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May 8, 2009

Via E-mail (bill.storm@state.mn.us)
and U.S. Mail

Mr. William C. Storm
Minnesota Department of Commerce
Office of Energy Security
85 – 7th Place East
Suite 500
St. Paul, MN 55101

Re: Environmental Impact Statement In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for Certificates of Need for the Prairie Island Nuclear Generating Plant for an Extended Power Uprate and Additional Dry Cask Storage; MPUC Dockets: E-002/CN-08-509 and E-002/CN-08-510

Dear Mr. Storm:

The purpose of this letter is to provide the Department of Commerce, Office of Energy Security (the "DOC") with comments pertaining to the March 17, 2009, draft Environmental Impact Statement (the "DEIS") for the above-referenced matters. These comments are submitted on behalf of the City of Red Wing (the "City"). However, it should be noted that the City did participate in the Prairie Island Nuclear Generating Plant Study Group (the "Study Group") as well as the Advisory Task Force appointed to comment on the scope of environmental review necessitated by Xcel Energy's Applications for an Extended Power Uprate and Additional Dry Cask Storage (the "Applications"). It is my understanding that the Study Group will be submitting its own comments regarding the DEIS. The City supports the Study Group's comments and, to the extent they overlap with the comments set forth herein, the City incorporates the Study Group's comments as if those were its own.

OVERVIEW

The DEIS arises from the combined Dockets for the Certificates of Need Administrative Hearings that are currently pending before Judge Luis. The DEIS is separated into two parts: Chapter One, which addresses the Application for an Extended Power Uprate and Chapter Two, which addresses the Application for Additional Dry Cask Storage. As is noted in the DEIS, these Applications are in conjunction with the series of Applications that are pending or will be submitted by Xcel Energy to the Nuclear Regulatory

Commission for, among other things, an extended license to operate the Prairie Island Nuclear Generating Plant (the "PINGP") for an additional 20 years, license to store additional spent fuel and to have the Power Uprate during the additional 20 years of the relicensing.

As is aptly pointed out by the comments of the Study Group, the purpose of the DEIS and ultimately the final Environmental Impact Statement (the "FEIS") is to advise the Administrative Law Judge, the Minnesota Public Utilities Commission, the Minnesota Legislature and other policy and decision makers on the environmental impacts of proposed Applications, appropriate alternatives and certain mitigation steps or efforts that can be taken relative to the same. *See, Minn. Stat. §116D.04 Subd. 2a (2008)*. Under Section 116D.04 Subd. 2a, the environmental impact statement is to be prepared by the responsible governmental unit. The environmental impact statement is to be analytical and detailed and not simply "an encyclopedic document". *Id.* The DOC, by virtue of the consolidation of the Environmental Quality Board into the same, is the responsible governmental unit obligated to provide the Environmental Impact Statement for Xcel Energy's above-referenced Applications.

The DEIS presented fails these essential purposes. It lacks independent analysis, and glosses over the environmental, economic and other policy concerns that are raised by Xcel Energy's Applications. In place of analysis, the DEIS simply assumes that a great number of the facts presented by Xcel Energy in its Applications are accurate and complete. This failure of the DEIS deprives each decision maker at the various stages in which the Applications are to be analyzed of crucial facts needed by them to fulfill their role. As it is currently composed, the DEIS fits exactly into the category of what Section 116D.04 Sub. 2a describes it should not be: an encyclopedic document where the facts presented by the Applicant are simply deemed to be true and correct.

While these comments will provide specific language and analysis that should be contained in the FEIS, an overview examples of the lack of analysis, detail and evaluation of mitigation efforts are as follows:

1. The DEIS, and indeed the scoping decision, defers much analysis. It creates and relies on a preemption argument that is not supported either by case law or by statute. Indeed, the specific limitations set forth in the DEIS fails to recognize the rights and responsibilities of Minnesota policy makers relative to the health, safety, and welfare of its citizens. While ultimately, the same conclusion may be reached, it is imperative that the DOC, through the DEIS and FEIS, thoroughly review (and not just recite) the Application, identify the environmental, societal, and economic issues and engage in a robust discussion of them, their alternatives, and the necessary mitigation efforts relative to the same.

2. With respect to the storage issues, the DEIS identifies a potential 200 year period in which the spent fuel may be stored at the PINGP. Yet, there is no analysis on how that spent fuel is going to be monitored, maintained, and safeguarded during that period of

time. While there is reference to a maintenance program relative to current spent fuel storage but there is nothing that identifies how this will fill the 200 year timeframe. There is no reference to the Yucca Mountain Environmental Impact Statement and its analysis of above-ground spent fuel storage systems and concrete pads upon which they are placed. There is no analysis of the TN40-HT Cask or its limited design life of 20 years and how that fits into the proposed 200 year timeframe.

3. There is a discussion of the Decommissioning Docket, the 60 year Waste Confidence Rule, and the 200 year period in which the spent fuel is anticipated to be stored at the facility. However, there is no analysis that ties these together. For example, there is no cost evaluation of the monitoring, inspection, and/or maintenance of spent fuel storage for either the 60 year period or the 200 year anticipated period. There is no analysis on whether the Decommissioning Docket has sufficient funds for this storage and/or how the same would tie-out to the 60 year Waste Confidence Rule or the 200 year storage facility. While there is acknowledgement that the Federal Government is responsible for the long-term storage of the spent fuel, there is no acknowledgement that Xcel Energy, until that time comes, is responsible for the safety and storage of the same.

4. The DEIS introduces a concept that is outside of the rules or statutes regarding spent fuel storage: temporary long-term storage. This term is not defined in any statute, rule, caselaw or otherwise. In fact, it is contrary to Xcel Energy's obligations relative to its Application whereby it must disclose whether the spent fuel is going to be temporary or permanent. See, Rule 7855.0600C. There is no discussion or analysis of what temporary long-term storage means and how the same fits within the construct of current Minnesota Statutes and Rules.

5. Finally, and in fairness to the DOC since these issues were raised after the DEIS was published, the DEIS and the FEIS must include an analysis of the City's position relative to its ability to provide first responder services to any incident at the PINGP. The DEIS, on numerous occasions, cites to the Emergency Response Plans of Xcel Energy and the coordination of those through other response plans by the State of Minnesota and NRC. However, as the testimony of Roger Hand clearly indicates, under each of these plans, the City is the primary and first responder. If the City is unable to provide the adequate, necessary, and timely response as anticipated by those Emergency Response Plans, what will be the result? The FEIS must include an analysis of the City's position and the environmental and economic impacts of the same. In fact, the only prudent analysis by the DOC in analyzing the potential environmental impacts is to assume that the Emergency Response Plans will not provide an effective or timely response to any event at the PINGP and apply the same to both non-radiological and radiological events.

ANALYSIS

With respect to the DEIS, the City has the following comments and suggested modifications to the DEIS. However, in making these suggestions, the City believes that the DEIS or FEIS should also reflect the overall general policy concerns set forth above and as set forth in the PINGP Study Group's DEIS comments.

1. In Chapter One, Section 4.13, Page 88, the DEIS identifies the Emergency Response Plans and how the same would be implemented in the event of a radiological release. It should be noted, that the Emergency Response Plans, do, in fact, address both radiological and non-radiological events at the PINGP. As such, the general description of the Emergency Response Plans should address this fact.

In addition, the DEIS or FEIS must address the alternative that the City and its fire, ambulance, and police departments may not be able to adequately respond to an event at the PINGP. The DEIS or FEIS should then evaluate the impact of this lack of appropriate response and how the same would be reflected in its analysis in the preceding 87 pages of Chapter One. The City's potential inability to respond appropriately precludes any assumption by the DOC that the Emergency Response Plans are going to be effective.

2. In Chapter Two, Section 3.2, Page 13, the DEIS introduces the concept of "temporary long-term storage of spent nuclear fuel." There is no explanation about what this term means or how this definition was reached. The term itself stands in contrast to the obligations of Xcel Energy, as the Applicant, to identify whether storage is temporary or permanent in its Application. It also stands in contrast to Minn. Stat. §116.83 Sub. 4, which indicates that permanent storage is supposed to occur in an out-of-state facility. The DEIS and the DOC must explain what this new concept means and how it relates to Xcel's Applications.

3. In Chapter Two, Section 3.2, Pages 12-13, the DEIS describes the monitoring, inspection, and maintenance for the Dry Casks. It further identifies that the design life for the TN-40 Series is 25 years. This analysis and the failure to include the other information that would allow for a more robust discussion on the effectiveness of the monitoring, inspection and maintenance plan is wholly deficient. First, the TN-40 is not the Cask that is going to be used. Rather, it is the TN-40HT Series, which has a design life of 20 years. Second, there is no analysis whatsoever of the concrete or other items that are to be used as part of the ISFISI. The DEIS specifically ignores that Yucca Mountain EIS, which sets the anticipated concrete life of an ISFISI at approximately 100 years. The DEIS also ignores a specific report referenced in the Yucca Mountain EIS regarding the life expectancy of concrete that is subject to the conditions normally associated with spent fuel storage systems. The life expectancy is also greatly impacted by the freeze-thaw cycle with St. Cloud, Minnesota specifically cited as the extreme end of this cycle. To effectively evaluate what steps can be and should be taken by Xcel Energy to mitigate against the degradation of the Casks and the concrete supporting them, a more appropriate monitoring inspection and

maintenance system must be developed and evaluated. Indeed, it is the DEIS that sets out a 200 year period for this analysis but fails to explain or provide any support for its conclusion that the equipment and programs to maintain the same are sufficient to provide containment for that period of time.

4. In Chapter Two, Section 3.4, Page 15, under the analysis for "Funding for Decommissioning", the DEIS fails to identify how adequate funding is going to be provided for the 200 years. It is imperative that the DEIS detail the costs associated with the spent fuel. At a minimum, it would be prudent for the DEIS to analyze how Xcel Energy intends to meet, at a minimum, the financing necessary to inspect, monitor, and maintain the storage systems for the 200 year period or at least 60 years. The Decommissioning Fund, as noted in the DEIS, supposedly covers ISFIS operations but there is no analysis relative to the same. The DEIS must analyze this information.

5. In Chapter Two, Section 4.9, Page 22, the DEIS references the Emergency Response Plans Xcel Energy maintains for all activities at the PINGP site. In doing so, the DEIS simply assumes that the Emergency Response Plans will operate and that any incident will be appropriately addressed pursuant to the same. The DEIS analysis must be amended to include the alternative that the Emergency Response Plans may not operate as assumed. The City has provided testimony that it may not be able to meet its duties and unless its ability to respond to the same is addressed the response will be inadequate and/or ineffective.

6. Under Chapter Two, Section 4.10, Pages 22-23, the DEIS concludes that "the non-radiological impacts related to the expansion of the Prairie Island ISFISI are not significant." As previously pointed out, this conclusion, and any analysis backing the same, is deficient. There is an assumption that the equipment (casks and concrete) and the materials that comprise the same will last for 60 or 200 years, depending upon whether the DEIS follows the Waste Confidence Rule or its own assumptions. However, there is nothing to backup this conclusion. There is no analysis or regard for the design life of the cask that is proposed to be used, the limitations associated with the same, or any analysis on how long this casks has been in use. There is an assumption that the materials and all the welds, seals, and other joints will survive intact from all events whether that is time, weathering, deterioration, or other events. In short, the conclusions are unsubstantiated and the analysis must be supplemented if these conclusions are to be supported.

7. Under Chapter Two, Section 5.3, the DEIS walks through a number of different incidences that may result in a radiological release. This analysis covers natural phenomena, manmade phenomena, and either hypothetical cask confinement failures. Underlying each of these different proposed events, is the existence and effective operation of the Emergency Response Plan that mitigates or limits any release. The City has introduced evidence that it may not appropriately be able to respond to the Emergency Response Plans currently in place. Again, it should be noted that the City's fire, ambulance, and police are and shall be the first responders under any plan currently in place relative to the PINGP. Accordingly, the analysis under Section 5.3 must be modified to include a

scenario where the presumption that the Emergency Response Plans will effectively operate is removed.

8. In Chapter Two, Section 5.4, Page 34, the concept of temporary long-term storage is again used. While there is a loose association between that term and 200 years, the DEIS must specifically set out if that is what it interprets that term to mean. If so, the DEIS must explain and identify how that was reached and what measures it is utilizing to conclude that the spent fuel storage systems currently used and/or proposed to be used by Xcel Energy are adequate.

9. In Chapter Two, Section 5.4, Page 34, under the heading "Normal Operations" the DEIS concludes that if regular monitoring and maintenance continues as currently performed, any risk of a radiological event will not be significant. Other than the pressure monitors, visual inspection, and painting with corrosive inhibiting coatings specified in Pages 12 and 13 of Chapter Two, there is no other description of monitoring, inspection, or maintenance. The current process described is completed on casks that have been in use for a mere 14 years. This is not even 10% of the lifetime that the DEIS projects for storage.

The DEIS fails to analyze how, for the remainder of 200 year period, this inspection, monitoring, and maintenance system will be effective. There is no analysis relative to aging or degradation of the systems and how these are to be handled or paid for. In short, the conclusion reached is illogical based on the time that the DEIS assumes spent fuel will be stored.

10. Under Chapter Two, Section 5.4, Pages 36-37, there is a stated and thereafter implied assumption that the "emergency planning measures remain effective into the future." The testimony from the City has clearly rebutted this assumption and the DEIS must be modified to reflect that the emergency planning measures will not remain as effective as the DOC assumes.

CONCLUSION

The DEIS fails its essential purpose. It does not provide a detailed analysis of the proposed Applications and their potential impact as well as the steps that could be taken to mitigate the same. Instead, it regurgitates large sections of Xcel Energy's Applications and does not critically analyze the same as it is obligated to do by statute and rule. The DEIS simply assumes that these facts are correct and, based on a number of other external reports, analysis, and actions, that there will be no significant impact if the Certificate of Needs as requested are granted. The DEIS must be modified so that the policymakers have an appropriate record to evaluate the environmental impact of the proposed Applications. With respect to the assumption that the Emergency Response Plans will be implemented and in place, the City's testimony clearly rebuts any presumption that this will be the case. Accordingly, the DEIS and the FEIS must be modified to reflect this rebuttal.

Mr. William C. Storm

May 8, 2009

Page 7

With respect to the continued storage of spent fuel, there must be an effective analysis of the continued storage of the same during the timeframe that the DEIS itself has established. This must include a timeline of funding, and plan for the maintenance, inspection, repair and replacement, if necessary, of the casks and other support systems in and around the facilities that store the spent fuel. This information was specifically requested by the Advisory Task Force and must be included within the FEIS.

I thank you for your considerations in this matter.

Very truly yours,

MADIGAN, DAHL & HARLAN, P.A.

/s/ Thomas P. Harlan

Thomas P. Harlan

cc: Kay Kuhlman (via e-mail)
Marshall Hallock (via e-mail)