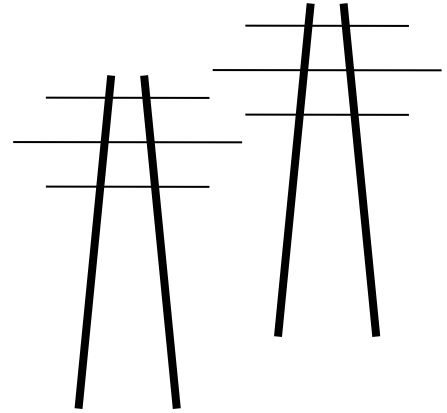


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March 3, 2022

Michael Kaluzniak
Commission Staff
Public Utilities Commission
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mike.kaluzniak@state.mn.us
via email and eDockets

RE: Overland's Comments – Initial Comment
PUC Docket E-002/CN-08-510

Dear Mr. Kaluzniak:

Thank you for the opportunity to comment on the Xcel Energy request to use alternative dry cask storage technology.

I am making these comments as an individual, comments made in the public interest, and I am not representing any party in this docket.

The Commission has requested comments on the following topics:

- Should the Commission approve Xcel Energy's request for use of an alternative dry cask storage technology?
- If approved, what, if any, additional condition(s) should be included in the Commission's order?
- Should the Commission make any findings regarding cost recovery in this docket?
- Are there other issues or concerns related to this matter?

SHOULD THE COMMISSION APPROVE XCEL ENERGY'S REQUEST?

The Commission should not approve Xcel Energy's request for use of an alternative dry cask storage technology. Any approval at this time would be premature – there's no support for approval where the Commission and the public have no idea what is being approved.

As stated before, in person and in writing, it'd be foolhardy to approve Xcel's request until they've filled in the blanks and we've had a chance to review. No approval should be given unless and until a specific cask has been proposed and fully vetted by the Commission. It's pretty simple. The Commission should not give Xcel Energy blanket permission for the unknown. That's irresponsible. The Commission is the regulator – don't abdicate responsibility.

IF APPROVED, WHAT, IF ANY, ADDITIONAL CONDITIONS SHOULD BE INCLUDED IN THE COMMISSION'S ORDER?

The Department of Commerce-EERA filed a comment June 17, 2022, with four specific "mitigation measures" and stated that "EERA staff believes that these mitigation measures are reasonable and appropriate conditions on any Commission approval of Xcel Energy's request." That's a good place to start:

- The conditions proposed by the Department of Commerce, Division of Energy Resources requiring Xcel Energy to file the results of its competitive bidding process with the Commission.
- A condition requiring Xcel Energy to file: (1) the results of its application to the Nuclear Regulatory Commission (NRC) for a transportation license for the TN-40HT cask and (2) the transportation license for any cask or canister selected for use at Prairie Island through Xcel Energy's competitive bidding process.
- A condition requiring Xcel Energy to file those documents made available for or provided to the NRC for use of a cask or canister other than a TN-40HT cask at Prairie Island.
- A condition requiring the Commission to implement a planning process or framework for institutional control of spent nuclear at Prairie Island (or in Minnesota, generally) or adapt an existing planning process or framework that addresses institutional control to make it relatively more public-facing, transparent, and inclusive.

The conditions proposed by commenters and more or less recommended by EERA make sense, but require additional certainty to assure compliance.

Commerce-DER has proposed reasonable reporting requirements as well:

- a. a copy of the request for proposals (RFP);
- b. information regarding how the RFP was advertised;
- c. a statement of the evaluation criteria used by the Company;
- d. an overview of each proposal received in response to the RFP—at a minimum the overview should include:
 - a cost estimate; and
 - how the casks will facilitate transportation out of state to a permanent or interim storage facility as soon as feasible;
- e. the Company's evaluation of each proposal; and
- f. the Company's ultimate determination regarding the RFP and resulting proposals.

Commerce-EERA and Commerce-DER have made reasonable reporting requests as and for

conditions. However...

NO APPROVAL OF XCEL'S REQUEST SHOULD BE GRANTED, NO APPROVAL SHALL BECOME EFFECTIVE, UNLESS AND UNTIL XCEL HAS COMPLIED WITH ALL CONDITIONS AND XCEL'S COMPLIANCE HAS BEEN SUBJECT TO COMMENT PERIOD AND EXPRESS DETERMINATION OF ADEQUACY OF COMPLIANCE.

The first three of the eera conditions are filings, not all-inclusive by any means, steps needed to assure transparency and that the record is fully developed PRIOR to any decision by the Commission – and to assure that this documentation is available for public review.

The forth bullet above is the most important:

A condition requiring the Commission to implement a planning process or framework for institutional control of spent nuclear at Prairie Island (or in Minnesota, generally) or adapt an existing planning process or framework that addresses institutional control to make it relatively more public-facing, transparent, and inclusive.

Institutional control is needed, I think every commenter will agree with this statement. Institutional control will not happen by accident. Institutional control requires PLANNING. It must also be a public process, because the Public Utilities Commission's regulatory acts must be in the public interest. The public will have to live with whatever decision the Commission makes, and must have a voice in this planning. For this reason, the general public, Prairie Island Indian Community, City of Red Wing, and Goodhue County must have an opportunity to participate in this planning for institutional control.

As for DER's comments, each of these points should be required, BEFORE any Commission approval.

SHOULD THE COMMISSION MAKE ANY FINDINGS REGARDING COST RECOVERY?

Should the Commission make findings regarding cost recovery?

DER argues that "The Petition does not contain a request regarding cost recovery therefore DOC-DER concludes that no findings regarding cost recovery are necessary at this time. Issues regarding cost recovery can be addressed once the actual technology selected is known."

This implies that cost recovery findings would only be needed if Xcel requests them! DER should at least acknowledge that cost recovery findings are necessary once costs are known, not that they "can be addressed." This is a SHOULD, or SHALL.

Once more, with feeling: Should the Commission make findings regarding cost recovery?

Yes. As the Commission is well aware, the state's jurisdiction extends to economic issues, which are **not** pre-empted as nuclear safety issues over which federal government has total control.¹ If the state does allow continued nuclear generation by approving Xcel's request, the state must calculate in the costs of "replacement" of not just casks², but of the facility, which must be replaced at regular intervals per the NRC. From my review, there is has been no such consideration of replacement, and the state must make findings of the incremental increases in costs due to an approval of Xcel's request, and the replacement over time of this nuclear waste storage facility that isn't going anywhere anytime soon. This must also be a part of the "institutional control" planning, as above. Facility replacement cost must not be hidden or disregarded. Facility replacement cost is inherent in things nuclear – ask the NRC!

It's time for disclosures of plans by Xcel Energy, and time for another round of comments, if not a contested case, based on whatever it is that Xcel Energy may disclose. Any decision by the Commission other than to leave this docket open and solicit more information and additional comment is premature. No approval should be issued before the basic facts of the casks and costs are known and vetted.

Thank you for the opportunity to file comments on these important issues with long term impacts.

Very truly yours,



Carol A. Overland
Attorney at Law

cc: eDockets Electronic Service List
City of Red Wing and Mayor: citycouncilmayor@ci.red-wing.mn.us

¹ See PG & E v. State Energy Comm'n, 461 U.S. 190 (1983) <https://supreme.justia.com/cases/federal/us/461/190/>

² Minn. Stat. §116C.776, <https://www.revisor.mn.gov/statutes/cite/116C.776>