

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Northern  
States Power Company (d/b/a Xcel  
Energy) for a Certificate of Need for the  
Monticello Nuclear Generating Plant  
Extended Power Uprate

**FIRST PREHEARING ORDER**

A prehearing conference was held on April 29, 2008 at the Public Utilities Commission (Commission) conference room before Administrative Law Judge Steve M. Mihalchick. The following persons noted their appearances:

Julia Anderson, Assistant Attorney General, Minnesota Office of the Attorney General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota, 55101-2130 appeared for and on behalf of the Office of Energy Security.

Michael Ahern, Dorsey & Whitney, LLP, 50 S. 6<sup>th</sup> Street, Suite 1500, Minneapolis, Minnesota 55402-1498, appeared for and on behalf of Xcel Energy.

Brian Zelenak, Manager, Regulatory Administration, Xcel Energy, 414 Nicollet Mall, Minneapolis, Minnesota 55401, appeared on behalf of Xcel Energy.

Bill Storm, Energy Facility Permitting, Office of Energy Security, 85 7<sup>th</sup> Place East, Suite 500, St. Paul, MN 55101-2198 appeared on behalf of the Office of Energy Security.

Robert Cupit, Senior Facility Planner, and Michael Kaluzniak, Senior Energy Facility Planner, Minnesota Public Utilities Commission, 121 East Seventh Place, Suite 350, St. Paul, MN 55101-2147, named as the Commission's Representative in this matter, appeared on behalf of the Public Utilities Commission (the Commission or PUC).

Based on the discussions during the prehearing conference, the submissions of the parties and interested persons, and upon all of the files, the Administrative Law Judge makes the following:

## ORDER

### Parties, Participants and Intervenors

1. The current parties to this case are Northern States Power Company d/b/a Xcel Energy and the Department of Commerce, Office of Energy Security.

2. Any person desiring to become a formal party must file a Petition to Intervene by May 29, 2008. Any person petitioning to intervene after that date may be restricted as to the scope of their participation. Any existing party that wishes to object must file an objection within seven days of service of the petition. Petitions to Intervene should comply with Minn. R. 1400.6200.

3. Any person who desires to be placed on the service list as a non-party participant must file a request with the Administrative Law Judge by May 29, 2008.

4. Members of the public need not become formal parties to participate in the public hearings, although only formal parties may cross-examine witnesses at the evidentiary hearing. Members of the public may offer either oral or written testimony, may offer exhibits for inclusion in the record and may question the parties' witnesses as set forth below.

### Procedure

5. The Administrative Procedure Act<sup>1</sup> shall govern the conduct of the Certificate of Need hearing. If those provisions are silent on any issue, OAH rules regarding contested cases<sup>2</sup> and the Commission's Rules of Practice and Procedure,<sup>3</sup> may be applied by the Administrative Law Judge.

6. The public hearing to be held in Mid-August, 2008 shall be combined for the purpose of coordinating opportunities for the public to comment on the siting/routing application, MPUC Docket No. E002/GS-07-1567, and the certificate of need application, MPUC Docket No. E-002/CN-08-185, as ordered by the PUC.<sup>4</sup> The Siting/Routing hearing shall be governed by the Rules of the PUC.<sup>5</sup> These two docketed proceedings shall be maintained as separate PUC dockets, and all documents and testimony filed electronically or otherwise shall designate the docket number of the proceeding to which they apply.

---

<sup>1</sup> Minn. Stat. §§ 14.57 – 14.62.

<sup>2</sup> Minn. R. 1400.5100 – 1400.8400.

<sup>3</sup> Minn. R. 7829.0100 – 7829.3200.

<sup>4</sup> See *In the Matter of the Application for a LEPGP Site Permit for the Monticello Nuclear Generating Plant (MNGP) Extended Power Uprate Project*, PUC Docket No. E-002/GS-07-1567, Order dated May 12, 2008 approving coordination of the public hearing for the MNGP Uprate project siting docket (E002/GS-07-1567) with the public hearing portion of the CON docket (E002/CN-07-185).

<sup>5</sup> Minn. R. 7849.5710.

## **Schedule**

The following schedule for the need proceeding is adopted, with references for convenience to dates applicable for the siting and routing proceeding:

<b>Date</b>	<b>Event or Document Due</b>
February 14, 2008	Receipt of CON Application
April 7, 2008	PUC Meeting Accepting CON Application
April 18, 2008	PUC Order Issued Accepting Application "Receipt of Application" for DOC purposes
April 29, 2008	Prehearing Conference
May 2, 2008	Receipt of Site Permit Application
May 8, 2008	PUC Meeting – Accepting Site Permit Application, Approving Coordinated Public Hearings
May 29, 2008	Deadline for Intervention
May 15-19, 2008	Notice – CON Application and Site Permit Application and Public Meeting
May 29, 2008	Initial Public Information Meeting/Scoping Meeting, 7:00 p.m., River City Extreme, 3875 School Boulevard, Monticello, MN
June 9, 2008	Public Comment Period Ends on Scoping Decision
June 13, 2008	Scoping Decision Anticipated to be Issued
July 31, 2008	Environmental Assessment Completed and Available
August 7, 2008	Xcel Direct Testimony

Mid-August 2008	Siting and Contested Case Coordinated Public Hearings, 7:00 p.m., Monticello Public Hearing Plus 10 Days Public Comments on Siting and Contested Case Due
Public Hearing plus 14 Days	ALJ Report on Public Hearing
September 3, 2008	Intervenors' Direct Testimony Due
September 24, 2008	Rebuttal Testimony Due, All Parties
September 30, 2008	Surrebuttal Testimony Due, All Parties
October 6, 2008	Evidentiary Hearing on CON in St. Paul or Monticello
Close of Evidentiary Hearing plus 21 Days	Xcel Brief
Xcel Brief plus 21 Days	Intervenors' Briefs

### **Filing of Documents**

7. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

8. Persons capable of doing so should E-file electronic versions of their documents on the E-Filing system of the Commission and the Department (the E-Filing system). Such E-filing constitutes service upon the Commission, Administrative Law Judge, and Department.

9. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

a. The original document shall be filed using the E-filing system wherever possible. Otherwise, the original document shall be sent by U. S. Mail to:

Hon. Steve M. Mihalchick  
Office of Administrative Hearings  
PO Box 64620  
St. Paul, MN 55164-0620

or by delivery to:

Hon. Steve M. Mihalchick  
Office of Administrative Hearings  
600 North Robert Street  
St. Paul, Minnesota

b. After the Administrative Law Judge's Report is issued, all parties and other persons shall file the original of all documents with the Executive Secretary of the Commission, in the manner provided for by the Commission.

10. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

11. The effective date of filing shall be the date the document is E-filed, mailed by U.S. Mail, or delivered to the Administrative Law Judge or Executive Secretary of the Commission.

12. A certificate of service shall be filed with each filed document or within three business days thereafter. Parties using the E-filing system should retain the unique document identifier as proof of service through that system.

13. If nonpublic data is filed with the Administrative Law Judge or Commission, it shall be prepared and marked in accordance with the Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. Those procedures may be viewed at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf).

## **Discovery**

14. A party may serve requests for information on any other party. All requests for information may be made in writing by email, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, or anytime on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

15. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the information request. If the information cannot be supplied within eight business

days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

16. Responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. If a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received after 4:30.p.m. on a business day is considered to be received the following business day.

17. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize CDs to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

18. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting or responding party, which shall provide the information in that format. If the request or response contains material designated Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of a Protective Order in this matter before providing the information.

19. No Protective Order is being issued at this time. Issuance of a Protective Order is reserved pending the parties' negotiation and Administrative Law Judge's approval of the terms of such an Order.

20. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be made informally by e-mail and will normally be heard by telephone conference.

### **Offering of Prefiled Testimony and Examination of Witnesses**

21. At the evidentiary hearing, prefiled testimony and exhibits shall be offered and received as hearing exhibits and exhibit numbers shall be assigned

at that time. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be filed with the Administrative Law Judge and served no later than three days before the public hearing starts. E-filing shall be used where possible.

22. At the evidentiary hearing, witnesses shall be allowed five minutes to summarize their prefiled testimony. Additional time may be allowed if necessary for a witness to respond to new issues raised by other parties, if no response was previously allowed.

23. At the evidentiary hearing, parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine witnesses through any one representative chosen by the party.

24. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearing shall be: Xcel, any intervenors (in order of intervention), and the Office of Energy Security.

25. At the Mid-August 2008 public hearing, parties shall have personnel available to answer any questions the public may have. Also, members of the public are encouraged to present their own views and concerns regarding the need application and/or the siting/routing application.

Dated: May 21, 2008

/s/ Steve M. Mihalchick

---

STEVE M. MIHALCHICK  
Administrative Law Judge