point.”<sup>16</sup>

In response, Steven Wishart, Director of Resource Planning for Xcel, filed testimony with updated modeling and analysis. Without the MISO reserve planning changes, the updated modeling shows a capacity need of only 93 MW in 2017 and 307 MW in 2019. With the MISO changes, it shows no shortfall at all until 2019 at which point the shortfall is only 26 MW. This is the very data that the ALJ relied upon in drawing the conclusion that Xcel’s resource needs are uncertain at best.<sup>17</sup> The Department’s own updated analysis confirms a similarly significant reduction in capacity needs on Xcel’s system with or without the MISO changes.<sup>18</sup> Ultimately the ALJ recommends selection of a minimum of 71 MW of solar capacity, potentially including another 200 MW if additional added capacity is needed before the end of 2019.<sup>19</sup> Given that the ALJ’s selection fits squarely within the updated modeling demonstration of need by both Xcel and the Department based on analysis requested by the Commission, XLI is unsure why or how the Department pointedly concludes that the ALJ’s Recommendations are in error and contrary to Commission Order. In light of the continuing downward projections of capacity needs and forthcoming resource planning process, XLI questions whether any selection at all in this docket is necessary or warranted.

## **B. The Commission Can and Should Deviate From Its March 2013 Estimation of Size, Type and Timing**

With qualifying language, the Commission initially found that the record in the resource planning docket demonstrated a large range of potential need, starting at 150 MW by 2017 and increasing up to 500 MW by 2019.<sup>20</sup> In preparation for the this docket, the Commission

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<sup>16</sup> *NoCC Order* at 4.

<sup>17</sup> See *ALJ Recommendation*, Findings of Fact at ¶237-239 (citing Wishart Direct Testimony at 7-8, 10, Table 2 and Table 4); See also *ALJ Recommendation*, Conclusions of Law at ¶4-5 (citing Wishart Direct Testimony, Table 4).

<sup>18</sup> See, Rakow Direct Testimony at 26, Table 2 (Sep. 27, 2013).

<sup>19</sup> *ALJ Recommendations*, Recommendation, at ¶19-21.

<sup>20</sup> *Resource Plan Order* at 6.

explained:

For purposes of Xcel's competitive bidding docket, the Commission finds it appropriate to solicit proposals for an additional 150 MW in 2017, increasing up to 500 MW by 2019. This statement does not preclude Xcel from acquiring more than 150 MW of new resources by 2017. Those choices will be made in the context of the resource acquisition docket, based on the proposals and evidence adduced in that docket.<sup>21</sup>

The Commission stated from the outset that the ultimate resource choices should be based upon evidence brought into the record. XLI finds it surprising that the Department now argues that this initial determination is unmovable, given it argued the opposite in support of Xcel's acquisition of more than threefold the wind resources recommended from the same analysis.<sup>22</sup> More importantly, the Commission can and should use the best evidence developed in the record to select suitable resources. In fact, it appears to be *because* of the close and careful examination of "voluminous, complex, and contested facts," that the Commission chose to use a certificate of need-like proceeding in the competitive resource acquisition process.<sup>23</sup>

### **1. Precedent Exists for Such a Deviation**

The Commission has long recognized that resource planning is a collaborative and iterative process that necessarily involves changing circumstances. In the order approving the resource plan that gave way to the first competitive resource acquisition process, the Commission explained:

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<sup>21</sup> *Resource Plan Order* at 6.

<sup>22</sup> *In the Matter of the Petition of Northern States Power Company for Approval of the Acquisition of 600 MW of Wind Generation*, Docket No. E002/M-13-603, PROCEDURAL COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE-DIVISION OF ENERGY RESOURCES, p4 (Aug. 8, 2013) (arguing that had the model relied on the more recent pricing information (among other things), it would have produced different results and, as such, "Xcel should not rely on the analysis in the 2010 IRP to support its acquisition of the specific resources requested in the instant docket.").

<sup>23</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2004 Resource Plan*, Docket No. E-002/RP-04-1752, ORDER ESTABLISHING RESOURCE ACQUISITION PROCESS, ESTABLISHING BIDDING PROCESS UNDER MINN. STAT. § 216B.2422, SUBD. 5, AND REQUIRING COMPLIANCE FILING, at 7 (May 31, 2006) ("Further, the process is familiar and credible to stakeholders. It has proven ability to produce an intelligible and trustworthy record from the examination of voluminous, complex, and contested facts. In short, the process is substantively, procedurally, and pragmatically well suited for adaptation to competitive resource procurement. For all these reasons, the Commission concurs with the Company, the Department, and other stakeholders on the value of the certificate of need framework for evaluating competing resources.").

The process is iterative because analyzing future energy needs and preparing to meet them is not a static process; strategies for meeting future needs are always evolving in response to changes in actual conditions in the service area. When demographics, economics, or technologies change, so do resource needs and strategies for meeting them.<sup>24</sup>

## **2. The Last Competitive Bidding Resource Acquisition Process was Terminated Mid-Process Due to Changed Circumstances**

While the competitive resource acquisition process is more narrow in scope, it too can be subject to dramatic changes in actual circumstances, requiring an evolving response. To be sure, the Commission addressed a similar set of facts and circumstances in the last competitive resource acquisition process. On July 28, 2006, the Commission approved Xcel's 2004 Resource Plan that included direction to file a certificate of need application to initiate the new competitive resource acquisition process for "375 megawatts of baseload capacity with an intended in-service date of 2015" ("375 Baseload Docket").<sup>25</sup> Xcel did so, eventually outlining a wind-hydro baseload proposal. Westmoreland submitted a competing coal-hydro baseload proposal. The Commission determined the proposals were complete in early 2007 and referred the process to the Office of Administrative Hearings for a contested case proceeding.<sup>26</sup> When the Minnesota Legislature passed the Next Generation Energy Act later that year, Xcel filed a Notice of Changed Circumstances in affected dockets explaining that the new law posed significant changes for its system that required thoughtful review in the context of a resource plan. Specifically, Xcel explained:

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<sup>24</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2004 Resource Plan*, Docket No. E-002/RP-04-1752, ORDER APPROVING RESOURCE PLAN AS MODIFIED, FINDING COMPLIANCE WITH RENEWABLE ENERGY OBJECTIVES STATUTE, AND SETTING FILING REQUIREMENTS (July 28, 2006).

<sup>25</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2005-2019 Resource Plan*, Docket No E-002/RP-04-1752, ORDER APPROVING RESOURCE PLAN AS MODIFIED, FINDING COMPLIANCE WITH RENEWABLE ENERGY OBJECTIVES STATUTE, AND SETTING FILING REQUIREMENTS (Jul. 28, 2006), at 17.

<sup>26</sup> *In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy to Initiate a Competitive Bidding Resource Acquisition Process for 375 Base Load Generation*, Docket No E-002/CN-06-1518, ORDER ACCEPTING PROPOSALS AS SUBSTANTIALLY COMPLETE AND NOTICE AND ORDER FOR HEARING (Feb. 13, 2007).



Because our preliminary analyses of the impacts of the 2007 legislation indicate substantial changes to system operations and suggest changed needs with respect to resource size, type, and timing, we respectfully request that the Commission:

- Acknowledge that the circumstances surrounding our 2004 Resource Plan have significantly changed due to the new legislative initiatives, that such changes may affect our resource needs, and that it is appropriate to undertake a comprehensive assessment of these changes to determine whether modification to our approved five-year action plan is warranted.
- Approve our proposal to modify the current resource acquisition proceedings' schedules pending verification of the size, type and timing of our customers' resource needs.
- Accept our commitment to file a new Resource Plan by December 14, 2007, several months earlier than our current requirement to file by March 1, 2008.<sup>27</sup>

Notably the new law would require an additional 300 MW of new wind annually until 2020, as well as an approximately 0.8 percent annual retail sales savings as part of the new conservation requirements.<sup>28</sup> In its filing Xcel proposed to suspend the 375 MW Baseload Docket in order to verify its need in Xcel's upcoming Resource Plan filing.<sup>29</sup> Westmoreland responded in the Resource Plan docket, arguing that the Commission had already determined the need for 375 MW Baseload Docket and not proceeding would pose significant risks to ratepayers that adequate baseload resources would not be acquired in time.<sup>30</sup> Further, Westmoreland argued that a modified schedule could frustrate independent power producers who bid and invest significant resource into such a process.<sup>31</sup>

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<sup>27</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2005-2019 Resource Plan*, Docket No E-002/RP-04-1752, NOTICE OF CHANGED CIRCUMSTANCES, REQUEST TO MODIFY SCHEDULE FOR RESOURCE ACQUISITION PROCEEDINGS, AND PROPOSAL FOR NEW RESOURCE PLAN FILING (Jul. 20, 2007), at 2.

<sup>28</sup> *Id.* at 3-4.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2005-2019 Resource Plan*, Docket No E-002/RP-04-1752, WESTMORELAND POWER INC'S MOTION TO INTERVENE AND RESPONSE TO XCEL'S REQUEST TO MODIFY SCHEDULE (Aug 10, 2007), at 7-8.

<sup>31</sup> *Id.* at 9.

Ultimately, the Commission agreed that the new laws warranted detailed analysis before Xcel committed to any new baseload resource acquisitions.<sup>32</sup> As such, the Commission suspended the proceeding until Xcel filed a new resource plan.<sup>33</sup> On December 14, 2007, Xcel filed its new resource plan and requested that the 375 MW Baseload Docket be closed in light of its updated planning.<sup>34</sup> The company recognized the impact its recommendation would have on Westmoreland, but argued that the overall focus must be on ratepayer impacts.<sup>35</sup> The company explained:

Because the very nature of the underlying need has changed, we believe that this proceeding is no longer appropriately framed and would not result in a cost-effective needed resource for our system. As a result, we propose that this proceeding be closed. We recognize the impact this recommendation has on Westmoreland Power Inc., who proposed an alternative project in the pending proceeding. While we appreciate the resources Westmoreland has expended to participate in this proceeding, we believe that the overall focus of this effort must be on ratepayer impacts: ratepayers would not be well served by continued efforts to supply a need that no longer exists.<sup>36</sup>

Xcel went on to argue that not only would there be harm to ratepayers by proceeding through a docket where the underlying need had changed dramatically, but that moving the decisions forward to a new resource planning process would also be more fair to potential suppliers of resources.<sup>37</sup> The Department agreed that the analysis of any needed baseload resources should be reviewed subsequent to the analysis of the 2007 IRP to determine Xcel's

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<sup>32</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2005-2019 Resource Plan*, Docket No E-002/RP-04-1752, ORDER SUSPENDING CONTESTED CASE PROCEEDING, DELAYING FILING DATES, AND ADVANCING DATE FOR FILING NEXT RESOURCE PLAN (Sept. 28, 2007) at 5.

<sup>33</sup> *Id.* at 6.

<sup>34</sup> *In the Matter of Northern States Power Company d/b/a Xcel Energy's Application for Approval of its 2005-2019 Resource Plan*, Docket No E-002/RP-04-1752, PROPOSED SCHEDULE FOR SUSPENDED PROCEEDINGS (Dec. 14, 2007).

<sup>35</sup> *In the Matter of the Petition by Northern States Power Company d/b/a Xcel Energy to Initiate a Competitive Resource Acquisition Process for 375 MW of Base Load Capacity*, Docket No E-002/CN-06-1518, ORDER CLOSING DOCKET (Mar. 19, 2008).

<sup>36</sup> *In the Matter of the Petition by Northern States Power Company d/b/a Xcel Energy to Initiate a Competitive Resource Acquisition Process for 375 MW of Base Load Capacity*, Docket No E-002/CN-06-1518, PROPOSED SCHEDULE FOR SUSPENDING PROCEEDINGS (Dec. 14, 2007).

<sup>37</sup> *Id.*

need for resources.<sup>38</sup> Ultimately the Commission agreed that changed circumstances warranted closing the docket.<sup>39</sup>

In the instant case, the event triggering the Commission to force a notice of changed circumstance was the acquisition of 750 MW of new wind - something more limited in scope perhaps than the above mentioned change in circumstance. When taken into consideration with the other intervening changes, however, several hundred MW of capacity resources are affected in the 2017-2019 time frame. While few dared to discount the Next Generation Energy Act as a significant change in circumstances, Xcel argued against filing a NoCC in the instant docket and the Department is currently arguing that the Commission ignore all of the updated information in favor of setting a firm target for parties to bid into. It simultaneously argues that while the Resource Plan Order did not exclude solar generation, it would be more fair to other solar suppliers if such a selection was made in an all-solar process. Fairness in the bidding process is an important consideration; it was weighed carefully in 2007 and should be weighed carefully now. But fairness to bidding parties did not trump ratepayer concerns in 2007 and should not now. Moreover, if the current process cannot lead to a “fair” outcome in light of the changed circumstances (to the natural gas bidders, the single solar bidder, or other potential solar suppliers who did not bid in this process), perhaps it too should be brought to a close in favor of current and thorough analysis in the forthcoming resource planning process.

### **3. The Current Change in Circumstances is Particularly Important Light of Escalating Rates**

While the current changed circumstances are not as neatly captured in a single session law change as was the case in 2007, they are significant and come in an environment of escalating rates. XLI noted in its Public Comment that Xcel is currently seeking approval to increase rates in Minnesota by nearly \$300 million over two years and may return for a second 3-year multiyear plan proceeding at the end of 2015. These increases are on the heels of recent and significant rate increases. Ratepayers do not possess an infinite ability to shoulder increasing electric rates. Businesses competing in a global marketplace cannot pass through increased

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<sup>38</sup> *In the Matter of the Petition by Northern States Power Company d/b/a Xcel Energy to Initiate a Competitive Resource Acquisition Process for 375 MW of Base Load Capacity*, Docket No E-002/CN-06-1518, COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE (Jan. 11, 2008).

<sup>39</sup> *Id.* at 3.

energy costs to customers. Exacerbating the recent and significant rate increases by overbuilding in the near future could have the unintended consequence of further reducing demand via system departures, which would burden the remaining customers with an increasing share of fixed costs, incentivizing more system departures and creating a downward spiral for demand. Perhaps even more troubling are the unfortunate messages that could be implied by any final Commission order permitting Xcel to construct or procure resources based on an obsolete finding of need. Such an order would send the signals to utilities that the Commission is insensitive to the issue of rate shock and that utilities are free to add to rate base upon even a flimsy showing of need. The Commission should remain cognizant of the potential precedent from its decision in this docket.

### **III. CONCLUSION**

As stated above and in our Public Comment, XLI believes the record in this docket is inadequate on the question of need and cautions against selection of resources today that risk significant overbuilding. State resource planning rules account for the fact that circumstances change while planning is underway that may require new considerations or, in the most extreme cases, a wholesale change in direction. Contrary to the Department's assertion that the size, type, and timing for this docket was set in stone in March 2013, the Commission can and should account for the additional analysis brought into the record and the significant changes in circumstances. Consideration of the more recent modeling and analysis demonstrates that the capacity shortfall on Xcel's system could be as low as none in the near-term to only 300 MW in 2019. In light of the uncertain need, XLI continues to believe that it is prudent to select only the smallest and most flexible resources today that can be fully supported by the record and postpone more significant investment choices to its upcoming resource planning process. At that time the parties will be able to make further investment choices in light of current data and in tandem with other major resource decisions. XLI also cautions against subjecting these decisions now to claims that the sky will fall if natural gas units are not selected immediately. Such assertions are not supported on the record, do not give way to careful planning, and do not appear to comport with the current timeline, which has a resource planning process starting within months - several years before capacity deficits loom, particularly if the ALJ's Recommendations are followed.

Respectfully submitted,

STOEL RIVES LLP

Dated: January 31, 2014

/s/ Andrew P. Moratzka

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**CERTIFICATE OF SERVICE**

I, Kathy Prestidge, hereby certify that I have this day served a true and correct copy of the following document to all persons at the addresses indicated on the attached list by electronic filing:

**XCEL LARGE INDUSTRIALS' REPLY TO EXCEPTIONS TO  
ADMINISTRATIVE LAW JUDGE FINDINGS OF FACT**

PUC Docket Number E-002/CN-12-1240

OAH Docket Number 8-2500-30760

Dated this 31st day of January, 2014.

*/s/ Kathy Prestidge*  
Kathy Prestidge

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