BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
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IN THE MATTER OF THE APPLICATION OF NORTHERN STATES POWER COMPANY FOR AUTHORITY TO INCREASE RATES FOR ELECTRIC SERVICE IN STATE OF MINNESOTA	MPUC Docket No. E-002/GR-13-868

RESPONSE OF THE MINNESOTA DEPARTMENT OF COMMERCE TO XCEL ENERGY'S REQUESTS FOR RECONSIDERATION AND/OR CLARIFICATION

JUNE 8, 2015

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I. INTRODUCTION

On May 8, 2015, the Minnesota Public Utilities Commission ("Commission") issued its *Findings of Fact, Conclusions of Law and Order* ("May 8, 2015 Rate Case Order") in the above-referenced electric rate case of Northern States Power Company d/b/a Xcel Energy ("Xcel" or "Company").

On May 28, 2015, AARP and the Minnesota Office of Attorney General – Residential Utilities and Antitrust Division ("OAG") filed comments regarding certain aspects of interim rate refunds, along with rehearing requests. On the same day, the Department filed comments addressing other issues regarding interim rate refunds, along with a limited request for reconsideration and clarification.

On May 28, 2015, Xcel filed its petition for Reconsideration of the Commission's May 8, 2015 Rate Case Order. The Company requested rehearing on the following issues:

1. Exception to the revenue decoupling mechanism's three percent cap;

2. Reconsideration and/or clarification of certain aspects of the revenue decoupling mechanism in light of the Company's 2016 test year rate case;

3. Reconsideration and/or clarification asserting that the Monticello Extended Power Uprate ("EPU") Project was used and useful ("in-service") as of January 1, 2015 and arguing that it is allowed to include costs of the EPU in 2015 rate base beginning on January 1, 2015; and

4. Reconsideration and/or clarification of the calculation of the revenue deficiency, based on applying the 2015 rate of return to the Company's entire 2015 rate base.

The Department addresses below Xcel's rehearing requests regarding these issues.

II. DOC'S RESPONSE TO XCEL'S REHEARING REQUEST FOR DECOUPLING REGARDING THREE PERCENT CAP AND IMPLEMENTATION FOR UPCOMING 2016 RATE CASE

Xcel's Request for Reconsideration at page 6 asks the Commission, in regards to decoupling to:

- Reconsider the three percent cap that applies to decoupling adjustments, and
- Clarify how the Company should implement the decoupling mechanism outlined in the Order in the context of a 2016 rate case.

The Department recommends that the Commission reject Xcel's Request for Reconsideration of the Commission-approved decoupling cap. The Department agrees, however, that the issue of revenue decoupling implementation could use some clarification and appreciates Xcel's discussion. The Department discusses each of these issues below.

A. REVENUE DECOUPLING CAP

In its May 8, 2015 Findings of Fact, Conclusions, and Order (2015 Order) the Commission stated that it supported the 3 percent cap, but disagreed that the cap should be based on *total* revenue for each customer group; instead, the Commission preferred to exclude fuel and all applicable riders in setting the cap. Specifically, the Commission's 2015 Order (page 80) states:

> … the Commission disagrees with the [Administrative Law Judge] ALJ and the Department about the merits of calculating the cap on the basis of all of a customer group's revenues, including revenues from riders. Part of the value of a cap is the assurance it provides ratepayers about the potential consequences of this new rate design. Because the magnitude of revenues from the fuel clause and other riders is prone to large fluctuations, the magnitude of a cap calculated on this basis becomes more speculative—that is, it would no longer provide ratepayers with reassurance. The Commission prefers a cap formula that provides a greater degree of clarity.

Xcel's Request for Reconsideration, at page 6 provides three reasons why it requests that the Commission reconsider the approved decoupling cap of three percent:

- A three percent cap applied only to base revenues, rather than being applied to total customer group revenues (base revenues + fuel + riders), was not evaluated in the record.
- A three percent base revenue cap differs from prior caps adopted by the Commission and national practice.

- The three percent revenue cap is incompatible with other elements of the decoupling mechanism as set forth in the Commission's Order.

The Department responds briefly to each of Xcel's three arguments.

1. Size of the Decoupling Cap

As Xcel points out on page 7 of its Reconsideration Request, the Department analyzed four different caps. In his Supplemental Testimony, Department Witness Christopher T. Davis illustrated the difference in size of the following four caps: (1) a two percent cap calculated using base revenue plus fuel and all applicable riders; (2) a three percent cap calculated using base revenue plus fuel and all applicable riders; (3) a 5 percent cap calculated using base revenue only; and (4) a 10 percent cap calculated using base revenue only.

The Department recommended revenue decoupling cap number 2, a three percent cap applied to base revenue plus fuel and all applicable riders. In his Supplemental Testimony, Mr. Davis recommended that the Commission:

> Approve a three-year pilot full revenue decoupling mechanism for Xcel's residential and non-demand-metered customer classes with the following provisions:
>
> a) The Commission approve no cap on decoupling refunds, but a hard cap on surcharges, that, including fuel and all applicable riders, is in an amount *no greater than* 3 percent of total customer group revenue. [Emphasis added.]
>
> b) Xcel not be allowed to surcharge customers in any year after the Company fails to achieve energy savings equal to 1.2 percent of retail sales.
>
> c) The pilot program run for three years.

Davis Supplemental Testimony at 17. In regards to the 2 percent cap, Mr. Davis stated:

> While it could be argued that AARP's 2 percent cap does a better job of protecting ratepayers than the 3 percent cap I propose, the balance for the Commission to strike as to this issue is the protection of ratepayers vs. the Commission's policy goals regarding energy conservation. For the reasons I note above, I conclude that the 3 percent hard cap I recommend strikes a reasonable balance.

Davis Supplemental Testimony at 9. From the Commission's Order, it appears that the Commission's preferred revenue decoupling cap accepts the Department's recommendations and reasoning in large part and is consistent with the Department's recommendations highlighted above, because the Department recommended that the cap be three percent of total revenues *at the highest* and because the Commission's preferred method would lead to a cap that would fall between AARP's recommended hard cap and the highest amount proposed by the Department. Further, the Commission's evaluation of the record regarding the magnitude of the cap, at page 80 of the 2015 Order, accurately concludes that inclusion of revenues from the fuel clause and other riders would be subject to fluctuations such that the cap may exceed three percent of base revenues. Table 1 below, showing the Department's calculations based on actual electric sales and customer actual data submitted to the record by Xcel on January 16, 2015,[1] confirms that the Commission's assessment of the record is accurate.

[1] On January 16, 2015, a date well in advance of Commission deliberations, the Company submitted to the record electric sales and customer actual data by major class for January through December 2014 in compliance with the commitment made during the evidentiary hearing by Xcel Witness Anne Heuer in her Opening Statement. Ex. 140, Heuer Opening Statement at 5-6; Tr. Vol. 3 at 143-145 (Heuer). Heuer Attachment F2 *(*Attachment 1 hereto) shows the weather normalized 2015 revenue by rate class for 2015. The attachment indicates that the 2015 Residential Regular rate class base revenues (without fuel costs and riders) would be $747,686,000 and the 2015 Residential Space Heating base revenues would be $28,249,000.

Table 1: Hard Caps due to Applying 2 and 3 Percent Caps to 1) Base Revenues Only and 2) Base Revenues + Fuel + Riders

	2% Hard Cap		3% Hard Cap	
	Base Revenues	Base+Fuel+ Rider Revenues[2]	Base Revenues[3]	Base+Fuel+ Rider Revenues[4]
Total Surcharge for Residential Class	$14,953,720	$19,206,560	$22,430,580	$28,809,840
Residential Annual Bill Increase (Avg.)	$14	$18	$21	$27
Total Surcharge for Space Heating Class	$564,980	$765,700	$847,470	$1,148,550
Space Heating Annual Bill Increase (Avg.)	$17	$24	$26	$35

Table 1 indicates that the Commission's approved hard cap of three percent applied to base revenues would result in an estimated total potential surcharge of $22.4 million, or an average annual cost to a regular residential customer of $21. The Commission's approved cap is 22 percent less than the highest amount recommended by the Department and 17 percent higher than AARP's recommended cap. The Department concludes that the Commission's choice strikes a balance between caps proposed by two different parties, accurately determined that exclusion of revenues from the fuel clause and other riders may result in a lower cap, and thus is reasonable.

2. Deviation from past Commission precedent and national practice.

Xcel's Request for Reconsideration at page 7-8 argues that because the Commission approved 10 percent revenue decoupling caps applied to base revenues for both CenterPoint Energy and Minnesota Energy Resource Corporation ("MERC"), and because the Order does not

[2] AARP's proposed cap.
[3] Commission-approved cap.
[4] Highest cap recommended by Department.

explain why it is reasonable to treat the Company differently than CenterPoint and MERC, "the record lacks the evidence necessary to support departing from past practice." Xcel does not appear to dispute in this respect that consistency would require application of a cap only to base revenues; it appears to dispute only the amount of three percent rather than ten percent.

Xcel's argument seeking consistency with recent MERC and Centerpoint decisions is unpersuasive because, first, Xcel disregards the pilot nature of the decoupling mechanism approved by the Commission for Xcel (Order at 102), and the statutory goals to be accomplished by implementation of pilot programs. As the Commission observed in its Centerpoint decision, where a pilot decoupling program also was ordered, inconsistency among the various pilot programs is appropriate and necessary:

> The Commission agrees with the Department that selecting a decoupling mechanism should be guided by the Commission's statutory and policy goals concerning such programs. In this instance, these goals include the statutory goal for pilot decoupling programs: to assess the merits of a rate decoupling strategy to promote energy efficiency and conservation. [*citing* Minn. Stat. § 216B.2412, subd. 3.] This goal can be served best through a decoupling program that offers new information about decoupling's effectiveness.
>
> The Commission has previously approved two decoupling pilot programs. One partial decoupling program was implemented by the Company from 2010 to 2013. The other, a full decoupling program implemented by Minnesota Energy Resources Corporation is just now underway. The Commission concludes that the modified full decoupling proposal in this proceeding is an appropriate addition to the list of pilot programs intended to aid the Commission in assessing rate decoupling's merits as a regulatory tool.
>
> The modified full decoupling proposal serves the relevant statutory goals by differing from both previously approved decoupling programs.

13-316 Findings of Fact, Conclusions and Order, June 9, 2014 at 47-48. It is not only reasonable for the Commission's 2015Order to "depart from past practice" and treat Xcel differently than CenterPoint and MERC, it is laudable for the 2015 Order to do so.

Second, Xcel's argument about "precedent" ignores the important fact that the decoupling mechanisms for MERC and CenterPoint applied only to distribution revenues, whereas Xcel Electric's decoupling mechanism applies to distribution, transmission and generation costs. A two percent cap on a larger base number (distribution, transmission and generation costs) is a much larger cap than the same percentage cap on a smaller base (distribution costs). Thus, decoupling programs for distribution-only utilities will necessarily be different than for a fully integrated (generation, transmission and distribution) utility.

In addition, Xcel argues that the Commission's approved cap deviates from what it calls "national practice." The Department notes that Xcel's revenue decoupling mechanism is a three-year pilot project and there is no reason for the Commission to follow a specific formula that might be used in other parts of the country. Further, before considering programs in other states, it would also be necessary to understand which of the national programs apply only to distribution costs rather than distribution, transmission and generation costs, along with any other relevant differences in programs elsewhere. Using the Attachment F2 revenue figures from Xcel's January 16, 2016 compliance filing, the Department calculates that Xcel's desired 10 percent of base revenue cap would expose residential customers alone to a potential annual surcharge of $74,768,600.[5]

3. Inconsistency with other aspects of the 2015 Order

Xcel complains on page 8 of its Request for Reconsideration that a situation could arise with the Commission's approved revenue decoupling cap in which the Company could be required to issue refunds for all weather-related increases in usage per customer, but would be prevented from fully recouping weather-related decreases in usage per customer.

[5] 10 percent x $747,686,000.

The Department has three brief comments. First, the Department proposed a cap because Minn. Stat. §216B.2412 subdivision 2 establishes criteria for decoupling that requires that ratepayers not be harmed. It is noteworthy that Xcel's Request for Reconsideration does not mention the statutory dictate to protect ratepayers. Second, in Mr. Davis's Rebuttal Testimony at 8-9, where he evaluated different levels of caps, Mr. Davis found that during the ten year period he reviewed, Xcel would have encountered the two or three percent total revenue caps as follows:

- At no time for the non-demand small commercial rate class,
- For the regular residential class, only two out of the ten years for the two percent cap, none for the three percent cap, and
- For the space heating residential class, only two out of the ten years for both the two percent and three percent caps.

Because the Commission's approved cap is between the two percent and three percent caps evaluated by Mr. Davis, the Department continues to conclude that the cap will likely have little impact on Xcel's recovery of funds.

Third, the Company focuses only on its weather-related risk and ignores the reduction in risk the decoupling mechanism provides against decreases in use per customer due to any factor. Further, as discussed on pages 26-28 of Dr. Amit's Surrebuttal Testimony in this matter, the Company is fully compensated for its risk through its authorized rate of return, particularly given that many of the companies in Mr. Hevert's and Dr. Amit's comparison groups:

> …have partial of complete decoupling provisions combined with other various revenue stabilization policies. … Thus, it is reasonable to conclude [that] Mr. Hevert's comparison groups capture any decoupling impact on risk and therefore, no additional adjustment is needed to account for the Commission allowing decoupling for NSP."

Based upon its review of Xcel's arguments, the Department concludes that reconsideration of the revenue decoupling cap and revenue decoupling in general are unwarranted.

B. DECOUPLING IMPLEMENTATION CLARIFICATION

In regards to implementation of the decoupling mechanism, Xcel's Request for Reconsideration at page 9 seeks guidance on two items:

- Clarification regarding the data that should be used to calculate baseline fixed revenue per customer and baseline fixed energy charges, and
- Guidance regarding how the implementation schedule from the Order would function in light of the Company's intention to file a 2016 rate case with interim rates effective January 1, 2016, and with final rates effective some time in 2017.

With regard to the Company's first request, the Commission's 2015 Order in this rate case approves a revenue-per-customer ("RPC") amount for each of the three customer classes that will be subject to revenue decoupling. When Xcel says that it wants to measure deferrals, it is basically stating that for each affected rate class, the Company will compare:

(a) The product of the rate-case approved revenue-per-customer level of a rate class x actual number of customers, to

(b) The total actual revenues collected for that rate class.

If part b is lower than part a, the under-recovery deferral will result in a surcharge in the subsequent decoupling adjustment. If part b is higher than part a, the over-recovery deferral will result in a refund in the decoupling adjustment.

The Department interprets Xcel's question regarding which data to use to mean: what revenues and what customer counts should be used to calculate the RPC in part a above.

The Department concludes that the appropriate data to use is the Commission-authorized revenue requirements and customer counts that are approved for the time when the deferral is being measured, and that eventually the Company must true-up the calculations using the final authorized revenue requirements and actual customer counts for the applicable period. In the Department's February 18, 2015 Comments on CenterPoint Energy's decoupling implementation proposal (Docket No. G008/GR-13-316), the Department stated:

> After reviewing the scenarios provided by CenterPoint, the Department concludes that the Company's initial proposal is reasonable. As shown in greater detail in its reply comments, CenterPoint's proposal would track revenues during the interim rate period and then true up revenues to account for any differences in billing determinants and rates between the implementation of interim rates and the implementation of final rates. It also appears that the Company will calculate any refund or surcharge due to the difference between the interim and final approved decoupling mechanism separately from any interim rate refund.

Under the Commission's approved implementation schedule for Xcel no sooner than January 1, 2016, Xcel would use the authorized revenues from whatever rates are in place, be that final rates from this rate case (if Xcel decides not to file another rate case) or interim rates from a future rate case (if Xcel files a rate case for 2016). However, there will need to be a true-up based on final approved rates, and reflecting actual revenues (not weather normalized) and actual numbers of customers. For example, see CenterPoint's Attachment 1 to its December 19, 2014 Reply Comments in Docket No. G008/GR-13-316.

With regard to Xcel's request for guidance on the implementation schedule, Xcel's Request for Reconsideration at pages 10-11 and n. 40 proposes to begin measuring deferrals as of June 1, 2015. Although the Department believes that a June 1, 2015 is theoretically possible, the Department does not support the June 1, 2015 implementation date because Xcel has not yet informed customers that the deferral process is occurring. It was for this reason that the

Commission appropriately placed the following requirements on Xcel's decoupling proposal in Ordering Paragraph 40:

> *Pilot Program*: Xcel shall implement its revenue decoupling mechanism as a three-year pilot program.
>
> *Start of energy-consumption measurement*: Xcel may begin calculating its over- or under-recovery of nonfuel costs after the final compliance order authorizing implementation of final rates in this proceeding, but not before new rates take effect, and *no sooner than January 1, 2016*. [Emphasis added]

Consequently, the Department recommends that the Commission not change the January 1, 2016 implementation date.

The Department notes that Xcel's proposed implementation schedule assuming a 2016 rate case would commence a revenue adjustment on April 1, 2017 for 2016 deferrals. Although the Department appreciates Xcel's preference for a set schedule, the Department recommends that the first adjustment wait until final rates have been approved, which may occur later in 2017.[6] The Department recommends that the Commission consider the schedule in Table 2 below:

Table 2: Potential Xcel Decoupling Schedule if the Company Files New Rate Case Last Quarter of 2015

Date	**Event**
January - December 2016	Measure 2016 Decoupling Deferrals
After new rates approved in 2017	Implement 2016 Decoupling Adjustment
January - December 2017	Measure 2017 Decoupling Deferrals
April 1, 2018	Implement 2017 Decoupling Adjustment
January - December 2018	Measure 2018 Decoupling Deferrals
April 1, 2019	Implement 2019 Decoupling Adjustment
Sometime in 2020	True Up Balance

[6] For example, at the time Xcel is expected to file its rate case, there will be other rate proceedings before the Commission, allowing the Commission to extend the 10-month statutory deadline by 90 days. Further, if Xcel files a multi-year rate case, the Commission would be allowed to extend the deadline another 90 days.

III. XCEL'S REHEARING REQUEST OR CLARIFICATION AS TO WHETHER THE MONTICELLO EPU IS USED AND USEFUL AS OF JANUARY 1, 2015, SHOULD BE DENIED.

Xcel's Rehearing Request regarding whether the Monticello EPU is used and useful ("in service" for ratemaking purposes) as of January 1, 2015, should be denied for several reasons. First, the Commission's May 8, 2015 Rate Case Order is clear and reasonable as to the Commission's ratemaking treatment of the Monticello EPU for 2015. Second, Xcel's new and unsupported claims regarding requirements of the Nuclear Regulatory Commission ("NRC") are not supported by the record and, in fact, conflict with evidence provided by Xcel. Third, Xcel misinterprets the findings of the ALJ Report regarding rate treatment for 2015 and, therefore, misstates the Commission's May 8, 2015 Rate Case Order regarding its ratemaking treatment of the Monticello EPU for 2015. Finally, in light of the Commission's adoption of the Multi-Year Refund Rate Plan, Xcel's Rehearing Request, which depends in part on whether the Monticello EPU is fully operating at the 671 MW by the end of the 2015 Step Year, is premature.

A. THE COMMISSION'S MAY 8, 2015 RATE CASE ORDER REGARDING RATE TREATMENT OF THE MONTICELLO EPU FOR 2015 IS CLEAR AND REASONABLE

Xcel acknowledged that the Monticello EPU has not yet operated – even for testing purposes – at its full capacity (total plant capacity of 671 MW) for 2015.[7] On page 2 of its Rehearing Request, however, the Company selectively quoted from the Commission's May 8, 2015 Rate Case Order on pages 14-15, with citation to pages 20-21 of the ALJ Report, and then incorrectly concluded that the Commission determined that Monticello EPU is in-service as of January 1, 2015.

[7] Xcel Request for Reconsideration or Clarification at 3.

The Department strongly disagrees with Xcel's incorrect interpretation of the Commission's May 8, 2015 Rate Case Order. The Department provides herein complete quotation from the Commission's May 8, 2015 Rate Case Order and the ALJ report, and explains why Monticello EPU is not in-service and not used and useful for 2015, in keeping with the May 8, 2015 Order.

In its May 8, 2015 Rate Case Order, the Commission adopted the ALJ Report's findings and conclusions, determined that the Monticello EPU was not used and useful in 2014, and provided a ratemaking mechanism with respect to 2015. For convenience, the Department provides the following quotation regarding the Commission's conclusions regarding whether the Monticello EPU was shown to be used and useful for ratemaking purposes for 2014 and 2015 (two years of the multi-year rate plan):[8]

> **C. The Recommendation of the Administrative Law Judge**
>
> Applying Minn. Stat. § 216B.16, subd. 6, the ALJ concluded that Xcel had failed to demonstrate that the EPU was in service and used and useful, or that it was likely to be so during the 2014 test year. The ALJ reasoned that, until the Company completes the EPU ascension process, ratepayers will not be able to receive the benefit of the additional 71 MW of power that the EPU was intended to provide, and the EPU will not be in service or used and useful.
>
> Having found that the EPU was not used and useful during the test year, the ALJ recommended that the Commission adopt the Department's proposal to remove the EPU portion of the LCM/EPU project from 2014 rate base, and the associated depreciation expense from the 2014 test year. The ALJ recommended that Xcel be allowed to include the EPU costs in the 2015 Step subject to refund as part of the multiyear-rate-plan refund process.
>
> Finally, the ALJ recommended rejecting the Chamber's proposed remedy. The ALJ reasoned that allowing Xcel a current return on the EPU and deferred recovery of 2014 depreciation expense would be inconsistent with the conclusion that the EPU was not used and useful during 2014. And she concluded that the increased fuel costs should be addressed in Xcel's Annual Automatic Adjustment (AAA) proceeding.

[8] May 8, 2015 Rate Case Order at 14-15 (emphasis added).

D. Commission Action

The Commission concurs in and adopts the Administrative Law Judge's findings, conclusions, and recommendations on this issue.

The Commission must consider the factors in Minn. Stat. § 216B.16, subd. 6, when determining what utility property should be included in Xcel's rate base. Specifically, the statute requires the Commission to consider a utility's need for revenue sufficient to enable it to meet the cost of furnishing service, "including adequate provision for depreciation of its utility property used and useful in rendering service to the public."

The Commission finds that the Monticello EPU was not used and useful in 2014. The circumstances of the EPU have not materially changed since the 2012 rate case. While Xcel did briefly bring the plant up to 640 MW in March 2014, as of the end of 2014 the Company still did not have the NRC's permission to operate Monticello at the full 671 MW uprate level. Thus, ratepayers are still not receiving the benefit for which Xcel is asking to be paid.

Because the Monticello EPU was not used and useful in 2014, the Commission will order that the 2014 depreciation expense and return on the EPU be excluded from the 2014 test year, based on the 50% LCM, 50% EPU allocation determined in the prudency-investigation docket. **As recommended by the Department and the ALJ, the Commission will allow Xcel to recover EPU costs in the 2015 Step. However, if the EPU is not in service by January 1, 2015, the Company should refund any excess amounts collected in rates through the refund mechanism for the multiyear rate plan.**

The Commission's Order as cited above is clear and unambiguous; if the Monticello EPU is not in-service by January 1, 2015, the Company should refund excess amounts in the refund mechanism for the multiyear rate plan. Based on evidence provided by the Company during the rate case proceeding, Xcel expected the Monticello EPU to be fully up and running at least by the end of 2014, which did not occur. Further, based on Xcel's assurances that it would demonstrate that Monticello EPU would be in full operation, at the 671 MW level in 2015, the Department expected the Monticello EPU to be used and useful as of 2015, but would need to provide a refund if it failed to do so, under the capital true-up in this proceeding. The Commission's decision assumed the same, with a refund mechanism in the event that the

Monticello EPU is not used and useful for ratemaking purposes by January 1, 2015. Xcel has yet to operate Monticello at the 671 MW level.[9]

Moreover, as it has done previously in this matter, Xcel cited to purported law in *other states* for key legal analysis. Specifically, the Company stated on page 3 of its Petition for Reconsideration that the Monticello plant can be considered to be in service for ratemaking purposes (i.e., used and useful) even though "the Monticello Plant has not yet operated at 671 MW." The Company relied on cases from North Carolina, Indiana and Colorado for this proposition. The Commission's appropriate reliance on Minn. Stat. § 216B.16, subd. 6 together with the discussion provided in the Commission's May 8, 2015 Rate Case Order on pages 14-15, quoted above in text, support the reasonable conclusion that the Commission rejected the novel legal position proposed by Xcel in this regard.

The Commission's May 8, 2015 Rate Case Order is clear and reasonable. It needs no clarification that ratepayers are entitled to a refund if the Monticello EPU is not used and useful as of January 1, 2015.

B. THE COMMISSION SHOULD NOT ACCEPT XCEL'S NEW UNSUPPORTED INFORMATION REGARDING NRC REQUIREMENTS FOR OPERATION OF THE MONTICELLO EPU, INSTEAD THE COMMISSION SHOULD RELY ON SUPPORTED INFORMATION THAT WAS REVIEWED BY PARTIES IN THIS RATE CASE

The Company claims for the first time, on page 2 of its Rehearing Request, that Monticello EPU is "in service as of January 1, 2015," due to their new, unsubstantiated claim that the Nuclear Regulatory Commission ("NRC") no longer requires Xcel to obtain its approval to ascend the Monticello EPU plant to the 671 MW level or to operate at that full capacity level

[9] Xcel Request for Rehearing at 3-4. Further, as of the date of these comments, Monticello is operating only at 95 percent of its capacity (671 * 0.95 equals about 637), according to the NRC's website.

on a sustained basis.[10] The Company provided no record citation or any other verified information to support its claim that the Company no longer is subject to approval from NRC for the Monticello EPU plant ascension to the 671 MW level or to operate at that full capacity level on a sustained basis.

Moreover, the Company's unsupported statement regarding NRC requirements is inconsistent with Xcel's response to Department discovery that was identified as DOC information request no. 115, quoted extensively in Ms. Campbell's Direct Testimony at pages 51-55, which is provided below. In that testimony, Ms. Campbell discussed the Department's concerns with Xcel's estimated in-service date and noted that the information request response from Xcel confirmed several requirements for NRC approval during various stages of the ascension process and approval as to the end of testing of the ascension process, as follows:[11]

Q. In the above questions and answers the Company estimated in-service date of January 2014; however, is the Monticello LCM/EPU project operating at its full 671 MW level (specifically the 71 MW related to the EPU) at this time?

A. No. As a result, the Department asked Xcel in the Monticello CI docket to identify the steps that are necessary before Monticello operates at its full 671 MW level and to indicate the expected dates for each step. The Company provided the following response to DOC information request no. 115 in Docket No. E002/CI-13-754:

> [Xcel's response] Monticello has specific license requirements that must be met and verified during power ascension testing. The testing will take the station from its previous licensed output of 1775 MWt (approximately 609 MWe) to our new approved output of 2004 MWt (approximately 671 MWe).
>
> The process is such that the Company increases power in small increments and collects data for verification against licensed parameters. When the station reaches predefined power levels the data is collected and sent to the NRC for review. **The station will not move up in power without NRC concurrence**. NRC review times vary based on the data being evaluated and how close it correlates to the values submitted during the licensing process.

[10] Xcel Request for Rehearing at 3.
[11] DOC Ex. 429 at 51-55 (Campbell Direct) (emphasis added).

Testing to Date:

After receiving the EPU license on December 9, 2013, the Company began its ascension plan. Power was increased in December and testing began. We moved through the first two power ascension set points in December and January. Then on March 11, 2014, the unit reached the first required data collection plateau, which was 1864 MWt (approximately 640 MWe). The data collection is required as part of the Power Uprate License and is intended to provide verification that the steam dryer is not reasonably likely to be damaged as a result of uprated conditions as occurred at Quad Cities. The data was collected and sent to the vendor for review and their concurrence. During that review, the vendor discovered that the stresses were running lower than expected, consistently across the entire data collection range, by a factor of 2. As a result, **to comply with our license**, we returned the plant to the previously known safe power level of 1775MWt (approximately 609 MWe).

The vendor reviewed the data and determined that a programming error was made during the initial setup for data collection. The program was initially changed to accommodate reactor vessel pressure testing, which is required by technical specifications to restart the reactor, but was not reset properly to capture steam loads; thus, creating the error. This data anomaly was easily reconciled and the offset was dispositioned by the vendor. However, as part of the normal process of conducting additional extent of condition review of the entire data provided, we discovered a configuration issue associated with the wiring to the strain gauges on one of the main steam lines (located in the Drywell). The upper and lower wires were mislabeled and thus lead us to connect them incorrectly at the data Collection Panel located outside of the Drywell. The physical distances are different between the upper and lower collection points and this requires the vendor to re-run their stress model with the correct configurations. Following the completion of their data set runs, **Xcel Energy will review the results and submit them to the NRC as required by the license. Once the NRC completes their review we will resume power ascension testing.**

Steps Going Forward:

We expect our reanalysis and re-verification of the model and the inputs and outputs to be completed by the end of June and we expect NRC review will take approximately one month, so we expect to re-enter power ascension in August, assuming no

additional licensing activities are required. The Company believes that we will be able to achieve full power of 2004 MWt (approximately 671 MWe) by the end of 2014 based on the following ascension plan, which contains the same steps as our pre-data issue plan but with different dates:

- August- Raise power to 1819 MWt (approximately 624 MWe) for Steam Dryer Data only.
- Early September- Raise power to 1864 MWt (105% or approximately 640 MWe) for Steam Dryer only (This is the power level that we need to submit Dryer Data to NRC)
- **Submit the data to the NRC for their review and concurrence**.
- Late September- Raise Power to 1908 MWt (approximately 658 MWe) and commence Dynamic Testing.
- October- Transition to M+ Operating Domain, as required by the license. This transition will result in a power reduction to 1686 MWt (approximately 580 MWe), which is the starting verification point on the operators Power to Flow Map.
- October- Raise power to M+ 1775 MWt (approximately 609 MWe)
- Mid-November- Raise power to M+ 1864 MWt (105% or approximately 640 MWe)
- Mid-November- Raise power to M+ 1908 MWt (approximately 658 MWe).
- End of November- Raise Power to EPU 1953 MWt (approximately 664 MWe)
- **Submit the data to the NRC for their review and concurrence.**
- December- Raise Power to EPU 2004 MWt (approximately 671 MWe) output. The 2004 MWt power level correlates to the new power level of 671MWe and will end the testing window **pending NRC concurrence**. The time line provided is based on timely reviews by the vendors and the NRC. Should the data render unexpected results, the review times could be impacted.

DOC Ex. ___ at NAC-8 (Campbell Direct).

Q. What does this response mean as to when the Company now believes the EPU will be in service?

A. The Company's response above means that the Company is now estimating that the plant will be operating at 640 MW in August 2014, meaning 40 MW of the EPU will be in service by that time. **Then, in December 2014 the Company estimates that the full Monticello EPU with approximately 671 MW will be available to serve ratepayers.**

Q. Does the Company's response suggest there may be uncertainties in this timeline?

A. **Yes, there are a number of assumptions in the Company's response that may or may not actually happen in the manner or estimated timeline that could affect how much of the EPU is available to serve customers at which times.** Of course, safety and compliance with NRC standards are important factors. Thus, it is hoped that 40 MW will be available by the time of the evidentiary hearing in this matter and that the remaining 31 MW would be available by the end of 2014, but **those dates are not guaranteed at this time.**

Q. Do you have concerns about this delay regarding the remaining life of the Monticello LCM/EPU project for ratemaking purposes?

A. Yes. For non-nuclear generation plants the in-service date is determined and the useful life of 20 or 30 years (whatever is appropriate) then begins, so delays of in-service won't likely shorten the life of the plant. However, the lives of nuclear generation plants are tied to an NRC operational license of 20 years. So delays of getting the EPU portion of the Monticello plant up and running are shortening the useful life of the EPU since the remaining life of the NRC license was at 16.8 years as of January 1, 2014, as shown in the Company's 2014 remaining life depreciation study dated February 28, 2014 in Docket No. G,E002/D-14-181, Attachment A page 3 of 9, DOC Ex. ___ at NAC-9 (Campbell Direct).

What that means for ratemaking purposes is that, if the in-service on the Monticello EPU doesn't happen until January 2015, then the remaining useful life (due to NRC license) will be reduced to only 15.8 years that this plant will be able to serve ratepayers.

Additionally, Xcel acknowledged in response to Commission questioning at the March 8, 2015, rate case oral arguments that the Monticello EPU had not reached its full 671 MW operating level.[12] Specifically, Xcel was asked to state the level at which the Monticello plant was operating at the end of 2014. The Company indicated the plant had ascended to 656 MW, but not steadily operating at this level, and therefore had not reached the 671 MW level by year end 2014. Clearly, the Commission correctly found in its May 8, 2015, Rate Case Order that the

[12] *See* March 3, 2015 Oral Argument Agenda Item #2 in Docket No. E002/GR-13-868, Time Stamp at 5 hours 48 minutes and 38 seconds.

Monticello EPU was not shown to be used and useful to ratepayers in 2014.[13] There is no reasonable basis to conclude that the Commission intends to apply a new or different standard as to whether the plant is shown to be used and useful to ratepayers in 2015. The plant still has not been shown to be used and useful to ratepayers as of January 1, 2015.

Further, the Department recommends that the Commission rely on information reviewed and tested in the rate case proceeding (as cited above), rather than adopt Xcel's new unsupported and unverified information regarding Monticello being in-service for 2015 in the Company's request for reconsideration. The Department knows of no change in NRC approval requirements or any reason to conclude that the discovery response Xcel provided during the rate case was inaccurate as to NRC approval requirements. Additionally, even if NRC approval were not required, the fact remains that Xcel has not yet reached the 671 MW level for Monticello plant (which includes the 71 MW EPU).

C. XCEL MISINTERPRETS THE ALJ'S FINDINGS

On pages 3 and 4 of its Rehearing Request, the Company quoted part of ALJ finding no. 89, and used this partial quotation to misapply the ALJ Report. The Company also provided new reasons why the Monticello EPU has not operated at its full capacity of 671 MW, such as mechanical issues and the possibility that water temperatures in the Mississippi River could be too high, which according to the Company could further delay achieving the Monticello output level. The Company suggests that Monticello EPU is not being treated consistently with the Commission's past treatment of outages at Sherco 3 and Black Dog Units 2 and 5. The Department concludes that, due to Xcel's misinterpretation of the ALJ's Order, the Company's new arguments are not valid.

[13] May 8, 2015 Rate Case Order at 14-15 and 97.

Complete quotation of the ALJ Report finding nos. 88 and 89 may be helpful to understanding what the ALJ and, by adoption, the Commission determined in this regard:

> 88. In summary, the facts in this case demonstrate that the EPU is not "used and useful" because the EPU is not being used for its intended purpose. To require ratepayers to pay for the cost of the EPU before they receive the benefit of the additional 71 MW of power that the EPU is designed to provide would result in unreasonable rates.
>
> 89. In reach this conclusion, the Administrative Law Judge is not suggesting that the plant must operate continuously at the 671 MW once the Company receives NRC approval to operate at that level in order for the EPU be "used and useful." The Administrative Law Judge recognizes that the plant may operate at a lower level at times for operation reasons or because of planned outage. However, until the Company receives authorization from the NRC to operate at the 671 MW level, the plant is not able to provide the 71 MW of additional cost-effective power that the EPU was intended to provide when the Commission approved the Certificate of Need.

The Department understands the above finding no. 88 to mean that since ratepayers still cannot receive the benefit of the additional 71 MW of power for the EPU (which would be 671 MW total for Monticello), ratepayers should not pay for the costs of the Monticello EPU. The Department agrees with this conclusion, particularly given the discussion above regarding the NRC, and considers this conclusion's application reasonable for 2014 and for 2015, at least as to the date of these comments. Neither the ALJ Report nor the Commission suggested that a different standard would apply for ratemaking purposes to whether the plant is used and useful in 2015. Additionally, the Department understands ALJ Report finding no. 89 to mean that while the Company should not be required to keep Monticello at 671 MW continuously, the Company does need to receive NRC approval to operate at the 671 MW level and at least to reach the 671 MW operating level in practice.

The Company's new reasons for why the Monticello plant has not reached the 671 MW level do not demonstrate that the Monticello EPU is used and useful nor do they otherwise justify recovery from ratepayers. For ratemaking purposes, Xcel carries the burden of proving that a plant is used and useful, and ratepayers must be given the benefit of any doubt as to the Company's showing.[14]

Xcel's Request for Rehearing reminds the Department of Xcel's changing rationale in this rate case in its unsuccessful attempt to impose on ratepayers the costs of the Monticello EPU prior to the Company demonstrating that the plant is used and useful to ratepayers. To that end, the Department provides the following quotation from Ms. Campbell's Surrebuttal Testimony at pages 46-47, in which she responded to the remarkable rebuttal testimony of then Vice President Clark in which he suggested that it would be reasonable for the Commission to treat the lack of full and sustained operation of the EPU simply as a temporary plant outage:[15]

> **Q. How do you respond to Xcel's argument that the fact that the plant is not operating as the Company proposed in its rate case is similar to any other plant outage?**
>
> A. I do not agree with Mr. Clark that this very capital-intensive project should be treated like a plant outage. Given that: 1) the NRC has not allowed the plant to operate at the 671 MWe level, 2) the plant is not operating at the 640 MWe level for the reasons discussed above, and 3) the plant *is* operating at 600 MWE, current operations and non-operations of the plant cannot be considered to be a plant outage. Instead, the fact remains that the Monticello EPU has not yet been approved to be fully up and running at the 671 MW level, and may not reach that level for most or all of 2014 based on the Company's response to Department information request 115.
>
> **Q. What is your overall conclusion about whether Xcel has shown the Monticello EPU to be used and useful for 2014?**
>
> A. My understanding of Minnesota law, Minn. Stat. § 216B.03, is that the benefit of any doubt as to reasonableness must go to the consumer. Thus, for purposes of the 2014 test year, I do not agree that Xcel has shown that

[14] Minn. Stat. § 216B.16, subd. 4 and 6, and § 216B.03, respectively.

[15] DOC Ex. 435 at 42 (Campbell Surrebuttal) (citing Xcel Ex. 100 at 24 (Clark Rebuttal). Xcel initially testified that the Monticello EPU would be fully operational as of March 2014. Xcel Ex. 51 at 20 (O'Connor Direct).

> it is reasonable to include the Monticello EPU as being in-service based on the Company's hope that it may be approved by the NRC and that it may meet final testing protocols upon the resumption of power ascension testing in order to be fully operational by December 2014 (see response to Department information request 115, NAC-8 of my Direct Testimony). While I remain open to allowing some recovery of the Monticello EPU if the EPU is in service or partially in service by the time of the evidentiary hearing in this proceeding, I note that it is Xcel's responsibility (and burden) to show why ratepayers should pay for costs of the EPU in 2014 (and thereafter).

In conclusion, the Department disagrees with Xcel's interpretation of the ALJ's Finding and, therefore, Xcel's misinterpretation of the Commission's May 8, 2015 Rate Case Order. Instead the Department understands the ALJ Report to require that Monticello receive NRC approval to operate at the 671 MW level on a sustained basis and reach the 671 MW operating level at least once, before requiring ratepayers to pay for Monticello EPU. Additionally, it would be unreasonable to compare the Monticello EPU to previous Xcel plants that had been shown to be fully operating to serve ratepayers, but that were on outage during a rate case, since Monticello EPU has yet to reach, or operate successfully, at the 671 MW level.

D. XCEL'S REHEARING REQUEST REGARDING IF MONTICELLO EPU IS USED AND USEFUL FOR 2015 IS PREMATURE AND SHOULD BE ADDRESSED IN THE MULTI-YEAR REFUND RATE PLAN

Page 3 of Ms. Campbell's Opening Hearing Statement[16] at the evidentiary hearing provided the following recommendation related to the status of the Monticello Nuclear Plant for 2015:

> Second, I recommended that the Monticello EPU plant be placed back into rate base in 2015 (assuming it will be in-service in 2015 as discussed in more detail below) as shown on Attachment A, column (d) in the Company's response to Department information request no. 2148. In light of the agreement announced at the evidentiary hearing between the Company and the Department regarding the terms of the Multi-Year Rate Plan (MYRP), if the Monticello EPU is not approved and does not operate successfully at the higher 671 MWe level by

[16] DOC Ex. 450 (Campbell Hearing Statement).

> January 2015, the Department would support requiring Xcel to refund any amounts collected in rates through the refund mechanism for the MYRP.

The Department is not aware of any party challenging this statement at the rate case hearing regarding Monticello EPU being subject to the refund mechanism for the MYRP.

The Commission agreed with the Department's recommendation regarding the treatment of Monticello for 2015 on page 15 of the Commission May 8, 2015 Rate Case Order:

> Because the Monticello EPU was not used and useful in 2014, the Commission will order that the 2014 depreciation expense and return on the EPU be excluded from the 2014 test year, based on the 50% LCM, 50% EPU allocation determined in the prudency-investigation docket. **As recommended by the Department and the ALJ, the Commission will allow Xcel to recover EPU costs in the 2015 Step. However, if the EPU is not in service by January 1, 2015, the Company should refund any excess amounts collected in rates through the refund mechanism for the multiyear rate plan. [emphasis added]**

The Department continues to recommend that the best place to evaluate whether Monticello EPU is in-service and used and useful is in the refund mechanism for the multiyear rate plan. The Department can then evaluate after year-end 2015 if Monticello plant (with the EPU) has reached the 671 MW level and receive NRC approval to operate at that level.

IV. DOC'S RESPONSE TO XCEL'S REHEARING REQUEST FOR APPLICATION OF RATE OF RETURN TO 2015 RATE BASE

Xcel's second reconsideration request, as stated on page 1, is "to clarify the calculation of the revenue deficiency in the Order, based on applying the correct rate of return to our entire 2015 rate base." Specifically, on page 4, the Company stated:

> Our primary concern is that the Gross Revenue Deficiency calculation in the Order does not apply the Company's approved 2015 cost of capital to the entire rate base for 2015 (although it does apply the updated cost of capital to 2015 Step projects). Applying the updated cost of capital to the entire 2015 rate base was a resolved issue between the Company and the Department during the proceeding.

The Company seems to imply that it is following the Department's recommendation when Xcel applies the 2015 rate of return to the 2015 rate base (including both the 2014 rate base and the 2015 Step projects). That is, on page 4 of its reconsideration request the Company incorrectly implies that Dr. Amit's request for updated information pertains to the separate topic of application of the 2015 rate of return to the 2015 Step projects :

> To calculate the revenue deficiency corresponding to the 2015 rate base, the Company initially applied a single cost of debt to rate base for 2014 and 2015. In response to Department witness Dr. Eilon Amit's request in Direct Testimony, we then updated the separate costs of debt for 2014 and 2015 in George Tyson's Rebuttal. Dr. Amit subsequently accepted these updated costs of debt, which were incorporated into Department witness Mr. Dale Lusti's Surrebuttal and evidentiary hearing cost of service schedules.

Dr. Amit's request that the Company update its long-term debt and short-term debt components of capital structure in rebuttal testimony to reflect most currently available information at that time is unrelated to Xcel's objection that it was not appropriate for the Commission to apply the 2015 rate of return only to the 2015 Step projects.

The Company's argument that "applying the updated cost of capital to the entire 2015 rate base was a resolved issue between the Company and the Department during the proceeding," is incorrect because this issue had not been debated. Although the Department's revenue deficiency calculations in direct, surrebuttal and evidentiary hearing positions did apply the 2015 rate of return to the entire rate base for 2015, the Department discussed how the Commission's decision regarding the cost of capital in 2015 could be viewed as being related to the Department's "Passage of Time" adjustment, which the Commission did not approve, just as it did not approve Xcel's request to apply the cost of capital to all of 2015 ratebase. The Department discussed how these two issues could be viewed together in its May 28, 2015

Comments regarding Xcel's May 1, 2015 Compliance Filing of Class Cost of Service Study and Class revenue Apportionment Schedules, as noted on page 6:

> The Department sees a similarity to the Commission's decision not to approve a "Passage of time" adjustment, and the Commission decision to apply the 2015 rate of return only to the 2015 Step projects (both result in a very narrow interpretation of what can be updated for the 2015 Step). Thus, while the Department would prefer that the Commission approve the Department's recommended "Passage of Time" adjustment, for this proceeding, the Department could agree with the Commission that it would be appropriate to apply the rate of return only to the 2015 Step projects.

In summary, if the Commission reconsiders its position with regard to the "Passage of Time" issue, and approves the Department's recommended "Passage of Time" adjustment, then the Department would agree with Xcel that the Commission should apply the approved 2015 rate of return to the entire 2015 rate base (including both the 2014 rate base and the 2015 Step projects). However, if the Commission does not reconsider the "Passage of Time" issue, it similarly should not reconsider its decision regarding the application of the 2015 rate of return to only the 2015 Step projects.

V. CONCLUSIONS AND RECOMMENDATIONS

Based on the above, the Department recommends that the Commission:

A. DECOUPLING RECOMMENDATIONS:

- Reject Xcel's Request for Reconsideration of the Commission-approved decoupling cap.
- Reject Xcel's proposal to begin measuring deferrals as of June 1, 2015. Instead, as required by the Commission's Order, the start date should remain at January 1, 2016.
- The subsequent decoupling adjustment should be made after final rates for 2016 are known. If Xcel follows through on its plans to file a multi-year rate case later this year, final rates for 2016 may not be approved until later in 2017.

B. MONTICELLO EPU RECOMMENDATIONS:

- Reject Xcel's Rehearing Request as to whether the Monticello EPU was used and useful ("in service" for ratemaking purposes) as of January 1, 2015.

C. APPLICATION OF THE RATE OF RETURN TO WHAT 2015 RATE BASE RECOMMENDATIONS:

- Apply the approved 2015 rate of return to the entire 2015 rate base (including both the 2014 rate base and the 2015 Step projects) only if the Commission reconsiders its position with regard to the "Passage of Time" issue, and approves the Department's recommended "Passage of Time" adjustment, then the Department would agree with Xcel that the Commission should. If the Commission does not reconsider the "Passage of Time" issue, it similarly should not reconsider its decision regarding the application of the 2015 rate of return to only the 2015 Step projects.

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Respectfully submitted,

/s/ *Julia E. Anderson*

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