

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Application of Northern States Power Company (d/b/a Xcel Energy) for a Certificate of Need to Establish an Independent Spent Fuel Storage Installation at the Monticello Generating Plant

ISSUE DATE: April 7, 2005

DOCKET NO. E-002/CN-05-123

ORDER FINDING APPLICATION
SUBSTANTIALLY COMPLETE
CONTINGENT UPON ADDITIONAL
FILING

PROCEDURAL HISTORY

On January 18, 2005, Xcel Energy (Xcel or the Company) submitted its certificate of need application for a nuclear waste storage facility at the Monticello Nuclear Generating Plant.

On January 20, 2005, the Commission issued a notice requesting comments on the substantial completeness of Xcel's application. The comment and reply periods indicated in that notice ended on February 8, 2004 and February 22, 2005, respectively.

On February 1, 2005, the Commission issued its ORDER EXTENDING COMPLETENESS REVIEW PERIOD. In its Order, the Commission indicated that it would consider the substantial completeness of the application "as soon as practicable."

On February 8, 2005, the Commission received initial comments on completeness from the North American Water Office (NAWO), the Energy Division of the Department of Commerce (the Department), River Communities United for Responsible Energy (R-CURE), and the Institute for Local Self-Reliance (ILSR).

On February 9, 2005, Carol A. Overland filed initial comments on completeness.

On February 22, 2005, Minnesotans for an Energy-Efficient Economy (ME3) and Xcel filed reply comments.

The Commission met on March 24, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Additional Items Required to Substantially Complete Xcel's Filing

A. Commenting Parties

All commenting parties identified some substantial items missing from Xcel's filing that they asserted were specifically required by rule or were otherwise appropriate for the record to contain at the commencement of this proceeding. The Department recommended that the Commission accept the application as substantially complete pending submission of certain additional data. The other commenting parties recommended that the Commission reject the Company's filing and require it to file several items before meeting again to determine whether the filing was substantially complete.

B. Working List of Information Missing

The following is a composite of the items deemed missing from Xcel's filing:

1. The specific rule elements listed by the Energy Division of the Department of Commerce in its February 8, 2005 comments: 1) Minn. Rules, Part 7855.0270 F; 2) Minn. Rules, Part 7855.0610 A,B,C,E,F,G,H, and I; 3) Minn. Rules, Part 7855.0640 I, J, and K; and 4) Minn. Rules, Part 7855.0650 G.
2. Jurisdictional cost allocations, plus a quantification of Minnesota customers' rate impacts for each of the alternatives considered in the application and supplement (i.e., both for the storage facility and continued operation of Monticello and for the various possible alternatives to replace 600 MW).
3. Quantification of purported economic benefits of the Monticello plant to local communities.
4. Load and Capability Report tables indicating projected kilowatt supply and demand for at least the "forecast years" as defined in the certificate of need and resource planning rules.
5. A list and description of other dry storage systems, if any, in use in the United States or other countries for spent fuel from boiling water reactors, and an explanation of why they were rejected for possible use at Monticello.
6. A discussion of age-related degradation of the plant and storage canisters, the review processes of the NRC for considering such degradation, and procedures for dealing with a canister problem once it has been placed in the storage vault.

7. An analysis of the costs of long-term storage of spent fuel (e.g., 50, 100, and 200 years) that would result from 20 years of operation of a re-licensed Monticello plant, indicating the types of and costs of actions that might be necessary (e.g., if relevant, replacement of storage system components, movement of the canisters back to the pool, construction of any other needed facilities, and any additional security measures after the plant is shut down).
8. A discussion of radiation monitoring for the Monticello plant, an indication of dispersion patterns for routine radiation releases from the plant, and a comparison of monitoring results with the established federal standards.
9. Additional information regarding the re-racking alternative, including an indication of likely cost and a discussion of the implications for storage and/or disposal of the discarded racks.
10. Analysis of a combined wind power and gas-fired power alternative for replacing Monticello's capacity, including an indication of the amount of each component that would have to be added to the system (i.e. additional capacity that would have to be added that currently is not under construction or under contract), a discussion of the feasibility/availability of such a combination, and appropriate information in the areas of cost, reliability, and environmental effects.
11. Analysis of at least one representative "community-based" alternative for replacing Monticello's capacity, consisting of a reasonable combination of smaller sources such as 1) demand-side management (including a discussion of real-time price signals to customers and other rate design options for affecting demand, including summary information from such recent Commission dockets addressing such issues as Docket Nos. E-002/M-01-46, E-002/CI-01-1024 and E-002/M-02-1894), 2) wind power, and 3) any other distributed generation sources, including a discussion of the feasibility/availability of such a combination, as well any available and pertinent information in the areas of cost, reliability, and environmental effects.
12. A summary of information included in the Company's reply comments that are deemed to have evidentiary value.¹

C. Xcel's Response

In its initial comments at the hearing on this matter, Xcel agreed to make a supplementary filing providing most of the identified items but sought modification of #6 (discussion of age-related degradation) and #11 (presentation of a representative "community-based" alternative).

¹ Since comments on completeness are not routinely made part of the evidentiary record considered by the Administrative Law Judge (ALJ) and the Commission, a summary of information included in the Company's reply comments that are deemed to have evidentiary value should be included in the supplementary filing.

Regarding item #6, Xcel agreed to provide the information sought in item #6 regarding the review processes of the NRC for considering such degradation, and procedures for dealing with a canister problem once it has been placed in the storage vault. With respect to the information sought by item #6 regarding the age-related degradation issues, however, the Company sought permission to provide the requested information in a modified fashion. The Company stated that its license renewal application recently filed with the Nuclear Regulatory Commission (NRC) contained, among other things, information sought by item #6 regarding the age-related degradation issues. The Company stated that it would prefer to simply make that application available to requesting parties in lieu of sorting relevant information on this topic from the NRC application and presenting that information separately in this docket.

And regarding item #11, Xcel initially objected to being required to present a "community-based" alternative for replacing Monticello's capacity because, it stated, any alternative it proposed would inevitably be criticized by other parties to this proceeding. The Company stated that it preferred that the "community-based" alternative be developed by the Environmental Quality Board (EQB) in its Environment Impact Statement (EIS) process regarding the Company's Monticello proposal. Subsequently, however, the Company stated that it would include in its supplementary filing a "community-based" alternative for replacing Monticello's capacity if requested by the Commission.

D. Commission Analysis and Action

In addition to items specifically identified by Commission rule, certain information filed as part of the Company's application will facilitate the orderly and efficient processing of the Company's proposal. This information will give the parties and the Commission a much better start on assessing the application and lead to administrative efficiencies. The list appearing above, modified slightly with respect to Item #6 and Item #11, appropriately fills out the Company's filing. The list, as modified, appears in Order Paragraph 1. The Company has agreed to provide this information in a supplementary filing that the Company anticipates filing within a month of the March 24, 2005 hearing.

The Commission will request that Xcel place the supplementary filing on its website at the same location as the original application filed on January 18, 2005.

II. Substantial Completeness of Filing: Effective Date

Xcel initially asked that the Commission find in this Order that its January 18, 2005 Certificate of Need filing was substantially complete on the date it was filed. Following discussion, the Company asked the Commission to find in this Order that its filing would be deemed substantially complete upon making the supplementary filing specified in this Order.

The Department stated that the Company's certificate of need filing would be substantially complete when the Company filed the information required by the following Commission rules: 1) Minn. Rules, Part 7855.0270 F; 2) Minn. Rules, Part 7855.0610 A,B,C,E,F,G,H, and I; 3) Minn. Rules, Part 7855.0640 I, J, and K; and 4) Minn. Rules, Part 7855.0650 G. The Department recommended that the Commission find that the Company's filing would be substantially complete as of the date it filed this additional information.

ME3 and NAWO recommended that the Commission 1) issue an Order finding Xcel's filing incomplete, 2) specify items that the Company must file in a supplementary filing, and 3) review that filing before deciding whether the Company's certificate of need filing was substantially complete.

The Commission finds that Xcel's January 18, 2005 filing is not substantially complete. However, additional items necessary to make it substantially complete have been identified and agreed to be provided by Xcel. In these circumstances, appropriate handling of this matter does not require the Commission to meet to review the Company's supplementary filing required by this Order before the Company's certificate of need filing will be deemed substantially complete. To facilitate review of this matter while requiring substantial additional information to be filed before Company's filing is treated as substantially complete, the Commission will make a contingent finding of substantial completeness at this time. The Commission clarifies that the Company's Certificate of Need filing, therefore, will be deemed substantially complete as of the date the Company files the supplementary information required by this Order. At the hearing on this matter, the Company indicated that it expected to make the supplementary filing within a month of the hearing.

One of the major reasons for concern about the completeness of a Certificate of Need filing and the specific date on which the filing is deemed substantially complete is the fact that the commencement of a statutory period for completion of the Commission's review of the utility's proposed action begins on the date that the utility makes a filing that is "substantially complete".² Certificate of Need filings found substantially complete trigger the six-month review period as of the date they were filed.

ME3 and NAWO have requested that the Commission not make a contingent finding of completeness and instead defer consideration of the completeness issue until the Commission has received and reviewed the Company's supplementary filing. In the circumstances of this case as explained below, however, the Commission finds no substantial benefit would be obtained by what ME3 and NAWO have requested.

² To give interested parties as well as the Commission appropriate opportunity to review the proposal during a limited review period, the Commission is vigilant to require a substantially complete filing so review time is not wasted securing through discovery information necessary to properly review the proposal.

As noted above, the items to be included in the Company's supplementary filing have been identified and agreed to by Xcel and the Company expects to make its supplementary filing within a month of the hearing on this matter. Absent the Company's unanticipated failure to make such a filing, therefore, the six month review period will start on that date. So the prospect of saving any time off the six-month time clock by adopting the ME3/NAWO recommendation on this issue is small.

Reducing the significance of any time saving to the six-month review period resulting from the ME3/NAWO recommendation is the fact that due to the complexity of this case, no party including the Company anticipates that a duly diligent review of its request can be completed within the six-month statutory time period indicated in Minn. Stat. § 216B.243, Subd. 5. In fact, the Department's projected schedule and timetable for this matter results in a Commission determination in 2006, well beyond the six month time period. The Company has specifically assured the Commission that if the matter can be determined in 2006, it will not assert any right it may have under the provision.

In these circumstances, prudent and efficient regulatory oversight does not include postponing the completeness issue and requiring an additional Commission meeting to affirmatively confirm that the Company's supplementary filing was adequate to meet the "substantially complete" test.

III. Contested Case Proceeding Appropriate

This case turns on facts best developed in formal evidentiary proceedings. The Commission finds that treating this matter as a contested case at the outset is prudent and administratively efficient. Accordingly, in a companion Order, the Commission is referring Xcel's application to the Office of Administrative Hearings for a contested case proceeding.³

IV. Second Comment Period Premature

In its written comments, the Department expressed the concern that the EQB in its EIS and the Commission in this docket should consider the same set of alternatives as long as the EQB's alternatives are reasonable. To promote that happening, the Department recommended that the Commission allow parties 15 days after the EQB issued its EIS scoping order to provide any additional comments on what supplemental information Xcel should be required to provide to ensure comparability between the alternatives considered in the EQB's EIS and in this certificate of need process.

However, the EQB's EIS scoping order is not anticipated until May. It is unclear, therefore, to what extent the coordination identified as desirable by the Department can be promoted by a round of comments at this time. In addition, it is not reasonable to postpone the Commission's

³ See the Commission's NOTICE AND ORDER FOR HEARING issued contemporaneously with this Order (April 7, 2005).

completeness review and referral of this matter to the Office of Administrative Hearings (OAH) for contested case proceedings until May in order to permit the kind of exchange of comments on the alternative issue that the Department recommended. In these circumstances, the Commission will decline to order a second comment period on this subject at this time and leave it to discovery and the contested case process to produce an appropriate record in this regard.

ORDER

1. Xcel Energy (Xcel or the Company) shall submit a supplementary filing containing the following information:

(1) the specific rule elements listed by the Energy Division of the Department of Commerce in its February 8, 2005 comments —

1. Minn. Rules, Part 7855.0270 F;
2. Minn. Rules, Part 7855.0610 A,B,C,E,F,G,H, and I;
3. Minn. Rules, Part 7855.0640 I, J, and K; and
4. Minn. Rules, Part 7855.0650 G

(2) jurisdictional cost allocations, plus a quantification of Minnesota customers' rate impacts for each of the alternatives considered in the application and supplement (i.e., both for the storage facility and continued operation of Monticello and for the various possible alternatives to replace 600 MW);

(3) quantification of purported economic benefits of the Monticello plant to local communities;

(4) Load and Capability Report tables indicating projected kilowatt supply and demand for at least the "forecast years" as defined in the certificate of need and resource planning rules;

(5) a list and description of other dry storage systems, if any, in use in the United States or other countries for spent fuel from boiling water reactors, and an explanation of why they were rejected for possible use at Monticello;

(6a) as part of its discussion of age-related degradation issues, additional information concerning the storage canisters;

(6b) appropriate text in the supplementary filing as part of its discussion of age-related degradation issues,

- notifying all the individuals who received a copy of the Certificate of Need Application in this proceeding that information concerning age-degradation of plant is contained in the Company's application to the Nuclear Regulatory Commission; and
- indicating with reasonable precision where and how in the NRC application that information is to be found;

(6c) information regarding 1) NRC's review processes for considering such degradation and 2) procedures for dealing with a canister problem once it has been placed in the storage vault;

(7) an analysis of the costs of long-term storage of spent fuel (e.g., 50, 100, and 200 years) that would result from 20 years of operation of a re-licensed Monticello plant, indicating the types of and costs of actions that might be necessary (e.g., if relevant, replacement of storage system components, movement of the canisters back to the pool, construction of any other needed facilities, and any additional security measures after the plant is shut down);

(8) a discussion of radiation monitoring for the Monticello plant, an indication of dispersion patterns for routine radiation releases from the plant, and a comparison of monitoring results with the established federal standards;

(9) additional information regarding the re-racking alternative, including an indication of likely cost and a discussion of the implications for storage and/or disposal of the discarded racks;

(10) analysis of a combined wind power and gas-fired power alternative for replacing Monticello's capacity, including an indication of the amount of each component that would have to be added to the system (i.e. additional capacity that would have to be added that currently is not under construction or under contract), a discussion of the feasibility/availability of such a combination, and appropriate information in the areas of cost, reliability, and environmental effects;

(11) analysis of at least one representative "community-based" alternative for replacing Monticello's capacity, consisting of a reasonable combination of smaller sources such as 1) demand-side management (including a discussion of real-time price signals to customers and other rate design options for affecting demand, including summary information from such recent Commission dockets addressing such issues as Docket Nos. E-002/M-01-46, E-002/CI-01-1024 and E-002/M-02-1894), 2) wind power, and 3) any other distributed generation sources, including a discussion of the feasibility/availability of such a combination, as well any available and pertinent information in the areas of cost, reliability, and environmental effects; and

(12) a summary of information included in the Company's reply comments that it deems to have evidentiary value.

2. Xcel's application shall be accepted as substantially complete contingent upon the filing of the supplementary information required in Order Paragraph 1.
3. The date Xcel files the supplementary materials identified in Order Paragraph 1 shall be the official application date for the Company's proposal.
4. To ensure the efficient and thorough processing of the application,
 - Xcel shall facilitate in every reasonable way the continued examination of the issues by the Department and the Environmental Quality Board;
 - it is requested that Xcel place the supplementary filing required by Order Paragraph 1 on its website at the same location as the original application filed on January 18, 2005; and
 - it is requested that the Department continue to study the issues and indicate during the hearing process its position on the reasonableness of granting a certificate of need to the Company
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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