

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

In the Matter of Northern States Power
Company's Petition for Approval to Merge
with New Century Energies, Inc.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION**

The above-entitled matter came before Administrative Law Judge Steve M. Mihalchick (the "ALJ") for evidentiary hearings on January 24, 2000 and again on January 28, 2000, in the Large Hearing Room of the Minnesota Public Utilities Commission Suite 350, Metro Square, 121 Seventh Place East, St. Paul, Minnesota. The record was closed upon receipt of a copy of NSP's final response to public comments on February 22, 2000.

Scott Wilensky, James P. Johnson, and Christopher Clark, Attorneys at Law, 414 Nicollet Mall, Minneapolis, Minnesota 55401 appeared on behalf of Northern States Power Company.

Priti R. Patel, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota, 55103-2106, appeared on behalf of the Minnesota Department of Commerce.

Dan M. Lipschultz, Assistant Attorney General, NCL Tower Suite 1200, 445 Minnesota St., St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Attorney General's Office.

Eric F. Swanson, Winthrop & Weinstein, 3200 World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101 appeared on behalf of Minnesota Energy Consumers.

William Grant, Executive Director of the Midwest Office of the Izaak Walton League of America, 1619 Dayton, Suite 202, St. Paul, Minnesota 55104, appeared on behalf of the Izaak Walton League, Minnesotans for an Energy Efficient Economy and Environmental Law and Policy Center of the Midwest, referred to as the Community Environmental Coalition.

Louis Sickmann, Clark Kaml and Brett Eknes, Suite 350 Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101, appeared in a neutral capacity on behalf of the Minnesota Public Utilities Commission.

Minnesota Public Utilities Commissioners, Gregory Scott, Edward Garvey, Leroy Koppendreyer, Joel Jacobs and Marshall Johnson, Suite 350 Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101, appeared at the hearing.

NOTICE

Notice is hereby given that pursuant to Minnesota Statute § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this report, if any, by any party adversely affected must be filed within twenty days of the mailing date hereof or such other date as established by the Commission's Executive Secretary or as agreed to by the Parties with the Commission's Executive Secretary. Questions regarding filing of exceptions should be directed to Dr. Burl Haar, Executive Secretary, Minnesota Public Utilities Commission, Suite 350 Metro Square, 121 Seventh Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 14 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUES

The ultimate issue in this case is whether the proposed merger is consistent with the public interest, considering, among other factors, the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

Based upon the record herein the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Procedural Background

A. Notice and Hearings

1. On July 28, 1999 Northern States Power Company ("NSP" or the "Company") filed its petition for approval of a merger ("Merger Application") with New Century Energies, Inc. ("NCE") in the above-captioned matter.

2. On September 8, 1999 the Commission issued a Notice and Order for Hearing directing that a contested case proceeding pursuant to the Administrative Procedure Act, Minnesota Statutes §§14.57 – 14.62, be held on the issue of whether the proposed merger is consistent with the public interest and any other issues relevant to the public interest.

3. Petitions to intervene in this proceeding were filed pursuant to Minnesota Rules Part 1400.6200. The following were made parties to this Proceeding: Community Environmental Coalition (CEC), Dairyland Power, Energy Cents Coalition, Great River Energy, Intertribal Council on Utility Policy, Koch Petroleum, Legal Services Advocacy Project, Minnesota Energy Consumers (MEC), Minnesota Power, Southern Minnesota Municipal Power Agency, and Wisconsin Public Service Corp. The Minnesota Department of Commerce (DOC, or Department) and the Office of Attorney General, Residential and Small Business Utilities Division (OAG) intervened as of right.

4. Hearings to receive public comment were held at the following locations on the dates indicated. The January 6, 2000 hearings occurred by video conference connecting the locations indicated:

<u>Date</u>	<u>Time</u>	<u>Location</u>
January 6, 2000	4:30 p.m.	St. Paul, Minnesota Winona, Minnesota Red Wing, Minnesota Pipestone, Minnesota Moorhead, Minnesota
January 10, 2000	4:30 p.m.	Mankato, Minnesota
January 11, 2000	4:30 p.m.	St. Cloud, Minnesota
January 12, 2000	2:00 p.m.	Minneapolis, Minnesota

5. Most public comments, both at the public hearings and in writing, expressed concerns about the merger or opposed the merger. The concerns expressed by commentators addressed: ratepayers paying merger costs, whether a decline in service quality would result from the merger; how NSP's plans to store nuclear waste and its requirement to fulfill the Prairie Island mandates would be affected; how the merger affects employee pensions; whether management would be moved out of state, the adequacy of the rate reductions, the adequacy and enforceability of the Stipulation Agreements, the adequacy of the notice to ratepayers, the accuracy of NSP's cost savings projections, the need for more winter fuel assistance for the needy, the potential for loss of Minnesota's authority to regulate the new utility to federal jurisdictions; and the concern that management of NSP and not customers or small shareholders are the primary beneficiaries of the proposed merger. There were also comments from the Minnesota Utility Investors and several individual investors who supported the merger. They generally believed that it would enhance stock values and were anxious for the merger to proceed. With a very few exceptions, the concerns raised by the public were

included among the concerns expressed and addressed by the parties in the Stipulation Agreements discussed below.

6. During December 1999 and January 2000, four separate Stipulation Agreements with interested parties resolving issues related to the proposed merger were filed with the ALJ. These Stipulations were between NSP and: CEC; the DOC; MEC; and the OAG.

7. Evidentiary hearings had been scheduled for the week of January 24 through January 28, 2000, but because all the major parties had reached stipulations with NSP, the Administrative Law Judge provided notice of a revised schedule for the proceedings. A brief hearing session was set for January 24, 2000 to enter the NSP Petition and Testimony, the Department of Commerce testimony, Stipulations, and public comments into the record. The schedule also provided that on January 28, 2000, the parties would make brief presentations regarding the Stipulations, and that questions would be addressed to the parties.

8. On January 24, 2000 the pre-filed testimony of eighteen witnesses was admitted into evidence. This included prefiled testimony of: Edward J. McIntyre (NSP), Paul E. Pender (NSP), Fredric C. Stoffel (NSP), Thomas J. Flaherty (NSP), Judy M. Pofert (NSP), Anne E. Hanson (NSP), John D. Winter (NSP), William H. Hieronymous (NSP), Richard J. Gilbert (NSP), Ricardo R. Astoria (NSP), Dale V. Lusti (DOC), Sundra Bender (DOC), Michael J. Michaud (DOC), Michelle A. St. Pierre (DOC), Marcus D. Gross (DOC), Nancy A. Campbell (DOC), Eilon Amit (DOC), and Kari L. Valley (DOC). In addition, the Stipulation Agreements described above and public comments were admitted into the record.

9. At the hearing on January 28, 2000, an agreement between NSP and GRE, Dairyland Power and SMMPA and an agreement between NSP, Energy Cents Coalition, Legal Services Advocacy Project and St. Paul Neighborhood Energy Consortium were admitted into evidence for informational purposes. Commission approval of these agreements is not requested. NSP, DOC, OAG, MEC and CEC made brief presentations relating to their respective Stipulations. These parties then responded to questions from the Commissioners, the Commission Staff and the ALJ .

10. Mr. Myer Shark submitted several separate written comments and appeared at the January 12, 2000 public hearing in Minneapolis. One of his concerns was the adequacy of the notice to ratepayers. He argued there was a denial of Due Process in the lack of notice and the participation rights of the public. Public Exh. 25. The Administrative Law Judge disagrees. Notices were published in newspapers of general circulation in NSP service areas and were stuffed in all customers bill envelopes. Feature articles about the merger and hearings appeared in newspapers. Due Process is a flexible concept that generally gives persons affected by state action the right to notice and to be heard. In this proceeding, in addition to the actions noted above, the interests of ratepayers and the public were largely represented by the public agencies: the Department of Commerce and the Office of the Attorney General. One group of large energy users, MEC, intervened and was granted party status. Beyond

that, individual ratepayers and other members of the public were given adequate notice and several opportunities to be heard. In these circumstances, there was no requirement that individual ratepayers be allowed to cross-examine witnesses, but, in fact, the public was allowed to ask questions of NSP and Department of Commerce representatives at the public hearings. The Administrative Law Judge law judges finds no defect in the notice to ratepayers and the public or in the opportunities given to ratepayers and the public to participate in this proceeding.

II. Description of the Proposed Transaction

11. The Merger Agreement anticipates the merger will be a tax-free, stock-for-stock exchange for shareholders of both companies, and will be accounted for as a pooling of interests. Upon completion, holders of New Century's common stock will receive 1.55 shares of the new holding company's stock for each share of NCE stock. NSP shareholders will receive one share of the new stock for each share of NSP's common stock. NSP Exh. 201, p.II-1.

12. The Merger Agreement proposes to create the combined company through a three-step process. First, NSP's electric and gas utility assets (the assets serving Minnesota, North Dakota, and South Dakota) will be "spun-down" into a new utility operating company subsidiary (referred to herein as "New NSP Utility"). Second, NCE will merge into NSP. NSP will be the surviving corporate entity in the merger and will be renamed Xcel Energy Inc. ("Xcel"). Third, Xcel will register with the Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act of 1935 ("PUHCA"), and will hold the combined assets and operations of NSP and NCE, including those of New NSP Utility. Id.

13. According to NSP, the operating utility subsidiaries (New NSP Utility, NSP(W), SPS, PSCo, Cheyenne and, if approved by all necessary regulatory agencies prior to closing, Black Mountain Gas) will hold the electric and gas assets used to provide utility service. Services provided to the operating companies will be provided by a subsidiary, referred to herein as "Service Company." Examples of the services provided by Service Company include legal, environmental, and internal audit. The provision of such shared services through a subsidiary service company is consistent with the approach used by registered holding companies providing these administrative and management services. Id., p. II-2.

14. NSP intends that the proposed NSP/NCE merger would be accounted for as a pooling-of-interests, because the merger meets all of the criteria prescribed for a pooling. NSP will request its independent accountants to issue an accounting opinion prior to the consummation of the merger indicating that the pooling method is appropriate and will provide a copy of the opinion in a compliance filing after the closing of the merger. Id., II-4.

15. The Merger Agreement provides that upon closing of the merger, James J. Howard, currently the Chairman and Chief Executive Officer of NSP, will serve as Chairman of the Board of Xcel and that Wayne H. Brunetti, currently President and

Chief Operating Officer of NCE, will serve as President and Chief Executive Officer. Mr. Howard will remain in the Chairman position until the first anniversary of the closing of the merger. Mr. Brunetti will succeed Mr. Howard as Chairman of the Board of Xcel after the first anniversary of the closing. Id., II-5. He will move to Minnesota and it is intended that the headquarters will remain in Minnesota.

III. Assessment of the Public Interest

16. NSP has entered in to separate Stipulations with four different parties to this proceeding: the Department of Commerce (DOC), Office of the Attorney General Residential and Small Business Utilities Division (OAG), Minnesota Energy Consumers (MEC) and Community Environmental Coalition (CEC). The Stipulations address both overlapping and independent issues. The signatory parties to each Stipulation have offered their Stipulations to the Commission and view the terms of each Stipulation as a package and consider each element in that package material to their decisions to the determination of the public interest or their withdrawal of objections to the proposed merger. No party has any objection to the provisions contained in other parties' Stipulations. NSP Exh. 221, p 1.

A. RATEPAYER PROTECTIONS

1. Rate Decrease and Rate Freeze

Position of the Parties

17. NSP projected net benefits to ratepayers from the merger. NSP estimated that non-fuel savings to Minnesota gas and electric customers from the merger, net of transition and transaction costs, totaled \$306 million over a ten year period. An additional \$20 million is expected by NSP to flow directly to customers through the fuel clause over this same period, providing \$336 million in merger related savings. NSP Exh. 203 Attachment IV-B-3 and IV-C-3.

18. The Department conducted a review of the claimed merger savings and determined estimated merger savings (net of merger costs) in the range of \$161 to \$198 million over this same ten year period to Minnesota customers. DOC Exh.100, DVL-4, Schedules 2 and 3, line 42.

19. Mr. Robert Carney submitted a written comment suggesting that the numbers supplied by NSP to show the cost savings were possibly overstated because there has been no experience with similar mergers and because it was in the interest of NSP's executives and its accounting firm to support the merger. Public Exh. 31. The professional analysts at the Department trimmed NSP's estimates significantly, but there is no reason to think they should be much lower. Because of the Stipulations, it was not necessary for NSP to put in rebuttal testimony to the Department's numbers. There have been many mergers of geographically separated non-utilities that have been based upon similarly expected administrative cost savings, so there is nothing so new about this aspect of this merger. Certainly proponents and experts hired to support a position will often present the best picture; regulators expect that. But the suggestion

that NSP and its accounting firm would grossly inflate numbers is ludicrous. The Administrative Law Judge is comfortable that the projected cost savings presented by NSP and the Department are sufficiently accurate for the purposes of this proceeding: determining appropriate rate reductions and freezes to obtain reasonable benefit for ratepayers and assurance of continued viability of energy supplies to Minnesotans.

20. The OAG and MEC did not conduct separate reviews of the potential merger related savings but rather sought to create greater certainty that Minnesota customers would share directly in any cost savings benefits of the proposed merger, in the form of rate reductions. NSP Exh. 221, p. 2.

21. In its Application, NSP proposed a gas and electric rate freeze from the date of the filing through June 1, 2003. NSP proposed a rate review at this time, after it had amortized merger related costs. These costs could be sought in the event that any of the exceptions to the freeze were met or the Commission ordered a rate case resulting from an earnings investigation. NSP Exh. 205, p. V-1.

22. The proposed rate freeze was designed to act as a rate ceiling as NSP did not propose to limit any person's right to seek an investigation pursuant to Minn. Stat. § 216B.17 and NSP committed to a rate review in 2003. Id.

23. NSP proposed two exceptions to its rate freeze commitment. The first would allow NSP to seek a base rate increase in the event that earnings fall below 9%. The second exception allowed for a rate increase in the event of industry restructuring. The purpose of the first exception is to ensure that the financial integrity of NSP is not jeopardized, while the second allowed for the uncertainty regarding requirements that may be imposed in restructuring. The rate freeze applied to base rates only and allowed for the automatic adjustment of fuel charges and miscellaneous rate changes. Id. at p. V-2.

24. The DOC evaluated NSP's current earnings in light of anticipated year 2000 merger savings and determined that no rate reduction was required. DOC Exh.100, pp. 37-44; DOC Exh. 111, p.4.

25. The OAG was concerned that the merger had the potential to increase certain transmission costs, capital costs and other costs and could have higher transaction and transition costs to integrate the two companies than those projected by NSP. The OAG was also concerned that the proposed merger would benefit shareholders without providing for similar benefits to ratepayers. Given these concerns, the OAG believed additional conditions, including a rate reduction and longer rate freeze, were necessary to ensure ratepayers the opportunity to share in the merger's expected benefits and to provide better protection from the merger's potential risks. NSP Exh. 214, pp. 1-2; NSP Exh. 221, p. 3.

26. MEC was concerned that the proposed merger would significantly benefit shareholders without providing assurance of corresponding benefits to ratepayers. MEC also had concerns that the proposed merger posed other risks to customers, as

set forth in its Petition to Intervene in this proceeding. As such, MEC believed additional conditions, including a rate reduction, were necessary in order to appropriately counterbalance those risks. Id.

27. The OAG, MEC and DOC all believed that a longer rate freeze was appropriate. Consistent with the discussion above, both OAG and MEC believed that benefits of the merger would be enhanced by a longer rate freeze. The Department also recommended a longer rate freeze period (4 years from Commission approval of the merger) to enhance ratepayer benefits from the merger. DOC Exh. 111, pp. 3-4; NSP Exh. 221, p. 3.

28. The OAG, MEC and DOC agreed that a 9% threshold was a reasonable earnings floor. They also agreed that industry restructuring was an appropriate exemption and that the freeze applies only to base rates. DOC Exh. 111 , pp. 5-7; NSP Exh. 214, Sections II.A and B.

29. The DOC also recommended that NSP should have to earn less than 9% on a historical basis as it had concerns about the accuracy of NSP's budget forecasts submitted in its annual jurisdictional report. DOC Exh. 111, pp. 7-8.

Stipulations and Agreements

30. The OAG and MEC Stipulations provide for identical overall electric rate reduction provisions over the rate freeze period. NSP will reduce base rates by the equivalent of specific percentage reduction calculated on 2000 budgeted revenues. An approximate base rate reduction of \$9 million in 2001 and an additional \$1 million in 2002 through 2005 will be applied to NSP's electric customer rates subject to the exceptions from the base rate freeze discussed below, totaling approximately \$50 million. The Agreements provide NSP some flexibility to begin sharing benefits in the Year 2000 either through a rate reduction or rate credit. NSP Exh. 214, Section I; NSP Exh. 215, Section I.

31. The OAG Agreement provides that the reduction for residential and small business customers shall first be applied to the customer charge, while the MEC Agreement provides that the reduction shall first be applied to the energy charge. Id. NSP, OAG and MEC have agreed that NSP would effectuate these provisions by implementing the OAG Stipulation rate design on its Residential and Small General Service Tariffs and implementing the MEC Stipulation rate design on its General Service Tariffs. NSP Exh. 221, p. 4. The DOC Agreement provides that NSP will file for Commission approval, the calculation of the rate reduction for each customer class and its reflection in rates, through new tariffs, for each class. NSP Exh. 213, Section VIII.A.

32. The OAG and MEC Agreements contain the exact same base rate freeze conditions. The extended base rate freeze applies only to electric rates. The rate freeze extends until January 1, 2006. NSP Exh. 214, Section II.A.1 and NSP Exh. 215, Section II.A.1. In addition to clarifying the two exceptions included in NSP's Application, the Stipulations contain a provision that allows NSP to file a petition to increase rates

beginning as of January, 1 2004 if its long term capacity costs for that year (or any subsequent year) exceed its year 2000 costs by \$50 million. The Agreements allow NSP to file a general rate case if it has earned less than 9% or is reasonably expected to earn less than 9% on a projected basis. Also, NSP may file a rate increase only in the event of implementation of restructuring (not the passage of a law authorizing retail choice). NSP Exh. 214 Section II.B and NSP Exh. 215, Section II.B.

33. The Agreements provide that rate changes resulting from currently authorized automatic recovery mechanisms are permitted during the term of the rate freeze and do not violate the terms of the Stipulations. The automatic recovery mechanisms currently permitted by law consist of : (1) the fuel clause adjustment mechanism; (2) conservation improvement costs and incentives; (3) costs or investments associated with the Prairie Island mandates, including the recovery of wind and biomass contract or investment costs and recovery of the annual cask payments for renewable development. In addition, should NSP need to reinstate an income neutral charge to fund the low-income rate mandates pursuant to Minn. Stat. § 216B.16, Subd.14, such charge is not prohibited by the rate freeze commitments. Id., Sections II.A and B.

34. Finally, the Agreements provide for assurance that NSP will not seek to undo the rate freeze as a result of unbundling (not retail choice); substituting tariffs; or expanding the automatic adjustment provisions beyond those discussed above. The provisions do allow for new tariffs or tariff changes in the event tariffs expire as long as there is an alternative base rate that is currently on file and subject to the rate reductions in Section A above. Further it assures that parties have the right to seek a Commission investigation of NSP's rates and Commission ordered rate decreases beyond those agreed to in the Stipulations pursuant to Minnesota statutes. The freeze allows the Commission to act on pending tariff filings and continues to permit automatic adjustment of charges as described above. Id., Section II.A. 1-4.

35. The DOC Agreement adds two additional terms to the rate freeze protections. First, the Agreement extends the gas base rate freeze such that interim rates cannot become effective until January 1, 2004 (unless NSP qualifies under the two gas rate freeze exceptions). The Stipulation clarifies that the gas base rate freeze exceptions are identical to the language for electric rate freeze exceptions for earning less than 9% and industry restructuring as contained in the OAG Agreement. The Stipulation does not modify and thus allows for the changes in rates due to the automatic adjustment of charges for the Purchased Gas Adjustment and CIP costs and incentives as proposed in NSP's filing. NSP Exh. 213, Section III.B.

36. Second, the DOC Agreement provides a procedural safeguard in the event that NSP seeks to rely on a projected test year to demonstrate that either its gas or electric earnings are reasonably expected to be less than 9%. It requires NSP to make a pre-filing at least 60 days in advance of a rate case application so that parties can begin their review of whether NSP has satisfied the rate freeze exception prior to the filing. Parties also have 30 days after filing of the actual rate case petition to submit

comments in the event that they believe the earnings threshold has not been satisfied. Id., Section III.C

Public Comments

37. Mr. Shark argued that because the merger will give Xcel additional leverage in the market to cut costs, there should be a mechanism to ensure that Minnesota customers share ratably in the cost savings. He suggests that the use of “Rolled in Rates” or a similar formula to achieve that end be made a condition of merger approval. Public Exh. 10. Mr. Shark also stated that his interests as a residential customer were not adequately protected by the terms of the OAG Agreement. Public Exh. 34.

Reasonableness of Stipulations

38. The Administrative Law Judge finds that the provisions in the Stipulations relating to rate reductions and rate freeze conditions are reasonable and should be adopted. The requirements of the Stipulations provide assurance that the proposed merger satisfies the public interest standard of Minnesota law, assures tangible net benefits to ratepayers, and does not harm ratepayers or the public interest. The proposed rate reductions address the concerns of the OAG, MEC, and Mr. Shark that ratepayers should benefit directly from the proposed merger rather than from the potential realization of NSP's estimated savings. Since little of the projected merger savings arise from any anticipated production cost savings, there would be little benefit to be expected from using “Rolled in Rates.”

39. NSP, OAG and MEC expect that the electric rate reduction will flow approximately \$24 million to ratepayers during the first three years of the merger (assuming a July 1, 2000 closing date). This compares with NSP's projected non-fuel benefits (net of amortized transition and transaction costs) of approximately \$2.7 million. NSP Exh. 214, Section I.A and NSP Exh. 203 Attachment IV-B-3 and IV-C-3. Even excluding costs that NSP agreed that it must record below the line (i.e. non-tax deductible transition costs and the related tax gross up) from the amortization of merger costs, the ratepayer benefit of \$24 million still exceeds the net benefits to NSP during this period. Derived from NSP Exh. 203, Attachments IV-B-3 and IV-C-3 and DOC Exh. 111, p.14. It is not until 2004 that NSP projects to recoup savings that would exceed the direct ratepayer benefit. During this rate freeze the potential for further rate reductions still exists as the Stipulations do not preclude the Commission's ability to investigate NSP's earnings and if appropriate reduce rates. In fact, other provisions of the DOC Agreement increase scrutiny of NSP's earnings. Additionally, ratepayers may experience a portion of the merger related cost savings benefits indirectly, through the extended rate freeze provisions discussed below, as merger benefits should help to offset other cost increases. The public interest does not require a reduction in gas rates because a reduction on top of the current low earnings would only bring NSP closer to the 9% trigger, thus increasing the probability that the proposed freeze would end early. DOC Exh. 100, DVL-7, Sch. 2; NSP Exh. 221, pp. 5-6.

40. The extended rate freezes provide additional benefits to ratepayers beyond those proposed in the Application. Both the gas and electric freeze terms will extend for longer periods, providing rate stability for customers as NSP has to absorb cost increases that it may have otherwise been able to recover in the form of increased rates.

41. The exemptions to the rate freeze are also reasonable. Because the utility is currently the sole provider of service, low earnings can increase capital costs to the ultimate detriment of ratepayers. Thus, it is reasonable to have some earnings floor, at which point NSP can seek rate relief. The DOC Stipulation provided an additional safeguard that NSP's use of projected earnings as an exemption to the freeze can be carefully reviewed to assure that NSP is indeed in compliance with the Stipulation condition that it "reasonably expects" to earn less than 9% on a projected basis. This procedure addresses the DOC's concerns regarding the adequacy of NSP's budget forecasts by providing sufficient up-front opportunity to verify the adequacy of the projections. NSP Exh. 221, p. 6.

42. It is appropriate to allow NSP to adjust rates in the event of the implementation of restructuring. Uncertainty regarding restructuring requirements and the fact that current rates may not have cost based components makes this exemption reasonable.

43. Finally, the "capacity out" provision to the electric rate freeze will require NSP to demonstrate a non-merger related cause for relief during the 2004-2005 time period. The capacity out addressed the parties' concern that any rate freeze exemption other than the two proposed in NSP's Application clearly be driven by non-merger related events.

44. The clarifications regarding scope, automatic adjustments, tariff filings and rate investigations serve to clarify NSP's rate freeze proposal, as modified by the Stipulations, so as to minimize disputes over future applicability.

2. Earnings Reporting and Treatment of Merger Costs

Position of the Parties

45. NSP proposed that one-time transition and transaction costs be amortized over a three year period after merger consummation for regulatory reporting purposes. It also asserted that all transition and transaction costs should be eligible for recovery as long as NSP demonstrates that merger benefits outweighed these costs. The Company proposed a rate review in 2003 after merger costs had been amortized. NSP Exh.205, p. V-1.

46. The DOC recommended that in the event that NSP earned more than its authorized return on equity that it provide additional detailed information within 30 days of filing the jurisdictional annual report to demonstrate that current rates are just and reasonable. DOC Exh. 111, pp. 8-9. In addition, it recommended that certain non-deductible transition and transaction costs and the related tax-gross up be recorded

below the line and not eligible for recovery from ratepayers. DOC argued that the non-tax deductible portion of transition costs was an unreasonable expense. It also argued that all transaction costs (which are also non-tax deductible) should be a shareholder expense as shareholders benefit from the merger. DOC requested that all non-tax deductible transition and transaction costs and related tax gross ups be recorded below the line. Id., pp. 9-14.

Stipulations and Agreements

47. The DOC Agreement stipulates that NSP will provide additional information in the event that its earnings reported in the annual jurisdictional report exceed its authorized return by 100 basis points or more or upon request by the DOC. The Stipulation allows the utility until June 30 to submit this additional information. The DOC Agreement requires non-tax deductible transition costs and the related tax-gross up to be reported below the line and not eligible for rate recovery. NSP Exh. 213, Section V.A.

48. With respect to transaction costs and the related tax gross-up, NSP agrees not to include them in demonstrating that it is earning below the 9% rate freeze threshold or to seek recovery in the event that it initiates a general rate increase filing. Id., Section V.B

49. Eligible merger related costs are to be amortized for regulatory reporting purposes over three years from consummation of the merger and recorded above the line in the jurisdictional annual report. However, DOC and NSP agree that NSP retains its burden of proof in any rate proceeding in which it seeks to recover unamortized eligible merger costs of showing that the Minnesota jurisdictional merger benefits outweigh these jurisdictional costs. Id., Section V.C. Finally, the Stipulation does not allow for recovery of the costs associated with any transmission upgrades required by FERC to mitigate concerns related to market power. Id., Section VI.C.

Reasonableness of Stipulations

50. The Administrative Law Judge finds that these additional reporting and merger cost recovery conditions are reasonable. The additional reporting requirements are triggered by a reasonable return on equity band or upon DOC request thereby assuring adequate information in the event of a potential overearnings situation. This provision provides heightened scrutiny of NSP earnings in the event that greater than anticipated merger savings or other unanticipated events lead to returns significantly above currently authorized levels and provides for additional ratepayer protections compared to NSP's proposed one-time rate review.

51. Disallowance of the non-tax deductible portion of transition costs and transmission upgrades resulting from FERC requirements increases the protections to ratepayers by assuring that these costs cannot be recovered in any rate proceeding regardless of the level of merger benefits. The non-recovery of transaction costs in the event of a rate increase initiated by the Company helps to strengthen the rate freeze

provision since these amounts cannot be included in calculating whether NSP has or is anticipated to earn below 9%. If NSP initiates a rate increase during the rate freeze period, it also assures that regardless of any showing of benefits ratepayers will not pay for these costs. The DOC Stipulation does allow NSP to seek recovery of unamortized transaction costs only up to the amount of merger benefits in the event of a Commission ordered earnings investigation. However, the opportunity to seek recovery is appropriate since if NSP is in an overearnings situation it may be a result of greater than anticipated merger savings. In this situation (and in the event NSP seeks recovery of eligible transition costs), NSP and DOC agree that NSP retains its burden of proving that Minnesota jurisdictional merger benefits outweigh costs, thereby protecting ratepayers from any net costs resulting from the proposed transaction.

52. The proposed 3 year amortization of the total eligible merger costs incurred within two years of closing, for regulatory reporting purposes, as proposed in NSP's filing and the proposed reporting of eligible merger related costs are reasonable and consistent with past Commission practice. (See In the Matter of Interstate Power, Docket No. E,G 001/ PA-96-184).

3. Service Quality and Low- Income Assistance

Position of the Parties

53. Recognizing that NSP and NCE intend to reduce staffing in certain areas in order to obtain the efficiencies of the merger, NSP's Application proposed reporting requirements for certain service quality measures to provide assurance that the reductions not adversely impact service quality. Specifically, NSP proposed to report on meter reading and billing as it is currently required to do under the terms of the Commission approved Customer Metering and Billing Settlement (Docket No.E,G002/CI-97-863). In addition, NSP proposed to report on three additional service quality measures: telephone response time; electric service reliability and customer complaints (measured as complaints received by the MPUC). NSP Exh. 205, p.V-3-5.

54. The DOC recommended that service performance standards be created for the measures included in the Metering and Billing Settlement, electric reliability, gas reliability, customer complaints and telephone response time. The standards were typically based on historical year averages with allowance for a 5% deviation. The DOC initially did not recommend a specific penalty scheme but rather recommended that the subject of penalties be discussed and applied after it was determined that NSP failed to meet the performance standards. DOC Exh. 108, pp. 13-24.

55. The OAG requested assurance that service quality not decline and consistent with its position in Docket No. E,G002/CI-97-863 desired both customer specific remedies for those most inconvenienced by poor service quality and overall performance penalties be imposed. The OAG believed that extension of the Metering and Billing Settlement, due to expire this year, as well as an expanded measure for electric service reliability were warranted. In addition, the OAG wanted some continuation of supplemental support for low-income customers. NSP Exh. 221, p. 9.

56. NSP believed that three of the DOC's proposed gas performance standards were not appropriate to subject to penalties. Some hits are not due to NSP error and thus this measure should not subject it to a penalty. In addition, it would be difficult to establish duration and number of customers affected standards without historical experience. NSP was also concerned that with respect to both duration and frequency, higher numbers (as a result of automatic valve closings, for example) could be an indicator of a safer system, designed for better service quality. Id.

57. NSP was also concerned about measuring customer complaints to its Customer Advocacy Unit as was suggested by the DOC. NSP established a Customer Advocacy Unit two years ago staffed with people that specialize in handling a wide variety of complaints. The number of complaints referred there is growing each year as the group becomes more well known throughout the Company and the community. Id.

58. The DOC and OAG Agreements extend the customer specific remedies, penalties and reporting requirements of the Metering and Billing Settlements (the Service Quality Plan) through 2005. Exh. 213, Section IX.C and NSP Exh. 214, Section IV.A.

59. The DOC Stipulation provides for two categories of new standards. The first category, referred to as Performance Standards, include a quantifiable standard and subjects the Company to penalties for failure to meet each standard. The Performance Standards are:

Telephone Response Time from the centralized customer call center: A minimum of 78% of total calls answered within 20 seconds measured on an annual basis.

Customer Complaints: No more than 450 complaints received by the MPUC each year.

Mislocates per one thousand customers: Not more than .95.

In addition it incorporates electric reliability standards and customer specific remedies in the OAG Agreement discussed below. The DOC Stipulation applies a penalty of \$100,000 for the failure in any year of NSP to meet any of these performance standards. NSP Exh. 213, Section IX.A and D.

60. The second category of new standards is the Additional Reporting Requirements which include: number of gas line hits; annual number of firm retail customers that experience an unplanned interruption; duration of unplanned gas interruptions; and customer complaints to NSP's Customer Advocacy Unit. Id., Section IX.B. The DOC Stipulation requires NSP to report this data in its expected February 28, 2002 Report, including the last two quarters of 2000 as well as 2001.

61. The OAG Stipulation contains a measure for System Average Interruptions Duration Index (SAIDI) and System Average Interruptions Frequency

Index (SAIFI). SAIDI cannot exceed 1.9 and SAIFI cannot exceed 1.0 plus a 5% deviation margin. The OAG Stipulation also creates a customer specific remedy of \$30 for customers that experience six or more sustained interruptions. NSP Exh. 214, Section IV.B. The OAG Stipulation applies a penalty of \$100,000 for the failure in any year of NSP to meet any of the new performance standards. The DOC Stipulation incorporates this by reference. NSP Exh. 213, Section IX.D

62. Any penalty payments must be recorded below the line and are not eligible for rate recovery. NSP Exh. 213, Section IX.A and E; NSP Exh.214, Section IV.B.2. Finally, the OAG Stipulation requires an annual payment of \$300,000 each year in supplemental payments for low-income customers. NSP Exh. 214, Section III. The DOC makes clear that these payments are from shareholders and that NSP will work with interested parties on the best use of the funds. NSP Exh. 213, Section VIII.E.

Reasonableness of Stipulations

63. The Administrative Law Judge finds service quality provisions of the Stipulations provide ratepayers with reasonable protections against the potential for a decline in service quality resulting from the merger and should be adopted. The Stipulations further the public interest by providing additional service quality related benefits to customers. The continuation of the Metering and Billing Settlement plus the addition of five new performance standards now subjects the Company to scrutiny in most areas of customer service. The standards, penalties and customer specific remedies provide sufficient regulatory oversight that will serve to protect against declines in service quality.

64. The distinction between performance standards and additional reporting requirements is an appropriate balance when it is not clear as to whether an increase in the measure is an indicator of a decline in quality or where there is insufficient data to establish a reasonable performance threshold. Providing this information as part of the Service Quality Plan will build the relevant data to evaluate future service quality performance measures while allowing the parties to assess whether these measures are meaningful indicators of service quality.

65. The penalty scheme is consistent with the billing measure penalty approved in the Metering and Billing Settlement (Order dated March 3, 1998 in Docket No. E,G002/CI-97-863) and will serve to reinforce compliance with the standards. The fact that any penalty payments must come from shareholders assures that compliance is a shareholder responsibility. Similarly, the provision for continued low-income support at shareholder expense creates a ratepayer benefit for one group of customers without harm to remaining customers thereby satisfying the public interest standard.

4. Transmission Reliability

Position of the Parties

66. In its Application NSP indicated that it planned to join the Midwest Independent Transmission Operator (“MISO”) as a condition of its FERC Application.

NSP indicated that the MISO would provide benefits as it is a large ISO which would: increase access to distant generation resources at non-pancaked transmission rates; improve system reliability by internalizing transmission constraints; and facilitate competition in the wholesale market by placing functional control of NSP's transmission assets under an independent entity. NSP also indicated MISO was flexible to different structures such as an independent transmission company, which was NSP's pre-merger approach to creating or joining an ISO. NSP Exh.207, pp. VII-2-4.

67. The DOC raised general concerns regarding transmission reliability and NSP's decision to join MISO on transmission reliability. The DOC referenced plans by the Mid-American Continent Power Pool (MAPP) to form a Regional Transmission Operator ("RTO" or ISO) and questioned whether reliability would be harmed if Minnesota utilities chose to join separate ISOs. The DOC also raised concerns about the adequacy of supply in the region and how functions of the NERC regional reliability councils will be separated in the future. DOC Exh. 105.

68. Since the time DOC prepared its testimony, MAPP members rejected a proposal to create a separate MAPP RTO. Rather MAPP is currently focusing on a Memorandum of Understanding with MISO in which MAPP resources would be utilized in an expanded MISO if a significant portion of MAPP members joined the MISO. NSP believes the expansion of MISO to include MAPP members will facilitate regional transition to an RTO structure in a cost-effective way that should enhance grid reliability. NSP Exh. 221, p. 12.

69. The DOC Agreement provides certain coordination functions regarding transmission issues to assure that state regulators have a voice in this new regional transmission entity. NSP Exh. 213, Section VI.

70. The DOC Agreement requires NSP to support an unbundling of regional reliability functions in MAPP. The purpose of this provision was to assure that NSP would effectively participate in the maintenance of certain generation related reliability functions such as sharing of operating reserves and maintenance of planning reserves. NSP Exh. 221, p. 12. NSP also agreed to work to expeditiously delineate which reliability functions would be handled by MISO consistent with ongoing developments at NERC and FERC Order No. 2000. The Company also provided assurance that it will assist MISO in its transmission planning function by providing information on projected generation needs. NSP Exh. 213, Section VI. A.

71. The DOC Agreement also provides processes for increased information sharing on transmission issues, both on an informal and formal basis. These commitments include seeking telecommunication participation in MISO meetings, meeting at least quarterly on transmission issues with DOC and other interested parties; making a resource plan filing on transmission issues in 2002; and agreeing to establish a process to obtain better stakeholder input into transmission planning issues. Id., Section VI.B.

Reasonableness of Stipulations

72. Transmission unbundling is being largely directed by FERC policy. Thus, the Stipulations set certain objectives that NSP should seek to further in the development of the MISO as the Regional Transmission Organization. The Agreement also seeks to have NSP work to allow for facilitation of state regulatory input into the ongoing MISO processes. The DOC Stipulation requires NSP to work to promote an unbundled future that assures reliability for generation and transmission. It acknowledges that the state should have a voice as the MISO makes transmission management decisions and that while NSP cannot control the final outcome it can provide sufficient information such that the state is an effective participant in these policy decisions. It further provides assurance that transmission issues will be the subject of more regular information sharing, thus allowing the state to work with NSP to help define this uncertain future. While the commitments in this section are process oriented, this is reasonable as NSP cannot commit other key parties to any specific outcomes or results.

B. IMPACT ON REGULATORY OVERSIGHT

1. Federal Preemption

Position of the Parties

73. NSP stated that as a result of the merger Xcel Energy Inc. will become a registered holding company subject to regulation by the Securities and Exchange Commission (SEC) under the Public Utilities Holding Company Act of 1935(PUHCA). The SEC approves allocations among operating companies (such as New NSP Utility) and other affiliates for non-power goods and services through a "Services Agreement" with a separate affiliated Services Company to be named Xcel Energy Services, Inc. Allocation of power costs among the operating companies is subject to the jurisdiction of the FERC and is determined by the Joint Operating Agreement ("JOA"). In order to address concerns caused by federal preemption, NSP waived its right to raise federal preemption as a defense to any claim of imprudence under the Services Agreement or the JOA. The scope of the imprudence waiver under the JOA is broader than the waiver currently in place in the NSP(Minnesota) and NSP (Wisconsin) Interchange Agreement as the latter allows for removal to FERC while the waiver under the JOA does not. NSP Exh. 208, pp. VIII-4-8.

74. The DOC filed testimony concerning the scope of NSP's waivers and requested that NSP waive its rights regarding allocation of expenses as well as imprudence for purposes of the JOA and Service Company. The DOC also requested a hold harmless provision in the event that a Commission order is actually preempted, as NSP cannot waive federal preemption on behalf of all potential parties. DOC Exh. 104, pp. 11, 16.

75. The CEC also raised concerns about federal preemption as it related to the scope of the imprudence waiver. It also requested a hold harmless provision in the

event that a third party raised preemption as a challenge to a MPUC decision. The CEC was also concerned that the JOA not be used as a means of avoiding state integrated resource planning requirements. Although the current JOA subjects New NSP Utility to these requirements, CEC was concerned that the JOA could be amended to avoid such requirements in the future. NSP Exh. 221, p. 13.

76. The DOC agreement provides for a waiver of imprudence with respect to the Service Company (including allocation methods) and the JOA. Because there was substantial agreement on FERC allocators (the DOC preferred an energy allocator rather than a demand allocator), the parties agreed to work together to address the one DOC concern and to consult the DOC before making further changes to the JOA, Services Company and Interchange Agreement allocators. NSP Exh. 213 Section II.B.

77. NSP's waivers are binding on New NSP Utility and survive termination of the DOC Stipulation. NSP Exh. 213, Section X.A and D.

78. The CEC Agreement also provides that NSP will not raise preemption as a defense to MPUC Integrated Resource Planning decisions, assuring continued Commission authority in this area. NSP Exh. 215, Para. 6.

Reasonableness of Stipulations

79. The Administrative Law Judge finds that the provisions of the Stipulations strengthen the Company's waiver of federal preemption, are reasonable and should be adopted. The merger raises several concerns regarding the Commission's jurisdiction. First, because this merger creates a Holding Company, and a Service Company, there is the issue of whether this Commission's jurisdiction over New NSP Utility is diminished because the Service Company would be under SEC jurisdiction. Specifically, right now a significant portion of the costs currently incurred by NSP are subject to the direct regulation of this Commission. In the future, many of these costs will be incurred by the New Service Company and the costs will be assigned or allocated to the New NSP Utility. The assignment or allocation of these costs and whether the costs are prudently incurred and what allocation method to use, will be subject to the jurisdiction of the SEC.

80. Similarly, FERC has authority over the Joint Operating Agreement, which allows the companies to coordinate planning, operations and the wholesale marketing activities, and the DOC was concerned that costs be prudently incurred and that revenues and costs associated with power purchases and sales among the operating companies are fairly allocated. The expansion of FERC jurisdiction is limited to sales and purchases between the operating companies or joint sales and purchases on behalf of one or more operating companies.

81. Commission jurisdiction is necessary to ensure that this Commission has authority over pricing, assignment and allocation of revenues and expenses that flow through to Minnesota consumers in order to ensure just and reasonable rates. The

terms and conditions in the DOC and CEC Stipulations remedy these shortcomings and potential loss of jurisdiction.

82. Under the Stipulations NSP waived federal preemption both as a defense to any claim of imprudence and as a basis to challenge a Commission decision disallowing costs based on imprudence. The associated hold harmless provisions assure that the intent of the waivers will be effectuated even in the event anyone successfully challenged a Commission order on a claim for which NSP waived federal preemption. When combined with procedural protections on future allocation changes, the Stipulations assure that state regulatory oversight as a result of federal preemption under the JOA and the Services Company will not be adversely affected. The concerns raised by the DOC and CEC Agreements, have been effectively addressed by broadening the scope and strength of NSP's commitment to be subject to state regulatory requirements. As a result, the Commission retains its authority to assure that rates charged to NSP's customers are just and reasonable.

2. Retention of Other Regulatory Oversight

Position of the Parties

83. In its Application, NSP pledged continued access to books and records of New NSP Utility. It also asserted, that except for the issues related to federal preemption above, the Commission would continue to regulate the rates and terms of service much as it does today. NSP Exh. 208, p.VIII-4.

84. The DOC raised the concern that NSP did not include a specific provision regarding access to the books and records of the Services Company and those associated with the JOA. DOC Exh. 104, p. 16. The DOC also sought such a provision in the Service Agreement between New NSP Utility and the Services Company. DOC Exh. 106, pp. 10, 13. The DOC also wanted assurance that NSP would continue to comply with the affiliated interest statute and rules. DOC Exh. 104, pp. 16-17. The DOC raised specific concerns about the planned affiliated relationship between New NSP Utility and PSCo or other appropriate entity that would be utilized to effectuate integration of the gas businesses to create anticipated savings. Specifically, the DOC was concerned that the allocation of costs used in deriving jurisdictional savings may result in a subsidy of PSCo customers by NSP ratepayers. The DOC also questioned the sufficiency of reporting. DOC Exh.110, pp. 35-37.

85. CEC raised a similar concern about the need to file affiliated interest agreements for Commission approval. Both DOC and CEC wanted assurance that as a result of change in corporate structure and federal regulatory oversight that New NSP Utility would continue to fulfill all state regulatory requirements. The CEC also raised concerns that NSP might attempt to use the merger to escape the Prairie Island mandates. CEC did not want either the merger or NSP's plan to transfer the operating licenses to the NMC to interfere with compliance with the Prairie Island mandates. NSP Exh. 221, p. 15.

86. The DOC Stipulation specifically provides for full access to all the book and records of New NSP Utility as well as access to those of its affiliates as it relates to the Interchange Agreement with NSP (Wisconsin), the JOA and the Services Agreement with Xcel Energy Services, Inc. with the intent of broadening the scope of such access. NSP Exh. 213, Section I.A.

87. The DOC and CEC Agreements provide that NSP will continue to comply with all affiliated interest statutes and rules related to the Service Company and the DOC Agreement provides for certain filing requirements for the Services Company affiliated interest agreement. This assures that the Services Agreement will contain a clause assuring access to books, records and other information related to the Services Company. The DOC Stipulation also requires NSP to file any proposed gas, facilities or resource sharing agreement between New NSP Utility and an affiliate as an affiliated interest agreement which must include cost allocation methods and proposed reporting requirements for any joint utilization of gas resources to ensure that Minnesota ratepayers interests are protected in the event NSP gas capacity is diverted for PSCo's use. Both sections of the DOC Agreement assure that NSP will address the appropriateness of allocators and/or reporting requirements. NSP Exh. 213, Sections I.A and B and Section VIII.F; NSP Exh. 216, Para. 6.

88. The provisions relating to access to books and records and compliance with affiliated interest statutes and rules apply to New NSP Utility and survive termination of the DOC Stipulation. NSP Exh. 213, Section X.A and D.

89. The CEC Agreement contains a provision that requires New NSP Utility to comply with all Minnesota statutes and rules, assuring compliance with mandates applied to a public utility that operates nuclear power plants. NSP will be subject to these requirements of Minnesota law even if its nuclear operating licenses are transferred to the NMC. NSP Exh. 216, Para.3.

Reasonableness of Stipulations

90. The Administrative Law Judge finds that these provisions of the Stipulations are reasonable and should be adopted. The Stipulations assure continued regulatory oversight and compliance with respect to access to books and records, affiliated interest agreements, and compliance with Minnesota statutes, including those directed at companies, such as NSP that operate nuclear generating facilities. Although NSP asserted that these requirements would continue to apply to New NSP Utility, the Agreements create additional specificity around NSP's general commitment that assures future compliance. Because these commitments provide additional clarity to the scope of Commission oversight of New NSP Utility, they provide reasonable assurance that ratepayers will be adequately protected from corporate structure changes resulting from the proposed merger.

C. IMPACT ON COMPETITION

Position of the Parties

91. NSP and NCE engaged PHB Hagler Bailly, Inc. ("PHB") to analyze the competitive impacts of the proposed merger using the approach required by FERC. The objective of the analysis was to determine how the combination of the two firms affects competition on wholesale energy markets. Under this analysis, the market concentration of the existing firm is not an issue; rather, the analysis seeks to determine the change in concentration that results from the merger. Market concentration under this analysis is measured by the Herfindahl-Hirschner Index ("HHI"). Based on its analysis, PHB concluded that the merger will not have an adverse impact on competition. NSP Exh. 211.

92. Law and Economics Consulting Group ("LECG") performed a vertical market-power analysis. This analysis, contained in the testimony of Dr. Richard Gilbert in the FERC proceeding and incorporated by reference, considers whether the Parties have control over natural gas deliveries either through interstate pipelines (Viking and WestGas) or the distribution companies of NSP and PSCo such that Xcel could control the price of the input fuels in a manner that raises prices to competitors and favors the Parties' own generation. NSP Exh. 210.

93. The DOC analysis of competitive issues reached the same conclusions with respect to competitive concerns as NSP's witnesses. The DOC concluded that the proposed merger is unlikely to have an adverse impact on competition. DOC Exh. 103, pp. 12, 15.

94. The OAG and MEC raised concerns about the ability of a larger entity with high pre-merger market concentration to impede development of new technologies or otherwise impair the development of a more competitive market structure. NSP Exh. 221, p. 17.

95. The OAG and MEC Agreement both require NSP to make a generation cost disclosure filing with the Commission. The timeframe for the MEC Agreement is sooner but does not conflict with the "no later than six months" provision of the OAG Agreement. The DOC Stipulation requires that NSP identify the costs allocated to generation in this filing. NSP Exh. 214, Section V and NSP Exh. 215, Section III; NSP Exh. 213, Section VIII. B.

96. The OAG Agreement provides the general method by which NSP will file to calculate this unbundled generation cost. NSP Exh. 214, Section V.A. It also provides that NSP inform customers of the sources of its supply on a biannual basis. NSP Exh.214, Section V.B. The DOC Agreement clarifies the others in requiring NSP to identify the costs it is assigning to generation in any future Commission filing. NSP Exh. 213, Section VIII.B.

97. The OAG Stipulation also calls for an Aggregation Study to determine the benefits of certain forms of aggregation in a retail choice environment. NSP Exh.214,

Section VI. The DOC Stipulation expands the scope to require an additional study that shows the affect on all customer classes. NSP Exh. 213, Section VII.C.

98. The OAG Stipulation calls for a study of distributed generation and a subsequent tariff filing standardizing interconnection terms for facilities of up to at least 500 Kw. The tariff must be economic but is intended to assure that NSP does not attempt to hamper the deployment of these new technologies. NSP Exh. 214, Section V. The CEC and DOC Agreements also require a study of distributed generation. The CEC and DOC and OAG provide that NSP's evaluation of distributed generation take into account avoided transmission and distribution costs as well as account for environmental costs. The CEC Agreement raises the study size to 5000 kW or 5 MW. The DOC Agreement requires that tariff applicability be extended to 2MW. NSP Exh. 213, Section VIII.C; NSP Exh. 216, Para. 5.

99. Although the CEC Agreement refers to a study in NSP's July resource plan, the other agreements require it to be filed by the end of 2000 as a supplement to its resource plan filing. CEC and NSP indicated a willingness to work on a study that allows adequate preparation time and that will be filed no later than the end of 2000. NSP Exh. 221, p.18.

100. The MEC Agreement requires NSP to file a tariff that allows NSP to buy power from its large customers. NSP did this on an ad hoc basis last summer at times of system-wide needs and as a means of mitigating the impact on the company and customers of price spikes during those periods. In addition to providing system wide benefits in these circumstances, MEC sees such a buy back program as a reasonable way to avoid a portion of high peak hour costs. Therefore, the parties agreed to work cooperatively on a tariff filing to be presented for the Commission's consideration and approval. NSP Exh. 215, Section IV.

Reasonableness of Stipulations

101. The Administrative Law Judge finds that the Stipulation provisions are reasonable responses to the competitive impact concerns raised by the OAG and MEC. The merger Applicant's studies indicate that there is unlikely to be the elimination of a competitor that would harm competition in the wholesale market. This analysis was confirmed by the DOC. More recently the FERC ruled that the merger was unlikely to have an adverse impact on competition based on the same evidence as presented in this proceeding. Thus, there is unlikely to be an adverse impact on wholesale competition from the proposed merger.

102. The provisions of the Stipulations related to generation cost disclosure, distributed generation, aggregation and a customer buyback tariff all address concerns raised about impacts to competition at the retail level. The Stipulations provide additional information to all parties in the forthcoming debate on retail access and provide assurance that new technologies will be able to interconnect with NSP. Thus, these provisions of the Stipulations are reasonable.

D. Environmental Issues

Positions of the Parties

103. The CEC was concerned that the proposed merger could reduce the Commission's regulatory effectiveness, thereby limiting further progress on such environmentally beneficial projects as wind turbine development, conversion of coal plants to natural gas, and demand-side management programs. NSP Exh.221, p. 18-19.

104. NSP believed that since it would remain subject to Minnesota laws and regulations, that would allow for continued regulatory effectiveness in these areas. *Id.*, p.19.

Stipulations and Agreements

105. The CEC Agreement calls for NSP to study the transmission upgrades needed to move additional increments of wind of up to a total of 825 MW of wind generation. If all applicable siting criteria are met, NSP agrees to file for regulatory approval of appropriate additional transmission resources. The studies are intended to determine the needs and costs associated with incremental wind resources within the State of Minnesota. The provision recognizes current transmission constraints in the western part of the state and will allow for the development of additional information regarding the most effective next transmission step. The Agreement also recognizes that the parties may differ on the appropriate procurement process, level of procurement and the associated transmission upgrades and reserves both CEC's and NSP's rights to take positions on these wind procurement issues in future Resource Planning proceedings. NSP Exh. 216, Para. 4. The DOC Agreement requires that this and other studies are provided to all interested parties. NSP Exh. 213, Section VII.D.

106. The CEC Agreement also requires that if wind is not selected in this or next year's anticipated all-source bidding, that NSP will work with CEC to identify the reasons that wind is not succeeding in the bid process and to identify potential solutions to remove the impediments identified. NSP Exh. 216, Para. 5.

107. The CEC Agreement also provides that NSP study the technical feasibility and economic impact of conversion of first its High Bridge plant (units 3 and 4) and then its Riverside generating facility (units 7 and 8) to natural gas. The studies will be conducted in a time frame that allows NSP to gain information from its current Black Dog Repowering effort. The feasibility criteria used by NSP will be based on the potential profitability of the converted facilities based on the assumed revenue stream and the cost taking into consideration environmental externality values set by the Minnesota Public Utilities Commission. NSP Exh. 216, Para. 1.

108. The CEC Agreement provides that NSP will conduct an evaluation of both demand-side and supply-side non-nuclear resource options to its Prairie Island nuclear generating units in the event of a pre-license expiration shutdown in its upcoming

resource plan as required by the Commission's last resource planning order. NSP Exh. 216, Para.2.

109. The DOC Agreement provides that in its year 2000 Integrated Resource Plan ("IRP"), NSP agrees to include estimates of avoided transmission and distribution costs in its evaluation of Demand-Side Management resources and that if a new value has not been determined, it will use the avoided cost estimates used by the Company in its 2000-2001 Conservation Improvement Program. NSP Exh. 213, Section VII.B.

110. The Agreement provides that NSP work cooperatively with the DOC and other parties to explore strategies that encourage the economically efficient deployment of small wind projects (2 MW or less) within the State of Minnesota. NSP Exh. 213, Section VIII.D.

111. The OAG Stipulation provides that NSP disclose its generation resources to customers either on the customer's bill or through bill inserts at least twice a year. NSP Exh. 214, Section V.

112. The CEC Agreement, unlike the other agreements, does not contain a provision expressly stating that the parties agree that the agreement is in the public interest. NSP Exh. 216. But at the January 28, 2000 hearing, Mr. Grant, representing the CEC, explained that the provisions of its agreement with NSP did further the public interest. He stated:

We believe that, taken together, these provisions assure continued progress toward the accomplishment of important state energy policy goals and are, therefore, in the public interest. Further, the provisions ameliorate any loss of regulatory effectiveness that may result from merger approval, assuring [an] appropriate state level forum for resolving public interest issues.

Tr. 1/28/00, 17-21.

113. At the January 28, 2000 hearing, Commissioner Garvey raised the issue of conditioning approval of the merger upon Xcel reporting CO₂ and other greenhouse gas emissions for certain past years and developing a strategies for CO₂ mitigation. Ex. 220. NSP responded in a letter to the Administrative Law Judge on February 16, 2000. NSP Exh. 226.

114. NSP's response stated that it did not believe that the merger would impact the level of greenhouse gas emissions for the combined company. It stated that it would not object to conditions on the merger that would require it , within six months of the merger, to report to the Commission NSP's (not Xcel's) CO₂ emissions for the requested years, a summary of NSP's efforts to mitigate greenhouse gases, and an evaluation of CO₂ emissions associated with converting its two nuclear plants to coal or natural gas or a combination. NSP did not want to delay the merger, but offered to work with the Commission and staff on addressing this issue.

Reasonableness of Stipulations

115. The Administrative Law Judge finds that the environmental provisions of these Stipulations are reasonable and should be adopted. The studies and filings agreed to by NSP and the CEC address CEC concerns regarding the Commission's regulatory effectiveness in a post-merger context. The studies will provide important information on the ability to facilitate development of alternative resources such as wind, distributed generation and natural gas (as opposed to coal). Thus, these provisions of the Stipulations are reasonable.

116. NSP's response to Commissioner Garvey's questions does not address all of his requests, particularly because it does not commit to providing the past emissions figures for NCE's plants and does not talk about "developing a strategy" for controlling greenhouse gas emissions. The data for plants outside of Minnesota may be irrelevant to the Commission's Minnesota jurisdiction and probably should not be made a condition of approval of the merger. But requiring a commitment to develop a strategy for dealing with greenhouse gases, at least for electricity generated in Minnesota, is generally consistent with the studies NSP has already agreed to conduct and appears to be a reasonable requirement. The Commission can negotiate with the Commissions in the other states served by Xcel to encourage uniform requirements, which NSP would probably encourage as well.

E. Miscellaneous Provisions

117. In its Application NSP sought Commission approval of the proposed merger. It also sought approval for the transfer of utility assets from NSP to New NSP Utility. NSP Exh. 217, p. 5. NSP also requested a Commission finding that it recommend to the SEC that NSP be continued to retain its retail natural gas business, NSP Exh. 208, p. VII-3, to assure no loss of economies from combined operations. The OAG and DOC Stipulations provide that NSP's merger proposal as modified by the Stipulations is consistent with the public interest and both the proposal and the Stipulations should be approved. NSP Exh. 213, Section X.C and NSP Exh. 214, Section VIII.C.

118. NSP's request to transfer assets is integral to the merger transaction and because the proposed merger as modified by the Stipulations is consistent with the public interest, the Administrative Law Judge finds that the request for approval of transfer of assets is also consistent with the public interest.

119. NSP's request to make a finding that it is in the public interest for NSP to retain its retail natural gas business is consistent with the continuity of service that would be afforded as well as the benefits of the merger and the merger conditions, such as the gas rate freeze and service quality measures. Thus, the Administrative Law Judge finds that this request is reasonable and should be adopted.

120. Mr. Carney suggests that the many unanswered questions of this "seriously flawed" merger raise the potential of great harm to the public, and that the

merger should be stopped until it can be considered by the Minnesota Legislature and the U.S. Congress. Public Exh. 31. This is clearly a significant merger that will affect Minnesotans for many years to come. But the process used to review the proposal has been informed, thorough, and aggressive. The concessions extracted from NSP in the Stipulations do protect the public to a degree probably beyond that that would have been imposed if the hearing had proceeded. There appears to be no benefit to the public from stopping the merger.

Based upon the above Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Minnesota Public Utilities Commission and the Administrative Law Judge have jurisdiction over the subject matter of this hearing pursuant to Minn. Stat. §§ 216B.50 and 14.57 - 14.62 and Minn. Rules Parts 1400.5100 - 1400.8300.

2. The Commission gave proper notice of the hearing in this matter, has fulfilled all relevant substantive and procedural requirements of law or rule and has the authority to take the action proposed.

3. As the Party proposing the action in this proceeding, NSP has the burden of establishing facts supporting its proposals by a preponderance of the evidence. Similarly any other Party advocating an affirmative proposal has the burden of proving that proposal by a preponderance of the evidence. Minn. Rules pt. 1400.7300, subp. 5.

4. The merger proposed by NSP, as modified by the conditions of the Stipulations, is consistent with the public interest.

5. As an additional condition of approval, NSP should be required, within six months of merger approval, to submit a report to Commission detailing its 1990, 1997, 1998, and 1999 CO₂ emissions from NSP-owned generating facilities used to provide utility service and, within one year of merger approval, develop strategies, in cooperation with the parties to this proceeding, to mitigate CO₂ and other greenhouse gas emissions from such facilities.

6. Any of the above Findings of Fact more properly considered Conclusions of Law are hereby adopted as such.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Public Utilities Commission include in its Order in this proceeding a determination that NSP's proposed merger with NCE, as modified by the Stipulation Agreements and the condition set forth in Conclusion No. 5, is consistent with the public interest, that it approve the Stipulations Agreements in their entirety, and that it approve the merger with such Stipulation Agreements and condition.

Dated: February 28, 2000

STEVE M. MIHALCHICK
Administrative Law Judge