

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

In the Matter of the Application of Northern States Power Company d/b/a Xcel Energy for a Certificate of Need for Additional Dry Cask Storage at the Monticello Nuclear Generating Plant Independent Spent Fuel Storage Installation in Wright County

ISSUE DATE: October 17, 2023

DOCKET NO. E-002/CN-21-668

ORDER GRANTING APPLICATION WITH CONDITIONS

**PROCEDURAL HISTORY**

On September 1, 2021, Northern States Power Company—Minnesota d/b/a Xcel Energy (Xcel Energy or the Company) filed a petition for a certificate of need (CON or CN) to expand the capacity of its independent spent fuel storage installation (ISFSI) at the Company’s existing site at the Monticello Nuclear Power Generating Plant (Monticello Plant).

On December 28, 2021, the Minnesota Department of Commerce (DOC) issued notices of public meetings to address the appropriate scope of the environmental impact statement (EIS) that its Energy Environmental Review and Analysis Unit (DOC-EERA) would generate for this project. The notices also announced the availability of a Scoping Environmental Assessment Worksheet and a draft “scoping decision”—that is, a decision identifying the topics to be addressed in the EIS.

On February 15, 2022, the Commission issued its Order Accepting Application and Notice and Order for Hearing, referring this matter to the Office of Administrative Hearings for a contested case proceeding—that is, a proceeding to establish facts, wherein witnesses file sworn testimony and may undergo cross-examination.<sup>1</sup>

On March 2, 2022, DOC-EERA issued its EIS Scoping Decision.

On September 9, 2022, Xcel Energy filed additional information to aid in the preparation of the draft EIS.

On October 4, 2022, DOC-EERA issued its draft EIS, and a notice of public information meetings regarding the draft. DOC-EERA convened a public information meeting at the Monticello Community Center in Monticello, Minnesota, on October 26 and another meeting online on October 27.

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<sup>1</sup> Minn. Stat. §§ 14.57-14.62; Minn. R. 1400.5010-1400.8400.

On November 14, 2022, Xcel Energy filed comments on the draft EIS.

On January 10, 2023, DOC-EERA issued its final EIS.

On January 27, 2023, Xcel Energy filed comments asking DOC to find the final EIS adequate because it met all applicable regulatory requirements.

On February 6, 2023, DOC-EERA issued its Order Determining Final EIS to be Adequate and Order Determining ISFSI Design to be Protective of Groundwater.

On March 1, 2023, Xcel Energy filed direct testimony supporting its petition.

On March 1, 2023, DOC Division of Energy Resources (DOC-DER) also filed direct testimony, ultimately recommending that the Commission grant the petition.

On March 16, 2023, the Commission issued its Notice of Public Hearings. Public hearings were held at the Monticello Community Center in Monticello, Minnesota, on March 29 and online on March 30.

On March 27, 2023, Xcel Energy filed rebuttal testimony.

On April 7, 2023, the Commission received a public comment.

On April 14, 2023, DOC-DER filed surrebuttal testimony.

On April 17, 2023, the Commission received public comments.

On May 1, 2023, the Administrative Law Judge issued an order inviting comments regarding the tritium leak discovered at the Monticello Plant on November 22, 2022.

On May 15, 2023, Xcel Energy filed proposed findings of fact and a supplemental submission on the tritium leak.

On May 30, 2023, DOC filed comments regarding the potential consequences of the recent leak of tritium as requested by the Administrative Law Judge.

On June 29, 2023, the Administrative Law Judge filed his Summary of Testimony, Findings of Fact, Conclusions of Law, and Recommendation (ALJ Report) recommending that the Commission grant the certificate of need with conditions.

On July 14, 2023, DOC and Xcel Energy filed exceptions to ALJ Report.

On August 24, 2023, the Commission met to consider this matter.

## FINDINGS AND CONCLUSIONS

### I. Summary of Commission Action

In this order, the Commission adopts the ALJ Report to the extent that it is consistent with the Commission's determinations in this matter, and issues to Xcel Energy a certificate of need for additional dry cask storage at its independent spent fuel storage installation in Monticello with conditions. The Commission also authorizes its Executive Secretary to report the Commission's decision to the Legislature under Minn. Stat. § 116C.83, and directs the Company to make periodic reports to the Legislature about the status of the Monticello Plant and its spent fuel.

### II. Applicable Law

#### A. Certificate of Need

The Commission has general jurisdiction over investor-owned public electric utilities.<sup>2</sup> In addition, anyone seeking to build a nuclear waste storage facility<sup>3</sup> in Minnesota must first obtain a certificate of need from the Commission.<sup>4</sup>

In applying for a certificate of need, the applicant must demonstrate that its project is needed, and that the relevant demand for electricity cannot be met more cost effectively through energy conservation and measures designed to shift the time when electricity is consumed.<sup>5</sup> In evaluating an application, the Commission considers alternatives, environmental information, historical and forecast data, wastes and emissions, pollution control, safeguard equipment, and estimates of resulting economic changes ("induced development").<sup>6</sup> The Commission grants the certificate if it finds the following facts<sup>7</sup>—but only to the extent that the Commission finds a given criterion applicable and pertinent to the proposed facility:<sup>8</sup>

A. the probable direct or indirect result of denial would be an adverse effect upon the future adequacy, reliability, safety, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

(1) the accuracy of the applicant's forecast of demand for the energy or service that would be supplied by the proposed facility;

(2) the effects of existing or expected conservation programs of the applicant, the state government, or the federal government;

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<sup>2</sup> Minn. Stat. §§ 216B.01; 216B.02.

<sup>3</sup> Minn. Stat. § 216B.2421, subd. 2(8).

<sup>4</sup> Minn. Stat. §§ 116C.83; 216B.243.

<sup>5</sup> Minn. Stat. § 216B.243, subd. 3.

<sup>6</sup> Minn. R. chapter 7855.

<sup>7</sup> Minn. R. 7855.0120.

<sup>8</sup> Minn. R. 7855.0100.

(3) the effects of promotional practices in creating a need for the proposed facility, particularly promotional practices that have occurred since 1974;

(4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

(5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources;

B. a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant, considering:

(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. it has been demonstrated by a preponderance of the evidence on the record that the consequences of granting the certificate of need for the proposed facility, or a suitable modification thereof, are more favorable to society than the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs;

(2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility;

(3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development; and

(4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality; and

D. ... it has not been demonstrated on the record that the design, construction, operation, or retirement of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

In rendering its decision, the Commission makes a specific written finding with respect to each of the criteria listed above.<sup>9</sup>

Even if the Commission issues an order granting a certificate of need for additional storage for spent nuclear fuel, Minn. Stat. § 116C.83 prohibits the order from taking effect until the June following the start of the next regular meeting of the Minnesota Legislature—thereby granting the Legislature the opportunity to address the matter.<sup>10</sup> By the January 15th preceding that June, the Commission must submit a report on the matter to the chairs of the Minnesota House of Representatives and Senate committees with jurisdiction over energy and environmental policy issues; the report must contain a summary of the Commission's decision and the grounds for that decision, the alternatives considered and rejected, and the reasons for rejecting those alternatives.<sup>11</sup>

## **B. Environmental Requirements**

Before the Commission grants a certificate of need to expand a storage facility for spent nuclear fuel, DOC must prepare an EIS in accordance with Minn. R. 4410.2000 to 4410.3100.<sup>12</sup>

In addition, Minn. Stat. § 116C.83 limits the storage of spent fuel and requires that spent nuclear fuel be managed in a manner to facilitate shipping the waste to another storage facility. In particular, the statute limits the amount of radionuclides released to groundwater and requires that spent nuclear fuel waste facilities be designed to minimize this amount.<sup>13</sup>

## **III. Monticello Nuclear Generating Plant**

### **A. Operation of a Nuclear Generating Plant**

Similar to fossil fuel-powered generating plants, the Monticello Plant generates electricity by heating water to form steam which then pushes the blades of a turbine. But unlike a fossil fuel plant, the Monticello Plant derives heat from a nuclear reaction. The chemical element uranium is unstable, tending to decay into other elements—and in the process, emitting energy and electrons that sometimes collide with other uranium atoms, which may cause those other atoms to decay, resulting in a chain reaction. But this reaction slows as ever more uranium decays into other elements. Consequently, the plant must periodically replace the uranium.

While spent fuel no longer emits sufficient radiation to power a commercial electric generator, it continues to emit sufficient radiation to pose a health hazard. During the first decade after being removed from the reactor, the spent fuel is stored in a water pool to capture its radiation. Thereafter the spent fuel can be stored in sealed containers (dry casks) which can be stored in an

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<sup>9</sup> *Id.*

<sup>10</sup> Minn. Stat. § 116C.83, subd. 3.

<sup>11</sup> *Id.*

<sup>12</sup> Minn. Stat. § 116C.83, subd. 6; Minn. R. 4410.4400.

<sup>13</sup> Minn. Stat. § 116C.83, subd. 5, citing Minn. Stat. § 116C.76.

independent spent fuel storage installation.<sup>14</sup> The casks shield workers and members of the public from radiation during loading and storage, and keep external materials from seeping in.

## **B. The Monticello Plant and Independent Spent Fuel Storage Installation**

For more than 50 years Xcel Energy has owned and operated the Monticello Plant on approximately 2,150 acres in Monticello, Minnesota, on the west bank of the Mississippi River approximately 50 miles northwest of Minneapolis. The plant can generate up to 671 megawatts (MW).

The current ISFSI occupies roughly 3.5 acres adjacent to the reactor and turbine building. The site contains storage vaults monitored by temperature sensors, cameras, and other security devices.

The facility currently contains spent fuel in 30 canisters in modular concrete vaults, supported by a reinforced concrete pad.

The U.S. Nuclear Regulatory Commission (NRC), which regulates the use of nuclear materials,<sup>15</sup> initially licensed the Monticello Plant to operate from 1970 to 2010.

In 2006 the Commission granted a certificate of need to build the Monticello Plant's ISFSI and store up to 30 casks, sufficient to store all the fuel that would be used through 2030.<sup>16</sup> Shortly thereafter the NRC authorized Xcel Energy to extend the operations at the Monticello Plant by 20 years, through 2030.

In 2022, the Commission approved a resource plan for Xcel Energy that incorporated the expectation that the Company would continue operating the Monticello Plant through 2040.<sup>17</sup>

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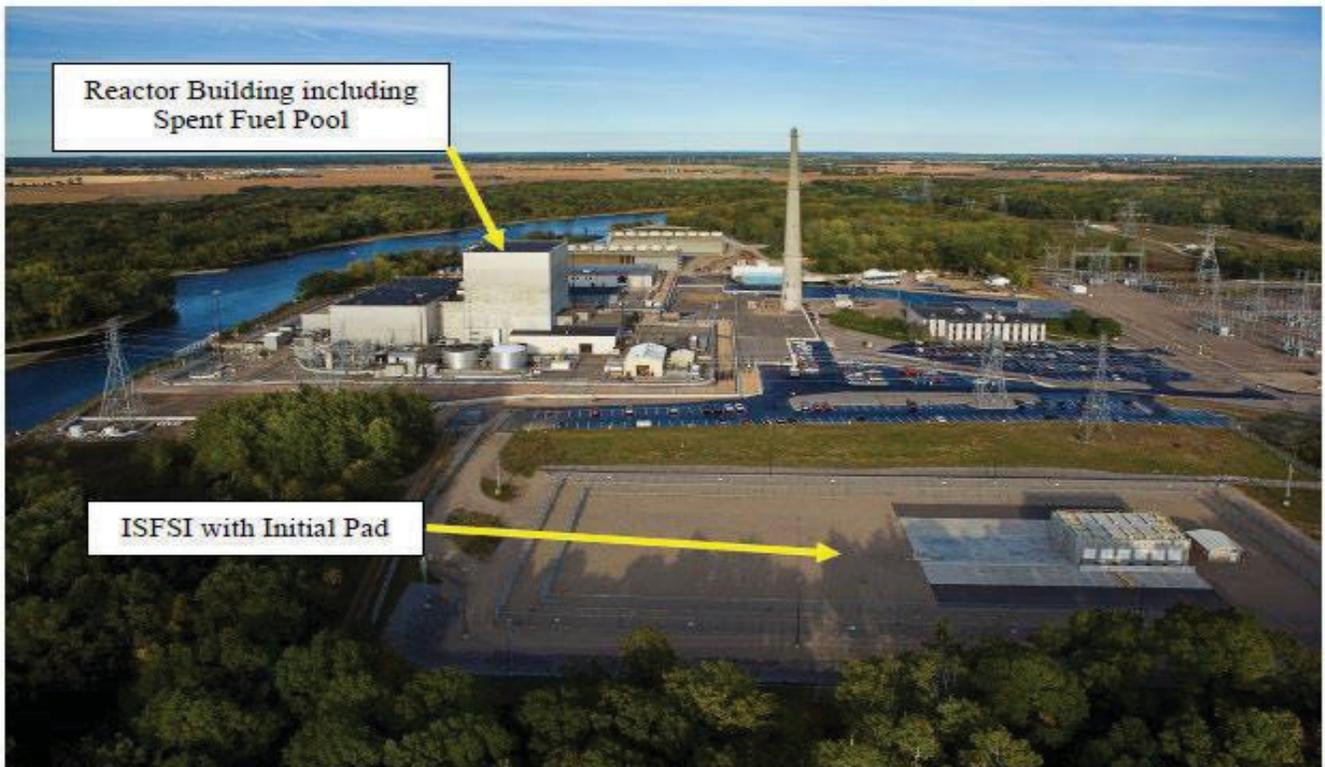
<sup>14</sup> See 10 C.F.R. § 72.3. The term “independent” distinguishes such storage facilities from storage pools that are part of a nuclear reactor plant.

<sup>15</sup> See generally Chapter 10 of the Code of Federal Regulations.

<sup>16</sup> *In the Matter of the Application of Northern States Power Company, d/b/a Xcel Energy, for a Certificate of Need to Establish an Independent Spent Fuel Storage Installation at the Monticello Generating Plant*, Docket No. E-002/CN-05-123, Order Granting Certificate of Need for Interim Independent Spent Fuel Storage Installation (October 23, 2006).

<sup>17</sup> *In the Matter of the 2020–2034 Upper Midwest Integrated Resource Plan of Northern States Power Company d/b/a Xcel Energy*, Docket No. E-002/RP-19-368, Order Approving Plan with Modifications and Establishing Requirements for Future Filings (April 15, 2022).

Figure 1: Storage Site Location<sup>18</sup>



Since then, the Company has petitioned the NRC to extend the Monticello Plant’s operating license; because the NRC grants extensions in 20-year increments, the Company is seeking an extension through 2050.

#### IV. The Petition

Xcel Energy seeks authorization to add sufficient storage to permit the Monticello Plant to extend its operations from 2030 until 2040. This would require building a second concrete support pad within the existing ISFSI and adding another modular concrete storage system to house steel canisters containing the spent fuel. While Xcel Energy anticipates needing only around 14 new canisters through 2040, the Company proposes to build space for approximately 36 canister vaults.

In its application and testimony, Xcel Energy presented arguments that the proposal fulfilled the statutory and regulatory requirements for a certificate of need. As part of its application, it analyzed possible alternative proposals. Specifically, while the Company found no viable off-site or on-site alternatives for storing spent nuclear fuel, it analyzed two scenarios for maintaining and developing enough other resources as to permit the Company to discontinue operating the Monticello Plant in 2030. The Company ultimately concluded that maintaining the Monticello Plant was a better alternative than either of the two scenarios.

<sup>18</sup> Xcel Energy’s application at 1-6.

## V. Tritium Leak

Tritium is a radioactive form of hydrogen that occurs naturally in the atmosphere, and also as a byproduct of operating a nuclear power plant. Tritium releases low-energy beta particles that do not travel far in air and are too weak to penetrate skin, but could cause health problems if ingested in sufficient quantities. Because tritium readily combines with oxygen to form water, the U.S. Environmental Protection Agency (EPA) has established a maximum drinking water standard of 20,000 picocuries per liter (pCi/L).<sup>19</sup>

According to Xcel Energy, during routine groundwater testing near the Monticello Plant on November 21 and 22, 2022, the Company detected a tritium leak. The Company later determined that it had come from a leaking water pipe running between two buildings at the plant.

The Company promptly reported this finding to the Minnesota State Duty Officer and the NRC, and the NRC published this fact in its reports. News media in Minnesota began reporting on the leak by mid-March 2023, and the Commission began receiving public comments about the leak in April.

On May 1, 2023, the Administrative Law Judge issued an order directing parties to provide additional information about the leak of tritiated water. In response, Xcel Energy made a supplemental filing addressing the history of the leak and the Company's investigation and ongoing remediation at the site.

According to this filing, the Company had located the leak and repaired it, but not before approximately 400,000 gallons of water—containing approximately 8 curies of radioactivity—had leaked; the Company had recovered 4.111 curies. Xcel Energy stated that the leak has not affected groundwater outside the boundaries of the Monticello Plant or the Mississippi River. The Company cited statements from the Minnesota Department of Health and the Minnesota Pollution Control Agency reporting that the leak posed no health risks to people or affected animals or plants (including crops), and no evidence that it has affected public drinking water or private well water.<sup>20</sup>

Xcel Energy argued that the discovery and disclosures of the leak did not call into question whether any of the certificate of need factors have been satisfied. And the Company stated that it would continue to pump tritiated water and clean up the water plume, ensuring that the leak would not pose a threat to the health of the public or the environment.

After reviewing these developments, DOC filed comments stating that the tritium leak did not ultimately alter its recommendation to grant Xcel Energy's petition for authority to expand the Monticello Plant's ISFSI. DOC concluded that Xcel Energy will need to continue operating the Monticello Plant to meet the state's energy needs, and that the leak of tritiated water did not

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<sup>19</sup> See 40 C.F.R. § 141.166(d)(1) and Table A. A picocurie is  $10^{-12}$  curies.

<sup>20</sup> <https://www.health.state.mn.us/communities/environment/air/tritiumleak.html>; <https://www.pca.state.mn.us/news-and-stories/minnesota-state-agencies-monitoring-cleanup-of-tritium-leak-at-xcel-energy-monticello-plant>; <https://www.pca.state.mn.us/news-and-stories/statement-on-xcel-energy-shutdown-of-monticello-nuclear-plant>.

trigger the need to revise the Final EIS. But DOC recommended that the Company make regular reports until the issues related to the leak had been resolved.

Finally, DOC argued that the current docket did not provide the appropriate forum, nor the appropriate record, to evaluate questions about the Company's prudence in managing the Monticello Plant and the leak, nor questions about recovering from ratepayers any costs related to the leak. Accordingly, DOC cautioned the Commission against making any findings that might bear on these questions; to the contrary, DOC recommended that the Commission make explicit findings denying that it was addressing such questions.

## **VI. Public Comments**

In addition to the public comments received by the DOC during discussions of the draft EIS, members of the public addressed comments to the Administrative Law Judge and the Commission. They offered a range of views, including the following:<sup>21</sup>

- The Commission should grant Xcel Energy's petition because nuclear power provides a safe, reliable, and reasonably priced source of electricity without generating greenhouse gases, and has benefitted the local community through providing employment and tax revenues.
- The Commission should grant the petition, but state agencies must continue to monitor the ISFSI throughout the Monticello Plant's operating life and beyond.
- DOC-EERA should revise the EIS in light of the information about the tritium leak.
- The Commission should postpone ruling on this matter until the tritium leak has been remedied and a thorough plan for alerting the public is assessed.
- Xcel Energy should not be allowed to continue operating the Monticello Plant because the tritium leak has not been resolved, the public was not adequately informed, and the plant's continued operation poses a risk to the public.
- Having large quantities of spent nuclear fuel stored above ground in the Mississippi River Valley creates a needless risk for contamination following an explosion or a breakdown of control following a pandemic. Federal authorities should take emergency action to secure spent nuclear fuel underground.

## **VII. Administrative Law Judge Report and Exceptions**

### **A. The Report**

After presenting 249 findings of fact and 15 conclusions of law, the ALJ Report concluded that

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<sup>21</sup> See, for example, public comments of Wendy Schoen (Apr. 13, 2023), Jonathan Heinrichs (Apr. 12, 2023), Melissa Larsen (Apr. 14, 2023), Fredrick Patch (Mar. 30, 2023), 1st Public Hearing Transcript, at 1-4, 22-25.

Xcel Energy had satisfied the criteria for receiving a certificate of need and should receive the certificate subject to the following conditions recommended by DOC-DER.

Xcel [Energy] must justify any costs (including operations and management expense, ongoing capital expense, revenue requirements related to capital included in rate base, insurance expense, land-lease expense, and property-production tax expense) that are higher than forecasted in this proceeding.

Xcel [Energy] bears the burden of proof in any future regulatory proceeding related to the recovery of costs above those forecasted in this proceeding.

The Commission will otherwise hold the Company accountable for the price and terms used to evaluate the project. Ratepayers will not be put at risk for any assumed benefits that do not materialize.

Xcel [Energy's] customers must be protected from risks associated with the non-deliverability of accredited capacity, energy or both, from the project. The Commission may adjust Xcel [Energy]'s recovery of costs associated with this project in the future if actual production varies significantly from assumed production over an extended period.<sup>22</sup>

Xcel Energy must file quarterly reports describing its activities to remediate the leak of tritiated water until such time as the leakage has been fully remediated. Further, the reports must include detail on the Company's groundwater monitoring and treatment of tritiated groundwater.<sup>23</sup>

## **B. Exceptions of Xcel Energy**

Xcel Energy stated that the ALJ Report accurately sets forth the legal standards to be applied in the certificate of need proceeding and demonstrated a thorough review of the record.

But the Company opposed adoption of Finding 193 which states that the U.S. Department of Energy classifies waste streams that included tritium as "high level radioactive waste." The Company disputed this claim, arguing that it is unsupported in the record and unnecessary to support any other finding, conclusion, or recommendation in the ALJ Report.

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<sup>22</sup> ALJ Report, Finding 245 and Conclusion 1.

<sup>23</sup> *Id.*, Finding 248 and Conclusion 1.

Xcel also proposed adopting the following findings clarified as follows:<sup>24</sup>

69. Xcel Energy filed an application with the NRC on January 9, 2023, to renew the Plant's operating license, ~~again, this~~ which if granted, would permit the Plant to operate until September 8, 2050.

104. Company witness Ms. Peterson explained that the Monticello Plant is an essential part of the Company's electrical supply system and has been for 50 years. The need for additional storage is a simple function of ~~from~~ extending the life of the Plant beyond 2030.

124. The Administrative Law Judge finds that the record demonstrates that the denial of a CN would adversely affect the future adequacy, reliability, or efficiency of energy supplies. Moreover, the denial of the CN would ~~negative~~ negatively impact the applicant, its customers, the people of Minnesota and the residents of neighboring states. The Administrative Law Judge concludes that the Company has adequately met the first criteria for a CN.

146. Company witness Dan Flo explained that because of the availability and ~~suitable~~ suitability of the existing site, the Company did not expend a lot of planning resources on an alternative location for a second ISFSI within the Monticello Plant.

204. Approximately 400,000 gallons of water leaked before the source of the leak was discovered and contained. The amount of tritium contained in the leaked water was approximately 8 curies. ~~To date~~ As of May 15, 2023, the Company has recovered 4.111 curies of the 8 curies leaked.

225. As noted above, no other non-nuclear powered baseload generation source in the Company's system can operate at nearly full capacity, year-round. The Company's Monticello Plant and Prairie Island Nuclear Generating plant are the only generation resources in Xcel Energy's system that provides this level of consistent energy and capacity.

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<sup>24</sup> Throughout this order, underlined language refers to text added to an original document, and language with lines through it refers to text being removed from an original document.

Xcel also proposed adopting modifications to clarify the Administrative Law Judge's final recommendation related to the duration of the reporting requirement related to the tritium leak at the plant:

Xcel Energy must file quarterly reports describing its activities to remediate the leak of tritiated water until such time as ~~the leakage has been fully remediated~~ sampling results from the Company's monitoring wells demonstrate, for four consecutive quarters, tritium levels below the EPA drinking water standard of 20,000 pCi/L. Further, the reports must include detail describing the Company's groundwater monitoring and treatment of tritiated groundwater.

Xcel Energy asserted the proposed clarification is consistent with DOC's proposed conditions, and would provide certainty around expectations for both the Company and parties receiving and reviewing reports on the remediation efforts.

### **C. Exceptions of DOC**

DOC asked that Findings 192 through 212 related to the tritiated water leak be replaced with proposed findings 162 and 163 from Xcel Energy's May 15, 2023, *Proposed Summary of Testimony, Findings of Fact, Conclusions of Law & Recommendation*.

DOC surmised that Findings 192-212 derived from the Company's supplemental filing regarding the tritiated water leak. DOC cautioned against relying on these detailed statements, as they arrived in the record too late to permit meaningful examination. DOC argued that Xcel Energy's proposed Findings 162 and 163 were a reasonable substitute:

162. The Company explained that it discovered a leak of tritiated water in November 2022 and promptly reported the leak to the Minnesota State Duty Officer and the NRC. The Company stated that the leak has not impacted groundwater outside the boundaries of the Plant, the Mississippi River, or any drinking water wells. The Company stated it has located the leak and repaired it. The Company also states that it continues to pump contaminated groundwater and will continue to take action to appropriately manage the cleanup of the tritiated water plume.

163. The ALJ finds that the Company's two replacement cases are reasonable test cases by which to compare the environmental impacts of extending the life of the Monticello Plant. The ALJ also finds that environmental considerations weigh in favor of extending the Monticello Plant and granting the CON, as compared to the Company's two replacement cases. The ALJ further finds that the circumstances around the leak of tritiated water at the Plant and the Company's response to that leak does not change the ALJ's finding on this point.

According to DOC, this language acknowledges that tritiated water leaked and finds that the record still supported granting the certificate of need, but does not address matters pertaining to the prudence of the Company's conduct or appropriate cost recovery.

### **VIII. Commission Analysis of Certificate of Need Criteria**

In analyzing whether to grant this certificate of need, the Commission must consider the regulatory criteria of Minn. R. 7855.0120. Those criteria, and the relevant analysis, are set forth below.

#### **A. Effect upon the future adequacy, reliability, safety, or efficiency of energy supply**

Minn. R. 7855.0120(A) requires the Commission to evaluate whether —

...the probable direct or indirect result of denial would be an adverse effect upon the future adequacy, reliability, safety, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering [the following factors]

The Administrative Law Judge found that the record demonstrates that the denial of a certificate of need would adversely affect the future adequacy, reliability, or efficiency of energy supplies, and would negatively impact the applicant, its customers, the people of Minnesota and the residents of neighboring states. Therefore, the Administrative Law Judge concluded that the Company has adequately met these criteria for a certificate of need.<sup>25</sup> The Commission concurs, as set forth below.

(1) the accuracy of the applicant's forecast of demand for the energy or service that would be supplied by the proposed facility....

The Commission extensively evaluated the demand for energy in Xcel Energy's service area, and affirmed the role of the Monticello Plant in meeting that demand through 2040, when evaluating and approving the Company's resource plan.<sup>26</sup> One key dynamic of that plan entailed retiring Xcel Energy's coal-fueled generators and delaying the retirement of other generators—including the Monticello Plant—to help offset the lost output. Accordingly, the Commission finds that operating the plant through 2040 as envisioned will generate additional spent fuel, thereby justifying the need for the additional storage sought in this docket.<sup>27</sup>

(2) the effects of existing or expected conservation programs of the applicant, the state government, or the federal government....

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<sup>25</sup> ALJ Report, Finding 124.

<sup>26</sup> See *In the Matter of the 2020-2034 Upper Midwest Integrated Resource Plan of Northern States Power Company d/b/a Xcel Energy*, Docket No. E002/RP-19-368, Order Approving Plan with Modifications and Establishing Requirements for Future Filing at 7, 31-32 (April 15, 2022).

<sup>27</sup> See ALJ Report, Findings 85-96.

Again, Xcel Energy’s resource plan provided a context for reviewing the Company’s resources for meeting customer demand—and, in particular, the context for identifying cost-effective conservation efforts. DOC, Xcel Energy, and the ALJ concluded that additional conservation efforts could not provide a practical replacement for the Monticello Plant’s output.<sup>28</sup> The Commission concurs.

(3) the effects of promotional practices in creating a need for the proposed facility, particularly promotional practices that have occurred since 1974....

Xcel Energy noted that the Monticello Plant had been contemplated, designed, and put into operation before 1974. In accordance with all parties, the Commission finds no evidence that the need to continue operating the Monticello Plant resulted from promotional practices.<sup>29</sup>

(4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand....

In the absence of receiving a certificate of need to expand its facility to store spent nuclear fuel, the Monticello Plant would cease operations in 2030. DOC and Xcel Energy concur that there are no places to store spent nuclear fuel from the plant beyond 2030 that would not require a certificate of need. While it might be possible to displace the need for extending operations at the Monticello Plant by maintaining the operations of the Company’s coal-fueled plants, the Commission found that option too costly and inconsistent with state environmental policies.<sup>30</sup>

Accordingly, the Commission finds no evidence that current and planned facilities not requiring certificates of need could meet the forecast demand.

(5) the effect of the proposed facility, or a suitable modification thereof, in making efficient use of resources....

Xcel Energy provided testimony that the Monticello Plant operates efficiently—maintaining continuous operations with high output and reduced operating costs. Moreover, the Company is exploring the ability to vary the plant’s output to reflect changes in demand—an uncommon practice among nuclear generators.<sup>31</sup>

The Commission finds this analysis persuasive. Moreover, authorizing the expansion of the Monticello Plant’s storage capacity will permit Xcel Energy to extend the operating life of the Monticello Plant, which reflects an efficient use of that resource.

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<sup>28</sup> *Id.*, Findings 97-102.

<sup>29</sup> *Id.*, Findings 103-106.

<sup>30</sup> *Id.*, Findings 107-118.

<sup>31</sup> *Id.*, Findings 118-123.

**B. Whether there is a more reasonable and prudent alternative**

Minn. R. 7855.0120(B) requires the Commission to evaluate whether —

... a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record ... considering:

(1) the appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives....

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives....

The Administrative Law Judge concluded that a more reasonable and prudent alternative to the proposed facility had not been demonstrated by a preponderance of the evidence on the record.<sup>32</sup> The Commission concurs, for the reasons set forth below.

Xcel Energy provided an analysis of various alternative plans, including —

- reprocessing the spent fuel,
- storing the spent fuel off-site (at new or existing storage facilities, and at a federal or privately run facility),
- storing the spent fuel on-site at a new ISFSI,
- making more efficient use of existing storage space,
- changing the design of the Company's dry casks, and
- relying on other sources of generation in lieu of extending the operating life of the Monticello Plant.<sup>33</sup>

Regarding this last alternative, Xcel Energy explored two scenarios. Under the first scenario, a capacity expansion model identified the least-cost combination of resources that might, in aggregate, have a similar generation profile to the Monticello Plant. The second scenario is similar, except that the model was constrained to pick only storage options (for example, batteries) and generation resources that rely on sources of energy that do not emit more greenhouse gases than the Monticello Plant.

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<sup>32</sup> *Id.*, Finding 220.

<sup>33</sup> ALJ Report, Findings 125-169.

Xcel Energy argued that none of the alternatives were a better alternative than the Company's proposal to extend the operating life of the Monticello Plant to 2040 and to authorize construction of the necessary storage facilities. No variation in the time, type, or timing of facilities altered this conclusion.<sup>34</sup>

The Company acknowledged that its capacity expansion model could identify a collection of resources that provide nearly the same generation output to the Monticello Plant at a lower cost (measured as the present value of the revenue requirement). But this analysis omitted consideration of externalities (that is, pollution), the regulatory costs of carbon, and the cost of complying with the new statutory mandate requiring utilities to refrain from using carbon-emitting generators by 2040.<sup>35</sup> Once the effects upon the natural and socioeconomic environments are considered—even including the effects of the tritium leak—neither of the proposed alternative scenarios provided a lower cost strategy to meet the forecasted demand.<sup>36</sup> Moreover, neither scenario could match the reliability of the Monticello Plant.<sup>37</sup>

Accordingly, the Commission finds that no more reasonable and prudent alternative to the proposed facility has been demonstrated by a preponderance of the evidence on the record. No variation in the size, the type, and the timing of proposed facilities, nor analysis of cost differences, nor consideration of consequences to the natural and socioeconomic environment, nor consideration of reliability alters this conclusion.

### **C. Whether granting the petition is favorable to society**

Minn. R. 7855.0120(C) requires the Commission to evaluate whether —

...it has been demonstrated by a preponderance of the evidence on the record that the consequences of granting the certificate of need for the proposed facility, or a suitable modification thereof, are more favorable to society than the consequences of denying the certificate....

The record shows that approving Xcel Energy's proposal would generate more social benefits than would denying it. This conclusion is clear in light of the state's increasing need for energy and generating capacity, the project's benefits for the natural and economic environments, the project's potential for inducing future development, and the social and environmental benefits of maintaining the Monticello Plant relative to other scenarios considered in the record. These matters are discussed further below.

(1) the relationship of the proposed facility, or a suitable modification thereof, to overall state energy needs....

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<sup>34</sup> *Id.*, Findings 170-178.

<sup>35</sup> *See* Minn. Stat. § 216B.2422, subd. 3; 2023 Minn. Laws, Ch. 7, § 10, adopting Minn. Stat. § 216B.1691, subd. 2g.

<sup>36</sup> ALJ Report, Findings 170-212.

<sup>37</sup> *Id.*, Findings 213-219.

DOC noted, based on reviewing the resource plans of multiple regulated utilities in the state, that the state generally faced a growing need for energy and power—and that Xcel Energy in particular faced needs due to the retirement of various generators and the expiration of certain power purchase contracts. On this basis, DOC concluded that keeping the Monticello Plant in operation through 2040 would help meet the state’s overall energy needs.

The ALJ concurred with the DOC’s assessment.<sup>38</sup> The Commission will do likewise.

(2) the effects of the proposed facility, or a suitable modification thereof, upon the natural and socioeconomic environments compared to the effects of not building the facility....

The ALJ identified three broad categories of consequences that the proposed project would have on the natural and socioeconomic environments. Most immediately, expanding the ISFSI would generate some amount of traffic, noise, and dust associated with construction—but since the construction would occur at an enclosed, remote location, and last briefly, the ALJ did not anticipate that this would have much consequence for either the natural or socioeconomic environments.

The ALJ noted that the proposal would generate and maintain economic activity in and around the City of Monticello. In addition to the short-term employment generated by the construction, discussed below, maintaining the Monticello Plant would maintain employment for hundreds of people for an additional ten years, and maintain substantial tax revenues for local units of government.

Perhaps most significantly, extending the life of the Monticello Plant would provide a source of electricity that would not generate a variety of externalities, especially greenhouse gases. In analyzing two alternative scenarios, Xcel Energy demonstrated that denying the certificate of need would have less beneficial effects for ratepayers and for the environment.

Weighing these considerations, the ALJ concluded that denying the certificate of need would tend to cause worse consequences for the natural and socioeconomic environments than would granting it.<sup>39</sup> The Commission concurs.

(3) the effects of the proposed facility, or a suitable modification thereof, in inducing future development....

Citing testimony from Xcel Energy’s witnesses, the ALJ found that granting the certificate of need would not cause the Monticello Plant to add more permanent employees, but during the six-month construction period the project would employ an estimated 40 construction workers (albeit no more than about 12 at any one time). The Company would anticipate the project causing minimal impact on other factors such as traffic, utilities, public services, or water usage levels.<sup>40</sup>

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<sup>38</sup> *Id.*, Findings 223-228.

<sup>39</sup> *Id.*, at Findings 229-231.

<sup>40</sup> *Id.*, at Finding 232.

The Commission concludes that granting the certificate of need would have some small consequence in inducing development.

(4) the socially beneficial uses of the output of the proposed facility, or a suitable modification thereof, including its uses to protect or enhance environmental quality....

The facility being proposed is an expansion of the Monticello Plant's ISFSI. Because Xcel Energy is pursuing this project to enable the Monticello Plant to continue generating electricity, it might appear that electric energy is the relevant output. But for purposes of this analysis, the relevant output is not energy, but generating capacity. Granting the certificate of need would help the Company maintain its capacity to generate electricity constantly and reliably with little harmful emissions. With this capacity, Xcel Energy can reduce its reliance on less constant, less reliable, more polluting sources of electricity. For this reason, the Commission finds that the Company's proposal has a socially beneficial use, and that the benefit relates to protecting the environment.<sup>41</sup>

#### **D. Whether project would comply with legal requirements**

Minn. R. 7855.0120(D) requires the Commission to evaluate whether —

...it has not been demonstrated on the record that the design, construction, operation, or retirement of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.

Xcel Energy stated that it would comply with relevant local, state, and federal policies, rules and regulations in building and operating the expanded ISFSI, knowing that the NRC is constantly monitoring the Company's actions.

Far from violating state policy, Xcel Energy argued that expanding the ISFSI is necessary to meet state policy goals—especially goals for reducing greenhouse gas emissions. In addition, expanding the ISFSI is necessary to continue operating the Monticello Plant until 2040, as set forth in the Company's Commission-approved resource plan. Finally, the Company stated that the project would comply with Minn. Stat. § 116C.83, subd. 4, by continuing to provide a flexible, modular storage system that would facilitate removing the spent fuel waste when an out-of-state storage facility becomes available.

The Department confirmed that it found no evidence that Xcel Energy's proposal would fail to comply with applicable federal, state and local policies, rules, or regulations—a position that the ALJ also adopted.<sup>42</sup> Accordingly, the Commission concurs.

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<sup>41</sup> *Id.*, Finding 233-234.

<sup>42</sup> *Id.*, Findings 235-244.

## **IX. Commission Action**

### **A. Conclusion, adoption of ALJ Report, and conditions**

The record of this proceeding, as summarized by the ALJ Report, demonstrates that the regulatory requirements for a certificate of need have been fulfilled. Consequently, the Commission will adopt the findings and conclusions of the ALJ Report to the extent that they are consistent with the decisions in this order—including the recommendation to grant Xcel Energy’s petition with conditions. The Commission will adopt the conditions recommended by the Administrative Law Judge—including the conditions proposed by DOC-DER—plus some additional conditions addressed below.

First, the Commission will adopt the ALJ Report modified to incorporate the uncontested clarifying changes proposed by Xcel Energy on July 14, 2023. These include changes to Findings 69, 104, 124, 146, and 225 as set forth above.

Second, the Commission will adopt the ALJ Report modified to replace Findings 192-212 with Xcel Energy’s proposed Findings 162-163, as proposed in DOC’s July 14, 2023, filing. These findings are sufficient to describe the events concerning the leak of tritiated water, while avoiding some unnecessary—and potentially contested—details set forth in the Administrative Law Judge’s findings. The Commission will further modify the language to clarify that these findings are being made by the Commission, not the ALJ, as set forth below:

162. The Company explained that it discovered a leak of tritiated water in November 2022 and promptly reported the leak to the Minnesota State Duty Officer and the NRC. The Company stated that the leak has not impacted groundwater outside the boundaries of the Plant, the Mississippi River, or any drinking water wells. The Company stated at the time of the ALJ report that it has located the leak and repaired it. The Company also states that it continues to pump contaminated groundwater and will continue to take action to appropriately manage the cleanup of the tritiated water plume.

163. The ~~ALJ~~ Commission finds that the Company’s two replacement cases are reasonable test cases by which to compare the environmental impacts of extending the life of the Monticello Plant. The ~~ALJ~~ Commission also finds that environmental considerations weigh in favor of extending the Monticello Plant and granting the CON, as compared to the Company’s two replacement cases. The ~~ALJ~~ Commission further finds that the circumstances around the leak of tritiated water at the Plant and the Company’s response to that leak does not change the ~~ALJ~~ Commission’s finding on this point.

## **C. Reporting Requirements**

### **1. Commission**

Consistent with Minn Stat. §116C.83, the Commission will delegate authority to its Executive Secretary to inform the appropriate Legislative committees that the Commission has issued an order to grant a certificate of need in this matter. While the statute prescribes a filing date of January 15, 2024, the Commission will direct the Executive Secretary to make this filing before December 31, 2023, to ensure that the Legislature has ample time to address the matter.

### **2. Xcel Energy**

As originally envisioned, the Legislature authorized the Commission to grant certificates of need for a utility to store spent nuclear fuel on a temporary basis, with the expectation that the waste would eventually move to a federal storage facility.<sup>43</sup> While progress in developing a federal facility has stalled, Xcel Energy should maintain plans to fulfill its statutory obligation to remove the waste if and when the opportunity arises. To this end, the Commission will direct Xcel Energy to make regular reports on the status of the ISFSI at the Monticello Plant to the Commission and to the chairs of the relevant legislative committees in the Minnesota House of Representatives and the Senate.

This report should set forth —

- the Company's estimate of the number of casks required to run the Monticello Plant through 2040,
- the amount of fuel being loaded each cycle,
- the capacity of the cask selected, and
- a summary of all proceedings before federal regulatory authorities in the past two years regarding licensure of the facility and removal of waste.

The Commission will direct Xcel Energy to file these reports on or before January 15 of odd-numbered years. But because all parties have had the opportunity to review the current status of the Monticello Plant and its ISFSI, the Commission will postpone the start of this reporting requirement until 2029, when the Company may have new developments to report. Xcel Energy may discontinue filing these reports when the Monticello Plant begins the process of decommissioning, or when the Company files a new certificate of need application seeking storage permitting the plant to operate beyond 2040.

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<sup>43</sup> See, for example, Minn. Stat. §§ 116C.775 and 116C.777 (requiring removal of spent nuclear waste from state as soon as possible) and 116C.779, subd. 1(i) (imposing annual fees if Xcel Energy fails to make good-faith effort to remove spent fuel from the state).

## ORDER

1. The Commission adopts the June 29, 2023, report of the Administrative Law Judge of the Office of Administrative Hearings to the extent it is consistent with the Commission's final decision. In particular, the Commission adopts the report with the following modifications:

- A. Modifying findings 69, 104, 124, 146, and 225 as proposed in the July 14, 2023, filing of Northern States Power Company d/b/a Xcel Energy.
- B. Replacing findings 192-212 with Xcel Energy's proposed findings 162-163, as shown in the July 14, 2023, filing of the Minnesota Department of Commerce and modified below:

162. The Company explained that it discovered a leak of tritiated water in November 2022 and promptly reported the leak to the Minnesota State Duty Officer and the [federal Nuclear Regulatory Commission]. The Company stated that the leak has not impacted groundwater outside the boundaries of the Plant, the Mississippi River, or any drinking water wells. The Company stated at the time of the ALJ report that it has located the leak and repaired it. The Company also states that it continues to pump contaminated groundwater and will continue to take action to appropriately manage the cleanup of the tritiated water plume.

163. The ~~ALJ~~ Commission finds that the Company's two replacement cases are reasonable test cases by which to compare the environmental impacts of extending the life of the Monticello Plant. The ~~ALJ~~ Commission also finds that environmental considerations weigh in favor of extending the Monticello Plant and granting the [certificate of need], as compared to the Company's two replacement cases. The ~~ALJ~~ Commission further finds that the circumstances around the leak of tritiated water at the Plant and the Company's response to that leak does not change the ~~ALJ~~ Commission's finding on this point.

2. The Commission issues a certificate of need to Xcel Energy for additional dry cask storage at its independent spent fuel storage installation in Monticello with the following conditions:
  - A. Xcel Energy must justify any costs, including those of operations and maintenance, ongoing capital expense, revenue requirements related to capital including in the rate base, insurance expense, land-lease expense, and property tax expense.
  - B. The Commission will otherwise hold Xcel Energy accountable for the price and terms used to evaluate the project.

- C. Ratepayers will not be put at risk for any assumed benefits that do not materialize.
- D. Xcel Energy’s customers must be protected from risks associated with the non-deliverability of accredited capacity, energy, or both, from the project. The Commission may adjust Xcel’s recovery of costs associated with this project in the future if actual production varies significantly from assumed production over an extended period.
- E. The Commission’s decision does not address the operations of the Monticello Nuclear Generating Plant beyond 2040, which will be subject to review in future resource planning proceedings.
- F. Xcel Energy shall file Monticello Nuclear Generating Plant reports as follows:
  - 1) Content: The reports shall contain —
    - a. Xcel Energy’s estimate of the number of casks required to run the Monticello Plant through 2040;
    - b. the amount of fuel being loaded each cycle;
    - c. the capacity of the cask selected; and
    - d. a summary of all proceedings before federal regulatory authorities in the past two years regarding licensure of the facility and removal of waste.
  - 2) Recipients: Xcel Energy shall file the reports with —
    - a. the Commission and
    - b. the chairs of the committees with jurisdiction over energy and environmental policy issues in both the Minnesota House of Representatives and Senate.
  - 3) Timing: Xcel Energy shall file the reports on or before January 15, 2029, and by January 15 of odd-numbered years thereafter until either —
    - a. a new certificate of need application has been filed for additional storage for the Monticello Plant to operate beyond 2040 or
    - b. the plant has begun the process of decommissioning.
- 3. The Commission delegates authority to the Executive Secretary to report the Commission’s decision to the Legislature under Minn. Stat. § 116C.83 before December 31, 2023.

4. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert  
Executive Secretary



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## **CERTIFICATE OF SERVICE**

I, Mai Choua Xiong, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

**Minnesota Public Utilities Commission**  
**ORDER GRANTING APPLICATION WITH CONDITIONS**

Docket Number **E-002/CN-21-668**  
Dated this 17<sup>th</sup> day of October, 2023

/s/ Mai Choua Xiong

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