



May 30, 2012

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VIA ELECTRONIC FILING

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

RE: In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy
for Certificate of Need for an Extended Power Uprate at the Prairie Island Nuclear
Generating Plant
Docket No. E002/CN-08-509

Dear Dr. Haar:

Enclosed for filing in the above-referenced docket, please find the Initial Comments of the Prairie Island Indian Community in Response to Xcel Energy's Petition and Notice of Changed Circumstances.

We have electronically filed this document with the Commission, and copies have been served on all parties on the attached service lists.

Thank you for your consideration. Please give me a call if you have any questions.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

/s/David M. Aafedt

David M. Aafedt

DMA/crh

Enclosures

cc: Attached Service Lists

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STATE OF MINNESOTA

PUBLIC UTILITIES COMMISSION

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David Boyd
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Commissioner
Commissioner
Commissioner

DOCKET NO. E002/CN-08-509

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificate of Need for an Extended Power Uprate at the Prairie Island Nuclear Generating Plant

INITIAL COMMENTS OF THE PRAIRIE ISLAND INDIAN COMMUNITY IN RESPONSE TO XCEL ENERGY'S PETITION AND NOTICE OF CHANGED CIRCUMSTANCES

INTRODUCTION

The Prairie Island Indian Community ("Community"), a federally recognized Indian Tribe, respectfully submits these Comments in response to Northern States Power Company's ("Xcel" or "Company") Notice of Changed Circumstances Filing, dated March 30, 2012, in the above-referenced matter ("March 30th Filing"). Consistent with previous filings in its pending Integrated Resource Plan docket, Xcel's March 30th Filing advises the Commission and interested parties that, *inter alia*, changes to its load forecasts, the costs of alternative resource options, and possible uncertainties associated with the federal licensing process "could combine to lead to a determination that the uprate program is not cost-effective for our customers and should not be pursued." March 30th Filing at 1.

The Community opposed the proposed Uprate. The Community argued before the Honorable Richard C. Luis, before this Commission, and before the Court of Appeals that the purported need for this additional baseload power simply did not exist. Indeed, in its most recent

filing with the Court of Appeals, the Community's Statement of the Case opened with the following point: "[a]s the name of this Certificate of Need proceeding suggests, *the fundamental showing that an applicant must make is that the need for the supplemental energy output actually exists.*" Community's Initial Appellate Brief at 5 (emphasis in original). What was clear from the evidence before the Administrative Law Judge and the Commission is that there was serious question as to whether the need continues to exist or ever, in fact, existed. The Community submits that Xcel's March 30th Filing confirms its arguments made in the underlying proceeding from the evidence that was presented.

The Community is a party to this proceeding pursuant to an October 3, 2008, Order. As it did in the underlying case before the Commission, the Community intends to participate fully to ensure that the record is fully-developed due to the significant, direct impact that the Uprate will have on the Community, as well as the other direct and indirect impacts that the Commission's decisions in this docket had and will continue to have on its members. As described above and as detailed more fully below, the Community submits that the Uprate should no longer be pursued. At a minimum and in the alternative, the entire Uprate ought to be reviewed *de novo* under the Certificate of Need statute and rule, including a referral to the Office of Administrative Hearings for a contested case hearing, as numerous material facts that Xcel advocated on behalf of the Uprate, and upon which the Commission based its December 19, 2009 Order approving the Certificate of Need for the Uprate, no longer appear to be supportable.

COMMENTS

The Community's Initial Comments in this docket with regard to the issues presented are as follows.

1. The Need For the Uprate No Longer Exists To The Extent That It Ever Existed.

In the underlying proceeding, the Certificate of Need statute and rule required Xcel to prove by a preponderance of the evidence that the probable result of the denial of the Uprate would have adversely affected the future adequacy, reliability, or efficiency of energy supply to Xcel, its customers, or the people of Minnesota and neighboring states. *See* Minn. Stat. § 216B.243 (2010) and Minn. R. 7849.0120A (2011). While the Community did not believe that Xcel carried its burden in the underlying proceeding, the Uprate was nevertheless approved. In light of the significant changes that have occurred, including Xcel's acknowledgment that the changes "could combine to lead the Commission to determine that the uprate program should not be further pursued[.]" the Commission must reevaluate the entire Uprate and hold Xcel to the criteria set forth in the Certificate of Need statute and rule in its review as part of this changed circumstance proceeding.

As Xcel's March 30th filing finally acknowledges, Minnesota consumers' energy demands do not require (and cannot support) the Uprate. Less than two years ago, Xcel "needed" the 164 MW of baseload power that the Uprate promised to provide.¹ What is glaringly obvious – in Xcel's March 30th Filing and in its recent Resource Plan docket filings – is that there is no longer any "need" for new baseload power at all. In fact, Xcel appears to have been very careful not to even use that word in its current filing. Indeed, it is unclear whether

¹ Now, after certain equipment upgrades have been implemented, the Uprate promise is more of a "ballpark estimate" of 135 MW – a 20% smaller figure than what was represented to the Commission.

even 1 MW of baseload power is necessary. Setting aside whether the demand forecasts presented to the Commission – initial and amended – were reasonably accurate, which the Community does not believe they were, there is now little doubt that the forecasts were exaggerated (or, at a minimum, not reasonably updated), and Xcel’s customer demand continues to be significantly off. Xcel’s Filing at 6.

Rather than rehashing all of the details of Xcel’s historic, present, and reasonably anticipated future demand forecasts, the Community respectfully submits that the Commission must conduct its analysis anew on the issue of the lagging customer demand forecast and whether there exists any the need for the Uprate (or any additional baseload power).

2. The Significant Changes To The Timing, Scope and Size of the Uprate, And The “Potential” Changed Conditions Require, At A Minimum, A New, Detailed Comparatives Analysis As The “Benefits” Of the Uprate Have Vanished.

As part of the underlying proceeding, Xcel was required to demonstrate that a more reasonable and prudent alternative did not exist, including a “no-build” alternative. Minn. Stat. §§ 216B.243 and 216B.2422, and Minn. R. 7849.0120B. As articulated by the parties and non-party participants in the underlying proceeding, a more “reasonable and prudent alternative” could have been, for example, converting an existing facility to use a different type of fuel (e.g., converting the Plant to from nuclear to natural gas) or satisfying the need by procuring an environmentally friendly hydropower purchased power agreement. Ultimately, the Commission determined that Xcel had met its burden on this issue.

In its March 30th filing, however, Xcel has acknowledged that circumstances associated with the Uprate have changed significantly, which bear directly and significantly on this criterion as the Commission analyzed the issue. Specifically, “natural gas prices have fallen dramatically and are forecasted to remain low.” March 30th Filing at 6. This has drastically reduced the

present value revenue requirement benefits identified in the underlying proceeding. *Id.* at 8-9. On a prospective basis, Xcel's analysis estimates an approximately \$50 million benefit to ratepayers. *Id.* As Xcel acknowledges, this could change dramatically based upon changes to a few other factors, such as timing, size and cost of the project. *Id.* at 10-11. A review of the March 30th Filing as a whole reveals that any claimed benefit to ratepayers is suspect at best, and that it is more likely that the Uprate will result in a net ratepayer cost. *Id.*

For example, for each year of delay by the NRC as part of the federal regulatory approval processes, the net benefits of the project decrease anywhere from \$10-\$30 million. *Id.* at 10. Similarly, if the Uprate is further reduced in size (it has already been reduced from its original 164 MW target to 117 MW), the benefits will decrease by at least \$50 million for a 10 MW decrease from its projected 117 MW target. *Id.* Thus, if the Uprate is pushed out three (3) years from 2016-2017 to 2019-2020 and the Uprate is reduced in size by 10 MW, both of which are entirely reasonable given what has transpired over the past two years since the Uprate was approved, there will be a net project cost of \$45 million as compared with the Xcel's present projection of a \$50 million net project benefit. *Id.* With the delays at the NRC, the 2019-2020 timeframe might even be wishful thinking.

The delay in project implementation will also have a significant negative cost impact on the Uprate. *Id.* at 11. Based upon Xcel's present estimates, there is a possibility that, standing alone, inflationary pressures on the cost components associated with the Uprate could completely eviscerate any potential customer benefits. *Id.*

Other significant pieces to this puzzle, including whether the Uprate makes any sense at all given the dramatic changes that have occurred since 2010, are the sharp drop in Xcel's customer demand forecast and the sharp drop in natural gas prices. *Id.* at 11-13. These

significant changes, all of which have occurred in the last few years, are not expected to recover anytime soon (if ever) during the expected remaining life of the Plant. *Id.* Had either one of these occurred without the other, perhaps Xcel might have been able to argue reasonably that the circumstances had not changed significantly enough to warrant a comprehensive re-review of the entire project. However, with both of these circumstances being present, as well as the likelihood that the project will continue to be delayed and the overall size reduced, there is little doubt that the entire project should be reviewed to determine how much the Uprate is actually going to negatively impact Minnesota ratepayers from a cost perspective if it is allowed to proceed.²

3. Xcel's March 30th Filing And The Events That Have Transpired Since That Time Confirm That The Uprate Will Not Be Compatible With Protecting the Human and Natural Environments.

In the underlying proceeding, the Commission concluded that Xcel demonstrated that the Uprate would provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health. Minn. R. 7849.0120C (emphasis added). The Commission arrived at this conclusion based upon Xcel's arguments that the "expanded operation of Prairie Island is the most cost-effective alternative for providing the additional energy capacity," the "uprate project will result in over 16 million less tons of carbon being emitted to the atmosphere as compared to the next 'best' alternative,"³ the project will not use a "greenfield" site, and "[c]ontinued operation of Prairie Island will ensure the continued

² An alternative that was presented by the PINGP Study Group in the underlying docket was the conversion of these plants to natural gas facilities. In light of the sharp drop of natural gas prices and the fact that Xcel's prior, chosen alternative is no longer viable (coal PPA), the Study Group's alternative warrants even greater consideration at this time.

³ The "hypothetical" comparative long term coal purchased power agreement, the carbon emitting alternative being referenced, was an unrealistic comparative. The appropriate comparison would now be natural gas or hydroelectric power purchase agreement.

employment of the highly skilled and dedicated work force at the Plant.” What we now know, based upon the March 30th filing, is that the Uprate is highly unlikely to be the most cost-effective alternative; that the carbon reductions used as a selling point in the underlying proceeding are a fiction as that comparative coal plant would no longer be a part of the analysis; a greenfield (versus brownfield) site is irrelevant as there is no “need” and no “new” plant is being contemplated; and the continued operation of the Plant and the employment of the workforce are not (and never were) an issue in this proceeding.

In contrast, the Community continues to believe that Xcel has failed to demonstrate that the Uprate would provide benefits to society in a manner compatible with protecting the natural and socioeconomic environments, including human health. Minn. R. 7849.0120C. Indeed, the evidence supports that the Uprate may have a negative impact on the surrounding natural and socioeconomic environments, including human health. Xcel has known for decades that the Plant at issue in this Uprate is responsible for the continuing tritium contamination of groundwater, yet Xcel has never been able to fully explain the potential source or sources of the tritium or provide assurances that even larger tritium leaks will not occur at the Plant in the future as they have at other nuclear power plants around the country.

As the Commission will recall, in the underlying proceeding, Xcel’s environmental witness was unable to answer simple fundamental questions about the Plant’s operations or its groundwater integrity program, and admitted that it has struggled to prevent tritium contamination from the Plant.⁴ In fact, Xcel used to also dump sump water from collection sumps within the Plant directly into a landlocked area of soil just outside of the Plant, which it

⁴ Going back to the 1980s, there was a significant onsite leak where the Plant’s tritium discharge line went directly into the head of the old discharge canal. Xcel failed to detect this leak for the Plant’s first handful of years’ worth of operations.

believes may contribute to elevated tritium levels in the groundwater surrounding the Plant. Even though Xcel knew that it was polluting the environment and exposing the Community and nearby residents to heightened health risks, Xcel continued to dump its liquid waste into the neighboring environment for many years until it was brought to light by the Community in the underlying proceeding.

As the Commission is aware, the Community was understandably concerned with Xcel's "historical practices" and issues because of the fact that the Uprate will place significant, additional stress on the Plant's already aged systems. The Community's concerns were realized in November of 2011 and February of this year – well before the Uprate conditions were even implemented – when two unpermitted releases of tritium contaminated water from the Plant's main warehouse steam heating system were reported. The first leak occurred over the course of a week long period between November 22 and 29, 2011, and resulted in an estimated release of 3,900 gallons of water that contained tritium and trace amounts of chemicals used to treat steam at the Plant. According to a sample taken on November 22nd (day one during which the leak reportedly occurred), the overflow of water condensed from the steam heating system had a tritium concentration of 9,430 picocuries/liter, or nearly one-half of the United States Environmental Protection Agency's 20,000 pCi/L limit for safe drinking water.

The second leak of 27 gallons of water that contained tritium concentration of 15,000+ pCi/L, or three-fourths of the U.S. E.P.A.'s 20,000 pCi/L limit for safe drinking water, occurred on February 3, 2012. Xcel also reported that other chemicals used to treat the steam at the Plant were released, including methoxy propylamine (MPA), ammonia, and hydrazine. As before, the release occurred when water that had condensed from the steam heating system at the site's main warehouse overflowed to the ground from a holding tank vent when a pump that circulated water

through the heating system failed. The release occurred despite Xcel's assurances that "[i]mmediate actions were taken to prevent reoccurrence" after the unpermitted release that was discovered in November 2011.

As part of this Changed Circumstances proceeding, the Community respectfully requests that the Commission reevaluate this criterion given the facts at issue and given the potential adverse health and environmental impacts at issue. As part of that review, the Community respectfully requests that the Commission review the part of its Order, and specifically Finding 252 of the ALJ, where he noted that Xcel "reported that it had been trying to determine how tritium entered the environment around the plant, but without success," and that, by doing so, Xcel had met its burden by "trying to determine how tritium entered the environment around the plant." Simply because Xcel has not been able to determine how tritium entered the environment around the Plant with the minimal effort that it has expended thus far does not mean it should stop looking. Instead, as part of this changed circumstance proceeding and given the additional time that Xcel appears to have before the Uprate might conceivably move forward, the Commission should reevaluate the obvious problem of ongoing tritium contamination of the groundwater from its existing operations and require Xcel to investigate and determine the cause of the (past and present) tritium contamination, and explain the wide fluctuations in the levels of tritium detected, before the Uprate be allowed to move forward. And as part of this review, Xcel should be required to install the best available monitoring technology so as to stay on top of these tritium discharge issues, and publicly disclose the subsequent recorded data for independent review, analysis, and comment.

4. Since the Commission's Approval of the Uprate, the Nuclear Regulatory Commission Has Determined That Its Prior Studies Are Inadequate For Purposes Of Determining The Impacts Of Long-Term Radiation Exposure And That They Must Be Updated.

In the underlying proceeding, the Community argued that the impacts of long-term radiation exposure associated with the Plant's Uprate were incompatible with protecting the surrounding natural environment and human health.⁵ The Community urged the Commission to delay its decision on the Uprate until such time as an appropriate study could be performed and Xcel can establish, within a reasonable degree of certainty, the safety of the Plant's operations under the Uprate conditions. It was for this reason that the Community proposed that a genetic testing study be made available to its members, as well as others who reside or work nearby or at the Plant, to ensure that it was safe under existing Plant operating conditions.

Ultimately, the Commission rejected the Community's request. Instead, it accepted Xcel's arguments, a Minnesota Department of Health ("MDH") study,⁶ and other generalized studies as sufficient for purposes of determining that the environment and human health would be protected from radiation exposures under existing conditions and, presumably, the Uprate. For example, the Nuclear Regulatory Commission ("NRC") has relied on a 1990 National Cancer Institute ("NCI") survey as its primary source for communicating with the public about cancer risks near nuclear power plants. The 1990 NCI Study concluded that "if nuclear facilities posed a risk to neighboring populations, the risk was so small to be detected by a survey such as this one."

⁵ The Community presented evidence in the underlying proceeding that exposure to low doses of radiation—even doses well below the exposure limit set by the NRC—can cause damage at the genetic and molecular level.

⁶ The MDH study did not examine cancer risks of the Community members and did not examine any risks associated with the Plant.

Soon after the Commission's approval of the Uprate, however, the NRC requested that the National Academy of Sciences ("NAS") examine this very issue because the 1990 study was "outdated" and has "recognized limitations." The now uncontroverted limitations in the 1990 NCI Study include its limited study of cancer fatalities without considering cancer incidence, and the fact that the NCI Study examined cancer fatalities on a county-wide basis, rather than in smaller study areas in the immediate vicinity of nuclear power plants. As previously argued by the Community, the health studies relied upon by the Commission are similarly outdated and have limitations that should be reconsidered, just as the NRC has decided to do with the updated NAS Study. Based on the now uncontroverted limitations in prior studies, Xcel should be required to demonstrate that exposure to radiation that had previously been determined to be negligible (by studies whose limitations are now readily acknowledged) is not really detrimental to the neighboring environment and human health, particularly populations and environments in the immediate vicinity of the Plant such as the Community and its Reservation. The Commission should reconsider this particular finding to ensure that cancer risks in populations near the Plant are examined using updated studies and methodologies such as those being employed by the NAS.

With Xcel's Notice of Changed Circumstances Filing also comes new opportunity. According to Xcel, the Uprate implementation will be delayed until at least 2016/2017 and likely much later than that, and the NAS's study and its results are two years closer to reality. The Community respectfully submits that the Commission should evaluate the results of the NAS Study as part of this changed circumstances proceeding and before allowing the Uprate to proceed.

5. The Lessons Of Fukushima Daiichi Strongly Suggest That The Commission Take This Opportunity To Review And Evaluate The Impact of External Events On The Safe Operation of the Plant Under the Uprate Conditions.

Everyone is well aware of the devastation that was wrought in March 2011 on the Fukushima Daiichi nuclear plant in Japan by an earthquake and tsunami. The events that unfolded revealed just how unprepared nuclear plant operators and their regulators were to deal with “extreme natural phenomena.” After spending a significant amount of time studying the events that led up to, and resulted from, the Fukushima incident, the NRC realized that immediate steps had to be taken at all nuclear plants in order to ensure that the appropriate mitigation steps for “beyond-design-basis external events” were in place. Accordingly, in March 2012, the NRC issued two Orders: 1) Order To Modify Licenses With Regard to Requirements For Mitigation Strategies For Beyond-Design-Basis External Events; and 2) Order to Modify Licenses With Regard To Reliable Spent Fuel Instrumentation. NRC Orders EA-12-049 and EA 12-051 (March 12, 2012).

While these issues are being scrutinized by the NRC at the federal level, the Community respectfully submits that the events of Fukushima unquestionably qualify as “changed circumstances” since the Uprate was approved, which strongly supports review by the Commission as part of this docket. Specifically, Fukushima has changed how nuclear plant public safety and health is viewed and, so too, must the regulatory framework by which existing and proposed operations are reviewed and analyzed. Consistent with how the NRC is now reviewing these issues, there must be a focus on prevention, mitigation, and emergency preparedness response. With respect to the latter, and consistent with the lessons learned from Fukushima and the position articulated by the Community in the underlying docket, special

emphasis must be placed on, among other things, ensuring that the most comprehensive monitoring program is in place with the most technologically advanced equipment.

The Community looks forward to analyzing these and other issues as part of this proceeding.

CONCLUSION

In conclusion, there is little doubt that, given the significant changes associated with the project, including the massive drop in the forecast demand, Xcel cannot continue to demonstrate need for the Uprate project. Accordingly, the Community respectfully submits that the Commission refer this matter to the Office of Administrative Hearing for a full contested case hearing to reevaluate the Uprate in light of the significantly changed circumstances and the requirements of Minnesota's Certificate of Need statute and rule.

Dated: May 30, 2012

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