BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of the Petition of Northern States Power Company d/b/a Xcel Energy for Approval of a Rate Rider to Recover Costs for Emissions Reduction Proposal

ISSUE DATE: March 8, 2004

DOCKET NO. E-002/M-02-633

ORDER APPROVING XCEL'S PROPOSED PLAN, SUBJECT TO THE TERMS OF A SETTLEMENT AGREEMENT AND ADDITIONAL CONDITIONS AND CLARIFICATIONS

PROCEDURAL HISTORY

I. XCEL ENERGY FILES AN EMISSIONS REDUCTION PROPOSAL

On July 26, 2002, Northern States Power Company d/b/a Xcel Energy (Xcel Energy or the Company) filed an emissions reduction proposal under Minn. Stat. § 216B.1692. Under the terms of the Company's emissions reduction proposal, it would carry out extensive and costly renovations at three metropolitan-area power plants – King, High Bridge, and Riverside, converting two of the three plants from coal to natural gas and installing advanced pollution control equipment at all three.

II. PUBLIC HEARINGS AND TECHNICAL CONFERENCE

Due to the proposal's technical complexity, its significant financial implications for ratepayers, and the widespread public interest it had generated, the Commission scheduled a series of public hearings, convened a technical conference to explore the financial consequences of converting two of the plants to natural gas, and established a 90-day period for the parties to meet, develop the record, exchange information, and attempt to clarify and narrow the issues in dispute.

III. REQUEST FOR DEFERRED ACCOUNTING TREATMENT

On August 8, 2003, Xcel filed a petition seeking deferred accounting treatment of certain expenses it stated it must incur before December 31, 2003 to maintain the viability of the time line and cost projections contained in its emissions reduction proposal or, in its view, in any reasonably

foreseeable modification of that proposal. These expenses would total approximately two million dollars. The entire amount would be directed toward the eventual renovation of the King Plant and would include environmental permitting costs, site preparation design costs, and plant process and equipment design and specification costs.

On October 23, 2003, the Commission issued an Order granting the Company's request for deferred accounting treatment, subject to the conditions set forth in its petition and subject to one additional condition: that if it is determined that construction on the King plant will not commence, the Company shall propose an amortization period for the deferred costs that begins at the time the costs were recorded to the deferred account.

On November 6, 2003, Myer Shark filed a Petition for Reconsideration and Rehearing of the Commission's October 23, 2003 Order.

IV. FURTHER EXAMINATION AND SETTLEMENT DISCUSSIONS

On November 7, 2003, the Commission held an Informational Meeting regarding Metropolitan Emissions Reduction Plan (MERP) alternatives.

On November 10, 2003, Xcel Energy filed a letter updating the Commission regarding discussions with the Minnesota Department of Commerce (the Department), the Residential and Small Business Division of the Office of the Attorney General (RUD-OAG), and the Suburban Rate Authority (SRA) to resolve issues raised by parties regarding the Company's Emissions Reduction Proposal. The Company stated that it hoped to provide the Commission with a settlement that had the support of as many parties as possible. The Company stated that it would update the Commission on progress at the Commission's December 9, 2003 informational meeting if the settlement was not already filed by that time.

On November 21, 2003, North Star Steel filed a Petition for a Contested Case Hearing together with a memorandum of law in support of its petition. Six parties filed comments opposing the petition: Xcel Energy, Minnesota Pollution Control Agency (PCA), Sierra Club, Izaak Walton League of America (IWLA)/Minnesotans for an Energy Efficient Economy (ME3), City of Minneapolis, and the SRA.

On December 9, 2003, the Commission held an Informational Meeting to gain a more complete understanding of the cost issues involved in this case and to hear the Company's responses to questions raised at the November 7, 2003 Informational Meeting.

V. SETTLEMENT AGREEMENT

On December 11, 2003, the Company filed a Settlement Agreement on behalf of Xcel, the Department, the RUD-OAG, the PCA, the Minnesota Chamber of Commerce, North Star Steel, IWLA-Midwest Office, ME3, Suburban Rate Authority, and the Sierra Club (the Settlement Agreement Parties). The Settlement Agreement Parties recommended that the Commission approve

the Proposed Plan filed by Xcel Energy on July 26, 2002, subject to the terms of the Settlement Agreement.

On December 14, 2003, Myer Shark filed comments regarding the legal requirements of due process as applied to the involvement of ratepayers in Commission proceedings.

On December 16, 2003, the Commission heard oral argument from the parties.

On December 17, 2003, the Xcel Energy filed responses to questions raised by Commission staff in a handout distributed at the hearing. The Company stated that the Department, the RUD-OAG, and the Company jointly prepared the responses.

On December 18, 2003, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. XCEL ENERGY'S EMISSIONS REDUCTION PROPOSAL

On July 26, 2002, Northern States Power Company d/b/a Xcel Energy filed an emissions reduction proposal under Minn. Stat. § 216B.1692. That statute authorizes electric utilities to file proposals to reduce emissions from large generating plants too old to be subject to the emissions restrictions applicable to new plants under the federal Clean Air Act. The statute also authorizes the Commission to grant rate recovery for the costs of these emissions reduction projects outside the general rate case process through an "emissions reduction-rate rider."

The Company proposed to carry out extensive and costly renovations at three metropolitan-area power plants – King, High Bridge, and Riverside, converting two of the three plants from coal to natural gas and installing advanced pollution control equipment at all three.

II. PARTIES' SETTLEMENT / JOINT RECOMMENDATION

All parties participating in this proceeding except Xcel ratepayer Myer Shark recommended that the Commission approve Xcel's July 26, 2002 Proposed Plan subject to the terms of their Settlement Agreement.[1] The parties to the Settlement Agreement (the parties) stated that the

[1] Clarification of terms: in its initial filing on July 26, 2002, Xcel presented two different emissions reductions projects. The project that it favored and recommended is referred to as Xcel's **Primary Proposal**. An alternative project was also presented in its initial filing, not favored by Xcel. This alternative is referred to as Xcel's **Alternative Proposal**. In the Settlement Agreement, Xcel and the other signatory parties did not use the term Primary Proposal, but instead requested Commission approval of the Company's **Proposed Plan** (as modified by terms of the settlement, of course.) The Company's **Proposed Plan** referred to in

plan achieves significant environmental benefits that are not otherwise required by law at a cost that is significant but not unreasonable, consistent with the requirements of Minn. Stat. § 216B.1692.

The parties stated that the Plan and rate rider meet the requirements of Minn. Stat. § 216B.1692, subd. 5 and that none of the disqualifying conditions delineated in the statute applied to the rate rider. Specifically, the parties stated that the project is not required by law or as part of a corrective action. In addition, with respect to the requirement that the Commission may not include in the rider any costs that are not directly allocable to the reduction of emissions, the parties noted that the Legislature's adoption of 2003 Laws of Minnesota, First Session, Chapter 11, Article 3, Sec. 12 at 1687-88 confirms that all costs related to the Company's Primary Proposal in this proceeding are eligible for recovery through the rate rider.

III. OBJECTIONS OF RATEPAYER MYER SHARK

In the course of this proceeding, ratepayer Myer Shark raised several concerns about Xcel's Proposal. In his initial comments, Mr. Shark recommended that the Proposal incorporate strict expense limits and controls to protect ratepayers, limiting expenses to those included in a closely scrutinized budget, with continuous audit reports to the Commission. Mr. Shark also argued that the issues and matters presented by Xcel's Proposal should be resolved in a contested rate case proceeding, preceded by adequate notice to all ratepayers.[2]

In comments filed May 29, 2003, Mr. Shark reiterated the need for adequate notice to ratepayers and a contested case proceeding to resolve the issues in this matter. Mr. Shark argued that the U.S. Constitution prohibited the Commission from granting the relief requested in Xcel's petition unless every ratepayer whose cost of service would be impacted received a qualifying notice of what is proposed and the potential for raising his rates, as well as advising of the opportunity to be heard against the Proposal. He also submitted recommendation regarding the nature and conduct of public hearings regarding Xcel's Proposal and urged the Commission to consider options and alternatives to the Company's Proposal. In addition, Mr. Shark questioned whether Xcel would be double recovering some expenses, since it has already recovered a "depreciation reserve" to handle repair and replacement and would, under the Proposal, allegedly recover costs for repair and replacement that ratepayers have already paid. Mr. Shark objected to what he viewed as Xcel recovering a bonus or incentive beyond actual costs for improving the plants that they will continue to own and operate as part of their rate base.

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the Settlement Agreement was, in essence, to implement its Primary Proposal. In this Order, the terms Primary Proposal and Alternative Proposal will be used when distinguishing between the two projects or approaches that the Company presented in its initial filing. And when the term "Xcel's Proposed Plan" is used in this Order, the term means what the parties to the Settlement Agreement intend it to refer to, i.e. the Company's plan to implement its Primary Proposal.

[2] On July 21, 2003, Mr. Shark submitted a proposed Notice to Ratepayers.

Following the September 10, 2003 Technical Natural Gas Conference, Mr. Shark filed comments recommending that the Commission take into account, in considering whether Xcel's Proposal imposes an unreasonable burden on its customers in Minnesota, the possibility that Canada might once again adopt an export duty, potentially doubling the cost of Canadian gas supplies used in Xcel's system. Mr. Shark also stated that a Minnesota statute (Minn. Stat. § 216B.1692) does not have the power to provide a Commission procedure to change the quality/cost of utility service which denies due process protections. Mr. Shark stated that the due process protections were reasonable notice, an opportunity to be heard before an unbiased tribunal, the right to introduce evidence, and the right to use all the tools of litigation. Mr. Shark stated that in this docket the ideal forum in which ratepayers could exercise their due process rights would be in a contested case proceeding.

On October 21, 2003, before the Settlement Agreement was filed, Mr. Shark submitted a petition requesting a contested case proceeding to provide a record to decide what he stated were pivotal issues, material issues of fact in dispute in this case. Mr. Shark indicated that those material disputed issues of fact were: 1) whether the cost of the proposed emission reduction was reasonable; 2) whether Xcel's proposed rate of return is reasonable; 3) whether the proposal to collect rates under the rider before the renovated plant is returned to service is appropriate; 4) whether the overall project is cost-effective; and 5) whether the project imposes unreasonable consumer costs.

Mr. Shark stated that before the Commission could decide the issues in this case, a contested case proceeding was needed to develop a record regarding the socioeconomic impact at various levels of construction cost and rate of return.

Finally in his petition, Mr. Shark stated that a contested case proceeding was necessary to establish a policy that the Commission will not entertain proposals to deal with only one element of rate determination without considering all elements if more than five years have elapsed since the last contested case proceeding.

After the Settlement Agreement was filed, Mr. Shark resubmitted comments filed earlier in this proceeding which addressed the due process rights of utility ratepayers in this matter. The resubmitted comments focused on the alleged constitutional right of utility ratepayers to reasonable notice of the proceeding or proposed action which could potentially affect the quality and/or cost of his or her utility service. Mr. Shark asserted that proper notice had not been given in this case. He concluded that it was necessary to restore such notice to all ratepayers and provide for class action procedures before the Commission, supported by funding for ratepayer advocacy on a par with funding for the utility's litigation efforts. Mr. Shark recommended that these reforms be incorporated in a set of model statutes and rules, preceded by a review and study of actual regulatory procedures and practice in the fifty states.

At the December 18, 2003 hearing regarding the Settlement Agreement, Mr. Shark noted that the price of natural gas was subject to substantial changes. As an example of factors which contribute to the volatility of the price of natural gas, Mr. Shark stated that in 1980 the Canadian Government imposed an export duty on gas. Mr. Shark noted that renewal of that export duty, thereby increasing the price of natural gas from Canada, was possible.

Mr. Shark further stated that the Commission has examined one alternative to Xcel's proposed Plan but not "alternatives" as required by the statute and that Xcel has mentioned alternatives but not examined them as required by the statute. Mr. Shark suggested that one alternative worth examining would be the coal gasification plant proposed for the Iron Range.

Finally, Mr. Shark stated that Xcel should need no monetary bonus to motivate it to do what a good neighbor does, clean up the air it has polluted and is polluting and suggested that Xcel's request for a bonus was motivated in part by a need to pay debts incurred in connection with Xcel's investments in NRG Energy, Inc. (NRG).

IV. SUMMARY OF COMMISSION ACTION IN THIS ORDER

A. Action Regarding Requests for Contested Case Hearing

Mr. Shark's October 22, 2003 request for a contested case proceeding is denied because a contested case proceeding is not required by statute or rule and is not guaranteed by the constitution of the United States. Further, since there are no material facts in dispute and all issues have been resolved to the Commission's satisfaction, the delay and expense of a contested case proceeding would be contrary to the public interest.

North Star Steel's petition for a contested case proceeding is effectively withdrawn due to its support for the Settlement Agreement. To the extent that it has not been withdrawn, it also will be denied.

The Commission explains the considerations leading to those conclusions below in Section V, pages 7-10.

B. Action Regarding Petition for Approval of Xcel's Three-Plant Emissions Reduction Proposal and Rate Rider

The Commission will approve Xcel's Proposed Plan[3], subject to the terms of the Settlement Agreement filed by the parties on December 11, 2003 and as further conditioned and clarified in Section VI of this Order because as so modified, it comports with the purposes and meets the requirements of Minn. Stat. § 216B.1692 and is in the public interest.

The Commission explains the considerations leading to those conclusions below in Section VI, pages 10-26.

V. COMMISSION ANALYSIS OF REQUESTS FOR CONTESTED CASE PROCEEDING

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[3] As noted previously in Footnote 1, as used in this Order, the term "Company's Proposed Plan" (which the signatory parties use in the Settlement Agreement) refers to the Xcel's plan to implement the Primary Proposal filed July 26, 2002.

This Order addresses two requests for a contested case proceeding: one by Xcel ratepayer Myer Shark (October 14, 2003) and North Star Steel (November 21, 2003).

A. North Star Steel Petition Deemed Withdrawn

Subsequent to filing its Petition for Contested Case Proceeding, North Star Steel signed the Settlement Agreement which, among other things, urged the Commission to approve Xcel's Proposed Plan, subject to the terms of the Settlement Agreement. In so doing, North Star Steel effectively withdrew its request for a contested case proceeding on this matter.

To the extent that North Star Steel did not intend to withdraw its petition by signing the Settlement Agreement, the Commission finds that its petition suffers the same defects applying to Myer Shark's petition. See below at B, C, D.

B. Asserted Constitutional Right

Myer Shark stated that ratepayers have a constitutional right to a contested case proceeding in this matter. He argued that the ratepayer's right to be heard included the right to be heard using all the tools of litigation.

The Commission disagrees. First, the ratepayers' interests were fully represented throughout this proceeding. The two agencies authorized by law to represent ratepayers' interests in this proceeding, the Department of Commerce and the Residential and Small Business Utilities Division of the Office of the Attorney General, were active parties to this case and both determined that contested case proceedings were unnecessary. In addition, the Commission received comments from four state agencies, six environmental agencies, three business-related groups; at least 13 neighborhood organizations, four health-related organizations, four local governments; a number of legislators; and hundreds of general public comments.

Second, the Commission has complied with all procedural requirements set by statute. The statute does not require a hearing or contested case proceedings – it requires the Commission to "allow opportunity for written and oral comment on the proposed emissions reduction rate rider proposal."[4] The Commission took a broad view of this requirement, requiring Xcel to notify all ratepayers of its proposal and holding public hearings on the proposal throughout Xcel's service territory. The Commission also held a day-long technical conference with the parties and other stakeholders on potential fuel costs at the converted plants and held several informational meetings, where parties and stakeholders offered information and perspectives.

Finally, where no property interest is at stake, a person is not entitled to a contested case on due process grounds. *Cable Communications Bd. v. Nor-West Community Partnership*, 356 N.W.2d 658, 666 (Minn. 1984). Further, as the Minnesota Court of Appeals has clarified, ratepayers have no generalized right to contested case proceedings on every utility action that affects rates, since they

[4] Minn. Stat. § 216B.1692, subd. 5 (a).

are not entitled to fixed utility rates and have no property interest in existing rates. *In the Matter of the Implementation of Utility Energy Conservation Programs*, 368 N.W.2d 308, 313 (Minn. Ct. App. 1985).

For all these reasons, the Commission rejects the claim that contested case proceedings were constitutionally required in this case.

C. Asserted Right to a Contested Case Proceeding Under State Law to Resolve Disputed Material Facts

Mr. Shark also asserted that Minn. Stat. § 14.60, subd. 2 and 3, Minn. Stat. § 14.62, and Minn. Rules, Part 7829.1000 require a contested case proceeding when material facts are in dispute. He identified a number of issues and considerations that he alleged were material facts in dispute.

A ratepayer has no statutory right to a contested case proceeding in this matter. The Administrative Procedure Act sections cited by Mr. Shark do not provide an independent right to a contested case hearing. They simply describe what procedures apply if there is a contested case proceeding. An agency is required to initiate a contested case proceeding "when one is required by law."[5] Any right to a contested case proceeding, therefore, is established by the applicable substantive law, not the provisions of the Administrative Procedure Act.[6] In this case, the applicable substantive law is the Emissions Reduction Statute, which establishes no such right.

Nor does a ratepayer have an automatic right under Minnesota Rules to a contested case proceeding when, as in this case, it disagrees with conclusions proposed by a petitioner. The Commission's rules provide that a party is entitled to a contested case proceeding under two circumstances.

> Circumstance 1: the proceeding must involve contested material facts **and** there is a right to a hearing under statute or rule. Note that both conditions must be shown for Circumstance 1 to exist.
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> Circumstance 2: the Commission finds that all significant issues have not been resolved to its satisfaction.[7]

Circumstance 1 does not exist in this case because neither condition is met. Mr. Shark has identified no statute or rule that establishes a right to a contested case hearing. The absence of such a right is sufficient to show that Circumstance 1 does not exist.

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[5] Minn. Stat. § 14.57(a).

[6] *In Re: People's Cooperative Power Association*, 447 N.W.2d 11 (Minn. Ct. App. 1989).

[7] Minn. Rules, Part 7829.1000.

The second condition required for Circumstance 1 is not met either: Mr. Shark has identified no contested material facts as that term is used in the Commission's rule. That there are issues on which Mr. Shark and the parties to the Settlement Agreement disagree does not mean that there are material facts in dispute, since the five subjects he characterized in his petition as material disputed facts are not "facts" at all, but policy determinations that the Commission must make:

> 1) whether, taking into consideration all the circumstances, including the purpose and provisions of the Emissions Reduction Statute, the costs identified in this matter are reasonable;
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> 2) whether, taking into consideration all the circumstances, including the purpose and provisions of the Emissions Reduction Statute, the rate of return provisions are reasonable;
>
> 3) whether, taking into consideration all the circumstances, including the purpose and provisions of the Emissions Reduction Statute, it is appropriate to collect the rider before the renovated plant is returned to service;
>
> 4) whether, taking into consideration all the circumstances, including the purpose and provisions of the Emissions Reduction Statute, the overall Project is cost-effective; and
>
> 5) whether, taking into consideration all the circumstances, including the purpose and provisions of the Emissions Reduction Statute, the Project imposes unreasonable consumer costs.

To further illustrate that there are no material facts in dispute, but only disputed conclusions about those facts, the Commission notes that Mr. Shark has submitted no affidavits and has offered no expert testimony contradicting any factual assertion contained in the record on any issue, including the significant environmental and human health benefits of the Project.

On page 4 of his Petition for a Contested Case Proceeding, Mr. Shark asserted that the clear intent of the legislature was that the Commission is required to develop a record on the socioeconomic impact of the Project at various levels of construction cost and rate of return. He then listed a number of topics that he believes the Commission must investigate, make findings on, and consider before it can determine whether the Project achieves environmental benefits without unreasonable consumer costs.

First, the list provided by Mr. Shark did not contain any factual assertions regarding any of the topics he listed, let alone any material disputed facts.

Mr. Shark maintained that the Commission has a statutory obligation to develop, on its own and in the absence of parties having provided information on the topics he listed, a record on the listed topics. He asserted that this obligation is to be inferred from the fact that the legislature required the Commission to make a finding of "no unreasonable consumer costs."

The statute does not support Mr. Shark's assertion. Reading the statute as a whole, the statute appears to envision a somewhat streamlined decision-making process, which is inconsistent with the extensive investigation proposed by Mr. Shark. And focusing on Subdivision 5 in particular, it appears that the legislature has authorized the Commission to make its decision to approve, modify, or reject the proposed emissions reduction rate rider proposal based on the record emerging from the process prescribed in that section, i.e. after receiving the Pollution Control Agency's environmental assessment and allowing any interested party the opportunity for written and oral comment on the emissions reduction rate rider proposal. In short, contrary to Mr. Shark's assertion on page 3 of his petition that the statute does not contemplate that the Commission would reach a decision on unreasonable costs by reviewing the record to date, the Commission finds that this is exactly what the statute contemplates.

To summarize: a contested case proceeding in these circumstances is not required by statute, rule, or the Constitution of the United States. And since there are no material facts in dispute and all issues have been resolved to the Commission's satisfaction, the delay and expense of a contested case proceeding would be contrary to the public interest. Accordingly, Mr. Shark's request for a contested case proceeding will be denied.

VI. COMMISSION ANALYSIS OF XCEL'S PROPOSAL AND RATE RIDER

The procedural requirements and substantive standards applicable to Xcel's proposed Emissions Reduction Rider are set forth in Minn. Stat. § 216B.1692, as clarified by Minnesota Laws 2003, 1st Special Session, Chapter 11, Article 3, Section 12.

The Commission finds that Xcel's Proposed Plan, subject to the terms of the Settlement Agreement filed by the parties on December 11, 2003 and as further conditioned and clarified herein, comports with the purposes and requirements of Minn. Stat. § 216B.1692 , is in the public interest, and as such will be approved.

In reaching that conclusion, the Commission has analyzed Xcel's Proposal as follows.

A. Procedural Requirements

1. Filing Requirements of Minn. Stat. § 216B.1692, Subd.2: Proposal Submission

Subdivision 2 requires a utility that intends to submit an emissions reduction rider to submit a proposal at least 60 days in advance of a petition for a rider. The proposal must include the priority ordering of the emissions reductions project, a schedule for implementation, analysis relied on to develop the priority ranking, the alternative emissions reduction projects considered, emissions reductions expected to be achieved and the relation to applicable standards for new facilities under the federal Clean Air Act, and the general rationale and conclusions in determining the priority ranking.

Xcel filed its Report-Proposed Selection of Emissions Reductions Projects with the Commission on May 3, 2002, with errata filed on May 7 and June 14, 2002. This was considered an informational filing. The Commission, therefore, did not solicit comments or take action on the Report. The Commission finds that Xcel has fulfilled the timing and content requirements for the filing set out in Minn. Stat. §216B.1692, subd. 2.[8]

2. Filing Requirements of Minn. Stat. § 216B.1692, Subd. 3: Filing Petition to Recover Project Costs

Subdivision 3 allows a utility to petition the Commission for approval of an emissions reduction rider to recover the costs of qualifying emissions reduction project outside of a general rate case. The utility is required to provide specific information in that filing: a description of the project, activities involved in the project, a schedule for implementation, any analysis provided to the PCA, assessment of alternatives to the project, proposed cost recovery method, any proposed recovery above cost, and the projected emissions reductions from the project.

Xcel filed its Petition for Approval of Rate Rider to Recover Costs of Emissions Reduction Proposal on July 26, 2002. Xcel has also provided additional information in the record, including its March 27, 2003 IR Responses to Issues Identified by Commission Staff, its April 28, 2003 Response to Commission Questions Raised at March 27, 2003 Meeting (and May 2 correction), and its September 10, 2003 Supplemental Filing Updating Natural Gas Supply and System Infrastructure Information.

The Commission finds that Xcel has fulfilled the content requirements for the filing set out in Minn. Stat. §216B.1692, subd. 3.[9]

3. PCA Evaluation Required by Minn. Stat. § 216B.1692, Subd. 4

Subdivision 4 requires the PCA to evaluate Xcel's emissions reduction project proposal and provide the Commission with:

- verification that the proposal qualifies under subd. 1;
- a description of the projected environmental benefits of the proposed project; and
- an assessment of the appropriateness of the proposed project.

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[8] For a more detailed discussion of Xcel meeting the Subdivision 2 filing requirement to show that it has considered project alternatives, see below at page 20.

[9] For a more detailed discussion of Xcel meeting the Subdivision 3 filing requirement to show that it has considered project alternatives, see below at page 21.

The PCA filed its initial report on December 30, 2002 (and a correction letter on February 21, 2003). This report analyzed Xcel's Primary MERP Proposal. The PCA filed its Review of Xcel Energy's Alternative Metropolitan Emission Reduction Proposal on April 28, 2003 (and a May 12, 2003 corrected version). The Commission finds that the PCA has provided the analysis and assessment required under the statute.

4. Statutorily Required Opportunity for Written and Oral Comment

Minn. Stat. § 216B.1692, subd. 5(a) states in relevant part:

> After receiving the Pollution Control Agency's environmental assessment, the commission shall allow opportunity for written and oral comment on the proposed emissions reduction rider proposal.

The Commission has provided numerous opportunities for written and oral comments, held informational meetings, held public hearings, and required Xcel to provide individual ratepayer notice of its proposal. The Commission finds that it has met and exceeded that requirement, as the following list of comment opportunities provided attests.

- On August 21, 2002, the Commission issued its NOTICE REGARDING SOLICITATION OF COMMENTS, which indicated that it would not solicit comments of the merits of the MERP Proposal and the rate rider until after the PCA Report was filed. The Notice allowed parties to submit procedural comments by September 16, 2002 if they so desired, but noted that further opportunity for such comments would be provided after the PCA Report. On December 30, 2002, PCA filed its Report with the Commission.

- On January 3, 2003, the Commission issued a notice SOLICITING SUBSTANTIVE COMMENTS.

- On January 8, 2003, the Commission issued its REVISED NOTICE SOLICITING PROCEDURAL AND SUBSTANTIVE COMMENTS, which invited parties to submit procedural and/or substantive comments on Xcel's MERP Proposal, the associated rider for cost recovery, and the PCA report by February 21, 2003 for initial comments and March 21, 2003 for reply comments.

- On February 11, 2003, the Commission issued its NOTICE SUSPENDING REPLY COMMENT PERIOD, indicating that it still wanted initial comments by February 21, but that it would hold a meeting to decide procedural issues and review the state of the record as soon as practical after receiving the initial comments. The Commission received comments from 4 state agencies, 6 environmental organizations, 3 business-related groups; at least 13 neighborhood organizations, 4 health-related organizations, 4 local governments; a number of legislators; and hundreds of general public comments.

- On March 27, 2003, the Commission met to review the state of the record, including the written comments filed to-date, and to determine procedural direction. The Commission allowed parties and participants to make oral comments at the meeting.

- On April 1, 2003, the Commission issued its NOTICE SEEKING COMMENTS AND ESTABLISHING FURTHER PROCEDURE, which requested the Department to file its initial comments by April 28 and for Xcel to file answers to various questions and issues by the same date. Parties were given until May 28, 2003 to file written replies to all comments and information in the record to-date and to file comments on procedures for public hearings and procedural options for reaching a final decision on the merits. In response to that NOTICE, the Commission received the requested filings from Xcel and the Department, comments and reply comments from more than a dozen parties and participants, as well as additional general public comments.

- On June 26, 2003, the Commission met to consider issues of notice, public hearings, and further procedures, including whether a contested case should be ordered. The Commission allowed parties and participants to make oral comments at the meeting.

- On July 15, 2003, the Commission issued its ORDER REQUIRING TECHNICAL CONFERENCE, PUBLIC HEARINGS, NEGOTIATIONS, AND REPORTS. Among other things, the Order directed the Executive Secretary to arrange for public input hearings and directed Xcel to notify all customers, by bill insert or direct mail, of its MERP Proposal, the gas technical conference, and the public hearings, and to advertise these public meetings in local and major newspapers.

- Eight public hearings, each conducted by an Administrative Law Judge (ALJ), were held between September 2 and 17, 2003. More than 150 members of the public spoke at those hearings. The ALJ submitted a summary of comments made at the public hearings. The Commission also received hundreds more written public comments.

- The Commission also held four informational (non-decision making) meetings: Natural Gas Technical Conference on September 10, PCA Analysis on October 2, Alternatives on November 7, and Cost Issues on December 9, 2003. The Commission also solicited written comments on the Natural Gas Technical Conference. Various parties and participants have made additional written submissions.

5. Adequate Notice Provided

Myer Shark argued that Xcel ratepayers did not receive adequate notice of Xcel's proposal. The Commission finds that adequate notice was provided.

- The Commission provided written notice to a broad service list; as part of this notice, the Commission sought written comments from parties on many aspects of the case; the Commission maintained an official service list, which included about 54 parties (the official service list) and an interested parties list, which included about 132 interested parties; the Commission issued a minimum of 12 notices.

- In January 2002, Xcel held community information meetings in Minneapolis, St. Paul, Stillwater, and Burnsville. The purpose of these meetings was to inform the communities of

the Company's study of alternatives at the four plant sites pursuant to the emissions reduction rider, Xcel's plans to select a project for proposal to the Commission, and the estimated timeline.

- In August 2003, prior to the eight public hearings, Xcel provided individual customer notices as bill inserts to all its customers. These notices were mailed directly to some customers and inserted in bills for others, to ensure notice prior to the public hearings. The inserts provided information on the proposal, estimated bill impacts, and the dates and locations for public hearings. In addition, Xcel placed 15 newspaper adds, in both major and community newspapers, providing public hearing information .

6. Contested Case Not Required

As addressed more specifically in Section V of this Order addressing Myer Shark's petition for a contested case proceeding, there is no statutory, Commission rule, or constitutional requirement that the Commission conduct a contested case proceeding in this matter.

Further, the public interest does not support the Commission ordering one on its own motion since there are no contested material facts, all significant issues have been resolved to the Commission's satisfaction, and to do so would cause significant costly and needless delays to the project.

B. Substantive Requirements / Criteria for Approval

1. "Qualifying Project" Requirements Under Minn. Stat. § 216B.1692, Subd. 1

Subdivision 1 states that projects, the costs of which are to be recovered under the emissions reduction-rate rider, must:

- be installed on existing large electric generating power plants, as defined by statute, located in the state, and currently not subject to emissions limitations for new power plants under the federal Clean Air Act;

- not increase the capacity for the existing electric generating plant by more than 10 percent or more than 100 MW, whichever is greater; and

- result in the existing plant either:

  (1) complying with new source review standards under the federal Clean Air Act; or

  (2) emitting air contaminants at levels substantially lower than allowed for new facilities by new source performance standards under the federal Clean Air Act; or

  (3) reducing emissions from current levels at a unit to the lowest cost-effective level when, due to the age or condition of the generating unit, the utility demonstrates that it would not be cost effective to reduce emission to the levels in (1) or (2) above.

With respect to these criteria, the PCA's December 30, 2003 Report stated that the projects at the King and Riverside plants meet all the conditions of Subdivision 1, but that the High Bridge proposal did not since its capacity increase of 270 MW exceeded the 100 MW statutory limit.[10] The PCA suggested that the costs related to the excess 170 MW should be considered for "recovery above cost" under subdivision 5(b)(4). The Department, OAG-RUD, and other parties also raised the High Bridge capacity issue.

Subsequent to the PCA report and the initial comments of parties, the legislature adopted Minnesota Laws 2003, 1st Special Session, Chapter 11, Article 3, Section 12. That session law states that, notwithstanding Minn. Stat. §216B.1692, subd. 1 (2) and subd. 5(c) and (d), "all investments in repowering, emissions reduction technologies and equipment, and power plant rehabilitation and life extension" in the Primary MERP Proposal filed by Xcel in July 2002 are deemed qualifying projects under §216B.1692, and "all costs related to all such investments are eligible for rider recovery."

In light of the 2003 session law, there is no need to analyze the arguments regarding whether Xcel's primary plan qualifies for consideration under the statute. In light of the legislature's clarification, the Commission finds as a matter of law that Xcel's primary plan qualifies as an eligible project under the statute.

2. Disqualified Projects and Costs Under Subsection 5(c) and (d)

Subsections 5(c) and 5(d) describe conditions that disqualify projects and costs, respectively. As previously noted, the Minnesota legislature has recently declared that notwithstanding Minn. Stat. §216B.1692, subd. 1 (2) and subd. 5(c) and (d), "all investments in repowering, emissions reduction technologies and equipment, and power plant rehabilitation and life extension" in the Primary MERP Proposal filed by Xcel in July 2002 are deemed qualifying projects under Minn. Stat. §216B.1692, and " all costs related to all such investments are eligible for rider recovery."[11]

In light of this legislative action, the Commission finds as a matter of law that Xcel's primary plan qualifies as an eligible project under the statute and all costs related to its investments therein are eligible for rider recovery.

3. Discretion to Approve Riders With Certain Characteristics: Subd. 5(b)

Under Minn. Stat. § 216B.1692, Subd. 5(b), the Commission may (but need not) approve a rider that 1) allows the utility to recover the costs of qualifying emissions reduction projects net of revenues attributable to the project; 2) allows an appropriate return on investment associated with qualifying emissions at the level established in the public utility's last rate case; 3) allocates project costs appropriately between wholesale and retail customers; 4) provides a mechanism for recovery above

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[10] Minn. Stat. § 216B.1692, Subd. 1 (2) requires that to be "qualified", a project must not increase the capacity of the existing electric generating power plant more than ten percent or more than 100 megawatts, whichever is greater.

[11] Minnesota Laws 2003, 1st Special Session, Chapter 11, Article 3, Section 12.

cost, if necessary to improve the overall economics of the qualifying projects to ensure implementation; 5) recovers costs from retail customer classes in proportion to class energy consumption; and 6) terminates recovery once the costs of the qualifying projects have been fully recovered.

The Commission finds that the proposed rider, subject to the terms of the Settlement Agreement and this Order, meets each of the six requirements set forth in Minn. Stat. § 216B.1692, Subd. 5(b).

With respect to these factors, Mr. Shark's objections to Xcel's proposed rider were 1) whether the proposed rider allows double recovery of costs already collected in current rates since depreciation costs were built into those rates; and 2) whether the rate of return on investment built into the rider rates was appropriate.

a. Failure to Offset for Depreciation Costs

Xcel argued that it is not necessary to adjust for the repair/replacement costs currently in rates because it is not exceeding the 11.47 percent allowed return on equity.

The Department initially challenged this aspect of the Company's proposed rider, recommending that recovery through the proposed tracker be limited to the incremental costs of the new facilities over the existing facilities included in base rates. The Department later withdrew that objection and recommended approval of the Company's Proposed Plan, as modified by the Settlement Agreement.

Xcel ratepayer Shark maintained an objection to the Company's Plan on that ground, however, arguing that if a depreciation reserve was recovered in rates, the cost of future repairs has already been paid by ratepayers and that the rates that did not take that into account, therefore, were unreasonable.

Mr. Shark's objection essentially asks the Commission to require Xcel to offset depreciation amounts already collected and to be collected under the Company's currently approved rates. Under traditional rate making principles, it is understood that costs and revenues will fluctuate between rate cases for a wide variety of reasons without obligating or authorizing the Company to adjust rates in response to those fluctuations, and the Commission finds no reason to selectively adjust for this particular factor, particularly since the Emissions Reduction Statute requires the Commission to evaluate the costs of an emissions reduction project on a stand-alone basis. This statutory requirement appears to directly preclude off-setting any depreciation amounts recovered in current rates for repair and maintenance. The other alternative, to launch into a full-scale analysis of all raised and lowered costs such as occurs in a rate case is expressly not contemplated by the statute.

b. Rate of Return Concerns

Minn. Stat. § 216B.1692, subd. 5(b)(2) authorizes but does not require the Commission to approve a rider that recovers a return on investment at the level established in the public utility's last general rate case. Xcel proposed to calculate the rider rate using the rate of return currently authorized, the rate approved by the Commission in the Company's most recent (1992) rate proceeding, 11.47 percent.

Initially, the Department, the RUD-OAG, North Star Steel and Myer Shark objected to the proposed 11.47 percent figure. They stated that Xcel's last rate case was more than a decade ago and does not reflect current financial conditions. The Department estimated the required rate of return on equity for Xcel under current economic conditions to be 10.72 percent. The RUD-OAG argued that the fact that the rate of return is guaranteed further magnifies this issue and virtually eliminates any risk to the Company and its shareholders. Mr. Shark argued that the unreasonably high rate of return was a demand for a bonus or incentive beyond actual costs for improving plants that the Company will continue to own and operate as part of its rate base.

Subsequently, the Department, the RUD-OAG, and North Star Steel withdrew their objections, arguing that the Company's Proposal should be accepted, subject to the terms of the Settlement Agreement adopted by the parties. Mr. Shark did not comment regarding the Settlement Agreement's modification of the rate of return.

The Settlement Agreement modified the Company's original proposal as follows. Instead of allowing the Company its authorized rate of return on common equity of 11.47 percent from its last rate case, as the Company initially proposed, the Settlement proposed a sliding scale rate of return that limited the rate of return to 10.86 percent if actual costs are between 95 and 105 percent of target costs and decreased the rate of return as costs further exceed target costs. Conversely, as actual overall project costs are reduced relative to the target cost, the Settlement Agreement allows increasingly higher rates of return, leading to the top rate (11.47 percent) if actual costs are 75 percent or less of target costs. See Settlement Agreement, Paragraph 8.

In short, under the Settlement Agreement, return on equity increases as actual costs decrease and decreases as actual costs increase. Thus, the Settlement Agreement's sliding scale rate of return provides an incentive to the Company to contain costs and to implement the Plan as efficiently and effectively as possible.

The Commission finds that these new provisions are clear improvements and are reasonable in the context of the Emission Reduction Statute. Accordingly, the Commission will not require any further modification of the rate of return for the Project.

4. Consideration of Comments in Opposition to the Plan, as Modified by the Settlement Agreement

a. Asserted Inadequate Due Process

Myer Shark was the only party opposing approval of Xcel's Plan, as modified by the Settlement Agreement. His written objections centered on whether ratepayers had been provided due process, in particular whether notice to ratepayers was adequate and whether their opportunity to be heard and present their objections was adequate.

Previously in this Order, the Commission has reviewed the amount of notice given ratepayers[12] as well as the opportunities afforded them to be heard and raise their objections to the Company's proposal.[13] The Commission concludes that ratepayers and Xcel ratepayer Myer Shark in particular received due process in this proceeding.

b. Possible Reimposition of Canada's Export Tax

Myer Shark reminded Commissioners about the volatility of the price of natural gas, citing the possible reimposition of Canada's export tax on natural gas as one variable potentially affecting the price of natural gas, the fuel relied on by the High Bridge and Riverside plants.

The Commission has taken the unpredictability of factors potentially affecting the price of natural gas, to the extent that they can be known, into account in assessing the reasonableness of the costs of the Proposed Project. The Commission has done so on the basis of the record it developed on the subject, including the testimony and written comments solicited in conjunction with the Natural Gas Technical Conference held September 10, 2003.

c. Required Consideration of Alternatives

At the December 18, 2003 hearing on this matter, Mr. Shark alleged that the Commission has considered only one alternative to the Xcel's Primary Proposal, in alleged violation of the statutory requirement that more than one alternative ("alternatives") be considered. The Commission clarifies that the statute imposes the obligation to show that it has considered alternatives on the utility as a filing requirement. See Minn. Stat. § 216B.1692, subds. 2 and 3. Subdivision 5 which outlines the Commission's obligations contains no similar requirement.

The Commission notes that in the extensive comment period following the Company's filings, no party challenged the Company's filings for having failed to show that it had considered "alternatives" and no party sought reconsideration of the Commission's July 15, 2003 Order in which the Commission decided how it would proceed to make the determinations required of it by Minn. Stat. § 216B.1692, as amended. In these circumstances, a December 2003 challenge based on an alleged failure to comply with the Emissions Reduction Statute's initial filing requirements appears untimely.

Without waiving that untimeliness, a review of the Xcel filings in question shows that there is no merit to the charge that Xcel did not meet the statute's filing requirements in this regard. The Emissions Reduction Statute requires the utility to show that it has "considered alternatives" at two points: first when it submits its plans for an emissions reduction project[14] and second when it files

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[12] Supra at page 14.

[13] Supra at pages 12-14.

[14] Minn. Stat. § 216B.1692, subd. 2(4).

its petition for an emissions reduction rider.[15] Review of Xcel's filings shows that it has met both of these filing requirements.

Regarding the first requirement (Subdivision 2), Xcel needed to include in its proposal for an emissions reduction rider "the alternative emissions reduction projects considered, including but not limited to applications of the best available control technology and repowering with natural gas, and reasons for not pursuing them."[16] It did so. See Xcel's May 3, 2003 filing: Chapter 3,A: Basic Alternatives Considered; Chapter 4: Details on Selected Projects; Chapter 8: Alternate Proposal; and Chapter 9: Other Alternatives Considered.

Regarding the second requirement (Subdivision 3), Xcel acknowledged in its July 26, 2002 Petition for Approval of Emissions Reduction Rate Rider its statutory obligation to include "an assessment of alternatives to the project, including costs, environmental impact, and operational issues."[17] The Company did so. In fact, it discussed alternatives for each of the three plants. See Xcel's July 26, 2002 filing, Appendix A, V, pages 19-23.

d. Alleged Monetary Bonus

Mr. Shark alleged that approving Xcel's Primary Proposal and rate rider would grant Xcel a monetary bonus (recovery above cost). He stated that giving Xcel such a bonus to motivate it to clean up the air it has been polluting was unacceptable.

The Commission has reviewed the financial components of Xcel's Primary Proposal subject to the terms of the Settlement Agreement and other requirements imposed in this Order and finds them acceptable in the context of the aims and provisions of the Emissions Reduction Statute. Moreover, although the Emissions Reduction Statute clearly authorizes recovery above cost (something Mr. Shark's clearly objects to and refers to as a"financial bonus") the Company did not request recovery above cost and none has been granted.

C. Appropriate Achievement of Environmental Benefits Without Unreasonable Consumer Costs

The heart of the Commission's obligations under the Emissions Reduction Statute is Minn. Stat. § 216B.1692, Subd. 5(a), which directs the Commission to consider, before making the ultimate determination whether to approve, modify, or reject the proposed emissions reduction project, whether the project, proposed cost recovery, and any proposed recovery above cost appropriately achieves environmental benefits without unreasonable consumer costs.

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[15] Minn. Stat. § 216B.1692, subd. 3(a)(5).

[16] Minn. Stat. § 216B.1692, subd. 2(4).

[17] Minn. Stat. § 216B.1692, subd. 3(a)(5).

This provision requires the Commission to determine appropriateness, weighing the environmental benefits against the consumer costs. Since the value of environmental benefits cannot be reduced to dollars and cents, the weighing directed in Subdivision 5(a) comes down to a policy decision for the Commission, a question of whether, taking all factors into consideration, the Project is "worth it."

1. Environmental Benefits

Under the Emissions Reduction Statute, the Pollution Control Agency is given the responsibility to provide the Commission with an evaluation of the proposed project, including a description of the projected environmental benefits of the proposed project . Due to this statutory role and expertise in the area, the Commission gives the PCA's Report on this subject a central position in the Commission's understanding of those benefits.

In its Report, the PCA noted that the King, High Bridge and Riverside plants contribute significantly to total overall emissions of sulfur dioxide (SO2) to Minnesota's air. The three plants alone represent almost half of SO2 released by electric utilities in the state, and nearly a quarter of SO2 emissions overall. The plants are emitting sizable amounts of NOx and mercury in Minnesota. The proposed project reduces SO2 emissions from these plants by 93 percent, NOx by 91 percent, and mercury by 76 percent.

The PCA reported that fine particulates strongly correlate with increased health problems, including early death from cardiopulmonary disease and lung cancer. EPA established an ambient standard for fine particles, PM(2.5), and requires state regulatory agencies to issue air alerts when monitoring shows actual ambient values approach levels that are still below the federal ambient standard. In 2001 and 2002, Minnesota experienced several air alerts for high levels of fine particles in Minnesota, and Minnesotans are suffering impaired health effects from fine particulates.

The PCA reported that SO2 and NOx contribute to widespread health concerns. The pollutants are subject to considerable regulation, most notable is the Bush Administration's Clear Skies proposal to reduce power plant emissions. The PCA also cited a study that measured health benefits when SO2 and NOx emissions are reduced at Minnesota coal-fired power plants. The study found that with reductions of the magnitude offered by the MERP proposal, the net present value of health benefits in Minnesota could be at least $1.2 billion.[18]

The PCA calculated benefits using Commission externality values. PCA's calculation extended benefits out to 2040, and uses a discount rate in keeping with public health benefits. (PCA used a 3% discount rate to value environmental and health benefits as approved by the EPA's Science Advisory Board for EPA's environmental benefit assessments.) PCA's calculation showed Commission externality-based benefits of the MERP project to be $200 to $500 million, using low and high externality values. The PCA stated that even this conservative treatment of the benefits shows benefits greater than those calculated by Xcel in its July filing ($58-$127 million).

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[18] Nelson, C.D., *The Public Health Impacts of Particulate Emissions from Coal-fired Power Plants in Minnesota.* Thesis. Master of Science. University of Minnesota. October 2000.

Xcel argued that the avoided costs related to the construction of an additional 385 MW over the original generating capacity at the three plants has a net present value of about $700 million. PCA concurs that there is real value to this generating capacity that is not reflected in the construction costs, nor in the assessment of benefits. In addition to adding generating capacity, the project refurbishes about 1,100 MW of existing capacity without the need to develop new sites or construct new transmission lines. Xcel stated that there is substantial benefit for not having to replace this power in some other manner.

The PCA noted that there are benefits to the project that are not directly quantifiable, including reduced emissions of mercury and other bioaccumulative metals; reduced contributions to ground level ozone (smog), regional haze and acid deposition; reduced truck and rail traffic, coal dust, ash disposal, stack heights, water usage, and water discharge, and noise; and reduced need for development of new energy generation sites and new transmission lines. In addition, the PCA cited substantial local improvements in the communities and general areas around the High Bridge and Riverside plants that will be achieved by eliminating the coal-burning plants.

2. Consumer Costs

Xcel proposed emissions reduction activities at the existing generating plants, including King, High Bridge and Riverside, in conformance with the requirements of Minn. Stat. § 216B.1692, for a total projected capital cost of $1.044 billion.

Because project costs are compared to the benefits of the proposal, the PCA reviewed project costs to determine if they were within a reasonable range. Xcel's Primary Proposal involves essentially three different types of construction/rehabilitation: King involves some rehabilitation of the coal-fired boiler to extend its life along with the addition of highly efficient pollution control equipment; Riverside involves repowering the plant to combust gas instead of coal, and requires replacing portions, but not all, of the power producing equipment onsite; High Bridge involves the construction of a new gas-fired generating station to retire a coal-fired station.

Construction costs for the King rehabilitation and the Riverside project fall within a reasonable range as defined by similar projects either nationally or within Minnesota.

PCA initially concluded that the cost of reconstructing High Bridge appears to be about 20 percent higher than national figures for new greenfield plants. The PCA stated that this may be due to some unique site characteristics that need to be addressed for reconstruction on the existing power plant site. It noted that Xcel had provided several reasons for the higher costs associated with work on the High Bridge project.

Subsequently, in supplemental information filed October 24, 2003, the PCA reported that it has continued to monitor trade journals as they report on costs of completed projects. In September 2003, trade journals reported that the conversion cost for the Possum Point Power station near Washington, D.C., (a brownfield development), result in a generating capacity capital cost of $727/kW, which compares favorably to Xcel's estimate for the conversion of High Bridge. In

addition, the PCA noted that its cost benefit analysis could be changed in two ways based on subsequent corrections to the record.

First, as a result of new cost data provided by Xcel in its September 10 filing, the Primary Proposal is expected to cost less than originally projected. Second, PCA's cost benefit analysis did not reflect the fact that the Primary Proposal will eliminate emissions from the High Bridge units 3 and 4, increasing the quantifiable benefits for the Primary Proposal. PCA explained that it did not adjust its study presentation to account for these later-discovered factors because the revised cost figures provided by Xcel treat a range of various 20 year forecasts of the price of natural gas, including a forecast biased toward a potential high end range, not in the currently predicted reasonable forecast range for future natural gas prices.

In the Settlement Agreement, the parties (including the PCA) agreed that a target cost would be used for the purpose of determining the rate of return on equity would be as follows:

King:	$381,560,000
High Bridge:	$394,840,000
Riverside	$212,385,000
TOTAL:	$988,785,000

3. Commission Consideration and Finding Regarding the of the Costs and Benefits Pursuant to as Required by Minn. Stat. § 1692 , Subd. 5

The Commission is aware that in examining benefits and costs, care must be taken to distinguish the direct costs of the Primary Proposal from the net cost to ratepayers, after taking into consideration the future avoided purchases of capacity and energy, which would otherwise be recovered from ratepayers. Estimates of future avoided costs are difficult to make but are an important part of any cost/benefit analysis. Xcel provided an expected avoided capacity and energy cost of about $461 million on a net present value basis. In other words, without the capacity provided by the Primary Proposal, Xcel would need to go out into the marketplace and purchase additional capacity. Thus, the avoided capacity and energy revenue requirements reduce the net cost of the Primary Proposal.

In addition to avoided costs, there are costs which would have arisen regardless of whether the Primary or Alternative Proposal is pursued. Parties accounted for these costs through different assumptions about the future base case (i.e. future resource expansion path, price of natural gas, dispatch order etc).

Xcel, PCA, IWLA, the Department, and the Sierra Club each analyzed costs and environmental and public health benefits. No party submitted a cost/benefit analysis that indicated the Company's project was inappropriate. Based on these analyses, each recommended that the Commission approve Xcel's Primary Proposal, notwithstanding the fact that each took a different approach to the assessment of future costs and benefits and in some cases used different base case and future scenarios. In short, differences in the parties' measure of costs and benefits, base cases, and future scenarios did not alter their central conclusion: that the Primary Proposal appropriately achieves environmental benefits and does not impose unreasonable costs.

Taken as a whole, these five approaches to benefits and costs provided by Xcel, PCA, IWLA, the Department, and the Sierra Club establish a record upon which the Commission can appropriately consider whether Xcel's Primary Proposal and proposed cost recovery, and any recovery above cost appropriately achieves environmental benefits without unreasonable costs and make a determination. Based on that record and also taking into consideration the purpose and terms of the Emissions Reduction Statute, the terms of the Settlement Agreement, and the conditions added by the Commission in Section VII, the Commission finds that Xcel's Primary Proposal, as conditioned, does appropriately achieve environmental benefits without unreasonable consumer costs.

4. Preference for Primary Proposal Over the Alternative

The PCA concluded that the costs of the Alternative Proposal substantially exceed its benefits. Because of the greater emission reductions from the Primary Proposal as well as the greater avoided costs, the PCA calculated that the Primary Proposal is more cost effective on a dollars-per-ton-reduced basis than the Alternative. As a result, the PCA indicated that the Primary Proposal is a superior project. No party disagreed with the PCA's conclusion and argued in favor of the Alternative proposal.

On the basis of the record, therefore, the Commission finds that Xcel's Primary Project is available and clearly superior to the Alternative. In these circumstances, the Alternative would impose "unreasonable consumer costs" in violation of the standard established in Minn. Stat. § 216B.1692, subd. 5(a).

VII. CONDITIONS AND CLARIFICATIONS

A. Independent Audit

In addition to the terms of the Settlement Agreement, the Commission will order an ongoing independent audit of the project as a condition of its approval of Xcel's Proposed Plan. An independent audit is a reasonable cost-containment measure that will promote prudent expenditures.

Specifically, the Commission will require Xcel to make available, upon request from the Department, the RUD-OAG, or the Commission, funding for an independent audit of the project paid for by the Company. The auditor will be selected and directed by and will work in cooperation with the Department and the RUD-OAG. The Company will be required to make the funds available beginning January 1, 2004 and throughout the life of the rider totaling $300,000 over the life of the project.

The Commission reserves the right to order additional funds (above the $300,000) on its own initiative or at the request of the Department and the RUD-OAG if necessary to conduct effective prudence reviews. Any request for funding above the $300,000 figure must come to the Commission for review and approval.

B. Reaffirmation of Ongoing Commitments

The Commission clarifies that the Settlement Agreement and the Commission's approval of the Emissions Reduction Primary Project and associated rate rider do not relieve Xcel of its obligations under Orders issued in previous dockets. The Commission specifically references the requirement from its October 22, 2003 Order in Docket No. E, G-002/CI-02-1346 that Xcel abide by the commitments the Company has made in previous dockets and in the 1346 Docket to protect NSP-MN customers from any negative financial effects resulting from its investments in NRG. See, e.g., Order Paragraph 1(f) of the October 22, 2002 Order in Docket No. Docket No. E.G.-002/CI-02-1346 which requires Xcel to

> . . . adjust Renewable Development Fund and **Emissions Reduction Riders** to remove any capital costs attributable to the NRG situation **when a specific rate rider adjustment is established in future proceedings**." (Emphasis added.)

C. Examination of Books

Based on the assumption that there will be a general rate case filed by Xcel in 2006, and given the complexity of this upcoming case, the Commission will require Xcel to open its books and records to parties for examination, beginning May 1, 2004.

D. Directive to Pursue Settlement Agreement Issues

In the Settlement Agreement, Xcel committed itself to study several issues. The Commission emphasizes the importance of those commitments and will specifically direct Xcel to pursue those issues as indicated in the Settlement Agreement. For instance, in the Settlement Agreement the Company made certain commitments with respect to mercury emissions[19] and the use of the most cost-effective resource and technology.[20]

E. Certificate of Need Not Required for High Bridge Conversion

The Certificate of Need Statute, Minn. Stat. § 216B.243, subd. 2 states

> Subd. 2. **Certificate required.** No large energy facility shall be sited or constructed in Minnesota without the issuance of a certificate of need by the commission pursuant to sections 216C.05 to 216C.30 and this section and consistent with the criteria for assessment of need.

However, Subdivision 8(5) of the Certificate of Need statute exempts conversion of the fuel source of an existing electric generating plant to natural gas from that requirement. In the context of this

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[19] Settlement Agreement, Paragraph 2.

[20] Settlement Agreement, Paragraph 39.

docket, the Commission concludes that this exemption applies to the High Bridge project. Therefore, no certificate of need process will be required regarding that project.

F. Variances Requested

1. Minn. Rules, Part 7825.2500

This rule is one of the Commission's automatic adjustment rules addressing the fuel clause and the purchased gas adjustment. It permits the filing of rate schedules containing provisions for the automatic adjustment of charges provided the provisions conform to parts 7825.2600 to 7825.2920. Xcel requested a variance to the rule, if deemed necessary, to permit the automatic adjustment of rates under the emissions reduction rider.

The Emissions Reduction Statute, Minn. Stat. § 216B.1692, contains provisions which create a unique rider, independent of the Commission's fuel clause or purchased gas adjustments. Consequently, the Commission finds that no variance to that rule is needed.

2. Minn. Rules, Part 7825.3600

This rule requires the filing of tariff pages reflecting the proposed changes when the proposed change in rates is filed. The Company requested a variance from this rule because the request for a new rate rider requires minor but identical changes to all the electric rate schedules.

The Commission finds that enforcing the rule would be burdensome due to the minor and identical changes needed to be filed in over 30 different electric rate schedules. The public interest would not be harmed by granting the variance because illustrative schedules are included with the filing, and granting the variance would not conflict with law.

Based on these findings, the Commission will exercise its authority pursuant to Minn. Rules, Part 7829.3200 to grant Xcel a variance from the identified requirement of Minn. Rules, Part 7825.3600.

The Commission clarifies that this variance simply allows the Company to have its rate rider considered without having filed all the proposed changed tariff pages. Now that this Order has approved the rate rider, the Company will need to file final updated tariff sheets before implementing the rate rider.

ORDER

1. The requests of Myer Shark and North Star Steel for a contested case proceeding are denied.

2. The Commission hereby approves Xcel's Proposed Plan and rate rider, subject to the terms of the Settlement Agreement and other conditions and clarifications set forth in the text of this Order.

3. Xcel shall make available funding for an independent audit of the project if requested by the Department, the RUD-OAG, or the Commission. The auditor shall be paid by the Company but shall be selected and directed by and work in cooperation with the Department and the RUD-OAG. The Company shall make funds available beginning January 1, 2004 and throughout the life of the rider, totaling $300,000 over the life of the project. The Commission reserves the right to order additional funds (above the $300,000) on its own initiative or at the request of the Department and the RUD-OAG if necessary to conduct effective prudence reviews. Additional Commission action will be needed in the future to increase the amount required of Xcel above the $300,000 figure.

4. Xcel shall abide by the commitments it has made in previous dockets and in Docket No. E, G-002/CI-02-1346 to protect NSP-MN customers, including, in Ordering Paragraph 1 (f)

> . . . to adjust Renewable Development Fund and **Emissions Reduction Riders** to remove any capital costs attributable to the NRG situation **when a specific rate rider adjustment is established in future proceedings**. (Emphasis added.)

5. Xcel shall open its books and records to parties for examination, beginning May 1, 2004.

6. Xcel shall take action to address the issues and take the steps identified for it in the Settlement Agreement.

7. The Commission clarifies that Xcel need not obtain a Certificate of Need for conversion of the High Bridge Plant as that conversion is exempted from the Certificate of Need requirements of Minn. Stat. § 216B.243.

8. The Commission hereby grants Xcel a variance from the requirement of Minn. Rules, Part 7825.3600 that as part of its request for approval of its proposed rider, that it include all the tariff pages that would need to be altered if the rate rider were approved. The Commission clarifies that the variance does not exempt the Company, now that the rate rider has been approved, from filing all the tariff pages reflecting the approved rate rider before implementing the rate rider.

9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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