STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Betsy Wergin	Vice Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner

In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota

DOCKET NO. E-002/ GR-13-868

PETITION FOR RECONSIDERATION OF THE OFFICE OF THE ATTORNEY GENERAL

I. INTRODUCTION.

Pursuant to Minnesota Statutes section 216B.27 and Minnesota Rules part 7829.7300, the Office of the Attorney General – Residential Utilities and Antitrust Division ("OAG") files this Petition for Reconsideration of the Minnesota Public Utilities Commission's ("Commission") Findings of Fact, Conclusions, and Order ("Order") in this matter. The OAG raised additional issues in this proceeding, but this Petition for Reconsideration is limited to the Commission's decision regarding the Prairie Island Nuclear Generating Plant ("PI") and nuclear refueling outage costs.

II. STANDARD OF PROOF.

Any party to a proceeding, or any person who is "aggrieved" and directly "affected" by a Commission order, may file a petition for rehearing or reconsideration within 20 days.[1] The Commission may reverse or change its original decision if it appears that the "original decision, order, or determination is in any respect unlawful or unreasonable."[2]

[1] Minn. Stat. § 216B.27 (2014); Minn. Rules part 7829.3000, subp. 1.
[2] Minn. Stat. § 216B.27, subd. 2 (2014).

In other recent cases, the Commission declined to consider requests for reconsideration because they "do[] not raise new issues, do[] not point to new and relevant evidence, [or do] not expose errors or ambiguities" in the Commission's decisions.[3] This is not the proper context for reviewing a request for reconsideration. Minnesota law permits the Commission to reconsider its decisions if they are unreasonable or unlawful, without regard to new evidence or arguments. And that is the reason that the Commission should reconsider its decision regarding Prairie Island: rather than limiting its deliberation to only new evidence or arguments, the Commission should reconsider its decisions because the Commission's decisions on these issues were fundamentally wrong, and violate the law and the Commission's Rules.

III. THE COMMISSION SHOULD RECONSIDER ITS DECISION REGARDING THE PRAIRIE ISLAND NUCLEAR GENERATING PLANT.

Xcel has requested recovery of $78.9 million in costs from the cancelled PI Extended Power Uprate ("EPU").[4] In its Order, the Commission granted Xcel full recovery of the costs, and allowed a debt-only return of 2.26 percent. The Commission's decision to permit a return on the assets, even a limited return, departs from the Commission's precedent without justification, violates the fundamental principles of ratemaking, and is unreasonable. Further, a significant portion of those costs are Allowance for Funds Used During Construction ("AFUDC") accrued in violation of FERC Uniform System of Accounts ("USOA"), which are required by Commission rule, and they should be disallowed. The Commission should reconsider its decision on these issues.

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[3] *See, e.g.*, Order Denying Reconsideration, *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Gas Utility Infrastructure Cost Rider*, Docket No. 14-336 (Apr. 10, 2015); Order Denying Reconsideration, *In the Matter of the Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. 13-617 (Dec. 22, 2014).

[4] Ex. 45, Table 1, at 11 (Weatherby Direct).

A. XCEL SHOULD NOT EARN A RETURN ON CANCELLED PROJECTS THAT PROVIDE NO BENEFIT TO RATEPAYERS.

The Commission should reconsider its decision to allow Xcel a return on the cancelled PI project. The Commission's decision to allow a debt-only return is a significant departure from precedent that has been applied regularly for decades, that tracks FERC's treatment of cancelled projects, and that is supported by sound public policy. The Commission has repeatedly made clear that the proper balance in the context of cancelled projects is to permit shareholders to recover the costs of the project, but to deny a return. Nothing in this case, including the fact that Xcel followed the Commission's Rules in reporting the challenges with the project in a timely manner, should lead the Commission to discard decades of precedent.

1. The Commission's Precedent Establishes That Utilities May Not Recover A Return On Cancelled Projects.

The Commission's precedent states that the proper balance for cancelled projects is to permit the utility to recover the costs of the project, but with no return. The Commission has applied this standard consistently for many years, in many cases. For example, in 2011, the Commission denied a return on Interstate Power and Light's ("IPL") cancelled coal-fired plant, Sutherland Generation Station Unit 4.[5] Although it initially entered into the project in partnership with several other utilities, IPL decided not to proceed with construction and cancelled the project after its preliminary investigation determined the risks involved.[6] In particular, IPL identified escalating construction costs, unstable economic conditions, unclear environmental regulations, and action by regulators purportedly delaying construction as

[5] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Interstate Power and Light Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. GR-10-276 (Aug. 12, 2011).
[6] *Id.* at 31.

problems with the project.[7] This list of challenges is largely comparable to the challenges faced in the PI EPU project. IPL requested recovery of several million dollars in costs for the abandoned project.[8] The Commission concluded that the proper balance of interests between ratepayers and shareholders was to allow IPL to recover its prudently incurred costs over the expected life of the plant, but with *no return*.[9]

The Commission has demonstrated a consistent application of this precedent for many years. For example, the Commission denied a return on a cancelled project, the Spiritwood plant, in 1987.[10] The Commission has maintained its precedent through many subsequent cases. In 1997, Xcel joined a group of other utilities in an attempt to develop an independent spent fuel storage installation ("ISFSI") in Utah.[11] The project was cancelled as a result of legal and legislative challenges, and Xcel requested recovery of approximately $23.3 million, amortized over three years, in its 2005 rate case.[12] The Commission determined that Xcel should be permitted to recover the costs because they were prudently incurred, but *with no return*.[13]

In each of these cases, the Commission has applied the same policy balance. The Commission stated that policy determination most clearly in a case involving Otter Tail Power's ("OTP"). In 2005, OTP agreed with several other utilities to construct a coal-fired power plant, Big Stone II, in Milbank, South Dakota.[14] OTP withdrew from the project in 2009 because of

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[7] *Id.*
[8] *Id.*
[9] *Id.* at 32–33; *see also* Ex. 20, at 50 (Errata to Clark Rebuttal).
[10] *See* Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Otter Tail Power Company To Increase Rates*, Docket No. E-017/GR-876-380 (Apr. 27, 1987).
[11] Findings of Fact, Conclusions of Law, and Order; Order Opening Investigation, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-05-1428, at 19 (Sept. 1, 2006).
[12] *Id.*
[13] *Id.*; *see also* Ex. 20, at 50 (Errata to Clark Rebuttal).
[14] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. GR-10-239, at 7 (Apr. 25, 2011).

uncertainty regarding federal regulations, softening demand, and economic concerns.[15] OTP sought to recover its investments in the project in its 2010 rate case, and argued that it should be permitted to earn a return.[16] The Commission agreed that OTP should be permitted to recover its prudently incurred costs, but ruled that it would be unreasonable for OTP to earn a return on a cancelled project.[17] The Commission explicitly denied OTP's request for a return, and stated,

> Finally, the Commission agrees that rejecting a return on the Big Stone II costs pending their amortization and setting the amortization period at five years represents the best public-interest balancing of ratepayer and shareholder interests. Granting a return on these costs would place the entire burden of this failed project on ratepayers; it is appropriate that shareholders share in this burden, just as they would have shared in the benefit of a completed plant.[18]

The Commission's precedent has already established what the proper balance is when utility projects are cancelled: utilities may recover their costs, but with no return. This precedent is supported by sound public policy, and it would be unreasonable to depart from it in this case.

2. The Commission's Precedent Of Denying A Return On Cancelled Projects Is Sound Policy.

In previous cases, the Commission has described sound public policy justifications for denying a return on cancelled projects. The balance that the Commission has struck in those cases is the correct balance; further, it is the same balance that is applied by FERC.

In particular, it is important to recognize that the Commission's precedent of permitting shareholders to recover their costs, without a return, rewards shareholders more than if they were investors in nearly any other context. Investors in every other industry face the same risk of project cancellation as utility investors, but have no expectation of getting their investment back

[15] *Id.*
[16] *Id.* at 8.
[17] *Id.* at 12.
[18] *Id.*

if cancellation ultimately occurs. In contrast, while utility investors do not earn a return on their failed investments, they are permitted to get their capital investment back, which places them in a better situation than investors in nearly any other context. In fact, to some extent ratepayers provide insurance for utility investors by paying the costs for projects that are cancelled. To also require ratepayers to insure a return for cancelled projects would be an unreasonable step in favor of shareholders

It is also important to recognize that Xcel's shareholders are *already* compensated for the risk of investment loss as a result of project cancellation, through the company's weighted cost of capital. Investors are well aware that utility projects, like any investment project, may face challenges and ultimately be cancelled. That understanding is incorporated in the market's expectations for Xcel, and is fully reflected in the Xcel's rate of return. In fact, the Commission has previously recognized that cancellation risk is fully incorporated into a utility's rate of return:

> The Commission finds that [the] Company is compensated for the risk of cancellation through the rate of return allowed. The investment risk has been taken into account and included in the rate of return. Ratepayers have not insured the investment of the Company against all risk of loss. If all investments are [permitted to earn a return], the Company would be encouraged to engage in speculation without accepting any risk. The Commission rejects the Company's argument that exclusion of the Spiritwood project from rate base will make the Company more risky. The Commission finds that the risk discussed is a normal business risk already compensated for in the rate of return. The Commission believes it is unreasonable to charge the future ratepayers if the investor has already been compensated for assuming the risk of abandonment. This would violate the consumer's right to protection against exorbitant rates. [19]

[19] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Otter Tail Power Company To Increase Rates*, Docket No. E-017/GR-876-380, at 7–8 (Apr. 27, 1987).

Xcel's shareholders have already been compensated for the risk of cancelled projects because the market incorporates that risk into Xcel's rate of return. Giving Xcel additional consideration for cancellation risk would be unreasonable.

In addition, the Commission's precedent tracks FERC's treatment of cancelled projects. FERC has followed the same precedent as the Commission for many years. For example, in a 1981 decision involving Xcel's cancelled nuclear reactor at Tyrone Energy Park, FERC applied the same analysis and FERC permitted Xcel to include the prudently incurred costs in its wholesale rates, but with no return.[20] As one academic stated,

> FERC's policy on the ratemaking treatment of abandonment losses is now well settled. The utility has the initial burden to show that its decisions to build and later cancel the plant were prudent. Having met this burden, investors and ratepayers will 'share' in the loss; ratepayers by paying in rates for the investment loss, investors by not earning a return on the investment.[21]

FERC's treatment of cancelled projects closely tracks the Commission's recent precedent; in deviating from its precedent, the Commission also deviates from FERC.

The Commission's decision was a significant departure from its precedent, and in making that decision the Commission has abandoned both FERC's process and the sound policy judgments that supported the Commission's previous decisions.

3. The Commission Must Conform To Its Precedent And There Are No Distinguishing Facts That Would Justify Abandoning That Precedent In This Case.

The Commission is required to apply its precedent or provide a reasonable justification for doing so. The Commission has done neither in this case. While the Commission has broad authority, "that does not mean . . . . that [the Commission] may abandon its own precedent

[20] *Northern States Power Co.*, 17 FERC ¶ 61,196, 61,382–83 (1981).
[21] Rodney A. Wilson, *Ratemaking Treatment of Abandoned Generating Plant Losses*, 8 Wm. Mitchell L. Rev. 343, 351–52 (1982).

without reason or explanation."[22] As the Minnesota Court of Appeals has instructed the Commission before, the Commission "must either conform to its prior norms and decisions or explain the reasons for its departure from such precedent."[23] The Commission has not provided any such explanation in this case. The policy considerations in this case are the same as in all of the cases cited above, and the Commission should apply its precedent and reach the same decision it has reached for years: utilities may recover prudently incurred costs for cancelled projects, but may not earn a return.

There are no facts that distinguish the PI EPU from any of these recent decisions. In fact, the situation in this case is strikingly similar to IPL's Sutherland plant. IPL cancelled the Sutherland plant because it identified escalating costs, unstable economic conditions, unclear regulations, and action by regulators that would delay construction.[24] The PI EPU was similarly cancelled because of regulatory delays, escalating nuclear construction costs, softening demand, and economic uncertainty. The primary difference between the cases is only one of magnitude. Beyond the scale of costs for recovery, the cases are largely similar, and they should receive similar treatment from the Commission.

In its Order and during the its deliberation, the Commission suggested that Xcel should be permitted a debt-only return on the PI EPU because the Company had acted prudently in informing the Commission that the project was facing challenges, and in ultimately cancelling the project.[25] This reasoning is flawed, and dangerous. Xcel *has* to inform the Commission when generation projects are not proceeding as expected—it is required under the Commission's

[22] *Peoples Natural Gas Co. a Div. of InterNorth, Inc. v. Minnesota Public Utilities Commission*, 342 N.W.2d 348, 352 (Minn. Ct. App. 1983) (citations omitted).
[23] *Id.* (*citing Mississippi Valley Gas Company v. Federal Energy Regulatory Commission*, 659 F.2d 488, 506 (5th Cir. 1981)).
[24] *Id.*
[25] Order, at 32.

rules.[26] The fact that Xcel followed the rules should not lead the Commission to abandon its precedent or change the outcome of its decision. Xcel's shareholders should not be rewarded for doing what it the Company is supposed to do. Instead, the Commission should follow its precedent and deny Xcel a return on the PI EPU.

As Commission Staff noted in their briefing papers,

> [T]he goal is to appropriately balance the interests of the ratepayers and the Company. Staff believes that the previous decisions, which allowed the company to recover the costs over the remaining life of the plant with no return, accomplished that goal. . . . . Allowing [a debt only return] would be just the first step in a process that would allow the Company to not only recover its costs is [sic] a situation like this but also earn the full rate of return. *Such a result would be totally inappropriate*. The proposal to allow recovery over the life of the plant with a debt only (2.24%) return tips the scale more heavily to Xcel.[27]

The Commission's prior decisions strike the proper balance between ratepayers and shareholders, and tracks FERC's policy. In applying this precedent and denying a return in situations like this, investors are allowed to recover the costs of the project to avoid any chilling of future investments, but do not earn a return on an investment that will never provide any benefit to anyone. Xcel's shareholders, like all investors, are aware of the risks of lost investments and cancelled projects, and the possibilities of those risks are incorporated into Xcel's rate of return, just like every other utility. Changing that balance, which the Commission has relied on for decades, would be unreasonable, and unnecessarily punitive to ratepayers. The Commission should reconsider its decision and deny a return on the cancelled PI EPU.

[26] *See* Minn. Rules part 7849.0400, subp. 2.
[27] Commission Staff Briefing Papers, Volume VII, at 15 (emphasis added).

B. THE UNIFORM SYSTEM OF ACCOUNTS REQUIRES THE COMMISSION TO RECONSIDER ITS DECISION REGARDING PRAIRIE ISLAND AFUDC.

Xcel has requested recovery of $12.8 million in AFUDC that was accrued to Xcel's books as a result of the PI EPU. In testimony, briefs, and during oral argument, the OAG argued that a portion of this AFUDC was accrued in violation of FERC's rule for accounting AFUDC, and should be disallowed. Without providing any discussion of the AFUDC rules contained within the USOA, or the Commission's obligation to follow them, the Commission held that the AFUDC accruals at issue "are rate-recoverable."[28] The Commission should reconsider that decision, because it does not properly apply the USOA or the Commission's own rules.

1. The Commission's Order Fails To Apply Commission Rules Requiring Utilities To Follow The USOA.

In its Order, the Commission stated that it would not adjust the AFUDC accounted for the PI EPU because "[a]ccounting rules can provide valuable information about the nature of costs, but they do not dictate their ratemaking treatment."[29] This is a misstatement of the Commission's Rules. The Commission's Rules *require* the Commission to apply the USOA completely, including its rules for accruing AFUDC. Xcel did not correctly apply the USOA's requirements for accruing AFUDC. By failing to take action to correct that violation, the Commission has both disregarded its own rules and encouraged further rule-breaking in the future.

The Minnesota Public Utilities Act requires the Commission to establish a "system of accounts to be kept by public utilities,"[30] and grants the Commission the authority to develop

[28] Order, at 33.
[29] *Id.*
[30] Minn. Stat. § 216B.10.

rules to accomplish that requirement.[31] The corresponding Commission Rules, which have been in place for decades, provide that "[a]ll public utilities shall conform to the appropriate [FERC] uniform system of accounts."[32] The Rules also make clear that this requirement is not limited just to the text of USOA, but also includes all of FERC's "orders, pronouncements, rules, and regulations changing or amending" the USOA.[33] In its previous orders, the Commission has confirmed that this Rule "provides that Minnesota public utilities shall conform to the FPC (now FERC) Uniform System of Accounts."[34]

The USOA, codified at Title 18 of the Code of Federal Regulations, part 101,[35] contains specific provisions regarding how utilities may account for AFUDC, including limitations on when AFUDC may be accrued. FERC also has multiple accounting releases and many decisions that provide further guidance on the USOA's requirements for AFUDC. By the Commission's own rules, the USOA's instructions on how to account for AFUDC are *binding* on Minnesota utilities. The Commission may not disregard or discount them simply because they are "accounting rules," rather than "ratemaking rules." While the decision of whether to permit AFUDC, whether to include it in rate base, or whether to write an offset into the Company's income statement may be ratemaking decisions, the manner in which AFUDC is accrued is an accounting issue that the Commission has already decided, by rule, will be controlled by the

[31] Minn. Stat. § 216B.08; *see also* Minn. Stat. § 216B.09, subd. 1.
[32] Minn. Rules part 7825.0300, subp. 2.
[33] *Id.*, subp. 2(D).
[34] *In the Matter of Northern Minnesota Utilities' Request for Certification of 1996 Depreciation Rates*, Docket No. G-007/D-96-614 (Oct. 15, 1996); *see also* Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Western Gas Utilities, Inc., for Authority to Increase its Rates for Gas Utility Service in Minnesota*, Docket No. G-012/GR-85-795, at 12 (Aug. 29, 1986) ("The Commission will reaffirm its requirement that the Company's books and records must be maintained in accordance with the [Uniform System of Accounts] as required by Minn. Stat. § 216B.10 . . . .").
[35] *See* 18 C.F.R. § 101.

USOA. The Commission has obligated itself to enforce application of the USOA on Xcel, including the rules limiting the accrual of AFUDC for cancelled and delayed projects.

There are two situations in which the Commission can be excused from applying the USOA, but neither of them apply in this case. First, the Commission's Rules permit a utility to petition for an exception to a provision of the USOA, which shall be granted for good cause.[36] Xcel has not requested an exception for this rule, so no exception may be granted. And even if Xcel had requested such an exception, it has not advanced any reason demonstrating good cause.[37] Second, the Commission's Rules also permit the Commission to grant a variance from its rules when several elements are satisfied.[38] But, as with the exception, no party has requested a variance in this case, so no variance may be granted. Furthermore, the requirements for variance are not met, because varying the rule would have an adverse effect on ratepayers.[39] As a result, there is no provision that permits the Commission to deviate from its Rule requiring utilities to follow FERC's USOA, including the rules for accruing AFUDC.

The Commission decided years ago that utilities must follow the USOA. There is no justification in this case for abandoning the portions of the USOA that limit recovery of AFUDC, and doing so would violate the Commission's Rules.

2. The USOA Prohibits Xcel From Accruing Any AFUDC On The PI EPU Because It Was Abandoned.

The USOA describes how utilities must account for AFUDC. In particular, the USOA provides, "No allowance for funds used during construction charges shall be included in these

[36] Minn. Rules part 7825.0300, subp. 4.
[37] In particular, it is important to note that Xcel's rate of return, representing the expectations of Xcel's investors, should incorporate the USOA's requirements for AFUDC, given that the USOA is a publicly available document that Xcel is required to follow by Commission rule. *See* Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Otter Tail Power Company To Increase Rates*, Docket No. E-017/GR-876-380 (Apr. 27, 1987).
[38] Minn. Rules part 7829.3200, subp. 1.
[39] *See id.* at subp. 1(C).

accounts upon expenditures for construction projects which have been abandoned."[40] The language of the USOA is clear: when a utility construction project is abandoned, the utility may not record any AFUDC in its electric plant accounts. Because the PI EPU was ultimately abandoned, Xcel is not permitted to recover *any* AFUDC for the project.[41]

There is a significant body of law holding that AFUDC should be disallowed when a utility construction project is cancelled.[42] The Commission has recognized this fact in prior cases involving cancelled projects,[43] and Minnesota courts have interpreted this provision of the USOA before. In *In re Interstate Power Company*, the Minnesota Court of Appeals considered whether to permit AFUDC on several cancelled projects.[44] The Court of Appeals noted specifically that the Commission's rules state "that Minnesota public utilities most conform to the [FERC USOA]",[45] and that FERC's USOA indicates that "AFUDC should not be include in the utility's accounts" because the projects in question had been cancelled.[46] On remand, the Minnesota Public Utilities Commission concluded that AFUDC, including interest, "is not recoverable until [the project] goes into service."[47] The Commission held that "earning a return on the capitalized imputed return represented by AFUDC must still await an asset's dedication to public service,"

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[40] FERC USOA, 18 C.F.R. § 101, Electric Plant Instruction 3(17).

[41] The OAG recognizes that this is a refinement of the position in its Initial Brief and Reply Brief. Because the Commission has repeatedly indicated that it will accept "new evidence" and "new arguments" on reconsideration, however, it is appropriate to raise the issue at this time. *See, e.g.*, *See, e.g.*, Order Denying Reconsideration, *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Gas Utility Infrastructure Cost Rider*, Docket No. 14-336 (Apr. 10, 2015) (noting that petitioners' requests "do[] not raise new issues, [and] do[] not point to new and relevant evidence"); *see also* Order Denying Reconsideration, *In the Matter of the Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. 13-617 (Dec. 22, 2014).

[42] *See, e.g., San Diego Gas and Electric Co.*, 31 P.U.R. 4th 435 (Cal. Pub. Util. Comm'n. 1979); *Central Maine Power Co. v. Public Util. Comm'n.*, 433 A.2d 331 (Sup. Ct. Ma. 1981).

[43] *See* Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Otter Tail Power Company To Increase Rates*, Docket No. E-017/GR-876-380, at 18 (Apr. 27, 1987).

[44] *In re Interstate Power Company*, 416 N.W.2d 800, (Minn. Ct. App. 1987).

[45] *See id.* at 808, n.4.

[46] *Id.* at 809.

[47] *In the Matter of the Application of Interstate Power Company for Authority to Increase its Rates for Electric Service in Minnesota*, Docket No. E-001/GR-86-384, 1988 WL 486153, at *4 (July 5, 1988).

regardless of the Commission's ratemaking policy on permitting CWIP in rate base.[48] Because the assets in question never went into service, the Commission determined that the AFUDC was not recoverable.[49]

Other state commissions have reached similar conclusions. For example, the Arkansas Public Service Commission considered whether to allow Entergy Arkansas, Inc. to recover AFUDC for a cancelled capital project.[50] The Arkansas Commission cited the USOA, in particular Electric Plant Instruction 3A(17), and noted that "[n]o allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned."[51] The Arkansas Commission stated that "[c]onsistent with the plain language of the CFR and this Commission's longstanding regulatory practice, the Commission finds that . . . no AFUDC should be allowed on abandoned projects."[52]

The Commission's Order permitting Xcel to recover AFUDC on the cancelled PI EPU is inconsistent with the USOA, the Commission's Rules, the Minnesota Court of Appeals, and the decisions of other state Commissions. The Commission should reconsider its decision and require Xcel to follow the USOA, which prohibits recording, and therefore recovery of, AFUDC on cancelled projects. The plain language of the USOA prohibits recovery of AFUDC for cancelled projects. The PI EPU was abandoned, and, therefore, Xcel may not recovery AFUDC for the project.

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[48] *Id.*
[49] *Id.*
[50] *In the Matter of the Application of Entergy Arkansas, Inc. for Recovery of Transition Costs*, 2004 WL 2281129 (Ark. Pub. Svc. Comm'n. Sept. 9, 2004).
[51] *Id.*
[52] *Id.*

3. In The Alternative, The USOA Prohibits Xcel From Accruing AFUDC On The PI EPU After The Project Was Suspended In August, 2011.

The Commission should disallow all AFUDC for the PI EPU because the USOA clearly states that no AFUDC may be recorded for a project that is abandoned. In addition to this requirements for abandoned projects, however, the USOA limits AFUDC for projects that are interrupted or suspended. Therefore, even if the Commission grants Xcel recovery of some AFUDC for the PI EPU—which it should not— it must disallow the AFUDC that was accrued after the project was suspended in August, 2011.

a. The USOA and FERC's decisions require utilities to stop accruing AFUDC when a project is interrupted or suspended.

In addition to the USOA's limitations for AFUDC on projects that are cancelled, FERC has provided further guidance on AFUDC for utility projects that are interrupted or suspended, like the PI EPU. In particular, Accounting Release AR-5 provides that "no AFUDC should be accrued during periods of interrupted construction."[53] AR-5 further provides that AFUDC should only be accrued while "activities that are necessary to get the construction project ready for its intended use are in progress."[54] AR-5 is binding on Xcel—the Commission's Rules indicate that utilities are bound by the USOA and "all [FERC] orders, pronouncements, rules, and regulations" regarding the USOA.[55]

In a series of cases that are also binding on Minnesota utilities FERC has further explained that AR-5 means that the accrual of AFUDC must cease when a project is not "viable and ongoing." Xcel should be familiar with the legal rules in this situation, because FERC first

[53] *See* Ex. 94, LHP-2, Schedule 8 (Perkett Rebuttal).
[54] *Id.*
[55] Minn. Rules part 7825.0200, subp. 3; *see also* Minn. Rules part 7825.0300, subp. 2(d) ("All [FERC] orders, pronouncements, or changes affecting the [FERC USOA] . . . shall be effective . . . .").

explained the applicable legal standard in a case regarding Xcel's cancelled power plant, the Tyrone Energy Park nuclear generating facility.[56] In that case, and the cases that followed, FERC determined that AFUDC should only be accrued on a project as long as the project is both viable and ongoing.[57] In later cases, FERC further clarified that AFUDC is only a "proper construction cost as long as the project is viable and ongoing."[58] When construction is under way, and a project is both viable and ongoing, it may continue to accrue AFUDC; when it is not, then AFUDC accrual *must* cease or be in violation of the USOA.

b. Xcel suspended work on the PI EPU in August, 2011, and cannot recover any AFUDC recorded after that date.

Even though the USOA requires utilities to cease accruing AFUDC when projects are interrupted, Xcel continued to accrue AFUDC on the PI EPU until December, 2012, more than a year after the Company internally decided to suspend the project. Xcel's internal decision to suspend work on the PI EPU in August, 2011, is determinative on this issue. When Xcel suspended the project, construction was not under way, the project was not ongoing, and the Company should have ceased accruing AFUDC.

Multiple Xcel employees testified that the Company suspended the PI EPU after a meeting with the NRC that took place on August 18, 2011.[59] In Direct Testimony, Xcel witness Mr. James R. Alders testified about the challenges the Company faced with the PI EPU, and the softening demand the Company saw for generation.[60] Mr. Alders also testified that the Company suspended construction on the project:

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[56] *Northern States Power Co.*, 17 FERC ¶ 61,196, 61,382–83 (1981).
[57] *See, e.g., Boston Edison Company*, 34 F.E.R.C. ¶ 63023, at 65074 1986 WL 76218 (Jan. 22, 1986).
[58] *Id.* at ¶ 65075.
[59] Tr. Evid. Hearing, Vol. 1, at 207:8–9 (Aug. 11, 2014) (McCall).
[60] Ex. 48, at 15–17.

> **Q. DID THE COMPANY AT SOME POINT "RAMP DOWN" ITS PRAIRIE ISLAND EPU ACTIVITIES WHILE IT NOTIFIED THE COMMISSION THAT CIRCUMSTANCESE [SIC] WERE CHANGING SUCH THAT A REASSESSMENT MADE SENSE?**
>
> A. Yes. Mr. McCall explains that we began the process of suspending development of the Project at the time of our changed circumstances reassessment.[61]

During the evidentiary hearing, Mr. Alders further clarified when the Company suspended construction on the project.

> **Q. [Y]ou stated that the Company began suspending the development of the project at the time of your changed circumstances reassessment; is that right?**
>
> A. Correct.
>
> **Q. Now, I'm interested in that phrase, the changed circumstances reassessment. When did the Company begin that reassessment?**
>
> A. I think as the nuclear business unit came back with information from the Nuclear Regulatory Commission about the federal license amendment process and how it might be extended and how additional information might be necessary that the question of reexamining the – or reassessing the benefits started to develop.
>
> **Q. Okay. So you would agree that the Company began its reassessment well before the notice of changed circumstances was filed in March of 2012?**
>
> A. Yes.[62]

Xcel witness Mr. Scott McCall confirmed Mr. Alders' testimony. In his Direct Testimony, Mr. McCall explained that the Company suspended the PI EPU in August, 2011.

> **Q. HOW DID THE COMPANY ATTEMPT TO BALANCE ITS MANAGEMENT OF THE KNOWN AND UNKNOWN RISKS OF THE PROJECT WITH THE RESULTS OF THIS COST-BENEFIT ANALYSIS?**

[61] *Id.* at 17.
[62] Tr. Evid. Hearing, Vol. 1, at 191:3–21 (Aug. 11, 2014) (Alders).

> A. From a project management standpoint, we determined it was prudent to ramp down and then suspend the Project while our regulatory and resource planning groups analyzed additional information and presented new information to the Commission. Fortunately, we were at a point in the Project when we had not yet begun construction and implementation, and therefore had the opportunity to begin the process of suspending the Project pending regulatory review. Consequently, we began the process of decreasing the amount of resources dedicated to the Project in approximately the third quarter of 2011.
>
> **Q. HOW LONG DID THE COMPANY TAKE TO STOP THE SPENDING ON THIS PROJECT?**
>
> A. Our review began in earnest after our discussions with the NRC in August of 2011. . . . By the end of 2011, the Company had suspended all other work on the Project . . . .
>
> **Q. HOW DID THE COMPANY GO ABOUT ENDING ITS INVESTMENT IN THE PROJECT?**
>
> A. . . . . While LCM work continued to ensure the Prairie Island facility could continue to function in a safe and reliable manger, virtually all EPU efforts ceased.[63]

Mr. McCall provided further testimony during the evidentiary hearing. In his opening statement, Mr. McCall testified that the Company suspended the Project in 2011:

> Based on the culmination of these concerns and because we were not yet in the implementation phase for the Prairie Island EPU project, we were largely able to suspend the project by the end of 2011.[64]

In response to further questions, Mr. McCall provided additional details, and confirmed that the Company suspended the PI EPU after the meeting with the NRC on August 18, 2011:

> **Q. Okay. Now, in your testimony on page 33, you indicated that the Company began to ramp down the EPU in the third quarter of 2011?**

[63] Ex. 49, at 33–35 (McCall Direct).
[64] Tr. Evid. Hearing, Vol. 1, at 201:10–14 (Aug. 11, 2014) (McCall).

A. That's correct.

Q. Can you provide a more precise date of when that ramp-down began?

A. The ramp-down began really largely after we had come back – we had – we had the meeting with the NRC on August 18th. We started looking at what resources do we need, and maybe there's – we basically completed the ramp-down by the end of that year, by the end of 2011.[65]

According to Xcel's two primary witnesses on the PI EPU, the Company suspended its work on the project in August, 2011, and had stopped *all* progress by the end of 2011. There can be no dispute about whether construction was ongoing following August, 2011. It was not. The Company had suspended the project.[66] Xcel was not pursuing the "activities that [were] necessary to get the construction project ready for its intended use," [67] and the project was suspended, or "interrupted,"[68] the two primary requirements of AR-5. Because construction was "interrupted," the plain language of the USOA required Xcel to stop accruing AFUDC.

As noted above, Minnesota utilities are bound by the USOA. The Commission must enforce its Rule mandating that utilities use the USOA, including the rules for recording AFUDC. The Commission *does not* have discretion to apply the USOA in some situations, and disregard it in others. To do so would violate the Commission's own rules, and it would be unreasonable. The Commission's distinction between accounting rules, apparently in reference to the USOA, and ratemaking rules is a distinction without a difference in this situation.[69] Xcel, and the Commission, are required to follow the USOA. The USOA prohibits Xcel from

[65] Tr. Evid. Hearing, Vol. 1, at 213:7–18 (Aug. 11, 2014) (McCall).
[66] It is worth pointing out that whether Xcel's decision to suspend the project was prudent, or whether it should have suspended the project earlier, is irrelevant to this inquiry. Xcel *did* suspend the project; as a result, the USOA requires Xcel to stop accruing AFUDC.
[67] *See* Ex. 94, LHP-2, Schedule 8 (Perkett Rebuttal).
[68] *Id.*
[69] Order, at 33.

recording the AFUDC in question. As a result, the AFUDC cannot be recovered. Xcel must not be granted recovery of costs that were recorded in violation of the Commission's Rules.

IV. THE COMMISSION SHOULD RECONSIDER ITS DECISIONS REGARDING NUCLEAR REFUELING OUTAGE EXPENSES.

In addition to reconsidering its decision regarding the PI EPU, the Commission should also reconsider its decisions regarding nuclear refueling outage ("NRO") expenses. Specifically, the Commission should reconsider its decisions to permit Xcel to over-recover for NRO expenses in 2015, and to permit Xcel to earn a full return on NRO expenses.

A. THE COMMISSION SHOULD UPDATE NUCLEAR REFUELING OUTAGE EXPENSES FOR THE 2015 STEP.

The Commission should reconsider its decision to set Xcel's 2015 step year NRO recovery at its 2014 cost level, which results in a $5.5 million over-recovery for the company. The Commission's decision to allow recovery of an amount higher than Xcel's actual costs results in inaccurate ratemaking, is fundamentally unfair to ratepayers, and is premised on a flawed analysis that is inconsistent with the Commission's past decisions. To promote ratepayer fairness and accurate cost recovery, the Commission should modify its Order to require Xcel to reduce its 2015 NRO costs by $5.5 million.

1. The Commission's Decision Is Inconsistent With The Commission's Justification For Adopting The Deferral And Amortization Method.

The Commission's decision in this case directly conflicts with the Commission's justification for adopting the deferral and amortization method in the first place. When it adopted the deferral and amortization method,[70] the Commission claimed that its "purpose" "is to

[70] Against the recommendations of the OAG, who pointed out that the deferral and amortization method unfairly inflates costs for ratepayers and gives Xcel an incentive to overstate NRO costs.

promote stability, predictability, accuracy, and fairness,"[71] to "match more closely the time these costs are incurred with the time they are recovered," and to "avoid substantial fluctuations in these costs between rate cases."[72] The Commission also assured parties that the use of the deferral-and-amortization method would not result in unfair benefits for the company. The Commission claimed that Xcel "credits ratepayers at the rate of return when amortized amounts exceed actual costs, *ensuring equitable treatment,*"[73] and that the Commission would monitor the program with a "side-by-side comparison of the rate impact of both deferral-and-amortization and direct-expense accounting" to permit necessary adjustments.[74]

But, by refusing to adjust Xcel's 2015 step-year to reflect the company's actual NRO costs, the Commission is not promoting several of its stated goals for using deferral-and-amortization accounting: accuracy in cost recovery, fairness between the company and ratepayers, and "matching" the timing of cost recovery with the timing the expenses were incurred. In this case, it is undisputed that Xcel's NRO expenses will be lower in the 2015 step year; accuracy, fairness, and matching the timing of recovery and expenses would support updating the costs. The Commission has abandoned those principles by failing to make necessary adjustments in order to ensure that cost levels are accurate for the 2015 step year. This is inequitable for ratepayers.

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[71] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-08-1065, a t 33 (Oct. 23, 2009).
[72] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, at 40 (Sept. 3, 2013).
[73] *Id.* at 41 (emphasis added).
[74] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-08-1065, at 32–33 (Oct. 23, 2009).

2. The Commission's Decision Is Also Inconsistent With The Multi-Year Rate Plan Order.

In addition, the Commission's decision to allow Xcel's 2015 NRO expenses to be recovered at 2014 cost levels is based on a flawed reading of the multi-year rate plan order ("MYRP") order.[75] The MYRP order allows Xcel's step year to be adjusted to reflect *both* "costs related to specific, clearly identified capital projects" and "appropriate non-capital costs."[76] The Commission's order does not properly apply this order for several reasons.

First, the Commission's Order provides no analysis of whether NRO expenses are "appropriate non-capital costs" to consider in setting rates for Xcel's step-year. The MYRP order permits updates for *both* capital costs and "appropriate non-capital costs." The Commission's Order fails to discuss any of the unique characteristics of NRO expenses. Instead, the Commission simply rejected a 2015 adjustment to Xcel's NRO expenses after concluding that they are "non-capital costs" that were not "transform[ed]" into capital costs by using the deferral and amortization method.[77] While this speaks to whether NRO costs are "capital costs," it says nothing to whether they are "appropriate non-capital costs" that should be considered in the 2015 step-year. The only possible discussion in the Commission's Order of whether NRO costs are "appropriate non-capital costs," is the general and unsupported claim that NRO expenses are "among the costs for which step year adjustments should only be accomplished in

[75] Order Establishing Terms, Conditions, and Procedures for Multiyear Rate Plans, *In the Matter of the Minnesota Office of the Attorney General – Antitrust and Utility Division's Petition for a Commission Investigation Regarding Criteria and Standards for Multiyear Rate Plans under Minn. Stat. § 216B.16, subd. 19*, Docket No. E,G-999/M-12-587 (June 17, 2013) ("MYRP Order").
[76] MYRP Order, at 12.
[77] Order at 28. While the Commission describes these costs as "non-capital costs," it does not claim that they are O&M costs. This appears to follow Xcel's claim that NRO costs are in a unique category that "are neither capital costs nor non-capital costs associated with a step-year project." Order at 27. It is unclear to the OAG how Xcel or the Commission classify these costs that are apparently not "capital costs" and not O&M costs.

conjunction with a fuller consideration of all rising and falling non-capital costs."[78] This explanation ignores the characteristics of NRO expenses, which indicate that they are fundamentally different from O&M costs, and are appropriate non-capital costs to update in a MYRP. that make them appropriate costs to update in a step year.[79] In fact, NRO expenses are so different than other O&M expenses that Xcel is permitted to use deferral-and-amortization accounting and to earn a return on these costs.[80] If refueling expenses that are permitted to earn a return are not sufficiently "appropriate" to be updated in a test year when it is clear that failing to make the update will allow the Company an over-recovery of $5.5 million, it is unclear what expenses would ever qualify as "appropriate non-capital costs."

Second, the Commission's claim that NRO costs are not "transformed" into capital costs by changing their accounting treatment conflicts with previous statements the Commission made when authorizing the deferral-and-amortization accounting method. Specifically, when the Commission authorized Xcel to use the deferral-and-amortization method—against the OAG's recommendation—it described the accounting method as follows:

> Under deferral-and-amortization accounting procedures, *the costs would be capitalized*, *i.e. placed in rate base*, and amortized over periods between refueling; the Company would earn its rate of return on the amount of those deferred costs as well as recovering the cost.[81]

The Commission's current determination that NRO expenses are not capital costs is clearly inconsistent with its previous statement that the costs are "capitalized" and "placed in rate base." Now that classifying the deferred-and-amortized NRO costs as capital costs would result in a

[78] Order, at 28.
[79] *See* OAG Exceptions, at 17.
[80] *Id.*
[81] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-08-1065, at 30 (Oct. 23, 2009).

lower 2015 recovery, the Commission has reversed course without explanation and concluded that they remain non-capital costs. The only consistent factor in the Commission's conflicting decisions is that the Company has benefited in both instances of the Commission's contradictory actions.

The Commission should reconsider its decision and update the NRO expenses for the 2015 step. The Commission's refusal to do so is inconsistent with its prior justifications for adopting the deferral and amortization method, and inconsistent with a reasonable reading of the MYRP order. Failing to make this adjustment will result in an over-recovery of $5.5 million.

B. XCEL SHOULD NOT EARN ITS FULL RATE OF RETURN ON NUCLEAR REFUELING OUTAGE EXPENSES.

In addition to updating NRO expenses for the step year, the Commission should reconsider its decision to allow Xcel to recover its full rate-of-return on NRO expenses that are deferred for a period of between 18 and 24 months. While the OAG recognizes that the Commission has decided this issue in previous rate cases, the evidence presented in this case demonstrates that the Commission's past decisions are wrong and fundamentally unfair to ratepayers.

The Commission's primary justification for permitting Xcel to earn a return on these costs has been its belief that the deferral and amortization methodology would somehow result in a balance between ratepayers and shareholders. But the Commission's claim that its methodology "ensur[es] equitable treatment"—a statement copied from the Order in Xcel's 2012 rate case[82]—is not only untrue, it has been proven to be untrue by additional evidence presented in this case. If the Commission had reviewed the "side-by-side comparison of the rate impact of

[82] Findings of Fact, Conclusions, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-12-961, at 41 (Sept. 3, 2013).

both deferral-and-amortization and direct-expense accounting" it indicated would take place,[83] it would be apparent that the deferral and amortization method has caused ratepayers to pay $16.7 million more in rates than they would have under the previous method.[84] As the Commission's own briefing papers state:

> The fact is that as a result of Xcel including the unamortized costs in rate base, ratepayers are harmed . . . Simply as a result of the change in accounting, Xcel was able to convert an operating income expenses where it was allowed a recovery of the cost to a rate base item for which it not only gets a recovery, it gets a recovery on the cost like it does for plant in service.
>
> Before the change ratepayers never paid a return on NOR costs. Now they do and ratepayers are harmed as a result . . . .[85]

The Commission's statement that the deferral and amortization method will result in "equitable treatment" is factually untrue. The Commission's failure to consider the evidence in this case, while continuing to assert that ratepayers are not harmed by Xcel's NRO accounting methodology, is unreasonable and should be changed. Accordingly, the Commission should reconsider its decision and prohibit Xcel from collecting a return on its deferred-and-amortized NRO expenses.

V. CONCLUSION.

The Commission should reconsider its decisions regarding the Prairie Island Extended Power Uprate and nuclear refueling outage expenses. The Commission has abandoned decades of precedent in allowing Xcel to earn a return on a cancelled project that will never provide any benefit to ratepayers. In addition, Xcel failed to properly apply the USOA's requirements for AFUDC. By failing to make the adjustments necessary to enforce the USOA, the Commission

[83] Findings of Fact, Conclusions of Law, and Order, *In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-0801065, at 32–33 (Oct. 23, 2009).
[84] Ex. 370, at 45 (Lindell Direct); Ex. 371, JJL-12 (Schedules to Lindell Direct).
[85] Briefing Papers, Vol. VII, at 52.

ignored its own rules. Further, the Commission's decision not to update nuclear refueling expenses for the 2015 step year is inconsistent both with the Commission's prior orders and the MYRP order. Finally, the Commission's justification for allowing Xcel to earn a return on nuclear refueling expenses is based on assumptions that are factually untrue. The Commission must reconsider its decisions on these matters to ensure that the rates resulting from this proceeding are just and reasonable.

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