



DATE: July 26, 2006
TO: Glen Wilson, Commissioner
FROM: Deborah Pile, Energy Facility Permitting *Debo Pile*
RE: DOC Staff Recommendation for Adequacy Determination on the Monticello Independent Spent Fuel Storage Installation Final Environmental Impact Statement

PUC Docket NO. E002/CN-05-123

The attached findings of fact, conclusions and order finding the Monticello Independent Spent Fuel Storage Installation environmental impact statement (EIS) to be adequate are offered for your signature.

They document that all processes and procedures were followed by the Environmental Quality Board and Department of Commerce in fulfilling the requirements of Minnesota statute 116C.83, subd. 6 (b) and that the adequacy tests of Minnesota Rule 4410.2800, subp. 4. have been met.

Background

Xcel Energy is proposing to expand the spent fuel storage capacity at the Monticello Generating Plant with an independent spent-fuel storage installation (ISFSI). On January 18, 2005, Xcel Energy submitted its Certificate of Need Application for the Monticello ISFSI to the Public Utilities Commission.

Before the PUC can make its need decision, a state EIS must be prepared. Authority for EIS preparation was transferred from the EQB to Commerce on July 1, 2005, including the authority to determine the adequacy of the Final EIS.

While the comment period on the adequacy of the FEIS closed April 10, 2006 and the adequacy decision could have been made as early as April 11, ongoing confusion by some parties concerning the relationship of the EIS process to the overall Certificate of Need process suggested that delaying the decision until the post-reply brief stage made sense.

I am available to discuss this matter and any specifics of the EIS process at your convenience.

Cc: Marya White
Edward Garvey

**STATE OF MINNESOTA
DEPARTMENT OF COMMERCE**

In the Matter of the Application by
Xcel Energy for a Certificate of Need for
an Independent Spent Fuel Storage
Installation at the Monticello Nuclear
Generating Plant in Wright County.

**FINDINGS OF FACT,
CONCLUSIONS AND ORDER
FINDING ENVIRONMENTAL
IMPACT STATEMENT TO BE
ADEQUATE**

PUC Docket No. E002/CN-05-123

The above-captioned matter came before the Commissioner of the Department of Commerce on July 26, 2006, pursuant to an application by Xcel Energy to construct an Independent Spent Fuel Storage Installation at the Monticello Nuclear Generating Plant in Wright County, Minnesota.

STATEMENT OF ISSUE

Is the Environmental Impact Statement for the Monticello Independent Spent Fuel Storage Installation adequate?

Based upon all of the proceedings herein, the Commissioner of the Department of Commerce makes the following:

FINDINGS OF FACT

Proposed Project

1. The spent fuel pool at the Xcel Energy Monticello Generating Plant will run out of room by 2010. Limited re-racking is possible that would allow the plant to operate through two more operating cycles, or another four years past 2010.
2. The federal Nuclear Regulatory Agency (NRC) operating license for the plant also expires in September 2010.
3. A certificate of need is required from the Minnesota Public Utilities Commission (PUC) for expanded spent fuel storage associated with the operation of a nuclear power plant beyond its current operating license. Minnesota Statutes 116C.83, subd. 2 and 3.
4. Xcel Energy is proposing to expand the spent fuel storage capacity at the Monticello Generating Plant with an independent spent-fuel storage installation

(ISFSI). On January 18, 2005, Xcel Energy submitted its Certificate of Need Application (CON Application) for the Monticello ISFSI to the PUC.

5. On March 16, 2005, Xcel Energy applied to the U.S. Nuclear Regulatory Commission (NRC) for a 20-year license renewal for the generating plant. Before deciding whether to grant the 20-year license renewal, the NRC must prepare a supplemental federal environmental impact statement (EIS).
6. The NRC, through rulemaking, has issued a general license for the spent-fuel storage technology Xcel Energy proposes to use at Monticello (Transnuclear NUHOMS 61 BT). Xcel Energy must demonstrate to the NRC that the ISFSI is designed to meet the specifications incorporated in the system's NRC general license and certificate of compliance. But otherwise, no new permit or approval for the ISFSI is required from the NRC.
7. The proposed ISFSI consists of a 200 foot by 460 foot lighted area located outside the generating plant, but within plant boundaries. Spent nuclear fuel would be placed in 20-ton steel canisters and sealed by welding in the plant, transported to the storage facility in a transfer overpack, and placed in large reinforced concrete storage vaults on a reinforced concrete pad. Up to 30 storage containers and vaults would be necessary to operate the plant through 2030, and up to 65 would be needed upon plant decommissioning. The proposed ISFSI is described in detail in the CON Application.
8. In the CON Application, Xcel Energy has asked the PUC for enough additional spent fuel storage capacity to allow the plant to operate for the entire twenty year license renewal period, until 2030.

Environmental Impact Statement Scoping

9. Before the PUC can make its certificate of need decision for the ISFSI, a state environmental impact statement (EIS) must be prepared. Minnesota Statute 116C.83, subd. 6(b).
10. The Minnesota Power Plant Siting Act, Minnesota Statutes 116C.51 to 116C.69, does not apply to this proceeding. Instead, the EIS for the proposed ISFSI falls under the Minnesota Environmental Policy Act, Minnesota Statutes Chapter 116D, and the Minnesota Environmental Review Rules, Minn. Rules Chapter 4410.
11. The Minnesota Environmental Quality Board (EQB) accepted Xcel Energy's completed data portion of the Scoping Environmental Assessment Worksheet (EAW) for the EIS on January 24, 2005.
12. The EQB staff prepared a draft Scope Decision and Scoping EAW, and published the document's availability in the *EQB Monitor* on March 14, 2005. EQB staff

circulated the draft Scope Decision and Scoping EAW as required by Minn. Rule 4410.2100, subp. 3. On March 17, 2005, a press release with the project description, scoping document availability, and commenting procedures was faxed to major media outlets throughout the state, including newspapers, radio, and television, and to the local newspaper, the *Monticello Times*.

13. By March 14, 2005, copies of the draft Scoping Document and Scoping EAW were placed in the following locations: Monticello Public Library, Big Lake Public Library, Becker Public Library, the Department of Natural Resources Library, St. Paul and the Minneapolis Public Library – Technology and Science, Minneapolis. The documents were also posted on the EQB web site, and mailed to the project distribution list.
14. Within the minimum 30-day comment period on the draft EIS scoping decision and scoping EAW, the EQB must hold at least one public meeting. Minn. Rule 4410.2100, subp. 3.
15. A public open house/scoping meeting was held Monday, April 4, 2005 beginning at 2:00 pm until approximately 9:00 p.m. at the Monticello Community Center, Mississippi Room, 505 Walnut Street in the City of Monticello, Minnesota. EQB staff and staff from Nuclear Management Company (operator of the Monticello Generation Plant) made presentations at 7:00, followed by public comments and discussion. Approximately six members of the public attended the open house, in addition to state agency and utility staff.
16. The formal 30-day scoping comment period ended on April 13, 2005; however, EQB staff did accept comments after the comment period ended.
17. Written comments were received from the following individuals or organizations:
 - a. Xcel Energy (James Alders);
 - b. Minnesota Department of Commerce (Steve Rakow);
 - c. Andy Edgar;
 - d. Mary Curtis;
 - e. Lee Dilley;
 - f. Dawn Froelich;
 - g. Sara Johnson;
 - h. Lucille M. Hick;
 - i. Carol Overland, Esquire;
 - j. North American Water Office (George Crocker);
 - k. Minnesotans for an Energy Efficient Economy (Beth Goodpaster); and
 - l. River Communities United for Responsible Energy, or R-CURE; (Kristen Eide-Tollefson).
18. Comments on the EIS scope addressed numerous issues, including the likely term of storage for the spent fuel to be studied in the EIS, the scope and importance of federal preemption over radiation health and safety, and role of state and federal

agencies in their respective regulatory processes, and the scope of alternatives to continued operation of the Monticello Generating Plant past 2010.

19. In response to these comments, the draft scoping decision and Scoping EAW were revised to include (1) an analysis of the impacts of on-site storage for up to 200 years, (2) a clarification that despite federal preemption, the EIS will address radiological health and safety issues in order to inform the public, inform the NRC, and compare generation alternatives, but will not include detailed independent studies of radiological health and safety issues, and (3) a revised process for defining one or more renewable "distributed energy" alternatives to the Monticello Generating Plant. Although some comments requested it, the revised scope of the EIS did not include an analysis of impacts of permanent storage of the spent nuclear fuel on-site at Monticello.
20. The EQB adopted the Scoping Decision and Scoping EAW, dated June 16, 2005.

Federal and State Cooperation

21. The United States Nuclear Regulatory Commission (NRC) is preparing a supplemental environmental impact statement as part of its review of Xcel Energy's license renewal application. The NRC supplemental environmental impact statement and procedures required under the National Environmental Policy Act overlaps with the state environmental impact statement in some areas.
22. Minnesota Rule 4410.3900 states that state governmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minnesota Statutes, Chapter 116D, and the National Environmental Policy Act, United States Code, title 42, sections 4321 to 4361. Minn. Rule 4410.3900, subp. 3, also says, in relevant part, "the RGU shall utilize the draft or final federal EIS as the draft state EIS for the project if the federal EIS addresses the scoped issues and satisfies the standards set forth in part 4410.2300."
23. The EQB and the NRC determined to cooperate, therefore, to the maximum extent possible to reduce duplication. However, because the NRC did not expect to complete a draft EIS until early 2006, the federal EIS will not be available in time for use as a replacement for the state EIS. In addition, as proposed, the focus of the state EIS is on the proposed ISFSI and the NRC EIS is on the impacts of continued operation of the Monticello Generating Plant.

Environmental Impact Statement Preparation

24. Authority for EIS preparation was transferred from the EQB to the Minnesota Department of Commerce (DOC) affected July 1, 2005. Laws of Minnesota 2005, Chapter 97, Article 3, Section 17.

25. EIS preparation notice was published in the *EQB Monitor* August 1, 2005, listing a tentative DEIS publication in September 2005 followed by contested case hearings in November 2005. Minn. Rule 4410.2100, subp. 9.
26. On August 19, 2005, DOC, with the consent of Xcel, requested an extension of the DEIS publication date from September 15 to November 18, 2005. Administrative Law Judge Steve M. Mihalchick in his August 30, 2005, third pre-hearing order granted the extension and rescheduled the contested case hearings for February 2006.
27. EIS preparation press release was supplied September 12, 2005, to the *Monticello Times*, *Star Tribune* and *Pioneer Press*. Minn. Rule 4410.2100, subp. 9.
28. The Draft Environmental Impact Statement was made available for public review on November 18, 2005, and notice was given in accordance with Minnesota Rule 4410.2600. The EIS was properly distributed and was provided to all people requesting a copy. DEIS availability notice was published in the December 5, 2005, *EQB Monitor* and DEIS availability press release was supplied by DOC to the *Monticello Times*, *Star Tribune* and *Pioneer Press* on December 23, 2005. Information on the public information meetings and hearings also was published in the January 2, 2006, *EQB Monitor* and placed as notices By Xcel in the *Monticello Times*, *Star Tribune*, *Pioneer Press* and *Sherburne County Citizen*.
29. Copies of the DEIS were supplied to the Monticello Public Library; Great River Regional Library, St. Cloud; Legislative Reference Library and DNR Library, St. Paul; and the Minneapolis Public Library – Technology and Science, Minneapolis. The document was also posted on the PUC web site, and mailed to the project distribution list.
30. Public information meetings and hearings presided over by Administrative Law Judge Steve M. Mihalchick were held at the Monticello Community Center, Mississippi Room, 505 Walnut Street in the city of Monticello on February 2, 2006, and at the Public Utilities Commission's offices, 121 Seventh Pl. E., Suite 350, in St. Paul on February 16, 2006 at 1 and 7 p.m. to discuss the draft EIS. The public also had an opportunity to ask questions during informal discussions with project personnel. The comment period was held open until March 3, 2006.
31. The Department of Commerce received three comment letters on the Draft Environmental Impact Statement. In addition, testimony from two witnesses in the Certificate of Need evidentiary hearings and several members of the public through the public hearings on the Certificate of Need and DEIS raised issues relative to the EIS.

Comment Letters

- a. Xcel Energy (James Alders)
- b. Minnesota Department of Natural Resources (Matt Langan)
- c. On behalf of ME3 and MCEA (Thomas Harlan)

Testimony of Parties

- d. Gordon R. Thompson, on behalf of ME3 and MCEA
- e. Michael Michaud, on behalf of North American Water Office

Comments at Public Hearings

- f. Kevin Krone
- g. Ellen Anderson
- h. Diane Rother
- i. Lea Fouchee
- j. Vicky Schmidt (e-mail submitted after hearing)

- 32. The FEIS addresses the issues raised in the scoping decision and responds to the comments on the DEIS consistent with that decision. The FEIS includes copies of comment letters, an overview of and links to testimony and public hearing comments on the DEIS, responses to comments and several revisions to the DEIS. Minnesota Rule 4410.2800, subp. 4, A. and C.
- 33. In accordance with Minnesota Statute 116C.83, subd. 6(b), the FEIS notes that NCR storage system evaluation and approval requirements insure that the facility is designed to provide a reasonable expectation that the operation of the facility will not result in groundwater contamination in excess of the standards established in section 116C.76, subdivision 1, clauses (1) to (3).
- 34. On March 20, 2006, the Final Environmental Impact Statement was made available for public review and notice was given in accordance with Minnesota Rules, part 4410.2700. The FEIS was properly distributed and was provided to all people requesting a copy.
- 35. FEIS availability notice was published in the March 27, 2006, *EQB Monitor* and FEIS availability press release was supplied by DOC to the *Monticello Times*, *Star Tribune* and *Pioneer Press* on April 4, 2006.
- 36. Copies of the FEIS were supplied to the Monticello Public Library; Great River Regional Library, St. Cloud; Legislative Reference Library and DNR Library, St. Paul; and the Minneapolis Public Library – Technology and Science, Minneapolis. The document was also posted on the PUC web site, and mailed to the project distribution list.
- 37. The period for commenting on the adequacy of the FEIS closed April 10, 2006. Comment letters were received from two parties: ME3/MCEA and North American Water Office. The letters were posted on the project web page.
- 38. ME3/MCEA (Thomas Harlan) letter generally reiterates concerns with the proposed project expressed in their comment letter on the DEIS. These concerns were addressed in FEIS Section 9, *Draft EIS Comments and Responses*, and

acknowledged through inclusion of their letter in the FEIS. In addition, changes were made to the DEIS text as appropriate.

39. The North American Water Office (George Crocker) letter contends that the FEIS fails to meet the requirements of Minnesota Rule 4410.2300, items G and H, as required by Minnesota Rule 4410.2800, subp. 4 item A, and discusses four specific areas of concern: generation alternative, routine radiological release, security and degradation and potential for accidents. In general, Mr. Crocker's comments fail to recognize that conformance with Minnesota Rule 4410.2300, items G and H is judged relative to the adopted scope, that suggestions for changes to the scope at the FEIS stage are untimely and that the EIS process is not synonymous with the Certificate of Need proceedings.

Criteria for Determination of Adequacy

Minnesota Rule 4410.2800, subp. 4, provides that the Final EIS is adequate if it:

- A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part 4410.2300, items G and H;
- B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and
- C. was prepared in compliance with the procedures of the act and parts 4410.0200 to 4410.6500.

Based upon the foregoing Findings of Fact, the Commissioner of the Department of Commerce makes the following:

CONCLUSIONS

1. Any of the foregoing Findings that more properly should be designated as Conclusions are hereby adopted as such.
2. The Commissioner of the Department of Commerce has the authority to determine the adequacy of the Final Environmental Impact Statement for the Monticello Independent Spent Fuel Storage Installation.
3. The Department of Commerce has fulfilled all relevant procedural requirements of law or rule applicable to the preparation of an Environmental Impact Statement.

4. The Final Environmental Impact Statement adequately addresses the significant environmental issues and alternatives identified in the Scoping Decision developed under Minnesota Rules part 4410.2100.
5. The Final Environmental Impact Statement provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping.

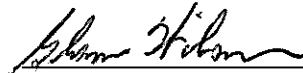
Based on the Findings of Fact and Conclusions contained herein and the entire record of this proceeding, the Department of Commerce hereby makes the following:

ORDER

The Commissioner of the Department of Commerce hereby determines that the Final Environmental Impact Statement on the Monticello Independent Spent Fuel Storage Installation is adequate.

Dated this 26 day of July, 2006

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE



Glen Wilson
Commissioner