

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Dan Lipschultz	Vice Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of the Petition of Northern
States Power Company for Approval of the
2019-2021 Triennial Nuclear
Decommissioning Study and Assumptions

DOCKET NO. E-002/M-17-828

**COMMENTS OF THE OFFICE
OF THE ATTORNEY GENERAL**

I. INTRODUCTION

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) respectfully submits the following Comments in response to the Notice of Comment Period (“Notice”) issued by the Commission on July 22, 2019.¹ In the Notice, the Commission asks whether it should change Northern State Power Company’s (“Xcel”) 2019 Annual Decommissioning Accrual and seeks comment on any issues or concerns related to Xcel’s July 15, 2019 Nuclear Decommissioning Accrual Compliance Filing (“Compliance Filing”).²

The Commission should not alter Xcel’s Annual Decommissioning Accrual at this time based on either of the following factors from its January 7, 2019 Order (“January 2019 Order”):³ (1) the use of the SAFSTOR decommissioning method;⁴ or (2) the possible use of third-party

¹ Notice of Comment Period (July 22, 2019) (“Notice”).

² *Id.*

³ *In the Matter of the Petition of Northern States Power Company for Approval of the 2019-2021 Triennial Nuclear Decommissioning Study and Assumptions*, MPUC Docket No. E-002/M-17-828, Order Approving Decommissioning Study, Decommissioning Accrual, and Taking Other Action at 7 (Jan. 7, 2019) (“January 2019 Order”).

⁴ Under SAFSTOR, “a nuclear facility is maintained and monitored in a condition that allows the radioactivity to decay; afterwards, the plant is dismantled and the property decontaminated.” See U.S. Nuclear Regulatory Commission, Background on Decommissioning Nuclear Power Plants, 1 available at <https://www.nrc.gov/docs/ML0403/ML040340625.pdf> (last updated Aug. 15, 2018) (last visited August 12, 2019) (“NRC Fact Sheet”); Callen Institute, 2018 Nuclear Decommissioning Funding Study, 20, (2018) (“2018 Nuclear Study”).

contractors for nuclear decommissioning. Nuclear decommissioning cost estimates have stabilized recently as nuclear operator cost estimation practices have improved. This stabilization offers Xcel and the Commission an opportunity to gain more knowledge before changing Xcel's Annual Decommissioning Accrual in a manner that may irreparably harm ratepayers. Smaller annual accruals under the SAFSTOR decommissioning method will not benefit ratepayers if Xcel's investment mix and strategy ("Investment Mix") results in a nuclear decommissioning trust ("NDT") funding shortfall as Xcel's nuclear plants move toward the end of their operating lives. Third-party nuclear decommissioning arrangements have the potential to encourage over-recovery from ratepayers to create profit incentives for third-party nuclear decommissioning contractors. Finally, any survey of the evolving nuclear decommissioning landscape should include a discussion of the *In Situ*, or ENTOMB,⁵ decommissioning method, as preliminary indicators are that this method may result in significant cost savings for ratepayers.

Xcel should not be allowed to change course with respect to Department of Energy ("DOE") reimbursements for dry fuel storage costs. Although the wording of the Standard Contract seems to indicate that the DOE will be obligated to reimburse Xcel for its dry storage fuel costs into and through decommissioning, the DOE has proven unreliable with respect to honoring its nuclear commitments and any litigation to enforce those commitments, even if successful, will result in increased cost to ratepayers.

If the Commission approves a 10-year extension of the Monticello plant, it should continue to require Department oversight of the NDT Investment Mix. While the idea of allowing the NDT to earn an additional 10 years of returns is alluring, in the absence of

⁵ Under the ENTOMB, or *In Situ* ("ISD"), decommissioning method, "radioactive contaminants are permanently encased on site in structurally sound material such as concrete. The facility is maintained and monitored until the radioactivity decays to a level permitting restricted release of the property." See NRC Fact Sheet at 2.

Department oversight, extending the life of the plant has the potential to provide a temporary increase in Xcel's rate base with no guarantee that Xcel's Investment Mix will offset any potential NDT funding gap that results from a decade of inflation and other costs.

II. ALTERING XCEL'S ANNUAL DECOMMISSIONING ACCRUAL BASED ON THE FACTORS ENUMERATED IN THE COMMISSION'S JANUARY 2019 ORDER IS PREMATURE AND UNNECESSARY.

Xcel operates three nuclear-powered generators that are at issue in this filing, the Monticello Nuclear Generating Plant (licensed to operate through 2030), and the two generators at the Prairie Island Nuclear Generating Plant (licensed to operate through 2033 and 2034, respectively). In its January 2019 Order, the Commission elected to implement the Department of Commerce's ("Department") recommendation and set Xcel's Annual Decommissioning Accrual at \$44.4 million.⁶ In so doing, the Commission noted that the \$44.4 million accrual would be subject to possible revision based on certain factors enumerated in the January 2019 Order.⁷ As detailed below, application of those factors demonstrates that modifying Xcel's Annual Decommissioning Accrual at this time is premature and unnecessary.

A. IMMEDIATE CHANGES TO XCEL'S ANNUAL DECOMMISSIONING ACCRUAL ARE UNNECESSARY AND HAVE THE POTENTIAL TO IRREPARABLY HARM RATEPAYERS.

Pursuant to the DOE's Standard Contract, "all costs associated with the preparation, transportation, and . . . disposal of spent nuclear fuel and high-level radioactive waste from civilian nuclear power reactors shall be borne by the owners and generators of such fuel and waste."⁸ Moreover, "[t]he DOE is required to collect a full cost recovery fee from owners and generators delivering to the DOE such spent nuclear fuel and/or high-level radioactive waste."⁹

⁶ January 2019 Order at 7.

⁷ *Id.*

⁸ Compliance Filing, Nuclear Decommissioning Accrual, MPUC Docket No. E-002/M-17-828, App. B at 1 (July 15, 2019).

⁹ *Id.*

Under federal regulations, nuclear decommissioning costs must be met using a NDT fund.¹⁰ NDTs are expected to grow over time, through an investment mix that includes, but is not necessarily limited to, equity, fixed income securities, private equity, hedge funds, real estate, and cash.¹¹

U.S. nuclear decommissioning cost estimates decreased in 2017, in part, because nuclear operators improved their cost estimation practices.¹² A recent report from the Callen Institute revealed that total cost estimates have stabilized in a range between \$88.1 billion and \$91.0 billion since 2014.¹³ A recent re-evaluation of Duke Energy’s 860 MW Crystal River 3 plant in Florida resulted in a reduced decommissioning cost estimate from \$1.2 billion in 2013 to \$895.9 million in 2018 under a SAFSTOR plan.¹⁴ Even cost estimates for the DECON¹⁵ decommissioning method have declined due to the ability of utilities to better predict costs.¹⁶ While these results are promising, they are in their relative infancy and, as outlined further below, at least SAFSTOR is not without its potential shortcomings. Thus, at this time, the Commission should refrain from reducing Xcel’s Annual Decommissioning Accrual based on either SAFSTOR or a third-party decommissioning method. Rather, the Commission should retain the \$44.4 million accrual from its January 2019 Order, instruct Xcel to continue gathering information about all of the available nuclear decommissioning options, and require Xcel to

¹⁰ See generally NRC Fact Sheet.

¹¹ 2018 Nuclear Study at 16.

¹² Nuclear Energy Insider, *US Decommissioning Costs Fall as Operators Implement Learnings*, available at <https://analysis.nuclearenergyinsider.com/us-decommissioning-costs-fall-operators-implement-learnings> (Nov. 28, 2018) (“*US Decommissioning Costs*”).

¹³ 2018 Nuclear Study at 9.

¹⁴ See generally *US Decommissioning Costs*.

¹⁵ DECON (immediate dismantling) is a method of decommissioning whereby, “soon after the nuclear facility closes, equipment, structures, and portions of the facility containing radioactive contaminants are removed or decontaminated to a level that permits release of the property and termination of the NRC license.” See NRC Fact Sheet at 1; 2018 Nuclear Study at 20.

¹⁶ See generally *US Decommissioning Costs*.

provide a nuclear decommissioning methodology update in its 2020 Triennial Nuclear Plant Decommissioning Accrual petition (“Triennial Filing”).

B. THE BENEFIT OF AN IMMEDIATE REDUCTION IN ANNUAL DECOMMISSIONING COSTS USING SAFSTOR MAY BE OUTWEIGHED BY AN INCREASE IN OVERALL AND END-OF-OPERATING LIFE COSTS TO RATEPAYERS IF XCEL’S INVESTMENT MIX AND STRATEGY IS NOT REASONABLE.

In its Compliance Filing, Xcel states that SAFSTOR results in smaller annual accruals for ratepayers during the life of the plant, which are offset by compounding returns after a plant’s retirement.¹⁷ While theoretically accurate, the smaller annual accruals may not materialize and may be outweighed by greater end-of-operating life costs to ratepayers if Xcel is not required to maintain a reasonable NDT Investment Mix. As demonstrated by related filings in this and other dockets, Xcel has struggled to implement an Investment Mix that has met the Department’s performance expectations.¹⁸ At one point the Department expressed displeasure with Xcel’s proposed Investment Mix pointing out that “because Xcel can recover any performance shortfall from ratepayers it may choose lower-return investments than are appropriate for a fund of this nature.”¹⁹ If Xcel’s Investment Mix underperforms in a SAFSTOR scenario and annual accruals are not adjusted upwards in subsequent years, ratepayers could find themselves with unanticipated and significantly increased costs as Xcel’s plants move towards decommissioning.

Because SAFSTOR has the potential to increase costs for ratepayers in the event Xcel’s Investment Mix does not outpace inflation and other costs, the Commission should refrain from reducing the \$44.4 million Annual Decommissioning Accrual based on this decommissioning

¹⁷ Compliance Filing at 5.

¹⁸ See January 2019 Order at 9 (clarifying that the Department continues to support small changes to the Investment Mix); July 2, 2018 Commission Order in E-002/M-17-828 at 7-8 (stating that Xcel’s outside expert “expressed approval of a portfolio that was closer to the investment strategy recommended by the Department”); February 27, 2017 Commission Order at 10 (directing Xcel to re-evaluate its investment strategy.”); October 5, 2015 Commission Order in E-002/M-14-761 at 5 (discussing the impact of a potential investment performance shortfall on ratepayers).

¹⁹ October 5, 2015 Commission Order in E-002/M-14-761 at 5 (discussing the impact of a potential investment performance shortfall on ratepayers).

method at this time. If the Commission does elect to make an accrual adjustment based on SAFSTOR it should, at a minimum, require Xcel to work with the Department to continue to improve the company's investment portfolio, as it has done under the DECON decommissioning method.²⁰

C. THIRD-PARTY DECOMMISSIONING ARRANGEMENTS HAVE THE POTENTIAL TO PROVIDE AN ECONOMIC WINDFALL TO INDEPENDENT CONTRACTORS AT THE EXPENSE OF RATEPAYERS.

In its Compliance Filing, Xcel posits that third-party contractors who specialize in decommissioning nuclear plants may be able to achieve efficiencies that reduce the overall cost of decommissioning.²¹ According to Xcel, “[t]he emergence of these third-party firms has resulted in a number of plants transitioning out of SAFSTOR and into immediate decommissioning, often years or decades earlier than planned.”²²

At least one of the third-party contractor case summaries provided by Xcel, however, should sound the Commission's alarm bells. Namely, the sale by Entergy of its Vermont Yankee plant to third-party decommissioning firm, NorthStar Group Services. As described by Xcel, NorthStar Group Services “has taken over ownership of the plant and corresponding decommissioning trust. It will use the trust funds to decommission the plant and *retain any unspent funds as profit from the transaction.*”²³ The purpose of an NDT is to ensure sufficient resources to pay to decontaminate and remove the nuclear facilities at the end of their used and useful operating lives, not to create an economic windfall for a third-party contractor at the expense of ratepayers. In an ideal world, there should not *be* any unspent funds that could be viewed by the utility, its ratepayers, or a third-party contractor as “profit.”

²⁰ January 2019 Order at 9.

²¹ Compliance Filing at 5.

²² *Id.*

²³ *Id.* at 6 (emphasis added).

In a SAFSTOR situation, the Commission would retain jurisdiction of nuclear decommissioning costs and could require a refund of any trust overages to ratepayers. Once ownership of a plant is transferred to a third-party nuclear decommissioning contractor, however, over-collections of trust money from ratepayers become “profit” for that contractor. It is a distinct possibility that a third-party decommissioning method would incentivize the over-collection of NDT funds from ratepayers as an initial matter, since a contractor’s interest in purchasing a plant likely would be commensurate with that plant’s ability to turn a significant “profit.”²⁴ The OAG does not countenance such a result and neither should the Commission. As specified in a prior Commission order, “[i]f the [f]und balance grows beyond the amount that the utility will need to decommission its nuclear plants, the utility must return the excess to ratepayers after decommissioning has been completed.”²⁵

Neither do the other case summaries provided by Xcel support a change in course at this time. Xcel’s Compliance Filing states that EnergySolutions, the third-party contractor that took over the decommissioning of the Zion plant in Illinois, is expected to complete the decommissioning process on-time and on-budget.²⁶ Xcel does not provide the basis for this conclusion, however, and, in late 2017, at least one source reported that “[t]he remaining funds in the plant’s [NDT] fund are not expected to cover decommissioning costs....”²⁷ While it appears the third-party contractor will bear the risk of any shortfall in the case of the Zion plant,²⁸ one must assume that future decommissioning agreements will evolve to protect third-party

²⁴ See Latham & Watkins, Nuclear Decommissioning and Legal Risk White Paper, 2, available at <https://www.lw.com/thoughtLeadership/nuclear-decommissioning-legal-risk> (Nov. 14, 2017) (explaining that as early as 2017, a French state-owned utility decided to pursue worldwide decommissioning projects, which it estimated to be a US \$222 billion global market) (“White Paper”).

²⁵ July 2, 2018 Order in E-002/M-17-828 at 3 (citing 18 C.F.R. § 35.32(a)(7)).

²⁶ Compliance Filing at 5.

²⁷ White Paper at 10.

²⁸ See *id.* (discussing the third-party decommissioning history of the Zion Illinois plant and explaining liability for the decommissioning shortfall per the decommissioning agreement).

contractors from such risk in the future. Regarding the plants to be decommissioned by Holtec International (“Holtec”), they either have only recently been acquired, have not yet been acquired, or the acquisition is still undergoing regulatory review by the Nuclear Regulatory Commission (“NRC”). These third-party ventures are still in their initial stages with respect to the decommissioning process and it remains to be seen how successful these ventures may be. Thus, the only appropriate step for the Commission to take at this point with respect to third-party decommissioning is to require Xcel to continue to monitor the industry and gather additional data for its 2020 Triennial Filing.

D. CONSISTENT WITH THE COMMISSION’S INITIAL DIRECTIVE TO CONSIDER ALTERNATE NUCLEAR DECOMMISSIONING OPTIONS, XCEL SHOULD BE REQUIRED TO EXPLORE THE ENTOMB/ *IN SITU* OPTION.

Although it has not yet been used by an NRC-licensed facility,²⁹ another decommissioning option is available to Xcel. Under the ENTOMB, or *In Situ* (“ISD”), decommissioning method, “radioactive contaminants are permanently encased on site in structurally sound material such as concrete. The facility is maintained and monitored until the radioactivity decays to a level permitting restricted release of the property.”³⁰ In fall 2012, the DOE released information regarding ISD closures it was conducting at a number of facilities throughout the Savannah River Site.³¹ “The P Reactor (operated 1954-1988) and R Reactor (operated 1953-1964) produced special nuclear materials for the U.S. nuclear weapons program. The DOE closure program was established to accelerate the reduction of risk and cost associated

²⁹ See NRC Fact Sheet at 2; White Paper at n.29 (explaining that there are small experimental US plants utilizing the ENTOMB decommissioning method).

³⁰ See NRC Fact Sheet at 2.

³¹ DOE, Best Practice Form, available at <https://www.dndkm.org/DOEKMDocuments/BestPractices/26-EFCOG%20Best%20Practice%20-%20SRS%20P%20and%20R%20Reactor%20Basins%20ISD%20Final.pdf> (Sept. 28, 2012) (“Best Practice Form”).

with excess nuclear facilities.”³² The program was so successful that the DOE listed among the advantages of ISD the fact that it “costs a fraction of the cost of demolition.”³³ Remarkably, the “fully-burdened costs for each of the reactor [ISD] decommissioning projects was about \$73M, 29% of the estimated cost of about \$250M for full demolition of the above-grade structures along with reactor vessel removal and below grade decontamination of *each* reactor complex; thereby realizing a 71% cost avoidance as compared to the cost of full scale D&D.”³⁴

In its current form, the ENTOMB/ISD method of decommissioning may not be the right choice for Xcel.³⁵ As nuclear decommissioning methods continue to evolve, however, and given the real cost savings the ENTOMB/ISD method may present, it may prove to be a viable alternative to DECON and SAFSTOR by the time Xcel’s plants reach the end of their operating lives. Since Xcel already plans to report on the developing nuclear decommissioning landscape, the Commission should require Xcel to consider the ENTOMB/ISD option as well.

III. THE COMMISSION SHOULD NOT ALTER THE WAY XCEL CURRENTLY PLANS FOR DRY FUEL STORAGE COSTS BECAUSE IT CREATES A LOSE/LOSE SITUATION FOR RATEPAYERS.

As with Section II above, the Commission’s January 2019 Order contemplated a potential reduction in the approved \$44.4 million Annual Decommissioning Accrual based on continuing DOE refunds for dry cask storage during the decommissioning process.³⁶ Xcel argues that, based on advice from its consultant and an analysis of its legal rights, it is reasonable to alter treatment of DOE reimbursements for dry fuel storage costs in the Annual Decommissioning Accrual.³⁷

³² Best Practice Form at 2.

³³ *Id.* at 8.

³⁴ *Id.* at 7 (emphasis in original).

³⁵ *See id.* at 8 (noting that, in 2012, demolition was not recommended for structures located at sites where institutional controls would be maintained).

³⁶ January 2019 Order at 7.

³⁷ Compliance Filing at 8.

It is not reasonable to “assume that Xcel Energy will continue to receive DOE reimbursement of its dry fuel storage costs into and through decommissioning” for a few reasons.³⁸ First, although Xcel’s expert opines that the plain language of the DOE Standard Contract does not limit the DOE’s responsibility for disposing of spent fuel solely to the operational period of the plant, even he understands that his contractual interpretation is not conclusive.³⁹ Second, the fact that other nuclear operators have confirmed that they currently continue to seek and receive DOE reimbursements for incurred dry cask storage costs is anecdotal, at best, and not a legal or regulatory guarantee of future DOE actions.⁴⁰ The uncertainty with regard to whether the DOE will unequivocally follow through with its future spent fuel obligations has its foundation in the simple fact that the DOE has been statutorily and contractually required to dispose of spent fuel since at least 1998. Nonetheless, the DOE had to be forced into settlement agreements to compensate nuclear operators for costs they are currently incurring because of the DOE’s failure to meet its spent fuel obligations.⁴¹ Third, even assuming Xcel could prevail in litigation to enforce DOE reimbursement of dry fuel storage costs, Xcel has admitted that a litigated outcome could result in an additional delay in receiving such reimbursement and any recovery would *only partially offset the costs of delay and litigation*.⁴² So, in a best case scenario where Xcel prevails in litigation against the DOE, ratepayers would end up paying not only dry fuel storage costs, but also at least some portion of the costs of delay and litigation. In a worst case scenario, where Xcel does *not* prevail in litigation against the DOE, ratepayers would be saddled with *increased* dry fuel storage costs *and* at least some

³⁸ *Id.*

³⁹ *Id.* at 9, App. A at 1, 5.

⁴⁰ *Id.* at 8.

⁴¹ *Id.*, App. A at 3.

⁴² *Id.* at 9.

portion of the costs of delay and litigation. Either way, deviation from the current course does not benefit ratepayers.

IV. IF THE COMMISSION APPROVES A 10-YEAR EXTENSION OF THE MONTICELLO PLANT, IT SHOULD REQUIRE DEPARTMENT OVERSIGHT OF THE NDT INVESTMENT MIX.

In its Compliance Filing, Xcel notes that its 2019 Integrated Resource Plan (“IRP”) includes an extension of its Monticello plant from 2030 to 2040 as part of the Preferred Plan. According to Xcel, if approved, the extension “could put additional downward pressure” on the Annual Decommissioning Accrual calculation by “allowing the NDT to earn returns during the 10 additional years of operation.”⁴³

A 10-year extension of the Monticello plant presents the same issues for ratepayers as a switch from DECON to SAFSTOR, as discussed in section II.B. above. Extending the life of the Monticello plant temporarily increases rate base at the expense of ratepayers, while providing no assurance that Xcel’s Investment Mix will prevent a NDT funding shortfall. Thus, if the Commission approves Xcel’s request to extend the life of the Monticello plant, the Commission should continue to require Department oversight of Xcel’s NDT Investment Mix.

⁴³ *Id.* at 2.

V. CONCLUSION

For the reasons set forth above, the Commission should not modify Xcel's Annual Decommissioning Accrual based on the factors in the Commission's January 2019 Order. If the Commission does find that modification of the accrual using the January 2019 Order factors would further the public interest, the Commission should impose the ratepayer protections set forth in these Comments.

Dated: August 19, 2019

Respectfully submitted,

KEITH ELLISON
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s/ **Kristin Berkland**

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August 19, 2019

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**Re: In the Matter of the Petition of Northern States Power Company for
Approval of the 2019-2021 Triennial Nuclear Decommissioning Study and
Assumptions
MPUC Docket No. E-002/M-17-828**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find Comments of the Minnesota Office of the Attorney General—Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

s/ **Kristin Berkland**

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