



May 28, 2021

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Commerce Department, Division of Energy Resources**
Docket No. E002/CN-08-510

Dear Mr. Seuffert:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (DOC-DER), in the following matter:

Request for Change in Spent-Fuel Storage Technology

The Petition was filed on April 30, 2021 by:

Bria E. Shea
Director, Regulatory & Strategic Analysis
Xcel Energy
414 Nicollet Mall, 401 – 7th Floor
Minneapolis, MN 55401

DOC-DER recommends that the Minnesota Public Utilities Commission (Commission) **approve the petition with conditions**. DOC-DER is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ar
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Commerce Department Division of Energy Resources

Docket No. E002/CN-08-510

I. INTRODUCTION

On May 16, 2008 Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed the Company's *Application to the Minnesota Public Utilities Commission for Certificates of Need for the Prairie Island Nuclear Generating Plant for Additional Dry Cask Storage and Extended Power Uprate* (CN Petition). The CN Petition stated that the Company's "first request is for a CON to allow for sufficient dry cask storage at the existing Independent Spent Fuel Storage Installation ("ISFSI") at Prairie Island in order to accommodate plant operations through 2034."

On December 18, 2009 the Minnesota Public Utilities Commission (Commission) issued its *Order Accepting Environmental Impact Statement, and Granting Certificates of Need and Site Permit with Conditions* (Order) in Docket Nos. E002/CN-08-509, E002/CN-08-510, and E002/GS-08-690. The Order stated at point 4B that the Commission "hereby grants Xcel's request for a Certificate of Need for additional dry cask storage at the Prairie Island Nuclear Generating Plant as provided herein on the condition that Xcel provide a compliance filing/status report on its emergency response plans."¹

On April 30, 2021 Northern States Power Company, doing business as Xcel Energy (Xcel or the Company) filed the Company's *Request for Change in Spent-Fuel Storage Technology* (Petition). The Petition requests certain Commission determinations regarding use of alternative spent-fuel containers already approved by the U. S. Nuclear Regulatory Commission (NRC) at the Prairie Island Nuclear Generating Plant (Prairie Island).

On May 14, 2021 the Commission issued its *Notice of Comment Period* (Notice). The Notice stated that the following topics are open for comment:

- Should the Commission approve Xcel Energy's proposal to change the type of spent fuel storage casks used at its Prairie Island Nuclear Plant?
- Is additional information needed before the Commission can make a decision, and if so, what information is needed?
- Does Xcel Energy's request require further proceedings, such as recertification?
- Should the Commission consider Minnesota Statutes, Section 116C.776, as part of this proceeding?

¹ For purposes of this proceeding the Order was not changed in a significant way by the Commission's January 27, 2010 *Order Granting Reconsideration and Clarifying Order* in Docket Nos. E002/CN-08-510, E002/CN-08-509 and E002/GS-08-690.

Below are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (DOC-DER) regarding the Petition.

II. DOC-DER ANALYSIS

A. APPLICABLE STATUTES AND RULES

1. Certificate of Need Statute

Minnesota Statutes § 216B.2421, Subd. 2 (8) defines a large energy facility (LEF) as including “any nuclear fuel processing or nuclear waste storage or disposal facility.” In turn, Minnesota Statutes § 216B.243, Subd. 2 states that no LEF can be sited or constructed in Minnesota without the issuance of a certificate of need (CN) by the Commission. Also, Minnesota Statutes § 116C.83, Subd. 2 requires that “expansion or establishment of an independent spent-fuel storage facility at a nuclear generation facility in this state, is subject to approval of a certificate of need by the Public Utilities Commission pursuant to section 216B.243.”

In the original CN Petition, the Company proposed an expansion of existing storage site. Therefore, a CN was clearly required. DOC-DER discusses the CN Statutes and Xcel’s current Petition below.

2. Dry Cask Management Policy Statutes

Minnesota Statutes § 116C.83, Subd. 4 (a) states that “[t]he storage of spent nuclear fuel in the pool and in dry casks at a nuclear generating plant must be managed to facilitate the shipment of waste out of state to a permanent or interim storage facility as soon as feasible in a manner that allows the continued operation of the plant consistent with sections 116C.71 to 116C.83 and 216B.1645, subdivision 4.”

More specifically, Minnesota Statutes § 116C.776 states:

If the Public Utilities Commission determines that casks or other containers that allow for transportation as well as storage of spent nuclear fuel exist and are economically feasible for storage and transportation of spent nuclear fuel generated by the Prairie Island nuclear power generating plant, the Commission shall order their use to replace use of the casks that are only usable for storage, but not transportation. If the Commission orders use of dual-purpose casks under this section, it must authorize use of a number of dual-purpose casks that provides the same total storage capacity that is authorized under sections 116C.77 to 116C.779; provided, that the total cask storage capacity permitted under sections 116C.77 to 116C.779 may not exceed the capacity of the TN-40 casks authorized under section 116C.77.

At the time of the original CN proceeding, compliance with these provisions was ensured via a submittal to the NRC, made by the designer of the TN-40 casks, Transnuclear, Inc., requesting a transportation license for the TN-40 casks. The license amendments were expected to eliminate the need to transfer spent fuel between different casks before transportation. How Xcel's proposal addresses spent fuel transportation policies is discussed further below.

3. Applicable Rules

Minnesota Rules part 7855 provides filing requirements for CN applications for nuclear waste storage facilities. Minnesota Rules 7855.0030, Subp. 1 provides that the Rule applies to CN applications for new nuclear waste storage or disposal facilities and applications for expansions of existing nuclear waste storage or disposal facilities by at least 20 percent of the base capacity of the facility. Minnesota Rules 7855.0600-7855.0670 provide the specific filing requirements for CN applications for these facilities. Xcel is proposing neither a new storage facility, nor an expansion of an existing facility. Therefore, Minnesota Rules 7855 does not apply to Xcel's request.

In addition, Minnesota Rules part 7855 does not provide any guidance regarding recertification. The Rule notably does not include a provision specifying changes to the certified size, type, or timing of a facility that do not require recertification. In contrast, Minnesota Rules 7849.0400, Subp. 2(H); 7851.0400, Subp. 3; and 7853.0800, Subp. 3, which apply to other other types of facilities that require CNs, explicitly define certain changes to a facility that has already obtained a CN that do not require recertification, and all other changes require the holder of a CN to file a notice of changed circumstances and obtain a Commission decision regarding the need for recertification.

B. XCEL'S FIRST REQUEST

Xcel's first request is stated in the Petition as follows: "The Company is seeking a determination from the Commission that the use of designs certified by the NRC under their rules for dry cask storage contained in 10 CFR Part 72 (other than the existing TN-40 casks currently in use) does not require recertification under Minn. Stat. 216B.243."

To support this request Xcel states that the "request is consistent with Minnesota rules regarding changes in size, type, or timing of facilities authorized for construction pursuant to a previously-issued Certificate of Need." Xcel refers to the fact that, as discussed above most CNs are decided under rules that state that certain changes do not require recertification and that all other changes require the holder of a CN to file a notice of changed circumstances and obtain a Commission decision regarding the need for recertification. Xcel's Petition concludes that the proposed change is beneficial because it will reduce costs and facilitate transfer of the spent fuel. Thus, Xcel argues that the proposal does not require recertification.

C. XCEL'S SECOND REQUEST

Xcel's second request, which is closely related to the first request, is stated in the Petition as follows:

The Company seeks to maintain this authorized capacity for spent fuel storage [equivalent to a capacity of 2,560 spent fuel assemblies], but requests elimination of any tie to a specific number of casks or a specific type of cask design. We are not requesting approval of any operational or life change—only a change in the type of storage technology we are authorized to pursue for storing spent-fuel assemblies at the plant. This would allow the Company to bid for and select the best cask technology for future storage.

Xcel's Petition provides two reasons supporting the request: "other available technologies may be in the best interest of our customers and other stakeholders by reducing costs and facilitating shipment to an offsite facility at the earliest date possible."

In terms of costs, Xcel's "initial estimate is that the hardware costs for alternate cask designs is approximately 40-50% of the cost of TN-40 casks." However, Xcel indicates that the alternate designs hold less fuel, resulting in the need for one additional cask to hold the same amount of spent fuel. Xcel's position is that the increase in number of casks is outweighed by the decrease in cost per cask.

In terms of facilitating shipment, the Petition states that, at this time, there are two applications for Consolidated Interim Storage Facilities (CISF) under active review by the NRC:

Each of these proposed CISF applications are based on a specific welded canister design for storage. Their license applications under review request permission for specific designs, and do not include the TN-40 cask. An amendment to their license would be required in order to store a TN-40 cask in the future.

Therefore, Xcel argues that a change from the TN-40 cask design may better enable compliance with the intent of the spent fuel transportation provisions of Minnesota Statutes § 116C.83, Subd. 4 (a) even if the specific language does not apply to the Petition.

D. XCEL'S PROPOSED REPORTING REQUIREMENT

In the Petition Xcel proposes the following reporting requirement:

Following the selection of a particular cask technology, the Company would provide the Commission with information regarding its selection process. This information would include the technologies considered and details regarding how the Company selected a particular cask type, including cost.

E. ANALYSIS OF XCEL'S REQUESTS

1. Application of Minnesota Statutes

First, Minnesota Statutes § 116C.83, Subd. 2 requires that “expansion or establishment of an independent spent-fuel storage facility” is subject to approval via a CN. However, Xcel is proposing neither an expansion of an existing nor establishment of a new facility. Therefore, DOC-DER concludes that this statute does not apply.

Second, Minnesota Statutes § 216B.2421, Subd. 2 (8) defines “any nuclear fuel processing or nuclear waste storage or disposal facility” as a “large energy facility.” Minnesota Statutes § 216B.243, Subd. 2 states that no large energy facility shall be sited or constructed in Minnesota without the issuance of a CN. The question for the Commission is whether Xcel’s proposal to change the type of canisters amounts to a proposal to site or construct a nuclear waste storage or disposal facility. Xcel’s Petition does not propose a change in the ability to store fuel but does recommend a change in the type of casks. At this time, given the overall language of Minnesota Statutes and Minnesota Rules, DOC-DER concludes that the text refers to the facility as a whole and not individual parts. For example, replacing a 100 MW turbine from one manufacturer with a 100 MW turbine from another manufacturer in an already approved facility does not trigger a CN requirement. The CN requirement is based upon the capacity of the facility, not the particulars of the technology. Therefore, DOC-DER concludes that this statute does not apply.

Third, Minnesota Statutes § 116C.776 requires the Commission to order the use of casks at Prairie Island that allow for transportation as well as storage of spent nuclear fuel to replace the use of the casks that are only usable for storage, but not transportation. DOC-DER understands that the current casks at Prairie Island are usable for both storage and transportation.² Therefore, DOC-DER concludes that this statute does not apply directly to the Petition. However, the policy directive is clear, casks with greater flexibility are preferred. DOC-DER recommends the Commission consider this policy directive in making a final decision in this proceeding.

2. Application of Minnesota Rules

² As discussed in the Petition, the current casks would not be usable at the proposed CISFs currently before the NRC without license modifications.

Xcel's Petition proposes neither a new nuclear waste storage facility nor a 20 percent expansion of an existing facility. Therefore, DOC-DER concludes that Minnesota Rules 7855 does not apply. The remaining question is what authority grants the Commission the ability to decide Xcel's request regarding the changing the types of casks?

Xcel states that the Commission "may want to consider this filing under the miscellaneous filing procedures under Minn. R. 7829.0100, or it may wish to do so under the analogous certificate of need rules [i.e., consider the Petition as if it were a changed circumstance filing]."

DOC-DER agrees with Xcel that, in absence of a rule directly covering the Petition's proposed actions, it is reasonable to conclude that the Petition qualifies as a miscellaneous tariff filing. Minnesota Rules part 7829.1300 contains the completeness requirements for miscellaneous filings. DOC-DER reviewed the Petition for compliance with the completeness requirements of Minnesota Rules part 7829.1300 and concludes that the Petition is complete.

3. Xcel's First Request—No Recertification Required

Above DOC-DER reviewed Minnesota Statutes and Minnesota Rules and concluded that they do not require recertification. Therefore, DOC-DER recommends the Commission approve Xcel's first request, that no recertification is required.

4. Xcel's Second Request—Casks to be Selected via Bidding

Regarding Xcel's proposal to select casks via a competitive bidding process, in general DOC-DER supports competitive bidding processes for selecting resources as being able to deliver the best overall project at the least cost. DOC-DER has supported well-designed bidding processes in numerous proceedings. Therefore, DOC-DER recommends the Commission approve the Company's proposal to provide Xcel the authorization to utilize any NRC-approved storage technology in order to facilitate the bidding process. This approval should clarify that the approval is based upon Xcel's representation that "we are not asking to run the Prairie Island plant any longer than currently authorized, nor are we seeking approval of an operational change for the plant."

5. Xcel's Proposed Reporting Requirement

DOC-DER agrees with Xcel that the Company should be required to make a filing providing the Commission with information regarding the selection process and its outcome. DOC-DER recommends the Commission require the following types of information be included in the filing:

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

F. REPLY TO COMMISSION NOTICE

DOC-DER's conclusions regarding topics open for comment in the Notice is as follows:

1. Should the Commission Approve Xcel's Proposal?

As stated above, DOC-DER recommends that the Commission approve Xcel's proposal with additional reporting conditions as part of the Company's proposed filing reporting the results of the bidding process.

2. Is Additional Information Needed?

DOC-DER concludes that additional information is not needed at this time.

3. Are Further Proceedings Required?

DOC-DER concludes that further proceedings, beyond the Company's proposed filing a report with the results of the bidding process, are not required under Minnesota Statutes and Minnesota Rules.

4. Should the Commission Consider Minnesota Statutes § 116C.776?

DOC-DER recommends that the Commission determine that Minnesota Statutes § 116C.776 does not directly apply to the Petition but consider the clear policy directive of that statute.

III. CONCLUSIONS AND RECOMMENDATIONS

DOC-DER recommends the Commission approve the Company's proposal and provide Xcel the authorization to utilize any NRC-approved storage technology. This approval should clarify that the approval is based upon Xcel's representation that "we are not asking to run the Prairie Island plant any longer than currently authorized, nor are we seeking approval of an operational change for the plant."

DOC-DER also recommends the Commission require the following types of information be included in the Company's filing reporting the results of the bidding process:

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

/ar

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket Nos. **E002/CN-08-510**

Dated this **28th** day of **May, 2021**.

/s/Linda Chavez

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B. Andrew	Brown	brown.andrew@dorsey.com	Dorsey & Whitney LLP	Suite 1500 50 South Sixth Street Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_8-510_1
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_8-510_1
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