



414 Nicollet Mall
Minneapolis, MN 55401

August 13, 2021

- Via Electronic Filing -

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: MOTION TO STRIKE THE OFFICE OF THE
ATTORNEY GENERAL'S REPLY COMMENTS
2020-2034 UPPER MIDWEST INTEGRATED RESOURCE PLAN
DOCKET NO. E002/RP-19-368

Dear Mr. Seuffert:

Northern States Power Company d/b/a Xcel Energy (the Company) hereby moves, pursuant to Minn. R. 7892.0410, to strike the June 25, 2021 Reply Comments filed by the Office of the Attorney General (OAG) in this Docket and require the OAG to refile its Reply Comments without any reference to information pertaining to Otter Tail Power that has been designated as Trade Secret. The OAG has refused to provide such information to the Company, and it would be extremely prejudicial to the Company for the Commission to consider arguments in this—or any—docket pertaining to the Company's system using information which we are unable to review, much less address.

Therefore, the Company respectfully requests, for the reasons set forth in the attached motion, that the OAG's Reply Comments be stricken from the record and that the OAG be ordered to refile its Reply Comments without reference to any information designated as "Trade Secret Data" that relates to Otter Tail Power.

Pursuant to Minn. R. 7829.0410, any opposition to this motion must be filed and served on the service list in this docket within 14 days of the motion filing.

We have electronically filed this document with the Commission, and copies have been served on the parties on the attached service lists. Please contact me at (612) 330-7641 or matt.b.harris@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

MATTHEW B. HARRIS
LEAD ASSISTANT GENERAL COUNSEL

Encl.

cc: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Valerie Means
Matthew Schuerger
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

MOTION TO STRIKE THE OFFICE OF THE
ATTORNEY GENERAL'S REPLY
COMMENTS
2020-2034 UPPER MIDWEST
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DOCKET NO. E002/RP-19-368

MOTION TO STRIKE

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Northern States Power Company d/b/a Xcel Energy (the Company) hereby moves, pursuant to Minn. R. 7892.0410, to strike the June 25, 2021 Reply Comments filed by the Office of the Attorney General (OAG) in this Docket and require the OAG to refile its Reply Comments without any reference to information pertaining to Otter Tail Power that has been designated as Trade Secret and withheld from the Company. The OAG has objected to the Company's request for such information and refused to provide it to the Company because it contains information that Otter Tail Power has designated as trade secret and does not consent to provide to the Company. We respect Otter Tail Power's request that the OAG not provide commercially sensitive information to the Company, but it would be extremely prejudicial to the Company for the Commission to consider arguments in this—or any—docket concerning the Company's system using information which we are unable to review, much less address.

Therefore, the Company respectfully requests, for the reasons set forth below, that the OAG's Reply Comments be stricken from the record and that the OAG be ordered to refile its Reply Comments without reference to any information designated as "Trade Secret Data" that relates to Otter Tail Power, specifically the information contained on pages 7, 13, 14, and 16 of the OAG's Reply Comments.

BACKGROUND

On June 25, 2021, the OAG filed Reply Comments in this Docket. Those Reply Comments included information designated as Trade Secret that related to both the Company and Otter Tail Power. That same day, the OAG sent the Company a copy of its Reply Comments that revealed the Company's trade secret information but maintained protection over information that Otter Tail Power had designated as Trade Secret. The OAG used this information from Otter Tail Power to compare to and criticize the Company's modeling assumptions.

On June 28, 2021, the Company served the following discovery request (IR No. 92) on the OAG:

Please provide a completely unredacted version of the Office of the Attorney General's Reply Comments filed in the above-mentioned docket on June 25, 2021.

On July 9, 2021, the OAG served the following response to IR No. 92 on the Company:

The OAG objects to this request to the extent that it seeks information that has been designated as trade secret by Otter Tail Power Company ("Otter Tail"). The OAG asked Otter Tail to approve the release of Otter Tail's trade secret information that was referred to in the OAG's June 25, 2021 filing to Xcel, and Otter Tail refused.

The OAG previously provided Xcel with a copy of the OAG's Reply Comments filed in the above-mentioned docket on June 25, 2021 that included Xcel's trade secret information.

A copy of the Company's discovery request and the OAG's response is included as Attachment A to this Motion. Following receipt of this response, the Company reached out to the OAG and asked that they withdraw and refile their comments without the information designated as Trade Secret that they refuse to provide to the Company. Last week, the OAG informed the Company they would not be withdrawing their comments.

Having been unable to (1) obtain a copy of the OAG's Reply Comments that includes all of the information the OAG includes in its advocacy concerning the Company's Integrated Resource Plan, and (2) reach a mutually agreeable resolution of this matter, the Company brings the present motion.

ARGUMENT

The OAG's reliance on evidence that it refuses to provide to the Company deprives the Company of an opportunity to respond to its arguments and present contrary evidence supporting the validity of our modeling assumptions. The Commission, therefore, should not give any weight to such evidence, and the OAG's Reply Comments should be stricken from the record.

As the U.S. Supreme Court has noted, "[a] party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation."¹ Similarly, the Minnesota Supreme Court concluded a lower court "erred when it permitted the County to use, at trial, information which Northwestern National had requested through discovery, but which the County did not provide until the day of trial."² Additionally, in the analogous context of late-filed documents, the Commission's rules allow it to exclude filings made outside of an applicable time period, and where "the value of the document to the commission's deliberative process is outweighed by prejudice to a party, participant, or the public interest caused by the untimeliness."³

Here, the OAG is not simply providing information to the Company in an untimely manner but altogether refusing to provide the Company with relevant information it has included in a filing to the Commission. Were the Commission to rely on, or even consider, such information, the Company would be denied the opportunity to meaningfully respond, in violation of our due process rights. As a result, the Commission should strike the OAG's Reply Comments and order the Reply Comments be refiled without reference to Otter Tail Power's Trade Secret information.

¹ *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 289 (1974) (citing *Ohio Bell Telephone Co. v. Public Utilities Comm'n*, 301 U.S. 292 (1937); *United States v. Abilene & S.R. Co.*, 265 U.S. 274 (1924)).

² *Nw. Nat. Life Ins. Co. v. Cty. of Hennepin*, 572 N.W.2d 51, 55 (Minn. 1997).

³ Minn. R. 7829.0420.

TIMING FOR RESPONSE

This Motion to Strike is being made pursuant to Minn. R. 7829.0410 and is being filed and served on the persons listed on the official service list. Any opposition to the motion must be filed and served on the same list of persons within 14 days of service of the motion filing.

CONCLUSION

For the foregoing reasons, the Company respectfully requests that the Commission strike the OAG's Reply Comments and require the OAG to refile its Reply Comments without reference to Otter Tail Power's Trade Secret information.

Dated: August 13, 2021

Northern States Power Company

July 9, 2021

Ms. Bria Shea
Director, Regulatory & Strategic Analysis
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

**Re: 2020-2034 Upper Midwest Integrated Resource Plan
Docket No. E-002/RP-19-368**

Dear Ms. Shea:

Enclosed please find the *Office of the Attorney General—Residential Utilities Division's Response to Information Request number 92* in the above-entitled matter.

By copy of this letter, we have served all parties requesting to be served. A Certificate of Service is also enclosed.

Sincerely,

/s/ **Ian Dobson**

IAN DOBSON

Manager, Residential Utilities Division
Assistant Attorney General

(651) 757-1432 (Voice)

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ian.dobson@ag.state.mn.us

Enclosures

CERTIFICATE OF SERVICE

**Re: 2020-2034 Upper Midwest Integrated Resource Plan
Docket No. E-002/RP-19-368**

I, JUDY SIGAL, hereby certify that on the 9th day of July, 2021, I served a true and correct copy of the *Office of the Attorney General—Residential Utilities Division’s Response to Information Request number 98* upon all parties listed below by e-mail and/or electronic submission.

Bria Shea	bria.e.shea@xcelenergy.com Regulatory.Records@xcelenergy.com
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/s/ **Judy Sigal**
JUDY SIGAL

Docket No.: E002/RP-19-368
2020-2034 Upper Midwest Integrated Resource Plan
Requestor: Xcel Energy
Requested From: Office of the Attorney General
Date of Request: June 28, 2021 Information Request No. 92
Response Due: July 8, 2021

Question:

Please provide a completely unredacted version of the Office of the Attorney General's Reply Comments filed in the above-mentioned docket on June 25, 2021.

Response:

The OAG objects to this request to the extent that it seeks information that has been designated as trade secret by Otter Tail Power Company ("Otter Tail"). The OAG asked Otter Tail to approve the release of Otter Tail's trade secret information that was referred to in the OAG's June 25, 2021 filing to Xcel, and Otter Tail refused.

The OAG previously provided Xcel with a copy of the OAG's Reply Comments filed in the above-mentioned docket on June 25, 2021 that included Xcel's trade secret information.

CERTIFICATE OF SERVICE

I, Lynnette Sweet, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

Docket No. E002/RP-19-368

Dated this 13th day of August 2021

/s/

Lynnette Sweet
Regulatory Administrator

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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-368_19-368_Official
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