

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

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Chair
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In the Matter of Xcel Energy’s Petition for
Approval of Its 2023 Annual Fuel Forecast and
Monthly Fuel Cost Charges

DOCKET NO. E-002/AA-22-179

**OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITY DIVISION’S
ANSWER TO XCEL ENERGY’S
PETITION FOR RECONSIDERATION AND
THE DEPARTMENT OF COMMERCE’S
REQUEST FOR CLARIFICATION**

INTRODUCTION

On October 19, 2023, contractors doing horizontal drilling at Xcel’s Prairie Island Nuclear Generating Plant struck buried substation-control cables. Xcel had provided the drillers with maps that did not show the cables. Striking the cables caused the turbine and reactor at one of the plant’s two units to trip offline. The cable damage also extended a planned refueling outage at the plant’s other unit, which was already offline at the time of the incident. Fortunately, all safety functions of the plant operated as designed, preventing a nuclear incident. But Xcel incurred many millions of dollars buying replacement power on the wholesale market that it would not have incurred absent the outage. Based on the undisputed facts surrounding the outage, the Commission in November 2024 found that Xcel had acted imprudently and referred the case to the Office of Administrative Hearings (OAH) to determine the appropriate amount of refunds due to ratepayers.

Xcel now asks the Commission to reconsider its imprudence finding. Xcel argues that the Commission must refer the issue to OAH for “contested case” proceedings before it passes judgment on Xcel’s conduct. The Commission should decline to reconsider its decision. Xcel has

failed to show that it will be able to produce evidence establishing that its actions leading to the October 2023 incident were prudent. Given that failure, Xcel is not entitled to a contested-case hearing on prudence, and referring this issue to OAH would simply squander scarce Commission and stakeholder resources.

In addition, the Minnesota Department of Commerce (Department) requests clarification of the scope of the contested case. The Commission should grant the Department's request because doing so will help minimize procedural disputes that would waste valuable time and resources.

BACKGROUND

The cause of the October 2023 incident at Prairie Island is not disputed. In response to Department discovery, Xcel admitted that it provided its drilling contractors with maps “that did not fully depict all the . . . underground cables near the excavation path.”¹ As a result, the drillers “struck the control cable that was not fully depicted on the map, severing the control cable, and causing the outage.”²

The reason that the control cable was not fully depicted on the contractors' maps was that Xcel failed to fully survey the drilling area for buried lines. According to a report that Xcel filed with the U.S. Nuclear Regulatory Commission (NRC) in March 2024, “the use of Ground Penetrating Radar (GPR) had only been completed for some areas and had not been performed in the area that would have identified the interference with the [control] cables.”³ Xcel conceded to the NRC that “procedural weaknesses and poor communication between site departments” allowed work to proceed “without all controls in place that would be expected for work at a nuclear plant,” such as ensuring complete maps for the drillers.⁴

¹ Xcel Response to DOC IR 13 at 3 (Mar. 18, 2024).

² *Id.*

³ Xcel Response to OAG IR 3, attach. A at 5 (Apr. 25, 2024).

⁴ *Id.*

Xcel provided further details at a September 2024 hearing in front of the Commission:

[E]ven though the path that was planned for this line had been surveyed, the individuals in the field realized, while they were doing the activity, that they needed to adjust the path. And they adjusted the path. And they called—they brought in the project engineer, who looked at maps. And for whatever reason, that project engineer believed that the maps that he was looking at indicated that at the depth they were running, this was clear. And it didn't indicate that, because we had only surveyed the original path.⁵

In other words, Xcel failed to “call before it dug.”

The Commission concluded that Xcel had acted imprudently regarding the October 2023 outage. In reaching this conclusion, the Commission relied solely on Xcel's factual admissions. It found that the incident occurred because of “deficient oversight and inadequate processes that fell below the standard expected for excavation work at a nuclear facility.”⁶ It found that Xcel “knew or should have known that critical cables could be buried in the vicinity of the planned excavation site at a nuclear power plant.”⁷ Despite this knowledge, however, Xcel “failed to implement appropriate safeguards or provide reasonable oversight of the workers that struck the underground cable causing the outage.”⁸

The Commission referred the case to the Office of Administrative Hearings, directing parties to address “the appropriate refund amount due to ratepayers stemming from the lack of prudence regarding the October 2023 outage” at Prairie Island.⁹

Xcel seeks reconsideration of the Commission's decision to find imprudence without first referring that issue for contested-case proceedings before the OAH.

⁵ PUC Agenda Meeting on 2024-09-19, <https://minnesotapuc.granicus.com/player/clip/2421> (statement begins at 2:18:00).

⁶ Order Approving 2023 Fuel-Clause True-Up Report, Requiring Additional Filings, Finding Imprudence, and Notice of and Order for Hearing at 5 (Nov. 15, 2024).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 9.

THE LEGAL STANDARD

The Commission may grant a petition for reconsideration if it “appear[s] that the original decision . . . is in any respect unlawful or unreasonable.”¹⁰ The Commission denies petitions for reconsideration if they “do not raise new issues, do not point to new and relevant evidence, do not expose material errors or ambiguities in the . . . order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order.”¹¹

ANALYSIS

I. XCEL’S PETITION FOR RECONSIDERATION SHOULD BE DENIED.

Xcel has admitted to the facts necessary to establish that it was imprudent for Xcel to cut through its own cables at Prairie Island. The Commission’s imprudence determination, based on Xcel’s admissions, does not require a contested case. Xcel argues that the Commission should reconsider its order because there are contested material facts as to the prudence of Xcel’s actions. Yet Xcel has failed to point to any material facts that it will show to dispute imprudence and thus has failed to establish that it is entitled to a contested case on this issue. The Commission should deny Xcel’s petition for reconsideration.

The Commission’s rules require it to refer a matter for contested-case proceedings only when the case “involves contested material facts and there is a right to a hearing under statute or rule.”¹² To create contested material facts, a party seeking a contested case must make “some showing that evidence can be produced that is contrary to the action proposed by the agency.”¹³ To create a factual dispute, therefore, Xcel must show that it can produce evidence that its conduct

¹⁰ Minn. Stat. § 216B.27, subd. 3.

¹¹ *In re Application of Minn. Power for Authority to Increase Rates for Elec. Serv. in Minn.*, Docket No. E-015/GR-16-664, Order Granting Reconsideration in Part, Revising March 12, 2018 Order, and Otherwise Denying Reconsideration Petitions (May 29, 2018).

¹² Minn. R. 7829.1000.

¹³ *In re N. States Power Co.*, 676 N.W.2d 326, 335 (Minn. Ct. App. 2004).

was prudent. A utility acts prudently when it exercises “the care that a reasonable person would exercise under the same circumstances at the time the decision was made.”¹⁴

The only evidence that Xcel has produced establishes that its conduct was imprudent, rather than prudent. Xcel admits that it provided its contractors with maps “that did not fully depict all the . . . underground cables near the excavation path.”¹⁵ Xcel further admits that, although it surveyed the original drilling path with ground-penetrating radar, it failed to do so again when the path was changed. The Commission can reasonably infer from the fact that Xcel surveyed the original path that surveying excavation paths is consistent with the care that a reasonable nuclear-power-plant operator would exercise. Xcel’s failure to survey the new drilling path fell short of this standard and was therefore imprudent. Xcel has proffered no explanation for this failure beyond stating that the project engineer believed “for whatever reason” that the new drilling path was clear. Xcel’s failure to present any reasonable explanation for its actions, particularly when Xcel bears the burden to show prudence, undermines its claim that it is entitled to a contested case.

Xcel asserts that “the Company contests the factual basis for the prudence decision.”¹⁶ But simply saying, “I contest!” does not create a contested fact issue that requires referral to OAH. Instead, Xcel must show that it will be able to produce evidence that contradicts the Commission’s imprudence finding.¹⁷ Xcel fails to make any such showing. Instead, Xcel speculates about the evidence that might be provided in a contested case, suggesting that this evidence could include “witness testimony explaining exactly how the outage occurred; what specific mistake was made,

¹⁴ Docket No. E-002/CI-21-610, Order Disallowing Recovery of Certain Natural Gas Costs and Requiring Further Action at 5 (Oct. 19, 2022).

¹⁵ Xcel Response to DOC IR 13 at 3 (Mar. 18, 2024).

¹⁶ Xcel Petition at 8.

¹⁷ See *N. States Power Co.*, 676 N.W.2d at 335–36 (affirming denial of contested-case hearing even where party requesting hearing had presented “factual affidavits” supporting request).

the cause of that mistake, and whether that mistake was reasonably foreseeable and preventable with the information that the Company had at the time.”¹⁸ But Xcel has not shown that any of this evidence—most of which is in Xcel’s possession—would contradict Xcel’s admissions that it failed to use ground-penetrating radar where it dug and allowed digging to proceed “without all controls in place that would be expected for work at a nuclear plant.”¹⁹

Xcel also argues that the Licensee Event Report that Xcel filed with the NRC “does not provide a detailed explanation of the decisions or actions that led to the Outage or an assessment of whether the Outage occurred despite . . . the exercise of reasonable care.” Again, Xcel’s broad admissions make these details immaterial. Moreover, any potential exculpatory details are in Xcel’s possession, but Xcel has chosen not to share them with the Commission despite bearing the burden to show prudence. Given Xcel’s failure to show that “evidence can be produced that is contrary to the action proposed by the agency,”²⁰ the Commission correctly declined to refer this issue for contested-case proceedings, and Xcel’s petition for reconsideration should be denied.

II. THE DEPARTMENT’S CLARIFICATION REQUEST SHOULD BE GRANTED.

The Department asks the Commission to amend its order to clarify that the sole issue being referred to OAH is the “appropriate refund amount due to ratepayers for replacement power costs in 2023 and 2024” and that other appropriate cost adjustments will be addressed in Xcel’s pending rate case. The OAG supports the Department’s request. Further clarifying the scope of the contested case would, as the Department states, “allow the parties to avoid getting bogged down in potentially lengthy, resource-intensive disputes over procedural issues” and “eliminate the

¹⁸ Xcel Petition at 12–13.

¹⁹ Xcel Response to OAG IR 3, attach. A at 5 (Apr. 25, 2024).

²⁰ 676 N.W.2d at 335.

possibility of disputes over piecemeal or retroactive ratemaking.”²¹ The Department’s request should be granted.

CONCLUSION

For the foregoing reasons, the Commission should deny Xcel’s petition for reconsideration and grant the Department’s request for clarification.

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Respectfully submitted,

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²¹ Department Request for Clarification at 5.